SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *AD v. ZS,* 2026 NSSC 134

Date: 20260429
Docket: SFH No. 1201-074758
Registry: Halifax

Between:

AD

Petitioner

v.

ZS

Respondent

Judge:	The Honourable Justice LouAnn Chiasson
Heard:	December 8 and 9, 2025, in Halifax, Nova Scotia
Counsel:	Philip Whitehead for the Applicant
	ZS, self-represented, Respondent

By the Court:

Introduction

[1] AD and ZS are the parents of an 8 year old child. The issues for the court to address are:

1. The granting of a divorce
2. The appropriate parenting arrangement for the child:
    a. Parenting time for ZS, and
    b. Decision making regarding major developmental decisions
3. Child support payable by ZS:
    a. Determination of ZS's income
    b. Determining what, if any, s. 7 expenses are payable by ZS
4. Spousal support:
    a. Claim of AD abandoned at trial
    b. Claim by ZS advanced at the time of trial
5. Division of Matrimonial Property:
    a. If an unequal division of property is appropriate in the circumstances
    b. The impact, if any, on the division of property given ZS's bankruptcy proceedings.

BACKGROUND

[2] The parties dispute their date of cohabitation. AD testified at trial that the parties began cohabitation in 2016 despite her affidavit indicating 2015. She indicated that the reference in her affidavit was a typographical error. ZS indicates that the parties were cohabiting since 2015.

[3] The parties were married on August 25, 2018 and separated December 27, 2022. They have one child. The child has been and continues to be in the primary

care of AD. ZS does not dispute the continuation of AD as the primary care parent.

[4] ZS has two children from a previous relationship. During the parties cohabitation, ZS's two other children resided in a week on/ week off arrangement with the parties.

[5] There were two interim court orders. The first order in January 2024 confirmed joint decision making for the child, and a shared parenting schedule. ZS was also to continue coverage for AD and the child on his health insurance.

[6] In April 2024, a second interim order was issued. It confirmed child support payable by ZS to AD in the amount of $600 per month.

[7] Both court orders were without prejudice to the parties. Both orders were on consent of the parties.

[8] Both parties confirmed that the shared parenting arrangement has not been followed. ZS confirmed that in 2025 he had parenting time with the child on four occasions. One of those occasions was an overnight.

[9] It is acknowledged by ZS that the child support payments were not made as set out in the court order. ZS also confirmed that the health plan is no longer available as he is no longer employed.

[10] ZS filed a Statement of Income in January 2024. The Statement notes his source of income to be from employment. His income tax return and the documentation attached to the Statement of Income confirm that his income is derived from self-employment.

[11] ZS testified that he took a medical leave as a result of his mental health in February 2024. He further testified that his business relationship with another company terminated in May 2024 by mutual agreement.

[12] ZS confirmed that he attended a rehabilitation program for alcohol and drug abuse in September 2024. He indicated that he is "cured" as a result of the program and addresses his sobriety daily.

[13] ZS also confirmed monies spent on gambling. He indicated that both he and AD gambled when they were cohabiting. He testified that he continued to spend money gambling post separation.

DIVORCE

[14] I find the jurisdictional requirements to grant a divorce have been met. The Divorce Order and Corollary Relief Order will issue based upon the relief noted herein.

PARENTING ARRANGEMENT

[15] Any decision related to parenting time must take into account the legislative framework as set out in Section 16 of the *Divorce Act*. As with the provincial legislation, the overriding consideration is the best interests of the child. The factors to consider when analyzing the child's best interests are set out in s. 16(3) of the *Divorce Act*.

[16] ZS is requesting shared parenting although he has limited time with the child currently. He indicated a gradual increase of his time would be appropriate. AD has indicated that ZS has not been an involved parent post separation. She testified that he has requested parenting time with the child, only to cancel. AD indicated that some of the cancellations were last minute.

[17] The evidence is uncontroverted that ZS has had minimal involvement in the child's education. He did not know the name of the child's teacher. He has not attended parent/teacher meetings for the past two years.

[18] The evidence is also clear that ZS has had limited parenting time over the past number of months. Four visits over a period of twelve months is problematic. The child is only 8 years old. Given the significant break in the parenting time, a return to shared parenting is not appropriate at this time.

[19] A period of re-introduction through a neutral third party is warranted. A Veith House order will issue. In the standard course, a period of twelve weeks of visitation occurs followed by a report. Should the report reveal consistent attendance by ZS and no critical incidents, the parties would move to unsupervised parenting time based on the schedule based upon the suggestions of AD counsel in closing arguments:

a. Regular parenting time:
    i. Parenting time would be two times per week not to include overnights for a period of one month.

ii. Commencing the second month, parenting time would include one overnight every second week. On the week with no overnight, ZS would continue to have two evenings of parenting time during the weekdays.

iii. Commencing the third month, parenting time would occur every 2nd weekend from Friday evening to Sunday no later than 5 pm. On the week following weekend access, ZS would have one evening of parenting time during the weekdays.

iv. The scheduling of the proposed parenting time would be provided by ZS in writing a minimum of 48 hours in advance of the proposed parenting. AD will reply in writing within 12 hours of receipt of the written proposal of ZS to confirm the child's availability.

v. If the child has an activity during ZS parenting time he will ensure that she is transported to and from the activity.

vi. The parenting time noted above is conditional upon consistency of attendance by ZS. Inconsistent attendance will result in a delay in increasing the parenting time to the next phase.

b. Holidays and special occasions:

i. During holidays and special occasions, the following terms will apply and the regular parenting schedule is suspended:

a. Holiday time as specified herein is conditional upon the consistent attendance of ZS during his regular parenting as noted above.

b. Christmas holidays will include a minimum of 2-3 hours Christmas Eve or Christmas Day and such further time as the parties agree to in writing.

c. Easter- Easter is to be shared as the parties agree to in writing, commencing Easter 2027

d. March Break- March Break is to be alternated between the parties unless one of the parties intends to travel with the child, commencing March Break 2027.

Notification of proposed travel over March Break to be provided a minimum of 60 days in advance.

e. Summer- Commencing in 2027, ZS would have two non-consecutive weeks with notice of proposed weeks to be provided by ZS to AD no later than March 1st of each year.

f. The child's birthday- The parent without care of the child on the child's birthday is entitled to 1 ½ to 2 hours of parenting time with the child as agreed between the parties.

g. The parents' birthdays- The parent without care of the child on their birthday is entitled to have parenting time with the child as agreed between the parties.

h. Communication regarding the specific dates of holiday parenting time should be communicated at the earliest opportunity and no less than 48 hours in advance of the proposed holiday.

i. All communication regarding the scheduling of parenting time shall be in writing.

[20] AD will continue to have primary care of the child.

[21] The parties will continue to have shared decision making as it relates to major developmental decisions (i.e. health, education, religion). AD will keep ZS informed regarding any major developmental issue. ZS has a responsibility to ensure that he is receiving information directly from third party care providers and his ability to do so is confirmed by the Third Party Information Order.

CHILD SUPPORT

Income of ZS

[22] ZS provided a sworn Statement of Income filed with the court January 2024. That Statement indicated his income to be $70,449.96 based upon his 2022 income tax return. Disclosure was requested by counsel for AD.

[23] In response to the request, ZS forwarded information from his accountant. This information was entered into evidence as Exhibit 4. The report was entitled

"Transaction Detail by Account" and covered the period from January 2022 to December 2022.

[24] In March 2024 ZS filed his 2023 personal income tax return indicating receipt of dividend income ($80,500) and income from RRSP's ($37,366.57) for total reported income of $117,836.57.

[25] Other sources of financial information related to ZS came from bank statements and the evidence of his accountant who testified under subpoena.

[26] The account for ZA was Mr. Ogden. Mr. Ogden testified that he has been an accountant since 1998. Mr. Ogden confirmed that he held the designation of certified general accountant (CGA) from 1990 to 2005. He has not had the designation since 2005 as he was overseas for a period of time.

[27] Mr. Ogden indicated that he did not have any documentation related to ZS for the years 2023-2025. He indicated that he and ZS would pass a red box back and forth between them containing documents. Mr. Ogden testified that all original documents would be sent back to ZS.

[28] The last financial statement prepared by Mr. Ogden for ZS's business was as of December 31, 2022. The financial statements are premised on the following disclaimer:

> "NOTICE TO READER
> I have compiled the balance sheet of Z**'s … Limited as at December 31, 2022 and the statements of loss and retained earnings for the year then ended from information provided by management. I have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information. Accordingly, readers are cautioned that these statements may not be appropriate for their purposes."

[29] The 2022 financial statements note the gross revenue of ZS's business to be $456,183. Counsel for AD provided a summary from the deposits into ZS's corporate account for the years 2022. Contrary to the assertion that the gross revenue was $456,183, bank deposits reveal that $718,911.68 was deposited into the corporate account that year. In February of 2022, a deposit of $43,050.25 was put into the account but should be deducted from the revenue as it related to the cost of a vehicle sold by the business. The revenue in 2022 with this adjustment is $675,861.

[30] The differential between the revenue revealed from the bank statements and revenue reflected in the financial statements reveals underreporting of $219,678.43. Mr. Ogden was questioned on cross examination about this significant discrepancy.

[31] Mr. Ogden testified that some of that income could have been received in 2023 but reported in 2022. The difficulty with this assertion is that there is no documentation to confirm this to be the case. Additionally, the amount of the discrepancy is far too significant to simply result from the receipt of some revenue in 2023 declared as income in 2022.

[32] The more problematic testimony of Mr. Ogden related to admissions of preparing tax returns for ZS based on instructions from his client and not on the actual revenue received. He testified that ZS would instruct him to reduce the sales revenue and report a shareholder loan.

[33] Mr. Ogden indicated that ZS would advise as to the figures to put in the tax returns for income (despite the documentation) and Mr. Ogden would comply. He confirmed that the gross sales were more than the figure declared on the income tax return. Mr. Ogden confirmed that he was fairly confident that the sales were almost double the reported figure but that no adjustment was made to the expenses on the tax return.

[34] ZS would advise Mr. Ogden what he could pay in taxes, and Mr. Ogden would simply adjust the revenue so that the taxes owing were what ZS advised he could afford.

[35] Even if one were to assume the expenses were accurately recorded on the tax return, the pre-tax corporate income is in excess of $331,894. In that same tax year, ZS reported income of $70,000 from employment income.

[36] In 2023, ZS deposited $377,600.25 into his business account. No financial statements for that year are in evidence as Mr. Ogden did not prepare them. ZS reported dividend income of $80,500 (after gross up) and in excess of $37,000 in RRSP's. ZS filed this income tax return on his own prior to making an assignment in bankruptcy on April 26, 2024.

[37] It is clear that the income tax returns do not accurately reflect the income available to ZS up to 2024.

[38] The evidence is clear that the income of ZS was affected in February 2024 when he took a leave of absence. In May 2024, the business relationship between ZS and a third party company was at an end.

[39] ZS testified that he worked for Uber between January 2024 and August 2024. He also testified that he worked in his former field of employment from July 1, 2024 to September 6, 2024. In slightly over two months, ZS's gross income was declared to be $12,580.77. Within days of leaving that position, ZS was admitted to an inpatient facility for alcohol and cocaine addiction.

[40] ZS testified that he lost his drivers license in the summer of 2024, although his affidavit does not reveal the reason. With respect to the income earned through Uber, ZS indicated that the statements were attached as Exhibit 1 to his affidavit (Exhibit 9, affidavit filed January 17, 2025).

[41] The statements attached, however, have e-transfers from various individuals with amounts ranging from $10 to hundreds of dollars. A review of this Exhibit provides little in the way of proof of income. ZS declares his income from Uber to be $1,037.56 before expenses over an eight month period.

[42] ZS indicates that his 2024 income earned prior to his inpatient treatment program was $13,618.33 on a gross basis. He was in an inpatient program from September 9, 2024 to October 3, 2024. I have no information whatsoever related to job search efforts by ZS from October 2024 to the time of trial.

[43] An Interim Consent Order was issued by the court on April 30, 2024, following a settlement conference before another justice. The Interim Order indicates "No determination of income has been made for ZS". Despite the lack of any determination, ZS agreed to pay child support of $600 per month. This amount would be based on income of approximately $70,000 (Note: the 2017 table amounts were applicable in April 2024 prior to the updated table amounts in 2025).

[44] At the time of the settlement conference in March of 2024, ZS would have been aware that his Statement of Income (filed in January 2024) vastly underreported his income.

[45] Despite this, the Statement noted his income to be $70,449.96 based on his 2022 income tax return. As noted above, his corporate revenue from 2022 was over $675,000. Accepting his expenses as he declared them would result in pre-tax corporate income of over $331,800.

[46] Given this pre-tax corporate income I find as a fact that the declared income of $70,000 does not represent a true and accurate picture of the income available to ZS at the time of swearing his Statement of Income.

[47] Counsel for AD urges the court to set the child support owing by ZS based on the following:

YEAR	***INCOME OF ZS***	***CHILD SUPPORT OWING***	***CHILD SUPPORT PAID***	***DIFFERENTIAL***
2023	$70,000	$7,080 ($590/ month)	$2,690	$4,390
2024	$70,450	$6,612.42 ($604.14/ month Jan-Mar) (**$600/ month Apr-Aug) (**$600/ month Oct-Dec)	$23.93	$6,588.49
2025	$70,450	$7,200 (**$600/ month)	$0	$7,200
TOTAL AMOUNT				$18,178.49

** NOTES: The parties had agreed to monthly child support of $600 per month at the settlement conference in March 2024. AD is prepared to accept that child support amount prospectively. Further, AD acknowledges that no child support would be payable for September 2024 as ZS was in treatment for alcohol and drug addiction.

[48] AD's position is that ZS would be able to immediately leave treatment and have income of $70,450. I am not persuaded that ZS would immediately leave treatment and secure another position immediately. It may be reasonable to reduce the amount owing in 2024 to account for a three month period following treatment

for ZS to get on his feet. This would result in a total amount owing by ZS to be $16,378.49.

[49] Further, AD is seeking section 7 expenses to be shared proportionally between the parties based on the foregoing. Counsel for AD indicates that $3,044.19 is owed by ZS in relation to child care and gymnastics costs.

[50] Any consideration of imputed income to a payor must be based on objective evidence and a pragmatic approach. There are a number of cases that have addressed imputation of income. As noted in the case law, the discretion to impute income must be based on the evidence, grounded in fairness and reasonableness (see *Smith v Helppi*, 2011 NSCA 65, *Staples v. Callender*, 2010 NSCA 49, *Conrod v. Cooper*, 2025 NSSC 197, *Gates v. Gates*, 2023 NSSC 188, and *Coadic v. Coadic*, 2005 NSSC 291). The goal is to arrive at a fair estimate of income.

[51] The first step in the analysis is to determine whether the declared income of ZS fairly reflects his income based on his circumstances. AD bears the burden of proving that income should be imputed to ZS. Based upon the evidence before me, I find as a fact that AD has met this burden. ZS's declared income does not fairly reflect his income.

[52] Pursuant to section 19 (1) (a) of the *Federal Child Support Guidelines*, ZS is found to be intentionally under-employed. He has marketable skills, no suggestion of any reasonable job search, and no admissible evidence of ongoing medical disability. His income prior to 2024 was vastly underreported on his income tax returns and was far in excess of $70,000.

[53] I find it appropriate to set the child support owing by ZS to AD to be $19,422.68 ($16,378.49 plus $3,044.19) as of December 2025. As noted below, ZS provided an additional $2,750 from the proceeds of sale of the matrimonial home. This is to be credited against the monies owing of $19,422.68. The total amount owing as of December 2025 is therefore $16,672.68.

[54] Ongoing child support is payable based on an income of $70,450. The table amounts were updated in 2025 and the applicable table amount owing is $593.87 per month, commencing January 1, 2026. Section 7 expenses are to be shared between the parties proportional to the incomes of the parties, commencing January 1, 2026.

PROPERTY DIVISION

[55] AD claims an unequal division of matrimonial property based upon s. 13 of the *Matrimonial Property Act*. The matrimonial home located at Magenta Drive was sold. The proceeds of sale of that property were divided with AH receiving an additional $2,750 by agreement of the parties.

[56] The vehicles owned at separation were repossessed.

[57] ZS made an assignment in bankruptcy on April 26, 2024. As of the trial in December 2025, ZS was not discharged from bankruptcy given non-compliance with the terms of the trustee in bankruptcy. As noted by the trustee, any proceeds related to the property division which "devolve upon [ZS]… must be remitted to the bankruptcy estate."

[58] ZS mistakenly believed that he continued to control assets and debts despite the bankruptcy. The bankruptcy remains undischarged and the trustee is entitled to any property of ZS.

[59] ZS is claiming an interest in rental property in AD's name. The evidence confirms that AD owned a mini home prior to cohabiting with ZS. The property was purchased with the assistance of AD's grandparents and the savings of AD in May 2013.

[60] I accept that the parties resided in the mini home for a brief period of time and then resided in a residence owned by ZS for a brief period commencing in December 2016.

[61] The parties lived together in a number of residences. Following residing in the mini home, the parties resided in four other properties: a rental property (until November 2018), a home (purchased in November 2018 and sold June 2021); and another rental property (from June 2021 to March 2022). Their final residence was the matrimonial home, purchased in March 2022.

[62] In June 2025, AD sold the mini home. ZS indicates that he is entitled to a portion of the proceeds of the mini home. He testified that he paid for renovations to the mini home including a deck, roof, heat pump, bathroom renovation, etc..

[63] AD's grandfather testified. He confirmed that he provided financial assistance to AD by allowing her to live with him and his wife rent free for a period of time. This permitted AD to save money towards the purchase of the mini home.

[64] AD's grandfather also completed all necessary improvements to the mini home prior to AD and her child moving in. He continued to assist AD when she lived there and completed the necessary maintenance and repairs needed prior to the sale of the mini home in 2025, with the exception of the gutters.

[65] AD testified that she hired a company to do the gutter repair prior to the sale of the mini home. AD also stated she purchased the washer, dryer and refrigerator for the mini home. She indicated that a friend of hers replaced the roof and the heat pump was installed by a company. AD further testified that the bathroom tub and enclosure were completed by her friend.

[66] AD did not recall how the deck was renovated. She did concede that ZS assisted her grandfather with repairing a closet.

[67] When the parties left the mini home after a few months to move into ZS's residence, AD retained the mini home. She was responsible for the expenses associated with the rental and also retained the rental income.

[68] Should ZS be entitled to an interest in the mini home, any such interest would be payable to the bankruptcy trustee. That, however, is not determinative of his entitlement to the property. Any money owing to ZS is the property of the trustee in bankruptcy and not ZS.

[69] It should be noted that ZS did not claim any proprietary interest in the mini home in his statement of assets provided to the trustee in bankruptcy. This could implicitly confirm that ZS did not consider that he had any proprietary interest in the mini home in April of 2024. Nevertheless, ZS raises his entitlement to the property in the context of these divorce proceedings.

[70] The case of *Scholten v. Scholten*, [2023] N.B.J. No. 150 confirms that ownership of an asset pre-marriage does not necessarily characterize the asset as non-matrimonial. The courts in this province have often considered pre-marital acquired assets to be matrimonial property (*Morash v. Morash,* 2004 NSSC 20).

[71] The court must look to the characterization of the asset along with the circumstances of the acquisition, maintenance and work related to the asset to determine whether the disputed asset is matrimonial. In *Scholten*, the court held that the home owned by the wife prior to marriage was divisible because both parties contributed to the expenses of the home during their relationship.

[72] *Scholten* may be distinguished based on the facts of this case. In the present case, there may have been some minimal contribution by ZS related to a deck (although no documentary evidence was presented to confirm the extent, if any, of the contribution). AD, her family and friends assisted her with the significant maintenance, repairs and appliance purchases for the mini home.

[73] Presumptively, the asset would be considered matrimonial unless it fit within the definition of an exempt asset pursuant to s. 4(1) of the *Matrimonial Property Act*.

[74] AD did not advance an argument that the mini home was a business asset exempt from division. Counsel for AD sought an unequal division of the proceeds of sale based on the factors set out in section 13 of the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275.

[75] In particular, counsel argued that the issues related to ZS's gambling, and alcohol and drug use dissipated family property. Reference was made to s. 13(a) [the unreasonable impoverishment by either spouse of the matrimonial assets]; 13(d) [the length of time that the spouses have cohabited with each other during their marriage]; and 13(e) [the date and manner of acquisition of the assets].

[76] The burden of proof for an unequal division is on the Petitioner (*Marshall v. Marshall*, 2008 NSSC 11). Case law is clear that an equal division is the presumption. In awarding an unequal division, the court must find that an equal a division would be unfair and unconscionable (*Cunningham v. Cunningham*, 2018 NSCA 63, *Wolfson v. Wolfson*, 2023 NSCA 57, *Calder v. Calder*, 2022 NSSC 146).

[77] It is not simply an issue of fairness. The court must accept or reject the proposition that an equal division is unreasonable or excessive. Any such finding must be made on strong evidence.

[78] Section 13(a) permits the court to consider the unreasonable impoverishment by either spouse of the matrimonial assets. This section is often referenced when there are issues related to gambling and/ or addiction. The evidence confirms that ZS expended significant monies in relation to his gambling (as noted in the banking records). The bank records are less clear in relation to the financial implications of his alcohol and drug addiction.

[79] Section 13(d) permits the court to consider the length of cohabitation. Typically, this subsection is argued when the parties have a relatively short period of cohabitation. The evidence discloses ZS and AD cohabited for approximately seven to eight years. This factor is not significant in determining whether an equal division would be unfair or unconscionable.

[80] Section 13(e) permits the court to consider the date and manner of acquisition of an asset. It is clear that the mini home was acquired prior to the marriage of the parties and solely with AD and her family's assistance. The same, however, can be said of ZS's former residence prior to cohabitation. The proceeds of ZS's residence helped to pay for the parties' next home. As a result, an unequal division cannot be made out based on this factor.

[81] Section 13(h) of the *Matrimonial Property Act* permits a court to consider "the needs of a child who has not attained the age of majority". Despite the significant income earned by ZS he did not pay any appropriate child support until well after the separation. Even when he commenced paying child support, he was paying well below his actual means.

[82] Despite the existence of a court order, he has paid sporadically. At times, he has paid nothing at all. He indicates that he is not currently employable and has no income. Despite the income imputed to ZS, I am extremely concerned about his ability to adequately provide for the child of the marriage by way of child support.

[83] There would be some financial stability for AD in providing for the child were she able to retain the proceeds of the sale of the mini home. That factor, coupled with the significant monies provided by both AD and her family to acquire and maintain the home, mandate that she retain the proceeds of sale.

[84] I acknowledge that this means proceeds which may be available to pay ZS's creditors in his bankruptcy, will not be disbursed to them. I have instead directed that the proceeds of sale are to be retained by AD in order to care and provide for the child of the marriage.

[85] The exceptional circumstances of this case mandate an unequal division of the proceeds of the mini home. I find as a fact that an equal division of the proceeds of sale of the mini home would be unfair and unconscionable.

[86] The parties are each to retain the assets/ debts currently in their name and/ or possession as their sole property without further claim by the other.