

CANADA / JUDGMENT

Robins v. Robins

2023 BCSC 1353

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1353 Robins v. Robins

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Robins v. Robins,

2023 BCSC 1353

Date: 20230804

Docket: 60090

Registry: Kamloops

Between:

William Allan Robins

Claimant

And

Elisabeth Wright Robins

Respondent

Before: The Honourable Justice Hori

Reasons for Judgment

Counsel for the Claimant:

C. Soll

The Respondent, appearing in person:

E.W. Robins

Place and Date of Trial:

Kamloops, B.C.

March 6-9, 2023

Place and Date of Judgment:

Kamloops, B.C.

August 4, 2023

Introduction

- [1] The parties in this family law action were married on April 9, 1994. They began living separate and apart in the same residence on October 1, 2010. The parties lived separate and apart in the same residence until January 2013, when the claimant vacated the former family home.
- [2] The parties have two children. Both of the children are over the age of majority and are no longer dependant on the parties.
- [3] The parties executed a separation agreement dated December 20, 2012. The separation agreement dealt with all aspects of the separation, including:
- a) Parenting of the children;
 - b) Child support;
 - c) Spousal support; and
 - d) The division of family property and family debt.
- [4] The separation agreement also included a release by which the parties gave up all of their claims with respect to support, property, succession rights, and any other matter arising from their relationship.
- [5] In this action, the claimant, William Allan Robins, seeks the following relief:
- a) An order for divorce;
 - b) An order setting aside the spousal support provisions of the separation agreement; and
 - c) An order establishing an alternative spousal support arrangement.

Background

- [6] The parties met while working in the United States of America. They were working for Covenant Players, a travelling theatre company.

- [7] The parties were married on April 9, 1994, in Connecticut. In July 1995, the claimant left the employment of Covenant Players and took a job with the Ministry of Forests in British Columbia. When the claimant accepted the job with the Ministry of Forests, the parties moved to British Columbia but the respondent continued to work remotely for Covenant Players until the fall of 1995.
- [8] In September 1996, the parties moved to Lillooet, British Columbia. Around that time the respondent began teaching Spanish at the University College of the Cariboo (the "College"). The respondent worked only minimal hours for the College until she left that employment in 1999.
- [9] The parties had their first child in November 1996. They had their second child in March 1999.
- [10] In 2004, the parties moved to Kamloops, British Columbia, where the respondent commenced work for Cascadia Resources Inc. ("Cascadia"). The claimant testified that the respondent's work at Cascadia involved nearly full time hours. He testified that she worked 30 hours per week on average until the job ended in December 2004.
- [11] The claimant testified that the respondent was next employed by their neighbour in a small business selling pet supplies. The claimant recalled that the respondent started in this small business in December 2005 and worked approximately 30 hours per week for about one year.
- [12] The evidence of the claimant is that between 2008 and 2010 the respondent did volunteer work for Habitat for Humanity. She volunteered approximately 20 hours per week for this organization.
- [13] The claimant testified that in 2009 the respondent began working a few hours per week for Watson Engineering Ltd. During this time she also started a home-based business making and selling rice filled therapy bags. The claimant estimated that the respondent worked 35-40 hours per week at her home-based business.
- [14] The claimant also opined that after the parties separated, the respondent's home-based business suffered due to the respondent losing her boyfriend.
- [15] After the parties separated, they negotiated the terms of a separation agreement prepared by the respondent's lawyer. The claimant testified that he received no independent legal advice on the separation agreement. However, he had a lawyer on a limited retainer to consult when he had questions. The claimant testified that he negotiated the terms of the separation agreement himself without any involvement of his lawyer.
- [16] The parties have generally lived by the terms of the separation agreement as it relates to the financial aspects of the separation. There are no previous court orders relating to child support or spousal support.

Provisions of the Separation Agreement

Parenting Agreement

- [17] The separation agreement provides that the primary residence for the children will be with the respondent. It also provides that the claimant is to have reasonable access to the children to be arranged with the respondent. The separation agreement also provides that the children will have input into the time they wish to spend with each of their parents.
- [18] The claimant's evidence is that before the parties finalized the separation agreement, he and the respondent attempted to reach a resolution of their issues with the assistance of the Family Justice Centre. The claimant testified that the parties had reached a "tentative agreement" on the parenting plan and child support. However, they were not able to resolve the division of property and spousal support issues.
- [19] The claimant testified that from the start of their separation until the children became independent, the parties exercised parenting time with the children on a two-week on and two-week off rotation. The claimant points out that the actual parenting time arrangement followed by the parties, was different than the separation agreement provisions.

Child Support

- [20] The separation agreement provides that the claimant's income for the purposes of the Federal Child Support Guidelines [Guidelines] is \$72,000 per year. The separation agreement also states that the respondent is unemployed. Based on the income of the claimant, the separation agreement provides that the claimant was to pay child support of \$1,171 per month, payable every second week.
- [21] The claimant complains that the child support payable under the separation agreement gives no consideration to the equal shared parenting arrangement that the parties exercised.
- [22] The claimant reduced his child support payments in 2019 when the parties' first child graduated. From 2019 the claimant paid only half of the amount set out in the separation agreement.
- [23] Child support for the parties' youngest child continued until the pandemic suspended post-secondary education. When that occurred, the claimant suspended child support payments until his youngest child returned to his post-secondary studies. The claimant discontinued child support in April 2022 when he discovered that his youngest child had withdrawn from school.

Spousal Support

- [24] The separation agreement provides for the payment of \$1,500 per month in spousal support, payable by the claimant. The spousal support under the separation agreement was payable every two weeks, commencing on September 28, 2012.

- [25] As part of the resolution of the property division issue, the spousal support amount in the separation agreement was reduced by \$500 per month for 70 months. This reduction represented a total sum of \$35,000 which, coupled with a lump sum of \$45,000 payable by the respondent, compensated the claimant for his interest in the family residence.
- [26] The claimant testified that the spousal support agreement was adjusted in January 2015, by reducing the spousal support by an additional \$300 per month so that the claimant could purchase a vehicle. The further reduction of \$300 per month was to be effective until December 31, 2018.
- [27] With respect to the respondent's Guideline income, the separation agreement provides that the respondent is unemployed.
- [28] The spousal support provisions provide that the spousal support amount will not be reviewed until after October 2021. It provides further that upon review and for the following nine years the amount of support is to be set at the mid-range level pursuant to the Spousal Support Advisory Guidelines [SSAG]. I have no evidence that any review of the spousal support occurred after October 2021.

Divorce

- [29] The claimant gave the following evidence in support of his application for a divorce:
- a) There is no possibility of reconciliation;
 - b) The certificate of marriage filed with the court, fully and accurately describes the particulars of the marriage;
 - c) The claimant is not involved in any arrangement to hide or make up evidence to obtain a divorce; and
 - d) The parties have lived separate and apart since October 2010.
- [30] In addition, a clearance certificate is filed with the court.
- [31] I am satisfied, based on the foregoing evidence, that the requirements for divorce have been met. Therefore, I will grant the parties an order for divorce. The order will take effect the 31st day following the date of this order.

Setting Aside the Separation Agreement

- [32] In his notice of family claim, the claimant pleads the provisions of the Family Law Act, S.B.C. 2011, c. 25 as the authority to set aside the separation agreement. However, at the trial of the action, the claimant based his submission entirely on the provisions of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA] and the Supreme Court of Canada decision in *Miglin v. Miglin*, 2003 SCC 24. Therefore, my analysis of the issues is conducted pursuant to the terms of the DA and the authority of *Miglin*.

[33] The claimant seeks to set aside the spousal support provisions of the separation agreement and replace them with a spousal support order under the DA. I prefer to frame the issue as whether the claimant is entitled to an initial spousal support order under the DA that is inconsistent with the terms of the separation agreement. I frame the issue in this way because that is how the Supreme Court of Canada framed the issue in Miglin.

[34] The majority judgment in Miglin sets out the issue at paras. 1 and 2 as follows:

[1] This appeal concerns the proper approach to determining an application for spousal support pursuant to s. 15.2(1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) ("1985 Act"), where the spouses have executed a final agreement that addresses all matters respecting their separation, including a release of any future claim for spousal support

[2] In broader terms, the appeal raises the question of the proper weight to be given to any type of spousal support agreement that one of the parties subsequently wishes to have modified through an initial application in court for such support

[35] The starting point in this analysis is s. 15.2 of the DA, which provides, in part:

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) 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) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [36] The Supreme Court of Canada in *Miglin*, established the following principles when deciding an initial application for spousal support where there is an existing separation agreement:
- a) There is no requirement for the applicant to establish a material change in circumstance from the circumstances that existed at the time of the prior agreement: *Miglin* at para. 43.
 - b) The prior agreement is afforded no greater priority in the analysis than the other factors set out in s. 15.2 of the DA: *Miglin* at para. 44.
 - c) Where parties have settled their financial affairs in a final agreement and their settlement is not vulnerable to attack on any other basis, the settlement should not be undermined by courts concluding, with the benefit of hindsight, that they should have done it differently: *Miglin* at para. 45.
 - d) Trial judges must balance Parliament's objective of equitable sharing of the consequences of marriage and its breakdown with the parties' freedom to arrange their affairs as they see fit: *Miglin* at para. 46.
 - e) A court should be loath to interfere with a pre-existing agreement unless convinced that the agreement does not comply substantially with the overall objectives of the DA: *Miglin* at para. 46.
 - f) When measuring the appropriate weight to be given to the pre-existing agreement, the court must consider more than the objectives set out in s. 15.2(6) of the DA and must consider the broader policy goals of certainty, autonomy and finality associated with an agreement: *Miglin* at para. 57.
- [37] By applying the foregoing factors, the majority of the court established a two-staged analysis which they succinctly summarized at para. 4 of their reasons:
- [4] As we explain below, we believe that a fairly negotiated agreement that represents the intentions and expectations of the parties and that complies substantially with the objectives of the Divorce Act as a whole should receive considerable weight. In an originating application for spousal support, where the parties have executed a pre-existing agreement, the court should look first to the circumstances of negotiation and execution to determine whether the applicant has established a reason to discount the agreement. The court would inquire whether one party was vulnerable and the other party took advantage of that vulnerability. The court also examines whether the substance of the agreement, at formation, complied substantially with the general objectives of the Act. As we elaborate later, these general objectives include not only an equitable sharing of the consequences of the marriage breakdown under s. 15.2, but also certainty, finality and autonomy. Second, the court would ask whether, viewed from the time the application is made, the applicant has established that the agreement no longer reflects the original intention of the parties and

whether the agreement is still in substantial compliance with the objectives of the Act. In contrast, the trial judge's and the Court of Appeal's approaches failed to value a determination by the parties as to what is mutually acceptable to them. We would thus allow this appeal.

Stage One

- [38] In stage one of the analysis, the court is to first look at the circumstances in which the agreement was negotiated and executed to determine whether there is any reason to discount the agreement: Miglin at para. 80.
- [39] Where the court is satisfied that the conditions under which the parties negotiated the agreement were satisfactory, it must then turn its attention to the substance of the agreement. In doing so, the court is to determine the extent to which the agreement takes into account the factors and objectives in the DA and the extent to which it reflects an equitable sharing of the economic consequences of marriage and its breakdown: Miglin at para. 84.

Circumstances of Execution

- [40] The focus in considering the circumstances under which the parties executed the previous agreement, is whether there were circumstances of oppression, pressure, or other vulnerabilities at play during negotiation and execution of the agreement: Miglin at para. 81.
- [41] In my view, no circumstances of oppression, pressure or vulnerability were at play in the negotiation or execution of the separation agreement in this case. The claimant had access to legal counsel, but he chose not to take legal advice on the terms of the separation agreement. The claimant was earning significantly more than the respondent at the time of the separation agreement, so it cannot be said that he was financially coerced or pressured into the terms by any financial imbalance between the parties.
- [42] The claimant submits that he was vulnerable and pressured into executing the separation agreement because he did not want to jeopardize the tentative parenting agreement he had negotiated with the respondent through the Family Justice Centre. The tentative arrangement on parenting was that the parties would share parenting time with the children equally.
- [43] However, the parenting provisions of the separation agreement are contrary to and less advantageous for the claimant than the equal sharing arrangement he had arranged. The separation agreement provides that the primary residence for the children was with the respondent. The claimant was to have reasonable access to the children as arranged with the respondent and with input from the children.

- [44] On these facts, the claimant's submission that he was pressured or vulnerable because he wished to preserve his equal parenting time does not ring true. The separation agreement did not recognize the equal parenting time arrangement the claimant was seeking. Since the separation agreement did not recognize equal parenting time, I fail to see how the claimant's desire to maintain equal parenting time could have pressured him or made him more vulnerable in the negotiations.
- [45] The claimant also submits that the execution of the separation agreement was based on the representation that the respondent was unemployed. The claimant alleges that this is a misrepresentation because when the parties executed the separation agreement, the respondent was working at Watson Engineering Ltd. and was self-employed in her home-based business. In addition, the claimant submits that the respondent failed to disclose that she had plans to rent out a suite in the basement of the former family residence as a way to generate income.
- [46] I do not accept that the statement in the separation agreement that the respondent was unemployed or the failure to specifically disclose that the respondent intended to rent out a basement suite, mislead the claimant. It is clear from the claimant's evidence that he was aware, both before and after the separation, that the respondent was earning income. He knew that the respondent was operating a home-based business. He knew that the respondent was working at Watson Engineering Ltd. and he knew that the former family home had a rental suite. Accordingly, the claimant knew, or should have known, that the respondent was not unemployed and that she was earning income and had the capacity to do so.
- [47] Notwithstanding the claimant's knowledge, he chose to accept the representation in the separation agreement and accepted the terms of the agreement. Further, the claimant testified that he negotiated for and obtained a spousal support review clause to take effect after October 2021. He testified that he thought that the respondent's income would become a factor on a review.
- [48] Therefore, I find that there was nothing in the circumstances under which the parties negotiated and executed the separation agreement that provides a basis to discount the weight attributed to it.

Substance of the Agreement

- [49] Where the court is satisfied that the conditions under which the parties concluded the pre-existing agreement are satisfactory, the next question is whether the substance of the agreement, at its formation, complied substantially with the general objectives of the DA. The analysis of the substance of the agreement in stage one was described in Miglin at para. 84-85:

- [84] Where the court is satisfied that the conditions under which the agreement was negotiated are satisfactory, it must then turn its attention to the substance of the agreement. The court must determine the extent to which the agreement takes into account the factors and objectives listed in the Act, thereby reflecting an equitable sharing of the economic consequences of marriage and its breakdown. Only a significant departure from the general objectives of the Act will warrant the court's intervention on the basis that there is not substantial compliance with the Act. The court must not view spousal support arrangements in a vacuum, however; it must look at the agreement or arrangement in its totality, bearing in mind that all aspects of the agreement are inextricably linked and that the parties have a large discretion in establishing priorities and goals for themselves.
- [85] When examining the substance of the agreement, the court should ask itself whether the agreement is in substantial compliance with the Divorce Act. As just noted, this "substantial compliance" should be determined by considering whether the agreement represents a significant departure from the general objectives of the Act, which necessarily include, as well as the spousal support considerations in s. 15.2, finality, certainty, and the invitation in the Act for parties to determine their own affairs. The greater the vulnerabilities present at the time of formation, the more searching the court's review at this stage.
- [50] As suggested by the Court in Miglin, since I have found that the parties agreed on the terms of the separation agreement in circumstances where there were little or no vulnerabilities, my review of the substance of the agreement, at formation, need not be to an exacting standard.
- [51] It is difficult to assess the substance of the separation agreement at its formation 11 years after its execution. The substance of the separation agreement and whether it substantially complied with the factors and objectives of the DA, requires a contextual analysis. Eleven years after its execution much of the context and circumstance is lost due to the passage of time. Further, the parties presented very little evidence with respect to the circumstances under which they negotiated the separation agreement.
- [52] From the evidence that has been produced, I have distilled the following circumstances surrounding the negotiation and execution of the separation agreement:
- a) The parties shared parenting time with the children equally;
 - b) The claimant had a reported income for 2012 of \$82,508 which was significantly more than the respondent's reported income of \$5,616;
 - c) The children were 16 and 13 years of age;
 - d) The parties' relationship lasted for 16 years from the date of marriage to the date of separation;
 - e) The major asset owned by the parties was the former family home valued at \$330,000 and encumbered by a mortgage with a balance owing of \$147,582.81;

- f) The claimant had a pension plan of unknown value;
 - g) The respondent had an RRSP with a value of \$56,807;
 - h) The division of family property and family debt resulted in:
 - i. the claimant retaining two vehicles, receiving a half interest in the respondent's RRSP and receiving \$80,000 as payment for his half interest in the former family home; and
 - ii. the respondent retaining one vehicle, retaining a half interest in her RRSP, receiving an unvalued interest in the claimant's pension plan, and retaining the former family home by assuming the existing mortgage and paying the claimant \$80,000;
 - i) Before accounting for the respondent's interest in the claimant's pension plan, the net value of the assets retained by the respondent exceeds the net value of the assets retained by the claimant by approximately \$25,500.
- [53] I have conducted a DivorceMate calculation of child support and spousal support payable by the claimant as of the date of the separation agreement by inputting the following factors:
- a) the claimant's income of \$82,508 per year less union dues of \$1,495;
 - b) the respondent's income of \$5,616 per year;
 - c) shared parenting of the two children; and
 - d) a relationship of 16 years.
- [54] Using the foregoing factors and based on the child support tables from December 31, 2011, the child support payable by the claimant would have been \$1,223 per month. The spousal support range payable by the claimant would have been \$1,075 per month at the low end of the range, \$1,313 at the mid point of the range and \$1,525 per month at the high end of range.
- [55] Based on the foregoing analysis, there is not a significant difference between the claimant's support obligation set out in the separation agreement and the support he would have paid under the DA as dictated by the Guidelines and the SSAG. Therefore, I cannot conclude that the terms of the separation agreement represent a significant departure from the general objectives of the DA on the basis of the support payments mandated by the separation agreement.
- [56] I also find that the terms of the separation agreement are not a significant departure from the objectives of the DA in any other respect. The separation agreement recognizes the disadvantage of the marriage and its breakdown to the respondent who relied upon the claimant to financially support the family for 16 years and seeks to apportion the financial consequences between the parties and relieve the economic hardship suffered by the parties. In addition, at the inception of the separation agreement, the parties agreed to a review in October 2021 and a duration for the payment of spousal support of 18 years for the

date of separation.

- [57] While a duration of 18 years may seem lengthy, I am not satisfied that it was a significant departure from the objects of the DA as of the date of the separation agreement. This duration gave the respondent 10 years before a review to become economically self-sufficient and the review allowed the claimant to vary the duration after October 2021.
- [58] Accordingly, I find that when the parties negotiated the spousal support provisions of the separation agreement, there was no imbalance of power in favour of the respondent. I also find that at the time of its execution, the separation agreement substantially complied with the general objectives of the DA. Therefore, the terms of the separation agreement must be given significant weight.

Stage Two

- [59] The purpose of stage two of the analysis is to ensure that with the passage of time, the prior agreement continues to reflect the original intention of the parties and to assess the extent to which the agreement is still in substantial compliance with the objectives of the DA. The Court in Miglin stated as follows at para. 87-88:
- [87] Where negotiation of the agreement is not impugned on the basis set out above and the agreement was in substantial compliance with the general objectives of the Act at its time of creation, the court should defer to the wishes of the parties and afford the agreement great weight. Nevertheless, the vicissitudes of life mean that, in some circumstances, parties may find themselves down the road of their post-divorce life in circumstances not contemplated. Accordingly, on the bringing of an application under s. 15.2, the court should assess the extent to which enforcement of the agreement still reflects the original intention of the parties and the extent to which it is still in substantial compliance with the objectives of the Act.
- [88] The parties' intentions, as reflected by the agreement, are the backdrop against which the court must consider whether the situation of the parties at the time of the application makes it no longer appropriate to accord the agreement conclusive weight. We note that it is unlikely that the court will be persuaded to disregard the agreement in its entirety but for a significant change in the parties' circumstances from what could reasonably be anticipated at the time of negotiation. Although the change need not be "radically unforeseen", and the applicant need not demonstrate a causal connection to the marriage, the applicant must nevertheless clearly show that, in light of the new circumstances, the terms of the agreement no longer reflect the parties' intentions at the time of execution and the objectives of the Act. Accordingly, it will be necessary to show that these new circumstances were not reasonably anticipated by the parties, and have led to a situation that cannot be condoned.

- [60] The separation agreement in this case provides that the claimant pay spousal support in the amount of \$1,500 per month. The separation agreement provides for a downward adjustment to the spousal support of \$500 per month for 70 months to partially retire the respondent's agreement to pay \$80,000 to purchase the claimant's interest in the former family home. The 70-month period expired years ago.
- [61] The separation agreement also provides for a review of spousal support after October 2021. It also includes a term that for nine years following October 2021, the amount of support is to be set at the mid range for spousal support pursuant to the SSAG.
- [62] It is apparent from the terms of the separation agreement that the intention of the parties was to establish a level of spousal support that could be relied upon by the parties for 10 years. The parties agreed that spousal support would not be reviewed until after October 2021, when the children were 26 and 23 years of age.
- [63] By postponing a review of spousal support for 10 years, the parties must have appreciated that their levels of income would fluctuate in that 10-year period. Therefore, the parties would have anticipated a change in their income when they agreed to the terms of the separation agreement.
- [64] It is equally clear that the parties contemplated a change in the spousal support obligation in 10 years when the parties' youngest child would reasonably have completed post-secondary education at 23 years of age.
- [65] Accordingly, I defer to the wishes of the parties as set out in the separation agreement. In my view, the circumstances in which the parties find themselves today were in their contemplation when they executed the separation agreement.
- [66] Based on the spousal support review that follows in these reasons, I also find that the terms of the separation agreement continue to be in substantial compliance with the objectives of the DA.
- [67] I have one concern that relates to the duration of spousal support. In my view, the duration of spousal support is longer than contemplated by the DA. However, the duration of spousal support, in this case, is not a significant departure from the objects of the DA because the duration is subject to review as of October 2021, if it is not in keeping with the intentions of the parties.
- [68] Accordingly, I would not make a spousal support order in this case that is contrary to the terms of the separation agreement. However, I am prepared to conduct a review of spousal support as contemplated by the separation agreement after October 2021.

Spousal Support Review

[69] The claimant's income, net of union dues, for 2021 was \$107,996 and for 2022 it was \$97,072. For the purposes of this review, I will consider the claimant's annual income to be \$102,534 which is the average of his 2021 and 2022 incomes net of union dues.

[70] I will impute income to the respondent for three reasons:

- a) A period of 10 years from the execution of the separation agreement and October 2021, should have been sufficient time for the respondent to make some progress towards self-sufficiency;
- b) The respondent has not disclosed the documents necessary to establish her actual income for 2021 or 2022;
- c) The respondent has the capacity to earn income as evident from her past history prior to the marriage and during the marriage while caring for the children;
- d) The respondent has rental income from the basement suite in her house; and
- e) The respondent earns employment income from her job at Watson Engineering Ltd.

[71] The respondent testified that she works 10-15 hours per week at Watson Engineering Ltd. A letter produced from Watson Engineering Ltd. confirms that the respondent's hourly rate, as of 2019, was \$16.50 per hour. There is no evidence as to the respondent's current hourly rate, so I will base this analysis on the rate of \$16.50 per hour.

[72] If the respondent works an average of 15 hours per week at \$16.50 per hour, her annual earnings from Watson Engineering Ltd. would be \$12,870.

[73] The respondent also testified that she rents out her basement suite for \$2,000 per month. This translates to an annual revenue of \$24,000. While there may be an increase in household expenses as a result of a tenant, I am satisfied that those increases are minimal. Most of the household expenses are fixed costs that would not fluctuate whether a tenant occupied the premises or not. Therefore, for the purposes of this analysis, there will be no deduction for an increase in household expenses.

[74] Combining the respondent's employment earnings and her rental revenue, the annual income for the respondent would be \$36,870.

[75] Accordingly, I attribute an annual income of \$37,000 to the respondent for the purposes of this review.

[76] The respondent submits that she is limited in her capacity to earn income by her depression and anxiety. The respondent tenders a report from her physician, Dr. Sorinmade, a psychiatrist. I am not prepared to discount the respondent's income earning capacity in this analysis based on Sorinmade's report because:

- a) the respondent has shown that she is capable of working the hours I have attributed to her, even with her condition; and
 - b) the rental income she is earning should not be affected by her condition.
- [77] Further, I do not accept the opinions of Dr. Sorinmade in that he has shown himself to be an advocate for the respondent. Dr. Sorinmade's opinions are not based on any analysis of the respondent's work history, her job requirements or her hours of work. His opinion is based solely on the respondent telling him that she is comfortable working only 10-15 hours per week.
- [78] I also base this spousal support review on the without child support formula because, as of October 2021, the parties' youngest child had withdrawn from his post-secondary studies. Therefore, as of that date, the youngest child was 23 and no longer pursuing post-secondary education. There is no evidence to establish that the youngest child is unable to withdraw from his parents' charge or obtain the necessities of life. Accordingly, the claimant's child support obligations ought to have come to an end at that time.
- [79] Based on the foregoing parameters, the spousal support payable pursuant to the SSAG is \$1,311 per month on the low end of the range, \$1,529 per month in the mid range and \$1,748 per month at the high end of the range.
- [80] The separation agreement provides that the spousal support on this review is to be set at the mid range level and rounded to the nearest \$100. It is somewhat informative that the mid range of my assessment of spousal support, rounded to the nearest \$100, is \$1,500, which is the amount set for spousal support by the terms of the separation agreement.
- [81] Accordingly, the spousal support payable following this review will be unchanged and will remain at \$1,500 per month. The spousal support will be payable in bi-weekly installments as set out in the separation agreement.
- [82] As I indicated earlier in these reasons, the duration of the spousal support payments set out in the separation agreement represents a departure from the general objectives of the DA. The separation agreement provides that the duration for the payment of spousal support is for nine years following the review of support after October 2021. The duration set by the separation agreement does not promote the economic self-sufficiency of the respondent. In this case, the respondent has not tendered evidence to establish that she has taken steps towards economic self-sufficiency in the 10 years since the separation agreement.
- [83] Further, a duration of nine years from the October 2021 review date establishes a total duration of 18 years of spousal support since the date of separation. In my view, a spousal support duration of 18 years is not necessary to fulfill the objects of a spousal support order set out in s. 15.2(6) of the DA. In particular, such a lengthy duration is not necessary to promote the respondent's economic self-sufficiency.

- [84] Accordingly, I am prepared, on this review, to modify the duration of the spousal support obligation.
- [85] The SSAG in 2012, when the separation agreement was executed, would have prescribed a minimum duration of eight years and a maximum duration of 16 years from the date of separation as the spousal support duration. The maximum duration of 16 years will expire on October 1, 2026. In my view, reducing the duration of the spousal support obligation to the 14 years is more in keeping with the objects of the DA. It will also provide the respondent with one year within which to adjust her financial circumstance and become more economically self-sufficient.
- [86] Therefore, the claimant's obligation to pay spousal support in accordance with this order will end as of September 30, 2024.

Summary

- [87] The end result of this entire analysis is that the claimant's obligation to pay both past and prospective spousal support is to pay in accordance with the separation agreement. However, the claimant's spousal support obligation will end on September 30, 2024.

Costs

- [88] In my view, the respondent has been substantially successful in this action. Therefore, the respondent should have her costs of the proceedings. However, if the parties wish to make submissions on the issue of costs, they may do so by scheduling a costs hearing within the next 30 days.

"D.K. Hori J."

HORI J.

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