

CANADA / JUDGMENT

L.L.P. v. C.R.P.

2021 BCSC 772

COURT

Supreme Court of British Columbia

DECIDED

23 April 2021

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2021 BCSC 772 L.L.P. v. C.R.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.L.P. v. C.R.P.,

2021 BCSC 772

Date: 20210423

Docket: E57264

Registry: Kamloops

Between:

L.L.P. aka L.L.B.

Claimant

And

C.R.P.

Respondent

Before: The Honourable Madam Justice Tucker

Reasons for Judgment

Counsel for the Claimant, via teleconference:

R. Schubert

Counsel for the Respondent:

No appearances

Place and Date of Trial/Hearing:

Kamloops, B.C.

September 22, 29, 2020

Place and Date of Judgment:

Kamloops, B.C.

April 23, 2021

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I. Overview

- [1] The parties began living together in a marriage-like relationship on March 1, 2013, and were married on February 14, 2014. They have two children together, aged 6 and 5 years at the time of trial ("the children").
- [2] The claimant filed her notice of family claim on March 22, 2019, and the respondent was served on April 5, 2019.
- [3] The respondent participated, by telephone, in a judicial case conference held on September 16, 2019 (the "JCC"). He is party to a consent order issued following that conference (the "JCC order").
- [4] The respondent did not file a response to the notice of family claim. He has never provided a Form F8 Financial Statement, nor has he disclosed any documents. Notwithstanding, claimant's counsel has provided the respondent with notice in these proceedings on an ongoing basis, including notice of the trial hearing.
- [5] The respondent did not appear at trial.
- [6] The claimant testified at the trial and also called her father as a witness.
- [7] The claimant and her father were credible witnesses. I accept the evidence given by both.

II. Background and Facts

- [8] In 2013, the parties bought a house in Quesnel with a down payment gifted by the claimant's father. The respondent was employed at Quesnel's Walmart Canada store. By agreement of the parties, effective September 2013, the claimant gave up her employment for the purpose of becoming a stay-at-home parent.
- [9] In 2015, the parties moved to Williams Lake to allow the respondent to take the store manager position at that Walmart location. The house in Quesnel was sold, with net proceeds of about \$30,000-40,000. The proceeds were put in their joint bank account and used, over time, to cover family expenses in Williams Lake.
- [10] In January 2017, Walmart terminated the respondent's employment without cause and with one year's severance in lieu of notice. He did not look for replacement employment until August 2017, when he took a position as shift manager with a McDonald's restaurant location.
- [11] In mid-2017, the claimant's father bought a house in Williams Lake. He put the title in his own and the claimant's names. He did some basic renovations and then leased it to the parties, who moved into it in October 2017.

- [12] In August 2017, the claimant began working as a sales associate three days a week. That summer, she also began training to be a phlebotomist (a person who draws blood for testing and other uses). She completed that training in the summer of 2018.
- [13] The respondent left his McDonald's position in December 2017. In or about March 2018, he started as a sales representative with a building supplies company, but then lost that position in April or early May 2018 due to attendance issues.
- [14] The parties separated on June 1, 2018 (the "separation date"). They continued to both live in the house until July 31, 2018, when the respondent moved out and left for Alberta (the "departure date").
- [15] The respondent ceased making any financial contribution to the household on the separation date. The claimant paid all of the household expenses (including rent) and all of the child-related expenses between the separation and departure dates.
- [16] The respondent reported to the claimant that he found work loading grain cars in Alberta and then, in late 2018, that he had a position as store manager for a Giant Tiger retail outlet in Grand Prairie.
- [17] The claimant understands the respondent was still with Giant Tiger at the time of the JCC. However, at some point he ceased to work there, and subsequently reported having a new position as a manager at a Dollarama store. The claimant testified the respondent told her he had to work during the 2019 Christmas period, but did not specifically say whether it was at Dollarama.
- [18] At the date of trial, the claimant had no knowledge of the respondent's employment situation.
- [19] At the time of separation, the respondent had a 2014 Ford F150 truck registered in his name. Loan payments were still being made on the truck at the time of separation. The respondent exchanged it for a 2019 model before the departure date. The claimant assumes the upgrade involved a trade-in and taking a new loan in the respondent's name. She believes the respondent no longer has a vehicle, but does not know what became of the 2019 truck.
- [20] The parties discussed the respondent's sending money to help support the children in a January 2019 phone conversation about putting the children in some activity programs. The respondent said he would send her some money when he was able to, but none was ever sent.
- [21] The claimant has not yet had recourse to the Family Maintenance Enforcement Program. She said she was getting the paperwork ready to go when she heard the respondent had lost his position with Giant Tiger.

- [22] The claimant and the children lived in the Williams Lake house until March 2019. The claimant then moved them all to Kamloops in order to take a phlebotomist position at a Life Labs location there. As she had limited part-time hours when she started at Life Labs, she also worked part-time at a Kamloops Walmart store. For much of 2019, her combined hours from the two positions exceeded regular full-time hours.
- [23] The claimant is in a relationship. Her first child with her new partner was born in late December 2019.
- [24] The claimant's father sold the Williams Lake house in mid-2019. He testified that when he bought the house, he had it in mind that if things went well with the parties and the rental arrangement, he would eventually transfer ownership to them on generous terms. As it turned out, it was soon apparent that things were unlikely to go well.
- [25] The claimant's father lost money on the house, basically buying and selling at the same price, but incurring taxes, fees, and renovation costs in the process. Although her name was also on title, the claimant received nothing from the proceeds of sale.

II. Divorce

- [26] The claimant testified about the facts of the marriage and the circumstances of the separation, and I accept her evidence. The proper documents have been provided to, and a certificate obtained from, the Registry.
- [27] Pursuant to s. 12 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)) [DA], the claimant and the respondent are divorced from each other, with the divorce to take effect on the 31st day after this order.

III. Parenting Arrangements

- [28] The children have resided primarily with the claimant since the departure date. Between the departure date and the September 2019 JCC, the children spent the following parenting time in Alberta with the respondent: one week in each of August, September, and October 2018, and about five days in July 2019. By agreement of the parties, this parenting time was supervised by a person approved by the claimant.
- [29] The JCC order provided for the parties to have joint custody and joint guardianship and set out a number of interim orders. I will reproduce these as the claimant's request for relief is framed by reference to them:

THIS COURT FURTHER ORDERS, by consent and on an interim, without prejudice basis, that:

2. The guardianship of the Children to be exercised as follows:
 - (a) Each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the Children;

- (b) Each guardian will have the obligation to discuss with the other guardian any significant decisions that have to be made concerning the Children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
 - (c) The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decision;
 - (d) In the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the Claimant will be entitled to make those decisions and the respondent will have the right to apply for directions on any decision the guardian considers contrary to the best interests of the Children, under s. 49 of the Family Law Act] and
 - (e) Each guardian will have the right to obtain information concerning the Children directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.
3. The claimant shall have primary residence and day-to-day care of the Children;
 4. The respondent shall have reasonable and generous access as may be agreed to by the parties in writing;
 5. Until the respondent has completed three separate sets of parenting time with the Children as specified by this Order, or as otherwise ordered by this Court, the respondent's access to the Children shall be supervised by either [the respondent's mother or the respondent's sisters], or another person as approved to in writing by the claimant;
 6. The respondent shall not consume or be under the influence of any drugs (except those prescribed by his physician) or alcohol during and up to 24 hours prior to any access he has with the Children for so long as his access is required to be supervised;
 7. The respondent shall have access to the Children as follows:
 - (a) Commencing in 2019 and continuing for each and every year thereafter, for odd years the first week of Christmas school holidays, and for even years the second week of school Christmas holidays;
 - (b) Commencing in 2020 and continuing for each and every year thereafter, Easter weekend;
 - (c) Commencing in 2020 and continuing for each and every year thereafter, two sequential weeks in each of July and August, with the parties to agree on these dates at least 3 months in advance for each and every year; and
 - (d) Any other reasonable and generous access as may be agreed to by the parties in writing.
 8. Neither party shall remove the Children outside of the Provinces of British Columbia and Alberta unless they are otherwise permitted to do so by the prior written agreement of the other party or by an order of the Court;

9. Upon the reasonable request of either party to travel with the Children outside of the Provinces of British Columbia and Alberta, the other party shall not unreasonably withhold their consent and shall sign any documents which are presented to him or her by the other party to permit such travel.
10. All exchanges of the Children are to take place in Jasper, Alberta, unless otherwise agreed to by the parties;
11. On any travel day for the exchanges of the Children, each party will advise the other party of when they are leaving their respective homes to commence their travel;
12. Each party shall be permitted to have three telephone or other electronic communications with the Children per week when the Children are not in that party's care, with dates and times to be agreed to by the parties from time-to-time;
13. Based on being a resident of Alberta and having an income of \$80,000, the respondent shall pay to the claimant child support in the sum of \$539.54 every two weeks commencing October 3, 2019, and continuing every two weeks thereafter until further order of the Court[.]

[30] The respondent did not exercise his parenting time during Christmas 2019 or Easter 2020. In July 2020, the children went to Alberta to spend two weeks with him, however, the period was cut short by a few days when the claimant discovered (and confirmed) that the respondent was not complying with the supervision term.

[31] Section 37(1) the Family Law Act, S.B.C. 2011, c. 25 [FLA] directs the court to consider only the best interests of the children when determining parenting arrangements. Section 37(2) provides a non-exhaustive list of factors to be considered, and I have looked to these in reaching my decision.

[32] The claimant seeks a final order in the same terms as paragraphs 2-4 and 6- 12 of the JCC order, along with the following proposed term:

Until otherwise agreed by the parties in writing or pursuant to an order of the Court, the Respondent's access to the Children shall be supervised by either [the respondent's mother or the respondent's sisters], or another person as approved to in writing by the Claimant.

Unlike paragraph 5 of the JCC order, the proposed term does not include a sunset clause to end the supervision requirement.

[33] The claimant testified that during the relationship the respondent consumed alcohol and, to a lesser extent marijuana. She described his use as excessive.

[34] The claimant also testified that the respondent's employment issues were due to his drinking. While neither employer appears to have identified that as a factor in termination, the reasons given (i.e., management style and attendance issues) are not inconsistent with it being an aspect of the problem.

- [35] The evidence about the need for supervision centred on an incident that took place shortly prior to separation. The children were in the respondent's care while the claimant was at work. Her evidence is that he drank heavily while he had charge of them, and that when she got home the children (then 2 and 3 years old) had been put into the bathtub (without water) and left to play unsupervised. She testified that following the bathtub incident the parties agreed that a third party would care for the children whenever the claimant went to work.
- [36] The respondent appears to have accepted the supervision requirement as appropriate. He agreed to it and complied with it prior to the JCC order, and agreed to its inclusion in the JCC order. Notwithstanding that his last exercise of parenting time was cut short for failure comply with the term, he is not disputing the claimant's trial relief seeking to continue it.
- [37] The evidence on substance abuse and the need for supervision is rather limited. However, it is telling that the term has been accepted to date and the request to continue it is uncontested.
- [38] Permanent supervision is an exceptional order reserved for exceptional circumstances: *Seibel v. Davis*, 2017 BCSC 847 at paras. 55-59. In the circumstances, I conclude it is appropriate for the supervision requirement to continue, but for it to continue to include a sunset clause. However, I also conclude that the children would be better protected by making the prohibition against consuming and being under the influence of drugs and alcohol during parenting time free-standing, rather than dependent on the supervision requirement being effect.
- [39] The final order will include terms as set out below. I note for purposes of the final order that I have accepted the claimant's evidence that the respondent failed to comply with the supervision term during his July 2020 parenting time.
- [40] With regard to the other terms sought, the children are doing well having their primary residence with the claimant. It has been the established arrangement since they were very young. They are successfully bonding with the claimant's new partner and their new sibling.
- [41] Aside from her concerns about alcohol and drug consumption and supervision, the claimant is generally supportive of the respondent's exercise of parenting time. The parties have an established practice allowing reasonable and generous telephone/video-call time between the respondent and the children when initiated by the children.
- [42] The parties appear able to cooperate and effectively communicate with one another in relation to matters involving the children. It is appropriate for them to be joint guardians of the children.
- [43] The only evidence regarding the children's views on the proposed parenting arrangement is that before me through the claimant, but given their youth, the fact that there is no dispute between the parties, and the fact that it continues a historical arrangement that has been successful to date, I consider the record sufficient as it stands.

[44] Building on the framework of the JCC order, I am satisfied that an order under the FLA on the following terms is in the best interests of the children:

#. The guardianship of the children to be exercised as follows:

- (a) Each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the children;
- (b) Each guardian will have the obligation to discuss with the other guardian any significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
- (c) The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decision;
- (d) In the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the claimant will be entitled to make those decisions and the respondent will have the right to apply for directions on any decision the guardian considers contrary to the best interests of the children, under s. 49 of the Family Law Act and
- (e) Each guardian will have the right to obtain information concerning the Children directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.

#. The claimant shall have primary residence and day-to-day care of the children;

#. Until the respondent has completed three consecutive separate sets of parenting time with the children as specified by this Order, or as otherwise ordered by this Court, the respondent's parenting time shall be supervised by either [the respondent's mother or one of the respondent's sisters], or another person approved in writing by the claimant.

#. The claimant's approval of supervisors is not to be unreasonably withheld;

#. The respondent shall not consume or be under the influence of any drugs (except those prescribed by his physician) or alcohol during and up to 24 hours prior to any parenting time he has with the children;

#. The respondent shall have parenting time with the children as follows:

- (a) Commencing in 2019 and continuing for each and every year thereafter, for odd years the first week of Christmas school holidays, and for even years the second week of school Christmas holidays;
- (b) Commencing in 2020 and continuing for each and every year thereafter, Easter weekend;

(c) Commencing in 2020 and continuing for each and every year thereafter, two sequential weeks in each of July and August, with the parties to agree on these dates at least 3 months in advance for each and every year; and

(d) Any other reasonable and generous parenting time as may be agreed to by the parties in writing.

#. Neither party shall remove the children outside of the Provinces of British Columbia and Alberta unless they are otherwise permitted to do so by the prior written agreement of the other party or by an order of the Court;

#. Upon the reasonable request of either party to travel with the children outside of the Provinces of British Columbia and Alberta, the other party shall not unreasonably withhold their consent and shall sign any documents which are presented to him or her by the other party to permit such travel.

#. All exchanges of the children are to take place in Jasper, Alberta, unless otherwise agreed to by the parties;

#. On any travel day for the exchanges of the children, each party will advise the other party of when they are leaving their respective homes to commence their travel;

#. Each party shall be permitted to have three telephone or other electronic communications with the children per week when the children are not in that party's care, with dates and contact times to be agreed to by the parties from time-to-time;

IV. Child Support & Section 7 Expenses

A. Claimant's Income

[45] The claimant's most recent income filings are as follows:

- a) 2017: \$158,992 (\$4,764 employment income, \$2,428 employment insurance, and \$151,800 taxable dividends);
- b) 2018: \$26,468 (all employment income); and
- c) 2019: \$47,828 (all employment income);

[46] At trial, the claimant was on one year maternity leave that she commenced in December 2019 and she anticipated returning to work in January 2021. Her Form F8 Financial Statement, sworn August 18, 2020, gave her anticipated income for 2020 as \$29,796.

[47] When she went on leave, she was earning \$21.97 hourly with 28 guaranteed hours of work per week (which annualizes to just under \$32,000 a year). On her return, she anticipated obtaining full-time hours (i.e., 37.5 hours per week) for an annualized income of \$42,842. She anticipated working only at her Life Labs position in the future, as she now has the seniority to claim full-time hours there and also has increased parental responsibilities.

- [48] The claimant and her father gave evidence about the \$151,800 taxable dividend on her 2017 tax return. Years ago, the father established a family trust as an aspect of his succession planning. He more recently concluded the money would be of more assistance to his children as young adults than as an inheritance.
- [49] In 2017, he distributed their interests in the family trust. He put the claimant's distribution into a corporate bank account he controls. As a result, the claimant received her distribution from the trust fund, but her money was then put into trust in a bank account subject to her direction and with her father as a bare trustee.
- [50] The distribution triggered the dividend shown on the claimant's 2017 taxes, although the only portion of the distribution money actually put into her hands at that time was the roughly \$10,000 required to pay the triggered taxes. Since her money was put into the corporate account, the claimant has called for about \$25,000. Her father testified that she is free to call for the remainder at any time.
- [51] There was an initial \$45,000 (net) transfer to the claimant from the family trust on the same lines in 2016. The plaintiff used about \$25,000 of that to purchase the personal vehicle (a 2014 Ford) she owns and spent the remainder over time on family expenses.
- [52] The dividend does not constitute income for purposes of child support. The family trust was originally a succession vehicle, but the father, at his option as trustee, converted it into inter vivos distributions. He was not obliged to support the claimant at the time of the distributions, and the nature of the distributions is not akin to an income stream: *Andreassen v. Andreassen*, 2016 BCSC 1196, at paras. 79-90.
- [53] While the claimant now has money in trust for her in the corporate account, it is unconditionally available to her and has been since the day it was deposited there. The fact that she has chosen to request money from it from time-to-time as opposed to all at once does not make it akin to income either.
- [54] Accordingly, the claimant's income for guideline purposes is as follows: 2018 - \$26,468; 2019 - \$47,828; and 2020 - \$29,796.

B. Respondent's Income

- [55] Section 19(f) of the Federal Child Support Guidelines, S.O.R./97-175 [Guidelines] gives the court the discretion to impute "such amount of income to a spouse as it considers appropriate" when a party has failed to comply with their financial disclosure options.
- [56] The respondent has made absolutely no disclosure. I am left to do my best to impute an income on the evidence before me: *Sullivan v. Struck*, 2015 BCCA 521 at paras. 38 and 71; *Yang v. Zhang*, 2017 BCSC 524 at paras. 145-150.

- [57] The respondent was given a year's severance in January 2017, at his then annual salary of \$75,000. Thus, in the year 2017, his income was that amount plus whatever he earned latterly at McDonald's.
- [58] He was unemployed during the winter of 2018, and employed with the building supplies company from roughly March through May. He was unemployed again in June and July, then worked with grain cars for a time before getting on with Giant Tiger. His Giant Tiger position is roughly comparable to his former position with Walmart. I have no evidence regarding his earnings from the building supplies company or the grain work - it may have been less than if working at Walmart, but may also have been more. His periods of unemployment are not justified on the evidence, and he left the McDonald's position by choice.
- [59] Overall, I find it reasonable to impute a \$75,000 gross annual income to the respondent for 2018, on the basis that, whatever he did actually earn, he was capable of earning that amount.
- [60] The respondent told the claimant he started as a store manager with Giant Tiger in late 2018. He was presumably employed there or at some position comparable when he agreed to the JCC order in September 2019. Accordingly, I find it reasonable to impute him an annual salary of \$75,000 in 2019 up until October 3, 2019.
- [61] As of October 3, 2019, by agreement under the September 2019 JCC order, his annual salary for the remainder of the 2019 is \$80,000 and so remains through to trial.

C. Child Support

- [62] With the exception of the period between the separation and departure dates, the respondent has been a resident of Alberta throughout the material time period. For purposes of Guidelines calculations, I have treated him as a resident of Alberta during that two month window as well.
- i. Retroactive
- [63] The plaintiff seeks retroactive child support. In *D.B.S. v. S.R.G.*, 2006 SCC 37, at paras. 99-116, the Supreme Court of Canada identified four factors for consideration in relation to retroactive child support orders:
- (a) The conduct of the payor party;
 - (b) The recipient's delay in seeking the retroactive award;
 - (c) The circumstances of the children; and
 - (d) Potential hardship to the payor.

- [64] The notice of family claim, served on April 5, 2019, seeks child support (and s. 7 expenses) retroactive to June 1, 2018 (i.e., the separation date). As the respondent continued to live in the Williams Lake house for two months after the separation date, he was well aware of the expenses being incurred and the fact that they were being borne by the claimant.
- [65] The claimant did not delay unreasonably in seeking support. She raised the issue in January 2019, when she learned he had a position with Giant Tiger. The respondent has put forward no evidence of hardship.
- [66] In the circumstances, it is appropriate that child support be payable retroactive to June 1, 2018.
- [67] For the period of June 1, 2018, up to and including September 2019 (14 months), the respondent owes the claimant retroactive child support in the amount of \$1,094 per month based on a Guidelines income of \$75,000. This amounts to \$15,316.

ii. Arrears under JCC Order

- [68] On September 16, 2019, the respondent agreed to the JCC order setting his income at \$80,000 and agreeing to pay \$539.54 every two weeks (\$1,169 per month) in support commencing October 3, 2019.
- [69] The respondent owes arrears in unpaid child support under the JCC order through to the date of trial: October 1, 2019 to September 29, 2020 (12 months) for a total of \$14,028.

iii. Ongoing Child Support

- [70] I am not prepared to impute a post-trial gross annual income greater than \$80,000 as sought by the claimant. The respondent agreed to that as his income for the JCC order on a without prejudice basis. The most recent evidence of actual income is his \$75,000 salary at Walmart. The evidence indicates he has been working at progressively smaller and less established operations since leaving Walmart.
- [71] I find it appropriate to impute a \$75,000 annual salary to him effective the date of trial.
- [72] Accordingly, the respondent is obliged to pay the claimant \$1,094 per month commencing October 1, 2020.

D. Section 7 Expenses

i. Retroactive

- [73] Since separation, the claimant has incurred childcare expenses, out-of-pocket medical expenses (i.e., increased medical insurance premiums) and extracurricular expenses on behalf of the children.

- [74] The claimant has only used third party childcare only when working outside the home. At trial, she provided evidence and receipts regarding childcare expenses from date of separation through the end of 2019. I note that parties had agreed to use third party childcare when she was working even while the respondent was living in the Williams Lake house.
- [75] I accept these childcare expenses as incurred in respect of her employment, and thus in the amount of \$7,675 for 2018, and \$8,370 for 2019. These amounts are retroactive s. 7 expenses in accordance with s. 7(1)(a) of the Guidelines.
- [76] During the relationship, the parties put the children in swimming lessons, registered the older child in soccer and intended to enrol the younger in soccer once he was old enough. The claimant has continued the swimming lessons and both children are now enrolled in soccer. The expenses involved are modest and both programs are educational in the sense of learning basic skills.
- [77] I find the soccer and swimming lesson expenses are appropriately treated as special or extraordinary expenses.
- [78] The swimming expenses (both children) are accepted as follows:
- a) Swimming 2018: \$154.56
 - b) Swimming 2019: \$223.20
 - c) Swimming 2020: \$99.20
- [79] The soccer expenses (both children) are accepted as follows:
- a) Soccer 2019: \$890.00
 - b) Soccer 2020: \$291.00
- [80] The claimant has been paying \$40 per month (\$20 for each child) in medical and dental premiums to get coverage for the children. She spent a total of \$1,120 on premiums between the separation date and trial. The payments are accepted as expenses under s. 7(1)(b) of the Guidelines.
- [81] I find expenses should be retroactive to June 1, 2018 (the separation date). Again, the respondent was still in the Williams Lake house when these expenses began to be incurred and paid by the claimant. The expenses were raised to his attention in January 2019 phone conversation. The respondent was aware of these expenses, and knowingly not contributing toward them, from the date of separation: D.B.S.
- [82] The following table sets out the retroactive expenses that the claimant incurred for both children from June 1, 2018 to the date of trial:

Medical and Dental Premiums

Swimming

Soccer

Childcare

Total

2018

(June to Dec)

\$280

(\$40 x 7)

\$154.56

\$7,675

\$8,109.56

2019

\$480

(\$40 x 12)

\$223.20

\$890.00

\$8,370

\$9,963.20

2020

(Jan to Sept)

\$360

(\$40 x 9)

\$99.20

\$291.00

\$750.20

[83] In 2018, based on the claimant's income being \$26,468 and the respondent's income being \$75,000, the respondent's share of the expenses is 74% or \$6,001.07.

- [84] In 2019, based on the claimant's income being \$47,828 and the respondent's income being \$75,000 for the purposes of retroactive s. 7 expenses, the respondent's share of the expenses is 61% or \$6,077.55.
- [85] In 2020, based on the claimant's income being \$29,796 and the respondent's income being \$80,000 for the purposes of retroactive s. 7, expenses the respondent's share of the expenses is 73% or \$547.65.
- [86] The respondent owes a total of \$12,626.27 in retroactive s. 7 expenses.

ii. Ongoing Section 7 Expenses

- [87] Based on the respondent's Guidelines income of \$75,000 and the claimant's Guidelines income of \$29,796, the respondent's proportion of ongoing s. 7 expenses is 72% and the claimant's proportion is 28%.
- [88] Given that the medical and dental insurance premium for the children is a fixed monthly amount incurred by the claimant, I order that the respondent will pay to the claimant 72% of the medical and dental insurance premiums for the children of \$40 per month, which is \$28.80 per month.
- [89] Medical and dental insurance premiums paid on behalf of the children by the claimant are accepted as s. 7 expenses pending further order of the court.
- [90] Childcare expenses incurred in respect of the children of the marriage as a result of the claimant's employment are accepted as s. 7 expenses pending further order of the court.
- [91] In addition to the expenses specifically listed in s. 7 of the Guidelines, expenses to be shared between the parties will include ongoing soccer enrolment and swimming lessons incurred for one or both of the children pending further order of the court.
- [92] For all other s. 7 expenses, the party who incurred the expense is responsible for providing the receipt of the expense to the other party by email within 60 days of incurring the expense, and the other party will pay his or her proportion of the expense within 30 days of receiving the receipt.

E. Future Child Support and Expense Adjustments

- [93] The parties are required to exchange their income tax return for the previous year by no later than June 1 of each year, commencing in the year 2021, and continuing for so long as either party has an obligation to pay child support or to contribute to a s. 7 expense.

V. Spousal Support

- [94] The claimant concedes the respondent does not have sufficient income to pay spousal support given that child support takes precedence. However, she asks the court to determine and declare her entitlement and to record the reasons for the absence of an order for spousal support payments: *Lepp v. Lepp*, 2008 BCSC 448 at paras. 14-17.
- [95] The parties agreed the claimant would be a stay-at-home parent with the children while they were young and she ceased working in September 2013 accordingly. The family also moved from Quesnel to Williams Lake during the relationship in order to support and build the respondent's career with Walmart and his development as a retail manager. I note that the respondent has been able to capitalize on that in seeking employment post-separation.
- [96] I find that the claimant has a compensatory entitlement to spousal support that would have warranted a payment order had there been sufficient income. The claimant may, in the event of a change of circumstances, bring a further application regarding spousal support under s. 15.3(3) of the DA.

VI. Division of Family Property / Debts

- [97] As already noted, the respondent did not provide a Form F8 Financial Statement and has disclosed no documents, financial or otherwise, in this action.
- [98] The only evidence before me is that of the claimant, some of which is qualified as being to the best of her knowledge. Her evidence, however, was credible and reasonable in all the circumstances, and I have accepted it.
- [99] The claimant's position is that each party should keep the property in his or her own name and that each be responsible for any debt in their own name.
- [100] I find the monies presently held in trust for the claimant by her father in his corporate account are excluded property under FLA, s. 85(1)(e).
- [101] The claimant has a 2014 Ford Explorer purchased with trust money provided to her in 2016. At separation, the respondent had a 2014 Ford F150 truck, registered in his name. There was a loan on that truck in his name and that debt had, prior to separation, been serviced with money that was family property. At least some payments remained on the existing loan at separation, but the respondent then traded the truck in.
- [102] At separation, the claimant had two bank accounts holding a total amount of than \$2000. The respondent had a bank account in his own name at the time of separation and the claimant's evidence is that it would have had a minimal balance. The parties had a joint account with a minimal balance which they closed out at the time of separation.
- [103] The claimant has two registered retirement savings plans ("RRSPs"). Both pre-date the relationship. Her total contribution to them during the course of the relationship was \$350.

- [104] The claimant had three credit cards in her name at separation, with balances owing of approximately \$6,000, \$500 and \$5,000 respectively (\$11,500 in total). These balances owing were incurred during the relationship and are family debts.
- [105] To the best of the claimant's knowledge, at the date of separation, the respondent owed roughly \$2,500 to \$3,000 on a Scotiabank credit card held in his name, but had no other credit cards with any balances owing.
- [106] The parties divided the household contents by agreement prior to the departure date. The claimant testified that in addition to what he took when he left for Alberta, the respondent identified several pieces of furniture as his with the intention of retrieving them later. However, after the respondent was in Alberta, he advised the that he was not going to collect the items and authorized the claimant to dispose of them (which she did).
- [107] On the evidence, such as it is, at separation the plaintiff had several thousand dollars more family debt in her name than would amount to her share under an equal apportionment. However, the division is fairly close to equal and the claimant's primary concern at this time is finality and efficiency. I agree that is appropriate and efficient in the circumstances to leave the distribution as it is.
- [108] Each party will retain their own bank accounts, credits on debt instruments, personal property, and the household contents in their possession.
- [109] Each party is and will be responsible for the debt in their own name at the date of separation.
- [110] Either party may apply for an equal division of their respective adjusted pensionable earnings under the Canada Pension Plan, R.S.C. 1985, c. C-8, with the relevant dates being March 1, 2013 to June 1, 2018.
- [111] The parties had two Registered Education Savings Plans ("RESP") with the Canadian Scholarship Trust Plan, one in the name of each child. As of August 18, 2020, there was \$7,708.49 in the older child's RESP account and \$2,869.92 in that of the younger.
- [112] Post-separation, the claimant contributed \$1,700 to the older child's RESP account and \$850 to that of the younger.
- [113] The claimant's post-separation RESP contributions are declared to have been made solely by her and, absent her agreement otherwise, may only be used to pay her share of the children's education expenses.

VII. Disposition

[114] In summary:

- a) The guardianship and parenting arrangements are as set out in paragraphs 42 and 44;
- b) The respondent owes retroactive child support in the amount of \$15,316;

- c) The respondent owes arrears under September 2019 JCC order in the amount of \$14,028;
- d) The respondent's ongoing child support obligation is \$1,094 per month commencing October 1, 2020;
- e) The respondent owes retroactive s. 7 expenses in the amount of \$12,626;
- f) Ongoing s. 7 expenses are as set out in paragraphs 87-92;
- g) The claimant is entitled to compensatory spousal support for purposes of s. 15.3(3) of the DA;
- h) Each party will retain their own bank accounts, credits on debt instruments, personal property, and the household contents in their possession;
- i) Each party is and will be responsible for the debt in their own name at the date of separation;
- j) The claimant's post-separation RESP contributions were made solely by her and, absent her agreement otherwise, may only be used to pay her share of the children's education expenses; and
- k) The parties are required to exchange their income tax returns for the previous year by no later than June 1 of each year, commencing in the year 2021, and continuing for so long as either party has an obligation to pay child support or to contribute to a s. 7 expense.

[115] The claimant is entitled to her costs.

"Tucker J."

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