

CANADA / JUDGMENT

S.M.K. v. S.K.

2017 BCSC 1242

COURT

Supreme Court of British Columbia

DECIDED

19 July 2017

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2017 BCSC 1242 S.M.K. v. S.K. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: S.M.K. v. S.K., 2017 BCSC 1242 Date: 20170719 Docket: E151792 Registry: Vancouver Between: S.M.K. Claimant And: S.K. aka S.H. Respondent Before: The Honourable Mr. Justice G.C. Weatherill Reasons for Judgment Counsel for the Claimant: K.J. Heinrichs S. Kainth Counsel for the Respondent: S.L. Specht Place and Dates of Trial: Vancouver, B.C. June 19-23 and 27-30, 2017 Place and Date of Judgment: Vancouver, B.C. July 19, 2017

Introduction

- [1] This family dispute involves the usual panoply of issues that arise upon the breakdown of a marriage. However, it also raises the difficult and agonizing question of whether the mother should be allowed to relocate with the child of the relationship to Victoria, British Columbia.

Background

- [2] The parties are both approximately 38 years of age. They began to live in a marriage-like relationship in March 2004. They were married on September 13, 2008 and separated on May 7, 2013.
- [3] There is one child of the relationship, N., who is now seven years old.
- [4] The claimant is a secondary school teacher in Surrey, British Columbia. The respondent is a classroom and child support educator.
- [5] The claimant was born and raised in Burnaby, British Columbia.
- [6] The respondent was born in South Africa. She immigrated to Canada at the age of 15 with her mother, with whom she continues to have a close relationship. Upon her arrival in Canada, the respondent lived in Port Coquitlam.
- [7] The parties met and dated for a brief time in 1996.
- [8] In 2002, the respondent moved to Victoria.

- [9] The parties resumed their romance in 2003, shortly before the claimant obtained his teaching degree. At that time, teaching positions were scarce in British Columbia and, in September 2003, the claimant travelled to London, England where he quickly found employment as a teacher.
- [10] In March 2004, the respondent left Victoria and followed the claimant to London where they began living in a marriage-like relationship. She obtained employment in various clerical positions.
- [11] In 2005, the parties returned to Canada. They moved to Fort Simpson, Northwest Territories where the claimant worked as a teacher and the respondent worked in various capacities, including as a pre-school manager.
- [12] In 2006, the parties moved to South Korea where the claimant taught English. Again, the respondent moved with him to support his career.
- [13] In 2007, they returned to British Columbia. The claimant began working as a teacher in both an "on-call" and contract capacity. The respondent found part-time employment as a child and youth leader and child support worker. The parties lived with the claimant's parents.
- [14] The parties discussed the possibility of moving to Victoria where the respondent still had friends, family, and a horse. They casually looked at various properties there but, in 2008, the parties purchased a townhome in Port Moody for \$310,000. They combined their respective resources in order to raise the required down payment of approximately \$66,000. Those resources included the respondent's \$10,000 GIC that she purchased using the proceeds from the sale of her car prior to her move to England in 2004, and the claimant's \$5,253.54 from Canada Savings Bonds that his parents had purchased for him as a child.
- [15] The respondent testified that, at the time they purchased the townhouse, the claimant told her that they would consider a move to Victoria in five years.
- [16] Approximately one year later, the claimant's parents lent the parties \$50,000, which they used to reduce the principle amount of their mortgage. The parties paid \$126 per month to the claimant's parents, representing an interest rate of 3%. No portion of the principal of that loan has yet been repaid.
- [17] In 2009, the claimant began working for the Surrey School District in various teaching capacities. He is currently a full-time physical education teacher in Surrey.
- [18] While working in her part-time job, the respondent also attended Douglas College on a part-time basis taking courses towards a diploma in classroom and child support. She obtained her degree in June 2013. She is currently employed three days per week as a School and Student Support Worker for the Vancouver School Board. Her long-term plan is to obtain a degree or degrees in "something to do with children" so that she can have a positive influence on children's lives.

- [19] N. was born on February 27, 2010.
- [20] The respondent suffered from periods of post-partum anxiety. She testified that N. was a relatively needy baby who required almost constant feeding, including through the night.
- [21] The claimant testified that, after N.'s birth, the parties' relationship began to deteriorate. He believes that this is because both he and the respondent focused on N. and his needs rather than on their own.
- [22] However, as the evidence unfolded, it became clear that the parties' difficulties pre-dated N.'s birth. The claimant's impatient and quick-tempered personality troubled their relationship when they lived in England, the Northwest Territories, and South Korea, and lead to several incidents of, seemingly, uncontrollable anger on the part of the claimant.
- [23] After N. was born, there were several other incidents when the claimant's frustration and temper got the better of him. He yelled, screamed, and smashed his fist on the table and once through a closet door. These incidents caused the respondent to feel emotionally abused, as though she was "walking on egg shells". She tried to discuss her concerns with the claimant on several occasions but he refused to acknowledge their validity. She tried to have him attend counselling but he rejected the idea. The claimant conceded, during his cross-examination, that he should have reacted better than he had done on those occasions. However, he insisted that he had never raised his voice or reacted angrily in N.'s presence.
- [24] The respondent's evidence is to the contrary. She testified about several incidents during which the claimant became angry and lost his temper in N.'s presence.
- [25] The claimant wanted to have another child but the respondent did not feel safe and was concerned that their home environment was not conducive to bringing another child into it.
- [26] The respondent testified that, by April 2013, her feelings of emotional abuse as a result of the claimant's temper had reached the point where she had become afraid of him. She sought advice from counsellors and confronted the claimant telling him that his angry behavior had to stop and that he too needed to go to counselling. The claimant attended counselling for two weeks but then stopped.
- [27] The claimant testified that, on May 6, 2013, the respondent returned with N. from visiting her mother in Victoria and informed the claimant that he was to blame for the difficulties they were experiencing in their relationship, that she was not going to have any more children, and that she wanted to move to Victoria. The claimant testified that he was shattered by this information.
- [28] The following day, the respondent left the matrimonial home with N. and moved to a transition house. When the claimant returned home from work, he found that the respondent and N. had left. He testified that he did not see them for several days and for the next several months thereafter, he saw N. only sporadically during times dictated by the respondent.

- [29] On May 22, 2013, the claimant wrote a letter to the respondent's family physician in which he described the respondent as psychologically ill. He explained that his rationale for the letter was a concern that the respondent has succumbed to an unhappy mental state as a result of the many emotional and financial stressors in their lives and that he was only trying to help. Needless to say, the letter served to only exacerbate the situation.
- [30] Shortly after the parties' separation, the claimant moved out of the matrimonial home into his parent's home in North Burnaby so that the respondent could move back home with N. However, he placed a parameter of initially two weeks and later four weeks as the amount of time he was prepared to allow the respondent to live there without him. The respondent was not prepared to return to the matrimonial home under such constraints. Consequently, it remained vacant from mid-May until early July 2013 when the parties agreed that the respondent and N. would return home and the claimant would continue to live with his parents.
- [31] The respondent testified that she remained hopeful that she and the claimant would be able to resolve their issues and continue their marriage for N.'s sake.
- [32] From September 2013 to April 2014, the parties attended marriage counselling. As part of that counselling, the claimant wrote to the respondent's family physician apologizing for his May 2013 letter and asking that it be withdrawn.
- [33] In July 2014, without notice to the respondent, the claimant moved from his parent's home into a townhouse unit owned by his younger brother, Adam. The unit was in the same development as the matrimonial home. He did so despite advice from the parties' counsellor that it was not a good idea and that he should respect the respondent's space, insisting instead that "I thought what I was doing was best for N.". Predictably, he did not respect the boundaries that the respondent requested of him. In August 2014, the respondent left the matrimonial home and moved into rental accommodation.
- [34] The claimant did not move back into the matrimonial home because the respondent had changed the locks and did not provide him with a key. Rather, she wanted the home sold or rented. Over the course of the next many months, the parties' discussed the claimant buying the respondent's interest but they could not agree on the terms. As a consequence, the matrimonial home remained vacant.
- [35] From July 2013 to October 2015, the claimant had parenting time with N. pursuant to a tentative agreement between the parties as follows: Week 1 Tuesdays and Thursdays: 3:30 p.m. to 6:30 p.m. Saturdays: 9 a.m. to 5 p.m. Week 2 Mondays and Wednesdays: 3:30 p.m. to 6:30 p.m. Sunday: 9 a.m. to 5 p.m.
- [36] Commencing shortly after this schedule was put in place, the respondent also agreed to allow the claimant occasional overnight parenting time.

- [37] From September 2014 to April 2015, the parties engaged in a collaborative law process in an effort to resolve the issues between them. They each retained a divorce coach. All of these attempts at reconciliation failed.
- [38] Despite the parties' agreed parenting time schedule, the claimant often kept N. longer than had been agreed, usually during baseball and soccer seasons and, on one occasion, during the summer of 2014 for three days. The claimant conceded on cross-examination: "I was wrong".
- [39] The tension between the parties over parenting time increased.
- [40] The Notice of Family Claim was filed on June 26, 2015.
- [41] On October 29, 2015, Master McNaughton, as she then was, ordered the following interim parenting schedule for the claimant, which continues to be in place pending the outcome of this trial:
- a) Week 1: Tuesdays at 9 a.m. to Thursdays at 6:30 p.m.
 - b) Week 2: Mondays at 3:30 p.m. to Wednesdays at 6:30 p.m. and Fridays at 3:30 p.m. to Sundays at 6:30 p.m. The claimant has parenting time during holidays as agreed by the respondent.
- [42] Master McNaughton also ordered that a s. 211 Report be prepared. That report was authored by Dr. Adrienne Matheson and is dated July 2016 (see below).
- [43] Upon receipt of Dr. Matheson's s. 211 Report, the claimant took it upon himself, albeit ultimately unsuccessfully, to implement its recommendations regarding parenting times despite Maser McNaughton's October 29, 2015 order, claiming that he understood that the parties were required to do so.
- [44] The matrimonial home was not sold until October 2016. The claimant admitted on cross-examination that he was in large part responsible for the delay because he wanted to purchase the respondent's interest in it.
- [45] The parties were unable to agree on where N. would attend school. During a court application, they entered into a consent order that N. would attend Pleasantside Elementary School in Port Moody where he attended for his kindergarten and Grade One years.
- [46] The claimant testified that N. has many close friends in Port Moody, including at his school, and has a very close relationship with his many cousins and parental grandparents, all of whom live in relatively close proximity. N.'s best friend, Xavier, lives in the same townhouse development.

- [47] There was a great deal of evidence proffered by the parties and various other witnesses regarding the parties' respective parenting skills and the activities they engage in with N. The claimant testified that he and N. are involved in baseball, soccer, and other sports but the respondent does not support those activities and does not take N. to his practices or games during her parenting times. The respondent's evidence is that the claimant enrolled N. in soccer and baseball without any consultation with her.
- [48] The claimant testified that he takes N. to his family's cabin on Lillooet Lake where N. is able to fish, hike, camp, enjoy the outdoors, and spend time with his family and cousins.
- [49] The respondent testified that her current financial situation is incredibly stressful for her. She cannot afford her rent of \$1,200 per month and is becoming increasingly in debt to family and friends. She wishes to relocate from her home in Port Moody to Victoria where she feels that she would be able to provide N. with better financial stability and more opportunities. She and N. would live with her mother rent-free and have few, if any, child-care expenses. She would attend the University of Victoria ("UVic") where she has been accepted into its Child and Youth Care Degree program. Although there are similar programs available in the Lower Mainland, the respondent testified that she cannot afford to attend them with her current living expenses.
- [50] The respondent expects that, with her current diploma, she will be able to complete the UVic program in two years, attending on a part-time basis. After this, she plans to complete a one-year equine therapy program which will give her the credentials to use horses as a means of therapeutic and emotional healing for children. She testified that there is no equivalent equine therapy program in the Lower Mainland. At some point, she plans to take a Master's degree in the field of mental health. She expects that with a Master's degree her income will be triple that of her current income of \$25,000.
- [51] On cross-examination, the respondent agreed that there are several institutions in the Lower Mainland, including Douglas College and the University of the Fraser Valley, offering the same program as the one she has been accepted in Victoria. She also agreed that the UVic program can be taken on-line via "distance education". She agreed that she has not made any enquiries regarding bursaries, scholarships, grants or other financial assistance that might be available to her in that event.
- [52] The respondent testified that she has a social community of friends and church in the Victoria area. She also testified that she would ensure that N.'s relationship with the claimant and his family continues to be fostered.

- [53] On cross-examination, the respondent agreed that, in July 2016, she advised Dr. Matheson that she decided not to move to Victoria after her separation because she did not wish to "be responsible for creating so much distance between N. and his dad". She agreed that her current desire to move to Victoria is of relatively recent origin, starting with her application to UVic in early 2017. She also agreed that her support network in Port Moody is at least as good as it is in Victoria.
- [54] The respondent conceded on cross-examination that she would not move to Victoria without N.
- [55] The claimant called the following collateral witnesses as part of his case:
- a) Mike Varga, N.'s baseball coach;
 - b) Joseph Scott, a neighbour and friend;
 - c) Sylvia Schmitz, a friend whose husband is a long-time family friend;
 - d) Adam Klein ("Adam"), the claimant's younger brother with whom the claimant lives;
 - e) Cheryl Klein ("Cheryl"), the claimant's mother;
 - f) Gerald Klein ("Gerry"), the claimant's father.
- [56] Each of these witnesses testified that the claimant is a very good father to N., that they have a caring and loving relationship and that N. obviously enjoys his time and activities with his father.
- [57] Each of these witnesses testified that he or she has never heard the claimant speak negatively about the respondent or her family in N.'s presence.
- [58] With the exception of Mr. Varga, who was not asked, each testified that the claimant is extremely patient with N., that he does not raise his voice towards N., and that he disciplines N. appropriately.
- [59] Mr. Scott testified that his son Xavier and N. are in the same class at school, and that they are and have been best friends for several years. Other than Mr. Varga, who was not asked, each testified that he or she would happily care for N. whenever the need arises.
- [60] Cheryl testified that N. is very happy and comfortable in her home and that birthdays and other significant events are celebrated as a family with all of her three children, their spouses, and their children in attendance. If an event occurs on a day that does not coincide with the claimant's parenting time with N., the event is deferred until N. is able to attend. She testified that she loves N. and would do anything she can for him as well as for both the claimant and the respondent.

- [61] Cheryl confirmed that N. has a very close and loving relationship with his various cousins who live in the Lower Mainland. She testified that she remains good friends with the respondent's grandmother who lives in Toronto, but that she is not particularly fond of the respondent's mother, Penny. She also confirmed that the respondent is a good mother to N. and that she would like to resume a relationship with her.
- [62] Despite the attempts by the respondent's counsel to undermine Cheryl's role as a loving grandmother and to portray her as a jealous and conniving mother-in-law, I found Cheryl to be a forthright witness, motivated by nothing other than a grandmother's love and N.'s best interests.
- [63] Gerald, N.'s paternal grandfather, was equally sincere and did his best to assist the court in an objective manner. He confirmed that the \$50,000 he and Cheryl provided to the parties was not a gift but rather was a loan at 3% interest and that he expects the loan to be repaid. He also testified as to why and how it would be difficult for him and Cheryl to maintain their relationship with N. if the respondent moved with him to Victoria.
- [64] The respondent called the following collateral witnesses as part of her case:
- a) David Wood
 - b) Penny Fenske
 - c) Anne Thomas
 - d) Kirsten Allenberg
 - e) Janet Murphy
- [65] David Wood is a friend of the respondent. They met in 2014. He testified that Adam confronted him in front of the parties' matrimonial home and was disparaging of the respondent, proclaiming, among other things, that the respondent was psychologically unfit to be a mother and belonged in a mental institution.
- [66] Penny Fenske is the respondent's mother. Ms. Fenske immigrated to Canada from South Africa in 1994 and has lived in the Victoria area since 2001. She is a registered clinical counsellor who is obviously passionate about the well-being of children generally and of N. in particular. She is a strong advocate of "attachment therapy" when it comes to the parenting of children. She testified that she has a "delightful and loving relationship with N.", whom he sees every second weekend alternating between her home in Victoria and the respondent's home in Port Moody.
- [67] Ms. Fenske described the respondent as a gentle person who focuses on an "attachment parenting style" with N., showing him affection and positive reinforcement yet with intentionally set boundaries. She described N. as "intelligent", "athletic", "a sharp wit", "gentle", and "thoughtful". She testified that the respondent is connected, affectionate, and supportive of N.'s relationship with his father and is not vindictive of him.

- [68] Ms. Fenske testified that she would support and assist a relocation by the respondent and N. to Victoria. They would be able live rent-free with her. She has a flexible work schedule and would be free to assist with child care whenever needed. She testified that she would also be prepared to pick the claimant up at the ferry terminal and arrange for his accommodation in Victoria with various of her friends when he comes visit N. She testified that her and the respondent's long-term goal is to own acreage where they would have horses and where she and the respondent would be able to use their respective training and skills to launch an "equine assisted therapy" program.
- [69] Ms. Fenske confirmed on cross-examination that she is prepared to continue to assist the respondent financially if she continues to live in Port Moody.
- [70] Ms. Thomas met the respondent in October 2013 and they developed a close relationship. She described N. as a bright, cautious, confident, and expressive little boy. She described the respondent as a warm, caring, and compassionate person who is an exceptional parent who is supportive and encouraging of N.'s relationship with the claimant.
- [71] Ms. Allenberg met the respondent in Victoria in 2003 and rekindled her friendship with the respondent when she moved to the Lower Mainland in November 2013. She echoed Ms. Thomas' descriptions of N. and the respondent. She also testified that the claimant's demeanour during the parenting transitions she observed was less than cordial. She confirmed that she was available to support the respondent as much as possible should she continue to live in Port Moody.
- [72] Ms. Murphy met the respondent in May 2014 at her church. She too echoed the testimony of Ms. Thomas and Ms. Allenberg. When questioned by the court, Ms. Murphy acknowledged that the respondent and N. seem well adjusted and settled in their current lives, although the respondent does appear to struggle financially. Orders Sought by the Claimant
- [73] The claimant seeks to have the court endorse and implement Dr. Matheson's recommendations. He seeks the following orders:
- a) the parties share joint guardianship of N.;
 - b) the parties share equal parenting time with N., including during holidays and special events;
 - c) that the respondent be precluded from relocating N. to Victoria;
 - d) child support be paid on a set-off basis pursuant to s. 9 of the Federal Child Support Guidelines;
 - e) the parties share special and extraordinary expenses in proportion to their incomes;
 - f) the parties exchange their respective tax returns and support documents annually no later than June 30 of each year commencing June 30, 2018 and continue to do so for as long as child support is payable;

- g) effective July 1 of each year, the parties will adjust their respective contribution to s. 7 expenses based upon their taxable income in the preceding year;
 - h) the claimant pay mid-range spousal support to the respondent based upon his income of \$84,500 and the respondent's income of \$25,000 with his obligation to pay spousal support terminating on May 1, 2020;
 - i) the parties are equally responsible to pay the \$50,000 loan to the claimant's parents from the proceeds of sale of the matrimonial home;
 - j) the sum of \$5,253.54 that was used as part of the down payment for the purchase of the matrimonial home is excluded property and that it will be paid to him from the proceeds of sale of the matrimonial home prior to the division of family assets;
 - k) that all family property and family debts be divided equally between the parties;
 - l) a divorce; and
 - m) costs. Orders Sought by the Respondent
- [74] The respondent consents to the orders sought by the claimant as set out in subparagraphs a), e), f), g) and l).
- [75] The respondent disagrees with many of the recommendations contained in the s. 211 Report, primarily because the communication between her and the claimant is ineffective and uncordial, and because the transitions between the two different parenting styles do not provide sufficient time for N.'s emotional well-being.
- [76] The respondent seeks, inter alia, the following orders:
- a) that she maintain the primary residence for N. and that she be permitted to relocate to Victoria with him;
 - b) that she be entitled to make all decisions regarding N.'s counselling and mental and dental health, after consulting with the claimant and reasonably attempting to reach agreement with him on those issues;
 - c) that the claimant's parenting time be as follows: If the respondent relocates to Victoria
 - i. Four overnights per month on the Mainland for the months of January, February, April, May, June, September, October, and November to take place the second weekend of every month unless the parties otherwise agree; ii. Additional parenting time in Victoria of up to 48 hours per week upon the claimant providing the respondent with at least 7 days' notice; iii. One-half of Spring Break each year, with the claimant having the first half; iv. 5 overnights on the 2nd and 4th weeks of July and August each year;

- v. One-half of the Christmas holidays, with the claimant having N. in his care on Christmas Eve and Day every even numbered year and the respondent having N. in her care on Christmas Eve and Day every odd numbered year; and vi. Liberal Skype access as agreed between the parties. If the respondent does not relocate to Victoria
 - i. Thursday at 3 p.m. to Monday at 9 a.m. every second weekend; ii. Tuesday overnight on the alternating weeks from afterschool on Tuesday to Wednesday morning at 9 a.m.; iii. One-half of Spring Break each year, with the claimant having the first half; iv. 5 overnights on the 2nd and 4th weeks of July and August each year;
 - v. One-half of the Christmas holidays, with the claimant having N. in his care on Christmas Eve and Day every even numbered year and the respondent having N. in her care on Christmas Eve and Day every odd numbered year;
 - d) Each of the parties will use their respective best efforts to accommodate a request by the other party to change his or her parenting schedule provided 30 days' notice of the change is provided
 - e) Each of the parties will sign up with and actively engage in the use of Our Family Wizard as their primary source of communication regarding N.;
 - f) The claimant attend a minimum of 6 individual sessions of not less than 1.5 hours each of anger management therapy;
 - g) Within three months, each of the parties will complete the 12-hour on-line Parenting Without Conflict Course available through www.onlineparentingprograms.com;
 - h) Neither party will disparage the other in the presence of N.;
 - i) All communications during parenting exchanges will be courteous;
 - j) Neither party will attend N.'s sporting activities during the other party's parenting time unless consented to by that other party;
 - k) Various orders relating to child and spousal support, and family property. Credibility/Reliability The Claimant
- [77] During his direct examination, the claimant generally testified in a straightforward manner. However, he became guarded and evasive during his cross-examination when incidents of his ill-temper and unilateral conduct regarding his parenting time were put to him. When the legitimacy of his actions was challenged, his voice dropped to an almost imperceptible level. When confronted with his obviously unhelpful responses to the respondent's text and email communications in which she attempted to engage him in planning and discussions regarding N., he repeatedly reverted to his pat answer that he and N. "have so much fun together" and that they have a wonderful relationship. It was clear he now realizes that he did not conduct himself as he ought to have on those occasions.

- [78] The claimant was less than forthright in respect of his two sworn Form F8 Financial Statements regarding the amount of the loans owed to his parents and the number of vehicles he had disposed of. He also filed two affidavits which were misleading regarding income he earned from his car repair hobby. The Respondent
- [79] I found the respondent to be a sincere, down-to-earth, forthcoming, and genuine witness who has an earnest passion for children and their well-being. She was not prone to hyperbole and gave her evidence in a credible, responsible, and honest fashion.
- [80] To the extent that the claimant's evidence differs from that of the respondent, I accept the respondent's version over that of the claimant. The Claimant's Witnesses
- [81] Notwithstanding their respective fondness for and friendship with the claimant, I found that each of Mr. Varga, Mr. Scott, Ms. Schmitz, Cheryl, and Gerry testified in an objective, forthright, honest, and helpful manner. I have no hesitation accepting their evidence.
- [82] I found Adam generally to have been a reliable witness with the exception of his evidence regarding what he had said to Mr. Wood. I am not suggesting that Adam was being deliberately untruthful. Rather, I find that, during the event in question, his emotions were high and his memory was clouded by them. The Respondent's Witnesses
- [83] Mr. Wood was a very assertive, terse, and matter-of-fact witness. I accept his version of what was said during his interaction with Adam. However, despite Mr. Wood volunteering several times during his testimony that he was not taking sides in the dispute and insisting that he was "here to support N.", I find that he was in fact a staunch and unabashed advocate for the respondent. In many respects, his evidence appeared to be overly rehearsed. He first met the respondent in the Spring of 2014 and appears thereafter to have assumed the role of her private security detail and detective in support of her case. He attended N.'s soccer games equipped with a telephoto lens to observe N.'s interactions with the claimant and Cheryl from afar. Mr. Wood was not an objective witness and I assess his evidence in that context.
- [84] Ms. Fenske testified in a thoughtful and straightforward manner. However, she is obviously a very strong influence on the respondent and is understandably a strong advocate for her. I must assess her evidence in that context.
- [85] I found each of Ms. Thomas, Ms. Allenberg, and Ms. Murphy to be a forthright and credible witness. The s. 211 Report
- [86] Dr. Matheson testified via video conference from Toronto where she now resides. She received her Ph.D. in Development Psychology in 2009 and was registered as a psychologist in British Columbia in 2013. Although her experience as a clinical psychologist has been relatively brief, I had no difficulty finding that she was qualified as an expert capable of providing opinion evidence regarding the subject matter contemplated by a s. 211 Report.

- [87] Dr. Matheson based the factual aspects of her assessment primarily on office and at-home interviews and observations of each of the claimant, respondent, and N. She also interviewed N.'s counsellor, Mr. Conley, and the parties' counsellor, Dr. Browning, who indicated to her that the claimant is not overly receptive to therapy and does not acknowledge any abusive tendencies, although he was open to considering strategies that might help him improve. Dr. Matheson did not interview any other collateral witnesses because she determined that she had obtained sufficient information from her interviews of and interactions with the parties and N. for the purposes of her s. 211 Report.
- [88] Dr. Matheson opined that children do their best when they have a nurturing and loving relationship with each parent where each has both the opportunity to experience and obligation to deal with all aspects of parenting.
- [89] Dr. Matheson opined that N. has a warm and loving relationship with each parent, that each parent has a nurturing and loving relationship with N., and that each is willing and has the capacity to care for him.
- [90] However, each of the parties has a different parenting style that makes it difficult for N. to adapt to when he transitions from one parent to the other. Dr. Matheson found that N. is learning to adjust to these inconsistencies in parenting styles in order for his needs to be met. For example, if N. feels sad about something while he is with his father, his father responds by trying to make him feel happy rather than trying to deal with the reason for N.'s sadness. N. has learned not to release his emotions until he is with his mother because he feels emotionally safer with her. This has resulted in N. regressing developmentally when he returns to his mother's home for a short period of time until his pent-up emotions have been released.
- [91] Dr. Matheson opined that such regressive behaviour is not unusual for young children faced with having to transition from one parent's home to the other, particularly with timid individuals like N. and where there is a significant contrast in parenting styles.
- [92] Dr. Matheson opined that consistency for N. will reduce the difficult times he is having and that a consistent parenting regime, including consistent parenting styles, is necessary. She observed that a large part of the difficulties between the parties is the result of their inability to communicate in a positive, supportive, and helpful manner.
- [93] She stated at p. 28 of her report: Each parent has strengths and limitations in supporting their child. In order for N. to develop a relationship with each parent, he requires time with each of his parents. It is essential that any ongoing conflict be dealt with to minimize any negative effects that may impact N.'s healthy development. Communication is a primary challenge for this couple, and this appears to be rooted in their differing parenting styles and their anger towards one another. It appears N. is exposed directly and indirectly to the conflict; directly at transition times and indirectly by questions and statements that are made regarding his time with the other parent. Both parents are strongly encouraged to avoid discussing the other parent with N., as this is stressful and harmful for him. As these

parents improve their communication and access their own parenting supports to address the above-mentioned concerns, this young boy will enjoy a typical and happy childhood and adolescence.

[94] Dr. Matheson made the following recommendations (summarized):

- a) that both parents share equal guardianship of N.;
- b) that there be a regular, repeating parenting schedule as follows: Parent A: Parent B: Friday school-pick up to Wednesday school drop-off Wednesday school pick-up to Monday school drop-off Parent A: Parent B: Monday school pick-up to Wednesday school drop-off Wednesday school pick-up to Friday school drop-off Parent A: Parent B: Friday school pick-up to Wednesday school drop-off Wednesday school pick-up to Monday school drop-off Parent A: Parent B: Monday school pick-up to Wednesday school drop-off Wednesday school pick-up to Friday school drop-off
- c) this parenting schedule should remain in place during statutory and school holidays.
- d) that the parties have equal parenting time during extended school holidays such as over the Christmas holidays and Spring Break;
- e) that each party have two one-week non-contiguous vacation time with N. during the summer with the requested dates provided to the other party by June 1 of each year;
- f) that a parenting coordinator be appointed to assist with the implementation of the parenting schedule and to resolve disputes as they arise;
- g) if a face-to-face transition from one party to the other is necessary, that the parties must arrive on time, be cordial to each other and not engage in disparaging conversation;
- h) that requests for a change to the regular parenting schedule be provided to the other party in writing at least 30 days in advance;
- i) that both parties be entitled to attend N.'s birthday parties at which his friends are in attendance;
- j) that each parent be required to notify the other in a timely way in the event of significant illness, injury or emergency while N. is in their care;
- k) that each parent be required to notify the other of medical appointments or medical decisions relating to N. and each parent may attend such appointments and receive medical documentation related to N.'s care;
- l) that each parent have the right to access medical and/or mental health care for N. and that a parenting coordinator be retained to resolve any dispute that arises;

- m) that each parent be required to support N.'s desire to attend social events and extracurricular activities. If the parties do not agree on the activities that N. will be enrolled in, the dispute will be resolved by a parenting coordinator. Neither party will enroll N. in an activity that occurs during the other' party's parenting time unless that other party agrees. Neither party will attend an extracurricular activity during the other party's parenting time except year-end opening or closing events and/or recognition ceremonies;
 - n) that the non-custodial parent have the right of first refusal in the event that the custodial parent is unavailable for greater than 12 hours;
 - o) that the parties use their best efforts to encourage a healthy relationship between N. and the other parent and refrain from speaking to N. directly or indirectly about the other parent in a disparaging way;
 - p) that N. continue to attend regular play-therapy sessions with Chris Conley;
 - q) that the parties seek ongoing attachment based parent support in order to further develop their strategies and skills regarding N.'s coping mechanisms;
 - r) that each of the parties retain a parent coach to support them in ongoing parenting challenges as they arise; and
 - s) that the parties utilize an online family calendar such as Our Family Wizard as their primary method of communication.
- [95] When asked by the court for her opinion on whether a relocation to Victoria would be in N.'s best interests, Dr. Matheson again emphasized that N. will benefit from a significant and meaningful relationship with both parents that each of them has the capability of providing. Any extended time away from one parent would be a concern to Dr. Matheson. She stressed the importance to N. of reducing significant change in his life and keeping his life as stable as possible.
- [96] Dr. Matheson was an impressive witness. Her s. 211 Report is thorough and comprehensive. Her testimony regarding her assessment was objective and helpful. She epitomized the role of an expert witness and how they should conduct themselves. I have no hesitation accepting Dr. Matheson's opinion evidence.

Analysis

- [97] Frequently in high-conflict family disputes involving children, the parties and, occasionally, their counsel get caught up in the emotions surrounding the breakdown of the relationship and are seemingly unable to resist the urge to do whatever it takes to paint the other parent in a bad light. Such unfortunate tactics generally only serve to make matters worse. This trial had many of those features. Far too much time and energy was spent eliciting evidence of marginal relevance for the sole purpose of discrediting the motives and character of one or the other of the parties. The evidence ought to have been focused on what is truly

important, the best interests of N.

- [98] Clearly, this litigation has taken an enormous emotional and financial toll on the parties. That unhappy result may well have been avoided had a modicum of common sense been brought to bear, in particular, had the claimant's underlying anger issue been recognized and addressed rather than allowed to fester and perpetuate.
- [99] Prior to the parties' separation, the respondent fulfilled the role of primary caregiver while the claimant worked to support the family. However, both were involved in N.'s care and upbringing. As is often the case with many new parents, the parties had difficulty adjusting to the change in their lives and coping with the sleepless nights and other demands of parenthood. These stressors led to frustration and tension in their relationship. The claimant's propensity to become enraged over his frustrations made matters worse. The respondent's fear of him and feelings of emotional abuse intensified.
- [100] The claimant became consumed with anger over the respondent leaving him and his only being able to see N. on her terms. He developed extreme and, in my view, unwarranted animosity towards the respondent. He was relentless in his demands that he be allowed to see N. when he wanted to. His bitterness towards the respondent deepened when he became the subject of a sexual abuse investigation based upon comments N. had reportedly made to his mother.
- [101] It became clear during the claimant's cross-examination that he finds it difficult to admit to conduct that might cast him in a bad light. He refused to acknowledge that his reaction to many of the respondent's attempts to find solutions to their issues was disproportionate to the problem at hand. He steadfastly downplayed the notion that anything he had done was unjustified and was quick to blame the respondent for any incidents of N. acting out.
- [102] The claimant seems incapable of appreciating or gauging how his conduct affected the respondent emotionally and is unwilling to be held accountable for why she left him, although he ultimately accepted that his conduct may have played a part in it.
- [103] During his direct examination, the claimant testified that the respondent often did not respond in a timely way to his text and email communications regarding parenting issues and was inflexible regarding his parenting times. He cited several examples of what he described as the rigid enforcement by the respondent of his parenting times which led either to N. missing out on activities or to her accusing him of breaching their arrangements. However, on cross-examination, it became clear that the respondent's communications were anything but inflexible, rigid, or unresponsive to the claimant's requests. To the contrary, they were respectful, timely, and more often than not accommodating of the claimant's wishes. In contrast, the claimant's communications to her were generally terse, rude, and uncooperative.

- [104] One example of several examples was a student-led parent teacher conference that the claimant cancelled because it had been scheduled during his parenting time. He conceded on cross-examination that his cancellation of N.'s participation was probably not in his best interests, stating "I tried to do what I thought was right" and that "I love my time with N. and don't want to give it up if I don't have to".
- [105] The claimant also cancelled N.'s dental appointments that had been scheduled by the respondent because he was unable to attend himself. He delayed for many months his consent that N. continue to see a counsellor because he wanted to ensure that the counsellor who saw him would testify in this action. The respondent's enquiries of the claimant regarding scrapes, bruises, splinters, and other blemishes on N.'s body after the claimant's parenting time were met with accusatory rebukes questioning the respondent's intent. The claimant was unwilling to effectively communicate with the respondent regarding various medical issues affecting N., including a possible fractured ankle and his allergy to medication. He admitted during his cross-examination that "I guess I could have been a little more open about what had happened".
- [106] During his cross-examination, the claimant agreed that his communications with the respondent regarding N. had been obstructive and inappropriate, stating: "I was wrong, I shouldn't have said that - I'm trying to do my best"; "I'll do my best to change and be better in the future" and "I love my kid more than anything".
- [107] A great deal of time was spent during the respondent's cross-examination revisiting the many text messages and emails between the parties in an effort to demonstrate that she did not allow the claimant to participate in the decisions relating to N.'s health and well-being. To the extent that the respondent did not keep the claimant fully apprised in advance of every appointment or consultation that was made for N., she fully explained her actions in each instance. I accept her evidence and find that, given the claimant's apparent inability to communicate with her in a non-hostile manner, the steps she took were understandable, reasonable, and in N.'s best interests.
- [108] I find that, in all of the circumstances, the respondent's parenting of N. has been exceptional since the parties' separation. She did her best to foster and promote N.'s relationship with the claimant and to minimize the confrontations between her and the claimant.
- [109] Although the evidence is clear that the claimant wants to be a good father, I am concerned that he continues to place more importance on his own self-interest than on N.'s best interests. The claimant stated repeatedly during his cross-examination that the parenting time he had been offered by the respondent after separation "wasn't good enough for me - I needed more time with him"; "I wanted to be with him". He purported to justify his subsequent refusal to agree to N. attending counselling during his parenting time "because we were having so much fun together and it is more important for us to bond because our time together is limited". In my view, this evidence, in its totality, reflects a misguided

appreciation of what matters most -- it is not the needs of the claimant, but rather the best interests of N.

- [110] Despite the foregoing, there is no doubt that each of the parties has a close and deeply loving relationship with N. Both are caring and devoted parents who are willing and able to meet N.'s needs. Although both want the best for their child, they cannot agree as to what his best interests entail. As was observed by Dr. Matheson, it is essential to N.'s continued growth and development that the parties "find common ground in supporting their son as a cohesive unit".
- [111] I was heartened by a few of the claimant's more recent emails with the respondent which showed signs that he is capable of communicating in a cooperative, accommodating, and cordial manner.
- [112] I will now deal with the issues raised in this action with the foregoing observations and comments in mind. Relocation to Victoria
- [113] The parties have maintained a substantially equal parenting time schedule since Master McNaughton's order dated October 29, 2015.
- [114] In such circumstances, s. 69(5) of the Family Law Act, S.B.C. 2011, c. 25 ["FLA"] provides that the parent who wishes to relocate has the onus of establishing that:
- a) The proposed relocation is made in good faith;
 - b) The proposed arrangements to preserve the relationship between the child and the other parent and other persons who have a significant role in the child's life are reasonable and workable; and
 - c) The relocation is in the best interests of the child.
- a) Is the Proposed Relocation made in Good Faith?
- [115] Section 69(6) of the FLA provides that, in determining if the proposed relocation is made in good faith, the court must consider all relevant factors including:
- (a) the reasons for the proposed relocation;
 - (b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating parent, including increasing emotional well-being or financial or educational opportunities;
 - (c) whether notice was given under section 66 [of the FLA]
- [116] Although, "good faith" is a subjectively held state of mind, it involves an assessment of whether the reasons given for the move are genuine. If so, the court determines on an objective basis if the relocation is likely to enhance the general quality of life of the child: L.J.R. v. S.W.R., 2013 BCSC 1344 at para. 71; Pepin v. McCormack, 2014 BCSC 2230 at para. 69.

- [117] After N. was born, there was no discussion between the parties about a move to Victoria. The respondent has only recently developed a plan to move there. She applied to UVic in January 2017 and then sought the right to relocate when she filed her amended counterclaim in this proceeding on February 22, 2017, all without prior notice to the claimant. She is hopeful that a move to Victoria will provide her and N. with more opportunities for a fresh start and future advancement, and will remove the stress, tension, and emotion that exist in their current living arrangements.
- [118] Formal notice of the proposed relocation as required by s. 66 of the FLA was not provided until April 21, 2017.
- [119] Despite the respondent not having apprised the claimant of the reasons for the proposed relocation to Victoria prior to her testimony during the trial, I find she sincerely believes that if she stays in Port Moody, her financial position will be such that she will be unable to afford to upgrade her education for the foreseeable future. If she is able to move to Victoria, she will be able to live rent-free with her mother and afford to better her education. I have no doubt that the respondent's desire to relocate to Victoria is not founded on any improper motive.
- b) Will the Proposed Relocation Workably Preserve N.'s Relationships?
- [120] With the exception of his maternal grandmother, all of N.'s relationships are with people living in and around the Port Moody area.
- [121] N. has a close relationship with his paternal cousins and is particularly close to his cousin Ainsley who lives nearby. The claimant's parents live in and around Port Moody and are available for child care if needed. Ms. Fenske confirmed that she has been able to maintain a loving relationship with N. living in Port Moody and saw no reason why that would not continue if he stayed there.
- [122] The respondent conceded that her current support network in Port Moody is as good as that in Victoria. Indeed, I find that it is more established. She has lived in Port Moody since 2008. She has only ever lived in Victoria for two years from 2002 to 2004.
- [123] N. is happy with his school as well as with his pre and post school care. All of N.'s medical practitioners, counsellors, and support services are located in and around the Port Moody area.
- [124] The evidence is clear that N. has significant contact with each of his parents and has learned to adapt his needs to their respective attributes as parents. Notwithstanding the respondent's evidence that she will do her best to promote both the claimant's and his family's ongoing relationship with N., the proposed relocation will almost certainly and, in my view, unnecessarily disrupt the quantity and quality of N.'s time with his father. His trips to the claimant's family's cabin on Lillooet Lake will become an onerous expedition.

- [125] The claimant has stable employment and, although the documents indicate he may be able to transfer up to ten years of seniority if he moves to a full-time position with a Victoria School Board, there is no evidence that any such position would be available for him. The practical reality is that the claimant will reasonably have to stay in his current employment. If N. moves to Victoria, his parenting time will be difficult to arrange and challenging to implement for all concerned.
- [126] I found Ms. Fenske's evidence regarding the arrangements that could be made to preserve N.'s current relationships and the claimant's parenting time with him to be vague, nebulous, impractical, unworkable, and contrived. Her evidence regarding the logistics of such a move was based more upon hope than any realistic expectation that it would work.
- [127] I accept that there is unlikely to ever be an ideal co-parenting plan when one parent relocates with a child. But the plan must be reasonably workable. The regime proposed by the respondent is, in my view, overly complex, complicated, and impractical. It will likely create even more animosity, estrangement, and difficulty between the parties than now exists.
- c) Is the Proposed Relocation in N.'s Best Interests?
- [128] Section 37(2) of the FLA provides that, when determining the best interests of a child, the court must consider all of the child's needs and circumstances including his or her health and well-being, the nature and strength of the relationship between the child and significant persons in the child's life, and the child's need for stability.
- [129] N.'s needs and circumstances were succinctly articulated by Dr. Matheson at page 25 of her s. 211 Report. She opined that "N. needs individual and quality time with each of his parents" and that: N. is sensitive, and has a slow-to-warm up temperament, which must be considered when making decisions regarding his schedule and routine. It will be important to minimize any significant changes in his environment that would disrupt the consistency and routine that is currently in place regarding school, daycare and extra-curricular activities. Whenever possible, N. could benefit from consistency between homes in terms of routine, discipline and support.
- [130] I accept Dr. Matheson's opinion in this regard. The proposed relocation is inconsistent with the protections necessary for N.'s well-being.
- [131] There is no evidence beyond hopeful speculation that the general quality of N.'s life will be enhanced by such a move. By all accounts, N. is thriving in Port Moody where he has lived his entire life. In my view, once the uncertainty of this litigation is behind the parties and the orders I am making are implemented, it is likely that N.'s life in Port Moody will be equally enhanced.

- [132] The respondent has relatively long-term part-time employment with the Vancouver School Board. It is commendable that she wishes to upgrade her education and enhance her career prospects in order to become financially independent. However, there are Lower Mainland institutions offering the same program as that offered by UVic. Moreover, UVic offers the program the respondent wishes to take via on-line "distance learning".
- [133] I am not prepared to make an order permitting the respondent to relocate with N. to Victoria at this time. Anger Management and Co-Parenting Counselling
- [134] The question becomes what can reasonably be done to implement a cooperative and cohesive co-parenting regime for N. in Port Moody?
- [135] I find that the parties' struggle with their communications has predominantly been the result of the claimant's inability to contain his anger towards the respondent. I do not accept his evidence that he has not spoken disparagingly of the respondent to others or been disrespectful or hurtful of her in N.'s presence. His contemptuous attitude towards the respondent cannot help but have a negative impact on N. and his overall functioning and well-being. The claimant's approach to the joint parenting of N. is in serious need of an overhaul.
- [136] Counsel for the respondent points to the fact that, in the more than four years since separation, the claimant has had the guidance of counsellors, divorce coaches, a collaborative resolution process, and lawyers. She submits that there is no hope for the claimant. However, I find that the claimant is fundamentally a good person whose misguided actions are not beyond salvage.
- [137] What is needed is for the claimant to fully understand the importance of his coming to grips with his anger issues and appreciating the consequences to N.'s well-being if he does not conduct himself cooperatively and with civility in respect of his co-parenting of N. He must put aside his own self-interest in favour of N.'s.
- [138] To be clear, my decision to deny permission for the respondent to relocate to Victoria with N. "at this time" means that the respondent has liberty to renew her application for an order allowing a relocation to Victoria if:
- a) the claimant fails to successfully complete, at his cost, an individualized anger management program at "Moose Anger Management" or an equivalent program by November 30, 2017; or
 - b) there is material evidence of the claimant disregarding any of the orders set out herein or of him communicating with or about the respondent, directly or indirectly, in a disrespectful, disparaging or uncooperative manner.

- [139] Happily, it appears that the claimant has, at long last, acknowledged the need for assistance in managing his emotions. I was advised by counsel during the second last day of trial that the claimant has enrolled in an anger management program at "Moose Anger Management". I applaud him for that initiative. However, I emphasize that the claimant is required to complete an individualized program.
- [140] I am also ordering that, upon the claimant successfully completing the anger management program, the parties attend a co-parenting counselling program to be managed under the guidance of a qualified co-parenting counsellor. As between the parties it is the claimant who is predominantly at fault for their co-parenting issues. Accordingly, the cost of the co-parenting program will be shared by the claimant and the respondent 75%-25%, respectively.
- [141] Having carefully watched and assessed each of the parties as witnesses, I am confident that once the claimant learns to deal with his anger the foregoing regime will be in N.'s best interests. Parenting Responsibilities
- [142] Until such time as the claimant demonstrates the ability to co-parent in a manner that is respectful of and consistent with the parenting style of the respondent (together with cooperative, respectful, and civil interactions with her), I am of the view that it is appropriate and necessary for N.'s well-being that:
- a) the parenting schedule set out by Master McNaughton's Order of October 29, 2015 continue; and
 - b) the respondent have the right, after first consulting with the claimant, to determine and exercise the parental responsibilities in respect of N. as set out in s. 41(d), (f), (g), (h), (i), (j) and (l) of the FLA.
- [143] Upon the claimant successfully completing the anger management and co-parenting programs referred to above, the parenting schedule recommended by Dr. Matheson will be implemented as follows: Parent A: Parent B: Friday school-pick up to Wednesday school drop-off Wednesday school pick-up to Monday school drop-off Parent A: Parent B: Monday school pick-up to Wednesday school drop-off Wednesday school pick-up to Friday school drop-off Parent A: Parent B: Friday school pick-up to Wednesday school drop-off Wednesday school pick-up to Monday school drop-off Parent A: Parent B: Monday school pick-up to Wednesday school drop-off Wednesday school pick-up to Friday school drop-off This parenting schedule will remain in place during statutory and school holidays. The parties will have equal parenting time during extended school holidays such as over the Christmas holidays and Spring Break. Contiguous Christmas Eve and Days periods will alternate each year. Each party will have two one-week non-contiguous vacation time with N. during the summers with the requested dates provided to the other party by June 1 of each year.

[144] The foregoing parenting schedule is reviewable after 12 months from the date of these Reasons for Judgment. Child and Spousal Support

[145] The parties' respective incomes during the relevant period was as follows:

1. The Claimant's Income Year Line 150 Union/Prof. Fees Net 2012 \$69,593 \$1,532 \$68,061 2013 \$81,141 \$1,872 \$79,269 2014 \$71,133 1,696 \$69,437 2015 \$86,274 \$2,119 \$84,155 2016 \$86,657 \$2,128 \$84,529 2017 (imputed) \$85,000 \$85,000

[146] The decrease in the claimant's 2014 income is explained by him not having worked at summer school that year.

[147] During the period 2013 to 2016, the claimant also received a small amount of income from his hobby of purchasing, repairing and selling used cars. He estimates that he earned approximately \$8,000 during that period.

2. The Respondent's Income

[148] The respondent's income is as follows: Year Line 150 (including social assistance/child care benefits Undeclared Support from the claimant 2012 \$8,943 2013 \$13,422 \$6,000 2014 \$23,983 \$9,000 2015 \$21,065 2016 \$25,645 Retroactive Support

[149] After the parties' separation in May 2013, the claimant paid \$750 per month to the respondent until he agreed during the Judicial Case Conference held September 3, 2015 to increase his support payments to \$1,345 per month (child support: \$701; spousal support: \$644).

[150] The respondent submits that the claimant ought to have paid more than he did and seeks an award of retroactive support and s. 7 special and extraordinary expenses.

[151] The factors to be considered when determining whether an award for retroactive spousal support are set out in *Kerr. v. Baranow*, 2011 SCC 10 at paras. 207 and 212:

- a) The needs of the recipient, both at the time support should have been paid and at present;
- b) The conduct of the payor;
- c) The reason for the delay in seeking support; and
- d) Any hardship the retroactive award may occasion on the payor spouse.

[152] Because there is no presumptive entitlement to spousal support, concerns about notice, delay and misconduct generally carry more weight than they do in determining child support: *Kerr* at para. 208.

[153] The claimant submits that the respondent has provided no evidence of particular need and points to the fact that she continued to work part-time after Master McNaughton awarded almost equal parenting time. He submits further that his conduct ought not to be a factor because, since separation, he has consistently and regularly supported the respondent by

way not only of support payments but also by paying her share of many of the matrimonial home expenses. Moreover, he submits that the respondent has provided no reason for her delay in seeking an order for retroactive support despite having filed an application in September 2015. Finally, he submits that the evidence shows that, since separation, he has become indebted to his parents in the amount of approximately \$100,000 and any award for retroactive support would be a financial hardship on him.

- [154] The claimant's support payments were set-off by him against what he claims were the respondent's share of expenses related to the matrimonial home.
- [155] The respondent submits that she gave effective notice of her claim for support when she filed a Notice of Family Claim in July 2013, although she did not proceed with her claim pending the various collaborative resolution steps that were taken by the parties prior to the commencement by the claimant of this proceeding. The claimant's diary notes written in July 2013 make it clear that she was aware of her claim for support at that time. The respondent was forced to go on social assistance in 2013 and was reliant on loans and gifts from family and friends to get by. At the time, the claimant was living rent-free at his parents.
- [156] I have no hesitation finding that the respondent is entitled to an award of retroactive support based upon the difference between what he paid and what he ought to have paid according to the Child Support Guidelines and the Spousal Support Advisory Guidelines.
- [157] The following table sets out an accounting of the claimant's child support obligations versus amount paid, based upon the parties' respective guideline incomes (mid-range). I have considered and decided not to include the incidental income he earned repairing vehicles:
- | Year | Support Required | Amount Paid | Difference |
|-------------------|------------------|-------------|------------|
| 2013 | \$5,928 | \$6,000 | \$72 |
| 2014 | \$7,788 | \$9,000 | \$1,212 |
| 2015 | \$9,420 | \$8,804 | <\$616> |
| 2016 | \$9,456 | \$9,000 | <\$456> |
| 2017 (to June 30) | \$4,758 | \$4,206 | <\$552> |
| Total | \$37,350 | \$37,010 | <\$340> |
- [158] The following table sets out an accounting of the claimant's spousal support obligations versus amount paid, based upon the parties' respective guideline incomes (mid-range):
- | Year | Support Required | Amount Paid | Difference |
|-------------------|------------------|-------------|------------|
| 2013 | \$8,872 | \$0.00 | \$8,872 |
| 2014 | \$5,820 | \$0.00 | \$5,820 |
| 2015 | \$9,005 | \$0.00 | \$9,005 |
| 2016 | \$7,600 | \$0.00 | \$7,600 |
| 2017 (to June 30) | \$2,358 | \$0.00 | \$2,358 |
| Total | \$33,655 | \$0.00 | \$33,655 |
- [159] According to the records of the Family Maintenance Enforcement Program ("FMEP"), the claimant is currently in arrears of \$7,574.14 in respect of child and spousal support and \$3,690 in respect of s. 7 special and extraordinary expenses. The sum of \$8,995.53 is being held by the FMEP from the claimant's share of a distribution of \$55,000 to each of the parties from the sale proceeds of the matrimonial home.
- [160] There will be a direction that the sum of \$8,995.53 currently held by FMEP be paid out to the respondent towards the claimant's retroactive spousal support obligations, leaving a balance owing of \$24,659.47 (\$33,655 - \$8,995.53).

- [161] The evidence discloses that the following expenses were incurred for N.'s child care after separation: Year Total Claimant's share 2013 \$7,595 \$5,316.50 (70%) 2014 \$9,445 \$6,328.15 (67%) 2015 \$6,626 \$4,438.75 (67%) 2016 \$5,100 \$3,315.00 (65%) 2017 (to June) \$2,820 \$1,833.00 (65%) Total \$31,586 \$21,231.40
- [162] In addition, the respondent incurred medical expenses for N. The claimant's share of those expenses using the above percentages is \$1,900.
- [163] There will be an order that the claimant pay to the respondent his share of these expenses as set out above. Ongoing Support
- [164] The claimant will pay ongoing child support on a set-off basis pursuant to s. 9 of the Federal Child Support Guidelines based upon the parties' respective Line 150 income as adjusted for union, professional, etc. fees pursuant to the provisions of the Federal Child Support Guidelines.
- [165] The parties will share ongoing s. 7 special and extraordinary expenses in proportion to their respective incomes as determined immediately above.
- [166] The claimant will pay mid-range spousal support to the respondent based upon an income of \$85,000 for the claimant and \$25,645 for the respondent. The claimant's spousal support obligation will be reviewed on August 1, 2020.
- [167] The claimant's child support, spousal support, and the parties' respective obligation to contribute to s. 7 special and extraordinary expenses will be adjusted on August 1 of each year based upon their respective taxable income in the preceding year. Division of Family Property and Family Debts
- [168] The parties agree that there should be an equal division of their family property and family debts.
- a) Family Property
- [169] The parties agree that the following family property must be equally divided:
- a) Remaining matrimonial home sale proceeds: \$116,070.23
- b) Coast Capital Savings joint account: \$558.55
- c) Van City Saving Account (respondent): \$580.47
- d) Van City Savings Account (claimant): \$11.39
- e) 1986 Dodge Omni: \$3,300 (approx.)
- f) Cadillac: \$2,500 (approx.)
- g) 2003 Chevrolet Tracker: \$3,000 (approx.)
- h) 1/3 interest in a boat: \$600

[170] The claimant has accrued a pension with the Teacher's Pension Plan since approximately 2009. The parties are in agreement that this pension will be divided pursuant to the provisions of Part 6 of the FLA with the date of cohabitation being March 1, 2004 and the entitlement date being the date of the parties' separation, May 7, 2013.

[171] The parties also agree that their respective Canada Pension Plan credits accrued from March 1, 2004 to May 7, 2017 will be split evenly.

b) Excluded Assets

[172] I find that the following is excluded from the parties' family property on the basis that was property acquired before the relationship began:

a) claimant's contribution to the purchase of the matrimonial home: \$5,253.54

b) respondent's contribution to the purchase of the matrimonial home: \$10,000.

c) Family Debts

[173] The parties have the following family debt:

a) Loan from the claimant's parents, inclusive of interest: \$56,700

[174] I am directing that the sum of \$56,700 be paid to the claimant's parents from the proceeds of sale of the matrimonial home currently held in trust.

d) Living and Other Expenses to be Shared

[175] The respondent was re-assessed \$2,232 by the Canada Revenue Agency in respect of a maternity leave benefit overpayment. The claimant agrees that he is responsible for 50% of this amount.

[176] At the September 3, 2015 Judicial Case Conference, the parties agreed to equally share the costs of maintaining the matrimonial home and use their best efforts to effect its sale.

[177] As best I have been able to reconcile the accounting evidence provided by the parties, the parties' respective contributions towards their living expenses after separation was as follows:

Year	Claimant's contributions	Respondent's contributions
2013	\$10,326.22	\$2,627.68
2014	\$13,259.37	\$6,914.96
2015	\$13,704.17	\$6,914.96
2016	\$10,669.26	\$4,787.28
Total	\$47,959.02	\$21,244.88

[178] Each of the parties was obliged to pay 50% of the total of \$69,203.90 (\$47,959.02 + \$21,244.88) or \$34,601.95. As the claimant has contributed \$47,959.02, the respondent is required to pay to the claimant \$13,357.07 (\$34,601.95 - \$21,244.88). Overall Reconciliation

[179] There will be an order that the parties' respective entitlement/obligations regarding retroactive child and spousal support and the division of family property and family debt is as follows: Claimant Respondent Remaining sale proceeds of the matrimonial home, net of excluded property = \$100,816.69. Each party's entitlement is \$50,408.35 (\$100,816.69 / 2):

\$50,408.35 \$50,408.35 Excluded property: \$5,253.54 \$10,000.00 Adjustment for bank account balances: 5.26 <\$5.26> Interest in the boat: <\$300.00> \$300.00 Canada Revenue Agency re-assessment: <\$1,116.00> \$1,116.00 Retroactive child support: <\$340.00> \$340.00 Retroactive spousal support: <\$24,659.47> \$24,659.47 Living expense reconciliation: \$13,357.07 <\$13,357.07> Child care reconciliation: <\$21,231.40> \$21,231.40 Medical expenses reconciliation: <\$1,900.00> \$1,900.00 Share of \$56,700 loan: <\$28,350.00> <\$28,350.00> Total: <\$8,872.65> \$68,242.89

- [180] The balance of the trust monies after payment of the loan to the claimant's parents together with any accrued interest will be paid to the respondent. That amount equals \$59,370.24 (\$116,070.23 - \$56,700) plus accrued interest.
- [181] The respondent is entitled to judgment against the claimant for the balance remaining, namely \$8,872.65 (\$68,242.89 - \$59,370.24), less 50% of any accrued interest paid to the respondent.
- [182] All other property currently in the possession of a party will be distributed to that party.
Divorce
- [183] Each of the parties seeks a divorce from the other. It is clear from the evidence in this case that the parties have satisfied all of the evidentiary criteria necessary for the granting of a divorce.

Conclusion

[184] I am making the following orders and directions:

- a) The parties will share joint guardianship of N.
- b) The claimant will pay ongoing child support on a set-off basis pursuant to s. 9 of the Federal Child Support Guidelines based upon the parties' respective Line 150 income as adjusted for union, professional, etc. fees pursuant to the provisions of the Federal Child Support Guidelines.
- c) The parties will share ongoing s. 7 special and extraordinary expenses in proportion to their respective incomes as determined immediately above.
- d) The claimant will pay mid-range spousal support to the respondent based upon an income of \$85,000 for the claimant and \$25,645 for the respondent. The claimant's spousal support obligation will be reviewed on August 1, 2020.
- e) The claimant's child support, spousal support, and the parties' respective obligation to contribute to s. 7 special and extraordinary expenses will be adjusted on August 1 of each year based upon their respective taxable income in the preceding year.

- f) The parties will exchange their respective tax returns and support documents annually no later than June 30 of each year commencing June 30, 2018 and continue to do so for as long as child and/or spousal support is payable.
- g) The claimant will, at his expense, attend and complete an anger management program at "Moose Anger Management" or an equivalent program for the length of time the counsellor at the program determines is necessary for him.
- h) Upon the claimant successfully completing the anger management program, the parties will attend a co-parenting counselling program to be managed under the guidance of a qualified co-parenting counsellor. As between the parties it is the claimant who is predominantly at fault for their co-parenting issues. Accordingly, the cost of the co-parenting program will be shared by the claimant and the respondent 75%-25%, respectively.
- i) The respondent's application for an order that she be permitted to relocate to Victoria with N. is dismissed, with liberty to reapply in the event that the claimant fails to successfully complete an anger management course by November 30, 2017, or if there is material evidence of the claimant disregarding any of the orders set out herein or of him communicating with or about the respondent, directly or indirectly, in a disrespectful, disparaging or uncooperative manner.
- j) The parenting schedule set out by Master McNaughton's Order of October 29, 2015 will continue and the respondent have the right, after first consulting with the claimant, to determine and exercise the parental responsibilities in respect of N. as set out in s. 41(d), (f), (g), (h), (i), (j) and (l) of the FLA.
- k) Upon the claimant successfully completing the anger management and co-parenting programs referred to above, the parenting schedule recommended by Dr. Matheson will be implemented as follows: Parent A: Parent B: Friday school-pick up to Wednesday school drop-off Wednesday school pick-up to Monday school drop-off Parent A: Parent B: Monday school pick-up to Wednesday school drop-off Wednesday school pick-up to Friday school drop-off Parent A: Parent B: Friday school pick-up to Wednesday school drop-off Wednesday school pick-up to Monday school drop-off Parent A: Parent B: Monday school pick-up to Wednesday school drop-off Wednesday school pick-up to Friday school drop-off This parenting schedule will remain in place during statutory and school holidays. The parties will have equal parenting time during extended school holidays such as over the Christmas holidays and Spring Break. Contiguous Christmas Eve and Days periods will alternate each year. Each party will have two one-week non-contiguous vacation time with N. during the summers with the requested dates provided to the other party by June 1 of each year.
- l) The foregoing parenting schedule is reviewable after 12 months from the date of these Reasons for Judgment.

- m) The claimant's Teacher's Pension Plan accrued benefits will be divided pursuant to the provisions of Part 6 of the FLA with the date of cohabitation being March 1, 2004 and the entitlement date being the date of the parties' separation, May 7, 2013.
- n) The parties' respective Canada Pension Plan credits accrued from March 1, 2004 to May 7, 2017 will be split evenly.
- o) The sum of \$56,700 will be paid to the claimant's parents from the proceeds of sale of the matrimonial home currently held in trust.
- p) The balance of the trust monies after payment of the loan to the claimant's parents together with any accrued interest will be paid to the respondent. That amount equals \$59,370.24 plus accrued interest.
- q) The respondent is entitled to judgment against the claimant for the balance remaining, namely \$8,872.65 less 50% of any accrued interest paid to the respondent.
- r) The parties are divorced from each other effective 31 days after the date of these Reasons for Judgment.

[185] As there has been divided success, there will be no order as to costs.

[186] If I have failed to deal with any matter that I ought to have or if there are any issues arising out of the orders I have made, either party is at liberty to arrange with Supreme Court Scheduling for a further appearance before me. "G.C. Weatherill J."

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