

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Salloum v. Salloum*, 2023 NSSC 233

Date: 20230720

Docket: *SFH* No. 1201-070953

Registry: Halifax

Between:

Paraskevi "Beulah" Salloum

Applicant

v.

Salim Salloum

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Ingersoll

Heard: April 11, 2023, in Halifax, Nova Scotia

Written Decision: July 20, 2023

Subject: Family Law: divorce, parenting arrangements, determination of income, determination whether payments made by a non-party satisfy the father's child support obligations, child support, division of property.

Issues: Father alleged that matrimonial home related expenses made by his father should be offset against any child support he ought to have paid since 2015. Mother asserted that these payments do not satisfy the father's child support obligations.

Result: Divorce granted. Primary care and sole decision making granted to mother. Payments made by paternal grand parent not off set against child support owing by father. Matrimonial property divided equally but apportioned such that outstanding child support paid to mother. Order for ongoing child support granted.

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Counsel: William Leahey, counsel for the Applicant
Philip Whitehead, counsel for the Respondent

By the Court:

1 Introduction

[1] Paraskevi Beulah Salloum and Salim Abraham Salloum were married on July 13, 2002, and separated on January 30, 2012. Mr. and Ms. Salloum have two sons, Abraham who is nineteen and Yanni who is seventeen, both of whom have lived with their mother since the parties separated.

[2] Ms. Salloum seeks the following relief:

- a. A divorce;
- b. Primary care of Yanni and sole decision making in respect of Yanni;
- c. Child support (retroactive from July 2015 and prospective); and,
- d. A division of property.

[3] Mr. Salloum does not contest the granting of the divorce. Mr. Salloum accepts that Ms. Salloum should have primary care of Yanni, with him having reasonable parenting time with Yanni as arranged directly with Yanni (given his age). With respect to decision making, Mr. Salloum says that Yanni should make his own decisions with guidance from his parents and agrees that Ms. Salloum should have decision making responsibility with respect to Yanni subject to written

consultation with him in advance. Mr. Salloum says that the matrimonial property should be divided equally. With respect to Ms. Salloum's claim for child support from 2015 forward, Mr. Salloum asserts that his father paid the mortgage, property taxes, heating costs and home insurance on the matrimonial home between July 2015 and November 2022 (when the home was sold pursuant to court order) and that those payments satisfy his child support obligations during that time frame.

2 Agreements and issues withdrawn

[4] In her affidavit, Ms. Salloum deposed that Mr. Salloum owes her \$42,500.00 and sought an order repaying those funds. At trial, Ms. Salloum abandoned that claim except for \$5,000.00 which the parties agree must be repaid by Mr. Salloum into the RESP account. At trial, Ms. Salloum also confirmed that she is not seeking spousal support.

[5] At trial, Ms. Salloum agreed that she would repay \$ 4,300.00 which she had taken from the RESP account.

[6] At the commencement of the trial, Mr. Salloum confirmed that he was not seeking occupation rent in respect of Ms. Salloum's occupation of the matrimonial home between 2012 and 2021.

[7] At the commencement of the trial the parties also confirmed that they agreed with a 30% reduction in the value of the RRSPs to arrive at a net value of those matrimonial assets.

3 The Matrimonial Home

[8] Prior to separation, the parties' together with their sons resided at 23 Inverness Avenue. Ms. Salloum and her sons remained in the matrimonial home following the separation. Ms. Salloum purchased a condominium in August 2021, which she and her sons thereafter occupied, at which time the matrimonial home became and remained vacant.

[9] I ordered the sale of the matrimonial home and that its sale proceeds to be held in escrow. The sale closed on November 22, 2022.

[10] The evidence establishes that Mr. Salloum paid the mortgage and home insurance on the matrimonial home post separation (January 2012) until July of 2015. Mr. Salloum did not make any payments toward the matrimonial home's mortgage, property taxes, heating costs or insurance after July 2015. Neither did Ms. Salloum. Mr. Salloum's father, Abraham Salloum, paid the matrimonial home's mortgage, property taxes, insurance, and heating costs after July 2015. Mr. Salloum's father paid for the heating costs for the matrimonial home from 2012

until the home was sold in 2022 and in fact continues to pay the heating costs for Ms. Salloum's new residence purchased in 2021.

[11] As noted, Mr. Salloum says that his post 2015 child support obligations should be considered satisfied because his father paid expenses associated with the matrimonial home.

4 Divorce Granted

[12] As noted, the parties were married in Nova Scotia on July 13, 2002, and separated on January 30, 2012. The Petition for Divorce was filed on March 9, 2018. An Answer was not filed. The Petition and the long form marriage certificate were tendered as exhibits.

[13] The parties have not reconciled, and I am satisfied that there is no possibility of reconciliation. At least one of the parties has lived in Nova Scotia continuously since the parties were married. I am satisfied that the jurisdictional requirements for the granting of a divorce have been met, and there is proof of permanent marriage breakdown. There is no bar to divorce, such as collusion, condonation, or connivance. I grant the divorce.

5 Primary Care and Decision Making Responsibility

[14] Yanni is the remaining child of the marriage. Yanni has been in Ms. Salloum's primary care since the parties separated. Mr. Salloum acknowledges that this parenting arrangement should continue. I find that it is in Yanni's best interest to continue to remain in his mother's primary care.

[15] With respect to parenting time for Mr. Salloum, I find that given Yanni's age (he is seventeen) that I should not order that Yanni spend a specified amount of time with his father. Yanni will determine how much time he spends with his father and can arrange that directly with his father.

[16] With respect to decision making, I find that Ms. Salloum has been the *de facto* decision maker for both of her sons for many years. I do not have any evidence that Mr. Salloum participated in any decision-making situations regarding his sons nor that he asked to do so. The evidence establishes that Mr. Salloum has never attended a parent teacher event nor, in recent years, any of the boys' soccer games. I also find that in recent years, Mr. Salloum's engagement with his sons has reduced greatly. The evidence establishes that Mr. Salloum and Ms. Salloum rarely communicate. Given the pattern that has emerged over many years of Ms. Salloum making all decisions for the boys I will grant her sole decision making for Yanni, recognizing that he is now seventeen and will increasingly exercise a greater role

in decisions which concern him. Ms. Salloum has proposed that she provide updates on major decisions to Mr. Salloum. I accept that proposal and direct that Ms. Salloum provide Mr. Salloum updates of major decisions made in respect of or by Yanni until he reaches the age of majority.

6 Child Support

[17] The parties separated in January 2012.

[18] Mr. Salloum did not make any child support payments on behalf of his sons until he made six child support payments, in 2022 and 2023. As noted, Mr. Salloum did the matrimonial home property tax and insurance between January 2012 and July 2015.

6.1 Mr. Salloum's position

[19] Mr. Salloum submits that his child support obligation in respect of his sons from date of separation to date of trial is \$90,245.00.

[20] Mr. Salloum asserts that his matrimonial property related payments made until 2015 and all matrimonial property related payments made by his father, Abraham Salloum, thereafter, ought to be considered child support payments made by him on the basis that they were paid on his behalf by his father.

[21] Mr. Salloum says that his child support obligations have been overpaid based on the following payments:

Category of Payment	Amount	Total payment
Child support (six payments (five in 2022 and one in 2023))	\$968.00 per month	\$5,808.00
Two miscellaneous payments in 2012	\$500.00 per month	\$1,000.00
Home Insurance for 11 years (paid by Mr. Salloum's father after July 2015)	\$600.00 per year	\$6,600.00
Home heat for 11 years (paid by Mr. Salloum's father since the matrimonial home was purchased and still paid to date in respect of Ms. Salloum's residence)	\$200.00 per month (Mr. Salloum estimates this monthly costs)	\$26,200.00
Car payments (January 2012 to September 2013)	\$600.00 per month	\$12,600.00
Soccer and gym memberships	\$220.00 annually (for one year as example)	\$2,640.00
Mortgage payments made by Mr. Salloum (January 2012 to July 2015)	\$1,482.24 per month	\$63,736.32
Mortgage payments made by Mr. Salloum's father (January 2012 to July 2015)	Various over time \$1,482.24 per month until 2019, then \$1,609.78 per month for five months and \$1,440.35 from 2020 to November of 2022.	\$129,650.56
		Total: \$248,234.88

[22] Mr. Salloum asserts that between January 2012 and November 2022 (when the matrimonial home was sold), Ms. Salloum received support amounting to

\$248,234.88. Mr. Salloum asserts that he has exceeded his child support obligations by \$157,989.88 ($\$248,234.88 - \$90,245.00 = \$157,989.88$)

[23] Mr. Salloum asserts that the total amount paid toward matrimonial home expenses (by him and his father) less the amount of child support owed (\$157,989.88) should be further reduced to take into account that fact that he was equally liable for half of the mortgage and tax payments over that period. Mr. Salloum calculates his share of the mortgage payments made during this time as being \$96,693.44 leaving a total overpayment of \$61,296.44.

[24] Mr. Salloum asserts that it would be windfall for Ms. Salloum to order Mr. Salloum to pay the unpaid child support in addition to the funds which his father has paid in respect of matrimonial property expenses since 2015. Mr. Salloum asserts that the payments made by his father were in satisfaction of his child support obligations.

6.2 Ms. Salloum's position

[25] Ms. Salloum acknowledges that Mr. Salloum's payment of the mortgage and insurance should be credited against his child support obligations between January 2012 and July 2015. Ms. Salloum asserts that Mr. Salloum's child support obligations existed and continued from July 2015 forward, and that any payments

Abraham Salloum made with respect to matrimonial home expenses do not satisfy Mr. Salloum's obligation to pay child support. Ms. Salloum says that Mr. Salloum's child support obligation remain unpaid since July of 2015 with the exception of six child support payments he made pursuant to the interim order.

6.3 Child Support issues

[26] With respect to child support the following issues must be addressed:

- a. What were Mr. Salloum's child support obligations between January 2012 and July 2015?
- b. What were Mr. Salloum's child support obligations between July 2015 and the trial?
- c. Do matrimonial home expense payments made by Mr. Salloum's father satisfy Mr. Salloum's child support obligations?

6.4 Mr. Salloum's child support obligations from January 2012 to July 2015

[27] Mr. Salloum's child support obligations and his payment of matrimonial home expenses in this period must be considered because Ms. Salloum acknowledges that Mr. Salloum overpaid in the 2012 to 2015 period, and this overpayment must be addressed when calculating Mr. Salloum's outstanding child support obligations after July of 2015.

[28] The parties are in agreement regarding Mr. Salloum's income from 2012 up to and including 2015 and that Mr. Salloum's child support obligations for that period total \$22,712.00.

[29] The evidence establishes that Mr. Salloum paid the mortgage, property tax, and insurance for the matrimonial home between January 2012 and July 2015. Those amounts total \$62,821.84 (mortgage and property tax at \$1,482.24 per month x 41 months, and home insurance at \$50 per month x 41 months).

[30] Given the mortgage and property tax were the responsibility of both parties, I have credited Mr. Salloum for half of the mortgage and tax payments made during this period. In *Davis v. Davis*, [2022] N.S.J. No. 214, Berliner J, credited a father for half of the value of the mortgage payments he made while his spouse was occupying the matrimonial home.

[31] I, therefore, find that Mr. Salloum's net contribution to expenses between January 2012 and July 2015 for which he should received credit to be \$32,435.92.

[32] Ms. Salloum accepts that Mr. Salloum's matrimonial property related payments made from the date of separation to July 2015 ought to be considered payments in lieu, or in satisfaction of, his child support obligations.

[33] I calculate Mr. Salloum's overpayment (net contributions of \$32,435.92 less unpaid child support of \$22,712.00) for this period to be \$9,723.92.

6.5 Mr. Salloum's child support obligations from July 2015 to present

[34] I compared the child support calculations of the parties and accept the calculations advanced by Ms. Salloum as an accurate calculation of Mr. Salloum's child support obligations since July 2015. Those calculations are set out in the following table:

Year	Income	Child Support Payable	Child Support Paid	Underpayment
2015 (six months)	\$41,065.00	\$3,504.00	\$0.00	\$3,504.00
2016	\$81,094.00	\$13,392.00	\$0.00	\$13,392.00
2017	\$60,870.00	\$10,380.00	\$0.00	\$10,380.00
2018	\$18,824.00	\$3,132.00	\$0.00	\$3,132.00
2019	\$18,175.00	\$2,964.00	\$0.00	\$2,964.00
2020	\$29,668.00	\$5,424.00	\$0.00	\$5,424.00
2021	\$72,753.00	\$12,312.00	\$0.00	\$12,312.00
2022*	\$118,566.24	\$15,645.18	\$4,840.00	\$10,805.00
2023 (to June 30)	\$118,566.24	\$5,991.00	\$968.00	\$5,023.00
Total		\$72,744.18	\$5,808.00	\$66,936.00

* Child support calculated for one child of the marriage after June 30, 2022, as Abraham turned 19 in July 2022. The parties agree that as of his 19th birthday Abraham was no longer a child of the marriage.

[35] Mr. Salloum's net child support obligations from July 2015 to June 2023 total \$66,936.00. Before addressing Mr. Salloum's assertion that he should receive credit for expenses paid by his father, I find that Mr. Salloum should be credited with \$9,723.92, which he overpaid prior to June 2015, leaving an amount payable by Mr. Salloum in the amount of \$57,212.08. I will now determine if the payments made by Mr. Salloum's father ought to offset this amount.

[36] Before considering Mr. Salloum's position regarding payments made by his father, I will address two child related expenses which Mr. Salloum says he made on behalf of his children. Mr. Salloum seeks credit for payments he made for his sons' competitive soccer and membership at the Canada Games Center. These amounts, to the extent to which they were paid by Mr. Salloum, are not payments that can be considered a credit toward child support owing by Mr. Salloum. Mr. Salloum was obliged to pay his proportionate share of special and extraordinary expenses for the boys. These expenses, given Mr. Salloum's evidence that the boys play competitive soccer would qualify as special or extraordinary expenses and cannot be said to satisfy his child support obligations.

[37] I will now determine if the payments made by Mr. Salloum's father satisfy Mr. Salloum's child support obligations.

6.6 Do matrimonial home expense payments made by Mr. Salloum's father satisfy Mr. Salloum's child support obligations?

[38] At trial, Mr. Salloum clarified that he is not seeking credit for an overpayment in respect of the payments that his father made after July 2015. He simply wants any child support that he ought to have paid in that period (net of the pre 2015 credit) to be considered satisfied by way of the payments made by his father. In the alternative, Mr. Salloum asserts that in the event I determine that Ms. Salloum is entitled to an unequal division of matrimonial property I should attribute \$61,296.44 to Ms. Salloum. As previously noted, Mr. Salloum arrives at the figure of \$61,296.44 as being the total amount paid toward matrimonial home expenses (by him and his father) since separation, less the amount of child support he should have paid (net amount of \$157,989.88), less one half of the mortgage payments made during this time (\$96,693.44) leaving a total overpayment of \$61,296.44.

[39] The question to be answered in this case is, whether a spouse who has made not child support or any other payments in support of the children in a given period can say that payments made by a third party in that period in support of the children satisfy that spouse's child support obligations as if those third-party payments had been made by the spouse directly.

6.6.1 Mr. Salloums' reasons why he should get credit for payments made by his father.

[40] Mr. Salloum asserts four reasons why he should get credit for payments made by his father for the following reasons:

- a. Ms. Salloum asked Abraham Salloum to pay matrimonial related expenses on behalf of Mr. Salloum;
- b. His father, Abraham Salloum, told him that payments made by Abraham Salloum would be offset against his inheritance from Abraham Salloum;
- c. The matrimonial home expense payments made by his father, Abraham Salloum satisfy Mr. Salloum's child support obligations as he will ultimately have to repay his father; and,
- d. That Ms. Salloum would obtain a windfall if were to receive child support payments from July 2015 to trial in addition to the matrimonial home expense payments made by his father.

[41] I will address each of Mr. Salloum's reasons and start by addressing the first two reasons together.

Reason #1 - Ms. Salloum asked Abraham Salloum to pay matrimonial related expenses on behalf of her son.

Reason #2 - His father, Abraham Salloum, told him that payments made by Abraham Salloum would be offset against his inheritance from Abraham Salloum.

[42] Mr. Salloum asserts that in July 2015 he told Ms. Salloum that he could no longer pay the matrimonial property related expenses and that Ms. Salloum thereafter asked his father to make those payments. Mr. Salloum says that his father told him that the payments would come out of his inheritance.

[43] The evidence contradicts Mr. Salloum on both assertions.

[44] Ms. Salloum denies that she asked Mr. Salloum's father to assume responsibility for the matrimonial property related expenses. Ms. Salloum deposed that her father-in-law told her that the mortgage payments were for the "boys" which I understand is a reference to her sons. Abraham Salloum on cross examination confirmed that Ms. Salloum did not ask him to make any payments toward matrimonial home expenses.

[45] Abraham Salloum was asked on cross examination about his son's evidence that Abraham Salloum was going to deduct the payments he made from Mr. Salloum's inheritance. Abraham denied making that comment.

[46] Based on the evidence I find that Ms. Salloum did not ask Abraham Salloum to continue Mr. Salloum's payments of matrimonial property expenses in 2015 and further that Mr. Salloum's father, Abraham Salloum did not tell Mr. Salloum that payments made by Abraham Salloum would come out of Mr. Salloum's inheritance.

Reason #3 - The matrimonial home expense payments made by his father, Abraham Salloum satisfy Mr. Salloum's child support obligations as he will ultimately have to repay his father.

[47] Mr. Salloum asserts that he is indebted to his father, Abraham Salloum, for the expenses paid Abraham Salloum after July 2015. Mr. Salloum says that this is a debt he owes and that I should credit him for those expenses as if he had paid them himself.

[48] I am not prepared to off set Mr. Salloum's child support obligations after July 2015 with amounts equal to the payments made by his father during that period. My reasons for doing so are as follows:

- a. Payments made by Abraham Salloum cannot be considered as part of Ms. Salloum's income for the purposes of calculating his child support obligations and cannot therefore be considered as payments made by Mr. Salloum.

- b. There was no agreement or contract in place in July 2015 or any time thereafter that matrimonial property expense payments made by Abraham Salloum constituted a loan to his son.
- c. Mr. Salloum had the means to pay child support following 2015 and did so in 2022 and 2023.
- d. Abraham Salloum paid expenses to assist his grand children and his daughter in law.

[49] I will now expand on each of these conclusions.

A. Payments made by Abraham Salloum cannot be considered as part of Ms. Salloum's income for the purposes of calculating his child support obligations and cannot therefore be considered as payments made by Mr. Salloum.

[50] The starting point in determining whether Mr. Salloum should get credit for payments made by his father must start with a consideration of the objectives of the Federal Child Support Guidelines. These objectives state:

Objectives

1 The objectives of these Guidelines are

- (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
- (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;

(c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and

(d) to ensure consistent treatment of spouses and children who are in similar circumstances.

[51] Child support is right of child and the obligation of the child's parents. Child support is meant to ensure that the child continues to benefit from the financial resources of both parents following separation. Absent exceptional circumstances, not present in this case, the calculation of child support is based on the incomes of the parents, not on the incomes of grand parents or other third parties. The obligation on a parent to pay child support is a personal obligation.

[52] A financial gift in the form of a payment of a matrimonial debt by a grandparent is not imputed as income to the parent whose parent made the payment if the parent did not have an entitlement to the gift (in other words if it was truly gratuitous). Evidence of a parent not being entitled to the payment of debts by his or her parent include evidence that the payment was made by a grandparent in a moment of great turmoil and can be terminated at any moment and if the payment was not to be made for a "sustainable amount of time". (See *K.A.F. v. J.L.F.* 2017 ONSC 4279).

[53] Similarly, In *Fewer v. Fewer* 2016 NSSC 244 Justice MacDonald held that the amount paid directly by an insurer, pursuant to contract of insurance, toward a

parent's mortgage should not be included in that parent's income because the parent has no control over the fact that the money was paid by the insurer and cannot redirect the payment to the support of the children. (See *M. (M.W.) v. M. (H.L.)* 2010 NBCA 86).

[54] In this case there is no dispute that after July 2015 Mr. Salloum did not pay child support and did not pay any other amount in satisfaction of his child support obligations (except for six payments in 2022 and 2023). The evidence establishes that Mr. Salloum's father made gratuitous payments in respect of matrimonial home expenses after July 2015 during a period of turmoil when Mr. Salloum was "on and off". The evidence establishes that Mr. Salloum's father was not obliged to make any of these payments and that he could have stopped the payments at any time, which he ultimately did (except for heating costs) when Ms. Salloum sold the matrimonial home pursuant to a court order.

[55] The evidence does not establish that Mr. Salloum had any basis on which to direct his father to not make the payments he did make and instead to pay the money in a lump sum to Ms. Salloum. The payments were made on a gratuitous basis by a kind grandparent who wanted to ensure his grand children did not suffer because of his son's inability to meet his obligations.

[56] Given these findings I find that Ms. Salloum could not argue that these, the payments made by her father-in-law, should be included in Mr. Salloum's income for the purposes of determining his child support obligations. His father's gratuitous payments do not constitute income in Mr. Salloum's hands.

[57] I find that it follows that if those gratuitous payments over which Mr. Salloum had no control must be excluded in determining Mr. Salloum's income and by extension his child support obligations they must also be excluded in determining if Mr. Salloum has satisfied his child support obligations.

B. There was no agreement or contract in place in July 2015 or any time thereafter that matrimonial property expense payments made by Abraham Salloum constituted a loan to his son.

[58] There is no doubt that Abraham Salloum began paying the matrimonial home mortgage and the insurance in July of 2015. I find that there was no agreement in place between Abraham Salloum and Mr. Salloum that the payments his father made constituted a loan from Abraham Salloum to Mr. Salloum.

[59] Abraham Salloum agreed on cross examination that when he started making the payments toward the matrimonial property expenses in 2015 the only agreement in place was that he would make the payments. He admitted that that was as far as the agreement went at that time.

[60] Mr. Salloum tendered an affidavit sworn by Abraham Salloum. That affidavit does not offer any evidence regarding an agreement that Abraham Salloum was loaning money to his son which would have to be repaid at some point in the future pursuant to agreed upon terms. In that affidavit Abraham Salloum:

- a. Deposes that he has provided support to his son in the form of payment of certain matrimonial property related expenses;
- b. Does not depose that Mr. Salloum asked him to start making payments on his behalf;
- c. Does not depose that he started making payments because Ms. Salloum asked him to do so;
- d. Does not offer a reason why he made these payments;
- e. Does not depose that he was contractually or otherwise legally obligated to make these payments;
- f. Does not depose that he was unable to stop making the payments once he started making the payments;
- g. Does not depose that Mr. Salloum must pay back the support provided; and,

- h. Does not offer any details of any arrangement in place between himself and Mr. Salloum regarding the payments he made.

[61] Abraham Salloum testified that he wants Mr. Salloum to repay to him the money he paid toward the matrimonial home expenses. Abraham Salloum testified that it is fine “at this point in time” if his son cannot repay him.

C. Mr. Salloum had the means to pay child support following 2015 and did so in 2022 and 2023.

[62] The evidence establishes that Mr. Salloum’s father started paying matrimonial property related expenses when Mr. Salloum ceased paying those expenses. In the years that Mr. Salloum paid those expenses (2012 to 2015) his income ranged from a low of \$29,977.00 (2012) to a high of \$43,483.00 (2014). In the years that followed 2015, except for 2018 and 2019, Mr. Salloum’s income exceeded his lowest pre-2015 income. As noted in the child support calculation chart, Mr. Salloum’s income in 2016 was \$81,094.00, in 2017 was \$60,870.00, in 2021 was \$72,753.41 and in 2022 was \$118,566.24. Mr. Salloum was able, prior to July 2015, to pay matrimonial property related expenses for the good of his children. He had the means to do so in at least five of the years that followed 2015 and chose not to do so. I find that Mr. Salloum, without explanation and without justification, failed to pay child support for his children after 2015 when he had the

means to do so and, further, failed to continue to pay the matrimonial property related expenses for the good of his children when he had the means to do so. Mr. Salloum cannot look to his father's goodwill and say that this satisfied his obligations which he failed to honour.

[63] This court issued a consent interim child support order on January 26, 2022 that required Mr. Salloum to pay child support of \$968.00 per month. Mr. Salloum consented to that order. Mr. Salloum paid this amount commencing in February of 2022 and made five payments. He stopped making payments except for one further payment in 2023. On cross examination Mr. Salloum was asked why he stopped making payments pursuant to the order in June 2022, to which he responded that he did not know why he stopped. Mr. Salloum did not take the position during his cross examination that he stopped making the payments because his father was making payments that satisfied his child support obligations. It would have been inconsistent for Mr. Salloum to agree to the issuance of an order requiring him to pay child support if it was his position that his father's payments satisfied his obligation to pay child support. Further, it is important to note, that Abraham Salloum continued to pay the mortgage, property tax, heating and insurance costs of the matrimonial home after the consent interim order was issued and while his son made six child support payments. This fact establishes that Abraham

Salloum's payments were not meant to be in satisfaction of his son's child support obligations but rather were payments made by a generous grandparent to ensure that his grandsons had a home.

D. Abraham Salloum paid expenses to assist his grandchildren and his daughter in-law

[64] On cross-examination, Abraham Salloum confirmed that he paid the heating costs at the matrimonial property and thereafter at Ms. Salloum's new residence (in 2021), because he wanted to make sure his grandsons were looked after and their mother as well.

[65] With respect to why he started paying the mortgage, Mr. Salloum's father, Abraham Salloum, testified that he was a guarantor on the mortgage and that his son did not have a steady income and was "on and off" at the time. Abraham Salloum acknowledged that Ms. Salloum could not carry on with the house so he took on the responsibility and that hopefully Mr. Salloum would repay him down the road. Mr. Salloum's father testified that he had a responsibility to take over the payments to make sure that the children could continue living in their home.

Abraham Salloum confirmed that all payments he made after 2015 were made directly to the bank, fuel company or insurer; none of the payments were made to Ms. Salloum.

Conclusion

[66] I find that Abraham Salloum commenced paying for matrimonial property expenses for the following reasons: he was a guarantor on the mortgage, his son could no longer make these payments as he was “on and off”, Ms. Salloum was not in a position to cover these costs herself and it was in the best interest of his grandsons and their mother for him to cover these costs to ensure his grandsons had a home. I find that Abraham Salloum did not start making these payments to satisfy his son’s child support obligations; there is no evidence that Abraham Salloum intended that the payments he was making in respect of the matrimonial property were satisfying his son’s child support obligations. I find that there was no agreement in July 2015 between Abraham Salloum and Mr. Salloum in which Abraham Salloum understood his son’s child support obligations and by which Abraham Salloum agreed to step into Mr. Salloum’s shoes and make payments in satisfaction of Mr. Salloum’s child support obligations. The fact that Mr. Salloum continued to pay Ms. Salloum’s heating bill after she moved to a new residence is consistent with Abraham Salloum wanting to take care of his grandsons and their mother without regard to his son’s child support obligations.

[67] This finding is consistent with the nature and purpose of child support payments. Ms. Salloum had primary care of the parties’ children since separation

and certainly in July of 2015 when Mr. Salloum stopped his payment of expenses related to the matrimonial home. There is no doubt that on and after July of 2015 Mr. Salloum was bound to pay child support in respect of his two sons. Except for six payments, Mr. Salloum did not pay child support neither did he pay any household expenses. Mr. Salloum failed to discharge his statutory obligations to his children. His father paid some of those expenses. His father had no obligation to do so but did so out of a spirit of generosity. The fact that his father stepped up and paid matrimonial home expenses does not satisfy Mr. Salloum's obligations to pay child support.

Reason #4 - That Ms. Salloum would obtain a windfall if she were to receive child support payments from July 2015 to trial in addition to the matrimonial home expense payments made by his father.

[68] With respect to the alleged windfall accruing to Ms. Salloum if I order that Mr. Salloum pay the outstanding child support, I do not accept that a windfall will necessarily result. Mr. Salloum had a personal obligation to pay child support and except for six payments he failed to do so. Ms. Salloum is entitled to that child support. Abraham Salloum was not under any duty to pay any expenses in respect of the matrimonial property. Further, the evidence does not establish any agreement between Mr. Salloum and his father with respect to the repayment of the funds Abraham Salloum has paid. Mr. Salloum may or may not have to repay

those funds. In any event, the fact that Abraham Salloum paid expenses for the good of his grandchildren does not mean that Ms. Salloum should not be paid child support.

[69] I will not consider Mr. Salloum's father's payments made after July 2015 as payments that satisfy Mr. Salloum's personal obligation to pay child support.

Those payments will not be offset against child support that Mr. Salloum ought to have paid since July 2015.

[70] I find Mr. Salloum's child support owing from July 2015 to June 2023 totals \$66,936.00. As noted, this amount should be reduced by his pre-July 2015 overpayment of \$9,723.92. This leaves an outstanding child support obligation by Mr. Salloum in the amount of \$57,212.08. I direct that this amount be addressed in the equalization of matrimonial property.

[71] With respect to prospective child support Mr. Salloum agrees, and I order him to pay child support in respect of Yanni in the monthly amount of \$998.00 based on his income of \$118,566.00. These payments will be made on the first day of the month through the Maintenance Enforcement Program.

[72] I direct Mr. Salloum to provide to Ms. Salloum on or before May 1st of each year his annual income tax return together with all attachments and the associated Notice of Assessment.

[73] Mr. Salloum has asked that I include a review clause permitting a review of child support to address Yanni's status as a child of the marriage. I am not prepared to make such an order. Mr. Salloum is free at any time to advance a variation application to change child support if he can establish a material change in circumstances. I see no reason to impose a review clause on the parties.

7 Property Division

[74] The parties agree that the matrimonial property should be equally divided.

[75] The following particulars explain the parties' matrimonial property:

- a. RRSPs. Ms. Salloum had two RRSPs prior to the marriage. She initially requested that she be granted the full amount of these RRSPs without equalization. At trial she agreed that the RRSPs should be included in the equalization of the matrimonial property. The parties agree that the RRSP amount included in the equalization should be the full amount reduced by 30%.

- b. RESP. Both parties took money from the childrens' RESP which they each acknowledge they must repay: Mr. Salloum took \$5,000.00 and Ms. Salloum took \$4,300.00.
- c. Tax Returns. The parties each had an Income Tax refund in 2011 the full amount of these returns is included in the equalization, but it is understood that these funds are long since dispersed.
- d. Bank Accounts. Ms. Salloum had two bank accounts at the time of separation. The amounts of these two accounts will be included in the equalization.
- e. Insurance Policy. Abraham Salloum took out an Ivari Life Insurance policy on Mr. Salloum. The parties agree that this policy has a cash surrender value of \$2,833.44.
- f. Matrimonial Home. As noted, the matrimonial home was sold in 2022. The proceeds from the sale net of all sale costs are \$363,924.00.
- g. The parties owned two vehicles at separation. I do not have valuations of either vehicle. Mr. Salloum deposed that Ms. Salloum was in possession of the parties' 2009 Nissan Murano between separation and September of 2013 and that during that time he paid the monthly car loan payment of approximately \$600.00 per month. Mr. Salloum

deposed that Ms. Salloum turned that vehicle over to Mr. Salloum in September of 2013, the vehicle was repossessed about a year later. Ms. Salloum does not challenge these facts. Mr. Salloum's also submits that the parties also owned a 2003 Nissan Murano at separation and that that vehicle had nominal value at separation. Mr. Salloum will receive credit for the car payments he made on the Nissan Murano while it was in Ms. Salloum's possession. This credit consists of 21 payments (January 2012 to September of 2013) at \$600.00 per payment and totals \$12,600.00. As neither party has valued the two Nissans and neither seeks to have these vehicles addressed in the equalization and because it appears that both parties had roughly equal benefit of the 2009 Nissan post separation neither vehicle will not be included in the equalization.

- h. Mr. Salloum asserts that post separation he gave Ms. Salloum two payments of \$500.00 each. Ms. Salloum does not deny that these payments were made in this amount. Mr. Salloum will receive a \$1,000.00 credit for these two payments.

[76] I direct that the outstanding child support be paid to Ms. Salloum from Mr. Salloum's share of the matrimonial property.

[77] I also direct Ms. Salloum and Mr. Salloum's share of the matrimonial property be reduced by \$9,300.00 (\$ 5,000.00 from Mr. Salloum's share and \$4,300.00 from Ms. Salloum's share) and that this amount be released to Ms. Salloum who is ordered to pay those funds back to the RESP.

[78] The following table confirms the division of matrimonial property.

Division of assets held at Separation and post Separation payments not addressed in Child Support Analysis (excluding matrimonial property with current values for RRSPs and Insurance Policy)					
	ASSET	VALUE	PET.	RESP.	COMMENT
1	RRSP 6914	\$3,094.00	X		Net of 30% tax
2	RRSP 6171	\$17,433.00	X		Net of 30% tax
3	Savings Account 4057	\$6,601.00	X		Petitioner's Account
4	Chequing Account	\$2,831.94	X		Petitioner's Account
5	Respondent's Tax Return 2011	\$2,373.57		X	
6	Petitioner's Tax Return 2011	\$5,000.00	X		
7	Cash Surrender value of Ivori Life Insurance Policy	\$2,833.43		X	
8	TOTAL Assets	\$40,166.94	\$34,959.94	\$5,207.00	
9	Equally divided assets		\$20,083.47	\$20,083.47	
10	Equalization payment required to equally divide assets held at separation		- \$14,876.47	+\$14,876.47	
11	Credit to Mr. Salloum for car payments (\$12,600.00) and two payments of \$500.00			+\$13,100.00	
Division of proceeds of sale less equalization payment, credit to Mr. Salloum and payment of outstanding child support					
	ASSET	VALUE	PET.	RESP.	COMMENT
1	Sale proceeds of Matrimonial Home (23 Inverness)	\$363,924.00	\$181,962.00	\$181,962.00	Plus, interest to be equally allocated between the parties when funds are released

2	Equalization payment by Ms. Salloum	\$14,876.47	- \$14,876.47	+\$14,876.47	
3	Credit to Mr. Salloum for car payments and two \$500.00 payments.	\$13,100.00	-\$13,100.00	+\$13,100.00	
4	Outstanding child support owed by Mr. Salloum	\$57,212.08	+\$57,212.08	-\$57,212.08	
5	RESP to be repaid by both parties		-\$5,000.00	-\$4,300.00	The amount of \$9,300.00 is to be taken from the sale proceeds and paid to Ms. Salloum who is ordered to pay those funds (\$9,300.00) to RESP with confirmation provided to Mr. Salloum's lawyer
6	Payment to each party from the sale proceeds (excluding RESP repayment)		\$206,197.61	\$148,426.39	

[79] To evenly apportion the matrimonial property and address the outstanding child support and the required RESP repayment, I direct that Ms. Salloum receive \$206,197.61 from the proceeds of sale of the matrimonial home and that Mr. Salloum receive \$148,426.39 and \$9,300.00 be paid to Ms. Salloum for repayment to the RESP.

8 Costs

[80] If the parties are unable to resolve the issue of costs, I will receive written submissions regarding costs within 45 days of this decision.

Daniel Ingersoll, J.