

**DATE:** 2024-03-26

**SUPERIOR COURT OF JUSTICE**

**HEARD:** October 10, 11, 12, and 16, 2023

## REASONS FOR DECISION

[3] Since separation, B.S.A. has resided with the Respondent. The Applicant has parenting time one day each weekend and one 3-4 hour visit during the week. The agreement permits additional parenting time which shall not be unreasonably withheld.

## **Parties Positions**

### **i) Child Support**

[4] Commencing late 2019, the Applicant paid monthly child support of \$500 directly to the Respondent. From September 2021 to March 2022, the Applicant paid \$400 child support. This was increased to \$450 effective April 1, 2022, and has remained the same since.

[5] The Respondent seeks retroactive child support in the amount of \$600 per month and argued arrears of \$7200 as of October 2023. The Respondent also asked the Court to impute income to the Applicant. The Respondent argued the Applicant made more income than he declared. In the alternative, the Applicant is deliberately underemployed.

[6] The Applicant argued his pay has always been deposited into his business account. He has not received any additional monies. He explained why his income decreased when working for RTI and that his income should not be imputed to more than what he earned. Further, he is not underemployed, and his salary is commensurate with what others with his experience earn.

### **ii) Section 7 Expenses**

[7] The Respondent has been responsible for the child's health care and expenses and seeks reimbursement for glasses, medication, and vitamins not covered by benefits. Further, their child attends martial arts, basketball, swimming, skating, and two language classes. The Respondent argued the Applicant should contribute to these expenses. It is her position the s.7 expenses should be shared equally provided the Respondent is not enrolled in classes. During this period, she requested the s.7 expenses be proportioned 70/30.

[8] The Applicant is willing to share s.7 expenses on condition he is consulted in advance, shares in the decision, and approves or agrees with the activity. He is not prepared to share expenses for programs or activities he disagrees with. The Applicant father expressed concern some activities may be outside what he can afford and not reasonable. The Applicant also expressed concern that the Respondent provides all receipts for s.7 expenses once a year, making it difficult for him to find the funds to reimburse the Respondent. He requested he be required to pay a set sum each month to be attributed to the s.7 expenses. Alternatively, the Respondent be ordered to provide him copies of the receipts monthly or within a set number of days after the expense was incurred.

### **iii) Spousal Support**

[9] The Respondent raised the issue of spousal support retroactive from the date of separation until April 2022 when she graduated. If the Court finds she is entitled to spousal support, her position is it be ordered at the lower end of the Spousal Support Advisory Guidelines (SSAG). The Respondent argued she had no source of income after the separation and was entitled to spousal support during the time she was enrolled in school.

[10] The Applicant disagreed the Respondent was entitled to spousal support. If the court found she was entitled, he understood his responsibilities and was prepared to pay according to the SSAG. The Applicant argued the Respondent did not provide him with sufficient information

about her true income or access to funds for the parties to agree spousal support was warranted. Further, she had access and was in receipt of other funds and was employed.

**iv) Travel with Child**

[11] Each party seeks leave to travel with their daughter without the need for permission from the other parent. The Respondent wants the freedom to travel anywhere including countries not part of the Hague Convention. The Respondent would like to travel to Iran to visit family with their daughter. She argued there is no risk for her to travel to other countries including those not signatories to the Hague Convention. She argued she has strong ties to Ontario including a secure job and therefore, is not a risk to flee with the child. She argued it would be in B.S.A.'s best interest to be able to see the world and travel.

[12] The Applicant argued both parties should have consent from the other to travel outside Canada with B.S.A. and consent should not be withheld unreasonably. Further, neither party should be permitted to travel to countries not part of the Hague Convention. In the alternative, if the Court determines the Respondent may travel freely with the child without restrictions, so should he. He would like to travel with their daughter on vacations and trips and not be forbidden from doing so by the Respondent. The Respondent mother is opposed to the Applicant father travelling with their child. She argued he does not exercise his current parenting time, has cancelled, and has not proven that he can care for their daughter properly for an extended period and has yet to have B.S.A. overnight.

**v) Location of Pick Ups/Drop Offs**

[13] Lastly, the parties disagreed about changing the pick-up/drop-off location of their daughter. The current arrangement had the Applicant attend at the Respondent's apartment complex on the 16<sup>th</sup> floor. The Respondent would remain in her apartment unit and let their daughter meet the Applicant by the elevator when he arrived.

[14] The Applicant seeks to have the exchanges occur in a public area, either the building lobby or a nearby restaurant or community centre. He wanted to ensure all future exchanges are captured by security cameras or other persons. He expressed concern that allegations could be made that put him in a difficult position to defend himself.

[15] The Respondent refused to change the location expressing concern for her safety despite the fact there are no security cameras on this floor but there are cameras in the lobby area.

**Issues**

[16] The following issues remain unresolved and must be determined:

- a. What is the father's income for the purpose of calculating child support and his contribution to section 7 expenses?
- b. Should the court impute income to the father?

- c. What is the amount of child support payable from October 1, 2019, to present, and ongoing?
- d. What s.7 expenses has the mother paid since separation and what s.7 expenses does she anticipate going forward?
- e. What is each parent's proportionate share of the s.7 expenses?
- f. Is the mother entitled to spousal support payable from October 1, 2019, until her graduation in the spring of 2022?
- g. Whether the parties can travel without the consent of the other party during their parenting time?
- h. Where should the child be picked up and dropped off?

### **Summary of Evidence**

[17] Before calculating child support and s.7 expenses, it is necessary to determine the Applicant's income. Much of the trial focussed on this issue.

[18] Upon arrival in Canada, the parties lived in Montreal for a short period of time before moving to Toronto where they continue to reside. The Applicant father held several different positions before obtaining full-time employment as a truck driver in July 2019. Throughout his employment until the present, his pay has been deposited directly into his CIBC business bank account. The Applicant was terminated in January 2023 after working for the same company for two years. He did not find a new job until late April and earned \$18,855.76 between then and August of 2023.

[19] The Respondent attended university and graduated with her law degree in Afghanistan in 2012. Prior to the marriage she worked as a lawyer and practiced family and criminal law. Upon coming to Canada, the Respondent mother attended Adult Learning classes and graduated with her Ontario Secondary School Diploma in June 2018. She subsequently enrolled at Centennial College in the Software Engineering Technology Co-op program and graduated in 2022. She is currently employed with the Ministry of the Solicitor General as a business applications administrator with an annual salary of \$79,622.92.

[20] The parties' relationship began to deteriorate in late 2018. The Applicant father left the home in early 2019 for several months before returning in hopes of a reconciliation. Unfortunately, the couple was unable to overcome their difficulties and officially separated October 1, 2019. Since that date, the Applicant has paid monthly child support except for two months, October 2019, and February 2022.

[21] The Applicant testified he worked as a truck driver for a numbered company, 2699047 Ontario Inc. He changed companies in December 2019 that same year and remained with RTI until his termination in January 2023. Initially, he drove the same route from Toronto to Montreal. In August 2021, the company reduced the number of trips to Montreal and eventually assigned that route to one driver. The Applicant's salary decreased based on the company's decision. The

Applicant produced almost all his driver log books to support his evidence that he was no longer driving long routes, and to confirm days he worked, where he went, and his hours. The terms of the Applicant's contract changed with the short haul routes. He was paid a weekly salary that was not variable or dependent on the number of hours he drove. The Applicant explained, it did not matter if he worked 30 hours or 45 hours, he still made the same amount.

[22] Throughout his employment as a truck driver, his pay was deposited into a business account with CIBC in the name of Azimi Transport Inc. Those records were filed with the Court for the period beginning May 1, 2019, to August 31, 2023. It is clear from these records, the Applicant received payments from a numbered company, 2699047 Ontario Inc., in varying amounts from July 15, 2019, to December 16, 2019. From December 17, 2019, to December 28, 2022, the Applicant received payments from Dhruv Transport Inc. In May 2023, the Applicant began receiving mobile deposit payments into that account, consistent with his evidence of his new employment with Atlantic Courier & Cartage Ltd.

[23] The Respondent claimed the Applicant earned more money than what was reflected in his accounts, and he must have other bank accounts that he failed to disclose. In response, the Applicant produced a letter from CIBC confirming he only has two accounts, one personal and one business.

[24] The Respondent challenged the Applicant with respect to two loans he received from friends. The loans were provided in the form of cheques. The Respondent questioned the Applicant if the cheques were ever deposited and if so when and into which account. The second cheque was dated March 12, 2023, for \$4000.00. The Applicant advised he located where the funds were deposited, however, the Respondent withdrew her challenge of this cheque and chose to focus on the first cheque. It was dated October 17, 2022, in the amount of \$3500.00. The Applicant was initially unsure which account the cheque was deposited to and believed it was his personal account in January, three months after the cheque was received, due to a deposit for the same amount. Overnight, he determined the funds had been deposited into his CIBC line of credit and produced a screenshot confirming the cheque was deposited on October 24, 2022, a few days later.

[25] The Respondent next questioned the Applicant where the \$3500.00 came from that was deposited into his personal account on January 23, 2023. These funds were transferred from the Applicant's line of credit on the same date as evident from the screenshot that confirmed the October 24, 2022, deposit.

[26] The Respondent sought to discredit the Applicant by suggesting he improperly had her create employment letters in the past. Therefore, the Court should not rely on the employment letters the Applicant produced regarding any income and employment. She argued it is easy to produce a letter and its accuracy and truthfulness should be questioned. The Applicant testified he did not recognize the handwriting on the draft letter of employment, nor had he worked for the company on the top of the letter, and he had never seen the letter before. The Respondent did not call any other evidence from the company or testify to efforts she made to contact the signatory at the phone numbers on the letters.

[27] The Respondent suggested the Applicant collected the Canada Emergency Response Benefit ("CERB") in 2020 despite being employed. She argued he was not entitled to receive

CERB and did so fraudulently. The Applicant's bank account statements reflect the CERB deposit(s), but no evidence was presented to demonstrate he was not entitled. The Respondent acknowledged that she collected CERB in 2020 when she was unable to secure employment.

[28] The Respondent argued the Applicant's income should be imputed at a minimum annual salary of \$70,000. She suggested to the Applicant that he often received cash payments from his employer. The Applicant disagreed and repeated any monies he earned were deposited directly from the company into his bank account. The Respondent questioned the Applicant about the sudden decrease in his income in August 2021. It was her position he continued to receive the same or similar monies but received it in cash to show a reduced income. This was not established through any evidence before the Court.

[29] If the Court does not find the Applicant was earning additional income, the Respondent argued the Applicant was deliberately underemployed and there are other positions in the industry where higher salaries are paid. The Respondent challenged the timing of the decrease in his salary and suggested it was a month after she filed her answer and sought spousal support. The Applicant repeated his explanation regarding the company's decision to assign one driver to the Montreal-Toronto route and how it impacted his pay.

[30] The Applicant agreed some truck drivers have a higher income but drive longer trips. Every trucking company is different, and rates of pay may be affected by hours, mileage, loads, heavy lifting, offloading, and onloading. The allegation of the Respondent that some drivers make \$70,000/year is possible if the driver travels longer routes and/or to the United States.

[31] The Applicant was terminated from his position with RTI in late December 2022/January 2023. He was unemployed for four months and began his new employment the end of April 2023. He currently earns approximately \$23/hour and the range of salary driving in Toronto is \$17/hr to \$23/hr.

[32] Lastly, the Respondent suggested the Applicant owned shares in a car-wash company. She agreed that other than overhearing a conversation where the Applicant seemed to give directions to the other party, she had no evidence to prove this allegation.

### **Child Support**

[33] There is no dispute that the Applicant is required to pay table child support. The quantum is determinative by the Applicant's income.

[34] The Applicant has paid child support since separation but missed October 2019 and February 2023. The Applicant paid \$500/month from November 2019 to September 2021. The Applicant reduced his child support payments to \$400 from that date to March 2022. Commencing April 2022, \$450 child support has been paid each month with the exception noted above.

### **Section 7 Expenses**

[35] The Applicant testified he was not opposed to some of the extra-curricular activities B.S.A. was enrolled in but he was concerned about his ability to pay. He explained the Respondent had enrolled B.S.A. in language classes and he did not understand why they had not explored other

options or classes that were less money. The Applicant advised he knew someone who could teach B.S.A. at a much lesser cost. The Applicant expressed the need for the Respondent to consider his income and financial ability to pay.

[36] The Applicant also testified that if he disagrees with an activity, whether it is beneficial to B.S.A. or not, he will not pay or contribute to that expense.

[37] The Applicant was questioned whether he contributed to any section 7 expenses to date. He explained he is prepared to contribute but wants to know what the true expense is and whether the Respondent received any subsidies or other coverage before apportioning the expense.

[38] Lastly, the Applicant explained the difficulties created when the Respondent provides him with copies of all receipts only once a year. He testified it would be easier for him to budget properly if the Respondent provide the receipts monthly, or he pay a monthly stipend towards the s.7 expenses. Further, he would like to know details of the expenses in advance and have some input into what educational programs the child is registered. The Applicant testified s.7 expenses should be apportioned after considering the parties' incomes and the child support payable.

[39] The Respondent testified she would like the s.7 expenses to be shared on a 50/50 basis irrespective of income. Further, if she returns to school, that the shared expenses be proportioned 70/30 in her favour.

[40] The Respondent, Ms. Mumtaz, expressed her intention to continue to register B.S.A. for activities and classes that are good for her health and encourage her interaction with other children. She will ensure the Applicant is informed of all activities and will provide him with a schedule of the child's weekly activities. She explained registrations open early in the morning online and fill up quickly. She does not have time to contact the Applicant and wait for his response or the spot will be filled.

[41] The Respondent filed receipts for s.7 expenses she is seeking shared coverage for 2023. These receipts are for prescription glasses, eye exams, dental care, and skating lessons.

[42] The Respondent advised B.S.A. is not currently enrolled in aftercare because she was bullied and unhappy. The Respondent picks her up and cares for her afterschool but still must work. The fact B.S.A. is not in aftercare is a benefit to the Applicant permitting him to save funds. She testified if B.S.A. was in aftercare, the Applicant would be responsible for 50% of the cost. It is her position that because she is saving the Applicant from contributing to aftercare, she will enroll B.S.A. in whatever programs she wants and will not seek his permission or input. Her justification is the cost of these extracurricular activities are far less than aftercare and the Applicant should be grateful he is saved from that s.7 expense.

[43] The Respondent testified B.S.A. attends martial arts classes twice a week, basketball, swimming, and skating. Many of the classes were subsidized and the only activity that incurred a cost in 2023 was \$50 for the fall skating session. B.S.A. is also enrolled in educational classes provided online. She attends 4 x 30-minute sessions a week. The Respondent pays for these classes directly thru paypal or etransfer.

## **Spousal Support**

[44] The Respondent seeks spousal support from the date of separation to April 2022 when she completed her studies. She testified regarding her financial circumstances and attendance at school throughout this period. Documents were filed to support her enrollment at Centennial College, grants and bursaries received, pay stubs, banking records, and notices of assessment.

[45] Throughout her studies, the Respondent received student grants from the Ontario Student Assistance Program, bursaries, and government rebates. Further, she was in receipt of all tax benefits including the child tax credit.

[46] The Applicant questioned the Respondent on deposits to her account in 2019 of approximately \$37,000. He asked why these funds were not declared on her taxes. The Respondent explained those funds were non-taxable and therefore were not included as income for tax purposes.

[47] In addition to the funds above, the Respondent agreed she received \$8400 from the Applicant in 2019. She did not claim this as spousal support but to cover the rent while the parties lived apart. In total, the Applicant received \$45,678.79 that year - none of which was taxed.

## **Travel**

[48] The Applicant testified both parties should be permitted to travel with B.S.A. providing a minimum of twenty (20) days notice is given in advance. Neither party should withhold their consent unreasonably. The Applicant testified that neither party should be permitted to travel to countries not part of the Hague Convention.

[49] He felt it was unfair the Respondent was permitted to travel outside Canada with B.S.A. and he is not permitted to take her on a trip. He testified he is not a criminal and should be allowed to travel with her. He believes when the Respondent travels with B.S.A. for a lengthy period, it creates a wider space between him and B.S.A.

[50] The Applicant discussed the Respondent's earlier motions requesting permission to travel. The first one was denied because the Respondent wanted to travel with B.S.A. to Turkey and Iran. Turkey had just suffered a catastrophic earthquake and Iran is not a party to the Hague Convention. Further, the issue regarding decision making and parenting had not been decided. Also, the Applicant was given little to no notice of the motion and was out of the country at the time the motion was filed, and the trial was upcoming.

[51] The Applicant explained he did not consent to her second request to travel in July in advance of her filing a motion as it went into his spam folder, and he did not see it until two days before the motion was scheduled. Rather than contact her, he waited for court.

[52] The Applicant believes he should be entitled to the same rights as the Respondent regarding travel with B.S.A.



[53] The Respondent questioned the Applicant regarding time spent with B.S.A. He agreed that B.S.A. has never spent a night apart from the Respondent, however, he argued he should be permitted overnights with her.

[54] The Applicant was asked about occasions when he cancelled parenting time with B.S.A., failed to request make-up time after she travelled with the Respondent in 2023, did not request additional time during the week when he was unemployed, and did not offer to provide after school supervision of B.S.A. when not working. The Respondent sought to demonstrate the Applicant has not developed a strong enough relationship to travel with B.S.A. for overnight periods at this time.

[55] The Respondent testified she has primary residence and decision-making responsibility regarding the health, education, and the well-being of the child and therefore should be permitted to travel outside Canada without the permission of the Applicant. Further, there should be no restrictions on where she can travel with B.S.A. including countries that are not signatories to the Hague convention.

[56] The Respondent testified about the benefits to B.S.A. if she is permitted to travel and see other countries. The Respondent banked her vacation time to permit an extended trip last summer that allowed B.S.A. to immerse herself in the culture and speak French while they were in Paris last summer. The Respondent also wants to take B.S.A. to Iran to see her family.

[57] The Respondent explained B.S.A.'s disappointment when the Court dismissed her motion to permit her to travel to Turkey and Iran with B.S.A. She acknowledged telling the child it was her father's fault they were not permitted to travel. This resulted in B.S.A. refusing to see the Applicant and created resentment towards him.

[58] The Respondent is prepared to inform the Applicant in advance of any travel arrangements including providing him with a complete itinerary with addresses. She expressed frustration with the Applicant when she travelled with B.S.A. last summer. She explained when the Applicant travels, he does not contact or seek to speak with B.S.A. However, when they were away, the Applicant insisted on calling without notice and without preapproved or agreed upon times and demanded to speak with B.S.A. On some occasions, it was not convenient or possible. At no time has the Applicant sought make-up time for occasions when he missed parenting time due to his travel or when B.S.A. travelled with the Respondent.

### **Pick Ups/Drop Offs**

[59] The Applicant testified about the current pickup/drop-off arrangements. He is required to attend the 16<sup>th</sup> floor of the Respondent's apartment building. Her apartment is approximately 25 meters from the elevator. The Applicant attends on the floor and the child exits the apartment and goes to her father and calls verbally to her mother to confirm she is safe. The Respondent remains in the apartment with the door locked.

[60] The Respondent claims their daughter gets stressed and upset when her parents are in the same room or vicinity. B.S.A. has expressed concerns and becomes apprehensive when both parents are scheduled or agree to attend the same events. The Respondent testified she would be open to exchanges of parenting time taking place at a public restaurant or common place. The

Respondent is not agreeable for drop offs and pick ups occurring in the lobby due to the presence of the Afghan community in her building.

[61] Both parties expressed a willingness to find a mutually agreeable public place for exchanges, either a McDonalds or community center.

### **Other Witnesses**

[62] Davoud Tawakol testified he has known the Applicant since 2009 when the Applicant arrived in Canada. He described his observations of the Applicant's relationship with B.S.A. He has seen the two laughing with each other and seem very close when together. The witness did not work with the Applicant and was not in a position to comment on his income. He testified that the Applicant used to drive long distance and attend in the US but that was more than four years ago.

[63] Ahmad Jami testified that he met the Applicant through family and mutual friends in 2019 or 2020 and believed it was after the parties separated as he has never met the Respondent. During their friendship, they usually meet three to four times a week to exercise, play sports, or cook together. He understood the Applicant to work in the Toronto area but was aware the Applicant had gone to Montreal on occasion.

[64] Ahmad Nawid Haqyar testified he has known the Applicant for a few years. During this time, they would often get together approximately 3 – 4 times a week. Often, they would meet after Mr. Haqyar gets off work around 6 p.m. but on occasion they have met earlier. The two would go for walks or play volleyball together.

[65] The Applicant asked all three witnesses if they had ever seen him receive cash payments for his work. All three denied any knowledge of the Applicant being paid in cash. None of the witnesses are truck drivers, nor do they work for the same employer or with the Applicant. On the issues I must decide, there evidence has little bearing.

### **Analysis**

#### **Child Support**

[66] The Applicant has an obligation to disclose all relevant evidence to enable the Respondent and the Court to have an accurate and complete picture of his income for support purposes.

[67] Having reviewed the evidence before me, including the Applicant's financial documents, logbooks, and testimony, I am satisfied that deposits and withdrawals into and from the Applicant's accounts accord with his evidence. Like the Respondent, the Applicant moved funds back and forth between accounts and more recently to his line of credit. The funds transferred in or out of accounts was easily reconciled when compared to other bank statements and/or credit lines. The Respondent testified he received no additional monies during his employment except the funds reflected in his banking statements and there is no evidence to the contrary.

[68] The Respondent requested that the Applicant's income should be imputed to \$70,000 per annum. The issue of imputation of income was not included in the Respondent's pleadings. She was directed to bring a motion to amend her pleadings if she wished to pursue this claim. There

was no evidence before the Court to indicate her pleadings were amended and I have declined to consider this claim.

[69] In the event I erred in not considering this issue, I summarized the evidence on this point, and am still not satisfied that income should be imputed to the Applicant. The onus is on the Respondent to establish the grounds for this request.<sup>1</sup> I cannot arbitrarily select an amount to impute income. There must be a basis for attributing \$70,000 or any other amount to the Applicant grounded in the evidence. No evidence was proffered to establish the Applicant made this amount in any years. Nor was it proven that he received cash payments or had other income. Further, there was an insufficient evidentiary basis to find that the Applicant was underemployed or intentionally unemployed. I am satisfied on the Applicant's evidence regarding his employment history.

[70] To determine table child support, I must first make a finding of the Applicant father's income in each of the years of 2019, 2020, 2021, 2022, and 2023. I reviewed all bank statements, financial statements, and materials introduced at trial. I totalled the deposits into the Applicant's business and/or personal accounts from the following employers, 2699047 Ontario Inc., Dhruv Transport Inc., and the more recent mobile deposits in 2023. In addition, I included CERB payments the Applicant received in 2020. I did not include as income monies that were transferred between accounts to cover shortfalls, bill payments, or monies that originated from the Applicant's credit line or funds that were loaned to the Applicant from his two friends. This process was completed for each of the above years. I acknowledge 2019 and 2023 are not an accurate calculation as I do not have full banking records for 2019, nor was evidence before the court of other potential income received in each of those two years.<sup>2</sup>

[71] In 2019, I totalled the monies deposited in the Applicant's business account between May and December (\$41,267.70), reviewed his business and personal notice of assessments for 2019 to 2022, and estimated an annual income of \$55,000 to determine table child support.<sup>3</sup> I have concluded table child support for October to December 2019, is \$507.<sup>4</sup>

[72] The Applicant's income for 2020 was \$63,402.66 which included receipt of the CERB for a four-month period between April to July (\$8000). Table child support for 2020 is \$588.85.

[73] The Applicant's income for 2021 was \$54397.32. He explained his income decreased due to changes in job assignments. One driver was assigned the Toronto to Montreal route, and he was not that driver. Instead, he was tasked with driving locally and received a weekly salary irrespective of the number of hours he drove. The Applicant relied on his bank statements and worklogs to confirm his route, hours, and days worked. Table child support for 2021 is \$501.66.

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<sup>1</sup> *Homs v. Zaya*, 2009 Carswell Ont 2068 (C.A.), add'l reasons 2009 Carswell Ont 3112 (C.A.); *Drygala v. Pauli*, 2002 Carswell Ont 3228 (C.A.), add'l reasons 2003 Carswell Ont 7 (C.A.); *McNeil v Dunne*, 2019 ONSC 2528.

<sup>2</sup> The Applicant's notice of assessments for his business and personal tax returns were filed with the court but the income tax returns were not. Therefore, to determine income that did not include business expense write-offs, I simply added all employment pay deposited to his accounts.

<sup>3</sup> The Applicant's corporate tax notice of assessment reflected an annual income of \$38,312.09. His bank records reflect deposits of \$41,267.70. The Applicant's full income tax returns were not evidence before the court, and I was unable to determine what amounts were deducted as expenses and therefore estimated compared to other years.

<sup>4</sup> The table amount of child support payable in 2019 may be subject to adjustment dependent on the Applicant's total income for that year. This information was not before me at trial and may affect the arrears calculated.

[74] The Applicant received a slight increase in his weekly salary in 2022, however, his annual income was lower than 2021 due to the change in his job assignments in August 2021. His annual income for 2022 was \$44,296. From the banking statements, the Applicant only worked one week in December. It appears the Applicant did not receive vacation pay and was only paid for the weeks he was in attendance. Table child support for 2022 is \$409.61.

[75] The Applicant lost his job in January 2023 and was unemployed until April 2023. His bank statements reveal he earned \$18,855.76 between May to August and an additional \$1443.00 in April. I am unable to determine his final income for 2023 but if his income for the balance of the year is consistent with the four months of bank statements filed with the Court, it would be approximately \$40,000. Table child support on this amount is \$359 and is subject to change dependent on the Applicant's income for the balance of the year and any other income including Employment Insurance collected for the period he was unemployed.

[76] To simplify calculations of any arrears owing, I rounded up the monthly table amounts as follows: 2019 - \$507; 2020 - \$589; 2021 - \$502; 2022 - \$410; and 2023 – \$359.

[77] Based on the above calculations, the Applicant should have paid a total of \$23,841. Based on the Respondent's calculations, the Applicant has paid a total of \$21,450 inclusive to the end of September 2023. Assuming the Applicant continued to pay \$450 for the period between October to December 2023 the total amount is \$22,800<sup>5</sup> leaving arrears of \$1041.

[78] The Applicant missed paying child support for the months of October 2019 and February 2023. The Applicant did pay the Respondent \$1400 in October 2019. I found the Respondent was not entitled to spousal support and therefore have applied \$500 from this amount towards the arrears. Therefore, arrears owing is \$541.<sup>6</sup>

[79] The above amount may be subject to adjustment upon the Applicant providing the Respondent with his full business bank account statements, income tax returns, and notices of assessment for 2023. The amount owing may be more dependent on the Applicant's annual income for 2023.

## Section 7 Expenses

[80] Section 7 of the *Federal Child Support Guidelines* governs "special or extraordinary" expenses. It permits a court to order an additional amount payable above table child support. A court must consider the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses. Special or extraordinary expenses are:

- a. Child care expenses incurred as a result of employment, illness, disability, or education or training for employment of the spouse who has the majority of parenting time;

<sup>5</sup> This amount does not include the missing payment for February 2023.

<sup>6</sup> As indicated above, any arrears are subject to the Applicant's income for 2023.

- b. That portion of the medical and dental insurance premiums attributable to the child;
- c. Health related expenses, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist, or any other person, physiotherapy, occupational therapy, speech therapy, and prescription drugs, 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.

[81] Section 7 requires a Court to determine the necessity and reasonableness of a claimed expense. It must consider if the expense is necessary in relation to the child's best interests and reasonable in relation to the means of the spouses. For paragraphs d and f above, the expense must be "extraordinary" not the activity.

[82] Section 7(2) provides that these expenses are shared by the parents in proportion to their respective incomes.

[83] The Respondent seeks reimbursement from the Applicant for medical and dental expenses that exceed or are not covered by her health benefits. The Respondent submitted receipts for three pairs of eyeglasses, eye examinations, and dental care received in 2023. The Respondent testified B.S.A. is now added to her benefits and is entitled to coverage for dental and healthcare. However, there was no evidence when she was added. To determine the Applicant's share in these expenses, the Respondent must provide proof of her insurance coverage and the effective date. If B.S.A. was added to her mother's benefits before these expenses were incurred, the Respondent must also provide a copy of the explanation of benefits to confirm what the insurer paid. Any balance remaining can then be divided proportionate to the parties' incomes. I am unable to determine what if anything is owed without fulsome information of the Applicant's income for 2023 and whether the Respondent received any reimbursement from her benefit provider. The parties must exchange this information to determine what the Applicant may owe.

[84] The Respondent enrolled B.S.A. in numerous extracurricular activities. Many of these programs were available at little or no cost to the Respondent, except skating and any necessary equipment. Section 7 is designed not to include everyday extracurricular activities as those are expected to be covered by table child support. Courts have held swimming lessons, soccer, basketball, and martial arts, are not extraordinary expenses.<sup>7</sup> If, however, B.S.A. was to compete in one or more of these sports and demonstrated a talent to become a professional, she may require additional training and instruction which could be an extraordinary expense.

[85] The law does not support the Applicant's position that he will only contribute to expenses he has approved or knows about in advance. Whether he approves or disagrees with a section 7

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<sup>7</sup> *Zigiris v Foustanelas*, 2016 ONSC 7528, *McAdam Estate v McAdam* [2006] O.J. 694, *Boisvert v Boisvert*, [2007] O.J. No. 2555.

expense is not the test. However, the programs B.S.A. has been registered for to date, do not fall under the rubric of “extraordinary expenses”.

[86] Section 7 includes post-secondary education as a special or extraordinary expense. In preparation for this expenditure, the Respondent opened a Registered Education Savings Plan (“RESP”) for B.S.A. She requested the Applicant father be ordered to contribute \$1200 a year to this plan. The Respondent testified she contributes \$50/month. Given the disparity of the incomes of the parties, I decline to make an order for the Applicant father to contribute to the RESP. However, this is a section 7 expense, and the Applicant will be required to contribute to these expenses at the appropriate time.

[87] The Respondent explained that B.S.A. will likely require braces in the future. This is also an expense contemplated by section 7 and the Applicant will be required to contribute to these expenses proportionate to the parties’ incomes after any benefits or coverage by dental plans.

[88] The Court understands the concerns expressed by the Applicant regarding receiving all receipts once per year. Therefore, the Respondent shall provide copies of any receipts for section 7 expenses to the Applicant within thirty (30) days of the expense, together with proof of any subsidies, coverage, and/or explanation of benefits.

### **Spousal Support**

[89] The *Divorce Act* sets out the objectives of spousal support and recognizes the economic advantages and disadvantages arising from a marriage and its breakdown, and the need to promote financial self-sufficiency of each spouse within a reasonable amount of time.

[90] The purpose behind needs-based support is for families to support themselves. If a spouse cannot work or does not have enough income or assets to support themselves, a court will order spousal support. Need is not limited to the ability to pay for necessities of life but also looks to the standard of living during the relationship.

[91] It is clear from the evidence the Respondent mother has been successful in obtaining financial self-sufficiency. She had been attending school prior to the marriage breakdown and continued her education after separation. The Respondent is not seeking spousal support moving forward but argued she was entitled to spousal support from the day of separation until she graduated from her program.

[92] A claim for spousal support was not made until July 16, 2021, almost two years after the parties separated. This date would be important to determine whether retroactive spousal support is payable. Retroactive spousal support refers to the period between the date of separation and when the claim was made. It is not support that may be owing after the Application is made.

[93] Both parties testified and produced documents to demonstrate or confirm their respective incomes and financial circumstances. I have no reason to doubt the sincerity and truthfulness of either party regarding their incomes. Determining each party’s income or access to funds was easily done through an examination of their financial documents.

[94] The Respondent provided calculations of what she believed she was entitled to for 2019, 2020, and 2021, based on an imputed income of \$70,000 to the Applicant. She calculated her income as \$0, 17,607, and 30,706, for the respective years. The Respondent did not include any monies she received from OSAP, bursaries, or scholarships. Although these funds are not taxable, it is still considered income for purposes of determining support.

[95] On the date of separation, the Respondent was attending Centennial College in the second year of a three-year program. She had applied for and received education grants and bursaries. These funds were not considered taxable income and therefore do not appear at line 150 of her notice of assessments. She testified she had been responsible for the household expenses since 2018 and the Applicant did not contribute except for six months in 2019 where he gave her \$1400/month for a total of \$8400.

[96] The Respondent submitted if the Court found she was entitled to spousal support it should be imposed at the low end. The Respondent relied on the Spousal Support Advisory Guidelines for the appropriate amount. I am unable to rely on the calculations submitted by the Respondent. I have found the Applicant's income to be less than what the Respondent relied upon and the Respondent's income to be much higher.

[97] Having examined the Respondent's bank account statements, a total of \$45,678.79 was deposited to her chequing account in 2019. This amount does not include transfers from her savings account. The Respondent received \$19,386 in OSAP grants. A further \$4711 was deposited thru ATM machines into her chequing account that I was unable to source where the monies originated. In addition, \$8400 was received from the Applicant for rent, and \$1400 from interbranch deposits between January to March. These funds alone total more than \$32,000 none of which was taxed. The \$32,000 does not include monthly child tax credits of \$658.24 or other credits the Respondent received. These additional deposits totalled \$10,581.29. I did not include the child support payments of \$1000 for the months of November and December in these calculations.

[98] For the years 2020 to 2022, relying on the Respondent's taxable income on her notice of assessments and other non-taxable sources of income, she is not entitled to spousal support.

### **Travel with Child**

[99] The parties agreed on March 31, 2023, the Respondent has primary residence and decision-making responsibility regarding the health, education, and the well-being of the child, following the recommendations of medical, professionals, school staff, and considering the best interests of the child. She shall advise the father before making any decision on major issues pertaining to the child's health or education or well-being and shall consider his opinions on such issues.

[100] The agreement permits the father to increase his time with B.S.A. and should eventually include or lead to overnight parenting time. This has not happened yet. The father expressed his desire to have more time with B.S.A. throughout the trial and asked the Court to order more parenting time.

[101] Unfortunately, contrary to the Applicant's testimony and requests, he has taken very little action to support his words. Justice Myers commented "the father is a truck driver. He has not been able to arrange his work with sufficient flexibility to exercise his mid-week time regularly, if at

all.” It is unclear if Justice Myers was aware the Applicant travelled in January and was unemployed upon his return until the end of April. There was no evidence before me of what steps the Applicant took to spend more time with B.S.A. during that time. This was an opportunity for him to pick her up from school, assist with homework, cook meals, and provide aftercare while the Respondent finished work. Further, there was no evidence presented about any efforts the Applicant has made to exercise the additional parenting time he was entitled to due to the Respondent’s travel with the child last summer.

[102] Before the Applicant can travel with his daughter, he needs to forge a stronger relationship with her. The child has never spent a single night away from the Respondent and therefore, it is not in the best interests of the child to suddenly be removed from her mother and spend an extended time travelling with her father prior to building a foundation and base ahead of any travel with the Applicant. This includes exercising parenting time consistently and insisting on any make-up time. As time progresses, the Applicant should be entitled to overnight parenting time with B.S.A. in anticipation of travel together. The Applicant needs to demonstrate how he will care for a child who is in his care for 24 hours a day for several days and possibly weeks without the presence of the Respondent.

[103] Therefore, the Applicant may only travel with the child outside Ontario with the written consent of the Respondent who holds the primary residence and the decision-making rights of the child.

[104] The Respondent mother would like to travel with the child without restrictions or consent of the Applicant father, including countries not signatories to the Hague Convention on Child Abduction. The Applicant is opposed.

[105] The Respondent mother brought two separate motions to travel in advance of the trial date. The first was not granted, the second was. Justice Myers heard both motions and distinguished the circumstances before him on each of the motions. I echo Justice Myers’ comments in the July 20, 2023, endorsement, “Travel is generally in the best interests of children. It gives them education, fun, excitement, and memories that last a lifetime”.

[106] I have determined the Respondent may obtain and retain government documents and passports for the child. The Respondent shall provide the Applicant with a photocopy of any government document(s) obtained for the child.

[107] Providing B.S.A. is under the age of sixteen, neither party shall travel with her to countries that are not signatories to the Hague Convention without written consent from the other party. Where consent is provided, the party travelling shall provide full details of the travel which shall include destinations, contact phone numbers, and addresses for the duration of the trip at least fourteen (14) days in advance.

[108] The Respondent does not require the consent of the Applicant to travel with the child to countries that are signatories to the Hague Convention. If B.S.A. is under the age of sixteen, the Respondent shall provide the Applicant with a minimum of thirty (30) days advance notice of any travel outside of Canada. She is not required to provide the Applicant with a full itinerary as set out above for travel to non-signatory countries.



### **Location of Pick Ups/Drop Offs**

[109] This last issue seemed to resolve itself during the testimony of the parties at trial. The Respondent testified she was prepared to meet the Applicant at a public venue such as a local community centre for the purpose of exchanging parenting time of B.S.A.

[110] This was a very reasonable position for everyone. As such, I will not interfere or impose a location for the exchanges of parenting time for B.S.A. but will order that it not take place on the 16th floor of the Respondent's apartment complex unless agreed to in advance in writing by both parties.

### **Costs:**

[111] Costs are not ordered. Both parties are self-represented and each had a degree of success at trial.

### **Conclusion**

[112] As a result of my findings of fact and application of the law set out below, I make the following orders:

#### **Child Support**

- a. Ms. Mumtaz's request to impute income to Mr. Shir Ahmad is dismissed.
- b. Mr. Shir Ahmad is ordered to pay child support arrears of \$541 within six months of this Order.
- c. Mr. Shir Ahmad shall pay to Ms. Mumtaz \$359 each month commencing April 1, 2024, for Table Child Support for B.S.A. born January 21, 2015.
- d. Mr. Shir Ahmad shall provide a copy of his personal and corporate income tax returns and Notices of Assessment each year on an ongoing basis by June 30 of the following year until child support is no longer payable. *i.e.* Mr. Shir Ahmad shall provide copies of this 2023 personal and corporate income tax returns and Notices of Assessment by June 30, 2024. The amount of Table child support payable will then be adjusted retroactive to January 1 of that year based on his income.

#### **Section 7 Expenses**

- e. Section 7 expenses shall be shared by the parties in proportion to their respective incomes.
- f. Ms. Mumtaz shall provide proof of her insurance coverage for B.S.A. and the effective date. If B.S.A. received coverage for her medical and dental care in 2023, Ms. Mumtaz shall also provide a copy of the explanation of benefits to confirm what costs were covered by the insurer.

- g. Ms. Mumtaz shall provide a copy of her income tax return and Notice of Assessment no later than June 30 each year for purposes of determining apportionment of any section 7 expenses.
- h. Ms. Mumtaz shall provide copies of any receipts for section 7 expenses to the Applicant within thirty (30) days of the expense, together with proof of any subsidies, coverage, and/or explanation of benefits.

### **Spousal Support**

- i. Ms. Mumtaz's claims for retroactive spousal support between October 1, 2019, and July 15, 2021, and for spousal support between July 16, 2021, to April 30, 2022, are dismissed.

### **Travel with Child**

- j. While the child is under the age of sixteen, neither party shall travel with B.S.A., to any countries that are not signatories to the Hague Convention without written consent from the other party. Where consent is provided, the party travelling shall provide a full itinerary to the other parent at least fourteen (14) days in advance of any travel. This itinerary shall include flight information, destinations, addresses where they will be staying, and full contact numbers.
- k. Ms. Mumtaz does not require the consent of Mr. Shir Ahmad to travel with B.S.A. to countries that are signatories to the Hague Convention. Ms. Mumtaz shall provide Mr. Shir Ahmad with at least fourteen (14) days advance notice of any travel outside of Canada providing the child is under the age of sixteen.
- l. Ms. Mumtaz may obtain and retain government documents and passports for B.S.A. Ms. Mumtaz shall provide Mr. Shir Ahmad with a photocopy of any government document(s) obtained for B.S.A.
- m. Mr. Shir Ahmad may only travel with the child outside Ontario with the written consent of Ms. Mumtaz who holds the primary residence and the decision-making rights of the child, such consent is not to be unreasonably withheld.

### **Pick ups/Drop offs**

- n. Any parental exchanges of B.S.A. shall no longer take place on the 16th floor of Ms. Mumtaz's apartment building unless agreed to in advance by both parties.

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Rhineland J.

**Date:** March 26, 2024

**CITATION:** Ahmad v Mumtaz, 2024 ONSC 1801

**COURT FILE NO:** FS-21-00023829-0000

**DATE:** 2024-03-26

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ZARIF AHMAD SHIR AHMAD

- And -

NAZRIN MUMTAZ

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**REASONS FOR DECISION**

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Rhineland J.

**Released: March 26, 2024**