
CANADA / JUDGMENT

P.G.E. v. H.R.C.

2016 BCSC 1316

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 1316 P.G.E. v. H.R.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.G.E. v. H.R.C.,

2016 BCSC 1316

Date: 20160714

Docket: E122352

Registry: Vancouver

Between:

P.G.E.

Claimant

And

H.R.C. and T.C.

Respondents

Before: The Honourable Madam Justice Choi

Reasons for Judgment

Counsel for the Claimant:

C. Linde

Appearing on her own behalf:

H.R.C.

Place and Date of Trial:

Vancouver, B.C.

October 5-9, 2015

October 13-16 & 19, 2015

December 14-17, 2015

January 11-15 & 19, 2016

Place and Date of Judgment:

Vancouver, B.C.

July 14, 2016

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Introduction

- [1] This is a family law matter respecting the parenting arrangements for two children, aged 4 and 7, arising from a two-year cohabitation.

- [2] Until the closing argument on day 20 of the trial, the claimant, P.G.E. sought sole custody, joint guardianship and primary residence of the children pursuant to the Family Relations Act, R.S.B.C. 1996, c. 128, the applicable legislation at the time he filed pleadings.
- [3] On closing argument, P.G.E. sought joint guardianship under the Family Law Act, S.B.C. 2011, c. 25 [FLA], equal parenting time and final decision-making authority.
- [4] P.G.E.'s case centered on the notion that the respondent, H.R.C., saw the world through a "cracked lens". This, he argued, is irremediable due to her tragic upbringing that included sexual and emotional abuse, and her suicidal attempts and ideation. His argument on closing continued to make those submissions, despite the change in position.
- [5] H.R.C.'s Counterclaim sought sole guardianship pursuant to the FLA. Her position throughout the trial, where she represented herself, adopted Dr. England's recommendations in the section 211 report. The recommendations were for the children to be primarily parented by H.R.C. and, in a few years, parented by both parties under an equal parenting plan. During closing submissions, H.R.C. argued that she have sole "custody and guardianship".
- [6] H.R.C. also seeks child support and section 7 expenses.

Background

- [7] The parties cohabited from January 2010 when P.G.E. was 36 years old and H.R.C. 30 years old, to January 2012. H.R.C. moved into P.G.E.'s rental accommodation with her one month old son, L., from a previous relationship at the commencement of the relationship. The parties' daughter, M., was born in January 2011. When the parties separated, H.R.C. and the two children moved out.
- [8] L.'s biological father is T.L., who was added as a third party respondent. He was not served with the pleadings, however, and has had no involvement in these proceedings.
- [9] P.G.E. has stood in the place of a parent for L.
- [10] During the relationship, the parties resided at a property in Delta and 127B Street in Surrey.
- [11] P.G.E. lives at 127B Street in Surrey, where he has resided for six years. This residence is a two bedroom basement suite. The children share a bedroom and each sleep in their own bed.
- [12] H.R.C. moved out of the Surrey property with the Children into the home of a friend for a few months. After that, H.R.C. moved to Trites Road, a three bedroom townhouse in the Steveston area of Richmond, where she still resides.
- [13] Neither party has any plans to move from their current residence.

- [14] P.G.E. is an electrician holding the Canadian standard interprovincial red seal ticket. He also is a field safety representative, responsible for writing up permits for his company, allowing his company to be licensed, bonded and insured. He has held a variety of different jobs since he was 19 years old: taxi driver, taxi dispatcher, limo driver, and was self-employed as a robotics fabricator. His 2013 tax return reported a line 150 income of \$49,909.36 and in 2014, he reported \$27,991.30.
- [15] H.R.C. has limited employment history. She worked at Starbucks. She worked at Shaw Communications for approximately one year, earning \$16.37 plus commissions. She was terminated and did not continue looking for alternate employment as the child care was too expensive and the children found it too difficult, particularly given the shift work. She is currently on social assistance.
- [16] After the parties' separation, H.R.C. prevented the children from seeing P.G.E. for a period of five months. P.G.E. commenced his claim in this Court on August 1, 2012. H.R.C. filed a response on September 20, 2012 and counterclaim on November 12, 2013. The parties attended a judicial case conference (JCC) on March 24, 2013, and both parties had counsel. There were several consent orders arising from the JCC including an agreement to retain Dr. Rebecca England to prepare a section 15 (now S. 211) report with P.G.E. paying for the cost of such report, initially.
- [17] The parenting schedule to date had been Tuesday morning until Wednesday morning, and Saturday to Sunday with P.G.E. On October 11, 2013, H.R.C. unilaterally changed this to Friday to Sunday with P.G.E. She cited the distance from P.G.E.'s home to the children's school on weekdays as being problematic.

P.G.E.'s Position

- [18] P.G.E.'s position can best be summarized from portions of his closing and opening arguments:

[Opening]

2. The theory of the Claimant father's case is that the very tragic infancy, childhood, teenage and adult years of the Respondent mother, have shaped a fixed personality in her. In certain disorders the personality is immutable, incapable of improvement.
5. The particular personality instability of the mother - however it may be labelled - is one that can convincingly portray the mother in all the best possible lights. By this personality mechanism, the mother has pulled the wool over the eyes of the psychologist who prepared the Section 211 recommending the children reside primarily with her. The degree of deception is extraordinary.
33. The Respondent mother had a tragic child and adulthood.

37. Repeatedly sexual abused and raped by tenant of mother, or land lord or neighbor that was babysitting between ages 3 to 8, and then again in her teens.
38. Mother told her to get over it, she needed the tenants, and the baby sitter.
39. Extreme suicidal ideation around 11 or 12 and continuing up until recently if not still.
40. Diagnosed with serious Post Traumatic Stress Disorder in her teens. Still on medication for PTSD.
41. Admits to attempting suicide three times, now saying one was for real and the following two for attention.
43. The lasting scars from all those devastating years have left her mental and emotional processes severally dysfunctional.
44. One significant result, that will be attested to by the Claimant's witnesses, is that it is very difficult if not impossible to really know the truth of what she says. It will be alleged this is because of her changing stories and claims combined with a near compulsion to exaggerate and make every issue high drama. (The use of phrase "high drama" is the layperson's catchall to which mental health professionals ascribe names that will be mentioned in the evidence[]).
45. Her two children are the only persons she feels love her. She feels they are the only unconditional love she has ever had.
46. It is the position of the father that the mother badly needs the children to satisfy her own unmet emotional and psychological needs. The children are the balm to keep her functioning.

[Closing]

Bi polar II and borderline personality disorder.

94. There is sufficient evidence before the court to clearly establish the truly significant unresolved issue of whether or not the Respondent did or still does suffer from being either bi-polar and/ or borderline.
- [19] On the basis of this hypothesis, most of the trial centered around H.R.C.'s mental health, sexual abuse as a child, and suicidal ideations prior to the parties' relationship.
- [20] Aside from P.G.E.'s concerns with H.R.C.'s mental health, the worst he or his witnesses could allege with respect to her parenting was that the children seem hungry when they come to his house.

H.R.C.'s Position

[21] H.R.C. argued that her difficulties were firmly in the past, prior to the parties' relationship, and before she had any children. She claimed that P.G.E. was an angry man who had a vendetta against her and used the legal process to further that vendetta.

Issues

1. What parenting arrangement is in the best interests of the children?
2. How much child support ought to be paid?

Dr. England

[22] Dr. Rebecca England prepared a s. 211 Psychological Evaluation pursuant to s. 211 of the FLA in this matter dated December 9, 2013. Dr. England is a psychologist and since 1997 has been partner at Ward St. Clere Psychological Services that provides court ordered assessment, custody and access evaluations, and parenting capacity evaluations. She has a Doctorate of Philosophy from the Clinical Psychology Programme at Simon Fraser University. That program is accredited by the Canadian and American Psychological Associations. The report was prepared to recommend a parenting plan for the parties. Dr. England interviewed P.G.E. and H.R.C., observed each of them interacting with the children, and conducted psychological testing on both parties. Additionally, she contacted collateral references suggested by each of the parties.

[23] P.G.E. described H.R.C. as having:

"the absolute need to create drama" and that she "had a diagnosis of Bipolar II" but "it might be a misdiagnosis of borderline disorder" saying that if she has this disorder then the children are "not safe with her".

[24] P.G.E. expressed concerns regarding H.R.C.'s parenting. He stated "her extreme lack of stability" is a central concern, saying "she was very emotionally abuse to me". When asked to provide his best example of this, he said "she was withholding sex all the time".

[25] Dr. England conducted a number of personality tests on each party.

[26] P.G.E.'s tests showed him to be more stressed than 90% of others involved in custody litigation and that he had narcissistic tendencies.

[27] H.R.C.'s test results showed a strong tendency to identify with the traditional female role. Dr. England reported that:

[H.R.C.] is an individual with a significant abuse history and is someone who has had to direct a considerable amount of time and energy into dealing with the various effects from this. She presents as someone who is quite emotionally reactive and somewhat dependent. She is likely to over-respond to certain situations as her emotional reactions outweigh intellectual processing

during times of stress. [P.G.E.]'s concerns regarding [H.R.C.]'s mental health issues impacting parents are not supported in that [H.R.C.] has a demonstrated history of accessing appropriate resources to manage her mental health, and throughout these challenges, the children's needs appear to have been met while in her care.

- [28] Dr. England described P.G.E. as harbouring resentment toward H.R.C. and that this was retaliatory and vindictive. He appeared to have little insight into the impact this may have on the parenting dispute.
- [29] She recommended the children be primarily parented by H.R.C. and that P.G.E. continue to have two overnights with the children per week.
- [30] Dr. England recommended an increase in parenting time when M. is four in 2016, and that in 2018 when M. is six, the parties adopt an equal parenting regime. Given that the children would be parented primarily by H.R.C., she recommended H.R.C. have final decision-making authority when the parties are unable to agree on any issue of significance.
- [31] After Dr. England's report was sent to the parties, P.G.E. wrote a letter to Dr. England dated December 12, 2013 asking her to amend her report. In it, he referred to H.R.C. as a "psychopath" and that the children are "suffering from neglect and emotional abuse right now. I'm not being dramatic. This is a fact" [emphasis in original].
- [32] H.R.C.'s diaries were produced to Dr. England during the trial to determine whether her recommendations differed after viewing them. The diaries were written prior to the parties' relationship and before the birth of the children during a time when H.R.C. had expressed suicidal ideation. After having reviewed H.R.C.'s diaries, Dr. England continued to recommend the parenting plan set out in her report.
- [33] P.G.E.'s counsel challenged Dr. England's qualifications to provide expert testimony to the court, despite her appointment having arisen by way of a consent order. Dr. England had also been previously retained by P.G.E.'s counsel on behalf of other clients to prepare s. 211 or s. 15 reports. Counsel also alleged a reasonable apprehension of bias arguing that Dr. England was an advocate for H.R.C.
- [34] The test for the admissibility of expert evidence was set out recently by the Supreme Court of Canada in *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23. At paras. 23 and 24, the Court adopted the test in *R. v. Abbey*, 2009 ONCA 624 and held that the court must determine the threshold admissibility of the expert evidence set out in *R. v. Mohan*, [1994] 2 S.C.R. 9: relevance, necessity, absence of an exclusionary rule, and a properly qualified expert.
- [35] With respect to a reasonable apprehension of bias, the Court held at para. 32:

Underlying the various formulations of the duty are three related concepts: impartiality, independence and absence of bias. The expert's opinion must be impartial in the sense that it reflects an objective assessment of the questions at hand. It must be independent in the sense

that it is the product of the expert's independent judgment, uninfluenced by who has retained him or her or the outcome of the litigation. It must be unbiased in the sense that it does not unfairly favour one party's position over another. The acid test is whether the expert's opinion would not change regardless of which party retained him or her.

[36] I accept that Dr. England is qualified to provide expert testimony on the parenting arrangements in this case and that her report and testimony were free from bias for the following reasons:

1. Dr. England has been qualified as an expert in this court on numerous occasions with respect to the preparation of s. 211 reports;
2. Dr. England's appointment to prepare this s. 211 report was made by way of a consent order at the JCC;
3. Counsel for P.G.E. had retained her previously for other cases to prepare s. 211 reports;
4. Her report was a product of her views after conducting interviews and psychological testing with the parties, observing the parties with the children and interviewing collateral witnesses; and
5. Dr. England's retainer was paid by P.G.E.

[37] P.G.E. tendered a report by Dr. Krywaniuk in critique of Dr. England's s. 211 report. Dr. Krywaniuk did not have the opportunity to see P.G.E. or H.R.C. yet the report consistently developed hypotheses most positive to P.G.E. where Dr. England expressed concerns, and more problematic for H.R.C. where Dr. England expressed no such concerns. Dr. Krywaniuk's report appears to be an assistant for the litigator and not for the court.

[38] A report critiquing a s. 211 report prepared by another expert may not be relevant and be thus inadmissible: *Hejzlar v. Mitchell-Hejzlar*, 2010 BCSC 1139. In *Hejzlar* at para. 11, the court noted that when critiquing a s. 211 report:

[11] A critic is very limited in his or her analysis. Section 11.36 of the Code of Conduct of the B.C. College of Psychologists dictates what psychologists can do when they are reviewing the report of another psychologist: (a) they must limit comments to methods and procedures; (b) they must not state any conclusions unless they have done their own individual assessments; and (c) they must restrict themselves to comments as to their sufficiency and accuracy.

[39] I do not accept Dr. Krywaniuk's critique of Dr. England's report because the revised conclusions it inappropriately makes in the absence of Dr. Krywaniuk's own assessment of the parties, and the bias it evidences make it unreliable.

Credibility

[40] A court may accept some or all of a witness' testimony.

- [41] H.R.C.'s evidence warrants some caution as she admitted to exaggerating and being dishonest with P.G.E.'s parents in the past. However, for the reasons below, I prefer H.R.C.'s evidence with respect to describing the parties' relationship, her parenting, and her mental health.
- [42] I had the opportunity to observe H.R.C. and found her to be organized, and generally polite and calm, particularly in the face of the allegations made and in having to self-represent.
- [43] I find that H.R.C. has worked to move beyond the difficulties she encountered as a child and that the children have not been adversely affected by any of her past. She testified as to being proactive about seeing a psychiatrist in the past. Dr. England's testimony about having communicated with H.R.C.'s psychiatrist affirms that she was under this care. H.R.C. also testified she was currently under a psychiatrist's care. The parties adduced no evidence that challenged this, and I have no other reason to disbelieve her.
- [44] I prefer the evidence of H.R.C. and several of H.R.C.'s witnesses in describing H.R.C.'s parenting to P.G.E.'s evidence and his witnesses' description of H.R.C.'s current parenting. His witnesses had limited or no opportunity to observe H.R.C.'s parenting since the parties' separation. I accept the evidence of H.R.C.'s friend, Ms. M.G., that H.R.C. has "made tremendous growth as a person, as a parent, in the last few years".
- [45] The witness, Ms. A.H., is the mother of two children who are also aged 4 and 7. Ms. A.H.'s child is in the same class as L. and she volunteers in the classroom once a week. She had seen H.R.C. twice daily during the school year for two years and had been to H.R.C.'s home. Ms. A.H. described the parties' children as well mannered, well looked after and supported by H.R.C. Ms. A.H. stated that H.R.C. had "a lovely home, a happy home, and [her] children are delightful and well adjusted." She testified that the "children have a beautiful sparkle because they have [H.R.C.] as a mom". She described H.R.C. as an "outstanding mother" who puts the children above herself. She had no motivation to lie. She and H.R.C. did not socialize and were not friends beyond both being mothers of children at the same school. She had no concerns for H.R.C.'s mental health and was happy for her children to play at H.R.C.'s home.
- [46] The witness, Ms. S.M., had known P.G.E. and his family for 24 years. She had known many of P.G.E.'s previous girlfriends who had all been described by P.G.E. as "crazy". She described an argument that she had with P.G.E., who had been a good friend, about 10 days after the separation whereby he "tried to bully me into taking his opinion that [H.R.C. was] crazy quite stridently bullying with many text messages and came by my house". He said "he was going to destroy you and crush you and ensure that you never saw your children ever again if basically the courts didn't go his way, he would take matters into his own hands".
- [47] I do not find the evidence of P.G.E.'s witnesses helpful regarding H.R.C.'s current parenting abilities. Neither of his parents, whom he called, have been to H.R.C.'s home. Their evidence regarding her parenting is based on their limited knowledge of her parenting after separation. I accept H.R.C.'s witness, Ms. M.G.'s evidence that since separation, H.R.C. has

come a long way. Thus, I prefer more recent evidence of her parenting. Both his sister and his bookkeeper confirmed on cross-examination that they are not able to speak to H.R.C.'s current parenting. Finally, his friend, Ms. A.S., stated that she had not seen H.R.C. since before the separation.

Statutory Scheme

Family Law Act - s. 37

[48] As the claim was commenced under the FRA which has since been repealed, the FLA applies. As the court states in *J.D.C. v. K.L.M.F.C.*, 2014 BCSC 2182 at paras. 230-232:

[230] The claimant's counsel argued that the parenting issues should be decided under the FRA and not the FLA. The respondent's counsel contends that the FRA is the applicable statute governing the parenting aspects of this proceeding.

[231] The transition provisions of the FLA include:

251(1) If an agreement or order, made before the coming into force of this section, provides a party with

- (a) custody or guardianship of a child, the party is a guardian of the child under this Act and has parental responsibilities and parenting time with respect to the child under this Act, or
 - (b) access to, but not custody or guardianship of, a child, the party has contact with the child under this Act.
- (2) For the purposes of subsection (1), a party's parental responsibilities, parenting time or contact with a child under this Act are as described in the agreement or order respecting custody, guardianship and access

[232] The effect of s. 4 of the Interpretation Act, R.S.B.C. 1996, c. 28 and s. 251 of the FLA is that cases started under the FRA are to be determined under the FLA except as provided for in s. 252.

[49] As this claim properly falls to be adjudicated under the FLA, s. 37 of the FLA applies:

Best interests of child

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
 - (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;

- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor. [emphasis added]
- [50] Section 41 sets out parental responsibilities (as defined by s. 1) and s. 42 defines parenting time.
- [51] Section 40(4) mandates that "no particular arrangement is presumed to be in the best interests of the child[ren]".

Analysis

Parenting Time and the s. 37 Factors

- [52] I have no doubt of P.G.E.'s love and care for the children and that he is well supported by his family and friends. With the assistance of his parents who both attended each day of the trial and are obviously supportive, loving grandparents, the children are well cared for with P.G.E.
- [53] The children are happy and generally healthy. H.R.C. has been the children's primary caregiver since their births. They have a strong bond with and a close attachment to her.

- [54] The children need stability and consistent care. H.R.C.'s evidence is that sometimes the children would return to her home not fed properly, sleep-deprived, and once they were sunburnt. After being with P.G.E., L. returned home to her once after his face had been bitten by a dog. L. is allergic to dogs.
- [55] Both parties have the ability to care for the children, despite their differing parenting styles and their high conflict relationship. The parties, at times, communicate well with each other regarding the children and they are both willing to work with a parenting coordinator.
- [56] In my view, while there is conflict between the parties, it is not so severe to bar either parent from guardianship or from participating in major decisions affecting the children.
- [57] The parties have differed greatly in their approach to some medical issues. Their disagreements have been a regular source of conflict. H.R.C. has initiated and attended the children's medical and dental appointments.
- [58] H.R.C. lives in a subsidized, three-bedroom townhouse within a short walk to the children's school in Steveston. The children will be entering kindergarten and grade three this September. P.G.E. lives in North Surrey, which is a long commute for children of this age on school days. He lives in a two bedroom basement suite where the children share a room.
- [59] H.R.C. has a home that is suitable for young children. She has been the primary caregiver since birth. In my view, given the history of their care, the proximity of the children's school, it would be in their best interests to remain primarily in H.R.C.'s care given their ages and that the parties do not live close to one another. It is not in the children's best interests to commute to P.G.E.'s home in North Surrey from their current school in Steveston.
- [60] There was virtually no evidence of how P.G.E. planned to care for the children while they attended school, either at their current school or a different school, and work at his job. The specifics of his current job and schedule were not clear except that he anticipated being flexible due to being self-employed.
- [61] I am in general agreement with Dr. England's conclusions and recommendations. Joint guardianship of L. and M. to both parents is in the children's best interests, such that the children reside primarily with H.R.C. Each parent has an obligation to consult with the other parent relating to the children's education, medical and dental. In the event the parties cannot agree, H.R.C. shall have final decision making authority. P.G.E. is at liberty to seek the assistance of the parenting coordinator or bring an application to the court.
- [62] I order joint guardianship on the Joyce model. Both parents will exercise all parental responsibilities for the children, with final decision-making authority to H.R.C. in the event of a dispute. For greater clarity:
1. Both parties are the joint guardians for the estate of the children;

2. If either parent dies, the surviving guardian will be the only guardian of the children;
 3. During either guardian's parenting time, that guardian will exercise the parenting responsibilities and day to day decisions provided that the other guardian is advised or consulted on matters of a significant nature.
 4. Each guardian is obligated to discuss significant decisions with the other and attempt to reach an agreement.
 5. In the event of a dispute, H.R.C. will make the decision and P.G.E. will have the right to apply for directions pursuant to s. 49 of the FLA.
- [63] Parenting time will be on the following schedule: Sundays at 5pm to Friday drop offs at school with H.R.C., P.G.E. to have Fridays after school until Sundays at 5pm. H.R.C. will pick up the children from P.G.E.'s home on Sundays and he will pick up the children from school on Fridays. The parties are at liberty to arrange other driving if they can do so. School holidays will be shared as follows:
- Summer holidays for 2016: P.G.E. is to have the children for a four day period of time, followed by a 7 day period with H.R.C., and this pattern is to be repeated for the remainder of the summer. The other parent may have telephone or skype access daily.
 - Spring break and Christmas break shall be divided equally. In 2016, P.G.E. shall have the children from noon on 24th to the 25th at noon and H.R.C. on the 25th from noon to 26th at noon. In 2017 and following years, this schedule will be alternated between the parties.
 - Commencing the summer of 2017, parenting time will be equal. The parties are free to work out an alternative arrangement that provides equal time, however, in the absence of agreement, the children shall be with each parent on alternating weeks commencing July 2 with H.R.C. The changeover will be on Sundays at 5pm, unless otherwise agreed by the parties or ordered by the court. In 2018, P.G.E. will have summer vacation with the children commencing July 1 and in subsequent years, the parties shall alternate which parent starts summer vacation with the children. Summer vacation ends on the noon of each Labour Day, and the children must be returned to H.R.C. at this time if they are with P.G.E.
- [64] The parties are at liberty to agree on different dates for summer vacation, spring break and Christmas, either on their own or with a parenting coordinator. Failing this, either may make an application to the court.
- [65] The children shall be with P.G.E. on Father's Day and with H.R.C. on Mother's Day, both periods to be from 9am to 6pm.
- [66] I am not prepared to order equal parenting time because of the logistical issues given the distance from the party's respective homes and the children's school.

[67] Both parties seek a parenting coordinator. I order that a parenting coordinator be appointed. The costs of the parenting coordinator will be a s. 7 expense payable proportionate to each parties' income.

Child Support

[68] H.R.C.'s pleadings sought child support. Other than a vague closing submission that P.G.E.'s level of support payable may be low, no other submissions were made respecting support. Little evidence was adduced by either party.

[69] The JCC consent order of March 2013 ordered \$430 per month of child support based on a guideline income of \$27,300.

[70] I am not able to determine when P.G.E. began paying support and at what amount and based on what guideline income before the JCC, if any. H.R.C.'s tax returns for the years 2012 and 2014 reported income from support payments and yet there is no claim for spousal support and no evidence that spousal support was ever paid. Child support is not taxable to the recipient.

[71] H.R.C.'s 2014 Notice of Assessment listed her line 150 income as \$22,688, which includes the following:

\$15,128

employment income

\$2,400

universal child care benefit

\$5,160

taxable support payments

[72] Her 2013 Notice of assessment listed line 150 income of \$14,350, comprising of the following:

\$8,082

employment income

\$2,400

universal child care benefit

\$258

commissions

\$3,868

social assistance payments

[73] Her 2012 Notice of Assessment indicated line 150 of \$14,000, comprising of the following:

\$2,400

universal child care benefit

\$3,360

support payments

\$8,240

social assistance payments

[74] Her 2011 Notice of Assessment indicated line 150 income of \$2,301 of which \$2300 was from universal child care benefit and \$1 was from employment income.

P.G.E.'s Financial Disclosure

[75] At trial, P.G.E.'s financial disclosure was inadequate. The Trial Record filed September 21, 2015 included a Form 8 Financial Statement sworn December 20, 2012 (the "2012 Form 8"). On October 5, 2015, he filed another Form 8 sworn October 5, 2015 (the "2015 Form 8"). On the 2015 Form 8, P.G.E. indicated on the form that he was an employed at a business named "Mad Science and Electric" in Surrey, BC. Despite indicating on the form that he controlled a corporation, he did not mark the option to declare he was self-employed. Yet he testified at trial that he was self-employed at Mad Science and Electric and indicated this on the 2012 Form 8 as well. On the 2015 Form 8, he also indicated on the form that he supplied financial statements of the corporation's three most recent tax years and a statement of the breakdown of costs, but none were provided. Only Part 2 expenses and Part 3 Property were completed. His annual expenses are listed at \$41,676.

[76] On the 2012 Form 8, he listed his income for support purposes as \$27,345.81 from other income of which \$-6,641.19 was from self-employment income and \$33,987 from other employment income. The self-employment number was derived from a gross of \$7,107.43 and presumably \$13,748.62 in expenses in order to reach the negative \$6,641.19 number. The only documents attached to the 2012 Form 8 include a Notice of Assessment dated March 24, 2011 for the 2009 tax year and p. 4 of Schedule 1 showing a line 150 income of \$56,2344.82. There is a handwritten notation on that one page indicating "2010". No financial statements of the business or other tax returns are attached to either the 2015 Form 8 nor 2012 Form 8 as required by the Form 8 Financial Statement. No information pertaining to P.G.E.'s income was completed on the 2015 Form 8. This is despite his evidence that he began a self-employed business.

[77] I do not accept, in the dearth of evidence to support it, the \$-6,641.19 in net self-employment income. As a result, for the purposes of child support, I find P.G.E.'s 2012 income to be the sum of the gross self-employment income and the other employment income he listed on the 2012 Form 8 of \$33,987 for a total of \$41,094.43.

[78] On day 20 of the trial, P.G.E. produced his 2014 tax return showing a line 150 income as \$27,991.30 from employment income. None of the attachments to the tax return, such as a T4, were produced and the 2014 Notice of Assessment was not in evidence.

[79] P.G.E.'s tax returns shows the following income:

Year

Line 150 on tax return

2014

\$27,991.30

2013

\$49,909.36

[80] The evidence is insufficient to determine the sources of P.G.E.'s income. His only income tax statements filed in this matter are from 2013 and 2014, none of which were accompanied by T4 slips or indication of where his income was coming from.

[81] P.G.E. led evidence, including calling his bookkeeper, P.L.P., as a witness to testify that H.R.C. had not produced her tax returns. Ms. L.P. said she could not complete some of P.G.E.'s tax information without H.R.C.'s tax information, which P.G.E. complained had not been produced.

[82] P.G.E. sought orders at trial that H.R.C.'s tax returns be produced. He did not bring any pre-trial applications regarding her tax returns.

[83] P.G.E. led little or no evidence respecting his income, and when and what amount of child support he paid. H.R.C. vaguely submitted in her closing argument that the current level of child support might be low but made no other submission.

[84] P.G.E. argued that this Court ought to impute income to H.R.C. of \$40,000. This number is based on an estimate about what H.R.C. could earn if she worked at a full-time job. She agreed that she could theoretically earn that income. H.R.C. intends to seek work when M. commences kindergarten in September 2016. There was no evidence that H.R.C. could actually earn \$40,000 and I decline to impute that income to her.

[85] On the basis of the limited evidence available at trial, I find that P.G.E.'s income is \$39,665 based on the average of the following:

2014

\$27,991.30

2013

\$49,909.36

2012

\$41,094.43

- [86] For the 2012 year, given the lack of evidence, I do not accept P.G.E.'s deductions to his self-employment income at this time and have added them back.
- [87] The child support for two children arising from an income of \$39,665 is \$606.71 per month. This amount is payable commencing August 1, 2016. For the purposes of child support and s. 7 expenses, H.R.C.'s income is \$12,044.75, the average of her income, minus support received, set out in her 2011 to 2014 Notices of Assessment. As such, P.G.E. bears 77% of the s. 7 expenses, while H.R.C. bears 23%.
- [88] Each party must serve and file an updated sworn Form 8 Financial Statement within 75 days of these reasons. These statements must include all required documents, including tax returns, notices of assessment or reassessment, financial statements of any business, tax returns for any business, breakdowns of the businesses expenses and salaries paid to those who are not at arm's length. Either party is at liberty to apply to the court for a review to vary the quantum of support. Once these required documents have been exchanged, I will be seized of that review application.
- [89] Further, the parties must annually exchange full personal tax returns with all the attachments no later than June 1. If any self-employed businesses exist, the self-employed party must provide the other party with financial statements of the business and a statement showing the breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of persons or corporations with whom the business does not deal at arm's length. If by August 1st annually, the parties are unable to agree about any changes to the amount of child support payable, either party can apply to the court for a determination. Any change in support is retroactive to January 1st of each year.

Costs

- [90] H.R.C. was the substantially successful party. She is entitled to her costs at the level of ordinary difficulty.

"Choi J."

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