SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *S. M-M v. S.M.*, 2022 NSSC 256

Date: 20220921
Docket: Halifax No. 1201-072984
Registry: Halifax

Between:

S.M-M

Applicant

v.

S.M.

Respondent

LIBRARY HEADING

Judge:	The Honourable Justice Samuel Moreau
Heard:	March 30, 2022, in Halifax, Nova Scotia
Written Decision:	September 21, 2022

Subject: Divorce, final decision making, imputation, Contino analysis, reimbursement, child support arrears, section 7 arrears.

Summary: The parties seek a divorce. The mother requests final decision-making authority on medical issues involving the children if the parties are unable to reach consensus. The mother requests that income be imputed to the father. The mother submits that a Contino analysis be completed as the parties have a hybrid parenting arrangement. The father disagrees and holds that the *Contino v. Leonelli-Contino* decision is distinguishable from this case. The mother requests that she be reimbursed for expenditures made post separation in relation to the parties' matrimonial debt. She also requests that the father pay child support and section 7 arrears owing.

Issues:

(1) Divorce.

(2) Final decision making regarding medical issues.

(3) Imputation of income.

(4) Appropriate quantum of child support.

(5) Reimbursement for post separation expenditures related to matrimonial debts.

(6) Child support arrears.

(7) Section 7 arrears.

Result: Divorce granted; mother shall make final decisions on medical issues if the parents are unable to reach consensus; income not imputed to the father; Contino analysis: father to pay child support in the amount of $707.00 per month; father to reimburse the mother with respect to post separation expenditures; father to pay child support arrears; father to pay section 7 arrears.

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SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: S*.M-M. v. S.M.*, 2022 NSSC 256

Date: 20220915
Docket: *Halifax* No. 1201-072984
Registry: Halifax

Between:

S. M-M.

Petitioner

v.

S.M.

Respondent

Judge:	The Honourable Justice Samuel Moreau
Heard:	March 30, 2022, in Halifax, Nova Scotia
Written Decision released to parties:	September 15, 2022
Counsel:	Linda Tippett-Leary, counsel for the Petitioner Godfred Chongatera, counsel for the Respondent

By the Court:

Introduction

[1] S. M-M. filed a Petition for Divorce on November 13, 2020, concerning the issues of custody, access, child support, exclusive possession of the matrimonial home, division of assets, division of pension and relief under the *Change of Name Act.* The parties were married on August 19, 2006 and separated on December 17, 2019. There are two dependent children, H. born in 2009 and V. born in 2014.

[2] S. M-M. is in the field of social work and has a masters degree in that discipline. She has worked in the area of child protection and is currently employed at a local hospital. S.M. has held employment in the information technology (I.T.) industry and currently has his own business.

History of Proceedings

[3] The parties participated in settlement conferences before Justice Williams on April 14, 2021, June 3, 2021 and September 29, 2021, during which they progressively achieved resolution on several of the outstanding issues. The matter proceeded to trial on March 30, 2022. Immediately prior to the trial the parties managed to further narrow the issues.

[4] Despite their success in settling a great number of the outstanding issues, the acrimonious nature of the parties' relationship, post separation, is quite evident and was affirmed during the trial.

[5] The parties were their only witnesses. Both were cross examined by opposing counsel. For ease of reference I shall refer to S. M-M. as the "Mother" and S.M. as the "Father" through out the remainder of this decision.

Issues

[6] The outstanding issues are:

1. The granting of a divorce;
2. Final decision making regarding medical issues;
3. Imputation of income to the father;
4. The appropriate quantum of child support; and
5. Reimbursement for post separation expenditures related to matrimonial debts, child support arrears and section 7 expenses.

Divorce

[7] I find the jurisdictional requirements to grant a Divorce order have been established and no bars to the issuance of the Order exist.

[8] I therefore authorize the issuance of a Divorce Order pursuant to the *Divorce Act* R.S.C. 1985, c3 (2nd Supp.).

Final decision making regarding medical issues

Positions of the parties

[9] The mother requests that she be granted final say regarding medical issues involving the children. The father takes the position that should the parents not be able to reach consensus, the final decision be made on the advice of a professional.

Analysis

[10] During the marriage both parents were involved in the care of the children. The mother took parental leave subsequent to the birth of each child. The father was a hands on parent. They made day to day and major decisions involving the children, jointly. After separation the mother had primary care of both children (until January, 2022). They attempted to co-parent at the same measure as during the marriage. They were not successful.

[11] The child, H. suffers from anxiety, attention deficit hyperactivity disorder (A.D.H.D.) and dyslexia. Approximately two months prior to separation H. began seeing a therapist, as mutually agreed by the parents.

[12] In March 2020, the father was charged with criminal code offences related to voyeurism. The mother had discovered several cameras in the home, including her bedroom. The charges are still pending.

[13] During cross examination the father testified he provided H.'s Therapist, M.V. with video(s). The father alleged the mother was mistreating the children and the video(s)(supposedly derived from the hidden cameras) were intended to bolster and/or confirm his belief of same. M.V. felt she could no longer continue as H.'s Therapist and the mother sought to retain another professional to provide services to H. Within this period child protection became involved with the mother and the children. The mother says the father reported her to the agency and while his allegations were not substantiated, the children still had to be interviewed.

[14] I accept both children struggled with the parent's separation and given H.'s vulnerabilities the entirety of the situation may have had a more acute effect on her. The mother attempted to retain A.B. as H.'s therapist. The father says he was not consulted and withheld his consent. The mother maintains that as a consequence H. went a considerable period without professional services. The mother contacted several therapists but could not secure one partly due to the realities of the Covid 19 pandemic.

[15] Eventually M.B.B. was retained as H.'s therapist with the father's consent. The mother says the child protection agency helped secure the father's consent in relation to M.B.B.'s retention. The father disagrees and maintains he consented to M.B.B. as he was consulted and able to conduct his " due diligence". H. continues to see M.B.B.

[16] The mother is of Caucasian heritage and the father, African Canadian. The father indicates that both children present as African Canadian. The father asserts that the children's cultural background should be strongly considered and he is the parent "who better understands the children and the cultural background."

[17] The mother clarified the salient issue as being final decision making authority; she has no objection to consulting with the father in attempting to reach consensus.

[18] When viewed in its totality the evidence leads me to the conclusion that the father unreasonably withheld his consent (in relation to health issues involving the children) and his reticence may have been centered in his animus toward the mother rather than a sober assessment of the principal issue.

[19] I am satisfied that post separation the mother has consulted or attempted to consult the father regarding major decisions (including medical issues) involving

the children. After the father was charged communication between the parties became difficult, in part due to a no contact order from Provincial Court. Currently they communicate via text message on issues involving the children.

[20] Section 16.3 of the *Divorce Act* reads:

> Allocation of decision-making responsibility
>
> 16.3 Decision-making responsibility in respect of a child, or any aspect of that responsibility, may be allocated to either spouse, to both spouses, to a person described in paragraph 16.1(1)(b), or to any combination of those persons.
>
> 2019, c. 16, s. 12

[21] The legislation provides me the authority to assign one or both parents as the final decision maker.

[22] The evidence establishes the following:

- Currently the parties exercise a shared parenting arrangement in relation to V. based on a 2-2-3 schedule (which flips to the other parent each week).
- H. refuses to attend parenting time with the father, and has had minimal to zero contact with him since the parties separated.
- There is a clear lack of trust between the parties, highlighted by a high degree of suspicion regarding the mother’s motive(s) in any action,

including, but not limited to the retention of professionals in relation to the children.

[23] The primary factor I must consider in deciding on this issue is the best interests of the children. I have decided in favour of the mother's request for the following reasons:

- The father has no contact with H. Despite the fact he is kept up to date with respect to her circumstances, the mother is best positioned to make judgments as to H.'s state of affairs.
- The shared arrangement regarding V. commenced in January, 2022. There was a significant workup to that arrangement, including, but not limited to the involvement of professional(s). V. continues to attend therapy sessions with K.S. The mother says " it was like pulling teeth to get" the father to consent to therapy for V.
- The father has demonstrated a wariness toward services important to the children's mental health .
- Notwithstanding the factors set out in Section 16(3) (b) and (f) of the *Divorce Act,* I find consideration of Section 16(3)(a), (d), (h) and (i) are paramount in this case. I acknowledge the father's argument that he " better

understands the children" from a cultural perspective and this factor be strongly considered in contemplating this issue. However, I have not been provided with any evidence to suggest or that would enable me to form a conclusion that the mother is devoid of or lacking in her comprehension as it relates to the children's ethnic or cultural background and her parenting practices.

[24] The mother is better positioned to be the final decision maker as it relates to the children's medical issues. I find it is in H.'s and V.'s best interests that the mother be assigned final decision maker with respect to medical issues in the event the parents are unable to reach consensus.

Imputation of Income

[25] The mother requests that income be imputed to the father. In *Dalton v. Clements,* 2016 NSSC 38 at paragraph 22, Justice Forgeron provides a helpful synopsis of case authorities on this topic:

> [22] In **Parsons v. Parsons**, 2012 NSSC 239, this court stated the principles that apply to the imputation of income pursuant to s. 19(1)(a) at paras 32 and 33, as follows:
>
> > 32 Section 19 of the *Guidelines* provides the court with the discretion to impute income in specified circumstances. The following principles are distilled from case law:
> >
> > a. The discretionary authority found in s.19 must be exercised judicially, and in accordance with rules of reasons and justice, not arbitrarily. A

rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before a court can impute income: **Coadic v. Coadic**, 2005 NSSC 291 (N.S. S.C.).

b. The goal of imputation is to arrive at a fair estimate of income, not to arbitrarily punish the payor: **Staples v. Callender**, 2010 NSCA 49 (N.S. C.A.).

c. The burden of establishing that income should be imputed rests upon the party making the claim, however, the evidentiary burden shifts if the payor asserts that his/her income has been reduced or his/her income earning capacity is compromised by ill health: **MacDonald v. MacDonald**, 2010 NSCA 34 (N.S. C.A.); **MacGillivary v. Ross**, 2008 NSSC 339 (N.S. S.C.).

d. The court is not restricted to actual income earned, but rather, may look to income earning capacity, having regard to subjective factors such as the payor's age, health, education, skills, employment history, and other relevant factors. The court must also look to objective factors in determining what is reasonable and fair in the circumstances: **Smith v. Helppi**, 2011 NSCA 65 (N.S. C.A.); **Van Gool v. Van Gool** (1998), 1998 CanLII 5650 (BC CA), 113 B.C.A.C. 200 (B.C. C.A.); **Hanson v. Hanson**, 1999 CanLII 6307 (BC SC), [1999] B.C.J. No. 2532 (B.C. S.C.); **Saunders-Roberts v. Roberts**, 2002 NWTSC 11 (N.W.T. S.C.); and **Duffy v. Duffy**, 2009 NLCA 48 (N.L. C.A.).

e. A party's decision to remain in an unremunerative employment situation, may entitle a court to impute income where the party has a greater income earning capacity. A party cannot avoid support obligations by a self-induced reduction in income: **Duffy v. Duffy**, ***supra***; and **Marshall v. Marshall** (2007), 2008 NSSC 11 (N.S. S.C.).

In **Smith v. Helppi**, 2011 NSCA 65 (N.S. C.A.), Oland J.A. confirmed the factors to be balanced when assessing income earning capacity at para. 16, wherein she quotes from the decision of Wilson J. in **Gould v. Julian**, 2010 NSSC 123 (N.S. S.C.). Oland J.A. states as follows:

> 16 Mr. Smith argues that the judge erred in imputing income as he did. What a judge is to consider in doing so was summarized in **Gould v. Julian**, 2010 NSSC 123 (N.S.S.C.), where Justice Darryl W. Wilson stated:
>
> Factors which should be considered when assessing a parent's capacity to earn an income were succinctly stated by Madam Justice Martinson of the British Columbia Supreme Court, in **Hanson v. Hanson**, 1999 CanLII 6307 (BC SC), [1999] B.C.J. No. 2532, as follows:

> 1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor". ...
>
> 2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability to work, freedom to relocate and other obligations.
>
> 3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at a lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.
>
> 4. Persistence in unremunerative employment may entitle the court to impute income.
>
> 5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
>
> 6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.
>
> . . . . .
>
> [33] In Nova Scotia, the test to be applied in determining whether a person is intentionally under-employed or unemployed is reasonableness, which does not require proof of a specific intention to undermine or avoid child maintenance obligations.

[26] The father has his G.E.D. certificate. He was involved in the information technology (IT) industry throughout the marriage. He has been employed by various companies within the IT sector with his last position prior to separation being a Chief Technology Officer.

[27] His Line 150 income for the period 2017 to present is as follows:

- 2017 - $90,000.00
- 2018 - $111,000.00
- 2019 - $59,277.45
- 2020 - $49,355.61
- 2021 - $52,036.08 (as indicated in Court Exhibit 10, the father's Statement of Income sworn March 18, 2022).

[28] In or about the year 2010, the father conceived of and developed a media news outlet operated principally on social media platforms. His objective was to have the media news outlet established to the point where it could be sold to a major organization (newspaper chain, IT company etc.) for a significant profit. After being let go by his last employer prior to separation the parties mutually agreed that instead of seeking other employment, the father would concentrate his efforts on the media news outlet. At present the father continues to pursue this venture. He says he is pleased with the growth of his business.

[29] The mother argues that support for the children is being sacrificed by the father's aspirations and he is capable of earning at least $60,000.00 per year. While

I acknowledge the legitimacy of the mother's argument, I conclude this is not an appropriate case in which to impute income.

[30] There is no question that despite his lack of accreditation the father is well versed and established in the IT industry. However, based on a balance of probabilities, the mother has not demonstrated that the father is intentionally underemployed. The decision that the father not seek employment at a higher rate of remuneration was bilateral. I am satisfied that at present the father continues in his efforts to grow his business.

[31] As enunciated by the jurisprudence the test to be applied in determining whether a person is intentionally underemployed is reasonableness. I find the mother has not met the onus of establishing that the father is intentionally underemployed.

Prospective Child Support

[32] At the conclusion of the June 3, 2021, settlement conference, the parties agreed the father would pay child support to the mother in the amount of $707.00 per month, commencing June 15, 2021. They also agreed section 7 expenses would be shared on an equal (50/50) basis and the father's child support arears ($5000.00) would be paid from his share of the proceeds of sale of the matrimonial home.

[33] The child V. has been in a shared (50/50) custodial arrangement since January, 2022. H. remains in the mother's primary care. The mother submits that an analysis be undertaken pursuant to the principles contained in *Contino v. Leonelli-Contino,* 2005 SCC 63. The father indicates there is insufficient evidence to conclude that a Contino analysis "applies" in this case. He says that the mother has not provided sufficient evidence regarding income and expenditure during the marriage to allow for a proper analysis.

[34] The father posits that child support be based on the difference between the parties' incomes (Mother's income - $91,467.00/ Father's income - $52,036.08, difference being $39,431). The guideline amount for one child based on the difference ($39,431) is $336.45 per month.

[35] The father says that instead of the mother paying $336.45 per month to him, she retain same in lieu of his contribution for the support of H.

[36] The father argues that the *Contino v. Leonelli-Contino* decision is distinguishable from the present case. I respectfully disagree. Both parties indicate that a comprehensive financial analysis is not possible because of a lack of information. I agree. However, I am satisfied that in this case such deficits do not preclude me from moving forward with an analysis as contemplated in the

jurisprudence. I find the best interests of H. and V. direct I proceed based on the evidence available to me and that I refer to and take authority from the precepts as set out by the Supreme Court of Canada in *Contino v. Leonelli-Contino, supra*.

[37] The parents have a hybrid parenting arrangement; H. in the mother's primary care and V. in a shared arrangement. In *Harrison v. Falkenham,* 2017 NSSC 129, Justice Jollimore provides direction when analyzing and determining the calculation of child support in hybrid parenting scenarios. At paragraphs 30 to 49, she writes:

> [30] There are two different ways to calculate support in hybrid parenting circumstances. In New Brunswick, Newfoundland and Labrador, Ontario, and British Columbia, the economies of scale approach is used. In Saskatchewan, Yukon, and Northwest Territories the two-stage approach is used. There are no written decisions in Nova Scotia on child support in hybrid cases. I found no decision where the hybrid parenting arrangement includes a child over the age of majority whose child support is calculated under clause 3(2)(b) of the *Guidelines.*
>
> [31] The economies of scale approach recognizes that, for example, the costs in a household comprised of six people are not six times greater than the costs of a single person household.
>
> [32] The table amounts of the *Guidelines* are built on Statistics Canada's 40/30 Equivalence Scale and its empirical foundation that there is an approximately 40% increase in household expenses when a second full-time member is added to the household and an approximately 30% increase in household costs for each additional full-time member added to the household.
>
> [33] If the economies of scale approach is used, I determine the amount of support Mr. Falkenham would pay Ms. Harrison for Libby and Ryan, and offset this against the amount Ms. Harrison would pay Mr. Falkenham for Libby, who is in shared custody. I would then complete the section 9 analysis, considering subsections 9(b) and 9(c).
>
> [34] If the two-stage approach is used, I first determine the support payable for Ryan under the presumptive rule of section 3 – as if he is the only child in Ms.

Harrison's home - and then determine the support payable for Libby under section 9.

[35] The economies of scale approach is said to have an advantage over the two-stage approach because the two-stage approach calculates Ryan's support in isolation from Libby's, ignoring the possibility of any economy of scale for the two children in Ms. Harrison's home. The economies of scale approach is also said to retain the flexibility to examine the actual financial circumstances of the parties and the children: *Sadkowski v. Harrison-Sadkowski*, 2008 ONCJ 115 at paragraphs 26-27.

[36] Between the two approaches, I determine that the economies of scale approach is the correct one to use. I do this for four reasons.

[37] First, by starting with Mr. Falkenham's child support amount for two children, it respects the *Guidelines*' quantification of the economy of scale.

[38] Second, by offsetting Ms. Harrison's child support for Libby, it incorporates the analysis of subsection 9(a) into the calculation.

[39] Third, it brings the remainder of section 9 into the analysis, ensuring the integrity of section 9 as a complete code for the determination of child support in shared custody circumstances is respected.

[40] Fourth, it better meets the *Guidelines'* objective of ensuring consistent treatment of similarly situated spouses and children by reflecting economies of scale.

[38] I shall use the economies of scale approach. As articulated by Justice Jollimore, the economies of scale approach envisages a comprehensive consideration of Section 9 of the *Federal Child Support Guidelines.* Section 9 reads:

Shared parenting time

9 Where a parent exercises parenting time with a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account

(a) the amounts set out in the applicable tables for each of the parents;

(b) the increased costs of shared parenting time arrangements;

and

(c) the conditions, means, needs and other circumstances of each parent and of any child for whom support is sought.

[39] As per the first step in the economies of scale approach the father would not be required to pay child support to the mother (father's annual income $52,036.08, guideline amount for 2 children = $744.47 per month, mother's annual income $91,467.00, guideline amount for 1 child = $785.83 per month). The mother would pay the father $41.36. I note the comments of Justice Bastarache at paragraph 49 of *Contino v. Leonelli-Contino,* supra:

> 49 Hence, the simple set-off serves as the starting point, but it cannot be the end of the inquiry. It has no presumptive value. Its true value is in bringing the court to focus first on the fact that both parents must make a contribution and that fixed and variable costs of each of them have to be measured before making adjustments to take into account increased costs attributable to joint custody and further adjustments needed to ensure that the final outcome is fair in light of the conditions, means, needs and other circumstances of each spouse and child for whom support is sought. *Full consideration* must be given to these last two factors (see Payne, at p. 263). The cliff effect is only resolved if the court covers and regards the other criteria set out in paras. (*b*) and (*c*) as equally important elements to determine the child support.

I am satisfied the totality of the evidence dictates I give "full consideration" to section 9 (b) and (c).

Section 9(b)and (c)

[40] I'm to consider any increased costs as a result of V.'s shared parenting and the overall circumstances in each household, trying to avoid a significant

discrepancy in their standards of living. I review these below, starting with any increased costs as a result of V.'s shared parenting.

[41] Subsequent to the sale of the matrimonial home the mother had to secure other accommodations. She testified as to the difficulty of finding an appropriate residence for the children and herself. Examination of her Statements of Expenses sworn November 2, 2020, and March 24, 2022, indicate a consistent pattern of expenditures. Her expenses in the November 2, 2020, statement totalled $8458.57 and the March 24, 2022, statement, $7057.54. The decrease is as a result of payment in full (from the proceeds of sale of the matrimonial home) of several of the matrimonial debts which she was previously paying.

[42] The occupants of the mother's household are the two children and herself. The father resides with his mother and his aunt. I have not been provided with any financial information concerning the father's mother and/or aunt. Also I am without any evidence as to the quantum of household expenses related to V. The only financial item in evidence related to the father's mother is that post separation she purchased a 2017 Audi vehicle for him costing $25,000. This information was derived from the father's cross-examination.

[43] I am satisfied the father's expenses in relation to V. since January, 2022, are minimal at best. The father shares his household expenses with two other individuals. His mother purchased an Audi vehicle for him post separation. The father has had and continues to have the benefit of sharing his living costs while the mother was saddled with the majority of the matrimonial debt (until the sale of the matrimonial home) and received child support inconsistently.

[44] I now turn to the overall circumstances in each parent's household.

[45] The parties have had an acrimonious separation. The criminal code charges against the father has added to the strain. Negotiations on a separation agreement broke down and communication became difficult. The father's child support payments were inconsistent.

[46] In the year, 2020, the father's child support payments totalled less than $4000. As per the guidelines his child support payments for 2020 should have totalled $8514.00. In 2021 the pattern of inconsistent payments continued until the agreement reached during the settlement conference held on June 3rd. As of January, 2022, the father stopped paying child support altogether.

[47] The father vacillated on the mother's request to obtain a mortgage deferral during the Covid 19 lockdown in 2020. His hesitation on that issue is difficult to

understand as he stood to benefit from the preservation of the matrimonial home. I am satisfied that during the period between the date of separation and sale of the matrimonial home the mother was left being responsible for the majority of the matrimonial debt.

[48] Once the mortgage deferral period ended the mother made all the mortgage payments and also most of the payments with respect to the line of credit and outstanding credit card invoices. Subsequent to the sale of the matrimonial home the father withheld his consent to the payment of some debts from the proceeds of sale as he questioned their categorization.

[49] Currently, approximately $96,000.00 from the proceeds of sale of the matrimonial home remains in trust as the parties are unable to reach agreement on the categorization of some debts which I shall address later in this decision.

[50] Court Exhibit 13 is the father's Statement of Expenses sworn March 25, 2021. The father filed an updated Statement of Expenses (post trial) sworn and filed on April 4, 2022. His March 25, 2021, Statement of Expenses states total monthly expenses in the amount of $2675. The April 4th, 2022, Statement of Expenses states total expenses in the amount of $4020, an increase of $1345 per

month. To be frank several of the expenditures listed in the April 4, 2022, document merit scrutiny.

[51] The available evidence does not support nor substantiate the increases in primary or secondary school expense, hair and grooming, drugs, dental, holidays and entertainment. The father also includes monthly payments of $250 to the TD Bank line of credit and $350 to the Scotiabank Visa.

[52] During the preliminary stages of this trial, I was informed that monies owing in relation to the line of credit and Scotiabank Visa had been satisfied with proceeds from the sale of the matrimonial home by the consent of both parties.

[53] In addition the father's April 4th, 2022, Statement of Expenses was not subjected to the test of cross examination. I assign no weight to the father's Statement of Expenses filed April 4th, 2022.

[54] Despite having a higher income, I find the mother's economic circumstances are inferior to the father's. This is substantiated by the evidence. In *Hussain v. Saunders* 2021 NSSC 166 at paragraphs 35 to 37, this Court states as follows:

> [35] At paragraph 68 of *Contino* Justice Bastarache comments on this critical concern, regarding the applicability of the off-set amount:
>
> > 68 Section 9(*c*) vests the court a broad discretion for conducting an analysis of the resources and needs of both the parents and the children. As mentioned earlier, this suggests that the Table amounts used in the

> simple set-off are not presumptively applicable and that the assumptions they hold must be verified against the facts, since all three factors must be applied. Here again, it will be important to keep in mind the objectives of the Guidelines mentioned earlier, requiring a fair standard of support for the child and fair contributions from both parents. The court will be especially concerned here with the standard of living of the child in each household and the ability of each parent to absorb the costs required to maintain the appropriate standard of living in the circumstances.

[36] In *Muise v. Fox* 2011 NSSC 258 at paragraph 15 Justice Jollimore states:

> [15] At paragraph 68 of Justice Bastarache's decision he tells me that section 9(c) vests me with a "broad discretion for conducting an analysis of the resources and needs of both the parents and the children" and reminds me to be especially concerned with the children's standard of living in each household and each parent's ability to manage the costs of maintaining the appropriate standard of living.

[37] In *Gottinger v Runge*, 2018 SKQB 343 at paragraph 28, Elson J. states:

> [28] In the appeal judgment, Caldwell J.A., writing for the court, noted that the purpose of s. 9 of the *Guidelines* is not to equalize the standards of living in the two households within which shared parenting is provided. Rather, and as noted in para 51 of *Contino*, it is the existence of divergent standards of living between the two households that engages a court's discretion to modify the set-off amount where the financial realities of the parents commend it. In this respect, Caldwell J.A. said the following in *Wetsch* at para 138:
>
> > **138** … s. 9 of the *Guidelines* and the *Contino* analysis allow for and accept that there may be a difference in the standard of living as between each household. It is where that difference is *significant* or appreciable that the court may step in to modify the set-off amount. A set-off remains appropriate, it is the amount of it that must be determined.

[55] The case authorities affirm that section 9 (c) of the Federal Child Support guidelines vests me with a broad discretion to deviate from the section 9 (a) calculation considering the economic realties of each parent together with the children's best interest. I am to consider the child's standard of living in each

household and the divergent standards of living between the two households to ensure a fair outcome "in light of the conditions, means, needs and other circumstances of each spouse and child for whom support is sought." *Foss v. Foss,* 2011 NSSC 115, *G.(C.N.) v. R. (S.M.),* 2007 BCSC, *Muise v. Fox* 2011 NSSC 258.

[56] As mentioned I assign no weight to the father's Statement of Expenses filed April 4, 2022. Considering his monthly income as stated in Court Exhibit 11 ($4336.34) and his total expenses as stated in Court Exhibit 13 ($2675.00), the father has a monthly surplus of $1661.34. Even after allowing for an increase of $500 monthly (accounting for increases in telephone and postage, cable, food, gasoline, motor vehicle maintenance and repair and parking and tolls) in expenses the father still has a significant surplus. These considerations are made without any financial information from the two individuals who reside in the same household as the father.

[57] Based on the available evidence I find there is an economic disparity between the two households. I am satisfied V.'s standard of living within the mother's household is significantly different to that available in the father's household. I conclude and find it would be inappropriate to order child support in the amount calculated pursuant to the first step of the economies of scale approach.

[58] Based on the father's annual income of $52,036.08, the guideline amount of child support for two children is $744.47 monthly. The mother accepts the father's monthly child support obligation being in the amount of $707.00 (the amount agreed to during the June 3rd, 2021 settlement conference).

The mother's claim for reimbursement regarding post separation matrimonial debt payments, child support arrears and section 7 expenses

Matrimonial debt payments

[59] The mother seeks reimbursement for expenditures she made post separation related to the matrimonial debt. A list of these expenditures is provided in Court Exhibit 3, Tab 10, exhibit g. As stated, immediately prior to trial the parties were able to settle many of the outstanding issues related to finances, primarily the matrimonial debts. As such two of the items listed in exhibit g; Scotiabank Mastercard in the amount of $1657 and Scotiabank Visa in the amount of $4309.50 shall not be considered here. Via correspondence to the Court dated April 19, 2022, Counsel for the mother provided an updated list, which is the same list evidenced at exhibit g, minus the two items mentioned above.

[60] During cross examination the mother confirmed her claim for reimbursement regarding the items found at Court Exhibit 3, Tab 10 exhibit g. I

have not been provided with any cogent evidence which would lead me to dispute or question the mother's claim. The evidence strongly supports her narrative of the father's abdication of responsibility regarding the majority of the matrimonial debts and his lackluster approach to the issue of child support. I am satisfied the mother's claim is appropriate and reasonable.

[61] The mother shall be reimbursed based on her expenditures with respect to the following:

- Cancellation of the home security contract: $186.63
- Line of credit payments : $1579
- TD Visa payments: $2675.00
- Canadian Tire Mastercard payments: $2719.00
- The father's business charges to the mother's credit card: $81.44

Child support arrears

[62] I find the father owes the mother the total amount of $3535.00 in child support arrears, calculated as follows:

- July, 2021 : $707.00
- January, 2022 : $707.00
- February, 2022: $707.00
- March, 2022: $707.00
- April, 2022: $707.00

Section 7 expenses

[63] I find the father owes the mother the total amount of $412.50 as his contribution toward section 7 expenses. This amount is related to tutoring costs of $705.00 and roller skating and camp costs of $120.00.

Amount owing

[64] The total amount paid by the mother pertaining to the matrimonial debts is $7,241.07. One half of that figure is $3620.53. The father owes $3535.00 in child support arrears and $412.50 as his contribution toward section 7 expenses. In total the father owes the mother $7,568.03. The mother acknowledges the father is owed $440.00 in relation to a previous payment for which he should be credited.

[65] I find the father owes the mother the total amount of $7128.03.

Conclusion

[66] I have carefully considered the available evidence, applicable legislation, case authorities and Counsel's submissions. I grant the issuing of a Corollary Relief Order containing the following provisions:

- The parties shall have joint custody of H. and V. with the following parenting arrangements:

The mother shall have primary care and residence of H.

> The parents shall have shared parenting of V. based on a 50/50 schedule.

- The parties shall consult on any major decision involving the children. If consensus cannot be reached, a professional opinion shall be sought and if consensus still cannot be reached, the professional opinion shall be final. This provision relates to all major decisions with the exception of medical decisions. In the event the parents are unable to reach consensus regarding any medical decision(s) involving the children, the mother is assigned as the final decision maker.

- Commencing June 15, 2021, the father shall pay child support to the mother in the amount of $707.00 per month and continuing on the first day of each month thereafter.

- The parties shall contribute to the cost(s) of any special or extraordinary expense, on a 50/50 or equal basis.

- The father's child support payments shall be paid through the Maintenance Enforcement Program of Nova Scotia.

- The father owes the mother the total amount of $7128.03, related to matrimonial debt expenditures (post separation), child support arrears and section 7 expenses. The amount owed to the mother ($7128.03) shall

be paid to her in a lumpsum from the father's share of the proceeds of sale of the matrimonial home currently held in trust. The amount ($7128.03) shall be paid to the mother within 7 days of the issuing of the corollary relief order flowing from this decision.

- The parents shall exchange complete copies of their respective income tax returns with all attachments and slips and copies of their Notice of Assessments and/or Reassessments received from the Canada Revenue Agency on or before June 1st of each year.

- Enforcement Clauses.

[67] Counsel for the mother shall draft the Divorce Order and Corollary Relief Order.

[68] The parties may provide written submissions on costs subsequent to the issuing of the Divorce Order and Corollary Relief Order.

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Samuel C.G. Moreau