

CANADA / JUDGMENT

Luo v. Wang

2025 BCSC 1271

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1271 Luo v. Wang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Luo v. Wang,

2025 BCSC 1271

Date: 20250707

Docket: E67163

Registry: New Westminster

Between:

Hao Luo

Claimant

And

Yanli Wang also known as Yan Li Wang

Respondent

Before: The Honourable Justice Girn

Reasons for Judgment

Claimant appearing in person:

H. Luo

Counsel for the Respondent:

G. Vlug

Place and Dates of Hearing:

New Westminster, B.C.

August 21, 2024

January 30, 2025

Place and Date of Judgment:

New Westminster, B.C.

July 7, 2025

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INTRODUCTION

[1] There are two applications before me in which the parties have applied for a number of orders arising from their marital separation. The matter first came before me on August 21, 2024. Unfortunately, the hearing did not conclude until January 30, 2025.

[2] The claimant, Hao Luo, seeks the following:

1. An order that the parties are divorced from each other.
2. Variation of the order of Justice Verhoeven on September 29, 2023 as it relates to child support. He seeks on an interim basis that his guideline income be imputed at \$45,000 from \$75,000.
3. An order pursuant to Rule 15-8 of the Supreme Court Family Rules and s. 97(2)(d) of the Family Law Act, S.B.C. 2011, c. 25 [FLA]:
 - (a) That the family home be sold.

- (b) That the parties have joint conduct of sale and be equally responsible for the fees associated with the sale of the family home and all costs incurred;
 - (c) That the net proceeds of sale be held in trust by the claimant's solicitor until further court order or written agreement between the parties; and
 - (d) Alternatively, an order that the respondent has 30 days from the date of this order to advise the claimant of her intention to purchase the claimant's one-half interest in the family home at fair market value and thereafter, have 30 days in which to complete the purchase.
4. In the alternative and pursuant to Section 200 of the Family Law Act, an order setting aside the order of Justice Ball dated May 29, 2023 relating to the family home expenses, including but not limited to: the mortgage on the former family home, property taxes and strata on the former matrimonial home, child hot lunch program, and expenses of the car including insurance and gasoline.
- [3] The respondent, Yanli Wang, opposes the orders sought by the claimant.
- [4] In her own separate application, the respondent seeks the following orders:
- 1. The claimant's income be imputed at \$75,000 per year;
 - 2. As a stand alone and alternative to the order of Justice Ball dated May 29, 2023, based on the claimant's imputed income of \$75,000 per year, that the claimant pay interim spousal support in the amount of \$1,446 commencing July 1, 2023;
 - 3. Pursuant to s. 228 (iii) of the FLA the court fine the claimant \$5,000 for each of the following breaches of court order:
 - a. Failing to pay the mortgage on the family home after the order of September 29, 2023;
 - b. Failing to pay the strata fee on the family home after the order of September 29, 2023;
 - c. Failing to pay the utilities on the family home on after the order of September 29, 2023;
 - d. Cutting the respondent off the credit cards that she was using to maintain her life and the life of the child, after the order of September 29, 2023;
 - 4. Pursuant to s. 228 (ii) of the FLA an order that the claimant pay to the respondent for her benefit who's interests were affected by the non-compliance, a sum up to \$5,000 (for each breach of the order of Justice Ball dated May 29, 2023 after the order of September 20, 2023;
 - 5. Pursuant to s.228 (ii) of the FLA the court order that the claimant pay to the respondent for the benefit of the child who's interests were affected by the non-compliance, a sum up to \$5,000 for each breach of the order of Justice Ball dated May 29, 2023; and
 - 6. An order pursuant to s.227 of the FLA requiring the claimant to (a)give security, (b) report to the court considering his compliance with court orders, (c) do or not do anything the court considers appropriate.

- [5] The respondent also sought an order compelling the claimant to provide various financial documents that had been agreed upon by the claimant at a Judicial Case Conference and subsequently requested by her counsel. During the course of the hearing, the claimant was agreeable to providing this material as set out in paragraphs 8-10 of the orders sought in the respondent's notice of application. A modified order relating disclosure of various financial documents was made on consent of the parties.
- [6] The claimant represented himself during the hearing with the assistance of an interpreter when the need arose. The respondent was represented by counsel.

BACKGROUND

- [7] By way of background, the parties were married on March 24, 2006 in China and separated on November 16, 2022. There is one child of the marriage, W., who is 15 years old. W. resides with the respondent with the claimant having parenting time with W. every Sunday from 10:00 a.m. to 12:00 p.m.
- [8] The claimant operates an incorporated business, Sureca Immigration Consulting Ltd. ("Sureca") and is also self-employed as an independent insurance broker. He says Sureca is no longer viable and not making the same kind income as it previously was due to a tightening of the rules on immigration.
- [9] The respondent is trained as an accountant and has not worked since coming to Canada in 2014. She says that her English skills prevents her from working. Although she did work with the claimant in the immigration consulting business prior to their separation. Since then the respondent has not worked on account of health issues.
- [10] The claimant filed a notice of family claim on April 6, 2023 seeking an order for divorce, orders respecting children, family property and debt. The respondent filed a response to family claim and counterclaim on April 19, 2023.
- [11] On April 27, 2023, the respondent filed a notice of application seeking various orders pertaining to ongoing responsibility for expenses related to the former family home, division of property, findings of family violence, and increased costs.
- [12] The claimant filed and served his Form F8 Financial Statement on May 4, 2023 and reported a total income of \$25,656 in 2022 according to his notice of assessment. The respondent says the claimant's income is much higher and he has not reported cash payments from the immigration consulting business.
- [13] The respondent lives in the family home with W. while the respondent lives in a rental suite and pays \$1,400/monthly rent.
- [14] The respondent's application filed April 27, 2023 was heard on May 29, 2023 before Justice Ball wherein an order was made for the claimant to pay the household expenses of the family home including the mortgage, property taxes, strata fees, expenses relating to the

respondent's vehicle including insurance and gasoline and W.'s hot lunch program. As well, the respondent was ordered not to make any unusual purchases on their credit cards other than the day to day expenses. The respondent was to continue using the parties' chequing and savings accounts to pay off the credit card each month. I note that the parties were both represented by counsel at this application. It appears this order was made on consent although the claimant argues that he was not in attendance and now says that he did not agree to the terms agreed upon by his counsel. He was also under the impression that the order was limited to three months.

- [15] On August 15, 2023, the claimant emailed the respondent advising that he could not afford to pay the household expenses and cancelled two of the respondent's credit cards. He also advised her that they must sell the family home because he could no longer afford to maintain it. It appears that he also cancelled the pre-authorized payments for BC Hydro and Fortis.
- [16] In response to this, on September 14, 2023, the respondent's counsel filed a notice of application to enforce compliance of Justice Ball's order. The claimant was personally served as he was self represented at that point. The hearing was scheduled to be heard on September 29, 2023.
- [17] The claimant says he was not able to attend the hearing and brings to the court's attention to emails exchanges with the respondent's counsel wherein he requested an adjournment because he did not have legal counsel.
- [18] The respondent's counsel did not agree to an adjournment. Having reviewed these emails, I find counsel's communication and its tone not appropriate. On September 25, 2023, counsel wrote in response to the claimant's request for an adjournment:

When a court makes an order you had better obey it.

You failed to obey a Court Order.

Now you are in BIG trouble.

You won't get a simple adjournment from me or the judge: you are in BIG trouble.

Bring your tooth brush. You might be going to a cell.

If you want an adjournment you better have a plan on how you are going to obey the court order. I won't give you an adjournment, you would have to sell it to the judge to get an adjournment, but quite frankly, I don't see that happening.

Your are in BIG TROUBLE

See you in court this Friday.

You might want to think about what you have done and the advice that you took and how you are going to change your ways.

I will simply say this. This type of communication from counsel was not necessary, particularly the comments that the claimant "should bring a toothbrush because he may be going to a cell".

- [19] The claimant responded back advising that the date was scheduled by counsel without consulting him and that he could not attend on September 29th. The claimant asked the respondent's counsel to provide their chain of emails to the presiding Justice. Counsel for the respondent then replied he would provide the email chain to the court and that he would be seeking the respondent's arrest pursuant to Rule 21-7(5) of the Supreme Court Family Rules.
- [20] The matter came before Justice Verhoeven. The claimant was not in attendance nor did he send a representative on his behalf to try and adjourn the matter. Based on the information before him, Justice Verhoeven made a number of orders including an order for child support based on the claimant's imputed income of \$75,000 per year. As well, Justice Verhoeven found the claimant was in non-compliance with Justice Ball's order and pursuant to s. 228 of the FLA, ordered the claimant to pay a fine of \$10,000. The claimant was also ordered to pay \$2,000 in costs. The respondent has confirmed that the claimant paid the fines and is up to date on his child support obligations. However, he has only made sporadic payments relating to the family home expenses as set out in Justice Ball's order.

DISCUSSION

- [21] I will now address the various issues I must decide on these two applications.

Should an order for divorce be granted?

- [22] The respondent seeks a divorce pursuant to s. 11 of the Divorce Act R.S.C. 1985, c. 3 (2nd Supp.) [Act].
- [23] Section 11 of the Act imposes a statutory duty on the court to ensure that certain conditions are met before a divorce is granted:
- 11 (1) In a divorce proceeding, it is the duty of the court
- (a) to satisfy itself that there has been no collusion in relation to the application for a divorce and to dismiss the application if it finds that there was collusion in presenting it;
 - (b) to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines, and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made; and
 - (c) where a divorce is sought in circumstances described in paragraph 8(2)(b), to satisfy itself that there has been no condonation or connivance on the part of the spouse bringing the proceeding, and to dismiss the application for a divorce if that spouse has condoned or connived at the act or conduct complained of unless, in the opinion of the court, the public interest would be better served by granting the divorce.

- [24] The respondent submits that reasonable arrangements for her and W.'s support have not been made and therefore an order for divorce should not be granted.
- [25] The parties have been separated since November 16, 2022. The evidence supports that they have lived separate and apart since then and there does not appear to be any prospect of them reconciling. There also does not appear to be any evidence of collusion or connivance with respect to obtaining a divorce order.
- [26] I am also satisfied that while the child support order made by Justice Verhoeven was on an interim basis, there are arrangements for the support of the child without any issues since the order was made. The claimant advised the Court that he has been making child support payments and there are no arrears since the order was made by Justice Verhoeven in September 2023. This was also confirmed by the respondent. Section 11 of the Act does not require the Court to be satisfied that reasonable arrangements for the support of the spouse are made prior to granting a divorce.
- [27] On these facts I am satisfied that there is no issue with respect to the Court's jurisdiction to grant a divorce.
- [28] I have also considered whether there is any prejudice to the respondent. The court retains a residual inherent discretion to postpone the granting of a divorce if doing so would prejudice the rights of one of the parties: *Mann v. Mann*, 2013 BCSC 1726, and *Kirk v. Kirk*, 2007 BCSC 67. The onus is on the party asserting prejudice to establish sufficient prejudice to warrant the court declining to exercise its divorce power: *Dhillon v. Dhillon*, 2017 BCSC 247. If sufficient prejudice is established, the burden then shifts to the party seeking the divorce to show a compelling or urgent need for the divorce to be granted, which overrides the prejudice.
- [29] As Justice Blok explained in *Mann* at para. 21, the exercise of discretion turns on the evidence of prejudice, the weighing of any proven prejudice, and the balancing of the interests and prejudice to the parties.
- [30] I will note that the respondent has not suggested that she would be prejudiced in anyway with the granting of a divorce order.
- [31] While there are financial issues that must be resolved at some point, the mere existence of other, unresolved issues between the parties (so long as they do not go to the issue of reasonable arrangements for the support of the children) is not, without more, a reason to decline to make an order of divorce.
- [32] Accordingly, I have concluded that in the circumstances of this case, the respondent has not established that she will suffer prejudice if a divorce order is granted.
- [33] As there is no currently scheduled trial date, the claimant is entitled to the divorce order he seeks.

Should there be a variation of Justice Verhoeven's order of September 29, 2023?

- [34] The claimant seeks to vary Justice Verhoeven's order. Specifically, the claimant seeks to have his imputed income of \$75,000 for child support purposes reduced to \$45,000. The Claimant advised during his submissions that he is agreeable to this higher amount rather than the amount sought in his notice of application (\$25,656).
- [35] The applicable sections for varying a court order are ss. 215 and 200 of the FLA.
- [36] Section 215 of the FLA dictates that a court may change, suspend or terminate an order if there has been a change in circumstances since the order was made.
- [37] The FLA also provides a mechanism to set aside an order when it was made in the absence of a party. Section 200(2) of FLA provides, inter alia, that an order made in the absence of a party may be changed, suspended or set aside by this court.
- [38] The test for setting aside an order made in the absence of a party to a family law case is a modified version of the well-known test in *Miracle Feeds v. D. & H. Enterprises Ltd.* (1979), 10 B.C.L.R. 58, for setting aside a default judgment in a civil case. The test requires that:
- 1) The respondent did not wilfully and deliberately fail to respond to the application;
 - 2) The respondent responded in a timely fashion when learned of the order; and
 - 3) The respondent has a meritorious defence or at least a defence worthy of investigation.

See *Batool v. Siddiqui*, 2022 BCSC 1220 at para. 62, citing *Nichol v. Nichol*, 2015 BCCA 278 at paras. 27-28.

- [39] The test is a flexible one. Failure to meet one factor is not necessarily fatal: *Batool* at para. 64, citing *Nichol* at para. 37. The relative strength in one factor may overcome the weakness or failure in another: *J Power Excavating & Trucking Ltd. v. Icon Projects Ltd.*, 2020 BCSC 1327 at para. 13. As well, there may be other additional factors identified by a defendant which are relevant to its application and to the court's discretion: *Director of Civil Forfeiture v. Doe*, 2010 BCSC 940 at para. 15
- [40] In the first prong of the *Miracle Feeds* test, which is focussed on the party's intention, the failure to respond must be blameworthy, as opposed to solely negligent: *Forgotten Treasures International Inc. v. Lloyd's Underwriters*, 2020 BCCA 341 [*Forgotten Treasures*] at paras. 19-20. There is no dispute that the claimant was served with the materials. What is unclear is why he did not file a response.

- [41] The claimant's evidence is that when he was served with the notice of application on September 14, 2023, he immediately emailed the respondent's counsel and attempted to seek an adjournment. I have already summarized their interactions and the appropriateness of the response by counsel. Although he did not mention in his emails to counsel, the claimant advised the court that he was in fact in China caring for his sick mother when the hearing was held on September 29th. The respondent does not dispute this.
- [42] While I appreciate that the claimant attempted to get an adjournment so that he could obtain new counsel and attend to care for his sick mother in China, he does not explicitly explain why he failed to file a response. The claimant did allude to the fact that he was afraid of going to jail as it was communicated to him by the respondent's counsel. Despite that, he took no action to seek legal advice in respect of the scheduled application or his inability to attend on that date. Accordingly, I am left in doubt as to whether or not the claimant wilfully and deliberately failed to respond to the application.
- [43] On the second prong of the test, on whether the claimant responded in a timely fashion when he learned of the order, I must look at the claimant's action in applying to set aside the order. The claimant filed his notice of application to vary Justice Verhoeven's order on February 6, 2024, just over four months later. The claimant does not explain why he did not bring this application any earlier. Although there is some evidence that he was representing himself at this point. To his credit, I do note that the claimant did comply with the order and continues to pay child support based on the imputed income of \$75,000. While it would have been preferable for him to apply to set aside the order sooner, a delay of four months is not so fatal.
- [44] On the issue of whether the claimant has a meritorious defence or at least a defence worthy of investigation, he submits that a variation ought to be made because the same facts relied on in this application were not before Justice Verhoeven on September 29, 2023. He argues that there was evidence of a substantial nature that had it been before the Court, it is likely that a different order would have been made. The claimant points to the immigration consulting business having net losses since 2019. He also states that his income as an independent consultant and insurance broker has been limited. His 2022 Notice of Assessment shows earnings of \$25,656.
- [45] He also submits that had he been able to attend the hearing, he would have been able to raise the issue of his financial inability to meet the obligations that were imposed on him.
- [46] The respondent says that the claimant has the funds to make the necessary child support payments as ordered by Justice Verhoeven. She points to multiple bank accounts wherein the claimant has transferred funds in and out. The claimant has argued that most of this money belongs to his cousins.

- [47] The respondent argues that the claimant has not declared all of his income and that the immigration consulting business was successful and payments received from clients were transferred into their Chinese bank accounts and not declared in the claimant's tax returns in Canada, which explains his lower income.
- [48] While there is dispute on the evidence, in my view, the claimant at least has a defence worthy of investigation.
- [49] Overall, I am satisfied that there is some evidence to support the defence he wishes to advance. In my view, had the claimant been able to provide the evidence that he has provided to the court on this application, his income may not have been imputed as high as \$75,000 but possibly lower.
- [50] Accordingly I am satisfied, pursuant to the test in *Miracle Feeds*, that the clause 1 of Justice Verhoeven's order should be varied as sought by the claimant.
- [51] While the claimant initially sought to have child support guideline income at \$25,656, during his submissions he accepted that his income can be imputed at a higher amount of \$45,000. I am not convinced that is the appropriate amount given that there is some evidence that money is available to the claimant in some of the bank accounts. For example, the claimant acknowledges that he moved some money into W.'s bank account for RESP purposes. He did this despite claiming that he can no longer afford to pay the family home expenses.
- [52] I am of the view that the appropriate imputation of income should be at \$50,000. It must also be remembered that the order of Justice Verhoeven was an interim one. This variation is also on an interim basis. Therefore, child support payments will be based on the claimant's imputed income of \$50,000. Payments will continue to be made on the first of each month commencing, August 1, 2025.

Should the family home be listed for sale?

- [53] The claimant's application for sale of the family home is being brought under Rule 15-8 Supreme Court Family Rules, pursuant to which the court has the discretion to order a sale of property if it appears "necessary or expedient", and to make directions as to the conduct of that sale.
- [54] Most recently, in *Luo v. Chan*, 2025 BCSC 703, Justice Branch succinctly summarized the applicable provisions of the FLA and the test for sale of family property:
- [34] Under s. 81 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], the claimant is *prima facie* entitled to an undivided half interest in all family property.
- [35] Section 85 of the FLA provides for certain types of property to be excluded from family property, including:
- a) property acquired by a spouse before the relationship between the spouses began;

- b) inheritances to a spouse; and
- c) gifts from a third party.

- [36] Section 84(2)(g) of FLA specifies that any increase in the value of excluded property during the relationship is considered family property and is subject to division between the spouses.
- [37] Section 96 of the FLA permits the court to divide excluded property under specific circumstances, such as when family property or family debt located outside British Columbia cannot be practically divided.
- [38] Section 97 allows the court to determine any matter respecting the ownership or right of possession of property or family debt.
- [39] Rule 15-8 of the Supreme Court Family Rules, B.C. Reg. 169/2009 provides the Court with the discretion to order a sale of family property on an interim application where it is necessary or expedient. The test is disjunctive. Where a sale is not required, it may still be ordered if it is expedient: *Laflamme v. Beauparlant*, 2024 BCSC 1008 at para. 32. The burden on such an application is on the applicant: *Laflamme*, para. 31.
- [40] The words "necessary" and "expedient" encompass several factors, such as the availability of alternative accommodation, the emotional condition of the spouses, external economic factors, wasting of the asset, the capacity of both parties to maintain the asset, whether the status quo should be preserved until trial, whether the sale will defeat a claim for reapportionment, and the likelihood that an order for sale will promote settlement: *A.B. v. C.D.*, 2015 BCSC 2134 at para. 63; *Laflamme* at para. 31.
- [41] The question of whether a sale is "necessary" is specifically concerned with the parties' financial circumstances, including whether either party requires access to the equity in the property to finance the litigation, maintain property or support themselves. The court will also consider whether a sale is inevitable given the parties' financial situations: *Laflamme* at paras. 31-32.
- [42] An interim sale will be considered "expedient" if it is advantageous to both parties: *N.N.N. v. D.E.B.*, 2016 BCSC 1778 at para. 21; *Reilly v. Reilly*, 99 D.L.R. (4th) 47, 1992 CanLII 742 at para. 35.
- [43] Ultimately, the decision is within the presider's discretion after considering the relevant factors. The above-noted factors are non-exhaustive: *R.R.S. v. B.R.M.S.*, 2021 BCSC 1330 at para. 22.
- [55] The family home in question is a townhouse located in Langley. As I have noted, since separation the respondent has continued to reside there while the claimant has had to maintain a separate household which has added to his expenses.

- [56] According to the respondent's 2023 financial statement, the home is valued at \$937,000 with a mortgage of approximately \$349,674.44. That leaves approximately \$587,325.56 in equity.
- [57] The claimant submits the sale of the family home is both necessary and expedient (advantageous). He says that neither party can afford to maintain the home or buy out the other's interest. The claimant is in substantial debt and says that the financial stress has led to him being diagnosed with depression for which he is receiving medical treatment.
- [58] He also argues that maintaining the home is a significant barrier to the parties resolving their differences and that the sale is inevitable considering their financial situations. The sale of the family home would allow the parties to use the proceeds to find more affordable accommodations and provide the respondent with enough money to either rent or purchase another property.
- [59] The respondent submits it is neither necessary nor expedient (advantageous) to sell the family home. W. attends school near the home and it would be detrimental for them to have to find alternate accommodations. The respondent also points to her medical and financial situation making it impractical for her to find alternative accommodations. I note that there is no evidence that the property is wasting.
- [60] More importantly, the respondent submits that the claimant would not be entitled to any of the equity from the home given her claim for excluded property. The claimant says that the sum of \$347,000 used to purchase the family home was a loan from her mother. The claimant disagrees. He argues that it was a gift for both of them. While the respondent has provided copies of transactions purportedly showing transfers from her mother, I am not necessarily convinced that they support her position. The documents are in the form of bank transfers but some of the transfers are in the claimant's name and most of the document is in the Chinese language and not translated.
- [61] In any event, the respondent submits that if the loan from her mother is subtracted from the equity that would leave only \$240,225.56 to be distributed to other compensatory claims.
- [62] The claimant was required to pay the household expenses which he has only done so sporadically. This, she says, has forced the respondent to borrow funds to pay those expenses that amount to roughly \$50,000 as of February 2024. She would be owed this money. Although, it is likely that the claimant would also be entitled to some claim of occupational rent. While I agree that it is unlikely either party will be able to buy out the other, at this stage there is a dispute regarding the money from the respondent's mother, whether it was gifted to them or was a loan. Suffice to say, these are issues that will need to be sorted out at trial.
- [63] As well, the respondent points to other family assets that she says do not belong to the claimant's cousins as he asserts. As well, there are other bank accounts in which more family assets are hidden. The disclosure of financial documents including those from bank accounts in China will provide a full picture. As a result, the respondent submits that the

claimant would likely not be entitled to any of the equity from the family home. As such, she submits that the family home should not be sold until all of the claims can be sorted out at trial.

- [64] The issue of full financial disclosure has not occurred. Given that there is some evidence that the claimant may have undisclosed assets overseas, the trial court may need to use the property to ensure the effectiveness and enforceability of any equalization award in the respondent's favour. A sale may impinge upon the respondent's ability to obtain an effective apportionment order: *G.J.U. v. J.L.U.*, 2017 BCSC 1352 at para. 57.
- [65] I am also not satisfied that a sale will promote early settlement. I am of the view that settlement discussion will only happen when fulsome disclosure has been made in relation to the various bank accounts including those overseas, the money purportedly held in trust by the claimant for his cousins and the excluded property claim.
- [66] I have also considered W's need for stability and access to his school and friends is important. That stability is provided by maintaining the family home at this time.
- [67] In my view, a sale of the property is simply premature at this stage and I find that it is not necessary.
- [68] I am not inclined to order the sale of the family home at this time. While there is not doubt that the claimant is suffering financially at this time, there are unanswered questions that only be resolved when there is full financial disclosure.
- [69] Expediency requires that the sale is advantageous to both parties. Taken as a whole, as stated by Justice Melnick at para. 12 of *M.A.L. v. N.A.L.*, 2014 BCSC 203, "[t]here are at present too many unknowns concerning the extent to which each party may have equity in the matrimonial home to order that it be sold prior to trial."
- [70] Given that the claimant has not established that an interim sale is necessary or expedient, and there are at least doubts regarding the justice of such an order at this time, the status quo should prevail: *Kapoor v. Makkar*, 2020 BCCA 223 at para. 23.
- [71] Finally, my decision should not be read that the claimant is precluded from bringing a further application for sale of the family home. However, I am of the view, that fulsome disclosure relating to the issues I have discussed above will likely have to occur before another application can be heard. As well, once there is fulsome disclosure it may then be appropriate for the claimant to seek to have Justice Ball's order of May 29, 2023 varied, suspended or terminated. Until then, Justice Ball's order will continue to remain in place.

Enforcement of Order under s. 228 FLA and Contempt of Court

- [72] In her application, the respondent argues that the claimant continues to breach Justice Ball's order pertaining to the household expenses including the mortgage and maintenance of the family home and other expenses.

- [73] She also argues that the claimant has breached the order by cancelling the credit cards the respondent used to pay her living expenses. While the claimant was fined by Justice Verhoeven for the same non-compliance, the respondent submits that the claimant continues to do so. She seeks \$5,000 each for her and W. who's interests were affected by the non-compliance pursuant to s. 228 of the FLA.
- [74] The respondent acknowledges that there have been some payments towards the mortgage and maintenance of the family home. In her most recent affidavit, the respondent deposes that mortgage and strata fee payments were paid by the claimant only in September 2024, October 2024 and December 2024.
- [75] The respondent resorts to s. 228 of the FLA to enforce compliance. The FLA provides for enforcement of orders respecting conduct in s. 228, which states that if a person fails to comply with a conduct order made under Division 5 of the FLA the court may:
- (a) make a further order;
 - (b) draw an adverse inference;
 - (c) require the party to pay expenses incurred by the other party, a financial penalty to be paid to the other party or a fine not exceeding \$5,000; or
 - (d) make any other order the court considers necessary to secure compliance.
- [76] As stated by Justice Murray in *A.N. v. A.M.N.*, 2021 BCSC 2228:
- [33] The remedies under s. 228 (and 231) of the FLA are not intended to punish, but rather to secure compliance with conduct orders. Deterrence and to a lesser extent, rehabilitation are important considerations. Unlike criminal contempt, concern for the administration of justice is less of a priority: *Larkin v. Glase*, 2009 BCCA 321, at paras. 49 and 50.
- [34] In order to find that s. 228 of the FLA applies, the court must find that a party has breached a conduct order. Whether a breach has occurred is to be determined objectively, considering the impugned conduct along with the surrounding circumstances at the time: *C.A.L. v. D.E.L.*, 2018 BCSC 772 at para. 44.
- (emphasis added)
- [77] The court only has jurisdiction to order such payments under s. 228 if there is first an order made under ss. 222 to 228 and that order is contravened. Enforcement under s. 228 relates to conduct orders not to non-compliance of a court order relating to non-payments such as those alleged by the respondent.

[78] In the case at bar, the order in question made by Justice Ball was not made under these specific sections. It is also clear that the orders were not conduct orders. Accordingly, I decline to order any fines under s. 228 of the FLA. While the respondent also sought an order that the claimant be found in contempt of court for non-compliance of a court order, her counsel advised the court during the hearing that it was being abandoned.

CONCLUSION

[79] The parties are divorced from each other to take effect on the 31st day following the release of these reasons.

[80] The order of Justice Verhoeven from September 29, 2023 is varied. The claimant's income is imputed at \$50,000 for child support purposes. Child support payments will continue to be made on the first of each month commencing August 1, 2025.

[81] The claimant's application for the sale of the family home is dismissed.

[82] The order of Justice Ball dated May 29, 2023 will remain place.

[83] The respondent's application for fines under s. 228 is dismissed.

[84] Given that I have imputed the claimant's income at \$50,000 per year, the respondent's application as it relates to imputing the claimant's income at \$75,000 per year is dismissed.

[85] I decline to make a stand alone and alternative to Justice Ball's order dated May 29, 2023 and order spousal support based on the claimant's imputed income at 75,000 per year.

[86] A number of other matters in the respective applications were agreed to by the parties as they relate to disclosure of financial documents. I have not set them out as part of these reasons.

COSTS

[87] With respect to costs, due to the mixed success of the parties in this matter, the parties will bear their own costs.

"Girn J."

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