SUPREME COURT OF YUKON

Citation: *G.J.B. v. C.B.*, 2014 YKSC 33

Date: 20140624
S.C. No. 03-B0079
Registry: Whitehorse

Between:

G. J. B.

Plaintiff

And

C. B.

Defendant

Before: Mr. Justice L.F. Gower

Appearances:

Brendan Myers Miller — Counsel for the Plaintiff
André W.L. Roothman — Counsel for the Defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is the defendant mother's application for an order requiring the plaintiff father to pay prospective, retroactive and arrears of child support for the child, B.J.M., who is presently 14 years old. The mother also seeks an order that the father pay his proportionate share of the child's special and extraordinary expenses.

[2] An order was made on December 17, 2013, dealing with the issue of prospective child support. The parties are agreed that a slight adjustment is required to that order to

reflect the most current information on the father's gross annual income, which according to his recently filed 2013 tax return was $66,887.

[3] I understood the parties to frame the issues as follows:

1) What is the amount of prospective child support payable?

2) What is the amount of retroactive child support payable?

3) Should the father receive a credit to reflect the fact that the child shared his residence equally between the parties for the months of February through July 2013?

4) Should the father pay for any arrears of special or extraordinary expenses?

5) Should the father pay for any other arrears?

FINDINGS OF FACT

[4] The parties were involved in a common-law relationship from about the summer of 1998 until about June 2000. The child was born on July 5, 1999. Although the father is ordinarily resident in the Yukon, he temporarily relocated to North Vancouver, British Columbia, in about November 2002, and periodically is required to work outside the Yukon as a heavy equipment operator.

[5] I find as a fact that in late 2000 the father agreed to pay child support of $454 per month, based on his then annual income of $53,000, pursuant to the *Child Support Guidelines*. He further agreed to pay 50% of the child's special or extraordinary expenses. The uncontested allegation of the mother is that these payments commenced January 1, 2001.

[6] The father commenced the present action by filing a Writ of Summons on December 10, 2003, seeking joint custody and specified access. At para. 16 of the Writ, the father pled:

> "The Plaintiff has been paying child support in the amount of $454 per month since Separation pursuant to the *Child Support Guidelines* and his gross annual income."

[7] On March 31, 2004, I made an order that the parties would share interim joint custody of the child and that the child would reside primarily with the mother. The father was granted specified access. As the parties chose not to deal with the issue of child support at that time, the order was silent in that regard.

[8] The father eventually fell behind in his child support payments. Beginning May 1, 2003, the mother began to keep a handwritten record of the child support arrears. In her affidavit # 3, the mother attached a copy of her "original handwritten notes" of the arrears as an exhibit. In her affidavit # 1, she attached as an exhibit a transcribed typewritten version of these notes. In the father's affidavit # 5, he alleged making "numerous" cash support payments, as well as payment for half of the cost of two summer camps, which the mother's list did not include. In her responsive affidavit # 2, the mother attached as an exhibit a revised typewritten record of the child support arrears, identifying those payments which were made in cash and correcting what she described as her "oversight" regarding the summer camp payments. In his affidavit # 6, the father challenged the mother's veracity regarding the amendment to the record of arrears and questioned the absence of handwritten notes. Apparently in response to this challenge, the mother filed her affidavit # 3, with a copy of her original notes attached.

[9] The mother's affidavit # 3 was filed after the case management deadline for the filing of materials, which I previously directed to be April 30, 2014. Further, the mother's counsel informed me at this hearing that he had delivered a copy to the father, when the father attended that counsel's office. Accordingly, the mother's counsel did not feel it was necessary to provide a copy of the affidavit to the father's counsel, who practices in Calgary, Alberta. Thus, when we started the hearing, the father's counsel objected to the admissibility of the affidavit. However, I directed that a copy be faxed to him and adjourned the hearing briefly to give the father's counsel an opportunity to read it. When we resumed the hearing, I did not understand the father's counsel to continue with his objection to the admissibility of the affidavit.

[10] Having said that, the father's counsel nevertheless made submissions challenging the veracity of the mother's handwritten record of arrears. As I understood him, he argued that there was no evidence as to when the record was actually made. He also questioned why it was produced so late in the litigation. Finally, he seemed to question the mother's ability to recall which payments were made in cash so long after the fact. I note that in the mother's handwritten record, the word "cash" is written or printed beside some of the entries.

[11] Indeed, the father's counsel went so far as to say that the mother initially 'denied' having received any cash payments, and only changed her evidence in this regard in response to the father's affidavit # 5. I reject this submission. The mother made no such denial of cash payments.

[12] There are, however, clearly conflicts in the evidence between the parties in several other important respects. In the absence of cross-examination and/or other

independent evidence, this has made it difficult to make findings of fact in certain respects.

[13] I also bear in mind that the father's counsel received the mother's affidavit # 3 at the last minute, and that the father has not had an opportunity to respond to it. Nevertheless, viewing the evidence on this application as a whole, including the general consistency between the three versions of the record of arrears, I am left with no reason to question the mother's truthfulness when she affirmed that the document attached as an exhibit to her affidavit # 3 was a copy of her "original handwritten notes".

[14] The upshot is that, as of December 1, 2013, the mother claimed total arrears of $32,824.50, plus certain special or extraordinary expenses, which I will deal with separately. These arrears are all based on the previous agreement that the father would pay child support of $454 per month plus 50% of the special or extraordinary expenses.

[15] There is a genuine dispute between the parties as to their communications about the occasions when the father failed to pay child support over the years. In his affidavit # 5, the father deposed that he paid the mother "as [he] was able". While his counsel submitted that there was effectively an agreement between the parties in this regard, the mother vehemently denies that suggestion. Indeed, in his affidavit # 5, the father refers to what he says was a specific agreement to waive unpaid child support after a meeting between the two of them at a restaurant in 2009. After that meeting, he said the mother "was happy with the amount of support I was giving her", meaning that the mother had agreed to waive certain payments which were missed. Once more, this interpretation was denied by the mother in her affidavit # 2. Rather, what the mother generally alleges is that the father continually promised to make good on the arrears,

but failed to do so. There is no further evidence from the father on this issue in his affidavit # 6.

[16] Once again, taking all of the evidence into account, I find as a fact that the parties made an oral agreement in late 2000 that the father would pay $454 per month in child support, based on his then gross annual income of $53,000. Payments commenced January 1, 2001 and continued for approximately 3 years through to the filing of the Writ of Summons by the father on December 10, 2003. Further, as the mother's record of arrears begins on May 1, 2003, and shows arrears at that time of only $229, it would seem that the father had been relatively up-to-date with his payments to that point. Further, the mother continually recorded the sum of "$454" as the amount owing from the father on the first day of each month thereafter, through to and including December 1, 2013. As I am satisfied that the record is genuine, it therefore reflects the fact that there was no waiver or reduction of monthly child support by the mother at any time following the initial oral agreement. As for the communications between the parties over the years about the unpaid child support, I also find as a fact that the mother agreed to wait for the father to catch up on the arrears, as he promised, but that she never agreed to a waiver or reduction of child support.

[17] I further find as a fact that the cash payments made by the father have been accurately recorded by the mother in the record of arrears. Therefore, I am not prepared to credit the father for any *additional* cash payments, which he admits he cannot prove in any event.

[18] In his affidavit # 5, the father deposed that he had significant financial difficulties from the summer of 2006 until sometime in 2011. The mother took no issue with these allegations, either in her subsequent affidavits or through her counsel's submissions. Therefore, I am prepared to accept this evidence. In the summer of 2006, the father was unable to work due to medical reasons, and was unable to pay the mother full child support. He tried to keep up as best he could until the summer of 2007, but was facing severe financial hardship and credit problems due to his employability. In December 2008, the father returned to the Yukon from British Columbia to help his mother take care of his father (the "grandfather"), who had suffered a stroke in 2007 and was beginning to suffer from dementia. In 2009, the father claimed compassionate Employment Insurance, as he was helping with the grandfather's deteriorating health. The grandfather died on April 15, 2009. In the same year, the father also lost a nephew and brother. The father spent the balance of 2009 clearing his father's acreage in order to sell the property for his mother. The father then met his current wife and started a relationship in 2010. When his first child was born from that relationship in 2011, the father was still struggling to get back on his feet financially.

[19] Some of this evidence is corroborated by the uncontested financial information provided by the father as to his gross annual incomes between 2009 and 2012, which were as follows:

- 2009: $12,686
- 2010: $51,762
- 2011: $18,052
- 2012: $56,301

[20] The father did not provide this Court with financial information for any of the years prior to 2009.

[21] In January 2013, the mother retained legal counsel to pursue the unpaid child support. In her affidavit # 3, she attached as an exhibit an email to her counsel dated January 15, 2013 indicating that she had spoken with the father and told him that she was working on “the papers for support payment” [as written] and that she required the last three years of tax returns from the father. However, it would appear that the mother then put the issue of unpaid child support on hold for the next several months, as the child began to reside equally between the respective residences of the parties from February through to and including July 2013.

[22] The child then returned to the mother’s home as his primary residence in August 2013. Also in that month, the father’s counsel admits that he received effective notice from the mother’s counsel that the mother was intending to pursue the unpaid child support.

[23] There is a further conflict in the evidence as to whether there was an agreement between the parties to waive payment of child support by the father for the time period when the child was residing equally with each of them. I do not have to resolve this conflict, as fairness compels me to credit the father for this time in any event. The practice in the Yukon, pursuant to s. 9 of the *Child Support Guidelines*, in a shared custody situation, is that the parties compare their respective gross annual incomes and determine the notional table amount of child support each would pay to the other. The higher income earner then pays the difference to the lower income earner. However, since there was no court application by either party, nor any agreement on the point, I

am prepared to resolve this issue by simply crediting the father by way of a waiver of any child support payable over that period and not concern myself with the mother's salary.

[24] On October 8, 2013, the mother filed her original notice of application seeking recovery of the unpaid child support, which gave rise to this hearing.

ANALYSIS

1. Prospective Child Support?

[25] As I noted above, the father's gross annual income for 2013 was $66,887. According to the *Child Support Guidelines*, the monthly child support payable for that amount (rounded up to $66,900) is $620. Therefore, my order of December 17, 2013 should be amended accordingly. In my view, that amendment should be retroactive to January 1, 2014.

2. "Retroactive" Child Support?

[26] With respect, I believe the parties may have misconceived this issue to some extent. Counsel for each of the parties has relied on the leading case in this area, *D.B.S. v. S.R.G.*, 2006 SCC 37. However, that case makes a clear distinction between the factors which are to apply to the payment of retroactive child support, and those applying to the payment of accumulated arrears (para. 98). Nevertheless, counsel relied upon *D.B.S.* to deal with both retroactive child support and arrears. As I will indicate later, different principles apply to the question of rescinding arrears.

[27] The classic situation referred to in *D.B.S.* is where a payor parent is obliged to pay child support in an amount set out in an agreement or a court order, based on their then gross annual income, and then the income of the payor parent subsequently

increases without the knowledge of the recipient parent. If the recipient parent later discovers this increase in income, they can pursue the payor parent for the retroactive increase in the monthly amount which should have been paid in the intervening months or years. However, in the case at bar, there were at least three years, 2009, 2010 and 2011, where the father earned *less* than the $53,000 upon which the original child support amount of $454 monthly was based. Admittedly, in 2012 and 2013, the father has earned more than $53,000, and for those years there is a genuinely arguable claim for retroactive child support which ought to have been paid, over and above the previously agreed-upon amount of $454.

[28] In his written argument, the father's counsel submitted that "looking at the facts of this case", and applying the "holistic approach" as per *D.B.S.* (para. 99), this is not a case "where arrears should be awarded." With respect, this is where the confusion begins. This case is not about 'awarding arrears'. Rather, the arrears have continued to accumulate since 2003, as neither party has applied to have them rescinded, suspended or otherwise varied. On the other hand, as this is also the first application by the mother for a court order confirming the amount of the arrears owing, then I do believe I have jurisdiction to consider the principles applicable in determining the issue of a retroactive adjustment of support as well as the issue of whether any of the arrears ought to be rescinded.

[29] Although much was made of the date of "formal" versus "effective" notice to the father, in my view, not much turns on it. Both counsel appeared to agree, albeit the father's counsel in the alternative, that there should be a retroactive variation for the increase in the father's income from $53,000 in the years 2012 and 2013. Further, I

understood the mother's counsel to agree that the father should receive the benefit of the reduction in his income from $53,000 in the years 2009, 2010 and 2011. As stated, this Court does not have income information from the father prior to 2009.

[30] In my view, the fair and reasonable thing to do here is to vary the amount of child support notionally payable by the father, for the years in which his income information is available, to more accurately reflect what he ought to have paid in each of those years. Obviously, in some cases the amount will decrease from $454 monthly, and in more recent years it will increase, as follows[1]:

Year	**Gross Annual Income**	**Monthly Table Amount**	**X 12 months**
2009	$12,686	$33	$396
2010	$51,762	$477	$5,724
2011	$18,052	$164	$1,968
2012	$56,301	$520	$6,240
2013	$66,887	$620	$7,440

[31] However, for reasons which will soon become obvious, it will be more convenient to set out what the father actually owes when I finally deal with the question of whether any arrears will be rescinded.

3. Credit for Equally Shared Residency?

[32] I have already outlined my approach to this issue at para. 23 of these reasons. It is only necessary at this stage to calculate the amount of the credit due to the father. The father deposed in his affidavit # 6 (para. 7) that the child resided equally between the parties "from February to the end of July" 2013, i.e. a total of six months. In that

[1] I have rounded up or rounded down the income numbers to the nearest hundred dollars.

year, the father was to have paid $620 per month in child support, based on his gross annual income of $66,887. Therefore, he is entitled to a credit of $3,720 ($620 x 6).

4. Special or Extraordinary Expenses?

[33] As I understand it, the principal dispute here is over the cost of the child's dance lessons in the years 2011-12 ($1,853) and 2013-14 ($1,050). In his affidavit # 6, the father suggested that he was being taken by surprise by the cost of the dance lessons. However, his evidence at para. 15 in this regard was somewhat contradictory. On the one hand, he deposed that he was told that the child had started taking dance lessons in 2011 and remembered clearly that his activities at the time included breakdancing. On the other hand, he suggested that there was "absolutely no communication and discussion" about the dance lessons. In her affidavit # 3, the mother deposed that she called the father in September 2011 about the dance lessons and that he had "no problem" paying half the cost per month (para. 18). The mother also noted that the dance lessons are important for the child, as he has been accepted into the Music, Arts, Dance, and Drama ("MADD") program at the Wood Street School in Whitehorse.

[34] I find as a fact that the father knew of the dance lessons from 2011, and that his professed ignorance that the lessons continued in 2013-14 is due to his own failure to maintain proper communication with the child and the mother about the issue.

[35] The father's counsel submitted that all arrears for special or extraordinary expenses should be disregarded on the basis of "the principle of certainty". This would again seem to be a reference to the factors potentially giving rise to a waiver of retroactive child support, as referred to in *D.B.S.*. However, as I stated above, the principles in *D.B.S.* focus on the potential award of retroactive child support and not on

the rescission or cancellation of accumulated arrears of child support. In order to obtain cancellation of arrears, it is necessary to establish prejudice by delay, serious hardship or unfairness in the circumstances: *Anderson v. Anderson*, 1999 BCCA 147, at para. 10. In *Matthews v. Matthews*, 2007 YKSC 11, Veale J., of this Court, at para. 46, referred with approval to the decision of the Ontario Court of Appeal in *DiFrancesco v. Couto* (2001), 56 O.R. (3d) 363, which addressed some of the factors which a court may consider in exercising its discretion in the rescission of arrears. Veale J. paraphrased these factors. I will quote them directly as they appear in *DiFrancesco*, at para. 23:

> "The decision to rescind arrears involves consideration of a variety of factors. In *Filipich v. Filipich* (1996), 92 O.A.C. 319 this court noted that some of the factors a court may consider are set out in *Gray v. Gray* (1983), 32 R.F.L. (2d) 438 Ont. (H.C.J.) at p. 441. They are as follows:
>
> - the nature of the obligation to support, whether contractual, statutory or judicial;
> - the ongoing financial capacity of the Respondent spouse;
> - the on-going need of the custodial parent and the dependent child;
> - unreasonable and unexplained delay on the part of the custodial parent in seeking to enforce payment of the obligation, tempered, however, in the case of child support with the fact that such support obligation exists for the child's benefit, is charged with a corresponding obligation to be used by the custodial parent for the child's benefit and cannot be bargained away to the prejudice of the child;
> - unreasonable and unexplained delay on the part of the Respondent spouse in seeking appropriate relief from his obligation; and

- where the payment of substantial arrears will cause undue hardship, the exercise of the Court's discretion on looking at the total picture, weighing the actual needs of the custodial parent and child and the current and financial capacity of the Respondent, to grant a measure of relief, where deemed appropriate."

[36] In the case at bar, the father's obligation to pay 50% of the special or extraordinary expenses is contractual, arising from his oral agreement with the mother in late 2000. The father's 2013 gross income was $66,887, and I find that he has the ongoing financial capacity to meet his obligations in this regard. Admittedly, there has been a delay on the part of the mother in seeking to enforce this payment, a point which I will return to later. However, this has to be tempered with the recognition that the dance lessons appear to be a genuine need for the child and that their continuation would be in his best interests. Further, until now, there has been no move by the father to seek relief from this obligation. Finally, providing that these arrears are paid pursuant to an appropriate payment plan, I am not satisfied that repayment will necessarily cause the father undue hardship.

[37] On the other hand, I must recognize that the father's income in 2011 ($18,052) was significantly below what it was in 2000 ($53,000), and below what it has been for the last two full calendar years. In my view, this amounts to evidence of a past inability to pay, which is also a relevant factor in exercising discretion to cancel arrears: *Haisman v. Haisman* (1994), 116 D.L.R. (4th) 671 (Alta. C.A.), at para. 25. Accordingly, I am prepared to grant the father some relief for the cost of the dance lessons by reducing his obligation to pay for the 2011-12 period from 50% to 25%. Therefore, the arrears payable will be reduced to $463 ($1,853 x 25%).

[38] The father remains responsible for 50% of the cost of the dance lessons in 2013-14, i.e. $525 ($1,050 x 50%).

[39] The father also objected to paying for 50% of the estimated cost of a new snowboard for the child ($613). As this expense has not yet been incurred, no arrears are payable. Nevertheless, the dispute needs to be resolved.

[40] The father's objection to the snowboard seems argumentative and exaggerated. In his affidavit # 6, the father claims to be "appalled" that the mother would make such a claim and that "snowboarding [is] a privilege" (para. 16). He also seems to suggest that he should be forgiven for this obligation because he alone purchased the previous snowboard for the child, as well as other miscellaneous sports equipment. The mother responded in her affidavit # 3 that she alone purchased the child's first snowboard, and that the estimate she provided was for a new snowboard on sale, which is "not top of the scale as far as boards go" (para. 20).

[41] I am satisfied that this is a legitimate extraordinary expense for an extracurricular activity under s. 7(1)(f) of the *Child Support Guidelines*. Further, it would appear to be one which is in the child's best interests, and the father's counsel has failed to persuade me that it is unreasonable. Therefore, I expect the father to pay his proportionate share of the expense when it is incurred.

[42] I pause here to note that, although the previous oral agreement was that the parties would <u>equally</u> share the cost of special or extraordinary expenses, both have suggested on this hearing that the sharing of such expenses in the future should be in proportion to their respective incomes. On the assumption that the mother's 2013 gross income was $81,202 (based on her T4 slip) and noting that the father's gross income for

the same year was $66,887, going forward for the next calendar year, the mother should pay 55% and the father should pay 45% of such expenses.

5. Arrears Generally?

[43] The father's counsel submitted that, based upon the "holistic approach" suggested in *D.B.S.* (para. 99), "this is not a case where arrears should be awarded". Once again, this submission is misconceived. The mother is not applying for arrears to be "awarded". Rather, she is applying for the enforcement of past arrears which have already accumulated. Further, in seeking forgiveness of these arrears, the father is effectively asking that they be cancelled or rescinded. *D.B.S.* is not an authority regarding the court's discretion to cancel arrears. Rather, in that regard, I must look to the principles in *DiFrancesco, Haisman,* and *Anderson,* all cited above.

[44] It may be helpful to set out a table which includes what the father ought to have paid in each year since 2003, what he did pay, and the difference owing, before considering the cancellation of any of the arrears:

Year	**Amount Agreed Upon or Adjusted to Reflect Actual Income**	**Amount Paid**	**Amount Due**
2003	$5,448	$3,300	$2,148
2004	$5,448	$4,890	$558
2005	$5,448	$4,490	$958
2006	$5,448	$4,515	$933
2007	$5,448	$1,235	$4,213
2008	$5,448	$0	$5,448
2009	$396	$700	($304)
2010	$5,724	$500	$5,224

2011	$1,968	$3,150	($1,182)
2012	$6,240	$2,550	$3,690
2013	$7,440	$0	$7,440
Totals	**54,456**	**25,330**	**29,126**

[45] Thus, without cancelling any arrears, the father will be required to pay $29,126, plus his proportionate share of the special or extraordinary expenses, plus his ongoing child support of $620 per month. Such a result strikes me as one which would no doubt cause the father significant financial hardship.

[46] In addition, I am troubled by the length of time that it has taken the mother to apply to this Court for enforcement of the arrears. In her affidavit # 1, the mother deposed that, given the financial constraints caused by having a handicapped (wheelchair-bound) child from her current marriage she has "never been able to afford the services of a lawyer in respect of the issue of arrears" (para. 13). In her affidavit # 2, the mother deposed that she could only afford to proceed with this application after her own mother (the "grandmother") agreed to advance funds to retain counsel (para. 23). However, it is clear that the mother had legal counsel in March 2004 when the consent order for interim joint custody and specified access was made. While the arrears were apparently not significant at that time ($784), I infer from all of the mother's evidence that the father's failure to pay on a regular basis and his failure to provide her with annual financial information has been a problem from the very beginning. In particular, in her affidavit # 1, at para. 6, the mother deposed:

> "Since the plaintiff agreed to pay child support back in 2001, he failed to pay on a regular basis. He also failed to provide me annually with information on his income. I only started to keep record of his payments since May 2003, because of the fact that he kept missing payments on a regular basis."

That evidence was uncontradicted by the father, and I therefore accept it as fact.

[47] Given this, it is difficult to understand why the mother failed to pursue the issue of arrears at the time of the March 2004 order. Clearly, she was able to retain counsel at that time, contrary to her assertion that she has “never been able to afford the services of a lawyer” to deal with the issue of child support. Further, it appears that the relationship between the mother and grandmother is a good one, and that the latter is a person of financial means. In the mother’s affidavit # 3, there is reference to the grandmother building a retirement home on the mother’s property. I infer from this that the mother likely could have approached the grandmother much earlier for financial assistance to pursue enforcement of the arrears. Yet, the mother has provided little or no explanation for why she waited approximately 12 years to do so.

[48] Lastly, the father’s evidence about his financial difficulties over the years is uncontradicted by the mother. He has deposed that he works mainly seasonally as a heavy equipment operator and that his profession is very unstable. When there is no work in the Yukon, he attempts to seek work elsewhere, which has required him to relocate temporarily to British Columbia and Alberta at different times. The work is also weather dependent. Furthermore, as I indicated above, the father experienced significant financial difficulties beginning in the summer of 2006, due to medical reasons. These difficulties would seem to have continued until the summer of 2007, as he was facing severe financial hardship and credit problems. In that same year the grandfather began to suffer from dementia and had a stroke. The father then returned to the Yukon from British Columbia to help his mother take care of the grandfather in December 2008. The father then claimed compassionate Employment Insurance in

2009 when the grandfather's health was deteriorating and he was helping to care for him. The grandfather, the father's nephew and the father's brother all died in 2009. The father also spent 2009 clearing the grandfather's acreage in order to sell the property for his mother. The father then started a relationship with his current wife 2010 and was struggling to get back on his feet financially to prepare for the arrival of their first child in 2011.

[49] It seems reasonable to infer that cumulatively these difficulties adversely affected the father's ability to pay child support over the period from approximately 2006 to 2011: see *Heisman*, cited above, at para. 25. Accordingly, it is my view that the father is entitled to a measure of relief for these years. It is also noteworthy that, after adjusting retroactively for the father's documented and significantly reduced gross income in each of the years 2009 and 2011, the father actually paid more in child support than he ought to have. In the circumstances, it is difficult to do more than try and achieve some retrospective 'rough justice' here. I resolve the matter by cancelling the arrears accumulated over the years 2006 to 2011 ($14,332) and subtracting that sum from the total of $29,126, to produce a revised total of $14,794. I note that this continues to account for the credit to the father for his 'overpayments' in 2009 in 2011.

[50] The father's financial statement, sworn on November 18, 2013, indicates that his monthly expenses total $4,080. These include a total of $325 month in discretionary spending on alcohol and tobacco. The father's 2013 tax return indicates that he has "net income" of $64,596, or $5,383 monthly. On its face then, there would seem to be a difference of approximately $1,300 between the father's net monthly income and his total monthly expenses. However, from that amount, he will be required to pay $620 per

month for prospective child support, plus 45% of the special or extraordinary expenses. I also bear in mind that those special or extraordinary expenses are likely to be significant in the near-term. They will include 25% of the 2011-12 dance lessons ($1,853 x 25%= $463), 50% of the 2013-14 dance lessons ($1,050 x 50%=$525) and 45% of the estimated cost of the new snowboard ($613 x 45%= $275). In addition, there is the potential of a significant expense associated with the child's upcoming school trip to New York City, which the mother has said will cost the father $1,796 up front, subject to later reimbursement. (I make no order with respect to this trip, as the father has not yet had an opportunity to respond to this information in the mother's affidavit # 3.)

[51] In all of the circumstances, and again applying some rough justice, I conclude that the father must repay the arrears of child support of $14,794 at the rate of $250 per month, in addition to the amount he is required to pay for ongoing prospective child support.

CONCLUSION

[52] Based on the father's 2013 gross income of $66,887, he is required to pay ongoing monthly child support of $620, commencing January 1, 2014.

[53] Retroactively, based on the same income, the father ought to have paid a total of $7,440 in monthly child support in 2013. Further, based on the father's 2012 gross income of $56,301, he ought to have paid a total of $6,240 in monthly child support. However, as these retroactive variations have been taken into account in assessing the arrears due, there is no need for a separate order in this regard.

[54] The father is entitled to a credit of $3,720 ($620 x 6 months) for the time when the child was residing equally with the parties from February to the end of July 2013.

[55] The father owes arrears for special or extraordinary expenses, i.e. the dance lessons, totalling $988 ($463 + $525).

[56] The father also owes arrears of child support totalling $14,794.

[57] Thus, the father presently owes a total of $12,062 ($14,794 + $988 - $3,720), which is payable at the rate of $250 per month, commencing July 1, 2014.

[58] If they have not already done so, the parties are required by Practice Direction #37 to complete both levels of the “parenting after separation” workshops offered by the Yukon Government within one year of the date of this order.

[59] As success was divided between the parties on this application, I order that each party shall bear their own costs.

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GOWER J.