

CANADA / JUDGMENT

N.C.M. v. S.H.P.

2024 BCSC 2426

COURT

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2024 BCSC 2426 N.C.M. v. S.H.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

N.C.M. v. S.H.P.,

2024 BCSC 2426

Date: 20241216

Docket: E201957

Registry: Vancouver

Between:

N.C.M.

Claimant

And

S.H.P.

Respondent

Before: The Honourable Madam Justice Morellato

Oral Reasons for Judgment

Counsel for the Claimant:

D.E. Labun

Counsel for the Respondent:

H.K. Basi

Place and Date of Hearing:

Vancouver, B.C.

June 5, 2024

Place and Date of Judgment:

Vancouver, B.C.

December 16, 2024

Table of Contents

I. Introduction.. 3

II. Background.. 3

III. Prior Proceedings. 3

IV. Retroactive and Ongoing Child Support Obligations. 5

A. The Father's Guideline Income. 9

B. The Mother's Guideline Income. 9

V. Should Spousal Support be Terminated?. 17

VI. Summary and Disposition.. 21

I. Introduction

[1] This is a high-conflict family matter which involves issues relating to parenting time, child support, and spousal support.

[2] At the last continuation of this matter in June of this year, the respondent father ("Father") requested that, on an interim basis and before the Court assesses a further and pending s. 211 Report, the Court assess the parties' respective incomes for child support purposes, as well as the claimant mother's ("Mother") entitlement to spousal support. I agreed to do so and, accordingly, these oral Reasons for Judgment ("Reasons") are limited to these two issues.

II. Background

[3] The parties commenced living together in November 2013 and were never married. They separated on February 1, 2020.

[4] There is one child of the union, A., born October 18, 2014.

- [5] The Mother was born June 13, 1980. She is a registered physiotherapist in British Columbia ("BC"). At the time of the hearings before me, she worked as an independent contractor as a physiotherapist for Spring Medical Centre in Burnaby, BC, and was building an independent practice.
- [6] The Father was born November 9, 1980. He is a foreman of longshoremen for the BC Maritime Employers Association.
- [7] The Father has regular parenting with A. since the parties separated and is seeking additional parenting time on an equal parenting time basis, which is currently the subject of an ongoing proceedings.

III. Prior Proceedings

- [8] I have considered the procedural history of this case, which need not be repeated in detail for purposes of this decision. However, there are previous orders of the court that do inform my analysis.
- [9] In September 2021, the Father agreed to pay interim spousal support of \$5,000.
- [10] On November 24, 2021, the parties entered into an interim Consent Order ("2021 Consent Order"), in anticipation of a trial in the spring of 2022. That order provided:
 - 1. BY CONSENT, the Respondent's Notice of Application filed 15/NOV/2021 is adjourned generally;
 - 2. BY CONSENT, on an interim without prejudice basis, the current parenting schedule will be amended such that commencing 03/DEC/2021, the Respondent will have parenting time with [A.], born 18/OCT/2014[,], every second weekend, from Friday at 3:00 p.m. to Monday at 9:00 a.m., with pickup and drop off at [A.'s] school. If there is a non-instructional day on the Respondent's Friday, the Respondent will pick up [A.] from the Claimant's residence at 9:00 a.m. on that Friday.
 - 3. BY CONSENT, the Respondent will continue to have parenting time every Tuesday at 3:00 p.m. to Wednesday at 9:00 a.m., with pickup and drop off at [A.'s] school.
 - 4. BY CONSENT, the Claimant's Notice of Application filed 26/AUG/ 2021 is adjourned generally;
 - 5. BY CONSENT, the Claimant will be paid interim spousal support as follows, which amounts will be paid to the Claimant forthwith out of the Respondent's share of the net proceeds of sale of the parties' former family home, currently held in the trust account of Jason Khong, Barrister and Solicitor:
 - a. For the period from 01/JAN/2021 to 30/NOV/2021, \$1,500 per month, in the total amount of \$16,500;
 - b. For the month of December 2021, \$2,250, and,

- c. For the month of January 2022, \$2,250;
- 6. BY CONSENT, the Respondent will pay interim spousal support to the Claimant directly, on the first day of each month, in the amount of \$2,250 per month commencing 01/FEB/2022.
- 7. BY CONSENT, the Claimant will be paid arrears of interim child support in the amount of \$2,044, forthwith out of the Respondent's share of the net proceeds of sale of the parties' former family home, currently held in the trust account of Jason Khong, Barrister and Solicitor.
- 8. BY CONSENT, the trial in this matter is set for 10 days commencing 25/APR/2022.
- 9. Costs of the 24/NOV/2021 appearance on these applications will be left to determination by judge hearing the trial in this matter.
- [11] The Father explains that the interim spousal support order agreed to between the parties was predicated on the trial proceeding, as previously scheduled, on April 25, 2021. The trial did not proceed at that time, apparently due to trial estimates exceeding the allotted trial time, as determined at a pre-trial management conference prior to the date of trial.

IV. Retroactive and Ongoing Child Support Obligations

- [12] It is clear that the Mother, as well as the Father, have ongoing child support obligations that must be met. In *Willick v. Willick*, [1994] 3 S.C.R. 670 at 689-690, the Supreme Court of Canada has underscored that child support orders: 1) are child-centered, not parent-centered; 2) require consideration of the children's needs as the priority, including the relative ability of each parent to pay; and 3) reinforce the joint obligations of parents to financially support their children.
- [13] In *Kerr v. Baranow*, 2011 SCC 10 at para. 208, Justice Cromwell affirmed that child support is the right of the child, not of the parent seeking support on the child's behalf. Further, the basic amount of child support depends on the income of the payor and not on a highly discretionary balancing of means and needs.
- [14] In *Michel v. Graydon*, 2020 SCC 24 at para. 10, the Supreme Court of Canada summed up the principles governing child support orders that had been set down previously in *D.B.S. v. S.R.G.*, 2006 SCC 37 [D.B.S.]; the Court in *Michel* reaffirmed that:
 - Child support is the right of the child, which right cannot be bargained away by the parents, and survives the breakdown of the relationship of the child's parents (para. 38);
 - Child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together (para. 38);
 - The child support owed will vary based upon the income of the payor parent, and is not confined to furnishing the "necessities of life" (paras. 38-45).

- [15] In this light, it is clear that I must assess the income of the parties so that they may apply the Federal Child Support Guidelines, SOR/97-175 ("Guideline" or "Guidelines") to determine their respective child support obligations.
- [16] Determining Guideline income includes a consideration of ss. 16 to 20 of the Guidelines. In *Brown v. Brown*, 2014 BCCA 152, the Court also discussed ss. 17-20 of Guidelines in the context of their objectives, and the Court reasoned:
- [22] Section 1 of the Guidelines explicitly sets out certain objectives:
1. The objectives of these Guidelines are
 - (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
 - (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
 - (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
 - (d) to ensure consistent treatment of spouses and children who are in similar circumstances.
- [23] Sections 17-20 of the Guidelines allow courts a degree of flexibility in specific circumstances where parties have unusual forms or patterns of income, or where they are able to manipulate their income for tax purposes in a manner that might frustrate the goals of the Guidelines. It is important, however, in interpreting and applying those sections, that courts recognize the need for consistent and predictable results. Courts should interpret ss. 17-20 of the Guidelines with a view to advancing the objectives set out in s. 1.
- [17] Sections 19(1) and 19(2) of the Guidelines are particularly instructive in this case. Section 19(1)(g) provides that a court "may impute such amount of income to a spouse as it considers appropriate in the circumstances," where the spouse "unreasonably deducts expenses from income". Further, s. 19(2) provides:
- (2) For the purpose of paragraph (1)(g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the Income Tax Act.
- [18] A key assessment consideration in this case is my finding, upon a review of the record before me, that income must be imputed to the Mother because she is not earning income according to her capacity, as contemplated by the applicable common law and Guidelines.

- [19] When imputing income, it is axiomatic that the court is not limited to what a party actually earns. Rather, the court must consider the party's capacity to earn income: see *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37; *Van Gool v. Van Gool* (1998), 64 B.C.L.R. (3d) 94 (C.A.); *Barker v. Barker*, 2005 BCCA 177 at para. 19. If a party is not employed in a manner commensurate with their earning capacity, it may be appropriate to impute income for purposes of a support order: *Hsieh v. Lui*, 2017 BCCA 51 at para. 47. I find this is such a case.
- [20] The reasons of this court in *Hanson v. Hanson* (1999), 92 A.C.W.S. (3d) 1024, [1999] B.C.J. No. 2532 (S.C.), are also of assistance in discerning whether income should be imputed. In that case, the legal principles set out by Madam Justice Martinson may be summarized as follows:
- i. Section 19(1) of the Guidelines allows the court to impute such amount of income to a spouse as it considers appropriate in the circumstances.
 - ii. Imputing income is the way in which the court gives effect to the legal requirement that a spouse must earn what the spouse is capable of earning.
 - iii. The court must consider not only the amount of income a spouse actually earns, but "the amount of income a spouse could earn if working to capacity."
 - iv. Bad faith is not required. The spouse required to pay is intentionally under-employed if that spouse chooses to earn less than he or she is capable of earning.
 - v. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the spouse are factors to be considered in addition to such matters as availability of work, freedom to relocate and other obligations.
- [21] In *Marquez* at para. 38, our Court of Appeal reasoned that the test for imputing income is one of reasonableness, having regard to the parties' capacity to earn income in light of age, education, health, work history and work availability: see also *Zilic v. Zilic*, 2021 BCCA 107 at para. 19. In addition, our Court of Appeal (in *Watts v. Willie*, 2004 BCCA 600 at para. 16 and *Beissner v. Matheusik*, 2015 BCCA 308 at para. 44) has endorsed the factors set down by the Manitoba Court of Appeal in *Donovan v. Donovan*, 2000 MBCA 80 at para. 21, which may ground an imputation of income on the basis of underemployment, as follows:
1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor" (*Van Gool v. Van Gool* (1998), 166 D.L.R. (4th) 528 (B.C.C.A.)).
 2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work, freedom to relocate and other obligations.

6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.
- [22] Self-induced reductions in income will not justify the avoidance of child support obligations: see also *Kandola v. Kandola*, 2016 BCSC 1443 at para 121, *aff'd* 2017 BCCA 235.
- [23] I have also considered Schedule III of the Guidelines that informs the appropriate adjustments when assessing income for child support purposes. Section 11 of Schedule III provides that the deduction for an allowable capital cost allowance with respect to real property is to be added to the Guideline income.
- [24] Notably, in *A.K.K. v. A.S.K.*, 2024 BCSC 1237 at para. 477, our court reasoned:
- [477] After establishing that the receiving party has (or will) deduct expenses, the onus shifts to that party to prove expenses deducted from income are reasonable. If an expense provides a personal benefit and/or is an ordinary living expense, it is added back to the other party's income.
- [25] As I discuss in greater depth later in these Reasons, I find that additional income should be imputed to the Mother, beyond what is found at lines 150 or 15000 in her Income Tax Returns. She is a very able physiotherapist garnering a significant hourly rate. I also find that she has made unreasonable business deductions for purposes of assessing her child support obligations.

A. The Father's Guideline Income

- [26] After reviewing the entirety of the record before me, I have determined that the Father's line 150 or line 15000 income (as the case may be) of his Income Tax Returns is appropriate for determining his child support obligations under the Guidelines.
- [27] I am mindful that the Father is earning more than \$150,000 a year and that the court has the discretion not to follow the "Table Amounts" in the Guidelines in certain cases. Under s. 4 of the Guidelines, child support may be calculated and payable: (1) as if income is earned at \$150,000, that is, pursuant to the "Table Amount"; or (2) by using the table amount for the first \$150,000 and adding a discretionary amount for the balance of the income having regard to the condition, means, needs and other circumstances that entitle the child to support, as well as the financial ability of the parents to contribute to the child's support. Ultimately, the approach taken is a matter of discretion. In the circumstance of this case, where the Father works as a foreman and the Mother is a successful professional, I am of the view that it would not be reasonable or fair to attribute income above the Table Amount to either parent.

B. The Mother's Guideline Income

[28] The Mother has claimed the following income on her Income Tax Returns from her business and professional income working as a physiotherapist:

2018:

\$34,291.23 (gross business profit);

\$28,025.19 (at line 150)

2019:

\$38,432.92 (gross business profit);

\$24,715.88 (at line 15000)

2020:

\$57,797.46 (gross business profit);

\$47,695.38 (at line 15000)

2021:

\$85,974.67 (gross business profit);

\$66,146.10 (at line 15000)

2022:

\$94,394 (gross business profit);

\$70,575.14 (at line 15000)

[29] In 2023, the Mother reported \$107,387.65 in gross business profit on her Income Tax Return. Her business losses were reported as \$77,810. Her line 15000 income was reported as \$37,156.26. The Mother's counsel submitted the Mother's gross "business income" and "professional income" for 2023 was \$126,964.

[30] The Father asserts that because the Mother works as an independent contractor, her line 150 or 15000 income is not an appropriate basis for calculating her Guideline income for child support purposes. He submits she has deducted unreasonable expenses that should not be allowed. Further, he submits the Mother ought to be working on a full-time basis in light of her hourly rate as compared to her declared earnings. After reviewing the record, I find the Father's submissions compelling.

[31] I note that their child, A., has been in school for some time, and childcare is arranged for her so that the Mother can work. Further, while the Mother has three other children from a previous marriage, she has equal parenting time with her former spouse.

- [32] Again, the Mother is a very experienced physiotherapist at the prime of her life, with a strong income earning capacity. She has been a physiotherapist since 2005, before the parties began living together and before the birth of their daughter, A. She has also completed post-graduate studies relating to women's health issues. In addition, she received her acupuncture certification in 2012. She clearly has a strong professional skillset. Further, she is working not only by providing physiotherapy services as an independent contractor with Spring Medical Centre but she also provides physiotherapy services in her own home.
- [33] I find the Mother's financial disclosure is limited and not transparent, despite concerted and appropriate efforts on the Father's part for further disclosure. This dynamic has made the Court's assessment more difficult. In any event, what can be gleaned from the record before me is that the Mother received \$101.50 per hour per client at Spring Medical Centre. She also earned between \$120-\$140 per hour from her home-based business and saw approximately four clients per week at her home. I am of the view that imputing income based on a 30-hour work week is reasonable and fair. Doing the best I can, with the limited information before me, I assess the Mother's gross imputed annual income at \$145,314. This figure represents 26 billable hours per week at \$101.50 and an additional four hours per week at \$130, working 46 of 52 weeks per year. However, from this gross income figure, reasonable business deduction must be made.
- [34] Having carefully reviewed the record before me, I am also satisfied that quite a number of business deductions claimed by the Mother are not reasonable for purposes of determining Guideline income for child support. In reviewing the Mother's claimed expense deductions from her gross income, I have found that they are over-inflated and not supported by the materials placed before me. Accordingly, I have reduced and adjusted these deductions for purposes of assessing her Guideline income. Doing so is fair, reasonable and in the child A.'s best interest, consistent with the guiding case law, the Guidelines and the entirety of factual matrix before me.
- [35] Business expenses reported by the Mother were as follows from 2018 to 2023:
- 2018: \$10,732
- 2019: \$16,460
- 2020: \$14,786
- 2021: \$44,395
- 2022: \$44,044
- 2023: \$77,810
- [36] In assessing the Mother's reasonable business expenses for 2021, I have accepted that her business deductions may very well be appropriate for income tax purposes. However, it is clear that the Court must conduct a separate and distinct assessment of the Mother's Guideline income in assessing the available income stream for child support purposes. The

Mother has also recognized this distinction. She acknowledges, for example, that "some" of her business expenses need to be "added back" in assessing her net self-employment income. For example, the Mother acknowledges that, in 2021, the amount of \$17,180, which was deducted for legal expenditures, should be an "add-back" for child support purposes.

- [37] Another example of an unreasonable business deduction relates to her claimed motor vehicle expenses. I find that her deduction in 2021 of \$8,351.34 for her motor vehicle expenses is not substantiated on the material before me. The Mother's income as a physiotherapist is derived in large measure from working as a physiotherapist at Spring Medical Centre, and to a more limited extent at her home. I am not satisfied this \$8,351.34 deduction is warranted for motor vehicle expenses. By way of comparison, I note that, in 2022, the Mother claimed \$1,154.73 in motor vehicle expense deductions, and in 2023, she claimed \$1,445 in motor vehicle expense deductions. Further, the Mother has acknowledged that her business does not include travel to clients. Based on the limited information before me, I am of the view it is fair and reasonable to assess her 2021 vehicle expense at the 2022 amount of \$1,153.73 rather than the \$8,351 amount deducted.
- [38] Another business deduction is also problematic. Based on s. 11 of Schedule III of the Guidelines, capital cost deductions are also not an appropriate expense for child support purposes. In 2021, the Mother deducted \$5,891.16 as a capital cost allowance; this is also not an appropriate deduction for purposes of assessing her child support Guideline income.
- [39] The evidence before me also does not substantiate the "Meals and Entertainment" deduction in 2021 as a reasonable business expense for her work as a physiotherapist.
- [40] I find that the acceptable business expenses for 2021 for purposes of the Mother's Guideline income amount to approximately \$13,567.03.
- [41] The Mother's total claimed business expenses for 2022 were slightly lower than they were in 2021. Yet, I still find that a number of her claimed expenses were also not reasonable for assessing her child support Guideline income. The capital cost deduction in 2022 of \$6,911 is not allowable, in light of Schedule III, s. 11 of the Guidelines. The materials before me also do not support the "Office, Stationery and Supplies" deduction of \$8,413, an increase of \$3,463 from the previous year, particularly in light of the fact that Spring Medical Centre has contractually agreed to provide office supplies, furniture, and computer equipment to the Mother. Furthermore, invoices were requested by the Father regarding the home portion of the business and its expenses as well as other business income, and the record in this regard is unsatisfactory due to the Mother's nondisclosure. Accordingly, I am unable to accept the entirety of this deduction, including others, as reasonable.
- [42] The evidence before me also does not substantiate the reasonableness of the "Meals and Entertainment" deduction of \$1,840, or the "Management and Administration Fees" deduction of \$425 as reasonable business expenses in 2022. Accordingly, these amounts will not be accepted as such.

[43] As regards the Mother's Guideline income for 2023, I am not persuaded that the very significant expenses that the Mother has claimed on her Income Tax Return in relation to her business income constitute an accurate reflection of her actual cash flow, or her Guideline income for child support purposes. Nevertheless, even assuming her hourly rate has remained constant since 2021, I do not accept her income earning capacity is as low as she claims it is. Again, my assessment must be based on what she is capable of earning working full-time, not what she actually earned.

[44] As regards her 2023 business deductions, the Mother submits:

As in a past year, we report the "Professional fees" claimed against "business income" appear to include [the Mother's] deduction for legal fees spent in pursuit of support. In 2023, the amount attributable to this is \$7,611.48. We understand that the proper place for deduction of this item may be Line 23200, so while we note it here as an appropriate "add back" to [the Mother's] "Line 150" income, it may be moved to a spot after "Line 150" in the amended T1 to be provided.

[45] In addition, the Mother concedes:

to "adding back" of \$11,093 for the "Business-use-of-home expenses", and \$2,851 in "Meals and entertainment". Because her business does not include travel to clients, and only the mileage used for business travel was expenses, she does not concede to the adding back of her motor vehicle expenses including CCA.

[46] In addition to the conceded "add-backs" that the Mother acknowledged in regard to her Guideline income in 2023, I have concerns about other claimed deductions, including the capital cost allowance deduction of \$5,868, the deduction of \$7,909 for "Management and Administration Fees", and the deduction for "Office, Stationery and Supplies" of \$7,736. The materials before me do not on balance substantiate the reasonableness of these deductions

[47] Furthermore, I remain concerned about the "bad debt" of \$18,226 claimed as a deduction. Again, there is a paucity of information before me substantiating how this number was arrived at and on what basis. The difficulty I face in assessing the Mother's Guideline income is a function of the insufficiency of the affidavit and other incomplete material before me supporting the Mother's asserted income for child support purposes, including evidence supporting the basis of various business deductions. This has in large measure undermined my ability to rely on her evidence.

[48] Nevertheless, considering the evidence as a whole, along with the applicable authorities and Guidelines, I am of the view that the Mother's Guideline income for 2023 should be imputed at \$125,000. This allows for over \$20,000 in proper business deduction for child support purposes. In my view, this is a conservative assessment of the extent of the Mother's income earning capacity.

- [49] In the final analysis, the Mother's significant income earning capacity must be weighed in the balance. I find that the mother's hourly rate as a physiotherapist clearly indicates that her income earning capacity is much greater than she claims even taking into consideration her "bad debts" and other business deductions.
- [50] The Father's request for an order that the Mother pay child support from December 1, 2021 is a reasonable one. I am satisfied that the D.B.S. factors weigh in favour of a retroactive child support order. This application, while subject to several continuations and to delay, was filed in 2022.
- [51] The Mother has known of the Father's claim for child support since at least the time of his Counterclaim on October 28, 2020. The Court in D.B.S. provides a helpful analytical framework for assessing the entitlement and quantum of retroactive awards. At paras. 99-116, the Court outlines four factors which inform the question of whether a retroactive order should be made:
1. the reasons for the recipient's delay in asking for child support;
 2. conduct of the payor (e.g., non-disclosure of income);
 3. the circumstances of the child; and
 4. any hardship the payor might suffer if required to pay retroactive child support.
- [52] These factors support the conclusion that an award of retroactive child support is warranted in this case.
- [53] First, the reason for the Mother's delay in paying child support in this case was at least in part a function of the Mother's non-disclosure and the Father's repeated but frustrated efforts to obtain financial disclosure.
- [54] Second, I find that the Mother's non-disclosure is unacceptable conduct that also supports my conclusion that a retroactive child support award is in order, again consistent with the reasoning in D.B.S.
- [55] Third, I am satisfied that A. would have benefitted from the Mother contributing to the cost of her care and upbringing.
- [56] Fourth, in concluding that the Mother's income should be imputed and that she ought to pay retroactive child support, I have also considered whether such an award would cause financial hardship to the Mother. I find that is not the case. I have considered this matter carefully and in light of the particular facts of this case, including the impact of the applicable table amounts payable by both parties in light of their respective Guideline incomes.
- [57] There are at least two factors that attenuate the amount of retroactive child support owed by the Mother to the Father that make any real hardship very unlikely.

- [58] First, there is a substantial amount of money currently held in the trust, from the division of family capital assets that remains to be divided between the parties. Second, the disparity between the Mother's and Father's Guideline incomes, given that the Father's Guideline income is significantly higher than the Mother's, is a factor that lessens the amount ultimately owed by the Mother for retroactive child support. The evidence before me does not justify negating or reducing the award of retroactive child support owed by the Mother based on hardship.
- [59] As regards the Mother's 2024 income, her Guideline income will be imputed at the greater of her line 15000 income or her 2024 hourly rate x 30-hour a week, minus reasonable deductions under the Guidelines, as discussed in these Reasons or as otherwise agreed to by the parties.
- [60] In summary, the Mother's Guideline income is assessed at \$125,000 from December 1, 2021 to date, as applicable. In this regard, I note that the Mother's business deductions were much less in 2021 and 2022. The Father's Guideline income will be assessed based on line 15000 of his Income Tax Returns. Again, on the materials before me, I find there is no principled basis for deviate from this approach regarding the Father's Guideline income.
- [61] As the parties have able legal counsel, the actual child support amount owed by each parent, based on these Reasons, may be readily discerned. The parties will pay their proportionate share of s. 7 expenses based on these Reasons. Should there be any difficulty in assessing the applicable amounts, the matter will be referred to the Registrar for final determination and certification. Should this be necessary, the parties are to schedule a pre-hearing conference with the Registrar for this purpose.

V. Should Spousal Support be Terminated?

- [62] Sections 160-162 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], govern the parties' spousal support issues.

160 If, after considering the objectives set out in section 161 [objectives of spousal support], a spouse is entitled to spousal support, the other spouse has a duty to provide support for the spouse in accordance with section 162 [determining spousal support].

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;

- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[63] The case law further informs the grounds on which entitlement may be established. In *Zacharias v. Zacharias*, 2015 BCCA 376 at paras. 25-27, the Court provides helpful guidance:

[25] Canadian courts have recognized three distinct bases upon which a spouse may be entitled to an award of spousal support: compensatory, non-compensatory, and contractual.

[26] Compensatory entitlement will arise where, as a result of the parties' roles during the marriage, one spouse has suffered economic disadvantage or has conferred economic advantages on the other. Most often, such entitlement will arise where one spouse has sacrificed career opportunities in order to take on more of the family's household or child-rearing responsibilities. Upon the dissolution of the marriage, the spouse who has given up opportunities may be entitled to spousal support, either to compensate for diminished earning capacity, or to share in the augmented earning capacity of the other spouse. The main goal of compensatory spousal support is to provide for an equitable sharing of the economic consequences of the marriage

[27] Non-compensatory support entitlement focuses on the needs of the spouses and on their respective means. It is based on the idea that spouses, by virtue of marriage, have some ongoing responsibility to care for one another. The degree to which non-compensatory principles will apply will depend on a close examination of not only the means and needs of the spouses, but also of the nature of the marital relationship and its duration . para. 53).

[64] I have also considered that this Court may vary an interim support order under ss. 216 (3) and (4) of the FLA where there has been a significant change in circumstance since a previous order of the court was made. I am satisfied that since the 2021 Consent Order was rendered, there has been a significant change in circumstance respecting both the Mother's increased earning capacity and her decreased financial independence on the Father.

[65] The Father seeks the termination of the Mother's spousal support payments. He deposes that during the course of the parties' relationship and from its onset, they both contributed to household expenses, with the exception that the Mother did not work for nine months after their daughter was born. The Father also asserts that the parties had an agreement that the Mother would work full-time once their daughter started school. However, the Mother did not follow this agreement, he submits, often refusing working hours when offered to her.

- [66] The Father asserts that he was able to secure a "before and after" school daycare program for their daughter so that the Mother could work full-time but she refused this opportunity.
- [67] In this instance, the Mother does not assert a contractual entitlement to spousal support. She asserts her entitlement both on a compensatory and non-compensatory basis. In assessing her entitlement to spousal support and the duration of spousal support, I accept that the parties had an arrangement where the Mother's responsibilities to care for their child were greater than the Father's while the child was an infant and of a pre-school age. As such, the couple relied largely on the Father's income and the Mother focused on taking care of A. However, I also accept the Father's assertion that this was a temporary arrangement and that, once their daughter was of school age, the Mother would resume her career, which she in fact has done, much to her credit.
- [68] I have considered the economic disadvantage to the Mother arising from the parties' relationship, the disadvantage to the Mother arising from the breakdown of their relationship, and the importance of relieving the economic consequence and hardship to the Mother that resulted. I have also considered the length of time the parties lived together and the functions she performed to facilitate the Father's work and overtime pay over the years they were together.
- [69] Further, I am also mindful of the basis of entitlement to non-compensatory spousal support and the objective of narrowing the gap between the needs and means of the parties: see *Namdarpour v. Vahman*, 2019 BCCA 153. Of course, income disparity alone will not entitle a spouse to non-compensatory spousal support: *Lee v. Lee*, 2014 BCCA 383.
- [70] In addition, I have also taken into account the Mother's considerable skills as a physiotherapist and her significant job and income earning opportunities: *Tedham v. Tedham*, 2005 BCCA 502 at para. 33. I am mindful, nevertheless, that self-sufficiency is only one factor to be considered in assessing entitlement to spousal support and that no single objective is paramount: *Moge v. Moge*, [1992] 3 S.C.R. 813 at 852. Accordingly, although I am satisfied she has reached a level of self-sufficiency, this is not the only factor to consider.
- [71] I have concluded that the Mother is entitled to spousal support and that it should continue until the economic consequences flowing from the marriage and its breakdown are redressed: *Tedham* at paras. 58-60; *Chutter v. Chutter*, 2008 BCCA 507 at para. 79; *Parton v. Parton*, 2018 BCCA 273 at para. 45. In discerning the appropriate duration of spousal support, the question of when the economic consequences of the marriage are redressed is informed not only by length of marriage, but also by the parties' respective ages, their health and other circumstances particular to the parties.
- [72] While the parties were together for a significant period of time, theirs was not a long or entirely traditional marriage. The Mother was 40 at the time of separation, had established her career prior to the commencement of the relationship between the parties and the birth of A. Further, she is in the prime of her life, and enjoys a meaningful vocation and high-paying work. This is not a case where the Mother has or will continue to suffer the economic

consequences flowing from the marriage and its dissolution on a long-term basis. As her career sacrifice was relatively brief, the circumstances before me are not analogous to a relationship where one partner essentially takes on child-rearing responsibilities from birth until high school graduation. As a result, the duration of the compensatory payments ought to be shorter in comparison.

- [73] Having carefully considered the guiding authorities and the specific circumstances before me, I am of the view that material changes in circumstances have come to light regarding the Mother's income earning capacity, that warrant a change in the Father's spousal support obligations as originally set out in the 2021 Consent Order. The Father's spousal support obligations will change, effective April 1, 2022, based on the parties respective Guideline incomes, as assessed earlier in these Reasons. Further, the Father's spousal support obligations will be terminated on December 31, 2024. Spousal support payments will be set at the mid-range of monthly support based on the Spousal Support Advisory Guidelines. I have reviewed the low, mid-range, and high-end amounts of spousal support for the periods in question; I am satisfied that payments at the mid-range, rather than at the low or the high end of the range, will better ensure that the economic consequences of the marriage are redressed fairly and not excessively.
- [74] Should they choose, the parties are at liberty to agree, in writing, to a lump-sum spousal support payment.

VI. Summary and Disposition

- [75] The Father's Guideline income for child support purposes is set according to his income at line 15000 of his Income Tax Returns.
- [76] The Mother's Guideline income for child support purposes is imputed at \$125,000 from December 1, 2021 to December 31, 2023. The Mother's 2024 Guideline income will be imputed at the greater of her line 15000 income or her 2024 averaged hourly rates x 30 hours a week at 46 weeks for the year, minus reasonable deductions under the Guidelines, guided by these Reasons or as otherwise agreed to by the parties.
- [77] The child support payable by the parties is an interim order subject to further agreement of the parties, consistent with the Guidelines, or further court order.
- [78] Material changes in circumstances, as discussed earlier in these Reasons, warrant a reduction in the Father's spousal support obligations as set out in the 2021 Consent Order. Commencing April 1, 2022, the Father's spousal support obligations will be based on the parties' respective Guideline incomes, as assessed herein.
- [79] The Mother is entitled to spousal support at the mid-range based on the parties' respective Guideline incomes. Spousal support shall terminate on December 31, 2024.

[80] The parties are encouraged to settle all outstanding issues by agreement, without further court intervention. Through the able assistance of their counsel, they are at liberty to design a final settlement and in doing so may use their respective portions of any remaining monies held in trust.

"Morellato J."

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