

CANADA / JUDGMENT

Rana v. Rana

2024 BCSC 49

COURT

Supreme Court of British Columbia

DECIDED

11 January 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 49 Rana v. Rana

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rana v. Rana,

2024 BCSC 49

Date: 20240111

Docket: E058226

Registry: New Westminster

Between:

Inam-Ul-Haq Rana

Claimant

And

Kiran Fatima Rana

Respondent

Before: The Honourable Justice Branch

Reasons for Judgment

The Claimant, appearing in person:

I. Rana

The Respondent, appearing in person:

K. Rana

Place and Date of Trial:

New Westminster, B.C.

September 25-29 and

November 1, 2023

Place and Date of Judgment:

New Westminster, B.C.

January 11, 2024

Table of Contents

I. INTRODUCTION.. 3

II. BACKGROUND.. 3

III. DIVORCE. 9

IV. MARRIAGE AGREEMENT. 9

V. PROPERTY DIVISION.. 10

A. Generally. 10

B. Pre-Marital Excluded Property. 10

C. The Transferred Property. 11

D. Property in Pakistan. 11

E. The Vehicles. 11

F. Accounts. 12

G. Transfers By and Between the Parties and their Families. 12

H. Personal Property. 12

I. The Alleged Family Debts. 12

J. Calculation of Property Equalization. 14

VI. CHILD SUPPORT. 14

A. Claimant's Income. 14

B. Respondent's Income. 19

C. Special Expenses. 20

D. Arrears/Retroactive Adjustment 20

VII. SPOUSAL SUPPORT. 21

A. Entitlement 21

B. Going Forward Spousal Support 21

VIII. SUPPORT ARREARS. 22

IX. CONCLUSION.. 22

I. INTRODUCTION

- [1] The claimant husband and respondent wife seek a divorce and a resolution of their financial issues. Any parenting and relocation issues were adjourned pending the appointment of counsel for their children.

II. BACKGROUND

- [2] Both parties were born and grew up in Pakistan. They were married on August 8, 2007. The parties' parents arranged the marriage as part of an attempted reconciliation of a family feud between their extended families.
- [3] The parties executed a marriage agreement certificate on the date of their marriage (the "Agreement"). It was signed before witnesses. The claimant was not in the room when the respondent signed the Agreement. She says that her parents pressured her to sign.
- [4] The Agreement provides, in material part, as follows:
- 13. Mahar: 1000 Rs
 - 15. Is Mahar Paid on marriage occasion, If so how much: All Paid
 - 18. Husband granted the right to divorce to wife, if so under what conditions: n/a
 - 19. Or husband have been forbade to divorce: n/a
- [5] The claimant gave certain jewellery to the respondent on their wedding day. The respondent alleges this was an outright gift, whereas the claimant argues it was intended to be returned to him upon any collapse of the marriage. The claimant accepts that there was no direct conversation about this however. He values this jewellery at about \$19,000. The respondent responds that it was junk jewellery. She later disposed of it for about \$1,000 to pay when the claimant fell behind on his support payments.
- [6] As of the date of their marriage, the claimant says he had about \$12,000 in cash, as well as title to a vehicle purchased for \$30,000 and later sold for \$18,000. The respondent disputes that he had this much cash, or a vehicle.

- [7] The claimant is a software engineer. At the time of their marriage, he was working in Saudi Arabia. The respondent was training to be a doctor in Pakistan. After completing her education in Pakistan, the respondent moved to Saudi Arabia to be with the claimant. She took steps to qualify as a physician in Saudi Arabia, but she could not find work. She says this was primarily due to the language requirements to work in Saudi Arabia. The claimant suggested that he was aware of other women who had been able to find work in Saudi Arabia, but this evidence was anecdotal and not grounded in properly admissible evidence.
- [8] In 2009 or 2010, the claimant's father, Mr. Abdul Haq, gifted certain property to the claimant. The claimant then transferred 0.25 acres to the respondent (the "Transferred Property"). She says the property was worth about \$5,000-\$10,000 at the time of the transfer. The claimant says that he transferred this land to the respondent so that she would relax about her situation, as she had been stressed about having children. The claimant also says that this transfer was impregnated with a trust such that the respondent did not retain the right to transfer same to anyone else. The respondent responds that the Transferred Property was not fully paid for when she received it and that she made the required payments thereafter.
- [9] The respondent came to believe that her prospects would be better in the United States. She started studying for the U.S. exams while in Saudi Arabia. There was no dispute that the claimant paid certain of the respondent's educational expenses during the marriage, for which the claimant now seeks compensation on the basis that it was agreed that this would be treated as a personal loan. There was no documentation presented at trial supporting this assertion.
- [10] During the respondent's time in the U.S., the parties had two children, R.R. and A.R., born December 2010 and February 2012. The fees for these births were apparently covered by the U.S.'s Medicaid program ("Medicaid"). Medicaid has not been pursuing the respondent directly for repayment. However, when the respondent later sought to enter the U.S. in 2022, she was advised that the amounts owing would need to be repaid before she would be granted entry. She has no current plans to go to the U.S. She does not know if the same restrictions would apply to the children or the claimant.
- [11] After completing the required U.S. courses, the respondent tried to find a medical residency placement in the U.S., but was unsuccessful.
- [12] In 2012, the respondent returned to Pakistan for internship training. She remained there until March 2014. She obtained her licence to practice medicine in Pakistan. However, she then moved back to Saudi Arabia to be with the claimant, as he was complaining he was lonely. The respondent again tried to find work in Saudi Arabia, but was unsuccessful.
- [13] In 2016, the parties decided to move to Canada. They arrived on March 16, 2016.

- [14] The respondent found work after his arrival but also invested in side businesses as a silent partner. He says he took loans from two associates in India to help finance these investments, one from Nadeem Abbas ("Investor #1") for \$100,000 and another for \$103,000 from a "Mr. Shahid" [phonetic] ("Investor #2"). I refer to these individuals collectively as the "Investors".
- [15] In 2017, the parties purchased a condominium in Burnaby. It was sold in 2018. They then bought another property in Surrey (the "Family Home").
- [16] The respondent took steps to become qualified as a doctor in Canada. She had difficulty finding other work in the meantime given that she did not have much experience, she did not perform well on one of her key exams, and she admits that she did not perform well in interviews. She took a three-month program on how to run a medical office. By 2019, she was able to obtain an administrative position, working two to three days per week. The pandemic interrupted her efforts to build up her Canadian medical qualifications and experience.
- [17] In 2019, the respondent gifted the Transferred Property to her mother. She says this was in recognition of all that her mother had done for her in the past. She estimates that the property was worth about \$15,000 at the time of the transfer and perhaps \$30,000 at present. This transfer caused a rift in the parties' relationship. The parties ceased living together in August 2019 as a result. The claimant began this family law proceeding at about the same time. The troubles in their relationship threw a wrench into her Canadian medical qualification efforts as she did not have the funds on her own to enter into the residency matching program.
- [18] The claimant says that in 2020 the Investors started pressing for repayment of their loans. He did not have the funds, as the businesses were not doing particularly well. He arranged for his father to sell a 1.5-acre lot in Pakistan to help repay the loans, and his father also sold 7.5 acres of his own to assist. There was documentary evidence of a sale on July 23, 2020, although the translation was difficult to understand.
- [19] The claimant says that he owes his father \$37,000 arising from this assistance (but at other points suggested the amount was \$55,000). Investor #1's agent, Khalid Wazir, testified that \$15,000 remains owing to Investor #1. Investor #2's agent, Nazish Imtiaz, testified that a further \$8,000 remains owing to Investor #2. The claimant seeks to treat all these amounts as family debts. However, it is important to note the following evidence about these alleged debts:
- a) The claimant's father testified that any funds he advanced to pay back his son's loans were "between father and child. I can take that money or not, or let it go. That is between us." In response to a question in cross-examination about the parties' alleged loans from their parents, the claimant's father testified that "When parents pay, child doesn't need to pay that back";

b) Mr. Wazir testified that:

i. Investor #1 had received profit distributions from the claimant;

ii. What had been advanced here was an investment rather than a loan;

c) The contract with Investor #1 is described as an "Investement [sic] Contract" and provides as follows, in material part:

Haqcan Holdings Limited agrees to pay 35% to 38% profit yearly on the amount of the initial capital herein from its corporate trading account in which the party mentioned above has agreed to invest and lock the capital for a period of 1 year. At the end of the term HAQCAN Holdings will also pay back the full amount of initial investment or both parties can renew the contract with mutual consent [sic].

.

All the terms and percentages of the payments are guaranteed and Haqcan Holdings is legally and fiscally liable to the client.

d) The claimant did not produce a written contract with Investor #2.

[20] On March 11, 2020, Master Keighley ordered that the claimant pay monthly child support of \$1,627 and spousal support of \$1,942 based on the claimant's income at the time of \$108,000.

[21] The parties reconciled in about April 2020. This reconciliation came to an end in June 2021. The respondent alleged that the claimant assaulted her. She says that this was not the first time that she was subjected to violence, which was predominantly verbal in their early years, but became more physical over time. She says the ongoing abuse drained her self-confidence.

[22] The claimant denies the earlier violence and asserts that the June 2021 incident was only a verbal assault. The claimant was charged criminally, however, and he pleaded guilty. He was not sentenced to jail time. In May 2023, the claimant was arrested for violating the terms of his probation by texting the claimant regarding an issue unrelated to the family proceeding.

[23] At some point after separation, the respondent removed \$3,675.51 from the parties' line of credit. The claimant argues that the respondent should have to account for this amount. The respondent agrees that she made this withdrawal, but said she had no option given how far behind the claimant was with his support payments at the time.

[24] In 2021, the parties agreed to sell the Family Home. On June 1, 2021, the parties entered into the agreement whereby they agreed to divide the net proceeds equally, and that this agreement would be "a full and final settlement of the [Family Home] between [the parties] all rights and obligations arising out of their marriage regarding the current property".

- [25] Master Nielsen made a revised support order on March 29, 2023, which required the claimant to pay \$1,284 monthly in child support and \$1,326 in spousal support. This amount was based on the claimant's updated income of \$83,000. At the time, the claimant was employed by Simon Fraser University ("SFU").
- [26] The claimant says he resigned from his position at SFU in the spring of 2023. He says he resigned because he was under investigation for a mistake at work and because of his health problems, including the stress of managing the present proceeding. It appears that SFU continued to pay him for a period after his resignation.
- [27] The claimant moved back to Pakistan on July 17, 2023. He says he moved back because:
- a) He needs the support of his family to care for himself;
 - b) He was not being allowed to see his children for any material time;
 - c) The respondent was threatening to move with the children to the United Kingdom in any event; and
 - d) His parents arranged a new marriage for him with a woman from Pakistan.
- [28] The claimant says he now expects to earn only about \$7,008 annually. He presently earns about \$540 per month as an Information Technology specialist. However, he provided no paystubs. He alleges that he is paid in cash.
- [29] The claimant has substantial support arrears absent a decision by this Court to adjust same. This debt has been referred to the Family Maintenance and Enforcement Program ("FMEP"), which calculated the outstanding amount as of September 14, 2023 as \$79,834.17.
- [30] In 2022, the respondent re-entered the Canadian residency matching program but was again unsuccessful. She was able to get a \$15/hr position scribing for a doctor. She could only work part-time as she also began studying to qualify as a doctor in the United Kingdom, where her physician sister lived. Her sister suggested that there were more opportunities in that country. The respondent's reported 2022 income was \$28,527. More recently, the respondent found full-time work as a medical assistant, earning \$1,500 per month. But she was let go because she took too much time off to prepare for exams. She is not yet fully qualified to practice as a physician in Canada. She must still complete the two-year residency.
- [31] The respondent said that she only had \$5,000 in cash and a used car at the time of trial. At trial, she suggested that her primary plan was to move to the United Kingdom. She was also considering a move to Manitoba, which had fewer qualification requirements. On November 6, 2023, after the trial, the claimant sought and obtained court approval for her to move with the children to Manitoba.

III. DIVORCE

- [32] Both parties agreed to the issuance of a Canadian divorce order, which I granted during the trial.

IV. MARRIAGE AGREEMENT

- [33] The respondent seeks to set aside the terms of the Agreement on the basis that it was a forced marriage. Alternatively, she argues that the Agreement does not diminish her rights to property or support.
- [34] It is unnecessary to consider the argument that the Agreement should be set aside. On its face, the Agreement does not waive property rights that the respondent would otherwise have, at least under Canadian law. The fact that the excerpted clauses above state "n/a" cannot reasonably be interpreted as waiving her rights.

V. PROPERTY DIVISION

A. Generally

- [35] Recall that the parties' major asset, the Family Home and the resultant sale proceeds, have already been divided equally. As will be clear from the discussion below, the parties would have been well-advised to resolve all property issues at the same time, as there is little left to divide.

B. Pre-Marital Excluded Property

- [36] As noted, the claimant says he brought \$12,000 in cash into the marriage, which he says should be treated as excluded property. I am prepared to accept his estimate. Given the claimant's employment position, it is not unusual or surprising that he would be holding at least that much in liquid assets at that time.
- [37] The claimant also says a vehicle was brought into the marriage. Although he provided no documentation in support of this valuation, I am prepared to accept his evidence. The respondent's suggestion that the claimant did not own a vehicle, even though he was still working in Saudi Arabia, seems very unlikely.
- [38] The claimant also sought to exclude the jewellery he gave the respondent at the time of the marriage or shortly thereafter.
- [39] I find that the jewellery should properly be treated as a gift to the respondent that became family property. At the time of transfer, I am satisfied that the claimant intended the jewellery to be a gift or, at the least, the jewellery subsequently lost any excluded status it may have had: *Venables v. Venables*, 2019 BCCA 281 at para. 95.
- [40] I also reject the respondent's argument that the jewellery should be treated as an outright gift to her not subject to treatment as family property for similar reasons. There is no evidence of an agreement to treat it differently other than as family property.

- [41] In terms of the current status of the jewellery, the respondent's evidence was that she largely disposed of same after separation. I accept that she received somewhere in the range of \$1,000. I have little doubt that the claimant's undocumented \$19,000 valuation for the jewellery is grossly inflated, but I am prepared to value it at \$1,000, and to treat that sum as still being in the respondent's possession within the \$5,000 in cash she still has at present.

C. The Transferred Property

- [42] The claimant seeks an order that the value of the Transferred Property should still be treated as family property notwithstanding that the respondent's mother now holds it. I find that there is no basis to treat the Transferred Property as family property. The property was gifted to a third party during the marriage. Per s. 84(1)(i) of the FLA, family property is limited to property owned by at least one spouse on the date of separation. The Transferred Property was not owned by a spouse on the date of separation. There was no allegation that this was a fraudulent conveyance. There is no evidence that it is held in trust for the claimant, and the respondent rebutted any presumption of resulting trust that might apply by explaining why the gift was made.

D. Property in Pakistan

- [43] The respondent asserts that the claimant has other assets in Pakistan, which he has not disclosed. However, the key document she relies upon in this respect is a translated land title document that is virtually impossible to interpret.
- [44] Although there was some lack of clarity in the statements the claimant made about his property in his earlier 2019 financial statement, I conclude that there is insufficient evidence to support a finding that there is undisclosed property.

E. The Vehicles

- [45] The parties abandoned any claim against the vehicles held by the other.

F. Accounts

- [46] The remaining financial assets held by the parties are negligible. I find that each party should simply keep possession of their own accounts.

G. Transfers By and Between the Parties and their Families

- [47] The claimant asserts that the respondent should repay him the amounts he paid for the respondent's education. I find that there is no basis to claim repayment for such a voluntary transfer between spouses during the marriage. Despite the claimant's assertions, there is insufficient evidence that the parties agreed that the respondent would pay this amount as a true loan.

- [48] The claimant sought an adjustment to account for the respondent withdrawing funds from the parties' line of credit, however, there was no restriction on either party using this account for their living expenses following separation. The respondent explained that she was in a difficult situation since the claimant was not keeping current with his support payments. The claimant did not account for his own expenditures from this account. As such, I find no reasonable basis to make an adjustment based on this withdrawal.
- [49] Each party also sought to claim a credit for amounts distributed to relatives during the course of the marriage. I find no basis to give credits for such intra-marital gifts and payments.

H. Personal Property

- [50] During the trial, the parties were able to agree that each would keep any other personal property in their possession so long as there was a payment of \$300 from the respondent to the claimant.

I. The Alleged Family Debts

- [51] The respondent said she has a debt of about \$40,000 relating to unpaid Medicaid payments arising from the birth of the parties' children. However, I am unable to find that this represents a proper family debt. Medicaid has not been pursuing any debt itself, and any such effort may be beyond any limitation period in any event: *Greenglass v. Greenglass*, 2010 ONCA 675 at paras. 26-27; *Zellweger v. Zellweger*, 2018 BCSC 1227 at para. 79.
- [52] While it is possible that this issue will make the respondent's future entry into the U.S. more difficult, she has no present plans to do so, and the claimant may be under a similar restriction.
- [53] In terms of the alleged debt owed by the claimant to his father, I find, based on the father's evidence, that any contribution his father made to the claimant's debt otherwise owing to the Investors was a gift. Considering the oft-cited factors from *Locke v. Locke*, 2000 BCSC 1300 at para. 20, the father's contribution to his son's debt is more properly treated as a gift as:
- There are no contemporaneous documents evidencing a loan;
 - The manner of repayment was not specified;
 - There is no security held for the funds;
 - There has been no formal demand for repayment;
 - There has been no partial repayment; and
 - The evidence regarding the expectation or likelihood of repayment is, at best, mixed, making this a neutral factor.

- [54] These factors provide circumstantial evidence relevant to the father's actual intention: *Beaverstock v. Beaverstock*, 2011 BCCA 413 at para. 11. Although a gratuitous transfer carries a presumption of a resulting trust, I find that the evidence here sufficiently rebuts that presumption: *Pecore v. Pecore*, 2007 SCC 17 at para. 24.
- [55] In terms of the loans from the Investors, the evidence was mixed, and the one document in the record arguably reflects a type of hybrid instrument as between a loan and an investment. I find that the \$15,000 still said to be owing to Investor #1 does qualify as a family debt. Although the agent for Investor #1 did describe it as an investment, I accept that something may have been "lost in translation". I place more weight on the document itself. Although it has some characteristics of an investment, like how any quarterly payments would be correlated with profit, the document reflects a loan at its core: the full principal needed to be repaid after one year unless Investor #1 agreed otherwise.
- [56] In relation to the funds owing to Investor #2, the agent was quite adamant that repayment was still expected. Although there was no document reflecting the terms of this loan, I accept that the \$8,000 payable to Investor #2 should also be treated as a family debt.

J. Calculation of Property Equalization

- [57] For the reasons expressed above, I see no basis for either party to advance a claim for unequal division. Moreover, neither party made a formal argument for unequal division.
- [58] The respondent should be treated as in possession of the following family property: the \$1,000 in cash representing the jewellery, which qualified as a family asset and which she disposed of after separation.
- [59] The claimant should be treated as carrying the following family debt: the \$23,000 owing to the two Investors.
- [60] As such, the respondent is responsible for compensating the claimant with \$500 to equalize their assets, and the claimant should be treated as equally responsible for the \$23,000 owing to the Investors.

VI. CHILD SUPPORT

A. Claimant's Income

- [61] The first step in determining the child support is to determine the appropriate income for the claimant.
- [62] The challenge in this respect is that the claimant resigned from his position at SFU before trial. The claimant suggests that the Court should now set going forward child support based on his projected \$7,000 per year income he will earn in Pakistan.

- [63] Section 19(1)(a) of the Federal Child Support Guidelines, SOR/97-175 [Guidelines], allows the court to impute income on top of their actual income if the spouse is intentionally underemployed or unemployed (other than where the underemployment or unemployment is required by the needs of a child or the reasonable educational or health needs of the spouse). Section 19(1) grants courts broad judicial discretion to impute income: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 36 [Marquez].
- [64] *Drygala v. Pauli* (2002), 61 O.R. (3d) 711 (C.A.) [Drygala], is a leading case addressing income imputation under s.19(1)(a) of the Guidelines: *C.M. v. M.N.*, 2022 BCSC 205 at para. 89. It was endorsed by our Court of Appeal in *Barker v. Barker*, 2005 BCCA 177. The court confirmed that in imputing income, the first question is whether the spouse is intentionally underemployed or unemployed. This will be the case when the parent voluntarily chooses to earn less than what they are capable of earning. The court does not need to find a specific intent to evade child support obligations before imputing income: *Drygala* at para. 26; *Barker* at para. 19. This imputation provision does not apply if, through no fault of their own, the parent is laid off, terminated, or given fewer hours. The onus is on the party trying to impute income to show that the underemployment or unemployment is intentional: *Marquez* at para. 36.
- [65] When imputing income, the test is reasonableness, having regard to the parent's "capacity to earn income in light of their age, education, health, work history and work availability": *Marquez* at para. 37.
- [66] As endorsed by our Court of Appeal in *Watts v. Willie*, 2004 BCCA 600, at para. 16:
- [16] In *Donovan v. Donovan* (2000), 190 D.L.R. (4th) 696, 2000 MBCA 80, Madam Justice Steel gave the judgment of the court and wrote at para. 21:

The following guidelines may be considered when determining whether to impute income. (See Dr. Julien D. Payne, *Imputing Income, "Determination of Income, Disclosure of Income,"* Child Support in Canada, Danrab Inc., August 3, 1999.)

1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor" (*Van Gool v. Van Gool*, (1998) 166 D.L.R. (4th) 528 (B.C.C.A.)).
2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work, freedom to relocate and other obligations.

3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at the lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.
4. Persistence in unremunerative employment may entitle the court to impute income.
5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

[67] The children's best interests ground the imputation analysis. As stated in Barker:

[18] Under s. 19(1)(a) of the Guidelines, the important question is whether the payor spouse has demonstrated an intention to be underemployed, with the consequence that his children do not benefit from his potential earning capacity. This does not mean a parent must work the long hours Ms. Barker puts in to earn her significant income. It does mean that a parent who chooses to work less than a regular work week must justify that choice by the needs of the children or suffer the loss personally. He cannot effectively transfer part of the cost of that choice to his children.

[Emphasis added.]

[68] With these general principles in view, three cases are directly relevant to the present situation.

[69] In *TA v. ST*, 2017 ABQB 414, the mother applied for child support from a father who had moved to Germany. The father was not working. The Court held that the father made a conscious decision to move to Germany and remain underemployed since separation. The Court noted that although an economic downturn had negatively affected Alberta's job market, the father's explanations did not otherwise justify his conscious decision to remain underemployed in another country. The Court imputed income, stating:

[86] Aware that he was failing to fulfill those [support] obligations, T.A. also made the conscious decision to move to Germany, stop working all together, and ignore the ongoing needs of his children. To paraphrase the Court of Appeal in *Uttl* at para 46, T.A.'s choice to move to Germany and completely withdraw from employment is not an acceptable decision by a parent.

[70] In *L.S.S.P. v. S.P.*, 2019 NBQB 116, the father was a truck driver who moved to Ontario after separation, where he no longer worked as a driver. The Court stated that "[w]hile the father gave reasons for his move to Ontario, his income reduction raises questions and suspicion": at para. 34. In imputing income to the father, the Court stated that the father chose to

relocate to be closer to his own family, rather than his children, and that he should earn what he was capable of earning. His father was in his productive years and had no health problems. Though he was tired of living in his truck, he had the experience and skills to obtain good and lucrative employment in that field: para. 38.

- [71] Finally, in *Karkulowski v. Karkulowski*, 2015 ONSC 1057, a father moved back to Poland from Ontario after separation. He stopped working as a truck driver, claiming to suffer from depression. But he provided no evidence that he sought medical help over the relevant period (only that he did so just before trial). Based on the circumstantial evidence, the Court drew the inference that he quit his job intentionally and unreasonably. He had no intention of paying support and chose to put himself in a position where he had no income with which to pay support. Notably, the Court did not consider the details of the Polish job market in its analysis. While Polish salaries may have been lower than Canadian salaries, the Court simply imputed what the father would have been making had he continued working in Canada.
- [72] I note that the claimant attempted to file certain medical documentation at trial to support a claim of a disability. However, I excluded such evidence given:
- a) The failure to properly produce these documents in a timely fashion; and
 - b) The fact that the reports purported to provide expert opinion without the requirements for such evidence having been met.
- [73] The claimant was visibly upset at various points during the trial. However, I am unable to say that his demeanour reflected a disability at a sufficient level that would justify a decision not to work at something like his previous position. I note that the claimant undermines his own position on his health by acknowledging that he is able to work in Pakistan.
- [74] I find that the dramatic reduction in his earnings is a choice rather than being driven by any disability. Applying the case law principles:
- a) The claimant's move back to Pakistan is quite recent;
 - b) Any alleged medical disability was not supported by properly admissible evidence;
 - c) One of his reasons for the move to Pakistan was that his children were potentially moving out of Canada in any event (which assumption is now no longer accurate as the children will apparently only be moving to Manitoba); and
 - d) The other reasons the claimant provides for a move to Pakistan indicate that the decision is more of a choice than a necessity. Contrary to the claimant's assertions that his move to Pakistan is a necessity, a grown man should be able to care for himself, and there are presumably potential new marriage candidates in this country as well.

[75] As such, I find that the Court should use the claimant's most recent 2022 reported income to establish his level for ongoing support purposes: \$83,000. This same finding can be supported based on either (1) the use of his last full year's reported income, or (2) income attribution due to present underemployment.

[76] That said, there are enough moving parts in terms of his situation and that of the respondent that I would allow an express right of review effective January 1, 2025.

B. Respondent's Income

[77] The claimant also seeks income attribution to the respondent on the basis that she is also underemployed. I disagree that such a finding is justified in the circumstances.

[78] There is no doubt that the respondent has struggled mightily to secure a full-time position as a physician. But, to use the old expression, "it's not for lack of trying":

- a) She could not settle into a position in Pakistan given that the claimant was living in Saudi Arabia;
- b) She reasonably faced difficulties finding a position in Saudi Arabia given the language barrier and the restrictions on women driving in that country;
- c) She applied for positions in the United States and was simply not successful;
- d) She was primarily responsible for raising the children, who are still only 13 and 11 years old;
- e) She did try to find a position in British Columbia, but was not successful;
- f) The respondent had to manage the family violence coming from the claimant; and
- g) Following the trial, on November 6, 2023, another judge of this Court issued an order allowing the respondent to move to Manitoba at her request so that she could pursue better employment opportunities in that jurisdiction.

[79] Given these factors, I find that there is no proper basis for an income attribution to the respondent. The respondent has consistently tried to find work: *Kwan v. Lai*, 2018 BCSC 1280 at para. 64; *Hawkins v. Hawkins*, 2019 ONSC 7149 at paras. 55-57. The respondent's reported income of \$28,527 will be used for the support calculations.

C. Special Expenses

[80] The respondent asserts that the children require an additional \$10,900 annually for health-related expenses, childcare, hot lunch and school supplies, and various sports and lessons. The claimant agreed that most of the special expenses claimed were reasonable.

[81] I find that the parties shall share the cost of any historical special expenses within the categories noted above in proportion to the parties' established incomes. In relation to any going forward special expenses however, the respondent should first seek the claimant's input on any new expenditure, although the respondent will retain the ability to register the

children for such activities over any objection by the claimant. Any disputes about the reasonableness of any expenditures, either in amount or kind, will have to be the subject of a further court application. Hopefully that will not be necessary.

D. Arrears/Retroactive Adjustment

- [82] The claimant suggested that there should be a retroactive adjustment of the child support amounts he has been ordered to pay, however, I find no basis for such an adjustment, particularly given his own problematic conduct outlined above.

VII. SPOUSAL SUPPORT

A. Entitlement

- [83] The claimant disputes that the respondent is entitled to spousal support based on compensatory or non-compensatory grounds. I disagree. The respondent is entitled to spousal support on compensatory grounds: she was primarily responsible for caring for their two children for many years, impinging on her ability to secure full-time work or develop her chosen career.
- [84] I do not find grounds for non-compensatory support. Non-compensatory support allows for a level of entitlement to meet the spouse's needs following the breakdown of a marriage: *Marquez* at para. 34. Needs extend beyond the level of support required to sustain basic necessities; non-compensatory support takes into account the standard of living during the marriage. Need is a relative concept in the spousal support context and also relates to the other spouse's post-separation standard of living: *Chutter v. Chutter*, 2008 BCCA 507 at para. 88. Given that both parties have been in equivalently dire financial straits for some time, the respondent's quality of life is not demonstrably different from when the parties lived together. Furthermore, the respondent's future prospects are as promising as the claimant's - at least after a further transitional period towards full-time work in her field. As such, any spousal support only stems from compensatory grounds.

B. Going Forward Spousal Support

- [85] However, I find that no spousal support award should be made at this time given the parties' respective incomes, the various tax benefits and credits, and the claimant's child support obligations. By my calculations, even with the imputation of income to the claimant, the claimant's spousal support obligation is zero according to the Spousal Support Advisory Guidelines [SSAG]. While the SSAG are not binding, they are a useful guide for assessing quantum and duration of spousal support: *Yemchuk v. Yemchuk*, 2005 BCCA 406 at para. 64; *Fisher v. Fisher*, 2008 ONCA 11 at para. 95.
- [86] I would add a further right of review if and when there is a reduction in the number of children of the marriage, as that will alter the SSAG calculus.

VIII. SUPPORT ARREARS

[87] I agree that the support arrears are as set out by the FMEP, or \$79,834.17, as of September 14, 2023.

IX. CONCLUSION

[88] I make the following orders:

- a) By consent, each party will keep the personal property presently in their possession in return for a payment of \$300 from the respondent to the claimant;
- b) Subject to the adjustment below, I declare that the claimant owes the respondent \$79,834.17 in child and spousal support arrears up to September 14, 2023;
- c) The incomes of the parties for the purpose of the calculation any further support payments should be as follows: \$83,000 for the claimant and \$28,527 for the respondent;
- d) Based on these income levels, the monthly child support payable from October 1, 2023, is \$1,284;
- e) The claimant is responsible for a pro rata 66% share of any unpaid special expenses within the categories set out in the respondent's August 2023 financial statement;
- f) The claimant is also responsible for 66% of any reasonable special and extraordinary expenses for his children on a going forward basis;
- g) The respondent shall consult with the claimant before incurring any further expenses she intends to claim as special or extraordinary expenses, but the respondent will have the final decision-making authority in this respect, subject to the claimant's right to seek a court determination that a particular expense does not properly qualify as a special or extraordinary expense;
- h) No going forward spousal support is payable;
- i) There will be a child and spousal support review right effective January 1, 2025, and also whenever the number of children of the marriage changes; and
- j) An asset equalization payment of \$500, and a debt equalization payment of \$11,500, is owing from the respondent to the claimant, which \$12,000 total will be treated as a reduction to the retroactive support award payable by the claimant.

"The Honourable Mr. Justice Branch"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/00/2024BCSC0049.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/rana-v-rana-2024>

Prepared on 29 October 2026 · Esheria