

CANADA / JUDGMENT

Saccary v. Spencer

2022 BCSC 1151

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Supreme Court of British Columbia

DECIDED

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2022 BCSC 1151 Saccary v. Spencer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Saccary v. Spencer,

2022 BCSC 1151

Date: 20220708

Docket: E21194

Registry: Fort St. John

Between:

Elaine Denette Saccary

Claimant

And

Christopher Spencer

Respondent

Before: The Honourable Madam Justice Burke

Reasons for Judgment

The Claimant, appearing on her own behalf, by videoconference:

E.D. Saccary

Counsel for Respondent, by videoconference:

M.S. Jakeman

Place and Date of Hearing:

Prince George, B.C.

February 17, 2022

March 23, 2022

Place and Date of Judgment:

Vancouver, B.C.

July 8, 2022

I. Introduction

- [1] The respondent, Christopher Spencer, has applied to set aside an October 26, 2020 order of the Court that set child support arrears at \$34,000 and increased child support payable by the respondent to the claimant, Elaine Saccary (the October 26, 2022 Order).
- [2] Alternatively, the respondent seeks an order that the arrears, interest, or default fees owed to the Family Maintenance Enforcement Program ("FMEP") by virtue of the October 2020 Order be reduced or cancelled pursuant to s. 174 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. He also seeks an order that the child support set out in the October 2020 Order be varied or cancelled under s. 152 of the FLA and that prospective child support be reassessed, based on the Federal Child Support Guidelines, SOR/97-175 [Guidelines], amounts for the parties' second child, E.L.S.
- [3] As part of this application, the respondent seeks an order that the parties' child, W.C.S., has ceased to be a child of the relationship pursuant to s. 147(1)(b) of the FLA, as of October 1, 2020. The respondent argues that, at present, W.C.S. has withdrawn from his care and is financially independent.
- [4] The claimant objects to the application seeking an order that W.C.S. has ceased to be a "child" under Part 7 of the FLA and the request to set aside the October 2020 Order. The claimant maintains W.C.S. is in crisis and remains dependent upon his parents and there is no reason the October 2020 Order should be set aside.

II. Background

- [5] This is a lengthy high-conflict litigation between the parties. Numerous orders exist between the parties concerning support and parenting issues. The background has been set out in *Saccary v. Spencer* (November 27, 2019), Fort St. John E21194 (B.C.S.C.) [Crerar Judgment]:

- [1] The parties entered into a common-law relationship in Fort St. John in September 2005. During that relationship, the parties had two sons: [W.C.S.], born in June 2006, and [E.L.S.], born in April 2009. The couple separated in March 2012. They have lived separate and apart since that time. Unfortunately as evidenced by the thickness of the court file, and the large number of orders issued, the parties have failed to live a harmonious post-separation life, harming their own happiness and well-being and that of their children.
- [6] Since the parties were never married, these proceedings are governed by the FLA.
- [7] In the above-noted case, the parties had cross applications before Justice Crerar concerning both financial and parenting matters. In the course of his reasons, Justice Crerar noted the parties' "past inability to put the needs of the children over their obsession with history and petty conflicts and sleights": Crerar Judgment at para. 42. At the end of the day, Justice Crerar noted that the parents should be commended in recognizing there was an immediate need to put their children - in particular W.C.S.- first:
- [68] Their ongoing disputes cannot continue to poison the relationship with each other, and their relationship with their children. They must focus on healing [W.C.S.] as soon as possible .
- [8] Despite Justice Crerar's cautions, the parties have continued to require court intervention to resolve their differences--the claimant brought an application seeing increased child support in March 2020, which was adjourned to October 2020 due to the COVID-19 pandemic. The respondent was not able to attend the hearing--despite trying to call in to the videoconference call--which resulted in the October 2020 Order, setting arrears at \$34,000 and increasing child support. It is this Order that is at issue, along with an application under s. 147 of the FLA for an order that the respondent no longer has a duty to support W.C.S.

III. Issues

- [9] The issues on this application are as follows:
1. Has W.C.S. voluntarily withdrawn from the respondent's care, such that he no longer has a duty to provide support pursuant to s. 147(1)(b) of the FLA?
 2. Should the October 2020 Order be set aside?
 3. Should the arrears, interest, or default fees owed to the FMEP be reduced or cancelled, pursuant to s. 174 of the FLA?
 4. Should the child support payments set out in October 2020 Order be varied pursuant to s. 152 of the FLA?
 5. What is appropriate child support going forward?

IV. ANALYSIS

1. Has W.C.S. voluntarily withdrawn from the respondent's care, such that he no longer has a duty to provide support pursuant to s. 147(1)(b) of the FLA?
- [10] The respondent has brought an application for an order under s. 147(1)(b) of the FLA that W.C.S. has withdrawn from his care, and as such he no longer has a duty to provide support. Both the arrears and child support issues below relate to this question and I will therefore consider it first.
- [11] The claimant is adamant that W.C.S. remains a child of the relationship, pursuant to Part 7 of the FLA. She argues he is in crisis and needs the family's support now more than ever. There does not appear to be much disagreement between the parties that W.C.S. is clearly in crisis. 15 years old at the time of the application, W.C.S is now 16 and continuing to live with his girlfriend at her mother's house. The respondent indicates, however, that as W.C.S. is no longer living at home, he is not financially dependent and should no longer be considered a "child", per s. 147(b) of the FLA. He says once W.C.S. returns to living with one of the parents, he can be considered a "child" again.
- [12] Section 1 of the FLA defines "child" as "a person who is under 19 years of age". W.C.S. falls under this description.
- [13] However, s. 147 of the FLA provides, in relevant part, as follows:

147 (1) Each parent and guardian of a child has a duty to provide support for the child, unless the child

[]

(b) is under 19 years of age and has voluntarily withdrawn from his or her parents' or guardians' charge, except if the child withdrew because of family violence or because the child's circumstances were, considered objectively, intolerable.

(2) If a child referred to in subsection (1) (b) returns to his or her parents' or guardians' charge, their duty to provide support for the child resumes.
- [14] The onus is on the respondent to demonstrate W.C.S. has voluntarily withdrawn from his parents' charge. I am not satisfied he has discharged this burden.
- [15] While W.C.S. may not be fully "dependent", as he is living elsewhere presently, he is far from independent and outside of the charge of his parents. He is now a 16 year-old in crisis, not a mature minor who has voluntarily struck out on his own. The affidavit material makes clear he is not self-supporting. W.C.S. continues to make what appear to be regular requests to his mother, for money, groceries, and other goods. While I agree that in some cases a child moving away from home could constitute "voluntarily withdrawing" from their parents' charge, this is not always the case. In *L.D.M. v. T.R.S.*, 2018 BCPC 92, the court held that although the parties' 19 year old daughter lived with her boyfriend, she was sufficiently

reliant upon her mother for financial support so as to remain dependent: para. 35. I find that the present case is analogous, insofar as W.C.S. does not live at home but clearly is not fully independent. I find further support in the fact that W.C.S. at the time of the application was only 15 years old, whereas the daughter in L.D.M. was 19 and in university.

[16] Furthermore, as discussed below, Canadian courts have held that parents continue to have a duty to provide child support in cases where the child does not reside with either parent: see e.g., *D.W. v. A.C.*, 2018 ONSC 133; *Lefebvre v. Gowan*, 2014 ONSC 6221; *Basso v. Reesor*, 2015 SKQB 316; *T.G. v. S.G.*, 2020 ONSC 4662; *Carrier v. Carrier*, 2008 SKQB 439; *Ross v. Gedcke* (2005), 25 R.F.L. (6th) 188, 2005 CanLII 50881 (Ont. Sup. Ct. J.) [Ross].

[17] I therefore conclude W.C.S. was and continues to be a "child" under Part 7 of the FLA and has not withdrawn himself from the care of his parents.

2. Should the October 2020 Order be Set Aside?

[18] This is a very challenging family law case due to a series of unfortunate events, including errors and omissions made by the parties in the course of the proceedings.

[19] On March 1, 2016, the Court assessed the claimant's income at \$77,177.90 annually and the respondent's income at \$135,000. On this basis, the respondent was ordered to pay child support in the amount of \$753 monthly.

[20] The evidence is clear however, the parties' son, W.C.S., began living with the respondent full-time from January 1, 2018 through to September 2020, with a small number of one or two week intervals in which he joined the claimant on vacation. Despite this arrangement--and while incurring all the financial expenses of W.C.S. living with him full-time--the respondent paid the claimant child support until July 1, 2018. At that time, the respondent found himself in financial hardship and filed for bankruptcy. While the respondent was not able to make consistent child support payments after this point, he did make large lump sum payments when he could. However, he was not able to resume monthly child support payments until July 2019.

[21] During this time, the respondent continued to consistently pay spousal support.

[22] The claimant says once she obtained financial information from the respondent, she made an application dated March 17, 2020, to vary and adjust the child support from 2015-2018 to reflect the parties' incomes and to claim \$34,332.00 in arrears.

[23] On October 26, 2020, this matter came before the Court. The respondent was not in attendance due to COVID-19 health concerns.

- [24] The Court asked the claimant some pertinent questions, including whether the claimant had advised the respondent that she was in court to deal with this matter, and reviewed the claimant's affidavit which contained the parties' income tax statements. Based on the claimant's responses and the material, the Court issued the October 2020 Order directing the respondent to pay child support in the amount of \$1,153/month, to commence January 1, 2019, and arrears for 2015 to 2018 in the amount of \$35,342.
- [25] By November 2, 2021, the respondent had arrears from ongoing FMEP payments in the amount of \$12,556.06 and arrears from the October 2020 Order in the amount of \$34,342. Interest on the arrears is in the amount of \$1,674.25.
- [26] The respondent filed a notice of application in January 2021, seeking leave to have the October 2020 Order varied. That application was adjourned generally a number of times.
- [27] While the respondent essentially seeks to have the arrears cancelled on the basis that W.C.S. was not living with the claimant during the period of time in which the arrears were assessed, I find the October 2020 Order can be set aside in its entirety under R. 21-6(3) of the Supreme Court Family Rules, 169/2009 [Rules].
- [28] Rule 21-6(3) provides that the court may set aside an order if a party was absent from the hearing. This rule applies to interim hearings the applicant did not attend: *Lin v. Wang*, 2019 BCSC 1893 at para. 18. In *A.J.D. v. C.D.*, 2018 BCSC 73 at para. 6, the court listed the following factors to be considered on such an application:
- a) the failure to appear was not wilful or deliberate;
 - b) the application to set aside the order was made as soon as reasonably possible;
 - c) the defence is worthy of investigation; and
 - d) all requirements are established through affidavit material filed on behalf of the applicant.
- [29] With respect to the first factor, I find that the respondent did not deliberately or willfully fail to appear at the subject hearing. The respondent was ill and attempting to obtain a COVID-19 test at the time. The claimant was aware of this and failed to inform the Court or seek an adjournment until such a time that the respondent could attend.
- [30] While there were some delays in the setting down of the application, the respondent did file as soon as reasonably possible, and it was not filed so late as to be unreasonable or prejudicial to the claimant. The October 2020 Order was made in late October 2020. The application to vary the Order was filed in January 2021. While there was a delay in having the matter heard, I am not satisfied it should bar the respondent from relief under R. 21-6(3) of the Rules in the present circumstances.
- [31] Most importantly, the respondent raises *prima facie* strong defences which warrant further investigation. First, for part of the period in which the impugned arrears accrued, W.C.S. was living full-time with the respondent. If this fact had been made known to the Court,

arrears would likely not have been assessed in the same amount as in the October 2020 Order. Second, the respondent filed for bankruptcy during the period in which the arrears accrued. As a result of this bankruptcy, the respondent's income for 2017 was inflated by major debt taken on from his company. The vast majority of the arrears under the October 2020 Order stemmed from the respondent's inflated income that year. If this fact had been made known to the Court at the hearing, it likely would have altered the outcome. It is also noteworthy that the claimant was aware of both of these facts at the time of the hearing, but failed to disclose this information to the Court.

- [32] Finally, the respondent has filed all necessary materials for this application, all of which is supported by affidavits. The respondent's materials and evidence support the above findings.
- [33] Accordingly, I am satisfied that the October 2020 Order should be set aside. The respondent was unable to attend the hearing and gave the claimant notice in advance. Nonetheless, she persisted with the application in his absence and proceeded to withhold highly pertinent information from the Court, which would likely had altered the form of order.
3. Should the Arrears, Interest or Default Fees Owed to FMEP be Reduced or Cancelled, Pursuant to s. 174 of the FLA?
- [34] Alternatively, I find that the arrears set out in October 2020 Order should be cancelled or varied, pursuant to s. 174 of the FLA.
- [35] As noted above, the respondent seeks to have the arrears in the October 2020 Order cancelled or reduced on the basis that W.C.S. was not living with the claimant during the period for which arrears were sought. For her part, the claimant has taken a literal view and argues that once the order is in place, child support must be paid even if the child is not living with the parent. This, the respondent says, is despite the fact that the claimant has international students in her home who have occupied W.C.S.'s former bedroom and, in effect, there has been no room for him in her house.
- [36] Subsection 174(1) of the FLA states that a court "may reduce or cancel arrears owing under an order respecting child support if satisfied that it would be grossly unfair not to reduce or cancel the arrears." In *MacCarthy v. MacCarthy*, 2015 BCCA 496, the Court set out the test under this provision as follows:
- [54] The factors to be considered in granting an order cancelling arrears are set out in *Burgie v. Argent*, 2013 BCCA 247, at paras. 15 and 23, namely, (a) whether there is a material change in circumstances, and (b) whether it would be "grossly unfair" not to cancel or reduce the arrears. In general, arrears will only be cancelled if the applicant shows he is unable to pay "now and in the future": *Semancik v. Saunders*, 2011 BCCA 264 at para. 25. The test for cancelling arrears of child support is more stringent than that for refusing to make a retroactive child support order. It is a "higher threshold".

- [37] In my view, it would be grossly unfair not to cancel the arrears stipulated in the October 2020 Order.
- [38] At the outset, I would note that while there may not have been material changes in the circumstances since the Order was made, the actual circumstances at the time the Order was made were substantially different from how they were presented to the Court. In particular, the claimant failed to notify the Court that W.C.S. had resided full-time with the respondent from January 1, 2018 until September 2020. This period makes up a large portion in which the respondent was ordered to pay retrospective child support at a higher rate. These facts demonstrate that the actual state of affairs between the parties and W.C.S. were substantially different from how they were presented to the Court in October 2020.
- [39] Moreover, I am satisfied that the circumstances under which the Order was made, and the Order itself, were grossly unfair to the respondent.
- [40] First, I find that the amount of arrears reached was inaccurate. There are two key reasons for this:
- a) The majority of the arrears in the October 2020 Order were for 2017. In this year alone, the claimant asserted the respondent owed \$21,552 in child support arrears. However, the respondent says, and I accept, that this number is inflated because he filed for bankruptcy that year and had his business debt included as income on his personal income taxes.
 - b) The arrears include 2018. W.C.S. lived full-time with the respondent starting on January 1, 2018. Accordingly, the respondent would not owe the claimant child support with respect to W.C.S. for this year.
- [41] Second, the claimant withheld relevant information from the Court at the October 26, 2020 hearing, including that she knew the respondent was attempting to attend but had some potential COVID-19 related health issues, that W.C.S. had lived full-time with the respondent, and that the respondent had filed for bankruptcy since the filing of the income tax statements on which she relied.
- [42] Her position is that she did not need to inform the Court of this, as there was a child support order in effect which applied despite any change in circumstance. The claimant has taken, and continues to take, a very literal approach to orders, insisting that child support applies as set out in the order no matter what the circumstances. This consistent rigidity is illustrative of the difficulty of this family proceeding generally.
- [43] I conclude that the claimant did not provide sufficient information or explanation to the Court and in effect took advantage of this situation to move her application forward. It is very difficult for the Court to deal with matters with only one party present. There is an onus on the party who wishes to proceed, even an unrepresented party, to be forthright and provide the Court with the full extent of their knowledge as to why the opposing party is not present. This is not a technical legal proposition, but rather a proposition that applies to ensure that truth and accuracy be maintained in establishing court orders which can have

significant effect on an individual or party.

- [44] The claimant knew the respondent indicated he was getting tested for COVID-19, and whether she believed him or not, it was incumbent in the circumstances for her to provide that information to the Court. The claimant blames the respondent and has said more than once that if the respondent had been there, all this could have been avoided. The claimant continues to maintain "he chose not to be there". I disagree. The reality is if the claimant had shared the true extent of her knowledge of the respondent's situation, this may well all have been avoided. The claimant is no stranger to the courts, as evidenced by the many applications in this case, and this makes her omission particularly concerning.
- [45] Throughout these proceedings, the claimant was also very focused on the many orders which she indicates that the respondent has not followed. This retrospective focus on past sleights reflects and reinforces the Court's comments in the Crerar Judgment.
- [46] I have reviewed the material filed in this matter and conclude certain of the arrears and the corresponding interest or default fees should be cancelled. Counsel's calculations include some credit to the claimant for short periods of time where W.C.S. resided with her. Indeed, the parties contradict each other on when W.C.S. "left home" to live with his girlfriend's family. The respondent says it was immediately after leaving his home in September 2020. The claimant says W.C.S. lived with her for parts of 2020. However, what is uncontroversial is that W.C.S. was living with the respondent from January 1, 2018 through to September 2020.
- [47] I will now set out those calculations:
- a) 2017: \$12,720 (\$1,060 x 12 months);
 - b) 2018: \$4,236 (\$275 x 12 months);
 - c) 2019: \$3,300 (\$204 x 12 months);
 - d) 2020: \$2,355 ((\$5 x 9 months) + (\$526 x 2 months)); and
 - e) 2021: \$6,312 (\$526 x 12 months).
- [48] With respect to 2017, it is my view the arrears for this year should be varied. In 2017, the respondent's income on his tax filings was \$301,268. This is nearly double the amount he normally earned, and thus his retroactive child support payments for that year far exceeded what he had paid, which had been assessed on the basis of income of \$135,000. However, the respondent says his income in 2017 was artificially inflated for tax purposes because of his bankruptcy that year. I accept this evidence. There is no other reasonable explanation for why his income would effectively double for one year and then reduce back to his normal rate thereafter.
- [49] Accordingly, I find it is fair to assess the respondent's income for 2017 under s. 17(1) of the Guidelines. Section 17(1) provides as follows:

If the court is of the opinion that the determination of a spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

[50] The test under this provision is what is "fair and reasonable", having regard for the payor's income in the preceding three years: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 43. The respondent's income for the preceding three years is as follows:

- a) 2014: \$135,000.
- b) 2015: \$162,475.
- c) 2016: \$139,103.

[51] For the purposes of child support payments for 2017, the respondent's income was \$175,103. His income in 2018 - 2020 was respectively \$160,478; \$177,879 and \$150,148.

[52] The calculations from the respondent indicate in fact the claimant may owe the respondent arrears. In all the circumstances however and in the interests of the parties moving forward, I conclude the present arrears arising from the October 2020 order should be cancelled on the basis set out earlier, including the reality that apart from a week or two, during the time in question, W.C.S. was living full time with the respondent.

4. Should the Child Support payments set out in the October 2020 Order be Varied, Pursuant to s. 152 of the FLA?

[53] As an alternative basis to the above-noted conclusion setting aside the October 2020 Order, I conclude the child support arrears set out as a result ought to be cancelled.

[54] Section 152 of the FLA provides, in relevant part, as follows:

152(1) On application, a court may change, suspend or terminate an order respecting child support, and may do so prospectively or retroactively.

152(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:

[]

- (b) evidence of a substantial nature that was not available during the previous hearing has become available

- [55] In my view, s. 152(2)(b) applies in the present case. As discussed above, there was much evidence and factual context which were not brought before the Court in the October 2020 hearing. Specifically, the claimant withheld that W.C.S. no longer resided with either parent and that the respondent had gone through bankruptcy recently. This directly affected the arrears ordered.
- [56] Both of these facts were highly material to the assessment of child support and should have been disclosed to the Court. Accordingly, I find that this constitutes "evidence of a substantial nature" that materially affected the conditions of the parties and should be considered in assessing child support in the present case. Moreover, I note that in *Galpin v. Galpin*, 2018 BCSC 1572, Justice Riley indicated that a party not appearing at an initial hearing, and thus not presenting their evidence, could be considered "evidence of a substantial nature": para. 29.
5. What is Appropriate Child Support Going Forward?
- [57] With the October 2020 Order set aside (or in the alternative, with my finding that child support payable under the October 2020 Order should be varied) this court must determine the appropriate child support payable in the present case. The facts of this case are somewhat unusual, insofar as W.C.S. does not reside with either parent, but remains a "child" under Part 7 of the FLA whom each parent owe a duty to support.
- [58] Some guidance can be taken from judgments from other Canadian jurisdictions where somewhat similar circumstances were considered.
- [59] In *Wright*, the Court considered whether child support should be paid by the father to the mother, despite the fact that the child was residing with his maternal grandparents. The Court found that the mother regularly paid for the child's expenses. Moreover, the Court held that "there was no evidence [the child] had withdrawn from parental control", but rather that his move to his grandparents' home was done with "the tacit if not actual approval of both of his parents": *Wright* at para. 55. After reviewing the case law, the Court found that "none of the authorities relieved [the parents] of their child support responsibility in circumstances where the child remained dependent and attended school but lived with another family member": *Wright* at para. 55.
- [60] In *Carrier*, the child lived full-time with his maternal grandparents. The Court ordered the father to pay the full Guideline amount to the maternal grandparents. The mother continued to pay for the child's clothing, groceries, and other expenses.
- [61] In *Lefebvre*, the father argued the mother could not seek child support while the child was residing with her maternal grandparents. In the result, the father was ordered to pay the Guideline amount to the mother. The Court found that the grandparents' assistance to the mother did not "remove the [father's] responsibility to provide child support": *Lefebvre* at para. 9.

[62] In Ross, the Court ordered the father to pay the Guideline amounts to the mother, despite the fact that the child had resided with his maternal grandparents for over two years. The mother maintained the child's room in her home and contributed to his ongoing financial support. The Court set out its reasoning as follows at para. 21:

The legislation and case law with regard to a parent's financial obligation to his/her children seems to me to be well settled. Once a child is born a parent is obliged to offer financial support according to the child's (special) needs and his/her ability to pay, until that child attains majority and thereafter, as long as the child lives under/with some disability (medical or educational) and thereby remains dependent on his/her parents. In Ontario this obligation is universal unless it can be proven that the child has withdrawn from parental authority or has otherwise become independent. That obligation does not "disappear" if the child resides far away from the custodial parent's home for some period of time (i.e. two months at summer camp or private boarding school) during the school year

[63] In Basso, the Court held that although the child was residing with his aunt, he "remain[ed] under his mother's charge and primary care": para. 17.

[64] As noted above, I have found that W.C.S. remains a "child" under Part 7 of the FLA. Accordingly, each parent continues to have a duty to provide support.

[65] The question that remains, therefore, is how child support should be determined with respect to W.C.S. The claimant has provided evidence that she continues to support W.C.S., both emotionally and financially (i.e., receipts for groceries and other goods, positive text message exchanges, evidence of e-transfers for food and other basic needs).

[66] There is no real precedent in this difficult case that answers the question of child support for W.C.S. going forward. While the claimant is providing some financial support to W.C.S. on request, it is not at the level that would occur if he was living at his mother's home. It is significantly less and indeed the claimant no longer has a room in her home for W.C.S.

[67] In my view therefore, it would not be equitable or appropriate for the respondent to be ordered to pay child support for W.C.S. to the claimant at the Guideline level. As noted, unlike Ross, the mother no longer has a room for W.C.S. and has been using it to accept international students. She has however been providing occasional funds to W.C.S. at his request.

[68] While the applicant respondent indicates he also provides occasional support to W.C.S., there is no evidence of that before me. Accordingly, going forward I order the respondent to pay 50% of the Guideline amount attributed to W.C.S. to the claimant. This amount can be adjusted if W.C.S. returns to one or the other of his parents' home.

- [69] The amount for one child is \$526.00. The amount for two children is \$817.00. As I am departing from the Guideline amount due to the unusual circumstances, I will round the numbers and subtract \$500 from \$800 and reduce that number which essentially reflects the addition of a second child, by 50% thereby reaching the child support amount of \$650.00 per month owing by the respondent going forward. $[(\$800 - \$500 = \$300) (\$300 / 2 = \$150)]$
- [70] The claimant's present income is \$90,554 and the respondent's income is \$154,550. Based on the court's conclusions set out above, the child support amount for two children living 50% of the time at each parent's house is \$817.00.
- [71] I adjust the amount and conclude the respondent should pay \$650.00 to the claimant for support of the 2 children, with the 50% deduction attributed to W.C.S. as set out above. As noted earlier, there is no real precedent for this difficult situation and I find this to be the fairest and most appropriate result in the circumstances.
- [72] The October 2020 order was stayed as of January 1, 2022. I conclude therefore the amount of child support payable by the respondent from January 1, 2022 forward is \$650.00 per month.

V. CONCLUSION

[73] To summarize, I make the following orders:

- a) that the October 2020 Order be set aside;
- b) in the alternative, that the arrears in the October 2020 Order be cancelled;
- c) in the alternative, the child support amounts in the October 2020 Order be cancelled;
- d) that the child support payable by the respondent to the claimant be set at \$650.00 per month from January 1, 2022 and going forward, being the adjusted 50% of the Guideline amount as set out above.

[74] The parties will bear their own costs in this matter.

"Burke J."

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