

SUPREME COURT OF YUKON

Citation: *PMB v TJC*
2026 YKSC 82

Date: 20260915
S.C. No. 23-B0060
Registry: Whitehorse

BETWEEN:

P.M.B.

PLAINTIFF

AND

T.J.C.

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff

Josélynn Fember

Counsel for the Defendant

Christiana Lavidas

REASONS FOR DECISION

Overview

[1] This is a decision on spousal support after a Binding Judicial Settlement Conference (BJSC). All other issues were resolved at the BJSC and an order is on file reflecting the agreement. Counsel and the parties are to be commended for their cooperative, forward-looking approach and the compromises they made to arrive at a settlement. There was insufficient time at the BJSC to discuss spousal support and there was a discrepancy in the positions of the parties on this issue in their written briefs. The parties and their counsel were content to rely on their written submissions

and exhibits and have me decide the plaintiff's entitlement to spousal support, and if any, the amount.

[2] In the following I will review briefly the relevant factual background, the applicable legal principles, and my analysis and conclusion. I have also considered previous affidavits filed by both parties in coming to my conclusions.

[3] My conclusion in brief is that the plaintiff has no entitlement to spousal support. The common law relationship was relatively short, at approximately four and a half years. While there is no doubt that during the relationship she contributed significantly to the management of the household and was the primary child caregiver, there is insufficient evidence that this affected her ability to earn good income or her career choices. The defendant's earnings are greater than the plaintiff's at the current time. However, since separation, the plaintiff's income fluctuations have been attributable to external events not connected to the relationship. She has made commendable child-focused choices about her residence, her employment and the delay of her return to school for nursing, due to her desire to give the children stability. These choices are not connected to sacrifices she may have made during the relationship.

[4] This conclusion is not meant to diminish the plaintiff's hard work of child raising and the other household contributions made by her. However, a consideration of the factors supporting entitlement to spousal support do not favour an award.

Background

[5] The parties had a common law relationship. There is some dispute about the date it began – the plaintiff says they began living together in a shared room in December 2018, while the defendant says they had two residences and did not start co-

habiting until they moved in a home together in Whitehorse in May 2019. This difference of five months is not material for the purpose of this application.

[6] The parties agree the relationship ended on August 19, 2023. There are two children of the relationship, X., age six and Y., age five (the Children).

[7] The plaintiff was employed by the Yukon government, Highways and Public Works, Transportation Maintenance Branch from 2012 to 2022 as a permanent heavy equipment operator. She worked a rotation of four 10-hour days followed by three days off, earning an annual income of approximately \$75,000, plus benefits, as well as overtime pay. She also during this time (2018-2019) attended nursing school while working night shifts.

[8] In 2022 she began working as a heavy equipment operator on the Nitsulin Bay Bridge project. When that project was put on hold, she began earning money through a cleaning contract through her company. Her cleaning contract earnings were put through the defendant's company account for financial reasons.

[9] In 2023, the plaintiff continued with the cleaning contract because there was no heavy equipment operating work and she wanted to remain in the community for the Children.

[10] The plaintiff's annual income was \$46,138.28 in 2021, \$35,570 in 2022, \$56,424 in 2023, \$122,826 in 2024, and \$62,062 in 2025.

[11] She has now applied to be an Educational Assistant (EA) at the school where her Children attend. There is no evidence of the proposed annual income; an on-line search of which I take judicial notice shows a range between \$51,000 and \$61,000 for

someone without experience. The hours of work are compatible with her need to provide child care.

[12] The defendant is a red seal millwright and has worked as a carpenter since October 2022. He is also a skilled mechanic. He incorporated his own company, at one point, but it is now inactive. He currently works shift work at a mine site.

[13] His annual income was \$92,586 in 2023, \$99,170 in 2024, \$116,987 in 2025, and \$156,127.36 (projected) in 2026. His current child support payments are calculated on the basis of his projected 2026 income.

Legal Principles

[14] Generally, the purpose of entitlement to spousal support is the alleviation of the adverse financial consequences of the breakdown of a marriage or common law relationship (*Bracklow v Bracklow*, [1999] 1 SCR 420 (*Bracklow*) at para. 35). A judge has broad discretion to apply relevant factors to the objectives set out in the applicable statute and strike a balance that is just. Entitlement must be proved first on a balance of probabilities, before turning to the determination of an appropriate amount.

[15] Because the parties were in a common law relationship, the claim for spousal support arises under Part 3 of the Yukon *Family Property and Support Act*, RSY 2002 c 83 (*FP SA*). Section 31 imposes a support obligation on both spouses to provide for themselves and to provide for the other spouse, in accordance with need, to the extent they are capable of doing so. Section 34 provides that a court may order support to be paid and sets out the factors to be considered in determining the amount, if any. Section 37 provides that people in common law relationships may apply to the court for a support order. A court may determine and order support using the factors set out in

s. 34 if they are satisfied it is justified after assessing the need of the applicant and the ability of the respondent to pay. Section 35 prioritizes child support over spousal support and allows for a revisiting of any spousal support order if the child support order is reduced or terminated due to a material change in circumstances.

[16] The relevant factors in s. 34 to this case are: the age and health of both parties; the length of their cohabitation; the capacity of the plaintiff to provide their own support; the capacity of the defendant to provide support; the assets and means of both parties; their accustomed standard of living while together and the plaintiff's needs; the measures available for the plaintiff to become financially independent and the length of time and cost involved to enable the dependent to take those measures; the effect on the plaintiff's earning capacity of the responsibilities assumed during cohabitation; housekeeping, child care or other domestic service performed by the plaintiff during cohabitation.

[17] There is a significant body of jurisprudence on spousal support under the *Divorce Act*, RSC, 1985, c 3 (2nd Supp). In those decisions, the purpose of spousal support is divided into (a) compensatory, meaning the recognition of economic disadvantages to a spouse arising from the marriage or its breakdown, and financial consequences arising from the care of children over and above child support obligations; and (b) non-compensatory, meaning relief of financial hardship based on need, because of a decline in a spouse's standard of living from the standard they enjoyed during the relationship. It reflects the economic interdependency from a shared life particularly where there is income disparity between the spouses. It allows for transitional assistance to the lower-

earning spouse to the financial realities of a single income (*Kirton v Mattie*, 2014 BCCA 513 at para. 49).

[18] The factors in s. 34 of the *FP*SA can be analyzed under compensatory and non-compensatory categories. Because the inquiry is fact specific and the determination is discretionary, I will examine all the relevant factors identified from s. 34 of the statute in the context of the overall purpose of spousal support.

[19] The primary factors related to compensatory support are the effect of responsibilities assumed and the provision of domestic services during co-habitation. The primary factors related to non-compensatory support are the accustomed standard of living during the co-habitation and the plaintiff's current needs, the measures necessary for the plaintiff to become financially independent and the time and cost of those measures, the capacity of the plaintiff to support herself and the capacity of the defendant to provide support.

[20] Their ages, health, and length of co-habitation relate to both prongs of the analysis. For example, a shorter co-habitation weakens the argument about ensuring an equal standard of living on separation, compared to a marriage or common law relationship of a long duration. Poor health and advanced age of the recipient spouse may also justify support payments on non-compensatory basis.

Analysis

Age, Health, Length of Co-habitation

[21] Both parties are young and healthy and have good income earning potential. The length of co-habitation in this case is relatively short – approximately four and a half years. These factors militate against entitlement to spousal support.

Capacity of plaintiff to support herself

[22] The plaintiff demonstrated throughout the relationship the ability to support herself and contribute positively to the family's economic status. Her earnings as a heavy equipment operator during the relationship were approximately \$75,000 annually plus benefits and overtime. During the first year of the relationship, she was able to pursue nursing classes while working. Although her income dropped in 2021 and 2022, due to a combination of maternity leave (2021) and the end of the heavy equipment operator employment (2022), it increased substantially in 2024 and remained higher in 2025. Her proposed work as an EA will likely result in less income than she earned in construction, but likely more than her cleaning business.

Capacity of defendant to provide support

[23] The defendant is a skilled tradesperson and is currently making a good income working shift work at a mine in receivership in the Yukon. He has the capacity to support the plaintiff.

Means and Assets

[24] The plaintiff says the defendant's significant inheritances totalling approximately one million should be considered in determining her entitlement to spousal support. It was not placed in a joint account, but it forms part of his means and assets.

The inherited capital may affect his income but there is no suggestion by either party that its value should be included in the calculation of the defendant's income. However, the plaintiff argues the inheritances affect the defendant's ability to absorb expenses, improve property and maintain a higher standard of living.

[25] While the inheritances do contribute to a disparity between the parties, and contribute to the defendant's ability to pay, they do not affect the entitlement to support. The inheritances the defendant received from family members are not related to the relationship between the parties and were not intended to increase his income.

Maintaining standard of living and plaintiff's needs

[26] The plaintiff says her standard of living has been detrimentally affected by the breakdown of the relationship. Her living expenses are high and without the defendant's financial contributions she is having trouble meeting them. She highlights the more expensive rent of \$1,100 for a three-bedroom two-bathroom home to which she recently moved in order to provide the Children with stability, safety, an appropriate space with a yard and accessible nearby greenspace. She also notes the costs of electricity, insurance, internet, water delivery amounting to approximately \$550 per month.

[27] The plaintiff has made child-focused decisions. Her new rental property is a marked improvement over the previous property which had safety and health issues.

[28] The defendant's child support payments are now \$1,771 per month. This amount will assist the plaintiff significantly with her expenses. In fact, this amount covers the living expenses for her and the Children she has itemized and will enable her to maintain a good residence for herself and the Children in the community.

[29] There was not much evidence provided about the difference between the standard of living the family enjoyed while together and the plaintiff's current standard of living and her needs. There is no doubt that the loss of a dual income will affect the standard of living of the plaintiff. Her lower standard of living post-separation is due in part to the unavailability of heavy equipment operator work, a situation that has existed

since 2022, as well as her choice to be available to her Children. While there was some economic interdependence during the relationship, evidenced by the plaintiff's modest contribution of a one-time payment of \$1,600 to truck financing, payment of the defendant's legal fees in 2019, and other contributions to rent, groceries, fuel, travel and household expenses, the parties maintained separate bank accounts and separate credit cards. In other words, it was not a substantial co-mingling or complete integration and sharing of joint finances. The time period of any economic advantages or interdependence resulting from co-habitation was relatively short at four and a half years.

[30] I also note the plaintiff had the use of the defendant's truck for three years, with expenses paid by him. The truck was returned to the defendant as part of the settlement. The plaintiff further received an equalization payment as a result of the settlement of the division of assets, which will assist her in purchasing a new vehicle. The truck helped her during the transition period after separation and the equalization payment will help her become re-established.

[31] The plaintiff has not shown need significant enough to justify spousal support.

Measures to allow the plaintiff to become financially independent and time and cost

[32] The plaintiff is capable of financial independence. She has demonstrated this since separation with her significant earnings in 2024 and solid earnings in 2025. As an EA she will also earn a decent income. Becoming a nurse is her ultimate goal and will provide her with greater financial security. She attested in an affidavit that her First Nation would likely assist her financially while she completes her education, once she chooses to resume her studies. She advised that she did not pursue the nursing

program at Yukon University because she believed she could obtain better training elsewhere. While challenging, these goals and opportunities are possible when she is ready. Her child care responsibilities existed during the relationship and did not prevent her from earning good annual incomes.

Effect of responsibilities on her earning potential; amount of household duties

[33] The plaintiff's lawyer argued the plaintiff's earning potential was diminished by her childbearing, her primary caregiver responsibilities and her other household responsibilities. However, this is not borne out by the evidence of her earnings. While her annual earnings fluctuated, it was for reasons other than child care responsibilities. Her time off from work as a result of child-bearing was relatively brief and did not result in a diminishment of her income over the longer period, evidenced by the significant increase in her income in 2024. Her assumption of household responsibilities of cleaning, laundry, cooking and certain administrative matters, did not limit her earning capacity or potential.

[34] The defendant's undisputed evidence is that he assumed significant child caregiving responsibilities for approximately a year and a half, in 2020-2021, allowing the plaintiff to work longer hours. This further undercuts the plaintiff's entitlement to a claim for spousal support based on sole responsibilities of child care and other domestic responsibilities during the relationship.

[35] Since the separation, the plaintiff says her career options are limited because of her need to provide child care as the primary caregiver. She says she has less flexibility to accept regular employment, work extended rotations, commute, relocate, attend school or pursue training. For example, she has chosen to delay her plan to pursue education to become a nurse in order to maintain stability for the Children as they were

starting school. On the other hand, she argues the defendant is able to work longer hours, accept shift work, and pursue other opportunities as a result of the absence of regular child care responsibilities.

[36] The plaintiff is to be commended for the child-focused nature of her employment choices. However, the reasons she has provided for delaying her education and accepting lower paying jobs (such as cleaning contracts and EA) are not related to the separation but from concern for her Children's stability. She does not want to move from her current location, which has more limited employment opportunities than Whitehorse, for example, because of its small size, and the support she receives from family and the community. She also has received a land allocation in the community from her First Nation on which some work has begun. She does not want to pursue relocation to attend nursing school at this time, also because of her concern for her Children's stability. This child-focused prioritizing is not a reason that entitles her to spousal support in all of the circumstances. They reflect decisions she has made independent of the relationship and for the Children.

Post separation increase in income

[37] The plaintiff argues that the significant increase in the defendant's earnings post separation entitles her to spousal support because if she were not caring for the Children, he would not be able to work shift work and out of town.

[38] This is an oft-contested area. As stated by the Court of Appeal of Saskatchewan in *Dungey v Dungey*, 2020 SKCA 138 at para. 88:

In summary, increases in income that occur post-separation are not automatically available for spousal support purposes. Many factors influence a trial judge's analysis of whether post-separation increases in income should be determined

to be income available for the purposes of spousal support ... while it is critical to establish a direct or indirect link between the ... cohabitation and the increase in income, the mere establishment of such a connection does not, in and of itself, result in the inclusion of all such income increases.

[39] Factors to be considered include the length of the marriage, the roles adopted during the marriage, the time elapsed between the date of separation and the income increase, and the reason for the income increase (*Kohan v Kohan*, 2016 ABCA 125).

[40] The defendant obtained this employment on his own initiative, more than two years after the separation. There is no evidence that during the relationship the plaintiff contributed to his ability to obtain this job – in other words, there is no evidence he acquired advantageous new skills or education because of the plaintiff's sacrifice, that contributed to acquiring this new job. With shift work (two weeks on/two weeks off) the father can have extended time where he is not working to devote to child care.

Retroactive Child Support

[41] The plaintiff claims retroactive spousal support to the date of the issuance of the Statement of Claim in November 2023. Retroactive payments are discretionary. Given my findings on entitlement, it is unnecessary to consider them because entitlement on a retroactive basis would likely not exist for the same reasons as set out above. However, I will address the submissions made by the plaintiff. Contrary to the plaintiff's written brief, spousal support was not requested in the Statement of Claim, only child support. In the Statement of Claim, paragraph 16 from the template that sets out a request for spousal support is absent. It was also not requested in any of the interim applications, for reasons explained by the plaintiff, that is, because of the priority of matters related to the Children. The first time spousal support was raised by the plaintiff, according to the

court filings, was for the purposes of the BJSC. Without a claim for spousal support in the Statement of Claim, even if entitlement were found, I decline to consider the plaintiff's entitlement to any retroactive spousal support.

Conclusion

[42] To conclude, the short duration of the relationship, the proven ability of the plaintiff to earn substantial income, even as the primary caregiver, the absence of full economic integration of the parties, and the understandable choices of the plaintiff to remain in the community for the benefit of the Children, the equalization payment and other property division decisions, are all reasons why there is no entitlement to spousal support. The plaintiff is to be commended for her child-centred and focused decisions.

DUNCAN C.J.