

CANADA / JUDGMENT

S.T.C. v. D.J.B.

2024 BCSC 2083

COURT

Supreme Court of British Columbia

DECIDED

18 November 2024

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

2024 BCSC 2083 S.T.C. v. D.J.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.T.C. v. D.J.B.,

2024 BCSC 2083

Date: 20241118

Docket: E181408

Registry: Vancouver

Between:

S.T.C. also known as S.T.B.

Claimant

And

D.J.B.

Respondent

Before: The Honourable Justice Giaschi

Reasons for Judgment

Counsel for the Claimant:

M. Rozenberg

Counsel for the Respondent:

N.L. Mills

Place and Date of Hearing:

Vancouver, B.C.

February 23 and May 21, 2024

Place and Date of Judgment:

Vancouver, B.C.

November 18, 2024

Table of Contents

Introduction.. 3

Facts. 3

Jackson J. 3

Groves J. 6

Mayer J. 7

The Applications. 11

Issues. 13

Analysis. 14

Respondent's Applications. 14

Claimants Application. 24

RRSPs. 31

Orders. 31

Introduction

[1] There are three applications before me, two by the respondent and one by the claimant. The applications are for multiple orders and largely relate to orders made by Justice Jackson on November 15, 2019 (the "Jackson Order"), after a 13-day trial, and by Justice Mayer on October 12, 2021 (the "Mayer Order") after a two-day hearing.

Facts

[2] The parties were married on August 21, 1999 and were found by Jackson J. to have separated on November 14, 2017.

[3] There are two children of the marriage; S1 born March 2005 and S2 born March 2008 (collectively, the "Children").

- [4] A notice of family claim was filed on May 21, 2018. A response and counterclaim was filed on June 12, 2018.
- [5] Between June 2018 and the commencement of the trial, various interlocutory proceedings were held and orders made. The only interlocutory order made that is of relevance is a consent order made on February 5, 2019, which, inter alia, ordered the respondent to pay child support to the claimant in the amount of \$756 per month commencing February 1, 2019.

Jackson J.

- [6] A 13-day trial was held in April and May 2019 before Jackson J.
- [7] At the conclusion of the trial, on May 3, 2019, Jackson J. reserved judgment generally but gave brief oral reasons in respect of some matters. In particular, she terminated a protection order on consent, set an interim parenting schedule, and ordered the parties to work cooperatively to remove a certificate of pending litigation on the family home. The orders made on May 3, 2019 were entered on June 28, 2019.
- [8] On November 15, 2019, Jackson J. issued her reasons for judgment which are indexed as 2019 BCSC 1967. She addressed divorce, parenting arrangements, retroactive and prospective child support, special expenses, spousal support, pension division and division of family property and debt, including the sale of the family home and distribution of the proceeds. The final order made November 15, 2019, was entered on August 20, 2020. It provided, inter alia:
- a) The claimant's gross annual income was determined to be \$101,000 and the respondent's gross annual income was imputed to be \$70,000 (preamble);
 - b) There was to be shared parenting, which was to be established over a six-month period (paras. 1-2);
 - c) The claimant was to pay \$449 per month in child support to the respondent, commencing January 1, 2020;
 - d) The respondent was to make a lump sum payment to the claimant for retroactive child support in the amount of \$8,688, which amount was to be taken into account in the property division (para.10);
 - e) Future s.7 expenses were to be shared in proportion to the respective incomes of the parties with the respondent's income being the greater of his actual income or his imputed income. If the parties were unable to agree on such expenses they were to retain a parenting coordinator to mediate the issue before applying to the court (para.11);
 - f) For as long as the Children are eligible to receive child support, the parties were to exchange their annual tax returns and notices of assessment (para. 12);

- g) The claimant was to pay lump sum spousal support to the respondent in the amount of \$3,811, which amount was to be accounted for in the property division (para. 16);
 - h) The family home was to be sold and the net proceeds equally divided subject to specified adjustments (paras. 18 and 20);
 - i) The balances in two savings accounts and two investment accounts, as at the date of separation, were to be shared equally (para. 21);
 - j) The balances in six jointly held savings and investment accounts, as at the date of separation, were to be divided equally between the parties and then closed, except for an RBC Estate account, which was to be retained by the respondent (para. 22);
 - k) The respondent was to provide the claimant with documentation showing the balances in various accounts as at separation, within 45 days;
 - l) Otherwise, the parties were to retain their respective financial accounts (para. 23);
 - m) The respondent's Telus shares were to be retained by him but he was to provide the claimant with documentation showing the value of those shares as at the date of separation and was to compensate her for one-half the value of the shares as at the date of separation (para. 25);
 - n) The parties' pensions and RRSPs were to be divided in accordance with Part 6 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] (para. 26); and
 - o) The amount of \$10,000 which was held in trust for S1 was to be placed in GIC with both parties being signatories (para. 27).
- [9] Concerning Jackson J.'s imputation of an income of \$70,000 to the respondent, this was addressed at paras. 102-108 of her reasons. At para. 103 she noted the respondent was earning approximately \$49,000 per year as a digital home technician with Telus but that he had previously earned between \$60,000 and \$80,000 per year in real estate and related banking. At para. 107 she rejected the respondent's evidence that he suffered from ongoing back and neck issues that affected the type of work he could do. She noted particularly "the absence of any medical evidence" supporting the back and neck issues. At para. 108 she found that the respondent had the ability to earn the same level of income as he did previously and that he was underemployed.
- [10] Concerning the order that the claimant was to pay \$449 per month in child support to the respondent, it is apparent from the reasons that this was premised on shared parenting. Moreover, at para. 109 of the reasons, she clarifies that the amount of \$449 per month is the set-off amount of child support. Justice Jackson actually determined that under the Federal Child Support Guidelines, SOR/97-175 [Guidelines] the claimant was to pay the respondent \$1,535 per month and the respondent was to pay the claimant \$1,086 per month. The entered order should have reflected this.

[11] Subsequent to the delivery of reasons but before the Jackson Order was entered, the claimant applied, inter alia, for clarification of the orders in respect of child support. One of the child support orders for which clarification was requested was whether the respondent owed child support for December 2019 and whether the amount was \$756 or \$1,086. At para. 15 of her reasons rendered on January 27, 2020, Jackson J. clarified that the support owed by the respondent for December 2019 was \$756.

Groves J.

[12] The parties next appeared before Justice Groves on March 26, 2021, with competing applications. The hearing was adjourned by Groves J. because the claimant had failed to properly serve her applications dated January 13 and February 11, 2021, on the respondent. He ordered, inter alia, that the applications be served by March 31, 2021.

[13] In addition to adjourning the applications and directing service of the materials, the order of Groves J. dated March 26, 2021, also provided that the Children were to be immediately enrolled in counselling at Alongside Youth Services and ordered that \$100,000 be paid to the respondent from the proceeds of the sale of the family home, which were held in trust.

Mayer J.

[14] The applications adjourned by Groves J. were heard by Mayer J. on September 13 and 14, 2021. In his reasons he addressed:

- a) whether legal counsel should be appointed for the Children;
- b) the attendance of the Children at counselling;
- c) the requirement that the parties retain a parenting coordinator;
- d) variation of the child support and special expenses orders made by Jackson J.; and
- e) what further orders were required to effect division of family property, pensions and investments.

Legal Counsel for the Children

[15] Justice Mayer determined the Children should have independent legal counsel and that there should be an updated s. 211 report, with the costs of such report to be shared and paid out of the proceeds from the sale of the family home. As a consequence of this decision, he adjourned the applications insofar as they concerned parenting time and responsibilities. As an interim measure, he suspended the shared parenting order of Jackson J. and ordered the respondent should have parenting time on Mondays and Tuesdays from after school until 8 p.m. and on Sundays from 11 a.m. until 8 p.m., all without prejudice.

Counselling

- [16] Concerning counselling, Mayer J. varied the order of Groves J. such that the Children would continue to attend counselling at Anchor Counselling and Wellness rather than Alongside Youth Services. Such counselling was to be for no less than one session per month and was to continue unless otherwise agreed by the parties or until further order of this court.

Parenting Coordinator

- [17] Concerning the retention of a parenting coordinator, Mayer J. noted in his reasons, at para. 38, that neither party had strictly complied with Jackson J.'s orders to appoint a parenting coordinator to assist them with establishing a parenting schedule, making parenting decisions or dividing s. 7 expenses. At para. 41 of his reasons, he stated that "The appointment of a parenting coordinator is required". He therefore ordered that each of the parties was to propose a list of up to three potential parenting coordinators within seven days and that, if they were unable to agree on the parenting coordinator within an additional seven days, the claimant was to appoint a parenting coordinator of her choice. All other terms of the final order with respect to appointment of a parenting coordinator were to remain in place.

Child Support

- [18] Concerning child support, Mayer J. found there had been a material change in circumstances justifying a variation of the support orders. The material change in circumstances was that the Children had, in fact, resided primarily with the claimant despite Jackson J. having ordered shared parenting time. He was unable to determine whether this was because the respondent was unable or unwilling to exercise shared parenting.
- [51] In any case, I am satisfied that there has been a material change in circumstances, which the parties did not anticipate at the time that the final order was made being the inability or unwillingness of D.J.B. to exercise parenting time on a 50-50% basis, which right was ordered in the Final Order to commence some time around June of 2020.
- [19] At para. 55, Mayer J. held "it would be grossly unfair to require S.T.C. to pay retroactive child support or to continue to pay child support to D.J.B.". There were two consequences that flowed this determination:
- First, the arrears of child support owing by the claimant from April 1, 2020, were cancelled. [The arrears for the period from January to March 2020, were not cancelled on the basis that the parties were then expecting to transition to a 50-50 parenting schedule.]; and
 - Second, the respondent was ordered to pay retroactive child support to the claimant from the time of effective notice of the claim for support, which he assumed was February 1, 2021, the day after the claimant's notice of application was filed.

- [20] At para. 58 of his reasons, Mayer J. briefly addressed the incomes of the parties, the amount of child support payable, and the requirements for future variation applications.
- [58] I order that D.B.S. pay retroactive child support (based on the guideline income determined by Jackson J. of \$70,000) commencing February 1, 2021 and every month thereafter in the amount of \$1,080 so long as the children remain children of the marriage. Again, this order is an interim order and without prejudice to the parties' ability to apply for a further variance, subject to a material change in circumstance, at the earlier of the hearing of an application vary the parenting time order set out in the Final Order, or if such an application is not brought, after January 31, 2022.
- [21] Paragraph 9(i) of the Mayer Order provided:
- i. The Respondent shall pay to the Claimant retroactive child support, on an interim basis, in the amount of \$1,080.00 per month, commencing February 1, 2021 and continuing on the 1st of each and every month thereafter so long as the Children remain children of the marriage. Either party is at liberty to set down a further application to further vary the provisions of the Final Order as it relates to child support, subject to a material change in circumstances, at the earlier of:
 - 1) the hearing of the adjourned applications referred to in paragraphs 1 and 2 above; or
 - 2) after January 31, 2022.
- [22] Paragraph 9(j) of the Mayer Order provided:
- j. The retroactive child support payable by the Respondent [for] December 1, 2019 in the amount of \$1,086.00 and for February 1, 2021 to and including October 1, 2021 in the amount of \$9,720.00, shall be paid adjusted [sic] when the funds in trust are paid out.

Special Expenses

- [23] Justice Mayer addressed special expenses at para. 59 of his reasons. He noted that Jackson J. had ordered the parties to engage a parenting coordinator to assist with such disputes before bringing a court application. He declined to make a ruling on the special expenses on the grounds that this pre-condition had not occurred.
- [24] Paragraph 10 of the Mayer Order specifically provided:

The application of the Claimant for payment of s. 7 expenses is adjourned. The Claimant is at liberty to apply for payment of s. 7 expenses if, after appointing a parenting coordinator, the parties are unable to reach a consensus on s. 7 expenses.

Family Property

- [25] Justice Mayer then addressed how the proceeds from the sale of the family home should be distributed. He noted the net sales proceeds of \$246,226.70 had been placed in trust, that Jackson J. had ordered the proceeds to be divided equally subject to various adjustments, that \$100,000 had been paid out to the respondent pursuant to the order of Groves J., and that \$47,618.87 had been paid out to the claimant. The amount then remaining in trust was \$106,265.24.
- [26] Justice Mayer addressed various adjustments that were disputed by the parties. I do not intend to review these in details.
- [27] In relation to housing costs, occupation rent, retroactive child support, lump sum spousal support, chattels and court costs ordered Mayer J. determined that the claimant was entitled to adjustments of \$29,069 in her favour and the respondent was entitled to adjustments of \$21,561 in his favour. (paras. 82-83 of the reasons) The net result was that the claimant was entitled to an adjustment of \$7,508 in her favour.
- [28] In relation to shares held by the parties and an amount withdrawn by the claimant from an RRSP, it was determined that the respondent was entitled to an adjustment of \$5,576.43 in his favour.
- [29] Ultimately, when all adjustments were taken into account, it was determined that the entire remaining proceeds of \$106,265.24 were for the claimant and that the respondent owed the claimant an additional \$7,657.41.

Pensions

- [30] In relation to the parties' pensions, it was determined that these were to be divided equally between the parties under Part 6 of the FLA, with the applicable division dates being August 21, 1999, the date of the marriage, and November 14, 2017, the date of separation.

Costs

- [31] In respect of the costs of the applications before him, Mayer J. gave the parties liberty to speak to the costs after the issuance of his reasons for judgment.

The Applications

- [32] The respondent has filed two notices of application. In his application filed November 6, 2023, the respondent seeks seven substantive orders, three of which are for, or relate to, variations or corrections of the Mayer Order (a, b and c below), and four of which are enforcement orders (d through g below). The orders requested are:

- a) A variation of the Mayer Order in respect of child support, retroactive to January 31, 2022, such that child support is payable based on the respondent's actual Guideline income (as opposed to imputed income);
 - b) A "correction" to the Mayer Order pursuant to Rule 15-1(18) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR] such that retroactive child support is calculated from April 1, 2021, the date the respondent allegedly received notice of the application for retroactive child support;
 - c) Cancellation of the arrears of child support as calculated by the BC Family Maintenance Agency ("BCFMA") for the period from January 31, 2022 to November 1, 2023;
 - d) The claimant does "everything reasonably necessary" to give effect to the Jackson Order and Mayer Order with respect to the division of the claimant's pension and registered accounts;
 - e) The claimant provide copies of her income tax returns for the years 2020 to 2022, as ordered by Jackson J.;
 - f) The claimant pay an amount not exceeding \$5,000, pursuant to s. 213 of the FLA, for non-disclosure of information;
 - g) The claimant pay an amount not exceeding \$5,000, pursuant to s. 230 of the FLA, for failure to comply with the orders of Jackson J. and Mayer J.
- [33] In his notice of application filed November 27, 2023, the respondent seeks eight orders as follows:
- a) The claimant pay the respondent \$1,200, being her share of the cost of a s. 211 report;
 - b) The claimant pay an amount not exceeding \$5,000, pursuant to s. 230 of the FLA, for failure to comply with the Mayer Order;
 - c) Paragraph 9(c) of the Mayer Order be varied such that the retroactive child support for the month of December 2019 is \$756;
 - d) Paragraph 12 of the Mayer Order be corrected such that the net proceeds from the sale of the family home are allocated \$102,034.24 to the claimant and \$3,417.41 to the respondent;
 - e) Paragraph 12 of the Mayer Order be corrected to require the claimant to pay \$813.59;
 - f) The retroactive child support amounts for December 2019 (\$1,080), and April 1, 2021 to October 1, 2021(\$9,720), as set out in para. 82 of the reasons for judgment of Mayer J., be cancelled;
 - g) The claimant does "everything reasonably necessary" to give effect to the Jackson Order and Mayer Order with respect to the division of the claimant's pension and registered accounts; and

- h) The claimant pay an amount not exceeding \$5,000, pursuant to s. 230 of the FLA, for failure to comply with the orders of Jackson J. and Mayer J.
- [34] I note that the respondent's two applications were filed less than one month apart and relate to generally the same subject matter and even request, in part, the same orders. This is a practice to be highly discouraged.
- [35] The claimant's application filed November 30, 2023, requests the following orders:
- a) Further to para. 16 of the Mayer Order, an order for the costs of the two-day hearing before Mayer J.;
 - b) Further to para. 10 of the Mayer Order, that the respondent pay his proportionate share of s. 7 expenses including university tuition for S1 and soccer, band and choir expenses for S2;
 - c) Judgment against the respondent in the amount of \$7,657.41 as per para. 12 of the Mayer Order;
 - d) A stay of the order that the claimant divide her pension with the respondent until the respondent has paid various amounts owing to her and has provided various documents;
 - e) That \$10,000 held in trust for S1 by Oreck Karby, Barristers and Solicitors be paid to S1, a child of the marriage; and
 - f) That the respondent produce various documents.

Issues

- [36] As is apparent from the multiplicity of orders requested, the issues are many and varied. I will address the non-enforcement orders requested in the respondent's two applications first then I will address the non-enforcement orders requested in the claimant's application and, finally, I will address the enforcement orders sought in all three applications.

Analysis

Respondent's Applications

Variation of Child Support from January 31, 2022

- [37] The respondent requests a variation of para. 9(i) of the Mayer Order which required him to pay child support commencing February 1, 2021 in the amount of \$1,080 per month, which amount was based on an imputed income of \$70,000.
- [38] Section 152 of the FLA addresses changes in child support orders. It provides:
- 152(1) On application, a court may change, suspend or terminate an order respecting child support, and may do so prospectively or retroactively.

- (2) Before making an order under subsection (1), the court must be satisfied that at least one of the following exists, and take it into consideration:
- (a) a change in circumstances, as provided for in the child support guidelines, has occurred since the order respecting child support was made;
 - (b) evidence of a substantial nature that was not available during the previous hearing has become available;
 - (c) evidence of a lack of financial disclosure by a party was discovered after the last order was made.
- [39] The respondent relies on s. 152(2)(a). He submits that there has been a material change in circumstances justifying a variation of para. 9(i) of the Mayer Order. More particularly, the respondent submits that he suffers from chronic pain and lateral epicondylitis, or tennis elbow, as a result of a fall at work. He relies on correspondence dated October 11, 2022 from Worksafe BC where it stated that his chronic pain and lateral epicondylitis are permanent conditions and a letter from Dr. Farhad O. Moola dated September 8, 2022. The respondent submits that due to restrictions on his ability to work, he has not been able to earn the \$70,000 income imputed to him. He submits that his support obligations should be based on his actual income.
- [40] The claimant disputes the respondent's medical condition. She submits there is a lack of medical evidence as to his injury or that it affects his ability to work. She says that despite the alleged injury, the respondent is an active golfer and cyclist. She further submits that the alleged work injury occurred in February 2021 but was not brought up before Mayer J.
- [41] The respondent addresses his injury and his ability to work at paras. 8-21 of his affidavit made November 3, 2023. In summary, he deposes:
- a) He suffers from chronic pain and lateral epicondylitis;
 - b) The chronic pain is a result of a workplace injury on February 10, 2021 when he fell down a stairway;
 - c) As a consequence, he was off work for approximately three weeks and, upon his return to work, was put on light duties;
 - d) He has constant pain in his right arm, no feeling in his bottom three fingers and limited feeling in the rest of his hand. He has issues with gripping anything;
 - e) While he is able to work full-time, he must only perform modified duties. He is unable to do tasks that require sustained or repetitive gripping and manipulation with the right hand. He is not able to do activities that require prolonged or repetitive use of a keyboard or mouse;
 - f) He has not worked since October 15, 2022, and is currently on a vocational training program with Worksafe BC;

- g) His Worksafe BC employment benefits expire on November 12, 2023; and
- h) His income was \$53,113.67 in 2020, \$54,032 in 2021, and \$46,314 in 2022.

[42] A letter from Dr. Farhad O. Moola dated September 8, 2022, is attached to the respondent's affidavit. The letter confirms the respondent has problems with the right elbow and forearm. Dr. Moola notes:

Presently, medication is not required for pain management.

Employment status is at work full time on modified duties.

The present level of recovery is estimated to be 70 percent. Function of the arm is estimated to be 75 percent of normal.

[43] A letter from Worksafe BC dated October 11, 2022, is also attached to the respondent's affidavit. This letter notes the date of the injury as February 10, 2021 and states that the respondent's claim for right lateral epicondylitis and chronic pain right elbow has been accepted as a "permanent condition". The letter further set out the work limitations as follows:

- Able to work 8 hours per day, 5 days per week with one "light" day at work per week where limited to no tool use is involved
- Able to manual handle tools on an occasional - frequent basis
- Able to do tasks that do not require sustained or repetitive gripping and manipulation with the right hand on more than an occasional basis
- Able to do tasks that do not require sustained or repetitive gripping and manipulation with the right hand on more than an occasional basis.
- Able to engage in activities that do not require prolonged or repetitive use of the keyboard and/or mouse.

[44] The claimant deposes in her November 30, 2023 affidavit that:

- a) After the respondent's workplace accident he worked from home doing customer support;
- b) On numerous occasions over the last 18 months she has observed the respondent at Tsawwassen Springs Golf Club teeing off; and
- c) During 2023 the respondent, who was an active road cyclist throughout the marriage, continued to participate in this activity.

[45] The claimant attaches to her affidavit documentation from the golf club that shows the respondent participated in multiple golf tournaments in 2023. She also attaches cycling race results that illustrate the respondent participated in at least one 50km cycling race in 2023.

- [46] Considering all of the evidence, I am not satisfied that the respondent has shown a material change in circumstances that justifies a variation in his child support payments.
- [47] Although I accept that the respondent suffered a fall down stairs in February 2021, I do not accept that the fall has had a material and ongoing impact on his ability to earn income.
- [48] First, the evidence submitted by the respondent of his injury and its impacts is far from sufficient. There is minimal detail in the letter from Dr. Moola. Specifically, he does not confirm a diagnosis of chronic pain or lateral epicondylitis, he does not state any restrictions on the activities the respondent can perform, and he does not state anything about the prognosis for the injury. The documentation from WorkSafe BC merely confirms that there are some limitations on the type of work the respondent can perform. It otherwise states the respondent is capable of working a full work week with one day of light duty.
- [49] Moreover, the letter from Dr. Moola and the WorkSafeBC documents are dated 14 months and 13 months before the notice of application was filed. They are not current and do not reflect the current status of the respondent's injury or of his ability to work.
- [50] I have not overlooked the respondent's evidence where he deposes he was told by Dr. Moola that he will continue to have significant deterioration in his right arm for the rest of his life. I do not accept this evidence as it is hearsay and is not supported by the actual contents of the letter from Dr. Moola.
- [51] Second, I do not accept the respondent's evidence of the effect of the injuries on him and his ability to work. The claimant's evidence has established that the respondent was able to participate in several golf tournaments and in a 50km bike race in 2023. This evidence, particularly the evidence of golfing, contradicts the respondent's evidence that he has issues with gripping anything and is unable to do tasks that require sustained or repetitive gripping and manipulation with the right hand. I find that the respondent has embellished his evidence concerning the effects of the injuries.
- [52] Third, the reason Jackson J. imputed an income to the respondent was that he had the capacity to earn the level of income he previously did in the real estate and real estate-related banking industries. There is no evidence whatsoever before me of the respondent having taken any steps to secure employment in those industries. Indeed, there is minimal evidence that he has taken any steps to secure employment.
- [53] Therefore, I conclude that there has not been a material change in circumstances justifying a variation of para. 9(i) of the Mayer Order. It follows that the respondent shall continue to be required to pay child support to the respondent in the amount of \$1,080 per month.

Correction to Para. 9(i) of the Mayer Order - Commencement Date for Retroactive Support

- [54] Paragraph 9(i) of the Mayer Order provides that the respondent shall pay retroactive child support, on an interim basis, in the amount of \$1,080 per month, commencing February 1, 2021. The respondent submits that the commencement date should be corrected, pursuant to Rule 15-1(18). More specifically, the respondent submits that the date of February 1, 2021 was chosen by Mayer J. based on an assumption that the claimant's notice of application was served the day after it was filed. The respondent says that, in fact, the notice of application was not served until after March 26, 2021, and therefore the commencement date should be April 1, 2021.
- [55] I agree with the respondent that the commencement date is based on an assumption, which Mayer J. specifically recognized. I further agree that it seems apparent from the reasons of Groves J. that the claimant's notice of application was not formally served on the respondent on February 1, 2021 and, in fact, had not been formally served as of March 26, 2021, the date the parties appeared by telephone before Groves J. However, I do not agree that this means the date of effective notice was April 1, 2021 nor does it mean that I have jurisdiction to correct or change the date.
- [56] Rule 15-1(18), the slip rule, provides for the correction of clerical mistakes in an order as follows:
- (18) The court may at any time correct a clerical mistake in an order or an error arising in an order from an accidental slip or omission, or may amend an order to provide for any matter that should have been but was not adjudicated on.
- [57] The slip rule is one of several exceptions to the doctrine of *functus officio*, which provides that a court generally loses jurisdiction once an order has been entered. The doctrine and the exceptions were addressed by Justice Gropper in *Morriss v. Cuttler*, 2013 BCSC 96. At para. 27, she observed that the slip rule was meant to largely address numerical mistakes.
- [27] The case law affirms the changes that are made under this rule are largely numerical mistakes, mistakes in the form of the order or omissions...
- [58] After reviewing the authorities, Gropper J. summarized the various exceptions to the *functus officio* doctrine, including the slip rule, at paras. 35-38.
- [35] In summary then, a court enjoys residual discretion after a matter is *functus* to amend or vary an order pursuant to R. 13-1(17) (limited to clerical errors and omissions). The order may also be amended or varied if it does not reflect the manifest intention of the court.
- [36] The court also enjoys the power to make supplementary orders if it has so reserved in order to assist the parties in working out the order. It may only amend the original order if there is a provision reserving jurisdiction for the court and it is proved that there has been a change of circumstances.

- [37] Additionally, if a judgment was obtained by fraud, abuse of process, or consent on a ground that would invalidate a compromise or if fresh evidence was discovered after the final judgment was delivered, the judgement may be set aside. This inherent jurisdiction has no application to the circumstances of this case because it is not alleged that fraud gave rise to the obtained decision.
- [38] All in all, the authorities suggest these exceptions to functus are narrow.
- [59] In my opinion, the change the respondent is requesting does not come within the slip rule. It is not a clerical mistake but is rather a determination made by Mayer J. based on inferences drawn from the evidence before him. If the respondent did not agree with the commencement date, he had the right to appeal the decision, which he did not do. The respondent is effectively requesting that I change the Mayer Order based on evidence that was either not before Mayer J. or was not properly explained by the respondent. It was the obligation of the respondent to put this evidence before Mayer J. and to make proper submissions about the effect of the evidence.
- [60] I also observe that the respondent has not led any evidence of when he received effective notice of the claimant's intent to pursue an order for retroactive support. The respondent merely says he was not formally served with the notice of application until late March 2021. However, it is the date of effective notice that is relevant and it is clear that the respondent had notice before he was formally served since he appeared at the hearing before Groves J.
- [61] Accordingly, I decline to change para. 9(i) of the Mayer Order.

Correction to Para. 9(c) of the Mayer Order - December 2019 Child Support

- [62] The respondent requests a variation of para. 9(c) of the Mayer Order where it was ordered that the respondent pay child support of \$1,080 for the month of December 2019.
- [63] Paragraph 9(c) of the Mayer Order is derived from para. 45 of Mayer J.'s reasons. Justice Mayer wrote, "D.J.B. agrees that retroactive child support should be paid by him for the month of December 2019 in the amount of \$1,080."
- [64] The respondent submits that the amount he agreed was payable for the month of December 2019 was \$756, not \$1,080. In support of this submission, he refers me to the consent order dated February 5, 2019, wherein the amount was set at \$756 and to para. 15 of the reasons of Jackson J. dated January 27, 2020, wherein she confirms the support payable for December 2019 is \$756.
- [65] The respondent again relies on Rule 15-1(18) as authority for the requested change. However, I again conclude that this rule is not applicable. This is not a clerical mistake or omission. Justice Mayer found as a fact that the respondent had agreed to this amount. If the respondent disagreed with that finding, his remedy was to appeal the Mayer Order. I cannot revisit a finding of fact under Rule 15-1(18).

Correction to Para. 12 of the Mayer Order - Division of Sales Proceeds

- [66] As noted, para. 12 of the Mayer Order provides that the entirety of the remaining proceeds from the sale of the family home, \$106,265.24 were payable to the claimant and that the respondent owed the claimant an additional \$7,657.41.
- [67] The respondent requests a variation of this order and says the apportionment should be \$102,034.24 to the claimant and \$3,417.41 to the respondent. He further says when the adjustments are taken into account, the claimant owes him \$813.59.
- [68] The respondent makes adjustments to the table at para. 82 of Mayer J.'s reasons. However, the adjustments are based on the assumption that the corrections he has requested to paras. 9(c) and 9(i) of the Mayer Order are allowed. As those corrections have been rejected, there is no basis for correcting para. 12 of the Mayer Order on this grounds.
- [69] However, the parties are agreed that there was a minor math error in Mayer J.'s calculation at para. 87 of his reasons. He calculated the amount to be paid to the claimant from the funds in trust to be \$106,265.24 but the actual amount should be \$104,515.24. As a consequence, the amount payable by the respondent to the claimant should be \$5,907.41 rather than \$7,657.41. This was an addition error that clearly comes within Rule 15-1(18).
- [70] I therefore order that para. 12(b) of the Mayer Order is to be corrected by substituting \$5,907.41 for \$7,657.41.

Cancellation of Arrears

- [71] The respondent requests orders cancelling the arrears of child support in respect of the \$1,080 owing for December 2019, the \$9,720 owing for February 1, 2021 to October 1, 2021, and for the period from January 31, 2022. The orders requested were premised on there being a variation or corrections to paras. 9(c) and 9(i) of the Mayer Order. As I have declined to vary or correct those orders, it follows that the request for cancellation of the arrears is also dismissed.
- [72] I note that the parties agree that BCFMA made a mistake in calculating the arrears owed by the respondent. The mistake relates to the retroactive support calculated by Mayer J. to be owing in the amount of \$9,720. This amount was taken into account in the division of the proceeds from the sale of the family home but, BCFMA apparently also included it as an amount owing by the respondent. I was advised at the hearing that this mistake has been corrected by BCFMA. I presume therefore that no order is necessary to address this. If I am wrong in this, and if the parties can agree, they may insert the appropriate order when they draft the order following receipt of these reasons. If they cannot agree, they may speak to me.

Section 211 Report Costs

- [73] Pursuant to para. 1 of the Mayer Order, the respondent requests an order that the claimant pay him \$1,200, being her share of the cost of a s. 211 report prepared by Dr. Elterman.
- [74] The evidence before me establishes that the total cost of the Elterman report was \$8,400. \$6,000 of this amount was paid in advance by the parties. Upon completion of the report, a further \$2,400 was owing which was paid by the respondent. Pursuant to para. 1 of the Mayer Order, the claimant's 50 percent share of the additional amount is \$1,200.
- [75] The claimant does not oppose paying her share of the Elterman report but deposes that she paid \$450 to copy pleadings and documents for Dr. Elterman. She submits that the respondent should be responsible for half of this amount.
- [76] I do not accept the claimant's evidence that she paid \$450 to copy pleadings and documents for Dr. Elterman as she has provided no invoices or other proof of the amount. Accordingly, I decline to make the adjustment she requests.
- [77] The claimant is required to pay the \$1,200 sought by the respondent. However, this amount may be set-off against the amounts owing to the claimant by the respondent and BCFMA must be advised of this by the respondent.

Enforcement Orders

- [78] The respondent requests multiple and duplicative orders against the claimant under ss. 213 and 230 of the FLA.
- [79] I decline to make any of the orders requested.
- [80] The s. 213 order is requested on the basis that the claimant failed to provide her tax returns as ordered by Jackson J. However, those returns have now been provided and it is not apparent on the evidence that the respondent or his counsel ever made a request that the claimant provide the requested returns. The respondent baldly deposes that he made repeated requests for her income tax returns but he provides no supporting evidence and I do not accept his bald assertion. Moreover, although the order of Jackson J. remains extant, it has no purpose so long as the Children reside primarily with the claimant. In these circumstances, the claimant's income is irrelevant to the child support calculations and the respondent was not "affected by the non-disclosure".
- [81] Concerning the respondent's request for an order under s. 230 of the FLA, this seems to be primarily in relation to the division of the parties' pensions and the claimant's refusal to proceed with the ordered pension division. If this stood alone, I might have considered imposing a fine under s. 230, however, it does not stand alone. It is apparent that both parties observe or ignore court orders as they please. The respondent has failed to comply with the support orders made, as evidenced by the arrears owed. In addition, neither party has followed the process ordered by Mayer J. to appoint a parenting coordinator.

[82] In the circumstances, I decline to exercise my discretion under s. 230.

Claimants Application

Costs of the Hearing before Mayer J.

[83] At the hearing before me, it was agreed between the parties that the request for an order of the costs of the hearing before Mayer J. should be adjourned and set down before Mayer J. Accordingly, I do not address this aspect of the claimant's application except to say that this should have occurred long, long ago.

Special Expenses

[84] The claimant requests an order that the respondent pay his share of special expenses including specifically university tuition for S1 and soccer, band and choir expenses for S2.

[85] I decline to address this aspect of the claimant's application.

[86] Paragraph 11 of the Jackson Order specifically provided how special expenses were to be shared and further provided that, if the parties were unable to agree on such expenses they were to retain a parenting coordinator to mediate the issue before applying to the court.

[87] Despite the clear condition in the Jackson Order, the claimant sought an order before Mayer J. for special expenses. He declined to make an order on the grounds that the pre-condition had not been met.

[88] The parties have still not appointed a parenting coordinator. The claimant deposes that she sent the respondent an email advising that she wanted a parenting coordinator and she deposes that the respondent refused to cooperate with appointing a parent coordinator. I observe that the email she relies on does not specifically request that the respondent cooperate in appointing a parenting coordinator. In any event, Mayer J. expressly provided a process for the appointment of a parenting coordinator. He ordered that each of the parties was to propose a list of up to three potential parenting coordinators within seven days and that, if they were unable to agree on the parenting coordinator within an additional seven days, the claimant was to appoint a parenting coordinator of her choice. The parties have completely ignored this part of his order, the purpose of which was to ensure a parenting coordinator was appointed to assist the parties with special expenses among other items.

[89] The claimant's application for special expenses remains premature because she has not complied with the pre-condition set by Jackson J. I therefore make no orders concerning special expenses.

Judgment for \$7,657,41

- [90] The claimant had requested judgment against the respondent in the amount of \$7,657.41 based on para. 12 of the Mayer Order where he ordered that if there were insufficient funds remaining in trust to pay the amount due to the claimant, then she would be entitled to judgment for the shortfall.
- [91] The respondent does not deny that there was a shortfall or that the claimant is entitled to judgment, rather he says the amount is subject to the adjustments he has requested in his notices of application.
- [92] Given that I have made no adjustments to the amounts ordered by Mayer J., the claimant is entitled to judgment against the respondent for the shortfall. Given the addition error of Mayer J., the shortfall is \$5,907.41. Judgment shall issue for this amount.

Stay of Pension Division

- [93] The claimant requests an order staying the division of the parties' pensions as ordered by both Jackson J. and Mayer J. More specifically, she requests that pension division be stayed until such time as the respondent has paid various amounts she alleges are owing by him and until he has provided various documents she has requested.
- [94] The claimant relies on Rules 15-4 (31) and (33) in support of her claim for a stay order. These sub-rules provide:

Stay of execution

- (31) The court may, at or after the time of making an order,
- (a) stay the execution of the order until such time as it thinks fit, or
- (b) provide that an order for the payment of money be payable by instalments.

Application for relief

- (33) Without limiting subrule (31), a party against whom an order has been made may apply to the court for a stay of execution or other relief on grounds with respect to which the supporting facts arose too late for them to be pleaded, and the court may give relief it considers will further the object of these Supreme Court Family Rules.
- [95] The claimant has provided no authorities in support of her submission that the pension division should be stayed. She merely deposes and submits that there should be a stay until she is paid the amounts she is owed.

- [96] In *Concord Pacific Acquisitions Inc. v. Oei*, 2020 BCSC 832 [Concord Pacific], Justice Voith (as he then was) extensively reviewed the authorities concerning the test to be applied in determining whether a stay of execution should issue. He identified several different approaches in the jurisprudence and attempted to reconcile them. He concluded at para. 61 as follows:
- [61] Accordingly, I consider that *Metropolitan Stores, RJR-MacDonald* and the First Group of Cases dictate the legal framework that governs applications for a stay of execution that are brought under the Rules. That framework, in most instances, contemplates a reasonably cursory assessment of the merits of an applicant's counterclaim or cross-claim. I say "in most cases" because even in the interlocutory injunction context, there are some exceptions to this. Once an applicant has established a "serious question" or an "arguable case", it will be necessary for the court to consider the question of irreparable harm and the myriad other factors, many of which I have identified, that can inform the balance of convenience.
- [97] Justice Voith summarized the *Metropolitan Stores, RJR-MacDonald* framework at paras. 34-35:
- [34] A number of decisions of this Court have looked to and relied on the general legal framework found in *Manitoba (A.G.) v. Metropolitan Stores Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 S.C.R. 110 and in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311 when dealing with an application for a stay of execution. Thus, in *Coolbreeze Ranch Ltd. v. Morgan Creek Tropicals*, 2009 BCSC 151, Justice Pitfield said:
- [64] The possibility of a stay of execution on a Rule 18A application is specifically contemplated by Rule 18A(11)(b), which empowers the court to impose terms respecting enforcement of the judgment, including a stay of execution, as it thinks just. Quite apart from that rule, the court has the capacity to stay execution of a judgment as part of its general or inherent jurisdiction.
- [65] A stay of execution is like an injunction and similar principles should apply in considering whether a stay is appropriate: *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 S.C.R. 110, 38 D.L.R. (4th) 321. The governing principles are the existence of an arguable case and the balance of convenience, including the potential for prejudice to a party as a consequence of a stay being granted or denied.
- See also, for example, *Natco International Inc. v. Photo Violation Technologies Corp.*, 2009 BCSC 1504 at para. 38; *Tesscourt* at para. 40; and, *Nie v. Kwang Chyun Enterprise Ltd.*, 2017 BCSC 1941 at paras. 54 and 55.
- [35] The important point, for present purposes, is that this framework would only require a court to be satisfied that an applicant on a stay application had "an arguable case" or had raised "a serious issue" in the action the applicant was advancing. It would not be necessary, and indeed it might be inappropriate, for the court to engage in a more thorough assessment of the merits of the applicant's underlying counterclaim.

- [98] I agree with the approach set out in *Concord Pacific*. Therefore, the claimant must show, on a balance of probabilities, (1) there is an arguable case to be tried, (2) that irreparable harm will occur if the stay is not granted, and (3) that the balance of convenience and justice favours granting the stay.
- [99] I am not satisfied that the claimant has established any of the pre-requisites for a stay of execution. First, she has not established that there is an arguable case. There are two extant orders mandating pension division pursuant to Part 6. Neither order was appealed and the claimant has made no submissions suggesting the orders are liable to be set aside or varied.
- [100] Second, the claimant has not shown that she will suffer irreparable harm if a stay is not granted. All that she has shown is that the respondent is behind in his payments to her. I was provided with a printout from the BCFMA at the hearing which showed the arrears then owing were \$5,456.81. This is not a significant sum. In any event, it is not irreparable harm as the claimant has remedies available to her to secure payment that she has not pursued.
- [101] Finally, the balance of justice and convenience is not in favour of granting a stay. In this regard, I am extremely troubled by the fact that there have been two court orders requiring the parties to divide their pensions in accordance with Part 6 of the FLA. It is apparent from the claimant's affidavit in this matter and her submissions that, notwithstanding these two court orders, she has refused to do so. The Jackson Order was made November 15, 2019. That was more than four years ago. To allow a stay of the pension division orders now would be to reward the claimant for ignoring the order for several years. That is simply not in the interests of justice.
- [102] Concerning Rule 15-4(33), for the reasons set out immediately above, I do not consider that a stay will further the object of the SCFR, one of which is to secure the just, speedy and inexpensive determination of every family law case on its merits. Granting a stay more than four years after an order is made does not further this objective.
- [103] Accordingly, I decline to order a stay of the pension division orders. It follows that I expect both parties to immediately do all things necessary to divide their pensions in accordance with the orders of Jackson J. and Mayer J.

Release of \$10,000

- [104] The claimant requests that the \$10,000 held in trust for S1 be released to S1. Regrettably, the claimant provides no clarification or explanation in her notice of application about this order. However, in her affidavit made March 4, 2021, the claimant deposes that S1 earned these funds from acting. She further deposes S1, then 16 years of age, is mature and intends to pursue a university education.
- [105] The respondent does not oppose the release of the funds but submits that he should be informed of the anticipated use of the funds.

[106] S1 is now 19 years of age and it is undisputed that the source of the 10,000 in trust was from her acting engagements. The funds are hers and she is now an adult. Accordingly, the funds are to be released to S1 without conditions.

Production of Documents

[107] The claimant requests an order requiring the respondent to produce the following:

- a) Bank account statements for the years 2021 to 2023 for:
 - i. the account into which a cheque for \$100,000 from Graham Laschuk was deposited;
 - ii. the accounts from which BCFMA garnished funds, as well as the sources of funds deposited to these accounts;
 - iii. the accounts from which any child support payments were made;
 - iv. the accounts into which he deposited an inheritance from his uncle; and
 - v. RBC account ending 4863.

[108] The claimant further requests orders that the respondent provide:

- a) A list of all employment positions the respondent has held with Telus from November 2019, including the periods the positions were held and a description of the work;
- b) Documents relating to his efforts to obtain employment since 2022;
- c) Copies of the respondent's Telus pension statements for 2017 to date; and
- d) Copies of the respondent's RRSP statements for 2017 to date.

[109] The only basis pleaded in the claimant's notice of application for these various orders is "The respondent should disclose documents in support of the application for payment of s. 7 expenses and to facilitate the divisions of RRSPs and pension as ordered at trial".

[110] By the time of the hearing before me, the respondent had provided his RRSP and pension statements and I was advised that the claimant no longer seeks those documents. However, the claimant continues to seek the balance of the documents requested and made a further request at the hearing for documents relating to a Lexus SUV that the respondent apparently drives.

[111] The respondent disputes the relevance of the documents requested. He says the claimant is on a fishing expedition.

[112] It is my view that the claimant's request for documents and other information is misguided. A final order has been made in this matter. It is not a continuing family law action. As such, there is no general obligation on the part of the respondent to provide his various account statements.

- [113] With respect to the respondent's efforts to obtain employment, this was relevant to the hearing of this application but is no longer relevant and there is no basis for ordering that he now produce documents related to this. Should the issue again arise in a future application, the claimant can ask to cross-examine him on his affidavits, something she did not do for this application.
- [114] I add that the claimant appears to conflate execution proceedings with more general family law matters. She appears to want the various documents so that she can ascertain what assets and accounts the respondent has for the purpose of recovering the amounts owed to her including s. 7 expenses. These are execution proceedings. She should avail herself of Rules 15-6 and 15-7, which permit her to issue a subpoena and to conduct an examination in aid of execution of the respondent.
- [115] Accordingly, I decline to order production of any of the requested documents.

RRSPs

- [116] During the course of the hearing before me, the parties made various submissions about the division of their RRSPs including allegations of funds having been removed from RRSPs. The applications did not address the division of the RRSPs except as an alternative remedy to the division of the pensions and, since the pensions are to be divided as ordered, I did not need to address the alternative order.
- [117] I therefore make no orders about the division of RRSPs. However, in the hope that the parties will not need to return to court to address this issue, I make the following comments. First, I observe that Jackson J. ordered the RRSPs divided in accordance with Part 6 of the FLA. This cannot be done as Part 6 relates only to pensions. I therefore encourage the parties to agree on a consent order that the RRSPs be divided as of the date of separation being November 14, 2017. If none of the RRSPs were held by a party prior to the marriage, this should be a straightforward calculation. If an RRSP was held by a party before the marriage then the division should be of the increase in value of the RRSP between the date of the marriage and the date of separation. Further, the RRSP division should be accomplished by way of a rollover to avoid tax complications.

Orders

- [118] Consistent with my reasons as set out above, the applications are dismissed except as follows:
- a) Paragraph 12(b) of the Mayer Order is to be corrected by substituting \$5,907.41 for \$7,657.41;
 - b) The claimant is required to pay \$1,200 to the respondent on account of her share of the Dr. Elterman report. This amount may be set-off against the amounts owing to the claimant by the respondent;

- c) The claimant shall have judgment against the respondent in the amount of \$5,907.41; and
- d) The \$10,000 currently held in trust by Oreck Karby, Barristers and Solicitors for S1 shall be released to S1 forthwith.

[119] The parties have leave to speak to me regarding the costs of the various applications provided they request leave within 45 days. If neither party requests leave to speak to costs within the 45 days, each party shall bear their own costs of these applications.

"Giaschi J."

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/20/2024BCSC2083.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/s-t-c-v-d-j-b-2024>

Prepared on 29 October 2026 · Esheria