

CANADA / JUDGMENT

R.L.N. v. D.L.J.-N.

2025 BCSC 270

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 270 R.L.N. v. D.L.J.-N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.L.N. v. D.L.J.-N.,

2025 BCSC 270

Date: 20250220

Docket: E160458

Registry: Vancouver

Between:

R.L.N. also known as C.E.R.N.

Claimant

And

D.L.J.-N.

Respondent

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

The Claimant, appearing in person:

C.E.R.N.

Counsel for the Respondent:

L.S. Dattilo

Place and Dates of Trial:

Vancouver, B.C.

February 26-29, May 27, 2024

and January 9, 2025

Place and Date of Judgment:

Vancouver, B.C.

February 20, 2025

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I. Introduction

- [1] The parties to this family law action had a 24-year relationship between 1991 and 2015. They have a daughter, Z.S.N., who was born in 2008.
- [2] During the relationship, the claimant, then known as R.L.N., identified as male, but now identifies as intersex, has adopted a new name with the initials C.E.R.N., and prefers female pronouns. In this action, she seeks a divorce, prospective and retroactive child and spousal support and an equal division of family assets and debts.
- [3] The respondent, D.L.J.-N., agrees to a divorce and does not oppose an order requiring her to pay monthly child support to C.E.R.N. from November 1, 2023 forward, given that Z.S.N. has, since that date, been residing exclusively with C.E.R.N. and has refused to have any

contact with D.L.J.-N. However, D.L.J.-N. opposes any order that would require her to pay spousal support after that date. She has been paying C.E.R.N. monthly spousal support in the amount of \$1,200 since June 15, 2016 and the parties had, she says, previously agreed that C.E.R.N. would not seek child support while receiving those payments. In addition, she seeks:

- a) an unequal division of the family assets, so that she can have title to the family home, which has been in her possession exclusively since separation, transferred into her name alone; and
- b) an order that the parties and Z.S.N. attend counselling for the purpose of repairing her relationship with Z.S.N.

[4] For the reasons that follow, I have concluded that the action should be allowed in part.

II. Factual Background

A. The Relationship

- [5] The parties are originally from Ontario. C.E.R.N. is now 58 and D.L.J.-N. 52.
- [6] They first met in Port Elgin in 1989 while working at the same restaurant or club. At the time, C.E.R.N. was in her early 20s and D.L.J.-N. a teenager and still in secondary school. They began dating about a year later, after D.L.J.-N.'s graduation.
- [7] Their relationship quickly grew serious. They began living together in 1991. By then, D.L.J.-N. was attending the University of Western Ontario in London, Ontario. C.E.R.N. left her job to join her there and found work a few months later at a local outdoor store.
- [8] The parties decided to move to British Columbia in 1996. Upon their arrival in the Lower Mainland, D.L.J.-N. began graduate studies at Simon Fraser University ("SFU"). She would eventually complete a Master's Degree in 1999 and then a PhD in 2004. After graduating, she worked briefly off campus but eventually returned to work at SFU in 2005 and has remained employed there ever since. Initially, C.E.R.N. found work as a music editor.
- [9] The parties were married on June 5, 1999. In 2006, after D.L.J.-N. had secured steady employment at SFU, they purchased an apartment located at 205-9188 University Crescent in Burnaby, which became the family home.
- [10] Z.S.N. was born in November 2008. D.L.J.-N. took maternity leave until February 2009. Around that time, C.E.R.N. was laid off and would not be employed again.
- [11] In the summer of 2009, the parties decided to take a trip to Ontario to see their families. While they were staying at the home of one of C.E.R.N.'s relatives, C.E.R.N. tripped and fell down a staircase. She did not seek medical attention while they were in Ontario. It was only after their return to British Columbia that she learned that she had sustained serious injuries in the fall, including several broken bones in her spine as well as an injury to her rotator cuff. Despite various attempts at treatment, including surgery, she has never recovered from

the accident.

- [12] The parties disagree about how Z.S.N. was cared for after D.L.J.-N. went back to work following her maternity leave. According to D.L.J.-N., Z.S.N. was placed in daycare because C.E.R.N. was still suffering from her injuries. C.E.R.N. says that she took on most of the childcare responsibilities herself.
- [13] In any event, with only one income, the parties had difficulty making ends meet. They tried to earn additional income through various entrepreneurial endeavours over the years but none of these were successful. Instead, they fell deeper into debt.
- [14] In 2013, the parties engaged a trustee to assist them in presenting a consumer proposal to their creditors. The proposal was approved by the creditors and successfully completed over the next five years. D.L.J.-N. made all of the payments herself, for a total of \$24,000.

B. The Separation

- [15] The financial predicament appears to have taken a heavy toll on the parties' relationship. They separated on January 18, 2015.
- [16] In November 2015, C.E.R.N. decided to return to Ontario for another visit with her family. The parties agreed, with the assistance of a mediator, that D.L.J.-N. would pay for the flight, but she purchased only a one-way ticket because, according to D.L.J.-N., C.E.R.N. did not know when she was planning to return. In the end, C.E.R.N. remained in Ontario for nearly six months. C.E.R.N.'s parents eventually paid for her flight back to Vancouver.
- [17] The level of conflict between the parties rose sharply following C.E.R.N.'s return from Ontario. D.L.J.-N. says she learned of C.E.R.N.'s arrival in Vancouver only when C.E.R.N. collected Z.S.N. from daycare, with no advance warning. Another argument arose when C.E.R.N. turned up at Z.S.N.'s school with no advance warning. The parties were unable to agree on a parenting schedule.

C. Litigation History

- [18] C.E.R.N. commenced this action on February 15, 2016. On August 9, 2016, the parties attended a judicial case conference ("JCC") and agreed to an order granting them shared custody and guardianship of Z.S.N. and setting a parenting schedule. D.L.J.-N. agreed to pay C.E.R.N. spousal support in the amount of \$1,200 per month, commencing on June 15, 2016. C.E.R.N. agreed not to seek child support while those payments were being made.
- [19] The parenting schedule was subsequently changed by way of consent orders dated November 29, 2016 and June 13, 2017.

- [20] The parties continued to follow the parenting schedule set out in the June 13 2017 consent order until the onset of the global pandemic in 2020. C.E.R.N.'s parenting time was severely restricted during the months of quarantine that followed, due to D.L.J.-N.'s concerns about the risk of infection.
- [21] In October 2023, Z.S.N. decided to move in with C.E.R.N. and to cut off all contact with D.L.J.-N. D.L.J.-N. has had no contact with Z.S.N. since then.
- [22] The parties presented their evidence at the trial before me from February 26-29, 2024. I adjourned the closing arguments so that they could arrange for the preparation of a report on Z.S.N.'s views. They were unable to agree on the appropriate author for such a report, which necessitated another hearing before me on May 27, 2024. The author they eventually selected met with Z.S.N. once. The author then asked to have a second meeting with Z.S.N., this time with D.L.J.-N. present. Z.S.N. refused to agree to this and the author refused to complete the report without that second meeting.
- [23] So matters stood when the parties appeared before me for closing argument on January 9, 2025. With the agreement of the parties, I met with Z.S.N. myself that day in order to hear her views directly. During my meeting with her, she explained why she does not wish to have contact with D.L.J.-N. for now, although she was open to resuming contact later, when she is ready. She expressed a strong preference not to participate in reunification counselling.

III. Discussion

A. Parenting Issues

- [24] D.L.J.-N. seeks an order requiring C.E.R.N. to arrange for Z.S.N. to participate in reunification counselling. Z.S.N. has indicated to me that she does not wish to do so, at least not until she is ready.
- [25] Issues of this kind are to be resolved with regard to s. 37 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], which states as follows:

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.
- [26] Of central importance in the circumstances of this case, given Z.S.N.'s age, is the fact that she does not want to be in contact with D.L.J.-N. D.L.J.-N. argues that Z.S.N.'s wishes should not carry the day because she believes Z.S.N. has been alienated from her by C.E.R.N.
- [27] A similar situation arose in *M.Y.T.C. v. L.H.N.*, 2020 BCSC 414, a case in which the evidence of alienation was much stronger. In refusing to order an 18-year-old child to attend reunification counselling against his will, I adopted the reasoning of Forth J., who had refused to grant that relief when the estranged parent had sought it on an earlier interlocutory application in the same action. In her decision, indexed as *M.Y.T.C. v. L.H.N.*, 2018 BCSC 1174, she stated as follows:
- [79] I see no benefit in forcing the child, if one can force a 15 year old, to attend counselling. The child's views are clear that any attempt to force him to enter counselling will be met with significant resistance. I believe this could even further damage the future relationship between him and his mother. The child may well use this as a further example of how he has been drawn into this marital "battle" by his mother.

- [80] The evidence supports that the child is "a bright competent adolescent boy capable of communicating his feelings and experiences", who shows "competence in his activities, social relationships and school achievement.": see Views of the Child Report at p. 10. In consideration of all the factors, his views must be given a significant weight. I adopt the reasoning of Mr. Justice Affleck in *K.L.S. v. K.M.S.*, 2017 BCSC 1315 at para. 16:
- [16] The only consideration I must have in regard to J.S. is her best interests. I am persuaded that an order of this Court requiring J.S. to undergo counselling with the aim of establishing a relationship with her mother, no matter how skilfully that counselling is handled, and no matter how delicately the re-establishment of a relationship is approached, would be seen by J.S. as coercion. It would not enhance the prospect of developing a useful relationship with her mother. In my view the more promising approach to achieving a satisfactory relationship between J.S. and her mother is to allow the passage of time, if possible, to overcome the wounds of the past, as perceived by J.S. This perception by J.S., whether or not it is acknowledged by others, must be respected. The striving of the respondent, through this Court, to create a relationship with J.S. is counterproductive.
- [81] If the child does wish to have counselling, then both parties should support and encourage this. However, the overall circumstances in this case do not support that the court should order the child to attend the REACH program or an equivalent. The record does not support that the child is ready or would be willing to engage in such counselling. As a result, this Court is not in the position to force meaningful counselling at this time: see e.g. *K.L.K. v. E.J.G.K.*, 2013 BCSC 2030 at paras. 72-74; *Willis v. Willis*, 1987 CarswellBC 2697 at para. 15 (S.C.).
- [28] The same reasoning applies here. I am therefore refusing to make any new parenting orders, other than a conduct order requiring C.E.R.N. to encourage Z.S.N. to resume contact with D.L.J.-N., if necessary with the assistance of counselling, when Z.S.N. is ready to do so.

B. Child Support

- [29] D.L.J.-N. does not oppose an order requiring her to pay child support retroactively from November 2023 forward. However, she argues that her monthly payments of \$1,200 in spousal support between then and now, if treated instead as child support, have been more than enough to satisfy her retroactive child support obligation. She says that C.E.R.N.'s agreement at the JCC not to seek child support while receiving those payments precludes her from claiming both child support and spousal support during that period.
- [30] I am not persuaded that D.L.J.-N. is entitled to a setoff of that kind against her retroactive child support obligation. Rather, I am satisfied that Z.S.N.'s decision to reside full-time with C.E.R.N. was a material change in circumstances that overtook the parties' agreement at the JCC. Accordingly, my order will be that D.L.J.-N. must pay C.E.R.N. retroactive child support from November 2023 to the present.

[31] Prospectively, D.L.J.-N.'s current income of \$114,508 yields a table amount owing of \$1,068 per month. Although C.E.R.N. also seeks to have additional income imputed to D.L.J.-N., I see no evidentiary basis for such an order.

[32] Retroactively, D.L.J.-N. owes C.E.R.N. 16 months in unpaid child support (for the period from November 15, 2023 until February 15, 2025), for a total of \$17,088.

C. Spousal Support

[33] A spouse's entitlement to spousal support is determined having regard to the condition, means, needs and other circumstances of each spouse. Relevant factors include the length of time the spouses cohabited and the functions performed by each spouse during the cohabitation. Section 15 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), identifies four objectives for such an order:

- (a) to recognise any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) to apportion between the 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) to relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) insofar as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[34] In *Zacharias v. Zacharias*, 2015 BCCA 376 the Court of Appeal explained the various grounds upon which an award of spousal support can be based, as follows:

[25] Canadian courts have recognized three distinct bases upon which a spouse may be entitled to an award of spousal support: compensatory, non-compensatory, and contractual.

[26] Compensatory entitlement will arise where, as a result of the parties' roles during the marriage, one spouse has suffered economic disadvantage or has conferred economic advantages on the other. Most often, such entitlement will arise where one spouse has sacrificed career opportunities in order to take on more of the family's household or child-rearing responsibilities. Upon the dissolution of the marriage, the spouse who has given up opportunities may be entitled to spousal support, either to compensate for diminished earning capacity, or to share in the augmented earning capacity of the other spouse. The main goal of compensatory spousal support is to provide for an equitable sharing of the economic consequences of the marriage (see *Moge v. Moge*, [1992] 3 S.C.R. 813 at 858-66).

- [27] Non-compensatory support entitlement focuses on the needs of the spouses and on their respective means. It is based on the idea that spouses, by virtue of marriage, have some ongoing responsibility to care for one another. The degree to which non-compensatory principles will apply will depend on a close examination of not only the means and needs of the spouses, but also of the nature of the marital relationship and its duration (see *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, particularly at para. 53).
- [28] Finally, spousal support obligations may arise out of agreements entered into between the parties. There is no contractual basis to the support obligations in this case.
- [35] C.E.R.N. argues that she is entitled to compensatory and non-compensatory spousal support on the following grounds:
- a) she sacrificed her career in order to care for Z.S.N. when D.L.J.-N. returned to work;
 - b) her standard of living fell after the separation; and
 - c) she is disabled.
- [36] I am not persuaded that C.E.R.N. has a strong compensatory claim for spousal support. Although this was a 24-year relationship, the parties' standard of living during the relationship was not high. On the contrary, they lived beyond their limited means during the relationship and, as a result, found themselves heavily in debt. They only emerged from that debt burden because D.L.J.-N. made the payments needed to fulfill the terms of the consumer proposal.
- [37] There is no reliable evidence that C.E.R.N. sacrificed a career to care for Z.S.N. C.E.R.N. was laid off in 2009 and appears to have done little to seek employment thereafter, even before the accident that rendered her incapable of working. Her disability appears to be causally unrelated to the relationship or its breakdown.
- [38] C.E.R.N. also asserts that she supported D.L.J.-N. financially while D.L.J.-N. completed her education, but a review of their respective incomes during those years does not support that assertion. Even when she was still studying and only working part-time, D.L.J.-N. still earned considerably more than C.E.R.N.
- [39] Since agreeing to pay spousal support at the JCC in 2016, D.L.J.-N. has paid C.E.R.N. a total of \$123,600, which is roughly equivalent to the amount of spousal support that would have been payable at the low end of the range, after accounting for:
- a) C.E.R.N.'s offsetting obligation to pay child support, based on their incomes at the time;
 - b) the \$9,455.60 in s. 7 expenses paid exclusively by D.L.J.-N. during that period; and
 - c) the \$9,029.14 in CPP child benefits received by C.E.R.N. between December 1, 2020 and September 2023.

- [40] However, I accept that C.E.R.N. is still entitled to ongoing spousal support on non-compensatory grounds, based on need. The gap between the parties' incomes remains wide.
- [41] From 2017 to 2022, C.E.R.N. reported an income of \$14,400. In 2023, she reported a lower income of \$12,000 (a reduction that was not explained) but also received retroactive disability benefits in 2023 totalling \$29,341.59 under the Canada Pension Plan, covering the years 2020 - 2023. This translates into an average of \$7,335.40 in additional income in each of those four years, yielding a net annual income of \$14,400 (taxable) + \$7,335.40 (non-taxable) = \$21,735.40.
- [42] I have attached as a schedule to these reasons for judgment a DivorceMate calculation, based on the parties' incomes as I have found them to be, showing monthly spousal support payable in amounts ranging from \$945, at the low end, to a mid-level of \$1,259 and a high end of \$1,630, with a minimum duration of 7.75 years and a maximum duration of 15.5 years from the date of separation. Having considered the circumstances canvassed above, I have concluded that the appropriate amount of spousal support payable should be closer to the low end of that range, at \$1,000 per month.
- [43] Since November 1, 2023, D.L.J.-N. has, in view of my conclusions, been overpaying spousal support by \$200 per month. To compensate her for that overpayment, my order will be that her obligation to pay retroactive child support during that same period should be reduced by the amount of the overpayment ($16 \times \$200 = \$3,200$), yielding a net amount owing of \$13,888.
- [44] Prospectively, as of March 15, 2025, she should pay ongoing spousal support in the amount of \$1,000 per month until June 15, 2028, at which time her spousal support obligation, after 12 years of payments, should cease.

D. Property Division

- [45] Both parties seek a division of assets and debts under Part 5 the FLA.
- [46] Pursuant to s. 81 of the FLA, spouses are generally entitled on separation to a half interest in family property, and equally responsible for family debt, regardless of their use and contribution. The term "family property" is defined in s. 84 of the FLA to mean property that either spouse owns at the time of their separation or was acquired after their separation but derived from such property, unless it is excluded.
- [47] Despite s. 81, the court may order an unequal division of family property or family debt pursuant to s. 95, which states as follows:

Unequal division by order

95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or

- (b) divide family property as required under Part 6 [Pension Division].
 - (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
 - (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.
- [48] At the conclusion of the evidence phase of the trial, I directed the parties to prepare Scott schedules to accompany their closing arguments. Only D.L.J.-N. did so. Her Scott schedule shows that the only significant asset to be divided, apart from the parties' pensions, is the family home. D.L.J.-N. paid for two appraisals, the first showing its market value to be \$605,000 currently and \$350,000 as of the date of separation. It is subject to a mortgage with a current balance owing of \$244,393.83. At the time of separation, \$329,247.74 was owing on the mortgage.

- [49] D.L.J.-N. argues that it would be significantly unfair to divide the parties' net interest in the family home equally, in light of the passage of time since separation and the fact that D.L.J.-N. has been paying, on her own, all of the associated expenses in that period, which have totalled nearly \$264,000. She submits that the appropriate order is to assess the parties' net interest in the family home as of the date of separation, when there was only \$20,752.26 in equity to be shared. On that basis, she seeks an order requiring C.E.R.N. to transfer her interest in the family home to her for no further consideration.
- [50] It has been held that a spouse in exclusive possession of the family home is not entitled to an unequal division merely because he or she has been paying the mortgage and other property-related expenses on his or her own since separation: *Storey v. Terry*, 2020 BCCA 30; *Lodhi v. Khan*, 2019 BCSC 398; *S.D.M. v. B.R.M.*, 2018 BCSC 1473.
- [51] However, in this case, D.L.J.-N. was paying those expenses while having Z.S.N. primarily in her care and receiving no child support from C.E.R.N., making this case more like *Moynihan v. Nakano*, 2022 BCSC 2186, in which I ordered an unequal division for that and other reasons. In addition, D.L.J.-N. made all of the post-separation payments that allowed the parties to compromise the family debts for which they were both liable as of the separation date.
- [52] Further, I agree with D.L.J.-N. that the lengthy period of nearly 10 years between the date of separation and the date of trial, during which the value of the parties' net interest in the family home increased substantially due to market forces and D.L.J.-N.'s payments of the mortgage and related expenses, justifies an unequal division, as it did in *Ernst v. Carmichael*, 2019 BCSC 68.
- [53] In *Slavenova v. Ranguelov*, 2015 BCSC 79, the following grounds were cited as the basis for using the separation date as the valuation date in that case (at paras. 51-54):
- [51] As previously mentioned, s. 87 of the FLA provides that, unless an agreement or order provides otherwise, the value of family property or family debt must be determined according to fair market value as of the date of an agreement dividing family property and debt or as of the date of hearing before the court.
- [52] It is generally agreed that the various real property assets at issue in this proceeding have gone up in value since separation. It is also the case that the claimant has been solely responsible for the preservation and maintenance of those properties, and has paid down debt. In this case, immediately after separation the respondent left for Bulgaria. As all of the family property was either in Canada or the United States, the claimant has managed all of the family property since separation, paid the mortgages, paid taxes, arranged rentals, and collected the rents. These efforts of the claimant were of value.
- [53] In *K.M.J. v. J.H.D.N.*, 2014 BCSC 1895 at paras. 155-156, and *Bilawchuk v. Bilawchuk*, 2014 BCSC 2067 at paras. 59-63, the issue of how to account for a party's contributions post-separation was addressed in the context of family debt. In short, the FLA provides two

alternate routes to address potential unfairness that may arise from a party's post-separation contributions, namely s. 87 and s. 95. Under s. 95 a court can order reapportionment to address any "significant unfairness" that may arise from an equal division of property and debt in light of the spouse's post-separation contribution. Alternatively, under s. 87 the Court may depart from the date of hearing or agreement as the valuation date.

- [54] I have already determined that the parties do not have an existing agreement with respect to family property and debt. Similarly, I find that there is no agreement providing for an alternate valuation date than that contemplated by s. 87, which in the circumstances is the date of the hearing before the court. However, I find that in the circumstances it is appropriate for me to order under s. 87 that the parties' real property should be valued at the date of separation, rather than at the date of trial.
- [54] A similar approach was followed in *Davie v. De Mark*, 2017 BCSC 872 at paras. 168-169:
- [168] The claimant made no contributions to Beatty Street post-separation, financial or in-kind. It is the respondent who has borne the whole of the debt since then. On the evidence, the rise in value between separation and trial is predominantly due to market trends. And, the increase has been rapid: reaching \$145,000 in just 16 months.
- [169] I hold that the appraised value for use in assessing the claimant's interest in Beatty Street should be \$775,000, as at December 20, 2015. For the reasons provided, to rule otherwise would result in significant unfairness to the respondent. The difference in Beatty Street value from the start of the parties' marriage-like relationship and separation is therefore \$120,000.
- [55] The same reasoning applies here. On that basis, I agree with D.L.J.-N. that an unequal division is appropriate. However, valuing the family home as of the date of separation would overshoot the mark in this case. In that scenario, the equity to be divided would be worth only \$20,752.26. At present that figure is \$360,606.17. Although D.L.J.-N. has been paying all of the associated expenses since separation and completed the consumer proposal on her own, those one-sided contributions do not justify such an uneven division, particularly when D.L.J.-N. has had exclusive use of the family home in that same period.
- [56] In all the circumstances, I have concluded that the appropriate order is for the current value of the equity in the family home to be divided 85%/15% in D.L.J.-N.'s favour. It follows that D.L.J.-N. must compensate C.E.R.N. for her 15% share of that amount, or \$54,090.93. Further, I am ordering D.L.J.-N. to pay C.E.R.N. that amount within 90 days of the release of this judgment. Upon receipt of that payment, C.E.R.N. will immediately transfer title to the family home into D.L.J.-N.'s name alone.
- [57] I am making the other orders for the division of assets and debts as proposed by D.L.J.-N.

IV. Summary and Conclusion

- [58] In summary, I am making the following orders:

- a) the divorce is granted;
- b) the parties will remain joint guardians of Z.S.N.;
- c) C.E.R.N. will encourage Z.S.N. to resume contact with D.L.J.-N., if necessary with the assistance of counselling, when Z.S.N. is ready to do so;
- d) D.L.J.-N. is to pay C.E.R.N.:
 - i. retroactive child support from November 1, 2023 to the present, less overpaid spousal support during that same period, for a net amount owing of \$13,888;
 - ii. ongoing child support, beginning as of March 15, 2025, in the amount of \$1,068 per month, on the 15th day of every month; and
 - iii. ongoing spousal support, beginning as of March 15, 2025, in the amount of \$1,000 per month, on the 15th day of every month, until June 15, 2028;
- e) within 90 days of the release of this judgment, D.L.J.-N. will pay C.E.R.N. \$54,090.93, less C.E.R.N.'s 50% share of:
 - i. the costs of the two property appraisals; and
 - ii. the retainer paid to the author of the voice of the child report that was never completed, and upon receipt of that payment, C.E.R.N. will transfer her interest in the family home to D.L.J.-N.;
- f) the parties' pensions are to be divided equally under Part 6 of the FLA; and
- g) the parties will otherwise retain the assets currently in their possession or control and will be responsible for debts currently in their own name, other than the mortgage charging the family home which, after C.E.R.N.'s interest is transferred to D.L.J.-N., will be D.L.J.-N.'s sole responsibility and D.L.J.-N. will indemnify C.E.R.N. and save C.E.R.N. harmless from any further liability in that regard.

[59] All other claims in the action are dismissed.

[60] As success was divided, I am inclined to order that the parties will bear their own costs. If either party wishes to seek a different order as to costs, they may do so by delivering written submissions to the other side, and to the registry, to my attention, within 21 days following the release of these reasons for judgment. The other party will have 10 days thereafter to deliver, in the same manner, any written reply submissions they wish to make.

"Milman J."

Schedule A

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