IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *P.J.D. v. W.K.W.,*
2019 BCSC 1188

Date: 20190719
Docket: E173090
Registry: Vancouver

Between:

P. J. D.

Claimant

And

W. K. W. also known as W. K. D

Respondent

Before: The Honourable Mr. Justice Skolrood

Reasons for Judgment

The Claimant, appearing in person:	P.J.D.
Counsel for the Respondent:	S.G. Label
Place and Date of Trial:	Vancouver, B.C. April 8-12, 2019
Place and Date of Judgment:	Vancouver, B.C. July 19, 2019

Introduction

[1] The principal issue in dispute in this family law case is the parenting arrangements for the two children of the marriage. There are also issues concerning the division of the respondent's employment pension, the claimant's entitlement to funds from the respondent in respect of a mortgage on their matrimonial home that he paid off, and the respondent's entitlement to s. 7 expenses. The notice of family claim included a claim for spousal support but the claimant advised at trial that he has abandoned that claim.

[2] In order to protect the privacy and well-being of the parties' children, I have identified the parties by their initials in the style of cause and have referred to the children by their initials throughout these Reasons.

[3] Both parties consent to a divorce and I am satisfied that the requisite criteria under the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) have been met.

Summary of the Evidence

Background

[4] The claimant is 63 years old. He operates his own direct mail company. There was minimal evidence adduced at trial concerning his income and employment history.

[5] The respondent is 44 years old. She is employed as a social worker.

[6] The parties began living together in 2000 and were married in 2002. It was the first marriage for the respondent and the third for the claimant.

[7] They have twin children, a boy (N.D.) and a girl (I.D.), born in 2006. The children will soon turn 13.

[8] The parties separated in August 2016.

The Claimant

[9] The claimant appeared in person at the trial. His testimony in direct was relatively brief but it identified a number of key themes that lie at the heart of his position in this case:

a) He is devoted to his children and wants to continue to spend quality time with them. He would like to have equal parenting time but, at a minimum, he wants to maintain his current amount of time, which is approximately 40%;

b) He has been active in their lives to date. Both children are good athletes and the respondent has been very involved in their sporting activities;

c) The claimant and respondent have very different parenting styles. The claimant views it as his role to instill structure and discipline in the children. He considers the respondent's approach to parenting to be too permissive;

d) The claimant believes that the respondent marginalizes his role as a parent. He claims that she makes decisions without consulting him and that she effectively imposes the parenting schedule on him; and

e) The claimant believes that the respondent has a co-dependant relationship with her mother and that the respondent's mother interferes with his parenting.

[10] It is apparent from the claimant's evidence that he is a devoted and involved parent. That said, his approach to dealing with the children is an ongoing source of friction between the parties and one

of the primary reasons the children have said, according to the respondent, that they want to spend less time with him.

[11] By way of example, the claimant acknowledged saying to I.D. that she “looked like a farmer” in her class photograph because she wore a checked shirt and that she would get fatter if her mother kept feeding her bagels for breakfast. Similarly, with respect to N.D., he often criticizes his performance in his sports. On one occasion, he told N.D. that he was overweight and the slowest runner on the track.

[12] According to the claimant, he is not being abusive, rather he is doing his job as a parent and delivering the “tough messages” that the kids need to hear. Again, his view is that the respondent is too soft on them and, as a result, is causing them emotional harm.

[13] One example he gave about how the parties differ in their approach involved an incident with I.D. and another girl who were accused of taking some candy from the principal’s office at school. The claimant said he wanted to discipline I.D. by making her go and apologize to the principal, but he said the respondent undermined his efforts. He said he also wanted to limit the children’s use of phones but again, the respondent undermined him by buying them both phones.

[14] The claimant’s communication with and about the respondent is of particular concern. As is all too common in current family litigation, extensive text exchanges between the parties were introduced into evidence. Without going into great detail, it can fairly be said that the claimant is often rude and aggressive in his communications. He regularly says derogatory things about the respondent, referring to her as “sick”, “mentally ill”, a “wacko” and accusing her of lying. He also denigrates her family, referring to them as “trailer trash”.

[15] He acknowledges that he has said similar things about the respondent in front of the children. His response was that he does not say “mean things”, he says “factual things”. He also admits that he has said things about the respondent’s family in front of the children “when it is appropriate to provide comparisons”. He says he wants to save the children from growing up like the respondent and her family.

[16] Rather than acknowledging the inappropriate nature of his communications, he attributes it to his frustration with the respondent and again characterizes much of what he says as delivering the tough but true messages.

[17] The claimant was asked whether the children have ever said to him that they want to spend less time with him. He says they have discussed the issue but the children have said that it is more that they want to spend time with their friends in Ladner, which is difficult because he lives in Richmond. However, he is soon moving to Tsawwassen so, in his view, this will no longer be as much of an issue.

The Respondent

[18] As indicated, the respondent and the claimant began living together in 2000 and were married in 2002. When they first moved in together they split expenses evenly. They largely kept their finances separate, including maintaining separate accounts, but contributed an equal amount each month for living expenses. This continued throughout their married life.

[19] According to the respondent, not only did they keep their finances separate, but there was also very little discussion between them about financial matters, for example, incomes and savings.

[20] The parties purchased a house in Richmond in September 2001. Each contributed one-half of the down payment and they continued to make equal monthly contributions to the cost of the mortgage. Occasionally, if more money was needed, for example for larger purchases for the house, they would again contribute equally.

[21] The respondent obtained her social work degree and began working as a social worker in 2003. She works with families who come into contact with the Ministry of Children and Family Development.

[22] The children were born in August 2006. The respondent took maternity leave and then returned to work part time in October 2007. Her mother looked after the children while she was working. She returned to work full-time when the children started kindergarten.

[23] The respondent testified that throughout the marriage she and the claimant often had disagreements that resulted in him yelling at her and making derogatory comments. She described the claimant as having a “short fuse”.

[24] In April 2016, the parties had an argument that resulted in the claimant not speaking to the respondent for two weeks. It was then that the respondent decided the relationship was over.

[25] They agreed that the house had to be sold and the claimant said he would take care of it. He initially did nothing but ultimately the house was listed and sold on August 1, 2016. By that time, the respondent had purchased a new house in Ladner, and moved there with the children when the family home sold.

[26] When they sold the family home, it was mortgage free. In 2010, the claimant received an inheritance and used some of the money to pay off the mortgage. When they separated, the claimant asked the respondent to repay half of the amount he paid on the mortgage, and she agreed.

[27] According to the respondent, at the time of separation, they also agreed that they would each keep their own investments, savings, bank accounts and vehicles. The respondent said it was also agreed that she would keep her pension. I will return to the issue of the pension below. There was no discussion about child or spousal support.

[28] With respect to the children, the respondent said there was no agreement about parenting. She asked the claimant when he would like to see them and he said “I’ll see them when I can”.

[29] In the first year after separation, the parenting schedule was often dictated by the children's activities. Since September 2017, however, the schedule has generally been that the claimant has the children three nights per week and every other weekend, until Monday morning (or until 3:00 p.m. if the Monday is a Pro-D day or holiday).

[30] The respondent said the claimant agreed to this schedule, under which he has the children about 12 days per month.

[31] The respondent reviewed many of the texts and emails that were put to the claimant in cross-examination. Again, the claimant is regularly rude and demeaning in his dealings with the respondent. She said these are typical of how he communicates with her and that he is often worse when speaking to her on the phone.

[32] The parties met twice with a family justice counsellor, however that did not help matters as, according to the respondent, the claimant accused her of having a co-dependent relationship with her mother and of emotionally harming the children. The respondent said she set up some additional counselling for the parties earlier this year with a view to helping them learn to co-parent. However, at the first session, the claimant accused her of lying and having no integrity. According to the respondent the counsellor said that she could not work with them and they needed to go for conflict resolution.

[33] The claimant told the respondent that she needed to see a psychiatrist. The respondent consulted her family doctor who declined to make a referral.

[34] In terms of the children, the respondent denied that she does not discipline them or that she cannot say no. With respect to the candy incident involving I.D., the respondent said she made I.D. write a letter of apology and use her own money to buy replacement candy.

[35] The respondent described a number of other incidents involving the children, for example concerning birthday presents for the children, I.D. not leaving clothes at the claimant's house, and the scheduling of the children's activities. Many of the things described are relatively minor and again underscore the parties' different parenting styles and their inability to communicate. It is not necessary or helpful to dwell on these incidents.

[36] The respondent testified that both children have said they want to spend less time with the claimant. She said that I.D. often cries about having to go to the respondent's house and that both children get upset by the things the claimant says about the respondent. The respondent is also concerned about the children's emotional well-being given some of the things the claimant says to them, for example when he tells I.D. she is fat.

The Parties' Positions

[37] The claimant seeks an order for equal parenting time or, at a minimum, an order maintaining the current arrangement. He stresses the importance of his role in the children's lives and the need for each parent to have an equal say in important decisions affecting them.

[38] The claimant seeks an order dividing the respondent's pension as well as an accounting of certain expenses claimed by the respondent.

[39] The respondent seeks increased parenting time. She proposes that the claimant continue to have the children every other weekend, but from Friday to Sunday night rather than Monday morning. She further proposes that in alternating weeks, the claimant should have one overnight with the children rather than the current three.

[40] With respect to her pension, the respondent submits that the parties agreed that each would retain their own financial assets, including her pension. The respondent also claims for retroactive s. 7 expenses.

Discussion

Preliminary Point – Views of the Child Report

[41] As I will return to below, one of the key factors to consider when determining parenting arrangements is the views of the child or children. A child's views, depending upon his or her age and level of maturity, are regularly considered as part of the "best interests" analysis which is at the core of any parenting decision: *S.B.C. v. F.A.C.*, 2013 BCSC 211 at paras. 373-75; *Stav v. Stav*, 2012 BCCA 154 at para. 75; *L.E.G. v. A.G.*, 2002 BCSC 1455 at paras. 16, 18; *J.S.R. v. P.K.R.*, 2017 BCSC 928 at paras. 231, 233.

[42] More weight may be attached to the children's views or wishes depending upon their age and level of maturity. Some cases have recognized that at a certain age, children "vote with their feet", in the sense that they are acknowledged as having the capacity to make choices about preferred parenting arrangements. In such cases, the courts generally recognize the futility of ordering a child or youth to comply with a parenting arrangement with which they disagree, as the child or youth will simply leave either to return to the other parent or go elsewhere: *D.L.G. v. R.A.G.*, 2010 BCSC 244 at para. 32; *R.F.N. v. K.A.E.*, 2006 BCPC 493 at para. 17.

[43] The children here are about to turn 13 years old. They are arguably still just shy of the age when they will "vote with their feet". Nonetheless their views carry considerable weight.

[44] There is no direct evidence of those views. An agreement was reached by the parties at a trial management conference held on March 5, 2019, for Dr. Marilyn Beloff to prepare a views of the child report. I note that no formal order was prepared but this term is reflected in the clerk's notes and I accept the representation of counsel that such an order was made, by consent. The clerk's notes also record that the issue of how to allocate costs will be addressed once an estimate has been obtained. Again, I accept that this is a fair representation of what was ordered.

[45] Dr. Beloff subsequently provided a cost estimate of $4,000. However, the claimant refused to contribute one-half of that amount. He took the position that because of certain real estate transactions he was involved in, he could not afford to pay anything towards the report.

[46] The respondent then proposed that she would pay the entire amount up front, subject to dealing with an apportionment of costs at trial. Dr. Beloff was prepared to accept that arrangement if she received written confirmation from the claimant giving his consent. The claimant refused to do so. Initially, he said he would agree if "…I get confirmation that [the claimant] will get the help she needs to understand what she has done to the kids and what will happen if she continues down this road."

[47] There were some further exchanges between the parties, but ultimately no report was obtained because the claimant refused to consent.

[48] The respondent submits that given the claimant's conduct, I should draw an adverse inference that the views of the child report, if completed, would not have been favourable to him. I am reluctant to do so. In my view, the Court should avoid drawing inferences based on the conduct of one of the parents when the focus of the analysis is in the best interests of the children. However, what the absence of a views of the child report does mean is that the only evidence of the children's views is the evidence provided by the respondent. I will touch on that evidence below.

Parenting Arrangements

[49] As noted at the outset, and as is apparent from the summary of the parties' evidence and positions, the central issue concerns the parenting time for the two children.

[50] I note that in his amended notice of family claim filed May 1, 2018, the claimant alleges that on separation the parties reached an oral agreement to share parenting time and responsibilities equally. The respondent denies any such agreement. In his evidence, the best that the claimant could say was that the parties discussed equal parenting, although the respondent also denies this. Regardless, the evidence falls far short of establishing that there was an agreement about parenting arrangements.

[51] Section 37(1) of the *Family Law Act*, S.B.C. 2011, c. 25 [*FLA*] directs that when making an order concerning parenting arrangements, the sole criterion for the Court to consider is the best interests of the children. Section 37(2) then states that the analysis must be informed by the children's needs and circumstances, including the following factors:

> (a) the child's health and emotional well-being;
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> (b) the child's views, unless it would be inappropriate to consider them;
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> (c) the nature and strength of the relationships between the child and significant persons in the child's life;
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> (d) the history of the child's care;
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> (e) the child's need for stability, given the child's age and stage of development;
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> (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
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> (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
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> (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;

> (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
>
> (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[52] I will address those factors that are most relevant in the circumstances of this case.

The children's health and emotional well-being (s. 37(2)(a))

[53] Both parties express concern about the emotional well-being of the children when under the care of the other parent. Again, the claimant believes that the respondent is too lenient, fails to impose any structure and has a damaging co-dependent relationship with her mother. For her part, the respondent is concerned about how rigid the claimant is with the children and the derogatory things he says to them about her and her family.

[54] I note that there is no expert medical or psychological evidence before the court concerning the children.

[55] It is not uncommon, even in an intact family, for parents to have different parenting styles. One of the challenges that may arise upon the breakdown of a family is that one parent cannot dictate how the other must parent when the children are in his or her care. This is recognized to some extent in s. 42(2) of the *FLA*, which provides:

> During parenting time, a guardian may exercise, subject to an agreement or order that provides otherwise, the parental responsibility of making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child.

[56] It is also not the role of the court to impose its views or to intrude into day-to-day parenting decisions.

[57] Tolerance of different parenting styles, by the Court or the other parent, does not however mean turning a blind eye to conduct that is abusive or harmful to the children. As s. 37(2)(a) of the *FLA* provides, a child's health and emotional well-being is a key factor.

[58] Here, I am not satisfied on the evidence that either parent's approach to dealing with the children, in terms of things like discipline and day-to-day decision-making, is harmful to them. While the claimant clearly has a more rigid approach, and the respondent less so (although on the evidence I would not characterize her as being overly lenient or too "soft"), neither approach is manifestly contrary to the children's best interests.

[59] I do accept the respondent's evidence that the children are often upset by things the claimant says about them, for example in connection with their sports activities. While this behaviour on the part of the claimant may not constitute emotional abuse, there is a strong likelihood that if he does not modify his approach, as the children get older they will choose to distance themselves from him.

[60] I take a different view, however, to the claimant's derogatory statements about the respondent and her family which he makes in the presence of the children. I find that such conduct is harmful to their emotional well-being in that it has the potential, and is likely intended to, damage the bond between the children and their mother.

[61] Regrettably, the claimant displays little or no insight into this behaviour and its negative impact on the children. Rather than acknowledging the need to address his conduct, the claimant characterized the trial as a character assassination of him based on lies and misrepresentations.

[62] It is also worth noting that the respondent took the "Parenting After Separation" online course in March 2017. That course is intended to assist separated parents in understanding their children's needs during the difficult separation process. The claimant has never taken the course. When asked why not, he said he "didn't have time".

The views of the children (s. 37(2)(b))

[63] As noted, the respondent testified that the children have both said they wish to spend less time with the claimant. The claimant testified that the children have not said this directly to him, but have said they want to spend more time with their friends in Ladner. Again, he says this will be less of an issue when he moves to Tsawwassen.

[64] As I have indicated, given the absence of a views of the child report, there is no evidence to counter that of the respondent concerning the wishes of the children.

[65] What is not clear is whether the children have clearly formed views about how much time they would like to have with the claimant. The respondent testified that at one point N.D. said he wanted to spend 75% of the time with her and 25% with the claimant. However, it is not apparent whether N.D. understood what that meant in terms of actual days and nights with each parent or that it was a carefully considered view. That said, I accept that both children have expressed a desire to spend less time with the claimant.

The nature and strength of the relationships between the children and significant persons in the children's life and the children's need for stability (s. 37(2)(c) and (e))

[66] Both parents have played a significant role in the children's lives to date. Despite her concern about the claimant's conduct and the impact on the children, the respondent acknowledges that he loves them and they love him. She supports the ongoing relationship, but again seeks an order to reduce the claimant's parenting time.

[67] I am satisfied that both parents have strong relationships with the children, and any order that I make will not unduly disrupt those relationships. That said, as I indicated above, the claimant runs the risk that his approach to dealing with the children may drive them away from him.

[68] In terms of stability, the children are used to spending time with both parents and at their respective homes. Any changes to the current parenting schedule that may be ordered will not, in my view, be unduly disruptive for them.

The impact of any family violence on the children's safety, security or well-being (s. 37(2)(g))

[69] Psychological or emotional abuse may constitute family violence under the *FLA*: s. 1; *S.M. v. R.M.*, 2015 BCSC 1344 at para. 17. The respondent submits that the claimant has committed family violence by way of his abusive and demeaning treatment of her, which often occurs in front of the children.

[70] I have already found that the claimant's behaviour directed at the respondent is harmful to the children's best interests. In the circumstances, I do not consider it necessary to determine whether that conduct constitutes family violence.

The appropriateness of an arrangement that would require the children's guardians to cooperate on issues affecting the children (s. 37(2)(i))

[71] It is apparent on the evidence that the parties have problems communicating and that a cooperative and collaborative relationship for dealing with the children is not possible.

[72] The claimant acknowledged as much in his testimony. He went as far to say that there was no need for the parties to co-parent. His view is that there simply needs to be a clear schedule that both parents will abide by. He also takes the position that both parents must have an equal say in important decisions like school, medical, activities, and any financial matters involving the children, however he does not explain how that can happen without proper communication and in the absence of any commitment to co-parenting.

[73] I am satisfied on the evidence that the respondent has made attempts to develop a cooperative approach, but those attempts have been rebuffed by the claimant. In the circumstances, giving the parties an "equal say" concerning important decisions affecting the children, as sought by the claimant, or requiring the parties to agree, is not feasible or realistic.

Summary and conclusion on the parenting arrangements

[74] In summary, I find that the children's emotional well-being is harmed by the claimant's treatment of the respondent and that the claimant is not capable of communicating and cooperating with the respondent in respect of important decisions affecting the children. I also accept the evidence that the children wish to spend less time with the claimant.

[75] I am prepared to respect those wishes. The question then becomes: what are the appropriate parenting arrangements?

[76] The respondent again proposes that the children continue to spend alternating weekends with the claimant, except that they will return to her on Sunday evening rather than Monday morning. I accept her concern that a transfer on Monday is awkward and often disruptive and that Sunday evening makes more sense.

[77] The more challenging issue is whether the three overnights per week that the claimant currently has with the children should be reduced to one per week as proposed by the respondent. One of the difficulties is that the basis for the respondent's proposal was not well explained, apart from the respondent's evidence of the children saying that three nights is too many and they want to spend less time. For example, there was no evidence about how one or two overnights per week with the claimant, versus the current three, will affect the children's schooling, extracurricular activities or time with their friends.

[78] Nonetheless, given my findings about the impact of the claimant's conduct on the children, I am prepared to accept the respondent's proposal as being in the children's best interests. I would reiterate, however, that the future of the claimant's relationship with the children and the amount of time they choose to spend with him as they grow older will largely depend on the extent to which he can modify his behaviour.

[79] I am also satisfied that this is a case in which final decision-making authority must rest with one parent, and the appropriate parent is the respondent. That is not to say that the respondent may make unilateral decisions concerning the children. Rather, the parties shall consult one another on all decisions that significantly affect the children, including these matters set out in s. 41 of the *FLA*, however if they cannot agree, the respondent will have authority to make the final decision, subject to the claimant's right to apply to the court for directions pursuant to s. 49 of the *FLA*.

[80] School holidays over Christmas and Spring Break will be shared equally between the parties. During the summer break, the regular schedule will continue subject to each party having one uninterrupted week with the children on dates to be agreed in advance. It is of course open to the parties to agree on further times in the summer.

Financial Issues

[81] There are two financial issues in dispute:

a) Is the claimant entitled to an interest in the respondent's employment pension?

b) Does the respondent owe the claimant an additional amount in respect of his use of inheritance money to pay off the mortgage on the family home?

[82] I will deal with the pension issue first. As a member of the public service, the respondent has a pension through the Public Service Pension Plan. Benefits under that plan have been accruing to her since she commenced her employment as a social worker in 2003.

[83] The respondent alleges that, upon separation, there was an oral agreement between the parties that they would each keep their own financial assets, which included her pension. The claimant acknowledges the oral agreement concerning other financial assets, but denies that he agreed that the respondent would keep her pension.

[84] In his notice of family claim filed November 23, 2017, the claimant alleged:

> There was an oral agreement between the parties, at the time of the parties[‘] separation, wherein all assets and debts were equally divided between the parties with the exception of the Respondent’s employment pension.

[85] The claimant’s position changed somewhat in his amended notice of family claim filed May 1, 2018. There he alleged:

> There was an oral agreement between the parties, at the time of the parties’ separation, to divide certain assets and debts between the parties with the notable exception of the Respondent’s employment pension, the division of which was left to be determined by the parties at a later date after the claimant had an opportunity to seek legal advice…

[86] I note that there is no evidence that the claimant did, in fact, seek legal advice with respect to his entitlement to the respondent’s pension, despite the fact that he has asserted that this was the reason why the pension was left out of the initial agreement.

[87] Further, the alleged agreement to keep the pension separate is inconsistent with the acknowledged agreement that each party would maintain their own assets and debts, as well as the entire history of the parties’ relationship in which they kept their finances largely separate.

[88] It is further inconsistent with the respondent’s agreement, which I will touch on below, to repay one-half of the inheritance money that the claimant used to pay off the mortgage on the family home in 2010. The respondent submits that she had no obligation to repay that money. When the claimant used the money to pay off the mortgage, and did so with no strings attached, he arguably gifted it to the respondent and eliminated any excluded property claim.

[89] Nonetheless, the respondent did agree to repay half. She said she did so as part of their agreement to settle all of their financial issues on the basis that they would each retain their own assets. She said she would not have agreed to the repayment unless the claimant had agreed that she would keep her pension. She alleges that he did so.

[90] I accept the respondent’s evidence on this point. It is clear that the parties did in fact agree to each retain their own assets and debts, which again is consistent with how they had managed their finances throughout their entire relationship. The claimant’s allegation that the pension was excluded from this agreement lacks any air of reality. The respondent is therefore entitled to retain 100% of her pension.

[91] The second financial issue concerns the respondent’s repayment of a portion of the claimant’s inheritance funds.

[92] On October 12, 2010, the claimant used $122,251.57 of his inheritance to pay off the mortgage on the family home. As noted, on separation, he asked and the respondent agreed to repay one half that amount, or approximately $61,000.

[93] The family home was sold on August 1, 2016. The net sales proceeds were approximately $1.45 million. On August 2, 2016, the claimant received $755,541.05 from the proceeds, which was $27,585.45 more than one-half, and on August 16, 2016, the respondent wrote him a cheque for another approximately $10,000.

[94] On October 1, 2016, the claimant demanded a further $21,000 from the respondent in order to satisfy her obligation. The claimant agreed to the further payment but deducted $7,088.47, representing one-half of family expenses that she had incurred prior to separation. She therefore paid the claimant the balance of $13,912.

[95] The claimant takes issue with this deduction. However, the respondent has produced records and bills to substantiate the expenses and the claimant has adduced no evidence to the contrary. I therefore accept the respondent's positon and her calculations. The respondent's deduction of one-half of these expenses is consisted with the parties' financial arrangement during the marriage whereby they divided expenses equally.

Section 7 Expenses

[96] The respondent claims $6,375.67 which she says is 50% of the s. 7 expenses she has incurred on behalf of the children and that the claimant has refused to contribute to. She has provided an itemized list of the expenses.

[97] The claimant submits that he has paid at least $1,900 to $2,300 in expenses for the children, although he was unable to specifically identify those expenses.

[98] The term "section 7 expenses" of course refers to expenses identified in s. 7 of the *Federal Child Support Guidelines*, SOR/97-175 [*Guidelines*]. Subsections 7(1), (1.1) and (2) provide:

> **Special or extraordinary expenses**
>
> **7 (1)** In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:
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> **(a)** child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
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> **(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.
>
> Definition of "extraordinary expenses"
>
> **(1.1)** For the purposes of paragraphs (1)(d) and (f), the term ***extraordinary expenses*** means
>
> > **(a)** expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or
> >
> > **(b)** where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account
> >
> > > **(i)** the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
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> > > **(ii)** the nature and number of the educational programs and extracurricular activities,
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> > > **(iii)** any special needs and talents of the child or children,
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> > > **(iv)** the overall cost of the programs and activities, and
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> > > **(v)** any other similar factor that the court considers relevant.
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> Sharing of expense
>
> **(2)** The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

[99] As can be seen, not all expenses incurred for or on behalf of children fall within the ambit of s. 7. Specifically, regular or ordinary day-to-day expenses incurred while the children are in the care of one or the other parent are generally not considered s. 7 expenses: *Clarke v. Clarke*, 2014 BCSC 824 at para. 49.

[100] A significant number of the expenses listed by the respondent fall within the scope of ordinary expenses, for example things like school supplies, lunch kits, hockey tape, school field trips, school planners, haircuts and regular clothes.

[101] On my review of the expenses submitted by the respondent, I calculate that approximately $8,500 properly fall within s. 7. These include items like the children's sports fees, camp fees, extraordinary field trips and orthodontic costs.

[102] While s. 7(2) of the *Guidelines* states that the expenses will generally be shared in proportion to the spouses' respective incomes, a 50/50 split here is reasonable and again consistent with the parties' history. I therefore find that the claimant owes the respondent $4,250 for retroactive s. 7 expenses.

[103] The claimant is however entitled to some set off for expenses he has incurred. While he was not able to particularize those expenses, either in terms of items or amounts, I do accept his evidence that he has spent money on the children, particularly for their sports. This is consistent with the

evidence that he has been very involved in their sports. Acknowledging that his is somewhat arbitrary, I am prepared to give him credit for spending $1,500, one-half of which he is entitled to set off against what he owes the respondent.

[104] The claimant therefore owes the respondent $3,500.

Conclusion

[105] I make the following orders:

a) The parties are divorced with the order to take effect 31 days from the date of this order;

b) The parties are both guardians of the children pursuant to s. 39 of the *FLA*;

c) The children will reside primarily with the respondent, with the claimant to have regular parenting time of one overnight per week and every other weekend from after school on Friday to 7:00 p.m. on Sunday;

d) The parties shall consult one another on all decisions that significantly affect the children including those matters set out in s. 41 of the *FLA* but if they cannot agree the respondent will have authority to make the final decision, subject to the claimant's right to apply to the court for directions pursuant to s. 49 of the *FLA*.

e) Christmas Break and Spring Break will be divided equally. The regular schedule will continue in the summer subject to each party having one uninterrupted week with the children on dates to be agreed in advance;

f) The parties will each retain the assets and debts in their respective names. The respondent will retain 100% of her employment pension; and

g) The claimant will pay the respondent $3,500 in retroactive s. 7 expenses.

[106] Due to time constraints and some uncertainty about what the parenting arrangement would be, the parties did not fully address the issue of child support. They therefore have leave to schedule a further hearing on that issue, of which I will be seized.

[107] The issue of costs will be deferred until the issue of child support has been determined.

"Skolrood J."