

CANADA / JUDGMENT

R.D. v. R.S.D.

2022 BCSC 1290

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1290 R.D. v. R.S.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.D. v. R.S.D.,

2022 BCSC 1290

Date: 20220804

Docket: E60539

Registry: New Westminster

Between:

R.D.

Claimant

And

R.S.D. a.k.a. R.D.,

and S.D.

Respondents

Before: The Honourable Madam Justice Tucker

Reasons for Judgment

In Chambers

Counsel for the Claimant:

A. Kahlon

R. Roxborough

Counsel for the Respondent,

R.S.D.:

J. Bal

P. Dhaliwal

Place and Dates of Hearing:

New Westminster, B.C.

June 23-24, 2022

Place and Date of Judgment:

Vancouver, B.C.

August 4, 2022

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I. Introduction

- [1] By notice of application dated June 10, 2022, the claimant seeks: the extension of a protection order under s. 187(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA]; to have contribution levels for Federal Child Support Guidelines, SOR/97-175 [Guidelines] s. 7 set on an interim, without prejudice basis; and rulings as to whether certain expenses incurred are s. 7 expenses.
- [2] The claimant, R.D., was born in 1985. The respondent R.S.D. was born in 1986. The respondent S.D. is R.S.D.'s mother. (As S.D. did not file a response to this application, I will refer to R.S.D. as "the" respondent in these reasons).
- [3] The parties married in August 2014. They share two children: A (presently 6 years of age) and B (presently 5).
- [4] Prior to August 2020, the parties and children resided together in a Vancouver residence. In or about August 2020, the claimant and the children went to live in the claimant's mother's Surrey home. They continue to reside there.
- [5] On August 25, 2020, Giaschi J. granted the claimant a protection order ("Giaschi Order"). The order had a one year term: FLA, s. 183(4). The Giaschi Order was extended by consent (on a without prejudice basis) multiple times and ultimately through to the hearing of the present application. At the close of the hearing, I further extended the order through to issuance of this decision.
- [6] On January 28, 2021, the parties entered into a consent order ("JCC Order"). The JCC Order included the following terms:
4. BY CONSENT, the Claimant will forthwith provide to the Respondent, all details regarding the counselling of the children they are enrolled in or will be enrolled in, including but limited to contact information of the counsellors and any documentations or reports to date.
 5. BY CONSENT, [the Respondent] is at liberty to request and obtain information about the children from third parties, including health, education or other information regarding the children without the consent of the Claimant.
- [7] The JCC Order obliged the respondent to pay monthly child support of \$1,112 commencing August 1, 2020. That amount was based on his having an income for child support purposes of \$71,694.05.
- [8] The parties agreed to retain Dr. Michael Elterman to prepare a full FLA, s. 211 report. The respondent agreed to pay the cost of the report. Dr. Elterman provided a report dated April 30, 2022 ("Elterman Report").

II. Application to Extend the Giaschi Order

A. Legal Framework

[9] The following FLA provisions deal with family violence.

[10] Section 1 defines "family violence":

"family violence" includes, with or without an intent to harm a family member,

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy;
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence[.]

[11] Section 38 lists factors for consideration in assessing the relationship between family violence and the best interests of a child. The listed factors are:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[12] Under s. 183(2), the court may make an order to protect a family member if family violence is "likely" to occur and the family member is an "at-risk family member". Under s. 182, an "at-risk family member" is a person whose safety and security is, or is likely at risk from family violence by a family member.

[13] The court is directed to consider the risk factors set out in s. 184(1):

Whether to make protection order

184 (1) In determining whether to make an order under this Part, the court must consider at least the following risk factors:

- (a) any history of family violence by the family member against whom the order is to be made;
- (b) whether any family violence is repetitive or escalating;
- (c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;
- (d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;
- (e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence;
- (f) the at-risk family member's perception of risks to his or her own safety and security;
- (g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.

[14] Under s. 185, if a child is a family member, the court must also consider whether the child may be exposed to family violence unless a protection order is made and whether any order should also be made respecting the child.

[15] The court has discussed the assessment of the likelihood of future family violence in a number of decisions. A concise overview of the applicable law is found in the recent decision of Fitzpatrick J. in *Raj v. Raj*, 2022 BCSC 110:

[78] Section 183(2) of the FLA provides that the Court may make a protection order if family violence is "likely" to occur.

- [79] The purpose of this provision is to recognize the danger to vulnerable family members in volatile relationships and allow the Court to impose measures to ensure their safety: *B.H.C. v. F.G.J.P.*, 2017 BCPC 378 at para. 7. In *Morgadinho v. Morgadinho*, 2014 BCSC 192 at para. 59, the Court determined that the broad and inclusive definition of "family violence" recognizes harm which can extend beyond the infliction of purely physical violence.
- [80] In *Dawson v. Dawson*, 2014 BCSC 44, the Court considered an approach to assessing the likelihood of family violence occurring:
- [44] The fact that there has been an act of physical family violence, even a single act of physical family violence, may provide a sufficient basis to conclude that family violence is likely to occur in the future. Although the passage of time may serve to reduce the probative force of such evidence, to the extent the circumstances giving rise to the earlier act of violence remain at large, the predictive quality of that earlier act may not be diminished with the passage of time. Moreover, it seems to me that when assessing the "likely" threshold set out in s. 183(2)(a) regard should be had to the gravity of the harm that might follow from an act of physical family violence.
- [45] ... Given the protective purpose of orders under Part 9 of the Family Law Act, it is reasonable in my view to apply what might be termed a sliding scale to the threshold. The potential for very serious acts of violence is sufficient to engage the provisions of the Act, even if those acts of violence are, in absolute terms, not particularly likely.
- [81] In *S.M. v. R.M.*, 2015 BCSC 1344, Justice Fitch (as he then was) stated:
- [25] judges hearing applications of this kind must approach the issue from a broad and contextual perspective, taking into account a variety of factors that frame the risk analysis in determining whether family violence is likely to occur. The inquiry is future orientated but it takes its shape from past conduct and present circumstances that inform the assessment of risk.
- [82] The first issue is whether the Protection Order should be extended pursuant to Part 9 (Protection from Family Violence) of the FLA. Ms. Raj seeks to continue the original order relating to both her and P.P. Mr. Raj appears to only mildly object to any extension in relation to Ms. Raj, citing that it is not necessary and that they can communicate through counsel. More strenuously, Mr. Raj objects to any continuation with respect to P.P. in light of his application to have parenting time with P.P.
- [83] Having considered all of the evidence, I find as follows:
- a) I am satisfied that Mr. Raj's actions in the past in relation to Ms. Raj and the Children constitute "family violence": FLA, s. 1. There is considerable evidence to support his ongoing alcohol abuse and anger issues leading to mental, emotional and physical abuse on a continuous basis since the parties' marriage;

- b) I am satisfied that family violence by Mr. Raj is likely to occur and that both Ms. Raj and P.P. continue to be "at risk family members" (FLA, ss. 182-183), where their safety or security is or is likely at risk from family violence carried out by Mr. Raj. There is evidence of recent actions of Mr. Raj in relation to P.V., P. and others (in July 2021) to indicate ongoing abuse of alcohol and at least one incident of violence in that context, confirming a continuing concern even at this time: Y.Z. v. A.C., 2019 BCSC 1564 at para. 72;
 - c) Despite substantial evidence as to the historical and more recent incidents of abuse--including the April 2020 Incident--Mr. Raj continues to simply deny any wrongdoing or take responsibility for any of his actions;
 - d) In relation to Ms. Raj, these high conflict proceedings are only their infancy and there are significant issues between the parties. Despite there being no evidence that Mr. Raj has breached the Protection Order, this is one factor that strongly suggests further protection is required given the undoubted continuing conflict between the parties: B.H.C. at paras. 50 and 53;
 - e) P.P. has been directly or indirectly exposed to family violence by Mr. Raj in relation to Ms. Raj and her sisters. The physical family violence has been directed to P.P. specifically arising from the April 2020 Incident. I conclude that she is not in the same position as her sisters to protect herself, given her age and vulnerability; and
 - f) In relation to P.P. specifically, I have considered that she may be exposed to further family violence and may be the subject of specific family violence toward her if the Protection Order is not renewed: FLA, s. 185.
- [84] I conclude that it is appropriate that the Protection Order be continued in favour of both Ms. Raj and P.P.

B. Evidence

- [16] The claimant deposes that the respondent has been physically, emotionally, sexually and financially abusive of her from the outset of the marriage. She describes his conduct as violent and unpredictable and the respondent as an abuser of alcohol.
- [17] The claimant says she came to fear for her life and so began audio-recording some of her interactions with the respondent. This practice generated a collection of some 50 recordings (the "Recordings"). She attests that in late December 2017, she gave her cousin access to her phone and cloud account to enable her cousin to access the Recordings if they were needed as evidence. She says she did this because she was concerned the children might be left with the respondent if she were killed.

- [18] The claimant filed two affidavits that attach transcripts of Recordings. Claimant's affidavit #1 was sworn August, 25 2020 and was sworn in support of her application for the Giaschi Order. Claimant's affidavit #2 was sworn July 6, 2021 and was sworn in response to the respondent's application for parenting time (an application not before me). Her affidavit #1 attaches transcript excerpts; her affidavit #2 attaches full transcripts.
- [19] Claimant's affidavit #1 asserts that the respondent has, among other things, physically and sexually assaulted (including raped) the claimant, threatened her with rape, and threatened to kill her or arrange to have her killed by someone else. She attests that many of these incidents were witnessed by the children. Where a Recording was made in relation to an incident she describes, an excerpt from the transcript of that Recording is attached. The attached excerpts are consistent with the claimant's attestations.
- [20] The following two incidents are among those described in the claimant's affidavit #1:
- 1) The respondent physically assaulted her on a city street in August 2015. He hit her repeatedly with his open hand, leaving her with a nosebleed and facial abrasions. A witness called the police. The claimant gave a statement to the responding police officers. Later - and after finding out that she was pregnant - she swore a false affidavit stating that she had hit the respondent first. She says she swore that affidavit to help the respondent avoid jail; and
 - 2) In early 2018, the respondent and his brother left the family home to go damage the respondent's ex-girlfriend's car. When the respondent returned, he reported that they had broken her windshield. The next day, the ex-girlfriend texted the claimant. In her text, she said the respondent had continued to call her after he was married and had called her the previous night and threatened to come to her house. She had hung up in response to the threat. In the morning, she discovered her windshield was broken and wrote that she was certain the respondent was responsible. A copy of the text sent to the claimant was provided as an attachment.
- [21] Claimant's affidavit #2 describes the impact of the respondent's conduct on the children and several incidents involving his verbally abusing the claimant and others in front of the children. She references the physical, emotional and sexual violence outlined in her affidavit #1 and attaches the full transcripts.
- [22] The respondent's response affidavits are noteworthy for what they do not say. He makes no attempt to refute any of the specific incidents detailed in Claimant's affidavit #1. Notably, there is no response affidavit that is stated to be sworn in response to the application for a protection order.
- [23] Respondent's affidavit #1, sworn April 8, 2021, is specifically sworn in support of the respondent's application for parenting time." (An application not before me.) In it, he complains that only 12 Recordings had been produced to date. He then states:

22. Affidavit #1 of the Claimant makes numerous allegations against me. I deny all the allegations related to by ability to parent my Children and be an active and caring part of their lives.
23. I do acknowledge that I have had my shortcomings when it comes to my behaviour with the Claimant. We have had a very turbulent relationship over the last few years prior to separation.
27. I do not want my ability to see my children getting caught up in the event and allegations which have caused the breakdown of the marriage. I will therefore address the specific accusations against me in Affidavit #1 of the Claimant when necessary and when I have the complete audio recordings for review. My priority is to see my children.

[Emphasis added.]

[24] Respondent's affidavit #2 does not touch upon family violence at all.

[25] Counsel for the claimant advised that the full collection of Recordings was made available to respondent's counsel prior to the date of respondent's affidavit #3. Her representation was not disputed.

[26] Respondent's affidavit #3, dated July 6, 2021, states:

2. I make this affidavit in response to the Claimant's Affidavit #2 made on July 6, 2021. I reply to the various paragraphs that are relevant to the matters to be determined. My failure to respond to each of these allegations should not be construed as an admission of the accuracy of any of these allegations.

[Emphasis added.]

[27] Respondent's affidavit #4 was sworn August 19, 2021 and is stated to be made in response to the claimant's August 12, 2021 application to extend the Giaschi Order (subsequently resolved by a consent extension order) and to impose conditions on any interim parenting time exercised by the respondent (e.g., supervision and refraining from alcohol and drugs).

[28] Respondent's affidavit #4 repeats the underlined language in the quote from the second paragraph of respondent's affidavit #3. The following are the only paragraphs of the respondent's affidavit #4 that touch upon the claimant's evidence of family violence:

12. There are no restrictions from the Ministry of Children and Family Development or the Police. I have never been contacted by the Ministry or the Police in relation to my care of the Children or from this court matter.
34. I strongly object to the fact that the Claimant is applying for another protection order on the basis that family violence will likely occur.
35. I have not breached any of the terms of the [Giaschi Order] since I was served it in August 2020.

- [29] In Respondent's affidavit #5, sworn September 27, 2021, the respondent attests that he would cooperate with the police if he were contacted regarding the claimant's assertions. He adds that he did not ask his mother to contact the claimant or her family during the term of the Giaschi Order. (The fact that his mother attempted contact is undisputed.)
- [30] Finally, in respondent's affidavit #6 sworn June 17, 2022, he specifically denies the allegation that he was financially abusive, and explains that the claimant did not provide him with information about her personal accounts, so he responded in kind.

C. Analysis

- [31] Overall, with the exception of financial abuse, the respondent has provided no meaningful response regarding the incidents of family violence detailed in claimant's affidavit #1. He has taken no issue with the authenticity or accuracy of any of the Recordings or transcripts in evidence. The respondent asserts that this does not amount to an admission.
- [32] It is not for the respondent to dictate to the court whether his failure to respond amounts to an admission in the circumstances. The incidents of family violence set out by the claimant are squarely at issue on the application to extend the Giaschi Order. I am satisfied that his failure to respond to, let alone refute, the incidents of family violence detailed in claimant's affidavits #1 and #2 does constitute an admission that the incidents occurred as described.
- [33] Accordingly, I am satisfied that the respondent routinely engaged in family violence of an extreme nature over the period the parties resided together. This included physical, sexual and verbal abuse of the claimant. A significant amount of this family violence was witnessed by the children.
- [34] The respondent contends there is no basis for concluding there is likely to be family violence in the future. He relies on the fact that he has not breached the Giaschi Order and his evidence that, to his knowledge, neither the police nor the Ministry of Children and Family Development ("MCFD") are actively following up on the claimant's assertions.
- [35] He also notes that he has attended six counselling sessions as recommended in the Elterman Report. He attests that he is longer drinking alcohol to the extent he did when the parties were together and that he presently drinks alcohol only at events or on special occasions. Finally, he contends that he is sufficiently motivated to behave well by his desire to regain parenting time. He contends that a conduct order is sufficient in the circumstances.
- [36] I do not find the respondent's submissions persuasive.
- [37] His description of the parties' relationship while they resided together as "turbulent" is a vast understatement. The violence that occurred included physical violence, sexual violence, threats of rape and threats of death. The fact that such conduct is prohibited by the criminal law was insufficient to cause the respondent to refrain from engaging in it. Further, his suggestion that he can be expected to put his anger and resentments behind him and move

forward peacefully is belied by the fact that several years into his marriage he felt the need to smash his ex-girlfriend's windshield.

- [38] The evidence before me does not establish that the respondent's violent conduct is restricted to (as opposed to aggravated during) periods of heavy drinking. Dr. Elterman recommended that the respondent see a counsellor trained to deal with substance abuse problems, and there is no evidence that he has done that. He continues to drink.
- [39] The respondent's minimization of his conduct in his evidence and his interview with Dr. Elterman indicate he has yet to take responsibility for that conduct. While he attests to have had six counselling sessions, there is nothing in evidence as to the type, scope or focus of that counselling, nor any report indicating whether the counselling sessions were effective or sufficient.
- [40] Finally, these parties are at the outset of a course of litigation that promises to be high-conflict. While the respondent has entered several consent orders to date, difficult issues lie ahead, including parenting arrangements and financial matters. The combination of litigation stress and the respondent's past conduct readily lead to the conclusion that the protection order should continue.
- [41] I note that the Giaschi Order was limited to the claimant and did not extend to the children. The application before me does not seek to extend the Giaschi Order to include the children and in my view the evidence does not warrant such an extension at this time. The children are impacted, but the impact is almost entirely indirect, with the claimant being the primary target. Further, the respondent currently has no parenting time. The issue can be revisited as required on any application he might make for parenting time.
- [42] The term of the Giaschi Order will be extended for a year from the date of these reasons for judgment.

III. Section 7 Expenses: Interim Contribution Levels

- [43] The claimant seeks an interim order requiring the parties, on a without prejudice basis, to contribute equally to s. 7 expenses for the period of August 2020 through trial.
- [44] Neither party provided an updated F8 financial statement for purposes of this application.
- [45] The claimant is employed with Anika Youth Services where she runs a day program for young women in the care of the MCFD. She is also in receipt of disability benefits with respect to a number of long-term health conditions.
- [46] The evidence indicates the claimant's presently has an employment income of about \$44,500 and anticipates receiving something in the range of \$10,000 to \$15,000 in disability benefits. (Nothing in my reliance on these numbers should be construed as a finding that claimant's disability benefits constitute income for purposes of child support.)

- [47] The respondent is employed as a longshoreman. He is currently off work due to injury and in receipt of WorkSafeBC ("WCB") compensation benefits.
- [48] The respondent's agreed upon annual employment income under the JCC Order was \$71,694.05. He is currently receiving bi-weekly WCB benefits of \$2,568. The claimant calculates that WCB benefit (without gross up) as annualizing out to \$66,768 (\$2,568 x 26). The respondent says it annualizes to \$61,632, but provided no basis for that calculation.
- [49] The interim 50/50 split sought by the claimant is reasonable. If anything, it appears favourable to the respondent.
- [50] On a without prejudice basis, the parties are ordered to contribute equally towards s. 7 expenses for the children with respect to August 2020 through to trial.

IV. Disputed Expense Claims

A. The Expenses

- [51] The claimant seeks contribution with respect to the following expenses she has paid post-separation:
- a) Academics White Rock (in part for A. only and then, from B.'s registration date forward, for both): from August 1, 2022 through June, 2022 - \$29,430;
 - b) Child therapy for both children (with Elizabeth Nardella of Arches Counselling): 60 sessions from December 4, 2020 until February 19, 2022 for a total of \$6,902;
 - c) Soccer for both children: September 2022 until May 2023 for a total of \$1,710;
 - d) Dance for both children: October 1, 2020 through March 6, 2021 for a total of \$1,204.25;
 - e) "Academics Advanced Programs" for both children: January 2021 through July 2021 for a total of \$1,504;
 - f) Girl Guides program for both children: September 1, 2022 until June 31, 2023 for a total of \$258;
 - g) Piano (A.): May 2, 2022 for \$238;
 - h) Golf equipment and lessons (A.): May 2022 for \$322.34;
 - i) "Glarea": August 2021 through April 2022 for \$4,500; and
 - j) Summer camp: May 26, 2022 for a total of \$1,704.
- [52] The claimant also sought contribution regarding \$880 incurred for dental services between December 2020 and May 2022. At the hearing, the respondent conceded the dental expenses were proper s. 7 expenses.

B. Legal Framework

[53] Section 7 of the Guidelines includes the following:

Special or extraordinary expenses

7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

- (a) child care expenses incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time;
- (b) that portion of the medical and dental insurance premiums attributable to the child;
- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

Definition of "extraordinary expenses"

(1.1) For the purposes of paragraphs (1)(d) and (f), the term extraordinary expenses means

- (a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or
- (b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account
 - (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
 - (ii) the nature and number of the educational programs and extracurricular activities,
 - (iii) any special needs and talents of the child or children,

- (iv) the overall cost of the programs and activities, and
- (v) any other similar factor that the court considers relevant.

[54] In *Clarke v. Clarke*, 2014 BCSC 824, Baird J. provided a very helpful review of the law regarding special and extraordinary expenses:

What are special and extraordinary expenses?

- [47] It appears that the parties do not agree as to what qualifies as a "special or extraordinary expense". In order to guide them in the future I am going to briefly comment on the legal meaning of that phrase. I note that there is a similar summary in *MacDonald v. Pink*, 2011 NSSC 421 at para. 55, which may also be helpful.
- [48] Section 7 of the Federal Child Support Guidelines gives the court the discretion to order payment of an amount over and above the regular table amount. However, in order to qualify for a s. 7 order, the expenses must be proven to be "special" or "extraordinary" in some way.
- [49] This is because the basic table amounts of child support are designed to cover all the "ordinary" costs of raising a child: *D.M.C.T. v. L.K.S.*, 2008 NSCA 61 at para. 25. Food, shelter, clothing and other necessities are all ordinary, as are many educational, extracurricular and recreational expenses: *McLaughlin v. McLaughlin* (1998), 167 D.L.R. (4th) 39 (B.C.C.A.).
- [50] So when does an expense qualify as special or extraordinary? First, it must fit within one of the categories of expenses listed in section 7 .
- [51] That list is exhaustive. If the claimed expense does not fit into any of those categories, it cannot be a special or extraordinary expense: *Kase v. Bazinet*, 2011 ONCJ 718 at para. 39.
- [52] Even where an expense fits into one of the listed categories, that is not the end of the story. The expenses must be both "necessary" -- as defined in relation to the child's best interests -- and "reasonable," as measured against the combined financial means of the parents (and, where appropriate, the child) as well as the family's spending patterns prior to separation: see section 7(1) and *Yensen v. Yensen*, 2003 BCSC 1372 at para. 8. In addition if the expense is one listed under subsection (d) or (f) -- educational programs or extracurricular activities -- the party claiming the expense must prove that they are "extraordinary."
- [53] There is no straightforward definition for "extraordinary" although section 7.1, recently added to the Guidelines, provides some guidance; it requires a sort of proportionality inquiry, looking at the nature and number of activities, any special needs or talents of the child, the overall cost of the activities, and any other similar relevant factors: see *D.M.C.T.* at para. 32.
- [54] Because the tests are fact-specific, I cannot definitively say what types of expenses qualify in every case. But I can say what does not qualify as special or extraordinary:

- Expenses such as "entertainment, pets, vacations, school fees, school supplies, children's allowances, meals outside the home, personal grooming, and clothing" are not section 7 expenses: *Mertler v. Kardynal* (1997), 35 R.F.L. (4th) 72 (Sask. Q.B.).
- A home computer and other similar technologies do not qualify as extraordinary as they are "common item[s] found in most homes": *Yensen* at para. 18.
- Recreational sports and other similar extracurricular activities -- dance lessons, community sports leagues, ski trips, etcetera -- are generally considered "ordinary." The question is whether the participation goes beyond that of the "average child": *D.L.C. v. F.M.C.*, 2010 BCSC 1312 at para. 67.

C. Analysis

- [55] Aside from the dental expenses, all the expenses claimed are disputed by the respondent. He contends the expenses are either covered by the existing child support payments or are unnecessary and unreasonable given the parties' present financial positions. He agrees that A. attended Academics White Rock prior to the parties' separation, but argues that it is too expensive to have two children attend and that it would have been too expensive even if the marriage had continued.
- [56] He also questions how the claimant has been able to pay the expenses claimed given the budget numbers set out in her F8 financial statement. There is some merit to that, however, neither of the budgets set out in the parties' current F8 financial statements strike me as having been carefully and diligently prepared. Both are also stale. I also note that the respondent's F8 financial statement provides deficient disclosure, a fact acknowledged by his counsel during the hearing.
- [57] I do not find it appropriate to place much weight on either parties' F8 financial statement budgets in assessing affordability here. The evidence of the parties' respective incomes is already set out above.
- i. Counselling
- [58] Counselling is a special expense under s. 7(1)(c).
- [59] The claimant attests that both children have difficulty sleeping and suffer nightmares as a consequence of family violence. A. also exhibits symptoms of anxiety. Since December 2020, the children have received weekly play therapy for sleeping issues and anxiety with Elizabeth Nardella of Arches Counselling.

- [60] The sessions cost \$145 per session per child, however, the children were awarded partial funding for therapy under the Crime Victim Assistance Program ("CVAP"). The children were approved for 24 sessions each with a coverage amount of \$80. The expenses claimed by claimant represent the cost in excess of the CVAP subsidy. There is a report from the counsellor describing the nature of the counselling provided. There is also a note from A.'s school stating that there has been an observed improvement in her socialization skills.
- [61] The children were exposed to family violence on numerous occasions as well as a significant general household discord and stress and the break-up of the family unit. I accept that it is necessary in the circumstances for them to receive counselling.
- [62] The respondent objects to Ms. Nardella as the counsellor. He says the claimant gave Ms. Nardella information that has resulted in her being biased against him. The claimant's evidence is that she told Ms. Nardella about the family violence that had been witnessed by the children. I have found as a fact that family violence occurred and that much of it was witnessed by the children. Thus, it was appropriate for Ms. Nardella to be made aware of that in order to provide appropriate treatment to the children. With regard to his complaint as bias, I am not relying on Ms. Nardella's counselling report as expert evidence, but rather only as evidence of the form and nature of counselling that is being obtained under the expense in dispute.
- [63] There is evidence that Ms. Nardella is a licenced therapist, that the counselling sessions have taken place and about the cost of the counselling sessions. Considering the need for therapy, the CVAP subsidy and the parties' incomes, it is a reasonable cost.
- [64] The respondent also contends that the claimant has complied with term 4 of the JCC Order in terms of providing details regarding the counselling. The claimant says she has complied and that, if the respondent wants further information, he can get it under term 5 of the JCC Order.
- [65] Terms 4 and 5 of the JCC Order deal with obligations as between the parties. Whether the parties have complied with those terms is irrelevant to whether counselling is a necessary and reasonable expense in terms of the best interests of the children.
- [66] The counselling fees are proper s. 7 special expenses.

ii. Academics White Rock

- [67] A pre-kindergarten programme is not "primary school education". There is no evidence about Academics White Rock as an education program. There is no evidence as to how the best interests of the children are advanced by attending nor that either child has any particular need to attend. Notwithstanding a modest government subsidy, the program is unduly costly given the parties' means.
- [68] The Academics White Rock expenses are not justified as s. 7 extraordinary expenses.

iii. Extracurricular Programs

- [69] I am not satisfied on the evidence that any of the numerous extracurricular program expenses claimed are justified. The claimant's evidence consists of a collection of receipts. While some of the receipts provide a modicum of information in addition to the amount of the expense, none are self-explanatory. There is no information before me regarding the substance of the programs or why these programs are particularly appropriate or important for the children to attend. There is no evidence identifying what "Glarea" even is.
- [70] As noted in Clarke, recreational sports, community activities and things like dance lesson are generally ordinary expenses absent evidence that the level or degree of participation is beyond that of the average child. On the evidence before me on this application, none of the extracurricular expenses claimed have been shown to be extraordinary within the meaning the Guidelines.

V. Disposition

[71] In summary, the findings are as follows:

- a) The Giaschi Order is extended for the period of one year from the date of these reasons for judgment;
- b) On a without prejudice basis, the parties will contribute to s. 7 expenses equally pending trial; and
- c) With the exception of the conceded dental expenses and the payments to Arches Counselling, the expenses the claimant claims as s. 7 expenses are disallowed.

"Tucker J."

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