IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hohmann v. Hohmann,* 2024 BCSC 100

Date: 20240122
Docket: E18230
Registry: Quesnel

2024 BCSC 100 (CanLII)

Between:

Jennifer Lee Hohmann

Claimant

And

Stephen Gregor Hohmann

Respondent

Before: The Honourable Justice A. Ross

Reasons for Judgment

Counsel for the Claimant:	D.W. Lindsay
The Respondent, appearing in person:	S. Hohmann
Place and Date of Trial/Hearing:	Prince George, B.C. November 22, 2023
Place and Date of Judgment:	Quesnel, B.C. January 22, 2024

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Introduction

[1] This family law application came on before me in regular chambers on November 22, 2023 in Prince George.

[2] The claimant seeks relief in the areas of parental responsibilities, parenting time, occupation of the family residence, spousal support and child support. The respondent opposes all relief sought by the claimant.

[3] As discussed below many of the issues to be determined in these reasons derive from the fact of the parties separated in 2015 but continue to reside in the same house. Further issues arise due to the respondent's failure to make proper financial disclosure in the litigation.

[4] I also note that the respondent did not provide a response to the application and he filed no affidavit material. He did attend the hearing and he provided me with his position on the claimant's application. He also advised me of the points of evidence where he disagreed with the plaintiff's evidence. His statements were not provided under oath. I have tried to give them appropriate weight.

[5] I note at the outset that the parties have seven children:

a) Five of whom are still children of the marriage; and

b) Two have aged out and are economically independent.

[6] I will not refer to the children of the marriage by name, simply referring to them, collectively, as the "Children". They range in age from 8 to 18.

Orders Sought

[7] The claimant seeks the following orders:

a) An order that the claimant have sole interim parental responsibilities for the five Children;

b) An order that the Children reside primarily with the claimant;

c) An order that the respondent have reasonable and generous parenting time with the Children as agreed to between the parties from time to time taking the wishes of the Children into account;

d) An order that the respondent pay the claimant child support pursuant to Part 7 of the *Family Law Act,* S.B.C. 2011, c. 25 [*FLA*], and in accordance with the *Federal Child Support Guidelines*, SOR/97-175 [*Guidelines*];

e) An order that the respondent pay the claimant spousal support pursuant to Part 7 of the *FLA* and in accordance with the Spousal Advisory Guidelines;

f) An order that the claimant have exclusive occupation of the family residence located at 1980 Higdon Rd. Quesnel, BC. (the "Family Residence"); and

g) Costs.

[8] Above, I outlined the items of relief in the order that they appear in the notice of application. However, because all of the other issues turn on whether the claimant is granted exclusive occupancy of the family residence, I have addressed that issue first.

Background Facts

[9] By way of background:

a) The claimant is 48 years old. The respondent is 54 years old.

b) The parties were married on May 23, 1998.

c) They have seven children, born between the years 1998 and 2015.

d) Commencing in 2012, the parties began living in the Family Residence on Higdon Rd. That property is in a rural area, approximately 10 km south of Quesnel.

e) In addition to the property upon which the Family Residence is situated, the respondent is the registered owner of an adjacent property that is either 200

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acres or 350 acres (the "Adjacent Property"). The parties did not agree on the size of that property. Until 2012, the parties lived in a residence located on the Adjacent Property. The former residence on that property is currently unoccupied.

f) Significant logging activity has occurred on the Adjacent Property within the last two years.

g) All seven children were, or are, homeschooled.

h) The six youngest children continue to reside in the Family Residence with the five youngest continuing to be homeschooled by the claimant.

i) The respondent is self-employed, operating a business as a logging truck driver. The family also operates a farm on the property.

j) The claimant's affidavit #3 indicates that the parties separated on March 1, 2015. I understand (from his response to family claim) that the respondent disputes the date of separation, but no evidence to the contrary was tendered. Given that the claimant commenced this litigation on August 14, 2020, for the purposes of this application, the date of separation is only relevant to the issue of occupancy of the Family Residence.

k) Since separation, the claimant has slept in a bedroom she shares with the two youngest sons. The respondent sleeps in the master bedroom.

[10] I note that, upon the application of the claimant on October 4, 2021, Master Vos ordered that the claimant would have sole conduct of sale of the Family Residence. That order was not settled until July, 2022. I understand that the property has been listed for sale but there have been no offers.

Exclusive Occupation of the Family Residence

[11] The plaintiff applies under s. 90(2) of the *FLA* for exclusive occupation of the family residence. That section provides:

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> **90** (1) For the purposes of this section, "family residence" means a residence that is
>
> (a) owned or leased by one spouse or both, and
>
> (b) the ordinary place of residence of the spouses.
>
> (2) The Supreme Court may make an order granting a spouse, for a specified period of time,
>
> (a) exclusive occupation of a family residence, or
>
> (b) possession or use of specified personal property stored at the family residence, including to the exclusion of the other spouse.

[12] The claimant submits that this is an appropriate case to make an interim order for exclusive occupation. She cites two cases:

a) *J. v. S.*, 2008 BCSC 549, a decision of Master Taylor; and

b) *Ferguson v. Ferguson,* 2014 BCSC 216, a decision of Justice Tindale.

[13] Both of those cases provide that the test for exclusive occupancy of the family home is whether or not it is a "practical impossibility" for both parties to remain in the home. Of course, my primary consideration in any such order is the best interests of the Children, as outlined in s. 37(2) of the *FLA*.

[14] In *J. v. S.,* Master Taylor indicated a two-part test:

a) The first part of the test is whether the sharing of the home would be a practical impossibility; and

b) The second part of the requires the applicant to show that he or she would be the preferred occupant on the balance of convenience.

[15] Further, the longer the parties have lived in the same house since separation, the higher the bar for the applicant to establish the "impossibility" of the situation.

Practical Impossibility

[16] I turn first to the evidence of the practical impossibility.

[17] There is no dispute that:

a) The claimant is a stay-at-home mother, who is raising and homeschooling five Children (at present); and

b) The claimant's bedroom in the home is shared with the two youngest sons.

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[18] The claimant says that she has no privacy in the home. She says that the respondent will come into her room uninvited and will ignore her requests to leave. She says the respondent is extremely controlling and there is constant stress in the household. She says the respondent openly criticizes her and states that he thinks she has brain damage. He tells the Children that the claimant's brain damage is the reason the couple is no longer able to get along.

[19] She also says that her primary source of income is the child tax credit of approximately $2,200 per month. She says that, although they have one joint bank account, the respondent is a self-employed truck driver who has complete control of the family finances. Any funds in the joint account are deposited from the respondent's business account.

[20] The respondent disputed some of the claimant's evidence. In particular, he submitted:

a) That comments regarding the claimant suffering brain damage are the topic of common discussion in the family and arise from the claimant falling off a horse and suffering a concussion many years ago.

b) The claimant is not totally financially dependent upon him. To the contrary, the couple has a joint account from which the family's bills are paid. He says there is no secret in respect of those finances. He further says that he writes cheques whenever she needs them. He says that the local bank knows him and knows her and would let her view the business accounts if she requested. His accountant would also allow her the same access.

[21] Despite his failure to properly disclose his financial information, it is my impression that the respondent is not hiding significant funds or income. He is not a

man who spends flagrantly on himself or purchases expensive items for his personal enjoyment. I accept, in general, his submission that his income goes to support the family. However, to be clear, this is the impression that I divined based on the claimant's affidavit and the respondent's scant financial disclosure.

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[22] As to the remainder of the respondent's positions, with the greatest respect to the respondent, his submissions betrayed the underlying truth of the claimant's statements regarding the nature of the household. In particular:

a) When attempting to counter the claimant's allegations of his verbal abuse, the respondent submitted, in court, that he thinks the claimant has "dementia or something" because her description of events does not match his perception. The respondent did not appear to turn his mind to the question of whether that submission was, in itself, insulting.

b) Although he says that the claimant has access to the family bank account, upon basic questioning from myself, he conceded that:

   i. his trucking business has a separate bank account at a different bank;

   ii. all of the income from the business, including logging income derived from the family's property, is deposited into the business account; and

   iii. then, on an "as needed" basis, he deposits money into the couple's joint account from which the family bills are paid.

c) By definition, the claimant would have no access to that business account and no information about the family finances other than the amounts deposited into the joint account.

[23] On the basis of the evidence, I am satisfied that the respondent has full control over the family finances, apart from the child tax benefit. I am also satisfied that there is substantial tension within the household.

[24] Claimant's counsel submits that:

a) while it is possible that the relationship between the parties might not meet the test of "practical impossibility",

b) the court should consider the best interests of the Children.

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[25] Claimant's counsel submits that the Children are caught in the midst of the ongoing family tension. Counsel relies on the *J. v S.* decision where Master Taylor found that the practical impossibility test was not met in respect of the parties, but found that the Children had been placed squarely in the middle of the sniping between the parties. At paras. 12–13, Master Taylor wrote:

> [12] The affidavits filed by the parties and relied upon by them in this application are difficult to reconcile. However, what does become evident is that the children have been placed squarely in the middle of the sniping between the parties. In essence, the children have been caught in the crossfire. This is not what this court considers to be in their best interests. The children should be and must be protected from the extreme animosity and upset which exists between the parties. It may be that the plaintiff is exaggerating and magnifying the difficulties between herself and the defendant, but she is reacting to the defendant's presence in and around her and, for whatever reason, the children are caught in the middle.
>
> [13] For these reasons, I deem shared occupancy of the residence on Cypress Street to be a practical impossibility. Accordingly, I grant the plaintiff's motion for exclusive possession of the property and contents, to commence at 9:00 a.m. on Wednesday, May 1, 2008. I also order that the defendant shall have reasonable and generous access to the children. Leave is granted to the defendant to apply if a reasonable access schedule with the children cannot be arranged with the plaintiff.

[26] The claimant submits that, in this case, the Children should be protected from the animosity between the parties.

[27] In answer to that submission, the respondent says that the best interests of the Children will be served by both parents living together, in the same house as the Children. When pressed on this issue, he indicated that if the parties move to separate residences he expected that the Children would probably choose to come to live with him.

[28] In addressing the respondent's position, I cannot ignore his statements during the course of the hearing wherein he indicated that he did not want the marriage to

end. He stated that he would be married to the claimant for the rest of his life. Thus, in my opinion, despite its inherent problems, the current situation suits the respondent's overall wishes. He does not want the relationship, or the family, to break up. Hence, he downplays the tension in the home.

[29] In my opinion, the claimant's submission regarding the best interests of the Children is correct. This litigation is not yet scheduled for trial. However, when that trial occurs, a final order will be made dividing the property being the parties. Regardless of the circumstances prior to the final order, they will be required to live separate and apart after trial. It is clear to me that, if the claimant had greater financial resources, that trial, and the division of property, would already have occurred.

[30] In this litigation, the parties have undertaken the unusual burden of residing in the Family Residence for eight years following separation. That is not the normal course. I infer that this situation has continued because of the particular circumstances of the parties, including the number of children, the rural nature of the Family Residence, and the respondent's control of the family finances.

[31] In my opinion, it is not in the best interests of the Children for this situation to continue. To the extent that there is any benefit to the Children from having both parents in the same home, that benefit is outweighed by the tension between parties and the stress caused thereby.

[32] On the basis of my analysis above I find the current situation is a practical impossibility for the claimant and for the Children.

Balance of Convenience

[33] I now move to the second part of the test, assessing the balance of convenience.

[34] In my opinion, for the reasons described below, the balance weighs heavily in favour of the claimant.

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[35] First, the claimant is the primary caregiver for the Children. In saying that, I accept that the respondent is very active in the activities of the Children. However, there is a difference between those two concepts.

[36] Further, as noted, the claimant is primarily responsible for homeschooling the Children.

[37] As noted above, the parties own the property comprising the Family Residence as well as the Adjacent Property. The neighbouring acreage contains the former family home, which has not been inhabited since 2012. There are problems with that former residence. I understand there is mould that has developed over time. However, given time to work on those issues, they are not insurmountable. That residence is a place where the respondent could reside with the expenditure of a small capital investment and monthly expense. Given the mould issues, I expect that the respondent would require time to ready the residence. I arbitrarily set that time at three months. I have addressed that lead time in my order below.

[38] On that basis, I find that the balance of convenience favours the claimant.

[39] It follows that I grant paragraph 6 of the claimant's notice of application, and I grant her exclusive occupation of the residence located at 1980 Higdon Rd., Quesnel, commencing three months after the date of release of these reasons.

<u>Children Primarily with the Claimant</u>

[40] Paragraph 2 of the notice of application requests an order that the Children reside primarily with the claimant.

[41] Given my analysis of the exclusive occupancy issue, it follows that, in my opinion, the best interests of the Children will be met by having them reside primarily with the claimant in the family residence. In particular, the claimant is the primary caregiver and the organizer of the homeschooling. Given those responsibilities, it makes sense for the Children to reside primarily with the claimant.

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[42] I grant the order requested by the claimant in paragraph 2 of the notice of application.

Reasonable and Generous Parenting Time to the Respondent

[43] In many, if not most, family law cases, there is a dispute over parenting time. This case is different. The claimant does not seek to limit or restrict the respondent's parenting time. She is content to have an order that the two parties agree, on an ongoing basis, to the respondent having reasonable and generous parenting time with the Children. She seeks an order to that affect. She also seeks a provision that takes the wishes of the Children into account. I infer that the claimant's position is based upon the number and age of the Children. There is a lot of parenting time to be divided between the parties. The older children will clearly have some "say" in the time they will spend with each parent.

[44] I find paragraph 3 of the claimant's notice of application to be reasonable and I grant the relief sought therein.

Child Support

[45] Paragraph 4 of the notice of application seeks child support. The claimant relies on ss. 147, 149–150 of the *FLA* and the *Guidelines*, ss. 16–19.

[46] Until this application, with the parties residing together in the family residence, there has been no urgent need for the claimant to apply for child support. The claimant does not dispute that the respondent has been paying for the family's expenses. However, with the separation of the two households, and primary parenting being granted to the claimant, child support will be necessary.

[47] The main issue with respect to awarding child support relates to the lack of evidence regarding the respondent's income.

[48] The respondent filed a response to family claim on July 14, 2023. Attached to that pleading were portions of three income tax returns. Each document is a "T1

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Summary" or the final page of that year's income tax return. Those documents indicate the following taxable income:

Year	Gross Business	Net Business	Gross Farming	Net Farming	Capital Gains	Total Income
2020	$152,305	$84,275	$52	-$21,660	$0	$62,815
2021	$89,428	$30,350	$932	-$44,292	$52,150	$38,208
2022	$60,132	$11,195	$1,753	-$26,386	$44,429	$29,238

[49] Two things need to be addressed in respect of these figures:

a) It is evident that the respondent's Total Income is negatively affected by the losses experienced from farming activities on a yearly basis. As noted, I was presented with limited information, but the respondent indicated that he deducts the majority of the mortgage payments from his income.

b) I understand that the Capital Gains declared in 2021 and 2022 constitute profits from logging the Adjacent Property. The realization of those profits (or earnings) raises issues regarding the ultimate division of property. It appears (although I make no finding on this point) that the respondent is selling family property (i.e. lumber) and declaring it as income. He is then using those funds to pay family expenses, including the mortgages on the two properties. In turn, he is deducting those mortgage expenses from his annual income.

[50] Hence, the methods used to create, and reduce, the respondent's taxable income are complex. In my opinion, those issues are not amenable to resolution on this type of application, especially in the absence of proper disclosure.

[51] I noted above that Mr. Hohmann's position is that everything he earns goes toward the family. As noted above, I accept that he is not a man who spends lavishly on himself. However, the fact remains that he has not made proper financial

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disclosure in this litigation. The claimant has no knowledge of the finances of the respondent's business. His income tax returns do not present a simple calculation that can be used to estimate an income for guideline child support purposes.

[52] It appears from the limited financial information, that the respondent is eligible for certain tax deductions from both his business and his farming income. It is likely that significant sums would be "added back" in any calculation of his income in this family litigation. In submissions, the respondent advised that he pays the mortgage of $2,500 per month. It was unclear whether that amount represented the payment solely for the Family Residence, or whether it also included the Adjacent Property. I have no evidence on that issue. However, I infer that the mortgage is being paid, and it is clear that the claimant is not paying it.

[53] For the reasons set out above, I am unable to make a firm finding on the respondent's income for the purposes of child support.

[54] Claimant's counsel provided four separate Divorcemate calculations, based upon:

a) The claimant receiving the Child Tax Benefits ($2,730/month); and

b) Ascribing the respondent with incomes between $80,000 and $150,000.

[55] At the lower income amounts ($80,000 and $100,000), the Divorcemate computations produce child support amounts of $2,189 and $2,673 respectively.

[56] Claimant's counsel submits that the respondent's income for support purposes could be as high as $150,000. He submits that it is the respondent's failure to make proper disclosure that places the claimant in this position. Counsel urges me to implement a support regime that would place the onus on the respondent to apply for a variation if his income is, in fact, lower than the court determines.

[57] I do not accept the claimant's counsel's submission on this point. Based on the Divorcemate calculations, ascribing an income of $150,000 to the respondent would result in monthly support payments (child and spousal) of approximately

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$4,600. Based on the information in the tax returns, support payments of that amount could leave Mr. Hohmann with zero disposable income.

[58] In my opinion, based upon the respondent's financial disclosure to date, the best estimate I can make is that his income for support purposes is approximately $90,000.

[59] On that basis, I award interim child support of $2,500 per month on the basis that it approximates the guideline support payable at that income level.

[60] It is possible that this level of monthly child support will cause an unfairness to the respondent. By that, I mean that it is possible that his income for support purposes may, in fact, be lower than $90,000. If that is the case, then the respondent is at liberty to apply to vary my order. In order to do so, he will have to make a full financial disclosure.

Spousal Support

[61] I have reviewed the Divorcemate calculations prepared by the claimant's counsel. I infer from those calculations that, in the financial circumstances of these parties, (i.e. where the claimant receives the child tax benefit plus child support for five children and the respondent's income is less than $100,000) the respondent will have no obligation to pay spousal support.

[62] Hence, on the basis of the evidence before me on this application, I make no interim order in respect of spousal support.

Sole Parenting

[63] Finally, I address the claimant's request for sole interim parenting responsibilities for the Children. This request is at paragraph 1 of the notice of application.

[64] In her affidavit, at paragraph 59, the claimant outlines a list of events regarding disputes between the parties on parenting decisions. She raises concerns regarding risky activities that the respondent undertakes with the Children. Without

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going into the details of those activities, I note that the family is involved in horse riding and rodeo activities.

[65] In reviewing the claimant's concerns, I note that most of the examples she provides occurred in 2019 and 2020. There is one event in September 2023. Further, much of the evidence relates to disputes over the enforcement of a bedtime routine for the youngest children. In the context of one parent seeking decision-making power to the exclusion of the other parent, I consider all of these complaints to be either dated or, in context, minor.

[66] There is one concern that I consider to be relevant and probative. The claimant says that the respondent discourages dental work for the Children. Given that the respondent controlled the finances, the claimant was left to do her best with the funds available.

[67] However, I believe that the decisions relating to dentistry (and other appointments) will be addressed with the division of households and the payment of child support. Under the new circumstances, the claimant will be entitled to take the Children to the dentist. On this application, there is no claim for payment of s. 7 (special or extraordinary) expenses. However, the claimant would be entitled to claim such expenses if they are incurred.

[68] Having considered the submissions and the facts, I am not satisfied that this is an appropriate case to order that the claimant should have sole interim parenting responsibilities for the Children. I dismiss paragraph 1 of the application.

Summary

[69] In summary, noting that I have addressed them in a different order than the notice of application, I grant the following orders:

a) Paragraph 2: an order that the Children reside primarily with the claimant.

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b) Paragraph 3: an order that the respondent have reasonable and generous parenting time with the Children as agreed to between the parties from time to time taking the wishes of the Children into account.

c) Paragraph 4: an order that the respondent pay the claimant child support pursuant to Part 7 of the *FLA* and in accordance with the *Guidelines*. I set that interim support at $2,500 per month.

d) Paragraph 6: an order that the claimant have exclusive occupation of the Family Residence located at 1980 Higdon Rd., Quesnel, BC.

[70] I dismiss the following paragraphs of relief:

a) Paragraph 1: an order that the claimant have sole interim parental responsibilities for the Children.

b) Paragraph 5: an order that the respondent pay the claimant spousal support pursuant to Part 7 of the *FLA* and in accordance with the Spousal Advisory Guidelines.

[71] I note that my dismissal of paragraph 5, spousal support, is based upon my estimate of the respondent's income. If further evidence is disclosed, the claimant is at liberty to bring on a further application.

[72] The claimant is entitled to her costs of this application. I make that order because it is clear that she was required to bring the application and has been primarily successful in it.

"A. Ross J."

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