

CANADA / JUDGMENT

S.O.S. v. T.Z.

2025 BCSC 813

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 813 S.O.S. v. T.Z.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.O.S. v. T.Z.,

2025 BCSC 813

Date: 20240430

Docket: E230871

Registry: Vancouver

Between:

S.O.S.

Claimant

And

T. Z.

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraphs 61 and 62 on May 6, 2025.

Before: The Honourable Justice K. Loo

Reasons for Judgment

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Place and Date of Trial:

Vancouver, B.C.

February 10-14, 18-21. 24, 26-28, 2025; March 10-14, 2025

Place and Date of Judgment:

Vancouver, B.C.

April 30, 2025

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Introduction

- [1] The claimant, S.O.S., and the respondent, T.Z., met in the summer of 2011, and in March 2012 began to live together in Maple Ridge, in a house previously owned by S.O.S. (the "Maple Ridge property").
- [2] When the parties began their relationship, the respondent owned and operated a spa business. The claimant owned and operated an excavation business which is now called Sleeman Enterprises Ltd. ("SEL").
- [3] The Maple Ridge property has been used for business purposes by SEL, and, since 2022, it has been beneficially owned by SEL.
- [4] Soon after the parties began co-habiting, the respondent's daughter from a previous relationship, J.Z., began to live with the parties. J.Z. was born in British Columbia in February 2010 but had been living in China with the respondent's parents. When she returned to British Columbia to live with the parties, she was two years of age. She is now 15.
- [5] In March 2016, the parties had a son, J.S. He is now nine years of age.
- [6] The spa business was sold in 2017.
- [7] In 2018, the parties moved out of the Maple Ridge residence into a rental house in Coquitlam.
- [8] In November 2021, the parties purchased a house on Dansey Road in Coquitlam (the "Dansey property"). They moved into that house in March 2022.
- [9] SEL has continued to use the Maple Ridge property for business purposes. The residential premises on the Maple Ridge property are now being rented to a third party, as is a basement suite in the Dansey property.
- [10] On April 2, 2023, there was an incident that resulted in the attendance of the police at the family home. As a result of that incident, the respondent was removed from the home.

- [11] On April 6, 2023, a protection order was issued by this Court against the respondent. Although the order was varied between then and the date of trial, a revised form of the protection order was still extant when the trial began. During the trial, I vacated the main provisions of the protection order, while maintaining the interim parenting order that was incorporated in it.
- [12] Since April 22, 2023, the claimant has been primarily responsible for both children. The respondent had only supervised visits for many months. Thereafter, the respondent has had approximately six hours per week of unsupervised parenting time but no overnight visits. The respondent presently lives in West Vancouver, in a house rented from a friend.
- [13] I made an anonymization order at the end of the trial to protect the privacy of the parties and, more particularly, the children. The style of cause has been amended, and these reasons have been prepared in accordance with that order.

Issues

- [14] The issues that arise to be determined at this trial are the following:

- a) What property is family property?
- b) How should the family property be divided?
- c) Who are the guardians of each child?
- d) What parenting arrangements ought to be made?
- e) What child support should be payable?
- f) What spousal support should be payable?

- [15] I will address these issues in turn.

Credibility

- [16] Before turning to the central issues in this action, I will address the credibility of the parties. They were the primary witnesses at this trial, and their testimony occupied approximately 13 of the 15 days of evidence.
- [17] In conducting my assessment of credibility, I have considered the following summary of the law in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his

testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

[18] In my view, the testimony of both parties was problematic in different ways.

The claimant

[19] While the claimant appeared to testify in a straightforward and credible manner, his testimony was ultimately proven untrue in various respects. I will address two examples.

[20] In respect of the arrival of J.Z. in Canada, he testified that J.Z. flew from China unaccompanied and was brought by someone off the plane. He remarked during testimony how extraordinary this was, for someone who was two years old, yet his testimony on this issue turned out to be untrue. J.Z.'s passport and the respondent's passport both bear the same date -- December 3, 2022 -- showing that the respondent went to China to retrieve her and that they flew back together.

[21] A further, and probably more important, example regarding the claimant's credibility concerns the event that caused the separation of the parties. I have concluded that the claimant exaggerated, both to the police and to the Court, the magnitude of what had happened. This matter will be discussed further below, but it involved an allegation that after an argument in J.Z.'s room, the respondent threw an exercise dumbbell at the claimant and J.Z.

[22] Based on the testimony of the parties and aided by photos of the hallway in question, I have concluded that the claimant and J.Z. were almost in J.S.'s bedroom, at least 15 to 20 feet away from the respondent, by the time that the dumbbell was thrown by the respondent. The claimant entered in evidence photos of marks in a door, which, in my view, could not reasonably have been produced by a thrown dumbbell. I have concluded that the respondent threw or tossed the dumbbell in their direction in a fit of anger, but the claimant and J.Z. were already far away from where the dumbbell landed on the ground.

[23] The claimant's allegations made to the police in relation to this incident had serious consequences. They resulted in the respondent being removed from the house. For the first few months after the incident, the respondent had no contact with her children. As indicated above, she subsequently had supervised visits and eventually twice-weekly parenting time.

The respondent

- [24] The respondent was a poor witness in the sense that she was argumentative and took every opportunity to state her theory of the case rather than to answer the questions posed to her. Further, there were numerous ways in which her testimony was ultimately shown to be untrue or exaggerated.
- [25] Much of the evidence at the trial concerned the respondent's gambling activities and her time away from the home at casinos.
- [26] In the spring of 2022, there was an incident that occurred when the respondent returned to the house from being away, apparently at the casino. The claimant's sister had brought sushi to the house. When the respondent came home, she said she was going to bed. The claimant brought food to her, and she became agitated. An argument ensued, the respondent threw a glass on the floor, shattering it, and she stormed out of the house.
- [27] The claimant's sister, S.S., testified at the trial, and in my view, her evidence was generally credible and reliable. She testified in a straightforward manner, answering the questions asked of her, and was not prone to exaggeration or hyperbole. I accept her evidence regarding the incident described above, which was consistent with the evidence of the claimant.
- [28] The details of this incident are not particularly probative in themselves. This case will not turn on one instance of the respondent throwing a glass to the floor during an argument and leaving the house. However, what is of significance is that the respondent completely denied the event, saying, "There could not have been any incident of breaking a glass." She accused S.S. of "fabricating a lot of things." In my view, the fact that she denied this incident reflects poorly on her credibility.
- [29] The respondent also had a tendency to make absolute statements which were ultimately proven to be exaggerated. On one occasion, she said that before she would go to the casino in the evening, she would always make arrangements for the care of the children and that she has never been late in the morning to pick up the children. On repeated occasions, she testified that she never gambled with family money. As will be discussed below, both of these statements were ultimately shown to be untrue.
- [30] Further, she gave testimony which, in my view, was on its face unlikely to be true, in an attempt to justify her gambling activities. On one occasion, she testified that the parties were planning to buy a property -- ultimately the Dansey property -- and the claimant asked her if she had \$100,000 to contribute to its cost. The respondent testified that she said that she did not have this amount of money but that if he would give her \$12,000, she could go gamble and get \$100,000, and he agreed.

[31] This evidence was not put to the claimant on cross-examination, and under the rule in *Browne v. Dunn* (1893), 6 R. 67 (U.K.H.L.), 1893 CanLII 65, I can give it little or no weight. In any event, the evidence is clear, in my view, that the claimant did not approve of, although he tolerated, the respondent's gambling activities. It is beyond belief that the claimant was persuaded to give a \$12,000 gambling stake to the respondent in the hope that she could win \$100,000 at the casino, to be contributed towards the house purchase.

The assessment of credibility generally

[32] As a result of the foregoing issues, it will be difficult to rely on the testimony of either of the parties without corroboration. I will endeavour to make factual findings, where possible, in this case without relying solely on the credibility of either. In this regard, I will heed the words of Justice O'Halloran in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.), wherein he held:

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Property division

Identification of family property

[33] Family property and family debt are defined in s. 84 and s. 86 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Family property includes all property owned, beneficially or legally, by at least one spouse on the date of separation. Family debt includes all financial obligations incurred by a spouse during the relationship.

[34] A party claiming that certain property is excluded from family property bears the burden of proving the exclusion on a balance of probabilities with clear and cogent evidence: *Shih v. Shih*, 2017 BCCA 37 at paras. 42-43; FLA, s. 85(2).

[35] Section 85(1) of the FLA lists the types of excluded property:

Excluded property

85 (1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;
- (b) inheritances to a spouse;
- (b.1) gifts to a spouse from a third party;
- (c) a settlement or an award of damages to a spouse as compensation for injury or loss, unless the settlement or award represents compensation for
- (i) loss to both spouses, or

(ii) lost income of a spouse;

...

(g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).

[36] Even if a party proves that certain property is excluded, any appreciation of its value during the relationship is family property. Only its initial value is excluded, determined as of the later of the date the relationship began, or the property was acquired: FLA s. 84(2)(g).

[37] In this case, the primary issues relating to the division of family property involve the two residential properties -- Maple Ridge and Dansey -- and two companies owned by the claimant: SEL and Kramerica Holdings Ltd. ("Kramerica").

Commencement of the parties' relationship

[38] In order to determine the issue of excluded property, among other issues, it is necessary to determine the date upon which the parties' relationship began. This is because s. 85(1)(a) of the FLA provides that excluded property includes "property acquired by a spouse before the relationship between the spouses began."

[39] The respondent submits that the parties' relationship began in late 2011, on the basis that they were spending at least two to three nights per week and possibly "almost every night" together at the claimant's trailer, that the respondent would "regularly" prepare dinner for the claimant at the respondent's store, and that the parties had discussed, and were committed to, a lengthy relationship.

[40] In my view, however, although there are authorities that stand for the proposition that a marriage-like relationship may continue despite the parties not continuing to live under the same roof (see e.g., *Coupar v. Roh*, 2014 BCSC 1392 at paras. 67-68), it would be very uncommon for a Court to find that a marriage-like relationship commenced before co-habitation. Section 3(3) of the FLA provides that a relationship between spouses begins on the date on which they began to live together in a marriage-like relationship. In any event, in my view, the factors cited by the respondent are insufficient to establish that a marriage-like relationship existed before the parties moved into the Maple Ridge property together, in March 2012.

The two residential properties

The Maple Ridge property

- [41] As the claimant owned the Maple Ridge property prior to the commencement of the relationship, the value of the property at the time the parties entered into the relationship is excluded pursuant to s. 85(1)(a) of the FLA. An appraisal shows that it was valued on May 20, 2012 -- shortly after the co-habitation date -- at \$650,000. The outstanding mortgage at that date was \$401,495. As a result, the equity -- and the excluded value -- at the date of co-habitation was \$248,505.
- [42] When the Maple Ridge property was purchased, Kramerica was restructured. The evidence shows that the purpose of the restructuring was to permit two mortgages to be obtained -- one in the claimant's name and one in the name of Kramerica.
- [43] Kramerica became the beneficial owner of the Maple Ridge property by means of a Declaration of Bare Trust and Agency Agreement dated January 2022. As a part of the same transaction, Kramerica granted a shareholder's loan to the claimant in the amount of \$600,000. Much of that loan was used for the down payment and deposit in respect of the Dansey property.
- [44] The parties argued this case on the basis that the Maple Ridge property is owned by the parties, but that premise is incorrect. As Kramerica beneficially owns the Maple Ridge property, that property's value will be accounted for in the valuation of Kramerica. It would be duplicative to also regard the property as a family asset owned by the parties.

The Dansey property in Coquitlam

- [45] As discussed above, the parties purchased the Dansey property in November 2021. At January 24, 2024, the property was valued at \$1,900,000. There is no later appraisal, and neither party objected to the January 2024 appraisal being used. Although it would be preferable to have evidence of the property's value closer to the trial date, the appraisal as of January 2024 is the latest put before the Court.
- [46] The claimant testified that the outstanding mortgage at the date of trial is \$1,168,000. Therefore, I find that the equity in the Dansey property at the date of trial is \$732,000. This value constitutes family property to be divided between the parties.

The two companies

- [47] As both companies were owned by the claimant during the course of the relationship, they are both family property pursuant to s. 84(1)(a)(i) of the FLA.
- [48] As indicated above, SEL is the operating company in respect of an excavation business. Kramerica is the holding company that owns the business assets, including the Maple Ridge property from which the business operated.

[49] The evidence advanced by the parties at trial regarding the valuation of the claimant's business assets was, regrettably, wholly inadequate. No chartered business valuator gave evidence on behalf of either party, and the Court has been left with very little information upon which to make determinations of value, other than the financial statements of the companies. Nonetheless, the Court is required to do the best that it can, given the very limited evidence that has been led.

Sleeman Enterprises Ltd.

[50] The companies' accountant was called to give evidence, and he provided a range that he surmised might represent the value of SEL. However, he was quick to concede that he is not a chartered business valuator. Further, the claimant did not comply with the rules regarding expert evidence with respect to the accountant's testimony; therefore, his suggestion as to a potential range of value is not admissible as opinion evidence. I can give the range that he provided no weight.

[51] It is generally known that there are two ways to value a business. One is to have regard to the present value of future cash flows. The second is to determine the company's liquidation value.

[52] In this case, in my view, SEL is an operating company that produces cash flow and profits, and therefore, it ordinarily would be valued on a cash flow basis. However, the respondent seeks to attribute the entire future cash flow of SEL to the claimant as future income for the purpose of calculating spousal and child support. These support issues will be dealt with below, but it is incorrect in my view to award both a division of assets in respect of a solely owned income-generating company and what is essentially a split of that very income by means of support. In other words, it would be duplicative to award the respondent a proportion of the business which is valued on the basis of its future income while also attributing the future income of the business to the higher-earning spouse for support purposes: see e.g., *S.K.W. v. C.M.W.*, 2024 BCSC 1183 at paras. 79, 81

[53] I have considered whether any of the company's assets or liabilities ought to be valued separately from the going-concern value of the company as a whole. It is my view that any excess cash or any extraordinary liabilities that do not arise from the day-to-day income-earning activities of the company may be taken into account in the division of property between the parties in this case.

[54] On August 31, 2024, the cash held by the company totalled \$65,000. There was evidence advanced regarding the amount of working capital needed by the company, and, in my view, that amount is greater than \$65,000. Therefore, the sum of \$65,000 was not available to the claimant at the date of the latest financial statement, and it ought not to be taken into account as a family asset.

- [55] On the other hand, at the date of trial, SEL owed a corporate tax debt in the sum of \$68,000. The financial statements of SEL show that this tax debt was incurred before the separation of the parties; therefore, it is a family debt pursuant to FLA s. 86(a). See also: S.K.W. at para. 101. In my view, that sum owing ought to be taken separately into account in assessing the division of family property in this case.
- [56] To summarize, I have determined that the entire positive value of the company is subsumed in its capacity to generate income for the claimant. However, it is my view that the negative value of its tax debt, in the amount of \$68,000, shall be accounted for when dividing family property between the parties.

Kramerica

- [57] As indicated above, there was a restructuring in 2022 that resulted in Kramerica owning the beneficial interest in the Maple Ridge property and the claimant taking a \$600,000 shareholders loan from the company, much of which was used to pay the down payment on the Dansey property.
- [58] In order to value Kramerica for the purpose of property division in this case, examining its future profitability or cash flow would not be appropriate as it is a holding company. It is my view that the Court must value Kramerica primarily by having regard to the value of its only significant asset, the Maple Ridge property.
- [59] At January 24, 2024, the Maple Ridge property was valued at \$1,325,000. Again, as with the Dansey property, there is no later appraisal, and neither party objected to the January 2024 appraisal being used. The outstanding mortgage at the date of trial was \$736,000. Therefore, I find that the equity in the property at or around the date of trial was \$589,000.
- [60] Apart from inter-company loans and the shareholders loan to the claimant, which will be addressed below, Kramerica does not appear to have any significant assets or liabilities. Therefore, I find that for the purpose of the division of family property in this case, the value of Kramerica is the value of the equity in the Maple Ridge property -- \$589,000.

Family debt

- [61] As indicated, Kramerica advanced a shareholder's loan to the claimant as part of the restructuring of that company in 2022. In my view, the Court may choose to account for the loan as an asset of Kramerica (as the result of which the value of Kramerica would be increased by this amount) and as a liability of the claimant (as the result of which the value of the assets owned by him would be correspondingly reduced), or to do neither on the basis that the debt is owed by the claimant to a company wholly owned by him. For the sake of simplicity, it is my view that the latter approach is appropriate in this case. Neither party submitted or led evidence to show that this choice would make any difference to the total value of the family property to be divided among the parties.

- [62] There are significant mortgage debts owed by KramERICA and the claimant on Maple Ridge and Dansey, respectively, but these debts have been accounted for in the valuation of those properties and that company.
- [63] The only other family debt that has been proven is a debt owed by the respondent to a company called Sunshine Treasurehunt Development Ltd. ("Sunshine"). As this was a financial obligation incurred by a spouse during the course of the relationship, it is a family debt as defined in s. 86 of the FLA. While it appears that at least some of the funds borrowed from Sunshine were not used for family purposes, that consideration is to be accounted for when dividing family property and debt, not when identifying that property and debt.

Imputation of property to the respondent

- [64] The claimant spent much time during the trial seeking to persuade the Court that significant assets ought to be imputed to the respondent on the basis of non-disclosure.
- [65] He cited the well-known case of *Cunha v. Cunha*, 99 B.C.L.R. (2d) 93, 1994 CanLII 3195 (S.C.), for the proposition that non-disclosure is the "cancer of matrimonial property litigation" and that "where there has been concealment of assets, it ordinarily should be held that concealment is ongoing, that there are assets still undisclosed, and that the division of assets should be affected accordingly."
- [66] It is clear on the authorities that assets may be imputed to a non-disclosing party in the appropriate circumstances. Further, it is clear that in this case, the respondent's disclosure of her bank accounts in China has been incomplete. She testified that she was unable to access the statements online and that when she went to China, she obtained some documents and made disclosure as best she could.
- [67] The claimant argues that because the statements are incomplete, an inference should be drawn that the respondent has sizable accounts and assets in China. However, deficiencies in disclosure do not lead inevitably to an inference of hidden assets. In *Wu v. Sun*, 2011 BCCA 239, the Court of Appeal held:
- [41] I am not the first to observe that non-disclosure is the Achilles heel of family assets litigation. Strong measures are justified in discouraging it. However, one cannot make something out of nothing.
- [68] In *Wu*, the Court of Appeal cited with approval from the decision in *M.P.P. v. C.M.P.*, 2005 BCSC 1014, wherein this Court held:
- [127] I accept that Mr. C.M.P. did not meet his [disclosure] obligations in this regard, but an adverse inference is not an adequate substitute for evidence about specific assets, the ownership of those assets, whether the assets were used for a family purpose, or otherwise met the definition of family assets, or the value of the family assets, sufficient to allow for the making of a compensation order that is more than a guess.

- [69] These passages, in my view, are directly on point with this case.
- [70] A failure to disclose accounts in a foreign jurisdiction, although serious, does not lead directly to an inference that there are assets hidden in that jurisdiction. Even if such an inference could be drawn in this case, there is no evidence upon which the Court could value such assets. The Chinese bank account statements do not assist: although some of the numbers are large, the respondent testified that the accounts were "flow through" accounts. They were used to deposit funds borrowed from family and friends, and funds to be returned to those family and friends.
- [71] The same principles apply to the respondent's Canadian bank accounts. There were some statements from those accounts entered into evidence, but there is no basis upon which the Court might arrive at a dollar value that could be attributed to those accounts for the purpose of the division of property.
- [72] In respect of both the Chinese bank accounts and the Canadian bank accounts, the claimant did not even suggest any amounts to be imputed, leaving the inferences to be drawn entirely up to the Court. For the most part, the monies deposited into the accounts were roughly equal to the amounts withdrawn. There is no evidence that funds accumulated over time in any of the accounts or, indeed, that there were any funds in the accounts either at the date of separation or at the date of trial. In my view, there is insufficient evidence upon which the Court can fairly make any imputation or finding of significant assets in the respondent's accounts.

Other family property

- [73] As indicated above, the respondent was running a spa business when the parties met. It was purchased in 2011 by the respondent for \$50,000 and was sold in 2017 for the same sum.
- [74] Since the respondent brought this business into the relationship, it was an excluded asset. It had no increase in value during the relationship, and therefore, the family property associated with the spa is zero.
- [75] The only other significant family asset not dealt with above is the GMC Terrain vehicle driven by the respondent. It was sold by the respondent after separation but before trial for \$8,000.

Division of family property

Legal principles

- [76] Once the Court has determined what assets and liabilities are family property and family debt, the Court must divide that property and debt. There is a presumption under the FLA that the parties have an equal entitlement to family property and an equal responsibility for the family debts:

Equal entitlement and responsibility

81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],

- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
- (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.

[77] The Court may order unequal division of property if equal division would be significantly unfair, pursuant to s. 95(1) of the FLA. Section 95(2) enumerates factors that the Court may consider in determining whether equal division would be significantly unfair:

Unequal division by order

95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;

- (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[78] Broadly speaking, it is not this Court's task to determine whether there is significant unfairness within the meaning of s. 95 by meticulously tallying up the respective contributions of the parties. Respective contributions are not a factor set out in s. 95(2). Further, s. 81(a) expressly states that "spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution" (emphasis added).

[79] Nonetheless, the courts have recognized that in some circumstances, unequal contributions can lead to a finding that an equal division of family property would be significantly unfair. For example, in *Chang v. Chang*, 2020 BCSC 1783, the Court divided the family home 75/25 on the basis of unequal contributions that led to significant unfairness: para. 122.

[80] In *Chang*, the Court described the applicable test:

[108] To clear the high hurdle of significant unfairness, Ms. Chang must show "marked, prolonged, and intentional or unexplained disparities in contribution to family burdens": *Singh* at para. 133, citing *Khan v. Gilbert*, 2019 BCCA 80 at para. 32. Reapportionment requires "something objectively unjust, unreasonable, or unfair in some important or substantial sense": *Singh* at para. 134.

[81] Regarding the meaning of "significant unfairness" under s. 95, the decisions in *Singh v. Singh*, 2020 BCCA 21 [*Singh* 2020]; *Jaszczewska v. Kostanski*, 2016 BCCA 286; and *V.J.F. v. S.K.W.*, 2016 BCCA 186 are also of relevance.

[82] The Court in *Chang* made the following findings:

[110] In the present case, I find there is evidence of significant disparities in contribution to family burdens, such as childrearing and household duties, which are intentional and unexplained. Again, Mr. Chang agreed that Ms. Chang was responsible for the majority of those duties during their relationship.

[111] While Mr. Chang attempted to explain his lesser contribution in these areas by pointing to the long hours he worked at Greyhound, there was no explanation for the many years during the relationship when he was unemployed or working part time.

[112] In finding that there are significant disparities in contribution to family burdens, I have taken into account that Mr. Chang did make some contributions to childrearing, elder care and maintenance of family property, some of which I described earlier in these reasons.

- [113] I also considered that Mr. Chang did some work on the Family Home, such as enlarging closets, adding a fireplace mantle, updating light switches and carrying out various other tasks. However, I agree with Ms. Chang that Mr. Chang's work on the Family Home was often of poor quality and sometimes it was downright detrimental.
- [114] For example, Mr. Chang undertook a renovation of the downstairs bathroom. He demolished the shower stall but never replaced it. Mr. Chang's bathroom renovation effectively reduced the total working showers from two to one. In addition, his work on the back deck and stairs did little, if anything, to improve their safety or usability.
- [115] There is also evidence of significant disparities in the parties' financial contributions, which are intentional and unexplained. As pointed out earlier in these reasons, Mr. Chang acknowledged that Ms. Chang contributed far more towards family property and family expenses than he did.
- [116] Mr. Chang testified that he gave Ms. Chang cash, or he contributed directly to family expenses, when he had money left over or when he felt that he could afford it. I find that in addition to choosing to earn very little income, Mr. Chang decided that his earnings should go firstly and principally to cover his own personal, discretionary expenses for items such as memorabilia and spare tools, before he contributed anything to family expenses. Mr. Chang provided no reasonable explanation for his behaviour. Throughout the relationship, Mr. Chang deliberately prioritized his own spending needs above the financial needs of his family.

Application

- [83] In this case, the claimant seeks an unequal division of family property, awarding him 100% of that property. In support of his position on this issue, he cites the respondent's gambling activities, the large amounts of money which flowed into and out of her bank accounts during the course of the relationship, her dissipation of family assets, and her unequal contribution to the family finances. I will address these arguments in turn.

Gambling and bank accounts

- [84] Evidence regarding the respondent's gambling activities occupied a very substantial part of this trial. In support of his claim for unequal division, the claimant submits that the respondent spent much of her time gambling, to the detriment of her relationship with her spouse and her children, and the family's finances.
- [85] In this regard, it is apparent from the documentary record, from the claimant's testimony, and from records obtained from the B.C. Lottery Corporation ("BCLC") that the respondent gambled prolifically. In my view, the time she spent at casinos was excessive in light of her responsibilities to her family, and the amounts gambled by her were disproportionate to her family's wealth and income.

- [86] For example, the BCLC records show that in November 2022, she attended at the casino every day that month. Although this was a particularly active month at the casino for the respondent, possibly connected to the breakdown in the parties' relationship, which accelerated during this period, it was not unusual for her to spend some time at the casino during the majority of days of a month. The records show that during January 2019, she attended at casinos on 23 of 31 days. For November 2019, the records show attendance on 26 of 30 days.
- [87] Further, she often stayed at the casino for five to ten hours at a time or more, frequently until early morning hours. For example, the entries starting on November 29, 2022, show gambling activity starting at approximately 11:00 am and continuing through the day until 2:00 am the next morning, and then starting again at approximately 11:00 am on November 30, 2022. Although she denied that she had "VIP" status at the casinos or that she was a professional gambler, she gambled to such a significant extent that she would earn complementary stays at casino hotels and, on occasion, was away from her family for days at a time.
- [88] Moreover, the amounts gambled by the respondent were significant. For example, the BCLC records show more than \$5 million deposited by the respondent into slot machines during the period from January 2018 to December 2022.
- [89] The records show that approximately \$57,000 was paid out to her in cash in the course of four transactions between January 3, 2018, and January 11, 2018. In total, the amounts paid out to her in January 2018 total approximately \$104,000. The records for other months disclose figures of similar magnitude.
- [90] Another indication of the amounts that she gambled is that the respondent often purchased credits in the amount of \$9,000 for table games at the casino, which would entitle her to a table of her own.
- [91] The respondent argues that betting small amounts repeatedly can generate large total wagers. She testified that the same money cycled in and out, and therefore little can be taken from the totals. For example, if one had \$1,000 and then won and lost that amount 5,000 times, the result would be total wagers in the sum of \$5 million, even though the bettor may have never had more than \$2,000 at her disposal at any one time.
- [92] She also testified that most of the funds she used for gambling were borrowed from friends or the claimant, and that when she received payouts from the casino, most if not all of the funds were used to repay the loans. She testified that she has a circle of friends who also gamble and that money was borrowed and lent freely among them.

- [93] I accept the respondent's evidence that the figures from BCLC represent amounts that cycled back and forth between her and the casino during the course of her gambling. It is clear, in my view, that the respondent never actually possessed \$5 million or even hundreds of thousands of dollars at one time, and that where tens of thousands of dollars were paid out to her by the casino, a roughly equal amount had been paid in. Nonetheless, the totals demonstrate a very significant amount of borrowing and gambling activity.
- [94] The significant level of the respondent's gambling activity and the amounts involved are demonstrated by her multiple bank accounts and credit card accounts. She explained that she needed multiple accounts because she would otherwise be constrained by daily withdrawal limits.
- [95] The bank accounts show tens of thousands of dollars flowing in and out of her bank accounts during many months between 2018 and 2019. For example, the figures for the first five months of 2019 show roughly equal inflows and outflows of approximately \$22,000, \$48,000, \$33,000, \$34,000, and \$35,000. The credit card statements show amounts paid out by way of cash advances and then repaid. In the statement for November 2022, the cash advances taken by the respondent exceeded \$66,000.
- [96] With regard to the time she spent gambling, the respondent testified that before she would go to the casino, she would always make arrangements for the care of the children and that she was never late in the morning to pick them up.
- [97] However, as indicated above, these absolute statements are belied by the documentary record: the claimant has shown numerous occasions on which he had to ask where she was and when she was coming home, after she had spent all night at the casino or at the hotel. There are text messages showing that although the claimant would have to leave for work by 5:30 am, the respondent would not come home despite calls. On at least one occasion, the claimant was late for work, and his employees were required to go to a site visit with a client in his stead.
- [98] The respondent also sought to justify her time away from the family by arguing that she was not only gambling. It appears that the casino constituted a social life for the respondent: it is where she saw friends and ate at restaurants. She testified about doing yoga at casino hotels. Regardless of what she was doing, however, it is my view, as stated above, that she spent significant time at the casino rather than contributing to the welfare of her family. The fact that she was not necessarily actively gambling for the entire time she was at the casino does not change that finding.

Dissipation of family funds

- [99] The respondent denies dissipating the family assets by gambling, and she insisted on various occasions during her testimony that she never gambled with family money. However, it is clear that she borrowed money from the claimant on repeated occasions for the purpose of gambling.
- [100] Further, he testified that she demanded money on repeated occasions, sometimes in the order of \$10,000 or more at a time. The respondent testified that when she asked for more money between 2017 and 2019, he would not agree but conceded that after 2019, when she asked for money, he did not argue any more, "either for family expenses or gambling."
- [101] Documentary evidence was adduced showing that the claimant provided the respondent with approximately \$160,000 during the period between January 2021 and the beginning of 2023. On occasion those demands were accompanied by threats. One text message from the respondent to the claimant stated: "You don't care about anything J.S. and J.Z. We need money you get some money for us. We go no live here anymore."
- [102] The claimant's evidence is that he does not know what the respondent used the money for, and that, to his knowledge, she never used the monies for family purposes. However, it appears on the evidence that some of the funds were used for home renovations. Some of the funds were also used for groceries: she testified that she would use some of the money for groceries at places like Costco that did not accept the joint Visa card that the claimant had given her.
- [103] It is clear that the respondent deposited money borrowed from friends and money received from the claimant, at least on occasion, into the same account. She could not explain how she was able to determine whose money she was using to gamble. The documentary evidence also suggests that, from time to time, money received from the claimant was paid out immediately in order to satisfy debts to the respondent's friends.
- [104] Overall, it appears that her gambling efforts generated a net loss over the years from which there are records, but the records are unclear. No evidence was called from BCLC to explain the spreadsheets produced by them. It appears that the respondent lost a total of \$241,000 at slot machines between the beginning of 2018 and the end of 2022, but it is unclear how much, if anything, she won from table games or whether those winnings were large enough to offset her other losses.
- [105] The respondent cites *Kumar v. Nand*, 2022 BCSC 1145 and *Broda v. Morin*, 2015 SKQB 240, for the proposition that money spent on legal gambling is essentially the same as money spent on other forms of entertainment. While, in my view, that proposition is generally correct, it must be subject to moderation, and the time and amounts of money spent on gambling, like on any other pastime or diversion, must be reasonable having regard to the family's means and the person's other responsibilities.

- [106] In Kumar, the claimant, who was employed during the parties' relationship, was found to have "gambled within his means" in the sense that he only used his current income to gamble, and accumulated savings of roughly the same amount as was accumulated by his spouse during the relationship: paras. 17, 43. In Broda, the Court found that the petitioner's gambling activities did not constitute dissipation of family property within the meaning of the Saskatchewan Family Property Act, S.S. 1997 c. F-6.3, noting that she continued to contribute to her RRSPs which were divided by the Court as family property: para. 49. I find that these cases are distinguishable on the facts before me.
- [107] During argument, respondent's counsel characterized the amount of family money used for gambling as "minimum wage" amounts. As stated above, the claimant transferred approximately \$160,000 to the respondent during the last two years of their relationship. On the basis of the respondent's evidence regarding her use of the funds received from the claimant, it is likely that more than minimum wage amounts (which amount to approximately \$35,000 per year) were spent on gambling rather than for family purposes.
- [108] In my view, that money ought to have been available to the family. Further, I find that she spent significant amounts of time at the casino instead of contributing to the welfare of the family by, for example, obtaining employment. Moreover, it is my view that the monetary resources to which she had access, that allowed her to have tens of thousands of dollars cycling through her bank accounts on a regular basis, could also have been made available, at least in part, to the family's benefit.
- [109] Given these findings, it is my view that the respondent's gambling activities ought to be taken into account in determining whether an equal distribution of family property would be substantially unfair.

Other aspects of unequal contribution

- [110] Apart from the respondent's casino activities, the claimant argues that although the respondent played a large part in the care and raising of the children, she made very few contributions to the family's finances.
- [111] The claimant testified that he paid all of the family's expenses, although there is some evidence of the respondent paying off credit cards and purchasing items for the children from time to time.
- [112] The respondent repeatedly admitted, and complained, during the course of her testimony, that the claimant repeatedly told her, or asked her, to seek a job. She testified that they had arguments in relation to this issue, but that it was difficult to get a job because it was her responsibility to pick up the children from daycare and to drop them off, and that there were few jobs available which would allow her to work only from 9:00 am to 3:00 pm.

- [113] In my view, although the respondent worked for a few months for a friend as a house cleaner, she did not make much of an effort to find a job whose hours might be flexible enough to allow for her to deal with the children's care.
- [114] The respondent appeared in testimony to believe herself entitled to money from the claimant. At one point, she testified that "We were married. If he didn't give me money what kind of marriage would it be?" On another occasion, she stated: "I felt that I did way more than Sofia [one of the claimant's employees] and I did not get anything. She got a lot more than me for doing less." This assertion was nonsensical in view of the fact that Sofia worked full-time at SEL. Further, contrary to her assertion that she did not "get anything," the claimant earned income which was used to pay the mortgage on the house that she lived in and the cost of the vehicle that she drove, as well as most of the family expenses.
- [115] The respondent expressed the view that her casino winnings were neither income nor family money. Further, neither the income from the spa business nor the proceeds from its sale were used for family purposes. The claimant testified that when he asked her about the spa business, she said that it was hers and that she did not have to tell him about it.
- [116] Also relevant to the issue of unequal contribution is that, from at least mid-2022, the rental monies from both the Maple Ridge property and the basement suite at the Coquitlam property were paid to the respondent, in amounts of \$2,000 and \$2,300 per month, respectively.
- [117] Further, the claimant has continued to maintain the Maple Ridge property, the Dansey property, and the two companies without any contribution from the respondent to the household or those assets since April 2023.

The respondent's case for equal division

- [118] As indicated, the primary way in which the respondent contributed to the family was in the care and raising of the children. She was the primary caregiver, although the claimant also cared for the children, particularly when the respondent was away at the casino.
- [119] The respondent testified and adduced text messages showing that she was employed as a cleaner for approximately six months in 2020 or 2021, making approximately \$1,600 per month after deductions. She also testified and provided documentary evidence that she assisted in renovations of the Dansey property, by helping to find contractors and communicating with those who only spoke Chinese. She assisted in renting out the residential premises at the Maple Ridge property after the parties moved, and in renting the basement suite at the Dansey property, by retaining a rental agent who was her friend.

- [120] The respondent testified and advanced documentary evidence showing that she paid for family expenses and made payments against the family credit card from time to time. The respondent testified that she gave him cash from her casino winnings, but there is no corroborative evidence in this regard, and this proposition was not put to the claimant in cross-examination.
- [121] She also appears to have purchased items for the children from time to time. It appears that she purchased a Dyson hair dryer and curler for J.Z. that cost \$1800. She testified: "After 2016, he was the only one making money. But for the things he would not pay, is it wrong for me to try to make up the gap? The claimant does not agree to spend for my daughter so I have to buy things for her."
- [122] The respondent argues that the claimant ought to be denied the remedy of unequal division on the basis of a lack of "clean hands." She submits that unequal division is an equitable remedy and that a lack of clean hands ought to result in unequal division being denied. In support of this proposition, she cites the decision of *Sharifpour v. Rostami*, 2018 BCSC 681, wherein this Court held that "the claimant has not come to court with clean hands and has not demonstrated it would be substantially unfair not to divide the family property equally."
- [123] However, the Court in *Sharifpour* did not cite any authority for the proposition that unclean hands will preclude the remedy of unequal division: I note that s. 95(2) lists a number of factors that the Court may consider when determining whether to divide family property unequally, and unclean hands and the conduct of the parties in the litigation are not specifically mentioned. I am not persuaded that the Court ought generally to deny unequal division on the basis of unclean hands, but, in any event, in my view, the types of conduct alleged by the respondent -- primarily relating to the manner in which the claimant gave evidence at trial and the issues regarding her credibility that I have described above -- are insufficient to warrant the denial of unequal division in this case.

Conclusions on unequal division

- [124] In order to persuade the Court that unequal division is warranted, the claimant must establish significant unfairness, having regard to the factors set out in s. 95(2). This is a high threshold, described in the context of unequal contribution as a "marked, prolonged, and intentional or unexplained disparities in contribution to family burdens": *Singh* 2020 at para. 133, citing *Khan v. Gilbert*, 2019 BCCA 80.
- [125] I accept the respondent's submission that the law is protective of her contribution to the family, which was child-rearing. Her contribution, particularly when the children were younger, was to care for the children and to allow the claimant to work. After separation, the respondent's role in this regard had to be assumed by the claimant's mother and sister.

- [126] That said, the children attended day care when young and school thereafter. During the relationship, the claimant assumed childcare responsibilities in the evenings and weekends while the respondent was at the casino. Moreover, the claimant and members of his family had a larger role in the raising of the children as they became older. For example, as will be described below, the claimant's sister, S.S., participated in various aspects of J.Z.'s life.
- [127] In my view, the claimant has established that there should be orders for unequal division, for the following reasons.
- [128] First, I find that there were marked, prolonged, and intentional or unexplained disparities in respect of the respondent's contributions to the family as the result of her intentional unemployment and her casino activities. She refused to find a job, and I have found that the time that she spent at the casino was marked, prolonged, and excessive in comparison to her familial responsibilities. She made it clear both to the claimant and to the Court that she did not regard herself as obliged to share casino winnings with the respondent. Her attitude towards the claimant appeared to be that it was his obligation to provide for the family while her time and money was hers to do with as she wished.
- [129] Further, in relation to the e-transfers totalling \$160,000 provided by the claimant to the respondent between January 2021 and the beginning of 2023, I find that an amount exceeding \$100,000 was dissipated by the respondent. As discussed above, the respondent's evidence is that some of these funds were used for house and family related expenses, but the evidence in this regard is limited, and the few examples given are of relatively small amounts.
- [130] In my view, with regard to this dissipation, significant unfairness can be seen arising from the circumstances enumerated in s. 95(2)(g) -- the respondent "substantially reduced the value of family property" or "disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected."
- [131] For the reasons stated, although the respondent clearly made some contributions to the household, particularly in respect of raising the children, it is my view that an unequal division of the family property is appropriate.
- [132] Having concluded that unequal division is appropriate, the next step is to determine the extent of the unequal division and to apply that division to the assets in this case.

Conclusions on property division

- [133] As discussed above, the assets to be divided in this case include the value of the Dansey property (\$732,000), the value of KramERICA (\$589,000), and the negative value of the SEL tax debt (-\$68,000), which total \$1,253,000. All of these assets and liabilities will remain with the claimant, and, therefore, the respondent is entitled to a compensation payment in respect

of them. Further, the claimant is entitled to a credit for the excluded value of the Maple Ridge property, which he brought into the relationship, in the amount of \$248,505. Also, the claimant is entitled to a credit for his share of the proceeds (in the amount of \$8,000) from the sale of the respondent's GMC Terrain.

[134] Primarily due to the respondent's contributions with regard to the raising of the children, the disparity in this case is less than that described in Chang wherein this Court divided the family home 75/25. In my view, an appropriate division that would not be significantly unfair in this case is 65/35 in favour of the claimant.

[135] As a result, the claimant shall pay \$351,573 (\$1,253,000 less \$248,505 x 35%) to the respondent for her interests in the Dansey property, KramERICA, and SEL, and the respondent shall pay \$5,200 (\$8,000 x 65%) to the claimant for his interest in the proceeds of the GMC Terrain.

[136] Further, I find that the \$68,000 debt repayable to Sunshine shall be allocated 100% to the respondent. The respondent testified that for Lunar New Year, she did not have money to gift to family members and parents in China and that she borrowed this money from a friend for this purpose. She also used this money to repay borrowed monies to another friend. She testified, "I don't know whether [the claimant] agreed to this, but this is what I have done."

[137] In my view, pursuant to s. 95(2)(d), this debt was not incurred in the normal course of the relationship between the spouses and it should be the respondent's responsibility alone.

[138] In summary, the amount payable by the claimant to the respondent on account of property division totals \$346,373.

Guardianship and parenting

Legal principles

[139] The claimant is J.S.'s guardian, together with the respondent, because they are J.S.'s biological parents.

[140] However, the claimant is not J.Z.'s biological father, and he never adopted J.Z. Therefore, he is not her guardian unless an order of this Court is granted, making him so. The applicable section of the FLA is s. 51, which provides in part:

Orders respecting guardianship

51 (1) On application, a court may

(a) appoint a person as a child's guardian

- (2) An applicant under subsection (1) (a) of this section must provide evidence to the court, in accordance with the Supreme Court Family Rules or the Provincial Court Family Rules, respecting the best interests of the child as described in section 37 [best interests of child] of this Act.
- (3) Subsection (2) of this section applies regardless of whether there is consent to the application under section 219 [persons may consent to order being made].
- (4) If a child is 12 years of age or older, a court must not appoint a person other than a parent as the child's guardian without the child's written approval, unless satisfied that the appointment is in the best interests of the child.

[141] At least with regard to J.S., and with regard to J.Z. if I conclude that the claimant is her guardian, this Court must also determine the issue of parenting. Section 45(1) provides:

Orders respecting parenting arrangements

45 (1) On application by a guardian, a court may make an order respecting one or more of the following:

- (a) the allocation of parental responsibilities;
- (b) parenting time;
- (c) the implementation of an order made under this Division;
- (d) the means for resolving disputes respecting an order made under this Division.

[142] It is clear that in making an agreement or order respecting guardianship, parenting arrangements, or contact with a child, the parties and the Court must consider the best interests of the child only: FLA s. 37(1).

[143] To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered. Section 37(2) provides that those needs and circumstances include:

- a) the child's health and emotional well-being;
- b) the child's views, unless it would be inappropriate to consider them;
- c) the nature and strength of the relationships between the child and significant persons in the child's life;
- d) the history of the child's care;
- e) the child's need for stability, given the child's age and stage of development;
- f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;

- g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;
- i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[144] Further, s. 37(3) and (4) provide:

Best interests of child

37

- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[145] Section 37(4) is an important consideration in this case. There was much evidence advanced by both parties, in particular the claimant, regarding the behavior of the other. However, that behavior is relevant to guardianship and parenting issues "only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor."

Application of these principles to the facts of this case

[146] As stated above, the best interests of the children are the only basis on which decisions about guardianship and parenting can be made. Many of the considerations in s. 37(2) are relevant, and I will address them below.

History of the children's care

[147] The children were raised by both parents. While the respondent appears to have been the primary caregiver when the children were younger, the claimant and the members of his family took on a larger role as the children have grown.

[148] There was much evidence led at trial regarding the relationships between the respondent and the children, and between the claimant and the children.

- [149] It appears clear that the relationship between the respondent and the children is a close one.
- [150] The respondent and J.Z., in particular, appear to have a strong bond. That said, J.Z. is a teenager, and both parties admit to times during which she did not listen to either parent. Further, there was evidence given of numerous instances, some of which will be addressed further below, in which the respondent has shown herself to be, on occasion, subject to fits of temper or anger. It is evident that she has high expectations for J.Z., and those expectations, on occasion, have manifested in words that she now admits are inappropriate. Possibly because of the more volatile relationship between them, the respondent has at least on occasion purchased items for J.Z. which are unnecessarily expensive given the family's finances -- for example, an \$1800 Dyson hair dryer.
- [151] It appears that the respondent's relationship with J.S. is good, and much less fraught with emotion and conflict than her relationship with J.Z. There was very little evidence that either parent was ever required to discipline J.S. or that they had any negative interactions with him. It appears that on occasion, J.S. has been perceived as more popular than J.Z., among both friends and family, and this has created some conflict and resentment between the siblings, particularly on J.Z.'s part.
- [152] The relationship between the claimant and the children appears also to be close, although not necessarily in the same way as the relationship between the children and the respondent. There is no doubt that the parties have different parenting styles.
- [153] The claimant has been the only consistent father figure in J.Z.'s life since the age of two, and has lived with the claimant and the respondent for an equal amount of time. Under cross-examination, the respondent testified: "I got together with the claimant and J.Z. is my daughter. Doesn't that make the claimant family too?"
- [154] The claimant appears to relate to J.S. better than to J.Z. The Court was shown many photos of the claimant with J.S., often doing things related to the claimant's work, or construction or excavation equipment. There were few photos in evidence of the claimant together with J.Z., although it is clear on the evidence that the claimant would care for both children when the respondent was away and would pick up J.Z. from her dance class and other activities.
- [155] There is some evidence that on occasion, the claimant refused to purchase items or to pay for courses for the children that he regarded as too expensive. Although the claimant's positions regarding these expenses may well have been reasonable, they appear to have affected his relationship with the children, who view him to be parsimonious, particularly in comparison to their mother.

The nature and strength of the relationships between the child and significant persons in the child's life

- [156] Of relevance to this factor is the relationship between the children and the members of the claimant's family, in particular his sister S.S. and his mother.
- [157] S.S. testified that she and J.Z. had a close relationship. There was evidence that S.S. and J.Z. went shopping for makeup and other such things. S.S. testified that she bought a house in Maple Ridge in 2014 and that J.Z. visited her from time to time, and they had sleepovers and movie nights. Although S.S. now lives in North Vancouver, she testified that, before the separation, she would see the respondent and the children at least once per week.
- [158] S.S. testified that she attended parent-teacher conferences with the respondent, sometimes to assist with any language difficulties that the respondent might have had. She testified that she assisted with doctor's appointments and with J.Z.'s dance activities. When the respondent was not at home, S.S. assisted the claimant to prepare meals for the children, and to put them asleep when they were younger. It is conceded by the respondent that the children have had a good relationship with the claimant's mother and sister.
- [159] In my view, the evidence shows that the members of the claimant's family, particularly S.S., have been beneficial and positive factors in the lives of the children. All other things being equal, in my view, it would be in the best interests of the children for them to continue to have some role in the children's upbringing going forward. That said, that view must be reconciled with the children's own preferences and views, which will be addressed below.

The children's need for stability

- [160] In determining both parenting and guardianship issues, the Court must consider each child's need for stability, given their ages and stages of development.
- [161] In the past, the children both attended a private school called Traditional Learning Academy ("TLA"). In 2024, J.Z. began attending Centennial, a public high school in Burnaby, while J.S. continues to attend TLA. It appears that both children have friends in the Coquitlam area. Among J.S.'s friends are the sons of the tenants at the Dansey property and the children who live next door.
- [162] It is also relevant, in relation to this factor, to consider the disruption to the children's lives that would result if they were to be parented primarily or much of the time by the respondent in West Vancouver. On the other hand, those considerations are again moderated by the children's views, which are addressed below.

The ability of each party to exercise their responsibilities and the impact of any family violence on the child's safety, security or well-being

[163] Sections 37(2)(f) and (g) are important considerations in this case. The question to be addressed is whether the respondent's ability to exercise her parental responsibilities are impaired, given her gambling habits and temper. Section 37(2)(g) requires the Court to consider the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member.

[164] Section 38 sets out the following considerations with respect to assessing the impact of any family violence:

Assessing family violence

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[165] In my view, there are two broad subjects to be addressed here, both relating to the respondent's ability to parent the children. One concerns her gambling activities. The other concerns her temper, and words she has used when dealing with J.Z. -- particularly on April 2, 2023.

[166] I have addressed the issue of the respondent's gambling above in relation to the unequal division of the family property. I have found that the time that she has spent at the casino has been marked, prolonged and excessive in comparison to her familial responsibilities. The claimant testified that the children believed that it was her job to go there.

[167] It is notable that during the relationship, the claimant and his family were able to care for the children when the respondent spent long hours and nights at the casino. In her testimony, the respondent acknowledged that her casino activities would have to be confined to the times during which J.S. is with the claimant. With regard to J.Z., the

respondent's position appeared to be that she can care for herself. The respondent testified that she has the support of friends, but there was no evidence of anyone in the respondent's circle who would be able to care for J.S. on a regular basis.

- [168] As discussed above, the incident on April 2, 2023, led to the respondent's removal from the house. That weekend, the respondent had been away, apparently at the casino. She had left Friday night and did not return home until Sunday afternoon. J.Z. had homework to be done, and late in the evening, there was an argument between J.Z. and the respondent in J.Z.'s room. The respondent sought to confront J.Z. about her homework, and the claimant sought to persuade the respondent to leave the room and to go to bed. Eventually, the claimant and J.Z. left the bedroom. There was shouting from the respondent, and she threw a small dumbbell, which had been on the ground in J.Z.'s room, in their direction. The claimant called the police, and they attended at the house. After interviewing the parties and J.Z., the police officers asked the respondent to leave.
- [169] There is an audio recording of this incident, which was played during the trial. In the credibility section of these reasons, I have concluded that the claimant's report of the incident was exaggerated in that the dumbbell never posed a real physical threat to him and J.Z. That said, I cannot find that the claimant was at fault during the course of the incident. His tone and his words throughout were moderate, while the respondent's turned from initially calm to angry.
- [170] In my view, an important aspect of the April 2023 incident is the words stated by the respondent to her daughter in the course of the incident. She said, among other things: "J.Z. ruined my life, why don't she just kill herself"; and "I'll smash your brain and hammer you to death if you don't reply me." At other times during the recording, she referred to J.Z. as a "stupid kid" and a "m---f--- idiot."
- [171] In relation to these words, the respondent has offered various explanations. She contested the interpretation of her words -- some of which were said in Mandarin -- and her counsel suggested, without any expert evidence in support, that words such as these need to be viewed in their cultural context. The respondent testified that she meant that she wanted to smash her daughter's thoughts, not her head.
- [172] Of importance to this issue is the testimony of Tanya Vissia, the social worker assigned to investigate a complaint to the Ministry of Children and Family Development arising from the April 2023 incident. She concluded after her investigation that she had no concerns with the respondent's parenting skills. She conceded that the respondent's comments were inappropriate but testified that there was "nothing that would cause us concern that she would harm the children." Her view was that the words used by the respondent ought not to be taken literally. She further observed that the children had no concerns with their mother, and have said very clearly to Ms. Vissia that they feel safe with their mother.

- [173] The evidence is clear, in my view, that the respondent has said things both to the claimant and to J.Z. that are inappropriate, particularly when she was frustrated by J.Z.'s behaviour. Another example occurred in June 2022, when the respondent wrote to the claimant, referring to J.Z.: "I don't care about her, she can live as she wants. I don't have the patience to deal with her. I go to living my friend house for this summer."
- [174] The respondent ought to understand that demeaning, violent words like the ones that she used in April 2023 with J.Z. are both inappropriate and unacceptable when said to one's children. That said, the fact that J.Z. does not seem to be strongly affected by these words or dissuaded from being with her mother is of significant importance. Further, I am persuaded that there was no actual violent intent behind the words, nor are they evidence of a pattern of coercive and controlling behaviour. At the end of the day, the April 2023 incident is a factor but not a determinative one in assessing the best interests of the children. It is notable that since the April 2023 incident, the respondent has completed anger management courses.

The views of the children

- [175] As will be evident from my conclusions below, the views of the children -- in particular, J.Z. -- are a critical consideration in this case. Their views may be discerned from at least three different sources.
- [176] The most important source is a report authored by Robert Finlay under s. 211 of the FLA. Mr. Finlay, who was jointly retained by the parties, is a registered marriage and family therapist, a registered clinical counsellor, and an experienced s. 211 report writer. He interviewed both children in January 2025.
- [177] J.Z.'s views are stated clearly in the report. Among other things, she said:
- a) she liked the claimant's mother and sister before they moved in, but now living with the claimant's mother and sister "bothers and irritates me".
 - b) she was not threatened or scared by her mother's behavior on the night of April 2, 2023;
 - c) the claimant "isn't involved" with her, in that he leaves for work at 6:00 am and comes back at 5:00 pm, and "doesn't show any interest in her";
 - d) "I don't want to live with my step-dad, I want to live with my mom, permanently and full time. I don't want to see my step-dad and his family. I don't care what he thinks or whether he wants to have a relationship with me. My mom is always there for me. We can hang out and be close without even talking";
 - e) "I don't care what school I attend. I am good at making friends and I can make friends even at a new school"; and

- f) now that she is a teenager, she doesn't usually hang out with her brother. They have "drifted apart". It would be "fine" if she were living with her mom and her brother continued to go back and forth between the parties.

[178] Mr. Findlay also interviewed J.S. Among other things, J.S. told Mr. Finlay that:

- a) when asked who he most likes to spend time with, he chose his mom, his aunt (S.S.), his grandmother (the claimant's mother), and then his father;
- b) he wishes that his father would play with him more, and do more fun things with him;
- c) neither of his mother nor his father scares him; and
- d) at present, he is spending too much time with his father and too little time with his mother.

[179] The evidence of Mr. Finlay in this regard is corroborated by Ms. Vissia, and by persons who supervised parenting visits between the respondent and the children following April 2023.

[180] The evidence of Ms. Vissia has been addressed above in relation to the April 2023 incident. She testified that she does not ask children who they wish to live with, but J.Z. made it clear that she wants to live with her mother. She opined that J.Z. is presently struggling because she wants to be with her mother.

[181] Similarly, the supervisors' reports recount numerous instances in which J.Z. told her mother that she wanted to live with her and in which J.S. said that he wanted to spend more time with her.

[182] Finally, the evidence regarding J.Z.'s wishes is corroborated by the claimant. He testified that during the weekend before the trial, J.Z. accompanied the claimant on a work-related drive. The claimant testified that J.Z. said that "she did not want to throw me under the bus, but she wanted to live with mom. She wanted to keep a room at the house in case things did not work out."

Conclusions regarding guardianship and parenting

Guardianship with respect to J.Z.

[183] As stated above, s. 51(4) of the FLA states that:

Orders respecting guardianship

51

- (4) If a child is 12 years of age or older, a court must not appoint a person other than a parent as the child's guardian without the child's written approval, unless satisfied that the appointment is in the best interests of the child.

[184] Further, there is a notice requirement in s.52:

Who is entitled to notice

52 (1) Subject to subsections (2) and (3), if an application is made under this Division, the following persons must be served with notice of the application:

- (a) each parent or guardian of the child affected by the application;
 - (b) each adult person with whom the child usually lives and who generally has care of the child;
 - (c) any other person to whom the court considers it appropriate to serve with notice.
- (3) The court may grant an exemption from a requirement to give notice under subsection (1) if the court considers it appropriate.

[185] There is very little jurisprudence addressing these provisions, but they were applied by Justice Hori in *K.R.P. v. O.M.P.*, 2022 BCSC 37.

[186] In respect of the notice requirement, Justice Hori held as follows:

[35] Dealing with the issue of notice of the claimant's guardianship application to E.'s biological father pursuant to s. 52(1) of the FLA, I am granting an exemption from the notice requirement. The evidence from the respondent is that E.'s biological father has not been involved in E.'s life since his birth. The two people who have been responsible for E.'s care and upbringing have been the claimant and the respondent. Therefore, in my view, notice of this guardianship application to E.'s biological father is not necessary.

[187] In my view, this passage is directly apposite to this case. As in *K.R.P.*, J.Z.'s biological father has been absent from her life since her birth and the two parties have been responsible for her care and upbringing. I grant an exemption from the notice requirement in favour of the claimant.

[188] With regard to the merits of the guardianship application, I am also guided by the conclusions reached by Justice Hori in *K.R.P.* He held:

[37] E. is 14 years old. The claimant produced no written approval from E. approving the appointment of the claimant as his guardian.

[38] Without E.'s written approval, s. 51(4) of the FLA does not allow me to appoint the claimant as his guardian unless the appointment is in E.'s best interests.

[39] E. has expressed his views with respect to spending time with the claimant to both Family Justice Counsellors. The views expressed by E. show a level of maturity that warrants his involvement in this decision. In these circumstances, E. should have a say in whether the claimant is appointed as his guardian. Therefore, I am not satisfied that the appointment of the claimant as a guardian of E., without E.'s approval, is in his best interests.

- [189] The essence of Justice Hori's decision is that the views of the child are particularly important when the child is 14 years of age or more, and his views show a level of maturity that warrant his involvement in the decision. This proposition is supported by the decision of Justice Forth in *M.Y.T.C. v. L.H.N.*, 2018 BCSC 1174, wherein she held:
- [31] The weight given to a child's views should be in accordance with their age and maturity. If a child is forming a view in a reasonable and independent manner, then the views must be considered as a significant factor in family cases.
- [190] In this case, Mr. Finlay opined that both children were respectful and articulate and, in his view, honest in expressing their views. He opined that J.Z.'s views were "genuine and credible." There is clear evidence that both children wish to be with their mother, and that their mother's parenting is of benefit to the children, particularly J.Z., in both tangible ways (for example, by making food that they prefer) and less tangible ways (such as emotional connection).
- [191] I am cognizant of the fact that J.Z. is 15 years of age and that any order that I may make as to guardianship may be in effect for less than four years.
- [192] Further, I observe that the claimant advanced virtually no evidence regarding how it would be in the best interests of J.Z. for him to take part in the responsibilities given to a guardian under s. 40 and s. 41 of the FLA. Those responsibilities are the essence of one's appointment as a guardian.
- [193] The claimant submitted that, given the respondent's gambling activities, the safest and most stable home for J.Z. is with the claimant. However, for a 15-year-old for whom constant supervision and care is not required, it is my view that the emotional and less tangible aspects of guardianship are more important. J.Z. appears to feel more recognized and connected to the respondent, and, as stated above, J.Z. has expressed to both Mr. Finlay and Ms. Vissia that she has no concerns about her mother.
- [194] The claimant's submissions also focused on what would happen if the respondent were incapacitated. However, this Court's order will not prevent a future guardianship order being made in favour of the claimant if something were to happen to the respondent that renders her incapable of caring for J.Z.
- [195] I conclude that the guardianship application in respect of J.Z. ought to be dismissed, on the basis that J.Z.'s consent has not been obtained and the claimant has not otherwise established that it would be in J.Z.'s best interests for him to be appointed as her guardian. As stated, this conclusion shall not preclude a future application for guardianship if circumstances materially change.
- [196] Despite my dismissal of the guardianship application, it is my view that there is significant benefit to J.Z. maintaining ties with the claimant and his family. It would be unfortunate if the claimant and his family were to lose their connection with J.Z. On the other hand, the Court cannot practically compel a teenager who is 15 years old to visit her step-father. I

order that the claimant shall be entitled to have contact visits with J.Z., that he shall be entitled to seek such visits once per month, and that the respondent shall act reasonably to facilitate such contact visits, but that any visits, their duration and their timing shall be subject to J.Z.'s wishes.

Parenting with respect to J.S.

- [197] With regard to J.S., the factors in s. 37 of the FLA are also applicable but are subject to different considerations. As J.S. is nine years of age, his views are given less weight than that of a 15-year-old. In any event, J.S.'s views are less firmly stated than J.Z.'s, and J.S. appears to have a relationship with the claimant that is different and closer than that between the claimant and J.Z.
- [198] It is clear that the claimant has a home and a support system which would be safe and comfortable for J.S., and the respondent does not contest the proposition that the claimant ought to have significant parenting time. As indicated above, it is my view that the members of the claimant's family, particularly S.S., have been beneficial and positive factors in the lives of the children.
- [199] On the other hand, the respondent argues that she should have "primary custody." The respondent is presently renting a house in West Vancouver from a friend, and there appears to be more than enough room for the children to live there with her. According to the respondent, she would be able to drive the children to their present schools if she were given parenting rights. I observe that many of the issues regarding the respondent's apparent difficulties with anger management and harsh language are applicable largely to J.Z. and not to J.S.
- [200] In my view, it is in the best interests of J.S. that both parents have as much parenting time as is practical, that the parenting of J.S. ought to be shared, and that both parents should have between 45% and 55% of the parenting time of J.S.
- [201] Given the claimant's work schedule, the respondent has proposed that the claimant will parent J.S. on weekends and that she will do so during the week. However, it is unclear how this would work if she obtains a job, as she is obligated to do to support herself.
- [202] I received no alternative submissions from the respondent regarding a parenting schedule and no specific submissions from the claimant. In the absence of any specific suggestions, I order that the parenting of J.S. be subject to the following schedule, subject to agreement of the parties or further order of this Court: by the respondent between Sunday at 4:00 pm and Thursday after school; by the claimant between Thursday after school and Sunday at 4:00 pm.
- [203] In addition, the claimant shall be entitled to parent J.S. for four weeks per year, during which he will have J.S. every day. Those weeks may be, but do not have to be, consecutive.

- [204] If the respondent wishes to have an extended period with J.S. for the purposes of travel or otherwise, she will be entitled to seek that parenting time from the claimant and her request shall not be unreasonably refused. However, to the extent that the claimant misses parenting time with J.S. as the result of such requests, the claimant shall be entitled to replacement parenting time as soon as reasonably convenient to the parties and to J.S.
- [205] The claimant has sought an order regarding travel and the children's passports. Given my orders with respect to guardianship, the claimant has no entitlement to restrict J.Z.'s travel, but, in my view, there are valid issues to be considered regarding J.S. in this regard.
- [206] As the respondent has significant ties to China, where J.S.'s grandparents reside, there is some likelihood that the respondent will wish to travel there with J.S. I order that neither party may take J.S. out of the country absent express written consent of the other or an order of this Court, and that this written consent shall not be unreasonably withheld. J.S.'s passport shall be kept by the claimant unless and until it is required by the respondent and J.S. for such authorized travel.

Spousal support

Entitlement

- [207] The objectives with regard to spousal support are set out in s. 161 of the FLA:

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.

- [208] The first two objectives are commonly referred to as the compensatory grounds, and the second two as the non-compensatory grounds.

- [209] In this case, in my view, there is no entitlement to spousal support on compensatory grounds. The respondent's expertise, at the outset of the relationship, was in the field of aesthetic and spa treatments. She had a spa business at the outset and sold that business by her own choice. As I have found above, the parties clashed repeatedly over the respondent's refusal to obtain a job. Rather than seriously seeking employment, the respondent spent significant amounts of time gambling at casinos.
- [210] The non-compensatory grounds have to do with need. In order to determine whether there is a sufficient discrepancy between the parties' incomes to warrant a support order on non-compensatory grounds, it is necessary to address the issue of imputed income, in respect of both parties.

Imputation of income

Income of the claimant

- [211] Regarding the claimant's income going forward, the respondent relies on s. 18 of the Federal Child Support Guidelines, SOR/97-175 [Child Support Guidelines], which state that the court can select an amount of business income to use to determine annual income. In my view, it is clear on the authorities that similar principles apply in respect of spousal support: see e.g., *Marquez v. Zapiola*; 2013 BCCA 433 at para. 36.
- [212] The net income of SEL has varied significantly during the past five years. In 2020, the company's net income was \$362,964; in 2021, it was \$409,228; in 2022, it was \$340,196; in 2023, it was \$998,074; and in 2024, it was \$262,862. There was no clear evidence as to why the income was so high in 2023 and relatively low in 2024.
- [213] In terms of projected net income going forward, there are no clear trends, but I note that in the three years before 2023, SEL's net income was between \$340,000 and \$410,000. Based on these historical amounts, I find that the likely income of the company going forward will be in the order of \$350,000 per year.
- [214] The respondent concedes that not all of the company's income can be used to determine the claimant's annual income, in that the company requires working capital to operate. She suggests that based on historical cash figures, the working capital allowance ought to be set at \$100,000. In my view, the amount of cash in the company has, in good years, been substantially more than \$100,000. In my view, an appropriate level of working capital for the company is \$150,000.
- [215] Subtracting the working capital requirement from the projected company income, I find that the income from SEL available to the claimant will be \$200,000. This is the income upon which his future support obligations, subject to material changes in circumstances, shall be based.

[216] I note that the respondent submits that some or all of the shareholder debt taken by the claimant ought to be attributed to him as income. The companies' accountant gave evidence that if shareholders debt is not paid back within four years, the Canada Revenue Agency can treat that loan as income earned by the shareholder. However, in my view, it would be inappropriate to find at this time that any of the shareholder loans taken by the respondent ought to be attributed to him as income for the purposes of support, as there is no evidence that these loans will not be paid back. If they are ultimately not paid back in the future, it is possible (although I am making no decision in this regard) that the resulting additional income may be taken into account in determining a variation in spousal support at that time.

Income of the respondent

- [217] The respondent has not made any income of significance since 2016. As indicated above, she has an obligation to work and to provide for herself. The principles relevant to a claim for imputation of income were summarized in *Marquez*, as follows, cited with approval in *Smith v. Smith*, 2023 BCSC 991 at para. 80:
- [36] For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. However, the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding.
- [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 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.
- [218] The respondent worked for a short time doing housecleaning for a friend's company in 2020 or 2021. She testified that since April 2, 2023, she has not looked for a job because she has been preparing for this case. When asked whether she intended to obtain a job or open a business, she said that she had no current plan.
- [219] Given what appears to be a significant network of friends and contacts, and her age, skills, work history, and her apparent ability to operate a spa business, it is my view that she is capable of earning at least an average esthetician's income.

- [220] There is no clear evidence of how much income she made when she ran the spa business. I note that annual income at minimum wage (37.5 hours per week) is in the order of \$35,000. According to statistics published by online recruiting companies in British Columbia, it appears that the average salary for an esthetician is in the order of \$21 per hour or \$41,000 per year.
- [221] In the absence of any better evidence proffered by either party in this case, I conclude that the respondent's income ought to be imputed at \$41,000 per year, for the purposes of both spousal support and child support.

Conclusions regarding spousal support

- [222] No claim was made for retroactive spousal support and no such order is appropriate given that the respondent has received both her share and the claimant's share of the rental income for two years. Further, since August 2024, the claimant has been paying her \$700 per month.
- [223] As discussed above, I have found there is no entitlement to spousal support on compensatory grounds. On the non-compensatory grounds, there is a significant income disparity, which was described by this Court in *S.A.H. v. I.B.L.*, 2018 BCSC 544 at para. 144 as "the primary marker for entitlement to spousal support." That said, it appears that the respondent has wealthy friends who are willing to lend her money liberally and to provide her housing and a vehicle at significantly below market rates: she testified that she is renting a 5000-square-foot house in West Vancouver for \$3000 per month and sub-leasing a BMW vehicle from a friend for \$800 per month, even though the friend is leasing it himself for \$1200 per month.
- [224] Given these circumstances, I have concluded that spousal support shall be payable by the claimant to the respondent in accordance with the Spousal Support Advisory Guidelines based on the imputed incomes set out above, at the low end of the range.

Child support

J.S.

- [225] The issue of child support for J.S. in this case is governed by s. 147(1) of the FLA, which provides that each parent and guardian of a child has a duty to provide support for the child.
- [226] As indicated above, the incomes attributable to the parties for the purpose of child support are \$200,000 for the claimant and \$41,000 for the respondent.
- [227] The child support payable in respect of J.S. shall be calculated at the mid-range of the Child Support Guidelines utilizing those incomes. As I have found that the parenting time for J.S. shall be shared, the offset described in s. 9(a) of the Child Support Guidelines shall apply. That subsection provides:

Shared parenting time

9 If each spouse exercises not less than 40% of parenting time with a child over the course of a year, the amount of the child support order must be determined by taking into account

- (a) the amounts set out in the applicable tables for each of the spouses

J.Z.

[228] In respect of J.Z., the claimant's obligations arise from ss. 147(4) and (5) of the FLA:

Duty to provide support for child

147

- (4) A child's stepparent does not have a duty to provide support for the child unless
 - (a) the stepparent contributed to the support of the child for at least one year, and
 - (b) a proceeding for an order under this Part, against the stepparent, is started within one year after the date the stepparent last contributed to the support of the child.
- (5) If a stepparent has a duty to provide support for a child under subsection (4), the stepparent's duty
 - (a) is secondary to that of the child's parents and guardians, and
 - (b) extends only as appropriate on consideration of
 - (i) the standard of living experienced by the child during the relationship between the stepparent and the stepparent's spouse, and
 - (ii) the length of time during which the child lived with the stepparent.

[229] Further, s. 5 of the Child Support Guidelines permits a departure from those Guidelines in the case of stepchildren as follows:

Spouse in place of a parent

5 Where a spouse against whom a child support order is sought stands in the place of a parent for a child, the amount of the child support order is, in respect of that spouse, such amount as the court considers appropriate, having regard to these Guidelines and any other parent's legal duty to support the child.

[230] The claimant falls within the criteria in s. 147(4) of the FLA and "stands in the place of a parent" for J.Z. for the purposes of s. 5 of the Child Support Guidelines. In *Mancuso v. Weinrath*, 2005 BCSC 1606 at para. 21, Justice Groves interpreted this section to mean that "once the court determines that a spouse stands in the place of a parent, the court has discretion to determine how much the spouse must pay."

- [231] That discretion, however, must be exercised judicially. In Mancuso at para. 22, Justice Groves observed that the objectives set out in s. 1 of the Child Support Guidelines must be respected in that the children must continue to benefit from the financial means of both spouses after separation. In this regard, he cited with approval a passage from the decision in *Singh v. Singh*, [1997] B.C.J. No. 2195, 1997 CanLII 2971 (S.C.) [Singh 1997], wherein this Court held:
- [17] In determining what is an appropriate amount the court should consider the guideline amount and also consider the condition, means, needs and circumstances of the parties and of the children. The court may also consider the relationship between the person who stands in the place of a parent and the children including the length of that relationship, whether it continues and the extent to which the children have come to rely on that person for support.
- [232] Further, in *U.V.H. v M.W.H.*, 2008 BCCA 177, Justice Newbury held as follows in respect of s. 5 of the Child Support Guidelines:
- [41] Given the "children-first" perspective of the Guidelines (see *D.B.S.*, supra, at para. 43), primacy should be given to the children's standard of living [W]here one of the natural or adoptive parents is not present or is unable to pay any support, the stepparent may well have to pay his or her full table amount. The Legislature has left it to the judgment of trial and chambers judges in the first instance to fashion orders that are "appropriate" under s. 5. At the same time, the Guidelines system is not thereby jettisoned in favour of a wide open' discretion. The inquiry must, like the Guidelines themselves, focus on the children and their needs.
- [233] It is my view that although this Court has a discretion to depart from the Child Support Guidelines with regard to stepchildren in appropriate circumstances, the most common situation in which a departure is likely is where the second biological parent remains part of the children's life and is paying support. Where, as here, the second biological parent is not present, the inquiry, as stated by the Court of Appeal in *U.V.H.*, must "focus on the children and their needs": para. 41.
- [234] For these reasons, I have concluded that child support must be paid by the claimant in respect of J.Z.
- [235] Because the relationship between the claimant and J.Z. is not continuing in the same way that it was before (one of the criteria to which this Court ought to have regard, in accordance with *Singh 1997*), I order that child support shall be paid by the claimant at the low end of the Guideline range.
- [236] Section 7 of the Child Support Guidelines provides that certain types of special or extraordinary expenses incurred in relation to a child are to be shared between the parents of the child, in addition to the payment of child support.

[237] With respect to both children, the claimant and the respondent shall share s. 7 expenses 80/20 in proportion to their incomes. As a result of my orders above, the claimant bears financial responsibility for J.Z. without any decision-making power. Therefore, it is my view that section 7 expenses for both children must be agreed to in advance if shared payment is sought. If the parties cannot agree on s. 7 expenses then a court application may be necessary. If the reasonableness of s. 7 expenses becomes a significant and repeated issue, I suggest that the parties ought to appoint an arbitrator to settle these disputes.

Conclusions and summary of orders

[238] The claimant shall be entitled to ownership of the Dansey property and the two companies.

[239] The sum of \$346,373 shall be payable by the claimant to the respondent on account of property division.

[240] The claimant's guardianship application in respect of J.Z. is dismissed.

[241] The parenting of J.S. shall be shared as set out in these reasons.

[242] Income shall be imputed to the claimant and respondent for the purposes of child support and spousal support in the amounts of \$200,000 and \$41,000 respectively.

[243] Spousal support shall be payable by the claimant at the low end of the Spousal Support Advisory Guidelines range, subject to further order of this Court.

[244] Child support shall be payable by both parties in respect of J.S. in accordance with the offset provisions in s. 9(a) of the Child Support Guidelines at the midrange of the Guideline amounts until J.S. is no longer a child of the marriage or subject to further order of this Court.

[245] Child support shall be payable by the claimant in respect of J.Z. at the low end of the Guideline amounts until J.Z. is no longer a child of the marriage or subject to further order of this Court.

[246] Section 7 expenses shall be divided 80/20 between the claimant and respondent respectively and shall be subject to the notice and approval protocol set out in these reasons.

[247] Neither party may take J.S. out of the country absent express written consent of the other or an order of this Court, which shall not be unreasonably withheld, and J.S.'s passport shall be kept by the claimant unless and until it is required by the respondent and J.S. for such authorized travel.

Costs

[248] I have concluded that no costs of this action shall be payable by either party. I have reached this conclusion because success is divided, and because it is important not to upset the balance achieved by this Court's award on the substantive issues addressed in these reasons: see *M.N. v. C.G.F.*, 2020 BCSC 2071 at para. 7, citing *Gold v. Gold*, 82 B.C.L.R. (2d) 180 at para. 20, 1993 CanLII 1248 (C.A.). In my assessment of costs, I have also taken into account the parties' conduct as described in the credibility section of these reasons.

"The Honourable Justice Loo"

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