

CANADA / JUDGMENT

M.P. v. P.P.

2024 BCSC 2138

COURT

Supreme Court of British Columbia

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2024 BCSC 2138 M.P. v. P.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.P. v. P.P.,

2024 BCSC 2138

Date: 20241127

Docket: E64676

Registry: New Westminster

Between:

M.P.

Claimant

And

P.P.

Respondent

Before: The Honourable Justice Bantourakis

Reasons for Judgment

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Place and Dates of Trial:

New Westminster, B.C.

September 9-13, 16-20

and 23-26, 2024

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November 27, 2024

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I. INTRODUCTION

- [1] The parties to this family law dispute have had difficulty agreeing on much since separating. They have two young children.
- [2] The level of distrust and acrimony between Ms. P. and Mr. P. is high. There are allegations of family violence, criminal activity, and disagreements on many points, including their history together, parenting, property, their incomes and their financial situations. Additionally, Ms. P. wants to move to the United States with the children, to which Mr. P. is opposed.
- [3] Though this case was in some ways litigated as a re-hashing of the parties' entire relationship and separation, I have limited my findings to what is necessary to decide the issues. Those issues include: the duration of the marriage-like relationship; parenting responsibilities, parenting time and relocation; division of family property and debt; income for support purposes, and both child and spousal support. The parties agree that there should be an order for divorce.
- [4] Because of their children, Mr. P. and Ms. P. will be a part of each other's lives for a long time. They must now focus on navigating that reality in peace and with their children's best interests at heart. As they move forward, one can hope that they will remember that their love for their children, at least, is something they will always share in common.

II. BACKGROUND

- [5] Mr. and Ms. P.'s relationship was intense from the beginning. They met online in February 2017. Ms. P. was living in the United States, and Mr. P. was in British Columbia. Though they disagreed on many details at trial, both described a relationship that started quickly and that from its very early stages and for its duration involved periods of conflict.
- [6] Ms. P. is an American citizen. She has an undergraduate degree in Spanish with a focus on Linguistics from a well-known American university. When she met Mr. P., she was 28 years old and living with her grandfather in Las Vegas, Nevada. At the time, she was self-employed providing tutoring and essay writing services. As I discuss later, her conventional work history to that point appears to have been somewhat limited.

- [7] Mr. P. is 14 years older than Ms. P. He is an entrepreneur who, among other things, owns a motorcycle parts and upgrading business. I will refer to that company as OPP Racing. Mr. P. has another company, OPP Track Days, which hosts events at an exclusive motor racing track. He also has other business interests, including an import/export business involving Mexico, referred to as Manavo, which he operates with a business partner. Ms. P. alleges that Mr. P. has also been involved in illegally producing marijuana, which Mr. P. vehemently denies.
- [8] Mr. P. owns two properties. The first is a large residential property located on an acreage in Maple Ridge (the "Maple Ridge Home"). The second is a commercial unit located in Port Coquitlam (the "Poco Shop").

Relationship, Children and Separation

- [9] Ms. P. described the beginning of the parties' relationship as something of a whirlwind. In April 2017, shortly after they had met, Mr. P. took Ms. P. on a trip to Europe with business class flights, nice hotels and a gift of jewelry - a "promise ring" by which they signaled their commitment to each other. She says they shared intimate and difficult details of their lives to that point and promised to be the other's "safe space" moving forward. Ms. P.'s sister accompanied them for part of the trip and her travel costs, other than airfare, were also covered by Mr. P.
- [10] Mr. P. says this was a previously booked work trip that he paid for using points, with the cost of meals often covered by business associates or family. He says the ring he got Ms. P. only cost about 60 Euros, that he did not know what a "promise ring" meant and that he only bought it because Ms. P. insisted. I find that Mr. P. tended to downplay both the cost and significance of the trip, while Ms. P. tended to do the opposite.
- [11] After returning from Europe, Ms. P. stayed with Mr. P. in the Maple Ridge Home. Ms. P. says that they had decided to make a life together. From then onward she describes a comfortable existence in which Mr. P. supported her financially, including gifting her a Rolex watch and providing a Mercedes Benz for her use while he drove a Maserati. According to her, she spent much of her time with Mr. P., even accompanying him in his work at times and providing some modest assistance. She tended to certain aspects of the home. She also spent time vacationing and at the exclusive racing track one of Mr. P.'s companies holds a corporate membership to.
- [12] Mr. P. paints a different picture. According to him, Ms. P. stayed with him for periods of time but also returned to the United States from time to time and it was not certain that they were planning a future together. Instead, they were still testing things out. He also says that Ms. P. continued working remotely at her tutoring business and that he lived a more modest lifestyle than he had some years before because his motorcycle business, which had once been extremely successful, was on the decline.

- [13] The relationship, which had always been rocky, took a turn for the worse in July of 2019 and Ms. P. returned to the United States. Soon after, however, she found out she was pregnant. She returned to British Columbia and, on August 26, 2019, the parties married in a small ceremony in the Poco Shop. Mr. P. sponsored Ms. P.'s application for permanent residency, which she has since obtained. Their first son, A.P. was born in March 2020 and from then on Ms. P. was a full-time homemaker. Their second son, G.P., was born in September 2021.
- [14] While there were several sources of conflict in the relationship, including Mr. P.'s belief that Ms. P. was communicating with other men, the parties agree that finances were a bone of contention. Ms. P. alleges that Mr. P. always had ample funds, including in cash, for things he thought were important, but unfairly balked when she wanted to spend money. Mr. P., on the other hand, casts Ms. P. as an inveterate and prolific spender who did not care about the financial strain he says he was under.
- [15] The parties separated on March 21, 2022 after an altercation at their home to which the police were called. Mr. P. was arrested that night and later released subject to conditions that included no-contact with Ms. P. Shortly afterwards, after returning from a previously scheduled trip, Ms. P. and the children moved into a shelter for victims of domestic violence.
- [16] Mr. P. later pleaded guilty to wilfully resisting or obstructing a police officer in relation to that incident. He received a conditional discharge and probation for 12 months, with one of the conditions being that he not attend Ms. P.'s residence or contact her except as provided in a family court order. Other charges were stayed.
- [17] On March 1, 2023, Mr. P. was arrested and charged with breaching the terms of the probation order, following an incident in which he was alleged to have driven past Ms. P.'s home. That charge was stayed in August 2024 and I am told that Mr. P. is no longer subject to criminal charges or conditions.

Proceedings to date

- [18] Ms. P. filed her family law claim on April 8, 2022. Since then, the process has been contentious. Most of the litigation history is set out in the reasons on interlocutory rulings in this matter reported at M.P. v. P.P., 2022 BCSC 1511, M.P. v. P.P., 2023 BCSC 694 and M.P. v. P.P., 2023 BCSC 1530.
- [19] Suffice it to say that there have been several applications, competing affidavits in the thousands of pages and several interim orders, including on relocation, parenting time, support, imputing income for support purposes, and distribution of family property. Some of the orders were contested, some were on consent, some were made without notice, and others were not.

- [20] For current purposes it is worth noting that Ms. P. obtained an ex parte order on May 20, 2022 permitting her to relocate to Nevada with the children on an interim basis. However, on a subsequent contested application, the interim relocation order was set aside and they were required to return to British Columbia, which they did by early November 2022: M.P. v. P.P., 2022 BCSC 1511.
- [21] In terms of parenting, broadly speaking, Mr. P.'s parenting time was very limited in the weeks and months after separation and, for obvious reasons, when Ms. P. and the children were in Nevada. Since their return, Mr. P.'s parenting time has gradually increased. When the children returned to B.C., there was a consent order for parenting time with Mr. P. of 6 hours three days a week, with exchanges facilitated by a third party. By about May 2023, parenting time had increased and the parties agreed to an informal shared parenting arrangement which was later formalized by way of a consent order.
- [22] Mr. P. and Ms. P. have each accused the other of breaching court orders about the children and there have been conflicts over parenting exchanges: see e.g. M.P. v. P.P., 2023 BCSC 694 and M.P. v. P.P., 2023 BCSC 1530.
- [23] In terms of support, income of \$140,000 was imputed to Mr. P. on an interim basis following a contested application. While Mr. P. has paid support monthly since separation, the pattern of payment has been variable in terms of amount. He says he does not make that much money and cannot afford to pay what was ordered. In January of this year, Mr. P. and Ms. P. entered into a consent order on an interim and without prejudice basis for payment of \$1,000 monthly in child support and the same amount in spousal support. Since then, it appears that Mr. P. has made his support payments as required.

The current situation

- [24] The parties have now settled into a shared parenting regimen. This is not to say that the situation is easy. It remains tense and perceived slights could disrupt the uncomfortable balance they have achieved. However, the children have had largely equal parenting time with both parents for some time now and for almost a year there have not been any contested applications or serious allegations of misconduct, which is a marked improvement from before.
- [25] Ms. P. lives in a rented apartment in Abbotsford, working part-time hours at what is effectively a minimum wage job. She has received income assistance from the government. She says her financial dire straights are compounded both by her inability to afford daycare for the boys when they are with her (and consequent inability to work as much as she would like), and Mr. P.'s alleged failure to pay the support he should. She says she has looked for better paying work but has been unsuccessful. She says that she had no experience being "head of household" until she and Mr. P. separated and has struggled to achieve financial self-sufficiency while raising two young children.

[26] Mr. P. still lives in the Maple Ridge Home and operates his motorcycle businesses. He is also pursuing his import/export business but says he has yet to have any success with it. He may also be seeking out other business opportunities. He alleges that this litigation has prevented him from devoting the necessary time to his entrepreneurial pursuits and that the motorcycle business was in decline anyway. He says he is financially strapped and has had to borrow money from his parents to get by. However, he appears to believe that his financial situation will improve once this litigation concludes.

III. ANALYSIS

[27] The parties have advanced conflicting versions of certain events and each encourages me to find that the other lacks any credibility. Not all of these factual conflicts need to be resolved, but some do.

[28] Neither party was a perfect witness. Beyond the specific credibility findings I have made below, the unfortunate reality is that the reliability of both parties' evidence is affected by the distrust and bad feeling that persists between them, which has become the lens through which they now seem to view much of their shared history.

[29] Because of this, I have generally not accepted a party's evidence on a contested issue unless, for example, it harmonizes with other independent evidence I have accepted, is reasonable and likely in light of uncontroversial facts, and/or remained consistent despite meaningful and probing cross-examination: see e.g. *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-188.

A. DURATION OF THE SPOUSAL RELATIONSHIP

[30] Mr. P. and Ms. P. disagree on the length of their spousal relationship. Ms. P. says it lasted almost five years. Mr. P. says it was about half that. The difference of two and a half years affects the family property claims. It may also affect spousal support.

[31] In order to be "spouses" within the meaning of the Family Law Act, S.B.C. 2011, c. 25 [FLA] and in particular for the purpose of assessing entitlement to division of family property, the parties must have lived in a marriage-like relationship for a continuous period of at least two years: FLA, s. 3(1). The relationship between spouses begins on the date they began to live in a marriage-like relationship: FLA, s. 3(3).

[32] Here, the parties agree that they married in August of 2019 and that they separated on March 21, 2022. Mr. P. says those two events mark the beginning and end of the marriage-like relationship for the purposes of the FLA. However, Ms. P. says she and Mr. P. began living in a marriage-like relationship May 1, 2017 and that the relationship was continuous for at least two years from then onward. She bears the onus of proving that: *Voth v. Martin*, 2019 BCSC 834 at para. 8.

(1) When did the marriage-like relationship begin?

- [33] In deciding whether a marriage-like relationship exists and when it began, it may be important to consider the parties' intentions, particularly whether they saw the relationship as being "of a lengthy, indeterminate duration": *Weber v. Leclerc*, 2015 BCCA 492 at para. 23. However, evidence of those intentions must also be tested against objective evidence of lifestyle and interactions, which provides direct guidance on the nature of the relationship: *Weber* at paras. 23-24. "[S]ubjective or conscious intentions may be overtaken by conduct such that whilst a person living with another might not say he or she was living in a marriage-like relationship, the reality is that the relationship has become such": *Dey v. Blackett*, 2018 BCSC 244 at para. 195.
- [34] To that end, it is helpful to consider whether qualities that are generally accepted as possible indicators of a marriage-like relationship are present: *Weber* at para. 25. These qualities include, for example, whether the parties live together and under what circumstances, sexual and personal behaviour, domestic services, social activities, economic support, children, and the societal perception of the couple: *M. v. H.*, [1999] 2 S.C.R. 3, at para. 59; *L.T.F. v. R.B.F.*, 2023 BCSC 834, at para. 78. Cohabitation is not determinative in establishing when a marriage-like relationship began. However, it is frequently afforded significant weight: *Basi v Basi*, 2021 BCSC 421 at para. 13; *H.S.S. v. S.H.D.*, 2016 BCSC 1300 at para. 48.
- [35] The analysis is holistic and highly fact-specific. The objective evidence "may address a wide assortment of characteristics or indicia for which there is no definitive classification system to determine the ultimate characterization of the relationship": *Jones v. Davidson*, 2022 BCCA 31 at para. 24.
- [36] That is, people may legitimately structure their relationships in different ways. The analysis cannot be reduced to a simple checklist or tally of how many factors tend in one direction or another: *Austin v. Goerz*, 2007 BCCA 586 at para. 38; *Coad v. Lariviere*, 2022 BCCA 222 at para. 127. It is important to remember that "[s]pousal relationships are many and varied": *Austin* at para. 58.
- [37] The parties agree that Mr. P. bought Ms. P. a so-called "promise ring" during their first weeks together in Europe, though Mr. P. says he did not know what that meant. They also seem to agree that Ms. P. stayed at the Maple Ridge Home for extended periods starting in May 2017 and until they married. There is no dispute that the relationship was sexual throughout this time and that there was an expectation of exclusivity. Mr. P. did all the cooking for them both at the Maple Ridge Home and Ms. P. attended to other things around the home, such as cleaning and some decorating.
- [38] Overall I found that Mr. P.'s testimony that Ms. P. came and went during the relevant period and the circumstances in which she did so was vague and unreliable. Conversely, Ms. P.'s evidence of where she lived from May 2017 was clear, specific and supported, for example, by photographs taken throughout that first year and beyond. I find that Ms. P. only returned to the United States without Mr. P. twice between May and early December 2017, both times for very brief visits, mainly to her sister in Los Angeles, and not to reside in the Nevada

home in which she had been living before.

- [39] I accept, as Mr. P. has pointed out, that Ms. P. did not move all of her personal belongings to Canada when she began staying at the Maple Ridge Home in 2017. She had been living with her grandfather when the parties met. She moved her belongings up in early 2018. I also accept that from an immigration perspective Ms. P. was only a visitor here until the parties married. Her evidence that she crossed the border as needed so as not to overstay her visa was not specifically contradicted.
- [40] The parties bought a puppy in the fall of 2017. The significance of adopting a pet dog, which is not a short-term undertaking, must be assessed in view of the broader circumstances of the case: see e.g. *Antoniuk v. Beveridge*, 2024 BCSC 2034 at paras. 84-85, 115-116. Here, I find it is more consistent with Ms. P.'s evidence that the parties understood their living arrangement in the Maple Ridge Home was stable, than with Mr. P.'s evidence that Ms. P. was somewhat transient and that they were merely testing things out.
- [41] I also find that the parties quickly entered into an arrangement by which Mr. P. provided for Ms. P. financially and she largely depended on him in that regard. While financial dependence is not an essential aspect of a marriage-like relationship, it is relevant: *Austin* at paras. 55-56.
- [42] This financial arrangement began from about the time the parties returned from Europe and lasted throughout their relationship. They agree that Ms. P.'s housing, food and car expenses were all paid for by Mr. P., as well as some of her other expenses. Mr. P.'s submission that Ms. P. was earning some money from her academic writing business and could leave at any time to re-establish herself in the United States does not alter my finding that there was a meaningful degree of financial dependence here.
- [43] Along the same lines, Ms. P. testified that shortly after she came to the Lower Mainland, Mr. P. suggested that she open an account with a Canadian financial institution to establish Canadian credit in view of immigrating here. In cross-examination, Mr. P. did not deny this, though he could not recall when he did that. Mr. P. further said that he had put two thousand dollars down to open the account for Ms. P., and more often than not paid her ongoing balances. Overall, this evidence is consistent with Ms. P.'s testimony that she had been living with Mr. P. and that they shared a long-term plan for their relationship.
- [44] Ms. P. suffered an ectopic pregnancy in 2017. She says the parties had stopped using birth control (in the form of condoms) because they were trying to conceive. Mr. P. denies this. At trial, he agreed that he told Ms. P. he wanted to have children, but said he was clear that their relationship would have to be stable for six to nine months, "with no disrespect".
- [45] Mr. P. wrote to an immigration lawyer in early April of 2018 stating that Ms. P. had moved up and that they wanted to have children together. In August of 2018 Mr. P. sent a text message to Ms. P. expressing his wish that they had children. On Mr. P.'s account, neither of these communications were preceded by six to nine months of relative peace in the relationship.

Considering the evidence as a whole, I find it likely that the parties were at the very least not consistently using birth control in the lead up to Ms. P.'s ectopic pregnancy and were planning a future that involved having children together.

- [46] In terms of how the relationship was perceived by others, Mr. P. introduced Ms. P. as his girlfriend from 2017 until they married and she met his parents and some other friends from very shortly after the relationship began. They engaged in social activities together. Ms. P. accompanied Mr. P. in some of his travels for work and she only traveled without Mr. P. on a limited number of occasions, mostly for brief visits with friends or family in the United States.
- [47] Mr. P.'s mother and his friend Mr. Oram gave evidence suggesting they thought the relationship did not seem all that stable before the parties married. It is not controversial that the relationship could be volatile and involved conflict. I have concluded their evidence offers little on this point, as they were not privy to certain important aspects of Mr. P.'s private life. For example, Mr. Oram only learned the parties were getting married the day of the wedding ceremony in 2019 and Mr. P.'s mother only learned of it after.
- [48] In sum, this was an intense relationship that became serious very quickly. While it was volatile, the inquiry is into the existence of a marriage-like relationship, not its quality or whether it was a happy or good one: J.J.G. v. K.M.A., 2009 BCSC 1056, at para. 71. I find the parties began cohabiting as a couple upon their return from Europe. They shared domestic chores, engaged in social activities together and sometimes traveled together. This was an exclusive sexual relationship in which Ms. P. depended on Mr. P. financially to a significant extent and in which they undertook certain long-term commitments jointly, such as a pet dog. They also planned to have children and were not consistently using birth control. Considering the evidence that I have accepted as a whole, I find that the marriage-like relationship began on May 1, 2017.
- (2) Did the parties live in that marriage-like relationship for a continuous period of at least two years?
- [49] The next question is whether the marriage-like relationship that I have found began on May 1, 2017 continued for two years: FLA, s. 3(1)(b)(i). To "stop the clock" on an existing marriage-like relationship, there must be a separation: L.T.F. at para. 80, 84, citing Smith v. Cartwright, 2018 BCSC 2074 at paras. 30-32.
- [50] For current purposes, the parties agree that their separation in July 2019, which I mentioned earlier, is not relevant because of s. 83 of the FLA. What matters is if they lived in a marriage-like relationship for a continuous period of at least two years leading up to that.

- [51] There are two periods that could affect the length of the marriage-like relationship. The first runs from about early to mid-December 2017 until late January or early February 2018. Both parties acknowledge they were physically apart during most of this period, but disagree about the implications. The second is some time in 2018. Ms. P. denies there was any separation in 2018, but Mr. P. says there was.
- [52] Subsection 3(4)(b) of the FLA provides that the court may consider as evidence of separation (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.
- [53] At common law, separation ending a marriage-like relationship is made out "when either party regards it as being at an end and, by his or her conduct, has demonstrated in a convincing manner that this particular state of mind is a settled one": *Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65, at para. 42; *Dixon v. Moss*, 2023 BCSC 1248 at para. 142, citing *H.S.S.* at paras. 42-46.
- [54] Physical separation after a fight or disagreement does not automatically bring a relationship to an end. Instead, the law recognizes that a separation may, depending on the circumstances, simply amount to a "cooling-off period" that does not convincingly demonstrate a settled state of mind that the relationship is at an end: *Re Sanderson and Russell* (1979), 24 O.R. (2d) 429 (C.A.); see also *L.T.F.* at paras. 85-88. The evidence should be viewed from the perspective of the particular relationship in issue and, again, holistically: *L.T.F.* at para. 99; *Mancinelli v. Mancinelli*, 2021 BCSC 94 at paras. 73-77; *Yake v. Chamberlain*, 2014 BCSC 1582 at paras. 50-52; *Ernst v. Carmichael*, 2019 BCSC 68 at para. 16.
- [55] Regarding the 2017 separation, both parties agree that they were physically separate from early December 2017 until late January or early February 2018 and that Ms. P. left because of problems in the relationship. Leaving aside Mr. P.'s assertion that he believed the relationship was 100% over at this point, the parties' accounts of what was happening during this period overlap to an extent. Both agree on the general timeline of the alleged separation, that they remained in contact to a degree, that some of their communications involved discussing or reflecting on their relationship and interactions, and that they both willingly participated in a serious discussion about their relationship in late January of 2018 (for which Ms. P. flew to British Columbia so they could discuss the matter in person) following which they agreed to be together. Ms. P. then returned to the Maple Ridge Home in early February 2018.
- [56] Within days of Ms. P.'s move back to the Lower Mainland, Mr. P. had bought her a ring that would eventually become her wedding band. Within less than two months of that he had emailed the immigration lawyer as described above.

- [57] Looking at the matter as a whole, I have concluded that from December 2017 to January 2018 there was no settled intention to separate for the purposes of s. 4(b) of the FLA. This was, in my view, a cooling off period during which the parties took some time apart following a period of increased conflict in their relationship to consider the future. It culminated in the resumption of their marriage-like relationship.
- [58] As for the second alleged separation, I do not accept there was a relevant period of separation in 2018. Though it is common ground that the parties had an explosive fight at some point that year in which Ms. P. lunged for a knife, I am unable to accept Mr. P.'s evidence that they separated after that fight. Other than saying he believed the relationship was over, he offered few specifics. He did not say who initiated the separation or what words might have been spoken to that effect. He did not know how long the alleged separation lasted, whether days, weeks or months. He was not certain where Ms. P. went and he could not describe the circumstances or timing of her alleged return other than to say that somehow she had come back. No particulars were put to Ms. P. on cross-examination.
- [59] In light of all this, I find that the marriage-like relationship began on May 1, 2017 and continued uninterrupted until the agreed separation date of March 21, 2022.

B. FAMILY VIOLENCE AND PROTECTION CONCERNS

- [60] Ms. P. asks that a protection order be made under s. 183 of the FLA prohibiting Mr. P. from attending within 100 meters of any place that she resides. The purpose of a protection order is to protect at-risk family members where the court concludes that family violence is likely to occur: FLA, s. 183(2).
- [61] "Family violence" in this context is defined in s. 1 of the FLA and broadly includes acts of physical violence, intimidation, harassment and impingement on a family member's personal or financial autonomy, among others. In making a protection order, the court must consider the factors set out in s. 184 of the FLA and I have considered those factors.
- (1) Family Violence Allegations
- [62] To begin, both Mr. P. and Ms. P. accuse each other of threatening or otherwise abusive conduct at various points before the children's birth. Mr. P. points out that some of the incidents Ms. P. relies on involve conduct he is alleged to have engaged in vis-à-vis third parties, and not her. Ms. P. acknowledges the incident mentioned above in which she lunged for a knife but says she has since gone through therapy to great benefit. Ms. P. says she is worried for her safety not only because of what has occurred in the past, but also because of the allegations she has made against Mr. P. in this litigation.
- [63] The events of March 21, 2022 that triggered the parties' separation are important. According to Ms. P., Mr. P. had agreed that she and the children could travel abroad for a holiday with her family. However, that night, which was the night of their departure, he became enraged when he learned the family's nanny would be accompanying her. This built on

disagreements they were having about money. Among other things, Ms. P. says Mr. P. blocked her into the family garage and then pushed her down to the ground when she tried to leave by taxi.

- [64] Mr. P. agrees that there was a dispute about the nanny accompanying Ms. P. but effectively says that Ms. P. is lying about what he did. Among other things, Mr. P. says that he watched as Ms. P. ran around unprovoked, yelling "assault, assault" "help me" and "stop" while the taxi driver loaded her bags in his taxi. Mr. P. says he didn't realize it immediately, but later understood that she was on the phone with police. He claims the police then assaulted him when they arrived. However, it is not disputed that Mr. P. later pleaded guilty to wilfully resisting or obstructing a police officer in relation to this incident.
- [65] Overall, I find Ms. P.'s account trustworthy. Her description of what happened after the police arrived is consistent with the video of that portion of the night's events and her testimony on related matters was clear and unshaken in cross-examination. In the video, she can be heard imploring Mr. P. not to resist the officers and telling one or both of the children, among other things, that their father will be okay. The same cannot be said for Mr. P.'s account of that night, which in certain respects was inconsistent with the video of his interactions with police. After that night, Mr. P. cut off Ms. P.'s access to all but very little credit and removed the vehicle she had been relying on to get home with the boys after their trip.
- [66] Ms. P. also says that Mr. P. breached a condition of his probation by driving past her home in February of 2023, though the related charge was later stayed. Concerningly, Mr. P. gave evidence at trial that I find was intended to give the impression that he did not know Ms. P.'s address at the relevant time. However, in cross-examination, it emerged that he gave contrary evidence in an earlier affidavit, where he said he did know her address and had learned it from a friend.
- [67] Nevertheless, I am unable to find that it was Mr. P. who drove past Ms. P.'s home that night, considering that Ms. P.'s evidence of her observations over the course of seconds has obvious inherent frailties and the video of that drive-by does little to assist. However, I do find that Mr. P. set about to find out Ms. P.'s address upon her return from Nevada, despite knowing she wished to keep that information from him and despite knowing he was under conditions not to attend that location in any event.
- [68] There is evidence of tension and conflict during certain post-separation parenting exchanges but those incidents are now somewhat dated and the parties no longer use a third party to facilitate exchanges. Mr. P. has also used insulting language when communicating with Ms. P. in writing, including recently.
- (2) Is family violence likely to occur?

- [69] Both parties are responsible for incidents of family violence before the children were born. I find that these dated incidents, as described in the evidence, do not on their own support the view that family violence is likely to occur at this stage, considering the passage of time and the context in which they occurred.
- [70] Since the children's birth, the incident leading to the parties' separation does meet the definition of family violence. I have accepted Ms. P.'s account of what happened that night. I also accept that Mr. P. sought out Ms. P.'s address upon her return from Nevada over two years ago and that in the immediate aftermath of separation, Mr. P. cut off Ms. P.'s access to a vehicle and all but little credit.
- [71] That said, I find that the risk of family violence is greatly reduced now that the parties are physically separated. Many of the allegations here relate to periods during which the parties were either still enmeshed in their volatile relationship, or that coincide with or closely post-date either their separation or Ms. P.'s return from Nevada with the children. These were times of intense conflict and emotion. Likewise, while the relationship and initial post-separation period were volatile, the evidence does not establish a pattern of coercive and controlling behaviour.
- [72] There are some more recent examples of Mr. P. using inappropriate language with Ms. P. in emails, which reflects poorly on him. However, overall the tension between these parties is abating. Further, any allegations Ms. P. has made against Mr. P. have been aired publicly for quite some time now and I am persuaded that Mr. P. will not do anything that could jeopardize his relationship with and access to his children.
- [73] This is to say, while the conduct described above cannot be ignored, the parties do appear to have settled into a more stable regimen and to be moving on with their lives. Considering the matter as a whole, I am unable to conclude there is a likelihood of family violence and Ms. P.'s request for a protection order is dismissed. Should the circumstances change, Ms. P. is of course at liberty to apply for a protection order again in future.

C. PARENTING AND RELOCATION

- [74] The parenting issues in this case center on (1) whether Ms. P. should be permitted to move the children to Nevada; (2) what the parenting arrangements should be either in the event of relocation, or in the event relocation is not permitted; and (3) how parental responsibilities should be allocated as well as whether any special conditions should be imposed regarding travel and access to passports.
- [75] Despite early disruptions in the wake of the parties' separation, the children have had mostly equal parenting time with both parents for quite some time now. The parties agree that this situation should continue if Ms. P.'s application to relocate is not allowed. However, they disagree on the relocation issue itself, as well as the allocation of parental responsibilities.

- [76] My parenting orders are made under the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.). Section 16(1) of the Divorce Act requires that the court only take the best interests of the children into account in making a parenting order. Primary consideration is given to the children's physical, emotional and psychological safety, security and well-being: Divorce Act, s. 16(2).
- [77] The analysis must be conducted in consideration of all factors related to the circumstances of the child, including those enumerated in s. 16(3) of the Divorce Act. Those enumerated factors include, but are not limited to: the child's needs, including the need for stability; the nature and strength of the child's relationship with each spouse and other important people in their life; each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse as well as their ability to communicate and cooperate on matters affecting the child; the history of the child's care; plans for the child's care; and family violence including its impact on the parties' ability to care for the children and the appropriateness of requiring them to cooperate. The Divorce Act defines family violence broadly and the factors set out in s. 16(4) must be considered in assessing the best interests of the children.
- [78] I found both parties credible in their accounts of their love for and devotion to their children, which is apparent. I also largely accept their evidence of the day to day care they give those children, which is excellent, though each was understandably eager to paint themselves in the best possible light.
- (1) Relocation
- [79] As with any other parenting order, the best interests of the children are the only consideration on relocation. In addition to those referred to above, there are additional factors that must be considered in assessing a child's best interests in this context: Divorce Act, s. 16.92.
- [80] These factors include, but again are not limited to, the reasons for the relocation, the impact of the relocation on the child; the amount of time spent with the child by each person who has parenting time and their level of involvement in the child's life; the reasonableness of the proposal of the person who intends to relocate the child; compliance with obligations under family law legislation and orders and the likelihood of future compliance.
- [81] Section 16.92(2) of the Divorce Act prohibits the Court from considering whether the person who intends to relocate would still move if relocation is prohibited. Accordingly, I have not considered whether Ms. P. would still move if her request to relocate is denied.
- [82] Considering the factors in each of ss. 16(3), (4) and 16.92, I have concluded that relocation is not in the children's best interests. Accordingly, Ms. P.'s relocation application is dismissed.

- [83] Ms. P. says she wants to relocate because she is able to offer the children a higher standard of living in Nevada and would face significantly less in the way of financial burden there. Here, she finds herself financially compromised, even having had to rely on social assistance. In Nevada, conversely, she is able to live in her grandfather's home rent-free and is not expected to contribute much if anything to routine expenses such as groceries and utilities.
- [84] While proximity to family is also important to Ms. P., as she has many close family members both in Nevada and neighbouring California, she says her dire financial situation is the main reason for her relocation application because it is affecting the children's stability. In fact, she effectively says she would not be asking to relocate if she had some assurance of financial stability in the Lower Mainland. While she has raised family violence concerns in this litigation, Ms. P. does not rely on fears for her safety as a reason for relocating.
- [85] Mr. P. opposes the children's relocation. It is clear that their temporary move to Nevada in 2022 was very difficult for him. There is no dispute that he is a loving and involved father. While the prospect of the children's relocation genuinely brought him to tears at trial, the question is what is in the children's best interests, not Mr. P.'s. Mr. P. says the children benefit from his direct parenting on a regular basis, that Ms. P.'s financial situation is not compromised and that if it is, it is because of her own improvident financial decision-making. He also questions whether Ms. P. will facilitate contact between him and the children if they move.
- [86] At first blush, the reasons Ms. P. advances for the relocation seem to have some merit. "[T]he interests of child and nurturing parent are intertwined, so that a relocation that benefits a parent may well also serve the child's best interests": *M.P. v. P.P.*, 2022 BCSC 1511, at para. 48, relying on *Barendregt v. Grebliunas*, 2022 SCC 22 at paras. 171, 173. Additionally, the relative availability of affordable housing, child care, and employment is a relevant consideration: see e.g. *S.Z.M. v. K.M.N.*, 2021 BCSC 365 at para. 59. I accept that Ms. P. has faced financial precarity in the years following separation and I do not accept that she is the author of her own misfortune as Mr. P. suggests. However, the outcome of these proceedings will attenuate these concerns, as Ms. P. herself acknowledges.
- [87] The children have strong relationships with both of their parents and have benefited from the shared parenting regime the parties have, at last, settled into. Likewise, both parents are able and willing to meet the children's needs. While there have been disruptions, any history of care A.P. and G.P. would be able to remember involves regular, meaningful and substantial parenting time with both parents. The evidence of both parties at trial satisfies me that the children have benefitted from a parenting plan that allows them to see both parents every few days. By all accounts, the boys are typical boys of their age, generally well-adjusted and happy. It is in their best interests that the stability they have most recently enjoyed in that regard be maintained.

- [88] Further, I find that relocation would disrupt the boys' relationship with Mr. P., in particular considering their very young ages. Both parents deeply love their children and while the children are too young to have their views meaningfully canvassed, the evidence satisfies me that they are bonded to both parents. As for other important people in their lives, my decision will necessarily affect the boys' contact with one or the other set of grandparents.
- [89] Ms. P. says that she believes Mr. P. is a good father now, though she had reservations when the children were younger and after the violent incident leading to their separation. I find that she is willing to support the children's relationship with their father, but it would undoubtedly require more effort and commitment in the event of relocation.
- [90] Overall, the relevant considerations persuade me that the best interests of the children weigh against relocation. In so saying, I acknowledge the family violence concerns outlined above including the fact the children witnessed at least part of what occurred the night of the parties' separation. I have considered the history of family violence in light of the principles discussed in *Barendregt v. Grebliunas*, 2022 SCC 22 at paras. 142 to 146, among others.
- [91] However, the conflict has reduced with the passage of time and there is reason to believe that with final orders settling their outstanding disputes, the parties will be able to move forward in a more positive manner, as they have started doing in recent months. In the circumstances, I am satisfied that both parents are able to care for the children and that requiring some degree of cooperation between them is appropriate, subject to the orders set out below.
- (2) Parenting time
- [92] Though both parties devoted trial time to rehashing past events and what they perceived to be the other's past parenting issues and failures, they ultimately agreed that parenting time should be shared equally if the relocation application was unsuccessful. Because of this, I see no need to delve into the details of those past alleged failures, when the evidence as a whole satisfies me that the children are well cared for and loved by both parties and will continue to be. I find that it is in the children's best interests for a shared parenting arrangement to continue.
- [93] The children are not yet in school. A.P. is currently four years old while G.P. has just turned three. The parties have most recently been following a 2-2-5-5 parenting schedule. During Mr. P.'s parenting time, when it is a work day, the children attend a daycare. During Ms. P.'s parenting time, Ms. P. works remotely early in the morning while the children sleep, but otherwise cares for them as she says she has been unable to secure places for them in a subsidized daycare program and she cannot otherwise afford daycare for two children. Parenting exchanges occur at a police station in Mission, B.C.

- [94] Ms. P. suggests that the parties exercise parenting time on an alternating week-on/week-off schedule with parenting exchanges occurring each Friday at 6:00 pm, still at the police station. She also proposes that parenting exchanges occur at school once both children enter school. She has requested an order stipulating that the parties make best efforts to agree on equal sharing of significant holidays.
- [95] Mr. P. asks that a shared parenting schedule be ordered, though he does not specify a particular schedule. At trial he indicated he would be amenable to a schedule involving fewer exchanges. He also asks for an order that the parties share holiday time over the summer, Christmas and other major holidays. The form of order he submitted at trial does not propose any change to the current parenting exchange arrangement though in submissions he did raise the possibility that it might be more convenient for the exchanges to occur at the boys' daycare.
- [96] I am not convinced that a week-on/week-off parenting schedule is in the children's best interests considering their young ages. The evidence satisfies me that the 2-2-5-5 parenting schedule that has most recently been in place has worked well for the children and that stability in that regard is in their best interests at this time. Accordingly, there will be an order continuing the current 2-2-5-5 parenting time schedule and parenting exchanges will continue to occur at the same police station in Mission.
- [97] The parties are, of course, at liberty to alter this schedule or the exchange location if they are able to agree. For example, once the boys are in daycare full time, they could consider parenting exchanges at the boys' daycare (which would then further minimize any direct contact between them). Though the boys' current daycare is not conveniently situated for Ms. P., she may well locate a daycare that is more convenient for her or she may get a job that makes the current daycare location less problematic. I will not make any orders to this effect as there seem to be some practical hurdles to this at the moment. However, I would encourage the parties to consider parenting exchanges at the boys' daycare to the extent it is feasible and, obviously, at school once they are in school. If the parties cannot agree, my order for parenting exchanges at the police station governs.
- [98] There will also be an order as requested that the parties share holiday parenting time over the summer, Christmas and other major holidays. Neither party has asked the Court to spell the holiday parenting schedule out with any greater particularity, from which I take that they have concluded they will be able to reach agreement on specifics.
- (3) Travel, decision-making responsibility and communication

[99] The parties seek a variety of orders relating to decision-making responsibility and travel, among other things. Pursuant to s. 16.3 of the Divorce Act, decision-making responsibility in respect of a child, or any aspect of that responsibility, may be allocated to either spouse or to both spouses. Pursuant to s. 16.1(4) the Court may allocate decision-making responsibility in accordance with s. 16.3 and may also provide for any other matter that the court considers appropriate.

Travel

[100] Mr. P. requests orders that he hold the children's passports and that Ms. P. post \$10,000 security if she travels with the children. He says there should also be an order that either party may only travel outside Canada with the children with the other party's written consent and that neither party will unreasonably withhold that consent.

[101] I will not order that Ms. P. post security if she travels with the children. I understand that the children's temporary relocation to Nevada was very difficult for Mr. P. and that Ms. P.'s decision to obtain the initial interim relocation order ex parte has left him feeling that she cannot be trusted. The loss of trust between them is profound, on both sides and for a variety of reasons.

[102] However, Ms. P. has a demonstrated pattern of ensuring the children's return to B.C. and of complying with court processes in that regard. Ms. P. returned the children to British Columbia after their scheduled trip abroad following the dramatic events of March 21, 2022. She remained in contact with Mr. P.'s mother during that absence. When she went to Nevada with the children in 2022, Ms. P. did so with the benefit of a court order permitting her to. When this Court required her to, she returned with them.

[103] At trial, Mr. P. alleged that Ms. P. had, at the time of their separation, forged a document authorizing her to travel with the boys. I do not accept his evidence on this. He also gave evidence strongly intimating that Ms. P. had forged a transfer document for the sale of a car, maintaining that her name was not on the ownership documentation. However, in cross-examination, an email was put to him in which he seemed to acknowledge having put Ms. P.'s name on relevant paperwork for the car. Because of this, I have concluded that I cannot give credence to this type of allegation by Mr. P. against Ms. P. without persuasive evidence supporting it. In my view, there is none as relates to the travel authorization.

[104] That said, I am prepared to make an order requiring that each party obtain the other's written consent before they may travel outside of Canada with the children and that consent should not be unreasonably withheld. I do this because I believe this kind of assurance may assist the parties in rebuilding trust.

- [105] In considering whether to provide his consent in future, Mr. P. should keep in mind that the reasonableness of any refusal will be considered, among other things, in light of the findings I have made here. Further, it is not appropriate to attempt to barter consent in exchange for property or financial consideration. For her part, Ms. P. should keep in mind my findings on parenting, including that her relocation application has been dismissed, and that it is in the children's best interests that a shared parenting arrangement continue.
- [106] As for the children's passports, I see no need to order that Mr. P. alone hold the children's passports. I understand that the children are dual U.S. and Canadian citizens. I will order that Ms. P. hold the children's U.S. passports and that Mr. P. hold their Canadian passports. The parties will exchange passports as needed and neither will unreasonably withhold the passports from the other.

Decision-Making Responsibility and Communication

- [107] As for decision-making responsibilities, Mr. P. proposes that the parties share decision-making responsibility, whereas Ms. P. proposes that it be shared pursuant to the Joyce model, entitling her to make decisions if the parties are unable to agree.
- [108] Despite high levels of conflict in the earlier stages of this litigation, I have already mentioned that the temperature has cooled somewhat in recent months. For example, both parties appear to agree on which school the children should attend when the time comes so long as related costs can be agreed on, and they both agreed that a daycare they had been considering for the boys was not suitable. They were also able to agree on increased parenting time for Mr. P. at various points, leading up to the current shared parenting arrangement.
- [109] There is disagreement on whether A.P. should attend counseling following a traumatic incident he experienced. Mr. P., who has so far resisted sending A.P. to counseling, insinuated at trial that Ms. P. might have fabricated the incident in question, a proposition I reject entirely. I make no findings on whether A.P. should attend counseling or not and appreciate that it is a difficult question considering his young age, among other things. The point, however, is that Mr. P.'s distrust of Ms. P. appears to have impeded cooperation on this issue.
- [110] Mr. P. also registered the children for their current daycare without consulting Ms. P. While they admittedly only attend that daycare on days Mr. P. has parenting time, I doubt that Mr. P. would have taken such an accommodating view of the matter if Ms. P. had enrolled the boys in a program that he had not pre-approved.

- [111] That said, generally speaking, I accept that both parties want to make decisions that are in the children's best interests and they have progressively demonstrated an increasing ability to cooperate. Added to this, giving final decision-making authority in all matters to one party has the potential to increase the conflict between them, which is not in the children's best interests.
- [112] In light of all this, I have concluded that Ms. P. should be given final decision-making authority as relates to A.P.'s attendance at counseling for the next year only, as that is an issue upon which the parties are currently at an impasse. Thereafter, the parties will have joint decision-making authority regarding any such counseling.
- [113] I also order that Ms. P. have final decision-making authority regarding any daycare in which she may wish to enrol the children during her parenting time, assuming the boys continue attending their current daycare during Mr. P.'s parenting time. That order will be in force until each child begins attending school.
- [114] That said I also will order that the parties make best efforts to enroll the children in a single daycare at the approximate midpoint between their residences. The parties will share decision-making authority in that regard. If they cannot agree, my orders about daycare during their respective parenting times govern.
- [115] In all other matters, the parties will equally share decision-making authority in respect of the children and guardianship, likewise, is shared.
- [116] Additionally, pursuant to s. 16.1(4)(d) of the Divorce Act, I will make the orders that Ms. P. has requested at paragraphs 12 to 15 of the draft order she handed up at trial. Those orders will assist in reducing friction here as they limit the parties to written communication, and otherwise set parameters for respectful communications that are in the children's best interests and that should help them to move forward in a spirit of cooperation.

D. DIVISION OF PROPERTY AND DEBT

- [117] Division of family property and family debt is governed by Part 5 of the FLA. Family property and family debt are to be divided equally unless it would be "significantly unfair" to do so: FLA, ss. 81 and 95.
- [118] All real and personal property that is owned by at least one spouse at the time of separation is family property unless it is excluded property: FLA, ss. 84 and 85. Family debt includes all financial obligations incurred by a spouse from the beginning of the relationship to the date of separation and after separation if incurred to maintain family property: FLA, s. 86.
- [119] For the purposes of analysis, I begin by determining what is family property and family debt in this case and is therefore subject to division. From there, I move on to a consideration of Mr. P.'s claim for unequal division.
- (1) What is the family property and debt in this case?

[120] Neither party has put Mr. P.'s shareholdings in OPP Racing, OPP Track Days or Manavo in issue under this heading. There is no evidence as to the value of these companies at relevant times, nor any apparent claim for equalization in that regard. I conclude that those shareholdings are not in issue for division of property purposes.

The Maple Ridge Home, Poco Shop and associated liabilities

[121] By far the most valuable assets in issue are the Maple Ridge Home and the Poco Shop, both of which are held by Mr. P. The parties agree these properties were acquired before their relationship began and are therefore excluded property as defined in s.85(1)(a) of the FLA. However, the amount by which their value has increased since the spousal relationship began is to be included in the accounting of family property: FLA, s. 84(2)(g)(i). Section 87(b)(ii) of the FLA establishes the date of trial as the valuation date unless the court orders otherwise.

[122] The parties tendered joint appraisal reports at trial. The appraisal report for the Maple Ridge Home assesses its value as of May 1, 2017 as \$1,275,000. The associated mortgage amount owing as of that date is estimated at \$589,134. On that basis, I find the equity in the home as of the commencement of the marriage-like relationship was \$685,866. By trial, the Maple Ridge Home's value was \$2,250,000, and I accept, as Mr. P. says, that the mortgage amount is \$475,611, leaving equity of \$1,774,389.

[123] On this basis, I find that the increase in equity in the Maple Ridge Home that is subject to division is \$1,088,523. Mr. P. says that the mortgage owing on the Maple Ridge Home should not be factored in, arguing only the increase in assessed value is relevant. However, this would not be fair in my view, as it would exclude from division the amounts by which the mortgage was paid down during the parties' relationship and until the valuation date.

[124] The increase in value of the Poco Shop from May 1, 2017 to September 12, 2024 is assessed at \$1,070,000 and that property has been mortgage-free at all relevant times. While that amount is not in dispute, Mr. P. has also included the capital gains tax his counsel has calculated would be payable if the Poco Shop were sold in his schedule of property and debt, treating it as family debt. I will consider this potential tax liability below, in assessing Mr. P.'s claim for unequal division and in giving effect to the division family property: *Maguire v. Maguire*, 2016 BCCA 431 at paras. 31-39; FLA, ss. 95(2)(h), 97(1)-(2).

Vehicles & Promissory Note for Vehicle

[125] Though evidence was led at trial regarding Mr. P.'s use of a Maserati sports car, Mr. P. claims the car belongs to an acquaintance. Ms. P. has not included the Maserati in her schedule of property and debt and I take from this that she is not seeking division in that regard.

- [126] However, a Mercedes Benz GLS 550 Mr. P. bought for \$87,000 before tax in June 2020 and still owned when the parties separated is in issue. Ms. P. says that vehicle should be valued at \$60,000 and that there is no associated debt.
- [127] Mr. P. says he could not afford the Mercedes and tried to sell it on the open market after separation but was unable to. He then transferred it to his mother in exchange for his parents' agreement to forgive a \$35,000 loan he had taken from them for the down-payment, as well as their agreement to discharge any amounts still owing on the financing agreement. In June of 2020, the financed amount was about \$60,000. Mr. P. did not quantify how much of that amount remained owing, whether at separation or when he disposed of it. He still uses the car as his parents have allowed him to, though it is in his mother's name.
- [128] As I will explain later, Mr. P. lied about his income to obtain financing for this purchase. For this and other reasons, I view his evidence about this vehicle with suspicion. I do not accept his evidence of the car's value when he tried to sell it, for example. However, I do accept that he owed some sum of money on the vehicle (which is family debt) as important aspects of his evidence on that front were supported by his mother's testimony, a promissory note the mother vouched for, and the credit/lease agreement signed at the time of purchase. Conversely, Ms. P. has not submitted cogent evidence to support her valuation, nor has she accounted for the financing.
- [129] In the circumstances, and doing the best I can with an imperfect record, I find that the value of the Mercedes Benz GLS 550 and the family debt owing on it (consisting of both the \$35,000 promissory note and any financed amounts remaining as at the date of separation) cancel each other out, leaving no amount, whether in property or debt, for division under this heading.

Bank Accounts

- [130] The parties agree that the following amounts held in bank accounts are subject to division:

Account

Amount to Mr. P.

Amount to Ms. P.

TD chequing 8256

\$1,183.00

Wells Fargo Account

\$55.00

Bank of America

\$302.00

Royal Bank

\$12.00

TD chequing

\$1,044.00

TOTAL

\$1,183.00

\$1,413.00

[131] Ms. P. seems to say that Mr. P. had another TD chequing account with a value of \$838. However, relevant amounts were not put to Mr. P. during his testimony or sufficiently addressed in the evidence. The same is true of an account Ms. P. may have held with an alleged balance of approximately \$52.00. In the absence of adequate evidence or agreement between the parties, neither amount will be factored in for division.

[132] Mr. P. points out that Ms. P. received \$13,781 in retroactive child tax benefits in the summer of 2022, the entitlement to a substantial portion of which would have accrued before separation. Ms. P. does not appear to dispute that a portion of this amount is subject to division as family property. At most, it seems the amount received would include payment for three post-separation months. Neither party provided any breakdown of what that might amount to. Doing the best that I can in the circumstances, I find that \$11,000 of that amount is family property subject to division.

Credit card debt

[133] The parties agree that the following amounts owed in credit card debt are subject to division:

Account

Amount to Mr. P.

Amount to Ms. P.

TD First Class Travel Card

(\$252.00)

Amex #13000

(\$2,537.00)

Southwest

(\$1,447.00)

Capital One

(\$6,209)

Royal Bank Visa

(\$683)

TOTAL

(\$2,789)

(\$8,339)

[134] Mr. P. has also included on his schedule of family property and debt an amount owing of \$31,000 for an Amex Business Loan taken out in October 2021. He says he paid it off post-separation, with his parents' help.

[135] This loan was taken out by OPP Racing. In his Financial Statement filed May 25, 2022, Mr. P. has included the parenthetical note "(personal guarantee)" next to the listing for that loan. However, other than that parenthetical note, the evidence is unclear on the personal guarantee. I have not been directed to any cogent evidence on what amounts may have been paid by OPP Racing, the degree to which Mr. P.'s financial liability was engaged and, assuming Mr. P.'s parents did assist in paying this loan, whether they did so on behalf of OPP Racing or Mr. P. There is, simply put, insufficient evidence for me to conclude that this is family debt.

CEBA Loans

[136] Mr. P. claims two Canada Emergency Business Account loans in the amount of \$80,000 as family debt. These loans were made to OPP Racing and OPP Track Days, respectively during the course of the parties' relationship and not to Mr. P. in his personal capacity. Mr. P. suggested that he had used these funds for both business and personal purposes but did not provide many details beyond that.

[137] The evidence before me shows only that the CEBA loans were loans taken on by the corporate entities Mr. P. controls and not Mr. P. personally. Any liability for these amounts accrued to the corporations and not to Mr. P. He agreed he did not provide any personal guarantee for these loans. While they would have been relevant to the extent that they affected the value of Mr. P.'s shareholdings in OPP and OPP Track Days, the parties have not put those shareholdings in issue for property division purposes. I find that the CEBA loans are not family debt and are therefore not subject to division.

Promissory notes

[138] Mr. P. has tendered two promissory notes that he says are evidence of loans taken on during the course of the parties' relationship that are family debt.

- [139] The first is a \$330,000 loan from Mr. P.'s parents. Mr. P. says he borrowed this amount to build what was referred to as a shop or warehouse on the Maple Ridge Home property (the "Home-Based Shop"). Mr. P.'s plan was to work from the Home-Based Shop and to store his company's semi-truck there as well as other equipment or inventory for his motorcycle business. This would then free up the Poco Shop (from which he had been operating OPP Racing and OPP Track Days) to generate rental income. That is, the plan was for OPP to move into the Home-Based Shop and for the Poco Shop to then be rented out to a third party.
- [140] The promissory note is dated January 2019 and was signed in the presence of a lawyer. There is no dispute that Mr. P. built the Home-Based Shop. Several invoices relating to construction costs were tendered in evidence, though the evidentiary record was admittedly not complete in that regard. As planned, the Poco Shop is now rented out and generating income with OPP operating from the Home-Based Shop instead. Mr. P.'s mother testified that she loaned him this amount, which was paid out incrementally when construction-related invoices came due, and will require repayment. I accept that evidence and find that Mr. P.'s parents did loan him \$330,000, that there is an expectation of repayment, and that this is family debt subject to division.
- [141] The second promissory note, from April 2020 is for \$85,000. It represents a loan Mr. P. says he took from his business associate Mr. Rodriguez to finance a deal by which Manavo would export chicken feet from Mexico to China. Unfortunately, he says, the deal collapsed and the money was lost.
- [142] Mr. Rodriguez testified that he had loaned this money to Mr. P. personally, as Mr. P. was going to finance the chicken feet deal himself. He expects to be repaid. The loan was secured as against the semi-truck. While I appreciate that the promissory note itself bears only one signature, Mr. P.'s account was supported by Mr. Rodriguez's testimony which in my view was not meaningfully undermined on cross-examination. There was also general consensus that there was a chicken feet deal, though Ms. P.'s account of it obviously diverged from Mr. P. and Mr. R.'s in certain respects. I find that Mr. Rodriguez did loan Mr. P. \$85,000 in his personal capacity in April 2020 and that this is family debt and subject to division.

Exercise Equipment

- [143] Mr. P. says that a Peloton Bike acquired during the course of the relationship at Ms. P.'s request and retained by her should be valued at \$3,000 and factored into the division of property analysis. There is no firm evidence as to its value for division. Mr. P. says he paid about \$4,000 for it. It is not clear when it was bought but Ms. P. seemed to acknowledge it was during the relationship and that she retained it. Again, doing the best I can with an imperfect record, I assess its value for division at \$2,000.

Gold Bars & War Medals

- [144] Finally, Mr. P. seeks return of some gold bars and war medals. Ms. P. acknowledges that she took the gold bars from the Maple Ridge Home after separation, though she says she did so unknowingly as she found them secreted inside a box of language tapes she took with her. Those bars were apparently gifts for the children from Mr. P.'s parents. Mr. P. says he wants to retain the gold bars for the children's benefit. Ms. P. did not take serious issue with this. I order that Ms. P. return the gold bars to Mr. P. within 30 days of the date of this judgment.
- [145] The war medals, however, are contentious. Mr. P. had a collection of his grandfather's medals from the Second World War. They are extremely significant to him. He believes that Ms. P. took them. Ms. P. says she did not. Considering Ms. P.'s evidence that the gold bars were taken inadvertently and that she only discovered she had them after some time, I order that Ms. P. search through the belongings she took from the Maple Ridge Home, including those she has in storage, and make best efforts to locate the war medals. I order that if Ms. P. has Mr. P.'s family war medals in her possession, she is to return them to Mr. P. within 30 days of the date of this judgment.
- (2) Would it be significantly unfair to divide family property and debt equally?
- [146] A notional equal division of family property and debt on the findings above would yield an equalization to Ms. P. of \$873,995.50, minus the amounts she has already received by way of interim distribution. However, Mr. P. says that family property and debt should not be divided equally.
- [147] Pursuant to s. 95(1) of the FLA, the court may order an unequal division of family property and/or family debt if it would be significantly unfair to divide it equally based on the factors set out in s. 95(2) and (3). The onus is on Mr. P. in this regard.
- [148] Here, Mr. P. says that the factor set out in s. 95(2)(a) of the FLA, the duration of the relationship between the spouses, militates strongly in favour of an unequal division. Of course, he has taken the position that the marriage-like relationship only lasted two and a half years, whereas I have found that it lasted almost five years. In *Banh v. Chrysler*, 2022 BCCA 74, the Court of Appeal overturned an order for unequal division because on its own the short duration of the parties' marriage (two years) was insufficient to sustain unequal division: *Banh*, at paras. 7, 58-64.
- [149] Though he emphasizes the duration of the relationship in asking for unequal division, Mr. P. does say there are additional factors at play. He points to the fact he brought significant excluded property into the relationship, the parties' relative contributions to the acquisition and maintenance of family property, and the Poco Shop's latent tax liabilities, which I mentioned earlier: FLA, s. 95(2)(c), (f), (h), (i).

- [150] While Mr. P. brought the assets into the relationship, fairness is maintained by excluding the value of Mr. P.'s property on the date the relationship began. Further, the increase in value here is largely a function of market forces.
- [151] In terms of contribution, the cases in which an unequal contribution by spouses has been found to reach the significantly unfair threshold have involved "marked, prolonged, and intentional or unexplained disparities in the contributions to family burdens": *Khan v. Gilbert*, 2019 BCCA 80 at para. 32. A dollar-for-dollar comparison of the parties' contributions would create uncertainty and complexity contrary to the objectives of the FLA: *Khan* at paras. 31-36.
- [152] The evidence in this case does not establish such disparities in contribution to family property. Mr. P. invited Ms. P. to come live with him in Canada knowing that she would depend on him financially. The arrangement, at least to that degree, was mutually agreed to. I find that Mr. P. would also likely have known that Ms. P.'s financial contribution would be limited; she was much younger than him, did not have an established career beyond her self-employment, which he must have known was modest relative to his, and had no immigration status in Canada until some time after their first child was born, at which point she was a full-time homemaker.
- [153] Ms. P. did contribute, primarily within the home and by being the primary caregiver for the children once they were born. Mr. P., in turn, pursued his business interests: *Venables v. Venables*, 2019 BCCA 281 at para. 85. One of the themes of Mr. P.'s case as it was presented at trial was that Ms. P. had contributed little and was motivated only by money and material goods. Whatever he may view as her motivations, I find there was give and take in this relationship and I am not persuaded that I should discount Ms. P.'s indirect contributions to family property as Mr. P. encourages me to do.
- [154] As for latent tax liabilities associated with the Poco Shop, there is no absolute rule on how tax consequences are accounted for in dividing family assets. They are challenging to address. On the one hand, "[a]ccounting for a speculative future contingent tax liability in property division runs the risk that the division of assets will be unfair to one party if that tax liability never materializes or only does so in the distant future." On the other hand, "[f]ailing to account for a potential or speculative future contingent tax liability runs the same risk of unfairness but for the other party": *P.T. v. K.T. and others*, 2017 BCSC 520 at para. 22; *Sea v. He*, 2024 BCCA 161 at para. 84.
- [155] The Court must undertake a "case- and fact-specific inquiry into, among other things, the likelihood that the value of assets subject to division will be reduced by latent tax consequences or other costs as a consequence of the division": *Sea* at para. 88. Reduction is not limited to cases where the evidence shows the asset in issue must or will be sold: *Sanai v. Mahmoud*, 2017 BCCA 155 at paras. 22, 33-34. However, the intention of the owning spouse in that regard is not irrelevant: *Ouellette v. Ouellette*, 2012 BCCA 145 at paras. 27, 32.

[156] On the evidence, I am not satisfied that the latent tax liability militates in favour of unequal division. The evidence is lacking. Mr. P. adduced no evidence that he plans to sell the Poco Shop in the near to medium term: see e.g. *Gavriel v. Gavriel*, 2017 BCSC 1653 at paras. 69-71. He has owned it since long before his relationship with Ms. P. and currently rents it out for income. Subject to my comments below regarding costs associated with making the compensation payment in this case, it is entirely possible any tax liability may not materialize until the distant future. There is also no expert or other evidence quantifying the tax liability for current purposes. In closing submissions, counsel provided their own calculation, which was effectively the extent to which the issue was addressed.

[157] Considering the factors in s. 95 of the FLA that Mr. P. has relied on together and the circumstances as a whole, I find that equal division under the FLA would not be significantly unfair. On the record before me, this yields a compensation payment to Ms. P. of \$738,995.50, payable within 90 days of this judgment. This amount is calculated as follows and based on my findings above:

Property or debt

Amount held by Mr. P.

Amount held by Ms. P.

Increased equity in Maple Ridge Home

\$1,088,523

Increased value of Poco Shop

\$1,070,000

Bank Accounts

\$1,183

\$1,413

\$11,000

Credit card debt

(\$2,789)

(\$8,339)

Promissory notes

(\$330,000)

(\$85,000)

Exercise equipment

\$2,000

TOTAL

\$1,741,917

\$6,074

EQUAL DIVISION: $\$1,741,917 + \$6,074 / 2 = \$873,995.50$ to each

Equal share minus interim distributions to Ms. P. of \$135,000 = \$738,995.50

[158] That said, this compensation payment will have to come from somewhere and there may be costs associated with making it. Any such costs should not upset the goal of my order, which is to equalize the parties' share of family property: Sea at para. 90-91. There were variables in this case that may have affected the parties' ability to address such costs before knowing what the Court's judgment would be: Sea at para. 92.

[159] Accordingly, if there are costs attendant upon making the compensation payment that would render the equal division of family property I have ordered unequal, the parties should endeavour to agree on an appropriate adjustment. If they are unable to, they have leave to appear back before me within 90 days of the date of this judgment to address any relevant costs or adjustments.

E. SUPPORT

[160] Child support and spousal support are in issue here. Both Mr. P. and Ms. P. are required to provide for their children's support. Child support is based on the parent's income. The parties disagree on what their respective incomes should be for support purposes, with each arguing to increase the other's income and limit their own. They disagree on both past and prospective support. Additionally, they disagree on the extent of Ms. P.'s spousal support entitlement.

(1) What is Mr. P.'s income for support purposes?

[161] Mr. P.'s income for support purposes is determined in accordance with the Child Support Guidelines. Special rules address situations where, as here, the paying party is a shareholder, director or officer of a corporation: Guidelines, ss. 17-18. Further income may be imputed to a paying party, including where information required for the fair determination of the party's income has not been provided: Guidelines, ss. 19, 23.

[162] Imputing income to a payor parent is an inherently discretionary process, not a mathematical exercise: Pousette v. Janssen, 2023 BCCA 176 at para. 48.

Alleged Income from Illicit Sources

- [163] Ms. P. says that I should impute income from the illicit cultivation and sale of marijuana to Mr. P. Mr. P. agrees that he grew a small number of legal marijuana plants when he was evaluating whether licensed cultivation might be a viable business venture for him, but says it was always within the four corners of the law.
- [164] I will not impute income to Mr. P. for future support obligations on the basis of alleged illegal activity. Among other things, sound policy reasons militate against doing so: *B.G.M.S. v J.E.B.*, 2018 BCSC 1628, at paras. 197, 202.
- [165] As for past support obligations, that is from April 2022, the evidence of marijuana cultivation pre-dates that time. Ms. P.'s own observation at the Maple Ridge Home was that there was no grow-operation around the time of separation. Considering the evidence as a whole, the evidentiary basis for imputing income for past support purposes on this basis is lacking.

Disclosed Income

- [166] Ms. P. also says that income should be imputed to Mr. P. on other, more conventional bases. Notably, she takes issue with deductions he has claimed, arguing that many are unreasonable: *Guidelines*, s. 19(1)(g).
- [167] As I explain below, I agree with Ms. P. that certain amounts deducted fall within s. 19(1)(g) of the *Guidelines*. However, I do not agree with her on the number that do. The evidence establishes that OPP Racing and OPP Track Days operate as going concerns and that Mr. P. is legitimately deriving rental income from the Poco Shop, for example. Keeping in mind Mr. P.'s onus to show that the expenses are reasonable deductions from income for child support purposes, I have applied a degree of common sense in analyzing the financial information before me: *Lupien v Leblanc*, 2019 BCSC 431 at paras. 84-86.
- [168] In closing submissions, Mr. P. agreed that the income available to him for support purposes well exceeds his line 15000 income. He suggested his income should be set with reference to the pre-tax income of his companies as disclosed on their annual financial statements: *Guidelines*, s. 18. Additionally, he agrees that the amounts deducted on those statements for amortization ought to be added back, as should the deductions claimed for the Mercedes Benz GLS 550, which he agrees he used for his personal benefit: *Guidelines*, s. 19(1)(g). Finally, Mr. P. says that the rental income reflected on line 15000 of his 2023 personal income tax return should also be added to the total for 2023.
- [169] Taking those factors into account, the amount Mr. P. says can fairly be attributed to him to him is:

Year

Mr. P.'s line 15000 income

Income Mr. P. agrees was/is available to him for support purposes

2022

\$34,500

\$64,741.80

2023

\$54,969.89

\$109,457.09

2024

n/a

\$100,491.89

[170] For 2023, Mr. P. includes the \$54,969.89 in rental income reported at line 15000 of his 2023 tax return in the total amount of income available to him for support purposes, but does not propose that any of the deductions applied in arriving at that number be added back. Mr. P.'s rental income came from renting out the Poco Shop to a third party and renting out the Home-Based Shop to OPP.

[171] Renting the Home-Based Shop to OPP means that Mr. P. can deduct a portion of the mortgage interest and property taxes for the Maple Ridge Home against his personal rental income, when these are expenses that he would have incurred regardless of the rental: *Barry v. Davis*, 2021 BCSC 546. I find that those amounts should be added back to Mr. P.'s 2023 income subject to gross up: *A.K.K. v. A.S.K.*, 2024 BCSC 1237 at para. 477.

[172] In 2023, Mr. P. also claimed a \$29,123.22 deduction against his rental income for "Repairs and Maintenance". The evidence satisfies me that these expenses were in the nature of a capital outlay and not routine repairs or maintenance. In the circumstances, this is not a reasonable deduction. However, considering the evidence on when work was being done on the Home-Based Shop, it seems far more likely to me that this amount reflects moneys that were available to Mr. P. for support purposes in 2022 and not 2023, though I acknowledge he derived the tax benefit for it in 2023. Exercising my discretion in light of the facts, this deduction should be added to Mr. P.'s 2022 Guideline income.

[173] Finally, I have considered the other expenses claimed by OPP Racing and OPP Track Days with which Ms. P. takes issue. I find that that OPP Racing's deductions for meals and entertainment have not been justified, though on the evidence I am prepared to find that OPP Track Days' equivalent deductions are justified considering the nature of its business and the evidence led in that regard. I also find that about a third of the claimed deductions for telephone, fax and internet likely benefited Mr. P. personally.

[174] Applying the above considerations and factoring in appropriate tax gross-up, Mr. P.'s available income for support purposes can fairly be imputed at approximately \$110,000 for 2022 and at approximately \$135,000 for 2023 before considering undisclosed income, to which I now turn.

Undisclosed Income

[175] Quite apart from her allegations that Mr. P. was involved in illicitly growing marijuana, Ms. P. says the evidence shows that Mr. P. has undisclosed income. For example, in June 2020 when he entered into a credit application for the Mercedes GLS 550, Mr. P. declared a personal income of \$32,000 a month.

[176] I find that the evidence does not show that Mr. P. earned or earns \$32,000 a month. However, the credit application shows two things. First, Mr. P. was willing to lie about his income to obtain a financial benefit he might not otherwise have obtained (financing for the car). Second, in doing so, Mr. P. willingly undertook a substantial monthly payment obligation for a luxury vehicle, while at the same maintaining that this had been a difficult time for him financially.

[177] There are other examples of Mr. P. undertaking expenses beyond what might be reasonably expected on the income he says is available to him, such as hiring a nanny at a time he claims to have been in a highly compromised financial position, or building the Home-Based Shop, or his future plan, which he insisted on at trial, to send the children to an expensive private school. I do not accept that these expenses are entirely explained by the financial assistance he received or hopes to receive from his parents. In particular, Mr. P.'s mother's testimony regarding her expectations for repayment of the \$330,000 loan and her financial situation more broadly is not consistent with the degree of financial backing from Mr. P.'s parents I would have to accept in order to fully explain these expenditures.

[178] Despite Mr. P.'s evidence that OPP's transactions are all trackable by way of card swipes and other electronic means, there is evidence of Mr. P. engaging in some cash business transactions during the relationship, which I find are also relevant to assessing Mr. P.'s post-separation income. This includes the cash "savings" he said he kept in a safe at his business premises and the cash payments a neighbour believed Mr. P. had made when investing in a local farming operation. That said, the evidence does not go so far as to show that the cash transactions have been very substantial.

[179] Along the same lines, Mr. P. testified to spending time on Manavo, his business venture with Mr. Rodriguez. Mr. Rodriguez confirmed this and expressed great confidence in Manavo's eventual success. Both men seemed to suggest that Manavo is a going concern in some form or another. That is difficult to reconcile with the limited evidence of Manavo's activities.

- [180] It also emerged in cross-examination that an American corporate entity controlled by Mr. P., the existence of which was not disclosed until the eleventh hour, held a bank account in the United States that, in turn, had not been disclosed.
- [181] This does not mean that I accept that Mr. P. has access to vast amounts of undisclosed income as Ms. P. asks me to find. However, in the absence of full disclosure the court can look to circumstantial evidence for the purposes of imputing income: *K.F.M. v K.G.T.*, 2023 BCSC 1347 at paras. 100-101. Doing so, I find it is likely that Mr. P. received modest amounts of additional income that are not recorded during the periods in issue. Accordingly, a modest amount should be added to the income determinations set out above to account for that.
- [182] Overall, considering both disclosed and undisclosed income and the evidence as a whole, I find that Mr. P.'s income for support purposes in 2022 was \$120,000 and that his income for support purposes in 2023 was \$140,000. I also find that Mr. P.'s 2023 income offers the best evidence of what income has been available to him for support purposes in 2024 and will be for the foreseeable future.
- (2) What is Ms. P.'s income for support purposes?
- [183] Mr. P. says that Ms. P. is underemployed within the meaning of s. 19(1)(a) of the Guidelines and asks that income be imputed to her as well. He bears the onus of showing that: *Windle v. Windle*, 2010 BCSC 18 at para. 88. The question here is whether Ms. P. is intentionally under-employed or unemployed, unless the under-employment or unemployment is required by the needs of a child or by the reasonable educational or health needs of the parent.
- [184] A spouse is intentionally under-employed when they choose to earn less than what they are capable of earning: *Barker v. Barker*, 2005 BCCA 177 at paras.18-19. It is not necessary for a party alleging under-employment to show that their former spouse's intent is to avoid support obligations: *Beissner v. Matheusik*, 2015 BCCA 308, at para. 44.
- [185] Ms. P. has a university education and academic talent. As mentioned before, when she met Mr. P. she offered tutoring and essay writing services. She continued this work to a limited degree at the beginning of their relationship, with income of up to about \$10,000 U.S. per year until A.P. was born at which point she became a full-time homemaker.
- [186] In this business, among other things, Ms. P. wrote academic papers for others who then apparently passed them off as their own. She conceded that any income she has derived from these activities involved plagiarism, but justified it saying that this was where the money was. I am not persuaded that there was much money in it at all.

- [187] Though Ms. P. suggested in her evidence in chief that the essay-writing business had been successful and yielded good income before she moved to Canada to be with Mr. P., I do not find this credible. Ms. P. was forced to qualify that evidence in cross-examination and was generally evasive on the topic. The fact that this business, at its core, centered on acts of dishonesty raises question as to her evidence on this point, as well as the degree to which she will be able to rely on that past experience to secure employment.
- [188] Post-separation, when she was in Nevada, Ms. P. worked for several months at a childcare and educational facility as an Eligibility and Intake Coordinator. The pay was low but the children were able to attend that daycare free of charge while she worked. Upon her return to B.C., Ms. P. tried to revive her essay-writing business but that failed. She applied for a small number of British Columbia-based jobs in the first half of 2023. She then started looking for U.S. based remote work.
- [189] Ms. P. started in her current job around spring of this year. It involves taking customer service calls for a U.S. company from home. The schedule is flexible, allowing her to care for the children when they are with her, but to date the hours have been limited. The pay is roughly minimum wage. Ms. P. has received social assistance at various points since separation and depends heavily on what support she has received from Mr. P. as well, she says, as money borrowed or gifted by family.
- [190] In terms of her current and future work plans, aside from the customer service work she currently does, Ms. P. says that she has created a social media or online brand and has self-published a self-help book for women and girls linked to that brand. She believes it will be very successful. She has also tried her hand at day-trading, but that was a failure.
- [191] I find that Ms. P.'s conventional work history was limited before she met Mr. P. and remains so. She depended on Mr. P. financially from the beginning of their relationship and became a full-time homemaker once they had children. When the parties separated two and a half years ago, G.P. was only six months old and still breastfeeding. A.P. was two and a half. Ms. P. was their primary caregiver until a shared parenting arrangement was implemented. Even since then, Ms. P.'s employment options have been affected by her lack of access to affordable daycare. Though Mr. P. suggested at trial that it would be reasonable for the parties to share daycare costs proportionate to their incomes, it is not apparent that that offer was extended to Ms. P. before trial.
- [192] I accept Ms. P.'s evidence that she has experienced limitations in her ability to work and the range of jobs she can apply for because of her childcare responsibilities. Though I have identified some credibility concerns above, Ms. P.'s evidence in this regard is supported by the fact she worked when she had access to childcare in Nevada. It is also consistent with the evidence I have accepted of her financial precarity and receipt of social assistance at relevant times, the fact she was the primary caregiver for part of this period, and the children's young ages. The parties' parenting schedules during a certain period also posed a barrier to full-time employment, considering the numerous parenting exchanges they at

one point had to do each week.

- [193] As a result, no additional income should be imputed to Ms. P. for 2022 and 2023, which Mr. P.'s calculations for past support owing seem to accept. Ms. P. concedes income for support purposes of \$18,832 for 2022. Accordingly, I find that to have been Ms. P.'s Guideline income in 2022.
- [194] In 2023, Ms. P.'s income was comprised of \$7,908 in employment income and \$17,210 in social assistance payments. The parties did not expressly address what portion of the social assistance amount may have been received for the benefit of the children which, pursuant to s. 4 of Schedule III of the Guidelines, should be deducted from Ms. P.'s income for child support purposes. This is relevant because Ms. P. agrees there was shared parenting from May 2023. It should be straightforward for the parties to determine this amount and I direct them to do so for the purposes of the child support calculation for May to December 2023.
- [195] As for Ms. P.'s income for spousal support purposes in 2023, no amount of the social assistance should be included: Spousal Support Advisory Guidelines ["SSAG"], at 6.2. Accordingly, for spousal support purposes, Ms. P.'s 2023 income is \$7,908.
- [196] Turning to 2024 and beyond, Ms. P. has a university education, is still in her 30s, is poised, articulate and healthy. She has a duty to seek employment to support her children if she can, even if she cannot obtain interesting or highly paid work, or requires re-training: Beissner at para. 44, citing *Donovan v. Donovan*, 2000 MBCA 80, at para. 21. This means that even if she hopes to obtain success online or through her book, she cannot forego income from more conventional sources on the basis of that hope alone. Considering her limited employment history, entry-level jobs are the most realistic option for her right now.
- [197] While childcare remains an issue, the evidence satisfies me that for a portion of 2024 there has been room for the children to attend their current daycare full time at a cost of \$1200 per month for both children. Again, Mr. P. now seems to accept the parties should be responsible for shares of daycare cost proportionate to their incomes. While I appreciate that the location is inconvenient relative to Ms. P.'s residence, it is unclear how limiting the current daycare location would be relative to a work location and Ms. P.'s job search to date has not been exhaustive. There is also some prospect, given the children are on waitlists for subsidized daycare and the order I have made regarding daycare above, that Ms. P. will be able to secure daycare closer to home or a future work location.
- [198] In light of all the evidence, I find that Ms. P.'s income for support purposes should be imputed at \$35,000 starting January 1, 2024, which approximates full time work at minimum wage. I also allow for review of Ms. P.'s income for support purposes as of January 1, 2027, by which point both children will be in school.

(3) Past and Prospective Child Support

- [199] Child support has been in issue since the commencement of proceedings in April of 2022. The parties agree on past amounts Mr. P. has paid with the only dispute being as to income for support purposes, and thus whether those past payments were sufficient to discharge his child support obligations or not. Mr. P. says there has been overpayment and Ms. P. says there has been underpayment.
- [200] With the issue of past income now resolved, the parties are directed to calculate and reach agreement on the total amount of child support that ought to have been paid from April 2022 until November 2024 inclusive, based on the income determinations set out above and the Federal Child Support tables.
- [201] In respect of any past period of shared parenting, which commenced as of May 2023, considering the factors set out in s. 9 of the Federal Child Support Guidelines, I find the amount of child support payable by Mr. P. for shared parenting periods should be the amount set out in the applicable table for Mr. P., from which the amount set out in the applicable table for Ms. P. should be set off.
- [202] Should the parties' calculation yield a past underpayment, Mr. P. is ordered to pay any past amount still owing. Conversely, should those calculations yield a past overpayment, any overpayment may be set off from the amounts payable to Ms. P. to account for the division of family property.
- [203] In terms of prospective child support, I find that Mr. P. is a resident of British Columbia and has a gross annual income of \$140,000. Ms. P. is found to be a resident of British Columbia and to have a gross annual income of \$35,000.
- [204] Mr. P. will pay to Ms. P. the amount of \$2,037 per month for the support of A.P. and G.P. and Ms. P. will pay to Mr. P. the sum of \$562 per month for the support of A.P. and G.P. To satisfy each party's obligations to pay child support, Mr. P. will pay to Ms. P. the net sum of \$1,475 commencing on December 1, 2024 and then continuing on the 1st day of each and every month. These payments will continue for as long as the children are eligible for support under the Divorce Act or until further agreement of the parties or Court order.

(4) Past and Prospective Spousal Support

- [205] The parties agree that Ms. P. is entitled to spousal support. Leaving aside their disagreement on income, their main points of disagreement turn on the strength of and basis for Ms. P.'s entitlement as it relates to both amount and duration. Relatedly, they disagree on whether a lump sum payment is appropriate. Given the claim for a divorce order, s. 15.2 of the Divorce Act provides the appropriate legislative framework: see e.g. *Jordan v. Jordan*, 2022 BCSC 1564 at para. 127.

[206] Mr. P. appeared to acknowledge in closing submissions that spousal support is justified on both compensatory and non-compensatory bases, but says Ms. P.'s entitlement is minor because the relationship was short and Ms. P. did not give up a significant career because of the relationship. He proposes that her entitlement be limited to four years, with an end to spousal support by December 31, 2026.

Entitlement

[207] Though Ms. P.'s entitlement is conceded, its basis and strength are important to assessing both how much she should receive and for how long. When assessing entitlement to spousal support, the Court must consider the objectives that underlie spousal support awards, as enumerated in s. 15.2(6) of the Divorce Act.

[208] A spousal support order should: (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.

[209] The court must consider the condition, means, needs and other circumstances of each spouse, including the length of time the spouses cohabited and the functions performed by each spouse during cohabitation: Divorce Act, s. 15(4).

[210] Mr. P. is correct that the relationship, at about five years, was not particularly long. However, Ms. P. is entitled to support on a compensatory basis. Ms. P. gave up her life in the United States to move to Canada to be with Mr. P. She had no immigration status allowing her to work here at the time and, through an arrangement the parties agreed to, she became financially dependent on Mr. P. At the time, she was only 28 years old and had been living with her grandfather.

[211] During the relationship, Mr. P. worked and the parties shared domestic chores, with Mr. P. cooking and Ms. P. attending to cleaning and other things around the home. Once A.P. was born, Ms. P. stopped earning income altogether and became a full-time homemaker, with Mr. P. continuing his business activities as he saw fit. The fact the parties hired a nanny to help after G.P.'s birth does not meaningfully affect the analysis in my view.

[212] G.P. was only six months old and still breastfeeding when the parties separated and from that point until they transitioned into a shared parenting arrangement, Ms. P. was the parent primarily responsible for two very young children. In the immediate aftermath of separation, Ms. P. and the children were essentially without resources and stayed in a shelter for victims of domestic abuse, including because Mr. P. initially cut off her access to all but very little credit after the police incident at the Maple Ridge Home.

- [213] While Ms. P. has earned some employment income since then and has received funds from Mr. P., the evidence satisfies me that her financial situation has nevertheless been unstable. At the same time, her ability to work to ameliorate her situation has been affected by child care issues.
- [214] Ms. P. now finds herself effectively entering the conventional workforce at the age of 36, and with two young children to care for. While parenting is shared, it seems unlikely, at least in the near term, that she will be able to find employment that offers her the kind of flexibility Mr. P.'s business ventures allow him in terms of how he structures his days and she will be limited to employment that accommodates the parenting situation.
- [215] Thus, beyond the disadvantage accruing during the course of the relationship, I find that from the time of separation Ms. P. has suffered disadvantage within the meaning of s. 15.2(6)(b) of the Divorce Act. On the evidence as a whole, I find that Ms. P. has compensatory entitlement to spousal support that I would qualify as moderate.

Lump sum vs. monthly amount

- [216] I am not satisfied that lump sum spousal support is appropriate or necessary considering the purposes and the principles discussed, for example, in *Parton v. Parton*, 2018 BCCA 273 at para. 67. As noted, the conflict between these parties does seem to be abating. They will necessarily have some degree of ongoing contact because of the children.
- [217] Additionally, Ms. P.'s concerns about Mr. P.'s failure to fully comply with past support orders are not sufficient, on the facts of this case, to outweigh the disadvantages of a lump sum award considering the real possibility that the means and needs of the parties will change over time and the difficulties inherent in calculating an appropriate award of lump sum spousal support when, as I explain below, the full extent of Ms. P.'s spousal support entitlement over time is unclear: *Parton* at para. 68.
- [218] Looking then to monthly amounts, Mr. P. again says he has overpaid to date, while Ms. P. says he has underpaid. The SSAG provide guidance in making appropriate spousal support awards. A departure from the SSAG requires an explanation: *Lightle v. Kotar*, 2014 BCCA 69 at para. 63.
- [219] Considering the parties' incomes as I have found them to be in 2022, and applying the with-child formula, the SSAG provide a range of spousal support from \$523 to \$1,291, with \$864 being the middle of the range. Location within the range is driven by the factors detailed in Chapter 9 of the SSAG, notably the strength of any compensatory claim, the recipient's needs, the age, number, needs and standard of living of any children, the needs and ability to pay of the payor, work incentives for the payor, property division and debts, and self-sufficiency incentives.

- [220] In my view, these factors militate in favour of spousal support somewhere between the middle to the high end of the range for 2022, considering among other things Ms. P. and the children's needs and standard of living in the immediate aftermath of separation, when they relocated, and when they returned to British Columbia. Exercising my discretion, I find that Ms. P.'s spousal support entitlement for 2022 was \$1,000 per month.
- [221] For 2023, I find that Ms. P.'s spousal support entitlement was \$1,872 per month. I arrive at this conclusion because that amount represents a mid-to-high range award for the months Ms. P. had primary care of the children when many of the same factors as were at play in 2022 were present. For the period of shared parenting, some of those factors had abated and while \$1,872 represents the very low end of the SSAG range for that period, it would leave the parties with equal shares of the family's net disposable income, which I consider appropriate in this case: SSAG: Revised User's Guide, s. 8.6.
- [222] For 2024 and onward, the SSAG yield a range of \$1,286 to \$2,282 with \$1,772 being the middle of the range. Considering the factors outlined in Chapter 9 of the SSAG, including Ms. P.'s entitlement, Mr. P.'s ability to pay, the incentive toward self-sufficiency, as well as relative shares of net disposable income, I consider \$1,500 to be an appropriate monthly amount.
- [223] I am advised by the parties that the calculation of any retroactive amounts may be affected not only by payments Mr. P. has made to date, but also certain financial liabilities flowing from Ms. P.'s receipt of government assistance, and the obligations Mr. P. undertook when sponsoring Ms. P.'s immigration to Canada.
- [224] Accordingly, the parties are directed to determine and agree upon any retroactive amounts owing taking all of this into account. As it was with child support, if that calculation yields a past underpayment by Mr. P., he is ordered to pay the difference, and if it yields a past overpayment, that amount may be offset as against the compensation payment Ms. P. will receive for division of family property. If the parties are unable to agree, they have leave to appear back before me to address the issue.

Duration

- [225] As for duration, I do not agree with Mr. P. that it is appropriate to fix an end date for spousal support at this time. I acknowledge that this was not a very long relationship comparatively speaking. However, for marriages with dependent children, the SSAG recommend that initial orders be indefinite, subject to the usual process for review or variation.

- [226] At trial, Ms. P. not only spoke about the challenges of establishing herself while caring for two young children, but candidly admitted that it was only after the breakdown of her relationship with Mr. P. that she found herself having to act as what she referred to as "head of household". She experienced some setbacks in that regard and acknowledged making some mistakes. Moving forward, Ms. P. will need to continue working towards economic self-sufficiency, which is one of the core objectives underlying spousal support orders.
- [227] All things considered, I have concluded that an end-point for spousal support is better determined with more information about Ms. P.'s employment moving forward, and once both children are in school. Accordingly, I order that Mr. P. will pay to Ms. P. for her support the sum of \$1500 on December 15, 2024 and continuing on the 15th day of each and every month thereafter for an indefinite period, but Mr. P. may apply for a review of quantum and/or entitlement anytime after January 1, 2027. At that point, both children will be in school and more information will be available regarding Ms. P.'s employment.

F. DIVORCE

- [228] Both parties consent to an order for divorce. I am satisfied that the requirements of the Divorce Act are met including that adequate provision has been made for the children of the marriage. Accordingly, I order that subject to s. 12 of the Divorce Act (Canada), the claimant and the respondent, who were married at Port Coquitlam, British Columbia on August 26, 2019, are divorced from each other. The divorce is to take effect on the 31st day after the date of this order.

IV. CONCLUSION

- [229] Mr. P. and Ms. P. have each gone through a very difficult time together. I hope for their children that they will be able to move forward in peace.
- [230] Both parties have asked for leave to speak to costs following judgment. Should they be unable to agree on costs, they may make arrangements to appear before me for a maximum of one hour, at 9 a.m. on a date to be arranged through Supreme Court Scheduling. In that event, written submissions not exceeding five pages each and any affidavit evidence to be relied on must be exchanged on a schedule to be agreed on between counsel, and filed at least seven days before the hearing.

"Bantourakis J."

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