
CANADA / JUDGMENT

Walsh v. Chambers

2016 BCSC 67

COURT

Supreme Court of British Columbia

DECIDED

19 January 2016

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2016 BCSC 67 Walsh v. Chambers

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Walsh v. Chambers,

2016 BCSC 67

Date: 20160119

Docket: 105599

Registry: Kelowna

Between:

Natalie Nicole Walsh

Claimant

And

Matthew Anthony Chambers

Respondent

Before: The Honourable Mr. Justice Rogers

Reasons for Judgment

Counsel for the Claimant:

G. Malinovsky

Appearing on his own behalf:

M.A. Chambers

Place and Date of Trial/Hearing:

Kelowna, B.C.

October 13, 2015

and January 11, 2016

Place and Date of Judgment:

Kelowna, B.C.

January 19, 2016

Introduction

- [1] This is a summary trial of the parties' family law dispute. The main issues are the respondent's income for the purposes of child support - an issue on which the respondent has adduced slightly confusing evidence - and division of the parties' family assets and family debts.
- [2] The parties are not married; the Divorce Act has no application here.

The Facts

- [3] The parties began their relationship in 2005. In 2007 they separated for about six months. They lived together again as spouses from 2007 to March 2014. They separated in that month. The parties have one child: Lilly-Anna, born December 19, 2012. The parties also have one daughter each from a previous relationship. Those two young ladies were born in January and November 2003. Guardianship, parental responsibilities and child support for the older children do not figure in this matter.
- [4] The claimant is 40 years old. She is a licensed practical nurse. Her 2014 Line 150 income was \$32,273. That sum includes approximately \$1,400 net rental income from the letting of a portion of the claimant's house.
- [5] The respondent is 36 years old. He is an information technologist. In 2014, he was self-employed in his own business. His net Line 150 income for that year was \$23,980. The respondent has not adduced a statement of gross business income and expenses from which that number was derived. The respondent's 2013 Line 150 income was \$30,809.
- [6] Lilly has been primarily resident with the claimant since the parties separated. The parties have agreed that Lilly should continue to live primarily with her mother. Shortly after they separated, the parties agreed that they should be joint guardians of Lilly and that they would share parenting responsibilities for her. They reduced that agreement to writing in July 2014 and that agreement has been filed with the court. The agreement further provides that the respondent's income was \$35,895 at the time and that he should pay basic child support of \$326 per month. The respondent has paid that sum from July 2014 to the date of trial.

- [7] Sometime in or around early 2015, the respondent stopped working for himself and became an employee of New Logic Computers of Kelowna, B.C. In his May 2015 Form 8 Financial Statement, the respondent initially reported his income as the \$23,980 shown at Line 150 of his 2014 tax return. The respondent later revised that figure to \$52,000.
- [8] In that same May 2015 Form 8, the respondent declared that he has employment related automobile expenses of \$5,177. Instead of deducting that expense on his Form 8 as he should have, the respondent added it to his income. In the result, the respondent's revised May 2015 Form 8 indicates that his income was \$57,177.
- [9] The respondent has represented himself throughout. I infer from that fact and from the fact that he made an obvious error in adding rather than subtracting employment expenses that he was inadvertently confused when he completed and later revised his May 2015 Form 8.
- [10] On September 14, 2015, the respondent filed a second Form 8. In that statement the respondent put his employment income at \$53,676. He did not make any claim for employment related auto expenses. The respondent has adduced copies of two of his current pay slips. The August 2015 slip shows that his gross income for one-half of August 2015 was \$2,288. Extrapolated on an annual basis, that data suggests that the respondent's current income is approximately \$55,000. The respondent's December 31, 2015 payslip shows his year to date income was \$56,624.
- [11] It is an unresolved issue whether the respondent is entitled to claim auto expenses. It may not be until he files his 2015 tax return that an answer can be known to that question.
- [12] The parties have had some difficulty with parenting arrangements but they are capable of negotiating those conflicts without resort to court processes. The sole exception to that happy state arose on one occasion when the claimant sought to take Lilly to the U.S.A. on relatively short notice and the respondent balked at jumping to comply with to the claimant's wish that he prepare and sign a consent form for that travel. At trial, the respondent submitted that he has no objection to both parties being at liberty without the other's consent to travel with Lilly outside of Canada for seven days or less.
- [13] In 1997, the claimant bought a house at 4870 Chatham Road in Kelowna, B.C. The claimant and respondent lived in that house from 2007 until they separated in March 2014. Neither party attended the trial with appraisals of the house as of 2007 or March 2014 or October 2015. At trial, the only evidence of the value of the house were B.C. Assessment Authority statements for 2007, 2014, and 2015. Those assessments were \$319,000, \$333,000, and \$331,000 respectively.
- [14] While the parties cohabited the respondent worked as an information technologist and the claimant attended school and minded the parties' children. She looked after the majority of the housework. After the claimant started working outside the home, the claimant and respondent shared the family's expenses as their incomes allowed.

- [15] In August or September 2010, the claimant and respondent agreed that the respondent should have an ownership interest in the house. The claimant transferred a 1 percent interest in the house to the respondent and the respondent was registered as holding that interest as a tenant in common on the property's title.
- [16] From June 2014 forward, the claimant has paid all of the mortgage, utilities, and insurance on the house.
- [17] While they were together, the parties jointly agreed that some renovations were necessary so that the house would be more comfortable for their blended family. They agreed to spend \$60,000 on those renovations. To raise that sum, they agreed that they would increase the mortgage debt on the house by \$50,000 and that they would borrow the remaining \$10,000 on their credit cards. When that financing was complete, the mortgage on the house had risen to \$337,281. The claimant is the sole mortgagee and covenantor on the mortgage.
- [18] The evidence is silent as to the month and year in which the mortgage debt was increased. It is equally silent as to the amount of the mortgage payments and the breakdown of those payments between principal, interest, and, if applicable, a property tax account.
- [19] The claimant asserts that as of June 2014, the mortgage debt had been reduced to \$313,297 and that of that debt, \$23,984 is the unpaid balance of the \$50,000 renovation loan. I note that \$23,984 is simply the difference between \$337,281 and \$313,297.
- [20] The respondent has not contributed to the mortgage payments since June 2014. The claimant has enjoyed exclusive use and occupation of the house and has collected and kept rent from her tenant since that time.
- [21] Neither party has sought or now seeks spousal support from the other.
- [22] By March 2012, the parties' combined credit card debt amounted to some \$22,000. This debt derived from various family related expenses. Those expenses included \$10,000 for the house renovation, the respondent's legal bills relating to litigation with his former spouse, and other household expenses. In March 2012, the parties agreed to consolidate their credit card debt into a single loan from the Interior Savings Credit Union. Until the beginning of October 2014, the respondent contributed half of the required \$500 payment on consolidation loan. The claimant negotiated a reduction of the required payment to \$437 and since October 2014 she has been paying that entire sum without contribution from the respondent. The balance of the consolidation loan at trial was \$8,521.
- [23] The claimant started this family proceeding on December 16, 2014. In that claim she sought unequal division of the family property and contribution from the respondent to Lilly's Guideline s. 7 expenses. The claimant did not seek an order for child support.

- [24] In March 2015, the parties attended a Judicial Case Conference. There they consented to an interim order that commencing April 2015, the respondent pay \$351 per month, representing a 54 percent contribution to Lilly's monthly daycare expense. That order is silent as to the parties' incomes and does not specify the total cost of daycare. The parties agree that the respondent has complied with that order.
- [25] The receipts attached to the claimant's second affidavit satisfied me that the respondent's daycare expense for Lilly for the period August to the end of October 2014 totaled \$719. The receipt attached to the claimant's fourth affidavit satisfied me that from November 2014 to the present Lilly's daycare expense has been \$650 per month.
- [26] On July 29, 2015, the claimant filed an amended Notice of Family Claim. The amendment sought an order that the respondent pay child support for Lilly.
- [27] Lilly started pre-school in September 2015. Pre-school was the claimant's idea - she did not consult with the respondent as to the benefit or necessity of pre-school, nor did she consult with the respondent as to the parties' ability to pay for Lilly's attendance. The pre-school charged a one-time registration fee of \$50 and charges \$112 per month.
- [28] In November, 2015, the respondent began to deduct \$12 from his monthly child support payments. The respondent's rationale for making this deduction is that the claimant is financially responsible for supplying diapers for Lilly during the respondent's parenting time.
- [29] The claimant asserts that she spent 30 hours packing up the respondent's belongings after he quit the family home and that she stored those belongings in an outbuilding on her property for approximately a year before the respondent took possession of them. The claimant says that the respondent should pay her \$15 per hour for her packing effort and \$200 per month for storing his items. The claimant adduced no evidence to support the reasonableness of those figures.
- [30] The claimant maintains that in December 2014 she paid for the parties' 2015 Costco membership but that she has not been able to enjoy the benefit of that payment because the respondent unilaterally terminated her membership. The respondent says that it was reasonable for him to terminate the claimant's membership because, without advising him of her intention, she took to herself the entire \$80 Costco membership rebate the parties had earned in 2014.

Parties' Positions

Claimant

- [31] The claimant specified the relief she seeks in paragraphs 1 and 2(a) - (l) of her Notice of Application.

- [32] The claimant submits that the house is excluded property and not subject to division between the parties. She goes on to argue that the respondent has no claim for a division of equity in the house. That is because, according to the claimant, the Family Law Act restricts division of equity in an excluded asset to the amount by which its equity has increased during the relationship. Here, the claimant's equity decreased and, she says, there is nothing to divide.
- [33] The claimant further says that the respondent should be ordered:
- To pay the outstanding balance of the consolidation loan being \$8,521.66 or to indemnify the claimant for any payments the claimant makes on that loan;
 - To pay one-half of the remaining balance of the renovation loan that was secured by the mortgage on the house being \$10,997;
 - To pay the claimant \$450 for packing the respondent's belongings;
 - To pay the claimant \$2,400 for storing the respondent's belongings;
 - To pay retroactive and ongoing child support for Lilly based upon the respondent's past and present incomes;
 - To pay the respondent's proportionate share of Lilly's Guideline s. 7 expenses including, but not limited to, the cost of daycare; and
 - To reimburse her \$100 for the 2015 Costco membership.
- [34] The claimant further seeks an order varying the parties' written agreement so that the claimant have all day-to-day parenting responsibilities for Lilly and an order that the claimant be at liberty to travel to the USA or across Canada with Lilly without the respondent's consent for periods of up to seven days.
- [35] Finally, the claimant seeks costs of the litigation.

Respondent

- [36] The respondent agrees with the claimant that the house is not a family asset. He says, however, that the equity may have increased during the relationship. At trial the respondent asserted that he wished to have the house appraised. He acknowledged, however, that he had not taken steps to commission an appraisal. The record of the case reveals that the respondent has not engaged the Supreme Court Family Rules to ensure that an appraisal was done ahead of the conclusion of the trial.
- [37] The respondent argues that the house and its associated debt should remain with the claimant.

- [38] The respondent does not argue against paying basic and s. 7 child support for Lilly. He asserts that any retroactive payments for 2014 be determined by his 2014 Line 150 income and that his ongoing obligations be based upon his current income of approximately \$55,000. The respondent takes no position on the claimant's income for the purposes of proportionate sharing of s. 7 expenses, although he does wish to ensure that the claimant's income from rental of a portion of the house be included in that figure.

The Law

- [39] This matter falls entirely within the scope of the Family Law Act, [SBC 2011] c. 25 [FLA].
- [40] The FLA child support provisions relevant to this matter require that the court give effect to the Federal Child Support Guidelines, SOR/97-175 [Guidelines]. It is not necessary here to make an exhaustive review of the Guidelines; it is sufficient to note that the Guidelines stipulate that a payor's support obligation will be determined by his or her income and that absent various circumstances that do not apply here, that income will be the payor's taxable income as reported at Line 150 of his or her annual tax return. The Guidelines further stipulate that a child's special and extraordinary expenses - expenses that include daycare - will be shared by the parties in the proportion that their incomes bear to one another.
- [41] As to property, s. 81 of the FLA provides that upon separation, spouses (that is persons who have lived together in a marriage-like arrangement for two or more years) are entitled to an undivided one-half interest as tenants in common in the family property and are responsible for one-half of the family debts. Where one spouse has brought property into the relationship, the property itself is not family property but the increase in its value during the relationship is family property and is divisible between the spouses: FLA s. 85(1)(a) and s. 84(2)(g).
- [42] Unless the court otherwise orders or the parties agree, the value of family property must be determined by its fair market value and the date of valuation must be either the date of an agreement dividing the property or the date of the hearing at which that property will be divided: FLA s. 87.
- [43] The court may order that family property or debt be divided unequally if it would be significantly unfair to divide it equally: FLA s. 95(1). The considerations that may influence the assessment of fairness include, but are not limited to, the factors set out in FLA s. 95(2) (a) to (i) and (3).
- [44] The claimant is seeking retroactive orders for basic and s. 7 child support. The current law in Canada concerning retroactive support was set down by the Supreme Court of Canada in the trilogy of cases collectively cited as *D.B.S. v. S.R.G.*, 2006 SCC 37, [2006] 2 S.C.R. 231 [DBS]. There, the Supreme Court said, among other things, that as a general proposition a retroactive order should speak from the date that the claimant first articulated a desire for payment of support. Whether a retroactive order is made will be influenced by a number of factors, including whether a reasonable excuse exists for not seeking an order earlier, the

payor's conduct and in particular whether that conduct is blameworthy, the circumstances of the child, and whether a retroactive order would work a hardship upon the payor.

Discussion

Primary Residence, Guardianship, and Parenting Responsibilities

- [45] Lilly shall reside primarily with the claimant. Lilly will have reasonable, frequent, and generous parenting time with the respondent.
- [46] There is no reason to not accede to the parties' wish that they continue to act as Lilly's joint guardians. An order will go accordingly.
- [47] The evidence on the summary trial did not establish that the respondent is not capable of exercising all of the parenting responsibilities contemplated by the FLA. There is, in my view, no reason to vary the provisions of the parties' July 2014, written agreement concerning the exercise of parenting responsibilities. The relevant portions of that agreement are:

THAT Natalie Nicole Walsh and Matthew Anthony Chambers will each continue to exercise all parental responsibilities with respect to Lilly-Anna Rose Chambers as listed below.

- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- (b) making decisions respecting where the child will reside;
- (c) making decisions respecting with whom the child will live and associate;
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
- (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- (g) applying for a passport, license, permit, benefit, privilege or other thing for the child;
- (h) giving, refusing or withdrawing consent for the child, if consent is required;
- (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- (j) requesting and receiving from third parties health, education or other information respecting the child;
- (k) subject to any applicable provincial legislation;

- (i) starting, defending, compromising or settling any proceeding relating to the child; and
- (ii) identifying, advancing and protecting the child's legal and financial interests;
- (I) exercising any other responsibilities reasonably necessary to nurture the child's development.

[48] An order incorporating those parenting provisions will go.

Travel

- [49] Subject to the arrangement of the necessary parenting schedule, the parties will be at liberty to travel with Lilly within Canada or the United States of America for periods of seven days or less without first obtaining the other party's consent.
- [50] The claimant will maintain possession of Lilly's passport. So that Lilly may travel with the respondent, the claimant will provide the passport to the respondent upon request. At the conclusion of that travel, the respondent will provide the passport to the claimant.

Division of Family Property and Debt

- [51] Section 85(1)(a) of the FLA operates to exempt the house on Chatham Road from being family property. Any increase in the value of that house since 2007 is, by virtue of s. 85(2)(g), family property. That increase would be divisible between the parties.
- [52] The only evidence concerning the value of the house are the three property tax assessment notices issued by the B.C. Assessment Authority in 2007, 2014, and 2015. The assessed values are \$319,000, \$333,000, and \$331,000 respectively. By their decision to not adduce other evidence concerning the value of the house, I infer that the parties have agreed that the house need not be valued by reference to its fair market value. I say this despite the respondent's late-breaking and unconvincing assertion that he wished to have the house professionally appraised. The 2015 assessment is closest in date to the date of trial - it is the appropriate figure to use here.
- [53] During the parties' relationship, the mortgage debt on the house increased by more than the increase of its assessed value. I find that the equity in the house did not increase during the relationship and that there is, therefore, no family property to divide between the parties. The claimant is solely responsible for payment of the mortgage. Nothing that the respondent did or did not do caused the claimant to incur the original mortgage debt. For that reason I do not consider the original mortgage debt to be a family debt. That debt is not divisible between the parties.

- [54] The increase of the mortgage debt in 2007 was attributable to renovations carried out during the relationship. The claimant will enjoy the benefit of those renovations going forward; I cannot see how it would be fair to require the respondent to contribute to the cost of the renovations beyond the share of payments he made prior to the parties' separation. For that reason I will not accede to the claimant's demand that the respondent directly pay or indemnify the claimant for one-half of the outstanding balances of the renovation expense.
- [55] On the other hand, the parties are jointly liable for the consolidation loan. Further, the consolidation loan arises out of a joint decision to bring a number of family debts under a single loan. Those debts included \$10,000 borrowed for the renovations and another \$12,000 for other family obligations. Among those additional family obligations were, for example, legal fees for family litigation that were charged to the respondent. Doing relatively rough justice here, I find that one-half of the at trial balance of the consolidation loan is a family debt and that that half is divisible equally between the parties. The balance of that loan at trial was \$8,521. The respondent is liable for one-half of one-half of that debt, or \$2,130.
- [56] There is an item missing in the parties' accounting. That item is the respondent's 1 percent interest in the house. If the house has a current value of \$331,000 and the mortgage debt is \$313,297, then the parties' equity in the property is \$17,703. The respondent has a 1 percent interest in that equity. The respondent's interest in the house therefore has a value of \$177.
- [57] The most practical resolution of the property aspects of the case is to order that the respondent transfer his 1 percent interest in the house to the claimant in consideration for a set off in the same amount against any obligation the respondent may have to pay retroactive child support. An order will go to that effect. The parties will equally share the fees, disbursements, and taxes associated with documenting and registering that transfer.
- [58] The claimant's demand for payment of the Costco membership is picayune. It does not meet the de minimis test for a matter worthy of argument or judgment.

Parties' Incomes

- [59] For the purpose of sharing Lilly's s. 7 expenses, the claimant's incomes for 2014 and 2015 were \$32,273. Those figures include the net income the claimant receives from renting out a portion of her house.
- [60] For the purposes of determining the respondent's basic and s. 7 support obligations, I find that the respondent's income as of the trial date is \$56,600. I have not taken into account the respondent's assertion that his income should be reduced by employment related auto expenses. Whether that is an actual and appropriate deduction from his income may be determined when he files his income tax return in 2016.
- [61] I find that for the 2014 calendar year the respondent's income was \$23,980.

Basic Child Support

- [62] Commencing February 1, 2016, and on the first day of every month thereafter for so long as Lilly remains a child of the parties within the meaning of that term as defined by the FLA, the respondent shall pay basic child support to the claimant in the amount of \$523. The provisions of the parties' July 2014 agreement concerning the exchange of income tax information and adjustment of the amount of support shall be incorporated into this order.
- [63] The respondent is financially responsible to provide for Lilly's necessities during his parenting time. That responsibility includes providing Lilly with food, drink, and attending to her personal hygiene. The respondent shall not, therefore, deduct diaper expenses from his obligation to pay basic or s. 7 child support.

Guideline Section 7 Support

- [64] The parties shall share Lilly's s. 7 expenses in the proportions that their incomes bear to one another. As of February 1, 2016, the claimant's and the respondent's proportions will be 37 and 63 percent respectively.
- [65] The claimant shall provide the respondent with a monthly accounting of s. 7 expenses including copies of invoices for those expenses. As of the trial date, the s. 7 expense is \$650 for Lilly's daycare and the pre-school registration fee of \$50 and the monthly fee of \$112.
- [66] From the release of these reasons onward, the claimant shall not demand contribution from the respondent for an item of s. 7 expense exceeding \$200 per year without first consulting with the respondent. That consultation will be with respect to the nature and benefit of such an expense and the parties' ability to make their respective contributions to that expense.

Retroactive Support

- [67] The claimant seeks an order for retroactive basic and s. 7 support. The parties first addressed child support in the terms of their July 2014 written agreement. There, the respondent agreed to pay \$326 per month for basic support. That figure was based upon his stated income of \$36,000 (rounded) at the time.
- [68] The claimant first raised s. 7 support when she filed her Notice of Family Claim in mid-December, 2014. At the JCC on March 24, 2015, the respondent agreed to pay s. 7 support commencing April 1, 2015, and a consent order was made to that effect.
- [69] The parties agree that the respondent has (with the exception of the \$12 per month deductions since November 2015) paid basic and s. 7 support as required by the agreement and the JCC order.

- [70] As the D.B.S. decision dictates, the factors to consider when assessing the claimant's claim for retroactive support are: the reason for and delay in making the request for support, the payor's conduct, the circumstances of the child, hardship on the payor, and the commencement date of the retroactive order.
- [71] The evidence satisfies me that the claimant has not delayed unreasonably in her pursuit of basic and s. 7 support. Basic support was agreed upon within months of the parties' separation and s. 7 support was made an issue within a year of separation. Neither of those events suggest delay by the claimant.
- [72] In July 2014, the respondent agreed to pay interim child support based upon an income that was higher than what he in fact earned. If the provisions of the Guidelines were to be strictly applied, the respondent has a good argument that for 2014 he ought to have paid basic support of \$198 per month based on his income of \$23,000 (rounded) in that year.
- [73] Not so much to his credit is the fact that the respondent's income increased to \$56,600 when he started working for his current employer but he did not voluntarily increase his payment of basic child support. As noted earlier, his current income requires monthly child support payments of \$523 but he has limited his payments to \$326. Since November 2015 the respondent has reduced that payment to \$312 on account of the diaper issue. That said, on the whole the respondent has complied with the agreement and the consent order made at the parties' JCC.
- [74] On the other hand, the respondent was starting a new job in 2015 and could not have accurately predicted what his annual income would be for the entire year. For at least the first several months of 2015, it would have been difficult for him to have calculated his child support obligation with any precision.
- [75] Overall I am not persuaded that the respondent's conduct was blameworthy in the sense contemplated in D.B.S.
- [76] The parties adduced no evidence as to the effect, positive or negative, of over or under payment of child support upon Lilly's circumstances.
- [77] The respondent is earning a decent income, but I accept his submission that having to pay a large sum for retroactive support would work a hardship upon him.
- [78] If the Guideline table amounts were strictly applied to an assessment of retroactive basic support, the results would be:
- over payment for six months in 2014 for a total of \$768, calculated as: $(\$326 - \$198) \times 6$ months.
 - underpayment from January 1, 2015 to October 31, 2015 totaling \$1,970, calculated as: $(\$523 - \$326) \times 10$ months, and
 - underpayment from November 1, 2015 to February 1, 2016 totalling \$642, calculated as $(\$523 - \$312) \times 3$ months.

- [79] On that strict basis, the net shortfall of basic support for the period July 2014 to February 1, 2016 would be \$1,844.
- [80] The claimant seeks an order for payment of retroactive s. 7 expenses as well. She says that the respondent should contribute his proportionate share of the cost of daycare from August 2014 to April 30, 2015. She puts that figure at \$1,805 based upon a cost of \$650 per month, her income of \$32,273 and the respondent's income of \$36,000 as set out in the July 2014 agreement.
- [81] A difficulty with the claim for retroactive daycare expense is that the claimant did not adduce evidence that at any time ahead of the JCC she asked for a contribution from the respondent to the daycare expense. That same difficulty applies to the claimant's demand for contribution to Lilly's pre-school expense. There is no evidence that the claimant consulted with the respondent about that expense, nor is there evidence that she asked for a contribution ahead of her filing her fourth affidavit on November 30, 2015.
- [82] Given the lack of evidence that the claimant asked for contribution to daycare expenses ahead of the JCC, and given the principle laid down in D.B.S. that the usual commencement date for a retroactive order is the date of first demand and the apparent circumstance that daycare expenses were first raised at the JCC, I would select the date of the JCC as the commencement date for any retroactive order.
- [83] The JCC order was, as noted earlier, made on March 24, 2015. The JCC order based the respondent's proportionate share of s. 7 expenses on the \$36,000 stipulated in the written agreement. However, when the JCC took place, the respondent's income was in fact on the order of \$56,000. The claimant's income was unchanged from \$32,273. The claimant says that the respondent should be ordered to pay an increased share of the s. 7 expenses retroactive to the JCC order.
- [84] In the absence of blameworthy behavior by him, it would not be fair to deprive the respondent of the certainty afforded him by the JCC order. In my view the respondent is entitled to a period of grace following the making of the JCC order. I would, therefore, limit the start date of any retroactive order for daycare expenses to July 1, 2015. As of that date, the respondent's income had settled to a predictable \$56,600 per year. His obligation to contribute to s. 7 expenses ought to be adjusted to reflect the proportion his income bore to the claimant's income. The proportion was - and remains - 63 percent to 37 percent. By that calculation, the shortfall of the respondent's contribution to daycare expenses from July 1, 2015 to January 31, 2016 is \$409.50, calculated as: $(\$409 - \$351) \times 7$ months.
- [85] Given the claimant's unilateral decision to incur pre-school expenses without first consulting the respondent, and given the relatively modest amount of those expenses, I am not inclined to make a retroactive award for them. Going forward, however, from February 1, 2016, the pre-school expense is an expense to be shared by the parties pursuant to s. 7.

Summary of Financial Orders

- [86] The respondent has no claim for division of family property.
- [87] One half of the balance of the consolidation loan is a family debt, divisible equally between the parties. The balance of the loan at trial was \$8,521. The respondent shall contribute \$2,130 to the retirement of that debt.
- [88] As of the trial date, the claimant's annual income is \$32,273 and the respondent's annual income is \$56,600. Commencing February 1, 2016, and on the first day of every month thereafter, the respondent shall pay \$523 to the claimant for the support of their child, Lilly.
- [89] Not later than July 15, 2016, and on that date every year thereafter, the parties shall exchange their filed income tax returns and notices of assessment. The parties shall annually adjust their basic and s. 7 support obligations based upon those documents and any other information relevant to the determination of their incomes for the purposes of the Federal Child Support Guidelines.
- [90] The parties shall share their child's s. 7 expenses in the proportion that their incomes bear to one another. The proportion shall be 37 percent to the claimant and 63 percent to the respondent commencing February 1, 2016. Section 7 expenses will include daycare and pre-school fees.
- [91] The claimant shall not demand contribution from the respondent for an item of s. 7 expense exceeding \$200 per year without first consulting with the respondent. That consultation will be with respect to the nature and benefit of such an expense and the parties' ability to make their respective contributions to that expense.
- [92] The respondent shall transfer his 1 percent interest in the house to the claimant. The parties shall equally share the cost of effecting that transfer.
- [93] The respondent shall be liable to pay retroactive basic child support in the total sum of \$1,844 and retroactive s. 7 support in the total sum of \$409.50 less the value of his 1 percent interest in the house. That interest has a value of \$177. The respondent may reduce the arrears by monthly payments of \$150 commencing March 1, 2016. The claimant shall be enjoined from taking enforcement proceedings for collection of arrears for so long as the respondent makes the monthly payments.

Costs

- [94] Neither party achieved substantial success in this matter. The parties will bear their own costs.

"Rogers J."

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