

CANADA / JUDGMENT

B.F.W. v. F.P.

2025 BCSC 589

COURT

Supreme Court of British Columbia

DECIDED

28 March 2025

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2025 BCSC 589 B.F.W. v. F.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

B.F.W. v. F.P.,

2025 BCSC 589

Date: 20250328

Docket: COU-E-4840

Registry: Courtenay

Between:

B.F.W.

Claimant

And:

F.P.

Respondent

Before: The Honourable Justice K. Wolfe

(Appearing by MS Teams)

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant (by MS Teams):

S.C. Gabel

Counsel for the Respondent (by MS Teams):

I. Won

Place and Date of Hearing:

Nanaimo, B.C.

March 12, 2025

Place and Date of Judgment:

Nanaimo, B.C.

March 28, 2025

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[1] THE COURT: These are my oral reasons for judgment in respect of a further application brought by the claimant mother in this family law matter. As I intend to publish these reasons, I reserve the right to edit them for grammar, clarity, style, and case references, but the substance of my decision will not change. To safeguard the privacy and well-being of the children, the names of the parties have been initialized in the style of cause, and efforts have been made to anonymize identifying details in the judgment.

Overview

[2] On this application, the mother seeks penalties for breaches by the respondent father of various communication-related conduct orders imposed by the Court in December 2024 (the "2024 Conduct Orders"). She also seeks to re-open the summary trial in this matter to permit the Court to consider any evidence and submissions from early July 2024, the December 2024 application and this application. Finally, the mother seeks an interim order requiring

the father to transfer ownership of one of the parties' two vehicles into her name, given the upcoming deadline for renewal of that vehicle's insurance and previous difficulties obtaining the father's cooperation on such matters.

- [3] The father admits he breached the 2024 Conduct Orders, but does not agree with the alleged number of breaches or the amount of the penalty sought. The father does not oppose the Court considering evidence from the more recent applications, but maintains it does not change the parenting time orders he seeks in the summary trial and is not relevant to the other matters in issue. The father opposes the order requiring him to transfer the vehicle's ownership. He says in practical terms the mother is seeking a final order in respect of division of family property which is the subject of the summary trial, and in any event, he will cooperate to renew the vehicle's insurance.
- [4] For the reasons that follow, I grant the mother's application in part. I order the father to pay the mother \$10,000 in penalties, on the payment schedule described below, for his multiple distinct breaches of the 2024 Conduct Orders. I also grant a limited re-opening of the summary trial so that I am able to consider and rely on additional factual information and submissions in rendering my ultimate decision in this matter.
- [5] I decline to grant an interim order requiring the father to transfer ownership of one vehicle into the mother's name. I agree with the father that such an order is more in the nature of a final order for division of family property, which will be addressed in the summary trial. However, given previous difficulties obtaining the father's cooperation to renew the insurance, I instead grant a conduct order requiring the father to sign and provide the necessary documents for renewal of the insurance by 4:00 p.m. on Monday, April 7, 2025. Failure to comply will result in an automatic further penalty of \$2,500 payable forthwith, without the need for a subsequent court application. As explained further below, I consider that imposing a further conduct order on these terms strikes the appropriate balance in this case.

Issues

- [6] The mother's application raises three issues:
- a) What is the appropriate penalty for the father's breaches of the 2024 Conduct Orders?
 - b) Should the Court re-open the summary trial to permit consideration of evidence and submissions provided after it concluded?
 - c) Should the Court order the father to transfer ownership of one of the parties' vehicles to the mother on an interim basis?
- [7] The mother also seeks costs and special costs of this application.

Background

- [8] The underlying proceeding is a family law claim in which I heard a summary trial in June 2024 and received further written submissions in early July 2024. Through the summary trial, the parties seek final resolution of all matters in dispute between them, including a request for divorce. The decision on the summary trial remains under reserve in part as a result of subsequent events and applications in the proceedings. I will provide a brief overview of the relevant background here, and will address further facts as necessary in my analysis of the individual issues below.
- [9] The parties were together for more than 25 years. They have two children, who are now aged ten and seven. They separated on January 4, 2020, as a result of a significant incident of family violence at the family residence in one of the communities on Haida Gwaii. That incident resulted in criminal proceedings, a series of protection orders from the Provincial Court in 2020, 2021, and 2022, as well as a conduct order made by consent on July 14, 2022 and entered August 15, 2022.
- [10] As a result of the incident and resulting proceedings, the mother has lived in the family residence with the children since separation. The father was required to leave the family residence and is not permitted to return to it. The terms of the Provincial Court orders require the father not to attend within five metres of the family residence. The father was also prohibited from contacting the mother until the conduct order of July 14, 2022 was made. Term 2 of the July 14, 2022 conduct order permitted limited text or email communications between the parties for two purposes only: 1) scheduling parenting time and confirming parenting time supervisors; and 2) discussing resolution of Family Law Act, S.B.C. 2011, c. 25, matters, including separation and divorce. The renewed communications between the parties led to a number of difficulties. Some of those difficulties were raised in the context of the summary trial, but subsequent events led the mother to file the application I heard on December 13, 2024.
- [11] In that application, the mother sought orders under s. 225 of the Family Law Act further restraining communications from the father to her, as well as an order proactively setting a monetary penalty for any breaches by the father. The mother also sought orders to ensure the father's communications with the children did not address adult or legal matters, including negative commentary about the mother or the parties' separation. The father was self-represented at that application.
- [12] After hearing submissions from both parties, I granted the mother's application in part, resulting in the 2024 Conduct Orders. My reasons are indexed at 2024 BCSC 2432 and I will not repeat their findings here. The 2024 Conduct Orders prohibit the father from communicating with the mother other than by text for purposes of arranging dates and times for the father's calls with the children, and any necessary work-related communications if the parties encounter each other while the father is working at the ferry terminal. The 2024 Conduct Orders expressly identify subjects the father is not to address

directly or indirectly in his text communications with the mother, and in his telephone communications with the parties' children. The 2024 Conduct Orders also impose standard reciprocal orders to ensure the parties do not involve the children in their disputes (legal or otherwise) and refrain from negative commentary about each other.

- [13] In light of the father's assurances to me at the hearing that he understood which communications were not permitted and would comply with the proposed conduct orders, I declined the mother's request to proactively impose a penalty for any breaches by the father. Instead, the 2024 Conduct Orders include a term permitting the mother to set a hearing on short notice to seek orders for penalties of \$500.00 per breach in the event of a breach by the father.
- [14] By memorandum dated January 6, 2025, I advised the parties I considered some of the evidence and submissions from the December 13, 2024 hearing to be relevant to the issues on the summary trial and sought their positions on my ability to rely on that material for purposes of my decision. Through further communications with the parties in January 2025, including two further memoranda, it became clear another hearing would be required, including to address the mother's request for enforcement of the 2024 Conduct Orders. Based on counsel's schedules, the present application was set for hearing on March 12, 2025. Both sides were granted permission to and did provide further evidence and submissions.

Analysis

Issue 1: What is the appropriate penalty for the father's breaches?

- [15] The Court has authority to enforce compliance with conduct orders made under s. 225 of the Family Law Act. Section 228 of that act provides:

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].

The parties' positions

- [16] There is no dispute the father breached the 2024 Conduct Orders. In his 4th Affidavit made February 21, 2025, the father admits that despite representing to the Court on December 13, 2024 that he "would stop messaging the [mother] in an unwelcome manner [he] failed to do as [he] promised" (at para. 5). The father further deposes "I acknowledge that I sent messages to the [mother] knowing that I was in breach of the [2024 Conduct Orders]" (at para. 9). The father also acknowledges the 2024 Conduct Orders "restrict[-] the nature of what [he] can discuss with [his] children" (at para. 8) and admits that "[a]t the time of the breaches in relation to my communication with my children" he was struggling to accept that the Court could restrict those communications (at para. 11). As this evidence makes clear, the father's admissions are not limited to a single instance of breach; he admits to multiple breaches of the 2024 Conduct Orders, in relation to both his communications with the mother and his communications with his children.
- [17] Between December 13, 2024 and February 25, 2025, the mother has identified 79 text messages from the father that she considers to be breaches of the 2024 Conduct Orders, as well as an additional 19 text messages from the father that are possible breaches. This amounts to a total of 98 breaches (out of a total of 185 texts from the father) in about two-and-a-half months' time. The evidence before the Court shows the majority of such messages occurred before February 2, 2025, with only a few such messages from February 2, 2025 onwards. Some of the messages identified by the mother and drawn to the Court's attention at the hearing of this application are flagrant violations of the 2024 Conduct Orders in which the father expressly acknowledges he is in breach, openly criticizes or mocks the 2024 Conduct Orders or taunts the mother not to "report" or "fine" him. The following examples are illustrative of some of these kinds of texts from the father:
- "Oops, I told you something outside of arranging telephone calls with the children. I hope you don't report me" (Dec 21/24).
 - In response to the mother advising she will be supervising the father's call with the children: "I have a number of concerns, including making this statement. Ideally a new supervisor, unless the level of speech police austerity is lowered / loosened Are you going to report me? Pardon me, I have to barf , living under authoritarianism" (Dec 22/24).
 - "*Redacted* censor or obscure (part of a text) for legal or security purposes I told my story to a dozen folks, they all state that I do not need [a supervisor]. The rest of what I would like to speak to you about has to be redacted due to court orders" (Dec 31/24).

· "Knowing that I am breaching the Order that is against me , Would you like to know what I am working on?" (Jan 18/25).

- [18] The mother's Affidavits #6 and #7 identify seven further alleged breaches in the father's telephone communications with the children over the same time period.
- [19] The father did not attempt to refute the mother's characterization of specific messages or communications. Wisely, the father also did not attempt to justify the admitted breaches, or to explain the more egregious and flagrant violations, including those that specifically reference the 2024 Conduct Orders. Instead, the father admits that some of his communications were problematic, and submits more generally that while there were some breaches, he does not agree all the individual messages identified by the mother are "breaches". The father says the 2024 Conduct Orders represent a significant imposition and contain some ambiguities, and as a result, it is not surprising he continues to work on proper compliance.
- [20] The mother asks the Court to order a penalty of \$500 for each breach she identified, for a total of \$49,000 or such other amount as the Court deems appropriate. The mother recognizes that s. 228(1)(c)(iii) of the Family Law Act sets a limit of \$5,000 for a fine for failure to comply with a conduct order, and also acknowledges that the purpose of such a penalty is not to punish, but to secure compliance. However, the mother says the Court has authority to order penalties that exceed \$5,000 in total if such orders are made on a "per breach" basis. She relies on several cases in support of this position, notably: *Ishwarlall v. Ishwarlall*, 2023 BCSC 310 at para. 71; *D.G.T. v. V.J.I.*, 2023 BCSC 1061 at para. 127; and *A.N. v. A.N.M.*, 2021 BCSC 2228 ("A.N. 2021") at para. 44.
- [21] The mother says the circumstances of this case warrant strict enforcement of each breach of the 2024 Conduct Orders. Specifically, the father was alerted to the mother's concerns with his communications during the summary trial in June 2024. In further exchanges between counsel in November 2024, the father represented he would cease his behaviour. When he failed to do so, the mother brought the December 13, 2024 application, and sought a proactive penalty for any breaches. On the strength of the father's word that he understood and would stop the problematic communications, the Court declined to impose a proactive penalty but clearly outlined the likely consequences in the event of a breach.
- [22] Despite this clear warning, the father breached the 2024 Conduct Orders within days of them being made and continued to do so repeatedly and deliberately over at least the next six weeks. Given this and the sheer volume of breaches, the mother says limiting the penalty to only \$5,000 will embolden the father, sending the message he can continue to breach and get away with it, rather than securing his future compliance. She recognizes she seeks a significant penalty but says it is only that large because the father's breaches are so numerous.

- [23] The father asks the Court for another opportunity to demonstrate he can and will comply, but also expressly accepts in his Affidavit #4 "that there will be a financial penalty for [his] actions" in breaching the 2024 Conduct Orders (at para. 19). However, the father says any such penalty must be focused on securing future compliance, rather than on punishing him. The father says this focus on deterrence explains the \$5,000 statutory limit in s. 228(1)(c)(iii). He says the plain language interpretation of s. 228 is that an order made as a consequence of a party's failure to comply with a conduct order is limited to \$5,000 regardless of the severity or frequency of the party's conduct. The father says the mother's cases do not support the Court's authority to order a penalty greater than \$5,000 for breach of one order.
- [24] If the Court does have jurisdiction to exceed what the father calls a "statutory cap", the father says the Court should consider the principles of proportionality and necessity in determining what is appropriate. He says ordering a penalty nine times the statutory maximum, as sought by the mother, would be disproportionate; it would amount to 65 percent of his 2023 gross annual income. Further, that magnitude of penalty would make it difficult for the father to re-establish himself after the summary trial decision is rendered because the penalty would most likely have to be paid from his interest in the family home. He says that size of penalty is also not necessary to secure his compliance, given his recently improved efforts.

Discussion

- [25] In *M.S.H. v. B.J.H.*, 2024 BCSC 2147, Justice Walkem provided a concise summary of the Court's power to order fines under s. 228 of the Family Law Act:
- [19] Section 228 (and the related sections in ss. 229-231), are not intended to punish, but rather to secure compliance with court orders: *N.P.G. v. R.G.*, 2024 BCSC 680 at para. 12 [N.P.G.]. These sections "should be resorted to when, and only to the extent, necessary and appropriate to enforce and secure compliance with orders made under the [FLA]": *N.P.G.* at para. 13. Whether or not a breach has occurred is to be determined objectively on a consideration of the impugned conduct, considered in light of all of the circumstances: *N.P.G.* at para. 17; *A.N. v. A.M.N.*, 2021 BCSC 2228 at para. 34.
- [20] Justice Skolrood, as he then was, provided a comprehensive overview of the approach to be taken under s. 228 in *A.J.F. v. N.L.S.*, 2020 BCSC 26 [A.J.F.]
- [21] A.J.F. confirmed the overarching imperative that court orders be respected: "[c]ompliance 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": A.J.F. at para. 75. Section 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": A.J.F. at para. 83. [] The s. 228 regime empowers courts to fashion remedies that ensure compliance by providing progressively more serious responses as a particular case may dictate: A.J.F. at para. 86.

- [22] A breach of a conduct order, on its own, is not determinative of whether a fine should be ordered. A fine must be warranted, and serve the purpose of securing compliance with the conduct order. Generally, fines are discretionary and guided by the principle of restraint. The focus is on ensuring compliance rather than penalizing a party
- [26] Considering the above principles in light of the facts of this case, I agree with the mother that the father has already been given multiple chances to prove he can adjust his behaviour. Despite those opportunities and his own assurances to counsel and to the Court, he admits he continued to engage in problematic conduct. That conduct included deliberate and pointed flaunting of the Court's orders, including communications that both criticize the Court's orders and appear designed to test if the mother will pursue enforcement. The father's subjective motives in breaching the 2024 Conduct Orders, along with the surrounding circumstances, are relevant in fashioning the appropriate remedy: *C.A.L. v. D.E.L.*, 2018 BCSC 772 at para. 44. In that regard, I note these are also not isolated incidents; instead, they are repetitive and significant in number, despite the 2024 Conduct Orders only having been made three months before the hearing of this application. As the father's compliance with court orders is not a matter of choice, his behaviour is very concerning. In my view, a fine is warranted; it is simply a question of how much.
- [27] On reviewing the cases to which the mother referred, I agree with the father that those three specific cases do not support the Court's jurisdiction to impose penalties on a "per breach" basis. In particular, in *Ishwarlall*, under s. 213 of the Family Law Act, the Court ordered four fines of \$5,000 each for breaches of four separate disclosure orders (at para. 71). While the Court at para. 127 of *D.G.T.* relied on para. 44 of *A.N. 2021* for the proposition that the claimant could have sought a far greater fine on a per breach basis, the Court in *A.N. 2021* did not actually impose fines under s. 228 on a "per breach" basis. Instead, Justice Murray imposed a single fine of \$5,000 under s. 228 and a second fine of \$5,000 under s. 61(2)(g) of the Family Law Act (for wrongful denial of parenting time).
- [28] That said, there are cases that support fines in excess of \$5,000 being imposed under s. 228 and other penalty provisions of the Family Law Act, including on a "per breach" basis. For example, in the subsequent decision in *A.N. v. A.N.M.*, 2024 BCSC 587, Murray J. imposed a fine of \$100,000 for continuous breaches of conduct orders after she found the initial \$5,000 fine did not adequately deter the breaches and a stronger message was required (at paras. 39-40). Justice Murray also imposed a second fine of \$100,000 for continuing breaches of the parenting time orders. Neither fine was expressly made on a "per breach" or "per order" basis, but rather seemingly on the general basis of continued, repeated breaches.
- [29] In *A.E.P. v. M.K.*, 2020 BCSC 1742, the Court ordered \$20,000 in fines under s. 288 on a "per breach" and "per order" basis. The claimant in that case argued, among other things, that the respondent should pay \$5,000 for each of the 22 phone calls and 29 text messages the respondent sent to a tenant of one of the parties' properties in breach of a conduct order (for a total of \$285,000; *A.E.P.* at para. 7). Justice Milman was not persuaded each telephone call or text message was a separate breach, but did order three fines of \$5,000 each for discrete

incidents where the respondent contacted the tenant in a manner prohibited by the conduct order. Justice Milman also ordered an additional \$5,000 fine for the respondent's breach of a separate order related to improper communication with the parties' daughter. I recognize the respondent in A.E.P. had previously been fined for breaches of conduct orders.

- [30] In *P.R.R. v. S.C.R.*, 2024 BCSC 2221, the Court ordered one party to pay \$1,000 and \$2,000 respectively under s. 228 for failing to comply with two separate orders. In *Hazen v. Hazen*, 2022 BCSC 1900, the Court ordered the respondent to pay the claimant \$25,000 under s. 230(2)(b)(ii) of the Family Law Act which the Court equated to \$5,000 each for five separate breaches of three orders.
- [31] The above case law establishes that total fines can be imposed under s. 228 and other provisions of the Family Law Act on a "per breach" or "per order" basis, including in excess of \$5,000, if the Court is satisfied there are multiple discrete breaches of one or more orders. I turn now to consider the evidence of the father's breaches in this case - both his text messages with the mother and his communications with the children.
- [32] I have reviewed the table of text messages with annotations from the mother's counsel that is attached as Exhibit "A" to the Affidavit #1 of M. Jenkins (a legal administrative assistant), made February 26, 2025. Like Milman J. in *A.E.P.*, I am not persuaded it is appropriate to treat each individual text message as a breach, including because some of the messages were sent as part of a text "string" on the same day. I do not intend to outline in detail my assessment of each message; I have analysed the table of messages in light of the nature of communications prohibited by paras. 1 and 2 of the 2024 Conduct Orders.
- [33] In broad terms, para. 1 of the 2024 Conduct Orders prohibits the father from communicating by text with the mother other than "for purposes of arranging dates and times" for phone calls with the children. Without limiting para. 1, para. 2 identifies specific topics the father is not to address directly or indirectly with the mother, including suggesting meetings, invoking religious or spiritual ideas and addressing reconciliation or settlement. In my view, the 2024 Conduct Orders are clear that the father's texts are to focus on timing for calls with the children, and are not to include commentary on parenting, supervision or other legal matters before the Court. Based on that, I have identified the following discrete breaches, in four general categories:

Category

Dates

Number of discrete breaches

Commentary on parenting arrangements / supervision / other legal matters (i.e. beyond arranging calls)

• Dec 15/24

· Dec 21/24

· Dec 28/24

· Jan 4/25

· Jan 8/25

· Jan 11/25

· Jan 21/25

7

Invoking religious or spiritual ideas / doctrines

· Dec 24/24

· Dec 28/24

· Dec 29/24

3

Invitations to meet / try alternatives

· Jan 18/25

1

Criticisms / flaunting of the Court's orders, including testing if mother will enforce

· Dec 22/24

· Dec 28/24

· Dec 31/24

· Jan 6/25

· Jan 18/25

5

Total number of distinct text breaches:

16

[34] For clarity, my articulation of the four categories in the table above is an effort to simplify the analysis given the number of messages. It does not mean the other prohibited topics set out in para. 2 of the 2024 Conduct Orders cease to apply. Where messages or strings on one day fit in more than one category, they were generally only counted once in what I determined was the predominant category. The exceptions are the father's messages on December 28, 2024 and January 18, 2025. On December 28, 2024, the father sent 18 separate

messages in approximately 39 minutes. I find three separate breaches based on the distinct content of those messages. On January 18, 2025, the father sent 11 messages over three distinct timeframes. Given their content, I find two distinct breaches that day. Further, in keeping with the principle of restraint, unless a message identified by the mother as a "possible" breach formed part of a larger string of problematic texts, I have generally not counted it.

- [35] In terms of the father's communications with the children, as noted, the mother's Affidavits #6 and #7 identify seven alleged breaches. I have reviewed those alleged breaches against the requirements of paras. 4 and 5 of the 2024 Conduct Orders. Among other things, those terms prohibit the parties from discussing "inappropriate adult, court or legal matters" with the children. In my view, there are four further breaches that run afoul of that prohibition based on their content:
- a) the father's December 15, 2024 discussion with the children to the effect that the father could use a particular TV in the family residence that is no longer being used;
 - b) the January 24, 2025 conversation between the father and the younger child where the father stated twice that if he could not find a place to live that was half the size of the family residence, he would have to move away from Haida Gwaii;
 - c) the father's February 7 and 8, 2025 continuing discussions with the children about his poor living accommodations and commentary about his phone calls being monitored and not having visits; and
 - d) the father's February 15, 2025 discussion with the children complaining further about the "shanty" where he currently lives being very cold, such that the pipes have frozen and he has no running water.
- [36] Together with the text message breaches, I conclude there have been a total of 20 distinct breaches by the father since the 2024 Conduct Orders were imposed on December 13, 2024. The mother suggested a fine of \$500 per breach. In many cases I reviewed, the Court set the fine for a first breach lower than \$5,000, based on the specific factual situation and likely also the desire to preserve room for an increased penalty in the event of continued non-compliance.
- [37] A fine of \$500 per breach for the 20 distinct breaches I have identified would result in a total penalty of \$10,000 against the father. In his current financial circumstances, this is not an insignificant penalty, but I consider it proportionate in light of the nature and number of distinct breaches the father committed in a very short timeframe. As I am satisfied a penalty of \$10,000 sends a clear message about the father's obligation to comply with court orders, without being punitive in nature, I will make that order. In my view, it is also appropriate to set a payment schedule for the penalty, rather than it being payable as a lump sum. My detailed order is in my conclusion below. The father is also advised that if this penalty is insufficient to secure his future compliance with court orders of any kind, he can expect

increased penalties in the future.

- [38] Lastly, as the father failed to comply with communications orders made under s. 225 of the Family Law Act, I am required by s. 228(2) to consider if it would be appropriate to make an order under Part 9, which addresses protection from family violence. While the parties did not address this issue, I do not consider it necessary to make any additional orders at this time. The father remains subject to Provincial Court orders that prohibit his attendance at the family residence. I remain optimistic that, given the concrete consequences I am imposing for his breaches to date, and the increased efforts the father appeared to be making in February 2025, the father does now clearly understand what he is required to do and that he will face even greater jeopardy if he does not comply. I am also conscious that my forthcoming decision in the summary trial will address the allegations of family violence and what, if anything, should flow from them.

Issue 2: Should the summary trial be re-opened?

- [39] As noted, the mother seeks to have the summary trial re-opened to the extent of allowing the Court to consider both evidence and submissions provided subsequent to the conclusion of the summary trial hearing on June 7, 2024. She says the evidence that the father has not relocated away from Haida Gwaii as he had represented is relevant to the issues of parenting time and spousal support. The evidence of the father's communications and non-compliance is relevant to the mother's request that the father's parenting time be supervised for a longer term.
- [40] In his application response, the father did not consent to re-opening, but also did not advance any arguments against it. In submissions, the father recognized that, given the Court's obligation to fashion remedies in the summary trial that address the children's best interests, the Court should realistically consider the subsequent evidence. The father's application response and oral submissions addressed what the Court should take from the subsequent evidence if the Court exercises its discretion to re-open the summary trial. In this regard, the father concedes the information regarding his continued residence on Haida Gwaii and his failure to comply with the 2024 Conduct Orders may be relevant to the question of parenting time. The father maintains, however, that evidence about the parties' conduct is not relevant to the issues of property division and spousal support.
- [41] As a preliminary matter, the parties' July 2024 written submissions have already been addressed. The mother sought leave from the Court on June 20, 2024 to make further submissions in respect of a decision published about ten days after the conclusion of the summary trial hearing. I granted the parties permission to provide three pages of written submissions in respect of that decision; both parties provided submissions on July 3, 2024. In light of my previous decision granting leave for further submissions in the context of the summary trial, I need not address those submissions a second time.

- [42] Turning to the legal framework for re-opening, there is no dispute the Court has wide discretion to re-open a matter and hear new evidence before a decision has been rendered or a final order has been entered in order to prevent a miscarriage of justice: *Grewal v. Grewal*, 2016 BCCA 237 at para. 70, citing *Clayton v. British American Securities Ltd.* (1934), 49 B.C.R. 28, 1934 CanLII 229 (C.A.). It is also well-settled that the Court's discretion to re-open should be "exercised with restraint" and care to prevent fraud and abuse of the court's process, and that the purpose of re-opening is not to permit a party to re-argue or re-cast its case: *Mong v. Giang*, 2022 BCSC 1732 at para. 12, *aff'd* 2024 BCCA 136 at paras. 24-28; *Moradkhan v. Mofidi*, 2013 BCCA 132 at para. 31. The party seeking to re-open must show that a miscarriage of justice would probably occur if the matter is not re-opened and that any new evidence would probably change the result. That said, new evidence is not a prerequisite to re-opening; applications to re-open will always depend on the individual circumstances and "the overarching concern of the interests of justice": *Grewal* at para. 71.
- [43] The present case is somewhat unique. Judgment in the summary trial has not yet been rendered; the issues remain under active consideration by the Court. The question of re-opening arose because the Court was asked to hear a further, interim application. In the context of that hearing, and the present one, the Court has received subsequent evidence and submissions that both parties concede may, at least in part, be relevant to certain issues in the summary trial. This is not a situation where either side is asking the Court to hold yet another hearing or to receive further evidence not already filed. Instead, the request to re-open is more limited: to permit the Court to consider and rely on subsequent evidence that may well be relevant to issues such as parenting time (including supervision), parental responsibilities and support. While the parties do not agree on the issues to which the subsequent evidence may be relevant, their disputes in this regard simply mirror the positions already advanced on the summary trial. The Court is well-placed to consider those positions in relation to the subsequent evidence.
- [44] Both parties agree that some of the subsequent evidence may be relevant to at least some of the issues in the summary trial. Both parties also agree that it is in the interests of justice to ensure the Court can consider the more recent evidence in fashioning remedies that address the best interests of the parties' children and that reflect the current circumstances. Re-opening the summary trial to the limited extent requested does not offend the principle of finality where the decision has not yet been rendered. In my view, there are greater risks to the interests of justice if the Court is not allowed to consider the more recent evidence for purposes of the summary trial. In the circumstances, I exercise my discretion to order a re-opening of the summary trial to permit the Court to consider evidence and submissions presented for the December 13, 2024 and March 12, 2025 applications. My order is set out in detail below.

Issue 3: Should the Court order transfer of the vehicle ownership?

- [45] The parties own two Chevrolet Impalas: a 2018 one and a 2016 one. Both are the subject of family property claims in the summary trial and both are registered solely in the father's name. During the relationship and since separation, the mother has exclusively used the 2018 Impala and the father has exclusively used the 2016 Impala. The mother seeks an interim order requiring the father to transfer ownership of the 2018 Impala into her name, without prejudice to either party's outstanding claims in this matter. The mother says in 2023, the father refused to sign the insurance paperwork, resulting in her renting a car for a period of time. In 2024, the father was uncooperative until a few days before the insurance expired, despite a 2023 agreement under which he was required to cooperate in future. She incurred legal expenses to address the issue. As the insurance for the 2018 Impala expires April 12, 2025, the mother wishes to avoid the renewal process turning into a difficult ordeal for a third year in a row, particularly if the decision in the summary trial will not be rendered before the expiry date.
- [46] The mother says the Court has authority under one or more of ss. 90(2)(b), 222 and 227(c) of the Family Law Act to make the order she seeks as it concerns use of "personal property" that is necessary for the good of the children (the mother needs a car to care for the children). The mother says this would be an interim, without prejudice order to make the on-paper ownership of the 2018 Impala match her exclusive use of it. The mother attempted to address this issue through a consent order, rather than as part of this hearing, but the father refused.
- [47] The father says the issue of the vehicle's ownership is not one the parties were given leave to address at this hearing. The father's application response does not address this issue. However, the mother's Affidavit #7 attaches correspondence between counsel in which the father's counsel advises he considers the requested order to be in the nature of a final order sought on an application, contrary to R. 10-1(3) of the Supreme Court Family Rules, B.C. Reg. 169/2009. In that same correspondence, counsel confirmed the father "indicated he will cooperate with the insurance renewal process this year".
- [48] The father is correct that the issue of the vehicle's ownership is not one that I expressly gave the parties leave to address at this hearing. However, the timing for the present application and the delivery of these reasons has resulted in a further delay of my decision in the summary trial, with the result that renewal of the vehicle insurance has again become a live issue. As I will not be able to render my decision in the summary trial in advance of the insurance expiring on April 12, 2025, it is more expeditious to address the issue now and avoid another potential interim application that could further delay my ultimate decision.
- [49] Considering the facts of the underlying proceeding, I agree with the father that the order requested by the mother is more in the nature of an order for division of family property and therefore is more properly addressed as part of the summary trial. I am also not persuaded the Family Law Act provisions referenced by the mother provide sufficient authority for the specific order she seeks.

- [50] Section 90(2)(b) of the Family Law Act allows the Court to make an order granting a spouse, for a specified period of time, possession or use of specified personal property stored at the family residence, including to the exclusion of the other spouse. However, s. 90(3)(b) specifies that an order under s. 90 "does not grant to a spouse a proprietary interest in the personal property". The mother did not refer to any cases in which the Court has relied on s. 90(2)(b) to order the transfer of ownership of a vehicle. In *Sandhu v. Bhullar*, 2016 BCSC 287, the Court made an order under s. 90(2)(b) requiring certain jewellery to be delivered to one of the parties and requiring the jewellery to remain in that party's possession pending trial, further court order or agreement of the parties (at para. 24). In my view, ordering the transfer of ownership of a vehicle is not analogous. Further, as the order sought by the mother is designed to grant her a proprietary interest in the 2018 Impala by transferring legal ownership to her, such an order would be inconsistent with the language of s. 90(3)(b), even if only granted on an interim basis.
- [51] Section 222 of the Family Law Act grants the Court discretion to make conduct orders for various purposes, including "(b) to manage behaviours that might frustrate the resolution of a family law dispute by an agreement or order" and "(d) to facilitate arrangements pending final determination of a family law dispute". Section 227(c) permits a Court to make an order requiring a party to "do or not do anything, as the court considers appropriate, in relation to a purpose referred to in section 222". The focus of both provisions appears to be on controlling behaviour or conduct, rather than on addressing concerns with property.
- [52] The mother cited *Pasco v. Pasco*, 2016 BCSC 2484 in support of her request. While the claimant in *Pasco* relied on ss. 222 and 227(c) in asking the Court to order the respondent to execute an authorization for a Nexus card, the Court held the claimant's request was "a strained interpretation of s. 222" (at para. 23). Instead the Court found the jurisdiction to make the requested order under ss. 41, 42 and 45 of the Family Law Act (*Pasco* at para. 24). As noted, in my view, the mother's request to transfer the ownership of the 2018 Impala is an order focused on division of property, rather than on the father's conduct. I am not persuaded such an order can be made under ss. 222 or 227(c) of the Family Law Act.
- [53] While I am not satisfied I have the authority to order the transfer of ownership of the 2018 Impala on this application, I am concerned about avoiding a repeat of previous difficulties with obtaining the father's timely cooperation in renewing the insurance. Since the father's previous conduct is what raises the concern, I find s. 222(b) and (d) of the Family Law Act permit me to make a conduct order to secure the father's cooperation in renewing the car insurance. Accordingly, I grant a conduct order requiring the father to sign and provide the necessary insurance renewal documents to the mother by 4:00 p.m. on Monday, April 7, 2025. Given present concerns about the father's non-compliance with conduct orders, I find it appropriate to add as a term that failure by the father to comply by the deadline I have set will result in an automatic further penalty of \$2,500 payable forthwith, without the need for the mother to bring a subsequent court application. As long as the father cooperates, as he indicated he would, he faces no further jeopardy. The specific terms of my order are set out

below.

- [54] For clarity, the parties are not required to meet personally to provide or return the insurance renewal documents that must be signed. The record before me indicates the mother had proposed that a third party meet with the father in order to have him sign the necessary documents. While it is not formally part of my order, in the circumstances, I endorse that approach and ask counsel to assist in coordinating as required.
- [55] In my view, imposing a further conduct order on these terms strikes the appropriate balance. It reduces conflict between the parties by setting clear expectations and timelines, and minimizing such conflict is in the children's best interests. This conduct order assures the mother she will continue to have uninterrupted use of the vehicle for the parties' children and the father will cooperate to renew the insurance or face an automatic monetary penalty. It also provides the father the opportunity he requested to demonstrate to the Court he is capable of complying with conduct orders.

Conclusion and summary of orders

- [56] Given my above conclusions on the three issues before me, I make the following orders:
- a) Pursuant to s. 228(1)(c) of the Family Law Act, as a penalty for the respondent's multiple distinct breaches of the 2024 Conduct Orders between December 13, 2024 and February 25, 2025, the respondent will pay to the claimant the aggregate sum of \$10,000 as follows:
 - i. The respondent will pay to the claimant a minimum of \$500 per month towards the total amount of the penalty, commencing on April 1, 2025 and continuing on the first day of each month thereafter until the total amount of the penalty is paid in full or until further agreement of the parties or court order. Unless modified by further order of the Court, this amount is in addition to any other amounts the respondent may be ordered to pay the claimant.
 - b) The summary trial is re-opened to the extent that the Court may, for purposes of rendering a decision in the summary trial, consider and rely on any evidence and submissions put before the Court in relation to the applications heard December 13, 2024 and March 12, 2025.
 - c) Pursuant to s. 222(b) and (d) of the Family Law Act, the father must sign all documents necessary to renew the insurance on the parties' 2018 Chevrolet Impala LT Sedan and must provide the signed documents to the mother on or before 4:00 p.m. on Monday, April 7, 2025. If the father fails to comply with this term of order by the April 7, 2025 deadline, then pursuant to s. 228(1)(c) of the Family Law Act, the father will forthwith pay the mother a penalty of \$2,500 without the need for the mother to bring a subsequent application.
 - [57] For clarity, the 2024 Conduct Orders remain in place and must be complied with going forward, unless modified by further order. I acknowledge and will bear in mind the father's submissions that the 2024 Conduct Orders may require modification or clarification in future, for example, depending on the parenting time orders I make in the summary trial.

- [58] Finally, with respect to costs, the mother sought special costs in her notice of application. The parties did not address special costs in oral submissions, possibly due to time constraints. Special costs are an extraordinary, discretionary remedy. They are punitive rather than compensatory, and are awarded when a court seeks to disassociate itself from conduct it considers reprehensible and "deserving of reproof and rebuke": *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at paras. 56-57, citing *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 at para. 17, 1994 CanLII 2570 (C.A.).
- [59] As noted above and as stated during the March 12, 2025 hearing, the father's conduct in failing to comply with the 2024 Conduct Orders is very concerning. Of particular concern are the father's communications which flagrantly and pointedly reference and criticize the 2024 Conduct Orders. Such a response to a court order is unacceptable. Had that nature of communication continued for a longer period of time, I may well have been persuaded the father's conduct met the high threshold for an order of special costs. However, I accept there is evidence before me of some effort by the father, albeit imperfect, to rectify his behaviour beginning in early February 2025. Viewed as a whole, and while it is a close call, I am not satisfied the father's behaviour qualifies as reprehensible. I decline to award special costs in this instance, but caution the father that further misconduct may warrant a very different response from the Court.
- [60] Turning to regular costs, I consider the mother to have been substantially successful on this application. While she did not obtain the exact penalty sought, it was the father's failure to comply with the 2024 Conduct Orders, despite having provided assurances to the Court, that required the mother to bring this application. I have also re-opened the summary trial and granted a different form of relief to address concerns about the impending vehicle insurance renewal. I consider this a matter of ordinary difficulty and I order that the mother is entitled to her costs of this application in any event of the cause. Costs of this application and the December 2024 one will be addressed as part of the summary trial as a whole.
- [61] Unless there is anything arising, those are my reasons.

"K. Wolfe J."

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