
CANADA / JUDGMENT

Vanderhook v. Yates

2017 BCSC 2473

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 2473 Vanderhook v. Yates

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Vanderhook v. Yates,

2017 BCSC 2473

Date: 20170519

Docket: 15-2989

Registry: Victoria

Between:

Kristen Gail Vanderhook

Claimant

And:

Jarritt William Yates

Respondent

Before: The Honourable Mr. Justice G. R. J. Gaul

Oral Reasons for Judgment

Counsel for the Claimant:

T. Luchies

B. Greaves

Counsel for the Respondent:

M. Jakeman

Place and Date of Trial:

Victoria, B.C.

January 9 - 13, 16 - 18;

February 10, March 13, 2017

Place and Date of Judgment:

Victoria, B.C.

May 19, 2017

- [1] THE COURT: The claimant and the respondent are good people. They are not perfect, but then who is? Sadly, they have not been able to resolve their matrimonial dispute, and as is often the case, much of the disagreement revolves around their children.
- [2] I have no doubt that both Mr. Yates and Ms. Vanderhook love their children dearly and only want what is best for them. The question of what is best for the children is the significant issue in this case and it has caused much friction between the parties. The remainder of the parties' dispute involves financial matters.
- [3] In these reasons for judgment, I will address the following five issues:
- the court's jurisdiction;
 - parenting issues;
 - child support and s. 7 expenses and extraordinary expenses;
 - spousal support; and
 - the identification and division of family assets.

Background

- [4] The claimant, Ms. Vanderhook, is 36 years old. The respondent, Mr. Yates, is 38. They met in Merritt, B.C., when each of them was in high school.
- [5] In February 2001, Mr. Yates joined the Canadian Armed Forces (the "CF") and relocated to Edmonton, Alberta, to commence his training as a combat engineer. It was around this time that the parties began a long-distance relationship.
- [6] In September 2002, Mr. Yates deployed with the CF to Bosnia Herzegovina.
- [7] At some point the parties agreed that Ms. Vanderhook would relocate from Merritt to Edmonton and begin living in Mr. Yate's military Private Married Quarters ("PMQs"), while he was away on deployment. In February of 2003, Ms. Vanderhook did so.

- [8] Mr. Yates returned to Edmonton in April of 2003 and began living with Ms. Vanderhook in their PMQs. The parties were married on 6 September 2003.
- [9] On 24 September 2004, the parties' first child, [D.Y.], was born. He has grown into quite an energetic and athletic young person. He has, also at times exhibited aggressive behaviour, especially at school, and it would appear that he may be suffering from an attention deficit syndrome.
- [10] In or around February 2005, the parties and their son moved out of their PMQs and into a new house they had built in the Edmonton area.
- [11] From March until August of 2005, Mr. Yates was deployed with the CF to Afghanistan. At some point that year, he was promoted to the rank of Corporal. He also began the process of re-mustering as a firefighter within the CF.
- [12] After obtaining his firefighter qualifications, Mr. Yates was posted to the Canadian Forces Base in Comox B.C. Consequently, the parties relocated to Vancouver Island in the summer of 2006. While in Comox, Mr. Yates was employed as a firefighter with both the CF and the local community fire department.
- [13] In December 2006, Ms. Vanderhook joined the CF as an army reservist.
- [14] The parties' second child, [K.Y.], was born in January 2009.
- [15] Even though Mr. Yates was working two jobs and Ms. Vanderhook was also earning an income from her part-time work with the CF, financial stresses began putting strain on their relationship. The prospect of Mr. Yates again deploying with the CF was another source of marital tension.
- [16] Mr. Yates deployed with the CF to the United Arab Emirates from March until June 2010. Upon his return home, he was promoted to the rank of Master Corporal. He was subsequently posted to the Canadian Forces Base in Esquimalt, B.C.
- [17] The parties sold their home in Comox and moved to PMQs in the Victoria region in the summer of 2010.
- [18] In July 2011, Mr. Yates was deployed to Libya. By that time, there was significant marital discord between the parties. Things did not improve on that front and while Mr. Yates was away the parties agreed to separate as of 19 August 2011.
- [19] Mr. Yates returned home from his deployment in February 2012. Although the parties had separated, they agreed that Mr. Yates could reside in their family PMQs until he found an alternate living arrangement.
- [20] In August 2012, Mr. Yates left the PMQs and obtained his own accommodations. Up to that point, he had continued to pay for all of the PMQ-related expenses, as well as a share of the family expenses.

- [21] In October 2012, Ms. Vanderhook completed her component transfer from the CF Primary Reserve to the Regular Force as a resource management support clerk holding the rank of Corporal. Around the same time she was becoming a member of the Regular Force, Mr. Yates was completing his exit from the CF. He was also at the start of a new relationship with Ms. Megan Mackenzie.
- [22] Shortly after ending his employment with the CF, Mr. Yates secured new employment as a firefighter with Wapose Emergency Services Inc. at an oil sands worksite some 75 kilometres north of Fort McMurray, Alberta. As of March 2014, he was the deputy fire chief of this operation. When not at work, Mr. Yates resided in Victoria with Ms. Mackenzie and her son who now is 13 years old.
- [23] In July 2014, Mr. Yates and Ms. Mackenzie were engaged to be married, and in March 2015, their son was born.
- [24] Ms. Vanderhook continues to reside in the PMQs in Victoria.
- [25] Mr. Yates and Ms. Mackenzie and their family now live in a home located just outside of Victoria, in Sooke, B.C.

History of the legal proceedings

- [26] As is often the case in situations like the present one, there is a somewhat convoluted history to this matter.
- [27] On 18 January 2013, Ms. Vanderhook filed an application in Provincial Court seeking an order relating to the custody, guardianship, and maintenance of the children. Mr. Yates filed a reply and counterclaim on 28 January 2013.
- [28] At a Family Case Conference held in Provincial Court on 18 September 2013, the parties agreed to a consent interim order that provided for the following:
- shared guardianship with each party having the obligation to advise the other party of any matters of a significant nature affecting the children and to discuss with the other party any significant decisions that have to be made concerning the children and to try and reach agreement on those decisions;
 - in the event the parties could not reach an agreement regarding significant decisions about the children, then Ms. Vanderhook would have the right to make the decisions and Mr. Yates would have the right to apply to court for directions;
 - a specific parenting schedule for Mr. Yates that expired in March 2014.
- [29] The consent order also had the following specific term:

- [5] The parties agree that it is in the children's best interest to spend time with the other party rather than with a third party. Accordingly, if a party with whom the children are scheduled to spend time cannot care for the children, they will notify the other party and give that party the opportunity to do so. If the other party cannot care for the children, the party with whom the children are scheduled to spend time with will be solely and financially responsible for making alternate childcare arrangements.

That is an important term of the order.

- [30] In March 2014, Ms. Vanderhook filed another application in Provincial Court again seeking an interim order relating to the children. Mr. Yates, in response, filed his materials in April of 2014. For reasons that remain unclear to me, the application never proceeded.
- [31] At some undisclosed and unexplained time, Mr. Yates filed a notice of family claim in Supreme Court seeking a divorce order. Ms. Vanderhook filed no pleadings in that action and so a desk order divorce was granted on 10 January 2015.
- [32] On 5 August 2015, Ms. Vanderhook filed a notice of family claim of her own in Supreme Court seeking orders relating to the parties' parenting arrangement of the children, child support, spousal support, and division of family property.
- [33] On 25 September 2015, Mr. Yates filed his response, and three days later he filed a counterclaim. Ms. Vanderhook filed her response to the counterclaim on 6 December 2016.
- [34] At a Judicial Case Conference in Supreme Court on 28 September 2015, the parties agreed to an interim order requiring Mr. Yates to pay Ms. Vanderhook \$1,663 per month in child support and \$384.30 per month as a contribution towards the children's childcare expenses. These amounts were based on guideline incomes of \$114,000 and \$70,614 for Mr. Yates and Ms. Vanderhook respectively. The order was also made "without prejudice to the claimant or respondent on quantum or commencement date".
- [35] That brings us to the trial. I will note at this point that both sides agree that but for the divorce order which can only be granted under the Federal Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.), all of the other orders they are seeking should be made under British Columbia's Family Law Act, S.B.C. 2011, c. 25.

Credibility of witnesses

- [36] Before I address the substantive issues in this case, let me make a few comments about the evidence and the principal witnesses.
- [37] First, there is the claimant. I found Ms. Vanderhook to be a generally earnest witness who provided reliable evidence. She is also someone who has kept reasonably accurate records.

- [38] However, I find she used the fact that Mr. Yates was employed in Alberta and was regularly away from Victoria as a convenient excuse for her making most if not all of the significant decisions for the children without first consulting with him. This was so, notwithstanding the clear terms of the Provincial Court order and the expectation that she would consult with Mr. Yates and try to reach an agreement with him on issues and decisions relating to the children.
- [39] In my view, Ms. Vanderhook found it convenient and to her advantage to simply exclude Mr. Yates from the decision-making process. This is borne out in the evidence relating to [D.Y.'s] medical appointments and treatment, as well as the preparation of his special educational programs, including his Individual Education Plan ("IEP").
- [40] The same can be said about the manner in which the children were registered for many of their sports and other extracurricular activities. While there was communication in the early post-separation period, once Mr. Yates re-established himself in a new relationship and had found new employment in Alberta, there was, in my view, a noticeable lack of effort on Ms. Vanderhook's part to include Mr. Yates in any of the significant decisions relating to the children. Ms. Vanderhook also started to disregard the terms of paragraph 5 of the Provincial Court order that required her to first seek Mr. Yates' assistance in caring for the children, in the event she was not able to, before resorting to a third party child care service. All of this is regrettable and needs to change.
- [41] As for Mr. Yates, I found him to be as earnest and reliable a witness as Ms. Vanderhook. However, his paperwork was noticeably less complete than hers, particularly his financial records. For example, the CRA tax returns that he disclosed to Ms. Vanderhook were incomplete and delivered very late in the day. Mr. Yates explains that the person who had prepared some of those returns had swindled him by failing to file them and return the records to him. In essence, Mr. Yates says this person ran off with those financial records. Mr. Yates says this meant he had to try to recreate his missing tax returns and that explains why they were not complete when he delivered them to Ms. Vanderhook's counsel on the eve of trial. I do not find that is a satisfactory answer to the poor state of Mr. Yates' financial disclosure. In my view, he could have and should have been more diligent in preparing his financial materials and delivering them to Ms. Vanderhook's counsel well in advance of the trial.
- [42] I should also note that I found that Mr. Yates could have taken additional steps to become engaged in the medical and schooling issues relating to his children, especially [D.Y.], notwithstanding Ms. Vanderhook's inability or unwillingness to include him. It is, to a certain degree, a two-way street.

- [43] Each party seems to retain a simmering anger and/or resentment towards the other. Regrettably that is not uncommon in family law matters. This unhealthy attitude, however, must stop, if not for their own well-being, then for the well-being of their children. They have both quite candidly and refreshingly acknowledged that they could be better parents. That recognition is a good beginning. I suggest that today they start making a new concerted effort to get along or at least be civil with one another for the sake of their children.
- [44] While the remainder of the witnesses, including Ms. Vanderhook's mother and Mr. Yates's father, provided helpful background information on the parties and their interaction with their children, I see no need to go into any great detail about that evidence. Suffice it to say there is strong evidence indicating that both parties have had their difficulties and have had challenges communicating with one another, and that while there were good times in the marriage, there were also not-so-good times.
- [45] The two witnesses I do wish to comment upon in a little more detail are Dr. Jane Bradley and Ms. Stephanie Hedley-Smith.
- [46] Dr. Bradley is a registered psychologist who practises in Victoria. She confirmed that she has been counselling [D.Y.] since approximately February 2013, especially with regard to his difficult school behaviour. She was not, however, qualified to testify as an expert witness and consequently she was not able to provide me with any opinion evidence, including anything relating to a diagnosis of [D.Y.'s] condition.
- [47] Exhibit 13 at trial is a booklet containing three letters addressed "to whom it may concern", authored by Dr. Bradley. Those letters were admitted into evidence solely for the purpose of confirming they were letters prepared by Dr. Bradley on the given dates. In particular, the letters were not admitted as proof of the truth of their contents.
- [48] As a general observation, I found Dr. Bradley's evidence to be of limited assistance, notwithstanding that it touched upon [D.Y.'s] health, one of the crucial issues in this case. While I accept that Dr. Bradley has a genuine concern for and interest in [D.Y.'s] health and took steps to assess his abilities, I found her efforts to include Mr. Yates in those steps to be surprisingly lacking. She was not made aware of any court order that had been made, including the Provincial Court order. She was not sure whether Ms. Vanderhook told her that she had the final decision-making authority when it came to decisions regarding [D.Y.], and she never questioned whether perhaps Mr. Yates should be more involved in the healthcare plan that was being devised for [D.Y.]. This, in my view, is another example of Mr. Yates being excluded from the plans being made for [D.Y.'s] welfare. Perhaps, if he had been included, Mr. Yates may have had some influential input that could have been used to [D.Y.'s] benefit. Additionally, Mr. Yates may have formulated a more fulsome understanding and appreciation of [D.Y.'s] condition which may, in turn, have given him a better understanding of the suggested medical approaches to treating [D.Y.].

- [49] In my view, one of the root causes of the parties' problems in this case is lack of involvement of Mr. Yates in the day-to-day care of the children, and in particular the plans being made for [D.Y.].
- [50] Ms. Hedley-Smith is the principal of John Stubbs Elementary School, the school the parties' children attend. Although she only assumed her position in 2015, she is familiar with both children, especially [D.Y.]. Ms. Hedley-Smith described how she and other school officials have attempted to deal with [D.Y.'s] outburst at school. I accept Ms. Hedley-Smith was accurate when she testified that [D.Y.] is "a great kid" and that there was a clear and genuine desire on the part of the school to ensure he is able to manage his emotional outbursts so as not to create a hazardous environment for [D.Y.] or for the others in the school.
- [51] Although Ms. Hedley-Smith was not a part of the team that prepared [D.Y.'s] IEP, she acknowledged that it was odd that Mr. Yates appeared not to have been consulted or involved in its preparation. She also quite candidly acknowledged that a better effort needed to be made to include Mr. Yates in these types of discussions, and that perhaps there had been a bias in favour of only contacting and relying upon Ms. Vanderhook to provide information about [D.Y.], instead of seeking information from both parents.
- [52] While this was refreshing to hear, it was also concerning because once again Mr. Yates was being excluded from his parental role. I repeat what I just said: perhaps if greater efforts had been made to involve Mr. Yates, the overall results may have turned out better.
- [53] Finally, let me comment on the evidence that is not before me. First, I have nothing from [D.Y.] or [K.Y.]. The law is clear that the court must take into consideration the views of the child when determining, amongst other things, parenting arrangements. [K.Y.] is 8 and [D.Y.] is 13. They are still young, especially [K.Y.]; however, they are not and should not be voiceless. By all accounts, both children are personable and intelligent. While [D.Y.] does have behavioural and academic challenges, that does not mean he could not have expressed his views on this issue. Providing the children with an avenue to have their voices heard by the court, by the individual who will be making decisions relating to their lives, would have been respectful of their individuality and would have been helpful to me as the one being asked to make a decision of what is in their best interests. Of course, their views would not be determinative, but their views would have been considered.
- [54] Both parties have suggested that their son suffers from Attentional Deficit Hyperactivity Disorder, to one degree or another. The parties also agree that a doctor has prescribed an ADHD-related medication for him. Unfortunately, I have no evidence from any medical doctor relating to [D.Y.'s] condition or treatment plan. What I do know is that Ms. Vanderhook's view of [D.Y.'s] condition and how to treat it conflicts with Mr. Yates' view of things. Ms. Vanderhook supports the use of medication and is prepared to comply with the prescriptions [D.Y.'s] doctors have given him. Mr. Yates, on the other hand, is reluctant about adopting that route, preferring instead to try non-pharmacological means of treating the condition. This difference of opinion has meant [D.Y.'s] use of medications has differed

depending upon which parent he is with.

- [55] As best I can determine, [D.Y.'s] prescription dosage is vague and has changed over time. This change in dosage, without any meaningful consultation with him, was another item that caused concern for Mr. Yates.
- [56] The parties have left me with the challenging task of deciding what is in [D.Y.'s] best interests, including his medical interests, without having provided me with the necessary medical evidence. Be that as it may, it seems that Mr. Yates is not entirely opposed to the idea of using medication to treat [D.Y.'s] condition, if necessary. He would, however, like to be actively involved in determining what the appropriate dosage should be and prefers, at the moment, that it be as minimal as possible. This explains why [D.Y.] has been taking one amount of medication at Ms. Vanderhook's house and a lower amount at Mr. Yates' house.
- [57] Let me now address the substantive issues that the parties seek to have resolved.

Jurisdiction

- [58] The fact that there is a pre-existing Provincial Court order that addresses guardianship and created a time-limited parenting regime raises the question of whether the parties should be seeking a variation to that order in Provincial Court, as opposed to a new order in this court.
- [59] It would appear that s. 194 of the Family Law Act addresses this situation. That section reads:
- 194 (1) If a proceeding respecting a family law dispute may be started in either the Supreme Court or the Provincial Court, the starting of a proceeding in one court does not prevent the starting of a second proceeding in the other court, unless the relief applied for in the second proceeding has already been granted or refused in the first proceeding.
- (2) If proceedings are started in both courts and each court may make an order for the same relief, the making of an order by one court does not prevent an application for an order in the other court unless the relief that is the subject of the application to the other court has already been granted or refused by the first court.
- (3) If proceedings are started in both courts, a court, on application and to the extent that the matter is within the court's jurisdiction under section 192 [Supreme Court jurisdiction] or 193 [Provincial Court jurisdiction], as applicable, may do one or more of the following:
- (a) decline to hear a matter;
 - (b) decline to hear a matter until another matter under this Act, or under any other law of British Columbia or Canada, has been heard in the other court;
 - (c) consolidate proceedings started in the other court with proceedings started in the court;
 - (d) hear a matter.

- (4) Despite subsection (2), the Supreme Court may change, suspend or terminate, under section 215 [changing, suspending or terminating orders generally], an order of the Provincial Court if
 - (a) the Supreme Court is making an order that affects an order of the Provincial Court, and
 - (b) the parties would have to go back to the Provincial Court to have the Provincial Court's order changed, suspended or terminated as a result.
 - (5) If the Supreme Court acts under subsection (4), the Supreme Court's order is deemed to be an order of the Provincial Court for all purposes.
 - (6) Nothing in this section authorizes the Supreme Court to change, suspend or terminate an order of the Provincial Court if the Provincial Court has refused to change, suspend or terminate the order, except as provided under section 233 [appeals from Provincial Court orders].
- [60] In maintaining that I have the jurisdiction to make the orders sought, notwithstanding the existence of the Provincial Court order, the parties have brought to my attention the decision of Mr. Justice Rogers in *C.R.J. v. L.S.J.*, 2013 BCSC 1781. In that case, the court was dealing with an extant interim order of the Provincial Court that required the respondent to pay the claimant child support and spousal support. At paragraphs 23 and 25 of his reasons for judgment, Justice Rogers explained:
- [23] Section 194(2) does [not] apply here because the Provincial Court pronounced on child and spousal support orders ahead of any Supreme Court orders. The Provincial Court orders having been made, the effect of s. 194(2) must be to prevent the Supreme Court from making orders on the same matters.
- ...
- [25] Section 194(4) must be read in light of s. 194(2). In plain language, if the Provincial Court has made one or more orders but has not pronounced on a particular matter, s. 194(2) permits the Supreme Court to pronounce on that unoccupied subject. If the effect of the Supreme Court's order requires the parties to apply to the Provincial Court to bring the Provincial Court order in line with the Supreme Court order, then, and only then, may the Supreme Court vary the Provincial Court order as necessary. In such a case, the Supreme Court judge will be deemed to have acted as a member of the Provincial Court.
- [61] There is no doubt the overlapping jurisdictions of the two courts can, at times, complicate the process of resolving family law cases.

- [62] Counsel before me have jointly pointed to the fact that the term of the Provincial Court order relating to parenting time has expired and therefore that portion of the order is no longer enforceable. In effect, counsel argue there is no extant Provincial Court order that addresses parenting time. As such, they submit the field is no longer occupied by the Provincial Court and I can proceed and make an order that addresses the parties' parenting time regime.
- [63] I accept counsels' submissions on this point. In my view, the parenting time field is not occupied by the Provincial Court and, as such, I have the jurisdiction to make an order touching upon that issue. Given that such an order will also affect the guardianship provisions of the Provincial Court order that still exists, I will be varying that order pursuant to s. 194(4) of the Family Law Act.

Parenting issues

- [64] In my opinion, the two issues that have created a logjam that prevents the parties from taking positive steps towards establishing a healthy co-parenting regime are Mr. Yates' parenting time with the children and who should have the final say in the event the parties disagree on an issue relating to the children.

Parenting time

- [65] Let me start with parenting time.
- [66] As I have already mentioned, at one point in time the parties had an interim parenting time regime. This was set out in the Provincial Court order. However, things changed in the spring of 2014. Mr. Yates became the deputy fire chief with Wapose Emergency Services. This resulted in him having a more established work schedule. He had also established a new home and family with Ms. Mackenzie. Finally, and most importantly, the time-limited court ordered parenting time regime that had been in place thanks to the Provincial Court order had expired. The parties attempted to work out a new parenting schedule, but it eventually became a one-way street with Ms. Vanderhook essentially dictating what days Mr. Yates could have parenting time with the children when he was home from work. This created significant friction between the parties, with Mr. Yates feeling as though he had little option but to accept the parenting days being offered by Ms. Vanderhook.
- [67] Ms. Vanderhook, for her part, found it immensely frustrating that Mr. Yates could not or would not get the children to their various activities on time or at all when they were with him. It was with the aim of maintaining an established school and activity schedule that Ms. Vanderhook insisted Mr. Yates adopt the parenting schedules she proposed.

- [68] In my opinion, Ms. Vanderhook was correct to want a routine for the children. However, incorporated into that routine should have been a healthy degree of flexibility. I do not accept Ms. Vanderhook's proposition that it is more important for the children to attend their extracurricular activities, such as ice hockey, swimming lessons, or Scouts, than to spend time with their father.
- [69] Like Ms. Vanderhook, Mr. Yates is aware of and understands the needs of the parties' children. He is especially aware that [D.Y.] loves ice hockey, is good at it, and wishes to play at a high level. However, he is also right to maintain that when the children are with him, it is for him to decide what can be accommodated. It may well be that he decides that [D.Y.] does not go to a hockey practice and instead stays at home to celebrate the birthday of his younger step-brother. I would expect that he would discuss that with [D.Y.] before making that decision. However, in my view, it would be entirely understandable, reasonable, and appropriate for Mr. Yates to decide that [D.Y.] will forego a hockey practice or a scout meeting in favour of a special event, like a family birthday party.
- [70] Mr. Yates' desire for a more comprehensive parenting regime that allows him to have more time with the children is understandable. His work schedule is now much more stable and predictable and he and his wife, Ms. Mackenzie, now have a home that can accommodate [D.Y.] and [K.Y.].
- [71] Ms. Vanderhook is worried about Mr. Yates having more parenting time with their children especially with their son, because of Mr. Yates' apparent unwillingness to ensure [D.Y.] is taking his medication. She is also concerned about what she says is Mr. Yates' difficulty getting the children to their respective activities.
- [72] While much was said about [D.Y.] and his medical condition, as I have already noted, there is little medical evidence relating to his actual diagnosis and prognosis. Given what I have found to be the unjustified exclusion of Mr. Yates from [D.Y.'s] medical appointments and discussions with [D.Y.'s] health professionals, I am not satisfied that Mr. Yates's views of his son's medical needs, and in particular his reluctance to medicate him in the way that Ms. Vanderhook insists, is contrary to [D.Y.'s] best interests. It is unclear to me exactly what type of treatment and what amount of medication is best for [D.Y.]. There is also a question of how the currently prescribed medication should be administered and whether it can be done at school. It may well be, if and when Mr. Yates is genuinely included in the medical examinations and discussions about [D.Y.'s] health care plan, that a better understanding of the boy's needs can be reached by all, including Mr. Yates and Ms. Mackenzie. If that were to occur, then I think the parties should be able to reach an understanding and agreement based upon the expert medical advice they get regarding their son's needs. That includes the type, dosage, and the manner in which it should be administered.
- [73] I have spent a significant amount of time addressing [D.Y.] and his needs; however I have not forgotten about [K.Y.] and her needs. The parties agree that she is a bright and active young girl who does not have the same behavioural issues that her brother has.

- [74] Having considered all of the evidence, in my view it is in the children's best interest for them to spend time with their father, and parenthetically their step-siblings, on a more regular and established basis. As such, effective 1 June 2017, or such other date that the parties agree, Ms. Vanderhook and Mr. Yates will share the parenting time of the children essentially on an equal basis. To that end, Mr. Yates is to provide Ms. Vanderhook with his work schedule at least 30 days in advance of its first date. He is also to clearly identify what weeks he will be at home in Sooke. On the weeks that Mr. Yates is at home, he will have parenting time with [D.Y.] and [K.Y.] at his home. Unless the parties agree otherwise, this time will begin the morning after he arrives home and end the afternoon he leaves home to return to Alberta.
- [75] I will repeat at this point, it is expected that the parties will be flexible and reasonable. The court cannot micromanage how a parenting regime actually unfolds. The court provides the framework, but it is the parties who put it into effect. If, for example, a situation arises where Ms. Vanderhook needs Mr. Yates to start his parenting time with the children on the day of his arrival home, as opposed to the following day, and Mr. Yates can reasonably accommodate that request, then it is expected he will. Vice versa, if Mr. Yates needs Ms. Vanderhook to start her parenting time with the children early and she can reasonably accommodate that request, it makes sense that she would. That, in my respectful opinion, is the foundation of a healthy co-parenting regime. Children will benefit from seeing their parents working together for their best interests. Generally, as long as neither party abuses the situation, flexibility results in tangible benefits for everyone involved.
- [76] Additionally, the parties will share equally the children's holidays, including but not limited to their spring breaks, summer holidays, and Christmas holidays.
- [77] While I am not making it a specific term of my order, in line with what I just said about the need to be flexible, I would expect the parties will be reasonable when it comes to special days on the calendar. That is, if it is reasonably possible, the children should spend Mother's Day with their mother and Father's Day with their father. It also makes sense that the parties share on an alternating annual basis special events like Halloween and statutory holidays like Thanksgiving. I am not going to make this a specific term of my order because I wish to give the parties an opportunity to show they can co-parent their children in a respectful manner.

Parenting responsibilities

- [78] The Provincial Court interim consent order that the parties entered into in September 2013 required a genuine effort on the part of both parties to consult each other and try to reach a mutually-agreeable decision on issues relating to the children. In my view Ms. Vanderhook did not live up to this requirement. Perhaps it was because Mr. Yates was living outside of British Columbia; perhaps it was because of the animosity that had grown between the two of them; or perhaps it was a combination of these factors and others, but whatever the reason, I find that Ms. Vanderhook consciously and deliberately excluded Mr. Yates from a

number of important parenting decisions when she should have been making a genuine effort to consult with him.

- [79] In reaching my conclusion on the question of parenting responsibilities, I have kept in mind the provisions of the Family Law Act, especially sections 37 and 40, which address the best interests of the child and parenting arrangements.
- [80] In my opinion, Mr. Yates is just as capable as Ms. Vanderhook to make parental decisions for the children and I see no reason why she should be given any greater say than him. That includes deciding what medical treatment the children should receive. As I indicated earlier in these reasons, I would expect Mr. Yates to develop a much better understanding of [D.Y.'s] health issues and the proposed treatments once he is included and more fulsomely engaged in the consultation process with [D.Y.'s] healthcare providers and educational professionals.
- [81] In my respectful opinion it is appropriate in this case that the parties share equally all parental responsibilities set out in s. 41 of the Family Law Act. The day-to-day decisions relating to the children will be made by the parent with whom the children are residing. For all other decisions, including but not limited to the registration of the children for extracurricular activities, the parties will have to reach a joint agreement.
- [82] I am not blind to the fact that it is quite possible if not likely that the parties will have difficulties adjusting to the new parenting regime. There is still a simmering tension between them and I suspect it will take some time for that to subside. To their credit, the parties recognize that as well and it was for that reason that the idea of the appointment of a parenting coordinator to assist them in establishing a healthy co-parenting regime surfaced during the course of the trial. It is an idea that I find has merit in this case.
- [83] In *Silverman v. Silverman*, 2013 BCSC 601, a case where a parenting coordinator was appointed, Mr. Justice Grauer explained:
- [21] it is absolutely clear to me that the issues arising between these parties in relation to the care of their children over the next few years are such that conflict between them will continue at an unacceptably high level. I discuss these issues in more detail below. The likelihood of either agreeing with the other is remote. The best interests of the children demand the participation of a qualified parenting coordinator, and indeed the appointment of a parenting coordinator was part of the relief sought by the respondent in her Notice of Application. The claimant had no objection to the concept in principle, but expressed the view that the parties lacked the necessary financial resources. The respondent expressed some doubt in that regard as well.
- [22] I do appreciate that a parenting coordinator costs money, but I cannot believe that such a service could possibly cost more than the parties have seen fit to spend on battling in court. Indeed, I would expect a significant saving. If they can manage to be sensible and reach agreements in the best interests of their children without requiring the services, then the expense will be minimal. But most importantly, I am satisfied that the intervention of a

parenting coordinator is essential to the children's welfare. It follows that the parents will just have to reprioritize their expenses. As will be seen, they are not entirely without financial resources.

- [84] In my opinion, the situation facing Mr. Yates and Ms. Vanderhook is similar, but not as dire. Neither party had any vehement objection to the appointment of a parenting coordinator; however each did express some reservation about the associated costs. While I have a certain degree of confidence that Ms. Vanderhook and Mr. Yates can eventually reach a common ground that will allow them to co-parent their children effectively, I do not believe they can reach that place without some assistance in the short term. That assistance, in my view, must come in the form of a parenting coordinator. Yes, there will be a cost associated with that and the parties will share that cost equally. However, as Justice Grauer noted in *Silverman*, if the parties can eventually find a way to reach agreements without the need to resort to the parenting coordinator, then the costs associated with that service will be minimal. At the very least, I would think the cost of a properly used parenting coordinator would be less than the cost of having to return to court to have a child-related issue resolved.
- [85] In my respectful opinion, the appointment of a parenting coordinator to assist the parties in implementing the new parenting regime is in the best interest of their children. The parenting coordinator's term will be for two years and will include all of the areas articulated in s. 17 of the Family Law Act. Pursuant to s. 18 of that Act, the parenting coordinator will be empowered to make determinations with respect to all areas of parenting responsibilities that require joint decision making, including the resolution of issues concerning the children's medical care and their extracurricular activities, as well as any changes or adjustments to the parenting times which the parties are not able to agree upon.
- [86] Certain provisions of the Provincial Court order will have to be amended or varied in light of my decision today. The portions of the Provincial Court order that are unaffected will remain in force.
- [87] Before leaving this issue, I will add that I will be retaining all of the materials that were provided to me during the course of the trial and seizing myself of this case for the next two years. That means if the parties need to return back to court, they will do so before me. The only caveat to that is if I am not available and the situation is an urgent one, I will unseize myself.
- [88] Finally, along the lines of what Justice Grauer did in *Silverman*, I will grant the parenting coordinator leave to apply to me in writing or otherwise in the event he or she requires directions.

Child support issues

Retroactive child support

[89] Since the parties separated, Ms. Vanderhook has been the principal caregiver to the children. I say this, recognizing that Mr. Yates has attempted more recently to perform a greater parenting role, but his efforts were, to a significant extent, rebuffed or denied by Ms. Vanderhook.

[90] In her 2013 Provincial Court action, Ms. Vanderhook sought an order that Mr. Yates pay her child support. She sought the same thing in her 2015 Supreme Court action.

[91] Since August 2012, Mr. Yates has paid approximately \$80,000 in child support. Ms. Vanderhook argues the amount should have been more in the range of \$103,000. Consequently, she says approximately \$23,000 in arrears are owing.

[92] Ms. Vanderhook contends that Mr. Yates' Guideline income for the purpose of determining his support obligations should be the following:

- For 2012: \$83,022
- For 2013: \$114,460
- For 2014: \$127,498
- For 2015: \$180,369
- For 2016: \$145,229

[93] For the sake of comparison, I note Ms. Vanderhook's Guideline incomes for these years was:

- For 2012: \$46,543
- For 2013: \$74,563
- For 2014: \$72,188
- For 2015: \$73,176
- For 2016: \$72,024

[94] Mr. Yates accepts that child support is the right of the child and that he has an obligation to provide support for his children. Moreover, he is generally in agreement with the initial figures Ms. Vanderhook has adopted to calculate his Guideline income. He does not agree, however, with the 2016 amount that she has projected. Instead, he submits that that amount should be more in the range of \$138,500.

[95] Additionally, Mr. Yates argues he should be entitled to deduct from his income the approximate \$10,500 travel expenses he incurs annually to get to his work, to Alberta. In making that submission, he relies upon Schedule III, s. 1(f) of the Federal Child Support Guidelines. I am not convinced that these expenses are deductible from his income for the purposes of determining child support. In my view, Mr. Yates' situation is similar to that of

the appellant in *Brown v. Canada*, 2012 TCC 452. In that case, the court found the expenses incurred by Mr. Brown, a pilot with Cathay Pacific Airlines, to commute from his home in Calgary, Alberta to his principal workplace in Los Angeles, California were not deductible.

- [96] In my opinion, Ms. Vanderhook is substantially correct on the issue. While I accept Mr. Yates' calculation of his 2016 income, I find he still owes Ms. Vanderhook \$22,500 in child support arrears.

Prospective child support

- [97] Based upon a Guideline income of \$138,500 for Mr. Yates and a Guideline income of \$72,024 for Ms. Vanderhook, and based upon an essentially equal parenting regime, Mr. Yates will pay Ms. Vanderhook child support for the children pursuant to the Child Support Guidelines. Moreover, for as long as child support is payable, the parties are to exchange their yearly Canada Revenue Agency T1 tax returns by June 1st, as well as a copy of any CRA notice of assessment relating to that return within 14 days of receiving it.

Retroactive special and extraordinary expenses

- [98] Ms. Vanderhook claims to have spent from August 2012 until December 2016 approximately \$42,000 in special and extraordinary expenses for the children. These expenses included daycare and after-school costs for the children, medical and tutoring expenses, and extracurricular sports and activities for the children. In this action, she seeks to have Mr. Yates pay a portion of those expenses, and she submits that sum should be approximately \$25,000.
- [99] Mr. Yates acknowledges that from around September 2013 until late 2015, he paid Ms. Vanderhook little to nothing for any of the special expenses she claims to have incurred on behalf of the children. That was principally because he felt she was not complying with the terms of the Provincial Court order, in that she was not consulting with him about these expenses and activities and was not providing him with sufficient proof of the expenses themselves. He also claims to have been incurring expenses for the children, but not seeking any contribution towards them from Ms. Vanderhook.
- [100] I must say that I have concerns about the nature of the expenses claimed, especially some of the childcare expenses and some of the extracurricular activity expenses. Some of them were incurred without any consultation or input from Mr. Yates, and in some cases the childcare expenses may not have been necessary or required had Ms. Vanderhook turned to Mr. Yates for assistance as she was required to do under the Provincial Court order. While it is often difficult to incorporate a former spouse's new partner into the parenting equation, Ms. Mackenzie was also available, though the fact that she did not have a driver's licence until recently made that option less feasible.

- [101] I also have concerns about the fact that both Mr. Yates and Ms. Vanderhook had extended health plans from their employers. It would appear that these plans would have covered a portion of the expenses.
- [102] Finally, I note that some of the expenses claimed were actually paid by Ms. Vanderhook's mother and not Ms. Vanderhook.
- [103] In my view, there is little use in conducting an intensive forensic accounting of all of the expenses claimed. I have reviewed them all and I have considered the principles articulated in the case authorities relating to what is and what is not a special or extraordinary expense.
- [104] In my opinion, Ms. Vanderhook embarked upon a course of conduct with the good intention of having the children involved in healthy activities. However, she did so without consulting with Mr. Yates as she should have. Some of the expenses claimed are legitimate and defensible; some are not.
- [105] Based upon Ms. Vanderhook's calculations, she says Mr. Yates owes her between \$24,000 and \$25,000 for these retroactive expenses. In my opinion Ms. Vanderhook is not entitled to such a large sum. In my view, fair compensation for these retroactive expenses is \$8,000.

Prospective special and extraordinary expenses

- [106] Ms. Vanderhook seeks an order identifying specific activities for the children as recognized s. 7 expenses. For [D.Y.], that includes Scouts, counselling with Dr. Bradley, baseball, swimming, hockey including at a higher competitive level, and tutoring. For [K.Y.], those activities include baseball, Girl Guides, and figure skating and/or hockey.
- [107] I am not prepared to make the order sought. In my view, the fine balance between keeping the children active and over-programming them could be compromised were I to grant the order. In other words, I think the children are potentially over-involved in extra-curricular activities. In any event, they will now be spending on a regular basis much more time with their father and their extended family in Sooke. As such, the parties will need to establish a new balance established between organized activity time and time spent with family. Making the order Ms. Vanderhook seeks would, in my respectful view, be counterproductive to creating that new balance.
- [108] The statutory provisions and the relevant case law are quite clear on what are and are not special and extraordinary expenses. Helpfully, Mr. Justice Baird in *Clarke v. Clarke*, 2014 BCSC 824 summarized the law relating to these expenses:
- [48] Section 7 of the Federal Child Support Guidelines gives the court the discretion to order payment of an amount over and above the regular table amount. However, in order to qualify for a s. 7 order, the expenses must be proven to be "special" or "extraordinary" in some way.

- [49] This is because the basic table amounts of child support are designed to cover all the "ordinary" costs of raising a child: *D.M.C.T. v. L.K.S.*, 2008 NSCA 61 at para. 25. Food, shelter, clothing and other necessities are all ordinary, as are many educational, extracurricular and recreational expenses: *McLaughlin v. McLaughlin* (1998), 167 D.L.R. (4th) 39 (B.C.C.A.).
- [50] So when does an expense qualify as special or extraordinary? First, it must fit within one of the categories of expenses listed in section 7, as follows:
- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
 - (b) that portion of the medical and dental insurance premiums attributable to the child;
 - (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
 - (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
 - (e) expenses for post-secondary education; and
 - (f) extraordinary expenses for extracurricular activities.
- [51] That list is exhaustive. If the claimed expense does not fit into any of those categories, it cannot be a special or extraordinary expense: *Kase v. Bazinet*, 2011 ONCJ 718 at para. 39.
- [52] Even where an expense fits into one of the listed categories, that is not the end of the story. The expenses must be both "necessary" -- as defined in relation to the child's best interests -- and "reasonable," as measured against the combined financial means of the parents (and, where appropriate, the child) as well as the family's spending patterns prior to separation: see section 7(1) and *Yensen v. Yensen*, 2003 BCSC at para. 8. In addition if the expense is one listed under subsection (d) or (f) -- educational programs or extracurricular activities -- the party claiming the expense must prove that they are "extraordinary."
- [53] There is no straightforward definition for "extraordinary" although section 7.1, recently added to the Guidelines, provides some guidance; it requires a sort of proportionality inquiry, looking at the nature and number of activities, any special needs or talents of the child, the overall cost of the activities, and any other similar relevant factors: see *D.M.C.T.* at para. 32.
- [54] Because the tests are fact-specific, I cannot definitively say what types of expenses qualify in every case. But I can say what does not qualify as special or extraordinary:

* Expenses such as "entertainment, pets, vacations, school fees, school supplies, children's allowances, meals outside the home, personal grooming, and clothing" are not section 7 expenses: *Mertler v. Kardynal* (1997), 35 R.F.L. (4th) 72 (Sask. Q.B.).

* A home computer and other similar technologies do not qualify as extraordinary as they are "common item[s] found in most homes": *Yensen* at para. 18.

* Recreational sports and other similar extracurricular activities -- dance lessons, community sports leagues, ski trips, etcetera -- are generally considered "ordinary." The question is whether the participation goes beyond that of the "average child": *D.L.C. v. F.M.C.*, 2010 BCS 1312 at para. 67.

[109] The parties are going to have to abide by these principles. If they have difficulty doing so, then they may seek the assistance of their parenting coordinator. Failing that, they may return back before me for directions.

[110] Effective 1 June 2017, the parties will pay their proportionate share of their children's special and extraordinary expenses based upon their respective Guideline incomes.

Spousal support

Entitlement

[111] Ms. Vanderhook says she is entitled to a modest amount of spousal support. She bases her claim principally on compensatory grounds, although there was a slight suggestion that there was a needs basis as well.

[112] When Ms. Vanderhook moved to Edmonton to begin cohabitating with Mr. Yates, she had already abandoned or was in the process of abandoning her post-secondary studies in hotel and resort management at the University College of the Cariboo. She was employed at a Tim Hortons coffee shop around the time she became pregnant with [D.Y.] and took a one year's maternity leave from that job after he was born. At the conclusion of that year's leave, she returned to her position with Tim Hortons for a short period until she obtained new employment as a clerk at a local Superstore.

[113] In the fall of 2005, Ms. Vanderhook opened a daycare in the home that she and Mr. Yates had recently moved into.

[114] In December 2006, only a few months after she and Mr. Yates had moved to Comox, Ms. Vanderhook joined the CF and began working as a Class A Reservist. Except for the maternity leave she took when [K.Y.] was born, Ms. Vanderhook continued her training and employment with the CF.

[115] As noted earlier in these reasons, Ms. Vanderhook became a regular, full-time member of the CF a couple of months after she and Mr. Yates decided to end their marriage. She now holds the rank of Master Corporal and earns approximately \$72,000 per year.

- [116] I accept that Ms. Vanderhook was the principal caregiver to the children during the parties' marital relationship. I also accept that she was principally a stay-at-home mom during those early years, although she did have some gainful employment. She was able to secure employment upon the parties' relocation to Comox, and she was able to transfer to the Regular Forces on a full time basis shortly after it became clear to both Mr. Yates and Ms. Vanderhook that their relationship had come to an end.
- [117] Ms. Vanderhook did not seek spousal support until nearly four years after the parties separated. I am satisfied that her economic situation and her opportunity to pursue employment opportunities have not been hindered by her marriage to Mr. Yates or its dissolution.
- [118] In light of all of the evidence before me, I see no needs basis or compensatory basis to make an order for spousal support in this case. Accordingly, Ms. Vanderhook's claim for spousal support is denied.

Identification and division of family assets and debts

- [119] Upon his release from the CF, Mr. Yates received a pension entitlement of approximately \$188,179. He also received a severance package of approximately \$13,500. Ms. Vanderhook says these sums are family assets that should be shared. Mr. Yates asserts that these amounts are excluded property under the Family Law Act and consequently not subject to being divided between the parties.
- [120] Although Mr. Yates says he and Ms. Vanderhook discussed whether his military pension was something they would share upon the termination of their marriage, I am not persuaded that the parties reached an agreement. Moreover I am not persuaded that the pension and severance package fall into the category of items that are statutorily excluded from division upon dissolution of a relationship. In my opinion, Ms. Vanderhook is entitled to a percentage of Mr. Yates' CF pension and severance package, based upon the length of the parties' cohabitation; that is, from 1 February 2003 until 19 August 2011.
- [121] On the date the parties separated, they had at least one Registered Retirement Savings Plan. It was in Ms. Vanderhook's name. There is evidence that there may have been more than one. That causes no significant difficulty because the parties do not dispute that any RRSP that existed at the time of their separation is subject to being divided equally between them.
- [122] Mr. Yates also had a Tax-Free Savings Account into which he deposited approximately \$8,200 he had received as a result of leaving the CF. Those funds are to be divided equally as well.
- [123] Finally, there are two Registered Educational Savings Plans in the children's names. Ms. Vanderhook seeks to have the one that is registered in both her name and Mr. Yates' name transferred into her name alone for the benefit of the children. I see no reason to do that. The RESPs exist for the benefit of the parties' children. In my opinion both parents should

be involved in how those funds are used. As such, any RESPs that existed in the children's names at the time the parties separated are to be registered in the names of both parents for the purposes and benefit of the children.

Conclusion

[124] This litigation has been long and costly for the parties; and by costly, I am not only referring to financial costs. I have no doubt it has been a significant stress and strain on them both as well as their extended families. I also have no doubt that they are hopeful this will be the end of court appearances.

[125] It will not be easy establishing a new and effective co-parenting regime, but that is the parties' challenge and it is one I believe they can meet. Succeeding will require them to remain focussed on the overall best interest of their growing children. [D.Y.] and [K.Y.] will need to see and believe that their parents and stepparents can get along in a civil and respectful manner. With the assistance of a parenting coordinator, I believe the parties will be able to reach that point. If they cannot, they will be able to come back before me.

Order

[126] The resulting order will consist of the following:

- The parties will share parenting time on an equal basis. Mr. Yates' parenting time with the children will begin on the day after he returns home from work and will end on the day he is to return to work. Ms. Vanderhook will have parenting time with the children when Mr. Yates is away at work in Alberta. Mr. Yates is to provide Ms. Vanderhook with at least 30 days' notice of his work schedule and the weeks in which he will be in Victoria and having parenting time with the children;
- The parents will share the parenting responsibilities of the children;
- The parties are to retain the services of a parenting coordinator. The parenting coordinator will be retained for a period of two years. The parties will share equally the costs associated with the parenting coordinator;
- The parties are to make their best efforts to reach an agreement on issues relating to the children. If they cannot reach such an agreement, the parenting coordinator will make a determination. In doing so, the parenting coordinator may seek directions from the court. The parties, as well, have leave to seek directions from the court;
- Mr. Yates is to pay Ms. Vanderhook \$22,500 in child support arrears;
- Commencing 1 June 2017, Mr. Yates is to pay Ms. Vanderhook child support based on their respective Guideline incomes and a shared parenting arrangement;
- The parties are also to exchange their yearly CRA T1s by 1 June and any notice of assessment that they receive within 14 days of receipt;

- Mr. Yates is to pay Ms. Vanderhook \$8,000 in special and extraordinary expense arrears;
- The parties will share the children's special and extraordinary expenses in proportion to their respective Guideline incomes;
- Ms. Vanderhook's claim for spousal support is dismissed;
- Ms. Vanderhook is entitled to a share of Mr. Yates's CF pension and severance package. That share is based upon the length of the parties' relationship that started on 1 February 2003, and ended on 19 August 2011;
- The parties are to share equally the RRSPs that they accumulated during the course of their relationship, as well as the one TFSA that Mr. Yates had containing funds that he had received from the Canadian Forces;
- The RESPs that the parties have for their children are to be registered in both of the parties' names for the benefit of the children;
- The parties, as well as the parenting coordinator, will have leave to apply for directions in the event that is necessary;
- I will remain seized of this matter.

[Discussion with Counsel about the wording of the order and costs]

[127] THE COURT: I will leave it to you two to decide who will draft the order. If the parties wish to make submissions on the issue of costs, they are to indicate that to the court through the registry within 30 days of today's date. In the event they wish to make such submissions, then they are to be in writing to a maximum of ten pages in length.

[128] The last comment I have is for the parties themselves. This has been a difficult process for you both. Like it or not, you now have a court order that attempts to provide a framework on how you can move forward. For the sake of your children, do your very best to reach a civil co-parenting regime. I believe you can do it and I also believe it would be in your children's long term best interests.

[129] Counsel, you have represented your clients well. We will now stand down.

[130] MR. LUCHIES: Thank you, My Lord.

[131] MR. JAKEMAN: Thank you, My Lord.

"G. R. J. Gaul J."

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