

CANADA / JUDGMENT

White v. White

2025 BCSC 339

COURT

Supreme Court of British Columbia

DECIDED

28 February 2025

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2025 BCSC 339 White v. White

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

White v. White,

2025 BCSC 339

Date: 20250228

Docket: E65633

Registry: Nanaimo

Between:

Jacqueline Mary White

Claimant

And

Brent Howard White

Respondent

Before: The Honourable Mr. Justice Blok

Reasons for Judgment

Counsel for the Claimant:

A.J. Mattila

Counsel for the Respondent:

R. Fraser

Place and Dates of Hearing:

Nanaimo, B.C.

February 27 and July 12, 2024

Place and Date of Judgment:

Nanaimo, B.C.

February 28, 2025

I. Introduction

- [1] The respondent, Brent White, applies for various forms of relief relating to child support he formerly paid and spousal support he continues to pay.
- [2] As to child support, Mr. White seeks declarations that the parties' now-adult children are no longer children of the marriage as well as orders for the repayment of sums he says he paid when a child or children no longer met the definition of "child of the marriage".
- [3] As to spousal support, Mr. White seeks an order terminating his spousal support obligation because he is at, or nearing, retirement age and wishes to retire.
- [4] In his notice of application, Mr. White also sought other relief, but by the time of the hearing only one of those items was pursued, that being an order or orders to finalize an RRSP rollover set out in a final order pronounced on March 27, 2015 (the "Divorce Order"). By the end of the hearing it appeared that issue had been resolved. If that was not the case then the parties should arrange a further hearing to deal with the issue.
- [5] The claimant, who is now Jacqueline Ryan, says the individual circumstances of the children, as well as the other Farden factors (from *Farden v. Farden*, 1993 CanLII 2570 (B.C.S.C.)), warranted the continuation of child support into adulthood and beyond the dates each child obtained an undergraduate degree.
- [6] Ms. Ryan also argues that Mr. White's application to retroactively vary child support comes too late and his blameworthy behaviour disentitles him from obtaining the relief sought.
- [7] On the matter of spousal support, Ms. Ryan says Mr. White's stated intention to retire is too vague to constitute a change of circumstances, and in any event would be a premature retirement. She submits that the spousal support order was compensatory in nature and so it should not be set aside or varied.

II. Background

- [8] The parties commenced a marriage-like relationship in 1990, were married in August 1993, separated on April 23, 2012, and were divorced pursuant to the Divorce Order on March 27, 2015.

- [9] At the time of the hearing, Mr. White was 63 years old and Ms. Ryan was 59. Mr. White works as a machine tender at a paper mill and has current earnings of about \$209,000 per year. Ms. Ryan runs an aesthetics business out of her home and, together with some rental income, earns about \$10,000 per year after deduction of business expenses.
- [10] The parties have three children: Ryan, born in October 1994; Shannon, born in July 1996; and Kelly, born in August 1998. All three children went to university, obtained undergraduate degrees and then went on to pursue further studies.
- [11] The Divorce Order required Mr. White to pay monthly child support of \$2,104 and monthly spousal support of \$716, effective April 1, 2015.
- [12] The parties agree that the children no longer meet the definition of "child of the marriage" under the Divorce Act, (R.S.C., 1985, c. 3 (2nd Supp.)) but they disagree as to the dates on which each of the children no longer met that definition. Mr. White claims he has overpaid child support because he paid child support after the children became independent.
- [13] Enforcement of child support has been in the hands of the Family Maintenance Enforcement Program (FMEP), and the amount payable was adjusted to reflect changes in a child's status, at least to the extent the parties were in agreement. Ms. Ryan says that twice each year she provided FMEP with statements concerning the status of the children and which FMEP accepted as proof a child, or the children, continued to meet the definition of "child of the marriage".
- [14] On the matter of spousal support, Mr. White says he wishes to retire and, as part of his retirement decision, he needs to know if spousal support must still be paid after he retires. He says his retirement is a "material change in circumstances".

III. Child Support

- [15] The following are the details of each child's circumstances.

Ryan

- [16] Ryan was 17 years old when the parties separated, and 20 when the Divorce Order was made. He went to university and obtained a bachelor's degree in psychology in May 2020. He then went on to pursue a master's degree in psychology, which he started in September 2022 and was to finish in April 2024. He is expected to continue his studies in order to obtain a doctorate degree.
- [17] Mr. White says that Ryan ceased to be a child of the marriage upon the completion of his undergraduate degree in April 2020.

[18] Ms. Ryan concedes that Ryan was no longer a child of the marriage as of September 2020, but says it is not reasonable to expect Ryan to have been independent immediately upon graduation given that he went on to post-graduate studies and it took him two years to get accepted into his chosen post-graduate program.

[19] Ms. Ryan also submits that Mr. White is too late in bringing this application and, in any event, should be denied any retroactive relief due to his blameworthy behaviour.

Shannon

[20] Shannon was 15 years old when the parties separated and 18 when the Divorce Order was made.

[21] Shannon took undergraduate studies and graduated with a bachelor of science degree in, it appears, August 2020. She was then wait-listed for the veterinary medicine program at the University of Saskatchewan. She was admitted to that program the following year. Shannon married in July 2024.

[22] FMEP enforced child support for Shannon to August 31, 2020, there was then an 11-month enforcement hiatus to July 30, 2021, and then FMEP reinstituted enforcement for Shannon when she resumed full-time studies. Evidently, FMEP will enforce an order if there is an educational hiatus of 12 months or less, but not if it is longer. This explains why Ryan's child support was not reinstated, as his gap lasted two years.

[23] On the second day of this hearing, counsel reported that they had come to an agreement concerning child support relating to Shannon, having agreed that this child support should end effective June 30, 2024.

[24] Counsel for Mr. White said that he still wishes to have a declaration that Shannon is no longer a child of the marriage as of that date.

Kelly

[25] Kelly was 13 at separation and 16 when the Divorce Order was made. She too went to university, graduating with a bachelor's degree in kinesiology in June 2022. She then took other courses with a view to getting into naturopathic medicine, those being a yoga instructor course that went from September 2022 to March 2023, and a herbalism course that ran until January 2024.

[26] Mr. White says that child support for Kelly ought to have ended in June 2022 when she finished her undergraduate studies. He argues that the subsequent courses in yoga instruction and herbalism are not serious subjects of study that warrant a continued child support obligation. In any event, Mr. White asserts that Kelly worked full-time from 2021 to 2023.

- [27] Ms. Ryan says Kelly's later courses were full-time courses related to her vocational goal of naturopathic medicine, and Kelly's work during this time was part-time, not full-time. Ms. Ryan says Kelly ceased being a child of the marriage at the end of December 2023, when she finished her courses.

IV. Child Support - Positions of the Parties

A. Mr. White

- [28] Mr. White argues he overpaid by \$2,190 for Ryan (five months) and \$11,286 for Kelly (18 months), for a total of \$13,476.
- [29] He argues that the onus is on Ms. Ryan to show that the children continued to meet the definition of "child of the marriage" and she has failed to do so. Ryan had a gap in his university education and so child support should not have been payable during that gap. Kelly pursued unrelated studies for 18 months and, Mr. White says, worked full-time during that period.
- [30] Mr. White argues that the Farden factors are not met here as it is not clear how the children's studies were paid for, it is not clear how much they contributed to their education, their career plans were uncertain, and the parents made no plans for the children's education aside from saving funds in RESPs. He also said the children were estranged from him.
- [31] On this issue, Mr. White cited *R.L.D. v. J.R.J.M.*, 2023 BCSC 299 and *Nordeen v. Nordeen*, 2013 BCCA 178.
- [32] Mr. White also argued that child support ought not to have been based on the table approach after the children became adults, but should have been set using the shared contribution approach set out in s. 3 (2)(b) of the Federal Child Support Guidelines. This argument was not pursued in the later part of the application, perhaps as a result of Ms. Ryan's warning that this would result in the opening of a Pandora's Box of issues and consequential effects.

B. Ms. Ryan

- [33] Ms. Ryan submits that there is a barrier faced by Mr. White in his application insofar as he was obliged to disclose his income every year and failed to do so. His disclosure came only through the Form F8 financial statement he filed as a necessary component of his current application, and the statement shows earnings substantially in excess of the \$111,000 figure that formed the basis of child support in the Divorce Order. Mr. White's failure to disclose his tax returns persisted even in the face of a direct request for the same made by Ms. Ryan's counsel in August 2017. Ms. Ryan says this is "blameworthy conduct" that should disentitle Mr. White from having child support varied in his favour: *Greco v. Greco*, 2017 BCSC 172.
- [34] Ms. Ryan also noted that Mr. White was obliged by the terms of the Divorce Order to contribute to the education expenses of the children once RESPs were exhausted, but he did not do so.

- [35] As for Ryan's situation, he took some courses while he waited for his master's degree program, and Ms. Ryan could well have sought a resumption of child support for him when he started that program, but she did not. Accordingly, Mr. White has already benefitted from not having to pay child support for Ryan when he probably should have been paying that support.
- [36] As for Kelly, Ms. Ryan submits that the subsequent courses and training that Kelly took following her undergraduate degree were linked to her career goal as a naturopath. These courses were full-time. The employment Kelly listed during this time was not full-time work, as Mr. White alleged.
- [37] Ms. Ryan rejected Mr. White's claims of estrangement by the children, submitting that there has been ongoing contact between the children and their father, but it has been Mr. White's choice to remain largely unengaged with them. She says Mr. White has not met the burden of demonstrating child-caused estrangement as per Farden.

V. Child Support - Legal Principles

- [38] The essential principles concerning child support for an adult child pursuing post-secondary education are succinctly summarized by Hinkson C.J.S.C. in *Gron v. Gron*, 2021 BCSC 1375:
- [22] The claimant, as the parent applying for a support order for a child over the age of majority, must establish that Danielle, though an adult, remains a "child of the marriage" as defined by subsection 2(1)(b) of the Divorce Act, and is, "by reason of illness, disability, or other cause, to withdraw from charge or to obtain the necessities of life."
- [23] In *Dring v. Gehyle*, 2018 BCCA 435 ("Dring") at paras. 49, 103, 104, Justice Goepel held that:
- 49 Once a child of the relationship reaches the age of majority, the presumption is that the child is no longer a "child" and child support is no longer required. At age 19, a child is an adult who, generally speaking, must support himself or herself. To remain a "child" for support purposes, the adult child must be unable to withdraw from his or her parents' charge, or unable to obtain the necessities of life because of illness, disability or another reason. Once a child reaches the age of majority, the party applying for child support bears the onus of proving that the child is still a child: *Olson v. Olson*, 2003 ABCA 56 at para. 13.
- [emphasis by Goepel J.A.]
- [24] In *Farden v. Farden* (1993), 48 R.F.L. (3d) 60, Master Joyce, as he then was, set out the following factors to be considered in assessing whether a child attending school could be treated as a child of the marriage at pages 64-65:

Whether or not attendance in a post-secondary institution will be sufficient cause for a finding that the child is still a "child of the marriage" requires examination of all of the circumstances. It is not a conclusion which follows automatically from proof of attendance at the institution [McNulty v. McNulty (1976), 25 R.F.L. 29 (B.C.S.C.)]. In my view the relevant circumstances include:

- (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
- (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
- (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
- (4) the ability of the child to contribute to his own support through part-time employment;
- (5) the age of the child;
- (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
- (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
- (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

[25] In *W.P.N. v. B.J.N.*, 2005 BCCA 7, Justice Levine, for a unanimous Court, observed at para. 18 that:

The pursuit of education necessary to equip a child with a career qualifies as "other cause" for continuing dependence of a child of or over the age of majority: *Martin v. Martin* (1988), 26 B.C.L.R. (2d) 390 at 393 (C.A.). In determining whether a child pursuing an education is unable to withdraw from her parents' charge or obtain the necessities of life a court must consider the surrounding circumstances; mere attendance at an educational institution is not sufficient: *Ciardullo v. Ciardullo* (1995), 15 R.F.L. (4th) 121 at para. 17 (B.C.S.C.).

[26] In *Neufeld v. Neufeld*, 2013 BCCA 178 at para. 17, Justice Groberman commented:

17 This Court has found the Farden factors to be useful indicators in deciding whether child support should continue to be paid in respect of a child over the age of majority who is attending a post-secondary institution (see, for example, *Darlington v. Darlington* (1997), 32 R.F.L. (4th) 406; *W.P.N. v. B.J.N.*, 2005 BCCA 7 and *De Beck v. De Beck*, 2012 BCCA 465). It must be emphasized, however, that the Farden factors are neither a checklist nor a set of statutorily-mandated criteria. Rather, they are considerations for the court in assessing whether the child's situation is consistent with the definition of "child of the marriage" in the Divorce Act.

- [39] In *Colucci v. Colucci*, 2021 SCC 24, [2021] 2 S.C.R. 3, the court confirmed that the principles and factors expressed in *D.B.S. v. S.R.G.*, 2006 SCC 37, [2006] 2 S.C.R. 231, apply, with some minor variation, to applications for the retroactive reduction of child support. In *Colucci*, Justice Martin, for the unanimous Court, said:
- [55] In building a framework for the variation of child support and the rescission of arrears, judicial discretion must be structured to safeguard the child's interest in receiving the appropriate amount of support to which they are entitled. Alongside this paramount interest, there must be a fair balancing of certainty and flexibility to reach a just result in light of fluctuations in payor income and the particular circumstances of each case. In addition, the framework under s. 17 must promote the timely disclosure of accurate information, which in turn encourages equal bargaining and fair settlements, as the payor parent "holds the cards" when it comes to child support (*Michel*, at para. 32, per Brown J.). Above all, "the ultimate goal must be to ensure that children benefit from the support they are owed at the time when they are owed it. Any incentives for payor parents to be deficient in meeting their obligations should be eliminated" (*D.B.S.*, at para. 4). Payors should not be better off from a legal standpoint if they do not pay the child support the law says they owe. Nor should payors receive any sort of benefit or advantage from failing to disclose their real financial situation or providing disclosure on the eve of the hearing.
- [40] Justice Martin summarized the framework to be applied where a retroactive decrease in child support is sought:
- [113] To summarize, where the payor applies under s. 17 of the Divorce Act to retroactively decrease child support, the following analysis applies:
- (1) The payor must meet the threshold of establishing a past material change in circumstances. The onus is on the payor to show a material decrease in income that has some degree of continuity, and that is real and not one of choice.
 - (2) Once a material change in circumstances is established, a presumption arises in favour of retroactively decreasing child support to the date the payor gave the recipient effective notice, up to three years before formal notice of the application to vary. In the decrease context, effective notice requires clear communication of the change in circumstances accompanied by the disclosure of any available documentation necessary to substantiate the change and allow the recipient parent to meaningfully assess the situation.
 - (3) Where no effective notice is given by the payor parent, child support should generally be varied back to the date of formal notice, or a later date where the payor has delayed making complete disclosure in the course of the proceedings.
 - (4) The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. The *D.B.S.* factors (adapted to the decrease context) guide this exercise of discretion. Those factors are: (i) whether the payor had an understandable reason for the delay in seeking a decrease; (ii) the payor's conduct; (iii) the child's

circumstances; and (iv) hardship to the payor if support is not decreased (viewed in context of hardship to the child and recipient if support is decreased). The payor's efforts to pay what they can and to communicate and disclose income information on an ongoing basis will often be a key consideration under the factor of payor conduct.

- (5) Finally, once the court has determined that support should be retroactively decreased to a particular date, the decrease must be quantified. The proper amount of support for each year since the date of retroactivity must be calculated in accordance with the Guidelines.
- [41] A finding of unreasonable delay or a payor parent's blameworthy conduct will militate against a retroactive order: *G.M.W. v. D.P.W.*, 2014 BCCA 282 at para. 43. Blameworthy conduct is conduct that has the effect of privileging the payor's interests over the child's right to support: *Colucci* at para. 101.
- [42] The payor's efforts to disclose and communicate will often be prominent considerations in assessing the payor's conduct in the context of an application for a retroactive decrease of support: *Colucci* at para. 102 .

VI. Child Support - Discussion

- [43] I find it unnecessary to delve into the details or reasonableness of Ryan and Kelly's educational paths, or Mr. White's allegations of estrangement, as I conclude that Mr. White's blameworthy conduct is such that his claim for repayment of support must be dismissed. His blameworthy conduct, in brief, is that after the Divorce Order he failed to disclose the changes to his income, including by failing to provide copies of his income tax returns on an annual basis, and to adjust the amount of child support accordingly.
- [44] This blameworthy conduct is no small thing. His ongoing child support obligation was based on an annual income of \$111,000 as per the Divorce Order of March 27, 2015. How much he made in the years 2016, 2017, 2018 and 2019 is unknown on the record before me. For later years, he attached his tax assessment or reassessment documents (but not his actual tax returns, as he was also required to do) to his Form F8 financial statement. These showed Line 150 income in the following approximate amounts: 2020: \$160,000; 2021: \$156,000; and 2022: \$209,000. In his Form F8 itself he showed his 2023 income to be \$209,000.
- [45] It stands to reason that in his unionized job he almost certainly had annual increases in his income. From this, I conclude that Mr. White was underpaying child support from 2016 to 2024.
- [46] Mr. White answers his failure to disclose by likewise blaming Ms. Ryan for failing to disclose her own tax returns. That is not a good thing either, but she was not the parent paying child support. Also, in the Divorce Order she had an income imputed to her of \$50,000 per year, a sum which is more than I expect she has in fact earned in her in-home aesthetics shop over the years, and anyway, her income level would have only affected the sharing of s. 7 expenses, not the table amount of child support. The important point is that Mr. White's

blameworthy conduct had the effect of privileging his own interests over his children's right to an appropriate amount of support: Colucci at para. 101. His conduct is fatal to his application to retroactively vary his child support application.

[47] Although unnecessary to do so, I also conclude that his three-year delay in seeking a retroactive variation of support relating to Ryan is additional basis on which to deny that aspect of his application.

[48] Mr. White said he nonetheless wishes to have formal declarations that the children no longer met the definition of "child of the marriage" on certain dates. I see no issue with making such a declaration, and these were not opposed except as to the dates, so these declarations will be based on the dates support actually ceased, which for Ryan is September 30, 2020; for Shannon it is June 30, 2024; and for Kelly it is December 31, 2023.

VII. Spousal Support - Positions of The Parties

A. Mr. White

[49] Mr. White referred to some additional facts relevant to spousal support. He deposes that he has worked in the mills of Port Alberni in various capacities for 46 years, and he is the oldest person in his local union.

[50] He says his work as a machine tender is very physical and involves heavy lifting and climbing. He says he has arthritis, tendinitis and a torn meniscus in his knees, as well as some vision loss. He evidences the torn meniscus through an MRI report, though not with any physician's report explaining the significance of the findings. He says he has knee pain every day and sometimes it is disabling. His vision loss is verified by an ophthalmologist's letter from June 2022, although the indication is that the loss is modest, though progressive, with the physician noting the progression is slow and "so hopefully it will not trouble you that much".

[51] By letter to his employer dated July 27, 2023, Mr. White gave notice of his intention to retire effective May 31, 2024.

[52] He says his income has been enhanced recently because he is doing overtime work in order to save money for retirement. His income post-retirement will come solely from pensions (a work pension and CPP) and Old Age Security, and the pensions were divided in 2015 as part of the Divorce Order. His expected pension income will be between \$3,890 and \$4,580 per month, depending on the form of pension he selects.

[53] Mr. White argues that his decision to retire is a reasonable one, his actual retirement is sufficiently certain, and his intended retirement amounts to a material change in circumstances: *Hague v. Hague*, 2022 BCCA 325; *Peters v. MacLean*, 2014 BCSC 990; and *Caron v. Caron*, 2023 ABKB 285.

- [54] Mr. White notes Ms. Ryan took her share of the 2015 pension division in a lump-sum payment, the amount of which has not been disclosed by her. Ms. Ryan has merely said that she received "well over six figures" for her share of the pension, which covered the contribution period from January 1992 to the separation date in April 2012. He says the fact that his work and CPP pensions have been divided also bears on the income that would be attributed to him on retirement, as a significant portion of that income derives from property that has already been divided. In brief, there is a "double dipping" scenario here.
- [55] Mr. White says Ms. Ryan's financial circumstances are more favourable than his, as indicated in their respective Form F8 financial statements. Mr. White has net assets of about \$998,000, whereas Ms. Ryan has net assets of about \$1,725,000, a difference of \$727,000. He also submits that Ms. Ryan's stated business income of about \$8,000 is artificially low due to personal expenses being claimed as business expenses, and that Ms. Ryan has the capacity to earn much more than that. In this regard, Mr. White notes that the Divorce Order imputed to Ms. Ryan an income of \$50,000 per year. Finally, he also says Ms. Ryan is not maximizing the return on her assets, as at one time she earned \$583 per month renting a suite in her home, whereas now her rental income is merely \$1,100 per year.
- [56] Mr. White argues that Ms. Ryan, having re-partnered, is self-sufficient in terms of assets and income, and she has now received adequate compensation for any financial disadvantages caused by the marriage.

B. Ms. Ryan

- [57] Ms. Ryan emphasizes that Mr. White has not retired. A mere intention to retire is not the same as an actual retirement because an intention may not be carried out. Ms. Ryan argues that this uncertainty means Mr. White has not demonstrated a material change in circumstances.
- [58] As for Mr. White's argument that Ms. Ryan's net assets exceed his, this is a consequence of her having purchased his interest in the family home and subsequently benefitting from a rising real estate market. Ms. Ryan also noted Mr. White did not provide a valuation for his work pension in his Form F8 financial statement which, if done, would likely have substantially increased the stated value of his net assets. This is of particular significance in terms of the comparison of net assets in this case, since Ms. Ryan cashed out her share of the divided work pension and, unlike the situation with Mr. White, that value is included in her net assets.
- [59] Ms. Ryan notes that the parties had a 22-year relationship. She sacrificed a career as she had steady employment as an aesthetics and electrolysis instructor in Victoria, and she left that work to relocate to Port Alberni to live with Mr. White. During the relationship the parties adopted traditional roles, with Ms. Ryan looking after the children and household and doing some part-time work from her home.

- [60] Ms. Ryan cited several authorities having to do with variation applications and retirement: *Beninger v. Beninger*, 2019 BCSC 366; *Falconer v. Falconer*, 2017 BCSC 2355; *Carey v. Carey*, 2021 BCSC 1537; and *Greco*. In brief, her counsel says the applicant bears the burden of demonstrating a material change of circumstances, and the question of voluntary retirement in terms of being a material change depends on a careful scrutiny of the circumstances in the case. Counsel noted, in particular, that the court in *Carey* found that a stated intention to retire does not equate to a material change in circumstances: para. 36.
- [61] Here, although Mr. White gave notice of his intention to retire on May 31, 2024, he did not follow through with his stated intention.

VIII. Spousal Support - Legal Principles

- [62] In *Hague*, the Court of Appeal set out the well-established two-stage framework for applications to vary or terminate spousal support:
- [30] Applications to vary or terminate spousal support are assessed under a two-stage framework:
1. Under s. 17(4.1) of the Divorce Act, before making a variation order, the court must be satisfied that there has been a change in "the condition, means, needs or other circumstances" of either former spouse. This requires the applicant to establish a material change in circumstances since the making of the order sought to be varied.
 2. Once the material change threshold is met, the court must determine what variation is appropriate in light of the change in circumstances. A court "should limit itself to making only the variation justified by the change."

(*Rozen v. Rozen*, 2016 BCCA 303 at paras. 19-23, citing *L.M.P. v. L.S.*, 2011 SCC 64 at para. 47; *Beninger v. Beninger*, 2019 BCSC 366 at para. 50.)

- [63] *Hague* also provides guidance on what constitutes a "material change in circumstances":
- [33] A material change in circumstances is a change that, "if known at the time, would likely have resulted in different terms": *Willick v. Willick*, [1994] 3 S.C.R. 370, 1994 CanLII 28 (S.C.C.) at p. 688; see also *L.M.P.* at para. 32. A material change is one that must not actually have been contemplated when the spousal support order was made: *L.M.P.* at paras. 66-67.

IX. Spousal Support - Discussion

- [64] I deal first with whether Mr. White's stated intention to retire is a "material change in circumstances".
- [65] There is nothing in the evidence to suggest that retirement itself was actually contemplated by the parties when the Divorce Order was made. Certainly there is nothing in the order itself that addresses a retirement situation.

- [66] However, the issue here is one step away from actual retirement as it is merely a stated intention to retire at this point. The question is whether that is enough.
- [67] In Caron, a 69 year old welder, working in the pipeline industry, sought to vary or cancel his spousal support obligation. He had a number of health issues: chronic obstructive pulmonary disease, arthritis and arrhythmia, for which he took blood thinners and heart medication. He had not set any retirement date, nor given any notice of retirement, but wanted to know what his spousal support obligation would be in retirement so that he could make plans accordingly. The court concluded that Mr. Caron had provided sufficient evidence on which to conclude that his retirement was a certainty: Caron at para. 45.
- [68] In both Hague and Peters, two cases cited by Mr. White, the payor spouse had already retired. Beninger, Falconer and Greco, cases cited by Ms. Ryan, also involved payors who had already retired.
- [69] In Carey, a 68 year old payor, who was employed in middle management of a professional consultancy firm, wished to retire. He was finding the pace and stress of work too much, and he had some health issues, though none significant, and so he wished to retire and enjoy his retirement. The payee spouse argued that the application was premature; by contrast, the applicant/payor spouse argued that it was practical to deal with the issue before retiring.
- [70] The court in Carey acknowledged that an intention to retire may satisfy the material change in circumstances test, noting that Schulstad v. Schulstad, 2017 ONCA 95 was an example of that, but the court also noted the particular finding in Schulstad that the payor's intended retirement was a certainty: Carey at paras. 37-40. In Carey, the court found the payor's intended retirement was not certain (at para. 41). I also note that, similar to the present case, the payor had given notice to the payee that he intended to retire by a certain date but had not actually done so.
- [71] I appreciate that the facts in the present case are broadly similar to those in Caron, but the payor in that case was materially older, his health issues seemed to be more serious, and I suspect the work of a pipeline welder is heavier work than that of a paper machine tender. Most importantly, I am not satisfied that Mr. White's intended imminent retirement is a certainty, given that Mr. White provided a retirement notice to his employer, naming a specific date, yet has not retired.
- [72] A further consequence of the pre-retirement timing of his application is that Mr. White cannot say what his retirement income will be because he has not yet chosen the form of his pension payments. The income range associated with the options is a substantial one. This uncertainty would render it much more difficult to assess the proper level of spousal support to be paid in the event spousal support was varied, not terminated.
- [73] For those reasons, I conclude that Mr. White has not met his burden of showing there has been a material change in circumstances in this case.

- [74] Although it is not necessary that I do so, for the benefit of the parties in resolving matters following Mr. White's actual retirement, I will add that even if Mr. White had actually retired, it is unlikely I would have terminated his spousal support obligation, although I might have reduced it. I would not have terminated it altogether because, as noted in Hague:
- [36] The underlying goal of compensatory spousal support is the equitable sharing of the economic consequences of a marriage or its breakdown. It is intended to provide "redress for economic disadvantage arising from the marriage (such as diminished earning capacity and sacrificed career opportunities to take on child care responsibilities) or the conferral of an economic advantage upon the other spouse (such as contributions to enhanced career development)": *Parton v. Parton*, 2018 BCCA 273 at para. 39; see also *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-51.
- [75] In my view, Ms. Ryan's substantial compensatory claim remains, and 10 years of spousal support is not sufficient to fully compensate her given the length of the parties' relationship, the role she played in the domestic partnership and the disadvantages to her that resulted from that relationship and its breakdown.
- [76] I also note that the evidence before the Court was likely insufficient to fix any revised amount of support in any event. Mr. White did not provide a valuation of the already-divided portion of his work pension or indicate what percentage of his likely pension income would be attributable to the divided portion. Since the divided part of the pension was accrued over a period just in excess of 10 years, and the remainder over 13 years at a much higher earnings level, even on a rough analysis there would still be a substantial basis for continuing spousal support, though perhaps on a reduced basis, without offending the rule against double-dipping.

X. Conclusion

[77] In summary:

- a) Mr. White's application for repayment of child support already paid is dismissed;
- b) Mr. White's application to vary or terminate his spousal support obligation is dismissed;
- c) There will be declarations that the children of the parties ceased to be a "child of the marriage" on the following dates:
 - i. Ryan: September 30, 2020;
 - ii. Shannon: June 30, 2024; and
 - iii. Kelly: December 31, 2023.

[78] Ms. Ryan has been substantially successful and so she is entitled to costs.

"Blok J."

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