

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *J.L. v. A.H.*, 2024 NSSC 96

Date: 20240501

Docket: SFHPSA-126825

Registry: Halifax

Between:

J.L.

Applicant

v.

A.H.

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Samuel Moreau

Heard: December 1, 2023, in Halifax, Nova Scotia

Written Decision: May 1, 2024

Subject: Child support, Table amount, Special or extraordinary expenses, Disclosure, Undue hardship, Retroactive Support, Unreasonable delay, Blameworthy conduct, Child's circumstances, Credibility, non-recurring payments, Life Insurance Policy, Birth Registration, change of surname, Common law relationship

Summary: The Court addressed the Applicant's claim of Undue Hardship, Determination of Income, Prospective and Retroactive child support, the parties' respective contributions to special or extraordinary expenses, registration of a parent on the child's birth registration document(s) and change of the child's surname.

Issues: (1) Whether the father's claim that payment of child support in the guideline amount would cause an undue hardship to him;

- (2) The father's income for the years 2022 and 2023;
- (3) The appropriate quantum of prospective child support;
- (4) Special or extraordinary expenses payable by each party;
 - a. the appropriate contribution of each party; and
 - b. childcare costs.
- (5) Whether retroactive child support should be ordered and if so, in what amount;
- (6) Whether a life insurance policy securing payment of the father's child support obligation should be established;
- (7) Whether the father's name should be added to A.'s birth certificate, confirming him as her biological father; and
- (8) Whether A.'s surname should be changed.

Result:

The Applicant's claim of Undue Hardship was dismissed. The Court determined the Applicant's prospective and retroactive child support obligation. A change of the child's surname was ordered.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

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Date: 20240405

Docket: SFHPSA-126825

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Between:

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Applicant

v.

A.H.

Respondent

Judge: The Honourable Justice Samuel Moreau

Heard: December 1, 2023, in Halifax, Nova Scotia

Released to the Parties: April 5, 2024

Counsel: Judith Schoen for J.L.
Noelle Yhard for A.H.

By the Court:

Overview

[1] These parties were in a common law relationship from October, 2020, to July 1, 2022. They are the parents of the child, A., born in 2021.

[2] The parties were first before this Court in December, 2022, for an Interim Hearing which addressed several issues pertaining to A., including day to day care, parenting time, decision making, child support and relocation of the child's ordinary place of residence. Exclusive possession of the jointly owned home was also addressed.

[3] Immediately after the Interim Hearing, an Interim Order was granted, (issued January 13, 2023). J.L., the father, was ordered to pay child support commencing February 1, 2023, and continuing on the first day of each month thereafter. An amount of child support payable was not specified as the father had failed to provide the required financial information. The Interim Order compelled that he file a sworn Statement of Income with the Court and the mother's legal counsel no later than January 6, 2023.

[4] As per the provisions of the Consent Order also issued on January 13, 2023, the parties seemingly reached final agreement on all issues (they agreed that A.,

remain in the mother's primary care and the child's ordinary place of residence be in the Province of New Brunswick. Paragraphs 8 to 19 sets out the arrangements for the father's parenting time.) with the exception of child support. Paragraphs 25 and 26 of the Consent Order states:

Child Support

25. Child support remains a live issue to be determined by this Honourable Court.
26. J.L. shall provide A.H., through counsel, a sworn statement of income which shall attach his 2021, 2020 and 2019 income tax returns and notices of assessment, his last pay stub in December 2022, and three recent pay stubs. This shall be provided no later than January 6, 2023.

[5] The parties have been unable to resolve the issue of child support, largely because of their inability to reach consensus on the quantum of the father's income (for the purposes of his child support obligation), for the years 2022 and 2023.

The Trial

[6] During the preliminary stage of the trial, I addressed the mother's motion to strike portions of the father's reply Affidavit sworn November 20, 2023. The father objected to the mother's motion to strike. I did not strike the impugned portions, but indicated I would consider the mother's motion when analyzing the evidence and the appropriate weight, if any, to be assigned to same. In my analysis of the evidence, I have done so.

[7] The Court heard viva voce evidence from the parties by way of cross examination.

Issues

I have been asked to resolve the following issues:

1. Whether the father's claim that payment of child support in the guideline amount would cause an undue hardship to him;
2. The father's income for the years 2022 and 2023;
3. The appropriate quantum of prospective child support;
4. Special or extraordinary expenses payable by each party;
 - the appropriate contribution of each party; and
 - childcare costs.
5. Whether retroactive child support should be ordered and if so, in what amount;
6. Whether a life insurance policy securing payment of the father's child support obligation should be established;
7. Whether the father's name should be added to A.'s birth certificate, confirming him as her biological father; and
8. Whether A.'s surname should be changed.

Undue Hardship

[8] In his statement of Undue Hardship Circumstances sworn September 19, 2023, the father advances his claim on the basis of being responsible for an

unusually high level of debts, which he says were reasonably incurred to support himself, the mother and A. prior to separation. He also submits that he has a legal duty to support a dependent child within his household.

[9] Section 10 of the *Provincial Child Support Guidelines* directs my analysis on this issue:

Undue hardship

10 (1) On the application of a parent, a court may award an amount of child support that is different from the amount determined under any of Sections 3 to 5, 8 or 9 if the court finds that the parent making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.

Circumstances that may cause undue hardship

(2) Circumstances that may cause a parent or child to suffer undue hardship include the following:

- (a) the parent has responsibility for an unusually high level of debts reasonably incurred to maintain the parents and their children prior to the separation, where the parents cohabited, or to earn a living;
- (b) the parent has unusually high expenses in relation to exercising parenting time or interaction with a child;

Clause 10(2)(b) amended: O.I.C. 2017-143 N.S. Reg. 83/2017

- (c) the parent has a legal duty under a judgment, order or written separation agreement to support any person;
- (d) the parent has a legal duty to support a child, other than a child to whom the order relates, who is
 - (i) under the age of majority, or
 - (ii) the age of majority or over but is a dependent child within the meaning of clause 2(c) of the Act; and
- (e) the parent has a legal duty to support any person who is unable to obtain the necessaries of life due to an illness or disability, including a dependent parent within the meaning of clause 2(d) of the Act.

Standards of living must be considered

- (3) Despite a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of the opinion that the household of the parent who claims undue hardship would, after determining the amount of child support under any of Sections 3 to 5, 8 or 9, have a higher standard of living than the household of the other parent.

Standards of living test

- (4) In comparing standards of living for the purpose of subsection (3), the court may use the Comparison of Household Standards of Living Test referred to in Schedule II.

Reasonable time

- (5) Where the court awards a different amount of child support under subsection (1), it may specify, in the child support order, a reasonable time for the satisfaction of any obligation arising from circumstances that cause undue hardship and the amount payable at the end of that time.

Reasons

- (6) Where the court makes a child support order in a different amount under this Section, it must record its reasons for doing so.

[10] In *Corbett v McEachern*, 2017 NSSC 108, Justice Forgeron provides a synopsis of case authorities on undue hardship applications. At Paragraphs 24 to 26, she writes:

Law

[24] Section 10 of the *Child Support Guidelines* provides the court with the discretionary authority to reduce the amount of child support in circumstances where the payor would suffer undue hardship. Section 10 specifies a two stage test. First, the payor must prove that they would suffer undue hardship in the circumstances, including the non-exhaustive list of examples outlined in s.10(2). Second, if circumstances of undue hardship are proven, then the court must compare household standards of living. If the payor has a lower standard of living after the payment of child support, then the court may reduce the child support payable. However, the court can also refuse to reduce child support even where there is a lower household standard of living: **Hanmore v. Hanmore**, 2000 ABCA 57 (Alta. C.A.), at para. 9, leave to appeal to the Supreme Court of Canada refused at [2000] S.C.C.A. No. 182 (S.C.C.)

[25] In **Pretty v. Pretty**, 2011 NSSC 296 (N.S.S.C.), this court reviewed applicable legal principles to a claim of undue hardship at para. 78, which provides, in part, as follows:

- A narrow definition of "**undue hardship**" must be adopted to ensure that the objectives of the *Guidelines* will not be defeated. Only exceptional circumstances will justify a reduction in child support: **Hanmore v. Hanmore**, *supra*, at para 10.
- The burden of proof is on the person claiming the relief: **Hanmore v. Hanmore**, *supra*, at para 11.
- "Hardship" is defined as "difficult, painful suffering", and "undue" is defined as "excessive, disproportionate." To succeed, one must prove that the hardship is exceptional, excessive, or disproportionate in the circumstances. This produces a "very steep barrier" to a successful claim: **Hanmore v. Hanmore**, *supra*, at paras 11 and 17, and quoting from **Barrie v. Barrie** (1998), 1998 ABQB 291 (CanLII), 230 A.R. 379 (Alta. Q.B.).
- A departure from the *Guidelines* for **undue hardship** should be the "exception and not the norm": **Hanmore v. Hanmore**, *supra*, at para. 13, and quoting from **Hansval v. Hansval**, 1997 CanLII 11079 (SK KB), [1998] 4 W.W.R. 202 (Sask. Q.B.).
- Parents are expected to exhaust all efforts to increase their incomes and decrease discretionary expenses before consideration can be given to reduce a child support obligation: **McPhee v. Thomas**, 2010 NSSC 367 (N.S. S.C.).

[26] In **T.(L.C.) v. K.(R.)**, 2017 BCCA 64, Garson J.A. held that the trial judge erred in granting an undue hardship claim because the trial judge did not recognize the high threshold required for such a finding. The Court of Appeal noted that "[t]he test for undue hardship requires that the hardship be severe and unreasonable": para 83.

[11] The father has the burden of proving he will suffer an undue hardship if I order him to pay child support as per Section 3 of the *Child Support Guidelines*.

[12] The father has repartnered. His partner, A.L. and her son, O., moved into the father's home in the latter part of 2022. O. is not the father's biological child. A.L. gave birth to L. in October, 2023. L. is the biological son of the father.

[13] A.L. was employed when she began cohabiting with the father and continues to be by the same employer. She is currently on maternity leave and according to the father's Affidavit evidence, "anticipated" to be on maternity benefits until her return to work in November, 2024.

[14] As articulated by the case authorities, there are two steps in analyzing an undue hardship claim. First the father must demonstrate he would suffer an undue hardship if ordered to pay child support consistent with section 3 of the *Child Support Guidelines*. I am satisfied the father has not met the burden as required by the first step for the following reasons:

1. The father has failed to provide any cogent evidence which corroborates or supports his claim of being responsible for an unusually high level of debt incurred during the relationship: At line 36 of his Statement of Expenses sworn September 19, 2023, the father claims a debt of \$40,000 in legal costs which was merged into his home mortgage. He says the debt (one half of his total legal costs incurred since separation) was a result of the mother having “kidnapped” A. No evidence was tendered to support this assertion, neither in this trial nor the Interim Hearing held in December, 2022;
2. The father is under no legal duty to support O.;
3. The father earns a substantially higher income than the mother. (The father’s income - \$82,190.88, The mother’s income- \$47,392.80). Additionally, it is reasonable to make the inference based on the available evidence that A.L.’s employment situation is secure as she is on maternity leave from the same employer as when she began cohabitating with the father; and
4. A.L. currently receives E.I. benefits in the approximate amount of \$1,874 per month. I conclude she has some ability to contribute to the household expenses. Upon her return to work, her ability to contribute will be enhanced.

[15] The father bears a legal duty to support his newborn son, L. However, his evidence is bereft of any information with respect to expenses he assumes and relating to L.

[16] My analysis of the father's financial circumstances also raises the issue of credibility. The father testified he is currently employed as a mechanic and earns \$37 per hour. He says his average work week is 40 hours and he takes two weeks off per year for an extended period of parenting time with A. The father's credibility pertaining to his evidence on the extended period of parenting time is problematic. During his cross examination it was highlighted that he worked and earned income during the same period of parenting time in 2023.

[17] Additionally, his self serving responses to many of Counsel's questions, the inaccurate claim made in his 2022 Income Tax Return regarding O. and the lack of clarification with respect to his 2022 income (including his 2022 income tax return tendered as Court Exhibit 3 which appears to be incomplete) leads me to the conclusion that portions of his evidence were provided in an evasive and strategic manner. *Baker-Warren v Denault*, 2009 NSSC 59.

[18] I find the father has not met the burden of proving that he will suffer an undue hardship if ordered to pay child support as per Section 3 of the *Child Support Guidelines*. The father's claim for undue hardship is dismissed.

Determination of the Father's Income

Sections 15, and 16 of the *Provincial Child Support Guidelines*, reads as follows:

Income

Determination of annual income

15 (1) Subject to subsection (2), a parent's annual income is determined by the court in accordance with Sections 16 to 20.

Agreement

(2) Where the parents agree in writing on the annual income of a parent, the court may consider that amount to be the parent's income for the purposes of these Guidelines if the court thinks that the amount is reasonable having regard to the income information provided under Section 21.

Calculation of annual income

16 Subject to Sections 17 to 20, a parent's annual income is determined using the sources of income set out under the heading "(Total Income)" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.

Section 16 replaced: O.I.C. 2000-554, N.S. Reg. 187/2000; amended; O.I.C. 2007 321, N.S. Reg. 294/2007.

The father's 2022 income

[19] Court Exhibit 1 confirms the father's total income for 2022 as being \$95,063 (his notice of assessment for the 2022 tax year). At Paragraph 11(2) of his Affidavit sworn November 6, 2023, the father says that in March, 2022, he received a "pension buyout" in the amount of \$20,000.

[20] Court Exhibit 3, the father's 2022 Income Tax Return, has his total income for 2022 (box 150 000) as \$95,064.90, comprised of the following:

Employment Income	\$75,263.93
Other Employment Income	\$269.82
Other Income	\$19,531.15

Box 20700 of the same Income Tax Return states the amount of \$19,853.05 under the heading Registered Pension Plan (RPP) deduction. It appears the \$19,853.05 at box 20700 is the “\$20,000” “pension buyout” referenced in Paragraph 11(2) of the father’s Affidavit. The Affidavit provides no further clarification.

[21] The amount indicated as “other income” at box 13000., \$19,531.15, also has a statement on the same line indicating “SEE LIST”. I infer that the LIST is meant to provide clarification or the source of the \$19,531.15 amount. The LIST is not provided with or within Court Exhibit 3. As aforementioned the father’s 2022 Income Tax Return tendered as Court Exhibit 3 appears to be incomplete.

[22] I infer from the sum of the father’s evidence that in his view his child support obligation for the year, 2022, should be based on an amount lower than \$95,063.

[23] Other than the contents of Paragraph 11(2) the father provides no information or clarification on the amounts listed in his 2022 Income Tax Return which comprise his total income for that year.

[24] I conclude the reasonable inference (given the available evidence) is that the father objects to one or both amounts (\$19,853.15 and 19,531.15) being included in the calculation of his 2022 income for child support purposes on the basis that

one or both are non-recurring payments. I emphasize that the father's evidence on this issue is imprecise and understated.

[25] The mother addresses the father's 2022 income at Paragraphs 13 to 17 of her Affidavit sworn November 15, 2023, contained in Court Exhibit 2.

[26] A review of the jurisprudence pertaining to non-recurring payments establishes that the decision on including or excluding this form of income is within the trial judge's discretion. *Walsh v Walsh*, 2008 CanLII 586 (ONSC). In *Leet v Beach*, 2010 NSSC 433, at Paragraph 56, A.C.J. O'Neil references a helpful list of considerations articulated by Justice Conrad in *Ewing v Ewing*, 2009 ABCA 227:

[56] The Alberta Court of Appeal in *Ewing v. Ewing*, 2009 ABCA 227 was called upon to decide, whether the capital gains resulting from the sale of corporate shares resulted in income for purposes of calculating child support. Madam Justice Conrad delivered the decision on behalf of the Court. Her judgment is quoted extensively supra at paragraph 46. She provided a helpful list of considerations for a court when deciding whether the section 16 calculation is 'fair' having regard to non-recurring gains and patterns of income:

.....

35 While the courts have the discretion to determine whether the section 16 income calculation is fair, having regard to non-recurring gains and patterns of income, the following, although not an exhaustive list, outlines some of the matters a court might consider:

Is the non-recurring gain or fluctuation actually in the nature of a bonus or other incentive payment akin to income for work done for that year?

Is the non-recurring gain a sale of assets that formed the basis of the payor's income?

Will the capital generated from a sale provide a source of income for the future?

Are the non-recurring gains received at an age when they constitute the payor's retirement fund, or partial retirement fund, such that it may not be fair to consider the whole amount, or any of it, as income for child support purposes?

Is the payor in the business of buying and selling capital assets year after year such that those amounts, while the sale of capital, are in actuality more in the nature of income?

Is inclusion of the amount necessary to provide proper child support in all the circumstances?

Is the increase in income due to the sale of assets which have already been divided between the spouses, so that including them as income might be akin to redistributing what has already been shared?

Did the non-recurring gain even generate cash, or was it merely the result of a restructuring of capital for tax or other legitimate business reasons?

Does the inclusion of the amount result in wealth distribution as opposed to proper support for the children?

[27] As indicated the evidence available to me concerning the stated amounts references a “pension buyout”, which I understand to be the figure in the amount of \$19,853.05. In the oft quoted case *Marinangeli v Marinangeli*, (2003), 2003 CanLII 27673 (ONCA), the Court states at Paragraph 30:

[30] While the courts have differed in their approach when dealing with non-recurring income, the recurring theme is that the child of the marriage should benefit from a sudden increase in lifestyle and money available to the family.

[28] At Paragraph 7 of *Leet v Beach*, Supra, A.C.J. O’Neil summarizes Justice Jollimore’s comments in *Stevenson v Kuhn*, 2010 NSSC 398 on the principles of child support:

[7] The principles discussed in the following must be applied within the broader context of the four core principles that are the basis of child support jurisprudence. These were succinctly stated

by Justice Jollimore in *Stevenson v. Kuhn*, 2010 NSSC 398 at paragraph 68. They are (1) child support is the right of the child; (2) the child's right to support survives the breakdown of the relationship between the child's parents; (3) child support should, as much as possible, perpetuate the standard of living the child experienced before the parents' relationship broke down; and (4) the amount of child support varies, based upon the parent's income. (See *Willick*, 2994 CanLII 28 (S.C.C.) and *Richardson*, 1987 CanLII 58 (S.C.C.)).

[29] I am satisfied that A. should benefit from the seeming non-recurring payment(s) to the father in 2022. I find (based on the evidence available to me), this discretionary judgment to be in A.'s best interests. The father's child support obligation for the year, 2022, shall be based on an income of \$95,063.00.

The father's 2023 income

[30] At Paragraph 10 of his November 6, 2023, Affidavit, the father calculates his year-to-date income for 2023 at \$75,000, which includes vacation pay. His calculations are based on his earnings for the pay period up to October 6, 2023. His Statement of Income sworn September 19, 2023, and found at Court Exhibit 1, Tab 3, states a total annual income of \$82,190.88. Line m.) of the same document indicates a monthly deduction of \$200 for union dues.

[31] The mother calculates the father's 2023, income at the amount of \$79,772 with an annual deduction of \$861 in union dues, resulting in the figure of \$78,911.

[32] Each party attributes a different amount to the deduction for union dues.

[33] On each of the pay stubs provided by the father a number of deductions are listed. At Paragraph 8 of his Reply Affidavit sworn November 20, 2023, the father states “the union dues being comprised of the deductions noted as UNION, BLDG FND, TRNG FND and STABLE”. The father calculates his total annual deduction for union dues at the amount of \$2,400.

[34] Regarding the deductions listed on the father’s pay stubs, the \$17 deduction with the heading UNION is comprehensible. However, the three other categories which the father claims as “union dues” (BLDG FND, TRNG FND, STABLE) are not. Additionally, the father provides no explanation or meaning for these acronyms.

[35] The father commenced his current employment in March, 2022. His Affidavit evidence indicates that previous to his current employment he worked for a “variety of employers.” His 2022 income tax return states the amount of \$1,912.11 at box 21200, under the title, Annual union, professional, or like dues. His T4 slip for 2022 relating to his current employer states union dues in the amount of \$1,805.08.

[36] Based on the available evidence I conclude that the deduction relating to the father’s union dues for the year 2023, shall be in the amount of \$2,400.

[37] I find the father's child support obligation for the year, 2023, shall be based on an income of \$82,190.88.

Prospective Child Support

[38] I find that the father's prospective child support obligation shall be in the amount of \$705.60 per month based on an annual income of \$82,190.88.

Section 7 Expenses

[39] The mother requests that the parties share Section 7 expenses proportionally. Currently, the mother does not incur any costs relating to childcare as her subsidy covers that expense. The subsidy is subject to an annual review and therefore may change. The mother seeks a provision in the Order to the effect that either party may make an application to the New Brunswick Court of Kings' Bench, Family Division, for a review of childcare costs without the necessity of having to establish a material change in circumstances.

[40] Childcare costs incurred as a result of the mother's employment is an expense contemplated in Section 7(1)(a) of the *Child Support Guidelines*. The requested provision shall form part of the Order.

[41] The Order will also indicate that the parties shall proportionally share any uninsured health expenses relating to A. which exceeds \$100 per year. The parties

will consult on any uninsured health expense and must agree on the expense before it is incurred. Neither party shall unreasonably withhold their consent.

[42] Their respective contributions to any uninsured health expenses exceeding \$100 per year and any agreed upon extracurricular expenses shall be as follows:

The father » 63% (income=\$82,1990.88)

The mother » 37% (income=\$47,392.80)

Retroactive Child Support

[43] The mother advances a claim for retroactive child support for the period July 1, 2022, to November 30, 2023. The father objects to this claim. In analyzing this claim, I reference the seminal case *D.B.S. v. S.R.G.* SCC 37 and the four factors to consider when determining a request for retroactive child support:

Reasonable Excuse for why Support was not sought Earlier

[44] The mother made an application for child support almost immediately after the parties separated. I am satisfied there was no delay in her efforts to seek child support from the father.

Conduct of the Payor Parent

[45] As noted, these parties were before me for an Interim Hearing in December, 2022. At the conclusion of the hearing, I ordered the father to pay child support to

the mother but was unable to assign a specific amount payable as he failed to provide the required financial information. Earlier in this decision I referenced Paragraphs 25 and 26 of the Consent Order issued on January 13, 2023. A more fulsome version of the father's 2022 income tax return was only provided on the day of the trial (tendered and marked as Court Exhibit 3, which as stated appears to be incomplete). The previous version provided in his pretrial filings, consists of three pages. I am satisfied the evidence demonstrates that the father behaved in a blameworthy fashion by not disclosing his financial information in a timely manner to the mother and to the Court.

Circumstances of the Child

[46] A.'s circumstances have changed as a result of her parent's separation. It is undisputed that the father's child support payments in 2022 were nominal at best and below the guideline amount in 2023. A retroactive award would be of benefit to A.

Hardship Occasioned by a Retroactive Award

[47] I am not convinced that the imposition of a retroactive award for child support would cause hardship to the father. The father's annual income is much higher than the mother's (by almost \$35,000). The father's household expenses and expenses related to L. are/can be offset by contribution(s) from his partner, A.L. I

accept the mother moved in with her parents subsequent to separation because of financial necessity. Based on the totality of the evidence I am satisfied an award of retroactive child support, would not result in hardship to the father.

Decision on the Mother's Request for Retroactive Child Support

[48] I find a review of the four factors enunciated in *D.B.S. v. S.R.G.* supra, compels that an award of retroactive child support be ordered. During closing summations Counsel for the father indicated no disagreement with respect to the amounts of child support paid by him and listed in Paragraph 43 of the mother's Affidavit (Court Exhibit 2, Tab 1).

[49] In 2022 the father paid \$550. In 2022, (based on an income of \$95,063) he should have paid \$4,880.88 in total. He owes \$4,330.88 for 2022. In 2023 he paid the total amount of \$6,173, up to November 2nd. In 2023, (January 1 to November 2) (based on an income of \$82,190.88) he should have paid \$7,761.60 in total. He owes \$1,588.60 for 2023.

[50] I find for the period July 1, 2022, to November 2, 2023, the father owes the mother the total amount of \$5,919.48 in retroactive child support.

Life Insurance Policy

[51] The mother requests a provision in the Order which would require the father to maintain a life insurance policy naming him as the insured individual and her as irrevocable beneficiary for so long as he is obligated to pay child support for the benefit of A. The mother further requests that the father be responsible for payment of the premiums associated with the policy and that he provide confirmation the premiums are paid up to date.

[52] The father did not provide a response to this request. Paragraph 12 of the *Provincial Child Support Guidelines* reads:

Security

12 The court may require in a child support order that the amount payable under the order or interim order be paid or secured, or paid and secured, in the manner specified in the order, in accordance with Section 36 of the Act.

The “Act” as referenced in Paragraph 12 is the *Parenting and Support Act*.

Paragraph 36 of that legislation states:

Security for support

36 (1) Where a court of competent jurisdiction orders the payment of support pursuant to this or any other enactment, the court may require the person obliged to pay support to give such security, including a charge on property, that the court orders, for the performance of the order respecting support.

(2) A court which requires a person to give security pursuant to subsection (1), may, on application, direct the sale or other realization of the security upon such terms and conditions as the court considers appropriate. R.S., c. 160, s. 36; 2015, c. 44, s. 35.

[53] I am satisfied it is in A.’s best interests that the relief sought as per Section 12 of the *Provincial Child Support Guidelines* be granted. The father shall

maintain a life insurance policy in the amount of \$100,000 with himself as the insured party and naming the mother as irrevocable beneficiary for so long as he is ordered to pay child support for A.'s benefit. He shall be responsible for payment of the premiums and upon request shall provide confirmation in writing of the status/standing of the premiums, including but not limited to whether they are paid up to date.

Change of A.'s Surname and J.L.'s Name being Added to A.'s Birth Certificate thereby Registering him as her Father

[54] The father requests that A.'s surname be changed to his surname and also that his name be added to the child's birth certificate, listing him as her father.

[55] The mother addresses these issues at Paragraphs 64 to 96 of her Affidavit evidence. To summarize, the mother maintains that she provided the father with the necessary documents to be completed and signed by him in order to register the child's surname as being hyphenated; H.-L. or L.-H., as per the father's preference. Copies of text messages provided in the mother's Affidavit evidence suggests the father agreed to a hyphenated surname for A.

[56] The mother broached this issue with the father because when she attempted to obtain a New Brunswick Medicare card for A., she was informed that the paperwork regarding A.'s birth certificate had never been processed.

[57] The mother says the father did not return the documents and as she required the birth certificate, she went ahead and registered the child's surname as H., being her (the mother's) surname. She asserts the father did not appear to be concerned about A.'s surname until she raised the issue of retroactive child support.

[58] The father says while the parties were still together, he made three to four applications to have A.'s birth registration completed, and they (the parties) agreed that the child's surname would be L. (the father's surname).

[59] Further, he disputes the mother's assertion of a link between the issues of the name change and retroactive child support.

[60] The father's name will be added to A.'s birth certificate listing him as her father. Any costs/fees associated with this administrative action shall be borne by the father and he shall be responsible for obtaining the necessary documents and having them submitted. I accept the mother's evidence that she provided the father with the necessary documents, and he did not return them as requested/required.

A.'s Surname

[61] It is unfortunate that the parties were unable to bring this issue to a conclusion during their relationship. I accept the father attempted to complete the necessary administrative functions relating to the registration of A.'s birth. The

number of attempts he made is irrelevant at this point. This issue can be resolved as follows:

- a) A.'s surname be changed to L., as the father says was agreed to by the parties prior to separation;
- b) A.'s surname be changed to a hyphenated version: H.L. or L.H.; or
- c) Maintenance of the status quo: the child's surname remaining as H.

[62] In *Baker v. Aboud*, 2017 NSSC 42, Justice Forgeron addresses the issue of a change of a child's surname and provides an apt review of the jurisprudence in this area. This case authority is very helpful, as in my experience this issue is seldom litigated at the Supreme Court (Family Division). Justice Forgeron writes at Paragraphs 21 to 25:

[21] In **L.M.D. v. J.R.S.** [2010] N.B.Q.B. 188, French J., as he then was, noted the symbolic importance attached to a child's surname. A surname is evidence of the biological tie between a child and a parent. A surname affirms meaningful parental participation in a child's life. A surname is a symbol of filiation. In noting the importance of a child's surname, French J. quoted from the Supreme Court of Canada's decision of **Trociuk v. British Columbia Attorney General**, 2003 SCC 34, at paras 16 – 19, which state as follows:

16 Including one's particulars on a birth registration is an important means of participating in the life of a child. A birth registration is not only an instrument of prompt recording. It evidences the biological ties between parent and child, and including one's particulars on the registration is a means of affirming these ties. Such ties do not exhaustively define the parent-child relationship. However, they are a significant feature of that relationship for many in our society, and affirming them is a significant means by which some parents participate in a child's life. The significance of this affirmation is not only subjectively perceived. The legislature of British Columbia has attached important consequences to the presence of a father's particulars on his child's birth registration. It has decided that where a father's particulars are included on the birth registration, his consent is always required for his child's adoption.

However, where his particulars are not included, a father must fulfill at least one of an alternative set of conditions. As Prowse J.A. notes, ss.13(1)(c) and 13(2)(a) of the *Adoption Act*, R.S.B.C. 1996, c. 5, provide that "a father who is named on the birth registration must be given notice of the proposed adoption of his child. He may, or may not, qualify for notice apart from registration" (para. 141).

17 Contribution to the process of determining a child's surname is another significant mode of participation in the life of a child. For many in our society, the act of naming a child holds great significance. As Prowse J.A. notes, naming is often the occasion for celebration and the surname itself symbolizes, for many, familial bonds across generations (paras. 138-39).

18 The significance of choosing a surname is particularly evident if viewed in light of the rationales for reforms which extended to mothers the ability to transmit their surnames to their children. As Professor Castelli wrote on this subject, in a comment on the (Quebec) *Civil Code Revision Office's Report* on the Name and Physical Identity of Human Persons:

[TRANSLATION] one of the most serious and most fundamental inequalities is indeed for women not to be able to pass on their surnames; for that matter, this is how that impossibility has always been viewed: a sign of the inferiority of women and their incapacity to perpetuate a line by filiation; was it not regarded ... as a misfortune not to have a son, precisely because the "line", the "name", died out with girls, who were unable to perpetuate them. People in our time have admittedly become relatively indifferent to those sorts of considerations; nevertheless, transmission of the surname remains the symbol of filiation, and it is not normal to deny to women any possibility of seeing their surnames passed on to their children or to some of them. M.D. Castelli « Rapport de l'O.R.C.C. sur le nom et l'identité physique de la personne humaine » (1976), 17 C. de D. 372 at 374.

Although the activity of naming may not hold the same significance for all, it is clearly important to many in our society. A father who is arbitrarily excluded from this activity would reasonably perceive that a significant interest has been affected.

19 The conclusion flowing from the above is that a father's ability to include his particulars on a child's birth registration and to contribute to the process of determining the child's surname can reasonably be perceived to be modes of meaningful participation in a child's life. As a further consequence, arbitrary exclusion from such means of participation negatively affects an interest that is significant to a father. I turn now to the question of whether the impugned provisions affect this interest in a way that a reasonable claimant would view as demeaning to his dignity.

[22] In **L.M.D. v. J.R.S.**, *supra*, the court held that it was in the child's best interests to have a hyphenated name so that the child's relationship with both parents would be demonstratively recognized, as would the child's continuity with each of the child's families. The court assigned little weight to the status quo given that the application was neither random nor without purpose, and was founded on the child's best interests.

[23] In **Bromley v. Furlong**, 2012 NLCA 56, the Newfoundland Court of Appeal granted the mother's appeal noting that the trial judge erred by focusing on the mother's attitude as opposed to the child's best interests. The Court of Appeal then adopted the approach set out in **L.M.D. v. J.R.S.**, *supra*, and found that it was in the child's best interests to have a hyphenated name.

[24] In **X.G. v. R.M.**, 2013 NSSC 206, MacLellan, J. also adopted the approach stated in **L.M.D. v. J.R.S.**, *supra* in finding that it was in the child's best interests to have a hyphenated name notwithstanding the negative conduct and attitude on the part of the mother.

[25] In **X.G. v. R.M.**, , MacLellan, J. also reviewed the factors outlined as relevant in Halsbury's Law of Canada (2009) at para 119, which states as follows:

119 In Halsbury's Laws of Canada (2009), the following factors were listed as relevant in making this determination:

- 1) The short and longer term effects of any change in the child's surname
- 2) Embarrassment that the child may feel in having a different surname than (sic) that of the custodial parent.
- 3) Confusion of identity that may arise if the name is changed or not changed.
- 4) The effect of the change of name on the relationship with the parent who's (sic) name the child bore during the marriage.
- 5) The effect of frequent or random changes of name.

[63] The mother maintains that A.'s surname should remain as H. She testified she previously agreed to a hyphenated version but as aforementioned the father failed to return the required documents. She proceeded to have the birth registration process completed (with the child's surname registered as H.) as she required the birth registration document to obtain a New Brunswick Health Card for A. and also to secure the daycare subsidy. The mother says A. now knows her

name as A.H. and it would be confusing for the child to have a change of her surname. The father maintains the child's surname should be changed to L. as was agreed to during their relationship.

[64] A.'s best interests is the primary consideration. She is almost 2.5 years old and has been in the mother's care since the parties separated. The father exercises parenting time and has demonstrated his desire to be involved in his daughter's life.

[65] In an ideal world, any conflicts between parents would not impact their children. We do not live in an ideal world. All too frequently during their later years, children bear the brunt of decisions made for them or on their behalf (during the earlier stage(s) of their lives) the results of which may be adverse or have the potential of becoming adverse.

[66] As articulated by the jurisprudence, a name is not merely "an instrument of prompt recording." It signifies one's identity and the ties of one's origin. In many cultures the naming of a child is occasioned with much pomp and celebration.

[67] Given A.'s age and stage of development, I am confident that a change of her surname would not engender her to embarrassment or confusion related to her identity. I am also confident a change of the child's surname (consistent with my

finding below) at this stage of her life would not affect her relationship with either parent in an adverse manner.

[68] I am of the view that is in A.'s best interests to have a hyphenated name so that her relationship with both the mother and the father would be demonstratively recognized. I find it is in A.'s best interests that her surname be changed to H.-L.

Conclusion

[69] After considering the parties evidence (Affidavit and Viva Voce), their respective arguments and the applicable legislation and case authorities, the following shall form the terms of the Order flowing from this decision:

1. The fathers claim for undue hardship is dismissed.
2. For the purposes of his child support obligation, the father's 2022 income is determined to be \$95,063 and for 2023, \$82,190.88.
3. Based on an annual income of \$82,190.88 the father shall pay child support to the mother in the guideline amount of \$705.60 per month commencing January 1, 2023, and continuing on the first day of each month thereafter.
4. The parties shall proportionally share the cost of any agreed upon extracurricular activity/expense. The father's contribution shall be 63% and the mother's 37%.
5. Subject to the Rules of that Court either party may make an application to the New Brunswick Court of Kings Bench, Family Division, for a review of the respective parties' contributions towards childcare, without the necessity of establishing a material change in circumstances.

6. The parties will consult on any uninsured health expense and must agree on the expense before it is incurred. Neither party shall unreasonably withhold their consent. The parties' respective contributions to any uninsured health expense(s) exceeding \$100 per year shall be borne proportionally and as stated in Paragraph 4.
7. For the period July 1, 2022, to November 2, 2023, the father owes the mother the total amount of \$5,919.48 in retroactive child support. The father may satisfy the amount owing by making a lump sum payment to the mother or in increments of \$200 per month to be paid on the first day of each month, commencing December 1, 2023 and continuing on the first day of each month thereafter until the amount owing is paid in full.
8. The father shall maintain a life insurance policy in the amount of \$100,000 with himself as the insured party and naming the mother as irrevocable beneficiary for as long as he is ordered to pay child support for the benefit of A. He shall be responsible for payment of the premiums and upon request shall provide confirmation in writing of the status/standing of the policy, including payment of the premiums and whether they are paid up to date.
9. The father's name will be added to A.'s birth certificate, listing him as her father. The father will be responsible for bearing the costs/fees of this action and shall also be responsible for obtaining and submitting the necessary forms/documents.
10. A.'s surname shall be changed to H.-L. The father will be responsible for bearing the costs/fees of the change of name and shall also be responsible for obtaining and submitting the necessary forms/documents.
11. Any forms/documents related to the actions as ordered in Paragraphs 9 and 10 shall be submitted to the appropriate authority/institution for processing no later than 90 days from the date this order is issued.
12. The father's child support payments shall be paid through the Maintenance Enforcement Program of Nova Scotia.
13. Enforcement Clauses.

[70] Counsel for the mother shall prepare the Order.

[71] The parties may make written submissions on costs within 30 days of the Order being issued.

Samuel C. G. Moreau. J.