

CANADA / JUDGMENT

## L.K.M. v. T.G.T.

2025 BCSC 981

### COURT

Supreme Court of British Columbia

### DECIDED

29 May 2025

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2025 BCSC 981 L.K.M. v. T.G.T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.K.M. v. T.G.T.,

2025 BCSC 981

Date: 20250529

Docket: E233069

Registry: Vancouver

Between:

L.K.M.

Claimant

And

T.G.T. also known as T.G.T.

Respondent

Before: Associate Judge Robinson

Reasons for Judgment

Counsel for the Claimant:

K. Simington

Counsel for the Respondent:

J. Desilets

N. Bernardi

Place and Date of Hearing:

Vancouver, B.C.

January 28 and April 15, 2025

Place and Date of Judgment:

Vancouver, B.C.

May 29, 2025

## Introduction

- [1] These reasons arise from an application, heard over two non-consecutive days, in a family law dispute.
- [2] The dispute arises from a marriage-like relationship which began in January 2018 and ended in 2023. There is dispute as to the date of separation. The claimant contends that separation occurred in November 2023, whereas the respondent takes the position that separation occurred earlier, in February 2023.
- [3] During the parties' relationship, they became parents to one child, to whom I shall refer as G. G was born in January 2019. G is now 6 years old and enrolled in kindergarten.
- [4] In this context, the claimant seeks a multitude of orders, most of which are opposed by the respondent. In particular, she seeks:
  - a) An order, pursuant to s. 91 of the Family Law Act, S.B.C. 2011, c. 25 (the "FLA") restraining the respondent from transferring, selling or disposing of property pending the final determination of this proceeding;
  - b) An order pursuant to R. 9-1 of the Supreme Court Family Rules, BC Reg 169/2009 ("SCRF") compelling the respondent to produce certain documents;
  - c) An order pursuant to R. 9-2(17) compelling the respondent to provide the name and address of his current romantic partner (as well as the name of any other person who has stayed with the respondent while he is exercising parenting time) and the dates in which he allegedly rented a house in Vancouver in or around late 2023 and early 2024;
  - d) An order that the respondent pay retroactive child support in the amount of \$4,015 per month for the period beginning November 2023 and ending December 2024 and in the amount of \$3,720 per month from January 2025 to the present date;
  - e) An order that the respondent pay ongoing child support in the amount of \$3,720 per month from the present date until further order of the court;

- f) An order that the respondent pay spousal support, retroactive to November 2023, and ongoing until further order of the court, in the amount of \$7,313 per month;
  - g) An order that the respondent pay 62% of special and extraordinary expenses pursuant to s. 7 of the Federal Child Support Guidelines and including but not limited to tuition and related fees associated with the parties' daughter's attendance at a private school; and
  - h) The imposition of a fine in the amount of \$5,000, payable by the respondent, pursuant to s. 213 of the FLA, which is it characterized and defined as maintenance pursuant to s. 1 of the Family Maintenance Enforcement Act, RSBC 1996, c 127.
- [5] The respondent does not object to ongoing child support. He accepts this obligation but submits that the amount should be set at \$3,696 per month and not \$3,720 as claimed. He further concedes an obligation to contribute to special and extraordinary expenses, but contends that many of the expenses claimed by the claimant are not properly within the scope of s. 7.
- [6] In respect of the remaining orders sought, they are opposed by the respondent.

## Background

- [7] To put this application into context, it is necessary to set out the background in some detail.
- [8] When the parties met and began cohabitation, in January 2018, the claimant was self-employed as the owner of a yoga studio while the respondent was employed by a company known as "WSP".
- [9] Within a year of cohabitation, in September 2018, the parties purchased a house near Ottawa to which they relocated. It was while living in the Ottawa home that G was born.
- [10] Following the birth of G, the claimant did not cease work or avail herself of maternity leave. She continued to operate the yoga business and also launched a charity, from which she drew a salary. Meanwhile the respondent availed himself of a brief parental leave of absence (of approximately three weeks) and thereafter arranged his work schedule to allow him to work from home four days per week.
- [11] In August 2020, the parties purchased a new home in Whistler, British Columbia to which they relocated. Their Ottawa home was sold shortly thereafter. After their relocation to Whistler, the claimant ceased operation of the yoga business, but continued to operate the charity and continued to draw a salary from that venture.
- [12] In 2021, the respondent's employment was terminated. As part of the termination, he was paid one year's salary as severance and entered into a restrictive covenant whereby he agreed to refrain from competing with WSP for a period of one year. Thereafter, the respondent was unemployed until 2022.

- [13] In 2022, the respondent obtained employment, based in Kelowna, British Columbia. Upon doing so, the parties began to search for a home in Kelowna and listed their property in Whistler for sale.
- [14] The Whistler property did not immediately sell, and in the meantime, the claimant continued to reside in that home while the respondent travelled back and forth between Whistler and Kelowna to accommodate both his professional and personal objectives.
- [15] It was during this arrangement that the parties' relationship ended. As indicated, there is dispute as to the exact date of separation, but that dispute is not material to the matters on this application.
- [16] In or around August 2023, the claimant's engagement with the charity ended and she ceased to draw any salary from that venture.
- [17] Following separation, the claimant continued to occupy the former family home, in Whistler, until it was sold in May 2024. Up until that time, although the parties had separated, the respondent paid all expenses related to the maintenance of the former family home.
- [18] The sale of the former family home generated net sale proceeds of slightly less than \$800,000. From those proceeds, each party received an interim distribution of \$200,00. More recently, on March 12, 2025, the claimant was granted a further interim distribution in the amount of \$160,000 pursuant to an order of Associate Judge Bilawich (2025 BCSC 552). Consequently, the remaining proceeds available for distribution amount to slightly less than \$240,000.
- [19] In April 2024, the claimant advised the respondent that she intended to relocate to Ontario, along with G, as she had recently accepted employment in that Province. The respondent objected to G's relocation and made the claimant aware of his objection in a timely manner. This dispute was ultimately resolved in a summary trial before Mr. Justice Giaschi, in July and August 2024 (2024 BCSC 1675). Following an analysis of the factors enumerated under s. 37(2) of the FLA, Giaschi, J. found that the best interests of G would be met by permitting her relocation to Ontario where she would reside with the claimant. He declined to make any final orders in respect of parenting, instead ordering, on an interim basis, that, inter alia, the parties will share all parental responsibilities under s. 41 of the FLA.
- [20] The respondent has initiated an appeal of the order of Giaschi, J., and the appeal is set to be heard on May 30, 2025.
- [21] Since relocating to Ontario, the claimant has arranged to enroll G in a private school at a cost of \$15,390 per school year. She did this without seeking or obtaining the respondent's agreement or consent. The respondent has refused to contribute to the tuition expenses despite repeated requests from the claimant.

[22] However, the respondent has paid support since the claimant and G moved out of the former family home. In this regard, he agreed to pay spousal support on an interim and without prejudice basis in the amount of \$2,236 per month for three months beginning on June 1, 2024. With respect to child support, he began paying \$2,708 per month on May 15, 2024 and has continued to make those payments on a without prejudice basis.

[23] It is against the foregoing backdrop that the current application has arisen.

## Discussion

### Section 91 Restraining Order

[24] Section 91 of the FLA provides:

- (1) On application by a spouse, the Supreme Court must make an order restraining the other spouse from disposing of any property at issue under this Part or Part 6 [Pension Division] until or unless the other spouse establishes that a claim made under this Part or Part 6 will not be defeated or adversely affected by the disposal of the property.
- (2) The Supreme Court may make one or more of the following orders:
  - (a) for the possession, delivery, safekeeping and preservation of property;
  - (b) for the purpose of protecting the applicant's interest in property from being defeated or adversely affected,
    - (i) prohibiting the other spouse from disposing of, transferring, converting, or exchanging into another form, property in which the applicant may have an interest, or
    - (ii) vesting all or a portion of property in, or in trust for, the applicant.
- (3) The Supreme Court may make an order under this section before notice of the application is served on the other spouse, or may order that notice of the application be served on the other spouse.
- (4) Despite section 215 (2) [changing, suspending or terminating orders generally], the Supreme Court may change, suspend or terminate an order made under this section.

[25] It is not contested that a party opposing an order under s. 91 has the onus of establishing that the disposition of property will not adversely affect the applicant's claims. In this context, that onus belongs to the respondent.

[26] In assessing the potential adverse effect on the claimant's claims, consideration must be given to the nature and extent of the dispute between the parties. Their primary shared asset was the former family home. A significant portion of the net sale proceeds have been distributed on an interim basis such that the remaining funds total less than \$240,000. That amount is being held in trust and will remain in trust pending further agreement of the parties or further order of the court. Accordingly, no order under s. 91 is necessary to protect against dissipation.

- [27] The only other discernible asset in which the claimant may have an interest (and which may be subject to dissipation by the respondent) is the respondent's RRSP account. As of April 1, 2025, the account held a balance of \$9,600. There has been a significant erosion in the account value since January 2025, when it had a value of \$87,000. In other words, a restraining order to preserve this asset is tantamount to closing the metaphorical "barn door" after the "horse" has already escaped.
- [28] Moreover, the extent of the claimant's potential interest in the RRSP account is debatable. In January 2023, the account had a balance of zero. By June 2023, the balance stood at \$10,473. If the respondent's position as to the separation date prevails at trial, it would likely result in a determination that the claimant is entitled to no more than one-half of that amount (and possibly less than one-half), or \$5,236.50.
- [29] The proceeds arising from the sale of the formerly family home remain as sufficient security to address this entitlement, if an entitlement is established at trial.
- [30] I am satisfied, on the evidence that the respondent has met the onus of establishing that an order under s. 91 is neither necessary nor warranted. The disposition of property by the respondent between now and the date of trial will not adversely affect the claimant's claims.
- [31] In the circumstances, I dismiss this aspect of the claimant's application.

### **Production of Documents under R. 9-1**

- [32] Rule 9-1(1) in SCFR requires a party in a family law proceeding to prepare a list of documents setting out all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and all other documents to which the party intends to refer at trial.
- [33] Upon receiving and reviewing the disclosed list of documents, the receiving party may demand further and better production, in accordance with R. 9-1(8) which triggers an obligation on the disclosing party under R. 9-1(9) to either comply with the demand or explain its non-compliance. This process is intended to require the parties to engage in a dialogue and if possible, avoid applications to the court.
- [34] There is no question that the claimant initiated the procedure contemplated by R. 9-1(8) in this context. Specifically, counsel for the claimant delivered a letter to counsel for the respondent dated December 3, 2024 requesting a list of documents and specifically identifying certain documents and classes of documents which, in the view of the claimant, were subject to production.

- [35] Thereafter, by way of letter dated January 10, 2025, the respondent served a list of documents. In that same letter, counsel for the respondent provided a rather comprehensive explanation of why certain documents requested by the claimant would not be produced or disclosed. Without reciting the letter verbatim, counsel for the respondent explained that:
- a) Many of the documents requested were not in his possession and were taken from the formerly family home by the claimant when she moved;
  - b) He did not regard certain documents to be relevant and invited the claimant to explain the basis on which she contends that they are relevant;
  - c) He had requested certain records from non-party record holders and agreed to produce them upon receipt; and
  - d) Certain banking records were unavailable because the accounts to which they related were "dormant". However, the respondent produced screen shots reflecting transactions and balances in respect of such accounts.
- [36] The respondent contends that the foregoing letter, along with the list of documents enclosed therewith, satisfies his document disclosure obligations.
- [37] On the basis of the evidence before me on this application, I agree with the respondent. There is no question that most of the documents sought by the claimant in the demand letter of December 2, 2024 were disclosed by the respondent. To the extent that the respondent has not fully complied with the claimant's request, he has explained his noncompliance.
- [38] The claimant effectively asks the court to disregard his explanation and order further and better production of documents. She does so without having taken the court to any evidence which would constitute a basis on which to find or infer that such documents exist, or if they do exist, whether they are within the power, possession or control of the respondent such that he is capable of the disclosure she seeks. Moreover, insofar as the relevancy of the documents are concerned, the claimant did not make any submissions on this point.
- [39] On an application for document production, it is not sufficient to identify specific documents or classes of documents and to require or expect the court to take notice of relevancy, particularly where, as here, relevancy is in dispute.
- [40] In the circumstances, I am satisfied that the respondent has generally complied with his disclosure obligations under R. 9-1. I make this finding in recognition of the fact that the respondent did not provide his list of documents until well after the time limited for doing so had passed and after he had been prompted to do so by way of letter from opposing counsel. While I am not inclined to minimize those facts, what is most salient in the present context is that the respondent has disclosed the documents which are subject to production in this litigation and has expressly recognized an obligation to disclose additional

documentation once obtained.

- [41] There is no basis for any order that he do more than that, and this aspect of the application is dismissed.

### **Disclosure of Information under R. 9-2(17)**

- [42] This application has been rendered largely academic insofar as it seeks the name and address of the respondent's current romantic partner. After this application was filed and before it was heard, the respondent provided the name and email address for his current romantic partner. In doing so, the respondent has discharged his obligations.
- [43] I reach that conclusion after considering the claimant's position. Specifically, she takes issue with the information provided and argues that she requires the full, "legal name" as well as a "physical address".
- [44] With respect to her full, "legal name", the claimant proffered no evidence to suggest that the name provided by the respondent was inaccurate or that it was anything other than her full, "legal name". The claimant's suspicions or doubts concerning the veracity of what has been provided are not bases on which to order the respondent to provide more information than has already been provided.
- [45] With respect to her current residential address, the claimant relies upon R. 9-2(17)(b) which provides:

Unless the court otherwise orders, a person being examined for discovery is compellable to give the names and addresses of all persons who reasonably might be expected to have knowledge relating to any matter in question in the family law case.

- [46] Although, the foregoing does not define "address", it is my view that an email address is sufficient to achieve the underlying intent of the rule, if not generally, then certainly in this case.
- [47] The rule is intended to afford an opposing party an opportunity to contact, meet and possibly interview potential witnesses in a family law dispute. An email address certainly constitutes a means of contact and also establishes a channel for dialogue. In most instances, it likely provides a more convenient and efficient means of contact than an in-person visit to the home of a potential witness.
- [48] In reaching this conclusion, I am also influenced by the fact that, despite having been given an email address, the claimant has made no attempt to contact the respondent's current romantic partner. If contact had been attempted and had been unsuccessful, the claimant would be able to present a more compelling argument for further and better information. However, in my view, to insist on additional information without establishing its necessity is problematic when that additional information concerns the privacy of a person who is uninterested in the litigation itself.

- [49] The application is dismissed in respect of the request for the respondent's current romantic partner's "physical address" and "full legal name".
- [50] The situation is somewhat different regarding the dates on which the respondent allegedly rented a home in Vancouver. While the claimant did not clearly articulate why this information is relevant, I have inferred that the relevancy pertains to establishing the parties' separation date. That is to say, if the parties continued to cohabitate in late 2023, this may be evidence that supports the claimant's contention of a separation date in November of that year (as opposed to February 2023 as contended by the respondent).
- [51] While evidence of ongoing cohabitation is not determinative of an ongoing marriage-like relationship, it is nonetheless relevant evidence.
- [52] On the other hand, the respondent says that this information has already been provided and, in that regard, he points to an email, dated January 14, 2024. In that email, addressed to the claimant, he wrote:

In the short term (coming weeks) I am going to be based out of Vancouver, probably until early Feb possibly a little longer

- [53] He submitted that the foregoing statement discloses that his rental of a home in Vancouver began after January 14, 2024. He says that this is sufficient disclosure and also argues that because the date was later than November 2023 - the claimant's alleged separation date - the precise dates are not relevant to the litigation.
- [54] There is some merit to the respondent's position but, in my view, an email message which requires the recipient to draw implications to discern the facts does not meet the threshold of disclosure in litigation. Requiring the respondent to provide information concerning the dates on which he rented a home in Vancouver is not onerous and is hardly an invasive inquiry. The information is presumably readily available to the respondent. Unlike an informal email, disclosure made in the context of litigation is less malleable and therefore likely to change before trial.
- [55] Accordingly, the application is granted insofar as it relates to the dates in which the respondent rented a home in Vancouver in or around late 2023 or early 2024.

### **Retroactive and Ongoing Child Support**

- [56] As indicated, the respondent consents to an order requiring ongoing child support. His opposition is primarily related to an order for retroactive child support.
- [57] To the extent that there is dispute related to ongoing support, it concerns the amount payable.

- [58] The claimant argues that ongoing child support obligations ought to be calculated on the basis of the respondent's anticipated 2024 annual income of \$465,045. She says that such an income gives rise to support obligations of \$3,720 per month under the Federal Child Support Guidelines.
- [59] The difficulty with the claimant's position is that the respondent's 2024 income was inflated by ongoing payments from his former employer (from which he was dismissed in 2021). At the time of his dismissal, he had an ongoing entitlement to performance share units, or PSU's. Those PSU's resulted in the issuance of payments in each of 2022, 2023 and 2024, as follows:
- a) 2022: \$372,300.26 (gross)
  - b) 2023: \$167,501.00 (gross)
  - c) 2024: \$11,030.89 (net)
- [60] It is not disputed that the respondent has no further right to payment from his former employer. In 2025, his income is likely to be limited to that which he is expected to derive from his current employer - \$438,410.00 per annum. This amount is reflected in the respondent's most recent financial statement dated January 10, 2025.
- [61] The foregoing income gives rise to monthly support obligations of \$3,696.00 per month. The discrepancy between that amount and the amount claimed on this application is relatively minor.
- [62] I am unable and unwilling to delve too deeply into the discrepancy. This is an issue better addressed at trial where the court will be positioned to weigh and assess the evidence and to resolve issues of credibility. If that assessment results in a determination that the respondent has not paid sufficient child support, that may be addressed as part of any final order.
- [63] In the meantime, given the unassailable evidence that the respondent's guideline income is not less than \$438,410.00 per annum, I accede to the respondent's position and order that he pay child support, in the amount of \$3,696.00 per month, on the 15th day of each month beginning on June 15, 2025 and continuing thereafter until further agreement of the parties or further order of this court.
- [64] The matter of retroactive child support is more contentious.
- [65] It is notable that this is not a situation in which the respondent has failed to pay child support. It is not disputed that he has been paying child support in the amount of \$2,708 since May, 2024. Prior to then, he paid all expenses related to the former family home while the Complainant continued to live at that address along with G.

- [66] The claim for retroactive child support is premised on what the claimant says is the difference between what has been paid and what ought to have been paid since separation. She contends that the respondent misstated his income for 2023 and that if he had stated his correct income for that year, his child support obligations would have been significantly higher than \$2,708 per month.
- [67] The difficulty with the claimant's position is that determining the arrears or retroactive child support requires the court to resolve significant issues, which is not easily done on the basis of an incomplete evidentiary record, as is common on interim applications.
- [68] This frequent problem was encountered and addressed by the court in *S.J.R. v. G.P.B.R.*, 2004 BCSC 1785, where Master Keighley declined to make any orders for interim support, holding, at para. 53:

I feel that that issue is best left to the trial judge for a more thorough evaluation of the parties' circumstances

- [69] Here, while it may be that the respondent's child support payments to date have been deficient, the extent of the deficiency (if any) is impossible to determine with confidence. Consideration would need to be given to the amounts paid by the respondent in maintaining the former family home from the date of separation (which itself is uncertain and disputed) and the evidence as to those expenses is in dispute.
- [70] Consequently, an award of retroactive child support would be largely assessed arbitrarily and could result in a significant injustice and prejudice to the respondent pending trial.
- [71] This issue of retroactive child support will be left for determination at trial, at which time the court will have the benefit of a more developed body of evidence which may be tested by cross examination.
- [72] In the meantime, the respondent will continue to pay monthly child support in the amount of \$3,696 as described above.

### **Retroactive and Ongoing Spousal Support**

- [73] The claimant seeks spousal support in the amount of \$7,313.00 per month on an ongoing basis and retroactive to November 2023 - the date on which she claims the parties separated. She claims both a compensatory and non-compensatory entitlement.
- [74] At the outset, the considerations for interim spousal support are not contentious and were summarized by Master Keighley in *Robles v. Kuhn*, 2009 BCSC 1163, as follows:
1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);

2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payer's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
  3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 3299; *Newson v. Newson*, 1998 Canlll 6440 (BC CA), [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
  4. The courts should not unduly emphasise any one of the statutory considerations above others;
  5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
  6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
  7. Interim support should only be ordered where it can be said a prima facie case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);
  8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: *L.G.B.*
- [75] In applying the foregoing considerations, and in particular, the admonition against interim orders where a prima facie case has not been established, I am not satisfied that there is any basis for a compensatory award of interim spousal support on this application.
- [76] Compensatory support is intended to address the losses sustained by one spouse following the break-up of a marriage or marriage-like relationship. A common situation is where one spouse assumes greater responsibilities for matters such as child care and thereby sacrifices economic opportunities, resulting in reduced earning capacity and more limited prospects for future financial success: *Chutter v. Chutter*, 2008 BCCA 507 at para. 50.
- [77] I have no doubt that the claimant assumed certain responsibilities and made sacrifices associated with parenting and indeed, as part of a union with the respondent. However, there is insufficient evidence on which to conclude that those responsibilities and sacrifices negatively impacted her earning capacity or prospects for future financial success.
- [78] Indeed, the undisputed evidence on this application is that the claimant's income increased during each year of the parties' relationship and its growth has continued since separation.

- [79] Specifically, in 2018, the first year of their relationship - the claimant earned \$43,717. In 2019 - the year in which G was born - her income increased to \$59,933. In 2020, the claimant ceased to operate her yoga business but nonetheless realized income of \$78,000. In 2021, her income increased again to \$86,673, and in 2022 - the last complete year of the parties' relationship, she earned \$88,400.
- [80] The growth in the claimant's income has continued post-separation. She is now employed in a position in which she earns \$135,000 along with an entitlement to potential bonuses.
- [81] The extent to which the claimant's earning capacity was adversely affected by the marriage-like relationship, if it was affected at all, is very much in dispute. Until that issue is addressed, on a full consideration of the evidence, it is not appropriate to make any award for compensatory spousal support.
- [82] With respect to non-compensatory spousal support, the court in Chutter, supra held, at para. 54-55:
- [54] Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.
- [55] The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10:
- "Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.
- [83] However, an interim application for spousal support requires more than satisfying the court that the party seeking support has "needs" and that the party from whom support is sought has the means to address those needs. As a threshold issue, the necessity to establish a prima facie entitlement remains.
- [84] In my view, the claimant has not met that threshold.
- [85] Here, the evidence is that following the parties' separation until May 2024, the respondent continued to pay all expenses to maintain the former family home while it was occupied exclusively by the claimant and G. The evidence indicates that these expenses totaled more than \$8,000 per month.

- [86] Thereafter, beginning on or about June 1, 2024, the respondent paid the claimant spousal support, pursuant to a without prejudice consent order in the amount of \$2,236 per month for three months.
- [87] It is notable that when receiving the foregoing spousal support, the claimant (along with G) was residing with her mother, rent-free, in Ontario. That living situation persisted until November 2024, when she arranged to rent her own home in Ontario. By that date, she was employed in her current position in which she began to earn at least \$135,000 per year (\$11,250 per month).
- [88] When the foregoing is considered against the backdrop of the parties' relatively brief relationship, I am left with genuine questions about the claimant's entitlement to spousal support over and above what has been paid to date.
- [89] In saying that, I am mindful of the claimant's evidence that, since separation, she has incurred significant debts. At the same time, the basis for these debts was not explained in the evidence. The respondent contends that that claimant's debts are a consequence of imprudent financial decisions and argued that the law does not permit a party to "spend her way to a claim for interim spousal support".
- [90] This is, in my view, correct. The objectives of spousal support are enumerated in s. 163 of the FLA, as follows:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
  - (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
  - (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
  - (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [91] Subsection 163(c) contemplates an award of spousal support to relieve economic hardship, but expressly limits that objective to situations involving economic hardship "arising from the breakdown of the relationship between the spouses". Here, on the evidence proffered, I am not satisfied that the claimant's economic hardship is attributable to the breakdown of the relationship.
- [92] Moreover, even if I were satisfied, that would not justify an interim award in this context. Consideration would also have to be given to the amounts paid to date, as described above, the relative brevity of the parties' relationship and the potential injustice arising from an interim award.

- [93] The potential injustice is a significant consideration in this case. There are situations in which the court may make an interim award as a stop-gap measure knowing or expecting that the parties' ultimate entitlements and obligations can be addressed and equalized at trial based on a more developed body of evidence. This may embolden the court to set aside misgivings and to make an interim order with confidence that any "overpayment" can be offset against other claims that are in issue.
- [94] That confidence does not exist in this situation. This is because there does not appear to be significant assets against which an overpayment may be offset. The parties' most significant asset was the former family home. As indicated, the proceeds from the sale of the home have been the subject of interim distributions. The claimant has received interim distributions totaling \$360,000 to date and the respondent has received \$200,000. The balance available for distribution is approximately \$240,000.
- [95] Of that balance, the respondent has a presumptive entitlement to roughly \$200,000 from those sale proceeds. Accordingly, if an interim award for spousal support is granted and the claimant is subsequently found to have received more support than that to which she is ultimately entitled, the funds against which the amount paid may be offset is minimal.
- [96] Given the foregoing, any determinations related to spousal support, retroactive or ongoing, are best determined at trial, and I dismiss the claimant's application in this regard.

### Special and Extraordinary Expenses

- [97] The respondent does not deny or dispute an obligation to contribute to special and extraordinary expenses as they relate to G. He further agrees to an apportionment, based on the parties' respective incomes, whereby he is required to pay 62% and the claimant is required to pay 38% of those expenses.
- [98] The respondent's obligations arise pursuant to s. 7 of Federal Child Support Guidelines which provides:
- 7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:
- (a) child care expenses incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time;
  - (b) that portion of the medical and dental insurance premiums attributable to the child;

- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

(1.1) For the purposes of paras. (l)(d) and (f), the term extraordinary expenses mean:

- (a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or
- (b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account.
- (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate;
- (ii) the nature and number of the educational programs and extracurricular activities;
- (iii) (any special needs and talents of the child or children;
- (iv) the overall cost of the programs and activities; and
- (v) any other similar factor that the court considers relevant.

[99] The contentious issue in this regard involves determining the expenses which are properly for determination is what expenses are extraordinary expenses for the purposes of subsections 7(1)(d) and (f).

[100] The contention relates primarily to G's enrolment at a private school in Ontario. The tuition fees associated with the school (including an initial registration fee and G's participation in a hot lunch program) amount to \$15,390 for the 2024/2025 school year.

[101] The respondent resists an obligation to contribute to those fees and argues that they do not constitute extraordinary expenses.

[102] In resolving this issue, the decision of Justice Baird in *Clarke v. Clarke*, 2014 BCSC 824, is instructive. There, Baird, J. held:

- [48] Section 7 of the Federal Child Support Guidelines gives the court the discretion to order payment of an amount over and above the regular table amount. However, in order to qualify for as. 7 order, the expenses must be proven to be "special" or "extraordinary" in some way.
- [49] This is because the basic table amounts of child support are designed to cover all the "ordinary" costs of raising a child: *D.M.C.T. v. L.K.S.*, 2008 NSCA 61 at para. 25. Food, shelter, clothing and other necessities are all ordinary, as are many educational, extracurricular and recreational expenses: *McLaughlin v. McLaughlin* (1998), 1998 Canlll 5558 (BC CA), 167 D.L.R. (4th) 39 (B.C.C.A.).
- [50] So when does an expense qualify as special or extraordinary? First, it must fit within one of the categories of expenses listed in section 7
- [51] That list is exhaustive. If the claimed expense does not fit into any of those categories, it cannot be a special or extraordinary expense: *Kase v. Bazinet*, 2011 ONCJ 718 at para. 39.
- [52] Even where an expense fits into one of the listed categories, that is not the end of the story. The expenses must be both "necessary" -- as defined in relation to the child's best interests -- and "reasonable," as measured against the combined financial means of the parents (and, where appropriate, the child) as well as the family's spending patterns prior to separation: see section 7(1) and *Yensen v. Yensen*, 2003 BCSC 1372 at para. 8. In addition if the expense is one listed under subsection (d) or (f) -- educational programs or extracurricular activities -- the party claiming the expense must prove that they are "extraordinary."
- [53] There is no straightforward definition for "extraordinary" although section 7.1, recently added to the Guidelines, provides some guidance; it requires a sort of proportionality inquiry, looking at the nature and number of activities, any special needs or talents of the child, the overall cost of the activities, and any other similar relevant factors: see *D.M.C.T.* at para. 32.
- [54] Because the tests are fact-specific, I cannot definitively say what types of expenses qualify in every case. But I can say what does not qualify as special or extraordinary:
- Expenses such as "entertainment, pets, vacations, school fees, school supplies, children's allowances, meals outside the home, personal grooming, and clothing" are not section 7 expenses: *Mertler v. Kardynal* (1997), 1997 Canlll 11209 (SK KB), 35 R.F.L. (4th) 72 (Sask. Q.B.).
  - A home computer and other similar technologies do not qualify as extraordinary as they are "common item[s] found in most homes": *Yensen* at para. 18.
  - Recreational sports and other similar extracurricular activities -- dance lessons, community sports leagues, ski trips, etcetera -- are generally considered "ordinary." The question is whether the participation goes beyond that of the "average child": *D.L.C. v. F.M.C.*, 2010 BCSC 1312 at para. 67. [emphasis added]

- [103] The foregoing seemingly precludes a determination that school fees are an extraordinary expense for the purposes of s. 7. However, if that is not the case and if the foregoing is intended to constitute general rules to which there are exceptions, those exceptions do not arise in this case.
- [104] Specifically, where the school fees (or other expenses) had been incurred with the consent or agreement of the party from whom payment is sought, it may be inequitable to allow that party to avoid paying a proportionate share of those fees. Likewise, where school fees were being incurred during the course of the parties' marriage such that there is or may be an expectation that they continue following separation, they may be properly regarded as an extraordinary expense.
- [105] Those circumstances do not exist here. As discussed, G is presently enrolled in kindergarten. She has no history of enrolment in private school. The fact that she previously attended a "private" daycare is not relevant since, daycare services invariably require payment of fees.
- [106] Moreover, this is not a situation in which the respondent has either consented or acquiesced to G's enrolment in private school.
- [107] While I am satisfied that the parties had contemplated and planned on G being enrolled in private school prior to their separation, those plans appear to have been contingent on the relationship persisting and the parties relocating, to reside with one another, in Kelowna. It is not surprising that the costs associated with maintaining two separate households following separation might cause the parties (or at least one of the parties) to rethink financial matters.
- [108] Here, the decision to enroll G in a private school was made by the claimant unilaterally, despite the fact that she and the respondent share guardianship and despite the respondent's express consent to G being enrolled in a public school. Incidentally, the public school to which the respondent consented was the same public school suggested by the claimant and which the claimant described as being the same public school she herself had attended as a child and as a "very good, very highly rated school".
- [109] The claimant proceeded to enroll G in a private school, at significant costs. In my view, these facts alone cannot and do not justify visiting a portion of those costs on the respondent as an extraordinary expense. In reaching this conclusion, I take guidance from the decision of Justice Skolrood (as he then was) in *Younger v. Younger*, 2017 BCSC 363:
- [50] Before delving more into the details of the amounts spent by each party, it is worth making a couple of observations. First, it is apparent that many if not most of the expenditures made by one or the other parent were made without the other parent's agreement, and some of those expenditures are significant. While the Guidelines do not require the agreement of the two parents in order for an expense to be properly characterized as a s. 7 expense, it is unreasonable for either parent to incur significant expenses without the other's agreement

and then seek recovery from that other parent. particularly well after the fact. The absence of agreement between the parties leads to the difficult situation facing the court on this application of having to look back in time to parse the details of who paid what and when. [emphasis added]

[110] I make similar observations in respect of other expenses at issue on this application. They include:

- a) Summer camp costs of \$400-\$500 per week during the months of July and August; and
- b) Costs related to extracurricular activities such as soccer, basketball, music, dance, gymnastics, and skiing. The claimant has assessed these expenses at more than \$5,000 annually.

[111] The decision in *Clarke*, supra held that "recreational sports and other similar extracurricular activities - dance lessons, community sports leagues, ski trips, etcetera -- are generally considered 'ordinary'" and do not qualify as a special or extraordinary expense.

[112] In my view, there is no basis on which to depart from this general rule. As with school fees, the various extracurricular activities in which G is involved have arisen because of the claimant's unilateral actions and decisions and without the consent or agreement of the respondent. Moreover, there is no evidence that G has a lengthy history in any of these activities such that her participation is necessarily in her best interests.

[113] While G likely realizes a benefit from participation in the activities, there is no evidence that she has any special needs or talents that should be fostered by that participation. Put simply, her participation appears to be decidedly "ordinary", as opposed to extraordinary.

[114] Accordingly, on this application, it is appropriate to require the respondent to pay or to reimburse the claimant at a rate of 62% of special and extraordinary expenses as they relate to G. However, that obligation does not extend to school fees or extracurricular activities save and except for extracurricular to which the respondent has agreed.

[115] In this regard, the respondent's obligation shall be triggered and shall arise on being presented with confirmation of an expense being payable (in circumstances where pre-payment is sought) or a receipt (in circumstances where reimbursement is sought).

### **Imposition of a Fine**

[116] Given my decisions in respect of the various orders sought, little needs to be said about of the claimant's application for the imposition of a fine against the respondent. Put simply, there is no basis for any fine.

[117] I am not satisfied that the respondent is in breach of any previous orders related to disclosure. To the extent that he is or has been remiss in any respect, I am satisfied that is a result in inadvertence as opposed to any intentional concealment of information.

[118] The circumstances before the court are not circumstances which would justify the imposition of any fine.

## Conclusion

[119] Save and except for the following orders, the claimant's application is dismissed. Specifically, I order that:

- a) The respondent provide the claimant with the dates on which he allegedly rented a home in Vancouver (including the start date and end date) in or around late 2023 or early 2024;
- b) The respondent pay child support, in the amount of \$3,696.00 per month, on the 15th day of each month beginning on June 15, 2025 and continuing thereafter until further agreement of the parties or further order of this court; and
- c) The respondent pay (or reimburse the claimant) 62% of special and extraordinary expenses as they relate to G. However, for the purposes of this order, neither expenses related to G's enrolment or attendance at private school nor expenses related to G's participation in extracurricular activities constitute special or extraordinary expenses are not payable by the respondent unless his consent is sought and obtained prior to such expenses being incurred.

[120] In the circumstances, the respondent has been generally successful on this application. I therefore award the respondent costs, in any event of the cause. Those costs are payable at the conclusion of this matter and are not payable forthwith.

"Associate Judge Robinson"

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Prepared on 24 October 2026 · Esheria