

CANADA / JUDGMENT

P.T. v. K.T.

2024 BCSC 1386

COURT

Supreme Court of British Columbia

DECIDED

17 June 2024

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2024 BCSC 1386 P.T. v. K.T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.T. v. K.T.,

2024 BCSC 1386

Date: 20240617

Docket: E141550

Registry: Vancouver

Between:

P.T.

Claimant

And

K.T. also known as D.T., E.T., in her personal capacity and in her capacity as trustee of the T. Family Trust, B.W.T. also known as V.T., and K. Holdings Ltd.

Respondent

Before: The Honourable Mr. Justice Brongers

Oral Reasons for Judgment

In Chambers

Appearing on his own behalf:

P. T.

Appearing on her own behalf:

K. T.

Place and Date of Hearing:

Vancouver, B.C.

June 10-11, 2024

Place and Date of Judgment:

Vancouver, B.C.

June 17, 2024

Introduction

- [1] THE COURT: There are four applications before the court brought by two ex-spouses, the claimant, Mr. P.T., and the respondent, Ms. K.T. The parties are both self-represented.
- [2] After a complex 13-day trial, Mr. P.T. and Ms. K.T. were issued a final order by Justice Voith, then of this court, dated December 16, 2016 (the "Voith Order"). It addresses a wide variety of family law issues, including parenting, property division, support, and divorce, all in considerable detail.
- [3] The primary relief now sought by Mr. P.T. and Ms. K.T. is a variation of certain aspects of the Voith Order that relate to his child and spousal support obligations owed to her. Both parties assert that there have been material changes in circumstances that justify a variation. However, they point to different alleged changes, and seek different forms of variation.
- [4] Having heard the parties and reviewed their application records, I am only persuaded that there has been one material change in the parties' circumstances that warrants a variation of the Voith Order at this time. It is the fact that the children of the marriage have both been residing primarily with Ms. K.T. since the Voith Order was issued, contrary to what was contemplated by Justice Voith. In my view, this justifies a prospective and partly retrospective variation of the amount of child support and spousal support payable by Mr. P.T. to Ms. K.T.
- [5] I will also issue an order on consent in relation to the parties' special or extraordinary child care expenses that they are obligated to share, as well as a document disclosure order.
- [6] The balance of the parties' requests for relief will be either dismissed or adjourned. I will summarize the specific orders that I am issuing at the conclusion of my reasons.

Background

- [7] Much of the factual background to this matter is set out in the reasons for the Voith Order that are indexed at P.T. v. K.T. and others, 2016 BCSC 2367.

[8] They state that the parties were married on July 25, 1991. Two children, A.T. and C.T. (the "Children"), were born in late 2003 and early 2007, respectively. This means that A.T. is now 20 years old and that C.T. is now 17 years old. Mr. P.T. and Ms. K.T. separated in November 2013. Their divorce became effective on January 16, 2017.

[9] The Voith Order includes a number of terms that are relevant to the present applications. I paraphrase them as follows:

Paragraph 6: The Guideline Incomes of the parties for the purposes of child and spousal support are \$214,000 for Mr. P.T., and \$77,237 for Ms. K.T.

Paragraph 7: Mr. P.T. will pay Ms. K.T. the sum of \$2,188 per month as child support for the Children.

Paragraph 9: The parties shall share special or extraordinary child care expenses ("Section 7 Expenses") in a proportion of 70% payable by Mr. P.T., and 30% payable by Ms. K.T.

Paragraph 11: The current annual Section 7 Expenses for the Children are:

- (a) for A.T.: approximately \$13,366 in respect of counselling; tutor for math, English, and French; hot lunch program; camp field trips and photos; choir; fine arts and ballet courses; spring camps; summer camp; and summer courses; and
- (b) for C.T.: approximately \$19,080 in respect of counselling; tuition; registration; education fees and field trips; donation requirement; school uniform and shoes; tutor for math; Greek lessons; choir; piano; spring camp; and summer camps.

Paragraph 12: Mr. P.T. will pay Ms. K.T. mid-range spousal support in the amount of \$1,022 per month.

Paragraph 14: Mr. P.T. will name Ms. K.T. as beneficiary of a life insurance policy and will pledge the amount of \$589,016 to her benefit as security for support.

[10] On June 23, 2023, Mr. P.T. filed a notice of application. Its primary purpose was to address a parenting impasse with Ms. K.T. regarding whether C.T. could attend a summer rowing program and two rowing regattas. The application also sought orders relating to Section 7 Expenses, and orders finding Ms. K.T. in contempt of court and subject to monetary penalties. The application was made returnable on June 30, 2023.

[11] Commendably, the issue of C.T.'s attendance at the rowing program and the regattas was resolved on consent, and the parties agreed to adjourn the balance of Mr. P.T.'s application to October 19, 2023.

[12] Ms. K.T. then filed a notice of application on October 17, 2023, seeking the following relief:

- a) an order setting aside paragraph 6 of the Voith Order and specifying that the parties' Guideline Incomes be set at an unspecified level to be determined by the court based on available evidence;

- b) an order setting aside paragraph 7 of the Voith Order and replacing it with a child support order set at an unspecified amount to be calculated by the court based on the children having their primary residence with Ms. K.T., such order to be retroactive to January 1, 2017;
 - c) an order setting aside paragraph 9 of the Voith Order and replacing it with a Section 7 Expenses order that provides for the parties' respective share of such expenses to reflect the parties' new Guideline Incomes;
 - d) an order that C.T.'s vitamins and supplements are Section 7 Expenses; and
 - e) an order requiring Mr. P.T. to produce certain documents to Ms. K.T.
- [13] However, the parties' two applications did not proceed on October 19, 2023, as they were adjourned by consent.
- [14] Mr. P.T. then filed a third application dated March 18, 2024. It is effectively a cross-application to Ms. K.T.'s October 19, 2023, application. Mr. P.T. is also seeking variations to the Voith Order in terms of the calculation of the parties' Guideline Incomes, the amount of monthly support payable by Mr. P.T. to Ms. K.T., and the terms of the parties' responsibilities for Section 7 Expenses. In particular, Mr. P.T. requests the following relief:
- a) an order varying paragraph 6 of the Voith Order to specify that Mr. P.T.'s Guideline Income be increased from \$214,000 to \$217,713, and that Ms. K.T.'s Guideline Income be increased from \$77,237 to \$301,412;
 - b) an order terminating paragraph 12 of the Voith Order that specifies the spousal support payable by Mr. P.T. to Ms. K.T. as being \$1,022 per month, retroactive to July 1, 2017, and requiring Ms. K.T. to reimburse Mr. P.T. for the resulting overpayment of \$96,267.66;
 - c) an order maintaining paragraph 7 of the Voith Order that specifies the child support payable by Mr. P.T. to Ms. K.T. as being \$2,188 per month;
 - d) an order setting aside paragraph 9 of the Voith Order and replacing it with a Section 7 Expenses order that provides for the parties' respective share of such expenses to reflect their new Guideline Incomes, with Mr. P.T.'s share being 42% and Ms. K.T.'s share being 58%, retroactive to July 1, 2017, and requiring Ms. K.T. to reimburse Mr. P.T. for the resulting overpayment of \$70,032.50;
 - e) an order requiring Ms. K.T. to pay up front all future Section 7 Expenses (with the exception of C.T.'s private school tuition), and requiring Mr. P.T. to reimburse Ms. K.T. for his portion of the Section 7 Expenses within five days of receipt of proof of payment, provided such proof is submitted within 90 days of the Section 7 Expense having been incurred;
 - f) an order that C.T.'s saxophone cost is a Section 7 Expense; and

g) an order varying paragraph 14 of the Voith Order so that the amount of Mr. P.T.'s life insurance policy pledged to Ms. K.T. as security for support is changed from \$589,016 to \$80,956.

[15] Ms. K.T. also filed a fourth application on June 4, 2024, in which she added the following request for relief:

- a) an order setting aside paragraph 12 of the Voith Order and replacing it with a spousal support order set at an unspecified amount to be calculated by the court based on the children having their primary residence with Ms. K.T., such order to be retroactive to January 1, 2017;
- b) an order revising paragraph 11 of the Voith Order to update the current annual Section 7 Expenses of the Children in an unspecified manner; and
- c) an order that the parties exchange tax returns by June 30th yearly.

[16] All four applications were heard together on June 10 and 11, 2024. At the conclusion of the hearing, I took the matter under reserve until today, so that I could review the parties' submissions and the voluminous material that they have filed.

Analytical framework

[17] Given the positions taken by the parties at the hearing, it is apparent that their applications raise the following four questions:

1. Has there been a material change in circumstances since the Voith Order was issued?
2. If there has been such a material change, what variation to the Voith Order would be appropriate?
3. If the Voith Order is varied, what should be the effective date of the variation?
4. Should any other orders be issued?

Issue 1: Material Change in Circumstances

[18] The court's authority to vary support orders is provided by s. 17 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). Its relevant portions are:

17 (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, retroactively or prospectively,

- (a) a support order or any provision of one, on application by either or both former spouses;

...

(4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

(4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.

...

(6.1) A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines.

...

(7) A variation order varying a spousal support order should

- (a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;
- (b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.

[19] With respect to the variation of child support orders, consideration must also be given to s. 14 of the Federal Child Support Guidelines, SOR/97-175 (the "Child Support Guidelines"). It reads as follows:

14 For the purposes of subsection 17(4) of the Act, any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:

- (a) in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof;

[20] Guidance on how to exercise the court's s. 17 Divorce Act authority is provided by the Supreme Court of Canada in: Willick v. Willick, [1994] 3 S.C.R. 670; G.(L.) v. B.(G.), [1995] 3 S.C.R. 370; L.M.P. v. L.S., 2011 SCC 64; and Colucci v. Colucci, 2021 SCC 24.

- [21] This jurisprudence instructs a court that is considering a support order variation application to first examine whether there has been a material change in circumstances since the making of the order sought to be varied. Generally speaking, such a change is one that, if known at the time of the original order, would likely have resulted in different terms. The original order is treated as correct, and the court will not lightly depart from it. Also, a material change must have some degree of continuity and not simply be a temporary change in circumstances.
- [22] Ms. K.T. submits that the primary material change that has occurred since the Voith Order relates to the parenting arrangement for the Children. She notes that at the time of the Voith Order, it was contemplated that there would be shared parenting of the Children. However, this did not materialize, and the Children have always resided primarily with Ms. K.T.
- [23] At the outset of the hearing, Ms. K.T. also submitted that there have been changes to Mr. P.T.'s actual income stemming from his acquisition of a new property in Ladner and new investments, as well as changes to Ms. K.T.'s health that impact her capacity to earn income. Her objective in doing so was to encourage the court to recalculate the parties' Guideline Incomes set out in the Voith Order, although she was unable to propose any specific new figures or a cogent basis for their determination. After being questioned by the court regarding the sufficiency of the evidence she had tendered in support of her assertions, Ms. K.T. indicated that she would simplify her position by abandoning her request for a modification to the Guideline Incomes and consequential relief. As such, Ms. K.T.'s ultimate position for the present applications is that the only material change the court must consider is the one relating to parenting arrangements.
- [24] Turning to Mr. P.T., he submits that there has been a material change in circumstances relating to Ms. K.T.'s financial situation. He says that Ms. K.T. is now a "wealthy woman" who benefited from a real estate sale and who controls investments totalling over \$4 million. Accordingly, Mr. P.T. submits that Ms. K.T.'s Guideline Income should be increased to \$301,412 per year from the \$77,237 set in the Voith Order. However, as was the case for Ms. K.T. when asked about her evidence regarding Mr. P.T.'s alleged new sources of investment income, Mr. P.T. had difficulties identifying clear evidence regarding the details of Ms. K.T.'s alleged new financial situation and how it might justify a quadrupling of her Guideline Income.
- [25] Having reviewed the evidence set out in the parties' application records, I am only persuaded that there has been one material change in circumstances that warrants varying the support terms of the Voith Order at this time. It is the fact that, contrary to what was contemplated in the Voith Order, shared parenting of both of the Children has not occurred and the Children have resided primarily with Ms. K.T. instead.
- [26] Paragraph 228 of the reasons for judgment in relation to the Voith Order explains the anticipated parenting circumstances as follows:

- [228] Based on the income figures that I have determined are appropriate, the length of the Parties' marriage, their ages, the assumption that A. will, in the short term, be with her mother and that C. will spend his time equally with his parents, the various tax credits I have alluded to and other assumptions, P.T. is to pay K.T. child support of \$2,188 monthly. When A. begins to spend time with both her parents, as is presently anticipated, the Parties can calculate the new appropriate levels of child support.
- [27] In other words, it was understood at the time the Voith Order was issued that one child of the marriage, A.T., would reside with Ms. K.T., while the other child of the marriage, C.T., would reside equally with both Mr. P.T. and Ms. K.T. On that basis, child support payable by Mr. P.T. to Ms. K.T. was set at \$2,188 per month. The Voith Order also provided that once A.T. also resides equally with both parents, child support payable should be recalculated.
- [28] What actually transpired, however, is that both of the children - A.T. and C.T. - always resided primarily with Ms. K.T. Indeed, there is no dispute that while the parties had initially agreed to a parenting plan that contemplated a three-phase process which would eventually result in both parents having equal parenting time with the Children, this plan never came to fruition. Instead, A.T. has always resided exclusively with Ms. K.T. since the divorce, as A.T. deposed to personally in an affidavit filed for these proceedings. C.T. initially resided with both parents from 2017 to 2019, but it is agreed that C.T.'s primary residence was with Ms. K.T. and that C.T.'s time spent with Mr. P.T. never exceeded 40%. From 2019 onwards, when Mr. P.T. moved to Ladner, C.T. spent even less time with Mr. P.T., particularly during the COVID-19 pandemic.
- [29] Accordingly, I accept and find that the fact that both children of the marriage always resided primarily with Ms. K.T. - instead of just one child so residing - is a material change in circumstances that requires a modification to the Voith Order in terms of the amount of support payable by Mr. P.T. to Ms. K.T.
- [30] As for the other alleged material changes in circumstances, notably Mr. P.T.'s allegation that Ms. K.T.'s financial situation has significantly improved since the Voith Order, I am not satisfied that they have been demonstrated on the evidence before me.
- [31] In particular, Mr. P.T. submits that Ms. K.T. has received a large portion of the proceeds of a sale of valuable Vancouver real estate, and now has control of a corporation which holds substantial assets. He has also tendered some documents in support of this submission. However, Mr. P.T. has been unable to clearly explain to the court the details of Ms. K.T.'s current financial situation and her current income stream in any way that rises beyond mere speculation.
- [32] Furthermore, Ms. K.T. adamantly denies that the portrait Mr. P.T. paints of her finances is accurate, although her evidence does not clearly refute Mr. P.T.'s theory either.

- [33] Ultimately, the court is left in the position where it is unable to fairly determine whether there has been a material change in circumstances with Ms. K.T.'s finances, let alone to fairly establish new Guideline Incomes different from those set out in the Voith Order. Accordingly, I will not do so on this application.
- [34] That said, it is also apparent that the parties' inability to clearly address this question is the result of the understandably limited post-trial financial disclosure they have provided to each other, compounded by the fact that they are both self-represented. In light of this, my conclusion that material changes to the parties' income levels have not yet been proven is without prejudice to the parties' ability to raise this issue again in the future. I will discuss this further in my conclusion to these reasons.

Issue 2: Variation of the Voith Order

- [35] Once a material change has been demonstrated, the court must determine what variation is appropriate in light of the change in circumstances. The court should also limit itself to making only the variation justified by the change.
- [36] In my view, a variation to the Voith Order which sets the amount of monthly support payable by Mr. P.T. to Ms. K.T. in accordance with the actual parenting arrangements is justified in this case. In other words, the amounts of the monthly child support and the monthly spousal support must be recalculated on the basis that the Children both reside with Ms. K.T. This will obviously differ from the calculation performed for the Voith Order, which was done with the understanding that only A.T. resides primarily with Ms. K.T., and that C.T. resides with both parents under a shared parenting arrangement.
- [37] This change impacts both the table child support under the Child Support Guidelines, and spousal support under the Spousal Support Advisory Guidelines as the needs of a spouse who cares primarily for two children in their home will necessarily be greater than those of a spouse who has only one child residing with them while the other is subject to shared parenting time.
- [38] Ms. K.T. has helpfully provided the court with DivorceMate calculations of what these amounts should be, which were not challenged by Mr. P.T. They are based on a Guideline Income of \$214,000 for Mr. P.T. and \$77,237 for Ms. K.T., as per paragraph 6 of the Voith Order, and the understanding that the Children - A.T. and C.T. - both reside with Ms. K.T.
- [39] With respect to child support, the table amount is \$2,914. With respect to spousal support, the mid-range with-child-support amount is \$2,246. I find that these amounts are appropriate since, as discussed, it is evident that similar DivorceMate calculations were used in crafting the Voith Order (i.e., table amount child support and mid-range spousal support using the with-child-support formula), except that they reflected shared parenting time for C.T. which did not ultimately transpire.

[40] In sum, the Voith Order will be modified to provide that Mr. P.T. will pay Ms. K.T. \$2,914 per month as child support for the Children, and \$2,246 per month in spousal support.

Issue 3: Effective Date of Variation of the Voith Order

[41] Ms. K.T. has asked the court to order that Mr. P.T.'s support obligations be varied retroactively to January 1, 2017. It is my understanding that this date is proposed because it is the first day of the first month following the issuance of the Voith Order on December 16, 2016.

[42] The principles that apply to retroactive applications to vary child support orders are comprehensively set out in the Supreme Court of Canada's decision in *Colucci v. Colucci*, 2021 SCC 24. The same analysis can be applied to spousal support orders: *H.C.F. v. D.T.F.*, 2024 BCSC 574 at para. 49.

[43] It is presumed that retroactive relief will be granted back to the date that notice of the change in circumstances that gives rise to the variation was given. That will be the date of formal notice, unless the court is satisfied that effective notice was given earlier, up to three years prior to the date of formal notice. The court does, however, retain discretion to depart from these presumptive dates of retroactivity in order to avoid unfairness.

[44] Based on these principles, the court cannot simply order that Mr. P.T.'s child support and spousal support obligation be varied retroactively to January 1, 2017, as Ms. K.T. requests. Consideration must be given to when Ms. K.T. gave Mr. P.T. notice of the change of circumstances and her desire to have the support obligation varied accordingly.

[45] Ms. K.T. gave formal notice to Mr. P.T. of her desire to have the Voith Order varied to have child support calculated on the basis of the actual parenting arrangements by way of her October 17, 2023, notice of application. Ms. K.T. did the same in respect of spousal support by way of her June 4, 2024, notice of application.

[46] However, Ms. K.T. submits that she gave effective notice of this desire by way of a letter of demand dated December 21, 2020. It contains the following wording:

Justice Voith on December 16, 2016 fixed your income for child support purposes at \$214,000 and given the parenting arrangement between the two of us, he assumed that you would have [C.T.] 40% of the time. In 2017, the parenting plan and its implementation for shared custody of the children was not implemented on your part and [C.T.] remained in sole custody with me. Therefore, the calculation that Justice Voith made from the Child Support guidelines was inappropriate.

Based on the 3-year income average of \$214,000 and one child at sole custody and one child shared, Justice Voith calculated the payable monthly support was at \$2,188.00. The reality of 2 children in sole custody at \$214,000 is \$2914. Therefore in 2017 you paid \$726 per month less than what the children should have received for a total of \$8712.00 owing for the year.

I would like immediate payment of this amount before the end of 2020.

- [47] I find that Ms. K.T.'s December 21, 2020 letter constitutes effective notice in respect of her desire to modify Mr. P.T.'s child support obligation, but not in respect of his spousal support obligation. The letter is silent on the issue of spousal support.
- [48] Accordingly, there will be a retroactive variation of Mr. P.T.'s child support obligation to December 21, 2020, the date of Ms. K.T.'s letter of demand. For simplicity, it will be made effective on the first day of the next month, that is to say, on January 1, 2021.
- [49] As for Mr. P.T.'s spousal support obligation, it will not be retroactively varied since formal notice was only given on June 4, 2024. That obligation will only be varied prospectively, effective July 1, 2024, that is to say, the first day of next month.
- [50] At the hearing, Mr. P.T. asked that in the event he was required to make retroactive support payments, that they not be made payable immediately. This is a reasonable request. Mr. P.T. will be given a 12-month grace period to pay his retroactive child support payments owing to Ms. K.T. as a result of this order.

Issue 4: Other Orders

- [51] The other issues in dispute for which orders were sought by the parties relate to the following matters:
- 1) Section 7 Expenses;
 - 2) document disclosure;
 - 3) contempt of court and monetary penalties; and
 - 4) modification of the amount pledged for support in Mr. P.T.'s life insurance policy.
- [52] I will address each matter briefly.

Section 7 Expenses

- [53] Commendably, the parties reached an agreement at the hearing on how paragraph 11 of the Voith Order should be modified in relation to Section 7 Expenses. It restates the types of Section 7 Expenses for the Children that the parties agree are to be shared so as to reflect what they are currently. An order to this effect will be issued on consent.
- [54] Mr. P.T. also requests an order that would require Ms. K.T. to pay all Section 7 Expenses up front (with the exception of C.T.'s private school tuition), and to then require Mr. P.T. to reimburse Ms. K.T. for his portion of the Section 7 Expenses within five days of receipt of proof of payment, provided such proof is submitted within 90 days of the Section 7 Expense having been incurred.

- [55] Mr. P.T. explained that he is seeking this relief because Ms. K.T. has been negligent in paying Section 7 Expenses, leading certain service providers to come to him for payment instead. Mr. P.T. also alleges that Ms. K.T. has been dilatory in providing him with receipts and other information necessary for the parties to properly reconcile their respective obligations for Section 7 Expenses.
- [56] Ms. K.T. acknowledges that she has sometimes been tardy in this regard, noting that her health issues make it challenging for her to always deal promptly with Section 7 Expenses. However, Ms. K.T. promised at the hearing that she will make best efforts to try to provide Mr. P.T. with information and documentation about Section 7 Expenses at least every three months.
- [57] Given that the Children both reside with Ms. K.T. and that she has had past difficulties complying with her accounting obligations in relation to the Section 7 Expenses, there is some logic to Mr. P.T.'s request. However, I am not satisfied on the evidence I have been presented that the situation is so unmanageable at this time that the formal court order Mr. P.T. is requesting should be issued. I also accept Ms. K.T.'s good faith promise that she will try to do better in the future, a promise that I trust she will keep.

Document Disclosure

- [58] Ms. K.T. seeks an order requiring the parties to exchange income tax returns by June 30th of every year. Mr. P.T. did not indicate that he is opposed to doing so.
- [59] This is a reasonable order to make given the parties' ongoing dispute over whether there has been a material change in their respective income levels. Such an order will be issued. The first such disclosure will therefore be due on June 30, 2024, and this obligation will continue going forward, unless there is a written agreement between the parties or a further court order.

Contempt of Court and Monetary Penalties

- [60] In his June 23, 2023, notice of application, Mr. P.T. seeks a contempt of court order for Ms. K.T.'s alleged refusal to pay her share of Section 7 Expenses and for neglecting her parental duties for C.T. during her parenting time. Mr. P.T. also seeks an order that Ms. K.T. pay him a \$5,000 "penalty" to partially compensate him for the time and expense he incurred in filling in for her during her parenting time.
- [61] I indicated during the hearing that I would not be entertaining these requests for relief, both in the interests of time given the numerous other issues that needed to be addressed, and because I was not satisfied that Ms. K.T. had been given a fair opportunity to respond to these serious allegations. The request for this relief will therefore be adjourned.

Modification of the Amount Pledged for Support in Mr. P.T.'s Life Insurance Policy

- [62] In his March 18, 2024, application, Mr. P.T. seeks an order varying paragraph 14 of the Voith Order in order to modify the amount pledged in his life insurance policy to the benefit of Ms. K.T. as security for support from \$589,016 to \$80,956.
- [63] Mr. P.T. did not explain the basis for this request at the hearing, but presumably it was made on the assumption that Mr. P.T. would succeed in persuading the court to vary the Voith Order so as to reduce his support obligations. As he has not done so, this request for relief will be dismissed.

Conclusion

- [64] In summary, I have agreed with Ms. K.T. that a variation of the Voith Order is warranted to reflect the fact that the primary residence of both of the Children has been with Ms. K.T. since the divorce, and that there was never any shared parenting of C.T. This material change necessitates a recalculation of both the monthly child support and spousal support payable by Mr. P.T. to Ms. K.T. Specifically, the amount of monthly child support is varied to \$2,914 and monthly spousal support is varied to \$2,246.
- [65] Given the timing of Ms. K.T.'s notice of a desire for this variation, it will be made prospectively and retroactively to January 1, 2021 in the case of child support, but prospectively only in the case of spousal support.
- [66] Mr. P.T. is given until July 1, 2025, to pay the retroactive portion of the child support obligations that he now owes to Ms. K.T.
- [67] On the other hand, I am unable to fairly determine whether there has been a material change in circumstances in relation to the parties' actual incomes or capacity to earn income based on the evidence presented to me on this application. Accordingly, I will not order a variation in the Guideline Incomes established by the Voith Order or make any further adjustments to the support payable by Mr. P.T. to Ms. K.T.
- [68] That said, I accept that it is possible that such a variation may be justified in the future should the parties be able to obtain and present clear and cogent evidence to that effect. Therefore, I wish to make it clear that my dismissal of their requests for this relief is without prejudice to their right to present fresh applications.
- [69] Given the complexity of bringing an application to vary a final order based on changed financial circumstances arising from factors other than simple differences in employment income, the parties are strongly encouraged to obtain legal representation if they wish to do so.
- [70] Finally, given the outcome of these applications and the fact that the parties represented themselves, I find that this is an appropriate case for each party to bear their own costs.

Disposition

[71] The terms of the order I am issuing today are the following:

1. Paragraph 7 of the final order of the court (Voith J.) dated December 16, 2016, is varied to read as follows:

Pursuant to s. 9 of the Child Support Guidelines, the claimant, P.T., will pay to the respondent, K.T., the sum of \$2,188 per month as child support for the Children until December 31, 2020. Effective January 1, 2021, the claimant, P.T., will pay to the respondent, K.T., the sum of \$2,914 per month as child support for the Children.

2. The obligation of the claimant, P.T., to pay retroactive child support owing for the period from January 1, 2021 to June 30, 2024 pursuant to paragraph 1 of this order is suspended and not enforceable until July 1, 2025.
3. Paragraph 11 of the final order of the court (Voith J.) dated December 16, 2016, is varied on consent to read as follows:

The current annual Section 7 Expenses for the Children are:

A.T.:

- (i) health-related expenses, \$3,000.00;
- (ii) tuition, \$11,000.00; and
- (iii) cellphone, \$800.00;

for an approximate annual total of \$14,800.00.

C.T.:

- medical premiums, \$700.00;
- health-related expenses, \$3,000.00;
- tuition, \$10,000.00;
- athletics, \$1,500.00;
- school travel expenses, \$3,000.00;
- school events, \$200.00;
- Greek tutor, \$1,600.00; and
- cellphone, \$800.00;

for an approximate annual total of \$20,800.00.

4. Paragraph 12 of the final order of the court (Voith J.) dated December 16, 2016, is varied to read as follows:

The claimant, P.T., shall pay the respondent, K.T., monthly spousal support calculated at the Spousal Support Advisory Guidelines mid-range amount at \$1,022 per month until June 30, 2024. Effective July 1, 2024, the claimant, P.T., will pay to the respondent, K.T., monthly spousal support calculated at the Spousal Support Advisory Guidelines mid-range amount of \$2,246 per month."

5. The parties shall exchange annual income tax returns filed by June 30th of each year, commencing June 30, 2024. This obligation will continue every year, subject to a written agreement by the parties or a further court order.
6. The application by the claimant, P.T., for a contempt of court and monetary penalty order set out at paragraphs 5 and 6 of his notice of application filed June 23, 2023, is adjourned.
7. Except as otherwise provided for in this order, all other requests for relief set out in the notices of application filed by the claimant, P.T., on June 23, 2023, and March 18, 2024, are dismissed. This dismissal is without prejudice to the right of the claimant, P.T., to bring a fresh application to vary the Guideline Income amounts set out in the Voith Order and for other associated relief on further and better evidence.
8. Except as otherwise provided for in this order, all other requests for relief set out in the notices of application filed by the respondent, K.T., on October 17, 2023, and June 4, 2024, are dismissed. This dismissal is without prejudice to the right of the respondent, K.T., to bring a fresh application to vary the Guideline Income amounts set out in the Voith Order and for other associated relief on further and better evidence.
9. Each party shall bear their own costs of these applications.

[72] I will also be directing the Registry to prepare the order and will dispense with the parties' signature on the order.

[73] Unless there are any questions from the parties, we are concluded.

[74] Any questions?

[75] P.T.: What are -- it's not much of question as it is a request. Last week when we both present on the hearing, we, by consent, agreed that certain Section 7 Expenses, past and prospective in future, would be -- we agreed that they are Section 7 Expenses, namely [C.T.'s] previous rowing expenses, as well as the saxophone, have been acknowledged by both of us that they will be shared, and any prospective future rowing expenses -- expenses, if [C.T.] decides to engage again with the sport, will also be included as Section 7 Expenses. We made that agreement between ourselves and I would like if you could include it in the order as by consent [indiscernible].

[76] THE COURT: Anything else?

[77] P.T.: No.

[78] THE COURT: Thank you.

[79] P.T.: Thank you.

[80] K.T.: I don't -- I don't think that's necessary. It was by consent and why is he focusing on rowing? That was the whole problem in the beginning. I think we should -- I think it's done. I don't think it should continue to cause conflict, what wording if [indiscernible], we've agreed to things and we should just let things lie.

[81] THE COURT: Anything in reply?

[82] P.T.: Given the problems we had in the past in settling and agreeing on Section 7 Expenses, although there is a verbal agreement between the two of us, I don't want to undertake -- have the risk of not having in the future, thus my request to you to please include it.

[83] THE COURT: Thank you both. You will recall that at the hearing, I was concerned about ensuring that if you two did reach an agreement about Section 7 Expenses, that it be set down in writing. We made two attempts at the terms of the consent order, and I have kept a copy in the record of what was agreed to. What I read out today reflects precisely what you two agreed to in writing. It said nothing about rowing or any other expenses, and because they are not in that written agreement, I am not going to issue a different order from it today.

[84] If the two of you wish to make a further agreement in writing, you are free to do so. In fact, you are encouraged to do so. But no, I will not be modifying the order further.

"Brongers J."

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