

CANADA / JUDGMENT

O.K. v. V.K.

2016 BCSC 539

COURT

Supreme Court of British Columbia

DECIDED

29 March 2016

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2016 BCSC 539 O.K. v. V.K. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: O.K. v. V.K., 2016 BCSC 539 Date: 20160329 Docket: E113449 Registry: Vancouver Between: O.K. Claimant And: V.K. Respondent Before: The Honourable Mr. Justice D.M. Masuhara Reasons for Judgment Counsel for the Claimant: M. Weremchuk Acting on his own behalf: V.K. Place and Date of Trial: Vancouver, B.C. June 22-26, 2015 September 28-29, 2015 November 18-20, 2015 December 4, 2015 January 14, 2016 Written Reply Submissions: January 20, 2016 Place and Date of Judgment: Vancouver, B.C. March 29, 2016 I. Introduction

- [1] The matters for determination in this family action relate to parenting of the two remaining children of the marriage, a son I.K. and daughter, K.K., who respectively are 16 years and 8 years old; spousal and child support; retroactive support; and property division, including recognition of property interests held in Russia. With respect to property division, the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA] applies as this action was started before the current act, the Family Law Act, S.B.C. 2011, c. 25, came into effect.
- [2] This action was commenced in November 2011. Mr. K responded and counterclaimed in December 2011.
- [3] Ms. K was the only witness in the claimant's case.
- [4] Mr. K, his mother, and Mr. Kim, a former co-worker, were witnesses in the respondent's case. II. Background
- [5] Ms. K is 48 years old and Mr. K is 51 years old. The parties married in Moscow, Russia in August 1996. At the time of the marriage Ms. K had a 5-year-old son I.N. from a prior marriage. Mr. K took on the role as father for the child. The parties lived in Moscow and resided in an apartment located on Gudkova St, Zhurkovskiy, Moscow Region. Initially, Ms. K's father owned the apartment.
- [6] Ms. K holds a degree in teaching English which she obtained in about 1990. She did not work long in the field. In Russia, Ms. K's work experience included work as a librarian, secretary, daycare teacher, office manager, and bookkeeper. She last worked in October 1998.

- [7] Mr. K holds a degree in engineering from the Moscow University of Management. He specialized in economic cybernetics and programming.
- [8] As a result of the collapse in the Russian economy, the family moved to Canada in 1999. Mr. K was able to obtain a working permit. By then the parties had a son born in December 1998, I.K. He was 10 months old when the family arrived in Canada. Their daughter K.K. was born in December 2006. During the marriage in Canada, it was agreed that Ms. K would care for the children at home.
- [9] Mr. K initially worked as an applications developer earning \$48,000 per year. He subsequently obtained a permanent residence permit. He moved to another company as a programmer and then as an architect. His annual income increased to \$115,000. In 2009, he was given notice of termination. He then found another job which paid him a base annual income of \$119,000. In 2011, his annual income including bonuses reached \$127,128. In March 2014, Mr. K was laid off. In October 2014, he was hired under a one year contract with PNI Digital Media at \$90,000 per year. His contract however expired in October 2015. In November 2015, he then found a fulltime job as a programmer earning \$46 per hour and working 40 hours per week.
- [10] The parties separated in April 2011.
- [11] Though separated, the parties continued to live in the same co-op townhouse in Richmond. However, in February 2013, Mr. K moved out of the residence pursuant to a court order. He purchased a condominium unit in Richmond for \$233,000. He paid a down payment of \$11,650 by drawing down on an RRSP.
- [12] The parties were granted a divorce order on September 18, 2013. This date is the triggering date under the FRA for the purposes of this case.
- [13] The older son I.N. has lived with Ms. K since the separation and I.K. has lived with Ms. K full time since August 2013. The daughter spends time with each parent on a shared equal basis. A 2-2-3 pattern.
- [14] For the purposes of this action, the parties agree that I.N. is no longer a child of the marriage. He obtained a diploma in network administration from BCIT in 2014 and has since been employed on a fulltime basis.
- [15] In March 2013, Ms. K registered in the Professional Bookkeeper Certificate Program at Langara College. She is presently one course short of completion. She will start that course in January 2016. In July 2014, she began to work as a sales clerk in a large retail sales company. III. Previous Orders
- [16] There have been various orders made in this case.
- [17] In November 2012, an interim order included the following:
- (a) joint guardianship and shared custody of two children of the marriage, namely I.K. and

K.K.;

- (b) that Mr. K pay child support of \$2,200/month for the three children of the marriage; imputation of income to Ms. K of \$20,000 starting February 2013 child support reduced to \$1,900/month; Section 7 expenses on a 1/7 and 6/7 basis;
- (c) starting December 2012, Mr. K to pay spousal support of \$1,954/month; starting February 2013, the amount of spousal support would be reduced to \$1,500/month to reflect the imputation of \$20,000 of income to Ms. K;
- (d) Mr. K was also ordered to vacate the family home on or before February 1, 2013.

[18] In January 2013, Mr. K purchased a condominium for \$233,000. As mentioned, he withdrew over \$10,000 from RRSP funds to make the purchase. He moved into it in February 2013. He took the family car, a 2001 Nissan Altima. That same month, Ms. K and her son purchased a 2013 Mazda 3 for \$25,000. The car is registered in their joint names. It appears the vehicle was purchased 100% through financing.

[19] On January 31, 2013 the November interim order was set aside in terms of the imputation of \$20,000 of income to Ms. K. As a result, the child and spousal support amounts was varied starting February 1, 2013 to \$2,267 and \$1,954 respectively.

[20] In September 2013, the first trial of this case was held. An order which included terms for joint guardianship, shared custody on an equal basis, child support, spousal support, and division of family assets was issued. On April 24, 2014, the order was set aside by the Court of Appeal and a new trial ordered. The court upheld the interim order made January 31, 2013. The divorce granted in September 2013 remained valid.

[21] On March 5, 2014, Ms. K was granted an order to travel with the children to Russia during the month.

[22] In August 2014, Mr. K obtained an order giving him liberty to accept employment offers at an annual salary of \$90,000 or greater.

[23] In October 2014, an order was issued which included the following:

- (a) child support for I.K. and K.K. of \$1,350 starting November 1, 2014;
- (b) spousal support of \$1,400 starting November 1, 2014; and
- (c) reduction of Mr. K's support arrears from \$6,928 to \$5,000.

[24] Mr. K's appeal of this order was dismissed.

[25] In June 2015, the trial of this action commenced before me.

- [26] On June 26, 2015, the fifth day of trial, the parties settled several terms relating to the children including the continuation of joint guardianship and the equal parenting arrangement of a 2-2-3 schedule; travel for the children; the control of the child K.K.'s passport; the sharing of s. 7 expenses; medical coverage for the children; the exchange of income tax returns and related documentation between the parties; and the naming of Ms. K as beneficiary under life insurance from Mr. K's employment.
- [27] They agreed to s. 7 expenses as follows: BY CONSENT:
- (a) The claimant and respondent will each pay 50% of [K.K.'s] drawing lessons and swimming lessons, and such other activities as they may agree. [K.K.'s] drawings and other art works from the drawing lessons will be shared equally between the parents;
 - (b) The claimant will pay 40% and the respondent will pay 60% of [I.K.'s] National Lifeguard course and other agreed upon activities;
 - (c) The respondent is not required to make any retroactive payments for the children's activities;
 - (d) The respondent will provide the children with medical and extended medical coverage. The respondent will sign reimbursement claims forms within 7 days of being asked to do so by the claimant, and will forthwith submit them to the insurance provider. The respondent will pay the reimbursements to the claimant within 48 hours of receipt or the reimbursements.
- [28] With respect to item (d) above, it was acknowledged that Mr. K did not have medical coverage with his present employer. He agreed that if and when he does have such coverage he would ensure that Ms. K will be advised and he would include the children under his coverage.
- [29] During the continuation of the trial, in September 2015, counsel for Ms. K provided a draft consent order reflecting the agreement from June. Mr. K disagreed with the term relating to the 2-2-3 parenting schedule. He stated that he had not agreed to the parenting schedule because he was seeking sole custody. I found his comment not particularly persuasive but Ms. Weremchuk did not wish to prolong matters and was prepared to submit the consent order without the parenting schedule. The consent order, as amended, was entered September 29, 2015.
- [30] Mr. K was respectful generally throughout the trial. However, his frustration, bitterness and stress, which I view as related to the family breakdown and financial difficulties, emerged from time to time in harsh comments towards Ms. K. He also complained of little justice being present in our courts system.
- [31] I will deal first with parenting matters; then address the financial issues. IV. Parenting of the children

- [32] Mr. K's reasons for arguing the he should have sole custody of the children is that his mother is available to care for the child K.K. when both parents are working and that K.K.'s siblings are not able to or are not available to provide the necessary care for the child. Mr. K also argues that Ms. K is not a capable parent as she permitted her daughter to be driven in a car by a drunken driver - Ms. K's father on one occasion. This was according to the testimony of Mr. K's mother. He also testified that he has no problem with the 2-2-3 schedule including the overnight stays that are included in that schedule but that if he had sole custody ordered he would not have to pay child support.
- [33] In my view, the incident involving Ms. K's father has not been made out. There is no evidence that Ms. K was complicit in this event as Ms. K was not present at the time this was said to have occurred. As I pointed out to Mr. K, the criticism can more pointedly be levelled at his mother given that she was present at the time the child was placed in the car with her grandfather and did nothing to prevent it.
- [34] I do not find that either parent is deficient in parenting skills. I find that both have been good parents and that they have a good relationship with the child K.K.
- [35] The 2-2-3 schedule has been in place for some time and the evidence is that the child likes it.
- [36] My view is that Mr. K's primary motivation for sole custody is driven by financial factors which is not proper. His admission that he does not seek to upset the 2-2-3 schedule also supports my finding. I do not find that a sole custody declaration in his favour has merit and that relief is denied.
- [37] In my view, the best interests of the child are in a parenting schedule that is equally shared. The 2-2-3 schedule which has been in place is to continue.
- [38] The specific schedule will be as follows:
- a. Commencing November 16, 2015 the parenting schedule will be as follows:
 - i. Mr. K - Monday/Tuesday - starting Monday morning until - Wednesday morning; ii. Ms. K - Wednesday/Thursday - starting Wednesday morning until Friday morning; iii. Mr. K - Friday/Saturday/Sunday - starting Friday morning until Monday morning; and iv. Alternating thereafter;
 - v. The transition between the parents' homes will be at school start time or 10:30 am on non-instructional school days and holidays;
 - b. The parenting schedule will apply to both I.K. and K.K., except I.K.'s participation is subject to his wishes;
 - c. Neither party shall be excluded from attending any of the children's school or extracurricular activities on their non-parenting days;
 - d. The parties are at liberty to vary the parenting schedule by agreement in writing.

- [39] I now turn to financial matters. The approach to financial matters is to address property issues first. V. Division of Family Property
- [40] There was no triggering event until the divorce order of September 18, 2013.
- [41] The assets in issue in this case are the following:
- (a) Family car proceeds: Mr. K was involved in a motor vehicle crash. The 2001 Nissan Altima was totalled and he received \$3,510 as compensation for the loss from his insurer. He did not share any of this amount with Ms. K. He agreed at trial that she was entitled to one-half of the proceeds.
 - (b) Moscow apartment Orenburgskaya St: 1/3 interest held by Mr. K.
 - (c) Moscow District apartment on Gudkov St: ½ interest held by Ms. K. It was gifted by Ms. K's father to her in 1997. Ms. K gifted a one-half interest to her son I.N. in October 1999 as compensation for his interest in another property which was sold to provide monies for the parties to move to Canada.
 - (d) Richmond condominium: Mr. K purchased this after he was ordered to vacate the family home owned.
 - (e) RRSP: The value was approximately \$25,000 when divided pursuant to the order from the first trial. Mr. K agrees that the RRSPs should be split but says the split should only be \$4,230, which was the amount at the time of separation. He argues that the increased amount from \$4,500 to \$25,000 accumulated after separation. Mr. K says that pursuant to the court order from the first trial he rolled over his RRSPs to allow Ms. K to receive one-half of the RRSP, the amount was \$12,500.
 - (f) Co-Op Share: the value of the share in the co-op where the family resided is agreed at \$1,000. Ms. K agrees to pay Mr. K \$500.
 - (g) CPP: Ms. K applies to equalize the parties CPP contribution to January 31, 2013, which the date Mr. K moved out.
 - (h) Household Items: a list of household items was produced at trial. Mr. K did not take much when he was ordered to move out. Ms. K states that Mr. K should have taken things he wanted at the time he left. Mr. K states that he wanted to leave things for the family. Ms. K now states that Mr. K should come to take his share of items from the home as he wishes. She does not agree that he should be given a monetary amount as compensation for his share.
- [42] Ms. K submits that the interests in the Russian apartments should be excluded from the division of family assets. In the alternative, she seeks to have her one-half interest of her Moscow District apartment re-apportioned to her, as it was a gift to her from her father. She says the family lived in the apartment for a short-period and was later gifted to her. It is submitted that given the parties' very limited assets, a compensation order is not possible.

- [43] With respect to property in Canada, she submits it should be divided equally. The RRSPs as valued before Mr. K's withdrawal to purchase his condominium have been divided equally pursuant to the order from the first trial; \$12,686.85 rolled over into the claimant's name.
- [44] Her RRSPs are about \$4,000. Ms. K argues that she is entitled to one-half of the \$25,000 because the triggering date was September 18, 2013 when the divorce occurred and that the RRSPs value at that time was \$25,000. Ms. K simply seeks to have the \$12,686.85 which she received confirmed.
- [45] With respect to the Richmond condominium, Ms. K says that she will not pursue her claim of an entitlement to it, if she is able to retain her Moscow District apartment and if there is no change to the RRSP division made under the September 2013 order.
- [46] Ms. K agrees that Mr. K is entitled to \$500 for the Co-Op share. Ms. K seeks one-half of the settlement Mr. K received from ICBC for the value of the totalled family car - \$1,755. Mr. K agrees to this amount.
- [47] Ms. K will be applying to equalize the parties' CPP contributions to January 31, 2013.
- [48] With respect to household furnishings, Ms. K says that Mr. K is free to attend her home and remove furnishings up to \$1,390, excluding the children's furnishings.
- [49] In the alternative, Ms. K seeks reapportionment under s. 65 of the FRA.
- [50] Mr. K agrees that the RRSP fund should be divided equally. However, he takes the position that the amount to be divided should be \$4,230. This is the amount at the time of separation and the monies he contributed to the RRSP were post-separation and while he paid support. The value at the triggering event was \$25,000. Any increase in the value of the RRSP after separation should be reapportioned to him under s. 65 of the FRA. He wants this amount back less \$4500.
- [51] Mr. K does not agree with Ms. K's proposal of returning to the former family home to collect items as after he was ordered to vacate the family home he had to purchase additional furnishings to set up a separate household.
- [52] Mr. K also seeks recognition of the car repair expenses he incurred.
- [53] Mr. K disputes that his interest in the Moscow apartment Orenburgskaya is a family asset as it was never used for a family purpose. He claims an equal interest in Ms. K's interest in her Moscow District apartment as it was used for a family purpose.
- [54] With respect to Ms. K's interest in the Moscow District apartment, the parties lived in it for about three years. For the last two years there, Ms. K was the owner as she had been gifted the apartment. The family also stayed in the apartment on a visit to Russia in 2003. There is also some evidence of rental monies from the apartment being used to pay for travel expenses for the family to fly to Russia for visits. The FRA s. 58 defines a family asset as "Property owned by one or both spouses and ordinarily used by a spouse or a minor child of

either spouse for a family purpose " In my view, Ms. K's interest is a family asset. However, the question that arises is that of reapportionment under s. 65 of the FRA. I address this below.

[55] With respect to Mr. K's interest in his Moscow apartment Orenburgskaya, I am of the view that the apartment is not a family asset as it was never used for a family purpose.

[56] In terms of the RRSPs, I question whether the amount over the \$4,230 is a family asset even though the triggering event arose only at the time of the divorce. The additional amounts could not be said to have been for a family purpose given the breakdown in the relationship. In any event, if the monies were a family asset, then consideration under s. 65 of the FRA is required.

[57] In terms of Mr. K's condominium, it was never used for a family purpose and I find that it was not a family asset.

[58] In terms of car repair costs sought by Mr. K, the evidence is thin and I am not persuaded that such costs require consideration in division.

1. Reapportionment

[59] Section 65 of the FRA operates in circumstances where the division of property under that act would be unfair. The factors that apply to the question of unfairness are specified as follows:

- (a) the duration of the marriage;
- (b) the duration of the period which the spouses have lived separate and apart;
- (c) the date when property was acquired or disposed of;
- (d) the extent to which property was acquired by one spouse through inheritance or gift;
- (e) the needs of each spouse to become or remain economically independent and self-sufficient; or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse.

[60] The relationship was about fifteen years to separation. To the divorce the relationship was seventeen years. Either way the relationship can be described as a substantial period. Ms. K was the primary caregiver for the children and Mr. K was the income earner for the family. The Moscow District apartment interest of Ms. K was obtained as a gift. One-half of the apartment interest is in their son I.N.'s name, as another property in his name was sold to contribute to the family's move to Canada.

- [61] Ms. K needs to complete her bookkeeping program and to secure employment in her chosen area of work. Her age is a factor which affects her prospects at achieving economic independence and self-sufficiency.
- [62] Taking all of this into account, it would be unfair to simply grant Mr. K a one-half interest in Ms. K's one-half interest in the Moscow District apartment in the face of it having been a gift to Ms. K. I note as well that Mr. K has a 1/3 interest in a Moscow apartment which on the available evidence has a greater value than Ms. K's interest. In my view, Ms. K should retain her interest in her apartment.
- [63] Also, Ms. K is to be entitled to one-half the value of the RRSP as of the date of the separation; that value being \$4,230. Even if the funds invested up to the trigger date were considered a family asset, I would reapportion that increment post-separation to Mr. K. As a result, Ms. K is to repay \$10,572 to Mr. K. That amount is to be repaid over six years at \$147/month.
- [64] In summary, the division of assets will be as follows:
- (a) Ms. K shall retain her one-half interest in the Moscow District apartment.
 - (b) Ms. K will pay to Mr. K \$500 as a reflection of his entitlement to the Co-op.
 - (c) Ms. K is to repay Mr. K \$10,572 of the RRSP which was rolled over into her account at \$147/month over the next six years.
 - (d) Ms. K will pay to Mr. K \$1,390 as a reflection of his entitlement to household items which were kept by Ms. K when Mr. K was ordered to vacate the family home.
 - (e) Mr. K is to pay Ms. K \$1,755 as her share of the proceeds from the ICBC settlement for the family car.
 - (f) the parties are to equalize their CPP contributions.
- [65] The setting off of (b), (d), and (e) above results in a net amount of \$135 being payable by Ms. K to Mr. K. VI. Spousal Support/Child Support and Income of the parties:
- [66] Ms. K's claim for spousal support is made on the basis of both compensatory and non-compensatory entitlement. She seeks support under the Divorce Act and the FLA. I will determine entitlement, then income determination and then associated issue in determining quantum if necessary.
1. Entitlement
- [67] The starting point is to decide entitlement. In s. 15(2) of the Divorce Act, the court is to take into consideration the following:
- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and

(c) any order, agreement or arrangement relating to support of either spouse.

[68] In considering the substantial length of the marriage; Ms. K's role as the primary caregiver for the children; Mr. K's ability to further his career in IT through Ms. K caring for the children and agreeing to move to Canada; Mr. K's role as the primary income earner for the family; and Ms. K's lack of language skills (despite her degree), qualifications and work experience in Canada, I find that entitlement has been established on a compensatory and needs bases.

2. Income Determination

[69] I now turn to the determination of income of the parties.

[70] While the family was in Russia, Ms. K held administrative or clerical jobs throughout the marriage. However, when the family immigrated to Canada, Ms. K was the primary caregiver of the children and was not employed. After separation she looked for work as a receptionist, office assistant, bank teller, and accounting clerk, and customer service rep. She was not successful. Since separation she has enrolled at Langara College in a bookkeeping program and is now one course short of completing it. She chose this area as she had been a book keeper in Russia. Her last course starts in January 2016. In July 2014 she found work as a part time cashier with a retail company. She also works part time as a retail sales associate.

[71] Ms. K's reported income is as follows: Year Amount 2008 \$1,200 2009 \$1,200 2010 \$1,200 2011 \$1,200 2012 \$3,154 (includes support) 2013 \$23,132 (all support) 2014 \$26,517 (includes support \$13,800 and \$8,330 RRSP withdrawal) 2015 \$14,000

[72] Mr. K argues that rental income from the Moscow District Apartment, which Ms. K has an interest in, should be imputed to her. He argues that rent for a comparable premises is about \$650 per month. Ms. K in affidavits deposed that the apartment had not been rented out but at trial she agreed that the apartment has been rented out since 2013 but that she did not know what rent was received and that it is taken by her brother. Later in her testimony she said that the apartment was rented out for 12,000 rubles/month.

[73] Ms. K has an entitlement to the rent. There was no acceptable reason why she would have not known of the rent or the amount or why she would not be entitled to receive the money. In my view, she should be imputed with rental income after expenses of \$300/month to reflect her one-half interest and that this should be included from the date of separation.

[74] Mr. K also argues that Ms. K is capable of earning much more. He resents Ms. K not having pursued opportunities as a Russian translator in Canada given her degree. He argues that had she sought out certification as a translator in Canada following separation she would now be earning more. He argued that her earnings could be in the range of \$50,000 to \$60,000. He points to the testimony of a former co-worker, Mr. Kim, who spoke of the ease he had in finding work translating English into Korean and vice versa; and that such work could be done at home. He also resents the failure of Ms. K to find employment earlier than

after three years of separation and only at a part-time level. Mr. K's harsh perception of Ms. K is that her efforts are only the bare minimum and only to show the court that she has made some effort.

- [75] Mr. K submits that these aspects should be factored into her income calculation.
- [76] In my view, Ms. K's failure to find full-time remunerative employment until 2014 does not seem reasonable. I have taken into consideration that she did not have work experience in Canada, she was a full-time homemaker for some years prior to separation, and she had to deal with the difficulties of a marriage breakdown. At the same time, I am not persuaded by the evidence that taking on the Russian/English translation work is as simple for Ms. K as stated by Mr. K. I conclude that she should be imputed with modest income starting in 2013. It is reasonable to impute an income to her of \$12,000/year in 2013; \$18,000 in 2014 and 2015; \$24,000 in 2016; and \$30,000 in 2017. These amounts include rental income from her interest in the Moscow District apartment.
- [77] Mr. K is a programmer. His entire work life in Canada has been in the IT development area and he has been able to maintain regular employment except for short periods. He was the income earner for the family.
- [78] Mr. K's reported income is as follows: Year Amount 2008 \$116,329 2009 \$108,954 2010 \$110,358 2011 \$127,184 2012 \$121,634 2013 \$119,716 2014 \$98,895 2015 \$90,950
- [79] In my view, for present support a reasonable level of income for Mr. K is \$90,950. This was agreed to by Ms. K through counsel as acceptable.
- [80] The above income levels are what I use for support determinations.
- [81] I turn to child support first.

3. Child Support

- [82] As mentioned earlier, the original arrangement for the children was that their eldest son would reside primarily with Ms. K and the younger two children would reside equally with each parent. As of August 2013, this changed in that their son I.K. has chosen to live with Ms. K. Mr. K accepts that I.K. prefers to live with his mother and Mr. K does not seek to upset this but he is naturally hurt by the child's decision. Mr. K says that the son stated that he returned to live with his mother because the mother had more money. My sense is that the more likely reason is Mr. K's darker mood due to the breakdown in the family.
- [83] The parenting arrangement since August 2013 for child support determination is that the son I.K. lives full time with Ms. K and the daughter K.K. resides equally with the parents.
- [84] Considerable time at trial was taken up by tax deductions for Mr. K. CRA had refused to allow him to claim his daughter as a dependent. Counsel for Ms. K agreed to provide Mr. K a letter for 2014 which would allow Mr. K to meet CRA's requirement for deductibility.

- [85] A key focus of Mr. K has been on the need to reflect the factors set out under s. 9 of the Child Support Guidelines.
- [86] Section 9 reads as follows: Shared custody
9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account
- (a) the amounts set out in the applicable tables for each of the spouses;
 - (b) the increased costs of shared custody arrangements; and
 - (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.
- [87] Under the aforementioned section, child support determination requires the three specified factors to be taken into account. There is no specific formula to be used in this exercise of judicial discretion.
- [88] Set off is the starting point and not the presumptive value. Full recognition is also required of the potential of increased cost to the parents under a shared parenting regime and the condition, means, needs and other circumstances of each parent and child for whom support is sought. Part of the inquiry is an examination of the budgets and actual expenditures of both parents to determine whether shared parenting has, in effect, resulted in higher costs globally. Increased costs would, in many circumstances, result from duplication because the child is effectively being given two homes. This then leads to an inquiry to determine what, if any, additional costs have been incurred by the payor as a result of the parenting arrangement.
- [89] The factors the court may consider under s. 9(c) include the actual spending patterns of the parents, the ability of each parent to bear the increased costs of shared parenting and the standard of living in each household: *Contino v. Leonelli-Contino*, 2005 SCC 63 at para. 69.
- [90] It must also be recognized that increased time spent with a child does not necessarily entail increased spending on the child. Further, sharing parenting time does not translate into a dollar for dollar reduction in expenditures for the other.
- [91] In *Contino* the court stated at para. 51 that the objectives of the Child Support Guidelines is, to the extent possible, to avoid great disparities between households and that "[a]s far as possible, the child should not suffer a noticeable decline in his or her standard of living". In this case, the standards of living are relatively the same in the two homes.
- [92] Ms. K submits that in this case, the only adjustment should be set off.
- [93] Mr. K says that he had to set up his own residence and incur expenses such as beds, furnishings, and clothing to accommodate his kids because of his parenting obligations.

- [94] In terms of setoff, as per DivorceMate calculations (subject to check by the parties), the setoff calculation would be: Year OK Income VK Income Setoff Amounts 2013 12,000 119,716 2,130 2,206 2014 18,000 98,895 1,752 1,421 2015 18,000 90,950 1,206 2016 24,000 90,950 1,152
- [95] I now turn to consider the question of increased costs of shared custody under s. 9 of the Child Support Guidelines.
- [96] Mr. K argues that he has incurred additional costs. He points to the fact that he was ordered to vacate the family home and had to find a residence which would accommodate not only himself but the two younger children. This included new beds, computers, clothing, and moving expenses. He says this amounted to \$12,000 that he borrowed to pay his credit card. A review of the credit card statement where he identified his costs related to these expenses only totalled \$7,868.02.
- [97] In this case, the expenses for moving out and costs to set up a residence for the children are considerations. There is, however, a lack of specifics for the items comprising the \$12,000 and even the \$7,868.02. I accept that there has been additional costs incurred, my view a reasonable level in this case for the areas identified by Mr. K is \$4,000.
- [98] I now turn to the conditions, means, needs and other circumstances.
- [99] In this regard, Mr. K has substantially greater income than Ms. K and Mr. K's expenses do not seem to be out of balance in respect to departing from the set off approach, except for recovery of his setup costs. I note that I.K. resides full-time with Ms. K. Mr. K also points to the fact that his mother presently resides with him which lead to further expenses. However, she has a pension and can contribute. I do not find the costs related to his mother as affecting the analysis here.
- [100] One benefit identified for Mr. K was that during the trial assistance was provided to Mr. K to enable him to obtain a tax deduction from CRA for his daughter K.K. This was enabled by Ms. K agreeing to provide the necessary letter to satisfy CRA. Mr. K will now be able to obtain a refund of tax as well as have deductions prospectively. I also note the consent order arrived during trial, where Ms. K has agreed to pay one-half of the agreed upon activities for K.K. as well as 40% of I.K.'s lifeguarding course which is higher if based on proportional income. Another aspect that factors into this is that there is some evidence that Mr. K's condominium unit has increased significantly in value if the property tax assessment values are considered.
- [101] Given the foregoing, it is my view that the set-off amount is appropriate less the amount for set up costs of \$4,000 which are to be amortized over 48 months; which equals to a \$83/month credit to Mr. K as against his child support payments.

4. Section 7 Expenses

- [102] The Consent Order sets out the eligible expenses and how they are to be shared.

[103] Ms. K also seeks the following term: Section 7 expenses - in addition to the Consent order made June 26, 2015 with respect to the children's special expenses, the children's expenses listed in section 7(1)(b), (c), (d), (e) (medical insurance premiums attributed to the children, medical/dental expenses in excess of the insurance coverage, extraordinary school expenses, such as graduation costs and school trips more than \$100 each, post-secondary expenses) of the Child Support Guidelines to be shared 50/50.

[104] There was little debate on this issue. The term is approved; however, the parties are to consult on these expenses in advance before such expenditures are made.

5. Spousal Support

[105] Using the above determined annual incomes for the partners and the parenting arrangements, the Spousal Support Advisory Guidelines (SSAG) produce the following output (subject to check by the parties):

Year	Low	Mid	High
2013 Jan-Jul	1,695	1,566	2,115
2013 Aug-Dec	2,009	2,565	2,482
2014 Jan-June	709	1,124	1,086
2014 Jul-Dec	1,433	1,445	1,760
2015	843	1,137	1,423
2016	785	1,098	1,428

[106] The SSAG output from DivorceMate indicates that the support at the above ranges for a indefinite (unspecified) duration, subject to variation and possibly review, with a minimum duration of 7 years and a maximum duration of 14 years from the date of separation. In my view, spousal support is to be in effect for 14 years from the date of separation.

[107] Taking into consideration my determination of the division of Ms. K's Moscow apartment, some lower level in the range of spousal support is warranted. In this regard, I find a reasonable level of monthly support taking into consideration the factors under the FRA as follows (before the Children Support Guidelines s. 9 adjustment) is 2013: \$1900 (January-July), \$1766 (August-December); 2014: \$910 (January-June), \$1325 (July-December); 2015: \$1050; and 2016: \$1098.

6. Retroactivity:

[108] Based on my findings on child and spousal support, the amount of a retroactive adjustment can be calculated. The parties are to provide their calculations and submissions as to how the adjustment should be reflected for the court determination.

[109] The parenting plan is as set out in para. 38.

[110] The family assets are divided as set out in paras. 64 and 65.

[111] Child support (subject to check by the parties) is to be paid as set out in para. 94 and para. 101.

[112] Ms. K is entitled to spousal support. Spousal support (subject to check by the parties) is to be paid as set out in para.107.

[113] The parties are to calculate any retroactive adjustments for child and spousal support and provide submissions to the court for determination. "The Honourable Mr. Justice Masuhara"

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