
CANADA / JUDGMENT

A.E.P. v. M.K.

2020 BCSC 1742

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1742 A.E.P. v. M.K.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.E.P. v. M.K.,

2020 BCSC 1742

Date: 20201117

Docket: E181357

Registry: Vancouver

Between:

A.E.P. also known as A.P.

Claimant

And

M.K., Lazar Klot and Lyubov Klot

Respondents

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Counsel for the Claimant:

K. Lawrence

Counsel for the Respondent, M.K.:

A.E. Thiele

Counsel for the Respondents, Lazar Klot and Lyubov Klot:

W.A. McLachlan

Place and Dates of Hearing:

Vancouver, B.C.

August 24 and October 14, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 17, 2020

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I. Introduction

[1] Before the Court are three interlocutory applications brought by the claimant, A.E.P., in this family law action.

[2] In her notice of family claim, A.E.P. seeks a division of assets, child and spousal support and other relief under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The assets in dispute are substantial. They include, most notably for the purposes of the applications before me, approximately \$20 million in residential and rental properties located in British Columbia and elsewhere.

- [3] The trial is scheduled to take place over 14 days beginning on October 4, 2021. Although the trial is still almost a year away, the parties have already appeared in court many times. There have been many previous interlocutory orders made, including conduct, preservation of property, document production and protection orders. Almost all of those orders have gone by consent.
- [4] A.E.P. brings the present applications in an effort to enforce some of those consent orders. She seeks to punish M.K. for having breached them in various ways and to secure his future compliance. She argues that unless the relief she seeks is granted, M.K. will continue to flaunt the authority of the Court as he has been doing throughout this litigation.
- [5] The breaches that are the subject of these applications fall into the following categories:
- a) communicating inappropriately with the parties' 12-year-old daughter, contrary to a previous conduct order;
 - b) misappropriating or interfering with the rental revenue from two of the parties' rental properties that were ordered to be payable to A.E.P., including communicating directly with the tenant of one of those properties despite a previous conduct order prohibiting such communication;
 - c) failing to pay the children's school tuition and s. 7 expenses as previously ordered; and
 - d) late production of certain foreign banking records as ordered.
- [6] Although s. 228 and 230 of the FLA allow for the imposition of fines or compensation orders of up to \$5,000 for failing to comply with a court order made under that statute, A.E.P. seeks by the present applications, among other things, to have a fine imposed that is far in excess of that limit. She argues that M.K. will not be adequately deterred by a mere \$5,000 fine, and that therefore a much more significant deterrent is needed to bring home the point.
- [7] To that end, in her application filed February 11, 2020, A.E.P. seeks, among other things, to have a \$5,000 fine imposed for each of the 22 individual phone calls and 29 individual text messages that M.K. made to the tenant, and other alleged breaches, for a total of \$285,000. By two subsequent applications, filed on July 6 and August 10, 2020 respectively, she seeks the imposition of still more \$5,000 fines, as well as additional conduct, production and compensation orders.
- [8] M.K., through his counsel, acknowledges having committed two of the breaches alleged, but he argues that the relief sought is disproportionate, excessive and not in keeping with the authorities. His counsel argues that a fine of somewhere between \$5,000 and \$10,000 is sufficient in the circumstances.
- [9] For the reasons that follow, I have concluded that the applications should be allowed in part.

II. The Background Facts

A. The Parties and their Assets

- [10] The parties began cohabitating 1996 and separated in May 2018. They were never formally married. They have two children, a son, B.K. (16) and a daughter, T.K. (12). B.K. attends Mulgrave School and T.K., Collingwood School, both of which are private schools located in West Vancouver. A.E.P. resides with the two children in one of the former family homes in West Vancouver.
- [11] For several years prior to the parties' separation, M.K. was facing criminal charges in the United States. While those charges were pending, he was unable to leave the United States and return to Canada. Although the criminal charges have since been resolved, M.K. has not returned to live in Canada but instead resides in Mexico.
- [12] Much of the family's wealth is held in the form of real estate. A.E.P. contends that the parties acquired the following properties during the relationship:
- a) 3160 Benbow Road, West Vancouver, held by the parties and M.K.'s parents as joint tenants (the "Benbow Property");
 - b) 9081 Summer Lane, Whistler, held by the parties and M.K.'s parents as joint tenants (the "Summer Lane Property");
 - c) 3965 Westridge Avenue, West Vancouver, held by M.K. and his parents as joint tenants (the "Westridge Property");
 - d) 8263 Alpine Way, Whistler, held by M.K. and his parents as joint tenants (the "Alpine Way Property");
 - e) 3651 West 6th Avenue, Vancouver, held by M.K. and his parents as joint tenants; and
 - f) 2566 West 2nd Avenue, Vancouver (the "West 2nd Property"), held by M.K. and his parents as joint tenants.
- [13] The parties also own properties in Beverly Hills, California and Playa del Carmen, Mexico. A.E.P. believes that the properties generate approximately \$55,000 to \$60,000 per month in rental revenue, most of which she believes is retained by M.K.

B. The History of this Action

- [14] A.E.P. commenced this action on May 17, 2018.
- [15] Days later, on May 22, 2018, she obtained the following orders, among others:
- a) a protection order under s. 183 of the FLA (which was to expire on November 30, 2018 but was subsequently extended by agreement);
 - b) an order granting A.E.P. exclusive occupancy of the Benbow Property (she has since moved with the children to the Westridge Property and now has exclusive occupancy there instead); and

- c) a conduct order prohibiting M.K. from, among other things, speaking negatively regarding A.E.P. in the presence of the children.
- [16] On February 5, 2019, the parties agreed to a consent order that, among other things, converted the protection order into a conduct order under s. 225 and restated its terms. By that order, the parties were not to "threaten, demean or otherwise communicate negatively" or "speak negatively regarding the other party in the presence of the children" or "communicate to the other party through the children or otherwise involve the children in the litigation".
- [17] It is not disputed that on two occasions (March 24, 2019 and May 23, 2019), M.K. breached the February 5, 2019 consent order by sending text messages to A.E.P. in contravention of its terms. By a consent order made June 14, 2019, M.K. was required to pay a fine of \$2,500 for each of those breaches, for a total of \$5,000.
- [18] On March 19, 2019, A.E.P. filed an application seeking, among other things, interim child and spousal support. While that application was pending, the parties agreed to a consent order, dated July 25, 2019, containing the following terms, among others:
- a) M.K. was to produce certain financial records, including statements from foreign bank accounts in Switzerland and elsewhere;
 - b) M.K. was to pay the children's school tuition for the 2019/2020 academic year; and
 - c) M.K. was to pay the children's s. 7 expenses of \$2,700 per month.
- [19] On August 6, 2019, also by consent, Master Muir ordered, among other things that:
- a) A.E.P. was to retain the rental income from the upstairs suite of the Alpine Way Property and the main house at the Summer Lane Property;
 - b) if that income turned out to be less than \$8,000 in any given month, M.K. was to supplement the missing rental income so that A.E.P. received \$8,000 per month; and
 - c) M.K. was not to change the locks on any of the rental properties without A.E.P.'s consent.
- [20] A.E.P. arranged for a tenant to rent the Summer Lane Property for three months from September to November 2019. M.K. did not believe that it was appropriate to rent out the property for such a long period of time and contacted the new tenant directly to convey his views. Despite Master Muir's order, M.K. or his parents changed the lock code at the Summer Lane Property. As a result, the tenant abandoned the lease, leading to a loss of \$31,000 in rental revenue, according to A.E.P.
- [21] Following that episode, the parties were before the court again on September 18, 2019, at which time Gerow J. made the following orders, among others:
- a) M.K. was "restrained from communicating directly or indirectly with any current, potential or future tenant at Summer Land or Alpine Way"; and

- b) M.K. was required to deposit \$5,000 into court as security against his future breaches of court orders.
- [22] The first two of the present applications (those filed February 11, 2020 and July 6, 2020) came before Master Scarth on July 10, 2020. At that time, the parties agreed to a consent order containing the following terms:
- a) the hearing of the applications was adjourned to August 24, 2020;
 - b) M.K. was not to interfere with the tenancy booked at the Summer Lane Property from July 10, 2020 to August 13, 2020;
 - c) neither party was to book any guests to rent the Summer Lane Property until after the pending applications were heard;
 - d) M.K. was to direct Credit Suisse to produce documents pertaining to his accounts there; and
 - e) the funds in those accounts were to be paid into his lawyer's trust account.
- [23] On August 24, 2020, the parties appeared before me to address that part of A.E.P.'s third application filed August 10, 2020 seeking to amend the notice of family claim to add M.K.'s parents as respondents in the action. I granted that order for reasons given orally on that date. The remainder of the relief sought in the applications was adjourned to be heard by me on October 14, 2020.
- [24] Although the application filed February 11, 2020 sought, among other things, an order for sale of the West 2nd Property and granting A.E.P. sole conduct of that sale, I understand that she is no longer seeking that relief because M.K.'s parents, who would have an interest in any such order as co-owners of that property, were not named as respondents on that application.
- [25] The trial was originally scheduled to take place on November 25, 2019. It did not proceed at that time because there was no judge available. It also did not proceed on the next scheduled date, June 22, 2020, due to the partial closure of the courts in the wake of the current pandemic. On August 18, 2020, A.E.P. filed a notice of trial setting the current trial date, October 4, 2021.

III. The Legal Framework

- [26] A.E.P. seeks relief under the following provisions of the FLA: 222, 227, 228 and 230.
- [27] Those provisions state as follows:

Purposes for which orders respecting conduct may be made

222 At any time during a proceeding or on the making of an order under this Act, the court may make an order under this Division for one or more of the following purposes:

- (a) to facilitate the settlement of a family law dispute or of an issue that may become the subject of a family law dispute;
- (b) to manage behaviours that might frustrate the resolution of a family law dispute by an agreement or order;
- (c) to prevent misuse of the court process;
- (d) to facilitate arrangements pending final determination of a family law dispute.

Other orders respecting conduct

227 A court may make an order requiring a party to do one or more of the following:

- (a) give security in any form the court directs;
- (b) report to the court, or to a person named by the court, at the time and in the manner specified by the court;
- (c) do or not do anything, as the court considers appropriate, in relation to a purpose referred to in section 222 [purposes for which orders respecting conduct may be made].

Enforcing orders respecting conduct

228 (1) If a party fails to comply with an order made under this Division, the court may do one or more of the following:

- (a) make a further order under this Division;
 - (b) draw an inference that is adverse to the party, and make an order based on the inference;
 - (c) make an order requiring the party to pay
 - (i) the other party for all or part of the expenses reasonably and necessarily incurred as a result of the non-compliance, including fees and expenses related to family dispute resolution,
 - (ii) an amount not exceeding \$5 000 to or for the benefit of the other party, or a spouse or child whose interests were affected by the non-compliance, or
 - (iii) a fine not exceeding \$5 000
 - (d) make any other order the court considers necessary to secure compliance.
- (2) If a party fails to comply with an order made under section 225 [orders restricting communications], the court must consider whether it would be appropriate to make an order under Part 9 [Protection from Family Violence].

Enforcing orders generally

230 (1) Subject to section 188 [enforcing orders respecting protection], an order under this section may be made only if no other provision of this Act applies for the purposes of enforcing an order made under this Act.

- (2) For the purposes of enforcing an order made under this Act, the court on application by a party may make an order to do one or more of the following:
- (a) require a party to give security in any form the court directs;
 - (b) require a party to pay
 - (i) the other party for all or part of the expenses reasonably and necessarily incurred as a result of the party's actions, including fees and expenses related to family dispute resolution,
 - (ii) an amount not exceeding \$5 000 to or for the benefit of the other party, or a spouse or child whose interests were affected by the party's actions, or
 - (iii) a fine not exceeding \$5 000.

[28] In *C.A.L. v. D.E.L.*, 2018 BCSC 772, Master Bouck held that when dealing with an application such as this to impose a fine under those provisions, the court must determine, first, whether the alleged breach has occurred. That determination is made on an objective basis. The respondent's subjective motives in breaching the order along with the surrounding circumstances are relevant in fashioning the appropriate remedy (at para. 44).

[29] In *A.J.F. v. N.L.S.*, 2020 BCSC 26, Skolrood J. had occasion to consider how those provisions should be applied. He stated as follows:

[75] there can be no debate about the importance of complying with court orders. Compliance is not a matter of discretion or choice on the part of litigants. Rather, compliance is fundamental to the proper administration of justice and maintenance of the rule of law: *Grewal v. Nijjer*, 2011 BCSC 332 at para. 20, *aff'd* 2011 BCCA 505; *R.A. v. W.A.*, 2018 BCSC 1910 at para. 131; *Larkin v. Glase*, 2009 BCCA 321 at para. 7; *The Law Society of British Columbia v. Goodwin*, 2015 BCSC 2472 at para. 15.

[83] As noted by Master Bouck in *C.A.L. v. D.E.L.*, 2018 BCSC 772 at para. 43, s. 228 has been considered a limited number of times, but shares much of the same language as s. 213, which was discussed in *J.D.G. v. J.J.V.*, 2013 BCSC 1274. Relying on *J.D.G.*, Master Bouck said, "a robust application of the FLA's enforcement provisions is necessary so that the parties can focus on resolving the true merits of their dispute and not be bogged down in repetitive and costly pre-trial applications." Like s. 213, s. 228 should be applied creatively in a manner sensitive to the particular issues before the court. The court should focus on what measure will be most effective in the circumstances: *J.D.G.* at para. 25.

- [84] In addressing s. 228, a court must also be mindful of the purposes of conduct orders as stated in s. 222 of the FLA: C.A.L. at para. 43. Section 230 is linked to s. 228 in this case because its application is only triggered if no other provision of the FLA applies: s. 230(1); I.J.G.P.G. v. K.M., 2018 BCSC 2468 at para. 20; Partridge v. Partridge, 2018 BCSC 1687 at para. 79.
- [85] The measures set out in ss. 228 and 230 should be resorted to when, and only to the extent, necessary and appropriate to enforce and secure compliance with orders made under the FLA: Kanta v. Kanta, 2017 BCSC 2321 at para. 19; Kanta v. Kanta, 2017 BCSC 1428 at para. 72. Orders under ss. 228 and 230 may be necessary to impart on one or both parties that they are bound by the FLA and must comply with court orders: B.G.M.S. v. J.E.B., 2018 BCSC 1628 at para. 177.
- [86] Although compliance with the FLA and related court orders is critical, the FLA mandates a more holistic approach to resolving family disputes that minimizes delay, formality and conflict between the parties: s. 199(1). The remedies available under ss. 228 and 230 empower the court to provide progressively more serious responses as a particular case may dictate. More importantly, a court's objective should be to fashion a remedy that ensures compliance while addressing the specific situation before the court: J.R.B. v. J.H.F., 2015 BCPC 70 at para. 26.

IV. Discussion

A. Improper Communication with T.K.

- [30] In January 2020, the parties' 12-year-old daughter, T.K., visited M.K. in Mexico. While there, she asked M.K. why he was not providing more financial support for A.E.P. This angered M.K. and he reacted by telling T.K., among other things, that if the parties have to go to trial in this action, both parents could end up in jail and T.K. will have to live with her grandparents.
- [31] M.K. acknowledges, through his counsel, that his remarks to T.K. on that occasion were inappropriate and in breach of the conduct order of February 5, 2019. Nevertheless, he submits that his behaviour must be considered in its proper context, including the fact that T.K.'s remark to him must have been prompted by A.E.P.'s improper complaints to the children about his failure to provide adequate financial support for her (something A.E.P. herself denies having done). In any event, M.K. notes that it was T.K. who first broached the topic and that he was merely responding.
- [32] Regardless of whether it was T.K. who initiated the discussion, M.K. did not have to respond as he did. What he told T.K. on that occasion was unnecessary, malicious and, one can only infer, highly upsetting for her. By breaching the order in that manner, he caused his daughter the very kind of harm that such conduct orders are designed to prevent.

[33] This is not the first time that M.K. has breached a conduct order in this action through his intemperate communications with other members of the family. Previously, he agreed to a fine of \$2,500 per occurrence. In all the circumstances, I find that a \$5,000 fine under s. 228 should be imposed to sanction M.K. for that conduct and to deter him from committing further breaches.

B. Improper Communications with the Alpine Way Property Tenant

[34] In December 2019 or January 2020, M.K. breached the September 18, 2019 order of Gerow J. by contacting the upstairs tenant at the Alpine Way Property and asking her to send the January rent to M.K.'s father, rather than A.E.P., which she did.

[35] In the face of the parties' competing demands for her rent payment for February, the tenant sent the following text message to both of them:

I wanted to reach out to the both of you, because I have no idea who I should be paying this month. You both have good arguments, with [M.K.] having his name on my lease and [A.E.P.] having this court order. I received messages from the both of you asking me to pay the rent to them. I have no idea on how this plays out legally and do not wish to be in the middle of this. I would like the both of you to be clear on the matter because it shouldn't be this complicated for me. I do not wish to fuss either one of you or end up paying the wrong person and have if fall back on my potential lease extension. I would like to keep it cordial and hopefully we won't have to involve your lawyers. My thoughts on a potential solution would be either provide me with a court order with both your names stated clearly[.] Or if you would like I could get an escrow account in which I will place the rent until you have settled the issue between yourselves. I hope you understand that I'm not trying to creat[e] a fight I'm just trying to do the right thing and from where I'm standing it's not as clear as you might think

[36] M.K. did not respond. A.E.P. responded by sending the tenant copies of the orders of this Court dated August 6, 2019 and September 18, 2019. Upon receipt, the tenant paid the February rent to A.E.P.

[37] When he learned of this, M.K. sent the tenant numerous text messages threatening to terminate her lease or to refuse her the extension she wanted unless she paid that month's rent to him or his father. His text messages to her included the following:

... I suggest you get that rent back to my dad or you still owe us the rent. You made a disition [sic] to pay the rent to a person who dose [sic] not own the house or is not on the lease with you. My dad will be serving you with an eviction notice if you don't pay the rent.

[38] When the tenant forwarded to M.K. the two court orders that A.E.P. had sent to her, he responded as follows:

This doesn't mean anything to you. Your lease is with me. You owe me rent for this month. I'm disputing this in court and your job was to pay me rent the land lord If [I] don't receive the funds by the end of the week you'll be moving out of the house.

- [39] He called the tenant 22 times and sent her 29 text messages in an effort to divert the February rent to him or his father and to address other complaints he had with the tenancy.
- [40] M.K.'s explanation is that he did not believe that the interim orders previously made would continue in effect after the original trial date was adjourned and his parents were named as parties.
- [41] M.K. arranged for the January rent to be redirected, he says, so that he and his parents would have sufficient funds to cover various expenses they had to meet at other properties. He did not believe that A.E.P. needed the rental income any longer because she had been collecting short-term rentals over the holiday season at a very high rental rate.
- [42] M.K. has deposed that he was also concerned about a water leak in the basement suite at the Alpine Way property. He says that the tenant was not responding to the plumber or to him. He was also concerned that there were too many people living at the property, that there was an occupied motor home connected to the electricity supply and that the tenant had allowed old cars to be left on the property.
- [43] A.E.P. responds that she was dealing with these issues herself. She has deposed that on January 22, 2020 she arranged for her own plumber to attend and that she was in discussion with the tenant to address the various other issues that had been raised.
- [44] M.K. acknowledges that he communicated with the tenant in breach of the order. His counsel submits that a modest fine is appropriate.
- [45] I am not persuaded that each telephone call and text message sent to the tenant was a separate and discreet breach of the order justifying cumulative \$5,000 fines, as A.E.P. argues. I agree with the submission made by M.K.'s counsel that such a remedy would be excessive. But I have concluded that M.K. committed three discreet breaches of the order in his dealings with the tenant, as follows:
- a) misappropriating the January rent;
 - b) communicating with the tenant in an effort to misappropriate the February rent; and
 - c) communicating with the tenant on other matters.
- [46] I am satisfied that M.K.'s conduct in this regard was particularly egregious and deserving of rebuke from this Court. I am therefore satisfied that it is appropriate to impose a \$5,000 fine under s. 228 for each of those breaches, for a total of \$15,000.

- [47] Moreover, pursuant to the August 6, 2019 consent order of Master Muir, A.E.P. is entitled from then on to at least \$8,000 in rental revenue per month from the two properties. To the extent that she received less than that amount in any given month, M.K. is required to make up the difference. If the parties cannot agree on the amount owing in that regard, then they should set down a hearing before the registrar to have it determined.
- [48] Lastly, I agree with A.E.P. that M.K. should also be enjoined under s. 222 and 227, pending agreement or further order, from:
- a) advertising to rent the Summer Lane Property and the Alpine Way Property; and
 - b) engaging any third party to collect rent, attend at those properties or otherwise contact any potential, current or future tenant pending agreement or further order.

C. Failure to Pay School Tuition and s. 7 Expenses

- [49] The July 25, 2019 consent order required M.K., among other things, to pay the children's school tuition for the 2019/2020 school year and \$2,700 per month for s. 7 expenses. A.E.P. alleges that M.K. has breached that order by failing to pay those amounts when due and seeks fines and compensation orders as a remedy.
- [50] In late January 2020, A.E.P. sent M.K. and his parents a series of text messages to remind them that tuition payments for the children's schools were due by February 9, 2020. A.E.P. has deposed that in early February 2020, she paid \$2,000 to Mulgrave School and \$4,500 to Collingwood School because M.K. failed to do so. She has also deposed that M.K. has not reimbursed her for those payments, but she has not deposed that she ever asked him to do so, let alone attached correspondence to that effect.
- [51] Payment of school tuition for the current school year (2020/2021) is not required by Master Muir's or any other order. According to the invoice attached to A.E.P.'s affidavit, what she paid in February 2020 was a \$2,000 advance toward 2020/2021 tuition for Mulgrave School. That is not an expense that M.K. has been ordered to pay. It is also not clear to what school year the \$4,500 payment made on February 22, 2020 to Collingwood School pertained. The copy of the invoice attached to her affidavit is illegible. In view of the uncertainty, I am not satisfied that the evidence before me demonstrates that M.K. breached the term of the July 25, 2019 order requiring him to pay the children's school tuition for the 2019/2020 school year.
- [52] With respect to the unpaid s. 7 expenses, the July 25, 2017 consent order required M.K. to pay \$2,700 per month for the following s. 7 expenses:
- a) hockey and hockey-related expenses;
 - b) dance lessons and dance-related expenses; and
 - c) tutoring.

- [53] A.E.P. has deposed that since March 2020 she has received no such payment from M.K. She alleges that M.K. therefore owes her \$21,600 as of October 1, 2020 for those missing payments.
- [54] I have no evidence from M.K. to explain why those payments were not made as ordered. During the hearing, his counsel suggested that M.K. stopped making those payments because he understood the extra-curricular activities in question to have been suspended during the current pandemic.
- [55] A.E.P.'s counsel responded that M.K.'s obligation to pay \$2,700 per month persists regardless of whether those expenses are incurred or not. In any event, she argues, there is evidence before the Court showing the expenses that were incurred: attached to A.E.P.'s affidavit are numerous invoices that she described as expenses that she incurred for the children during the relevant period.
- [56] I do not read the July 25, 2019 consent order to require M.K. to pay A.E.P. \$2,700 per month regardless of what expenses she actually incurs. I also do not read that order to require him to reimburse her for any and all expenses that she incurs in relation to the children, regardless of their nature. Many of the attached invoices do not appear to reflect s. 7 expenses at all, but rather ordinary expenses such as clothing and haircare. Many of them do not appear to have been incurred after March 2020 but before then. A.E.P. has not explained in the body of her affidavit what specific activities the attached invoices relate to, although in some cases this can be inferred from the invoices themselves.
- [57] Based on my review of those invoices, it appears that A.E.P. spent the following amounts on s.7 expenses contemplated by the July 25, 2019 order between March and August 2020, when her affidavit was made:
- a) 2020/2021 annual membership for B.K. with the Port Moody Panthers hockey team (\$5,500 prorated over 12 months = \$458.33 per month, or \$3,666.64 for the period from March to October 2020);
 - b) physiotherapy for B.K. on July 13, 2020 (\$85);
 - c) physiotherapy for T.K. on March 27, 2020 (\$55);
 - d) purchase of Mulgrave school uniform on August 12, 2020 (\$372.96);
 - e) dance lessons with Alicia Bruce (\$2,120) and Kim Dixon (\$3,596.56); and
 - f) a payment to West Vancouver Dance Conservatory on July 25, 2020 (\$1,438.50).

- [58] Those invoices add up to \$11,334.66, which is considerably less than the amount that M.K. was ordered to pay for s.7 expenses during that period. I am therefore ordering that M.K. reimburse A.E.P. for that sum only. For the current month (November 2020) and thereafter until the children resume their normal pre-pandemic extra-curricular routine, M.K. is to reimburse A.E.P. in each month for s. 7 expenses that she actually incurred, as evidenced by receipts, to a maximum of \$2,700 per month.
- [59] Because the evidence before me does not show that A.E.P. gave M.K. notice of the expenses she incurred for the children during the current pandemic before bringing these applications, I am not prepared to penalise M.K. for having failed to make the payments that he missed.

D. Late Production of the Credit Suisse Account Records

- [60] The consent order of July 25, 2019 also required M.K. to produce certain documents to A.E.P. by September 22, 2019, including documents from any Swiss bank accounts that he held. On November 5, 2019, M.K. testified on his examination for discovery that he had no accounts in Switzerland. Then in May 2020, A.E.P. received correspondence at the former family home pertaining to two accounts in his name at Credit Suisse that he had not previously disclosed.
- [61] The consent order of Master Scarth dated July 10, 2020 required M.K. to have Credit Suisse produce the documents pertaining to those accounts and to pay the funds they contained into his lawyer's trust account. The documents were finally produced during the hearing of these applications, on October 14, 2020.
- [62] A.E.P. seeks to have another \$5,000 fine imposed for the late production of those documents. The notice of application filed July 6, 2020 did not seek that relief, however. There is no application before me seeking relief in relation to the Credit Suisse accounts beyond that already granted, by consent, in Master Scarth's order of July 10, 2020.
- [63] With the consent of the parties, Master Scarth ordered the funds from those accounts to be paid into M.K.'s counsel's trust account. The application filed July 6, 2020 seeks to have those funds paid into A.E.P.'s counsel's trust account, but there is no reason to believe that the funds would be any more secure there.
- [64] I am therefore not prepared to make any additional order in that regard.

V. Summary and Conclusion

- [65] I am ordering M.K. to pay fines totalling \$20,000, the first \$5,000 of which is to be paid using the funds previously paid into court. I am also ordering that M.K. replace those funds with a fresh payment into court of \$5,000, to serve as security against his potential liability for future breaches.

- [66] I am also ordering that M.K. pay to A.E.P. the amount by which the rental revenue that A.E.P. received from the Alpine Way Property and the Summit Drive Property was less than \$8,000 in each month after August 2019 to the present.
- [67] M.K. is enjoined under s. 222 and 227 of the FLA, pending agreement or further order, from:
- a) advertising to rent the Summer Lane Property and the Alpine Way Property; and
 - b) engaging any third party to collect rent, attend at the properties or otherwise contact any potential, current or future tenant pending agreement or further order.
- [68] Finally, I am ordering M.K. to reimburse A.E.P. \$11,334.66 for s.7 expenses shown to have been incurred from March to October 2020. For the current month (November 2020) and thereafter until the children resume their normal pre-pandemic extra-curricular routine, M.K. is to reimburse A.E.P. in each month for s. 7 expenses that she actually incurred, as evidenced by receipts, to a maximum of \$2,700 per month.
- [69] Apart from the relief that I granted on August 24, 2020 (adding the parents as respondents in this action and amending the style of cause accordingly) and the relief granted in these reasons for judgment, A.E.P.'s applications filed February 11, 2020, July 6, 2020 and August 10, 2020 are dismissed.
- [70] The parties have leave to speak to costs if they are unable to agree on the appropriate order in light of my decision.

"Milman J."

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