

CANADA / JUDGMENT

R.N.L. v. T.C.

2025 BCSC 1847

COURT

Supreme Court of British Columbia

DECIDED

11 June 2025

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2025 BCSC 1847 R.N.L. v. T.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.N.L. v. T.C.,

2025 BCSC 1847

Date: 20250611

Docket: E58559

Registry: New Westminster

Between:

R.N.L.

Claimant

And

T.C.

Respondent

Before: The Honourable Madam Justice Hamilton

(by videoconference)

Oral Reasons for Judgment

Appearing on their own behalf:

T. C. (by videoconference)

Appearing on their own behalf:

R. L. (by videoconference)

Place and Dates of Trial:

New Westminster, B.C.

May 12-16, 2025

Place and Date of Judgment:

New Westminster, B.C.

June 11, 2025

Background

- [1] THE COURT: This is a family file involving four children ages nine through 15.
- [2] The Claimant Ms. L and the Respondent Mr. C commenced living together in or about 2005. They married on August 15, 2015, and separated in April of 2019. The parties own a home at 2312 Lakeview Drive Blind Bay -- Sorrento, B.C., which I will refer to as the "Blind Bay Property". They also own several recreational vehicles including quads, a houseboat, and an RV trailer. Several of these vehicles were sold to pay off debt. Ms. L paid off additional family debt and seeks an adjustment for same.
- [3] The parties shared use of the Blind Bay Property until October 2019 when Ms. L started this action and obtained a protection order and exclusive occupancy of the Blind Bay Property. Ms. L continues to reside there with the children. She pays the mortgage, property taxes, and house insurance, and spent \$43,000 on repairs and improvements to the property since separation.
- [4] During the relationship, Ms. L stayed home to raise the children. In contemplation of separation, she obtained employment with WestJet. However, since separation, she had to give up her employment at WestJet and is now an educational assistant for children with special needs. She now has a 9:00 a.m. to 2:00 p.m. schedule which works for parenting. Her income is approximately \$22,000 per year.
- [5] Mr. C was the primary breadwinner in the relationship. He is an electrician who works on contract for various companies in other provinces. His income fluctuates, but most recently in 2024 his gross income was \$144,000. He was between contracts at trial but was hoping to have his next contract shortly.
- [6] The children have lived with Ms. L since separation, pursuant to the order of Master Keighley, as he then was, made November 22, 2019. Ms. L has interim primary residence of the children, and Mr. C was given reasonable parenting time at times and dates agreed to by the parties when his work schedule permitted. I will refer to this as the "Keighley Order".
- [7] The Keighley Order also provides that:

- (1) Mr. C shall not attend the Blind Bay Property, except to pick up or drop off the children;
- (2) Pursuant to s. 222 of the Family Law Act, S.B.C. 2011, c. 25 ["FLA"] the parties shall:
 - (a) Put the interests of the children first;
 - (b) Encourage the children's relationship with the other parent and speak to the children about the other parent and their partner in a positive and respectful manner;
 - (c) Maintain polite, respectful communications with each other;
 - (d) Avoid questioning the children about the other parent or time spent with the other parent;
 - (e) Avoid discussing with the children any inappropriate adult or court, court or legal matters; and
 - (f) Avoid blaming or criticizing the other parent to the children.
- [8] Pursuant to s. 222, Mr. C was also ordered not to consume or possess any alcohol or controlled substances, unless prescribed, within eight hours of exercising, parenting time, or during parenting time. The Keighley Order remains in effect.
- [9] Until recently, Mr. C's parenting time was approximately every other weekend, when he was in town, although at times his parenting time was temporarily suspended or supervised due to Ministry of Children and Family Development ("MCFD") or police involvement. For example, he was charged twice for assaulting his children and missed approximately six months of parenting time. He says that he was later acquitted. Ms. L takes some issue with this, but it is unnecessary for me to resolve this factual dispute.
- [10] On October 15, 2024, Mr. C and his girlfriend of five years, Ms. H, broke up. After this event, Mr. C was consuming alcohol very heavily. He admits that December 2024 was a particularly bad period in terms of his alcohol use and mental health, and that January and February 2025 were even worse. In October, Mr. C admits to being blackout drunk over a ten-day drinking binge, five of which days he had his children.
- [11] In December 2024 or January 2025, Mr. C received a 90-day roadside suspension, presumably for drinking while driving. On February 22, 2025, he was caught driving his vehicle while prohibited with one of the children inside the vehicle. He has been unable to renew his driver's licence since his last birthday in August 2024 due to about \$5,000 in tickets and fines. ICBC has deemed him an unsafe driver.
- [12] In January or February 2025, with this trial approaching, Ms. L contacted Ms. H to inform her that she would be calling her as a witness. During her conversation with Ms. H, Ms. L learned of events that caused her urgent concern for the children's safety, and she applied to the Salmon Arm Provincial Court for relief pending this trial. After hearing oral evidence from Ms. L, Ms. H, and Mr. C on March 12, 2025, Provincial Court Judge Guild ordered, on a without prejudice basis, that Mr. C's parenting time be supervised by a person agreed to by the parties. He also made the following orders:

- 1) Mr. C shall not operate a vehicle with the children in it unless he has a valid driver's licence and provides proof to Ms. L.;
 - 2) Similar to the Keighley Order, Judge Guild ordered that Mr. C:
 - i. put the best interests of the children before his own;
 - ii. encourage the children to have a good relationship with Ms. L and speak to the children about her and her partner in a positive and respectful manner;
 - iii. make a real effort to maintain polite, respectful communications with Ms. L; and
 - iv. refrain from negative or hostile criticism, communication or argument in any form in which the children can see or access.
 - v. not question the children about Ms. L on the time spent with Ms. L beyond simple conversational questions;
 - vi. not discuss with the children any inappropriate adult, court, or legal matters;
 - vii. not blame, criticize, or disparage Ms. L to the children.
 - 3) Mr. C shall enrol in a substance use counselling and mental health counselling or treatment, and provide confirmation of attendance to Ms. L within seven days of enrolment.
 - 4) Similar to the Keighley Order, but even more restrictive, Mr. C shall not consume any alcohol, cannabis, or other intoxicating substance during the exercise of any parenting time and during the 24 hours before having parenting time;
 - 5) Similar to the Keighley Order, pursuant to s. 222 and 227 of the FLA, Mr. C shall not go within 100 metres of the Blind Bay Property.
 - 6) Pursuant to s. 225 of the FLA, the parties shall communicate with each other only through OurFamilyWizard about family matters unless otherwise agreed to in writing: (a) except in the presence of a lawyer who has a copy of the order, (b) through a third-party serving court documents and during scheduled appearances and conferences. If the court appearance is in person, a sheriff must be present unless a judge, associate judge, or judicial justice waives this requirement.
- [13] Despite being aware of the trial dates in this Supreme Court proceeding, Mr. C did not attend the first day of trial. However, he appeared by video link at the beginning of day two of trial and asked for permission to appear by video for the remainder of the trial, which I granted. Ms. L cooperated to get Mr. C electronic copies of any exhibits that he requested.

The Issues

[14] The issues include:

- 1) Divorce;

- 2) Primary residence and decision-making for the children;
 - 3) Mr. C's parenting time and whether or not it should be supervised;
 - 4) Child support including retroactive support;
 - 5) Property and debt division including Ms. L's claim for unequal division.
- [15] In addition, Ms. L asked me to find Mr. C be in contempt of court for failing to comply with court orders, including a child support order, orders for disclosure of his income, and the terms of various protection orders. She seeks that he be imprisoned.
- [16] Spousal support is no longer a live issue because Ms. L concedes that, if Mr. C pays proper child support, there is not enough money left over to pay spousal support. As well, she says she does not need spousal support because she has been living in a common law relationship with her partner D since July 2023.
- [17] I will now turn to address each live issue.

Divorce

- [18] Ms. L seeks a divorce. Mr. C does not oppose. Ms. L provided all the requisite evidence and filed the appropriate paperwork for the divorce and I am satisfied that a divorce ought to be granted, and as such, I grant the divorce with it to take effect after 31 days.

Parenting Time and Decision Making

Statutory Provisions

- [19] The law provides that s. 37 of the FLA states that all orders for guardianship, parenting arrangements, or contact with the child must be made in consideration of only the best interests of the child. Pursuant to s. 39 of the FLA, the parties are presumed to be guardians of the children. The court may only consider the best interests of the child when making orders for parenting, and s. 37(4) dictates that, in making an order under that Part (Part 4), a person's conduct may only be considered if it substantially affects a factor set out in s. 37(2), which deals with the best interests of the children.
- [20] The allocation of parenting responsibilities is made under s. 40 of the FLA. Parenting responsibility set out under s. 41 may be allocated to one parent entirely, shared between both parents, or specifically allocated in various ways to each parent.
- [21] The various parental responsibilities are set out in Section 41 of the FLA as follows:
- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
 - (b) making decisions respecting where the child will reside;
 - (c) making decisions respecting with whom the child will live and associate;

- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
 - (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
 - (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
 - (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
 - (h) giving, refusing or withdrawing consent for the child, if consent is required;
 - (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
 - (j) requesting and receiving from third parties health, education or other information respecting the child;
 - (k) subject to any applicable provincial legislation,
 - (i) starting, defending, compromising or settling any proceeding relating to the child, and
 - (ii) identifying, advancing and protecting the child's legal and financial interests;
 - (l) exercising any other responsibilities reasonably necessary to nurture the child's development.
- [22] Section 37(2)(g) specifically requires the court to consider family violence when considering the best interests of the child.
- [23] An assessment of family violence is set out in s. 38 of the FLA:
- (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.

Analysis

- [24] The children have been in the primary care of Ms. L since at least October 2019. I accept Ms. L's evidence that she has been the children's main caregiver since birth. Mr. C often works out of town and has exercised parenting time on weekends when he has not been working out of town. He often does contract work as an electrician in other provinces such as Saskatchewan. He does not have a regular work schedule. His contracts are generally short term and last between one week to one month.
- [25] In his opening statement, Mr. C conceded that the children should continue residing primarily with Ms. L. He also conceded that Ms. L makes good decisions relating to the children, including decisions about their education, medical and dental needs, counsellors, and their son's autism professionals.
- [26] The only decision that Mr. C stated he wished to be involved with is if Ms. L ever intends to move the children away from Sorrento/Blind Bay. Ms. L confirmed that she has no intention of moving. She agrees that it is best for the children to have the stability of living in their neighbourhoods and attending their schools.
- [27] Mr. C also wishes to be informed of any significant decisions and information involving the children.
- [28] I am satisfied that it is in the best interest of the children that they reside primarily with Ms. L and that Ms. L make the decisions that relate to the children.
- [29] The parties are each guardians of the children, pursuant to the FLA. As such, each parent is entitled to obtain information directly from third parties regarding the children. However, I am granting Ms. L all parenting responsibilities, pursuant to s. 41 of the FLA, which is set out above.
- [30] I am satisfied on the evidence that it is in the best interests of the children in this case that only one party make the decisions relating to the children, other than the moving away decision. I am satisfied that the person be Ms. L. There has been a lot of conflict and family violence, which I will address in more detail below, and in my view, joint decision making would not work well. Ms. L has a history of making good, thoughtful decisions regarding the children, including in relation to their education, activities, medical and dental, and their son's special needs, and is well suited, in my view, to continue to do so.
- [31] However, I agree with Mr. C that Ms. L will be obliged to:
- 1) Keep Mr. C informed of any significant decisions in advance; and
 - 2) Ms. L shall not remove the children outside of the Sorrento/Blind Bay area without Mr. C's written permission, or court order, until the children have finished high school.

- [32] While already addressed in her exercise of parenting responsibilities under s. 41, for clarity, Ms. L will be specifically able to obtain and renew the children's passports without Mr. C's signature. Previously, Ms. L was unfortunately forced to bring a court application to permit the parties' daughter to travel to Japan to participate in an important martial arts event. To avoid stressful or costly future court applications, I find it is in the children's best interests that Ms. L will be able to travel with, or authorize the children to travel, without Mr. C's consent, provided that she provides Mr. C with reasonable notice in writing in advance of any travel and provides him with an itinerary that includes travel dates and where the children will be staying. Ms. L will also notify Mr. C of any changes to the travel plans as they arise.
- [33] These notifications and all other communication between the parties shall occur via OurFamilyWizard unless both parties otherwise agree. Ms. L's mother observed the trial and generously offered to pay for the OurFamilyWizard expense.
- [34] As such, once per month, Ms. L shall provide Mr. C by OurFamilyWizard any significant updates regarding the children's schooling, scheduled activities, medical, or dental. If Mr. C wishes further information, he can then inquire directly with the children's doctors, dentists, teachers, principals, or other third-party professionals. If there is nothing to update that month, Ms. L need not notify Mr. C that month.
- [35] Ms. L will notify Mr. C immediately through OurFamilyWizard regarding any significant changes to the children's physical or mental health or medications.
- [36] Mr. C must be respectful in his communication with Ms. L. All communications between the parties shall be brief, informative, professional in tone, and avoid any name calling, put downs, or swearing. I will also adopt and make the other conduct orders contained in the Guild Order which I outlined above.
- [37] Mr. C, I just note that you may not agree with Ms. L about certain things, but from what I have seen, she is an excellent mother, and you should show her respect for giving your children such good care and attention. If you are unable to show her respect in your communication, you must refrain from communicating with her. I encourage you to have one of your counsellors or someone else you trust review your communications before you send them. I have seen a lot of communications between parents, but some of yours are among the worst I have seen. I am hopeful that you will do better moving forward. As you say, you have a lot of work. Further, the children love both you and their mother. When you speak negatively about their mother, it insults and harms your children. And I think you know that they deserve better.

Whether Mr. C's Parenting Time Should Continue to be Supervised

- [38] I will now turn to the issue of whether Mr. C's parenting time should continue to be supervised.

[39] First, I will outline the parties' positions regarding Mr. C.'s parenting time.

[40] Ms. L submits Mr. C's parenting time should be supervised for 13 reasons, including:

- 1) Mr. C has been physically violent and verbally abusive to the children.
- 2) Mr. C has spoken about court proceedings and adult matters to the children, contrary to the court order.
- 3) Mr. C has badmouthed Ms. L to the children, contrary to court order.
- 4) Mr. C has driven with the children while having no licence and being prohibited from driving.
- 5) Mr. C has continued to consume alcohol around the children despite court order.
- 6) Mr. C has driven with the children while under the influence of alcohol.
- 7) Mr. C gave his eight-year-old son alcohol in 2024.
- 8) Mr. C failed to monitor their young son's anti-psychotic medication such that, in September 2024, their son missed 10 days of medication, resulting in a psychiatric episode and visit to the hospital.
- 9) Mr. C does not follow court orders generally.
- 10) Mr. C continues to consume alcohol and cannot be trusted to not drink in the children's presence.
- 11) Mr. C has not been forthright or communicative with her regarding his issues, and she does not trust him to tell her the truth about when he has consumed alcohol.
- 12) Mr. C takes risks with the children, such as letting them drive their quads along a busy highway.
- 13) Mr. C's relationship with the children has been chaotic and they currently need stability.

[41] Mr. C, on the other hand, seeks unsupervised parenting time on weekends when he is not working out of town. He admits to much of what Ms. L alleges, including breaching court orders, yelling at the children, driving with the children without a licence, biting his son on the leg, speaking with the children about court matters, badmouthing Ms. L to the children, consuming alcohol in the children's presence despite court orders, letting his eight-year-old try alcohol because he was curious and not monitoring the son's medication, stating that it was unnecessary.

[42] He denies assaulting his sons as previously charged, and emphasizes that he was found not guilty on the assault charges. However, he concedes that he has not been the best father to the children, and that December 2024 and January, and February 2025 were particularly low points in his life. However, he states he has taken significant steps to better himself since the Guild Order, including commencing three different counselling programs, including for

substance abuse and trauma counselling. Mr. C. says it is agonizing for him not to see the children. He has already not seen them since March 25, 2025, and he says he cannot afford professional supervision and does not know any mutual friends or other trusted adults to suggest to do the supervision.

Analysis

- [43] Both Ms. L and Ms. H testified about extremely concerning behaviour by Mr. C while the children were in his care. Mr. C admitted much of the allegations. In fact, Mr. C chose not to cross-examine Ms. H at all. Her testimony was very detailed and compelling, as was Ms. L's testimony.
- [44] Many of the concerns raised by Ms. L and Ms. H regarding Mr. C's communication with the children and orders preventing him from using alcohol or other intoxicating substances before and during his parenting time might normally be addressed by conduct orders. However, the Keighley Order has existed since November 22, 2019, and Mr. C has chosen to ignore it.
- [45] Mr. C. claims he was confused regarding whether the Keighley Order was in effect. However, Mr. C is intelligent and had the benefit of counsel representing him previously. It is obviously important to know and follow the terms of court orders. I find it improbable that there was confusion with the order. I am left with the impression that Mr. C ignored the Keighley Order, particularly in respect of drinking in the presence of the children. Mr. C's attitude is generally that Ms. L makes too big of a deal about things, such as him drinking during his parenting time.
- [46] Ms. H testified that, during her relationship with Mr. C from the fall of 2019 through late 2024, Mr. C drank regularly while he had parenting time with the children. For the first number of years he hid alcohol in a water bottle so he could drink it without the children knowing he was drinking alcohol. He would keep alcohol in bags in the fridge. He later drank openly in front of the children. He would drink all day when they went camping. Mr. C did not challenge Ms. H evidence by cross-examining her.
- [47] Mr. C not only breached the Keighley Order, but blatantly and repeatedly breached several of its terms. Not only did he drink alcohol during his parenting time, but he admits to speaking negatively about Ms. L in front of the children, contrary to the order. Ms. H testified that Mr. C told the children that Ms. L was seeking to have them diagnosed with special needs so they could get more money. He also told the children that Ms. L was making a big deal out of things, like drinking and when he bit his son's leg, leaving bite marks. He discussed the criminal assault proceedings with his son and justifies it by saying he only spoke about it after he was acquitted.
- [48] Ms. H testified about Mr. C drinking to excess while parenting the children on a quadding trip in December 2024, which led to their breakup. She testified that -Mr. C required his children to drive their quads alongside a busy, dangerous highway for approximately 13

kilometres on the way to a campground so that he could buy alcohol on the way. Mr. C then drank so much alcohol that day that by the time they were home he was vomiting from over-consumption and could not make dinner for the children. Despite still being intoxicated, Mr. C was then insistent on picking his daughter up from her boyfriend's place.

- [49] Following the breakup with Ms. H in late 2024, Mr. C admits that he drank until he was completely incapacitated for 10 days straight in December 2024, including while the children were in his care. Mr. C testified that his alcohol consumption was even worse in January and February 2025 than in December 2024. Despite this, Mr. C never contacted Ms. L to ask her to care for the children. He continued to look after the children despite being intoxicated and contrary to court order.
- [50] Ms. H has two children herself and spent five years with Mr. C. She testified that she would not trust Mr. C with the children. Ms. H is aware that Mr. C is currently attending counselling but his recent efforts do not alleviate her concerns. Ms. H. testified that, in the past, when the MCFD investigated him, suspended his parenting time and required him to take parenting courses, Mr. C would state he was taking the parenting courses but then not actually complete them.
- [51] Mr. C testified that he is still consuming alcohol, but only one tenth of what he was consuming before. He does not think alcohol contributed to his past issues with anger. He does not see alcohol as a problem. He testified that alcohol can make things worse for some people, but better for others.
- [52] Throughout Mr. C's testimony, I noted that he was focused on the effects that the family law proceedings and past criminal and MCFD proceedings had on him as opposed to the children. He testified that the criminal charges "took years off [his] life". Mr. C seemed to blame others including Ms. L for commencing criminal proceedings and making too big of a deal out of court order breaches or safety issues. During his cross-examination, he responded to certain allegations flippantly by stating things such as, "Arrest me. Hang me." Mr. C tended to deflect blame to others for his own behaviour throughout his testimony and submissions.
- [53] I find that Mr. C is not yet in a place where he actually accepts responsibility for his actions, or the fact that his parenting time has been limited to supervised parenting time. He appears still to focus on his own needs as opposed to the children's needs, saying it will kill him to wait longer to see his children. He tends to consider himself a victim and expects others to do the work for him. An example of this was when he testified that Ms. L should help him to access the Family Maintenance Enforcement Act officer online so he could discuss his support arrears.

- [54] Mr. C also did not like to be challenged. During his cross-examination, he refused to answer certain questions such what he told the police in an interview regarding disciplining his children or whether he lied to employers about his qualifications. Despite being reminded that it is the court's job to rule on whether questions were objectionable, Mr. C tried to make rulings himself. Mr. C also accused Ms. L of yelling at him during cross-examination when she was not even raising her voice.
- [55] I formed the impression that Mr. C is used to being in control and not being questioned. Even when I directed him to answer certain questions, he still refused. I am concerned that, while Mr. C has made some recent positive strides since the Guild Order such as starting counselling, it is far too early to tell whether he will stick with the counselling and truly benefit from it this time. It is concerning that Mr. C dismisses any suggestion that alcohol may have played a part in his behaviour.
- [56] As Mr. C himself said, he has a lot of work to do on himself. This should be his primary focus for the next several months. I understand that the children love him and miss him. They obviously have a strong bond with him. I am not concerned that restricting Mr. C's time to supervised parenting time on a continuing basis at this time will erode this strong bond. Mr. C may have said it best -- in order to take care of anyone else, you have to be able to take care of yourself first.
- [57] For all these reasons, I am satisfied that Mr. C's parenting time should remain supervised until he demonstrates that (1) he has insight into his issues; (2) there is no longer a danger that he will harm the children psychologically or physically; and (3) he will follow court orders.
- [58] The parenting time supervisor can be privately hired or someone who is agreeable to Ms. L. If there is any issue with Ms. L's approval of an otherwise suitable suggested supervisor, the parties may apply to me to resolve the issue. I will remain seized of parenting issues for 18 months.
- [59] It may be that Mr. C is able to obtain reports from his counsellors when he is farther down the road in his treatment. It may be that these reports can address these issues and the parenting concerns, and confirm that (1) he will take orders seriously, (2) is no longer a danger of harming the children psychologically or physically, (3) has addressed his risk taking behaviour, (4) alcohol is no longer an issue for his parenting, (5) he has addressed his anger issues and will not physically discipline the children or psychologically harm them or yell at them, (6) he accepts responsibility for his own behaviour and no longer blames others for his parenting or financial issues, (7) he has gained insight as to how his behaviour may have affected the children and may have prevented a co-parenting relationship with Ms. L.
- [60] The parties' funds are limited so I will also try to help move this process along by ordering a publicly funded s. 211 report be done by a family justice counsellor to assess whether Mr. C's parenting time continues to need to be supervised long term for the children's safety and well-being or whether Mr. C. has addressed the above concerns. I am hoping that the family

justice counsellor will review these reasons, interview the parties, as well as Mr. C's counsellors, interview the children, and report to the court regarding whether Mr. C is ready to have unsupervised parenting time.

- [61] These reports take some time. Therefore, I am not ruling out the possibility that Mr. C himself may be able to prove that he is ready to see his children unsupervised by bringing forth evidence from his own counsellors to show that he has addressed the above concerns. However, I thought it best to deal with both possibilities of a s. 211 report and other evidence.

Child Support, Including Retroactive Support

- [62] Section 147 of the FLA says that each parent and guardian of a of a child has a duty to provide support for the child. The discretion to make an order of retroactive child support is found under s. 152 of the FLA.

- [63] The circumstances in which retroactive child support may be awarded were addressed in *D.B.S. v. S.R.G.*, 2006 SCC 37. The Supreme Court of Canada directed trial judges to adopt a broad and holistic approach in the application of the four factors summarized at para. 133, none of which is determinative on its own. The four factors are:

- 1) Is there a reasonable excuse for why support was not sought earlier?
- 2) Was there any blameworthy conduct on the part of the payor parent?
- 3) Is the retroactive award appropriate in light of the child's past and present circumstances?
- 4) Whether a retroactive award will cause hardship to the payor parent or to his or her other children.

- [64] The only order that has been made in regards to child support is the order of Associate Judge Nielson made February 16, 2024, which provided on an interim without prejudice basis, that Mr. C pay \$2,516 per month child support based on income of \$107,000. Mr. C had not provided full disclosure at that point. Even at the outset of the trial, Mr. C had not provided his 2019, 2023, or 2024 T1 income tax forms or notices of assessment and/or reassessment.

- [65] However, doing the best with the evidence I have, I find that the parties' incomes were as follows:

- [66] Ms. L:

2019:

\$75,000

2020

\$30,000

2021

\$33,400

2022

\$22,400

2023

\$29,000

2024

\$19,000

[67] Mr. C:

2019:

\$67,000

2020:

\$80,300

2021:

\$107,600

2022:

\$166,700

2023:

\$112,000

2024:

\$144,000

[68] Ms. L seeks retroactive child support commencing July 1, 2019. The separation was April 22, 2019, but the parties shared two residences until July when Ms. L commenced renting her own residence and the parties shared parenting pursuant to a nesting arrangement, with the children staying in the Blind Bay Property. Then, as of October 9, 2019, Ms. L lived in the Blind Bay Property with the children exclusively, and Mr. C lived elsewhere.

- [69] Ms. L commenced her Notice of Family Claim in October 2019 and included a claim for child support. Ms. L also sought Mr. C's financial disclosure through counsel, and it was mandatory under the Rules of court. However, until the November 2019 order, the parties shared the Blind Bay Property and shared parenting in a nesting arrangement. After that, the parties lived independently and Ms. L had the children in her primary care. As such, I am satisfied that retroactive child support should be made as of November of 2019.
- [70] Child support is the child's right. It is clear that Ms. L was seeking child support. Ms. L did not delay in seeking child support. She diligently pursued child support and financial disclosure. There is no hardship in Mr. C paying retroactive child support. While he says he has no money, he was clearly employed from 2019 through 2024, and during this time was able to pay discretionary expenses such as vacations, recreational vehicles, and gifts, such as jewellery, for Ms. H. Ms. L's own income is less than Mr. C's. She is unable to work more due to her parenting responsibilities, including picking up the children from three different schools and taking their sons to various professionals for their special needs.
- [71] The children could have benefitted by the child support and still could. Their reasonable needs cannot be met on Ms. L's income and government autism funding alone. Child support should take priority. As such, Mr. C shall pay the retroactive child support as follows:
- 1) November and December 2019 at \$1,627 per month based on his Guideline income of \$67,000, for a total of \$3,254 owing.
 - 2) 2020: \$1,937 per month based on a Guideline income of \$80,300 for 12 months, less the \$500 he has already paid, for a total of \$22,744 owing.
 - 3) 2021: \$2,512 per month based on a Guideline income of \$107,600 for 12 months, less \$9,250 he has already paid, equals a total of \$20,894 owing.
 - 4) 2022: \$3,642 per month based on a Guideline income of \$166,700 for 12 months, less what he has already paid, equals \$27,544 owing.
 - 5) 2023: \$2,597 per month based on a Guideline income of \$112,000, which totals \$19,414 owing.
 - 6) 2024: \$3,217 per month based on an imputed Guideline income of \$144,000, which totals \$25,104 owing.
 - 7) 2025: \$3,217 per month based on an imputed income of \$144,000 from January 1, 2025, to date, which is six months, which equals \$19,302 owing. If, however, there have been payments of child support made between the trial and the date of these reasons, those amounts should be deducted from the \$19,302 figure.
- [72] The total of the above amounts is \$138,256 retroactive child support owing to the date of these Reasons for Judgment.

Base Child Support from July 1, 2025 on

- [73] In terms of base child support from July 1, 2025, on, Mr. C shall pay \$3,217 per month for the four children based on his imputed Guideline income of \$144,000, commencing July 1, 2025, and continuing pending further order or written agreement between the parties. I have imputed \$144,000 for Mr. C's income going forward based on Mr. C's evidence that he earned this amount in 2024. He had not yet filed his taxes at the time of trial, but anticipated filing them shortly on that basis. I accept his evidence as the best information as to his current capacity to earn income.
- [74] He has not provided evidence of his 2025 income. I expect that January and February were bad months for him based on the state of his mental health and substance use. However, his evidence is that he is actively seeking employment and hopes to secure a contract. He does not appear to have difficulty finding contracts based on his track record.

Section 7 Expenses

- [75] Ms. L has claimed retroactive s. 7 expenses of \$4,000, representing \$1,336 for Mr. C's share of his daughter's Japan flights and \$2,662.40 for Mr. C's portion of medical and dental expenses. I find that these amounts have been justified by documentary proof, and Mr. C does not take big issue with these expenses. Mr. C therefore owes a total of \$4,000 in retroactive s. 7 expenses.
- [76] Going forward, commencing July 1, 2025, and continuing until further order or written agreement between the parties, Mr. C will pay 75 percent and Ms. L will pay 25 percent of all s. 7 expenses as specifically sought by Ms. L, which includes some specification with respect to what is reasonable for the children's activity expenses.

Annual Exchange of Information

- [77] Each year, by July 1, Mr. C will provide Ms. L a copy of his tax return and notice of assessment for the prior year so that the parties can review and adjust child support if appropriate.
- [78] During the trial, Mr. C mentioned that he may choose to go back to school soon, and if so, his income would be limited for child support purposes. Without binding future applications, I will comment that at this stage Mr. C has not justified that choice. Child support is the child's right, and each parent is to maximize their income to the extent of their ability in order to pay appropriate levels of child support. The children rely heavily on Mr. C as the primary breadwinner of this separated family. I have imputed income to him of \$144,000 based on his capacity to earn income. If he applies to reduce child support in the future, he will have to demonstrate that he has made all reasonable efforts to earn income. If he chooses to go back to school, he chances that, on a future application, the court may still find his capacity to earn income is \$144,000 and not actually reduce the child support obligations.

Property and Debt Division, Including Ms. L's Claim for Unequal Division

- [79] The relevant provisions of the FLA for the purpose of this analysis are contained in Part 5. The key provisions are ss. 81, 84, 86, and 87.
- [80] Under s. 81 of the FLA, each spouse is entitled to a presumptive one-half undivided interest in all family property as a tenant in common and on separation. "Family property" is all real and personal property owned by one or both spouses at the date of separation. The presumptive one half divided interest under s. 81(b) is subject to an order for reapportionment under s. 95. Under s. 87, all property is to be valued according to its fair market value at the date of the trial.
- [81] Under the FLA, family debts are also divisible under s. 86. When determining the value of assets and debt, s. 87 of the FLA states that the trial date or the date of the agreement is the valuation date, unless otherwise ordered or agreed to. Setting the valuation date at another date requires a finding of significant unfairness. See *Eisele v. Eisele*, 2015 BCSC 2297, and *Blair v. Johnson*, 2015 BCSC 761.
- [82] In considering whether using the fair market value of the home would be significantly unfair, s. 95(2) of the FLA provides that the court may consider one or more of the following factors:
- (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.
- [83] Ms. L provided detailed evidence and provided documentation in support with respect to what assets and debts existed at the parties' separation of April 22, 2019. There is some dispute as to the values that ought to be attributed to certain assets and debts. There is no dispute that Ms. L should have the opportunity to retain the Blind Bay Property, but there is dispute over what compensation flows each way to make that happen. Ms. L maintains it would be significantly unfair to use the current fair market value of the Blind Bay Property. She wants the court to use the value as of separation.
- [84] Several appraisals have been done. The Blind Bay Property was worth approximately \$380,000 at the date of separation, before Ms. L spent \$43,000 on repairs and improvements. The most recent appraisal is from 2023 when a previous trial was to proceed, and that values the Blind Bay Property at \$510,000.
- [85] The balance of the mortgage of the Blind Bay Property was \$296,000 at the date of separation, and \$270,000 currently.
- [86] As set out above, I am required to use the most recent value of assets, unless using current values would be significantly unfair. It is up to the party who wishes a different date to establish that the application of the general rule would be significantly unfair, considering the various factors in s. 95.
- [87] Ms. L has not proven that it is significantly unfair to use the current value of the Blind Bay Property and the current mortgage balance. Provided that Ms. L gets credit for the \$43,000 she spent on repairs and improvements, I find that the \$43,000 in costs were reasonable and necessary expenses, and they ought to be shared, even though Mr. C did not consent to the repairs or improvements. Other than the \$43,000 spent on repairs and improvements, the rest of the increase in value of the Blind Bay Property since separation appears to me to be market increase. As well, Ms. L paid for the mortgage of \$1,900 per month, as well as property taxes and insurance post-separation. However, she received the benefit of not having to pay rent elsewhere. Her own evidence was that rentals are expensive in the area, with rent for a smaller place costing approximately \$3,000 per month.
- [88] As such, I find that the value of the Blind Bay Property is \$510,000, less the \$43,000 in repairs and improvement costs, which equals \$467,000. If I deduct the current value of the mortgage of \$270,000, that leaves \$197,000 in equity that represents divisible family property. Mr. C's one-half share would be \$98,500.

- [89] Ms. L gave detailed evidence, supported by documentation, that she assumed the following debts on behalf of the parties: \$3,000 for the Scotia Visa, \$15,500 for the Royal Visa, \$1,200 for overdue MSP bills, \$3,000 for the joint loan from Ms. L's mother, \$1,300 for the joint TD overdraft, \$9,000 interest on the family credit card, totalling \$33,000. Mr. C shall reimburse Ms. L for his half of this debt in the amount of \$16,500, which should be deducted from his share of the equity in the Blind Bay Property. \$98,500 minus \$16,500 equals \$82,000.
- [90] There are also some items that Mr. C retained, including a Dodge Ram truck, several recreational vehicles, tools, and musical instruments. Ms. L also states that Mr. C owes her for the parties' trailer and boat, each being sold for less than they could have been sold for, but for Mr. C's delay in selling the items. Ms. L prepared a spreadsheet of all of these items, which she said should result in attributing a total net value of \$109,000 to Mr. C for the items he retained.
- [91] Mr. C takes issues with some of the values that Ms. L attributes to the items, including the Beta and Yeti vehicles, which he says were pawned and went to paying off debt, the four kids quads, the adult quads, and the tools. He also asks me to use the actual sale price for the trailer and the boat. He says the musical instruments should not be counted in the division because Ms. L does not play instruments and some of the instruments were gifts to him.
- [92] I disagree with Mr. C's argument the musical instruments are not divisible, but I have reduced the value to account for some of them being gifts to Mr. C, and also because the value seemed inflated.
- [93] I agree with Mr. C that Ms. L's values for certain of the recreational vehicles seem inflated. Mr. C gave detailed evidence as to the purchase prices for the vehicles, which were in several cases much less than the values Ms. L attributes to the assets. I accept that Mr. C worked on some of the vehicles and spent money fixing them up, but I cannot accept that this increased the value to the extent that Ms. L claims.
- [94] There is no expert evidence or other objective evidence regarding the value of any of these recreational vehicles and any other personal property. As such, doing my best with the evidence, I find that Mr. C kept \$89,000 in family property, net of debts paid. Ms. L's one-half share of this family property is \$44,500. That figure should be offset against what Ms. L owes Mr. C for the buyout of the Blind Bay Property.
- [95] Overall, \$82,000 minus \$44,500 is \$37,500, which is what Ms. L would owe Mr. C to purchase his interest in the Blind Bay Property. However, that figure should be further offset by the amounts that Mr. C owes her for the retroactive child support, which totals including retroactive s. 7s -- \$142,256. This results in Ms. L owing Mr. C nothing for the Blind Bay Property, and results in Mr. C owing Ms. L a net sum of \$104,756 for the remainder of the retroactive child support owing.

[96] As such, Mr. C shall transfer the Blind Bay Property to Ms. L's sole name. Ms. L will be solely responsible for all expenses relating to the Blind Bay Property, including but not limited to, the mortgage. Ms. L shall have until the latter of the following dates to cause Mr. C's name to be removed from the mortgage, or cause the bank to release Mr. C from his covenants under the mortgage:

- 1) Six months from the date of these Reasons, or
- 2) When Mr. C has paid the balance of the retroactive child support of \$104,756 owing to Ms. L.

[97] Mr. C shall remove any CPL he has filed against the Blind Bay Property, and Mr. C shall cooperate with any mortgage renewals in the meantime. Each party will retain the other assets in his or her name and be responsible for paying any other debts in his or her own name.

Ms. L's Application to Find Mr. C in Contempt of Court

[98] That brings me to Ms. L's application to find Mr. C in contempt of court.

[99] Mr. C has breached several court orders. He says he was unaware of some of the orders when he breached them. I find that hard to believe. He says he has learned that he must follow court orders and he seeks another chance to follow them. He highlights that he has recently started attending counselling and is doing the work he has avoided for many years. He urges me to adjourn the contempt applications and give him another chance to follow the court orders and purge his contempt.

[100] I am going to give Mr. C one more chance so I will adjourn Ms. L's contempt applications generally. I have ordered a significant sum of child support and I have ordered ongoing child support. In my view, it would be better to facilitate Mr. C's payment of child support as opposed to imprisoning him, as sought by Ms. L. I will give him a chance to follow these orders.

Costs

[101] Mr. C will pay costs at Scale B to Ms. L throughout as she has been substantially successful. All other claims of the parties will be dismissed.

"Hamilton J."

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