SUPREME COURT OF YUKON

Citation: *RAWM v JLM*
2025 YKSC 66

Date: 20251015
S.C. No. 22-D5488
Registry: Whitehorse

BETWEEN:

R.A.W.M.

PLAINTIFF

AND

J.L.M.

DEFENDANT

Before Justice K. Wenckebach

Appearing on his own behalf — R.A.W.M.

Counsel for the Defendant — Shayne Fairman

REASONS FOR DECISION

Overview

[1] The parties to this divorce proceeding are R.A.W.M. and J.L.M. They have two children of the marriage: J.M.P.M. and Q.J.M. The issues in dispute are: the division of assets and liabilities; occupation rent; child support; and parenting-time. The parties agreed to proceed to summary trial on the issues of division of assets and liabilities, occupation rent and retroactive child support.

[2] J.L.M. seeks an unequal division of the equity of the family home; and R.A.W.M. seeks occupation rent. R.A.W.M. seeks that J.L.M. pay for the costs of the joint line of

credit incurred to renovate the home post-separation. There are also differences between the parties in the valuations of assets. J.L.M. also seeks child support and special and extraordinary expenses from R.A.W.M. retroactive to the date of separation.

[3] For the reasons that follow, I conclude that the equity in the family home should be divided unequally in favour of J.L.M. for financial contribution to the downpayment for the family's first home; and I deny the claim for occupation rent. The parties shall also share equally the payment on the line of credit for the post-separation renovations. I assess the value of the home at $720,000 as of the date of separation. I also conclude that R.A.W.M. should pay child support in accordance with the table amount, retroactive to May 1, 2023; and he should contribute to some, but not all, of the special and extraordinary expenses sought by J.L.M., retroactive to May 1, 2023.

Background

[4] The parties met in Great Britain, where R.A.W.M. is from, and where J.L.M. was living at the time. They started living in a common law relationship in 2011. They married on January 10, 2014.

[5] R.A.W.M. and J.L.M. purchased a home in January 2015, which they call "Blackdown Lodge". The house was rundown. The parties thus renovated the home. Both parties worked, though J.L.M. took some leave when J.M.P.M. was born.

[6] In 2020, the parties moved to Whitehorse, where J.L.M.'s family lives. They bought a home in a rural residential area, at [redacted] (the "Family Home") in January 2021. The Family Home was in poor condition and required renovations. As with Blackdown Lodge, the parties had renovations done to the home.

[7] The parties initially disagreed about the date of separation but came to agreement that it was on July 3, 2022. Since separation, J.L.M. has had primary

parenting time with J.M.P.M. and Q.J.M.; R.A.W.M. is not in favour of this arrangement but has agreed to defer this question until the issues of division of assets and liabilities is determined. R.A.W.M. has paid $1,800 a month in child support since around the date of separation, although he may have, at times, stopped paying or paid less than that amount.

Issues

[8] The issues are:

A. How should the evidence of the parties be assessed?

B. Should the equity in the Family Home be divided equally or unequally?

C. Should J.L.M. be responsible for payment of the line of credit?

D. What is the value of the Family Home?

E. How should the assets and liabilities be divided?

F. Does R.A.W.M. owe money for retroactive child support?

G. How should special and extraordinary expenses be divided between the parties?

Analysis

A. How should the evidence of the parties be assessed?

[9] Three issues arise under this question. First, as this was a summary trial, I must determine if I can make a decision on the evidence before me. Second, I will consider the parties' credibility generally. Third, I will address R.A.W.M.'s allegations that some of the documentary evidence filed by J.L.M. may be false.

Summary Trial

[10] Summary trials are not appropriate in all proceedings. In proceedings where credibility is a key issue, courts should conduct a full trial. Moreover, if, after hearing a

summary trial, the court is unable to make necessary findings of fact on the whole of the evidence, it may direct that a full trial be conducted (Supreme Court of Yukon *Rules of Court*, (the "*Rules*") Rule 19(12)(a)(i)).

[11] In this case, credibility is an issue. Because much of the evidence was provided through documentary evidence, however, credibility is not a central issue. Additionally, the parties were cross-examined on their affidavit evidence. I am able, on the whole of the evidence, to make the necessary findings of fact to decide the issues.

Credibility

[12] There are two components to credibility: credibility and reliability. Credibility is about the witness' honesty. Reliability is about the correctness of the witness' testimony. A witness is reliable if they were able to observe, recall and recount their evidence. A witness can be credible but not reliable. In those circumstances, the witness seeks to tell the truth but is not able to accurately provide evidence. A witness cannot be incredible and reliable, however. A witness who does not want to tell the truth also does not provide accurate evidence *(R v HC*, 2009 ONCA 56 at para. 41).

[13] The court may also believe all, some, or none of a witness' testimony.

[14] Here, I found both parties generally credible. I conclude that they were giving their evidence as they remembered it. My determinations on reliability, on the other hand, are on made on an issue-by-issue basis, as will be described further below.

Documentary Evidence

[15] During the hearing, R.A.W.M. suggested that some of the documentary evidence, such as emails sent between J.L.M. and third parties, could be fraudulent. Fake evidence, whether they be emails, photographs, extracts from social media accounts or otherwise, can be a difficult issue for courts. However, in this case,

R.A.W.M. cited no basis for his concerns that some of J.L.M.'s evidence had been faked. I have therefore accepted the documentary evidence provided by both parties as genuine.

B. Should the equity in the Family Home be divided equally or unequally?

[16] J.L.M. seeks to be credited the money she contributed to the downpayment of Blackdown Lodge. R.A.W.M. seeks occupation rent.

[17] I conclude that there should be an unequal division of assets in favour of J.L.M.

Law

Equal or Unequal Division of Assets

[18] When parties divorce, the *Family Property and Support Act,* RSY 2002, c 83 ("*FPSA*") recognizes that married spouses have joint responsibility and contribute jointly to the care of children, managing the household and dealing with the finances (s. 5). This joint contribution and responsibility lead to the presumption that the parties will divide the family assets equally (s. 6(1); *JAC v VRC*, 2015 YKSC 15 at para. 245 ("*JAC"*)). The role of the courts is not to comb through the detritus of a couple's marriage, seeking to parse the relative contributions each spouse has made to the acquisition of assets.

[19] There are, however, exceptions to this presumption. First, where parties have signed an agreement, which the legislation calls a "domestic contract", in which they agree to divide assets unequally, the court will respect the parties' agreement (s. 2). Domestic contracts must meet certain formal requirements, including being in writing and signed by both parties (s. 61).

[20] Second, a party may seek an unequal division of assets under s. 13 of the *FPSA*. The party seeking the unequal division of assets has the onus of proof and must

demonstrate that an equal division would be inequitable. The question for the court is whether it would be unfair to divide the assets equally *(JAC* at para. 245).

[21] The following factors are applicable in this analysis (s. 13):

(a) any agreement other than a marriage contract or a separation agreement;

(b) the duration of the period of cohabitation under the marriage;

(c) the duration of the period during which the spouses have lived separate and apart;

(d) the date when property was acquired;

(e) the extent to which property was acquired by one spouse by inheritance or gift;

(f) any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement, or use of property rendering it inequitable for the division of family assets to be in equal shares;

(g) the date of valuation of family assets.

Occupation Rent

[22] The British Columbia Court of Appeal has concluded that occupation rent is not a stand-alone claim but arises in the context of a claim for an unequal division of assets (*Shen v Tong*, 2013 BCCA 519 at para. 49). The British Columbia Court of Appeal considered this issue under its own legislation, the *Family Relations Act*, RSBC 1996, c 128, however, the legislation is similar to the *FPSA*. The principle may, thus, be applicable here.

[23] I find the British Columbia Court of Appeal's approach compelling. The equitable principle of fairness informs both the analysis on equal or unequal division of assets and

occupation rent. Occupation rent also can affect the division of what is usually one of the parties' major assets: the family home. It is therefore logical to consider occupation rent as a part of the overall question of whether assets should be divided equally or unequally, and not as a separate claim.

Analysis

Credit for Downpayment on Blackdown Lodge

(i) Parties' Arguments

[24] In the case at bar J.L.M. submits the parties had an agreement that, as J.L.M. contributed all the money for the downpayment of Blackdown Lodge, she would receive the money back if the parties sold the house or they separated. The parties also had other oral agreements about how they organized their finances. She argues that, as ss. 13(a) of the *FPSA* permits the court to divide family assets unequally based on oral agreements between the parties, J.L.M. should be credited the money she contributed to the downpayment of the home.

[25] R.A.W.M. denies the parties had the agreements described by J.L.M. He states the parties agreed J.L.M. would put more money into the home; and he would contribute less money but also contribute in-kind by working on the renovations. The home was in a terrible state when the parties bought it. The renovations he did to the home changed it significantly. It would therefore not be unfair to divide the assets equally.

(ii) Evidence

[26] J.L.M.'s evidence is that when the parties moved in together, they agreed that, if they were to break up, they would each keep what they had brought into the relationship. Additionally, R.A.W.M. wanted each to contribute 50% to their shared

costs. Any other money each had was for their own individual use. J.L.M.'s evidence is that throughout their relationship, they followed this pattern.

[27] R.A.W.M. denies that the parties had any of these agreements. In cross-examination he agreed, however, that the parties had a joint account into which they put money, and from which J.L.M. would pay for the couple's bills. He also agreed they had their own, separate bank accounts.

[28] J.L.M. also attests that she sold a house she owned in Edmonton, Alberta and used the proceeds for the downpayment on Blackdown Lodge. She states she paid the entirety of the downpayment and solicitors' costs. As well, the parties agreed that she would receive the amount back upon the sale of the home or if the parties separated.

[29] J.L.M. provided the contract of sale and lawyer's letter from the sale of her house in Edmonton showing the proceeds she received and the bank account statement confirming the deposit into her bank account. Additionally, she provided a bank statement showing the deposit of 100,000 pounds from "J.L. [redacted]" (which is J.L.M.'s maiden name). From there, 81,923 pounds was transferred to BPL solicitors, who handled the sale of Blackdown Lodge.

[30] R.A.W.M. attests he also provided money to buy Blackdown Lodge. In his affidavit, he states that he used the proceeds from his previous home and of a car to pay the downpayment on Blackdown Lodge. On cross-examination, R.A.W.M. stated that he also put money into the home from the sale of a boat he and J.L.M. co-owned.

[31] R.A.W.M. additionally states that he bought things for the house and put work into Blackdown Lodge as his contribution to the home. J.L.M., on the other hand, states that both R.A.W.M. and J.L.M. did some work on the house but most of the work was

done by contractors. She provides a summary of the payments to the contractors and a bank statement which, she states, show the payments to the contractors.

[32] J.L.M. attests, furthermore, that the money from the proceeds of the sale of Blackdown Lodge were used to fund the family's move to Canada. J.L.M. states some of the money was put towards moving the parties' belongings. The rest, she attests, was placed in the parties' joint bank account. J.L.M. also provides bank and contractor statements showing the flow of money for the purchase of and renovations to the Family Home.

(iii) Analysis

[33] Because the parties' evidence on this question differs, I must consider credibility.

[34] J.L.M.'s evidence about the circumstances surrounding the downpayment is credible and reliable. Much of her testimony is supported by documentary evidence. The amount and flow of money from J.L.M.'s bank to the joint bank account and then onto the solicitors who handled the purchase of Blackdown Lodge is consistent with her testimony. R.A.W.M. suggested that the money transferred from J.L.M. to the solicitors could have been for investment purposes rather than to pay for Blackdown Lodge. This is speculative.

[35] I also find R.A.W.M. unreliable on this issue. His evidence about where he obtained the money for the downpayment is inconsistent. In his affidavit, he stated that it was from the sale of a vehicle and of the home he had shared with his previous partner. On the stand, he stated that it was also from the proceeds of a boat sale. He explained that he had just remembered this additional contribution. What this additional evidence suggests, however, is that R.A.W.M.'s memory of that time is not very clear.

[36] His evidence about how much he put into the downpayment is also inconsistent. In his affidavit, he attests that he put 35,000 pounds into Blackdown Lodge and the assets of the marriage. In his cross-examination, he stated that he did not know how much he put in from the proceeds of the sale of the boat. Later, when asked if he contributed anything to the downpayment of Blackdown Lodge, he replied that he provided about 12,500, which is presumably pounds.

[37] It could be argued that the evidence is not truly inconsistent. R.A.W.M. states in the affidavit that he put 35,000 pounds into the home and marital assets, thus, 12,500 of those 35,000 pounds could have been into the home itself. This does not assist R.A.W.M. because it means his answer is vague. Either way, it contributes to my conclusion that R.A.W.M. is unreliable on this point.

[38] Additionally, in an affidavit R.A.W.M. states he earned significantly more than J.L.M. when they lived in Great Britain. On cross-examination, he stated he did not earn much more than J.L.M. He was challenged on the difference between his affidavit evidence and testimony on the stand. By way of explanation, R.A.W.M. stated that because he was self-employed and J.L.M. was an employee, on paper he earned more, but in reality, their incomes were not very different.

[39] This is not what R.A.W.M.'s affidavit says, however. It states: "It is evident that I made significantly more money during the relationship where my contribution was greater than [J.L.M.'s] on a week to week [as written] level." The affidavit thus states that R.A.W.M. made more money than J.L.M., not only on paper, but also in reality. His evidence on cross-examination is inconsistent with his affidavit evidence.

[40] As well, R.A.W.M.'s evidence about the contributions he provided through work on Blackdown Lodge is vague, both in his affidavit and when he was cross-examined. In contrast, J.L.M. provides information which is supported by bank statements.

[41] The parties were both established professionals when they entered into the relationship, each with their own assets. They divided expenses 50/50 and kept their own bank accounts. An agreement that the party putting the major financial contribution into Blackdown Lodge would be repaid if the house were sold or the parties separated is consistent with the way the parties ordered their financial affairs.

[42] This does not end the matter, however. The fact that there was an agreement that J.L.M. would receive the downpayment back if the parties separated is not determinative. If I were to conclude she should receive the money back on that basis only, I would be giving the agreement the same weight as a written agreement. That is contrary to the intention of the legislation. It is, however, one of the factors to consider under s. 13 of the *FPSA*.

Occupation Rent

[43] After the parties separated, J.L.M told R.A.W.M. that there had possibly been a fuel spill in the Family Home. R.A.W.M. alleges J.L.M. lied about the fuel spill, then dragged her feet in dealing with this alleged spill. She did this to prevent the parties from moving forward with the division of assets and liabilities. R.A.W.M. was prejudiced, because he has not been able to move on financially. His request for occupation rent is therefore based on s. 13(f) of the *FPSA*.

[44] J.L.M. maintains that she had legitimate concern that there had been a fuel spill in the home. J.L.M. also submits that she has not delayed the proceedings. If anything, it is R.A.W.M. who has delayed them. She pressed forward in getting the concern about

contamination sorted. There were delays, but they were due to the insurance company or environmental consultants. No occupation rent should be ordered.

(i) Law

[45] Occupation rent is a claim made when one spouse moves out of a home co-owned with the other spouse, and the other spouse stays in possession of the home. Occupation rent provides the spouse who left compensation because they were denied the opportunity to enjoy the property.

[46] Occupation rent is a discretionary award, to be made when it is just and equitable to do so (*Casey v Casey*, 2013 SKCA 58 at para. 49 *("Casey").* It is an exceptional remedy and should be used cautiously (at para. 48).

[47] In *Casey*, the Saskatchewan Court of Appeal identified the following factors as relevant in determining whether to order occupation rent:

> [48]
>
> 3. …
>
> - The conduct of both spouses, including failure to pay support, the circumstances under which the non-occupying spouse left the home, and if and when the non-occupying spouse moved for a sale of the home.
> - Where the children are residing and who is supporting them.
> - If and when a demand for occupational rent was made.
> - Financial difficulty experienced by the non-occupying spouse caused by being deprived of the equity in the home.
> - Who is paying for the expenses associated with the home ...

- Whether the occupying spouse has increased or decreased the selling value of the property.
- Any other competing claims in the litigation that may offset an award of occupational rent.

[citations omitted]

(ii) Facts

[48] J.L.M. attests that on about November 30, 2022, a contractor who was working in the crawl space of the Family Home noticed a smell of fuel or diesel when some dirt was disturbed. J.L.M. has filed the contractor's notes from November 30, 2022, which noted a fuel smell. The notes are hearsay, however, so I cannot take them into account.

[49] J.L.M. states she also noticed the smell when she was home.

[50] J.L.M. contacted R.A.W.M. but states her attempts to discuss the issue with him were unsuccessful. Eventually, she states she got legal advice and contacted her insurance company at the beginning of March 2024. From there a preliminary investigation was conducted by an environmental specialist on April 11, 2024.

[51] J.LM. attests that she attempted to contact the insurance company and the claims representative frequently, with no substantive response about any further steps. Eventually, on September 12, 2024, more tests were conducted on the home. On December 14, 2024, J.L.M. received an assessment report, which found that there was no contamination.

(ii) Analysis

[52] I do not believe that J.L.M. fabricated the concern that there had been a fuel spill in the home. J.L.M. attempted to get agreement from R.A.W.M. about how to proceed but was unable to do so. Once she contacted the insurance company, moreover, she

was diligent in getting the matter sorted. J.L.M. responded promptly to emails, provided the necessary information and followed up with her insurer and claims representative when they did not answer her emails in a timely manner. J.L.M. was cross-examined on this issue. Nothing in her cross-examination leads me to question her credibility.

[53] Moreover, R.A.W.M.'s concern is that the allegations about contamination made it impossible for the parties to negotiate a resolution of the division of assets; however, at the time J.L.M. contacted her insurance company, the parties were not in a position to resolve their property issues. Very little, if any, financial information had been exchanged. It was only at a Case Management Conference ("CMC") held on May 23, 2024, that an order was made requiring the parties to exchange their financial information.

[54] At another CMC, held December 5, 2024, an additional order was made, detailing the financial information that needed to be disclosed. Outstanding disclosure included: bank statements, credit card statements, documents about assets owned by either party; and investments, bank accounts and pension statements for accounts in Canada or in the United Kingdom.

[55] Despite the order in place, R.A.W.M. did not provide his financial information to J.L.M. A new order was issued following a CMC held on February 5, 2025, again requiring R.A.W.M. to provide that information. It was only then that disclosure was completed.

[56] Whether through negotiation or litigation, the parties could only effectively deal with the division of assets and liabilities once they had financial disclosure. Both parties started seriously addressing this question only in the spring of 2024. R.A.W.M. did not provide his financial information until late winter or early spring of 2025. Whether this file

moved more slowly than it should have is arguable. If there was delay, however, it was not caused because concern about the fuel spill in the Family Home was not resolved. I decline to award occupation rent on this basis.

[57] Aside from R.A.W.M.'s claim that J.L.M. purposefully delayed the resolution of their property issues, there is no basis upon which to order occupation rent. The children have been living at the Family Home with J.L.M. since separation. She has been paying all the expenses, including insurance and mortgage. This is not an exceptional case in which occupation rent should be ordered.

Consideration of the s. 13 Factors

[58] The parties had an oral agreement that J.L.M. would be repaid the downpayment on Blackdown Lodge if the parties moved or separated. Thus, the parties agreed to an unequal division of assets. The money J.L.M. put in as downpayment for Blackdown Lodge is also traceable.

[59] Another s. 13 factor that is applicable here is the length of the marriage. The parties were married eight years, a medium-term marriage (*JAC* at para. 239). Often the longer the marriage the more the parties have intermingled their assets and the more difficult it becomes to assess the contributions of each party. Generally, then, the longer the relationship the less likely a court will award an unequal division of assets. In this case, this factor is attenuated somewhat because the parties had the practice of contributing equally to family expenses and otherwise keeping their money separate.

[60] I have considered that R.A.W.M. did provide both tangible and intangible contributions to Blackdown Lodge. I accept that R.A.W.M. assisted with some of the home renovations at Blackdown Lodge, though I conclude that he did not contribute substantially more than J.L.M. by way of work. I also accept that, because J.L.M. was

newly living in Great Britain, she would not have been able to buy a house without R.A.W.M.

[61] I have also considered that J.L.M. is not seeking an unequal division of assets although the parties shared family costs but kept their own assets separately.

[62] Finally, the value of Blackdown Lodge appreciated significantly in value. The parties purchased it for 458,000 pounds in January 2015 and sold it for 700,000 pounds in November 2019. R.A.W.M. will still benefit from the joint contributions the parties put into Blackdown Lodge even if J.L.M. were to be credited for paying the downpayment. Taking all the factors together, I conclude that J.L.M. should receive the amount of her deposit- $159,340 (81,923 pounds).

C. Should J.L.M. be responsible for payment of the line of credit?

[63] R.A.W.M. seeks that J.L.M. be responsible for paying the line of credit used to pay for renovations done to the Family Home after the parties separated.

[64] J.L.M. seeks that the parties divide the debt on the line of credit in the amount of $69,359.79 and interest of $12,677.07. She agrees that this amount from the line of credit was used to pay for home renovations done after the parties separated. J.L.M. submits, however, that they were necessary; and R.A.W.M. agreed to pay for them.

[65] I conclude the parties should divide the debt on the line of credit equally.

Evidence

[66] The parties agree that, prior to separation, there were plans in place to renovate the Family Home. J.L.M. attests that after separation she cancelled all the renovations except those which were necessary: the roof; the septic tank; and the arctic entry. She stated the renovations were critical because the roof was leaking and causing damage to the home; the house had no useable waste plumbing; and the front door was

improperly installed, which could cause it to freeze shut. Although on cross-examination R.A.W.M. debated whether renovations to the arctic entry were truly necessary, overall, he does not dispute that these repairs were essential.

[67] Despite recognizing the need for renovations, R.A.W.M. was hesitant about proceeding with them after the parties separated. In emails exchanged between the parties at the time the renovations were done R.A.W.M. expressed several concerns. He was worried about proceeding when the parties' finances were up in the air because of their separation; he was not convinced J.L.M. would keep the home; and he felt the costs of the renovations were too high. I have some sympathy for R.A.W.M.'s position. The parties were in an uncertain situation, dealing with a number of financial unknowns. Their communication was also not always positive and there was a lack of trust between them. It is understandable, to a certain extent, that a party would be reluctant to commit to new major costs.

[68] However, R.A.W.M. also recognized at that time that the renovations were necessary. He states, in an email to J.L.M.: "I am not by any means denying the agreed work. I agreed to upgrade the artic [as written] entry and new roof regardless of our separation for the safety of the children residing with you...". R.A.W.M. communicated to J.L.M. that, despite his reservations, he agreed to move forward with the renovations.

[69] R.A.W.M. also contests the costs of the renovations. This is the crux of the issue here. R.A.W.M. states the costs of the renovations were too high; and the contractor did not provide an adequate breakdown of the additional costs.

[70] In my opinion, that is not a sufficient basis to order that J.L.M. pay the entire costs of the renovations. The initial cost estimate was $58,275, however, that estimate was not in place for long. R.A.W.M. noticed that there were items missed in the

estimate. It was increased then to $65,275. The final cost was about $81,000. Again, it is reasonable for R.A.W.M. to question whether the increase of about $16,000 was justified. R.A.W.M. should, however, have raised those issues with the contractor. R.A.W.M. does not state whether he did speak to the contractor. If he did not, he should have. If he did, there is nothing in the evidence to conclude that the contractor's final charges were problematic. I therefore order that the costs for the renovations be divided equally between the parties. I also conclude that, as R.A.W.M. contributed to the post-separation renovations to the Family Home, its valuation should include those upgrades.

D. What is the value of the Family Home?

[71] R.A.W.M. submits the value of the Family Home at the date of separation was $745,000. J.L.M. submits that it was $685,000-$705,000. I have assessed the valuation of the family home at the date of separation with the new septic tank and roof, and changes to the arctic entry at $720,000.

Facts

[72] The bank appraisal, dated May 1, 2022, and undertaken by CIBC for mortgages purposes, is filed in support of R.A.W.M.'s submission. J.L.M. filed a valuation by a realtor, Marj Eschak, dated March 9, 2025, including a valuation for July 2022 and a current (as of March 2025) value.

Analysis

[73] R.A.W.M. suggested that there are problems with J.L.M.'s valuation. First, he attested that Ms. Eschak is familiar with J.L.M.'s family. However, he was vague about the basis for this statement when asked about it on cross-examination. J.L.M.,

moreover, denied that she or her family has a personal relationship with Ms. Eschak. I conclude there is no reason to doubt Ms. Eschak's impartiality.

[74] Second, R.A.W.M. raised concerns that a retrospective valuation cannot be done on a home. However, parties both in family law matters and other civil litigation are called upon to provide retrospective valuations of assets. There must be a method for doing so. In this case, Ms. Eschak stated that she based her evaluation on comparable sales that took place in the summer of 2022. She used three comparators and provided the information on them with her report. The realtor's appraisal is therefore acceptable.

[75] For her part, J.L.M. suggested that R.A.W.M.'s appraisal was problematic because it expressly states that the appraisal is to be used only for the purposes for which it was commissioned. Moreover, J.L.M. points out that it states it appraises the current value of the property; and users are cautioned about relying on the report after its effective date.

[76] While it would have been better to use an appraisal commissioned expressly for the purposes of the litigation, I accept the appraisal provided by R.A.W.M. As I read it, the appraisal provides the caveats that it be used only for the purpose for which it was intended to limit liability. It does not affect the quality of the report.

[77] The statement cautioning users about its use after its effective date, moreover, is simply a reiteration of common sense. Markets change and they can be volatile. Thus, an appraisal may not be useful over the long term, or, sometimes, even the short term. In this case, there is no suggestion that market conditions changed between May 1, 2022 (the date the report was issued) and July 3, 2022, the date of separation.

[78] No other submissions were made about the expertise of the witnesses. I accept that the appraiser and Ms. Eschak are experts.

[79] The appraiser in R.A.W.M.'s appraisal believed the roof was in good shape and the septic tank was functional. This was incorrect, but in this case makes the appraisal more accurate rather than less so, because the valuation for the purposes of division includes a new roof and functional septic tank. There are other errors in the appraisal as well. J.L.M. states, and R.A.W.M. does not deny, that the appraisal was incorrect in stating that the Family Home had new cabinet faces, updated windows, custom cabinetry, had renovations done to the foundation and a detached garage. The appraisal is, however, otherwise detailed and thorough in its analysis. Its issues are not so significant that the entire appraisal should be dismissed.

[80] There is nothing in Ms. Eschak's valuation that is clearly wrong, but it, too, has flaws. The details on the valuation are sparse. It also values the house without a working septic system and new roof. Ms. Eschak estimates the cost of new roofing and septic but does not explain what value each would add to the house. J.L.M. extrapolates from the report to come to a valuation on her own, but that is not ideal.

[81] Both valuations have both positive qualities and drawbacks. Overall, even with the problems in the appraiser's report, it is more complete. I accept the report but take into account the errors made. Given these errors, I assess the value of the Family Home at the date of separation at $720,000.

E. How should the assets and liabilities be divided?

[82] The calculation of the division of the equity in the Family Home must be determined. For the other assets, the parties agree that each will retain their own pensions and bank accounts in their own names. J.LM. seeks that, in dividing some of the assets, such as the joint bank accounts, I credit her on some payments. Otherwise,

the parties agree that the assets and liabilities be divided equally but disagree about their valuation.

Division of Equity in the Family Home

[83] The mortgage at the date of separation was $264,886.71. The value of the house was $720,000. The equity in the house was, therefore, $455,113.29. I will round it down to $455,113. $159,340 is to go to J.L.M. The remainder is $295,773. Half of the equity, payable to R.A.W.M., is $147,886.50.

Household Contents, Tools and Miscellaneous Items

[84] R.A.W.M. values the household contents at about $45,000 (34,905 pounds). J.L.M. values them at $1,700.

[85] R.A.W.M. bases his valuation on the estimate of the value of the family's belongings created when the parties shipped their belongings from Great Britain to Canada. There are two problems with this valuation. First, the parties did not end up getting all the belongings they shipped. Some were lost in transit. Others, because of COVID-19, had to sit waiting to be delivered for a long period of time, and ended up damaged beyond repair. Second, the estimate is for replacement cost, rather than their actual value. I therefore do not accept R.A.W.M.'s valuation.

[86] I also conclude, however, that J.L.M.'s valuation is too low.

[87] R.A.W.M. suggests that the parties split the difference in valuation. While his interest in reaching a compromise is commendable, in this case, given the wildly different valuations, a middle point for valuation would not reach a realistic value for the household contents.

[88] While I do not accept J.L.M.'s valuation, given the size of the house and J.L.M.'s description of its contents, I find her valuation to be more accurate. I find the value of the household contents is $5,000.

[89] R.A.W.M. also makes claims for tools, and individual items such as a chainsaw and leaf blower. J.L.M. states that R.A.W.M. took most of the items he is now claiming; and some were part of the goods the parties lost when they moved from Great Britain to Canada.

[90] I find R.A.W.M. is unreliable on the issue of what assets the parties had at the date of separation, and which have already been divided. For example, in one of his affidavits, R.A.W.M. claims that there is an aluminum boat to be divided and assesses its value at $15,000. J.L.M., however, attests the parties do not have an aluminum boat. At the trial, R.A.W.M. agreed the parties did not have an aluminum boat and had no recollection of including it in his list of assets.

[91] I therefore conclude that the valuation of the items, apart from the inflatable boat, shall be divided as sought by J.L.M. These are:

- Chain Saw
- Generator (Honda)
- Men's mountain bike
- Tools
- Lawn Mower
- Leaf Blower

[92] With regard to the inflatable boat, J.L.M. states she believes this was gifted to J.M.P.M. I accept R.A.W.M.'s evidence it was not. R.A.W.M. values it at $6,000. It has been retained by J.L.M. $3,000 is therefore owing to R.A.W.M. on this item.

Vehicles and Recreational Items

[93] The parties have a 2020 Ford F-150, which R.A.W.M. kept. The parties bought it new in 2020 for $67,255.74. It appears R.A.W.M. seeks to value it at about $20,000 because that is the amount the parties paid off on the truck up to the date of separation. At the time he set out this position, he used this valuation because he stated the truck was leased. The truck is not leased, however and valuation is based on re-sale value. J.L.M. values the truck at $50,000 on separation. R.A.W.M. has not provided a different figure. Given the initial price and age of the vehicle, I accept J.L.M.'s valuation. The truck is to be retained by R.A.W.M. As J.L.M. paid for the insurance on the truck post-separation, the amount of $3,824 will be credited to her as well. $3,824, plus half of the value of the truck, minus half the amount owing for payment at the time of separation, is payable to J.L.M.

[94] The parties also have a 2019 Ford Explorer (the "Explorer") which J.L.M. kept. They paid $43,498.14 for the vehicle when they bought it, in 2020. R.A.W.M. states the blue book value in 2022 of the Explorer was $35,000. J.L.M. states the current blue book value of the Explorer is $24,350. I accept R.A.W.M.'s valuation of $35,000. It will be retained by J.L.M. with half the value payable to R.A.W.M.

[95] The parties have a 2015 Jayco Travel Trailer purchased in 2020 for $19,000. R.A.W.M. estimates the value in 2022 at $17,000. J.L.M. estimates it at $12,000. I value it at $14,500. It will be retained by J.L.M., and half the value paid to R.A.W.M.

[96] The parties also have a 2021 Skandic Skidoo. R.A.W.M. values it at $10,000. J.L.M. values it, with loading ramps, at $19,000 and $20,000 with all accessories. Given J.L.M.'s estimate includes the loading ramps I conclude it is more accurate. I find the value of the skidoo is $17,000. R.A.W.M. will keep it and pay half the value to J.L.M.

Bank Accounts

[97] The parties held a joint chequing account. R.A.W.M. states that there was $5,208.48 in the account at the date of separation. On July 4, there was $6,658.48. I accept J.L.M.'s evidence that the account continued to be used to pay for bills incurred for the family pre-separation and some of R.A.W.M.'s bills. Based on her figures, J.L.M. is entitled to $3,409.88; and R.A.W.M. is entitled to $3,248.60.

[98] The parties also held a joint savings account. R.A.W.M. states there was $51,395.01 in the account on the date of separation. On July 1, 2022, there was $51,417.56 in the account. On July 4, 2022, the day after the date of separation, $5,000 was transferred to the parties' savings account. $10,000 was transferred to pay a credit card bill for pre-separation costs. The account continued to be used by R.A.W.M. and to pay for pre-separation costs. I accept J.L.M.'s evidence that the account was distributed unequally in R.A.W.M.'s favour; and he retained $750 more than J.L.M. $375 will therefore be credited to J.L.M.

Liabilities

[99] As noted above, the joint line of credit and interest is to be divided equally between the parties. The total, as submitted by J.L.M., is $82,036.24.

[100] As each party has retained their individual bank accounts, I also conclude they should each be responsible for payment of the credit cards they each had in their names at the date of separation.

F. Does R.A.W.M. owe money for retroactive child support??

[101] J.L.M. seeks that R.A.W.M. pay child support in accordance with the *Federal Child Support Guidelines,* SOR/97-175 ("*Guidelines*") tables, retroactive to the date of

separation, July 3, 2022. R.A.W.M. submits that he cannot afford to pay the table amount.

[102] I conclude that R.A.W.M. should pay the table amount, effective May 1, 2023.

Facts

[103] R.A.W.M. began paying child support in September 2022, in the amount of $1,800 per month. It appears he decreased or ceased payment at times but has largely remained consistent in his payments of child support.

[104] R.A.W.M. commenced the divorce proceedings on March 15, 2023. The Statement of Claim proposes that R.A.W.M. pay $1,800 per month in child support while the children reside primarily with J.L.M. On the same date, R.A.W.M. filed a Notice of Application seeking that the parties have equal parenting time with the children. R.A.W.M. had counsel at that point.

[105] In her affidavit responding to the Notice of Application, which was filed on April 19, 2023, J.L.M. acknowledged that R.A.W.M. had been paying child support but stated it was less than required under the *Guidelines*. The affidavit also set out the amount R.A.W.M. would be obligated to pay under the *Guidelines*.

[106] J.L.M. also filed an email she sent to R.A.W.M. on December 4, 2023. In it, she states that her lawyer had spoken to R.A.W.M.'s lawyer several times about the deficit in child support payments, including in an email from April 19, 2023.

[107] In 2022, R.A.W.M. earned $154,394; in 2023, he earned $192,314; and in 2024 he earned $188,519. J.L.M. earned $199,910 in 2022; $260,285 in 2023; and $220,347 in 2024.

[108] Along with child support for the J.M.P.M. and Q.J.M., R.A.W.M. also pays child support for another child he has in Great Britain.

The *Guidelines*

[109] Before the *Guidelines* were enacted, child support was calculated on the basis of the child's needs. This led to significant litigation and inconsistency in the amount of child support ordered *(DBS v SRG*, 2006 SCC 37 ("*DBS")* at para. 43). Parliament sought to address these issues by enacting the *Guidelines.* The *Guidelines* changed how child support was calculated. Generally, the Guidelines use three criteria to calculate child support: the payor's income; the province or territory in which the payor lives; and the number of children in the family.

[110] The *Guidelines* also sought to create an efficient and predictable means of determining child support (*DBS* at paras. 43-44). The three criteria were translated into fixed amounts of child support to be paid, which were put into tables. Under the *Guidelines,* subject to limited exceptions, the court must apply the table amount in ordering the amount of child support payable.

[111] Nevertheless, there are areas in which the court has some discretion when determining child support, including whether child support should be ordered retroactively. Additionally, there are circumstances in which the court may order the payor to pay an amount of child support that is different than the table amount. In the case at bar, in addition to determining if child support should be awarded retroactively, two exceptions that may apply are: where the payor earns more than $150,000 per year and where there is undue hardship.

Retroactivity

(i) Law

[112] Orders are generally granted on a prospective basis. They are by and large effective on the date they are pronounced or issued. Under the *Divorce Act,* RSC, 1985,

c 3 (2nd Supp) however, parties may seek that child support be payable before the date the order is made *(DBS* at para. 81-82).

[113] Where an order could have been made earlier, but was not, the court will determine whether child support should be ordered retroactively. The factors applicable are: the reasons why support was not sought earlier (at para. 100); the payor's conduct (at para. 105); the circumstances of the child (at para. 110); and whether hardship would arise from a retroactive award (at para. 114) (the "*DBS Factors*"). The *DBS Factors* seek to balance the payor's interest in having certainty about how much child support they owe with ensuring that the amount of child support paid is commensurate with the payor's income level.

[114] Generally, the date of retroactivity is the date the parent provides effective notice to the other parent that they are seeking child support. Effective notice is "...any indication by the recipient parent that child support should be paid, or if it already is, that the current amount of child support needs to be re-negotiated." (*DBS* at para. 121) The parent seeking child support must then follow through with negotiations and, if necessary, commence litigation. As a general rule, courts will not award retroactive child support for any longer than three years from the point formal notice was given (*DBS* at para. 123). This is not invariable, however. The date of retroactivity may extend beyond three years where appropriate (*Michel v Graydon*, 2020 SCC 24 at paras. 32-36).

(ii) Analysis

[115] Applying the *DBS Factors*, I must first address the question of delay. Although the parties separated in July 2022 and child support was only litigated at the summary trial in June 2025, in my opinion, the issue of delay only relates to the period between the date of separation and April 2023. It was in April 2023 that J.L.M. filed an affidavit

and her lawyer sent an email to R.A.W.M.'s lawyer stating that, although R.A.W.M. was paying child support, it was not sufficient. At that point, J.L.M. provided effective notice to R.A.W.M. that she was seeking more child support than he was paying. J.L.M. and her counsel then followed up periodically with R.A.W.M. on this issue in 2023 and 2024. J.LM. should not be penalized for seeking payment through negotiation rather than immediately proceeding to litigation (*DBS* at para. 120). Child support should be retroactive to at least May 1, 2023.

[116] The issue of delay does arise, however, for the period between the date of separation, which is July 2022 and April 2023, the date effective notice was given. There is no evidence that J.L.M. provided notice to R.A.W.M. before April 2023 that she considered the amount of child support he was paying to be insufficient. She has also not explained why she did not raise the issue. For his part, R.A.W.M. started paying $1,800 per month for child support in September 2022. He did not engage in blameworthy conduct. There is also no suggestion that the children suffered financially because R.A.W.M. did not pay the full table amount of child support. I therefore reject J.L.M.'s request for child support retroactive to the date of separation. The date of retroactivity is, instead, May 1, 2023.

Exception to Table Amount: Earning More than $150,000

[117] The *Guidelines* allow for a departure from the table amount where the payor earns more than $150,000. Here, R.A.W.M. earns more than $150,000, but I conclude that the amount of child support payable should not be reduced on this basis.

(i) Law

[118] Section 4 of the *Guidelines* establishes the court's authority to depart from the table amount where a payor earns more than $150,000. The court's discretion to depart

from the table amount is constrained in several ways, however. The presumption is that the table amount is appropriate (*Francis v Baker* [1999], 3 SCR 250 ("*Francis*") at para. 42). There must, therefore, be clear and compelling evidence to depart from the table amount (at para. 43).

[119] Additionally, the court does not have discretion over the first $150,000. It must order the table amount on $150,000; it may only exercise discretion to increase or decrease on the amount over $150,000 (s. 4(b)(i)).

[120] On the portions of payors' earnings that are over $150,000, the court may order that child support be different than the table amount "...if the court considers that amount to be inappropriate" (s. 4(b)). The factors used when determining whether to exercise the discretion on the remainder of the payor's income are: "...the condition, means, needs and other circumstances of the children" (at para. 42); and each party's financial ability to contribute to the children's support (s. 4(b)(iii)). Other factors may also be relevant (at para. 44). In general, however, the closer the paying parent's income is to $150,000, the less likely it will be that the court will deviate from the table amount (at para. 41). In contrast, the court may conclude that the guideline amount is inappropriate if it would functionally be a wealth transfer to the payee parent (at para. 41).

(ii) Analysis

[121] The amount of child support payable on an income of $150,000 for two children in the Yukon is $2,182. Based on R.A.W.M.'s 2023 income of $192,314, the table amount would be $2,715. In 2024, based on earnings of $188,519, the amount of child support payable would be $2,667 per month. The difference in child support payable would in no way constitute a wealth transfer to J.L.M. Moreover, this is a situation in

which the paying parent's income is close to $150,000. There is no reason to depart from the table amount.

Exception to Table Amount: Undue Hardship

[122] The other exception that may be applicable in the case at bar is undue hardship. I find, however, that R.A.W.M. would not suffer undue hardship if he were required to pay the table amount.

(i) Law

[123] Section 10 of the *Guidelines* provides that a parent may seek that child support be different than that specified by the tables based on undue hardship.

[124] There is a two-step process for establishing undue hardship. First, the parent seeking that child support be different must demonstrate that they would suffer undue hardship if the table amount were paid. Section 10(2) provides a non-exhaustive list of factors that may lead to a finding of undue hardship. One of those factors is that the parent has a legal duty to support a child, other than a child of the marriage, who is under the age of majority (s. 10(2)(d)(i)).

[125] The party seeking to establish undue hardship has a high threshold to meet. "Hardship is not sufficient; the hardship must be "undue", that is "exceptional", "excessive" or "disproportionate" in all the circumstances" (*Van Gool v Van Gool*, [1998] 166 DLR (4th) 528 (BCCA) at para. 51).

[126] If the court concludes the party would suffer undue hardship, the second step requires the court to compare the standard of living of the parties' households. The court may only order child support different from the table amount if the parent seeking the change would have a lower standard of living than the other parent if the table amount were ordered (s. 10(3)-(4)).

(ii) Analysis

[127] R.A.W.M. pays child support for his child from another relationship in the amount of $800 per month. As the child lives in Great Britain, this amount is not calculated pursuant to the *Guidelines*. He also states that he pays, per month, $1,400 in rent, $934.67 in car payments and between $500-$1,000 in utilities and insurance. Additionally, he has other common day-to-day payments.

[128] Aside from child support payments, R.A.W.M.'s monthly costs are not outside the ordinary. This is not to say that I reject his evidence that paying child support on top of his other expenses will be difficult financially. However, his costs are not so significant they would not amount to undue hardship.

[129] Turning to the R.A.W.M.'s payments of child support for his child in Great Britain, to help determine whether those payments lead to undue hardship, I will compare how much R.A.W.M. would pay if he paid the *Guideline* amount for J.M.P.M. and Q.J.M. and the $800 for his other child, with how much he would pay under the *Guidelines* for three children.

[130] As noted above, in 2023, the table amount for R.A.W.M.'s income with two children is $2,715. Adding the $800 he pays in child support for his other child, the total is $3,515. If he were to pay child support in accordance with the *Guidelines* for three children, he would be required to pay $3,537. For 2024, the table amount for two children is $2,667. Adding $800, the total is $3,467. The *Guideline* amount for three children is $3,474.

[131] The *Guidelines* thus provide that for three children a person earning R.A.W.M.'s salary would pay slightly more than he would be required to pay if he pays the full table amount and $800 in child support to his other child. Under the *Guidelines,* then,

R.A.W.M. would not be considered to suffer undue hardship because of his obligation to support his other child.

[132] Where, as here, the exceptions in the *Guidelines* do not apply, the table amount is mandatory. I therefore conclude that, from May 2023 until December 2023, R.A.W.M. owed $2,715 per month in child support. Starting January 1, 2024, he owed $2,667 per month.

[133] The parties have not yet settled the children's residential schedule. If it changes, R.A.W.M.'s child support obligations may change as well. In the meantime, R.A.W.M. should continue to pay child support. On October 1, 2025, the table amounts were amended. For two children, using R.A.W.M.'s 2024 income, he owes $2,728. I order that R.A.W.M. pay $2,728 per month in child support, starting October 1, 2025, and payable on the first of each month thereafter.

G. How should special and extraordinary expenses be divided between the parties?

[134] In this case, the question of how the special and extraordinary expenses are to be divided is not really at issue. J.L.M. seeks that they be divided proportionately to their income. This favours R.A.W.M., as he earns less than J.L.M.; and it is consistent with the guiding principle set down in the legislation (s. 7(2)). Moreover, s. 7 expenses, like child support, should be retroactive to May 1, 2023.

[135] What is at issue is which special and extraordinary expenses R.A.W.M. should be required to pay. J.L.M. seeks that R.A.W.M. contribute to the following costs: J.M.P.M.'s counselling; the children's dental needs; J.M.P.M.'s afterschool care; J.M.P.M.'s piano lessons; Q.J.M.'s attendance at preschool in [redacted] and summer camps; J.M.P.M's freestyle skiing; and J.M.P.M.'s summer camps.

[136] In R.A.W.M.' s written materials he agrees to contribute to J.M.P.M.'s afterschool care but does not agree with contributing to Q.J.M.'s attendance at [redacted] for preschool. In his written materials he is silent on the rest of the requests. At the hearing I understood that he did agree to contribute to some of the other s. 7 expenses. Given that R.A.W.M. is self-represented, however, and given this position was not fully canvassed at the hearing, aside from J.M.P.M.'s afterschool care, I will address whether R.A.W.M. should contribute to all the costs J.L.M. seeks.

[137] I conclude that R.A.W.M. should contribute to some, though not all the costs sought by J.L.M.

Facts

[138] When the parties were still together, J.M.P.M. attended pre-school at [redacted]. He now has afterschool care. Q.J.M. was put on the waitlist for [redacted] in 2020. He attended another pre-school between 2020 and 2022. In September 2023 Q.J.M. started attending [redacted]. The [redacted] pre-school program runs during the school year only. Q.J.M. attends [redacted] summer camps when the pre-school is not in session.

[139] J.M.P.M. has also had a dentist appointment and had an orthodontist appointment. He has attended counselling, as well.

[140] Additionally, J.M.P.M. takes piano lessons and does freestyle skiing.

Law

[141] Section 7 of the *Guidelines* addresses special and extraordinary expenses. Special and extraordinary expenses are costs that go beyond the ordinary expenses of child rearing and beyond which the payee parent can reasonable cover (*JC v SAW*, 2008 YKSC 95 at para. 9).

[142] Special expenses and extraordinary expenses are two different categories; and the tests used to determine whether a cost should be payable are also different.

Special Expenses

[143] Special expenses include health-related expenses, childcare and post-secondary expenses. The factors used in determining whether a payor parent should contribute to these costs are whether they are both necessary and reasonable (s. 7(1)).

[144] Necessity has been interpreted to go beyond simply meeting the necessities of life and includes that which is suitable for the child, given their requirements at their stage of life (*Delichte v Rogers*, 2013 MBCA 106 *("Delichte")* at para. 35, citing *Hiemstra v Hiemstra*, 2025 ABQB 192*).* It is generally relatively easy to establish that medical, dental, and other similar costs are necessary.

[145] The following non-exhaustive list of factors is used to assess reasonableness:

- the combined income of the parties;
- the fact that two households must be maintained;
- the extent of the expense in relation to the parties' combined level of income;
- the debt of the parties;
- any prospect for a decline or increase in the parties' means in the near future; and
- whether the ... [payor] parent was consulted regarding the expense prior to the expense being incurred.

(*Delichte* at para. 39).

[146] Whether the payor parent was consulted is just one factor in the analysis; it is not determinative (at para. 44).

Extraordinary Expenses

[147] Extraordinary expenses include some extracurricular activities and the costs for primary or secondary school. The analysis in determining whether these costs should be paid has three components:

- First, the court considers whether the expense exceeds the amount the payee parent can reasonably cover (s. 7(1.1)(a));
- Second, if the payee parent can reasonably cover the costs, the court will decide if the costs are extraordinary. The factors used to determine if the costs are extraordinary are: the requesting parent's income; the nature of the programs or extracurricular activities; the child's special needs or talents; and the overall cost of the program or activity (ss. 7(1)-(1.1)(b)) (the "Extraordinary Expenses Factors");
- Third, the court will also consider whether the costs are necessary and reasonable (s.7(1)).

[148] There is considerable overlap between whether costs are extraordinary and whether they are necessary and reasonable.

[149] The factors used for determining necessity and reasonableness are similar for both special and extraordinary expenses. For extraordinary expenses, necessity will be established if the court concludes the activity will aid the child's health and development. Sports activities are commonly found to be necessary to a child's best interests (*Delichte* at para. 35).

Analysis

Special Expenses

[150] J.M.P.M.'s counselling and dental visits fall under the category of special expenses.

[151] In previous affidavits, both parents have described J.M.P.M.'s challenges with self-regulation, although they disagreed about the reason for it. J.M.P.M. also has attention deficit hyperactivity disorder ("ADHD"). Additionally, it is trite to note that parental separation, especially one that is conflictual, can have an impact on children. In this case, it may very well have had an impact on J.M.P.M.. I conclude that the costs are necessary.

[152] With regard to reasonableness, R.A.W.M. expressed some dissatisfaction with J.M.P.M.'s counselor. The information provided by J.L.M. about the counselor and some of her comments leads me to conclude that the counselling relationship proceeded well, however.

[153] J.M.P.M. attended counselling about once per month, at a cost of $200 per session (aside from the parent meeting, which was $180). J.L.M. states that 80% of the costs were covered by insurance. The total amount she paid for the year of counselling was $888.00. The cost is thus $74.00 per month.

[154] The combined income of the parties for 2023 is $452,599. The extent of the expense in relation to this combined income is minimal. I have no difficulty concluding that the costs for counselling are reasonable.

[155] J.L.M. states that J.M.P.M.'s dental costs have totaled $442.20 after insurance coverage. The orthodontic consult, which took place in the summer of 2024, was $200. Regular dental check-ups are generally necessary. Orthodontics, as well, if

recommended, are for oral health. The costs are also not excessive. I therefore conclude R.A.W.M. should contribute to the costs as of April 2023.

[156] R.A.W.M. has agreed to pay for J.M.P.M.'s after school care costs, so those will also be considered special expenses.

Extraordinary Expenses

[157] The expenses that may be extraordinary expenses are: J.M.P.M.'s piano lessons; Q.J.M.'s attendance at [redacted] and summer camps; J.M.P.M.'s freestyle skiing; and his attendance at summer camps.

[158] J.L.M. has not stated how much J.M.P.M.'s piano lessons cost. Given this lack of evidence, I will not order that R.A.W.M. contribute to this expense.

[159] On the issue of Q.J.M.'s attendance at [redacted], arguably this qualifies as childcare and would therefore be a special expense. However, J.L.M. refers to it as school and not simply childcare. I will therefore treat it as elementary school, making it a potential extraordinary expense.

[160] When the parties were together, J.M.P.M. attended [redacted] pre-school. Q.J.M. was put on the waitlist for [redacted] in 2022.

[161] While on the waiting list, Q.J.M. attended another pre-school, which cost $200-$250 per month after application of the Universal Childcare Subsidy ($2,400-$3,000 per year). The costs for [redacted], including for afterschool care, is $560.00 per month after application of the Universal Childcare Subsidy. [redacted] is closed during the summer months, so Q.J.M. attends summer camps. The costs for both [redacted] and summer camps total $13,605.12 for the years 2023-2025, or on average $4,535 per year, and about $380 per month.

[162] The first question is whether the expense exceeds the amount the payee parent can reasonably cover. J.L.M. earned $260,285 in 2023 and $220,347 in 2024. The child support owing for 2023 and 2024 at $2,715 and $2,667 per month must also be taken into account. J.L.M.'s income in 2023, therefore, was $289,205. In 2024, her income was $252,351. Payment of $380 per month does not exceed the amount J.L.M. can reasonably cover.

[163] I will thus consider the Extraordinary Expense Factors, and if the costs are necessary and reasonable. Because there is overlap between these parts of the test, I will consider them collectively.

[164] The cost of [redacted] and summer camps are more expensive than other pre-schools. Nevertheless, they are not inordinately expensive given the parties' incomes.

[165] J.M.P.M. also attended [redacted]. Both parents believe in the value of [redacted].

[166] The parties also discussed Q.J.M.'s enrollment in [redacted] before he attended. J.L.M. sent R.A.W.M. an email about Q.J.M.'s attendance at [redacted] when he was given a spot in April 2023. R.A.W.M. responded to the email, and J.L.M. proceeded to enroll Q.J.M. into [redacted].

[167] R.A.W.M. submits that he agreed to pay for half of the enrollment costs but did not agree to pay for Q.J.M.'s fees. However, his emailed response to J.L.M. says different. It states:

> ...its [as written] good news it's a great pre school.
> *We can agree something on the fees* and I will cover half of the enrollment costs... [emphasis added]

[168] Even though there was no proposal about the amount R.A.W.M. would contribute to Q.J.M.'s fees he did agree to pay a portion of them. He was also enthusiastic about

Q.J.M.'s attendance at [redacted]. Looking at the facts together, I conclude that Q.J.M.'s attendance at [redacted] is an extraordinary expense that is both necessary and reasonable.

[169] Regarding freestyle skiing, its cost for two seasons was $2,916.96 or $1,458.48 per season. J.L.M. is not seeking payment for the other costs associated with freestyle skiing, including skis, lift pass, boots and other gear. Considering J.L.M.'s income and the child support R.A.W.M. owes for 2023 and 2024, I conclude J.L.M. can reasonably cover these costs.

[170] Turning to the Extraordinary Expense Factors and whether the costs are necessary and reasonable, J.L.M. attests that J.M.P.M. benefits a great deal from his participation in freestyle skiing, including by helping to regulate his ADHD.

[171] The fees are manageable, given the parties' incomes, and that J.L.M. does not seek contribution towards J.M.P.M.'s gear.

[172] R.A.W.M. states that J.L.M. did not consult with him about the expense. J.L.M. did speak to R.A.W.M. at the time of enrollment about it; however, R.A.W.M. feels that J.L.M. was not consulting with him, but simply telling him that J.M.P.M. would be taking freestyle skiing. I have reviewed their communications from that time. J.L.M. did seek R.A.W.M.'s input in advance of the enrollment date, but R.A.W.M. did not respond until after J.L.M. enrolled J.M.P.M. There is nothing wrong with J.L.M.'s communications with R.A.W.M.

[173] I conclude the expense for freestyle skiing fits the legislative criteria for extraordinary expenses. R.A.W.M. is therefore responsible for a portion of these costs.

[174] Finally, I will address the costs for J.M.P.M.'s summer camps. J.M.P.M. attended some summer camps in 2023 and 2024. The total cost for camps between 2023-2025 is

$2,936, or about $980 each year. Again, the amount per year does not exceed that which J.L.M. can reasonably cover.

[175] No other information was provided about the camps. It was not clear if the camps were used for childcare or for J.M.P.M.'s enrichment. I therefore conclude that J.M.P.M.'s summer camps for 2023-2025 are not extraordinary expenses.

[176] I therefore conclude that R.A.W.M. should pay for Q.J.M.'s [redacted] costs, and J.M.P.M.'s fees for freestyle skiing. All the special and extraordinary expenses shall be payable proportionate to his income, retroactive to May 1, 2023.

[177] R.A.W.M. has also requested pre-judgment interest. It is unusual to order pre-judgment interest in the Yukon on family law matters. There is nothing in these proceedings that take them out of the ordinary and require pre-judgment interest.

Conclusion

[178] I conclude that there should be an unequal distribution of the family assets, with credit given to J.L.M. for the amount she contributed to the downpayment for the purchase of Blackdown Lodge. Otherwise, the assets and liabilities are to be divided as specified in this decision.

[179] R.A.W.M. shall pay child support in accordance with the table amounts, retroactive to May 1, 2023. The amount payable is the difference between the amount he has paid up to September 30, 2025, and the amount payable in accordance with the table amounts. On an interim basis, starting October 1, 2025, R.A.W.M. shall pay $2,728 in child support for J.M.P.M. and Q.J.M., and payable on the first of every month thereafter. If the children's residential arrangements change, child support may change as well.

[180] R.A.W.M. shall pay, proportionate to his income and retroactive to May 1, 2023, the following special and extraordinary expenses: J.M.P.M.'s counselling; J.M.P.M.'s dental and orthodontic costs; J.M.P.M.'s after-school care costs; Q.J.M.'s costs for [redacted] and summer camps; and J.M.P.M.'s freestyle skiing costs.

[181] I also order that R.A.W.M. and J.L.M. are divorced from each other, the divorce to take effect on the 31st day after the date of execution of this decision. After this judgment takes effect, either spouse may apply to this Court for a Certificate of Divorce.

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WENCKEBACH J.