SUPREME COURT OF YUKON

Citation: *ENAG v JSP*
2024 YKSC 37

Date: 20240802
S.C. No.22-B0065
Registry: Whitehorse

BETWEEN:

E.N.A.G

PLAINTIFF

AND

J.S.P

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff Shaunagh Stikeman

Counsel for the Defendant Joselynn Fember

REASONS FOR DECISION

INTRODUCTION

[1] This is a continuation of an application by the plaintiff mother for retroactive child support, retroactive proportionate s. 7 expenses, spousal support, and asset division. This application was part of an application for custody, access, and relocation that was heard in September 2023. Time was not sufficient to complete the support and property matters. The asset division decision is a final order and will be separated from any orders related to support.

BACKGROUND

[2] The plaintiff mother and defendant father met in New Brunswick and began living together in September 2010. They have two children together: R., age 11 years, and L. age seven years. In May 2018, the family moved to the Yukon to live with the defendant's parents who needed help in their home about 45 minutes from Whitehorse.

[3] For the most part during the relationship, the defendant was the primary financial provider and the plaintiff was the primary caregiver for the children. The plaintiff also provided support to the defendant's parents by cooking and cleaning for them. R. has severe anxiety, and the plaintiff has worked very hard on his behalf to get supports in place at school and to help him overcome his difficulties at home. The defendant has resisted accepting the degree and severity of R.'s challenges and was unable to meet his emotional needs in the same way the plaintiff was.

[4] The plaintiff and defendant separated either on November 29, 2021, according to the defendant, or December 1, 2021, according to the plaintiff. The plaintiff rented a condominium in downtown Whitehorse and the children spent from Sunday evening to Friday at 4:30 p.m. with her, and every weekend with the defendant, as well as approximately 1 – 1.5 hours one weeknight evening. As time progressed, the relationship between the defendant and R. became more strained, until R. refused to see the defendant any longer. The relationship between L. and the defendant remained positive.

[5] The plaintiff sought and obtained an order for sole custody and allowing her to relocate to New Brunswick with the children in July 2024. The defendant was given

eight weeks of access and twice weekly video and/or phone calls with the children. Both parties now have relationships with new partners.

[6] For the first year after separation, the communication and co-parenting was relatively functional and civil. In early 2023, at the time the defendant refused to sign a proposed settlement agreement, the plaintiff's new partner moved to the Yukon and the plaintiff filed the statement of claim, the conflict between them began to escalate. Communications became hostile, co-parenting arrangements became much more difficult, and court appearances became regular. This is a high conflict file.

ANALYSIS

I. Retroactive child support

[7] The plaintiff seeks retroactive child support in the amount of $991.60 for the period from January 1 to June 1, 2023. The defendant paid $1,100 per month during that period, which is less than the amount owed by the defendant under the *Yukon Child Support Guidelines*, O.I.C. 2000/63. The defendant says he overpaid child support in 2022 by $9,700 and as a result he does not owe retroactive child support. He paid $2,000 per month between January and August 2022 and $1,500 per month between September and December 2022. This is more than the amount that was owed according to the *Yukon Child Support Guidelines*. The plaintiff disputes the reason for this overpayment, saying the additional amounts were for spousal support which the defendant agreed to pay voluntarily.

[8] I agree with the defendant that no retroactive child support is owing because of the overpayments he made in 2022. There was no evidence that the payments of $2,000 and $1,500 per month included spousal support. There was no discussion about

payment of spousal support. The first time it was mentioned was in an off-hand way by the plaintiff, in a text dated June 15, 2022, about the separation agreement and the possibility that she could provide a receipt for "all the spousal support" the defendant had paid since December so he could "claim it against his taxes". There was no evidence of a response from the defendant to that text. There is no evidence of any written agreement between the parties about spousal support. The defendant made no attempt to deduct any support payments in his income tax returns, which he is entitled to do with spousal support payments. Nor is there evidence that the plaintiff claimed spousal support payments as income on her tax return. The next time this issue arose was through text messages in November and December 2022 during further separation agreement discussions. The defendant wrote that he was not interested in paying spousal support. His uncontradicted evidence is that every cheque he provided to the plaintiff stated it was for child support.

[9] I accept the defendant's explanation that the overpayments were a recognition that the plaintiff had to pay rent and "it seemed like the right thing to do". This notional contribution towards rent helped to ensure appropriate shelter for the children and can be considered part of child support. The plaintiff may have made understandable assumptions that the additional monies were for spousal support but there is no evidence of any such clarification of the purpose of the overpayments. The claim for retroactive child support is dismissed. The overpayments in 2022 cover the shortfall that occurred between January and June 2023.

II. Proportional Sharing of s. 7 expenses incurred in 2022, 2023, and part of 2024

[10] Section 7 of the *Yukon Child Support Guidelines* provides as follows:

7. Special or extraordinary expense

(1) In an order for child support, the court may, on either parent's request, provide for an amount to cover all or any portion of the following expenses which may be estimated, taking into account the necessity of the expenses in relation to the child's best interests and the reasonableness of the expenses in relation to the means of the parents and of the child, and if the parents cohabitated after the birth of the child, to the family's spending pattern prior to the separation

(a) child care expenses incurred as a result of the custodial parent's employment, illness, disability, or education or training for employment;

(b) the portion of the medical and dental insurance premiums attributable to the child;

(c) health-related expenses that exceed insurance reimbursement by at least $100 annually, including

(i) orthodontic treatment,

(ii) professional counselling provided by a psychologist, social worker, psychiatrist, or any other person,

(iii) physiotherapy, occupational therapy, speech therapy, and

(iv) medications, hearing aids, glasses, and contact lenses;

(d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;

(e) expenses for post-secondary education; and

(f) extraordinary expenses for extracurricular activities.

(1.1) For the purposes of paragraphs (1)(d) and (f), "extraordinary expenses" means

(a) expenses that exceed those that the parent requesting an amount for the extraordinary expenses can reasonably cover, taking into account that parent's income and the amount the parent would receive under the applicable table or, if the court has determined that the table amount is inappropriate, the amount the court has otherwise determined is appropriate; or

(b) if paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account

(i) the amount of the expense in relation to the income of the parent requesting the amount, including the amount that the parent would receive under the applicable table or, if the court has determined that the table amount is inappropriate, the amount the court has otherwise determined is appropriate,

(ii) the nature and number of the educational programs and extracurricular activities,

(iii) any special needs and talents of the child or children,

(iv) the overall cost of the educational programs and extracurricular activities, and

(v) any other similar factor the court considers relevant.

(2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the parents in proportion to their respective incomes after deducting from the expense any contribution from the child.

(3) Subject to subsection (4), in determining the amount of an expense referred to in subsection (1), the court must take in[to] account any subsidies, benefits, or income tax

> deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit, or income tax deduction or credit relating to the expense.
>
> (4) In determining the amount of an expense referred to in subsection (1), the court shall not take into account any universal child care benefit or any eligibility to claim that benefit.

[11] The plaintiff seeks an order that the defendant pay 93% of the s. 7 expenses in 2022, based on his income of $70,571.46 in 2021 and she pay 7% based on her income of $4,984.66 in 2021. The total amount of s. 7 expenses claimed in 2022 is $2,931. The plaintiff paid $2,490, and the defendant paid $441.

[12] The plaintiff seeks a further order that the defendant pay 83% of the s. 7 expenses in 2023, based on his income of $78,570.42 in 2022 and she pay 17% based on her income of $15,595.67 in 2022. The evidence is unclear about how much the plaintiff paid for s. 7 expenses in 2023, as she combines expenses paid for all of 2023 as well as January and February 2024.

[13] The plaintiff seeks another order that the defendant pay 78% of the s. 7 expenses up to April 2024 based on his 2023 income of $89,934 and she pay 22% based on her income of $25,634. The evidence is unclear about how much the plaintiff paid in 2024 as she combines expenses paid for all of 2023 up to and including April 2024.

[14] The defendant does not oppose proportionate sharing of s. 7 expenses for 2022, 2023, and 2024, in principle. He agrees he owes an amount of $1,689.13 but disputes an amount owing of $2,810.85. His objections are two-fold: a) the plaintiff was under-employed and should have had an annual income imputed to her of $39,000 for the period of December 2021-December 2022 (although his response to the notice of

application states an imputation of income of $34,000.34), thereby reducing the percentage amount he is required to pay; and b) he did not consent to the costs of the osteopathy treatments, the initial counselling meeting with Joseph Graham, the naturopath, the horseback riding and Caitlyn (who was the riding instructor). Further, the defendant says these amounts are covered by the overpayments of child support he made in 2022 and that he should be given credit for paying for certain extra-curricular activities – family swim pass at the Canada Games Centre ("CGC"), family community centre membership, and Mount Sima ski school for R. - for which he did not request contribution from the plaintiff.

a) Imputation of Income

[15] Section 17(1) of the *Yukon Child Support Guidelines* provides that the court may impute such amount of income to a parent it considers appropriate in the circumstances, including where the parent is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of any child or by the reasonable educational or health needs of the parent. There are other circumstances listed but this is the relevant one here.

[16] The onus is on the defendant to establish the grounds for the request to impute income. Both parties are obliged to disclose all relevant financial information at the outset of the litigation. The Court of Appeal for Ontario has held that a party is intentionally under-employed if they earn less than they are capable of earning having regard for all of the circumstances. The court must consider what is reasonable in the circumstances, including the age, education, experience, skills, health of the party, the party's previous earning history, and the amount of income the party could reasonably

earn if they worked to capacity (*Kerr v Pickering*, 2013 ONSC 317 at para. 39). The parents have a joint legal obligation to support their children to the best of their ability (*Donovan v Donovan*, 2000 MBCA 80 at para. 20). If a party chooses to pursue self-employment, the court will examine whether this choice was reasonable in all of the circumstances and may impute an income if it determines that the decision was not appropriate, given the parent's child support obligations (*Lawson v Lawson* (2006), 81 OR (3d) 321(CA); *Blake v Blake*, [2000] OJ No 2670 (SCJ)).

[17] The *Yukon Child Support Guidelines* require the most current information be used in determining income for calculations of payments under the *Guidelines*. In this case, because the application is for retroactive payment of s. 7 expenses, the income earned by each parent during the years 2022 and 2023 is known. As a result, there is no need to rely on the income earned in 2021 for the s. 7 expense payment calculations for 2022.

[18] In 2022, the plaintiff's gross income was $34,487.58. Of that amount, $19,808.60 consisted of Yukon government financial assistance to cover tuition for two courses – new earth energy school and video production education – as well as a living allowance. Deducting this amount left an annual income for the plaintiff of $14,678.98 in 2022.

[19] The defendant earned $78,570.72 in 2022.

[20] The defendant states the plaintiff has a degree in anthropology/archaeology, could easily earn a significant income, and has chosen not to do so. She has exaggerated and overstated her care-giving responsibilities, both childcare and care of his parents. The defendant says in 2020, a housecleaner provided help to the family once every two weeks. The plaintiff had a separate room in the home to see clients for

her energy healing business and did not have to spend the 45 minutes each way driving to town for work.

[21] The evidence shows that during the relationship the plaintiff never worked as an anthropologist or in a related field. While the couple were living in New Brunswick, she operated a mushroom farm business for approximately four years, and then was a Food Security Program Coordinator for the Foods of Fundy Valley for six months. When their second child was born, she was a full-time childcare provider, which continued when they moved to the Yukon in 2018. The plaintiff cooked, shopped, cleaned, and gardened. This included for the parents of the defendant as well. She volunteered regularly at L.'s pre-school and at R.'s school. She also provided administrative support assistance such as writing grant proposals for several non-profit societies. In 2020, she started her Energy Healing business and began to earn a modest income.

[22] In 2022, R.'s anxiety and resulting behaviours grew significantly worse. The school recommended he attend only half days to help with his emotional regulation and attention span. This began in the fall of 2022. As the primary caregiver of the children, the plaintiff spent significant time working with R.'s team at the school to develop strategies and approaches that would assist him and working with R. at home to reduce his anxiety and help his behaviours. The evidence shows she was communicating with the school on a daily basis. It reveals the plaintiff's extraordinary time commitment, dedication, and efforts to assist their son as he went through this especially difficult period in 2022. During this time, L. was at pre-school for five mornings a week. The plaintiff was providing significant support to both children during this time. Given all of these circumstances, I decline to impute any income to the plaintiff for 2022. Her

employment situation was part of a pattern that existed throughout the relationship and was due to the significant needs of her children.

[23] In 2023, the defendant's annual income was $89,934 and the plaintiff's income was $25,634. For the same reasons described in the previous paragraph, I decline to impute income to the plaintiff for 2023. Her income increased from the year before, signifying an increase in her business. The evidence shows that although R.'s behaviours improved from 2022, his needs remained significant, and the plaintiff continued to spend substantial time working with the school and at home with him. L. was still very young and required significant support from the plaintiff.

b) Failure to obtain agreement from the defendant before incurring expenses

[24] The defendant objects to contributing toward certain s. 7 expenses because the plaintiff did not inform him or obtain his agreement before she incurred them. Most of these expenses were health related – counselling, osteopathy, naturopathy – and one is either health-related or an extraordinary extra-curricular activity – horseback riding/Caitlyn.

[25] To decide this issue, it is helpful first to review the principles for determining whether an expense qualifies under s.7.

[26] The Court has jurisdiction to grant a discretionary award under s.7.

[27] The table amount of child support should be sufficient to provide for the ordinary needs of raising a child.

[28] The onus is on the party who seeks contribution to special or extraordinary expenses to prove on a balance of probabilities: a) they are necessary in relation to the child's best interests; and b) they are reasonable considering: i) the parents' financial

means; and ii) the family's spending pattern before separation (Julien D Payne & Marilyn A Payne, *Child Support Guidelines in Canada, 2022* (Toronto: Irwin Law, 2022 at 269-272)).

[29] These factors, among others, were discussed in the oft-quoted decision of the Court of Appeal of Manitoba in *Delichte v Rogers*, 2013 MBCA 106. The decision was about extraordinary expenses for schooling and extra-curricular activities, not health-related expenses. Nevertheless, the test of necessity and reasonableness applies to all of these expenses.

[30] Necessity was described by the Court of Appeal of Manitoba in *Delichte* as:

> [35] Courts have generally considered that the test of necessity does not connote only the necessities of life, but, rather, may include things that are "suitable to or proper for his station in life bearing in mind his requirements at the time." … Courts have looked to activities that have aided the child's development and health. So, for example, participation in sports activities has been held to be necessary in relation to the child's best interests. … [citations omitted]

[31] In that same decision, the Court of Appeal of Manitoba wrote about financial means:

> [38] … means of the parties should be interpreted broadly to include a consideration of all financial resources, including capital assets, income distribution, debt load, third-party resources which impact upon the parties' means, access costs, obligations to pay spousal or other child support orders, spousal support received, and any other relevant factors … . [citation omitted]

[32] The Court of Appeal of Manitoba opined that the family's spending pattern helps the court to determine whether the expenses in question were likely to be supported by

the parents when together and thus considered by both to be in the child's best interests (para. 40).

[33] On the issue of consultation, the Court of Appeal of Manitoba noted that the absence of consultation with the other spouse does not automatically preclude the apportionment of an extraordinary expense, but it is a factor that can be taken into account in the exercise of discretion, and in some cases the court has reduced a contribution amount because of a lack of consultation. I will address consultation after the analysis of necessity and reasonability.

[34] Ultimately, whether an expense is considered necessary and reasonable depends on the facts of the case and the discretion of the court. *BBB v AEB*, 2013 YKSC 120, is an example of this Court exercising its discretion and ordering in the circumstances of that case that the spending parent obtain agreement and provide receipts before being reimbursed by the other parent. Other cases have decided these issues differently, based on the facts of those cases.

Counselling with Joseph Graham

[35] The defendant now says he did not disagree with counselling for R.; he says he objected to contributing towards the cost of the initial session between the plaintiff and the counsellor because he had not been consulted in advance of that session. The defendant said he wanted to speak with R. to ensure he was in agreement (since he had refused to attend sessions with his previous counsellor in the end) and to speak with the new counsellor to assess his "competence". He also wanted to ensure counselling would not create triggers for R.

[36] The plaintiff had raised with the defendant by text the possibility of resuming counselling for R. approximately two weeks before her meeting with Joseph Graham. The defendant raised questions at that time about the utility and potential negative impact on R. of counselling. The plaintiff noted that R.'s mental state had improved since the previous counselling session and that it would benefit him. She placed him on the waitlist and noticed it was for counselling with his previous counsellor, who had not been successful in helping him. The plaintiff took the initiative to ask Joseph Graham if he would accept R. as a client, to which he agreed. It is the cost of this initial session between Joseph Graham and the plaintiff to which the defendant objects. It is not clear from the evidence whether R. attended that initial meeting.

[37] Joseph Graham is a well-respected counsellor. Due to the shortage of counsellors for children (the plaintiff says she called 11 different places unsuccessfully) and lengthy waitlist for the counsellor who was previously unable to assist R., it was important to seize the opportunity with Joseph Graham. As noted, discussion about counselling occurred between the parents shortly before and after the initial session. The defendant then spoke with R. and Joseph Graham, and agreed to counselling for R. with him.

[38] The counselling was in R.'s best interests. He had received counselling before separation; it was discontinued because of lack of progress with that particular counsellor and R.'s ultimate refusal to attend. At the time of resumption, his mental state had improved, and he was open to trying counselling again. In fact, he has done well with Joseph Graham. The cost was within the means of the family, at least partially covered by the defendant's insurance, and was part of the spending pattern before

separation. The defendant's position in refusing to pay for the initial session is not reasonable.

Osteopathy treatments

[39] During the relationship and after separation, the defendant did not agree with osteopathy treatments because he felt they were unnecessary. The defendant is correct that the letter to the plaintiff from the Child Development Centre ("CDC") did not recommend osteopathic treatment for L., as stated by the plaintiff. Instead, the CDC recommended physiotherapy treatment for her inward turned knees, flat feet, and hyper-mobility. A physiotherapist with the CDC treated L. in two sessions as a result. The plaintiff then took L. to an osteopath for treatment after she fell and hurt her back. Osteopathy treatment is a holistic approach to the body's systems involving working with the musculoskeletal system through touch. The CDC physiotherapist expressed no concern when the plaintiff advised them of the osteopathic treatment for L.'s back and her proposal for an osteopathic review of L.'s hips and legs. L.'s complaints of pain on the inside of her knee disappeared after a session with the osteopath, according to the plaintiff.

[40] Similarly, R. suffered from digestive and intestinal issues for many years. The osteopathic treatment for him was to help with this as well as with his T4 pain and tension around his ear and back of head. R. reported less or no pain after the sessions, according to the plaintiff.

[41] The threshold for determining contribution towards health-related expenses is not that they be proved medically necessary, but necessary in relation to the children's best interests (*Miceli v Miceli*, [1998] OJ No 5460 (Gen. Div) at paras. 39-40). It is noteworthy

that on August 9, 2023, the family doctor recommended osteopathy for both children for anxiety, and for L. for foot and knee pain. There is no evidence of the length of that medical appointment, or the information provided to the doctor in that appointment. I am not persuaded by the defendant's speculation that the appointment may have been too short or for another purpose and thus the medical recommendation lacks legitimacy. In any event, in both children's cases, the osteopathic treatment appears to have improved their conditions and thus to be in their best interests.

[42] The costs are within the means of the parents, and while not part of the spending pattern during the relationship, are reasonable.

Naturopathy

[43] There is no evidence about naturopathy from either party other than the defendant's objection to the costs of a naturopath, the plaintiff's inclusion of the family doctor's note of August 9, 2023, recommending osteopathy and naturopathy for anxiety for both children, and the cost of $130 for one session.

[44] I note the plaintiff's affidavit evidence that naturopathic and homeopathic remedies were administered to R. during her relationship with the defendant.

[45] The medical note prescribing naturopathy, combined with the fact that it was a part of the parents' spending pattern during the relationship, are sufficient to meet the threshold of necessity and reasonableness.

Horseback riding and Caitlyn

[46] The plaintiff advised L. took $504 worth of horseback riding lessons in 2022 at Northern Tempo Equestrian Centre. Caitlyn is a riding instructor at Northern Tempo. There is no receipt for these lessons included in the materials. The defendant has

objected to these expenses on the basis that he was not consulted in advance. He also states he was never asked for payment. He does not say whether he agrees with the activity of horseback riding. The plaintiff has not indicated whether horseback riding was an extracurricular activity, extraordinary expense, or a health-related activity connected to L.'s hips, knees, and toes.

[47] There is insufficient information provided by the plaintiff to determine whether the horseback riding lessons were a necessary, in terms of L's best interests, health-related expense, or whether they were an extraordinary expense extra-curricular activity, in which case the analysis under s. 7(1.1) of the *Yukon Child Support Guidelines* must be applied. Further, the absence of a receipt for these expenses does not enable the Court to determine the reasonableness of the cost (that is, there is no evidence of the number of lessons L. received for $504). It was a new activity so not part of the family's spending pattern. The contribution to horseback riding lesson costs is denied.

[48] The plaintiff provided receipts for all of the treatments with the exception of the horseback riding lessons.

Consultation in advance

[49] At the time these expenses were incurred, the plaintiff was the primary caregiver and there was no order for custody. The defendant did not agree initially to the counselling, but later did so; he did not agree to the osteopathy and naturopathy treatments; and there is no evidence about his agreement or not to the horseback riding lessons. The counselling, osteopathy, and naturopathy treatments meet the threshold test of necessity and reasonableness under s. 7. There is insufficient evidence about the horseback riding lessons.

[50] The parties were communicating regularly in 2022 and 2023, although the tone and efficacy of the communications deteriorated in 2023. The plaintiff could have informed the defendant before incurring expenses, even if she feared agreement would not be forthcoming. Consultation does not require agreement; but it does require informing, with reasons, of the proposed treatment or activity. The plaintiff did this very well, but often after it had occurred, rather than before. The failure of the plaintiff to consult the defendant will result in a reduction of the percentage the defendant is required to pay of 10% in 2022 and 2023.

Parenting time consideration

[51] Generally, the defendant's position is that if he is ordered to pay any of the expenses to which he objects, payments should be made for expenses incurred during the time the children spend with him. I reject this argument and it would in effect result in the defendant paying little or nothing towards these expenses. This is not the purpose of s. 7 expenses, which are to be determined according to the best interests of the children, and not according to parenting time.

Interest

[52] The plaintiff also claims interest on these outstanding expenses. As noted by the defendant, this is a new argument raised at the hearing and was not part of the application. No law was provided in support of this claim; it is not addressed in the s. 7 guidelines. No interest payments will be ordered.

2024 claims

[53] The defendant requests that the s. 7 expense claims incurred in 2024 be adjourned to be worked out between the parties. He says further financial disclosure

from the plaintiff is required and the plaintiff's new common-law relationship, which began in January 2023, should be taken into account as part of the household income when assessing percentages of contribution.

[54] No case law was provided to the Court addressing whether "means" of a parent set out in section 7(1) includes third party contributions to one party, such as from a common-law spouse. The defendant may have an argument, as some cases have referenced the consideration of third party resources that impact upon the parties' means as a factor (*Leskun v Leskun*, 2006 SCC 25 at para. 29), but without legal substantiation or evidence the Court cannot consider the issue fully to grant his request. Given the high conflict between the parties, it is more important at this stage to bring closure to the legal disputes between them so they can move forward with their lives and ensure their children are not further negatively affected by the conflict between the parents. I deny the adjournment request and will exercise my discretion under s. 7 to continue the proportionate apportionment of expenses to the plaintiff and defendant in 2024 based on the 2023 incomes of the plaintiff and defendant. No 10% reduction on the defendant's payment for failure to consult in advance shall be made as there is no evidence of that failure in 2024.

c) Overpayment does not cover the retroactive expenses for 2022 and 2023

[55] As noted above, the defendant explained the overpayment as part of child support and "the right thing to do" because of the need of the plaintiff to pay rent. This payment was in addition to the child support table amounts for the purpose of ensuring the plaintiff and the children had appropriate shelter, especially as they were establishing a new home. The defendant cannot now say as well that the overpayments

are for s. 7 expenses, especially for those that he refuses to pay. The overpayment shall not be applied to the 2022 and 2023 retroactive s. 7 expenses.

d) Voluntary payments for extra-curricular activities cannot be deducted

[56] The defendant chose to buy the family swim pass, family community membership, and Mount Sima ski pass for R. Like the plaintiff's decision to provide horseback riding lessons to L., the defendant did not ask the plaintiff for contribution, nor did he provide receipts. Although these payments were clearly made in the children's best interests, like the horseback riding lessons, the failure to claim them earlier means they will not be credited to the defendant.

III. Spousal Support

[57] The plaintiff claims spousal support retroactive to the date of separation which was either November 29, 2021, according to the defendant or December 1, 2021, according to the plaintiff.

[58] The amendments to the *Family Property and Support Act*, RSY 2002, c 83 (the "*Act*"), were proclaimed in force on March 1, 2022 (SY 2021, c 6). Under the previous version of the *Act*, common-law spouses were required to claim spousal support within three months of the date of separation. The amendments in force on March 1, 2022, eliminate the three-month limitation period for claiming spousal support for spouses who cease living together after March 1, 2022. Section 37(2) specifically states that the section as it read immediately before the day the amendment came into force – i.e. March 1, 2022 – applies to those spouses who cohabited and separated before March 1, 2022. There is no transition clause in the amendments to the statute; instead, a firm date on which the new legislation applies is clearly set out in s. 37(2) of the *Act*.

[59] The plaintiff acknowledges that the applicable statutory provision requires her to have made her claim for spousal support by March 1, 2022, at the latest, or February 27 at the earliest, since their date of separation was December 1, 2021, according to the plaintiff, or November 29, 2021, according to the defendant. The plaintiff's statement of claim filed on January 18, 2023, included a claim for spousal support. There was no previous claim. The defendant says her failure to claim within the three-month limitation period of the applicable statute is fatal to her claim for spousal support.

[60] The plaintiff argues however that the Court should exercise discretion to permit the plaintiff to claim spousal support because:

a) it is unfair that the plaintiff must suffer because the legislation was amended only three months after their separation;

b) the policy behind the amendment, tabled in July 2021, well before the parties' separation, was to promote fairness and provide equal access to spousal support for common-law and married spouses, contributing to the efforts to modernize laws and increase inclusivity and should be upheld in this case and it would be unconscionable not to have it apply to the plaintiff;

c) the plaintiff honestly believed the defendant was also making spousal support payments with his cheques for child support; and

d) the plaintiff did not file the statement of claim earlier because the defendant threatened to make co-parenting more difficult if lawyers became involved.

[61] There is no legal basis by which this Court has discretion to decide that s. 37 of the previous version of the *Act* should not apply to the plaintiff because the timing of their separation would make its application unfair and unconscionable. The legislature has made it clear – there is a cut-off date of March 1, 2022, at which time the amended legislation applies. Parties who separated before that date are subject to the previous s. 37 and the three-month limitation period. There is no transition provision or provision authorizing the Court to exercise discretion in the application of s. 37(2).

[62] The plaintiff's belief that the defendant's overpayments were for spousal support has been addressed above: while it may have been an honest assumption by the plaintiff, it was incorrect. Further, there is no evidence the plaintiff asked for spousal support before the discussions occurred by text around the time of the settlement agreement negotiation.

[63] The plaintiff chose to file her statement of claim shortly after the attempts at settling the outstanding issues failed, in December 2022, when the defendant refused to sign the settlement agreement. This is a logical time at which to file a statement of claim – once other avenues of informal and formal settlement have been exhausted. There is no documentary evidence of threats by the defendant of making life difficult for the plaintiff if she involved lawyers and the defendant denies it. However, even if such inappropriate and unwarranted comments were made by the defendant, I do not accept that was the only reason for the plaintiff's delay in filing the claim. In any event, by that time the plaintiff had already involved a lawyer to assist with the settlement agreement negotiation.

[64] The defendant seeks to rely on the unsigned settlement agreement in support of his position that he never agreed to pay spousal support. Given my other findings on this issue, it is not necessary for me to consider the content of the settlement agreement. In any event, I agree with the plaintiff that even though the defendant seeks a limited use of the settlement agreement, it is not admissible. Settlement privilege is a class privilege, meaning that there is a *prima facie* presumption of inadmissibility, and exceptions will be found "when the justice of the case requires it" (*Sable Offshore Energy Inc v Ameron International Corp*, 2013 SCC 37 at para. 12, quoting *Rush & Tompkins Ltd v Greater London Council*, [1988] 3 All E.R. 737 (HL) at 740). Settlement privilege applies when the following conditions are present: a) a litigious dispute is in existence or within contemplation; b) the communication is made with the express or implied intention that it would not be disclosed in a legal proceeding in the event negotiations failed; and c) the purpose of the communication is to attempt to effect a settlement *(Inter-Leasing, Inc v Ontario (Finance)*, [2009] OJ No 4714 (Div Ct)). There is an overriding public interest in favour of settlement because of the savings of time and financial and emotional costs of trial for the parties, and the reduction of the strain on an under-resourced court system. As stated by the Court of Appeal of Alberta in *Bellatrix Exploration Ltd v Penn West Petroleum Ltd,* 2013 ABCA 10 at paras. 27-28:

> It is to be remembered that the rationale for the privilege is not limited to the notion that it would be unfair to subsequently prejudice one of the parties by admitting any admissions made during settlement negotiations. The rule is also intended to allow parties to freely and openly discuss the potential for a settlement, and while doing so, the parties should not have to carefully monitor the content of their discussions. …

> … Accordingly, for the rule to operate properly, not only must the ambit of the settlement privilege be broad, but the exceptions to the exclusionary rule must be narrowly construed and only be given effect where another policy objective can be shown to outweigh any impact that may arise to the settlement objective. [citation omitted]

[65] Here the conditions for the application of settlement privilege to the incomplete settlement agreement are met. Litigation of the matters they were trying to resolve was in contemplation by the parties, it was implicit that the positions taken would not be disclosed in any subsequent litigation, and the purpose of the communications and agreement was to effect settlement.

[66] No exception to settlement privilege has been advanced by the defendant. Waiver of the privilege has not occurred.

[67] The claim for spousal support is dismissed.

IV. Final Order - Division of assets, debts, tax refund

[68] The plaintiff seeks an order that the defendant pay $34,745.81 in final payment for assets retained by him; $2,152.65 in final payment of family debts retained by the plaintiff; and $1,995.81 from the defendant's refund of $3,991.62 from his 2021 tax return.

[69] Unlike a marriage relationship, a common-law relationship does not automatically result in an equal division of assets between the parties. Generally, each person takes from the relationship what they brought into it, and jointly-owned property is shared. When one party suggests that they are entitled to a disproportionate amount of the property, they must prove that the parties were in a joint venture, the other party was enriched, they were correspondingly deprived, and there is no juristic reason for the entitlement (*Kerr v Baranow*, 2011 SCC 10). In this case, neither party has argued

unjust enrichment and consequential remedy. The plaintiff is asking for half of the value of the property she claims is jointly owned.

2017 Honda CRV EX

[70] This vehicle was leased during the relationship. The defendant says it was worth $23,000 at separation, although his financial statement approximates its value at $24,000. He says it had an amount owing of $17,800 at separation but the parties paid an additional $1,000, reducing the amount owing to $16,854.03. The defendant paid this amount (plus taxes and fees) to buy out the lease in October 2021. The plaintiff says the Honda was valued at $28,500 at separation and she is entitled to $14,250, half of its value at separation. She says there was no evidence of any debt owing in the defendant's financial statements.

[71] The defendant provided a receipt signed by him showing a buy out of the lease for $17,850.75. Neither party provided evidence of the amount paid to reduce the debt except for the defendant's general statement that they paid $1,000 towards it, without indicating how much each party contributed. Neither party provided evidence of the resale value. The text messages between the parties in November 2022 show that the defendant did not agree with the value of $28,500, writing instead that one would be lucky to get $23,000 for the vehicle. I agree with the defendant that $23,000 is a high resale value and more realistic than $28,500.

[72] The defendant has kept the Honda, valued at $23,000, and paid the lease buy out amount of $16,854.03 on his own without seeking contribution from the plaintiff. If the defendant were to obtain $23,000 for the Honda, the difference between the buy out amount and $23,000 would be $6,146. Since the defendant paid the buy out amount on his own, the plaintiff is not entitled to half of the value of the vehicle. Instead, the plaintiff

is entitled to $3,073, half of $6,146, the difference between the value of the vehicle and the buy out amount.

1992 Toyota Highlander

[73] Both parties say the vehicle was a gift from the defendant's parents with the understanding they would return it if they did not need it, according to the defendant, and an outright gift, according to the plaintiff. The plaintiff's evidence is that she was the primary driver of the vehicle, took the vehicle on separation, and then returned it to the defendant's parents on March 20, 2022. This suggests she understood it was a gift that would be returned at some point. She now seeks $2,000, half of the agreed upon value of $4,000 of the vehicle. The defendant says the plaintiff has disavowed any claim to this vehicle many times, by text and email. No evidence of this is provided, except the plaintiff's evidence she returned the vehicle to the parents, which is consistent with either her recognition it was a gift to be returned, or that she no longer wanted or claimed it. Since both parties agree this was a gift from the defendant's parents, and it has now been returned to them, no payment attributable to this vehicle will be made to either party.

Motorhome/RV

[74] The defendant sold the vehicle for $17,000 and provided $3,000 to plaintiff. The plaintiff seeks an additional $5,500. The defendant says the vehicle was in his name alone and the costs of sale included $2,763.80 in taxes, $385.22 in registration and insurance fees, $400 approximately in fuel and 50 hours of clean-up, maintenance, and facilitating the sale at $50/hour. He says the net proceeds of the sale were $10,950.98, of which the defendant says $2,475.49 is owed to the plaintiff. The plaintiff notes there

is no evidence to support these costs of sale and the motor home was clean and in good condition when she left on December 1, 2021.

[75] The absence of documentary evidence from the defendant of these costs of sale, other than his statement in the affidavit, means that I cannot accept the deductions as requested by the defendant. I acknowledge that there were some costs to readying the vehicle for sale so I will reduce the proceeds of sale by $1,000. The plaintiff shall be entitled to an additional $5,000 from the sale of the motorhome. The fact that it was in the defendant's name only is not sufficient to deny the plaintiff further payments from the sale. It was used by the family during the relationship and the defendant has acknowledged it is a family asset already by giving the plaintiff $3,000 from the sale.

Household items

[76] There is no evidence to support the value of either party's claims to household items nor is there a full itemization. The defendant says the plaintiff took what she wanted when she left the house, estimating a value of $7,000; the plaintiff said she took very little and had to furnish her new house essentially on her own. She seeks $1,000 from the defendant, which she says represents half of her estimated value of the household contents they accumulated together during the relationship.

[77] The lack of documentary evidence on this item makes it impossible for me to assess the appropriate value. I make no order with respect to household items.

$20,000 investment

[78] Both parties agree this was a gift from the defendant's parents to him. The parents had originally given the parties $20,000 to help with a downpayment on a house purchase. The defendant offered to pay the amount back after the sale of the house, but

his parents told him to keep and invest it. The plaintiff says he invested it to benefit the family in future and she is entitled to half of the initial investment and a certain amount as a proportion of the estimated profits. The defendant says the investment is in his name only, is not a shared asset, and should be excluded.

[79] I agree with the defendant on the evidence that this was a gift to him from his parents and he is solely entitled to it.

Tools - $500

[80] The plaintiff says the defendant kept all the tools accumulated during their relationship and she is entitled to $250. There is no evidence about the kind of tools, their use, who paid for them, when, and how they were shared, if at all. Without further evidence I am not able to determine if they are assets that should be divided or whether they are the defendant's assets. I make no order with respect to tools.

Defendant's tax refund

[81] The plaintiff says she is entitled to half of the tax refund obtained by the defendant on account of his 2021 tax filings, in the amount of $3,991.62. It is not clear where the plaintiff obtained this evidence. The defendant's income tax return for 2021 is filed as part of his financial statements and the reassessment shows he owes an amount of $241.89. I make no order with respect to the tax refund.

Credit card debt of plaintiff and repayment of Canada Child Benefit

[82] The plaintiff claims from the defendant a credit card debt of $560.78. She says the purchases were family expenses. The defendant says they each had their own credit cards and each assumed the debts of their own. The family purchases were made with the family credit card and payment made from a joint account to which they

both contributed. After separation, the defendant says there was a $6,000 balance on the family credit card which he paid, although there is no evidence provided to support this.

[83] Without further evidence, I am unable to find that the plaintiff's credit card expenses were for family expenses. They include, for example, Real Canadian Superstore, Tags Food and Gas, Canadian Tire Store, Wykes Independent Grocer, Aroma Borealis, Wal-Mart, and Changing Gear. It could be that some of this is for family expenses especially the grocery store purchases. However, it is not clear from the evidence what arrangements were made by the parties for payments of household expenses such as food and clothing when they were together. The plaintiff does not deny there was a family credit card for family purchases, and neither party offers any evidence as to what purchases were considered family purchases. Once again, there is insufficient evidence to decide this claim and so I make no order with respect to the plaintiff's credit card debt.

[84] The plaintiff provided evidence that she was required to repay $1,593.33 received as Canada Child Benefit based on a notice received in February 2022. The plaintiff provides no explanation as to why she was required to repay, and the reason is not part of the exhibit she filed showing the repayment. The website information about the Canada Child Benefit lists several reasons as to why repayment may be necessary, including a reassessment based on the most recent tax return, the number of eligible children, or change in marital status. Without knowing the reason for the plaintiff's requirement to repay, I am unable to determine whether she is entitled to claim any of

this amount from the defendant. I make no order with respect to the Canada Child Benefit.

Legal Fees for Drafting Separation Agreement

[85] The plaintiff claims half of $1,739.84 in legal fees for the drafting of the separation agreement, which was never signed by the defendant. There are text message exchanges in both November and December 2022 that reflect different positions of the defendant. In November 2022, after being notified of the lawyer's bill, the evidence is clear that the defendant agreed to pay half. Later, in December 2022, he wrote that he did not believe the lawyer was working for both of them; instead, he believed the lawyer was working for the plaintiff only. He says for that reason he had no interest in paying half of the legal fees.

[86] It is noteworthy that despite not signing the settlement agreement and refusing to contribute to the lawyer's fees for drafting it, the defendant has attempted to introduce the agreement into evidence at this hearing and has attempted to rely on some of its provisions in support of his arguments about property division and spousal support.

[87] The text message exchanges in November 2022 show that the plaintiff encouraged the defendant to speak with the lawyer or another lawyer about his questions and concerns about certain aspects of the settlement agreement. He did not do so and instead in the end refused to sign the agreement without further legal advice. The lawyer's invoice, which the plaintiff attached as an exhibit to one of her affidavits, shows that she sent email messages to the defendant.

[88] The process of negotiating the settlement agreement, even though it was never completed, was helpful to both parties in addressing the issues between them. This is

evident from the defendant's desire to rely on it at this hearing. His view that the lawyer was only representing the plaintiff was his perception and was never tested. He made no efforts to follow through with the plaintiff's helpful and reasonable suggestion that he speak directly with that lawyer or another one to address his concerns and questions.

[89] The defendant shall contribute half of the legal costs of drafting the settlement agreement - $869.92.

Legal Fees for drafting and serving Notice to File a Financial Statement

[90] The plaintiff claims $972.12 for the cost of drafting and serving a notice to file a financial statement, which she says was necessary because of the failure of the defendant to make full financial disclosure despite numerous requests from her. The defendant has not responded to this claim.

[91] The plaintiff attaches as an exhibit to her affidavit the lawyer's account for work done between November 14, 2022, and January 26, 2023. Only one entry refers to the notice to file a financial statement, on January 17, 2023. It is combined with a review of a statement of claim and is for 30 minutes at a cost of $175. The rest of the account is for reviewing, sending and responding to emails with the plaintiff and the defendant, and a telephone call with the plaintiff. There is no evidence that any of these were related to the notice to file a financial statement. That notice (Form 95 of the *Rules of Court* of the Supreme Court of Yukon) is a simple one-page form that requires the insertion of the person's name, checking boxes beside the documents sought to be disclosed, and signing and dating. There is no cost for filing the notice with the court.

[92] I agree with the plaintiff that such a notice should not have been necessary. The defendant was obligated to provide full financial disclosure and his recalcitrance in

doing so was not appropriate. However, the amount of legal fees claimed of $972.12 is a gross and unfair exaggeration. I will order that the defendant pay the plaintiff an amount of $50 for the cost of preparing, delivering, and filing the notice.

V. Costs

[93] The plaintiff seeks costs for the court hearings held June 15, 2023, September 28, 2023, November 20, 2023, and January 8, 2024.

[94] Section 77 of the *Children's Law Act*, RSY 2002, c 31, and Rule 60 of the *Rules of Court* are relevant provisions here.

[95] Section 77 provides:

> (1) Subject to subsection (2), the court shall not award costs of any proceeding under this Part.
>
> (2) The court may award to one or more parties costs that it may impose against one or more other parties in respect of a proceeding under this Part if the court is satisfied that the party or parties on whom the costs are imposed
>
> (a) propounded a claim or defence that was unreasonable or was without reasonable grounds;
>
> (b) took a proceeding or step in a proceeding that was unnecessary or frivolous;
>
> (c) acted in a way that tended to prejudice or delay the fair trial or hearing of the proceeding; or
>
> (d) abused in any other way the process of the court.

[96] The part of the statute that is referenced in this section is proceedings for custody, access, and guardianship.

[97] As a result of this section, in most family law proceedings in the Yukon involving parenting time (access) and decision-making (custody) with respect to children, parties have been responsible for their own costs, regardless of the outcome of the

proceedings. In some circumstances, costs have been awarded to a party where the conduct of the opposing party during the proceeding has met the test set out in s. 77.

[98] There is no costs provision in the *Rules of Court* particular to family law proceedings. Rule 60(9) provides that costs of and incidental to a proceeding follow the event unless the court otherwise orders and is subject to Rule 60(12) related to applications. Rule 60(12) provides that a successful applicant on an application is entitled to costs in the cause (meaning at the conclusion of the case), an unsuccessful applicant is not entitled to costs in the cause, but the opposing party is, and where an application is not opposed and is granted, the costs are costs in the cause.

[99] In this case, the only final order is the property division order. Property is not the subject of any of the four hearings for which the plaintiff seeks costs. The property matters for which the plaintiff seeks costs include the defendant's behaviour around reneging on his agreement to pay retroactive child support; refusing to provide health benefits plan information; and generally sending excessive emails to the plaintiff's legal counsel. These matters were not attached to any specific litigation proceeding thus, the plaintiff is requesting the Court to order otherwise than what Rule 60(12) provides.

[100] Costs in any case are fact and context specific. This is even more so in family law where, in the words of the Court of Appeal of British Columbia in *Gold v Gold* (1993), 106 DLR (4th) 452 (BCCA) at para. 20:

> … To lay down any strict guidelines [for costs] or even to attempt to give exhaustive examples is not, I think, helpful because the facts and issues in each family law case vary so greatly. Factors such as hardship, earning capacity, the purpose of the particular award, the conduct of the parties in the litigation, and the importance of not upsetting the balance achieved by the award itself are all matters which a trial judge, quite properly, may be asked to take into account.

> Assessing the importance of such factors within the context of a particular case, however, is a matter best left for determination by the trial judge.

June 15, 2023 Application

[101] The plaintiff applied to obtain permission to take the children to New Brunswick during the summer holiday. The defendant had refused permission as he did not trust that the plaintiff would return with the children, given the strained relationship and breakdown in communication by that time. The matter was resolved in court without a full hearing after discussion. An order was granted allowing the children to go to New Brunswick with the plaintiff for a shorter time than she had requested (20 days, not 30 days), after R.'s birthday, and on condition that the plaintiff provide an itinerary and make-up time to the defendant. The Court was asked on June 15, 2023, to award costs of the hearing in the amount of $500 to the plaintiff, and specifically declined to do so, contrary to the plaintiff's submission here that the Court did not address costs. Both parties were self-represented on that date. Since costs were already addressed and denied by the Court, they will not be addressed further here.

September 28, 2023 Application

[102] This was the plaintiff's application to relocate with the children to New Brunswick and for primary residence and sole custody. The plaintiff filed a 308-paragraph affidavit with 52 exhibits. In response, the defendant filed a 263-paragraph affidavit with 42 exhibits.

[103] The defendant did nothing before or at that hearing that was unreasonable, unnecessary, or frivolous; did not act to prejudice or delay the hearing; and was not abusive. The implications of the plaintiff's application to relocate with the children

thousands of kilometers away, in addition to seeking sole custody and primary residence were highly significant as, if granted, the nature of the defendant's relationship with the children would be altered. It is to be expected that as a father he would oppose this application. No costs will be ordered in this application.

November 20, 2023 Application

[104] This was the plaintiff's application for supervised access to the children by the defendant and the ability of the children to refuse access with the defendant, based on allegations of pinching of R. and other mistreatment by the father. Without making a determination of whether the pinching and other alleged mistreatment actually occurred, but out of an abundance of caution based on the child's expressed concerns to the plaintiff and the Child lawyer, the Court reduced in-person access by the father and allowed the children to be able to refuse access with him. The application for supervised access was denied. A family law case conference was ordered to be scheduled early in the new year as a check-in.

[105] Nothing about the defendant's conduct in responding to this application was sufficient to meet the threshold in s. 77. The defendant continues to deny vehemently the incidents related by R. and it is to be expected that he would oppose this application given the potential consequences. No costs will be ordered.

January 8, 2024 Family Law Case Conference

[106] The Court ordered this family law case conference as a check-in after the incidents reported by R. and the change in access ordered in November 2023. The plaintiff is assuming it was required because of the defendant's concerning conduct. In fact, the defendant's description of the purpose as ensuring the children's best interests

were being met is accurate. There is no evidence about the defendant's behaviour during that case conference, initiated by the Court, that would warrant a costs award against him. No costs will be ordered.

Costs for defendant's pattern of behaviour

[107] The plaintiff seeks costs against the defendant for "a pattern of behaviour that could be characterized as litigation abuse". She does not define litigation abuse. Her examples are: the defendant agreeing to pay retroactive child support through legal counsel but later refusing to sign a consent order to this effect; refusing to provide her with health benefits insurance plan information, leading to her legal counsel raising the issue repeatedly; excessive emails to legal counsel to increase the plaintiff's costs; refusing to follow the consent order by withholding consent for L. to receive counselling, withholding consent to Passport Canada for the issuance of passports, and discussing the court action with the children. Finally, the plaintiff seeks costs from the defendant of responding to the application for access brought by his parents.

[108] The authority to award costs outside of a specific litigation proceeding is not evident. The plaintiff could have included any or all of these matters in an application (such as requiring the defendant to comply with an order, or to disclose information), and they could then have been subject to a discussion about costs, depending on the application of s. 77 in the matters related to the children, Rule 59 – contempt of court – or Rule 60 for the property matters. I am not able to award legal costs generally, in the absence of a specific application.

[109] The inability to order costs in this context does not equate to condonation of this behaviour, however. I agree that the inconsistency of or last minute changes to the

defendant's positions, and his failure to respond to requests in a timely way are not behaviours that are helpful to resolution of the case and serve to escalate the conflict and the emotional as well as financial costs of this proceeding. Ultimately the prolongation of the conflict is in no one's interests, and particularly those of the children.

Application brought by defendant's parents

[110] Finally, there is no evidence that the defendant knew about his parents' application for access. The parents initiated it without legal counsel and stated to the Court that they had not advised their son of their plan. The defendant also stated in court that his parents brought the application without his knowledge. I will not award costs to the plaintiff against the defendant for an application that he did not initiate, and to which he was not a party.

Two case conferences and hearing of May 8, 2024

[111] The plaintiff in another affidavit requested costs for two other case conferences and the May 8 hearing. Success was divided in the May 8 hearing: each party shall be responsible for their own costs. No information was provided by either party about the two other case conferences. More specifically, the plaintiff has not indicated why she is entitled to costs from those case conferences. No order for costs shall be made.

OBSERVATION AND CONCLUSION

[112] I make one final observation about the high conflict in this file. Unfortunately, the many claims made and responses provided by both parties, too many of them unsupported by evidence, served to increase the time, cost, and conflict in this case. The strong, accusatory, and inflammatory language used by both parties, but in particular by the plaintiff (e.g. litigation abuse, fraud, fabrication) was not helpful except

to heighten emotions and escalate conflict. Similarly, the lengthy affidavits were full of details that were not always relevant to the issues, but were inserted to paint a negative picture of the other parent. I fully appreciate the anger, hurt, frustration felt by parties like these who must endure a difficult separation, especially where there are children. However, the parties must remember they will always be parents to their shared children, and the children are the ones who suffer most from conflict between their parents. Both parents have a responsibility to try to detach from their own anger towards and disappointment in their former spouse, rather than prolonging the hostility and combativeness between them, for the sake of their children, if nothing else. Both parents need to remember there is always more than one perspective to be considered, no matter how certain and justified they feel about the righteousness of their own perspective. By attempting to rise above this conflict between them, instead of acting in ways that prolong and intensify it, the parties can begin to rebuild a different and improved relationship necessary for the health of their children, and their own mental health.

[113] To conclude, I order with respect to support and s. 7 expenses as follows:

(a) The claim for retroactive child support is dismissed.

(b) The parties are responsible for the disputed s. 7 expenses claimed by the plaintiff of counselling, osteopathy, and naturopathy, but not for the horseback riding lessons.

i. For 2022, the plaintiff is responsible for 16% of the expenses and the defendant responsible for 84%. The global amount payable by the defendant in 2022 is reduced by 10%.

ii. For 2023, the plaintiff is responsible for 22% of the expenses and the defendant is responsible for 78%. The global amount payable by the defendant in 2023 is reduced by 10%.

iii. For 2024, the plaintiff is responsible for 22% of the expenses and the defendant is responsible for 78%.

iv. No interest is payable by the defendant on any amounts owing.

(c) For future s. 7 expenses, the party seeking contribution shall inform the other party in advance of the expenditure and answer any questions raised, and shall provide receipts of the expenditure.

(d) The claim for spousal support is dismissed.

[114] I order as follows with respect to asset division, fees, and costs (final order):

(a) The defendant shall pay to the plaintiff the amount of $3,073 representing her share of the Honda CRV.

(b) The defendant shall pay to the plaintiff the amount of $5,000 from the sale of the Motorhome/RV.

(c) The defendant shall pay to the plaintiff $869.92 towards legal fees incurred for the settlement agreement.

(d) The defendant shall pay the plaintiff $50 for the preparation, serving, and filing of the notice to file financial statements.

[115] The parties shall be responsible for their own costs.

_____

DUNCAN C.J.