
CANADA / JUDGMENT

Sampaio v. Christianson

2015 BCSC 1712

COURT

Supreme Court of British Columbia

DECIDED

23 September 2015

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2015 BCSC 1712 Sampaio v. Christianson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sampaio v. Christianson,

2015 BCSC 1712

Date: 20150923

Docket: E081901

Registry: Vancouver

Between:

Naira Mariane de Castro Sampaio aka Naira Christianson

Claimant

And

Rory Christianson

Respondent

Before: The Honourable Mr. Justice G.C. Weatherill

Reasons for Judgment

Claimant appearing on her own behalf:

N.M. de Castro Sampaio

Counsel for the Respondent:

J. Hittrich

Place and Dates of Hearing:

Vancouver, B.C.

August 28 and September 9-10, 2015

Place and Date of Judgment:

Vancouver, B.C.

September 23, 2015

I. Introduction

- [1] This is a high-conflict family proceeding with a tortured and lengthy history since 2008. No less than 34 affidavits have been filed by the respondent over the years. The claimant's affidavit count stands at 30. Many of the affidavits are voluminous.
- [2] In this episode of the combat, the respondent seeks the following categories of relief:
1. Retroactive Relief
 - a) an order that the claimant pay retroactive child support in respect of the 3 older children of his relationship with a previous partner for the periods:
 - i. June 1 to November 30, 2008;
 - ii. February 2010 to December 31, 2010; and
 - iii. January 2011 to June 30, 2011.
 - b) a declaration that his child support obligation in respect of Melissa, the child of his marriage to the claimant, is \$96 per month for 2010, \$24 per month for 2011 and \$243 per month for 2012;
 - c) an order that spousal support payable by the respondent to the claimant from January 1, 2010 to and including 2012 is \$0;
 - d) an order that the section 7 special and extraordinary expenses payable by the respondent to the claimant for the years 2010 to 2012 inclusive be in proportion to the parties' relative incomes during that period;
 - e) an order that the foregoing revised payment obligations be set off against any arrears owed by the respondent;
 - f) alternatively, an order that all retroactive child and spousal support owed by the respondent be cancelled;
 2. S. 7 Expenses

- g) an order that the claimant provide full particulars of all s. 7 expenses claimed by her from 2010 to the present;
- h) an order that the claimant provide, every 3 months, receipts showing the actual day care expenditures net of any government subsidy;
- 3. Parenting/Guardianship Changes
 - i) a declaration that the claimant is in breach of current parenting orders;
 - j) an order granting joint guardianship of Melissa to the respondent, including that the respondent be authorized to obtain information relating to Melissa, from third parties;
 - k) an order appointing Bob Finlay or another qualified professional as a parenting coordinator for a period of at least 2 years, the costs for which will be shared equally by the parties;
 - l) an order requiring the claimant to provide the respondent with make-up parenting time if his time is changed by the claimant;
 - m) an order re-instating the parenting time ordered by Madam Justice Smith on April 16, 2011, subject to variations and additions sought by the respondent in this application and noted in para. (n) below;
 - n) an order varying the respondent's parenting time in various and lengthy respects.
- [3] The applications originally came on for hearing before me on August 28, 2015. I adjourned those applications related to retroactive support to September 9, 2015 to allow for cross-examination on the parties' respective affidavits. I also adjourned the applications related to parenting/guardianship changes pending receipt of a s. 211 Child Custody, Parenting Capacity and Parenting Time Report, which I ordered be prepared.
- [4] On August 4, 2015, the respondent was laid off from his employment. On September 6, 2015, the respondent brought an additional notice of application for an order suspending all child support obligations until such time as he obtains either Employment Insurance benefits or other income. I granted leave for this application to be heard concurrently with the retroactive relief applications.
- [5] The parties were cross-examined on their affidavits before me on September 9 and 10, 2015.

II. Background

- [6] The claimant was born and raised in Brazil. She is educated as a teacher. The respondent was born and raised in British Columbia. He is a technical writer for software applications.
- [7] The parties met over the internet. The respondent sponsored the claimant's immigration to Canada.
- [8] The parties were married on October 4, 2001. He was 39 years of age and she was 31.

- [9] The respondent has three children from a previous relationship with a Ms. Paterson, Simone (now 18 years of age) and twins Rembrandt and Isaac (now 16 years of age) (collectively the "Three Older Children"). At the time the parties married, the Three Older Children were living with their mother, Ms. Paterson, in Calgary, Alberta.
- [10] In November 2003, the parties purchased a home in New Westminster (the "Matrimonial Home"). They made equal deposits into a joint bank account which was used to pay the mortgage. They lived together in the Matrimonial Home until May 31, 2008 when they separated.
- [11] On an occasion in mid-April 2004, the respondent left the Matrimonial Home without disclosing where he was going. It turned out he had travelled to Calgary, picked up the Three Older Children and brought them back to the Matrimonial Home without any notice to the claimant. To say the least, the claimant was surprised. She nevertheless assisted the respondent in providing care to the Three Older Children.
- [12] In June 2004, the claimant leased a new vehicle. She made the lease payments and purchased some of the insurance and gas for it. The respondent paid the balance of the insurance and gas expenses.
- [13] On March 27, 2005, the parties' daughter, Melissa was born.
- [14] In 2005, a trial of the matrimonial issues between the respondent and Ms. Paterson took place. The claimant provided an affidavit in that proceeding, sworn May 2, 2004. She deposed, in part, that:
14. I have found it necessary to shop for things for the children, such as clothing, toys and food, on an almost daily basis. They arrived at our home with nothing but the clothes they were wearing, pajamas and jackets and one stuffed toy each;
15. For the first week after the children arrived, I continued to work but took a few days off. Rory took a week off from work to care for the children. The following week I changed my work shift from day to evening, so that I now work from 4:00 p.m. to 12:30 a.m., to facilitate the care of the children. In the morning, Rory leaves for work at around 6:30 a.m., and I wake Simone at 7:30 a.m. I take Simone to school at 8:30 a.m., and I bring the twins along and all three children usually play in the nearby park until Simone goes into school. During the day I entertain the twins with games, trips to the park or to the library for story time, and we watch children's videos borrowed from the library.
16. I have also been asking the children to take turns saying prayers before dinner. I am very happy that they have learned so quickly to say their own prayers
17. When the children first arrived at our home, Remy was refusing to wear underwear, saying that it bothered him. We bought all of the children new, comfortable underwear, and I suggested to Remy that he try to wear underwear for just two hours a day before taking it off. Now he is wearing underwear every day without complaint.

- [15] Prior to the trial, the respondent and Ms. Paterson were ordered to obtain a s. 15 Custody and Access Report, the cost of which would be shared by them equally. The claimant testified that the respondent was desperate for the report but could not afford his share. He urged the claimant to lend him \$6000 for his share of the cost. The claimant did so by borrowing the money on her bank line of credit.
- [16] The claimant attended the trial of the proceeding between the respondent and Ms. Paterson. She heard the testimony of the respondent's mother and sister, neither of whom she had previously met. They provided evidence about the respondent's past which was shocking and disturbing to the claimant. She began to question whether she wanted to continue to have the respondent in her life.
- [17] One of the orders made by the trial judge was that the respondent and Ms. Paterson have equal parenting time with the Three Older Children.
- [18] The respondent testified that, on June 23, 2006, Ms. Paterson disappeared from British Columbia to unknown whereabouts for approximately five years. She had been residing in Mexico. He testified that, from June 23, 2006 until the parties separated on May 31, 2008, the Three Older Children lived in the Matrimonial Home as part of the family. Although the respondent was ordered to pay child support to Ms. Paterson in respect of the Three Older Children, he has not done so since June, 2006 when Ms. Paterson disappeared.
- [19] The respondent insists that, during the period June 2006 to May 2008 the claimant acted as a stepparent to the Three Older Children, caring for them and providing for their needs as any responsible mother would. He deposed in his Affidavit # 30, sworn June 12, 2015, that the claimant collected child tax credits for the Three Older Children and bought them clothes with the money. He deposed further that the claimant cooked for and cleaned after them, organized activities for them, took them to many of those activities and participated in family events with them.
- [20] This evidence is contradicted by the following evidence given by the respondent during his examination for discovery conducted on April 23, 2009 in this proceeding:
- Q. And did the other three children prepare their own breakfast and lunch during the weekdays?
- A. When? Before or after the separation?
- Q. During the marriage, before the separation.
- A. I did all the lunches for the three kids, and Melissa -- just for Melissa, Naira did lunches just for Melissa.
- [21] The claimant's version of these events is different. She testified that the respondent had been exercising his right to summer access with the Three Older Children which was to end on July 31, 2006. However, Ms. Paterson failed to pick them up when she was scheduled to and the respondent later determined that she had left for Mexico on June 23, 2006. As a result, the Three Older Children lived in the Matrimonial Home but did so as a separate

family with the respondent, not as part of the family comprised of the parties and Melissa. Indeed, the claimant testified that the respondent did not permit the claimant to act as a parent towards them and forbade her to encourage or discipline them. The claimant did not consider herself to be their stepmother, primarily because of what she had heard about the respondent's past life and because until this point, Ms. Paterson clearly wanted to continue to be a mother to the Three Older Children. The claimant did not allow the Three Older Children to refer to her as "mom". Rather, they called her by her first name, Naira.

- [22] The claimant also testified that she did not contribute financially towards the welfare of the Three Older Children. She used the respondent's credit card for most of the purchases she made for them, until early 2008 when the respondent cancelled it because she had used it to purchase diapers for Melissa.
- [23] The child tax credit monies received in respect of the Three Older Children were administered by the claimant in accordance with the respondent's instructions. She maintained a detailed accounting ledger of all expenditures she incurred for each of the Three Older Children and deducted them each month from the Child Tax Credits that were received in respect of them. Any surplus was provided by her to the respondent each month. She testified that she never used her own funds for the Three Older Children. Expenses incurred for Melissa were separately accounted for.
- [24] Other than paying 50% of the mortgage and the car expenses, the only household expense paid by the claimant was for the internet, which she used to communicate with her parents in Brazil. There is no evidence that any of the four children used the internet prior to the parties' separation on May 31, 2008.
- [25] In July 2007, the parties had a significant argument which ultimately led to the breakdown of their marriage. The claimant called the Ministry of Children and Family Development ("Ministry") to file a complaint about the respondent. The respondent felt that the claimant was influencing the Three Older Children against him. Thereafter, the respondent told the claimant that she had no legal right to educate or sign school documents for the Three Older Children. In an email to the claimant on July 3, 2007, the respondent wrote:

You need to stop spending money on the kids in any fashion, this is my responsibility - simply hand over the child tax credit funds and I will take care of all costs - you are not supplying me with a single receipt.

- [26] By this time, it was clear to the claimant that the respondent was not going to repay the \$6000 loan she had provided to him for the s. 15 report in his proceeding against Ms. Paterson. The claimant began using any excess amounts from the child tax credit monies for the Three Older Children to pay down this loan.
- [27] The parties separated on May 31, 2008 when the claimant and Melissa left the Matrimonial Home. They did not return.

- [28] This proceeding was commenced by the claimant on June 2, 2008.
- [29] By notice of motion filed June 24, 2008, the respondent sought various orders including an order that child support be payable to him by the claimant for all four children, retroactive to June 1, 2008. That application was adjourned generally by Master Donaldson on June 25, 2008.
- [30] The respondent filed his Statement of Defence and a Counterclaim on August 22, 2008 in which he sought, inter alia, an order for child support or maintenance under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [Divorce Act] and the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA].
- [31] On December 3, 2008, the Three Older Children were apprehended from the respondent's care by the Ministry.
- [32] The trial of this family proceeding took place on May 11 to 15 and July 9 to 10, 2009 before Madam Justice L. Smith. Written submissions were received by her on July 21 and 29, 2009.
- [33] On September 24, 2009, L. Smith J. pronounced her Reasons for Judgment. The salient parts of the resulting Final Order arising from those reasons for judgment provide as follows:
- [1] THIS COURT ORDERS that the [claimant] has sole custody and sole guardianship of [Melissa]. The [respondent] shall have the right to health and medical information from third parties concerning Melissa.
- [2] THIS COURT ORDERS that the [respondent] shall have reasonable and generous access to Melissa including supervised access every second weekend from Saturday at noon to Sunday at 5:00 pm. commencing October 3rd, 2009. The access shall be supervised by a professional access supervisor or someone that is agreed between the parties. In addition, the [respondent] shall continue to have mid-week access as arranged with the other children and the Director, at the times, dates and locations set by the Director in regard to the three children in the Directors care, or as otherwise agreed between the parties.
- [8] THIS COURT ORDERS that the [respondent] shall pay his proportionate share of Section 7 special expenses, until further order of this Court.
- [9] THIS COURT ORDERS that the [respondent] shall pay spousal support to the [claimant]. Within ten days of this Order, the [respondent] shall provide his 2008 tax return to the [claimant's] counsel, and the [claimant] shall file and deliver submissions by October 15th, 2009 and the [respondent] shall file, and deliver his Reply (including the tax return) by October 22nd, 2009 concerning ongoing child and spousal support. The interim child support Order of Madam Justice L. Smith of July 10, 2009 shall continue until further order of the Court.
- [10] THIS COURT ORDERS that the [respondent] has liberty to apply regarding child and spousal support if his three children, currently in foster care, are returned to his care.

- [34] The parties provided the written submissions contemplated by clause 9 of the Order, the claimant on October 21, 2009 and the respondent on October 20, 2009.
- [35] On December 4, 2009, L. Smith J. issued her Supplementary Reasons for Judgment, making several final orders, including a divorce order and orders relating to child and spousal support. It is the support obligations set out in that order that the respondent now seeks to vary. They read:
- [2] The [respondent] pay to the [claimant] \$761 per month in basic child support for support of the child of the marriage [Melissa] and special expenses in the amount of \$427 per month, for a total of \$1,188 per month in child support commencing October 1, 2009 and continuing each month thereafter, for so long as the child is eligible for support under the Divorce Act or otherwise at law.
- [3] That the [respondent] shall pay to the [claimant] spousal support of \$190 per month commencing October 1, 2009 and continuing for three years. The spousal support order will be reviewable if the [respondent] regains custody of his three children.
- [36] The respondent's appeal of L. Smith J.'s orders was dismissed.
- [37] It is noteworthy that the claimant obtained an award of costs in the amount of \$23,477.41 against the respondent in respect of the trial before L. Smith J. and \$5,944.67 in respect of the appeal of her decision. Certificates of Judgment were filed on February 28, 2011 against the respondent's interest in the Matrimonial Home. The respondent has not paid any of the costs that were awarded against him.
- [38] Unbeknownst to L. Smith J., the respondent was laid off from his employment with Nokia in August 2009, between the end of the trial and the issuance of the September 24, 2009 Reasons for Judgment. He received a lump sum severance payment at that time. He testified that he deliberately did not apprise the court of this change in his circumstances because he was concerned that, if the Ministry became aware of his unemployment, his application for custody of the Three Older Children would be adversely effected. He also testified that he thought a change in his support obligations would be automatic once he brought his situation to the court's attention in the future.
- [39] The respondent maintains that, in late January 2010, the Three Older Children were returned to the respondent's care. However, a document sent by the Ministry (marked as Exhibit "B" for identification during the respondent's evidence) indicates that Simone was not in the respondent's full time care until February 25, 2010 and Isaac and Rembrandt until April 9, 2010. The respondent agreed that they were "legally in the Ministry's care" but insists they were living with him from mid-January to April 2010 and that the Ministry documents are incorrect. There is no dispute that he was awarded interim custody of them on April 26, 2010 pursuant to the order of Madam Justice Kloegman.

- [40] The respondent agrees that he did not contribute financially to the Three Older Children while they were in foster care.
- [41] On June 8, 2010, the respondent filed an application to vary L. Smith J.'s September 24, 2009 Order to provide more and unsupervised parenting time with Melissa. In an effort to dissuade the court's previously stated concern that his employment prevented him from caring for his children, the respondent disclosed for the first time that his employment had ceased in August 2009. The hearing of that application did not proceed.
- [42] On August 16, 2010, the respondent filed another application, inter alia, for an order that the claimant pay to him retroactive child support for the Three Older Children. The application was heard by Mr. Justice Ehrcke on August 20, 2010 and was adjourned generally.
- [43] The respondent's application for child support was scheduled to come before the court again on February 28, 2011, before Mr. Justice Cole. However, On February 9, 2011, Cole J. had ordered that there be a trial to resolve multiple issues in this proceeding and so he adjourned this matter to be heard along with the others at trial. The trial did not take place. No explanation was given.
- [44] On July 2, 2011, the Three Older Children were once again apprehended from the respondent's care by the Ministry. On September 8, 2011, interim custody of the Three Older Children was granted to Ms. Paterson. On October 15, 2011, the Three Older Children were moved by Ms. Paterson to Ottawa.
- [45] Although the respondent has seen Simone and Rembrandt on occasion since October 2011, he has not seen Isaac since September 2011.
- [46] The respondent testified that Simone lived with him for the period from January to June 2014 while she attended high school in New Westminster for one term.
- [47] In September 2012, the respondent obtained employment with SAP Canada Inc. earning an annual salary of \$82,000. Despite having secured full time employment since September 2012, the respondent decided not to file any income tax returns since 2010 even though he would likely have been entitled to a tax refund. He did so because he was confident that the refunds would be garnished by the Family Maintenance Enforcement Program ("FMEP"). As a result, not only did he deliberately neglect to pursue his right to a credit for his income tax refunds, he gave up the child tax credits that would otherwise have been available to him. His hope is that his applications for retroactive child support and a variation of his support obligations will eliminate his indebtedness, whereupon he will then file his tax returns for the years 2011 to 2014, inclusive and obtain the refunds and other benefits he believes he will be entitled to.
- [48] Despite having made a conscious decision not to disclose his unemployment status until the custody dispute in respect of the Three Older Children had been resolved with the Ministry and despite the pleadings filed by him on August 16, 2010, the respondent testified that he had no knowledge he could maintain a claim against the claimant for retroactive child

support or to retroactively vary L. Smith J.'s December 4, 2009 Order until April 2015 when he was advised of his right to do so by his counsel, Mr. Hittrich. He maintains that this is the reason he took no steps in that regard until this notice of application was filed on June 15, 2015.

[49] The respondent claims that his income during his unemployment between August 2009 and September 2012 was as follows:

a)

2010:

\$14,910

b)

2011:

\$10,952

c)

2012:

\$27,427

He testified that he was able to survive and provide the necessities of life to himself and his children only by relying on the credit that was available to him through credit cards.

[50] The current amount owing by the respondent to the claimant for spousal and child support arrears is \$47,796.99. The FMEP has been garnishing \$2,376 each month from the respondent's employer.

[51] On August 4, 2015, the respondent was laid off from his employment at SAP Canada Inc. He has applied for Employment Insurance benefits and has been seeking new employment, so far without success.

[52] The Matrimonial Home is currently the subject of foreclosure proceedings by the Royal Bank of Canada. A foreclosure hearing is scheduled for November 2015.

III. Credibility

[53] I found the claimant to be an intelligent, forthright and honest witness. She gave her evidence in a detailed, assertive and credible manner. Her recall of the events was meticulous and remarkable.

[54] In contrast, I found the respondent to be evasive and less than straightforward and forthright in giving his evidence. I also found his evidence to be misleading in some respects. I was left with the distinct impression that there is much more to his story than he was prepared to disclose.

- [55] Moreover, the claimant left all of her documents, accounting and bank records and the detailed ledger of expenses in the Matrimonial Home when she left on May 31, 2008. Since then, the respondent has had these records in his possession and control. During the course of the hearing of these applications, the respondent produced a variety of these documents, but in a very selective way. For example, the claimant's ledger of expenses was produced on September 9, 2015 but not the related ledger that allocated the expenses among the children and recorded the application of the child tax credits to those expenses.
- [56] To the extent that the parties' evidence conflicts, I have no hesitation accepting the evidence of the claimant and rejecting that of the respondent.

IV. Analysis

1. Retroactive Variation of Child Support Order dated December 4, 2009
- [57] Section 17(1) of the Divorce Act provides that a court may make an order varying, rescinding or suspending a support order, prospectively or retroactively.
- [58] Section 17(4) provides that, before the court makes a variation to a child support order, it must be satisfied that there has been a change of circumstances as provided for in the Federal Child Support Guidelines, SOR/97-175 ("FCSGs"). Section 14 of the FCSGs provides, in relevant part, as follows:
14. For the purposes of subsection 17(4) of the Act, any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:
 - (a) in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof;
 - (b) in the case where the amount of child support does not include a determination made in accordance with a table, any change in the condition, means, needs or other circumstances of either spouse or of any child who is entitled to support; and
- [59] Section 152 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides that a court may change, suspend or terminate a child support order, prospectively or retroactively. Before doing so, the court must be satisfied that a change in circumstances, as provided for in the FCSGs has occurred or that there is evidence of a substantial nature that was not available at the time the support order was made.
- [60] The onus is on the respondent, as the applicant, to provide satisfactory evidence that a change in circumstances, as required by the legislation, has occurred since L. Smith J. made the order on December 4, 2009. In my view, the evidence he has provided is inadequate.

- [61] First and most importantly, the respondent was unemployed at the time of the December 4, 2009 Order and had been since August, 2009. He intentionally failed to disclose this significant fact to L. Smith J. because he perceived he would be disadvantaged in the ongoing custody proceedings with the Ministry in respect of the Three Older Children. The fact of his unemployment is not a change in circumstances after the December 4, 2009 Order was made. The same circumstances existed prior to the order. Moreover, evidence of his unemployment was available at the time the support order was made. He simply chose not to disclose it.
- [62] Second, I am not satisfied that the respondent has fully and accurately disclosed his financial circumstances during the period 2010 to September 2012. There are simply too many inconsistencies and unexplained gaps in his evidence as to his finances.
- [63] The respondent's sworn Form F8 Financial statements are incomplete and, in many important respects, misleading. For example, a proceeding was brought by the claimant and the FMEP against him for enforcement of his child support obligations when he was fully employed; on February 25, 2014, he swore a Statement of Finances in the Vancouver Provincial Court Action 10-24372, deposing that he had "four children who are legally dependent on me for financial support", claiming monthly expenses for child maintenance and other expenses that he was not paying. His response on cross-examination was that those listed expenses "do seem high to me" and that they "are still payable and owing even though I didn't pay".
- [64] In his June 12, 2015 affidavit, the respondent deposed that his "total gross income in 2010 was only \$14,910". However, in an earlier affidavit sworn by him on February 25, 2011, he deposed that his gross income in 2010 was \$16,694.85.
- [65] The respondent has not satisfied me that there has been a change of circumstances as provided for in the FCSGs.
- [66] While I accept that the Three Older Children were returned to the respondent's care sometime in early 2010, the unsatisfactory nature of the respondent's financial disclosure for the period 2010 to 2012 is such that I am unable to conclude that a different child support order would have been made. I am simply not satisfied that the respondent has fully revealed his income during that period.
- [67] The respondent's application for an order retroactively varying the child support order of December 4, 2009 is dismissed.

2. Retroactive Variation of Spousal Support Order

- [68] Section 17(4.1) of the Divorce Act provides that, before the court makes a variation to a spousal support order, it must be satisfied that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order.

[69] For the reasons set out above, I am also not satisfied that a change in the condition means, needs or other circumstances of the respondent has occurred since the December 4, 2009 Order. His application for an order that spousal support payable by the respondent to the claimant from January 1, 2010 to and including 2012 is \$0, is dismissed.

3. Retroactive Child Support in respect of the Three Older Children

[70] During his submissions, counsel for the respondent stated that the respondent is seeking a retroactive child support award for the Three Older Children in respect of the following amended periods:

- a) May 31, 2008 to December 3, 2008;
- b) mid-January 2010 to June 30, 2011

[71] In order to succeed, the respondent must demonstrate that the claimant was a "parent" to the Three Older Children prior to the parties' May 31, 2008 separation.

[72] The definition of "parent" under section 146 of the FLA includes a stepparent, if the stepparent has a duty to provide for the child under section 147(4):

147(4) A child's stepparent does not have a duty to provide support for the child unless:

- (b) the stepparent contributed to the support of the child for at least one year, and

[73] A proceeding for an order for child support against the stepparent is started within one year after the date the stepparent last contributed to the support of the child.

[74] When determining whether a stepparent contributed to the support of a child, the court is entitled to draw inferences from all the evidence: *Pritchard v. Pritchard* (1994), 1 B.C.L.R. (3d) 336 at para. 10 (S.C.). A contribution of any kind made by the spouse in relation to the children of the other spouse is sufficient: *Smart v. Wiewior*, 1990 CanLII 1673 (B.C.C.A.) at p. 4.

[75] Although the evidence shows that the Three Older Children lived full-time in the Matrimonial Home during the period from mid-2006 until May 31, 2008, I find that they did so as part of a separate family unit created by the respondent, not as part of the family unit comprised of the claimant, the respondent and Melissa.

[76] Indeed, even though they were living under the same roof, the claimant went to great lengths to keep the two families' affairs separated, particularly during the year preceding the parties' separation. Expenses for the two de facto households were not shared during the period of time between June 2006 and May 2008. I am not satisfied on the evidence before me that the claimant contributed to the support of the Three Older Children as required by s. 147(4) of the FLA. She explained that, when she heard for the first time in 2005 about the respondent's past, she began to question her relationship with him. For that reason, she distanced the Three Older Children from her own life when they began living in the Matrimonial Home in 2006. She neither considered herself to be their stepmother nor

contributed to their support within the period of one year immediately preceding the filing by the respondent of his application for child support on June 24, 2008.

- [77] The respondent has failed to demonstrate on the balance of probabilities that the claimant was a stepparent to the Three Older Children within the definition of the FLA.
- [78] Moreover, as stated above, I find that I am in no position to determine with any degree of confidence what the respondent's income was for the relevant period.
- [79] Finally, even if the respondent had satisfied me that the claimant was a stepparent and that the financial circumstances were such that a retroactive child support order should be granted, the court should generally not make a retroactive order for child support more than three years in the past. In *D.B.S. v. S.R.G.*, 2006 SCC 37, the Supreme Court of Canada stated:

In determining whether to make a retroactive award, a court should strive for a holistic view of the matter and decide each case on the basis of its particular facts. The payor parent's interest in certainty must be balanced with the need for fairness to the child and for flexibility. In doing this, the court should consider the reason for the recipient parent's delay in seeking child support, the conduct of the payor parent, the past and present circumstances of the child, including the child's needs at the time the support should have been paid, and whether the retroactive award might entail hardship. Once the court determines that a retroactive child support award should be ordered, the award should, as a general rule, be retroactive to the date of effective notice by the recipient parent that child support should be paid or increased, but to no more than three years in the past. Effective notice does not require the recipient parent to take legal action; all that is required is that the topic be broached. Once that has occurred, the payor parent can no longer assume that the status quo is fair. However, where the payor parent has engaged in blameworthy conduct, the date when the circumstances changed materially will be the presumptive start date of the award. Finally, the court must ensure not only that the quantum of a retroactive support award is consistent with the statutory scheme under which it is operating, but also that it fits the circumstances. [99-135]

[Emphasis added]

- [80] In my view, the respondent is now estopped from maintaining a claim for retroactive child support of the Three Older Children because he failed to take any meaningful steps to prosecute the claim for over seven years. In the meantime, the claimant has successfully re-established a life for herself and Melissa, in material part on the basis of the child support ordered by Madam Justice Smith in December 2009. It would be an injustice to her if she were to now be required to pay retroactive child support in respect of the Three Older Children.
- [81] The respondent's claim for retroactive child support in respect of the Three Older Children is dismissed.

4. Suspension of Child Support Obligations

- [82] The claimant concedes and I accept that the respondent was laid off from his employment at SAP Canada Inc. on August 4, 2015. I also accept that he is making reasonable efforts to become reemployed. In the meantime, he has no income and is in substantial debt.
- [83] The claimant candidly agreed that, in the circumstances, payment by the respondent of child support obligations should be suspended.
- [84] In the circumstances, I am ordering that payment by the respondent of his child support obligations are suspended pending receipt by him of Employment Insurance benefits or income of any form, at which time his child support obligation will resume on the first day of the month immediately following receipt of such benefits or income in an amount equal to that payable under the FCSGs for the annual equivalent of such benefits or income.

5. S. 7 Special and Extraordinary Expenses and Disclosure Issues

- [85] Given the foregoing, the respondent's obligation to pay s. 7 Extraordinary Expenses in respect of Melissa is unchanged.
- [86] The claimant agrees to provide the respondent with copies of all receipts in her possession or control relating to Melissa's s. 7 Extraordinary Expenses. She also agrees to continue to provide such receipts to the respondent on an ongoing basis. However, she wants the right to redact the contact information of the service providers because she continues to be fearful that the respondent will stalk her.
- [87] While there is evidence of certain things the respondent did that could arguably qualify as stalking, those activities took place prior to 2013 and have not been repeated.
- [88] In my view, a redaction of the s. 7 Extraordinary Expense receipts is no longer warranted.
- [89] The claimant will provide complete and unredacted copies of Melissa's s. 7 Extraordinary Expenses within her possession or control within 30 days of the date hereof.
- [90] Thereafter, every six months, the claimant will provide the respondent with unredacted copies of Melissa's s. 7 Extraordinary Expenses incurred in the preceding six months.
- [91] Each of the parties will provide to the other a copy of their filed income tax return by the first day of May of each year, commencing May 1, 2016.

V. Conclusion

- [92] All of the respondent's applications for retroactive relief are dismissed.
- [93] The claimant will provide complete and unredacted copies of Melissa's s. 7 Extraordinary Expenses within her possession or control within 30 days of the date hereof. Thereafter, every six months, the claimant will provide the respondent with unredacted copies of Melissa's s. 7 Extraordinary Expenses incurred in the preceding six months.

- [94] Each of the parties will provide to the other a copy of their filed income tax return by the first day of May of each year, commencing May 1, 2016.
- [95] The respondent's applications to vary his support obligations are dismissed. However, payment by the respondent of his child support obligations pursuant to the Order of L. Smith J. dated December 4, 2009 are suspended pending receipt by him of Employment Insurance benefits or income of any form, at which time his child support obligation will resume on the first day of the month immediately following receipt of such benefits or income in an amount equal to that payable under the FCSGs for the annual equivalent of such benefits or income.
- [96] The claimant is entitled to her costs of this application, including for two days of hearing.
- "G.C. Weatherill J."

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