
CANADA / JUDGMENT

S.N. v. B.N.

2021 BCSC 2339

COURT

Supreme Court of British Columbia

DECIDED

30 November 2021

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2021 BCSC 2339 S.N. v. B.N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.N. v. B.N.,

2021 BCSC 2339

Date: 20211130

Docket: E132550

Registry: Vancouver

Between:

S.N.

Claimant

And

B.N.

Respondent

And

D.N.

Respondent by Counterclaim

Before: The Honourable Mr. Justice Hori

Corrected Judgment: The Reasons for Judgement were corrected

at para. 233 on December 7, 2021

Reasons for Judgment

Counsel for the Claimant:

K. Rejminiak

H. Sidhu

The Respondent, appearing in person:

B.N.

Counsel for the Respondent by Counterclaim:

P. Joshi

Place and Date of Trial:

Vancouver, B.C.

December 16-17, 2019;

January 25-February 5;

and May 31-June 4, 2021

Place and Date of Judgment:

Vancouver, B.C.

November 30, 2021

Introduction

- [1] The claimant and the respondent in this family law case have one daughter, A.N. The respondent by counterclaim, D.N., is the claimant's mother and is a party to this family law case as an owner of the residence in which the claimant and the respondent lived during their relationship.
- [2] The claimant and the respondent were married on July 10, 2004. They separated on May 8, 2014.
- [3] After the claimant and the respondent were married, they lived with the claimant's mother in a residence located in Surrey, British Columbia (the "Residence"). The registered owners of the Residence at the time of the marriage were:
- a) D.N., as to a 74% interest;
 - b) the claimant, as to a 25% interest; and
 - c) the claimant's sister, as to a 1% interest.

Issues relating to the child

[4] The following issues relate to the child of the marriage:

- a) What parenting time arrangement is in the best interests of the child;
- b) What allocation of parenting responsibilities is in the best interests of the child;
- c) With whom should the child primarily reside; and
- d) How much should the claimant pay for child support.

Issues relating to spousal support

[5] The following issues relate to spousal support:

- a) Is the respondent entitled to spousal support;
- b) What is the appropriate level of spousal support; and
- c) What is the appropriate duration for the payment of spousal support.

Issues relating to income

[6] In order to address the matters of child support and spousal support it is necessary to determine the annual incomes of each party under the Federal Child Support Guidelines, SOR/97-175 [Guidelines]. The following issues relate to the parties' Guidelines income:

- a) What is the claimant's Guidelines income;
- b) What is the respondent's Guidelines income; and
- c) Should income be imputed to the respondent and, if so, how much and from what date.

Issues relating to property division

[7] The issues relating to property division are:

- a) Does the respondent have an interest in the Residence;
- b) If so, what is the respondent's interest, what is the value of the respondent's interest and what is the valuation date;
- c) What are the family assets other than the Residence;
- d) What are the family debts; and
- e) How should the family assets be divided.

Additional Issues

[8] The parties raise the following additional issues:

- a) Both the claimant and the respondent seek an order of divorce;
- b) The respondent applies for a name change for herself and A.N.; and

- c) The claimant seeks reimbursement for the cost of a report from Dr. Elterman, a psychologist who prepared a report pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].

Background of the Claimant

- [9] The claimant is 46 years of age. He is employed as a network technologist.
- [10] In 1994, the claimant moved to Surrey and began attending Kwantlen College in the computer information systems program. In 1998 or 1999, the claimant completed the program and received a certificate in computer information systems.
- [11] Before being employed by his current employer, the claimant worked part-time work for a computer company and worked on a seasonal project for the Canada Revenue Agency.

Background of the Respondent

- [12] The respondent is 42 years of age. She grew up in Surrey, British Columbia.
- [13] The respondent was engaged in part-time post-secondary education for a number of years. Over those years, she enrolled at Douglas College, the British Columbia Institute of Technology, and Kwantlen College. Her post-secondary studies were in business administration but the respondent did not receive any diplomas or certificates.

History of the relationship

- [14] The claimant and the respondent met through their families in 2001 or 2002. The parties were married on July 10, 2004, in Surrey, B.C.
- [15] When the parties were married, they lived in the Residence with the claimant's mother, D.N. The parties shared the Residence with the claimant's mother until they separated in May 2014.
- [16] During the marriage, the respondent worked for Pacific Blue Cross. In or around 2009, the respondent went on short-term disability from her employment with Pacific Blue Cross. During this time, she obtained short-term work with the RCMP for approximately two weeks. When the short-term disability period expired, her employer required her to return to work. The claimant testified that around this time the respondent announced to him that she wanted to have a child.
- [17] The couple's attempts to conceive a child were initially not successful. Therefore, they turned to an in vitro fertilization program to assist them.
- [18] The parties' daughter, A.N., was born in 2011. At the present time, A.N. is ten years of age.
- [19] The claimant described the relationship between him and the respondent as good during their first year of marriage. However, he described a series of problems that developed after the first year of their marriage. The problems identified by the claimant are:

- a) The respondent became withdrawn and angry to the point that the claimant was concerned about the respondent's mental health and the possibility that she would harm herself;
 - b) After the birth of A.N., the respondent did not want to eat;
 - c) The respondent would not allow the claimant to spend time with A.N. and if he attempted to do so she would get angry and threaten to cut off feeding time; and
 - d) The respondent would not return home with A.N. until late in the evening, which left the claimant with little time to spend with A.N. after work.
- [20] The respondent described a series of problems and events that she says eventually led to the parties' separation. Those problems and events are as follows:
- a) Interference in the relationship by the claimant's mother;
 - b) The claimant siding with his mother when disagreements arose;
 - c) The claimant being physically aggressive with the respondent by grabbing her by the neck in 2006 or 2007;
 - d) The claimant becoming angry and breaking the glass window in his vehicle;
 - e) The claimant controlling the family finances; and
 - f) The claimant controlling the respondent's computer use.
- [21] By February 2013, the relationship between the claimant and the respondent had deteriorated to the point that the respondent left the Residence with A.N. to live with her parents. The claimant testified that while the respondent was living with her parents, she made it difficult for him to see A.N. According to the claimant, the respondent would often leave her parents' home with A.N. when she expected the claimant to arrive.
- [22] In May 2013, the claimant filed an action in the Provincial Court seeking parenting time with A.N. When the respondent received notice of the action in Provincial Court, the respondent insisted that the claimant could spend time with their daughter in the Residence only if the claimant's mother was not present. The claimant agreed to these terms.
- [23] The respondent returned to the Residence with A.N. in October 2013 with the intention of reconciling. However, by December 2013, the relationship deteriorated once again. As a result, the claimant left the Residence. When he left, the claimant stayed with friends or family or he slept in his car.
- [24] By May 2014, the claimant decided that his relationship with the respondent was over and that he would not go back to the Residence.
- [25] When the parties separated for the final time in May 2014, the claimant stayed with friends and family. The respondent continued to live in the Residence with the claimant's mother until October 2014.

- [26] According to the respondent, the relationship between her and the claimant's mother was rocky from the start. Unsurprisingly, their relationship deteriorated even further after the claimant left the Residence. D.N. testified that her relationship with the respondent deteriorated to the point where she began sleeping at the home of relatives after the separation.
- [27] The respondent testified that on September 10, 2014, someone changed the locks to the Residence and she was denied entry. The respondent called the police and the police escorted her into the house.
- [28] The respondent testified that she had the locks to the Residence changed the following day and provided a new key to D.N.
- [29] However, according to D.N., the living situation became so intolerable that she applied for and obtained an order evicting the respondent from the Residence on October 8, 2014. As such, D.N. changed the locks to the Residence again on October 8, 2014, pursuant to an eviction order. The claimant denied any knowledge of the steps taken by his mother to obtain an eviction notice. D.N. confirmed that she did not tell her son about the steps she was taking to evict the respondent until after the eviction.
- [30] The respondent entered the Residence on October 8, 2014, accompanied by the police, collected some of her belongings and left. The respondent initially stayed with relatives until she found temporary housing. In December 2014, the respondent found permanent housing.
- [31] Following the eviction of the respondent from the Residence, the claimant returned to live in the Residence with his mother.

History of the Trial

- [32] The history of the trial of this family law case puts into context the lengthy delay in bringing this case to a conclusion. It is also relevant in establishing the valuation date for the property division issue.
- [33] The many delays in proceeding with this trial, and the reasons for those delays, also raise concerns about the credibility and reliability of the respondent's evidence.
- [34] The trial of this family law case was to commence on December 9, 2019. On that date, the respondent indicated that she was representing herself in this trial. She applied to adjourn the trial because her grandfather had passed away and his funeral was the next day. The claimant and D.N. opposed the adjournment application on the basis that this was the sixth trial date and the parties needed to proceed. I adjourned the trial until December 11, 2019, to allow the respondent to attend her grandfather's funeral.

- [35] On December 11, 2019, the respondent returned to court and requested another adjournment on the basis that she was still grieving for her grandfather and was not in a condition to proceed. I adjourned the trial once again to December 16, 2019, and I made that date peremptory on the respondent. I also took the opportunity to explain the trial process to the respondent because she was representing herself.
- [36] When the respondent attended on December 16, 2019, she once again applied for an adjournment. However, I denied the adjournment application and the trial commenced.
- [37] The trial proceeded with the respondent representing herself until December 18, 2019. On that date, the respondent's sister advised the court that the respondent was not able to proceed because she was not able to cope with the stress of dealing with this matter. Although the respondent was in the courthouse on that date, she was receiving assistance from a first aid attendant. As a result of the respondent's condition, I adjourned the trial once again.
- [38] When I adjourned the trial on December 18, 2019, I made the following orders:
- a) The parties would schedule the continuation of the trial for ten days commencing on January 13, 2020;
 - b) The respondent would file and serve on all other parties, a medical certificate confirming that she was unable to continue with the trial and explaining why;
 - c) The continuation date for the trial was peremptory on the respondent. There would be no further adjournments for the purpose of retaining counsel and any counsel retained by the respondent must be ready to proceed on January 13, 2020; and
 - d) If the respondent does not have counsel at the continuation, she had leave to have someone, other than legal counsel, assist her in the trial so long as that person was not a witness.
- [39] On January 13, 2020, the respondent once again applied to adjourn the trial for medical reasons. She produced a note from her doctor confirming that she continued to suffer from severe anxiety and recurrent panic attacks. The respondent also advised the court that she had been in contact with a lawyer. Based on the medical certification and the obvious difficulty the respondent was having in the courtroom, I adjourned the trial again on the basis that:
- a) The respondent would retain the lawyer she had contacted; and
 - b) The parties and the respondent's lawyer would attend a trial management conference on January 20, 2020.

- [40] With the involvement of new counsel for the respondent, the parties were unable to schedule the continuation of the trial until January 25, 2021. However, at a trial management conference on January 14, 2021, respondent's counsel advised the court that the respondent had dismissed her as counsel. Therefore, the trial proceeded on January 25, 2021, with the respondent representing herself.
- [41] The parties were unable to complete the trial in the time scheduled in January 2021. Therefore, the parties rescheduled the trial for May 2021.

Credibility and Reliability

- [42] I accept that the respondent was having difficulty with the stress and anxiety associated with the separation and with the trial process. She presented medical notes that confirmed her condition. Further, my observations of the respondent in the courtroom both before the trial commenced and during the trial clearly showed that the respondent was experiencing difficulty.
- [43] However, in my view, the respondent's reactions in the courtroom were out of proportion to the situation. On more than one occasion she broke down completely and was unable to compose herself. I am not suggesting that the respondent was not genuine in her reaction, but, in my view, her perception of what occurs around her is exaggerated.
- [44] Another example of the respondent's over-reaction is in her refusal to provide her residential address to the claimant, to A.N.'s school, to A.N.'s doctor, or to the court. The respondent claims that her refusal to provide her address is because she fears for her safety. However, there is no evidence of any violence or attempted violence from the claimant since the separation. The evidence does not reasonably justify the respondent's fears for her safety.
- [45] When counsel for the claimant asked the respondent on cross-examination why she did not stay with her family after the separation, the respondent testified that she was "afraid", she "did not know what was happening" and the claimant was "texting [her] asking for A.N." The respondent testified that she was afraid that the claimant would find her and that she was living in fear every day.
- [46] At one point in her cross-examination, the respondent testified that she did not know if the claimant would harm her after her eviction. She questioned who would come after her and if the claimant or his family would hire someone to kill her. There is no basis in the evidence that could justify such a concern.
- [47] The respondent also sought to justify her fear of the claimant by stating that on the day of her eviction from the Residence, the claimant sent her a text message saying "good morning". The respondent explained that the claimant had never said "good morning" before but on that day he did. When asked if she was afraid because the claimant said "good morning", the respondent gave a non-responsive answer.

- [48] The level of fear expressed by the respondent is not reasonably justified by the evidence. Therefore, I am concerned that because the respondent's evidence is based largely on her impressions of various situations, those perceptions are coloured by her tendency to over-react.
- [49] I am also cautious about accepting the respondent's testimony because she was evasive in answering many of the questions posed to her on cross-examination.
- [50] For example, when claimant's counsel attempted to have the respondent confirm that she had read and understood the contents of a financial statement affirmed by her on October 4, 2016, the respondent gave non-responsive answers. During the cross-examination, the respondent never answered the questions asked of her. She repeatedly responded that her lawyer had the information and he entered it into the statement. However, at one point, the respondent finally confirmed that she did not check the numbers in the statement before she signed it.
- [51] For these reasons, while I do not reject the respondent's evidence entirely, I considered the respondent's evidence with caution when it conflicted with other evidence.

Parenting Issues

The Pleadings and the Legislation

- [52] In his amended notice of family claim, the claimant seeks orders relating to parenting arrangements for A.N. pursuant to both the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA] and the FLA. He does not seek any child support from the respondent.
- [53] The respondent, in her amended counterclaim, seeks parenting orders and child support orders pursuant to only the FLA.
- [54] The parties did not address which legislation applies to the parenting issues in this case. However, in the area of parenting arrangements, the provisions in both Acts are similar. While I am not precluded from applying the FLA in a proceeding in which a divorce is sought, I will decide the parenting issues in this case under the DA.
- [55] Section 16(1) of the DA provides that when making a parenting order, the court must consider only the best interests of the child. Section 16(2) of the DA provides that when considering the best interests of the child, the court must give primary consideration to the child's physical, emotional and psychological safety, security and well-being. The factors that I must consider when determining the best interests of the child are set out in s. 16(3) as including:
- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;

- (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
- (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
- (d) the history of care of the child;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- (g) any plans for the child's care;
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- (j) any family violence and its impact on, among other things,
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Parenting Arrangements

- [56] It is clear that both the claimant and the respondent love their daughter and strive to do what is best for her. The conflict between the parties arises because they cannot communicate effectively with each other. Specifically, conflict occurs between the parties during the parenting time exchanges of A.N. Once in the care of one or other of the parents, A.N. appears to be happy, content, and thriving.
- [57] When the trial began, the parents were sharing their parenting time equally on a 5/5/2/2 schedule. The parties implemented this parenting time arrangement based on the recommendations of Dr. Elterman.

Family Violence

[58] In her submissions, the respondent sought a declaration that "the claimant subjected her to family violence". However, the respondent does not claim this relief in her counterclaim. Therefore, I decline to make such a declaration. However, I will consider the issue of family violence in the context of the competing claims for parenting time.

[59] The respondent alleges that she was the victim of family violence. Notwithstanding those allegations, I am not convinced by the evidence that there is any concern about A.N.'s physical or emotional safety and security while in the care of either parent.

[60] The conduct that the respondent claims to be family violence is:

- a) The claimant not acting to protect the respondent from the suffocating effect of his mother's presence in the Residence;
- b) The claimant grabbing the respondent forcefully around the neck until she had trouble breathing after an argument about the claimant's mother;
- c) The claimant controlling the family finances;
- d) The claimant controlling the respondent's computer use; and
- e) The claimant planning and orchestrating the respondent's eviction from the Residence.

[61] The definition of family violence is set out in s. 2 of the DA as follows:

family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person -- and in the case of a child, the direct or indirect exposure to such conduct -- and includes

- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
- (b) sexual abuse;
- (c) threats to kill or cause bodily harm to any person;
- (d) harassment, including stalking;
- (e) the failure to provide the necessities of life;
- (f) psychological abuse;
- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property;

[62] Section 16(3)(j) of the DA provides that in considering the effect of family violence on the best interests of the child, the court must consider:

- a) The impact of family violence on the ability and willingness of the person engaged in family violence to care for and meet the needs of the child; and
- b) The appropriateness of making an order that would require persons to whom the order would apply to cooperate on issues affecting the child.

[63] Section 16(4) of the DA requires the court, in considering the impact of the family violence on the best interest of the child, to take the following factors into account:

- (a) the nature, seriousness and frequency of the family violence and when it occurred;
- (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
- (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
- (d) the physical, emotional and psychological harm or risk of harm to the child;
- (e) any compromise to the safety of the child or other family member;
- (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
- (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
- (h) any other relevant factor.

[64] In this case, the respondent has not persuaded me that all of the alleged conduct amounted to family violence or that if it were, the claimant's conduct is such that parenting time with him is contrary to A.N.'s best interests.

[65] While the relationship between the respondent and D.N. may have been tense throughout the marriage, the respondent's evidence falls short of establishing a pattern of coercive and controlling behaviour. The respondent testified about only a relatively small number of minor instances where she says that D.N. exerted her will upon the respondent. In any event, the conflict between the respondent and D.N. was between the two of them. There is no evidence that either of them involved or exposed A.N. to the conflict or that the claimant was involved.

[66] The claimant denies the respondent's allegation that he grabbed her around the neck. However, if the allegation is true, by the respondent's own evidence it occurred during an argument between the parties in the absence of their daughter and was an isolated incident.

[67] If this incident occurred as alleged, then it certainly falls within the definition of family violence. However, I find that it does not impact upon the claimant's ability to care for and meet A.N.'s needs. I also find that the incident should not affect the parties' ability to cooperate on issues affecting their daughter. In reaching this conclusion I have considered the following:

- a) While the alleged violence is serious, it was an isolated incident;
- b) The respondent's view of the incident is coloured by her tendency to over-react and occurred years before the separation;
- c) The incident occurred when A.N. was not present; and
- d) There is no evidence of any risk of harm to A.N. or of any compromise of her safety.

[68] With respect to the allegation that the claimant controlled the family finances and the respondent's computer use, there is insufficient evidence before me to conclude that this amounts to family violence. The claimant controlled the family finances to the extent that he was the financial provider for the family. I am not prepared to accept the respondent's evidence that the claimant restricted the respondent's access to the family finances or that he prevented the respondent from using the family computer.

[69] It was D.N. who planned and carried out the respondent's eviction from the Residence. She took the steps to secure an eviction order and to have the locks changed. The claimant denied having any knowledge of the plan to evict the respondent until after it occurred. D.N. confirmed that she did not advise the claimant about her steps to evict the respondent until after it occurred. Therefore, the respondent has failed to establish that it was the claimant who planned and orchestrated her eviction from the Residence.

Dr. Elterman

[70] Dr. Elterman is a clinical and forensic psychologist. By an order dated June 3, 2016, Master Scarth appointed Dr. Elterman to prepare a report pursuant to s. 211 of the FLA. Master McDiarmid had established the scope of the s. 211 report in an order dated July 15, 2015. Master McDiarmid ordered that:

- 16. a Registered Psychologist (or a person with expertise in conducting s. 211 reports) be retained to conduct an investigation and prepare a section 211 Report including a psychological assessment of both parties and the said Registered Psychologist (or a person with expertise), shall be directed to make a recommendation as to the issues of full custody and guardianship, primary care and parenting time of the child,

[71] Dr. Elterman describes the scope and purpose of his assessment on page 2 of his report where he states:

This case was referred to me by Order of Master Scarth on June 3, 2016 in order for me to prepare a psychological assessment in this dispute concerning the best parenting arrangement for [A.N.]. The Order is provided under Section 11 of the Family Law Act which directs me to consider the wishes and needs of the child and, the ability and willingness of each parent to provide for those needs.

[72] The parties tendered Dr. Elterman's report as evidence at the trial. Neither the claimant nor the respondent challenged the contents of the report or Dr. Elterman's conclusions and recommendations.

[73] Dr. Elterman interviewed the claimant, the respondent, and A.N. separately. He also observed A.N. in each parent's home.

[74] Dr. Elterman summarizes concisely the main problems with this family unit. On page 8 of his report, Dr. Elterman writes:

From my interviewing of [the respondent] and [the claimant], I noted that the biggest problem is the lack of communication between them because they are interpreting each other through a 5 year old by asking her questions and taking the answers as literal and accurate. There also does seem to be an over-involvement of the grandparents and generally too much drama at the transfers.

[75] When Dr. Elterman observed A.N. in each of the party's homes, he described a "stark contrast" in the child's behaviour.

[76] After visiting the child in the respondent's home, Dr. Elterman described his observations as follows at page 17 of his report:

[A.N.] seemed smiling but somewhat subdued and seemed a bit nervous when I was present. She nonetheless took the role of host as she had already been to my office on 2 occasions. [A.N.] clearly spends considerable time with her mother as they communicate both verbally and nonverbally. [A.N.] seemed unusually vigilant during my visit in a way that she had not been when I had seen her in my office. In my office she had been more loose and expressive whereas she was now more tight and watchful when I saw her at [the respondent's home].

[77] After his visit with A.N. at the claimant's home, Dr. Elterman observed at page 17 of his report:

What I noted immediately was how outgoing, talkative and animated [A.N.] was with [the claimant] compared to how she had been more subdued with [the respondent]. She chatted, was affectionate and at one point when sitting next to him, I noticed that she put her arm around his shoulder. [A.N.] clearly enjoys the time with [the claimant] and they have an affectionate relationship. When he smiles she smiles in reciprocation. I noted that [the claimant] was more relaxed and happy than when I had seen him at any other time in my office. I noted that [the claimant's] mother seems to also have a close relationship with [A.N.] and [A.N.] sometimes asked her grandmother to assist her if she wanted to eat or drink. The visit was generally upbeat and

they talked about different people that they see and their activities. [A.N.] clearly is the centre of attention for her father and grandmother and she is very talkative and relaxed with them both. I had no concerns about [A.N.'s] attachment to [the claimant]. The visit was generally upbeat.

Parenting Time

[78] Dr. Elterman recommends that the parents share parenting time with their daughter equally. Specifically, he recommends that the division of the parenting time be:

- a) Monday and Tuesday nights the child to be with the respondent;
- b) Wednesday and Thursday nights the child to be with the claimant;
- c) Friday to Sunday nights to alternate between the parties.

[79] The goal of Dr. Elterman's recommendation is to maximize the time that A.N. spends with each parent, while minimizing the amount of time she is away from either parent at one time. However, I note that Dr. Elterman made these recommendations in 2016 when A.N. was only five years old. She is now ten years old. Given the passage of time and the additional maturity of the child, it should no longer be necessary to break up the equal shared parenting time into short periods.

[80] I accept Dr. Elterman's recommendation for equal parenting time for each parent. Dr. Elterman concludes that it is in A.N.'s best interests to have a relationship with both parents. Assessing A.N.'s best interests by considering the factors in s. 16(3) of the DA, leads me to the same conclusion as Dr. Elterman.

[81] A.N.'s age and stage of development requires both parents to have a significant part in A.N.'s life and she appears to have a strong relationship with both parents. Dr. Elterman's psychological assessment of both parents expresses no concern about either parent's willingness or ability to care for A.N. and meet her needs.

[82] The only concern I have about instituting an equal parenting time arrangement is whether the parents have the willingness and ability to cooperate and communicate with one another on matters affecting A.N. However, the parents' difficulty with cooperation and communication should not preclude A.N. from having equal time with both parents.

[83] Therefore, the claimant and the respondent will have equal parenting time with A.N. The parenting time will be seven days with the claimant and seven days with the respondent on a rotating basis. This arrangement will commence with the claimant having parenting time commencing on December 10, 2021.

[84] In my view, there is no need to continue the segmented parenting time recommended by Dr. Elterman.

[85] This week on/ week off parenting schedule will also lessen the direct personal contact between the claimant and respondent, which is the main source of conflict between them.

[86] In order to ensure that there is no confusion with respect to the implementation of the parenting time order made above, I will make the following additional orders:

- a) The parenting time exchanges will take place at 6:00 pm on Fridays at the Starbucks restaurant located at 800 - 7380 King George Boulevard, in Surrey B.C. unless otherwise agreed to by the parties;
- b) Neither the claimant nor the respondent will schedule A.N. in any activities during the other parent's parenting time, without the other parent's written consent or further order of the court;
- c) During the parenting time exchanges, the parents will stay in their respective vehicles and allow A.N. to walk from one vehicle to the other;
- d) Neither the claimant nor the respondent will speak to the other during the exchange other than to communicate information necessary for the care and well-being of A.N. and any such information will be confirmed in writing within 24 hours of the exchange;
- e) The parent without parenting time on A.N.'s birthday will have telephone or video access to A.N. at a time arranged by A.N.;
- f) Notwithstanding the week on/week off parenting schedule, the claimant will have parenting time with A.N. from 10:00 am to 2:00 pm on Father's Day and the respondent will have parenting time from 10:00 am to 2:00 pm on Mother's Day;
- g) Notwithstanding the week on/week off parenting schedule, Christmas parenting time will alternate from year to year commencing in 2021 with the respondent having parenting time with A.N. from 12:00 noon on December 24 until 12:00 noon on December 25 and the claimant having parenting time with A.N. from 12:00 noon on December 25 until 12:00 noon on December 26; and
- h) Parenting time for any other holidays will follow the week on/week off parenting schedule.

Conduct Orders Related to Parenting

[87] Given the level of conflict and acrimony between the claimant and the respondent, I find it is necessary to dictate by order the conduct expected of them. Therefore, I make the following conduct orders:

- a) The claimant and the respondent will not have any direct interaction with each other and all communications between the claimant and the respondent will be in writing through e-mail except:
 - i. in an emergency;
 - ii. while exchanging information during a parenting time exchange; or
 - iii. in the presence of third-party professionals;

- b) The respondent will not communicate with the claimant through the claimant's work e-mail;
- c) Within 72 hours of the issuing of these reasons for judgment, the claimant and the respondent will exchange e-mail addresses through which they wish to communicate with each other and all communications between them will be through those e-mail addresses;
- d) Within 72 hours of the issuing of these reasons for judgment, the claimant and the respondent will exchange personal, non-private cell phone numbers for use in emergencies only. If either the claimant or the respondent changes their cell phone number, they will advise the other of the change within 72 hours;
- e) All communication between the claimant and the respondent will be polite and respectful and will avoid personal attacks, insults, offensive language, or offensive messages.
- f) The claimant and the respondent will:
 - i. put the best interests of A.N. before their own interests;
 - ii. encourage A.N. to have a good relationship with the other parent;
 - iii. speak to A.N. about the other parent in a positive and respectful manner;
 - iv. refrain from any negative or hostile communications or arguments in front of their daughter; and
 - v. refrain from speaking negatively about the other parent or the other parent's family to their daughter or in her presence;
- g) Neither the claimant nor the respondent will:
 - i. question A.N. about the other parent or about the time spent with the other parent beyond simple conversation;
 - ii. discuss with A.N. any inappropriate adult, court, or legal matters; or
 - iii. blame, criticize, or disparage the other parent to A.N.
- h) The claimant will hold A.N.'s passport and will provide it to the respondent upon her request for the purpose of travel. The respondent will return the passport to the claimant at the parenting time exchange following the trip for which the passport was required;
- i) The claimant and the respondent will cooperate with one another to provide any authorizations required for international travel with A.N., including but not limited to:
 - i. Providing a written travel authorization;
 - ii. Providing a notarized travel authorization, if required; and
 - iii. Providing contact information so that the relevant border agency can confirm the travel authorization;

- j) The parent seeking to travel with A.N. will pay the entire cost of any notarized travel documents required for the trip; and
 - k) The parent seeking to travel with A.N. will give the other parent no less than three weeks' notice of the trip including a detailed itinerary and neither parent will plan any travel that would prevent the other parent from exercising their scheduled parenting time without written permission from the other parent.
- [88] The respondent has refused to provide her address to the claimant on the grounds that she perceives him to be a physical threat to her safety. The evidence does not support the respondent's perception. The only evidence of any physical violence is the respondent's evidence that the claimant grabbed her by the neck during an argument. The claimant denies this allegation but, if it occurred, it occurred before 2014. There are no recent incidents of violence alleged and they are unlikely to occur because the parties will not have direct contact with each other.
- [89] While I find that the respondent genuinely perceives the claimant as a threat to her safety, it is important for both parents to know where their daughter is living.
- [90] Therefore, within 72 hours of the issuing of these reasons for judgment, the respondent will provide the claimant with her residential address. Further, if the respondent's address changes, she will advise the claimant of the new address within 72 hours.

Primary Residence

- [91] A.N. attends school within the catchment area of the claimant's residence. She will continue to attend that school.
- [92] In order to avoid any confusion about A.N.'s residence for the purposes of the school catchment area, her residence for school catchment area purposes will be the claimant's residence.

Guardianship

- [93] Pursuant to s. 39(1) of the FLA, the claimant and the respondent are joint guardians of A.N.

Parental Responsibilities

- [94] I am prepared to accept Dr. Elterman's recommendation that the parties share the parental responsibilities for A.N. and that they consult with each other with respect to parental decisions.
- [95] I am not prepared to follow Dr. Elterman's recommendation that each parent have a domain within which they have the ultimate decision-making authority.

- [96] However, based on the personalities of the parties and the acrimony that exists between them, it is unlikely that the parties will be able to reach agreement on many parental decisions. Therefore, in order to minimize the need for future court applications and the associated costs, I have concluded that it would be best to give one of the parents the final decision-making authority when they cannot agree.
- [97] In my view, the claimant is the parent who is best suited to be the final decision-maker for parental decisions affecting A.N. because when he attended before me in this trial he appeared to be balanced in his approach and genuine in his willingness to involve the respondent in matters regarding A.N.
- [98] On the other hand, I have concerns about the respondent's ability to exercise the final decision-making authority because:
- a) She displays a significant level of animosity toward the claimant which factors into her decision-making process;
 - b) She has demonstrated a tendency to over-react to situations;
 - c) Her reactions to situations involving the claimant lead to emotional and physical difficulties that may hinder her decision-making process; and
 - d) She is less likely than the claimant to engage in a consultative process as is evident by her refusal to disclose her address.
- [99] Therefore, the claimant and the respondent will share the decision-making responsibilities for A.N. pursuant to s. 16.3 of the DA as follows:
- a) In the event of the death of either the claimant or the respondent, the surviving party will be the only party with decision-making responsibilities for A.N.;
 - b) The parent exercising their parenting time will have the authority to make day to day decisions affecting A.N. during their parenting time;
 - c) The parties must advise each other of any matters of a significant nature affecting A.N.;
 - d) The parties must discuss with the other parent any significant decisions concerning A.N., including significant decisions about A.N.'s health (except emergency decisions), education, religious instruction, and general welfare;
 - e) The parties must attempt to come to a consensus on significant decisions affecting A.N.;
 - f) In the event that the parties cannot reach an agreement on any parenting decision, the claimant is entitled to make the decision and the respondent is entitled to apply to this court for directions on any decision she considers to be contrary to A.N.'s best interests;

- g) The parties are each entitled to request and receive information concerning A.N. directly from third parties, including but not limited to teachers, counsellors, medical professionals, dental professionals, and third-party caregivers and neither the claimant nor the respondent will seek to deprive the other of that information;
- h) The parties are each entitled to receive and respond to any notice that a parent or guardian is entitled or required by law to receive; and
- i) The parties are each entitled to attend any of A.N.'s medical appointments. While they should work together to schedule medical appointments at mutually convenient times, they must schedule appointments on the first available date even if one of them is not able to attend the appointment. Neither party may change the date or time of a scheduled medical appointment without the written consent of the other.

Property Division

- [100] Under s. 81 of the FLA, spouses are entitled to an undivided half interest in all family property and are equally responsible for family debt upon separation unless otherwise ordered.
- [101] In this case, the respondent relies on s. 95(2)(i) of the FLA and seeks an unequal division of family property based on "other factor[s] that may lead to significant unfairness". However, the respondent did not specify what those factors are and how they may lead to unfairness. Further, there is nothing in the evidence that suggests that an equal division of family property would lead to any unfairness to the respondent.
- [102] Accordingly, the family assets and the family debts will be divided equally between the claimant and the respondent.

The Residence

- [103] Before the claimant and the respondent were married, the claimant lived in the Residence with his mother. When they were married, the respondent moved in to the Residence to live with the claimant and his mother.
- [104] The claimant and the respondent lived in the Residence from the date of their marriage until the date of separation and paid no rent.
- [105] Before moving to the Vancouver area, D.N. and her children lived in Terrace B.C. D.N. and her husband owned a home in Terrace which became D.N.'s sole property in 1983 when her husband passed away.
- [106] In 1994, D.N. moved with her children to Surrey B.C. At that time, she sold half of her interest in her Terrace home for \$50,000. She used part of the proceeds from that sale to purchase her first house in Surrey.

- [107] By the end of 1994, the house in Terrace sold and D.N. received an additional \$50,000 for her remaining half interest.
- [108] D.N. sold her first house in Surrey in 1999 to purchase the Residence. When D.N. applied for mortgage financing for the purchase, the lender required her children to "co-sign" the loan. Therefore, the claimant and his sister became registered owners of the Residence along with D.N. in the following proportions:
- a) D.N., as to a 74% interest;
 - b) the claimant, as to a 25% interest; and
 - c) the claimant's sister, as to a 1% interest.
- [109] D.N. testified that neither the claimant nor his sister put any money into the purchase of the Residence. D.N.'s evidence is that her children were on title only so that she could get a mortgage.
- [110] The purchase of the Residence completed on April 28, 1999.
- [111] D.N. testified that she makes the mortgage payments and pays for the house expenses. She also testified that the claimant is not responsible for making mortgage payments or for paying the bills on the house.
- [112] The claimant also testified that, other than in a few exceptional circumstances, he does not pay the mortgage or any expenses related to the Residence. However, in a financial statement sworn by the claimant on September 25, 2013, he claims "rent or mortgage" payments of \$1,300 per month. The claimant tried to explain this inconsistency by suggesting that the amount claimed in the financial statement is the amount that he would have had to pay if he did not live in the Residence. This explanation is weak at best because the claimant has always lived in the Residence and there is no evidence that he was planning to move out.
- [113] On the other hand, there is no evidence in any of the claimant's banking records to support the respondent's suggestion that the claimant was paying the mortgage or the Residence expenses on a regular basis.
- [114] On April 15, 2015, D.N. and her two children executed another mortgage to secure a loan of \$50,000 to pay for the claimant's wedding. Both D.N. and the claimant testified that the claimant was responsible for repaying the \$50,000 to D.N.
- [115] In 2007, the claimant and the respondent had an opportunity to purchase a half interest in a taxi for the price of \$75,000. In order to fund the purchase, the claimant, the respondent, and D.N. applied for a line of credit. The lender approved the line of credit to a limit of \$220,000 secured by a mortgage on the Residence.

- [116] On the same day that the line of credit mortgage was executed, the claimant's sister was removed from title to the Residence because she did not wish to be involved in the taxi loan.
- [117] Accordingly, on May 7, 2007, a \$220,000 mortgage was registered against the Residence and the registered owners of the Residence became:
- a) D.N., as to a 75% interest; and
 - b) The claimant, as to a 25% interest.
- [118] The claimant and the respondent used \$75,000 from the line of credit to pay for a half interest in the taxi. There is no evidence about whether the balance of the line of credit was drawn down. However, D.N. denies having used any funds from the line of credit.
- [119] On February 16, 2011, Coast Capital Savings Credit Union refinanced all of the debts secured by mortgage against the Residence. The Credit Union registered a mortgage of \$400,000 which paid out the existing financial charges against the Residence, including the wedding loan and the taxi loan.
- [120] The respondent's position is that D.N. holds her 75% interest in the Residence in trust for the claimant. Accordingly, the respondent submits that the claimant is the legal and beneficial owner of the Residence. As such, the respondent claims an interest in the entire property.
- [121] In support of her position, the respondent relies on evidence from the claimant's banking records that suggest that between 2005 and 2014 the claimant paid the utility charges for the Residence on a number of occasions, paid property taxes for one year, and paid for insurance in another year. However, these payments are not sufficiently frequent or sufficiently consistent to establish that the claimant was the beneficial owner of the Residence.
- [122] The respondent also submits that there are unexplained transfers of significant funds from the claimant's bank account that she suggests are payments made by the claimant for the Residence. The most significant of those transfers was the sum of \$15,000 to D.N. The claimant explained this transfer as the partial repayment of the funds borrowed for his wedding. The other transfers are in lesser amounts and the claimant could not recall the reasons for these other transfers.
- [123] The respondent also suggests that when she raised the problems created by the claimant's mother living with them in the Residence, the claimant stated that he was not willing to put his mother out onto the street. The respondent submits that this statement implies that the claimant considered himself to be the owner of the Residence. I do not accept the respondent's submission. I do not consider this statement to be about ownership of the Residence but rather about what would happen to his mother if she had to leave the Residence.

- [124] Accordingly, I find that the evidence is not sufficient to conclude that the claimant is the beneficial owner of the entire interest in the Residence.
- [125] The respondent relies upon *Bilin v. Bilin*, 2018 BCSC 804. In that family law case, the husband and his mother were the registered owners of the former family home. The court held that the husband was the beneficial owner of the entire interest in the family home. The *Bilin* case is distinguishable in the following respects:
- a) The husband in *Bilin* paid the mortgage, taxes, and utility accounts;
 - b) All of the funds required to purchase the *Bilin* home belonged to the husband; and
 - c) The husband alone negotiated the mortgage without consultation with others.
- [126] None of the facts present in *Bilin* are present in this case.
- [127] The position of the claimant and D.N. is that the claimant holds his 25% interest in trust for D.N. such that she is the legal and beneficial owner of the entire Residence. Accordingly, the claimant and D.N. submit that the respondent has no interest in the Residence.
- [128] The claimant and D.N. rely on the presumption of resulting trust to assert that D.N. is the sole owner of the Residence. They submit that since the claimant gave no value for the property and D.N. had no intention to gift any interest to the claimant, the claimant holds his legal interest in trust for D.N. pursuant to a resulting trust.
- [129] The difficulty with the submission of the claimant and D.N. is that the gratuitous transfer of property from one party to another is fundamental to the imposition of a resulting trust. In *Suen v. Suen*, 2013 BCCA 313, the Court of Appeal cited *Kerr v. Baranow*, 2011 SCC 10 for the following proposition at paras. 36-37:
- [36] A gratuitous transfer of property from one party to another is fundamental to the presumption of a resulting trust. In *Kerr v. Baranow*, 2011 SCC 10, Mr. Justice Cromwell, for the Court, wrote:
- [17] Resulting trusts arising from gratuitous transfers are the ones relevant to domestic situations. The traditional view was they arose in two types of situations: the gratuitous transfer of property from one partner to the other, and the joint contribution by two partners to the acquisition of property, title to which is in the name of only one of them. In either case, the transfer is gratuitous, in the first case because there was no consideration for the transfer of the property, and in the second case because there was no consideration for the contribution to the acquisition of the property.
- [18] The Court's most recent decision in relation to resulting trusts is consistent with the view that, in these gratuitous transfer situations, the actual intention of the grantor is the governing consideration: *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795, at paras. 43-44. As Rothstein J. noted at para. 44 of *Pecore*, where a gratuitous transfer is being challenged, "[t]he trial judge will commence his or her inquiry with the applicable presumption and will

weigh all of the evidence in an attempt to ascertain, on a balance of probabilities, the transferor's actual intention" (emphasis added [by Cromwell J.]).

- [19] As noted by Rothstein J. in this passage, presumptions may come into play when dealing with gratuitous transfers. The law generally presumes that the grantor intended to create a trust, rather than to make a gift, and so the presumption of resulting trust will often operate. As Rothstein J. explained, a presumption of a resulting trust is the general rule that applies to gratuitous transfers. When such a transfer is made, the onus will be on the person receiving the transfer to demonstrate that a gift was intended. Otherwise, the transferee holds the property in trust for the transferor. This presumption rests on the principle that equity presumes bargains and not gifts (*Pecore*, at para. 24).
- [37] The imposition of a resulting trust does not require proof of intention, but rather it is a legal doctrine that is imposed, "to return property to the person who gave it and is entitled to it beneficially, from someone else who has title to it. Thus, the beneficial interest 'results' (jumps back) to the true owner": Oosterhoff, [Oosterhoff on Trusts: Text, Commentary and Materials, 7th ed. (Toronto, Carswell, 2009)] at p. 25" (Kerr at para. 16). It may also arise where a claimant seeks, "the recognition of his or her proportionate interest in the asset which the other has acquired with [his or her] property" (para. 25).
- [130] The presumption of resulting trust rests on the principle that equity presumes bargains and not gifts: *Pecore v. Pecore*, 2007 SCC 17, at para. 24. In this case, the claimant's 25% interest in the Residence was not the result of a gratuitous transaction. In order for D.N. to obtain a mortgage for the purchase of the Residence, the lender required the claimant's credit. When he signed the mortgage documents, he pledged his credit for the purchase and became liable for the mortgage loan. In exchange for his credit, the claimant received a 25% interest in the Residence.
- [131] On this basis I find that there was no gratuitous transfer of the Residence to the claimant and that, accordingly, the claimant's claim for a resulting trust must fail.
- [132] Section 23 of the Land Title Act, R.S.B.C. 1996, c. 250, creates a presumption that the persons named in the title as registered owners of the property are indefeasibly entitled to an estate in fee simple to the land. This presumption may be displaced by equitable presumptions that account for the equitable interests between the parties: *Schouten Estate v. Swagerman-Schouten*, 2014 BCSC 2320 at para. 4. However, in this case, there are no equitable interests between the parties that displace the presumption of title.
- [133] Therefore, I find that the claimant is the legal and beneficial owner of a 25% interest in the Residence. I also find that the claimant's 25% interest in the Residence is a family asset.
- [134] The conduct of the parties following the purchase of the Residence supports the conclusion that the claimant's 25% interest in the Residence is a family asset. For example, in 2007 the claimant and the respondent purchased a half interest in a taxi by using the Residence as security for a mortgage loan.

- [135] Having found that the claimant's interest in the Residence is a family asset, I must value that interest and determine the value of the respondent's entitlement.
- [136] The respondent is entitled to a half interest in the claimant's interest in the Residence. The value of that interest is determined by the increase in the equity of the Residence from the date of marriage, July 10, 2004, to the date of trial: ss. 84(2)(g) and 87 of the FLA.
- [137] In the circumstances of this case, I have concluded that the date of valuation should be the first scheduled day of trial, December 16, 2019. The lengthy delay from the first day of the trial until the conclusion of the trial on June 4, 2021, was entirely due to the respondent's need to adjourn. The delay in concluding this trial should not prejudice the claimant. Therefore, the valuation date is December 16, 2019.
- [138] An appraisal of the Residence as of the date of marriage establishes a fair market value at that time of \$400,000.
- [139] The outstanding balance on the mortgages against the Residence as of the date of marriage is not entirely clear in the evidence. However, the disclosure statement for the original mortgage shows a mortgage with a five-year term and an outstanding balance of \$235,120 at the end of the term. Since the lender advanced the funds under the mortgage on April 28, 1999, the term had just expired as of July 10, 2004. Accordingly, the balance on the mortgage would have been approximately \$235,000, assuming that all payments were made and no lump sum payments were applied.
- [140] In addition, on June 4, 2003, the claimant and D.N. registered a second mortgage on the Residence in the amount of \$100,000.
- [141] The total indebtedness secured against the Residence as of July 10, 2004, was approximately \$335,000. Accordingly, the equity in the Residence as of July 10, 2004, was approximately \$65,000.
- [142] An appraisal of the Residence as of August 31, 2019, establishes the fair market value of the Residence as of that date to be \$925,000.
- [143] The outstanding balance on the mortgage as of December 6, 2019, was \$322,635. However, for the purposes of this assessment, the claimant concedes that the value of the wedding loan in the amount of \$50,000 should be deducted from the mortgage balance.
- [144] Similarly, when the Residence was refinanced, D.N. received the sum of \$26,285 directly from the proceeds of the refinancing. Neither the claimant nor the respondent shared in those funds. Accordingly, the mortgage balance is reduced by this figure as well.
- [145] Therefore, the equity in the Residence as of the start of the trial was approximately \$678,650 after the appropriate adjustments.
- [146] Based on this assessment, the increase in the equity of the Residence from the date of marriage to the date of trial is \$613,650.

[147] The claimant's share of the increased equity is \$153,412. The value of the respondent's property division claim is half of the claimant's share of the increased equity which is \$76,706.

[148] Therefore, the respondent is entitled to \$76,706 as her interest in the Residence.

The Vehicles

[149] At the time of separation, the claimant retained a 2013 Honda Civic purchased for \$22,318. The claimant has paid off any debt on the Honda and continues to drive that vehicle.

[150] On separation, the respondent retained a 2008 Infinity purchased for \$49,340. Unfortunately, the respondent did not stay current with the financing on the Infinity. Therefore, the finance company repossessed the vehicle in early 2016.

[151] There is some evidence about the value of the vehicles, although the evidence is not reliable. The respondent tendered no evidence about the debt on the Infinity at the time of separation. The lack of reliable evidence on value and the lack of any evidence about the financing debt owing at the time of separation, make it impossible to assess the appropriate equalization amount for these assets. Therefore, there will be no order with respect to the division of the vehicles.

Bank Accounts

[152] The respondent claims a half interest in the claimant's bank account balance as of the separation date. I find that she is entitled to that half interest. Similarly, the claimant is entitled to a half interest in the respondent's bank account balance at the date of separation.

[153] The claimant's balance on his Coast Capital account on May 8, 2014 was \$5,154.57. The respondent's balance on her Coast Capital account on May 5, 2014 was \$1,440.82.

[154] The respondent's half interest in the claimant's account is \$2,577.29. The claimant's half interest in the respondent's account is \$720.41. Offsetting the claimant's interest against the respondent's interest results in the net amount of \$1,856.88 payable by the claimant to the respondent.

Investments and Life Insurance

[155] The respondent claims an interest in the claimant's investments with Assante Wealth Management ("Assante") and CI Investments ("CI").

[156] D.N. established the investment account for the claimant years before the claimant and the respondent were married. D.N. transferred the investment to the claimant on August 22, 2011.

- [157] The claimant submits that the investment account and the life insurance were gifts by D.N. to the claimant and that they are not family property. I do not accept that submission. When D.N. transferred the investment account and the life insurance to the claimant during his marriage, they became family property. Therefore, the respondent is entitled to a half interest in the increase in value of those assets from August 22, 2011 to the date of trial.
- [158] The respondent treats the investments with Assante and CI as two separate investment accounts. However, after a review of the documents, I have concluded that the investment with Assante is the same as the investment with CI.
- [159] It appears from the documents that D.N. transferred the Assante account to the claimant on August 22, 2011. On the same date, Assante opened an account with CI and transferred the investment to them. It appears that Assante continued to manage the investments but did so through investments with CI.
- [160] The documents tendered by the claimant clearly establish that the value of the investment account on August 22, 2011, was \$14,192.
- [161] The documents do not establish a value for the account as of December 16, 2019. However, a statement from CI gives an account value of \$25,479.01 as of June 30, 2019. As this is the evidence of value closest to the trial date, I will use this figure to assess the increase in the value of the account since August 22, 2011.
- [162] Therefore, the increase in value in the Assante investment account is \$11,287.01. The respondent's half interest in the increase is \$5,643.50.
- [163] The respondent also claims an interest in a life insurance policy with Sun Life Financial.
- [164] As with the Assante investment, D.N. established the life insurance policy for the claimant before the claimant's marriage. D.N. transferred the life insurance policy to the claimant on August 22, 2011. The beneficiary of the life insurance policy is the claimant's mother.
- [165] The death benefit under the Sun Life insurance policy on August 22, 2011, was \$71,600. The death benefit increased to \$79,574 as of September 1, 2016. The claimant submits that if the life insurance is family property, then the respondent is entitled to half of the increase in the death benefit.
- [166] There are two problems with this submission:
- a) The valuation date should be the trial date, December 16, 2019, and there is no evidence of the death benefit value as of the trial date; and
 - b) I am not convinced that the increase in value should be determined by the death benefit amounts. Neither the claimant nor the respondent will benefit from the death benefit amount when the claimant dies. The appropriate assessment should be the increase in the cash surrender value of the policy.

[167] There is insufficient evidence of the change in the cash surrender value of the policy to determine the value of that change. Therefore, it is not possible to determine the value of the respondent's interest in the life insurance policy.

[168] However, the life insurance issue will be resolved with the following orders by consent:

- a) The claimant will remove his mother as the named beneficiary of the life insurance policy and replace her with A.N.;
- b) The claimant will not change the beneficiary of the life insurance policy from A.N. without the written consent of the respondent;
- c) The claimant will not cancel the life insurance policy without the written consent of the respondent or further order of the court.

Pension Plans

[169] The claimant has a municipal pension plan and the respondent has a pension through Great West Life. There is no report from a pension expert to value the respective pensions. Neither the claimant nor the respondent has produced accurate evidence about the actual value of the pension plans at the relevant times.

[170] The claimant submits that I should make an adverse inference against the respondent for not disclosing her pension information. The claimant submits that the result of that adverse inference should be to deny the respondent's claim for a division of the claimant's pension. I am not prepared to make the adverse inference suggested by the claimant because the claimant has not produced sufficient evidence to accurately assess the value of his pension. Even if I were to make an adverse inference, I would not be prepared to deny the respondent's pension division claim based solely on the adverse inference.

[171] The best that I can do in this situation is to make the following orders:

- a) The claimant is entitled to 50% of the respondent's Great West Life pension in accordance with Part 6 of the FLA, based on benefits accrued under that pension plan from July 10, 2004 to May 8, 2014; and
- b) The respondent is entitled to 50% of the claimant's municipal pension in accordance with Part 6 of the FLA, based on benefits accrued under that pension plan from July 10, 2004 to May 8, 2014.

The Jewelry

[172] The respondent seeks an order for the return of, or compensation for, gold jewelry that she claims the claimant did not return to her. The claimant denies having possession of this jewelry and testified that all of the respondent's belongings, including the jewelry, were returned to her.

[173] The respondent's evidence is not clear on what happened to the jewelry. She testified that she kept the jewelry in a trunk in her bedroom at the Residence. She noticed that the jewelry was missing from the trunk when she attended at the Residence with the police on October 8, 2014. However, she did not report the missing jewelry to the police officer that was with her. She testified that she did not know what happened to the jewelry.

[174] I find that the respondent's evidence about the missing jewelry is not reliable. When she noticed the jewelry was missing, she had every opportunity to report the missing items to the police who were escorting her through the house, but she did not. On this factual issue I am prepared to accept the evidence of the claimant that he did not keep the jewelry and does not have it.

[175] Therefore, the respondent's jewelry claims are dismissed.

The Taxi

[176] During the marriage, the parties purchased a half interest in a taxi from the respondent's father. In order to do so they incurred a debt of \$75,000 which they secured against the Residence.

[177] The taxi is clearly a family asset and the debt to purchase the taxi is clearly a family debt.

[178] Since the respondent does not wish to have any involvement with the taxi and since the taxi loan is secured against the Residence, the appropriate order is to award the taxi interest to the claimant along with the obligation to pay the taxi loan. Therefore, the claimant will retain the entire half interest in the taxi for himself and will be solely responsible for the taxi loan.

Family Debts

[179] The division of the significant family debts is part of the valuation of the family assets. The valuation of the Residence accounts for residential mortgages and the disposition of the taxi accounts for the taxi loan.

[180] The balance of the family debt consists of credit card accounts and money borrowed by the respondent for the in vitro fertilization program.

[181] The respondent claims that she has incurred the following family debts:

- a) Coast Capital Visa - \$20,000;
- b) American Express - \$15,000; and
- c) In Vitro fertilization - \$12,000

- [182] I cannot rely on the respondent's evidence with respect to her financial circumstances or her expenses. During cross-examination on her finances, the respondent was often evasive and non-responsive. When claimant's counsel asked her about obvious inconsistencies between her testimony and her sworn financial statements, she responded by suggesting that her lawyer had prepared the financial statements and stating that she did not check the numbers before signing the statements.
- [183] The respondent's sworn financial statement dated December 22, 2016, deposes that the Coast Capital Visa account was only \$11,339, the American Express Account was only \$3,862, and the in vitro fertilization debt was only \$8,000.
- [184] The respondent has given no reasonable explanation for these inconsistencies. Therefore, it is my view that the respondent has exaggerated these debts in order to increase the amount of her claims against the claimant.
- [185] As a result, I find that the family debt incurred by the respondent offsets the family debt incurred by the claimant. Accordingly, there will not be an equalization payment with respect to the family debt.

Property Division Summary

[186] The property division analysis results in the following orders:

- a) The claimant will pay to the respondent the sum of \$76,706 for her interest in the Residence;
- b) There is no equalization payment with respect to the vehicles;
- c) The claimant will pay to the respondent the sum of \$1,856.88 to equalize the value of the bank accounts held by the parties;
- d) The claimant will pay to the respondent the sum of \$5,643.50 for her interest in the claimant's investment account;
- e) There will be no payment to the respondent for the life insurance policy but the claimant will change the beneficiary of the policy to A.N.;
- f) With respect to the pension plans:
 - i. The claimant is entitled to 50% of the respondent's Great West Life pension in accordance with Part 6 of the FLA, based on benefits accrued under that pension plan from July 10, 2004 to May 8, 2014; and
 - ii. The respondent is entitled to 50% of the claimant's Municipal pension in accordance with Part 6 of the FLA, based on benefits accrued under that pension plan from July 10, 2004 to May 8, 2014.
- g) The respondent's claim related to the return of her jewelry is dismissed;

- h) The claimant will retain sole ownership of the taxi interest and will be solely responsible for the taxi loan;
- i) There will be no order for the payment of any of the respondent's credit card or in vitro fertilization debts.

Guidelines Income

The Claimant's Guidelines Income

[187] The claimant submits that his income for the purposes of the Guidelines in the years 2014 to 2021 is as follows:

2014

\$57,658

2015

\$57,658

2016

\$57,656

2017

\$58,662

2018

\$60,200

2019

\$70,495

2020

\$70,495

2021

\$70,495

[188] I have compared these income figures with the claimant's Canada Revenue documents tendered as evidence. Based on the Canada Revenue documents, I am prepared to accept these income figures as the claimant's Guidelines income.

The Respondent's Guidelines Income

[189] The respondent claims that she has earned no income since separation. The claimant seeks an order imputing income to the respondent in the amount of \$40,000 per year.

- [190] When the claimant and the respondent were married in 2004, the respondent worked at Fair Pharmacare. In 2005, she left Fair Pharmacare to accept a position at Pacific Blue Cross. At Pacific Blue Cross, the respondent started as a file clerk. She was later promoted to a customer service representative position and then to a claims examiner position.
- [191] While working at Pacific Blue Cross, the respondent worked a second job at the Canada Revenue Agency Tax Centre. She also worked for the RCMP for a period of time. However, she resigned from that position in October 2008.
- [192] The respondent testified that she continued to work for Pacific Blue Cross until she began in vitro fertilization in 2010. After the birth of A.N., the respondent did not return to work at Pacific Blue Cross. However, she continued to be on the Pacific Blue Cross payroll until 2013 because her employer issued a form T4 for employment income in 2013. It was not clear in the evidence, but the respondent may have received income in 2013 from Pacific Blue Cross pursuant to a disability plan.
- [193] The respondent has not earned any employment income since the parties separated, with the exception of 2019. In 2019, the respondent worked for one day on the Federal Election and she worked for an undisclosed period of time for ATI Telecom. Accordingly, the respondent's 2019 employment income includes \$2,054 from that company. The respondent testified that she lost the ATI Telecom job because of the COVID-19 pandemic.
- [194] The respondent also claims that she was unable to work in 2017 because of the stress and anxiety caused by this litigation.
- [195] The respondent testified that she looked for work after March 2020. However, the documented efforts to secure work do not commence until November 2020.
- [196] The steps that the respondent took to find work from November 2020 were with government agencies. While she testified that she looked for work, the respondent could not recall the qualifications required for those jobs.
- [197] The claimant testified that during their relationship, the respondent was always looking for courses to take. He describes her as educated, resourceful, and looking to better herself. In that regard, the respondent enrolled in payroll management and supervision courses in 2003 and 2004. She enrolled in a makeup artistry program in 2005. However, there is no evidence that she completed those programs or used the education from those programs to earn income.
- [198] After separation, the claimant communicated potential job opportunities to the respondent by email. The respondent applied for a number of those positions but was unsuccessful.

- [199] From 2005 to 2009, the respondent made significant contributions to the family finances by working outside the home. During those years, the respondent contributed on average approximately \$41,000 per year to the family. However, from 2010 to the date of separation, the respondent's employment income steadily declined to the point that she had no employment income in 2012.
- [200] The evidence does not reveal a clear reason for the decline in the respondent's income. The evidence suggests that the decline may be the result of a disability claim, the in vitro fertilization program, the respondent's desire to be at home with A.N., or a combination of all three.
- [201] The respondent claims that in 2017 she was not able to work due to the stress and anxiety caused by this litigation. However, she presented no health records to support this claim.
- [202] In *Marquez v. Zapiola*, 2013 BCCA 433, the Court of Appeal set out the test for imputing income at para. 37:
- [37] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work. See *Van Gool v. Van Gool* (1998), 113 B.C.A.C. 200, 44 R.F.L. (4th) 314 at paras. 28-31, *Barker v. Barker*, 2005 BCCA 177, 45 B.C.L.R. (4th) 43 at para. 19, and *McCaffrey v. Paleolog*, 2011 BCCA 378, 24 B.C.L.R. (5th) 62 at para. 46.
- [203] In my view, it is reasonable to conclude that the respondent in this case is intentionally under-employed or unemployed. Given her age, education, and work history, I find that it is unreasonable for the respondent to continue to be unemployed more than seven years after separation.
- [204] The respondent's earnings record prior to 2010 shows that she is capable of working outside the home and earning a living. She stopped doing so after 2010 for reasons that are not entirely clear. I am prepared to accept that her diminished income after 2010 is related to the birth of A.N. and the emotional issues caused by the separation and this litigation. However, that does not explain why the respondent continues to be unemployed.
- [205] Accordingly, I am not prepared to impute an income to the respondent for the entire period of time since separation. However, the respondent cannot sit back indefinitely and claim that she is incapable of working. In my view, the respondent ought to have been back in the workforce by the time that A.N. reached six years of age and was in full-time schooling. On that basis, I will impute an income to the respondent from 2018 onwards.

- [206] Given the length of time that the respondent has been out of the workforce, I am not persuaded that the respondent could return to work and earn a similar income to that which she earned during the marriage. The respondent has applied for work without success. She has some education but no certificates, diplomas, or degrees to rely upon. Further, it may be that her job prospects will be only part-time or casual work.
- [207] In 2018, the minimum wage was \$12.65 per hour. In my view, it is reasonable to expect that by 2018 the respondent could have worked part-time at minimum wage. Based on a 40-hour work week, the annual earnings at minimum wage would be about \$26,000. Therefore, I will impute an annual income of \$13,000 to the respondent for 2018.
- [208] The minimum wage in 2019 was \$13.85 per hour. The annual earnings at this rate would be approximately \$29,000. I would expect the respondent to increase her work hours each year as she gained more experience. Therefore, her imputed income for 2019 and the following years should reflect an increase. Thus, I will impute an income of \$17,000 to the respondent for 2019.
- [209] As the minimum wage increases and the respondent's work hours increase, her imputed income should also increase. Accordingly, I will impute an annual income of \$20,000 to the respondent for 2020. For 2021 and the years following until a further agreement between the parties or a further order of the court, the respondent's imputed income will be \$25,000.
- [210] For as long as A.N. is a "child of the marriage" under s. 2 of the DA and thus eligible to receive child support, the claimant and the respondent will exchange:
- a) Copies of their respective income tax returns for the previous year, including all attachments, no later than June 1, each year; and
 - b) Copies of any notice of assessment or reassessment provided to them by the Canada Revenue Agency immediately upon receiving them.

Child Support

- [211] I have ordered that the claimant and the respondent equally share parenting time with A.N.. Therefore, in the circumstances of this case, the child support obligations of each parent are set-off against the other: s. 9 of the Guidelines.
- [212] The claimant is paying interim child support in the amount of \$523 per month pursuant to an order made on January 15, 2015. The order specifically adjourned any retroactive child support to the trial.
- [213] The Guidelines establish the child support obligations of each parent based on their incomes: s. 3(1) of the Guidelines. A summary of the child support payments required and the payments made is set out in the following table:

Year

Claimant's

Income

Respondent's Income

Monthly net C.S. payable by claimant

Monthly C.S. paid by claimant

Annual deficit (overpayment) of C.S.

2014

\$57,658

\$0

\$534 (7mo.)

\$523 (2mo.)

\$2,692

2015

\$57,658

\$0

\$534

\$523

\$132

2016

\$57,656

\$0

\$534

\$523

\$132

2017

\$58,662

\$0

\$542

\$523

\$228

2018

\$60,200

\$13,000

\$530

\$523

\$84

2019

\$70,495

\$17,000

\$560

\$523

\$444

2020

\$70,495

\$20,000

\$506

\$523

(\$204)

2021

\$70,495

\$25,000

\$462

\$523

(\$732)

Total Payable

\$2,776

- [214] Therefore, provided that the claimant makes all of his \$523 per month child support payments until the end of 2021, he is required to pay unpaid child support in the amount of \$2,776.
- [215] Commencing on January 1, 2022, the claimant will pay the sum of \$462 per month to the respondent as child support. The payments will continue on the first day of each month thereafter until further order of this court, a further agreement between the claimant and the respondent, or the child ceases to be a child of the marriage.
- [216] The claimant and the respondent will share special and extraordinary expenses in proportion to their Guidelines income: the claimant will pay 74% and the respondent will pay 26%. The party incurring the expense will provide the other party with receipts for reimbursement.

Spousal Support

- [217] An interim order made on January 15, 2015, required the claimant to pay interim spousal support in the amount of \$600 per month. The order specifically adjourned the issue of retroactive spousal support to the trial. Therefore, the respondent's entitlement to spousal support from the date of separation has not been determined.
- [218] The claimant is \$12,000 in arrears on his spousal support payments.
- [219] In her counterclaim, the respondent claims spousal support pursuant to the FLA. Section 160 of the FLA provides that if, after considering the objectives prescribed by the FLA, a spouse is entitled to spousal support, the other spouse has a duty to provide support. The objectives prescribed by the FLA are set out in s. 161 as follows:

Objectives of spousal support

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[220] The Court of Appeal in *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 32-35, established broad principles that should be considered when ordering spousal support. Those principles include the following:

- a) marriage is an economic partnership that is built upon a premise (albeit rebuttable) of mutual support;
- b) the statutory factors and objectives to be considered in awarding spousal support include both compensatory and non-compensatory principles;
- c) the compensatory support principle recognizes the need to compensate a spouse for the economic disadvantages arising from the marriage and to account for economic advantages that are conferred on a spouse as a result of the marriage; and
- d) the non-compensatory support principle recognizes the need to compensate a spouse for the loss of the economic partnership and the mutual support that both parties enjoyed during the marriage.

[221] The economic disadvantages typically considered in the compensatory support principle include the withdrawal of one spouse from the workforce to assume primary responsibility for child care and household management. Withdrawing from the workforce to assume those functions often results in an impairment of that spouse's future economic opportunities.

[222] The non-compensatory support principle allows the court to assess the level of entitlement required to meet the spouse's needs after the separation. It is not limited to a level of support to meet the basic necessities but takes into account the standard of living enjoyed by the parties during the marriage.

[223] It was implicit in the claimant's submissions that the respondent is entitled to spousal support. I heard no submissions from the claimant to the contrary. Therefore, I find that the respondent is entitled to spousal support both on the compensatory and the non-compensatory support principles. Elements of both compensatory and non-compensatory support are present in this case. The respondent withdrew from the workforce to, at least in part, be the primary care giver to A.N. Once she withdrew from the workforce, the respondent depended on the claimant to provide the financial support for the family.

[224] Once the respondent establishes an entitlement to spousal support, the level of support and its duration must be determined. In making this determination, the court generally refers to the Spousal Support Advisory Guidelines [SSAG]. The SSAG are an informal guide for the court to use as an advisory tool to determine what level of spousal support is appropriate and for what length of time.

[225] I have assessed the spousal support payable by the claimant in this case with reference to the SSAG and using the annual incomes for the parties particularized in the Guidelines Income section of these reasons. The results of my assessment are in the following table:

Year

Claimant's income

Respondent's income

Monthly S.S.

Annual S.S.

2014

\$57,658

\$0

\$1,400 (7mo.)

\$9,800

2015

\$57,658

\$0

\$1,400

\$16,800

2016

\$57,656

\$0

\$1,400

\$16,800

2017

\$58,662

\$0

\$1,400

\$16,800

2018

\$60,200

\$13,000

\$700

\$8,400

2019

\$70,495

\$17,000

\$800

\$9,600

2020

\$70,495

\$20,000

\$700

\$8,400

2021

\$70,495

\$25,000

\$500

\$6,000

Total

\$92,600

[226] I have assessed spousal support in each year in the mid-range of the payments suggested by the SSAG.

[227] With respect to the duration of the spousal support, the SSAG suggest that the duration be a minimum of five years and a maximum of 15 years from the date of separation. In these circumstances, I find that the reasonable period for the payment of spousal support is eight years from the date of separation. Therefore, the spousal support will continue until May 1, 2022. The respondent ought to be able to be back on her feet within eight years from separation. She is capable of working, she has worked outside the home during the relationship, and she is still relatively young. With A.N. now in school, her availability to work has also increased.

- [228] The claimant must receive credit for the spousal support payments he has already made. The only evidence I was able to locate in the documents that is reliable and sufficiently detailed to arrive at a precise figure for the amounts paid by the claimant are the records of the Family Maintenance Enforcement Program ("FMEP"). However, those records are located in various places amongst over 2,000 pages of documents submitted by the claimant. Based on the FMEP documents that I have located, I find that the claimant made 44 payments of \$600 each toward spousal support. The total of those payments is \$26,400.
- [229] Accordingly, at the end of December 2021, the total spousal support obligation of the claimant will be \$92,600. After applying credit for the amount that the claimant has already paid, the balance remaining is \$66,200.
- [230] The claimant will pay \$300 per month to the respondent as spousal support commencing on January 1, 2022, and continuing on the first day of each month thereafter up to and including May 1, 2022.

Divorce

- [231] Both the claimant and the respondent wish to be divorced from one another. They separated in May 2014 and have not lived together since then. It is clear to me that there is no possibility of reconciliation between the claimant and the respondent and that there has been no collusion between them to obtain this divorce order.
- [232] I am satisfied that the parties have met the requirements of the DA. Therefore, subject to s. 12 of the DA, the parties are granted a divorce to take effect on the 31st day following the date of these reasons for judgment.

Name Change

- [233] The respondent applies to change her name to B.K.D. Accordingly, I will grant the change of name to the respondent pursuant to s. 5 of the Name Act, R.S.B.C. 1996, c. 328.
- [234] The respondent also applies to change A.N.'s name. The claimant does not consent to the name change. Therefore, pursuant to s. 5(2) of the Name Act, the respondent's application to change A.N.'s name is denied.

Costs of the s. 211 Report

- [235] The July 15, 2015 order which directed the preparation of a s. 211 report included an order that the claimant be responsible for the entire cost of the report in the first instance. The order also provided that 50% of those costs be accounted for by the respondent at the trial of the action.
- [236] The cost of the report was \$12,000. The claimant paid the entire cost of the report. Therefore, in accordance with the order of July 15, 2015, the respondent will reimburse the claimant in the amount of \$6,000.

Final Accounting

[237] The final accounting for the current financial obligations between the parties is summarized in the following table:

Payable by the claimant

Payable by the respondent

Residence

\$76,706.00

Bank accounts

\$1,856.88

Investments

\$5,643.50

Retroactive child support

\$2,776.00

Spousal support arrears

\$66,200.00

Section 211 report costs

\$6,000.00

Totals

\$153,182.38

\$6,000.00

Net payable by the claimant

\$147,182.38

[238] Therefore, the claimant is responsible for paying the respondent \$147,182.38.

Costs

[239] The parties have leave to make submissions on the issue of costs if they cannot agree. The parties will make the arrangements to address the issue of costs within 30 days following the release of these reasons for judgment.

"D.K. Hori J."

HORI J.

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