
CANADA / JUDGMENT

N.I. v. J.I.

2020 BCSC 1847

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Supreme Court of British Columbia

DECIDED

27 November 2020

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2020 BCSC 1847 N.I. v. J.I.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

N.I. v. J.I.,

2020 BCSC 1847

Date: 20201127

Docket: E183372

Registry: Victoria

Between:

N.I.

Claimant

And

J.I.

Respondent

Before: The Honourable Madam Justice MacNaughton

Reasons for Judgment

Counsel for the Claimant:

M. Jakeman

Counsel for the Respondent:

J. Stewart

Place and Date of Trial/Hearing:

Victoria, B.C.

October 23, 2020

Place and Date of Judgment:

Victoria, B.C.

November 27, 2020

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Introduction

- [1] After a five-day hearing in January 2020, I released March 18, 2020 reasons indexed as N.I. v. J.I., 2020 BCSC 409 (the "Relocation Reasons").
- [2] In the Relocation Reasons, I set out the history of the parties' relationship, their work histories, the circumstances surrounding and following the breakdown of their marriage, and the existing court orders. It is not necessary for me to repeat that history here.
- [3] For the purpose of these reasons, the following facts are relevant. The parties were married on May 2, 2008, and separated on December 31, 2017. The claimant, N.I., is a registered nurse and the respondent, J.I. is a pediatrician. They are the parents of two children: a daughter who is now 11 years old, and a son who will soon be nine years old. On the evidence, in the Relocation Reasons, I concluded that N.I. had historically been the primary care parent as the couple had moved frequently during their relationship, and, for the most part, N.I. did not work.

- [4] Although the January 2020 dates were set for trial of all the parties' issues, as J.I. had applied to relocate the children to Calgary, where he had accepted a position with Aspire Medical Clinic ("Aspire"), the trial dates were used to consider the relocation application. Both parties testified.
- [5] I dismissed J.I.'s relocation application. Although the parties had agreed to shared parenting in the Provincial Court, first on a 2-2-3 parenting schedule and later on a week on/week off schedule, as J.I. was living and working in Calgary, I varied the parenting schedule. I ordered that the children would be in their mother's care for three weeks and in their father's care for one week. I also made orders about parenting over the summer holidays, spring break, Christmas holidays, Easter, and Thanksgiving. I permitted the parties to agree to other parenting time and ordered that, when the children were not in school, J.I. could choose to exercise his parenting time in Victoria or in Calgary and that N.I. was to cooperate in that regard.
- [6] The order was a final order. As is clear from my reasons, the order was made on the basis that J.I. would be working in Calgary.
- [7] The issue of costs was not addressed.
- [8] The parties next appeared before me on April 3, 2020. At that time, J.I. sought to vary the parenting order in the Relocation Reasons and revert to the previous week on/week off schedule. He did so on the basis that, during the COVID-19 pandemic, he had arranged with Aspire to work remotely and had returned to Victoria. I suspended the parenting order in the Relocation Reasons until J.I. returned to work in Calgary and ordered week on/week off parenting time (the "Suspension Order").

The Applications

- [9] In N.I.'s application, she seeks the following orders:
- (a) that the former family home, (the "Home"), be sold, and certain ancillary orders with respect to the sale and the disposition of the proceeds;
 - (b) that she be entitled to enter the Home to obtain all of her personal belongings and half of the family's chattels;
 - (c) that \$25,000 of the proceeds of sale of the Home be released to her to offset the costs of litigation;
 - (d) that the Suspension Order be vacated and that the parenting schedule in the Relocation Order resume, or that a Views of the Children report be obtained from Dr. Jillian Roberts, with the costs to be shared;
 - (e) that J.I. be imputed an income of \$240,000 for the purpose of calculating the retroactive and prospective spousal and child support that N.I. claims she is entitled to;

- (f) that the costs of the relocation hearing in January 2020 be determined and payable to her within 30 days;
- (g) that J.I. provide full financial disclosure within 30 days of this application;
- (h) that pursuant to s. 91 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], the parties be restrained from disposing of, transferring, encumbering or otherwise dealing with any property which is or may be family property except in the usual course, until the trial of this action or until agreement of the parties or order of this Court; and
- (i) that J.I. pay her costs.

[10] J.I. opposes all aspects of N.I.'s application and, in his cross-application, seeks the following orders:

- (a) that inherited family jewellery be his excluded property;
- (b) that the family assets and debts be divided unequally in his favour pursuant to s. 95(3) of the FLA;
- (c) that the debt incurred by N.I. from January 1, 2018, to March 31, 2018, be her exclusive debt;
- (d) that the monies paid by him for the GMC Terrain Denali and N.I.'s insurance be adjusted for in the division of property and debt and payment of support;
- (e) that he have an option to purchase N.I.'s interest in the Home;
- (f) that N.I. pay him child support commencing March 1, 2018, pursuant to the Federal Child Support Guidelines, SOR/97-175 [Guidelines];
- (g) that the parties share in the cost of s. 7 expenses commencing January 1, 2018;
- (h) that N.I. pay him spousal support commencing March 1, 2018, in accordance with the Spousal Support Advisory Guidelines;
- (i) that commencing May 31, 2021, the parties exchange their income tax returns by May 31 of each year and make appropriate adjustments to spousal and child support and s. 7 expenses, effective June 1 of each year; and
- (j) that N.I. pay him his costs.

[11] At my urging, the parties were able to agree to a consent order that they be restrained, under s. 91 of the FLA, from disposing of, transferring, encumbering or otherwise dealing with any property which is or may be family property except in the usual course, until the trial of this action or until agreement of the parties or further order of this Court. I also suggested a way for the parties to resolve the costs of the relocation application as N.I. had been successful in opposing it. Counsel indicated that they would likely resolve that issue. They may also be able to agree on the value of the family jewellery and the chattels remaining in the Home.

- [12] As it was apparent that it would be impossible to deal with all of the matters raised in the parties' cross-applications in the time they had scheduled, particularly because of the competing, lengthy affidavits on many issues, I directed that we would only deal with N.I.'s applications for sale of the Home and with her claim for retroactive, prospective, and ongoing child and spousal support. In order to deal with both support matters, I must consider N.I.'s submission that J.I. should be imputed an income of \$240,000-250,000.
- [13] I will deal first with N.I.'s application that the Home be sold and then with her application for retroactive and prospective child and spousal support.

Sale of the Home

- [14] J.I. agrees that I have discretion to order the sale of the Home, but says that I should not exercise my discretion to do so in this case and the status quo should continue until a trial of the remaining issues between the parties.

The Applicable Law

- [15] In *A.B. v. C.D.*, 2015 BCSC 2134 at paras. 63-64, Justice Burke summarized the principles that have evolved from the cases in which an interim sale of a family home is sought. She said:
- [63] The courts have discretion to order the interim sale of a family asset where it is necessary and expedient. The courts have considered a number of factors in doing so. These include:
- Whether the sale is necessary. This is an important factor. If the sale is not necessary, any sale should be advantageous to both parties. Another factor is whether the sale will promote early settlement (as per *Reilley v. Reilley* [sic], [1992] B.C.J. No. 2561 (C.A.)), and/or whether the sale will defeat a spouse's claim for reapportionment (*Head v. Head*, [1994] B.C.J. No. 1503 (S.C. Master); *R.(L.M.) v. R.(J.F.)*, 2009 BCSC 1332 (Master));
 - In addition, a question may arise as to whether the sale of the family home is inevitable, or whether a spouse might be able to retain it on a division of assets (*Pierce v. Pierce* (1994), 2 B.C.L.R. (3d) 31 (S.C.); *Lede v. Lede*, [1994] B.C.J. No. 1655 (S.C. Master); *Wilson v. Wilson*, 2009 BCSC 1834 (Master), *aff'd* 2009 BCSC 1600); and
 - Another important consideration may arise as to whether a sale would effectively eliminate accommodation for a spouse and children or whether alternative accommodation is available (*Leask v. Leask*, [1994] B.C.J. No. 1821 (S.C. Master); *Matheson v. Matheson*, [1995] B.C.J. No. 441 (S.C. Master).
- [64] Finally, any doubt should be resolved in favour of the status quo (*Bodo v. Bodo* (1990), 25 R.F.L. (3d) 295 (B.C.S.C.)).
- [16] To that list I would add the Court of Appeal's criticism of *Bodo* as set out at para. 35 of *Reilly*:

35 With respect, this formulation may not provide the certainty it suggests. The status quo for one spouse may be the perpetuation of an injustice for another. In light of the infinite variety of circumstances arising out of human relationships it is fruitless to attempt to catalogue in advance the factors to be taken into account on an application for an interim sale.

[17] In *Tomic v. Tough*, 2013 BCCA 355, at para. 26, the Court of Appeal reiterated that the criteria for an interlocutory order for sale of property are whether it is expedient (including advantageous) and necessary:

[26] The criteria for an interlocutory order for sale of property are whether it is expedient and necessary. Those words were described in *Bodo* as encompassing, in family law proceedings, a number of factors: the needs of the children; the availability of alternative accommodation; the emotional condition of the spouses; external economic factors; wasting of the asset; and the capacity of both parties to maintain the asset. In *Reilly v. Reilly* [1992 CarswellBC 346 (B.C. C.A.)], 1992 CanLII 742, the court adopted the word 'advantageous' in place of 'expedient', at para. 35:

At the risk of over simplification my own view is that what the rule requires, where necessity is not in issue, is that the proposed sale be advantageous to both parties.

Application of the Law to This Case

[18] Having considered the evidence in this case, and in light of the fact that the parties have not moved forward with respect to the sale of this significant asset, I am satisfied that I should exercise my discretion to order a sale of the Home. J.I.'s continued residence in the Home, tying up as it does N.I.'s equity, is a significant block to them resolving their differences.

[19] Despite moving to Calgary for work in 2019, J.I. continued to reside in the Home when he came to Victoria for the purposes of his week on/week off parenting time. The Home was vacant while he was not in Victoria.

[20] Since the COVID-19 pandemic, he has been residing and working from the Home. In the *Relocation Reasons*, at para. 62, I said, in part:

[62] It is my hope that determining the parenting issues will assist the parties in resolving the financial and property issues without the need for further trial time. In particular, it appears that there is no dispute that, regardless of where the children reside, the family home in Victoria will need to be sold and no dispute that the net proceeds will be divided equally.

[21] It is true that my conclusion was based, in part, on J.I. residing in Calgary. Nonetheless, as the Home is the primary family asset, absent one party having the wherewithal to buy out the other's interest, a sale of the Home is inevitable.

- [22] As J.I. is still not licensed to practice in BC, when the pandemic resolves, he will be returning to Calgary, and the varied parenting schedule as set out in the Relocation Order will resume. Even if J.I. obtains licensure in BC, there is no guarantee that he will obtain a position in Victoria.
- [23] In his application, J.I. says that he wishes to buy out N.I.'s interest in the Home. He has not made a proposal to do so and has not said how he is financially able to raise the funds.
- [24] A review of J.I.'s October 9, 2020 F8 financial statement, makes it clear that, in the absence of undisclosed assets or without significant family help, he does not have the financial means to buy N.I.'s interest. Even adjusting for the \$48,500 advance N.I. received to fund her litigation costs and her cashing in of RRSPs, which were family assets, she will be entitled to a share of the net proceeds that is likely to exceed J.I.'s financial capacity.
- [25] In his F8, J.I. sets out net annual income of \$51,970.98 and annual expenses of \$107,967.84. If those figures are accurate, annually he is spending at more than twice his income. He faces increasing debt.
- [26] With respect to financial assets, he lists a number of insurance policies, in the names of the parties' children, and bank account balances of just over \$14,000. He has no pensions, RRSPs, or business interests. He has, what he estimates is, \$15,000 of family jewellery and household furnishings, all of which appear to be family assets. Finally, he lists unsecured debts totalling \$176,993.48, including a personal loan from his brother of \$140,692.69.
- [27] Of particular concern is that it appears that, since separation, J.I. has exhausted most of the family's bank accounts that were solely in his name. At the date of separation, J.I. had about \$300,000 in bank accounts in his name. In particular, in early January 2018, just after the parties' separation, J.I. had 213,530 Bruneian Dollars, or BND, in an account in Brunei. In her affidavit sworn on August 31, 2020, N.I. says that, as of January 1, 2018, based on the then exchange rate for BND to CAD, that amounted to \$224,206.50.
- [28] J.I. also had a CIBC account containing \$34,033.56. Finally, he had an ICICI Bank account containing 20,12,484 Indian Rupees, or INR (this figure was taken directly from the ICICI account record). N.I. says that, as of January 1, 2018, based on the then exchange rate for INR into CAD, that amounted to \$39,615.82. This figure was taken directly from the bank account records and was not disputed.
- [29] In J.I.'s financial statement, sworn on December 19, 2019, with the exception of insurance policies in the names of the parties' children and a TFSA in the name of his daughter, he had just over \$10,219 in financial assets. In the same F8, he said he had three pieces of property in India worth a total of \$38,447.61 and unsecured debts in the amount of \$91,478.39. In his financial statement, sworn on October 9, 2020, with the exception of the same insurance policies, he had \$14,162 in financial assets and unsecured debts in the amount of \$176,993.48. He indicates that he has not paid the property taxes on the Home. His Indian property had dropped slightly in value.

- [30] The Home is assessed at just over \$766,000. On behalf of N.I., a realtor prepared a market valuation which puts its value at \$980,000. Its current value is not known. There is an outstanding mortgage, which, according to J.I.'s F8, is at \$475,669.28.
- [31] Based on this financial picture, I am persuaded that a sale of the Home is inevitable. In addition, the fact that J.I. resides in the Home, while N.I. is paying for rental accommodation, continues to be a source of conflict between these parties. Selling the Home has the potential to move these parties towards resolution. The parties have been separated for almost three years. In that time, J.I. has had exclusive use of the Home, and N.I. has been denied access to her equity while continuing to pay for alternative accommodation for her and the children while they are in her care. No trial date has been set. A sale of the Home now will determine the value of the most important family asset and may result in a settlement of the remaining issues.
- [32] I therefore order that:
- (a) the Home located at 7-675 Superior Street, Victoria, British Columbia, V8V 1V1, legally described as PID: 027-941-515, Strata Lot 7, Plan VIS6805, Land District 57 shall be sold;
 - (b) pending sale of the Home, neither party shall register any charge, lien, or other encumbrance against it;
 - (c) the parties shall have joint conduct of the sale;
 - (d) the net proceeds of sale shall be held in the trust account of Velletta & Co., pending a final determination of this action, written agreement of the parties, or further order of this Court; and
 - (e) either party may apply to the court in the event they are unable to agree on a term of the conduct of sale. I will remain seized with respect to any such application.
- [33] I realize that the month of December may not be the most advantageous for listing a property for sale. Once the parties have agreed on a real estate agent, they should discuss and take the agent's advice as to an appropriate listing date.

Imputation of Income

The Applicable Law

- [34] As noted, N.I. seeks to impute income to J.I. for the purposes of retroactive and prospective child and spousal support.
- [35] Section 19 of the Guidelines provides:

19(1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by reasonable educational or health needs of the spouse.
- [36] The Court of Appeal addressed the interpretation of s. 19(1)(a) of the Guidelines in *Barker v. Barker*, 2005 BCCA 177. At para. 19, the court determined that a finding of bad faith on the part of the payor parent was not required when imputing income for intentional unemployment or underemployment. It was sufficient that the payor was not earning to capacity. *Barker* was followed and cited in *Koch v. Koch*, 2012 BCCA 378 at para. 38, and both cases were most recently cited in *Willms v. Willms*, 2020 BCCA 51 at para. 37
- [37] In *McCaffrey v. Paleolog*, 2011 BCCA 378, the Court of Appeal noted that the starting point of an analysis of s. 19 of the Guidelines is s. 88 of the Family Relations Act, R.S.B.C. 1996, c. 128, now s. 147 of the FLA, that each parent has a duty to provide support for their child. The court referred to the general principles concerning imputation of income. They include a parent's duty to seek employment, where they are healthy and there is no reason that they cannot work. When imputing income on the basis of intentional underemployment, the court must consider what is reasonable under the circumstances.
- [38] As they relate to this case, reasonableness will depend on factors relating to the parent, including their age, education, experience, skills, and health. It will also depend on factors relating to the workplace, including the availability of work, freedom to relocate, and other obligations.
- [39] A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which skills can be learned on the job. While this may affect the parent's earnings, courts do not sanction the refusal of a parent to take reasonable steps to support their children because they cannot obtain interesting or highly paid employment. Finally, a parent cannot be excluded from their child support obligations in furtherance of unrealistic or unproductive career aspirations.
- [40] The court then said:
- [58] In summary in a case like this:
1. income may be imputed to a parent who is intentionally under-employed or unemployed unless the parent establishes under s. 19(1)(a) of the Federal Child Support Guidelines that the needs of a child require the parent to remain at home;
 2. it is recognized that generally a newborn child or a child of very young age is a child who needs care at home in the context of s. 19(1)(a), but
 3. childbirth does not provide an automatic relief from a parent's child support obligations;

4. the circumstances of each situation must be evaluated using all of the criteria articulated in *Donovan v. Donovan* (2000), 190 D.L.R. (4th) 696 (Man. C.A.) as adopted by this Court in *Watts v. Willie*, 2004 BCCA 600;
 5. any period of non-support must be reasonable in the circumstances.
- [41] The test for imputing income for the purposes of spousal support is similar to the test that applies with respect to child support. The essential issue is reasonableness, taking into account factors including the payor spouse's capacity to earn income given their age, education, health, work history, work availability, and retraining prospects: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37 and *Hsieh v. Lui*, 2017 BCCA 51 at para. 48.
- [42] As this is an interim application, I must also consider the appropriateness of imputing income on an interim application.
- [43] In *Kouznetsova v. Kouznetsov*, 2014 BCCA 160 at paras. 44-45, the Court of Appeal said that the primary purpose of interim orders in family matters is to maintain the status quo between the parties. The court also said that the issue of imputing income may be better addressed at trial where the parties have fully canvassed their respective earning capacities and an evidentiary basis for such a finding can be properly established.
- [44] In *Fitzgibbon v. Fitzgibbon*, 2014 BCCA 403 at para. 22, the Court of Appeal added that, where credibility is at issue, the best forum for resolving those disputes is at trial rather than in repeated interim applications.
- [45] In *Elliott v. Pollock*, 2015 BCSC 2121, this Court followed *Kouznetsova*, stating:
- [20] Further, the imputation of income to a party is better addressed at trial where there can be a more fulsome review of the evidence, particularly where relevant facts are in conflict: *Kouznetsova* at para. 45. Here, there is either scant or conflicting evidence on the availability of work to each of the parties or their respective capacities to earn more income. The success of Ms. Elliott's claim for spousal support as well as retroactive child support will depend on whether the trial judge imputes income to one or both of the parties. ...
- [46] Most recently, in *J.C. v. A.A.G.*, 2020 BCSC 1485, Justice Punnett dealt with competing claims to by parties to impute income to the other. Citing *Kouznetsova* and *Elliott*, he declined to impute income for the purposes of retroactive support. He determined that making such an order required "a more fulsome review of the evidence" as it related to the past employment income of the respondent: paras. 34-37. However, Justice Punnet did impute income on a prospective basis. His order was interim and subject to a trial determination of the respondent's actual or imputed income. The respondent did not pursue her interim application to impute income to the claimant from his corporate interests. Finally, with respect to the respondent's claim for support arrears, Justice Punnett said those claims were best left for the trial judge who would have the full evidence of the parties to determine their incomes and address the issues of imputed income and retroactive payments.

Application of the Principles to This Case

- [47] Since the date of separation, J.I., who, historically, was the primary source of the family's funds, has not provided direct financial support to N.I. or paid child support for the children. Following their separation, and until the end of February 2018, N.I. says that J.I. provided her with some money for groceries and to pay family bills but did not pay her spousal support.
- [48] On these cross-applications, the parties have each filed two competing affidavits which outline their significant disputes on almost every aspect of the relief sought in the notice of family claim and the counterclaim. Some of those disputes about J.I.'s capacity to earn income follow.
- [49] There are also disputes about whether, and to what extent, N.I. should have paid child and spousal support to J.I. when she was working and he was not. Those disputes also follow.
- [50] First, there is a dispute about the diligence with which J.I. pursued licensure in BC, both before and after the parties moved here, as either a physician or a pediatrician. N.I. says that he has not done what he could. J.I. says that he started the process in about December 2016, while the parties were still in Brunei, and attaches correspondence with the licensing authorities at around that date. He says that he continues in those efforts, with the most recent correspondence in September 2020. N.I. points out that J.I. started another round of communications regarding licensure after the release of the Relocation Reasons.
- [51] Second, there is a dispute about the sufficiency of J.I.'s efforts to find suitable, or any, other work in BC. It may be that, having failed to find work in his profession, he was obliged to take any work to support his family.
- [52] Third, there is a dispute about J.I.'s reasons for not accepting a position with Aspire, when it was first offered to him in March 2018, and his delay before accepting it in August 2019. In the Relocation Reasons, I said:
- [17] J.I. did not work in any capacity from February 2018 until August 2019. He then accepted a position as a pediatric consultant with Aspire Medical Clinic in Calgary, Alberta ("Aspire"). His position is for a one-year term, but is renewable. Aspire's offer was dated June 26, 2019, and it indicated that the start date was negotiable. In cross-examination, J.I. agreed that Aspire had first offered him a position in March 2018. He decided to stay in Victoria after N.I. was criminally charged (those charged were ultimately stayed, as I will describe below). He did not clearly explain why he then waited until August 2019 to accept the position.
- [53] N.I. says that had J.I. accepted the Aspire position earlier, his patient list would have been established, and he would now be earning a significant income. J.I. says that he was unable to accept the March 2018 offer because he did not have a valid Canadian Permanent Resident card at the time and because he was dealing with the MCFD investigation.

- [54] Fourth, there is a dispute about the income J.I. has earned from Aspire since August 2019 and whether he is working to full capacity. Based on extrapolating his year-to-date income in 2020, he is expected to earn \$53,513.87 for the year. This is significantly less than Aspire projected him to earn.
- [55] Although J.I. says that he is working full time, for four weeks a month as needed, a copy of his billings to Aspire show many days on which he has not billed for any work.
- [56] J.I.'s earnings are significantly less than Aspire predicted in their letter of January 17, 2020, which J.I. relied on in support of his relocation application. In it, Aspire describes their assessment of his competence and experience, explains that they have offered him a flexible working schedule, describes the high need for pediatric consultants in Calgary, and sets out their expectation that he would bill over \$12,000 per week gross once his practice was established, which could take from six months to two years. After Aspire's 30% overhead charge, he would earn \$9,000 net weekly.
- [57] In support of her argument for imputing income to J.I., N.I. has also filed website pages from the Economic Research Institute, a company that compiles salary compensation survey data. The printouts indicate that the average salary for pediatricians in Vancouver is \$247,685 and in Calgary is \$251,252. I note that these pages are hearsay, and there is no basis for assessing their reliability on an interim application.
- [58] Fifth, there is a dispute about any impact two negative postings on the "Rate my MD" website may have had on J.I.'s ability to build his patient base and to obtain licensure. Counsel for J.I. acknowledges that there was no evidence of any impact but speculated that there might have been. In the postings, J.I. is criticized for his interactions with his own children, and potential patients are warned not to go to him. The postings have since been taken down.
- [59] Sixth, there is a dispute about whether N.I. agreed to support the family when they returned to BC in 2017, through her work as a registered nurse. She was licensed to work in BC and had accepted a casual position with Vancouver Island Health Authority in October 2017. She accepted a permanent part-time position in June 2018 and then a temporary full-time position in September 2019. J.I. says that they agreed that she would support the family; she denies that.
- [60] Finally, there is a dispute about the reasonableness of J.I.'s ongoing decision to work from BC during COVID-19.
- [61] In his two affidavits, J.I. says there are various reasons for why he has not been able to financially support his family since their move to Victoria. These include that: he is not licensed as a physician or a pediatrician in BC and was unable to find work of any kind in Victoria; he was unable to fully focus on his job search due to the circumstances following the breakdown of the parties' relationship which resulted in him being the sole caregiver for the parties' children for a period of time; despite his efforts, he was only able to find work in Calgary and incurred a number of expenses travelling to and from there to exercise his

parenting time; and he was in the process of building a practice when the COVID-19 pandemic struck. He explains in his affidavit that he is not a hospitalist. He works in a clinic environment and is seeing patients virtually from Victoria. He says that COVID-19 has impacted all doctors outside of hospitals.

[62] Based on the number of disputes between the parties about their respective earning capacities, I conclude that child and spousal support, both retroactive and prospective, is better addressed at trial where the parties' respective incomes will be fully canvassed, including under cross-examination, and there will be a proper evidentiary basis for determining who owes what to whom and whether income should be imputed to J.I. Here, many of the relevant facts are in conflict. N.I.'s success in applying for prospective and retroactive child and spousal support depends on whether certain facts are found by the trial judge. Those include whether income should be imputed to J.I. and whether support should be paid by N.I. during some or all of the period during which J.I. was not able to work. A trial judge will be better able to assess the parties' credibility and resolve, to the extent necessary, and the conflicts in their evidence.

[63] This aspect to N.I.'s application is dismissed.

Conclusion

[64] For the reasons set out, I have ordered that the parties' Home be sold. On consent, I have made a joint property restraining order. I have ordered that neither party register anything against title to the Home, pending its sale. I have dismissed N.I.'s interim application for retroactive and prospective child and spousal support based on an imputed income to J.I. and have left those matters for trial.

[65] The balance of N.I.'s application is adjourned generally. I have not dealt with J.I.'s application except to the extent that, as a result of my order for sale of the Home, I have implicitly denied his application for an option to buy N.I.'s interest in it.

[66] Both parties sought their costs. In light of the divided result, I would be inclined to order that both parties bear their own costs but if either party wishes to speak to costs, they may apply to do so through the registry.

[67] As set out, I will remain seized of issues arising from my order for the sale of the Home. No appraisal is required as it is to be listed. Counsel indicates to me that they believe they can work out the terms of the joint conduct of sale, and I trust they will be able to do so. Failing which, they may seek to appear.

"MacNaughton J."

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Prepared on 25 October 2026 · Esheria