

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *K.H. v. K.N.*, 2022 NSSC 305

Date: 20221102

Docket: Halifax No. SFHMCA-087174

Registry: Halifax

Between:

K.H.

Applicant

v.

K.N.

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Samuel Moreau

Heard: June 13, 14 and 15, 2022, in Halifax, Nova Scotia

Written Decision: November 2, 2022

Subject: Parenting Time, Decision Making, Imputation of Income, Prospective child support and Special or Extraordinary expenses, Retroactive child support and Special or Extraordinary expenses, Medical Insurance Policy, Travel out of Nova Scotia, Relocation of children's residence.

Summary: Application made by the mother regarding parenting issues, child support (both prospective and retroactive) s.7 expenses (both prospective and retroactive), imputation of income, the father's medical insurance policy with respect to the children and the parent's ability to travel outside of the province of Nova Scotia with the children. The father requests a longer duration of parenting time during the months of July and/or August at his residence in Newfoundland and requests a

restriction on the mother's ability to relocate the children's residence.

Issues:

- (1) Father's parenting time.
- (2) Decision making.
- (3) Imputation of Income.
- (4) Prospective child support and prospective special or extraordinary expenses.
- (5) Retroactive child support and retroactive special or extraordinary expenses.
- (6) Medical Insurance Policy.
- (7) Travel out of province, including international travel.
- (8) Relocation of children's residence.

Result:

Father to have parenting time during specified periods; mother assigned as children's decision maker; income imputed to the father; the father ordered to pay prospective child support from the date application was filed; the father ordered to pay prospective special or extraordinary expenses from the date the application was filed; mother's claim for retroactive child support and retroactive special or extraordinary expenses dismissed; the father ordered to maintain a medical insurance policy for both children and to provide the mother with cards regarding same policy; either parent may travel with the children outside N.S., including international travel; father's request with respect to relocation of the children's residence is not granted.

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Judge: The Honourable Justice Samuel Moreau

Heard: June 13, June 14 and June 15, 2022, in Halifax, Nova Scotia

Released
to the Parties: October 26, 2022

Written Decision: November 2, 2022

K.H., Self-represented

K.N., Self-represented

By the Court:

Introduction

[1] K.H. is the mother and K.N. is the father of two children, S.E. born in 2008 and S.M. born in 2009. The parents were in a common law relationship from 2005 to 2009.

[2] The mother has had primary care and residence of the children since separation.

[3] The father has repartnered and resides in the Province of Newfoundland. He and his spouse, S.N., have a son, K. born in 2013. The mother resides within the Halifax Regional Municipality with S.E. and S.M.

Legal Proceedings

[4] The trial commenced on June 13, 2022, and concluded on June 15, 2022. Both parties were self represented and cross examined the other. Neither called any other witnesses. The issues heard at trial stem from the Notice of Application filed by the mother on June 1, 2020.

[5] During the trial the father objected to a number of exhibits included in the mother's Affidavit sworn May 16, 2022, (Court Exhibit 1). He requested that the impugned items be struck from the evidence. The father's Affidavit sworn May 31, 2022, (Court Exhibit 5) also contains a number of exhibits of a contentious nature. I declined to strike the disputable exhibits (in both Affidavits) from the evidence but indicated to the parties I would consider (when analyzing the relevant issues) the weight, if any, attributable to the exhibits.

[6] The parties participated in a settlement conference before Justice Jollimore on October 13, 2021. The mother requested that the agreement read into the Court record on that date be incorporated into the Order flowing from this decision. The father voiced no objection to that request.

Issues

1. The father's parenting time;
2. Decision making in relation to S.E. and S.M.;
3. Should income be imputed to the father;
4. The appropriate quantum of prospective child support;

5. The appropriate contribution by each party to prospective special or extraordinary expenses;
6. Should the father be ordered to pay retroactive child support;
7. Should the father be ordered to pay retroactive special or extraordinary expenses;
8. The father's Blue Cross medical insurance policy for the children;
9. The mother's ability to travel outside the Province of Nova Scotia with the children, including internationally; and
10. The father's request that the residence of the children not be relocated further than 30 minutes by vehicle from the Stanfield International Airport.

The Father's Parenting Time

Positions of the Parties

[7] The mother proposes the father have parenting time with the children as follows:

- The entirety of March break each year, with confirmation of his intention to exercise parenting time provided at least six weeks prior;

- Two weeks during the summer months (July and/or August), with the option of the visit(s) being extended to a longer period, contingent on the children's availability and comfort level. The mother wishes to be notified of summer parenting time flight details by May 1st;
- One-half of Christmas vacation; and
- Long weekends with notice of the father's intention to exercise parenting time provided at least six weeks prior.

[8] The father requests a longer duration of parenting time in Newfoundland during the months of July and/or August.

Analysis

[9] In his Affidavit evidence commencing at paragraph 75, the father provides a review of his parenting time schedule from 2011 to March, 2022. The mother did not dispute the father's recollection of his visits with the children during the said period.

[10] There is disagreement as to why the father's parenting time did not occur during certain periods. The father says that since 2013 the mother "has been unwilling and uncooperative in agreeing to fair access, and adequate visitation

on any amounts of time exceeding what she unilaterally deemed appropriate.”

He asserts that at various junctures the mother has denied his parenting time with the children.

[11] The father indicates that some visits during 2015, 2016, 2017, 2018, 2021 and 2022, were not exercised due to a lack of financial resources and others because of a combination of financial issues and disagreements with the mother.

[12] The mother raises two issues which have also had a bearing on some missed visits and the duration of other visits with the father in Newfoundland. The mother says both children suffer from and/or exhibit symptoms related to certain mental health conditions. She indicates that both children have been diagnosed with having anxiety; S.E. with attention deficit hyperactivity disorder (ADHD) and symptoms of obsessive compulsive disorder (OCD); S.M. with ADHD, depression and a phobia of flying. S.M. struggles with being away from home for extended periods and is prone to panic attacks. She currently sees a therapist and is in the process of being tested for dyslexia.

[13] In her Affidavit evidence, the mother included several pieces of correspondence from a medical professional who previously saw both children.

The mother offers these exhibits as confirmation of the existence of the aforementioned conditions. The father objected to inclusion of the correspondence and requested that same be struck from the evidence. The father agrees that the children (at least S.M.) suffers from anxiety, but questions whether both suffer from the other conditions.

[14] In my view Court Exhibit 1, Tabs 15 and 17, (the correspondence from the medical professional) fails to corroborate the diagnoses as asserted by the mother. I am not suggesting the children do not suffer from the conditions as stated, however the correspondence does not contain the information necessary and/or sufficient to make a determination as per the mother's conclusions. The author of the correspondence was not called as a witness and therefore was not subjected to the test of cross examination. I assign no weight to the correspondence contained in Court Exhibit 1, Tabs 15 and 17. I am satisfied both children suffer from anxiety and S.M. may have a phobia of flying.

[15] The children have been involved in dance from a young age. I accept both are gifted in the art of ballet and perform at an elite level. In 2019, S.E. was invited to Canada's National Ballet School as a summer student during the month of July. In 2020 she was accepted into the Alberta Ballet School's Professional Division Summer Intensive Program.

[16] Also in 2020, S.E. was the recipient of the Nova Scotia Talent Trust's Lieutenant Governor's award for artistic achievement and received the Robert George Jackson award for dance. She has been featured in the local media as a result of her achievements in dance.

[17] The mother testified that six of the eight weeks during July and August are taken with ballet school, camps or other activities related to the art, which leaves two weeks for the father's parenting time. The father argues he was never consulted when the mother initially entered the children into dance; that the "interference from unreasonable dance" activities has negatively impacted his parenting time; and his parenting time should take precedence over dance and any other extracurricular activity.

[18] In *E.J.G. v. S.W.W.* 2018 NSSC 109, Justice MacDonald, formerly of this Court was tasked with deciding on a parent's schedule of parenting time. The parent lived outside the Province of Nova Scotia. At paragraph 61, Justice MacDonald writes:

[61] Determining the Father's parenting time is problematic. Face-to-face parenting time provides an opportunity for children to experience the knowledge, support and pleasure a parent can bring into the lives of their children. But geography and limited financial resources may severely limit the amount of time when a parent can provide children with that opportunity. Courts are directed to arrange for as much contact with both parents as is in a child's best interest. However, courts must balance parental contact with other best interest factors

such as financial support. In this case the Father suggests he must be provided financial relief if he is to have any face to face contact with his children. Before discussing the financial issues, I must first decide what parenting time arrangement would appear to be in their best interest absent financial considerations.

Best Interest Analysis

[19] I shall now address the legislated factors relevant to considering the best interests of S.E. and S.M.

[20] Section 18(6) of the *Parenting and Support Act* provides several factors I am to consider in determining the best interests of the children. Of the diversity of factors set out in the legislation, the most pertinent to this particular fact situation are section 18(6)(a)(b)(g)(h)(i):

- (a) The child's physical, emotional, social and education needs, including the child's need for stability and safety, taking into account the child's age and development.

[21] S.E. and S.M. are presently 14 and 13 years old respectively. I have commented on the lack of evidence concerning some of the mental health conditions alluded to by the mother. Any parenting plan must account for the children's anxiety and therefore be flexible enough to accommodate unforeseen occurrences due to this condition.

[22] I am satisfied the evidence in total confirms that ballet is of great importance to these children's physical, emotional and social needs and also to their

stability, in all senses of that word. For these children ballet is not merely another extracurricular activity. It is a part of their identity and important to their self esteem. Given their ages, establishing and/or nurturing a positive and confident outlook is paramount to their continued development.

[23] The father's parenting time is important and not to be discounted. However, I find it is essential the children be allowed to fully participate in their summer activities related to ballet.

(b) Each parent's or guardians willingness to support the development and maintenance of the child's relationship with the other parent or guardian.

[24] I am satisfied the mother presently supports the children's relationships with the father and facilitates communication between them. The disagreements regarding the father's parenting time relate to the length of visits, the children's dietary needs (and allergies), their use of electronic devices and the management of the children's behaviour (such as during panic attacks) and supervision of their sibling, K.

[25] The mother says that during a visit K. hit and pushed S.M. leaving bruises. The father counters that the individual caring for the children at the time of the incident diffused the situation and managed K.'s behaviour. The mother requests that K. be supervised when present with the children.

[26] The mother may have been overly protective of the children during their visits with the father, however the evidence does not support the father's contention that his parenting time was subsequently denied or "unreasonably blocked." Their disagreements were in relation to several issues ancillary to his parenting time and some missed visits due to his financial resources. Given the geographic realities, which directly relates to the number of potential visits, and considering travel costs, the consistent use of virtual technology should be considered.

(g) the nature, strength and stability of the relationship between the child and each parent or guardian.

[27] The children have strong and stable relationships with both parents.

(h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life.

[28] The father says that S.E. and S.M. have consistently enjoyed their visits with him, his spouse S.N., K. and extended family in Newfoundland. They participate in several social activities during visits and benefit from these interactions. I have not been provided with any evidence to the contrary.

(i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and co-operate on issues affecting the child.

[29] The basis of the dispute which exists between these parents stems from their lack of ability to communicate effectively on issues involving the children.

Both make reference to this factor in their Affidavit evidence and both hold the other accountable for the difficulties which exist in relation to their lack of ability to communicate effectively.

[30] There is little the Court can do to assist parents in being congenial and understanding of the other. The focus must be on the children. *Hustins v. Hustins*, 2014, NSSC 85. During closing summations both parents again identified communication as an issue between them. The father suggests they communicate via email except in emergency situations.

[31] Oral communication between these parties has proven to be counter productive. They have tried using a communication application. The father discontinued its use. He insinuates the mother misused the app. They also attempted to participate in mediation which according to the father also proved unsuccessful. The father has made complaints to the police for as he states “harassing behaviours” by the mother. No charges were ever laid against the mother.

[32] I conclude these parents shall have to communicate in writing (via email and/or text message). All communications should be respectful and child focused.

Decision Making

[33] The mother requests that the parents have joint decision making responsibility. In the event they are unable to achieve consensus she would have final say. During cross examination the father indicated he had no desire to participate in decision making because of the poor communication between the mother and himself. During closing summations he changed course and retracted his prior comments.

[34] Despite the mother's amiable position on this issue, I fail to comprehend how joint decision making could be successful in this scenario. The geographic divide demands that at the very least the parents have the ability to communicate at a base level which unfortunately has not been and is not practicable as demonstrated by the evidence. Throughout the trial, the philosophical differences between the parties in relation to fundamental parenting issues was quite evident to me.

[35] In *K.G. v. H.G.*, 2021, NSSC 43 at paragraphs 99 to 101, Justice Forgeron offers the following commentary on decision making in a case involving poor communication:

Decision-Making

[99] Ordinarily, joint decision-making is preferred because children generally benefit from the contributions and perspectives of two motivated and loving parents. Where, however, parental relationships are defined by mistrust, disrespect, and poor communication, and where there is no reasonable expectation that such a situation will improve, joint custody is not appropriate: **Roy v. Roy**, 2006 CanLII 15619 (ON CA), [2006] O.J. No. 1872 (C.A.) and **Godfrey-Smith v. Godfrey-Smith**, (1997) 165 N.S.R. (2d) 245 (S.C.).

[100] Unfortunately, joint custody is unworkable in this case. The parties share opposing views about the children's emotional and mental health needs. Parental conflict and mistrust have reached a critical level. The father is argumentative with the mother and many of the professionals who challenge his views. The father is not reasonable when he is not in control of the narrative.

[101] Because joint custody is not viable, I must appoint a decision-maker. I find that the mother is better positioned to make decisions in the best interests of the children. Decision-making is therefore assigned to her. In addition, I will not require the mother to consult with the father before making important decisions given the level of conflict, their divergent views, and the father's inability to accept no as an answer.

[36] Section 17A(2) of the *Parenting and Support Act* provides me the authority to assign one or both parents as decision maker(s). I find it is in S.E. and S.M.'s best interests that the mother be appointed as their decision maker. She may consult the father on major decisions, however consultation will not be a requirement in the order flowing from this decision.

Should Income be Imputed to the Father

[37] The mother maintains that the father has/continues to under report his income. The father's income was the subject of a motion hearing held on April 4, 2022. Subsequent to the motion hearing the father was ordered to disclose his spouse's income for the years 2017 to 2021 and year to date for 2022. He was also ordered to disclose both his and S.N.'s bank statements for all accounts (including business accounts) for the period June 1, 2017, to the present.

[38] The father is an Architect, licensed to practice in Newfoundland since 2016. The father's income for the period 2017 to the present is as follows:

- 2017 – Line 150 income = \$6300.00
- 2018 – Line 150 income = \$2700.00
- 2019 – Line 150 income = \$18,130.00
- 2020 – Line 150 income = \$29,930.21
- 2021 – Statement of Income sworn April 23, 2021 = \$29, 018.40

[39] Collective Architecture and Design Inc. was incorporated on August 1, 2016 and operated until December 31, 2020. The father had a 51% share and S.N. a 49% share in this business. He says Collective Architecture and Design Inc. ceased operations as a result of debts. From July, 2019, to February, 2021, the

father worked as an “independent courier” with Skip the Dishes and from September, 2019, to December, 2020, was the sole proprietor of an online business, which he says suffered losses.

[40] In January, 2021, S.N. and the father started an unincorporated architectural consulting business, Lean Architects. They each own 50% of this new venture.

[41] S.N.’s income for the period 2017 to the present is as follows:

- 2017 – Line 150 income = \$17,689.00
- 2018 – Line 150 income = \$37,639.00
- 2019 – Line 150 income = \$15,463.00
- 2020- Line 150 income = \$58,742.98
- 2021 – Not provided
- 2022, year to date – Not provided

[42] The financial information disclosed with respect to the Collective Architecture and Design Inc. shows its operation was of no consequence to the father’s income during its period of existence.

[43] The father and S.N. operate an Airbnb located in their home. The father says S.N. is the sole owner and proprietor of the Airbnb. He maintains he has no responsibilities in the operation of the Airbnb. I do not accept the father's evidence regarding the operation of the Airbnb. S.N. has a 50% ownership stake in the father's current architecture business and had a 49% share in the previous architecture business. It is clear the father and S.N. operate as a team in both personal and business endeavours. Court Exhibit 3, exhibits "B", "C", "D", "E", "F", "G", and "H" sustains this conclusion.

[44] The mother requests that income be imputed to the father. The mother provided a printout from the Economic Research Institute taken from the internet which shows the average salary for an Architect in Newfoundland and Labrador as being \$95,080. The father objected to admission of the printout. As aforementioned I indicated I would not strike the printout but would determine the weight assigned to it.

[45] Section 19 of the Federal Child Support Guidelines provides me the authority to impute income to the father. In *Rideout v. Woodman*, 2016 NSSC 205, Justice Forgeron provides a helpful synopsis of case authorities in relation to imputation of income. At paragraphs 29 and 30 she writes:

[29] Given these submissions, I must now determine if income should be imputed to Mr. Rideout since the 2005 court order. In **Smith v. Helppi**, 2011 NSCA 65 (N.S. C.A.), para 16, Oland J.A. approved the factors outlined by Dr. Julien D. Payne, in *Imputing Income, "Determination of Income; Disclosure of Income", Child Support in Canada*, Danrab Inc., August 3, 1999 as quoted by Martinson, J. in **Hanson v. Hanson**, 1999 CanLII 6307 (BC SC), [1999] B.C.J. No. 2532 and by Wilson J. in **Gould v. Julian**, 2010 NSSC 123 (N.S.S.C.). These factors are as follows:

- 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." (*V. (J.A.) v. V. (M.C.)* at para 30.)
- 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 of work, freedom to relocate and other obligations.
- 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 the 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.
- Persistence in unremunerative employment may entitle the court to impute income.
- A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
- As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

[30] In **Parsons v. Parsons**, 2012 NSSC 239, paras 32 and 33, this court distilled other principles applicable to s. 19 imputation claims as follows:

- The discretionary authority found in s.19 must be exercised judicially, and in accordance with rules of reason 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.).

- 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.).
- 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.); **MacGillivray v. Ross**, 2008 NSSC 339 (N.S.S.C.).
- 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.).
- 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.).
- 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.

[46] The father is 40 years old. The evidence discloses no health concerns. He holds a graduate degree in architecture. He presented as an intelligent and articulate individual.

[47] I am satisfied the father has persisted in unremunerative employment. His qualifications entitle him to a higher rate of remuneration. I find it is reasonable to impute income to the father for the following reasons:

- He benefits from the income derived from the Airbnb;
- He has chosen to initiate questionable business ventures;
- He has the qualifications and skills to earn a substantially higher income; and
- He did not fully comply with the Order issued April 7, 2022, with respect to disclosure of S.N.'s income.

[48] Income in the annual amount of \$58,389.89 is imputed to the father for the period June 1, 2020, to the present. I assign one-half of S.N.'s 2020 income (her 2021 and year to date income for 2022 were not provided) to the father. That figure added to the father's 2021 income totals \$58,389.89. I find the father has the capacity to earn an annual income in that amount.

[49] The mother requests that I retroactively impute income to the father in amounts higher than the reported figures for the period June 1st, 2017 to May 31st, 2020. I have carefully reviewed the evidence in consideration of the mother's claim for retroactive imputation. I find the evidence in relation to the

father's income for the stated period is not adequate enough to support the mother's claim for a retroactive imputation.

Prospective Child Support

[50] The mother advances claims for both prospective and retroactive child support, and also prospective and retroactive special or extraordinary expenses. I shall first consider the prospective claims. *Bennett v. Bennett*, 2015 NSSC 395.

[51] I have imputed income to the father in the annual amount of \$58,389.89. Commencing June 1st, 2020, (the date of filing of the present application) based on the imputed amount, the father shall pay child support to the mother in the monthly amount of \$830.30.

Prospective Special or Extraordinary Expenses

[52] The parties shall contribute to section 7 expenses in amounts proportional to their annual incomes.

[53] During his cross examination of the mother, the father attempted to portray her income as underreported and in his closing summations further asserted his belief that the mother had not disclosed her income from all sources. The father

provided no evidence (documentary or otherwise) to support or substantiate this claim.

[54] The parents proportional contributions to prospective section 7 expenses shall be based on the mother's line 150 income of \$25,835 and the father's imputed income of \$58,389.89. The mother shall contribute 31% and the father 69% to prospective special or extraordinary expenses, commencing June 1st, 2020.

[55] Section 7 of the Federal Child Support Guidelines reads as follows:

Special or extraordinary expenses

7 (1) In a child support order the court may, on a parent'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 parents and those of the child and, where the parents cohabited after the birth of the child, to the family's pattern of spending prior to the separation:

- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
- (b) that portion of the medical and dental insurance premiums attributable to the child;
- (c) health related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counseling 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.

(1.1) For the purposes of clauses (1)(d) and (f), “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, if the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or

(b) if clause (a) is not applicable, expenses that the court considers are extraordinary, taking into account all of the following:

(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, if the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,

(ii) the nature and number of the educational programs and extracurricular activities,

(iii) any special needs and talents of the child or children,

(iv) the overall cost of the programs and activities,

(v) any other similar factor that the court considers relevant.

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 parents in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

Subsidies, tax deductions, etc.

(3) Subject to subsection (4), in determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

(4) In determining the amount of an expense referred to in subsection (1), the court shall not take into account any universal child care benefit or any eligibility to claim that benefit.

[56] In *Rideout v. Woodman*, supra, Justice Forgeron provides the following

review with respect to section 7 expenses:

Law

[49] Section 7 of the Guidelines provides the court with the discretionary authority to make an award, which is in addition to the table amount, to cover the cost of all, or a portion of an expense that is proven to be special or extraordinary: **T.(D.M.C.) v. S.(L.K.)**, 2008 NSCA 61, para 25. The s.7 analysis is fact specific and must be undertaken on a case by case basis: **Staples v. Callender**, 2010 NSCA 49, para 32. In determining whether an expense is special or extraordinary, the court is directed to balance factors that are related to necessity in the context of the child's best interests, and reasonableness based on the means of the parents, those of the child, and the family's spending pattern prior to separation. In addition, other hurdles must be met for extracurricular activity expenses as noted in s.7 (1.1). Further, the court is mandated to reduce expenses based upon any available subsidy, benefit, income tax credits or deductions.

[57] Court Exhibit 4, the mother's Statement of Special or Extraordinary

Expenses sworn May 16, 2022, sets out the section 7 expenses claimed by her.

[58] After reviewing the mother's Statement of Special or Extraordinary

Expenses, I am satisfied the expenses listed in the following paragraph are necessary in the context of the children's best interests and reasonable based on the means of the parents.

[59] Here I am considering section 7 expenses incurred from June 1, 2020, to the

present. As noted I have determined the mother's contribution to be 31% and the father's 69%:

- S.E. - Orthodontic care - \$2485 (mother's contribution: \$770.35, father's contribution: \$1714.65)

- Both children - Maritime Dance Academy - \$8409.92 (mother's contribution: \$2607.08, father's contribution: \$5802.84)
- Both children - Elle Dance Academy - \$7295.50 (mother's contribution: \$2261.60, father's contribution: \$5033.90)
- S.E. - Ocean Periodontal - \$1242.51 (mother's contribution: \$385.18, father's contribution: \$857.33)
- S.E. - Medications- \$232.47 (mother's contribution: \$72.07, father's contribution: \$160.40)
- S.E. - Prescription eye glasses and contact lenses - \$255.97 (mother's contribution: \$79.35, father's contribution: \$176.62)
- S.M. - orthodontic care - \$2085 (mother's contribution: \$646.35, father's contribution: \$1438.65)
- S.M. - Medications - \$181.38 (mother's contribution: \$56.23, father's contribution: \$125.15)

[60] I do not consider the claims regarding soccer, baseball and taekwondo to be reasonable in these circumstances. I do not consider cellular phone expenses as meeting the definition of a special or extraordinary expense as contemplated in section 7 of the Federal Child Support guidelines.

[61] The mother provided significant evidence regarding the importance of hair care and hair styles and how these factor into a positive outlook and identity within the African Canadian Community. Both children identify as African Canadian.

[62] In her Statement of Special or Extraordinary Expenses, the mother makes a claim for hair care. I acknowledge the cultural importance of this issue, however in this circumstance I do not consider hair care as a reasonable expense.

[63] In total the father owes the mother \$15,309.54 in relation to his contributions to Special or Extraordinary expenses incurred from June 1, 2020 to the present.

Retroactive Child Support and Retroactive Special or Extraordinary Expenses

[64] The mother requests that the father pay retroactive child support and retroactive special or extraordinary expenses. It is unrefuted the father has paid child support to the mother since 2015. He argues he paid according to the guideline amount based on his annual income. Presently he has been paying \$264 on the first and fifteenth days of each month (\$528 per month) since November 15, 2020.

[65] In deciding whether to make a retroactive award I refer to the Supreme Court of Canada decisions cited as *D.B.S. v. S.R.G.*; *L.J.W. v. T.A.R.*; *Henry v. Henry*; *Hiemstra v. Hiemstra*, [2006] 2 S.C.R. 231, 2006 and *Colucci v. Colucci*, 2021 SCC 24.

[66] The Court in *D.B.S. v. S.R.G.* supra and *Colucci v. Colucci*, supra, identified four factors to consider when determining whether to make a retroactive award.

The factors are:

- Understandable reason for the delay;
- Conduct of the payor parent;
- Circumstances of the child; and
- Hardship occasioned by a retroactive award

Understandable reason for the delay

The mother commenced an application for child support on August 3, 2017, under the *Interjurisdictional Support Orders Act*. I am satisfied she cannot be faulted for delay in pursuing child support from the father.

Conduct of the Payor Parent

The mother indicates that the father paid child support during the identified period (June 1st, 2017 to May 31st, 2020) as follows:

- From June 1st, 2016 to September 1st, 2017 = \$185 on the 1st and 15th day of each month.
- From September 15, 2017 to November 1st, 2020 = \$184 on the 1st and 15th day of each month.

Currently the parties are not subject to a Court Order. The Order flowing from this decision will be the first Court Order addressing the issues relevant to S.E. and S.M. The father would not have been required to pay child support for the year, 2017, as his annual income fell well below the minimum threshold. During that year he paid the amounts of \$370 (to September 1st, 2017) and \$368 (for the remainder of the year) per month.

[67] The father consistently paid child support to the mother in accordance with his income during the stated period. I am satisfied the father did not engage in blame worthy conduct.

Circumstances of the child

[68] S.E. and S.M. are both active and involved young persons. The evidence affirms a retroactive award would be beneficial to them.

Hardship Occasioned by a Retroactive Award

[69] I have imputed income to the father. He shall pay child support based on the new figure commencing June 1st, 2020. Accounting for what he has already paid he owes the mother substantial amounts in arrears of child support and special or extraordinary expenses dating back to June 1, 2020.

[70] If I were to make a retroactive award the father may suffer hardship, depending on the amount ordered.

Decision on Retroactive Child Support and Retroactive Special or Extraordinary Expenses

[71] After considering the four factors as set out in the case authorities, I will not exercise my discretion to award retroactive child support and retroactive special or extraordinary expenses for the period June 1st, 2017 to May 31st, 2020.

Medical Insurance

[72] The father has maintained the children on a Blue Cross Health Insurance plan since 2015. During the mother's cross-examination of the father, there was

some discussion as to the effectiveness of the manner in which the parties currently manage this issue.

[73] The mother requests that the father obtain cards from Blue Cross for each child thereby eliminating much of the consultation and potential conflict between the parties brought about by this issue. I infer from the father's comments a seeming mistrust towards the mother and a belief she will misuse the policy if cards were provided.

[74] I shall order that the father continue to maintain the children on the Blue Cross Health Insurance Plan and that he provide the mother with cards for both children forthwith. I am satisfied this is in the best interests of the children.

Travel

[75] Either parent shall be permitted to travel outside the Province of Nova Scotia with the children, including international travel.

[76] The parent travelling with the children shall provide the other parent with at least three months notice of their intention to travel outside Nova Scotia with the children and shall also provide the following to the non travelling parent:

- Date of travel;

- Method of travel (If by air the name of the airline and flight number(s));
- Location where the children will be staying, including civic address;
- A telephone number that can be used to contact the children; and
- The expected date of return.

Relocation

[77] The father requests that the residence of the children not be relocated any further than thirty minutes by vehicle from the Stanfield International Airport. I shall not impose such a restriction on the mother.

[78] Given her circumstances, economics may dictate that the mother seek housing in an area more than a thirty minute drive from the Stanfield Airport.

[79] Should the mother propose to relocate, the father will always have the ability to avail himself of the relevant provisions of the legislation which governs this issue.

Conclusion

[80] I have carefully considered the evidence (both viva voce and documentary), the applicable legislation, case authorities (including *Foley v. Foley*, 1993 CanLII 3400(NSSC)) and the parties arguments.

[81] I have determined and find it is in the best interests of the children, S.E. and S.M. that an order be issued containing the following provisions:

- The mother shall have primary care and residence of S.E. and S.M.
- The mother is appointed as the children's decision maker.
- The father shall have parenting time with the children as follows:
 - The entirety of March Break each year. The father shall provide the mother with at least six weeks notice (in writing) of his intention to exercise his parenting time with the children during March Break.
 - The father shall have parenting time with the children during the months of July and/or August. The commencing date and duration of his summer parenting time shall be subject to the children's ballet activities. On or before May 1st of each year, the mother shall provide the father with the children's

schedule of dance activities for the upcoming months of July and August. On or before June 1st of each year the father shall provide the mother with the children's travel particulars for the upcoming months of July and/or August.

- The parents shall alternate Christmas vacation such that the children will be in the care of each parent for one half of the Christmas vacation. If the mid point of Christmas vacation falls on December 24th or 25th, the children shall travel on December 26th. During even numbered years the mother will have the first half of Christmas vacation and the father the second half. During odd numbered years the father will have the first half of Christmas vacation and the mother the second half.
- The father shall have parenting time with the children during long weekends in Nova Scotia. He shall provide the mother with at least six weeks notice of his intention to exercise parenting time during long weekends.
- The father may have any other parenting time with the children as mutually agreed to by the parties.

- The mother shall refrain from unreasonably inserting herself into day to day matters while the children are in the father's care.

- The mother shall provide the father with a professionally formulated action plan to address the children's mental health as it relates to flying unaccompanied. The goal of the plan is to prepare the children to fly unaccompanied.

- The children may fly unaccompanied to Newfoundland. If the mother objects to the children flying unaccompanied to Newfoundland, she shall provide the father with a written opinion from Krista MacNeil and/or Mary Therese O'Neil, explaining why unaccompanied flights from Halifax to St. John's are not in the children's best interests.

- While the children are in the father's care he shall ensure that they abide by any medication regimen put in place by a recognized medical professional, including but not limited to taking prescribed medication.

- While the children are in the father's care they shall follow any dietary requirements in relation to their dietary needs and allergies.

- While the children are in the father's care they shall not be left in a caring or supervisory role with respect to their younger sibling, K.

- Each parent will be responsible for the purchasing of necessary and reasonable hygiene and hair products while the children are in their care.
- The children shall have the option of leaving some of their belongings at the father's residence if they so choose.
- The mother and father shall communicate via email and/or text message. Their communications shall be respectful and child focused.
- Neither parent will discuss adult issues, (including issues pertaining to this or any future Court matter) with the children.
- Neither parent shall discuss the conflict between them directly with or in the presence of the children.
- Either parent may travel outside the Province of Nova Scotia with the children, including international travel. The parent travelling with the children shall provide the other parent with at least three months notice of their intention to travel outside Nova Scotia with the children and shall also provide the non-travelling parent with the following:
 - Date of travel;

- Method of travel (If by air the name of the airline and flight number(s));
 - Location where the children will be staying, including civic address;
 - A telephone number that can be used to contact the children; and
 - The expected date of return.
- Neither parent shall unreasonably withhold their written consent, where and when required, in order that the children travel internationally. This provision also extends to the retention of passports for the children and any other necessary travel documents.
- Any travel plans initiated by the mother shall not interrupt nor interfere with the father's scheduled parenting time.
- The father shall continue to maintain both children on the Blue Cross Health Plan.
- The father shall provide the mother with Blue Cross cards for S.E. and S.M. forthwith.
- Income in the annual amount of \$58,389.89 is imputed to the father.

- Commencing June 1st, 2020, the father shall pay child support to the mother in the guideline amount of \$830.30 per month and continuing thereafter on the first day of each month.
- The father may pay child support to the mother on the 1st and 15th days of each month, each payment being in the amount of \$415.15.
- Accounting for the payments he has already made, the father owes the mother the total amount of \$9,646.70 in child support arrears for the period June 1st, 2020, to October 31st, 2022, inclusive. The annual breakdown is as follows:
 - For the year, 2020 – Paid = \$2816.00 Owes = \$2996.10
 - For the year, 2021 – Paid = \$6336.00 Owes = \$3627.60
 - For the year, 2022 to October 31st – Paid = \$5280.00 Owes = \$3023.00

If the father is unable to pay the said amount in a lump sum, he shall pay the mother \$300 per month commencing November 1st, 2022, until the said amount is paid in full.

- Commencing June 1st, 2020, the parents shall contribute to special or extraordinary expenses on a proportional basis. The mother's contribution shall be 31% and the father's 69%.

- The following are deemed to be special or extraordinary expenses:
 - Orthodontic costs;
 - Prescribed medications;
 - Prescription eye glasses and/or contact lenses;
 - Reasonable costs related to the children's dance activities including but not limited to, any registration/membership fees, tuition fees, costume fees, and competition fees.

- In total the father owes the mother \$15,309.54 in relation to his contribution toward special or extraordinary expenses incurred from June 1st, 2020 to present. If he is unable to pay the said amount in a lump sum, he shall pay the mother \$300 per month commencing November 1st, 2022, until the said amount is paid in full.

- The mother's claims for retroactive child support and retroactive special or extraordinary expenses for the period June 1st, 2017, to May 31st, 2020, are dismissed.
- The father's child support obligations shall be registered with the Maintenance Enforcement Program of Nova Scotia.
- Enforcement clauses

[82] As I indicated during my preliminary comments on June 13, 2022, I shall not consider submissions on costs until the order flowing from this decision has been issued.

[83] Both parties provided submissions on costs in their Affidavit evidence. Subsequent to receipt of the issued order both parties may file any further written submissions on costs.

[84] The deadline for filing further submissions on costs will be three weeks subsequent to the date the Order is issued.

[85] The Court shall draft the Order and provide same to the parties once signed and issued.

Samuel C. G. Moreau J.