

SUPREME COURT OF NOVA SCOTIA

Citation: *J.H. v. R.H.*, 2023 NSSC 237

Date: 20230725

Docket: No. SFH1201-074542

Registry: Halifax

Between:

J.H.

Applicant/Petitioner

v

R.H.

Respondent

Judge: The Honourable Justice Theresa M Forgeron

Heard: July 7 and 18, 2023, in Halifax, Nova Scotia

Final Written: July 25, 2023

Counsel: Derek Sonnichsen, counsel for JH
Christopher Robinson, counsel for RH

By the Court:

Introduction

[1] This is an interim decision about separated parents who have a daughter who is almost 13 years old. No agreement was reached on interim parenting and support issues.

[2] The mother, JH, seeks primary care of the child. She also seeks child and spousal support once income is imputed to the father. She states that the father's business income is under-reported and the claimed business expenses are neither reasonable nor proven.

[3] In response, the father, RH, seeks a shared parenting arrangement, with no support payable. He states that income should be imputed to the mother because she has chosen to work in casual, part-time positions when a full-time job is available to her. He states that once income is appropriately imputed to the mother, the parties will earn comparable incomes. As such, no spousal or child support should be payable, except that s.7 expenses should be equally divided. The father also disputes the mother's entitlement to spousal support.

[4] The contested interim motion was heard on July 7 and 18, 2023. Each party testified and was cross-examined. Oral submissions were provided to augment the parties' written briefs. I adjourned for decision.

Issues

[5] To resolve the interim matters, I will decide four issues:

- What interim parenting arrangements are in the child's best interests?
- What are the incomes of the parties?
- What is the appropriate child support order?
- What is the appropriate spousal support order?

Analysis

[6] **What interim parenting arrangements are in the child's best interests?**

Mother's Position

[7] The mother seeks primary care for three reasons. First, she states that a primary care model reflects the *status quo* based on the parenting arrangement that evolved before the parties' separation. She said that she fulfilled the traditional primary care functions and worked less than full-time so that she could meet the child's needs. In addition, she stated that the father frequently spent extensive time in the US Virgin Islands without the child. For example, since 2020, the father was away for about five months each year, whereas the child and mother remained in Nova Scotia.

[8] Second, the mother states that the child has a poor relationship with the father. Even though the father lives directly across the street, the child spends little time with him. The daughter wants to remain in her primary care.

[9] Third, the mother states that she is best able to meet the child's needs, especially at this time. The mother noted that she proactively moved to support the child's significant mental health challenges. The father did not. The mother said it is not the time to place additional burdens on the child by creating a new parenting arrangement.

Father's Position

[10] For his part, the father requests a shared and equal parenting arrangement for five reasons. First, he said that the parties were both actively involved in the child's care. The father believes that he was the *de facto* primary care parent because the mother worked outside the home as a dental hygienist. He, on the other hand, worked at the motel where the parties lived. Thus, he had more physical time with the child than did the mother. Further, he only went to the USVI because he was tasked with selling the sailboat. Plus, the mother reneged on the child traveling to be with him.

[11] Second, the father blames the mother for his strained relationship with the child. He notes that although the mother uses the right words, her conduct proves that she is intent on destroying his relationship with the child. For example, the mother makes plans for the child at times when the child is supposed to be with him. Further, the mother did not keep him informed of the child's mental health needs. In addition, the mother speaks negatively about him to the child.

[12] Third, the father says that the mother does not meet the child's needs. He said that the mother wants primary care so she can claim support. The mother does not know how to parent properly. The mother acts as a friend and not a parent. The father says that the mother is a permissive parent; that the child has no rules or structure in the mother's care. For example, the mother permits late night, inappropriate cell phone use without consequences. In contrast, he said that he can provide the child with much needed discipline, structure, and rules.

[13] Fourth, the parties live next to each other. Given the proximity of their homes, a shared parenting arrangement will not create significant transitional difficulties for the child. The father stated that the case of *Gibney v Conohan*, 2011 NSSC 268 is exactly on point.

[14] Fifth, the maximum contact principle supports his position. The child needs to be in the shared parenting of both parents.

Law

[15] The *Divorce Act* states that I must make all parenting decisions in the child's best interests. The best interests test is a multi-faceted definition which encompasses all of the child's physical, health, educational, cultural, psychological, and emotional needs. The best interests test also encompasses the child's need for stability and structure. In addition, it requires an examination of the quality and strength of the parent child relationships, and the child's relationships with other family members. Further, the willingness of each parent to support the child's relationship with the other parent and the parents' ability to communicate must also be assessed. Finally, amendments to the *Act* confirm the significance of family violence to the best interests analysis.

[16] During an interim hearing, however, these best interests factors must be assessed through the *status quo* principle: *Marshall v Marshall*, 1998 CanLII 3191 (NSCA). *Status quo* refers to the parenting arrangement that was in place before the unilateral conduct of one of the parties. Generally, the *status quo* governs unless the *status quo* is not in the child's best interests. In effect, I must determine the temporary, parenting arrangement that is the least disruptive and most protective and supportive of the child, all within the context of her best interests.

[17] Further, there is no presumption in favour of shared parenting. The s.16(6) *Divorce Act* amendment replaced the maximum contact factor with the parenting time factor. In *Barendregt v Grebliunas*, 2022 SCC 22, the Supreme Court of

Canada clarified that, in the past, some courts misinterpreted the maximum contact principle. There was never a presumption in favour of shared parenting and, in any event, that principle is now replaced with the “parenting time factor”.

Parenting time must be consistent with the child’s best interests:

[134] Although *Gordon* placed emphasis on the “maximum contact principle”, it was clear that the best interests of the child are the sole consideration in relocation cases, and “if other factors show that it would not be in the child’s best interests, the court can and should restrict contact”: *Gordon*, at para. 24; see also para. 49. **But in the years since *Gordon*, some courts have interpreted what is known as the “maximum contact principle” as effectively creating a presumption in favour of shared parenting arrangements, equal parenting time, or regular access: *Folahan v. Folahan*, 2013 ONSC 2966, at para. 14 (CanLII); *Slade v. Slade*, 2002 YKSC 40, at para. 10 (CanLII); see also F. Kelly, “Enforcing a Parent/Child Relationship At All Cost? Supervised Access Orders in the Canadian Courts” (2011), 49 *Osgoode Hall L.J.* 277, at pp. 278 and 296-98. **Indeed, the term “maximum contact principle” seems to imply that as much contact with both parents as possible will necessarily be in the best interests of the child.****

[135] **These interpretations overreach.** It is worth repeating that **what is known as the maximum contact principle is *only* significant to the extent that it is in the child’s best interests; it must not be used to detract from this inquiry.** It is notable that the amended *Divorce Act* recasts the “maximum contact principle” as “[p]arenting time consistent with best interests of child”: s. 16(6). **This shift in language is more neutral and affirms the child-centric nature of the inquiry. Indeed, going forward, the “maximum contact principle” is better referred to as the “parenting time factor”.** [Emphasis Added].

Decision

[18] For the purposes of this interim proceeding, I find that it is in the child’s best interests to continue in the mother’s primary care for five reasons – the preservation of the *status quo*; the child’s needs; the child’s strained relationship with the father; the provincial court undertaking; and the child’s wishes.

A. Status Quo

[19] First, the *status quo* favours the mother. The mother was the primary care parent before and after the separation based on my findings:

- Since 2020, the father lived in the USVI for about five months of every year. During this time, the child was in the exclusive care of the mother. It doesn't matter why the father was absent; the fact is that he was.
- Before 2019, the father spent more time in the USVI than did the mother and the child. When the child was in grades 1 and 2, she and the mother only spent three months in the USVI compared to the father's five months. After grade 3 until 2020, the mother and child only spent five weeks sailing in the USVI with the father. The father was away for five months.
- After separation, the parties continued to live together, albeit unhappily, in the motel home until September 2022, when the mother moved into the house across the street. Although the child did not move in with the mother until her bedroom was completed in November 2022, the mother nonetheless continued her daily parenting of the child. In November 2022, the father once again left the country.
- The mother became the primary care parent, in part, because the father did not live with the child for substantial periods of time. Even when the father was living with the child and mother, the mother continued to assume most of the parenting tasks associated with the child's dental, orthodontic, medical, social, and educational needs. The father obviously assisted, but most of the decisions, arrangements, and care were nevertheless made and provided by the mother.

B. Daughter's Needs

[20] The mother is best able to meet the child's needs, especially her mental health needs. The daughter is experiencing significant trauma and mental health challenges, including self-harm. Many circumstances likely have contributed to the child's current mental health difficulties. For example, the child is almost 13 years old and is experiencing puberty. In addition, she lived through a global pandemic. Mental health challenges are one of the byproducts of the pandemic. Further, the child finds herself in the throes of her parents' toxic separation and divorce. She is caught in the middle of their conflict.

[21] The mother recognized the daughter's mental health needs and found her support through a private counsellor. The mother also checked in with the school and supported the daughter's confidential meetings with the school counsellor. The

mother took a flexible, summer job with her brother so that she would be available for the child when needed.

[22] The mother also tried to keep the father informed of the child's mental health needs. In February 2023, the mother reached out to the father by email to let him know about the child's counsellors and mental health issues. The father said that he didn't receive the message because he had blocked the mother's communication. The mother had no control over the father's decision to block her communication while he was in the USVI.

[23] In addition, the mother was primarily responsible for the child's educational, social, medical, and dental needs. She is best suited to continue in that role during the interim period. I recognize, however, that the mother also needs to improve. She too must learn skills to ensure that the child is not caught in the parenting conflict and to employ appropriate consequences when the child engages in inappropriate or risky behaviour.

[24] For his part, the father's initial response to the child's mental health needs was not as robust as the mother's. While the mother was proactive, the father simply blamed the mother. He said that she was too permissive. He believes that stronger discipline is the key. He also believes that the mother is teaching the child to use him to get money. By blaming the mother, the father fails to consider how his own conduct contributed to the child's mental health challenges. His lack of insight does not meet the child's needs.

[25] I am hopeful that the father will make the necessary changes. He recently met with the child's counsellor. The father loves the child. He agreed to participate in counselling. I will speak more fully about counselling goals later in my decision.

C. The Strained Father Child Relationship

[26] The child has a strained relationship with her father. The child's relationship with the father will not improve by simply forcing the child to live with the father 50% of the time, even assuming that the child would do so. It is not in the child's best interests for me to order her to live with the father. To the contrary, forcing the child to live with the father 50% of the time, would likely exacerbate their already tenuous bond. Counselling, and not a shared parenting order, is in the child's best interests.

[27] In contrast, the child has a strong bond with the mother. The child has always been in the mother's primary care and thus feels safe and secure when she is with her. Although the mother's parenting is not perfect, she has always been there for the child.

D. Provincial Court Undertaking

[28] The father is under a provincial court undertaking not to contact the mother. The father is charged with voyeurism because he placed cameras in the headboard of the parties' bed and in the bedside lamp. Unbeknownst to the mother, she was being recorded in intimate settings. Because of the father's conduct, he is not allowed to contact the mother. The inability to communicate impedes a successful shared parenting arrangement.

[29] In so finding, I accept the mother's evidence, in part, because her evidence was not successfully challenged. The father did not lead evidence other than to say that the allegations were false, despite protections that are afforded by virtue of s. 5 of the *Canada Evidence Act* RSC, 1985, c. C-5 and s.13 of the *Charter of Rights and Freedoms* which confirm that criminating evidence cannot be used in a criminal proceeding except for the prosecution of perjury or for impeachment purposes. Further, the presumption of innocence does not operate in a civil proceeding: *FH v McDougall*, 2008 SCC 53, para 42.

E. Child's Wishes

[30] Although I have no Voice of the Child Report, I am satisfied that the child wants to live in the primary care of the mother. I draw this conclusion because the child has chosen to live with the mother. The father lives directly across the street from the mother. If the child wanted to live with the father, she would have done so.

Interim Parenting Plan

[31] I find that the least disruptive, and the most protective and supportive interim parenting arrangement that is in the child's best interests is one where the child is placed in the mother's primary care.

[32] The father will have reasonable parenting time with the child upon reasonable notice, which should, where possible, include at least one overnight per week, and special occasion parenting time.

[33] The mother will have sole decision-making authority with respect to all important matters impacting the child's health, education, and general welfare.

[34] Unless the provincial court undertaking is varied, the mother does not have to keep the father informed of the decisions she makes. If the provincial court undertaking is varied, the mother will keep the father informed by communicating on the parenting App, Our Family Wizard. Each party will be responsible for their own costs associated with the use of OFW.

[35] Unless the provincial court undertaking is varied, the father is not to communicate with the mother. If the provincial court undertaking is varied, the parties are only to communicate through OFW. OFW will be used to communicate about the child's appointments and schedule so that the father can make plans to be with the child when the child is available.

[36] If the provincial court undertaking is varied, then the parties will only communicate respectfully and in a child-focused manner, through OFW. The parties must not use abusive or negative language when speaking to the other.

[37] Neither party will say anything negative or disparaging about the other, or about the other's family, in the presence or hearing of the child. Neither party will negatively involve the child in the parenting conflict.

[38] The father will have the right to communicate with and receive information from all professionals involved in the child's care including educators, counsellors, coaches, doctors, dentists, orthodontists, and other health professionals. The only exception is that the child's counsellors will determine the amount of information to be disclosed having regard to the child's privacy rights and the need to maximize the benefits arising from therapeutic counselling.

[39] Further, both parties will cooperate with the child's counsellors and follow their reasonable recommendations. In addition, each of the parties will participate in individual counselling with their own counsellor to achieve the following objectives:

- To gain insight into how their own past and current behavior contributed to the child's strained relationship with the father.
- To become attuned to the child's needs, based on her temperament and stage of development.

- To gain skills to parent and support the child in a manner consistent with her emotional well-being.
- To gain insight into how parenting conflict negatively impacts the child and what each can do to insulate the child from the parenting conflict.
- To gain skills to effectively manage their own negative feelings, and their feelings towards the other.
- To gain skills to communicate effectively with the other in a respectful and child-focused fashion, although such communication is subject to the provincial court undertaking.

[40] **What are the incomes of the parties?**

Position of the Mother

[41] The mother states that the father's income should be imputed because his tax returns under-report gross business income and inflate business expenses. The mother also asks for income to be imputed because the father neither disclosed his 2022 income tax return nor financial documents to support the claimed business expenses.

[42] Further, the mother disputes the father's claim that income should be imputed to her. She notes that she always worked part time to meet the child's needs and that her current employment choices are necessary to ensure she is present for the child this summer, given the child's mental health challenges.

Position of the Father

[43] For his part, the father states that the mother's income should be imputed because she is not working to capacity as she would rather collect support payments from him. During final submissions, the father said that the mother's income should be as stated in her November income statement – about \$45,000 per annum.

[44] The father states that his statement of income is a guesstimate and an appropriate reflection of income that will be available to him – about \$46,000 per annum. His calculation includes an estimate of the value of the personal component associated with the business expenses.

[45] In addition, the father rejects the suggestion that a negative inference should be drawn because he did not produce his 2022 tax return or proof of business expenses. He says that the mother has all his paperwork. Further, he states that the mother, not he, was responsible for the income and expenses reported on his tax returns. He states that he subsequently learned that the mother stole large quantities from his business.

Law

[46] Section 19 of the *Guidelines* provides me with the discretion to impute income in specified circumstances based on the following principles:

- My discretionary authority must be exercised judicially, not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before I can impute income: ***Coadic v Coadic***, 2005 NSSC 291.
- 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.
- The burden rests on the party making the claim, however, the evidentiary burden shifts if the payor asserts that their income has been reduced or that their income earning capacity is compromised by ill health: ***MacLellan v MacDonald***, 2010 NSCA 34; and ***MacGillivray v Ross***, 2008 NSSC 339.
- I am not restricted to actual income earned, but rather, I may look to income earning capacity, having regard to subjective factors such as the payor's age, health, education, skills, and employment history. I must also look to objective factors when assessing what is reasonable and fair in the circumstances: ***Smith v Helppi***, 2011 NSCA 65.
- A party's decision to remain in unremunerative employment; or to adopt an unrealistic or unproductive career; or to create a self-induced reduction in income may result in income being imputed: ***Smith v Helppi***, *supra*.
- The test to be applied when determining whether a person is intentionally under-employed is reasonableness, which does not require proof of a

specific intention to undermine or avoid a support obligation: *Smith v Helppi, supra*.

Decision on the Mother's Income

[47] I agree that the mother's November 2022 financial statement is an accurate reflection of her income earning capacity based on the mother's historical employment, skills and work experience, employment opportunities, as well as the mother's obligation to the child. I therefore impute income of \$45,000 to the mother for support purposes. The mother is capable of earning \$45,000 per annum whether she is exclusively employed as a dental hygienist or in various other part-time positions unrelated to her profession.

Decision on the Father's Income

[48] The father is self-employed. In the past, the father earned income from the motel business and rental properties, and from the sale of assets. The father's tax returns report the following gross and net business income (rounded):

2019 Gross \$194,792 Net \$26,917

2020 Gross \$42,201 Net (\$62,950)

2021 Gross \$159,228 Net \$11,237

2022 Not provided, but the motel earned \$337,353 in sales for the year.

[49] Section 16 of the *CSG* states that I am to assess child support based on the father's net business income, and, where appropriate, subject to a s. 19 imputation analysis. In this case, the mother proved that the father's income should be imputed above what he reports as his taxable, net business income. I will now explain my three reasons for reaching this conclusion.

A. Lifestyle

[50] Lifestyle can be used as evidence from which an inference can be drawn that a payor has undisclosed income: *Bak v Dobell*, 2007 ONCA 304, paras 40 to 43. Prior to separation, the parties acquired rental properties, a sail boat, various vehicles, a camper, and significant cash savings which were kept in their home - all without mortgages or loans. Further, after purchasing the sailboat, the father lived

in the USVI for about five months of every year. The parties would not have been able to afford their lifestyle on the father's net business income, even when combined with the mother's part-time earnings.

[51] The parties' lifestyle was, in part, sustained through the cash economy. Not all rental income, or cash payments, or profits from the sale of assets were reported to CRA. The father's tax returns do not accurately report all of the gross business income which the father earned.

[52] The father blamed the mother for the errors found in his tax returns. The father said that the mother completed and signed his annual tax returns without his consent. The father said he has since discovered that the mother stole from the business and filed inaccurate returns.

[53] I reject the father's allegations. I do not accept that the father had a *laissez-faire* attitude about the business, blindly trusting the mother with that responsibility and being a victim of her theft. To the contrary, the father was very much in charge of the business and its finances. He was the person who managed and controlled the business, not the mother. Although the mother did many tasks for the business, she did not exercise control. Further, the father knew, as a Canadian resident and business owner, that he had to file annual income tax returns. To suggest that the father never examined his tax returns for accuracy before or after their filing defies logic, especially given the father's business acumen, and his need to control.

B. Lack of Disclosure

[54] Section 21 of the *CSG* require parents to supply their three most recent income tax returns with all attachments and assessment notices. In addition, for parents who are self-employed, they must also file "the financial statements of the spouse's business or professional practice, other than a partnership, and ..". The failure do so can result in an adverse inference being drawn against the payor as stated in s. 23 which provides:

23 Where the court proceeds to a hearing on the basis of an application under paragraph 22(1)(a), the court may draw an adverse inference against the spouse who failed to comply and impute income to that spouse in such amount as it considers appropriate.

[55] Similar obligations are set out in *Rules* 59.21 and 59.22

[56] In this case, the father did not produce his 2022 income tax return. In addition, the father did not produce the statement of business or professional

activities for the 2021 tax year. Rather, for 2021, he simply stated what his gross and net incomes were, without any breakdown.

[57] I find that the mother is not responsible for the father's failure to produce. I do not accept that the mother has the receipts and the information that the father requires to complete his 2022 tax return or to verify the business expenses stated in his 2019 to 2021 tax returns. Further, the father has his 2021 tax return, the original of which must have included the statement of business or professional activities which he should have produced. He did not.

C. Lack of Proof of Reasonableness of Business Expenses

[58] The burden of proving that business expenses are reasonable falls on the business owner. A business owner who seeks to substantially reduce his income because of business expenses must provide full financial disclosure and an explanation of the losses. In *Wilcox v Snow*, 1999 NSCA 163, Flinn JA states:

[26] Where, as here, the respondent is applying to vary an existing child support order, he bears the onus of proof. **As a self-employed businessman he cannot, simply, file with the court a copy of his most recent income tax return, and expect that his net business income for tax purposes will be equated with his income for child support purposes.** That is what the respondent did in this case. It is not enough. **The businessman must demonstrate, among other things, that the deductions which were made from the gross income of the business, in the calculation of his net business income, should, reasonably, be taken into account in the determination of his income for the purpose of calculating his obligation to pay child support.**[Emphasis added]

[59] In this case, the father produced no receipts and provided little by way of explanation to justify the claimed business expenses. Such evidence is necessary to conduct the analysis reviewed in *Wilcox v Snow*, *supra*:

[22] In the case of a self-employed businessman, like the respondent, there is **very good reason why** the Court must **look beyond the bare tax return to determine** the self-employed businessman's **income** for the purposes of the Guidelines. **The net business income**, for income tax purposes, of a self employed businessman, **is not necessarily a true reflection of his income**, for the purpose of determining his ability to pay child support. The tax department may **permit the self employed businessman to make certain deductions from the gross income of the business in the calculation of his net business income for income tax purposes.** However, **in the determination of the income of that same self employed businessman, for the purpose of assessing his ability to pay child support, those same deductions may not be reasonable.**
[Emphasis added]

[60] Further, the Alberta Court of Appeal thoroughly reviewed a business owner's continuing obligation in *Cunningham v Seveny*, 2017 ABCA 4:

[26] Furthermore, a parent challenging the reasonableness of the corporate or business expenses is not legally required to first establish a *prima facie* case that such expenses are *unreasonable* before disclosure becomes necessary. Simply put, **in matters concerning child support, the required disclosure arises at the outset and continues to be the obligation of the disclosing parent throughout the duration of all child support proceedings.**

[27] The content of required **disclosure must be sufficient to allow meaningful review by the recipient parent, and must be sufficiently complete and comprehensible that, if called upon, a court can readily discharge its duty to decide what amount of the disclosing parent's annual income fairly reflects income for child support purposes.** The issue is whether full deduction of an expense results in a fair representation of the actual disposable income of the party, and the court must balance the business necessity of an expense against the alternative of using that money for child support: Julien D Payne, "Some Notable Family Law Decisions from 2014 to 2015" (2015) 44:3 The Advocates' Quarterly 271 at 295.

[28] So as to leave no doubt about the correct principle: **the evidential and persuasive onus** under sections 18-21 of either the federal or provincial *Guidelines* as to the reasonableness of expenses, **rests with the self-employed or corporate parent throughout, and is the most effective means by which to serve the best interests of the child.** "Because this information is required in order to properly assess the amount of child support that is payable, its disclosure is part of the obligation to pay support": *Roseberry* at para 86. As provided by Yungwirth J in *Roseberry*, information regarding corporate expenses is within the knowledge, possession and control of the shareholder, director or officer parent, not the challenging parent, and that information is relevant and necessary to determine income for child support guideline purposes. Moreover, the obligation to provide a reasonable explanation for expenses fits soundly within the initial onus on the claiming parent under [section 21](#) of the *Guidelines* to provide adequate disclosure of their corporate and personal income and expenses. As noted in *Roseberry* at paras 61 and 67, lack of full disclosure or "[n]on-compliance with disclosure requirements causes great difficulty for litigants, creates a backlog of retro-active support applications, and most importantly, interferes with the ability of the payor, recipient, and the Court to make a timely and proper assessment." That is what has occurred in this matter. [Emphasis added]

D. Summary

[61] The mother proved that income should be imputed to the father in the requested amount of \$200,000 for the following reasons:

- The father's income tax returns are not accurate, either with respect to the amount of gross income earned or the amount of business expenses.
- I infer that the father's income was under-reported given the parties' lifestyle, their lack of debt, and their property acquisitions, including storing large quantities of cash in their home.
- The father did not produce his 2022 income tax return, nor a statement of business or professional activities for 2021.
- The father did not produce receipts or provide explanations for the claimed business expenses.
- The motel business likely experienced challenges in 2020 because of the pandemic. 2020 cannot be used to determine income on a prospective basis.
- In 2022, the father earned \$337,353 from the motel. I have almost no evidence about the 2022 business expenses. I do know, however, that in 2020 and 2019, the father claimed \$113,390 and \$103,302 in business expenses.
- Some of the business expenses have a glaring personal element, such as those related to meals and entertainment, travel, motor vehicle, and a portion of the utility expenses (including cell phones and internet).
- It is likely that some personal repair and maintenance expenses, and some of the repair and maintenance expenses associated with the rental properties, but without the rental income being reported, are included in the claimed business expenses.
- Even without making adjustments for the above factors, and without scrutinizing the other business expenses, the father should have netted more than \$200,000 in income for the purpose of calculating reasonable, available income for child support purposes on a go forward basis.

[62] What is the appropriate child support order?

[63] During the interim, the father will pay the table amount of child support in the monthly amount of \$1,611. In addition, the father is responsible for 82% of the

child's uninsured medical expenses, including physiotherapy, orthodontic and counselling expenses. The father must pay his share within 30 days of being presented with an invoice. The father's share of the orthodontic expense to July 31, 2023 is \$2,658.40, plus he is required to make additional monthly payments of \$304.20 until the account is paid in full. I do not include the cost of the summer camp as a proper s. 7 expense; it is included within the table amount.

[64] Child support is payable through the Maintenance Enforcement Program once the order is registered. Until it is, the father will e-transfer or deliver the support payments via counsel given the provincial court undertaking.

[65] Child support is payable on the first day of each month commencing February 1, 2023, the month after the mother filed her interim motion. The child is not responsible for court delays. Retroactive support, which is the support obligation arising before the mother's interim motion was filed, will be determined during the divorce trial.

[66] **What is the appropriate spousal support order?**

[67] The mother claims \$1,000 per month in spousal support. The father objects noting that the mother worked throughout most of the marriage and that she is a qualified dental hygienist who, if she worked full-time, could earn about \$90,000 a year.

[68] Section 15 of the *Divorce Act* provides me with the jurisdiction to award interim spousal support. The mother bears the burden of proof. In *Bracklow v Bracklow*, [1999] 1 SCR 420, the Supreme Court of Canada confirmed that entitlement is grounded in one, or more, of the following three principles:

- Compensatory support to address economic advantages and disadvantages flowing from the marriage, or the roles adopted during the marriage.
- Non-compensatory support to address the disparity between the needs and means of the parties and arising from the marriage breakdown.
- Contractual support, either express or implied.

[69] The factors I must consider are stated in s. 15.2(4) of the *Divorce Act*:

15.2(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including:

- (a) the length of time the spouses cohabited.
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[70] The objectives I must consider are set out in s. 15.2(6) of the *Act*:

15.2(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[71] I find that the mother proved that she has a compensatory and non-compensatory claim for spousal support. The mother took time out of the work force after the child was born. The mother also worked casually and then part-time, partly to meet the needs of the child and also, before 2020, to sail with the father and the child in the USVI. Further, the mother continues to adjust her schedule to meet the child's needs. Finally, there is a significant disparity between the father's reasonable business income and the employment income of the mother. The mother requires interim spousal support to achieve the parties' pre-separation lifestyle and to meet the child's current needs.

[72] The mother proved that the father should pay her \$1,000 per month in interim spousal support, commencing February 1, 2023. In confirming this amount, I note the following:

- The mother has a need and that the father has an ability to pay.
- The mother is requesting an amount that is less than that suggested by the *SSAGs*.
- Based on her statement of expenses and affidavit update, the mother's monthly budget, excluding income tax, is about \$7,000 per month or \$84,000 per year.
- The mother's imputed income is \$45,000. The father must pay child support of \$1,611 per month or \$19,332 per year, plus 82% of the child's medical expenses.
- The mother will be left with an after-tax deficit after receiving spousal support and the CCB. The mother will have to make adjustments to her budget.
- Spousal support is deductible to the father and taxable to the mother.

[73] The mother's need will be reassessed once the property division is completed. In the meantime, spousal support of \$1,000 per month is payable through MEP after the order is registered for enforcement. Until it is, the father will e-transfer or deliver the support payments via counsel given the provincial court undertaking.

[74] The mother's claim for retroactive spousal support, that which predates her motion, will be determined at trial.

Conclusion

[75] The following relief is granted in an interim basis:

- The mother is granted primary care, while the father is granted reasonable parenting time.
- The parties must participate in counselling, with specified objectives, so that the child's emotional health needs can be properly addressed.

- The father must pay monthly child support to the mother in the amount of \$1,611, together with 82% of the child's uninsured medical expenses, including physiotherapy, orthodontic and counselling expenses.
- The father must pay monthly spousal support to the mother in the amount of \$1,000.

[76] The mother's counsel is to draft the order.

[77] If the parties are unable to agree on costs, then the mother is to file written submissions by August 15, 2023 and the father by August 31, 2023. Costs will be granted for the interim motion according to Tariff C.

Forgeron, J