

CANADA / JUDGMENT

M.D. v. B.D.

2022 BCSC 1707

COURT

Supreme Court of British Columbia

DECIDED

3 October 2022

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2022 BCSC 1707 M.D. v. B.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.D. v. B.D.,

2022 BCSC 1707

Date: 20221003

Docket: E94031

Registry: Nanaimo

Between:

M.D.

Claimant

And

B.D.

Respondent

Before: The Honourable Madam Justice D. MacDonald

Reasons for Judgment

The Claimant, appearing in person:

M.D.

The Respondent, appearing in person:

B.D.

Place and Dates of Trial:

Nanaimo, B.C.

July 4-8 and August 2, 2022

Place and Date of Judgment:

Nanaimo, B.C.

October 3, 2022

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Introduction

- [1] This is a high conflict family dispute. The claimant, M.D., and the respondent, B.D., met in Australia in 2009. The parties were married in 2013 and separated on June 1, 2021. They have two children: T. born in 2015 and F. born in 2020. Since their separation, the parties have had equal shared parenting time.
- [2] I have anonymized the names in the style of cause and in the body of these Reasons for Judgment because the parties have minor children. This anonymization is to protect the privacy of the children.
- [3] On July 27, 2021 the claimant filed a notice of family claim seeking a divorce and various orders under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The respondent filed her response to family claim and counterclaim on August 6, 2021.
- [4] The parties were before me for a six day trial in July to August 2022. Both parties were self-represented at trial. There is a significant amount of animosity between the parties, and most of the issues between the parties were highly contentious. The issues in dispute at trial were:
- a) parenting time;
 - b) parenting responsibilities;
 - c) determination of the parties' incomes;
 - d) child support, including whether B.D. should be required to pay support for M.D.'s two children from a prior relationship;
 - e) the apportionment of s. 7 expenses;
 - f) whether B.D. is entitled to spousal support; and
 - g) division of family property and debt, including whether B.D. should be bought out of the family business.

Credibility

Legal Principles

- [5] The assessment of a witness's credibility involves a consideration of the trustworthiness of the witness's testimony based on their sincerity and the accuracy of their evidence. Ultimately, the validity of the evidence depends on whether it is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296.
- [6] In *Gichuru v. Smith*, 2013 BCSC 895 at para. 129, *aff'd* 2014 BCCA 414, Justice Adair helpfully articulated a number of factors that affect the assessment of credibility. These factors include:
- a) the witness's ability and opportunity to observe events;
 - b) the firmness of the witness's memory;
 - c) the witness's ability to resist the influence of interest to modify their recollection;
 - d) whether the witness's evidence harmonizes with independent evidence that has been accepted;
 - e) whether the witness changes their testimony during direct and cross-examination;
 - f) whether the witness's testimony seems unreasonable, impossible, or unlikely;
 - g) whether a witness has a motive to lie; and
 - h) the demeanour of a witness generally.
- [7] As stated in the leading case *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 4 W.W.R. 171 (B.C.C.A.), the test of the truth of a witness's testimony is its "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable" in the circumstances.

Credibility Findings

- [8] Both parties had very different versions of what has transpired between them since their separation. As a result, credibility is important in this case. To the extent that I had problems with M.D.'s or B.D.'s credibility, I will point them out when addressing the evidence below.
- [9] At the outset, I note three characteristics of M.D. First, M.D. likes to control the situation. He demonstrated this behaviour in the courtroom. Despite being asked numerous times to wait for his turn to speak, M.D. constantly interrupted the proceedings to interject his opinion. Second, M.D. has anger management problems. He was unable to control his anger in the courtroom, where I assume he was trying to be on his best behaviour. Third, M.D. is prone to exaggeration. While I found M.D.'s behaviour in the courtroom to be disruptive, B.D. certainly added fuel to the fire. In my view, she responded to M.D. in circumstances when it

would have been best not to react.

- [10] Both parties argued with each other, and spoke over the other, when giving testimony. As a result, it was quite difficult to hear and digest the evidence at trial. At times it was difficult for me to understand exactly what each party was seeking based on their high conflict in the courtroom. Much of the trial time was focused on each party casting aspersions on the other.

Background Facts

General

- [11] The parties originally met in Australia in 2009. After a brief encounter B.D. returned to England and M.D. returned to Canada. In 2012, while on a trip to Canada, B.D. reached out to M.D. In 2013, M.D. went to England to see B.D. and meet her parents. B.D. moved to Kimberly, BC in 2013 on a work visa and lived with M.D. At the time that B.D. moved in with M.D., M.D.'s two children from a previous relationship were living with their mother in Calgary.
- [12] The parties were married on August 15, 2013. B.D. returned to England in the fall of 2013 to attend Oxford University. She obtained a Master's degree in film aesthetics in the spring of 2014. B.D. then returned to Canada.
- [13] M.D.'s children from his prior relationship would visit the parties' home from time to time. The parties' first child together, T., was born in 2015.
- [14] During the parties' relationship, M.D. worked in oilfields away from home. First, he worked in Alberta. He subsequently obtained a position in Saudi Arabia. Between 2014 and 2019 M.D. typically worked on a five-week on/five-week off rotation. He would return home to Kimberly, BC, for the five weeks he was off work.
- [15] B.D. was unable to secure permanent resident status until May 2021. M.D. could not sponsor her due to his past criminal convictions for assaulting the mother of his first two children. M.D. admitted to these convictions in testimony. He said they occurred in 2009 and were therefore not relevant to the current dispute.
- [16] Since B.D.'s immigration status was uncertain, she was unable to find a good job. She became the stay-at-home parent, while also working various part-time jobs in theatre.
- [17] In approximately 2015, the parties moved to Vancouver Island, BC. In 2016 they bought their current home. B.D.'s mother and stepfather lent them \$25,000 of which \$7,000 is still owing to B.D.'s mother.

- [18] In January 2020, M.D.'s oldest son from his prior relationship, D., moved in with the parties. Two weeks later, at the request of the children's mother, M.D.'s other son from his prior relationship, L., moved in with the parties. Prior to this change in the children's residence, B.D. and M.D. would only see D. and L. on school holidays.
- [19] M.D. returned to work in Saudi Arabia sometime in February 2020 and B.D. was left alone to look after D., L., and the parties' biological son, T. B.D. found this situation to be challenging, especially with the declaration of the COVID-19 pandemic in March 2020 and the fact that she was pregnant with the parties' second child, F. She had to homeschool the children because the schools were closed. L. also had learning difficulties and unstable moods which made the situation more challenging. B.D. had no family support as her own family all lived in England. B.D. pleaded for M.D. to come home, which he initially resisted.
- [20] B.D. began researching a new business. She came up with the idea that the parties should open a tree company, providing arborist services. M.D. agreed and returned home permanently in May or June 2020. The parties started the family business, Company M., in June 2020. The company is owned by M.D., B.D., and M.F., although it was initially set up as a sole proprietorship in M.D.'s name. M.F., an arborist, joined the company as a silent partner. The parties purchased tree service equipment and B.D. created the company website and helped to market the business. She also became the company's bookkeeper.
- [21] The evidence shows that when M.D. returned home, B.D. tried to make the relationship work. At some point the parties attended marriage counselling. However, the parties' relationship broke down in May 2021.
- [22] According to B.D., the parties' relationship broke down when she found evidence of M.D.'s infidelity. M.D. denied that he was unfaithful. He testified that B.D. asked for an open marriage within 48 hours of obtaining her permanent residency. B.D. admitted that because she was alone in Canada, with young children, she suggested an open relationship. She was hopeful the parties could live in the same household, continue to work in the same business, and co-parent their children. She asked M.D. to move downstairs. M.D. did not agree to an open marriage and the parties separated on June 1, 2021. B.D. testified that the request was not linked to her permanent residence status. I accept B.D.'s version of how the parties separated, for the reasons outlined below. The issue of whether there was any infidelity is irrelevant to the issues before me.
- [23] The parties have had shared parenting of their children since separation.
- [24] Initially after separation, both parties continued to live in the family home. This quickly proved to be very problematic and the parties' relationship deteriorated rapidly. B.D. took \$5,000 from the parties' joint account to help her with expenses including childcare (although her father replaced \$1,000 for the daycare expenses). As a result, in early September 2021 M.D. closed their joint accounts and denied B.D. access to their money.

- [25] A number of instances of family violence occurred while the parties were both living in the family home. I will outline my factual findings regarding some of these events to demonstrate the level of dysfunction between the parties. They also demonstrate my concerns regarding the credibility of M.D.

The First Incident

- [26] M.D. alleges that on July 10, 2021, B.D. had a "violent fit" so concerning that a neighbour entered the home to intervene. M.D. testified that he was laying on the parties' bed with F. when B.D. woke him up and threw her phone at him. B.D. denies that she threw her phone. B.D. testified that she had seen a text from another woman to M.D. that was sexual in nature. M.D. testified that B.D. alleged that he had been cheating on her. M.D. testified that while B.D. accused him, he just lay on the bed and never said a word because the children were there. He did not deny the content of the text was sexual.
- [27] Based on his behaviour in Court, I find it difficult to accept that M.D. did not say a word. Fortunately, there is independent evidence of the parties' actions during this incident. S.P., the neighbour who walked into the parties' home to intervene, testified at trial. She had to be subpoenaed by B.D. because she did not want to get involved; S.P. said she did not want conflict with either party. S.P. had a very different version of events than M.D. S.P.'s version was largely consistent with the testimony of B.D.
- [28] S.P. testified that she met the parties in June 2016. She lives in the house next door to the parties' home. S.P. testified that on the day of the incident she could hear the parties arguing very loudly and could hear F. crying. She believed she should intervene, so she came over to the house. When she arrived, M.D. was on the bed on his cell phone and B.D. was on the floor of the ensuite bathroom, holding F., and crying. S.P. testified that she picked up F. and walked out of the house. S.P. testified that T. was outside on the front lawn. S.P. says she took both boys home with her to remove them from the altercation.
- [29] Despite M.D.'s assertion that he was not arguing, S.P. testified that both M.D. and B.D. were yelling at each other, which is why she came over to the house. S.P. testified that she simply wanted to get the children away from the situation. She testified that she was in the house for approximately 30 seconds. She testified that she was positive that she heard both parties arguing.
- [30] S.P. testified that she has no concerns about B.D.'s parenting. She was not asked about M.D.'s parenting.
- [31] At trial, M.D. argued that S.P. had no memory and was biased. I disagree. In my view, S.P. was a neutral witness who had no reason to lie.

The Second Incident

- [32] M.D.'s girlfriend[1], S.M., testified at trial. She admitted in cross-examination that on or around July 15, 2021, she gave her "panties" to M.D. to put on the parties' marital bed. M.D. then texted B.D. and said he had a "treat" for her and told her to come into the bedroom. M.D. testified that his "life coach" advised him to put the panties on the bed. It turns out that S.M. was the "life coach" to whom M.D. referred. S.M. admitted in testimony that her advice was a poor choice.
- [33] Unsurprisingly, finding S.M.'s panties on the parties' "marital bed" upset B.D. Unfortunately, B.D. responded in kind by sending a photo of the panties to S.M.'s 19 year-old-son who worked for Company M. M.D. testified that S.M.'s son was "traumatized" by the photo and eventually quit.
- [34] In my view, the son's text exchange with B.D. does not indicate trauma. Whether or not he was traumatized, he was likely unhappy with the tension at work given his mother's involvement in the conflict between M.D. and B.D. No doubt he did not appreciate receiving the photo from B.D.

The Third Incident

- [35] B.D. testified that during the summer of 2021 her access to the parties' joint bank accounts was terminated. M.D. testified it was because she had "stolen" \$5,000 from the accounts. B.D. agreed she withdrew the money to pay for expenses, including childcare. She testified that M.D. was threatening to sell the house and all the assets and everything was in his name. As a result, she withdrew \$4,000 from their savings. At the time, the parties were still living in the same house and B.D. was trying to feed six people in the household. B.D. testified that at one point she asked M.D. to pay for half of the groceries. B.D. testified that M.D. responded by destroying boxes of food and dumping the socket set she had just purchased on the floor. B.D. produced photos of the mess he created.
- [36] When this altercation was put to M.D. during cross-examination he stated that he did not remember it. He then testified that B.D. had ripped food out of L.'s hands. He also stated that B.D. pushed and shoved him in front of his son. When this incident was put to M.D. again, M.D. stated that it [the food] "would have flown out of my hands when you were pushing and shoving me in front of my kid." M.D. testified that he called the RCMP.
- [37] I note that M.D. called the RCMP numerous times, likely in an attempt to have B.D. forced from the parties' home. I base this finding on a number of factors including a text M.D. wrote to B.D. on May 30, 2021 stating: "Start looking for a new place to live, you can't stay here anymore. I'll sign divorce papers but you are leaving asap." He also stated in a later text: "The police are gonna be in my house daily . I've already informed them of that. I'll call them long before I'm backed into a corner." M.D. also insisted during his testimony and argument that he has four children whereas B.D. only has two, so he has a 75 percent entitlement to the house. He also maintained, despite evidence to the contrary from S.P., that he runs his

business out of the house.>[2] It is clear that from the outset M.D. intended to stay in the house and have B.D. move out. This is in fact what occurred.

The Fourth Incident

- [38] The fourth incident occurred when M.D. asked B.D. to babysit his second oldest son, L. M.D. alleged B.D. was emotionally abusive to L. During cross-examination, B.D. asked M.D. why he would ask her to babysit his son if she was emotionally abusive to him. M.D. had no explanation.
- [39] B.D. explained that on this occasion she went downstairs to tell L. that she loved him regardless of what was going on between his father and her. M.D. came downstairs and began provoking her. She put to M.D. that she was standing in the doorway of L.'s room and M.D. agreed.
- [40] M.D. alleges that B.D. hit L. M.D. testified he took his son to the RCMP the next day to report the incident "but there was not enough evidence to do [B.D.] in at the time." This comment is very telling regarding M.D.'s motives.
- [41] B.D. did not deny that there was an argument between the parties on this occasion, but she adamantly denied that she physically assaulted L. She admitted that she shouted at M.D.
- [42] During this incident, M.D. recorded B.D. without her knowledge. I declined to admit the audio recording into evidence because it was recorded surreptitiously. No doubt it would confirm that there was an argument and yelling. I accept that there was an unfortunate altercation in front of a child. However, based on B.D.'s testimony and the lack of a response from the police, I find that there was no physical violence on the part of B.D.

The Fifth Incident

- [43] Fifth, there was an incident where M.D. took the parties' Nissan Pathfinder, which had been given to B.D. to use following the parties' separation, with the children in the car. The vehicle also had B.D.'s laptop in it. M.D. agreed that he took B.D.'s vehicle without her permission. He testified he did so because she had stolen company documents. M.D. agreed that while he had B.D.'s laptop he read and copied everything on it. There was a photograph in evidence confirming the same. M.D. denied that he stole the laptop; he argued that the laptop was company property and he was entitled to take it back.
- [44] M.D. testified that B.D. would not give financial information to the new company's Financial Officer. This latter statement was directly contradicted by email evidence. The company's new Chief Financial Officer (CFO) emailed B.D. on August 31, 2021 asking a number of financial questions. B.D. replied in a helpful manner on the very same day.

- [45] B.D. testified that M.D. smashed her phone in front of the children. I believe this may have been part of the fifth incident, but again it was often hard to piece together the evidence because at trial the parties were often talking over the other. M.D. admitted to smashing B.D.'s phone in a field, but testified that the children could not see it. B.D. stated that T. told her about the phone being smashed. The phone had to be replaced.

The Sixth Incident

- [46] In or around September 2021, around the time that B.D. was moving out of the family home, the parties had an altercation in front of T. in the parking lot of T.'s school. B.D. testified that she was at the school to meet with T.'s teacher. While she was there, M.D. arrived and attempted to collect T. M.D. was with his girlfriend, S.M., and they were in her car. B.D. testified that she had never met S.M. before. She walked over to the car and asked where S.M. and M.D. were taking T. She also asked whether they were bringing him back to her as that night was her parenting time. M.D. and S.M. refused to answer B.D.'s questions, apart from telling her that they were taking T. to therapy.
- [47] M.D. testified that he was picking up T. and one of his older sons from school to take them to therapy due to the separation. This is commendable. However, M.D. testified that B.D. hammered on his girlfriend's car window, that she was screaming and yelling, and that she traumatized the whole football field.
- [48] He also videotaped this incident. I allowed the video recording of this incident into evidence because it was recorded openly by B.D. and it was M.D. who requested that the recording be played in Court.
- [49] B.D. alleges that during this altercation M.D. shoved her. M.D. adamantly denied that he shoved her. He testified that B.D. was aggressive, intimidating, and that she physically restrained him during this incident. As he said in his submissions, in the video: "You can't see her hand holding me in the car, but slamming the door on me and physically holding the door and myself in the car".
- [50] I find that the video was inconclusive on whether M.D. shoved B.D. or whether B.D. restrained M.D. I do not have sufficient evidence to make a finding of physical abuse. I also emphasize that B.D. did not treat this as a significant matter and made no other allegations of physical abuse at trial.
- [51] The video confirmed that B.D.'s version of events was more accurate than M.D.'s version. M.D.'s testimony about B.D. screaming and pounding on the window was untrue. Further, B.D. testified that she asked M.D. where he was taking T. M.D. denied that she asked him this question. In the video she is clearly asking where they are taking T.
- [52] The video demonstrates the exchange between the parties that day was highly inappropriate. In this instance, I agree with M.D. that B.D. should not have raised the issue of where M.D. and S.M. were taking T. in front of T. Earlier in the day, the parties had a text

exchange where M.D. indicated that he was taking T. to therapy and B.D. stated "okay". During the text exchange, B.D. did not ask where the therapy session was taking place or when T. would be returned to her. By doing so in front of her son, as well as in front of S.M.'s child, she created an unnecessary confrontation in front of two young children. That said, when asked by B.D., M.D. should have just told her where he was taking T. and when T. would be returned. This would also have avoided the conflict. Instead M.D. escalated the conflict by saying he would not return T. to her after therapy because she was going to a homeless shelter, which was not true.

- [53] M.D. called the police during this incident and the police attended at the school. M.D. advised the police officer that B.D. was being physical which again was untrue. She did however escalate by raising her voice and saying that M.D. and S.M. were kidnapping her child, but only after M.D. called the police. She said she just wanted to know where they were taking T. She was not stopping them.
- [54] M.D. ended the exchange by saying: "Beat it female, get the hell out of here". There was no evidence that B.D. was physical. There was also no evidence on the video that M.D. shoved B.D.
- [55] M.D. alleges that the police constable banned B.D. from the family home and said that she would be charged with three assaults. B.D. denied that she was banned from the home. She testified that after she left the family home she asked M.D. when she could come and collect her things from the home as he would call the RCMP if she arrived unannounced. Again, there is no evidence to substantiate M.D.'s testimony about the police constable apart from his word. I am unable to accept this allegation based on M.D.'s tendency to exaggerate situations in an attempt to paint a poor picture of B.D.
- [56] M.D. called the police on B.D. on many occasions. For example, after B.D. moved out of the family home she returned to pick up the boys' lunch boxes. M.D. called the police because she was at the house. Despite M.D.'s assertions, no charges were ever laid. M.D. did not have a police report or a single witness to testify that there was any substance to his allegations that B.D. was physically violent towards him. I also note that M.D. is much larger than B.D. It is hard to believe he is physically intimidated by her. In any event, there was no evidence to substantiate that B.D. ever engaged in physical violence. It was these allegations which caused B.D. to feel she needed to video record all interactions.
- [57] I find there was constant arguing and aggressive behaviour between M.D. and B.D. According to B.D., in early September 2021 she left the house to protect her children from the family violence. She did this despite having nowhere to go and no financial support. She couch-surfed for the first few months and eventually found housing in November 2021. At or around the time B.D. moved out, the Ministry of Child and Family Development (the "Ministry") became involved because M.D. and his girlfriend called the Ministry and reported B.D. The Ministry required a safety plan. The Ministry closed its file on February 9, 2022 based on the social worker's assessment that no further action was required.

The Seventh Incident

- [58] There is one other incident, that happened after the parties separated, that is worth noting. After B.D. left the family home she quickly found employment. She was forced to do so because she was receiving virtually no financial assistance from M.D. and she had been removed from the parties' joint bank accounts. B.D. had a difficult time securing daycare for T. and F. Childcare was not an issue for M.D. because he had a more flexible work schedule because the parties own the company in which he works. By contrast, B.D. resigned when she was about to be removed as the director and the bookkeeper for the company. She had to find alternative employment. In addition, M.D. has a girlfriend with a young child who could step in and assist him when required. B.D. had no family or other day-to-day support. M.F. was very helpful to her but he worked full-time and had his own family to care for. As a result, B.D. had to find daycare quickly and on a limited budget since M.D. was not providing her financial support.
- [59] B.D. found a nanny to take care of F. on her parenting weeks. She initially did not give M.D. the name or address of this nanny, which in my view is as problematic as M.D. not giving B.D. the name of the therapist to whom he was taking T. On one occasion, M.D. was required to pick up F. at this daycare and B.D. therefore gave him the information. When he arrived, the nanny was nowhere to be seen and the children appeared to be unattended. M.D. immediately called the police and reported the daycare to the Ministry. B.D. testified that the nanny communicated to her that she had stepped out for a few minutes but the nanny's husband was home at the time.
- [60] M.D. argued that this incident shows that B.D. is not concerned with F.'s safety because she allowed him to spend time in a "death trap" daycare. In my view, it is clear that B.D. loves her son and would not intentionally put him in harms way. M.D. simply used this incident as one more tool in his arsenal to undermine B.D. If M.D. was sincerely concerned about the children's safety he could have assisted B.D. financially and helped her to find a more appropriate daycare for F. I find the way he dealt with this incident negatively reflects on M.D. rather than B.D.
- [61] I have not relayed every detail of all the sordid events between the parties. There were many other incidents to which I have not referred. I believe the incidents I have outlined provide a flavour of what was going on between the parties. They are unable to communicate and be civil with one another. The evidence was clear that both parties were involved in loud verbal arguments in front of the children. As I will later explain in these Reasons, this amounts to family violence.

Guardianship, Parental Responsibilities, and Parenting Time

- [62] Both parties seek an order that the parties share parenting time with T. and F. equally on the week-on/week-off schedule that has been in place since the parties' Judicial Case Conference on November 19, 2021. Neither party claimed the other was an unfit parent.

[63] Relying on s. 39 of the FLA, B.D. seeks an order that the parties are the guardians of T. and F. B.D. also seeks an order that the parties must return the children to the other parent in a neutral location following their parenting time.

[64] Both parties seek to have sole decision-making responsibility for T. and F. pursuant to s. 41 of the FLA.

Legal Principles

[65] Section 37 of the FLA provides that in making an order for parenting time and parenting responsibilities, the court must only consider the best interests of the child. In determining the best interests of the children, the overarching concern is to protect, to the greatest extent possible, the child's physical, psychological and emotional safety, security, and well-being; s. 37(3) of the FLA.

[66] Section 37(2) of the FLA provides:

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
 - (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[67] Section 38 of the FLA emphasizes that when assessing a child's best interests in circumstances of family violence[3], this Court must consider:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[68] Family violence is defined in s. 1 of the FLA as follows:

"family violence" includes, with or without an intent to harm a family member,

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence;

[69] Section 39(1) of the FLA provides that while a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.

- [70] Pursuant to s. 40(2) of the FLA, unless an agreement or court allocates parental responsibilities differently, each child's guardian may exercise all parental responsibilities with respect to the child in consultation with the child's other guardians, unless consultation would be unreasonable or inappropriate in the circumstances.
- [71] Parenting responsibilities are set out in s. 41 of the FLA. Parenting responsibilities may be allocated to one parent entirely, shared equally between both parents, or specifically allocated in various ways to each parent.
- [72] Professor Rollie Thompson helpfully articulated three core purposes of modern family law: (1) to assure the best interests of the child; (2) to reduce family conflict; and (3) to maintain, restructure, and encourage family relationships: "Are there Any Rules of Evidence in Family Law?" (2003) 21 CFLQ 245 as cited by Justice Mackinnon in *DeGiorgio v. DeGiorgio*, 2020 ONSC 1674 at para. 12. Professor Thompson writes:

We not only want to reduce conflict between spouses, parents and children, we also want to perform a more positive purpose through our process. We are not just worried about the relationships between family members and their therapists, but amongst family members too. Family law cannot "make family relationships work," but we can avoid doing further damage to them than has already been done. We can maintain existing relationships that do work, we can assist the parties to restructure those that do not, and we can encourage the creation of new relationships where necessary, under this "family relationships" purpose.

Analysis

- [73] The evidence in this case demonstrates that the separation and subsequent conduct of the parties has caused, and continues to cause, the children much distress. In my view, both parties have contributed to the animosity between them.
- [74] As stated above, the conflict between the parties rises to the level of family violence. The children have witnessed the parties get into serious arguments using derogatory language, threats, and intimidation. On one particular occasion, the parties' yelling was so loud that a neighbour entered their home and removed the children for their safety. I have heard evidence of intentional damage to property, unreasonable restrictions on a party's financial autonomy, and harassment. Texts from M.D. to B.D. were examples of harassment. From the evidence before me, the family violence between these parties is frequent, serious and, although not specifically directed at the children, is impacting the children's security, safety, and well-being. The most important thing for T. and F.'s best interests is that the violence and conflict between the parties cease immediately.
- [75] In assessing the children's best interests, I must consider the parties' abilities to exercise parenting responsibilities with respect to the children. The parties have demonstrated that they are unable to rise above their petty disputes and civilly communicate with each other about their children's care. I am specifically concerned about the appropriateness of an arrangement that would require the parties to cooperatively co-parent the children. I note

that B.D. has completed the Parenting After Separation course, while M.D. has not. This is despite the fact that M.D. was ordered to take the course at the parties' Judicial Case Conference on November 19, 2021. In my view, the parties have established that they are unable to be in each other's physical presence in front of the children. Therefore, the parties should not be in the physical presence of each other.

- [76] I must also consider the history of the children's care and the fact that T. and F. are still young and need stability. The parties have had a shared parenting schedule since November 2021. In my view, it is in the children's best interests to maintain the status quo. My hope is that as the parties' family issues are determined and the litigation ends, the level of conflict between them will cool. However, it is imperative that the parties be under certain conduct orders to prevent their conflict from impacting the children.
- [77] Pursuant to s. 225 of the FLA, I order that the parties abide by the following conduct orders:
- a) The parties will communicate only by text or email regarding parenting issues, except in the case of emergencies in which case the parents must communicate with each other in the most efficient way possible, including by telephone.
 - b) The parties will:
 - i. put the best interests of the children before their own interests;
 - ii. encourage the children to have a good relationship with the other parent and speak to the children about the other parent in a positive and respectful manner; and
 - iii. make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication, or argument in front of the children.
 - c) The parties will not:
 - i. blame, criticize, or disparage the other parent to the children; or
 - ii. discuss with the children any inappropriate adult, court, or legal matters.
- [78] In terms of parenting responsibilities, the parties will have day-to-day responsibilities for the children when in their care. In the event of a conflict, I grant sole parental decision making to B.D. for major decisions that should be made jointly.
- [79] Lastly, exchanges of children shall take place in a public place, such as the children's school or daycare where possible. When the exchange occurs on a non-school or daycare day, the parties shall return the children to the other parent at the Boys and Girls Club of Central Vancouver Island. If there is a legitimate reason why the exchange cannot take place at the Boys and Girls Club, the exchange shall take place at a neutral place as agreed upon in writing by both parties.

Income Determination

- [80] B.D. seeks an order imputing an annual income of \$140,000 to M.D. B.D. argues that M.D.'s Line 15,000 income as reported on his tax returns is not accurate because Company M. accepts cash payments and then fails to declare this cash income for tax purposes. She also argues that M.D. runs personal expenses through the business which she cannot do. This inflates his income. Further, B.D. bases this \$140,000 income imputation on M.D.'s historic income when he worked overseas in the oilfields, earning an income of over \$150,000 per year. B.D. contends that the Court should impute income to M.D. as a result of his lack of financial disclosure and because in 2020, when the company was just starting, M.D. made \$74,094 in its first six months. Lastly, B.D. argues that M.D. has taken out a shareholder loan in addition to his salary which results in his income being much higher than the \$51,000 that he claims.
- [81] M.D. argues that no income should be imputed to him. M.D. argues that his income tax returns are a true reflection of his income and he has not been earning any undeclared cash income. Further, M.D. argues that he cannot work overseas anymore and therefore his historical income is irrelevant. M.D. contends that his Federal Child Support Guidelines, SOR/97-175 [Guidelines] income for support purposes should be \$51,000 because that is what is shown on his 2021 T4.

Legal Principles

- [82] Parents are obligated by statute to provide for their children to the extent that they are capable of doing so: Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), s. 26.1(2) [DA]. Section 150(1) of the FLA provides that child support orders must be determined in accordance with the Guidelines.
- [83] It is well established that the most current information regarding a party's income should be used when calculating support: *Fuzi v. Fuzi*, [1999] B.C.J. No. 2263, 1999 CanLII 4073 (S.C.). For this reason, the Guidelines, the FLA, and the Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules] all require parties to a family law dispute to make adequate financial disclosure and set out certain legal consequences for when disclosure obligations are not met.
- [84] For example, the Rules require full financial disclosure from the parties in a family law dispute. Rule 5-1 applies to any party seeking to obtain or vary an order for child support. Rule 5-1(1) defines the applicable income documents that a person must provide:
- "applicable income documents" means, in respect of a person,
- (a) a copy of every personal income tax return filed by the person for each of the 3 most recent taxation years,

- (b) a copy of every notice of income tax assessment or reassessment issued to the person for each of the 3 most recent taxation years,
- (c) if the person is receiving employment insurance benefits, a copy of the 3 most recent employment insurance benefit statements,
- (d) if the person is receiving workers' compensation benefits, a copy of the 3 most recent workers' compensation benefit statements,
- (e) if the person is receiving income assistance, current documentary evidence of the income assistance that is being received by that person,
- (f) if the person is an employee,
- (i) the most recent statement of earnings indicating the total earnings paid to the person in the year to date, including overtime, or
 - (ii) if that statement is not provided by the employer, a letter from the person's employer setting out the information referred to in sub-paragraph (i) and including the person's rate of annual salary or remuneration,
- (g) if the person is self employed, the following information for the 3 most recent taxation years:
 - (i) the financial statements of the person's business or professional practice, other than a partnership;
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the person does not deal at arm's length,
- (h) if the person is a partner in a partnership, confirmation of the person's income and draw from, and capital in, the partnership for each of its 3 most recent taxation years,
- (i) if the person controls a corporation, the following information for the corporation's 3 most recent taxation years:
 - (i) the financial statements of the corporation and its subsidiaries;
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation and every related corporation does not deal at arm's length,
- (j) if the person is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's 3 most recent financial statements, and
- (k) if the person owns or has an interest in real property, a copy of the most recent assessment notice issued from an assessment authority for each property;

- [85] Rule 9-1 governs each party's obligation to list and produce documents. It requires the parties to prepare a list of documents that includes all documents that could be used by any party at trial to prove or disprove a material fact and which are or have been in the party's possession or control. The parties must also list any document they intend to refer to at trial.
- [86] Section 21(1) of the Guidelines outlines the disclosure requirements in child support matters. This section specifies that a spouse who is applying for a child support order and whose income information is necessary to determine the amount of the order, must disclose the following:
- (a) a copy of every personal income tax return filed by the spouse for each of the three most recent taxation years;
 - (b) a copy of every notice of assessment and reassessment issued to the spouse for each of the three most recent taxation years;
 - (c) where the spouse is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime or, where such a statement is not provided by the employer, a letter from the spouse's employer setting out that information including the spouse's rate of annual salary or remuneration;
 - (d) where the spouse is self-employed, for the three most recent taxation years
 - (i) the financial statements of the spouse's business or professional practice, other than a partnership, and
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the spouse does not deal at arm's length;
 - (e) where the spouse is a partner in a partnership, confirmation of the spouse's income and draw from, and capital in, the partnership for its three most recent taxation years;
 - (f) where the spouse controls a corporation, for its three most recent taxation years
 - (i) the financial statements of the corporation and its subsidiaries, and
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;
- [87] Section 21(2) of the Guidelines requires a person who is served with an application for a child support order and whose income information is necessary to determine the amount of the order, to provide the documents within 30 days.

[88] Where a party to a family dispute fails to comply with financial disclosure obligations, the FLA and the Rules provide certain mechanisms to the Court. Rule 5-1(28) provides that if a party fails to comply with a requirement to file a Form F8 Financial Statement or any applicable income document, the court may:

- (a) order that the Form F8 financial statement, applicable income document or particulars, as the case may be, be filed or served or both on terms the court considers appropriate;
- (b) dismiss all or part of that party's claim or application;
- (c) strike out all or part of that party's response to family claim or response to counterclaim;
- (d) proceed under Rule 21-7 to punish the party for contempt of court;
- (e) impose a fine under section 213(2)(d)(iii) of the Family Law Act;
- (f) draw an adverse inference against the party;
- (g) attribute income to that party in an amount the court considers appropriate;
- (h) make an order as to costs.

[89] Section 213(2) of the FLA further provides that if a person fails to comply with an order for disclosure or a requirement to disclose information under the Rules, the Court may do one or more of the following:

- (b) draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based on the inference;
- (d) make an order requiring the person described in subsection (1) to pay
 - (i) a party for all or part of the expenses reasonably and necessarily incurred as a result of the non-disclosure of information or the incomplete, false or misleading disclosure, including fees and expenses related to family dispute resolution,
 - (ii) an amount not exceeding \$5000 to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure, or
 - (iii) a fine not exceeding \$5000;
- (e) make any other order the court considers appropriate.

[90] Numerous authorities have stressed the importance of accurate and timely financial disclosure in family law proceedings. There has been strong judicial commentary condemning non-disclosure. In *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 at para. 9, 1994 CanLII 3195 (S.C.), Justice Fraser called the non-disclosure of assets "the cancer of matrimonial property litigation". He noted that non-disclosure "discourages settlement, increases the time and expense of litigation [and] has a tendency to deprive children of

proper support": Cunha at para. 9. These statements by Fraser J. were cited with approval by the Supreme Court of Canada in *Leskun v. Leskun*, 2006 SCC 25 at para. 34. More recently, the Supreme Court of Canada reiterated that the "[f]ailure to disclose material [financial] information is the cancer of family law litigation": *Michel v. Graydon*, 2020 SCC 24 at para. 33.

- [91] Where the court finds it difficult to determine a party's income due to that party's inadequate financial disclosure, the non-disclosing party must bear the consequences. As Justice Abrioux (as he then was) stated in *S.K.R. v. K.S.R.*, 2015 BCSC 914 at para. 55, it is not the court's role to "ferret out" the necessary information in the face of inadequate and confusing disclosure.
- [92] The court is not bound to accept a party's declared income for income tax purposes as the income on which to determine support obligations. A party's T1 statement may not be a true indication of their available income. Where a party owns or controls a corporation, they can artificially reduce their income and, if they do so, their income should be adjusted: *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 121. The "task of the court is to determine what money is fairly available to support the children of the marriage": *Younger v. Younger*, 2017 BCSC 363 at para. 25.
- [93] The Guidelines provide various mechanisms through which the court can determine a spouse's available income.
- [94] Under s. 18 of the Guidelines, where a spouse is a shareholder, director, or officer of a corporation, and the court is of the opinion that the determination of the spouse's annual income under s. 16 of the Guidelines does not fairly reflect all the money available to the spouse, the court may determine the spouse's income to include all or part of the corporation's pre-tax income. It may also impute an amount commensurate with the services the spouse provides to the corporation.
- [95] Section 19 of the Guidelines permits the court to impute income to a spouse in circumstances where the court is of the opinion that the spouse's disclosed income does not reflect the income available to them for support purposes. Section 19 contains a list of circumstances in which it would be appropriate to impute income, but the list is not exhaustive: *Riel v. Holland* (2003), 67 O.R. (3d) 417, 232 D.L.R. (4th) 264 (C.A.) at para. 36. These circumstances include: where the spouse is intentionally unemployed or under-employed (s. 19(1)(a)); where the spouse has failed to disclose financial information (s. 19(1)(f)); and where the spouse unreasonably deducts expenses from income (s. 19(1)(g)).
- [96] These statutory authorities allow the court to use all available evidence, including circumstantial evidence, to impute income to a non-disclosing party at an amount it considers appropriate. The Court may do so even where there is little evidence from which to assess the party's income. This principle was set out by the Court of Appeal in *Poursadeghian v. Hashemi-Dahaj*, 2010 BCCA 453:

- [23] In the absence of complete income tax returns and other financial information of a spouse the court must look to other evidence, including circumstantial evidence, for the purpose of imputing income, *A.G. v. B.R.*, 2005 BCSC 96 at para. 57.
- [24] The judge relied on the little evidence available concerning the defendant's ability to obtain a mortgage and his shareholding in Lucky 9, to impute an income of \$75,000. She did not accept the explanation offered for the defendant's shareholding in Lucky 9 or for the basis on which he obtained a mortgage on his home.
- [25] There was some evidence to support that conclusion and the judge was permitted to draw an adverse inference against the defendant because of his inadequate disclosure. The defendant cannot be heard to dispute the level of income attributed to him, nor permitted to escape his support obligations because of his failure [to] adequately disclose income information.

Analysis

- [97] The parties share parenting time of their two children. As a result, both parties' incomes are necessary to determine the set-off amount of child support that must be paid.
- B.D.
- [98] The evidence was clear that B.D. did not establish her permanent residency in Canada until shortly before the parties' separation. B.D.'s income during the parties' marriage was impacted by her insecure immigration status. At the time of separation, B.D. earned approximately \$1,000 per month for freelance work with a theatre company. She also worked approximately five hours per week as a bookkeeper for the family business.
- [99] In September 2021, B.D. obtained a full-time position at local university with a salary of \$47,957 per year. B.D. was successful in obtaining this position because she had obtained her permanent residency by that time. This position is a temporary contract covering a maternity leave and is slated to end in May 2023. B.D. has also continued to work part-time at the theatre company on top of this full-time position at a local university. She testified that she earns between \$500 and \$750 from the theatre company.
- [100] B.D. emphasized that because her position at the university is expected to end she may not be able to sustain this salary. However, a party's income for support purposes must be based on the most current information regarding a party's income: *Fuzi*. I find that B.D. has been earning \$47,957 per year at the university since September 2021 and continues to earn this income today. As such, that is the income information I must consider.

- [101] In her F8 financial statement, B.D. reports a combined income of \$68,588 because it includes B.D.'s income from her theatre work. This amount also includes \$15,192 in Canada Child Tax Benefits. Section 3 of Schedule III of the Guidelines instructs that in calculating a party's Guidelines income for support purposes, the court should deduct any universal child care benefit.
- [102] After subtracting the \$15,192 for the Child Tax Benefits, I find that B.D.'s Guidelines income for support purposes is \$53,396 as reported in her F8 financial statement.
- M.D.
- [103] B.D. asks that I impute income to M.D. since he did not provide this Court with his 2021 tax returns. M.D. produced his tax information for 2019 and 2020. However, he did not produce his income tax information for 2021.[4] In terms of Company M., M.D. produced only a balance sheet dated May 31, 2022. Despite being ordered to provide full financial disclosure for the years 2019, 2020, and 2021 by Master Dick on May 4, 2022, M.D. failed to provide his income tax returns for the year 2021 or proper financial statements from Company M.
- [104] M.D. claims that he made \$51,000 in 2021. The only evidence M.D. adduced to verify his income was his 2021 T4. However, a T4 does not meet M.D.'s financial disclosure obligations.
- [105] From the authorities above, it is clear that this Court may make an adverse inference and impute income to a party who has failed to meet their financial disclosure obligations: R. 5-1(28); Guidelines s. 19(1)(f); FLA s. 213(2). M.D. has failed to meet his financial disclosure obligations under the Guidelines, the Rules, and the FLA.
- [106] Given M.D.'s limited financial disclosure, it is difficult for this Court to assess his income for support purposes. As stated in S.K.R. at para. 55, M.D. bears the consequences of his lack of financial disclosure. It is not this Court's role to "ferret out" the necessary information. In these circumstances, I find it is appropriate in this case to make an adverse inference and impute income to M.D.
- [107] B.D. seeks that this Court impute an annual income of \$140,000 to M.D. In making this argument, B.D. relies on the fact that Company M. did well in its first six months in business from June to December 2020. B.D. relies on M.D.'s 2020 tax return which shows a Line 15,000 income of \$74,094. She also relies on M.D.'s higher salary when he was working overseas.
- [108] M.D. disputes B.D.'s income assessment, arguing that the business is not doing well. M.D. argues that the \$74,094 on his 2020 income tax assessment must be viewed as income split between him and B.D. since they were married at the time. I note that M.D. was operating Company M. as a sole proprietorship during 2020; the company was not incorporated until February 2021. M.D.'s argument that this income was split between him and B.D. does not accord with how a sole proprietorship works. Just because M.D. and B.D. were spouses while M.D. operated this sole proprietorship does not mean that this income is split

between M.D. and B.D. Rather, this income is fully attributed to M.D.

- [109] B.D. spent time at trial establishing that M.D. made very good money, not all reported to the Canada Revenue Agency ("CRA"), when he worked overseas in the oilfields. I agree he made a good income when working overseas. Nevertheless, I agree with M.D. that I should not assess his current income based on his inflated overseas income. M.D. testified that he cannot work overseas anymore because it would affect his children. I find that M.D. is not expected to return to oilfields work when he has four children still at home for whom he is responsible (two half time and two full time). As such, I will base his income on his current income at Company M.
- [110] I do not accede to M.D.'s argument that Company M. has recently been losing money. There was a simple way for M.D. to demonstrate that Company M. was not doing well, but he declined to disclose the Company's financial statements. He also did not disclose his 2021 personal income tax returns.
- [111] Company M. had many start-up costs in its first year and still made over \$74,000 in the first seven months (June 1 to December 31, 2020). I am not persuaded that the Company has not continued to do well. I accept that there have been periods where the Company was unable to work its chainsaws due to high fire risk in the area. That said, if Company M. really is not doing well, it would have been easy for M.D. to put his company's financial statements and his 2021 personal tax returns before this Court. As already stated, I am prepared to draw an adverse inference from the fact that he did not.
- [112] Given the evidence that Company M. made approximately \$74,000 during its first seven months of business, I find it appropriate to impute a Guidelines income of \$115,000 to M.D. for support purposes.[5] This is a conservative amount as it does not account for any of the cash sales that B.D. alleged were occurring when the business was in its first year. This issue was highly contentious with M.D. arguing that B.D. was trying to inflate the value of the Company by alleging they were being paid in cash which does not show up on the books. I have declined to include cash sales because there was some evidence that M.D. was not continuing with cash sales once his new CFO was hired. Although I am somewhat skeptical about this assertion, there was not enough evidence before me to establish otherwise. This amount also recognizes that the business is still getting established.
- [113] The parties will exchange financial information as required by s. 21 of the Guidelines, including Company M.'s financial statements, no later than May 31st each year. Going forward, I impute an income to M.D. of \$140,000 if he fails to produce his financial information to B.D. While this is substantially higher, if M.D. believes it is unfair he can provide B.D. with his full financial statements and they can come to an agreement regarding his income. If they cannot agree, either party may apply to have their income assessed.

Child Support

Legal Principles

[114] Parents have a joint and ongoing legal obligation to support their children in a way that is commensurate to their income. Section 147(1) of the FLA states that "[e]ach parent and guardian of a child has a duty to provide support for the child" subject to the exceptions in s. 147(1)(a) and (b). Section 147 codifies the case law respecting when child support obligations end.

[115] Section 149 of the FLA allows the court to make an order requiring a child's parent to pay child support. In making an order for child support, s. 150(1) of the FLA provides that the court must use the Guidelines to determine the appropriate amount. The objectives of the Guidelines are set out in s. 1 of the Guidelines:

- a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
- b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
- c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
- d) to ensure consistent treatment of spouses and children who are in similar circumstances.

[116] Section 9 of the Guidelines provides that where parenting time is shared equally, the amount of the child support order must be determined by taking into account:

- (a) the amounts set out in the applicable tables for each of the spouses;
- (b) the increased costs of shared parenting time arrangements; and
- (c) the conditions, means, needs, and other circumstances of each spouse and of any child for whom support is sought.

[117] In awarding child support in circumstances where a parent has prior support obligations to children from a prior relationship, the court should consider s. 10 of the Guidelines. Section 10 provides:

Undue Hardship

10(1) On either spouse's application, a court may award an amount of child support that is different from the amount determined under any of sections 3 to 5, 8 or 9 if the court finds that the spouse making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.

- (2) Circumstances that may cause a spouse or child to suffer undue hardship include the following:

- (a) the spouse has responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living;
- (b) the spouse has unusually high expenses in relation to exercising parenting time with a child;
- (c) the spouse has a legal duty under a judgment, order or written separation agreement to support any person;
- (d) the spouse has a legal duty to support a child, other than a child of the marriage, who is
 - (i) under the age of majority, or
 - (ii) the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessities of life; and
- (e) the spouse has a legal duty to support any person who is unable to obtain the necessities of life due to an illness or disability.

[118] In *D.B.S. v. S.R.G.*, 2006 SCC 37, at paras. 99-116, the Supreme Court of Canada outlined the appropriate analytical framework for assessing retroactive support awards. The Court identified the following factors to be considered in deciding whether to order a retroactive award:

- a) the reason for the recipient's delay in asking for child support;
- b) the conduct of the payor parent;
- c) the circumstances of the child; and
- d) any hardship the payor might suffer as a result of a retroactive award.

[119] Section 147 of the FLA specifically addresses a step-parent's obligation to provide child support:

147(4) A child's stepparent does not have a duty to provide support for the child unless

- (a) the stepparent contributed to the support of the child for at least one year, and
 - (b) a proceeding for an order under this Part, against the stepparent, is started within one year after the date the stepparent last contributed to the support of the child.
- (5) If a stepparent has a duty to provide support for a child under subsection (4), the stepparent's duty
- (a) is secondary to that of the child's parents and guardians, and
 - (b) extends only as appropriate on consideration of
 - (i) the standard of living experienced by the child during the relationship between the stepparent and his or her spouse, and
 - (ii) the length of time during which the child lived with the stepparent.

[120] In *L.W. v. J.W.*, 2018 BCPC 197, Provincial Court Judge Gouge considered the meaning of "support" in s. 147(4) of the FLA:

[12] The word "support" appears three times in section 147(4). When it first appears, it clearly means financial support - one does not apply for an order for emotional support. The governing principle of statutory interpretation was stated by Justice Cory in *Thomson v. Canada (Department of Agriculture)*, [1992] 1 S.C.R. 385 at para. 27:

Unless the contrary is clearly indicated by the context, a word should be given the same interpretation or meaning whenever it appears in an act.

[13] Ms. W asserts that Mr. W provided emotional support and parenting to her eldest child during the marriage, and found her application for child support (i.e. financial support) on that assertion. The simple answer to her application is that the Legislature has expressly provided that a stepparent who has never provided financial support to a child is not liable to pay child support for that child. It necessarily follows that Mr. W is not liable to pay child support for the eldest child.

[Emphasis added.]

[121] Section 5 of the Guidelines states that where the spouse against whom a child support order is sought stands in the place of a parent for a child, the amount of child support ordered is, in respect of that spouse, such an amount as the court considers appropriate, having regard to the Guidelines and any other parent's legal duty to support the child.

Analysis

Are M.D.'s children from a prior relationship children of the marriage?

[122] At trial, M.D. sought a finding that his two older sons from his prior relationship are children of the marriage entitled to child support from B.D. M.D. argues that B.D. was the boys' primary caregiver for one year and that she provided financial support for the children during that time. M.D. insists that B.D. is a "parent" to his two older sons and argues that the boys' biological mother is unavailable to pay support. M.D. argued that at one point in time B.D. applied to become a legal guardian of L. and D. M.D. also adduced a variety of photographs of B.D., himself, and the two boys spending time together as evidence of B.D.'s relationship with L. and D. M.D. relies on s. 147 of the FLA.

[123] B.D. does not accept M.D.'s argument that she is L. and D.'s step-parent. B.D. testified that she had limited time with the two boys until they were placed in her care in early 2020. She admitted she cared for the boys from that time until the parties' separation in June 2021. B.D. argues that M.D. moved L. and D. into the parties' home without asking her first; she never volunteered to become L. and D.'s step-parent. B.D. also argues that she never applied to become D. and L.'s legal guardian, she simply filled out the paperwork and when the boys' biological mother indicated she would not consent to B.D.'s guardianship, B.D. did not submit the paperwork. B.D. indicated that she only considered becoming L. and D.'s

guardian as a matter of convenience because the boys were living with her alone while M.D. was working overseas. There was no further application for her to become a guardian of D. and L.

[124] B.D. is not L. and D.'s biological mother. In order to find that L. and D. are children of the marriage I must find, pursuant to s. 147(4) of the FLA, that B.D. contributed to L. and D.'s support for at least one year and a proceeding for child support against her was commenced within one year after the date on which she stopped contributing to L. and D.'s support.

[125] I find that B.D. did not contribute to L. and D.'s support within the meaning of s. 147 of the FLA. It is clear from L.W. that "support" under s. 147 of the FLA means financial support. Based on the evidence, B.D. did not make enough money between 2020 and June 1, 2021 to support a finding that she financially supported the two older boys. In addition, B.D. had very little time with L. and D. prior to 2020 when they came to live with the parties. At that point, B.D. became fully responsible for the boys because M.D. was working overseas at the time. The evidence shows that B.D. was not happy with this arrangement and begged M.D. to come home to Canada. M.D. did come home in June 2020, meaning that B.D.'s role as a primary parent to L. and D. lasted from February 2020 when M.D. returned overseas for work to June 1, 2020 when he returned home to start Company M. This is a period of, at most, four months.

[126] I also base my decision that B.D. is not a step-parent responsible for providing child support to L. and D. on M.D.'s testimony at trial. At trial, M.D. repeatedly referred to L. and D. as "my kids". M.D. also asserted at trial that "he has four kids, whereas B.D. only has two". This shows that M.D. does not view B.D. as a true parent to D. and L. More importantly, there is no evidence before me that when the parties separated either of them put any thought into B.D. having parenting time with the two older boys. As a result, B.D. has not had any parenting time with L. and D. since she moved out of the family home in September 2021.

[127] I find the circumstances of how B.D. came to be caring for the two older boys, the short length of time in which she did so, her lack of parenting time with them post-separation, and M.D.'s choice of words at trial results in B.D. not being a step-parent to the two older boys.

[128] Even if I accepted that B.D. was a step-parent to the two older boys, which I do not, s. 147(5) (a) of the FLA states that a step-parent's obligation to provide child support is secondary to that of the child's parents and guardians. While M.D. testified that the boys' mother has a limited ability to parent, there was no evidence before me that M.D. has attempted to have the boys' biological mother pay child support.

[129] In these circumstances, I find that B.D. does not have to pay child support for L. and D.

Child Support for the Children of the Marriage

Prospective Child Support

[130] Since child support is the right of the children, I am ordering that both parties pay child support for their two biological children. I have already determined the parties' respective Guidelines income. Given my determination of the parties' Guidelines income, the parties' set-off child support amounts are as follows:

M.D.'s Guidelines Income

B.D.'s Guidelines Income

Payable by M.D.

Payable by B.D.

Set-Off Amount

\$115,000

\$53,396

\$1,717

\$830

\$887 (payable by M.D.)

[131] I note that M.D. has prior support obligations to his older two sons, however, I do not find that this prior support obligation rises to the level of undue hardship pursuant to s. 10 of the Guidelines. As such, commencing July 4, 2022 and continuing on the first of every subsequent month, M.D. shall pay to B.D. \$887 per month in child support for T. and F. This amount will be adjusted following the parties' exchange of financial information on or before May 31st each year.

Retroactive Child Support

[132] B.D. also seeks retroactive child support going back to September 1, 2021, a date after which she lost access to the parties' joint chequing account. B.D. asserts that M.D. has failed to pay any child support since the parties' separation.

[133] Considering the D.B.S. factors, I find that a retroactive child support award is warranted in this case. B.D. has a reasonable excuse for why she did not seek child support earlier: the level of conflict between the parties, with instances of family violence, made their communications impossible. Further, B.D.'s lack of financial resources following separation, and her exhaustion of her legal aid hours, meant that she had no legal advocate to communicate with the claimant on her behalf. I find that B.D.'s delay in seeking child support was reasonable and does not militate against a retroactive child support award.

- [134] In my view, M.D.'s actions in failing to pay any child support for the parties' two sons since separation constitutes blameworthy conduct. M.D.'s actions in requiring B.D. to move out of the family home without appropriate housing options and failing to pay any child support represents M.D. putting his own personal interests and animosity toward the respondent ahead of T. and F.'s best interests. M.D. is obligated to pay child support and neglected his obligations to his children. This factor supports the appropriateness of a retroactive child support award in this case.
- [135] In regard to the circumstances of the children, despite M.D.'s assertions otherwise, the children experience a very different standard of living when they are with their father than when they are with their mother. M.D. lives mostly with his girlfriend S.M. in an upscale neighbourhood. He also has sole possession of the family home despite rarely being there. Meanwhile B.D. has been forced to find rental accommodations, with a roommate, which does not come near to approximating the children's prior standard of living. She also has a limited income and has to pay rent and daycare.
- [136] It is a core principle of child support that, after separation, a child's standard of living should approximate as much as possible the standard they enjoyed while their parents were together: D.B.S. at para. 111. The evidence shows that at the outset B.D. was forced to rely on community charities to clothe and feed herself and T. and F. while M.D. remained in the family home and with exclusive access to the parties' assets and bank accounts. A child who underwent hardship in the past may be compensated for this unfortunate circumstance through a retroactive award: D.B.S. at para. 113. I find that this factor supports the appropriateness of a retroactive child support award in this case.
- [137] Finally, in my view, M.D. will not suffer any hardship as a result of a retroactive child support award. While M.D. has obligations to his children from his prior relationship, I do not find this to be such a hardship that it would militate against a retroactive child support award to T. and F.
- [138] Given that M.D. failed to disclose his 2021 personal tax returns, I imputed income to him in 2021.
- [139] Given the parties' Guidelines income for 2021 as determined above, the parties' set-off child support amounts in 2021 are as follows:

M.D.'s Guidelines Income

B.D.'s Guidelines Income

Payable by M.D.

Payable by B.D.

Set-off Amount

\$115,000

\$53,396

\$1,717

\$830

\$887

(payable by M.D.)

September 1, 2021 to July 4, 2022 = 10 months

$\$887 \times 10 \text{ months} = \$8,870$

Total Retroactive child support award: \$8,870

[140] As such, M.D. owes B.D. \$-----8,870 in retroactive child support for F. and T. for the period of time from September 1, 2021 to the date of trial (July 4, 2022). The evidence before me was that M.D. paid \$370 for child support twice. Therefore \$740 should be subtracted from this amount. The total amount owed by M.D. to B.D. is \$8,130 in retroactive child support.

Section 7 Expenses

[141] M.D. argues that an order requiring him to pay any proportion of T. and F.'s s. 7 expenses would take away opportunities for his older two sons. In M.D.'s submission, if he were required to pay for s. 7 expenses for T. and F., he would be unable to pay for any extracurricular activities for L. and D., which would be unfair to the older boys. Further, M.D. argues that B.D. has failed to provide him with appropriate receipts for the children's s. 7 expenses.

[142] B.D. seeks an order that the parties pay their respective proportions of T. and F.'s special and extraordinary expenses. As I understand it, the most significant potential s. 7 expense for T. and F. is the cost of daycare. B.D. argues that since separation M.D. has only contributed \$370 to the cost of F.'s daycare and T.'s after-school care. As such, I must specifically assess whether daycare for the two boys is an appropriate s. 7 expense that the parties should share.

Legal Principles

[143] Section 7 of the Guidelines outlines what constitutes a special or extraordinary expense:

Special or extraordinary expenses

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.

Definition of "extraordinary expenses"

(1.1) For the purposes of paragraphs (1)(d) and (f), the term extraordinary expense means

- (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.

[144] In *Visser v. Visser*, 2019 BCSC 1856, Justice Shergill analyzed whether the daycare costs for four children of the marriage who were under a shared parenting regime were valid s. 7 expenses. Justice Shergill held:

[214] Section 7(1)(a) of the CSG permits the court to provide an amount to cover all or any portion of childcare expenses incurred as a result of the custodial parent's employment or training for employment. In making such an order, the court must take 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 spending pattern of the family prior to separation.

[]

[221] Having regard to the evidence I am satisfied that it was reasonable and necessary for Ms. Byrne to enrol the children in daycare from March 2017 to August 2017. Her hours with Mr. Roberts and at WorkBC were sufficiently disruptive to require daycare. Placing the children in daycare assisted Ms. Byrne in her efforts to return to the workforce, thereby enabling her to achieve financial independence more quickly while also meeting the long-term financial needs of the children. Further, the daycare arrangements were consistent with the parties' pre-separation spending habits.

[145] In *L.A.M. v. S.C.M.*, 2020 BCSC 67 at para. 29, Justice Weatherill laid out a two-pronged approach to assessing whether an expense ought to be considered a s. 7 expense:

- a) First, the court should determine whether the expense claimed under section 7(1)(f) of the Guidelines is an extraordinary expense or extracurricular activity by considering the following factors:
 - i. the combined income of the parties;
 - ii. the nature and amount of the individual expense;
 - iii. the nature and number of the activities;
 - iv. any special needs or talents of the children;
 - v. the overall cost of the activities; and
 - vi. any other similar factor that the court considers relevant.
- b) Once the court determines that an expense falls within section 7(1)(f) of the Guidelines, a court must then determine whether the expenses are necessary in relation to the child's best interests and reasonable in the circumstances having regard to the following factors:
 - i. the means of the spouses and those of the child; and
 - ii. the family spending pattern prior to separation.

[146] Overall, for an expense to be considered a s. 7 expense it must meet the threshold of being necessary, reasonable, and affordable. The court must consider if the recipient of child support can reasonably cover the expense out of their income, including from the child support they receive. If so, the expense will usually not be considered an extraordinary expense: L.A.M. at para. 30.

Analysis

[147] The parties should share s. 7 expenses for T. and F. in proportion to their Guidelines income as determined above. While M.D. argues that an order for sharing of any s. 7 expenses will negatively impact his ability to enroll his older sons in extracurricular activities, I find that this is not an adequate reason to deprive T. and F. of reasonable s. 7 expenses. In any event, in final argument M.D. conceded that he should pay his share of s. 7 expenses.

[148] The most contentious s. 7 expense for T. and F. on which the parties disagree is the cost of daycare/after-school care. While s. 7(1)(a) of the Guidelines refers to "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", I rely on Shergill J.'s decision in Visser that daycare expenses may be included as a valid s. 7 expense even in circumstances where the parties share parenting of the children equally so long as the cost is reasonable in relation to the means of the spouses and the children and the spending pattern of the family prior to separation.

[149] In my view, placing the children in daycare is a reasonable expense. Similar to Visser, having the children attend daycare will assist with B.D.'s efforts to return to the workforce, thereby enabling her to achieve financial independence more quickly while also meeting the long-term financial needs of the children. Although the parties did not pay for the children to attend daycare prior to separation, B.D. was only working part-time during the parties' relationship since, for the majority of that time, she did not have permanent residency and thus had difficulty finding a secure and well-paying job.

[150] I am also mindful of M.D.'s argument that he has access to free childcare for the children in the form of his girlfriend, S.M. Nevertheless, it is reasonable and necessary that the parties share the cost of daycare for F. and after-school care for T. since it will allow B.D. to continue working.

[151] I find that the following costs are included as valid s. 7 expenses:

- a) the cost of daycare for F. and after-school care for T.;
- b) that portion of the medical and dental insurance premiums attributable to the children;

- 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.

[152] I conclude that going forward, the parties are to share the cost of these s. 7 expenses in proportion to their Guidelines income as determined above. M.D. shall pay 63 percent of these expenses and B.D. shall pay 37 percent of these expenses. The expenses should be exchanged, with receipts, every three months. The party who receives such expenses from the other parent shall reimburse the spouse for their proportion of the expense within two weeks of receiving the receipts. In addition, the parties shall share in any tax deductions for T. and F.'s extraordinary expenses in accordance with their respective contributions: *Piper v Piper*, 2010 BCSC 1718 at para. 104.

Property Division

Legal Principles

[153] Upon separation, each spouse is presumptively entitled to an undivided one-half interest in all family property: FLA s. 81. The value of the family property must be based on its fair market value at the date of trial, subject to agreement or as otherwise ordered: FLA s. 87. Section 97(1)(b) of the FLA provides that the court may make any order that is necessary, reasonable, or ancillary to give effect to a division of property or division of family debt.

[154] Section 95(1) of the FLA provides:

Unequal division by order

95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
- (b) divide family property as required under Part 6 [Pension Division].

[155] While the presumption is for equal division of family property and debts post-separation, this Court may order an unequal division of family property and debt based on the criteria for reapportionment set out in s. 95(2) and (3) of the FLA:

95 (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:

- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1);
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[156] A court is only permitted to reapportion family property if an equal division would be "significantly unfair". Justice Brown explained this difference in *L.G. v. R.G.*, 2013 BCSC 983:

[71] In my view, the term "significantly unfair" in s. 95(1) of the FLA essentially is a caution against a departure from the default of equal division in an attempt to achieve "perfect fairness". Only when an equal division brings consequences sufficiently weighty to render an equal division unjust or unreasonable should a judge's order depart from the default equal division.

[157] Therefore, the court may order an unequal division of family property or debt, or both, if it would be "significantly unfair" to divide the asset(s) equally.

[158] Section 84 of the FLA details what constitutes family property. Section 84 provides:

84(1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:

- (a) on the date the spouses separate,
 - (i) property that is owned by at least one spouse, or
 - (ii) a beneficial interest of at least one spouse in property;
 - (b) after separation,
 - (i) property acquired by at least one spouse if the property is derived from property referred to in paragraph (a)(i) or from a beneficial interest referred to in paragraph (a)(ii), or from the disposition of either, or
 - (ii) a beneficial interest acquired by at least one spouse in property if the beneficial interest is derived from property referred to in paragraph (a)(i) or from a beneficial interest referred to in paragraph (a)(ii), or from the disposition of either.
- (2) Without limiting subsection (1), family property includes the following:
- (a) a share or an interest in a corporation;
 - (b) an interest in a partnership, an association, an organization, a business or a venture;
 - (c) property owing to a spouse
 - (i) as a refund, including an income tax refund, or
 - (ii) in return for the provision of a good or service;
 - (d) money of a spouse in an account with a financial institution;
 - (e) a spouse's entitlement under an annuity, a pension plan, a retirement savings plan or an income plan;
 - (f) property, other than property to which subsection (3) applies, that a spouse disposes of after the relationship between the spouses began, but over which the spouse retains authority, to be exercised alone or with another person, to require its return or to direct its use or further disposition in any way;
 - (g) the amount by which the value of excluded property has increased since the later of the date
 - (i) the relationship between the spouses began, or
 - (ii) the excluded property was acquired.

[159] Section 87 of the FLA details how family property should be valued:

87 Unless an agreement or order provides otherwise and except in relation to a division of family property under Part 6,

- (a) the value of family property must be based on its fair market value, and
- (b) the value of family property and family debt must be determined as of the date
- (i) an agreement dividing the family property and family debt is made, or
- (ii) of the hearing before the court respecting the division of property and family debt.

[160] Section 85 of the FLA details what constitutes excluded property. Section 85 provides:

- (1) The following is excluded from family property:
 - (a) property acquired by a spouse before the relationship between the spouses began;
 - (b) inheritances to a spouse;
 - (b.1) gifts to a spouse from a third party;
 - (c) a settlement or an award of damages to a spouse as compensation for injury or loss, unless the settlement or award represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;
 - (d) money paid or payable under an insurance policy, other than a policy respecting property, except any portion that represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;
 - (e) property referred to in any of paragraphs (a) to (d) that is held in trust for the benefit of a spouse;
 - (f) a spouse's beneficial interest in property held in a discretionary trust
 - (i) to which the spouse did not contribute, and
 - (ii) that is settled by a person other than the spouse;
 - (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).
- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.

[161] Where property cannot be divided, or where it is "practically indivisible", the court may make a compensation order and leave ownership and possession of an asset in the hands of one party: *Kowalewich v. Kowalewich* 1998, 50 B.C.L.R. (3d) 12 at para. 16, 1998 CanLII 4424 (C.A.); *Blackett v. Blackett* (1989), 40 B.C.L.R. (2d) 99, 63 D.L.R. (4th) 18 (C.A.).

[162] As stated in *Weintz v. Weintz*, 2014 BCCA 118 at para. 38, the jurisprudence suggests that courts should strive to:

- (i) ensure that the total family assets are maximized, which will generally involve maintaining the business as a going concern; and
- (ii) ensure that division of the family assets is not merely equal in a legal sense but that the actual benefit received by each spouse is also equal.

Analysis

[163] The assets which I must divide between the parties are:

- a) The parties' family home;
- b) The parties' family business, Company M.;
- c) Personal vehicles; and
- d) Personal boats.

[164] The valuation and division of the parties' assets is particularly difficult given the lack of expert evidence about the value of most of the parties' assets. I have done my best to divide the parties' assets with the limited evidence before me.

The Family Home

[165] Both parties agree that the family home should be sold. However, both parties seek an unequal division in their favour. M.D. argues that he should be entitled to 75 percent of the equity in the home as he has four biological children to provide for whereas B.D. has only two children part-time. M.D. bears the onus of demonstrating that family property should be divided unequally: *FLA*, s. 85(2). Oral evidence is acceptable, subject to an assessment of credibility: *Parton v. Parton*, 2016 BCSC 1528 at para. 53, rev'd in part 2018 BCCA 273. B.D. argues that I should effect her division of the family company through an unequal division of the family home. I understand her to be asking for an equal division of the family home but that her share of Company M. be paid out of M.D.'s interest in the family home.

[166] M.D. adduced the BC Assessment for the property, which lists a value of \$802,000. B.D. adduced an appraisal from Cunningham & Rivard Appraisals Ltd. regarding the value of the family home, which provides that the property has "a median value of \$1,032,500 and an average value of \$1,028,000." At trial M.D. conceded the value of the home was \$1,032,500 as set out in the appraisal.

[167] The parties' family home is clearly family property to which both parties are entitled to an undivided one-half interest. It is clear to me that the family home must be sold immediately. As a result, the value of the family home will be the price at which it is sold.

[168] It is clear that the parties will be unable to cooperate to complete that sale. In *Etemadi v. Maali*, 2021 BCCA 298, the Court of Appeal cited with approval *Dhillon v. Khumar*, 2014 BCSC 2366 at para. 34, where Master Keighley set out the considerations relevant to an order for conduct of sale in family litigation:

[34] As to whether the claimant should be given sole conduct of sale, while there is no singular test for granting sole conduct of sale, the Court should consider all factors including the willingness of a party to facilitate the sale, the inability of the parties to agree on routine aspects of sale and the inability of the parties to cooperate: *McLachlan v. McLachlan*, 2013 BCSC 1733.

[169] Given the parties' inability to cooperate, I order that B.D. have sole conduct of the sale of the family home. The home should be sold and the proceeds of sale put into trust.

Should there be unequal division of the family home?

[170] Both parties seek unequal division of the family home in their favour. B.D. argues that her interest in the family business should be paid out through unequal division of the family home. M.D. argues that he should receive an unequal interest in the family home by virtue of his responsibility for four children, not just two.

[171] Section 95 of the FLA provides that the court may order an unequal division of family property or family debt or both if it would be significantly unfair to equally divide the family property or family debt or both. In determining whether an equal division would be "significantly unfair", the court may consider the factors listed in s. 95(2).

[172] Here there should be an equal division of the family home. I was not persuaded that it would be significantly unfair to order an equal division of the family home. In particular, M.D. provided me with no evidence as to why he needs 75 percent of the family home, apart from the fact he has four children. Yet the evidence at trial was that he has not been living in the family home.

[173] I order an equal division of the family home.

The Family Business

[174] One of the most contentious issues at trial was B.D.'s request to be bought out of the family business, Company M. This company is owned by B.D., M.D., and a third party, M.F. The parties started Company M. together with M.F. in June 2020. B.D. was removed as a director in August 2021.

[175] B.D. seeks an equal buyout of the family business. She helped to build it but now has no access to it. M.D. disputes that B.D. is entitled to a buyout of her share of the family business. He argues that she can keep her shares in the Company, but that if he is forced to buy her out this would "devastate" the Company. M.D. also points out that there is a third-party business partner whose interests should be considered. However, M.D. agrees to buy

out B.D. for \$1,500 or that he give B.D. the boom truck and chipper as compensation for the company. M.D. argues that if B.D. is paid out of the business, it should not come out of the equity in the home. Rather, he should be given a year to pay B.D.

[176] There was no expert evidence adduced at trial in respect of the value of the Company. M.D. introduced, for the first time at trial, a letter from his current CFO purporting to provide a valuation of the business. I allowed the letter to be marked as an exhibit at trial, but not for the truth of its contents. As a result, this letter cannot be relied upon for the valuation of the company.

[177] In her closing submissions, B.D. valued her one-third interest in Company M. at \$40,000. This was the only evidence adduced at trial with respect to the value of the Company. The \$40,000 included the value of the vehicles that belong to the Company. The parties estimated the value of each vehicle as set out in the table below. I have then determined the value based on the limited evidence before me. I have taken M.D.'s estimate from the document he put into evidence, the letter written by his current CFO.

Vehicle

M.D.'s Value

B.D.'s Value

Value of Vehicle

Boom 1

\$13,000

\$50,000

\$20,000

Boom 2

44,000

27,000

44,000

Boom 3

25,000[6]

25,000

25,000

Chipper 1

15,000

14,000

15,000

Chipper 2

10,000

27,000

20,000

Chipper 3

3,500

10,000

6,000

TOTAL

\$130,000

[178] The following vehicles were in the claimant's name at the time of separation: a Boom truck with dump box and chipper; a 2005 Boom truck and chipper package; and a Ford F800 with Boom, dumping box, and chipper package. Although I am unclear which ones correspond to the vehicles in the table, I am satisfied that they are reflected above. I find that these vehicles are the property of Company M. There was no evidence that M.D. used these vehicles as personal vehicles.

[179] It is virtually impossible to determine the value of the business without expert evidence regarding its value. While M.D. testified that the Company is not doing well, he also stated that the Company has new structures such as Workers' Compensation meetings, it is larger, and that the scope of the Company has changed dramatically. As a result, \$40,000 seems to be a conservative estimate of B.D.'s interest in the company given that I have estimated her one-third interest in the vehicles to be approximately \$43,000 (\$130,000 divided by three).

[180] I therefore award B.D. be bought out of the business by being paid \$40,000. Once she is paid the \$40,000, which should come out of M.D.'s equity in the family home, B.D. is to be removed as a shareholder of the Company. At that point B.D. will no longer have an interest in Company M.

Other Assets

Vehicles

[181] There was no expert evidence as to the value of the parties' personal vehicles. The parties included the value of these vehicles in their respective F8 statements, but their respective valuations were again different. The parties valued the vehicles as follows:

Item

M.D.'s Valuation

B.D.'s Valuation

Nissan Pathfinder

\$19,000

\$15,000

Dodge 1st Gen Cummins

\$7,000

\$15,000

Ford F250

\$2,500

\$20,000

Bayliner

\$3,000

\$5,000

Houseboat

\$3,000

\$5,000

[182] B.D. kept the Pathfinder and M.D. kept the Dodge and Ford 250 for their personal use.

These are approximately equal in value. Therefore B.D. is the personal owner of the Nissan Pathfinder; M.D. is the owner of the Dodge and Ford 250. If he has not already done so, the Nissan Pathfinder should be transferred into B.D.'s name. The Dodge and Ford should be in M.D.'s name.

[183] In terms of the boats, the Bayliner and the Houseboat, I estimate their value to be \$4,000 each. I order M.D. to pay B.D. \$4,000 for her share of the two boats, again out of his equity from the family home. The boats should then be transferred into M.D.'s name.

RRSPs and RESPs

[184] B.D. argues that at the time of separation, there was \$28,000 in the claimant's Sunlife RRSP. She adduced a Sunlife RRSP statement of account for January 1, 2019 to March 31, 2019 which shows a value of \$25,363.40. In his F8 financial statement, the claimant listed a Sunlife RRSP with a value of \$5,000. M.D. testified that he had to cash in most of the RRSP but he did not provide any documentary support to prove this was necessary. B.D. argues that M.D. used the money in his RRSP to pay down a personal debt.

[185] M.D. did not address this RRSP in his submissions. There was insufficient evidence before me to accept that M.D. had to cash this family asset in. It is a family asset and I find that B.D. is entitled to half of \$25,363 (an estimate because no statement was produced at the time of separation). She is therefore entitled to \$12,682.

[186] In his F8 financial statement, M.D. listed an RBC RESP with a value of \$4,154.21. The evidence before me is that it is in the names of the parties' children. As a result, it is not factored into this division. There was no evidence before me that B.D. has any savings.

Bank Accounts

[187] The evidence before me is that M.D. removed B.D.'s access to all bank accounts in August 2021. He provided no other evidence of bank accounts. I do not have enough evidence before me to make any findings.

Miscellaneous

[188] M.D. argues that like the engagement ring that he gave to B.D., the Bayliner was a gift to him as a result of the engagement. The only evidence before me was his testimony which I do not accept. The Bayliner Boat is accounted for above.

[189] The engagement ring is a gift to which B.D. is entitled to keep.

Family Debts

Legal Principles

[190] Section 86 of the FLA details what constitutes family debt. Section 86 provides:

86 Family debt includes all financial obligations incurred by a spouse

- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
- (b) after the date of separation, if incurred for the purpose of maintaining family property.

Analysis

[191] B.D. seeks a finding that certain debts incurred on the parties' joint credit cards were not family debts. Specifically, B.D. identifies the following debts as debts which were incurred post-separation on the parties' joint credit card and which she submits should not be considered family debts:

- a) A \$729.64 vacation to Longbeach Lodge in Tofino;
- b) \$617 to Telus for a new phone for D.;
- c) \$397.57 to International Camouflage;
- d) \$77.28 to Elegance Sculpting; and
- e) \$308 to Michael Warsh Law.

[192] I agree the above are not family debts. As a result, M.D. is responsible for these purchases.

[193] In terms of the \$8,567 in liquor store purchases in 2021, I accept that much of this is a family debt. The remainder is offset by the joint Aeroplan points B.D. used to go to England in 2022.

[194] The parties have two Lines of Credit ("LOC"). The joint Home Equity Line of Credit ("HELOC") was \$39,163.88 at the time of separation. According to B.D. this Line of Credit has increased to \$68,335 and is now listed as a company debt. I accept that the parties had a joint debt of \$39,164 at the time of separation. As a result, the \$39,164 should be paid out of the equity of the home before it is divided. The remaining debt on the HELOC is M.D.'s debt as he provided no documentation regarding why the HELOC was increased to over \$68,000 and that the increase was for a family purpose.

[195] The parties used a LOC to start Company M. M.D. has a Line of Credit with an outstanding amount of \$10,000. It is listed on Company M.'s Balance Sheet dated May 31, 2022. Since it is listed as a Company debt, I assume it is not a family debt.

[196] B.D. has an RBC personal LOC which was used to pay for Company M.'s vehicles. The outstanding amount is \$21,923.77. She took out this LOC during the marriage to support Company M. The Company has paid B.D. \$160 per month since separation to compensate her for her interest payments on this debt because it recognized that she was personally responsible for the interest payments. It is listed on Company M.'s Balance Sheet as a shareholder loan but in my view it is a family debt. It should be shared between the parties. M.D. therefore owes B.D. \$10,962 for this debt.

[197] B.D.'s mother and stepfather lent the parties money to put toward their home when they purchased it. Any amount not yet paid back should be subtracted from the home proceeds, once sold, and paid back prior to dividing the proceeds between the parties.

[198] Both parties appear to have been paying marina fees for the two boats, B.D. \$413 for the Bayliner and M.D. \$310 for the houseboat. I find that these debts cancel each other out. Going forward, M.D. is to pay both fees.

[199] B.D. has a student loan of approximately \$35,000 from her undergraduate degree. This is excluded (not family) debt and M.D. is not responsible for it.

Spousal Support

[200] B.D. seeks an order for prospective and retroactive lump sum spousal support on compensatory and needs-based grounds. B.D. highlights that she is simply seeking a modest amount of spousal support to assist her in overcoming the financial imbalance that has existed since separation.

[201] M.D. argues that B.D. should not be entitled to any spousal support. M.D. contends that B.D. has had a full year to become financially self-sufficient and therefore has no needs-based entitlement to spousal support. M.D. argues that the parties' lifestyles are "identical" and therefore no spousal support order is necessary. M.D. further argues that B.D. should not be awarded spousal support on compensatory grounds. M.D. supports his position on the fact that he paid for B.D.'s Master's degree in the United Kingdom and put B.D.'s educational and career aspirations above his own. M.D. submits that with B.D.'s educational background she does not need spousal support to "get back on her feet".

Legal Principles

[202] Marriage is regarded as a "joint endeavour". The "longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution": *Moge v. Moge*, [1992] 3 S.C.R. 813 at 870, 99 D.L.R. (4th) 456.

[203] There are three separate bases for spousal support: compensatory, contractual, and needs-based. Need alone may be sufficient to establish entitlement to spousal support: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 43, 63 B.C.L.R. (3d) 77; *Chutter v. Chutter*, 2008 BCCA 507 at para. 54, leave to appeal ref'd [2009] S.C.C.A. No. 41.

[204] Compensatory spousal support addresses the economic advantages enjoyed by one partner as a result of the other partner's efforts during the marriage. It also addresses the contributions of a spouse to the marriage and their losses upon its breakdown. Compensatory spousal support is based on the principle that spouses must share the economic consequences of a marriage breakdown. This includes recognizing that one spouse may have foregone employment opportunities to care for the children. In such circumstances, an order for compensatory spousal support will generally be appropriate to compensate the spouse for the value they brought to the relationship, as well as the economic loss they suffered as a result of the relationship: *Bracklow*. Spousal support awarded on compensatory grounds continues for a specified period of time whether or not the payee spouse has reached a degree of self-sufficiency: *Tedham v. Tedham*, 2005 BCCA

502 at para. 33.

- [205] Non-compensatory support is needs-based. It recognizes the economic hardship and loss of the marital standard of living that arises as a result of economic interdependency during the marriage. Non-compensatory support is based on the economic disadvantages generated by the dissolution of the marriage, not contributions made during the marriage: Bracklow at para. 41. The degree to which non-compensatory principles apply will depend on a close examination of the means and needs of the parties. It also depends on the nature of the marital relationship: Bracklow at para. 53.
- [206] The Supreme Court of Canada in *Moge* confirmed, at 852, that when determining entitlement to spousal support, the objectives in s. 15.2(6) of the DA must be considered and no single objective is paramount. These objectives are to:
- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [207] Compensatory support relates primarily to the first two objectives whereas non-compensatory support relates primarily to the third and fourth objectives: Bracklow at para. 41. Many claims involve aspects of both compensatory and non-compensatory principles. I need not decide on one basis for support to the exclusion of the other. Rather, I am to "[apply] the relevant factors and strik[e] the balance that best achieves justice in the particular case ": Bracklow at para. 32.
- [208] The doctrine of equitable sharing of the economic consequences of the marriage is the overarching principle that must be borne in mind: Bracklow, at para. 34.
- [209] The methodology for determining income for child support and spousal support purposes are similar. The Guidelines have a comprehensive code for determining income, while the Spousal Support Advisory Guidelines ("SSAG") do not. The authors of the SSAG have confirmed that the Guidelines rules for calculating income should be used for spousal support: SSAG, c. 6.1. "The starting point for the determination of income under the [SSAG] is the definition of "income" under the [Guidelines]": *R.M.S. v. F.P.C.S.*, 2011 BCCA 53 at para. 73; *Megson v. Megson*, 2014 BCSC 2467 at para. 165.

[210] Section 15.2(1) of the DA provides that a court may order a spouse to pay lump sum or periodic spousal support as the court thinks reasonable for the support of the other spouse. In *Davis v. Crawford*, 2011 ONCA 294, the Court emphasized that "a lump sum award should not be made in the guise of support for the purpose of redistributing assets": at para. 60. The Court stated that in determining whether to make a lump sum spousal support award, it is important to consider "whether the payor has the ability to make a lump sum payment without undermining the payor's self-sufficiency": at para. 63. Most importantly, a court considering an award of lump sum spousal support must weigh the perceived advantages of making a lump sum award in the particular case against any disadvantages of making such an order. The Court goes on to list a variety of advantages and disadvantages: at paras. 67-68. The Court stated that lump sum spousal support awards are not limited to "very unusual circumstances", however, most spousal support orders will be in the form of periodic payments: at para. 70. In the end, the Court held that "it is for the presiding judge to consider the factors relevant to making a spousal support award on the facts of the particular case and to exercise his or her discretion in determining whether a lump sum award is appropriate": at para. 69.

[211] Chapter 12.3 of the SSAG addresses circumstances where the payor spouse has prior support obligations:

An obligation to pay support for a prior spouse or for prior children will affect the support to be paid to a subsequent spouse. Generally speaking, the court has adopted a first-family-first approach for payors in such cases, subject to a very limited exception for low-income payors. Under the current law, courts determine the amount of any support for the second spouse taking into account the prior support obligations and the payor's budget.

[212] The SSAG goes on to detail how the exception for prior support obligations applies under the with child support formula in chapter 12.3.2:

An obligation to pay support for a prior spouse or prior children requires a slightly different adjustment under this formula, which works with net incomes rather than the gross incomes of the without child support formula. In calculating the payor spouse's individual net disposable income, this exception will require that any amount of support paid to prior spouses or children be deducted, thereby reducing the size of the pool of individual net disposable income between the current spouses and also reducing the payor's share of that smaller pool

[Emphasis added.]

Analysis

Prospective Spousal Support

[213] I must assess whether B.D. is entitled to spousal support on either compensatory or needs-based grounds. B.D. seeks that this award be in the form of a lump sum payment.

- [214] M.D. argues that B.D. is not entitled to spousal support because he paid for B.D.'s education at the expense of his own. This is a problematic position for two reasons. First, M.D. did not pay for the vast majority of B.D.'s education. Rather he paid for her nine-month Masters' program at Oxford University. B.D. has a Bachelor's degree from the University of London in drama which I understand was a four-year program. She obtained this degree prior to the parties commencing their relationship. Second, there was nothing in the evidence before me to suggest that M.D. wanted to pursue higher education and that he sacrificed his education to support B.D.
- [215] In addition, M.D. says that B.D. has an identical lifestyle to him. That is clearly not true. She lives in rental housing with a roommate, and they have one suite in the house. M.D. has access to two homes, the family home and his girlfriend's where he lives most of the time. M.D.'s lifestyle appears not to have been affected by the separation; B.D.'s lifestyle has been very much affected.
- [216] From the evidence, it is clear that the parties met in Australia and B.D. moved to Canada from the United Kingdom in order to pursue a relationship with M.D. She left behind her family and support system. B.D. was unable to obtain permanent residency in Canada until shortly before the parties' separation. By being in Canada without permanent residency, B.D. had to forgo career opportunities she would have otherwise had by virtue of her education. Although she now has decent employment it is not secure because she is covering a maternity leave. By being unable to obtain decent employment, B.D. has lost seniority, has missed promotions, and can only now start contributing to a workplace pension plan.
- [217] It is also clear from the evidence that during the majority of the parties' marriage M.D. worked overseas leaving B.D. with primary childcare responsibilities with respect to the parties' biological children. For a period of time she also cared for M.D.'s children from a prior relationship. This shows that B.D. took on the entire burden of the household and child-rearing responsibilities in order to facilitate M.D.'s career. There is no doubt that this caregiving arrangement also impacted B.D.'s ability to further her career. In other words, B.D. has been affected by her role in the marriage and is entitled to compensatory spousal support.
- [218] Although not necessary given my finding that B.D. is entitled to spousal support on compensatory grounds, I also find that B.D. is entitled to support on needs-based grounds. After the parties' separation B.D. had to move out of the family home without any child or spousal support from the claimant. She first had to "couch surf" because she could not afford rental accommodations. She had to rely on charity from the community, and government-sponsored programs, in order to house and feed herself and the two children. While she has now found a well-paying job and is working toward financial self-sufficiency, these events show that B.D. was seriously disadvantaged by the breakdown of the marriage and is in need of support.

- [219] Given their incomes for spousal support purposes, at the mid-range, M.D. is required to pay \$703 in spousal support per month to B.D. for 10 years, subject to changes as the parties' financial situation evolves in the future: Chutter at para. 121.
- [220] B.D. seeks an order that spousal support be paid in a lump sum. Based on the Court's guidance in Davis, spousal support should be paid in periodic payments. While I agree that the parties would benefit from a clean break, the parties are already permanently intertwined by virtue of their children. Further, there is a real possibility that the parties' means and needs will change over time especially since B.D.'s current job is temporary to cover a maternity leave. Ordering lump sum spousal support would essentially deprive the parties of the right to apply for a variation in spousal support. I am also of the view that ordering lump sum spousal support may compromise M.D.'s self-sufficiency.
- [221] For these reasons, commencing January 1, 2023 I order that M.D. pay to B.D. periodic spousal support in the amount of \$703 per month on the first of every month. This amount will be adjusted following the parties' exchange of financial information on or before May 31 each year.
- [222] Spousal support shall continue for 10 years.

Retroactive Spousal Support

- [223] B.D. seeks spousal support retroactive to September 1, 2021. M.D. opposes any spousal support award to B.D.
- [224] In assessing B.D.'s entitlement to retroactive spousal support, I must consider the factors laid out by the Court in D.B.S.: (a) the reason for the delay in asking for support; (b) the conduct of the payor spouse; (c) the circumstances of the recipient spouse; and (d) any hardship the payor might suffer as a result of a retroactive award.
- [225] Similar to my child support analysis, I find that B.D. had a reasonable excuse for not seeking spousal support earlier. Given the level of conflict between the parties, it is reasonable that B.D. lacked the financial and emotional means to bring an application. Further, as mentioned in the child support analysis, she quickly exhausted her legal aid hours and then had no access to legal advice. In my view, these factors support a retroactive spousal support award.
- [226] In regard to M.D.'s conduct, similar to my retroactive child support analysis, I find that M.D.'s actions in failing to pay any spousal support since separation constitutes blameworthy conduct. As laid out earlier in these Reasons, B.D. was forced to leave the family home with very little money and no access to the parties' shared assets. This factor further supports the appropriateness of a retroactive spousal support award.
- [227] B.D.'s circumstances immediately after separation were difficult. She was forced to leave the family home and rely on charity, government programs, and the goodwill of friends to support herself. B.D.'s standard of living at that time was significantly lower than that of

M.D., who remained in the parties' family home. B.D.'s circumstances have improved since then as she has found stable housing and secured a better paying job. Nevertheless, the evidence shows that she experienced hardship as a result of M.D.'s failure to provide any financial support following their separation. I find that this factor supports the appropriateness of a retroactive spousal support award.

[228] Finally, M.D. will not suffer any hardship as a result of a retroactive spousal support award. M.D. had the sole benefit of the parties' joint assets following separation. It is only fair to require him to pay the support he should have provided to B.D. at the time.

[229] Based on the parties' Guidelines income as determined in these Reasons, I find retroactive support from September 1, 2021 to the date of trial to be as follows:

Period of Time

M.D.'s Income

B.D.'s Income

Mid-Range Spousal Support Payable by M.D.

September 1, 2021 to January 1, 2022

$\$115,000/12 =$

$\$9,583 \times 4 \text{ months} = \$38,332$

$\$53,396/12 = \$4,449 \times 4 \text{ months} = \$17,796$

$\$703 \text{ per month}$

$(\times 4 \text{ months} =$

$\$2,812)$

January 1, 2022 to December 31, 2022

$\$115,000$

$\$53,396$

$\$703 \text{ per month} \times 12 \text{ months} = \$8,436$

Total Retroactive spousal support = $(\$2,812 + \$8,436) = \$11,248$

[230] Despite the above, M.D. paid the mortgage and all the expenses to maintain the family home between September 1, 2021 to the present time. The evidence before me was that the mortgage is \$2,026 per month, and the property taxes are \$3,300 per annum. I did not have evidence before me of other expenses relating to the house. I note that M.D. had the benefit of the family home and did not have to pay rent during this time. B.D. was at first couch surfing but as of November 2021 she had to pay \$1,600 per month in rent. She also had to

furnish her new place and would have other expenses relating to housing.

[231] To account for these amounts M.D. has spent on the family home, I order that M.D. pay to B.D. only 50 percent of the \$11,248, \$5,624, in retroactive spousal support for September 1, 2021 to the date of trial. I am not deducting more as he had the benefit of the family home whereas B.D. had to pay rent during this period.

Divorce

[232] Both parties sought a divorce. In his notice of family claim filed in July 2021, M.D. sought a divorce on the ground of cruelty, however, he did not raise this ground at trial.

[233] I find that the parties separated on June 1, 2021 and have not lived together since then. It is clear to me that there is no possibility of reconciliation between M.D. and B.D. and that there has been no collusion between them. Consequently, M.D. and B.D., who were married at Cranbrook, BC, on August 15, 2013, are divorced from each other. The divorce is to take effect on the 31st day after the date of this Order.

Disposition

[234] For the reasons given above, I make the following orders:

a) Parenting Time and Responsibilities:

i. The parties remain guardians of T. and F. pursuant to s. 39 of the FLA.

ii. The parties shall have equal shared parenting time as follows:

(1) The parties will share parenting of the children equally on a week-on/week-off schedule such that one parent will pick up the children on Monday after school and/or daycare and will drop them off to school/daycare on the following Monday morning. The parties will continue this alternating weekly schedule unless and until there is further order of this Court or agreement between the parties. This parenting schedule will ensure the parties do not have to interact during exchanges.

(2) When school is not in session, all exchanges shall take place at the Boys and Girls Club of Central Vancouver Island. If there is a legitimate reason why the exchange cannot take place at the Boys and Girls Club, the exchange shall take place at a neutral public place as agreed upon in writing by both parties. The parties shall have no communication during these exchanges.

(3) Summer Holidays:

(a) The regular parenting schedule will continue during the children's school summer holidays unless one or both parties, by no later than April 30 of each year, provides written notice of their wish to have an extended period of parenting time for vacation with the children and provides the proposed dates for that period. The extended vacation time will be for no more than 14 consecutive days unless otherwise agreed to by the parties. In the event that both

parents wish to have an extended vacation in any given year, in 2022 and all even-numbered years thereafter, M.D. will have first choice of dates for the extended vacation and in 2023 and all odd-numbered years thereafter, B.D. will have first choice of dates for the extended vacation.

(4) Mother's Day and Father's Day:

- (a) Regardless of the regular parenting schedule, M.D. will have parenting time on Father's Day from 10:00 AM to 6:00 PM.
- (b) Regardless of the regular parenting schedule, B.D. will have parenting time on Mother's Day from 10:00 AM to 6:00 PM.

(5) Easter Weekend:

- (a) Regardless of the regular parenting schedule, the parties will rotate parenting time such that on even-numbered years M.D. will have the children from the Thursday before Good Friday at 6:00 PM to Saturday at 6:00 PM and B.D. will have parenting time from Saturday at 6:00 PM to Monday at 6:00 PM and vice-versa on odd-numbered years.

(6) Christmas Holidays:

- (a) In 2022 and all even-numbered years thereafter, M.D. will have parenting time in the first week of the Christmas school break, commencing on the first Monday morning of that period and ending on the Sunday evening following, and B.D. will have parenting time for the second week of that period.
- (b) In 2023 and all odd-numbered years thereafter, B.D. will have parenting time in the first week of the Christmas school break, commencing on the first Monday morning of that period and ending on the Sunday evening following, and M.D. will have parenting time for the second week of that period.

(7) Birthdays:

- (a) On M.D.'s birthday (March 30), M.D. will have parenting time from 10:00 AM to 6:00 PM.
- (b) On B.D.'s birthday (July 12), B.D. will have parenting time from 10:00 AM to 6:00 PM.
- (c) On each of the children's birthdays, in 2022 and all other even-numbered years thereafter, M.D. will have parenting time from 10:00 AM to 3:00 PM and B.D. will have parenting time from 3:00 PM to 8:00 PM. In 2023 and all odd-numbered years thereafter, B.D. will have parenting time from 10:00 AM to 3:00 PM and M.D. will have parenting time from 3:00 PM to 8:00 PM.

(8) B.D.'s travel with the children to the United Kingdom:

(a) In any given year, on no less than two months' notice to M.D., B.D. may travel with the children to the United Kingdom for up to three weeks and M.D. will provide a signed consent form to that effect to B.D. by no later than one month prior to the scheduled departure date.

iii. The parties may request reasonable adjustments to the parenting schedule, consent to which must not be unreasonably withheld. The parties will make requests for changes to the parenting schedule at least 72 hours in advance in writing. All such variations will be by written agreement of both parents, which can include email or text message. For greater clarity, if a party does not agree in writing, then a change cannot be made.

iv. The parties will abide by the following conduct orders:

(1) The parties will communicate only by text or email regarding parenting issues, except in the case of emergencies in which case the parents must communicate with each other in the most efficient way possible, including by telephone.

(2) The parties will:

(a) put the best interests of the children before their own interests;

(b) encourage the children to have a good relationship with the other parent and speak to the children about the other parent in a positive and respectful manner; and

(c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication, or argument in front of the children.

(3) The parties will not:

(a) blame, criticize, or disparage the other parent to the children; or

(b) discuss with the children any inappropriate adult, court, or legal matters.

b) Income Determination:

i. I find that B.D.'s Guidelines income for support purposes in 2022 is \$53,396.

ii. I impute a Guidelines income of \$115,000 to M.D.

iii. The parties will exchange financial information as required by s. 21 of the Guidelines, including Company M.'s financial statements, no later than May 31st each year. Going forward, I impute an income to M.D. of \$140,000 if he fails to produce his financial information to B.D.

c) Child Support:

i. M.D.'s children from his prior relationship are not children of the marriage. As such, B.D. is not required to pay child support for L. and D.

ii. M.D. shall pay to B.D. \$887 per month in prospective child support for T. and F.

iii. M.D. shall pay to B.D. \$8,130 in retroactive child support for F. and T. for the period from September 1, 2021 to the date of trial.

d) Section 7 Expenses:

i. The parties shall share the following s. 7 expenses in proportion to their Guidelines income:

- (a) the cost of daycare for F. and after-school care for T.;
- (b) that portion of the medical and dental insurance premiums attributable to the children;
- (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 children's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

i. M.D. shall pay 63 percent of the children's s. 7 expenses and B.D. shall pay 37 percent of these expenses.

ii. The expenses should be exchanged, with receipts, every three months. The party who receives such expenses from the other parent shall reimburse the spouse for their proportion of the expense within two weeks of receiving the receipts.

e) Property Division:

i. The following is family property:

a. The family home will be divided as follows:

i. Given the parties' inability to cooperate, it is ordered that B.D. have sole conduct of the sale of the family home.

ii. The family home is to be sold immediately, and the proceeds of the sale will be put into a trust and divided equally between M.D. and B.D. after all other debts are satisfied.

1. Before the equal division of the family home, any amount owing to the loan provided for by B.D.'s mother and stepfather must be paid.

b. Company M. will be divided as follows:

i. M.D. will pay to B.D. \$40,000 in final satisfaction of her interest in all of Company M.

c. The family vehicles will be divided as follows:

i. B.D. is to be the sole owner of the family's Nissan Pathfinder.

1. If not already done, M.D. must transfer the ownership of the vehicle into B.D.'s name.
- ii. M.D. is to be the sole owner of both the Ford F250 and Dodge 1st Generation Cummins trucks.
- d. The family boats will be divided as follows:
 - i. M.D. will pay B.D. \$4,000 in final satisfaction of her interest in both the Bayliner boat and the Houseboat.
 - e. B.D. is entitled to keep the engagement ring as a gift, conditional upon marriage, from M.D.
- ii. The parties are both responsible for the payment of the following debts:
 - a. B.D.'s Royal Bank of Canada Line of Credit which has an outstanding balance amount of \$21,923.77. M.D. is to pay B.D. \$10,962 in satisfaction of this debt.
- iii. Both parties will make their best efforts to have the listed creditors remove the respective party's name as a person responsible for the listed debt to that creditor.
- f) Spousal Support:
 - i. M.D. shall pay to B.D. periodic prospective spousal support in the amount of \$703 per month on the first day of every month. Spousal support shall have a duration of 10 years.
 - ii. M.D. shall pay to B.D. \$5,624 in retroactive spousal support for the period from September 1, 2021 to the date of trial.
- g) Divorce:
 - i. M.D. and B.D., who were married at Cranbrook, BC, on August 15, 2013, are divorced from each other. The divorce is to take effect on the 31st day after the date of this Order.
 - h) The parties may return to this Court to clarify any aspect of this order. I will remain seized of the matter for any clarifications.

Costs

[235] B.D. and M.D. sought costs. In my view, B.D. was substantially successful at trial. Therefore, unless there are additional factors of which I am not aware, pursuant to Rule 16-1(7), B.D. is entitled to her costs.

"D. MacDonald J."

- [1] M.D. denied S.M. was his girlfriend at the time. From the testimony it is clear they were sexually involved whether or not they were officially dating.
- [2] S.P. testified that M.D. is no longer living in the house. He has not been living there since October 2021. His oldest son was living there alone throughout the winter months, from November 2021 to June 2022. S.P. stated there is no evidence that the business is being run out of the house.

- [3] See s. 37(2)(g) listed above.
- [4] M.D. was questioned how he could report B.D. for claiming the full child tax benefit if he had not filed his 2021 tax return. He stated it was filed but he had not gotten it back yet.
- [5] This is based on \$74,000 divided by seven months which equals \$10,571. That equates to \$115,000 over 12 months.
- [6] M.D. agreed to this number in final submissions.
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Prepared on 26 October 2026 · Esheria