
CANADA / JUDGMENT

Ren v. Yang

2012 BCCA 164

COURT

British Columbia Court of Appeal

DECIDED

23 April 2012

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2012 BCCA 164 Ren v. Yang

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Ren v. Yang,

2012 BCCA 164

Date: 20120423

Docket: CA039226

Between:

Jun Xiang Ren

Appellant

(Defendant)

And

Qian Yang

Respondent

(Plaintiff)

Before:

The Honourable Madam Justice Kirkpatrick

The Honourable Madam Justice Neilson

The Honourable Madam Justice Bennett

On appeal from: Supreme Court of British Columbia, June 30, 2011,

(Yang v. Ren, 2011 BCSC 869, Docket No. E100435)

Appellant appearing In Person:

Respondent appearing In Person:

Place and Date of Hearing:

Vancouver, British Columbia

March 19, 2012

Place and Date of Judgment:

Vancouver, British Columbia

April 23, 2012

Written Reasons by:

The Honourable Madam Justice Kirkpatrick

Concurred in by:

The Honourable Madam Justice Neilson

The Honourable Madam Justice Bennett

Reasons for Judgment of the Honourable Madam Justice Kirkpatrick:

INTRODUCTION

[1] Jun Xiang Ren ("Mr. Ren") appeals from the Supreme Court order pronounced June 30, 2011 and entered October 11, 2011 following an 11 day trial concerning the custody and care of the child of his marriage to Qian Yang ("Ms. Yang"), the division of family assets, and child and spousal support. The parties were represented by counsel at trial but appeared without counsel on the appeal. This proved to complicate the appeal because Mr. Ren treated the appeal as if it were an opportunity to retry the case and permit this Court to substitute its own view of the evidence to arrive at different findings of fact and credibility. The standard of appellate review of factual findings was stated by the Supreme Court of Canada in *Toneguzzo-Norvell v. Burnaby Hospital*, [1994] 1 S.C.R. 114 at 121, 110 D.L.R. (4th) 289:

It is by now well established that a Court of Appeal must not interfere with a trial judge's conclusions on matters of fact unless there is palpable or overriding error. In principle, a Court of Appeal will only intervene if the judge has made a manifest error, has ignored conclusive or relevant evidence, has misunderstood the evidence, or has drawn erroneous conclusions from it: [citations omitted]. A Court of Appeal is clearly not entitled to interfere merely because it takes a different view of the evidence. The finding of facts and the drawing of evidentiary conclusions from facts is the province of the trial judge, not the Court of Appeal.

- [2] Similarly, the standard of review of a trial decision concerning custody and access provides that appeal courts should not overturn the order of a trial judge unless the reasons disclose a material error, a significant misapprehension of the evidence, or an error of law: *Hickey v. Hickey*, [1999] 2 S.C.R. 518 and *Van de Perre v. Edwards*, 2001 SCC 60, [2001] 2 S.C.R. 1014.
- [3] The trial judge provided comprehensive reasons, indexed as 2011 BCSC 869. Those reasons should be read in conjunction with these reasons.
- [4] The judge fully set out the acrimonious background to the litigation, including the most unfortunate circumstance of Ms. Yang depriving Mr. Ren of contact with their young son, Allan - who was born in Vancouver, British Columbia, on July 24, 2007 - for more than one and a half years. Mr. Ren's written and oral submissions were somewhat disjointed and at times difficult to follow. His preoccupation with Ms. Yang's "abduction" of Allan imbued all of his argument. Without diminishing the impact that circumstance had upon Mr. Ren, it is important for Mr. Ren to understand that it is but one of a myriad of circumstances that the trial judge, and this Court, must consider.
- [5] The judge concisely described the central issues, and the challenges of crafting a suitable order, at paras. 2-3 of her reasons:
- [2] Underlying the issues relating to Allan are the parties' deep feelings of mutual distrust and hostility born of real or perceived mistreatment of each other during or after the marriage. While each party loves Allan devotedly, and claims to want to further Allan's best interests, he or she evidently sees little real value in Allan's relationship with the other parent. The task is to craft orders for guardianship, custody, and Allan's parenting schedule that, giving paramountcy to Allan's best interests, will allow him a meaningful role with each parent without the exclusion of the other. This requires some consideration of a period of more than 1½ years during which Ms. Yang remained in China after the separation and concealed her own, and therefore Allan's, whereabouts from Mr. Ren.
- [3] Underlying the property and financial issues are uncertainties about Mr. Ren's assets and income, which, except for a condominium in the University of British Columbia ("UBC") area, are owned and earned mainly in China and may be quite different from those which Mr. Ren formally acknowledges and reports for income tax purposes. Also uncertain is Ms. Yang's financial future, because she is a new and young immigrant to Canada with a post-secondary education but minimal knowledge of the English language, and with no apparent financial assets.

BACKGROUND

- [6] The background for our purposes may be briefly stated. Ms. Yang was born in China on September 10, 1982. She was educated in China and holds a B.A. degree in business administration. Mr. Ren was born in China on May 10, 1970. He was also educated in China and is the chief executive officer for a Chinese company, Qingdao Great Chemical Inc. The parties met in December 2005 when Mr. Ren hired Ms. Yang to work as his managerial

assistant. They married on June 26, 2006. Prior to the marriage Mr. Ren obtained landed immigrant status in Canada in May 2004. He lived in Vancouver from time to time, from where he was able to conduct his company's business.

- [7] Ms. Yang became pregnant in November 2006 and moved to Canada to join Mr. Ren on May 13, 2007. They lived for about eight months in a condominium at UBC in Vancouver, purchased by Mr. Ren in August 2006. They returned to China on January 30, 2008 to allow Ms. Yang's parents to help care for Allan. Mr. Ren returned to Canada in March 2008 to fulfill the residency requirements for permanent resident status. Ms. Yang stayed in China. Mr. Ren returned to China after about two months. On July 27, 2008, the parties returned to Vancouver with Allan expecting to stay indefinitely. Business problems arose in China, and they returned to China on August 7, 2008.
- [8] The end of the marriage was recounted by the judge, at paras. 18-21:
- [18] The marriage came to an end within weeks of the return to Qingdao. The parties agree that their separation dates as of August 25, 2008, the day after an incident in the home of Mr. Ren's parents. I will discuss the incident later when I discuss the issues concerning Allan's guardianship, custody and parenting schedule, because Ms. Yang claims that Mr. Ren was violent toward her in this and other incidents, and that his conduct, together with harassing conduct by his parents towards hers, explains her steps to avoid Mr. Ren over the extended period, beginning in December 2008, during which Mr. Ren had no contact with Allan.
- [19] That period began shortly before Mr. Ren returned to Vancouver in mid-December 2008. The parties gave different accounts of their communications before Mr. Ren left for Vancouver and of the nature and extent of Allan's contact with him between the separation on August 25, 2008 and Mr. Ren's return to Canada. Ms. Yang testified that she took his return as an abandonment of herself and Allan. Mr. Ren testified that from the time of the separation Ms. Yang had refused all contact with him, until, by text message a few days before his departure, she encouraged him to return to Canada and said she would seek a divorce. But undisputed is that from about that time forward, Ms. Yang and her family refused to respond to messages or visits from Mr. Ren or his family who were all deprived of contact with Allan for more than 1½ years to come.
- [20] Indeed, after Mr. Ren's departure for Vancouver Ms. Yang and her family almost immediately changed residences, telephone numbers, and email addresses, and made efforts to ensure that Mr. Ren did not learn of their new contact information. They did this again after the July 2009 encounter I am about to mention. Except for that brief encounter in a park in Qingdao, Mr. Ren did not see Allan again until August 13, 2010, after Ms. Yang returned Allan to British Columbia under order of this Court, and the Court then made an interim order for access.
- [21] The brief encounter in July 2009 arose as follows. As soon as Mr. Ren received his permanent resident's card in May 2009 and was therefore able to leave Canada without risking his status with Citizenship and Immigration Canada, he travelled to China to look for

Allan. He spent much of his time at places frequented by children, asking for information and watching for Allan. It was during an evening in July 2009 that Mr. Ren came across Allan in a public park, and saw Ms. Yang's mother nearby. Much evidence was led and disputed concerning what then happened. However, it seems undisputed that the incident ended with Mr. Ren on the ground and Ms. Yang's relatives leaving with Allan. Allegations of assault flew in every direction, except that there was no allegation that Allan was an actual or intended victim. Ms. Yang was not present for the events in the park, so Mr. Ren's account was the only first-hand one given in evidence in the trial.

- [9] Ms. Yang commenced legal proceedings in China in late 2008 or early 2009. Following a hearing in September 2009 attended by both parties, the Chinese court granted a divorce and awarded sole custody of Allan to Ms. Yang. Following an appeal in March 2010, all orders, including the divorce, were set aside by the Chinese court.
- [10] Ms. Yang initially commenced proceedings in British Columbia in February 2010 for the division of assets in Canada pursuant to the Family Relations Act, R.S.B.C. 1996, c.128. When the orders in China were set aside, she amended her pleadings to claim for divorce, custody, support, and division of assets in both Canada and China.
- [11] On June 16, 2010, Master Young ordered Ms. Yang to return Allan to British Columbia and made Allan's presence in the jurisdiction a pre-condition to any applications. Ms. Yang complied with the order.
- [12] On August 19, 2010, after a period of more than one-and-a-half years when Mr. Ren was unaware of Allan's whereabouts, Mr. Justice Harris granted Mr. Ren interim access. Mr. Justice Harris also ordered Mr. Ren to pay interim child support of \$545 per month.

CUSTODY AND GUARDIANSHIP

- [13] The trial was heard in January 2011. The judge first concluded, after careful consideration of the effects of Ms. Yang's lengthy deprivation of Mr. Ren's contact with Allan, that an order of joint custody and guardianship would be in the best interests of the child. She considered Mr. Ren's submission that Ms. Yang would try to exclude him from Allan again; Ms. Yang's allegations of harassment by Mr. Ren and his family; and Ms. Yang's allegations of violence by Mr. Ren and her fear for her personal safety. The judge rejected Ms. Yang's position that the period of no contact with Allan was attributable to Mr. Ren having abandoned Allan. She decided that, if unconstrained by court order, Ms. Yang would attempt to exclude Mr. Ren from Allan's life in the future.
- [14] The judge had the benefit of a custody report prepared by Dr. Elterman under s. 15 of the Family Relations Act. The judge agreed with Dr. Elterman's finding that Ms. Yang's conduct in keeping Allan from his father had caused tremendous damage to Mr. Ren, leading to the parties' inability to communicate and their mutual hostility and disrespect. She noted:

- [68] Dr. Elterman made similar observations in his report, but nonetheless recommended that the parties have joint custody and joint guardianship.
- [69] In his testimony, Dr. Elterman explained that joint custody and joint guardianship generally are favoured in situations where the parties can cooperate, and are viewed with less favour where they cannot. However, in some situations --and Dr. Elterman saw this as one -- joint custody and guardianship are best for the child in order to provide for "power sharing" as between the parents. As I inferred from his evidence, without such a mechanism, the child's relationship with one parent will almost inevitably suffer.
- [70] Dr. Elterman gave detailed and convincing reasons for this opinion and recommendation.
- [71] He explained that he found each of Ms. Yang and Mr. Ren to be immature and to be hostile toward the other.
- [72] He noted that Ms. Yang appears not to have considered the effects of denying a father's role to Mr. Ren, and viewed her as likely to consider Mr. Ren's role unnecessary in Allan's life. Dr. Elterman noted the contradiction in Ms. Yang's attitude in, on one hand, harbouring or expressing concerns that Mr. Ren is a danger to Allan and, on the other, seeming now quite content with Mr. Ren's having reasonable, including overnight, access.
- [73] As to Mr. Ren, Dr. Elterman observed that because he so clearly feels traumatized by the exclusion from Allan's life, he is unlikely to make good judgments about Allan's need to spend time with his mother. Mr. Ren seems also to believe his own value as a father to Allan to be much superior to Ms. Yang's role as mother. Dr. Elterman described Mr. Ren as fairly dismissive of Ms. Yang's opinions.
- [74] Dr. Elterman saw no reason to award sole custody to one parent or the other, and, for the reasons outlined above, suspected that to do so "would lead to the other parent being left out more than necessary".
- [15] The judge ultimately accepted that to give one party sole responsibility for Allan's custody or guardianship would "create a grave risk of exclusion of the other from any meaningful role in Allan's life." She ordered that the order for joint custody and guardianship would follow the "Master Joyce model" except that Ms. Yang is to have primary responsibility for making decisions regarding Allan's education and Mr. Ren primary responsibility for making decisions regarding Allan's health and religious upbringing.
- [16] As to the parenting schedule, the judge considered all of the evidence. She concluded, at paras. 91 and 100-102:

[91] The evidence in the trial led me to agree entirely with Dr. Elterman's assessments of these parties, based on his interviews and visits, and of the likely consequences for Allan's best interests of any arrangement that appears to favour one parent over the other. I therefore place great weight on Dr. Elterman's specific recommendations for a parenting schedule that will best allow Allan to flourish, including by allowing him a healthy and constructive relationship with each of his parents.

...

[100] In all the circumstances, I adopt Dr. Elterman's recommendation that Allan spend substantial blocks of roughly equivalent time with each parent each week.

[101] Dr. Elterman developed a workable schedule, on the facts as presented to him, and, except in each seeking more of Allan's time, the parties in the trial suggest no significant departures.

[102] Allan will therefore live with Ms. Yang from Saturdays at 7:00 p.m. until Wednesdays before preschool, and with Mr. Ren from Wednesdays after preschool until Saturdays at 7:00 p.m. On Wednesdays when Allan is sick or if there is no pre-school, the exchange will be at noon. This arrangement will, as Dr. Elterman noted, allow each parent a full weekend day with Allan, as well as 2½ days during the week.

CHILD SUPPORT

[17] After thorough examination of the evidence and the parties' respective positions, the judge concluded that Mr. Ren's income as disclosed in his Property and Financial Statement could not be accepted as accurate. Mr. Ren claimed that his income was: \$5,083 for 2007; \$20,198 for 2008; and \$58,400 for 2009. The judge found as a fact that Mr. Ren enjoys a "much higher real disposable income than he reports in his tax returns and in these proceedings."

[18] The judge clearly concluded that Mr. Ren's evidence as to his income and assets was unsatisfactory and unreliable. She therefore imputed income to Mr. Ren under s. 19 of the Federal Child Support Guidelines. Based on Mr. Ren's personal receipts and expenditures, she concluded that his annual income should be imputed to be \$130,000.

[19] Because Ms. Yang had no real assets or income at the trial date, the judge concluded that she could not contribute to Allan's support, and awarded the full table amount of \$1,146 per month to be paid by Mr. Ren. She ordered that Mr. Ren may apply for a variation of the child support order after August 2013 if circumstances warrant.

[20] The judge next considered whether to award retroactive child support. She had regard both to Mr. Ren's financial non-disclosure and to the fact that Ms. Yang had kept Allan from Mr. Ren from December 2008 until the interim order was made in August 2010. She stated:

- [129] There are many reasons that a court will not order retroactive support to "top up" an interim award. In *D.B.S. v. S.R.G.*; *L.J.W. v. T.A.R.*; *Henry v. Henry*; *Hiemstra v. Hiemstra*, 2006 SCC 37, [2006] 2 S.C.R. 231, Bastarache J. discussed these reasons at length. They include that such a retroactive award will disturb the certainty that a payor parent has come to expect, particularly since a court order is presumed to be valid (paras. 62-66).
- [130] However, these reasons have less application where, as here, the payor parent has not placed his or her true financial circumstances before the court that made the interim order (*D.B.S. v. S.R.G.* at para. 74). Mr. Ren will therefore pay retroactive support of \$601 per month to adjust the amounts payable under the interim order (\$545 per month) to the applicable amount (\$1,146 per month) for the income now imputed to him.
- [131] I decline to order retroactive support for any periods before the interim order of August 2010, during which Ms. Yang wrongfully deprived Mr. Ren of any involvement in or even knowledge about Allan's life. It is true that the court in China made an order for child support with which, it seems, Mr. Ren did not comply. However, the evidence did not disclose much detail about the terms of that order or the extent of Mr. Ren's obligation to comply, given the appeal process which ultimately set the order aside.

DIVISION OF FAMILY ASSETS

- [21] The judge reviewed the statutory provisions applicable to the division of family assets set out in s. 65(1) of the Family Relations Act. Both parties claimed 100% reapportionment of the two family assets in British Columbia - the condominium, the net value of which was \$160,000, and a vehicle valued at \$20,000.
- [22] In addition to the assets in British Columbia, Ms. Yang also claimed a 10% interest in Mr. Ren's company, Qingdao Great Chemical Inc., which she submitted had a value of \$500,000. The evidence concerning this asset was found by the judge to be "obscure or outright false." She concluded:
- [151] This is not an evidentiary context in which to make a compensating order relating to an asset which (except for Mr. Ren's residence in Vancouver) appears to be located entirely outside this jurisdiction, and about which very little is known except that it provides Mr. Ren with a source of funds. Ms. Yang's testimony, about which I have commented earlier, does not of itself provide a sufficient foundation.

She further held that in any event, the asset was not ordinarily used as a family asset. Ms. Yang's application for a compensation order in respect of the asset was therefore denied.

- [23] Three other properties in China were also considered. The judge concluded that there was "sparse" evidence concerning whether or not the properties in China were ordinarily used for a family purpose and are family assets. However, the judge nevertheless considered those assets in the context of s. 65(1)(f) of the Family Relations Act, which permits the court to consider "any other circumstances relating to the acquisition, preservation, maintenance,

improvement or use of property or the capacity or liabilities of a spouse" in determining whether the presumptive equal division under s. 56 would be unfair.

- [24] The judge concluded that Mr. Ren's foreign assets placed him in a much stronger financial position than Ms. Yang. She stated:
- [159] The evidence nonetheless makes clear that Mr. Ren is in a much stronger asset position than is Ms. Yang. By his own testimony, his real property in China has a total value of approximately \$600,000. Mr. Ren appears to have other substantial foreign holdings. In a Foreign Income Verification Statement he signed and filed in connection with his Canadian income tax return for 2007, he reported more than \$300,000 in funds held outside Canada, which the form made clear were separate from his real property holdings. Mr. Ren could not explain that report, which he attributed to his accountant.
- [160] In my view, the only reliable conclusion from the unsatisfactory evidence concerning Mr. Ren's financial position is that Mr. Ren owns two or more of the properties discussed above and other assets in China having, together, a substantial total value -- likely well in excess of \$500,000 and possibly approaching \$1 million.
- [161] There is no reliable evidence that Mr. Ren is liable for any significant debts. As I have already discussed, I am not persuaded that Mr. Ren owes substantial amounts to Qingdao Great Chemical Inc. that he will be obliged to repay.
- [25] Ultimately, the judge rejected Mr. Ren's argument that he should receive 100% of the two family assets in British Columbia on the basis that the marriage was of very short duration - two years - and Ms. Yang's minimal contribution to the family assets. The judge explained her reason for granting an equal division of those assets at paras. 178-181:
- [178] Section 65 of the FRA does not invite a process of reapportionment to equalize the parties' financial positions. It requires a more specific exercise that begins with the presumption that the parties hold an equal interest in the family assets, and reapportions those interests only if an equal division would be unfair having regard to the listed factors.
- [179] Here, factors weigh in each direction. On one hand, the marriage was very short; also, Mr. Ren brought the family assets into the marriage and Ms. Yang contributed little to them. On the other hand, the marriage and its breakdown have brought Ms. Yang to a new continent and culture in which, unlike Mr. Ren, she must face considerable challenges before she can achieve any form of economic self-sufficiency and provide a suitable home for Allan.
- [180] In these circumstances, I am not persuaded that equal division of the family assets would be unfair according to the factors listed in s. 65 of the FRA.
- [181] Ms. Yang is therefore entitled to a one-half interest in the net equity of the UBC condo and the Volvo vehicle.

SPOUSAL SUPPORT

[26] Lastly, the judge reviewed the evidence relating to Ms. Yang's claim to spousal support retroactive to December 18, 2008 and prospectively for three years following the trial. She reviewed the statutory provisions in s. 15.2(4) of the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3:

15.2(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

And s. 15.2(6):

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[27] The judge summarized her findings at paras. 203-207:

[203] This is a situation where, I find, spousal support is required on two bases: to provide for Ms. Yang's needs, and to compensate her for the effects of the marriage and its breakdown. The marriage was extremely short but, as I have discussed above, it had significant effect on Ms. Yang's earning capacity because it involved a move to Canada, where she is not yet equipped for the employment at the level she could have performed in China.

- [204] In my view, Ms. Yang has the capacity to quickly overcome the challenges she faces in Vancouver. She is an educated person with work experience and apparent intelligence and ability. She seems to have friends in the community, although her evidence about her personal life was extremely sparse. The division of the family assets in British Columbia will in the near future provide Ms. Yang with a reasonable capital sum to further assist her in settling in Vancouver.
- [205] To date, Ms. Yang has made only token efforts to establish herself by completing English classes and finding employment. The health food organization may offer an interesting sideline or hobby, and may in the future supplement Ms. Yang's income, but it is clearly not Ms. Yang's path to self-sufficiency.
- [206] There will be an order for spousal support for a period which, in my view, reflects the time during which Ms. Yang ought to have been able to establish herself in reasonable employment, had she begun reasonable efforts to do so shortly after her arrival in Canada. There will be no review at the end of this period; a review would function inconsistently with the basis for the duration of the order, and would, I find, tend to motivate further delay in Ms. Yang's efforts. The amount will be near the low end of the range suggested by the Spousal Support Advisory Guidelines, because of the effect of the division of family assets.
- [207] Mr. Ren will pay spousal support to Ms. Yang of \$3,000 per month on the 16th day of each month, until (and including) August 16, 2012.
- [28] In addition, the judge ordered Mr. Ren to pay retroactive spousal support of \$2,797 per month from August 16, 2010, the date an interim order was granted, to adjust for the income imputed to Mr. Ren following the trial.

ON APPEAL

- [29] The primary focus of Mr. Ren's written and oral submissions related to what he termed the abduction of his son for 610 days. That event, which Dr. Elterman considered and the judge agreed, "traumatized" Mr. Ren, has proved to be an intractable theme. All the issues decided at the trial are, in Mr. Ren's view, contaminated by the judge's alleged failure to accord the event its proper weight.
- [30] There can be no doubt that Ms. Yang's actions in depriving Mr. Ren of all contact with his son for many months was inexcusable. However, the judge, as I have set out above, acknowledged the harmful effects of the deprivation and gave it careful consideration in considering the only issue relevant to the conduct, namely the custody and guardianship of Allan.
- [31] Mr. Ren's first ground of appeal is that the trial judge erred in failing to find that Ms. Yang abducted Allan. He appears to rely on provisions of the Criminal Code, R.S.C. 1985, c.46, and criminal law decisions that have considered abductions, in support of his contention. This,

of course, is a family law proceeding. The abduction, if it was one, was for the Chinese authorities to determine. However one characterizes the conduct, it is an event in the past that was undoubtedly relevant to the consideration of Allan's best interests, but which Mr. Ren must now strive to put behind him. The judge clearly did not overlook, as Mr. Ren submits, the harmful effects of Ms. Yang's conduct on Mr. Ren.

- [32] However, the judge was obliged to determine what is in Allan's best interests. She was certainly aware of the impact Ms. Yang's actions had on Allan. She crafted an order that took into account the mutual immaturity and hostility of both parties, as noted by Dr. Elterman. At the foundation of the joint custody order was the recognition that, without such an order, the sole custodial parent would inevitably exclude the non-custodial parent, to the detriment of Allan.
- [33] In my opinion, the judge was not obliged, as Mr. Ren submits, to find that Allan was "abducted." She found that Mr. Ren did not abandon Allan as Ms. Yang alleged. The importance lies not in the term used to describe the event, but rather in the effects the event had on Allan and Mr. Ren and his family. In my view, the judge gave adequate weight to the event and considered it along with all of the other evidence relevant to Allan's best interests.
- [34] Related to Mr. Ren's fixation with Ms. Yang's "abduction" of Allan, is his claim to compensation in the sum of \$610,000, calculated on the basis of \$1,000 for each of the 610 days that he was deprived of contact with his child. This claim was not pleaded at trial. This Court generally does not consider issues raised for the first time on appeal. Further, Mr. Ren has not provided any legal authority to support such an award, and I am not aware of such authority. In the circumstances, I would dismiss this claim for relief.
- [35] Mr. Ren also submits that the judge erred in giving Ms. Yang responsibility for Allan's education without providing reasons for so doing and overlooked evidence concerning the plans he had put in place for Allan's education. He contends that, as a result, he is deprived of having any input in an important aspect of the child's life.
- [36] Reading the reasons, it is clear that the judge did not overlook the evidence of Mr. Ren's wishes and plans concerning Allan's education. She did, however, disagree that his wishes were necessarily in Allan's best interests. It is clear that she was concerned that Mr. Ren, if given sole responsibility for all issues concerning Allan, including education, would exclude Ms. Yang from participating in those decisions.
- [37] The terms of the order, which incorporate the "Master Joyce model" definition of guardianship, were evidently intended to require the parties to discuss with one another any significant issues, including education.
- [38] Mr. Ren criticized the incorporation of the terms of the Master Joyce model in the order on the basis that the model is intended for circumstances in which one parent has sole custody and joint guardianship is granted. The relevant terms of the order in this case read:

1 The claimant, Qian Yang ("Ms. Yang") and the respondent, Jun Xiang Ren ("Mr. Ren") have joint responsibility for their child, Allan Ren, born July 24, 2007 ("Allan"), Allan's custody and guardianship pursuant to the "Master Joyce Model", except as follows: Ms. Yang will have the primary responsibility for making decisions concerning Allan's education; Mr. Ren will have the primary responsibility for making decisions concerning Allan's health (except emergency decisions, which either parent may make), and concerning Allan's religious upbringing. Each party will promptly (within three days) inform the other party in writing of any decision make [sic].

2 Pursuant to the "Master Joyce Model",

- a. Ms. Yang and Mr. Ren are to be the joint guardians of the estate of Allan;
- b. in the event of the death of either parent, the remaining parent will be the sole guardian of Allan;
- c. the parent who has the primary responsibility for the day to day care of Allan will have the obligation to advise the other parent of any matters of a significant nature affecting Allan;
- d. the parent who has primary care will have the obligation to discuss with the other parent any significant decisions which have to be made concerning Allan, including significant decisions concerning the health (except emergency decisions), education, religious instruction, and general welfare of Allan;
- e. the parent who does not have primary care will have the obligation to discuss the foregoing issues with the parent and each parent shall have the obligation to try to reach agreement on those major decisions;
- f. in the event that the parents cannot reach agreement with respect to any major decision despite their best efforts, the primary care parent will have the right to make such decision;
- g. the other parent shall have the right to seek a review of any decision which that parent considers contrary to the best interests of Allan;
- h. each party will have the right to obtain information concerning Allan directly from third parties, including but not limited to teachers, counsellors, medical professionals and third party care givers.

[39] I see no reason why, in principle, the provisions in the Master Joyce model of guardianship cannot be included in an order for joint custody and guardianship. It is clear in this case that the parties need every encouragement and inducement to discuss matters relating to their child.

[40] However, the order in this case was apparently drafted without regard to the individual circumstances of the case, and is less than clear in effect. It appears the judge did not see or approve the terms of the order prior to entry, which in a contentious case such as this would have been desirable. For purposes of clarity, I would modify paragraphs 1 and 2 of the order to read as follows:

1 The claimant, Qian Yang ("Ms. Yang") and the respondent, Jun Xiang Ren ("Mr. Ren") have joint custody and guardianship of the child, Allan Ren, born July 24, 2007 ("Allan"). Joint guardianship is defined pursuant to the "Master Joyce Model", except as follows: Ms. Yang will have the primary responsibility for making decisions concerning Allan's education and Mr. Ren will have the primary responsibility for making decisions concerning Allan's health (except emergency decisions, which either parent may make), and concerning Allan's religious upbringing. Each party will promptly (within three days) inform the other party in writing of any decision made.

2 Joint guardianship means:

- a. Ms. Yang and Mr. Ren are to be joint guardians of the estate of Allan;
- b. in the event of the death of either parent, the remaining parent will be the sole guardian of Allan;
- c. the parent who has the primary care of Allan on a given day will have the obligation to advise the other parent of any matters of a significant nature affecting Allan;
- d. each parent will have the obligation to discuss with the other parent any significant decisions which have to be made concerning Allan, including significant decisions concerning the health (except emergency decisions), education, religious instruction, and general welfare of Allan;
- e. each parent has the obligation to discuss the foregoing issues with the other parent and each parent shall have the obligation to try to reach agreement on those major decisions;
- f. in the event that the parents cannot reach agreement with respect to any major decision despite their best efforts, Ms. Yang shall have the right to make decisions concerning Allan's education and Mr. Ren shall have the right to make decisions concerning Allan's health and religious upbringing;
- g. the other parent shall have the right to seek a review of any decision which that parent considers contrary to the best interests of Allan.
- h. each party will have the right to obtain information concerning Allan directly from third parties, including but not limited to teachers, counsellors, medical professionals and third party care givers.

- [41] Mr. Ren further submits that the judge overlooked the evidence of the driving distance between Mr. Ren's home and Allan's pre-school; erred in ordering equal parenting time; and erred in concluding that a sole custody order would result in a diminishment of involvement by the non-custodial parent.
- [42] In my view, the judge did not err as alleged. Mr. Ren is clearly unhappy with the outcome of the trial, but the judge considered all of the matters now raised by Mr. Ren and provided a reasoned decision. She did not err in her application of the relevant legal principles and cannot be said to have erred in her findings of fact.
- [43] I would dismiss Mr. Ren's appeal from the custody and guardianship orders. I would modify the order as indicated to better reflect the judge's reasons.
- [44] Mr. Ren next submitted that the judge erred in imputing income to him of \$130,000. He reiterated the evidence referred to in the reasons but claimed the judge failed to appreciate it.
- [45] It is obvious from reading the reasons as a whole that the judge did not believe Mr. Ren's assertion as to the income and capital available to him. As the judge noted, the evidence was unsatisfactory. Some evidence she described as obscure or outright false.
- [46] In my opinion, Mr. Ren cannot now dispute the level of income attributed to him due to his own failure to adequately disclose pertinent financial information: *Poursadeghian v. Hashemi-Dahaj*, 2010 BCCA 453 at para. 25, 10 B.C.L.R. (5th) 102. The judge's reasons for attributing the level of income Mr. Ren now disputes are logical and sound. The judge was in the unique position of assessing the credibility of Mr. Ren, a position that is not available to us. Her findings of fact deserve deference.
- [47] Mr. Ren also asks us to require Ms. Yang to pay child support, based on her ability to work, as she has intermittently in the past, in a massage parlour. The judge concluded that although Ms. Yang could earn a minimum of \$4,000 per month, the work required her to work 10-12 hours per day, seven days a week and was not employment that "the court would wish to endorse, let alone require." Ms. Yang said she left that employment in April 2010 because the work hours were unsuitable. I can see no error in the judge's finding that Ms. Yang's former employment was unsuitable, or that she did not have a current ability to contribute to Allan's support.
- [48] The judge concluded that Ms. Yang's efforts to find employment have been minimal. It is obvious she will need to become more fluent in English if she is to become gainfully employed. The judge reasoned that Ms. Yang can become self-sufficient within a limited period of time. On that basis, she awarded time limited spousal support until August 2012 and refrained from requiring Ms. Yang to contribute to Allan's support.

- [49] I am not persuaded the judge erred in not requiring Ms. Yang to pay child support to Mr. Ren. Mr. Ren asked that Ms. Yang be ordered to pay child support according to her tax return. Ms. Yang's 2010 tax return shows line 150 income of \$7,219. The Guideline amount is zero.
- [50] Although Mr. Ren did not specifically allege in his factum that the judge erred in granting Ms. Yang time-limited spousal support, it was evident from his oral submissions that he sought to overturn all aspects of the trial order.
- [51] I would dismiss an appeal from the spousal support order. In my opinion, the judge's findings were supported by the evidence and apply with equal force to both the child and spousal support issues. As I have already stated, absent clear error, we cannot interfere with the orders under appeal. In my view, Mr. Ren has not established that the trial judge erred in ordering him to pay spousal support.
- [52] Lastly, Mr. Ren contends that the order with respect to the division of family assets failed to give proper regard to the factors to be considered under s. 65(1) of the Family Relations Act. It is true, as Mr. Ren submits, that this was a marriage of short duration (s. 65(1)(a)); and the condominium was acquired by him in August 2006 (after the marriage registration in China) solely with his funds (s. 65(1)(c)). The judge was clearly aware of those factors. She was also mindful of Ms. Yang's need to become economically independent (s. 65(1)(e)), and specifically found that Mr. Ren's superior financial capacity (s. 65(1)(f)) militated in favour of an equal division of the family assets and not the 100% reapportionment sought by both parties.
- [53] In my opinion, it cannot be said that the judge failed to consider a relevant factor or overlooked relevant evidence in concluding that an equal division of these two family assets in question would not be unfair. I would dismiss this ground of appeal.
- [54] Finally, I note that Mr. Ren's factum contains many allegations of misconduct on the part of Ms. Yang that post-date the trial. He also raises numerous matters that are not relevant to the appeal and upon which I will not comment.
- [55] Before concluding these reasons, I note that this appeal was originally scheduled to be heard on March 6, 2012. The division at that time adjourned the appeal because Mr. Ren had failed to comply with the trial order, including the payment of child support. Mr. Ren had continued to pay the lesser amount of interim child support ordered by Mr. Justice Harris. In reasons indexed as 2012 BCCA 118, Madam Justice Prowse noted Mr. Ren's failure to explain his non-compliance with the Supreme Court order and directed that his appeal would not be heard unless he obtained a stay of the order in the Supreme Court.
- [56] Mr. Ren did obtain a stay of all but the child support order. He paid Ms. Yang child support in the amount of \$1,146 and an additional \$2,786. We directed Mr. Ren to pay a further \$2,022 in child support. Ms. Yang advised the Court on March 21, 2012 that amount was paid.

[57] I would remind Mr. Ren of his obligation to comply with all of the terms of the Supreme Court order.

[58] In summary, except for clarification of the terms of paragraphs 1 and 2 of the Supreme Court order, I would dismiss the appeal, with costs to the respondent, Ms. Yang.

"The Honourable Madam Justice Kirkpatrick"

I agree:

"The Honourable Madam Justice Neilson"

I agree:

"The Honourable Madam Justice Bennett"

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