CANADA / JUDGMENT

Sigalet v. Hunt

2019 BCSC 1428

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Supreme Court of British Columbia	23 August 2019

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2019 BCSC 1428 Sigalet v. Hunt IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Sigalet v. Hunt, 2019 BCSC 1428 Date: 20190823 Docket: E080334 Registry: Williams Lake Between: Kristofer David Sigalet Claimant And Elizabeth Corrinne Hunt Respondent Before: The Honourable Mr. Justice Hori Reasons for Judgment Counsel for the Claimant: D.T. Patterson Counsel for the Respondent: K. Church Place and Date of Hearing: Williams Lake, B.C. May 7 and 15, 2019 Place and Date of Judgment: Williams Lake, B.C. August 23, 2019 I. Nature of the Application

[1] The respondent, Elizabeth Corinne Hunt, applies for retroactive child support from 2011 and prospective child support for two children under the Federal Child Support Guidelines.

[2] The respondent also applies for the payment of the claimant's pro rata share of all special and extraordinary expenses related to the children from 2011. II. Background

[3] The relationship between the parties began in December 2000. They were never married but remained in a marriage-like relationship with periods of separation until their relationship finally concluded in June 2006.

[4] The parties have two children from their relationship as follows: Bjorn Phillip Sigalet, age 17; and Abayah O'Hara Hunt, age 16.

[5] The claimant commenced these proceedings on July 4, 2008, and both parties attended a judicial case conference on November 18, 2008.

[6] After the judicial case conference, the parties discussed the resolution of the issues in this action. Those discussions resulted in a consent order dated January 5, 2010, and filed with the Court on January 7, 2010. The relevant provisions of the consent order are set out below.

[7] Mr. Sigalet is 44 years of age. He is a registered forrester and is employed by the Provincial Government in the Ministry of Forests, Lands and Natural Resource Management.

[8] Ms. Hunt is 51 years of age. She is a lawyer who maintains a private legal practice in the field of aboriginal law. Ms. Hunt is First Nations and is a member of the Kwakiutl Band. The income earned by Ms. Hunt is partly earned through a corporate entity which operates on reserve land. Therefore, the income earned through the corporate entity is earned tax-free.

[9] Until recently, Ms. Hunt resided in Williams Lake, BC. However, due to career opportunities, she has recently moved to Campbell River, BC, where she continues to be engaged in the practice of law. III. Relevant Chronology

[10] On January 5, 2010, this Court made an order by consent (the "Consent Order") which included the following terms:

a) The claimant will pay the respondent the sum of $600 per month for the support of the two children commencing December 15, 2008, and continuing on the 15th day of each month until November 15, 2010; and

b) The parties will review child support by December 15, 2010. The Consent Order did not provide for the payment of special and extraordinary expenses. The Consent Order also did not provide specifically for the ongoing disclosure of financial records by the parties.

[11] On December 13, 2010, Mr. Sigalet requested Ms. Hunt's income information to determine his obligations to pay special and extraordinary expenses.

[12] There was no review of the child support obligation by December 15, 2010.

[13] Mr. Sigalet sent his 2010 T4 to Ms. Hunt by fax on January 14, 2011.

[14] On February 3, 2011, Mr. Sigalet requested income information from Ms. Hunt but he received no response.

[15] On August 30, 2012, Mr. Sigalet provided his 2011 T4 to Ms. Hunt.

[16] On November 14, 2012, counsel for Ms. Hunt delivered a letter to Mr. Sigalet requesting updated financial information.

[17] Mr. Sigalet provided his 2009, 2010 and 2011 T4 documents to Ms. Hunt on January 21, 2013.

[18] On February 14, 2013, counsel for Ms. Hunt delivered a letter to Mr. Sigalet requesting financial information and indicating that if there was no response an application would be set.

[19] On October 18, 2016, Ms. Hunt filed the application that is now before the Court.

[20] On November 15, 2016, Mr. Sigalet provided his 2013, 2014 and 2015 T4 documents to Ms. Hunt and on November 18, 2016, Ms. Hunt received Mr. Sigalet's pay stubs from September 18, 2016 to November 18, 2016.

[21] On December 23, 2016, Mr. Sigalet filed a financial statement attaching his income tax returns for 2012 to 2015, his notices of assessment for 2013 to 2015, his final pay stub for 2015 and his most current pay stub for 2016.

[22] In January 2017, the application before the Court was adjourned by consent. IV. Income of the parties

[23] Both Mr. Sigalet and Ms. Hunt have filed financial documents showing their income from 2011 to 2018. Mr. Sigalet's income is derived primarily from his employment. However from 2014 to 2016 he deferred part of his employment income as part of a leave of absence program offered by his employer. In addition to employment income, Mr. Sigalet received rental income from renting out a basement suite in his house.

[24] Ms. Hunt's income is comprised of taxable income that she earned personally as well as nontaxable income that she earned through her corporate entity which operated on reserve land. A. Income of the Claimant

[25] Between 2014 and 2016, Mr. Sigalet deferred a total of $18,723.77 pursuant to his employer's leave of absence program. The deferred income was taken as a lump sum in 2017. For the purposes of the Federal Child Support Guidelines, the deferred income should be redistributed back to the years in which it was earned. The parties are in agreement that this should happen.

[26] In addition, the parties agree that any rental income earned by Mr. Sigalet should be included in his Guideline income.

[27] Based upon the financial records filed with the Court, I have set out my assessment of Mr. Sigalet's annual income from 2011 to 2018 in the table below: Annual Income of Mr. Sigalet Tax Year T4 Income 13% Deferred Salary Net Rental Income Total 2011 $39,456.49 - No info $39,456.49 2012 $60,654.09 - No info $60,654.09 2013 $56,456.59 - $-675.00 $56,456.59 2014 $56,664.78 $1,805.03 $-145.46 $58,469.81 2015 $57,326.43 $8,523.12 $2,940.05 $68,789.60 2016 $56,186.06 $8,395.62 $3,456.76 $68,047.38 2017 $88,943.01 -$18,723.77 $3,373.03 $73,592.27 2018 $70,944.61 - $3,603.22 $74,547.83 2019 projected $70,477.49 - $3027.22 $73,504.71 B. Income of the Respondent

[28] The income earned through Ms. Hunt's corporate entity must be grossed-up because it is income earned on a reserve and is therefore not taxable. In addition to her corporate income, Ms. Hunt earned taxable personal income in the years between 2011 and 2018.

[29] On behalf of Mr. Sigalet it is submitted that I should gross-up Ms. Hunt's corporate income by the highest marginal tax rate in each of the years the corporate entity earned income. It is submitted on behalf of Ms. Hunt that the amount of corporate income to be attributed to her in each year should be the amount that she actually drew out of the company in each of those years.

[30] In my view neither of those approaches is correct. The gross-up of the corporate income by the highest marginal tax rate in each year is not appropriate because not every dollar earned by the corporate entity would be taxed at the highest marginal rate. The approach to attribute only the corporate income drawn out by Ms. Hunt in each year is also inappropriate since Ms. Hunt's total income in each year includes the entire amount earned by the corporate entity not just the amount that she chooses to draw out of the company in each year.

[31] I have assessed Ms. Hunt's annual income by assuming that 35% of the corporate revenue would be paid to taxes. The annual corporate income adjusted to account for the payment of taxes was then added to Ms. Hunt's personal income to arrive at her annual Guideline income.

[32] Ms. Hunt has recently taken a job as a lawyer on Vancouver Island. Therefore, from 2019 all of her income will be taxable. Ms. Hunt will be earning $70,000 per year in base salary in her new position.

[33] Based on these assumptions, I have concluded that Ms. Hunt's annual income is as set out in the table below: Annual Income of Ms. Hunt Tax Year Taxable Income Corporate Gross Income Grossed Up Corporate Income Total 2011 - $145,687.00 $224,133.84 $224,133.84 2012 $12,861.36 $212,336.00 $326,670.76 $339,532.12 2013 $16,267.01 $129,800.00 $199,692.30 $215,959.31 2014 $15,869.47 $59,962.00 $92,249.23 $108,118.70 2015 $15,869.47 $58,874.50 $90,576.15 $106,445.62 2016 $7,001.31 $72,043.00 $110,835.38 $117,836.69 2017 $-871.83 $161,966.00 $249,178.46 $248,306.63 2018 $9,217.70 $27,609.00 $42,475.38 $51,693.08 2019 projected $70,000.00 - - $70,000.00 V. Child support

[34] Having decided the historical income levels for each of the parties from 2011 for the purposes of the Child Support Guidelines, the annual child support obligations of each of the parents can be determined on a year by year basis. However, the child support obligations of Mr. Sigalet are impacted by the fact that since 2016 both or one of the children have resided with him for parts of the year. Therefore, to determine his net child support obligations it is necessary to determine the time that the children resided with Mr. Sigalet and to determine what Ms. Hunt's child support obligations would have been for those periods of time.

[35] Based on the evidence, I have determined that either one or both of the children resided with Mr. Sigalet for the following periods of time:

a) in 2016, both children resided with Mr. Sigalet for three months;

b) in 2017, both of the children resided with Mr. Sigalet for one month and Abayah Hunt continued to reside with her father for an additional one month;

c) in 2018, Bjorn Sigalet resided with Mr. Sigalet for seven months and;

d) in 2019, Bjorn Sigalet has resided with Mr. Sigalet for seven months from January 1 to date.

[36] In addition, since September 2017, Abayah Hunt has been attending school at Brentwood College. However, I have determined that while Abayah has been attending college, the main financial responsibility for Abayah's care and support has been with Ms. Hunt.

[37] Based on the level of income determined earlier in these reasons, the child support obligations of Mr. Sigalet for the children in accordance with the Child Support Guidelines from 2011 would have been as follows: Year Income Monthly Child Support Duration of Child support (months) Annual Child Support 2011 $39,456.49 $603 12 $7,236 2012 $60,654.09 $920 12 $11,040 2013 $56,456.59 $855 12 $10,260 2014 $58,469.81 $887 12 $10,644 2015 $68,789.60 $1043 12 $12,516 2016 $68,047.38 $1031 9 for 2 children $9,279 2017 $73,592.27 $688 1 for 1 child $688 2017 $73,592.27 $1115 10 for 2 children $11,150 2018 $74,547.83 $1157 5 for 2 children $5,785 2018 $74,547.83 $711 7 for 1 child $4,977 2019 projected $73,504.71 $700 7 for 1 child $5,600 (8 months)

[38] Based on the time that the children resided with their father, Ms. Hunt's child support obligations from 2016 would have been as follows: Year Income Monthly Child Support Annual Child Support 2011 - $0 $0 2012 - $0 $0 2013 - $0 $0 2014 - $0 $0 2015 - $0 $0 2016 $117,836.69 2 children - $1,707 3 months - $5,121 2017 $249,178.46 2 children - $3,353 1 month - $3,353 2017 $249,178.46 1 child - $2,056 1 month - $2,056 2018 $51,693.08 1 child - $485 7 months - $3,395 2019 projected $70,000.00 1 child - $666 8 months - $5,328

[39] From the foregoing assessment, the claimant's net child support obligations from 2011 are set out in the following table: Year C.S. payable by claimant C.S. payable by Respondent. Net C.S. payable by claimant C.S. paid by claimant Unpaid C.S. payable by claimant 2011 $7,236 $0 $7,236 $3,600 $3,636 2012 $11,040 $0 $11,040 $5,100 $5,940 2013 $10,260 $0 $10,260 $6,565 $3,695 2014 $10,644 $0 $10,644 $7,600 $3,044 2015 $12,516 $0 $12,516 $7,800 $4,716 2016 $9,279 $5,121 $4,158 $3,629 $529 2017 $11,838 $5,409 $6,429 $8,192 -$1,763 2018 $10,762 $3,395 $7,367 $10,290 -$2,923 2019 to Aug 31 $5,600 $5,328 $272 $0 $272

[40] The total unpaid child support obligations of Mr. Sigalet from 2011 to July 31, 2019, are $17,146. VI. Retroactive Child Support

[41] The Supreme Court of Canada in D.B.S. v. S.R.G., 2006 SCC 37, described in detail the rationale for the award of retroactive child support and the factors that must be considered when deciding whether a retroactive child support order is appropriate. The court in D.B.S. recognized the need for certainty in the payor's child support obligations but also the need for flexibility in awarding retroactive child support to ensure that the children benefit from the support they are owed at the time that it is owed to them. Mr. Justice Bastarache, at paragraph 4 of his reasons, writes as follows:

[4] . . . Whatever the outcome of these individual cases, the ultimate goal must be to ensure that children benefit from the support they are owed at the time when they are owed it. Any incentives for payor parents to be deficient in meeting their obligations should be eliminated.

[5] Against this backdrop, it becomes clear that retroactive awards cannot simply be regarded as exceptional orders to be made in exceptional circumstances. A modern approach compels consideration of all relevant factors in order to determine whether a retroactive award is appropriate in the circumstances. Thus, while the propriety of a retroactive award should not be presumed, it will not only be found in rare cases either. Unreasonable delay by the recipient parent in seeking an increase in support will militate against a retroactive award, while blameworthy conduct by the payor parent will have the opposite effect. Where ordered, an award should generally be retroactive to the date when the recipient parent gave the payor parent effective notice of his/her intention to seek an increase in support payments; this date represents a fair balance between certainty and flexibility.

[42] Justice Bastarache continues at paragraph 6:

[6] . . . Courts must be open to ordering retroactive support where fairness to children dictates it, but should also be mindful of the certainty that fairness to payor parents often demands.

[43] The factors that the court must consider before awarding retroactive child support are established by D.B.S. as follows:

a) whether there has been any delay by the recipient parent in seeking child support;

b) whether there has been any blameworthy conduct on the part of the payor parent;

c) whether the circumstances of the children justify a retroactive award; and

d) whether undue hardship will be occasioned to the payor parent by a retroactive award. A. Delay in seeking child support

[44] Mr. Sigalet points to the significant delay on the part of Ms. Hunt in seeking increased child support after December 15, 2010. Mr. Sigalet submits that Ms. Hunt knew that the child support payable pursuant to the Consent Order was below the level set by the Child Support Guidelines from the date that she agreed to the terms of the order. Ms. Hunt delivered an email to counsel for Mr. Sigalet on January 15, 2009, in which she expressed her agreement with the terms of the Consent Order with the following proviso: We will need a Child Support Agreement that sets out that Kris will get his reprieve from guideline child support for only two years.

[45] The Consent Order provides for the payment of child support in the amount of $600 per month commencing on December 15, 2008 and continuing until November 15, 2010. The Consent Order makes no provision for child support after November 15, 2010, other than to require that the support be reviewed by December 15, 2010.

[46] Mr. Sigalet sent his 2010 T4 to Ms. Hunt on January 11, 2011. He sent his 2011 T4 to Ms. Hunt on August 30, 2012, and on January 21, 2013, he sent his 2009, 2010 and 2011 T4s to Ms. Hunt.

[47] Ms. Hunt did not request financial information from Mr. Sigalet until her counsel, on November 14, 2012, made a written request for his income tax returns and notices of assessment for 2009, 2010 and 2011. Mr. Sigalet did not respond to this request so the request was renewed by Ms. Hunt's counsel by letter dated February 14, 2013. In the February 14, 2013 letter, counsel for Ms. Hunt advised Mr. Sigalet that if he does not respond the matter will be set for hearing. It took over three years for Ms. Hunt to file the application which is now before the Court. This application was filed on October 18, 2016. It has now been over two years since the application was filed for the matter to be set for hearing.

[48] It is submitted, on behalf of Mr. Sigalet, that this length of delay is egregious and should be sufficient to deny the award of a retroactive child support.

[49] Ms. Hunt claims that the reason for this long delay was that she had a significant reduction in her income since 2013. However, I am not prepared to accept this explanation for the delay because the income information reviewed earlier in these reasons shows that in the years 2014 to 2017, Ms. Hunt's combined income (personal and corporate), grossed up for taxes, continued to be in excess of $100,000 per year. Although the income in these years may have been less than what she earned in 2013, it is not, in my view, a reasonable explanation for the lengthy delay in seeking a child-support review. This is especially so since Ms. Hunt was aware of the child-support deficiency inherent in the Consent Order when it was entered. She certainly had the financial ability to pursue a child-support review in the three years after December 2010, but for some unexplained reason she chose not to do so. B. Blameworthy conduct

[50] The respondent, Ms. Hunt, alleges that the claimant has engaged in blameworthy conduct since December 15, 2010, the date on which the child support obligation was to be reviewed by the terms of the Consent Order. Ms. Hunt claims that the following conduct on the part of Mr. Sigalet constitutes blameworthy conduct:

a) failing to produce financial records when they were requested on November 14, 2012 and February 14, 2013;

b) moving quickly to have the child tax credits transferred to himself in January 2016, after the children had resided with him for only a short period of time; and

c) failing to disclose all of his income in the years 2014, 2015 and 2016 by virtue of the fact that he had deferred his income in those years to an employer sanctioned leave of absence program.

[51] Mr. Sigalet concedes that he has engaged in blameworthy behaviour. However, he submits that his blameworthy conduct is on the extreme low end of the scale of blameworthy conduct. Mr. Sigalet submits that the impact of his blameworthy conduct ought to be diminished for the following reasons:

a) Mr. Sigalet is not a lawyer unlike Ms. Hunt. Therefore, at any point after receiving Mr. Sigalet's T4 information Ms. Hunt could have calculated the appropriate child-support required to be paid by Mr. Sigalet but she did not;

b) Mr. Sigalet was advised that if the specific financial information requested of him were not provided an application would be brought before the Court. No such application was brought until over three years following the date on which Mr. Sigalet received this advice;

c) Mr. Sigalet continued to pay child support as set out in the Consent Order and took steps to increase the amount of support over time;

d) Once this application was brought, Mr. Sigalet filed financial statements and he increased his child support payments; and

e) The difference in the amount of support paid and the amount required to be paid under the Child Support Guidelines is minimal.

[52] Mr. Sigalet was fully aware that his child support obligations were to be reviewed by December 15, 2010. While he may have believed that a child-support payment of $600 per month was appropriate in 2011 when his income was $39,456, he certainly must have appreciated that his obligation would have increased significantly from 2012 onward when his income increased. However, he took no steps to increase his child support payments, other than by a mere $50 per month, until December 15, 2016, when he increased his child support payments to $1,029 per month.

[53] I must keep in mind the comments of the Supreme Court of Canada in D.B.S. in which the Court determined that retroactive awards may result in unpredictability but this unpredictability is often justified by the fact that payor parents choose to bring that unpredictability upon themselves by failing to meet their child-support obligations as and when they arise.

[54] Further, while I do not conclude that Mr. Sigalet intentionally concealed his deferred employment income in 2014, 2015 and 2016, the fact that he provided only his T4 documents to Ms. Hunt would have left Ms. Hunt with the impression that his Guideline income was less than it ought to have been. C. Circumstances of the Children

[55] There is no evidence before me in addressing the circumstances of the children in the years from 2011 to date. There is no evidence that the children were in need of financial support nor is there any evidence that they did not have all of the necessary financial support for their needs during this period of time.

[56] Therefore, I consider the circumstances of the children to be a neutral factor in my analysis. D. Hardship to the payor parent

[57] While it is reasonable to conclude that a retroactive award of child support will work some hardship upon Mr. Sigalet, I must consider the fact that any such hardship has been brought upon himself by his failure to properly meet his annual child support obligations as and

when they arose. He chose to sit back and await steps to be taken by Ms. Hunt to enforce the child-support obligations on behalf of the children. In the meantime he reaped the financial benefit of not having met his child care obligations. In other words, Mr. Sigalet has enhanced his own interests over his children's right to an appropriate amount of support. E. Decision on retroactive child support

[58] Based upon the foregoing analysis, I have concluded that some amount of retroactive child support is justified in this case as a result of Mr. Sigalet's conduct. While Mr. Sigalet submits that his conduct ought to be a minor factor in this analysis, it is my view that it is a factor that should be given some significant weight.

[59] On the other hand, I cannot ignore the inexcusable delay in Ms. Hunt seeking an increase in the child-support payments. While I recognize that the right to child support is an entitlement of the children which should not be compromised by the actions of the recipient parent, Ms. Hunt had the information and means by which to enforce the children's child-support entitlement well before she actually took steps to do so. Such a lengthy delay as there was in this case has already denied the children their support at the time when they were entitled to it.

[60] The Supreme Court of Canada in D.B.S. established that the general rule is to award retroactive child support to the date upon which the recipient parent gives effective notice of the claim for increased child support to the payor parent. In this case, Ms. Hunt's counsel requested financial information from Mr. Sigalet on November 14, 2012. Mr. Sigalet should have been aware, at that time, that a request for an increase in his child support obligations would be forthcoming. On February 14, 2013, counsel for Ms. Hunt advised Mr. Sigalet that an application for retroactive child support would be made.

[61] However, Ms. Hunt did not file an application for retroactive child support until October 18, 2016. The court in D.B.S. referred to this type of delay in making application at paragraph 123 of the decision:

[123] Once the recipient parent raises the issue of child support, his/her responsibility is not automatically fulfilled. Discussions should move forward. If they do not, legal action should be contemplated. While the date of effective notice will usually signal an effort on the part of the recipient parent to alter the child support situation, a prolonged period of inactivity after effective notice may indicate that the payor parent's reasonable interest in certainty has returned. Thus, even if effective notice has already been given, it will usually be inappropriate to delve too far into the past. The federal regime appears to have contemplated this issue by limiting a recipient parent's request for historical income information to a three-year period: see s. 25(1)(a) of the Guidelines. In general, I believe the same rough guideline can be followed for retroactive awards: it will usually be inappropriate to make a support award retroactive to a date more than three years before formal notice was given to the payor parent.

[62] After considering the conduct of Mr. Sigalet and the delay by Ms. Hunt in seeking an increase in child support, I have determined that retroactive child support should be awarded from the year in which Mr. Sigalet started to defer part of his income and failed to disclose that deferral to Ms. Hunt. This date strikes a balance between the blameworthy conduct on the part of Mr. Sigalet and the significant delay on the part of Ms. Hunt.

[63] Accordingly, I order that Mr. Sigalet pay retroactive child support from January 1, 2014. Based on the unpaid child support table set out earlier in these reasons, the retroactive child support payable by Mr. Sigalet is $3,875. VII. Prospective child-support

[64] With respect to prospective child-support, Bjorn currently resides with his father, while Abayah either resides with her mother or is attending school. Therefore, the child-support obligations of each of the parents should be offset one against the other.

[65] Based upon the income levels attributed to each of the parents as set out earlier in these reasons, the net child support payable by Mr. Sigalet is $238 per month. Therefore, Mr. Sigalet will pay prospective child-support of $238 per month to Ms. Hunt commencing on September 1, 2019, and continuing on the first day of each month thereafter until the children are no longer children as defined under the Family Law Act and the current residence arrangements continue. VIII. Section 7 expenses

[66] Ms. Hunt claims contribution from Mr. Sigalet to expenses incurred for the children under section 7 of the Guidelines.

[67] Section 7 of the Guidelines has been considered and interpreted by the Court of Appeal in Bodine-Shah v. Shah, 2014 BCCA 191. Special expenses listed in section 7(1)(a) to (c) and (e) are defined as expenses relating to child care, medical or dental insurance premiums, health related costs and post secondary education.

[68] Section 7 of the Guidelines also includes extraordinary expenses but limits extraordinary expenses to expenses for:

a) primary or secondary school education or for any other educational programs that meet the child's particular needs; or

b) extracurricular activities.

[69] Extraordinary expenses are to be assessed by taking into account the combined income of the parents, the nature and amount of the individual expense, the nature and number of activities, any special needs or talents of the child and the overall cost of the activities.

[70] Section 7 of the Guidelines also requires that any expense be reasonable and necessary. The Court of Appeal in Bodine-Shah has determined that relevant considerations to determine necessity and reasonableness include whether the expenses are necessary in relation to the child's best interests and reasonable having regard to the means of the spouses, the child and to the family's spending pattern prior to separation.

[71] The evidence tendered by Ms. Hunt in support of her claim for s. 7 expenses consists of a series of schedules listing specific expenses. Her evidence is that she paid for these expenses for the benefit of the children. It is Ms. Hunt's view that the expenses incurred were necessary to ensure that the children developed physically, socially and emotionally. The schedules contain little detail other than the date of the expense, the party receiving the payment and the amount.

[72] Ms. Hunt includes in her claim for section 7 expenses items such as family fitness, spring break vacations, "family miscellaneous", clothes, Christmas/birthday expenses, furniture expenses, household items, fuel, groceries and restaurant expenses. I am not prepared to accept these expense items as section 7 expenses. These expenses do not fall within the limits set by section 7 of the Guidelines for special or extraordinary expenses. They are not expenses for child care, medical or dental insurance premiums, health related costs or post secondary education. Further, they are not expenses for educational programs or for extracurricular activities.

[73] After reviewing each of the expense items listed in the schedules, I have concluded that the following expenses are section 7 expenses and that Mr. Sigalet's contribution to those expenses would have been appropriate at the time they were incurred. Year Description Amount Pro-rata Share Pro-rata amount 2011 Sun Peaks Registration $1,100 15.0 $165.00 2011 Sun Peaks Registration $895 15.0 $134.25 2011 Sun Peaks Registration $1,100 15.0 $165.00 2012 Pro Physio $35 15.2 $5.32 2012 School supplies $30 15.2 $4.56 2012 School supplies $40 15.2 $6.08 2012 School supplies $40 15.2 $6.08 2012 Library $25 15.2 $3.80 2013 Sun Peaks Passes $1,262 20.7 $261.23 2013 WL Physio $35 20.7 $7.25 2013 WL Physio $35 20.7 $7.25 2013 WL Physio $55 20.7 $11.39 2013 WL Physio $55 20.7 $11.39 2013 WL Physio $70 20.7 $14.49 2013 WL Physio $95 20.7 $19.67 2013 School meals $45 20.7 $9.32 2013 Scholastic books $11 20.7 $2.28 2013 School photos $34 20.7 $7.04 2013 Staples back to school $51 20.7 $ 10.56 Total $806.20

[74] Having determined that the foregoing expenses are section 7 expenses to which Mr. Sigalet ought to have contributed, it is necessary to determine whether a retroactive award for payment of those expenses is appropriate. Ms. Hunt incurred the expenses listed above between 2011 and 2013.

[75] I have already determined that Mr. Sigalet must pay retroactive child support from January 1, 2014, based on the analysis set out in D.B.S. While D.B.S. did not specifically address the retroactive payment of section 7 expenses, it is my view that the logic and analysis of D.B.S. applies to the retroactive payment of section 7 expenses. Therefore, for the same reasons that I limited retroactive child support payable by Mr. Sigalet to January 1, 2014, I find that the payment of retroactive section 7 expenses should be limited in the same way.

[76] Since Ms. Hunt incurred the section 7 expenses before January 1, 2014, there will not be any award for retroactive payment of these expenses. A. Brentwood College

[77] The one expense item that merits special consideration is the expense related to Abayah's attendance at Brentwood College.

[78] Abayah has been attending Brentwood College since September 2017. Prior to attending Brentwood College, Abayah had been suspended from school for having alcohol on school property. She was also suspended on one occasion in early 2017 when she left the school property with an individual who was in possession of marijuana. Ms. Hunt perceived that Abayah was having difficulty in the public school system and engaging in antisocial behaviour and poor decision-making. Therefore, Ms. Hunt enrolled Abayah at Brentwood College.

[79] Ms. Hunt made the decision to enroll Abayah in Brentwood College without consultation with or notice to Mr. Sigalet.

[80] Abayah attended Brentwood College in September 2017 under a contract where she agreed to random drug testing. Ms. Hunt observed that after commencing at Brentwood College, Abayah's grades improved and she became interested again in sports.

[81] The tuition for Brentwood College for the school year commencing in 2017 was $50,000 plus approximately $10,000 for incidentals. The tuition was reduced to $25,000 for the 2018 school year with the agreement of the College.

[82] It is my view that the costs associated with Brentwood College are extraordinary expenses as contemplated by s. 7 of the Guidelines. The Brentwood College expenses are expenses incurred for primary or secondary school education or for any other educational programs that meet the child's particular needs as set out in section 7.

[83] However, in order for the Court to order that Mr. Sigalet contribute to the Brentwood College expenses, I must be satisfied that the expense is necessary in relation to the child's best interests and reasonable in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation.

[84] On the question of whether the expense is necessary, the evidence suggests that Abayah was starting down a path that could lead to difficulties. While I cannot be sure what the future would have held for Abayah had she not transferred to Brentwood College, it appears that the transfer has in fact improved her academic performance as well as her extracurricular interests and activities. Therefore, I have concluded that the expense for Brentwood College is in Abayah's best interests and is therefore a necessary expense.

[85] With respect to whether the Brentwood College expense is reasonable, an expense of this kind does not fit with the family's spending pattern prior to the separation. However, given the means of the parties, some contribution towards the Brentwood College education would be appropriate. While a $50,000 annual tuition is unreasonable, a $25,000 annual tuition is more appropriate.

[86] Mr. Sigalet's pro rata share of the tuition based on the relative incomes of the parties is 23% for 2017 and 59% for 2018.

[87] Therefore, I have concluded that Mr. Sigalet should pay the sum of $5,750 for Abayah's 2017 Brentwood College tuition. I have arrived at this figure based on a pro rata contribution of 23% of $25,000. For the 2018 Brentwood College tuition, Mr. Sigalet will contribute $14,750. This amount is 59% of $25,000. Therefore, the total contribution required of Mr. Sigalet for Abayah's Brentwood College tuition is $20,500. IX. Prospective section 7 expenses

[88] The parties will divide s. 7 expenses commencing August 1, 2019, on a pro rata basis based on their Guideline incomes. The parties will consult one another before incurring s. 7 expenses and will agree to incur those expenses as special expenses or, failing such agreement, the parties have liberty to apply to the Court for a determination. X. Costs

[89] As I consider that both parties have had a degree of success in this application I order that each party bear their own costs. "Hori J."

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