

CANADA / JUDGMENT

Tay v. Passeri

2025 BCSC 2309

COURT

Supreme Court of British Columbia

DECIDED

25 November 2025

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2025 BCSC 2309 Tay v. Passeri

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tay v. Passeri,

2025 BCSC 2309

Date: 20251125

Docket: E242386

Registry: Vancouver

Between:

Jaeriah Poh Ching Tay aka Jaeriah Tay

Claimant

And

Danilo Passeri

Respondent

Corrected Judgment: The text of the judgment was corrected on November 28, 2025

Before: The Honourable Justice Shergill

Reasons for Judgment

Counsel for the Claimant (for part of the trial only):

S.Y. Kim

Counsel for the Respondent:

A.M. James

G. Banipal

Place and Dates of Trial:

Vancouver, B.C.

July 21-July 25, 2025

July 28-31 2025

August 1, 2025

October 6-8, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 25, 2025

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I. Introduction

- [1] This matter involves the parties' 8-year-old child, L. The main issues for my determination are: Ms. Tay's application for relocation of L. to Thailand; division of parental responsibilities; parenting time; and retroactive and prospective child support. These issues have taken on a substantially different character due to Ms. Tay's abduction of the child in August 2025.
- [2] The abduction occurred during a two-month break in the trial. Ms. Tay fled with L. to Thailand after her application for an interim relocation order was denied on August 1, 2025.

- [3] To date, the child's exact whereabouts remain unknown. Ms. Tay has refused to return L., or to provide an address for his location in Thailand. She has only permitted Mr. Passeri to speak to L. on a few occasions since the abduction, and for only a few minutes each time.
- [4] Ms. Tay is currently self-represented in this litigation. She and her legal counsel parted company around the time of the abduction. Ms. Tay's request to adjourn the October continuation date was denied, and Ms. Tay did not participate in the trial in October. Based on her last communication with the Court, Ms. Tay remains in Thailand and has no intention of returning L. to Canada.
- [5] Mr. Passeri asks this Court to dismiss Ms. Tay's application for relocation, and to grant him sole guardianship, sole decision-making authority, and sole parental responsibilities, pending L.'s return to Canada and further order of this Court. He also asks that I dismiss Ms. Tay's claims for retroactive and prospective child support.
- [6] For the following reasons, I find that the orders sought by Mr. Passeri should be granted.

II. Background

- [7] Much of the history of the parties and their relationship is uncontroverted. Most of it was agreed to in an Agreed Statement of Facts dated July 21, 2025. I have set out the salient features below, with additional findings of fact where necessary.
- [8] I have made these factual findings based on the evidence lead at the trial. Where conflicts have arisen in the testimony of the witnesses, I have resolved those by considering their reliability and credibility.

A. Credibility and reliability

- [9] Credibility and reliability are related but distinct concepts. Reliability concerns the accuracy of the testimony of a witness. It engages consideration of the ability of a witness to accurately observe, recall, and recount the events in issue. Credibility centers on the honesty of the witness: *R. v. H.C.*, 2009 ONCA 56 at para. 41.
- [10] Credibility involves an assessment of the trustworthiness of their evidence, based on their veracity and sincerity, as well as the accuracy of the evidence provided: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296, leave to appeal to SCC *ref'd* [2012] S.C.C.A. No. 392
- [11] A witness who is not telling the truth is not providing reliable evidence. However, the reverse is not the case--a credible witness may still give unreliable evidence. Sometimes an honest witness will be trying their best to tell the truth and will believe the truth of what they are recounting but nevertheless be mistaken in their recollection: *H.C.* at para. 41.

- [12] In *Gichuru v. Smith*, 2013 BCSC 895 at para. 129, aff'd 2014 BCCA 414, 2014 leave to appeal SCC ref'd, [2014] S.C.C.A. No. 547, the Court noted that demeanour is a factor that a court can consider in assessing a witness' credibility. However, trial judges are cautioned against making credibility assessments based on demeanour alone: *R. v. N.S.*, 2012 SCC 72 at paras. 99-107. This is because the manner in which a witness testifies is a notoriously unreliable measure of credibility: *N.S.* at para. 99, citing *Faryna v. Chorny*, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.). A witness' physical health, personality, cultural and social upbringing, and comfort level with testifying in a courtroom setting, are but some of the things that may affect their demeanour, thereby making it difficult to interpret: *N.S.* at para. 101.
- [13] The relevant principles to be applied when assessing the credibility of interested witnesses are discussed in *Faryna* at 356-357 and *Bradshaw* at para. 186. These factors include whether the witness: modified their testimony; their testimony is in harmony with independent evidence; and whether the testimony seems unreasonable, impossible, or unlikely. I have applied those principles here.
- [14] There are four key witnesses whose credibility and reliability bear mention here. They are the Claimant, her father Clarence Tay, the Claimant's fiancé Aurelian Pallain, and the Respondent.
- [15] I did not find the Claimant to be a credible or reliable witness. Ms. Tay's testimony was internally inconsistent and frequently contradicted by documentary and other evidence. Ms. Tay was defensive, argumentative, and refused to make reasonable concessions. She went out of her way to paint the Respondent in a bad light. It was clear that Ms. Tay did not place much value on Mr. Passeri's role as L.'s father.
- [16] Ms. Tay refused to admit wrongdoing even in the face of documentary evidence to the contrary. For example, Ms. Tay did not disclose in her Form F8 Financial Statements that she had been receiving dividend income from Nirvana Foods. She only admitted to receiving this money (\$1,265 twice per month) when her bank statements were put to her. Even then, Ms. Tay refused to acknowledge that she had a duty to disclose this money on her Form F8, stating that these were "dividend" payments and not income.
- [17] Ms. Tay made false affidavits on more than one occasion. In addition to her Form F8 referenced above, Ms. Tay lied in another affidavit about Mr. Pallain supporting her financially, and about her reasons for wanting an immediate divorce from Mr. Passeri. These two falsehoods are explained further elsewhere.
- [18] Ms. Tay's refusal to take responsibility for her own actions was also evident in other ways. For example, despite L.'s interim report card from April 2024 showing that he had been absent for 27 days and required extra assistance because he was struggling with English, Ms. Tay refused to accept that taking L. out of school for extended vacations could be detrimental to his learning. According to Ms. Tay, L. required extra support for only a short period of time and gained more from travelling than in school.

- [19] Ms. Tay's evidence also diverged from that of Mr. Pallain in some key areas.
- [20] For these and other reasons, I have approached Ms. Tay's testimony with a considerable degree of caution. Where it is controverted, I have looked to other reliable sources for corroboration.
- [21] I also have serious concerns about the veracity of Clarence Tay's evidence. Clarence Tay was not an objective witness. He showed a significant degree of bias in favour of Ms. Tay and against Mr. Passeri. Clarence Tay was intimately involved in the litigation and it was evident that had aligned himself with his daughter's position. Clarence Tay admitted that he had read the examination for discovery transcripts prior to testifying in the trial. He also admitted to making surreptitious audio recordings of Mr. Passeri. These were one-sided and clearly designed to portray Mr. Passeri in a negative light at trial.
- [22] Clarence Tay also has personal animosity against Mr. Passeri, who he believed had punched a hole in the wall of his house, and had abused his financial generosity relating to an airline ticket. These allegations culminated in a Small Claims action that Clarence Tay filed against Mr. Passeri only a few months before this trial commenced. The legal matter did not resolve as Clarence Tay had hoped, and it was clear that Clarence Tay continued to harbour negative feelings towards Mr. Passeri. I also find that Clarence Tay did not value Mr. Passeri's role as a father to L. and gave priority to his own relationship with L. over that of Mr. Passeri.
- [23] I turn now to Mr. Pallain's evidence. I generally found him to be a credible witness. It was evident that Mr. Pallain was trying to be forthright with the Court, despite his close emotional connection to Ms. Tay. He also tried to be fair when speaking about Mr. Passeri. However, I have serious concerns about the reliability of his evidence. While he spoke fondly of L., Mr. Pallain had spent very little time in L.'s presence. He also made some broad statements about important matters which were not corroborated by any documentary evidence.
- [24] I do not have the same concerns regarding Mr. Passeri's evidence. I found Mr. Passeri to be a credible and reliable witness. He provided his testimony in a forthright manner and was not prone to exaggeration or embellishment. He frequently made concessions against self-interest and was generally non-defensive. Mr. Passeri did not go out of his way to cast aspersions on the Claimant, her partner, or her family. His evidence generally accorded with the documentary and other evidence.
- [25] In assessing Mr. Passeri's credibility, I have considered Mr. Passeri's failure to report his tips on his income tax returns. In *Gagnier v. Canadian Forest Products Ltd.*, 1991 Carswell BC 2391, 1991 CanLII 143 (B.C.S.C.), Justice Finch (as he then was) noted that "false income tax returns raise a strong inference against the plaintiff who asserts a loss of income claim": at para. 27, citing *Iannone v. Hoogenraad* (1990), 50 B.C.L.R. (2nd) 390, 1990 CanLII 1089 (B.C.S.C.).

- [26] Any concerns that this failure might raise about the reliability of Mr. Passeri's evidence (particularly regarding financial matters), are allayed by the admissions made by Mr. Passeri. At the start of the trial, the parties tendered an Agreed Statement of Facts into evidence. Through that document, Mr. Passeri admitted that he was receiving \$7,000 per year in tips which were not included in his reported income. The accuracy of this figure is evidenced by the fact that it was also agreed to by Ms. Tay.
- [27] I will comment on the credibility and reliability of the remaining witnesses, as it becomes relevant in these reasons.

B. Parties

- [28] The Claimant is presently 36 years old. Ms. Tay has lived in Vancouver from 2000 until approximately August 1, 2025. Ms. Tay was born in Toronto, Ontario, but lived there only for a few years, before she moved with her family to Singapore. Ms. Tay resided in Singapore for about 9 years. She then moved with her family to Vancouver, British Columbia.
- [29] Ms. Tay was employed as a software/technical engineer until June 2024, when she voluntarily quit her employment in contemplation of relocating to Spain. Ms. Tay was still not working at the time of trial.
- [30] The Respondent is 53 years old. He was born in Italy and moved to British Columbia in 2011. He is a chef by training. Mr. Passeri suffered a work injury on November 15, 2023. He was off work for almost a year and returned to work on October 7, 2024. He was gainfully employed at the time of the trial.
- [31] The parties met in Italy and began a romantic relationship shortly afterwards. Around November 2011, they moved to the Metro Vancouver area of British Columbia and commenced cohabitation in the home of Ms. Tay's parents. They were married in December 2012. They separated on July 12, 2020, and were divorced on February 6, 2025.
- [32] The parties have one child, L., who was born in 2017. He is currently 8 years old and was supposed to have started grade 3 in September 2025. Prior to the commencement of this proceeding, L. was attending elementary school at a school in the Metro Vancouver area. By virtue of this Court's order made on August 1, 2025 ("August Order"), and pending final determination of this matter, L. was to resume his studies at the same school in September 2025.

C. Post Separation Events

- [33] The separation occurred following an altercation on July 12, 2020. Despite the events of that date, the parties made strong efforts to have a cordial separation. Indeed, the parties vacationed together with L. on several occasions after separation. They also shared a joint bank account until June 2024.

- [34] At the time of separation, the parties were residing with the Claimant's parents at the Tay Family Home. After Mr. Passeri moved out, L. lived with Ms. Tay and her parents, while having parenting time with Mr. Passeri informally. For some time after separation, Mr. Passeri continued to have a house key to the Tay Family Home, to facilitate his visits with L.
- [35] Around December 2020, Mr. Passeri returned to live at the Tay Family Home, where Ms. Tay and L. were still residing. He stayed there until February 2021, before being asked to move out and find his own accommodation.
- [36] Mr. Passeri had difficulty finding affordable and suitable housing that was near Ms. Tay. Thus, while L. lived primarily with Ms. Tay and her family after the separation, Mr. Passeri saw L. as often as he could based on his work schedule.
- [37] Mr. Passeri increased his parenting time with L. after he secured adequate housing. Following his work injury in November 2023, Mr. Passeri had L. every weekend from Friday after school to Sunday evening. This continued until about late August or September 2024, when Ms. Tay unilaterally reduced Mr. Passeri's parenting time to every alternate weekend and two weekday evenings for several hours each.
- [38] At the date of trial, L. was residing with Ms. Tay and seeing his father for parenting time every other weekend from Friday at 5:30 p.m. to Sunday evening.

D. History of Litigation

- [39] In early 2024, Ms. Tay communicated with Mr. Passeri about getting a divorce. Through subsequent communications, Mr. Passeri learned that Ms. Tay wished to relocate with L. to Spain. He did not agree to her relocation plans.
- [40] Consistent with his position, Mr. Passeri served an Objection to Relocation on April 17, 2024, through his first counsel, Danica Beck. Mr. Passeri provided his Objection pursuant to ss. 16.91(1)(b)(i) and 16.91(2) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp).
- [41] Up until June 2024, the parties shared a bank account which was used to fund some of the child's activities. On June 4, 2024, Ms. Tay and Mr. Passeri entered into an Interim Agreement. The Interim Agreement dealt with summer parenting time for 2024 on a without prejudice basis and provided for a final agreement regarding division of the joint bank account. The Interim Agreement also contemplated review of child support in September 2024, including retroactive support.
- [42] The Interim Agreement was filed by Ms. Tay on September 13, 2024.
- [43] Ms. Tay filed her Notice of Family Claim on September 16, 2024, seeking, amongst other things, an order for: divorce; parenting arrangements; child support; and special and extraordinary expenses. Ms. Tay also indicated in her Notice of Family Claim that she wished to relocate to Barcelona, Spain with L. She filed an Amended Notice of Family Claim on November 13, 2024, in which she added a claim for spousal support and a claim for

family property division. Although Ms. Tay also sought interim protection orders in the Notice of Family Claim she did not pursue this relief.

- [44] Mr. Passeri filed his Response to Family Claim and a Counterclaim on October 22, 2024. He filed a response to Ms. Tay's Amended Notice of Family Claim on November 21, 2024.
- [45] On November 29, 2024, Associate Judge Robertson pronounced a consent order for Mr. Passeri to pay interim child support of \$616 per month commencing on December 1, 2024. The payments continued in that manner until I pronounced the August Order.
- [46] The parties appeared in court several more times prior to the trial commencing. This included an attendance before Justice Latimer on February 6, 2025, for a divorce order and an order made by Justice Morellato on March 7, 2025, appointing Robert Colby to prepare a s. 211 Report.

E. Trial Proceeding and Abduction

- [47] This trial commenced before me on July 21, 2025. It was originally set for 10 days, ending on August 1, 2025. Due to insufficient time estimates, the trial did not complete as planned. The parties secured a further five days for October 2025.
- [48] The trial re-commenced on October 6, 2025. It concluded on October 8, 2025. As important events occurred during the break in the trial, I will distinguish between the two separate time blocks by referring to them as the "first part" or the "second part" of the trial.
- [49] On the second day of the first part of the trial, the parties settled issues related to division of family property and family debt, as well as retroactive s. 7 expenses. On July 22, 2025, I pronounced the following order by consent:
 - a) Each party's claim for spousal support is summarily dismissed, as if tried on its merits.
 - b) The following are extraordinary and special expenses of the child ("Section 7 Expenses"):
 - i. Child care expenses;
 - ii. Medical and dental insurance premiums attributable to the child;
 - iii. Health related expenses that exceed insurance reimbursement;
 - iv. Extraordinary expenses for primary or secondary school education or for other educational programs that meet the child's particular needs;
 - v. Expenses for post secondary education; and
 - vi. Extraordinary expenses for extracurricular activities.
 - c) Ms. Tay's claim for retroactive Section 7 Expenses is discontinued.
 - d) Each party shall keep their respective bank accounts or vehicles without further claim by the other.

- e) Neither party will apply to divide the other party's unadjusted pensionable earnings under ss. 55, 55.1, and 55.2, of the Canada Pension Plan (Canada).
 - f) Each party will be solely responsible for any and all liabilities associated with the property that they have retained and all other personal debt, including but not limited to, credit card debt, financial institution debt, and/or Canada Revenue Agency debt (past, present, and future) and the parties will indemnify the other and save each other harmless from all such debt of the other party.
 - g) Each party's claim for division of family property and family debts is dismissed, as if tried on its merits.
- [50] The trial continued for the remainder of the two weeks. When the first part of the trial adjourned on August 1, 2025, the Claimant had closed her case, and the Respondent was under cross-examination. With the consent of all parties, a further five days were secured starting October 6, 2025.
- [51] On August 1, 2025, both the parties sought various interim orders pending continuation of the trial. Ms. Tay asked for an interim relocation order to Thailand. I denied her request.
- [52] On August 1, 2025, I pronounced the August Order addressing summer parenting time and parenting time during the school year. I determined that pending further court order or agreement of the parties, L. would remain in school in the Metro Vancouver area. Each parent was given summer holiday parenting time for a two-week block. This was to be followed by a 5-5-2-2 parenting schedule that was set to coincide with the start of the school year. It was understood that this parenting schedule would only operate if Ms. Tay remained in British Columbia before completion of the trial. Otherwise, L. would remain in British Columbia in his father's care. I also suspended Mr. Passeri's obligation to pay interim child support from September 2025 onwards, pending further Court order.
- [53] While the parties were each permitted to travel abroad during their two-week summer holiday block, I restricted them to overseas travel to France, Italy, or Spain. In the August Order, I expressly denied Ms. Tay permission to travel with L. to Thailand during her summer parenting time.
- [54] Pursuant to the August Order, Ms. Tay was required to return L. on August 16, 2025, so that Mr. Passeri could commence his two-week summer holiday block. Ms. Tay failed to do so. Instead, without telling Mr. Passeri, she took the child to Thailand and refused to return L. or to disclose the address where she was keeping him. When Ms. Tay left for Thailand, she knew that she was acting in direct breach of the August Order and against the wishes of the child's father. In my order made on September 26, 2025, ("Abduction Ruling" or "September Order") (referenced further below), I summarized Mr. Passeri's efforts to try to ascertain L.'s whereabouts.

- [55] Ms. Tay parted company with her legal counsel, and on August 19, 2025, she filed a Notice of Intention to Act in Person.
- [56] On August 25, 2025, Mr. Passeri filed an application for return of the child. This included seeking various declarations and orders to facilitate the child's return. As part of these orders, Mr. Passeri also asked for production of unredacted documents from Ms. Tay's previous legal counsel, Ms. Kim, which may disclose the whereabouts of L., Ms. Tay, or Ms. Tay's family members in Thailand.
- [57] In my September Order, I issued Reasons for Judgment indexed at 2025 BCSC 1874. I granted the application brought by Mr. Passeri in its entirety. Ms. Tay was sent a copy of the Abduction Ruling but failed to comply with the September Order.
- [58] On September 30, 2025, Ms. Tay emailed a request to adjourn the trial. I denied the adjournment on October 2, 2025, and provided Oral Reasons for the denial on October 6, 2025.
- [59] This trial proceeded on October 6, 2025, in Ms. Tay's absence. The trial concluded on October 8, 2025, with judgment being reserved.
- [60] On October 6, 2025, this Court learned that Ms. Tay had commenced a legal proceeding in Thailand on September 2, 2025 ("Thai Proceeding"). The orders sought in the Thai Proceeding are similar to some of the orders that are being sought by the Claimant in this proceeding. In the Thai Proceeding, the Claimant asks for an order that she be the sole custodian of the child, and that the Respondent father be required to pay her legal fees and court fees "at the highest rate".
- [61] At the conclusion of this trial on October 8, 2025, I heard the Respondent's application for an immediate order requiring Ms. Tay to discontinue the Thai Proceeding, and to also surrender the child's passport.
- [62] In Oral Reasons for Judgment that were delivered on October 8, 2025, I concluded that the Thai Proceeding was an abuse of process. However, I dismissed the Respondent's application for an order that Ms. Tay discontinue the Thai Proceeding, on the grounds that this Court lacked the jurisdiction to make such an order.
- [63] However, I granted the Respondent's application for an order that Ms. Tay immediately surrender the child's passport to Mr. Passeri, and that she be prohibited from applying for any new passports on behalf of the child without the consent of Mr. Passeri or further order of this Court.

III. Relocation Application

- [64] The Respondent argues that Ms. Tay's application for relocation should be dismissed outright and not be considered on the merits, because of Ms. Tay's conduct.

[65] Before I address this issue, I will set out additional background facts which provide important context.

A. Background

[66] I begin with a summary of the evidence related to Ms. Tay's request to relocate with L. to Bangkok. This includes her reasons and plans for relocation. The evidence on these issues was provided by the parties' as well as various lay witnesses. I have referred to them where necessary.

[67] In addition, the Court heard from Mr. Robert Colby, a psychologist appointed by the Court to provide a s. 211 report. Mr. Colby's expert opinion as it relates to relocation, is summarized at the end of this section.

1. Decision to Relocate

[68] According to Ms. Tay, her desire to relocate with L. is a fulfillment of plans that she and Mr. Passeri had made when they were still together. During their relationship, they both agreed that it would be beneficial for L.'s growth to be raised in Europe or Southeast Asia. These plans remained unchanged even after separation.

[69] Ms. Tay testified that Mr. Passeri openly supported her plans to move abroad with L. Further, he made plans of his own to move to Thailand or Italy so he could be closer to them. She maintains that Mr. Passeri continued to support her plans for relocation even following their separation and the commencement of her relationship with Mr. Pallain. When she quit her job in June 2024, she did so in anticipation of her move, and on the strength of Mr. Passeri's support for the relocation.

[70] I reject Ms. Tay's evidence that Mr. Passeri had consented to her relocation with L. to Spain or Bangkok. I accept Mr. Passeri's testimony that while he was initially receptive to the idea, this was contingent on L. being able to split his time evenly between his parents' homes. Ms. Tay's original plan was to enroll L. in an online school so he could move back and forth between the two countries and continue his studies without interruption. However, Ms. Tay later advised Mr. Passeri that she intended to enrol L. in a physical school in Spain. This meant that Mr. Passeri's relationship with L. would effectively be terminated. Mr. Passeri wanted to maintain a strong relationship with his son and told Ms. Tay that he would not consent to her relocation with L. Mr. Passeri's testimony is supported by the Claimant's father. Clarence Tay testified that Mr. Passeri told him he did not agree to the relocation as Ms. Tay had changed the plan and L. would no longer attend an online school.

2. Reasons to Relocate

- [71] Ms. Tay's reasons to relocate were set out in her Notice of Family Claim. She stated that she wished to relocate with L. to Barcelona, Spain "for work and to be with her fiancé", Aurelian Pallain. Mr. Pallain lives and works in Barcelona. They met in July 2023 while she was travelling overseas. They are currently engaged to be married. Their marital status at trial raises an important point regarding Ms. Tay's credibility.
- [72] In January 2025, Ms. Tay expressed an urgent desire to get divorced from Mr. Passeri so that she could marry Mr. Pallain and start a family. To support her application for a divorce order that would take effect immediately (rather than the requisite 31 day waiting period) Ms. Tay affirmed an affidavit on January 20, 2025 ("Tay Affidavit No. 4").
- [73] At para. 15 of Tay Affidavit No. 4, Ms. Tay attested the following:
- Furthermore, I come from a conservative family and do not wish to get pregnant while I am married to another person. My fiancé, Aurelien also agrees with me. My remaining married to Danilo is causing a lot of stress in our relationship since we both wish to be married and start having children of our own. We plan on getting married as soon as I am granted the divorce.
- [74] On the strength of Ms. Tay's evidence, Justice Latimer granted a divorce order on February 6, 2025, to take effect on the same date. Despite her stated intentions, Ms. Tay did not follow through with her marriage plans to Mr. Pallain.
- [75] When the trial commenced in July 2025, Ms. Tay and Mr. Pallain had not gotten married, nor had they set a wedding date. By this time Ms. Tay was approximately six months pregnant with her and Mr. Pallain's child. The baby's due date was for early November 2025.
- [76] At trial, Ms. Tay was asked to explain the apparent contradiction between the statements made in her Affidavit No. 4 and her failure to get married to Mr. Pallain. She stated that she and Mr. Pallain had planned to marry in March 2025, but that their priorities had changed following the news that she was expecting a child. They wanted to have a bigger celebration with their family and friends and their new baby. I do not find this evidence credible. Ms. Tay's reasons for not marrying Mr. Pallain "as soon as" she was granted the divorce, are inconsistent with Mr. Pallain's evidence. According to Mr. Pallain, their marriage was delayed because of their living arrangements and this Court process.
- [77] I find it difficult to reconcile Ms. Tay's evidence regarding her changed marriage plans to Mr. Pallain, with the other evidence before me. In my view, Ms. Tay never intended to marry Mr. Pallain "as soon as" she was granted a divorce. Rather, she made this statement to obtain an urgent divorce, and in so doing, she deliberately misled the Court.
- [78] By the time the July 2025 trial date arrived, Ms. Tay's desire to relocate to Spain had dissipated. Ms. Tay now wanted to move with L. to Bangkok, Thailand. Ms. Tay testified that their plans changed after they found out she was pregnant with Mr. Pallain's child. She now wanted to live closer to her parents who had purchased a farm approximately several hours outside of Bangkok. Though her parents still lived in Canada, they were planning to move to Thailand. She testified that she wanted to move to Bangkok so that she could be closer to

them and draw on them for support.

- [79] In July 2025, Ms. Tay's parents (Clarence and Pamela) were still living in the Metro Vancouver area. Clarence Tay testified that he was employed in the food industry, with plans to retire in 2026. In anticipation of his retirement, he and his wife had purchased a farm in Thailand in 2023. The property is located in Ratchaburi, Thailand which is about two hours from Bangkok. Clarence Tay explained that over the past two years, they had built two houses on the property: one for he and his wife, and the other for Ms. Tay and her family when they visited.
- [80] Clarence Tay testified that he had timed his departure for when he would become eligible for his Canada Pension Plan pension. Once in Thailand, he and his wife would operate the farm for a residual income. Clarence Tay described plans to spend more time in Bangkok in the first few years of the baby's life so that he and his wife could be near Ms. Tay and her children. He stated that after the baby was a bit older, he and his wife would stay primarily on the farm where his grandchildren could visit. However, I find his evidence regarding these plans to be contradictory, vague, unrealistic, and unreliable. Even if I accept that Clarence Tay and his wife would try to provide Ms. Tay with some support to care for her children, it was clear from his evidence that this would only be for a limited duration.
- [81] I also note that both Clarence Tay's plans for their life in Thailand were intimately connected to his wife's goals and wishes. However, this court did not receive any direct evidence from Pamela Tay about whether she agreed with her husband's goals or those of Ms. Tay. Pamela Tay was present in the courtroom during large portions of the first part of the trial. Despite being listed as a witness for the Claimant, she was never called to testify, and no reasonable explanation was provided for her absence.
- [82] Finally, I note that Clarence Tay did not commit to providing any future financial support for Ms. Tay and her children. This is despite the fact that he and his wife had been an important source of financial support for Ms. Tay even after she and Mr. Passeri married. Clarence Tay explained that while he and his wife were supportive of Ms. Tay, they could not afford to give her any more money as they had exhausted their savings helping her with this litigation and other matters.

3. Relocation Plans

- [83] Ms. Tay's evidence was that after relocation, she planned to live with Mr. Pallain and L. in Bangkok. She stated that they would live in an upscale neighbourhood in Thong Lor, where L. would be enrolled in an elite French private school. The school would cost at least \$13,000 CDN per year. She also planned to have L. obtain medical care through a private hospital. Ms. Tay testified that after the move to Thailand, she would be relying on Mr. Pallain to support her and L. as well as their unborn child.

- [84] Ms. Tay did not have any immediate plans to return to work and acknowledged that she would be completely financially dependent on Mr. Pallain for the near future. Though she stated a desire to eventually return to work, she did not have any concrete plans for what she would do for work after giving birth.
- [85] Regardless, Ms. Tay stated that she intended to fully rely on Mr. Pallain for financial support. She asserted that Mr. Pallain's income was more than enough to support them all. Yet neither she nor Mr. Pallain provided any objective evidence to support this assertion. There is no evidence about his income or assets or liabilities.
- [86] According to Ms. Tay, Mr. Pallain was already a source of financial support for her and L., and he would continue to do so once they relocated to Bangkok. Her testimony was only partially corroborated by Mr. Pallain. While Mr. Pallain expressed an intention to support Ms. Tay and L. financially once they all moved to Bangkok, to date he had not done so.
- [87] At the time of trial, Mr. Pallain was still living and working in Barcelona, Spain. He worked as a Chief Operating Officer of a technology company that was involved in the education sector. He was also a shareholder in that company, which he planned to take public within the next two years. Mr. Pallain did not have any residence or office in Bangkok but stated he would open up an office when he moved to Thailand. Mr. Pallain explained that he was fond of Bangkok and had lived there previously for six years. Though he had left Thailand in 2018, Mr. Pallain still had friends in the region. While the company did not have any offices in Bangkok, Mr. Pallain's employer was supportive of his move and desire to work remotely. I note however that Mr. Pallain provided no evidence that he had a visa that would allow him to work in Thailand for a Thai employer, or to open his own company's office there.
- [88] Ms. Tay's assertion that Mr. Pallain was presently a source of financial support for her was contradicted by Mr. Pallain's own evidence. Mr. Pallain denied giving Ms. Tay any money in either 2024 or 2025. He also denied regularly covering her monthly living expenses. Mr. Pallain agreed under cross-examination that his financial support for Ms. Tay was limited to when they were on vacations together. During those times, he would pay for trips, restaurants, or activities. I pause here to note that money spent on joint vacations does not qualify as "financial support" in the manner that these words are normally employed.
- [89] Mr. Pallain expressed a willingness to support Ms. Tay and L., including paying for L.'s education and private healthcare. However, these assertions were vague and not backed up by any objective evidence. I note also that Mr. Pallain's interactions with L. have been limited to short vacations. In the two years since he and Ms. Tay had met, Mr. Pallain has gone on vacation with L. and Ms. Tay on five occasions. The longest period of time that he has spent with L. was two weeks. Thus, while Mr. Pallain spoke fondly of L., it is evident that their relationship was of very limited scope. Aside from helping L. with some of his homework, Mr. Pallain admitted that he had never done any of the tasks normally associated with parenting a child, such as taking L. to medical appointments, attending parent-teacher conferences, or attending L.'s other regular activities.

4. Section 211 Report

- [90] Mr. Colby's opinion is set out in a detailed report dated May 21, 2025 ("211 Report"). This section only deals with his opinion regarding relocation.
- [91] Mr. Colby testified during the first part of the trial. He was cross-examined extensively on his opinion by counsel for both parties. At that time, it was not known that Ms. Tay had intentions to abduct L. and cut off any meaningful contact between L. and his father.
- [92] Consequently, while I have no concerns regarding Mr. Colby's qualifications or his credibility, most of his findings are unreliable. This is because the circumstances before this Court are materially different than those contemplated by Mr. Colby when providing his opinion.
- [93] In *C.C. v. S.P.R.*, 2023 BCCA 422 at para. 19, the Court held that when faced with a relocation application, the court must determine the issues based on the options presented by the parties. Consequently, Mr. Colby was asked to opine on the two options presented by the parties, which were: (1) L. staying in the Lower Mainland and residing primarily with his father; or (2) L. staying in Thailand and residing primarily with his mother (211 Report at p.3).
- [94] Presented with these two options, Mr. Colby recommended that Ms. Tay be permitted to relocate with L. based on her history of parental involvement and the "Social Capital" that he would gain from the relocation (211 Report at p. 77). This would include being in close proximity to his soon to be born new sibling, as well as his maternal grandparents who have been actively involved in his life over the years (211 Report at p. 20).
- [95] However, Mr. Colby noted that a move to Thailand with his mother would create a considerable loss to L. in terms of his daily involvement and engagement with his father, which also provided Social Capital (211 Report at p. 68). Consequently, if Ms. Tay was permitted to relocate to Thailand with L., Mr. Colby considered it "essential that L.'s paternal parenting time be extensive and uninterrupted during holiday times including school breaks and summer scheduling" (211 Report at p. 71).
- [96] Mr. Colby's recommendation that Ms. Tay be permitted to relocate with L. to Thailand, was premised on various assumptions, which he stated, "are the basis for the recommendations presented, and should the Trier-of-Fact negate or reject the assumptions presented, reconsideration would have to be made of the recommendations, as presented" (211 Report at p. 75).
- [97] To that end, at p. 75 of the 211 Report Mr. Colby made the following key assumptions which are not proven in the evidence:
- Assumption 3: "Both parents seek to engage the other parent in a co-parenting arrangement."
 - Assumption 5: "There is no significant alienation of the child from either parent "

[98] Consequently, Mr. Colby's opinion regarding relocation is unreliable. This conclusion is not a commentary on Mr. Colby or the thoroughness of his assessment. Rather, as I noted earlier, Mr. Colby was not aware when he prepared his report, that Ms. Tay would abduct L. and prevent him from having any meaningful contact with his father.

B. Should the Relocation Application be Entertained?

[99] I now turn to whether Ms. Tay's relocation application should be entertained by this Court.

[100] The Respondent argues that Ms. Tay's application for relocation should not be considered as: (1) it is an abuse of process; (2) Ms. Tay has not complied with court orders; and (3) it would bring the administration of justice into disrepute. I agree.

[101] In *Y.Q. v. J.D.*, 2022 BCSC 2189, the respondent absconded to China with the parties' child. This was done against the wishes of the Claimant and contrary to an agreement for the child's return: *Y.Q.* at para. 39. Once in China, the Respondent obtained an order from the Chinese court, giving him sole custody: *Y.Q.* at para. 59. The Respondent also participated in the BC proceeding, where he argued that the child's best interests would favour her remaining in China: *Y.Q.* at para. 58. It was his position that the best interests of the child govern despite any wrongful retention of the child. Justice Kirchner did not agree: *Y.Q.* at paras. 70-71.

[102] At para. 72 of *Y.Q.*, the Court held that it would only entertain the father's application for relocation after the child was returned to British Columbia. In arriving at this conclusion, Justice Kirchner noted that entertaining the application would effectively mean that the Court was endorsing the unilateral removal of the child. This would be "abhorrent and directly contrary to the objectives stated in Division 7 of the FLA to discourage child abductions":

[64] In the case now before me, that is precisely what the respondent is asking this court to do, namely endorse his unilateral removal of A.D. from British Columbia and treat this application not as one for the return of a child who has been abducted, but as an application by the claimant for relocation of A.D. back to British Columbia.

[65] In my view, that would be abhorrent and directly contrary to the objectives stated in Division 7 of the FLA to discourage child abductions.

[]

[68] Further, as Justice Kent observed, the *Tsuchiya* case also states that the best interests of the child requirement under the FLA must be read in the context of the stated purposes of Division 7 of the FLA which concerns extraprovincial matters respecting parenting arrangements. One of the stated purposes of that division is "to discourage child abduction as an alternative to determining by due process the guardianship of, or parenting arrangements with respect to, a child".

- [69] In Tsuchiya, the Court of Appeal stated at para. 38:
- [38] . . . Those purposes reflect the underlying assumption that a wrongful removal of children from one jurisdiction to another will, in most cases, be contrary to the children's best interests. This is so because such a move almost invariably interferes with meaningful contact between the children and one of their lawful parents or guardians, and with their other family, friends, school, and home in a manner which is necessarily disruptive of their sense of stability and security.
- [103] I agree with the Respondent that Ms. Tay's conduct goes beyond simple "non-compliance" or a technical a failure to seek court approval. Ms. Tay has actively thwarted the court process that she put into motion, so that she could achieve her singular objective of taking the child wherever she pleases, regardless of his father's wishes or this Court's ruling. By doing so, she has displayed a profound disrespect for the law and this Court's processes.
- [104] Ms. Tay has abducted the child and fled the jurisdiction. She did this in direct contravention of the August Order. Ms. Tay has also refused to return the Child despite the September Order requiring her to do so.
- [105] I agree with the Respondent that given these circumstances, it would bring the administration of justice into disrepute if this court was to entertain the Claimant's relocation application.
- [106] In *Larkin v. Glase*, 2009 BCCA 321 at para. 31, the Court of Appeal noted that where a party has not complied with a court order, the court has the discretion to refuse to hear an application or to dismiss proceedings. This is the case even if the "disobedience" at issue, is not related to the matter under consideration: *Larkin* at para. 31. The court's discretion is "based on the policy of this Court to protect the administration of justice by avoiding circumstances where the Court could be held in disrepute by assisting a party who has exhibited disdain for the judicial process": *Larkin* at para. 31. See also *K.P.B. v. A.S.R.*, 2016 BCCA 382 at para. 37; *Bullock v. Bullock*, 2008 BCCA 162 at paras. 2-7; *Berry v. Berry*, 2002 BCCA 129 at para. 1; *Arrocha v. Harrison*, 2019 ONCA 838, leave to appeal to S.C.C. ref'd, 39036 (23 April 2020).
- [107] Abuse of process has also been established in this case. Ms. Tay was evidently aware of her need to seek an order to be permitted to relocate to Thailand with L. This is evidenced by the fact that this court proceeding was commenced by Ms. Tay. Yet when Ms. Tay realized that she would not get the interim relocation order she was seeking, she intentionally deceived this Court to permit interim travel to Europe in order to facilitate her abduction of L. in the midst of trial (see *Abduction Ruling* at paras. 11-16).
- [108] After Ms. Tay fled the jurisdiction with the child, she tried to adjourn this proceeding through an email to the Court, rather than appearing to make submissions on her relocation relief or seeking an adjournment through proper channels. Ms. Tay cited various hardships, including financial difficulties with retaining legal counsel in British Columbia.

What she did not disclose to this Court was that she had already retained legal counsel in Thailand and commenced parallel proceedings. This evidence came to light during the second part of this trial, when Mr. Passeri took the stand to provide an update of the events that had transpired since August 1, 2025.

- [109] Mr. Passeri testified that he has paid approximately \$14,000 USD to retain a lawyer in Thailand to represent him in the family case brought by Ms. Tay. It is reasonable to assume that Ms. Tay has spent a similar amount, if not more, to fund her legal proceedings in Thailand. If Ms. Tay could afford legal counsel in Thailand, then she could certainly have paid a lawyer in British Columbia to represent her interests in this proceeding. Her actions reflect a conscious decision to reject the authority of this Court in an effort to find a more favourable outcome.
- [110] For all of these reasons, I conclude that Ms. Tay's application for relocation should not be entertained. The relocation application is dismissed.
- [111] It bears mentioning that I would come to the same conclusion even if I had found that there are grounds to consider Ms. Tay's relocation application on its merits. I say this for several reasons including, my detailed assessment under the best interests analysis discussed below as well as my findings above.
- [112] In my view, the reasons that Ms. Tay provided for the relocation are vague and fluid in nature. The nature of Ms. Tay's plans, combined with her weak rationale for wanting to move to Thailand, leads to a strong inference that her decision to relocate with L. is not being made in good faith. Rather, Ms. Tay's primary motivator appears to be to move L. as far away from Mr. Passeri as possible, rather than what is in L.'s best interests. This factor weighs against allowing relocation.
- [113] Ms. Tay has chosen to uproot L. from a stable life in British Columbia where he is thriving, and to leave her lucrative career, in favour of uncertainty. Her relationship with Mr. Pallain is untested, and their future is contingent on many variables. Ms. Tay's belief that Mr. Pallain will support her and L. completely, is not backed up by any concrete evidence. There is no history of Mr. Pallain having supported L. and Ms. Tay in the past; and there is no evidence that he can meet their financial needs in the future.
- [114] They have no date set for their marriage, despite Ms. Tay asserting that being married to Mr. Pallain is an important step in their relationship. Mr. Pallain has no independent reason to move to Bangkok. He is only moving there because of Ms. Tay. Indeed, Mr. Pallain continues to live in Spain and has not made any concrete steps towards building a life in Bangkok. There is no evidence that he has obtained a visa or immigration status to work in Thailand, or to operate a foreign company while residing in Thailand. He has not opened a satellite office for his company in Bangkok or purchased or leased any residence for he, Ms. Tay, and L.

- [115] Mr. Pallain has not provided Ms. Tay with any of the financial support that she believes he will give her and which she requires to provide for L. Indeed, during the second part of the trial, this Court was provided evidence of recent communications from Ms. Tay where she is seeking financial support from Mr. Passeri--despite abducting L. to Thailand against his wishes.
- [116] Given the lack of certainty around the relationship and financial situation between Ms. Tay and Mr. Pallain, there is a risk that the relocation will negatively impact L.'s access to, among other things, education, healthcare, and extracurricular activities. All of these are expenses which the Claimant has not been able to show she can meet if her relocation application were granted. This also weighs against permitting relocation.
- [117] If the relocation were approved, the amount of parenting time and involvement that Mr. Passeri will have with his son is minimal. This is due to the geographical distance between British Columbia and Thailand, and Ms. Tay's persistent unwillingness to allow Mr. Passeri to have any meaningful parenting time with L. This is particularly evident in the weeks and past several months, during which Mr. Passeri has only been able to speak to L. sporadically and for no more than a few minutes at a time. This also weighs against granting relocation.
- [118] Further, Ms. Tay has failed to comply with court orders and is unlikely to comply with any order in the future with which she does not agree.
- [119] The detrimental impact of the relocation on L.'s relationship with his father, coupled with the lack of evidence that all of his needs will be met, the lack of reasonable rationale for the move, the uncertainty of the plans, Ms. Tay's willingness to disobey court orders, and a lack of any reasonable proposal for relocation, all lead me to conclude that relocation of L. to Thailand is not in his best interests.

IV. Parenting Arrangements

- [120] Mr. Passeri asks for an order granting him sole guardianship, sole decision-making authority, and sole parental responsibilities, pending L.'s return to Canada and further order of this Court.
- [121] The governing principle for making parenting orders, is to have regard to what is in the best interests of the child. This is expressed in s. 16(1) of the Divorce Act, which stipulates that the court shall take into consideration only the best interests of the child when making a parenting or contact order.
- [122] Section 16(3) of the Divorce Act sets out several factors for the Court's consideration. I will address these below, having regard to the evidence before me.

A. Best Interests Analysis

- [123] Section 16(3) of the Divorce Act stipulates that when making a parenting or contact order, the court shall take into consideration only the best interests of the child.
- [124] When considering the factors referred to in s. 16(3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being: Divorce Act, s. 16(2).
- [125] As part of his holistic assessment, Mr. Colby considered: (a) the emotional and psychological status of each of the parents relative to their parenting abilities and involvement; (b) parent-child bonding and parental histories; (c) L.'s emotional and psychological development, and his views; (d) L.'s relationship with others, such as his grandparents and Ms. Tay's fiancé; (e) allegations of family violence; (f) the willingness of each parent to satisfy L.'s needs; (g) the impact of each party's lifestyle on L.; (h) the parties long term plans for raising L.; and (i) the impact of Ms. Tay relocating to Thailand with L. or alternately, of L. staying in British Columbia with his father while his mother relocates.
- [126] I have set out the relevant portions of Mr. Colby's opinion which impact the parenting orders, below as they arise.
1. Child's Circumstances
- [127] In determining the best interests of the child, the court is required to consider all factors related to the circumstances of the child, including those set out at s. 16(3).
- a) When considering the factors referred to in s. 16(3), the court is required to give primary consideration to the child's physical, emotional and psychological safety, security and well-being: Divorce Act, s. 16(2). Needs of the Child
- [128] Section 16(3)(a) requires the court to consider the child's needs, given the child's age and stage of development, such as the child's need for stability.
- [129] At the time he was assessed by Mr. Colby, L. was seven years old. He turned eight just prior to the second part of this trial.
- [130] Mr. Colby opined that L. needs to be in a stable environment which is free from parental conflict. This includes the need not to be incorporated "into the parental dispute". Mr. Colby explained this concern in the following manner:

The need of a child is to not experience conflict, and not be engaged at exchanges and interactions with the parents in a manner that adds to their sense of vulnerability. Children need to be in a safe productive environment without concern or risk to themselves or their wellbeing. They need to feel accepted and listened to by their parents in a way that is not threatening or devaluing. Children should not be in an environment where they are engaged in a manner that they are incorporated into the parental dispute.

(211 Report at p. 54)

[131] I have addressed the parties' abilities and willingness to meet these needs, in section (h) below.

b) Nature and Strength of Important Relationships

[132] Section 16(3)(b) requires the court to assess the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life.

[133] There is no dispute that L. has a strong emotional bond to both parents. Mr. Colby reported that he is also very attached to his maternal grandparents and has a "positive interactive relationship" with Mr. Pallain (211 Report at p. 63). However, L.'s relationship with his father is in jeopardy following Ms. Tay's unilateral relocation of L. to Thailand. This reflects negatively on Ms. Tay as well as her parents and Mr. Pallain.

[134] I find that Ms. Tay's abduction of L. has likely been facilitated by Ms. Tay's parents and also possibly by Mr. Pallain. I say this for two reasons. First, in the court documents filed by Ms. Tay in Thailand, she states that her personal address is in Khao Cha-Ngum, Potharam District, Ratchaburi, Thailand. Ratchaburi is where Clarence and Pamela Tay's farm is located. It can reasonably be inferred that Ms. Tay is either living at their farm with L. or is using her parent's address on court documents with their consent so that her actual whereabouts can remain hidden. Either way, it is unlikely that she could do this without her parent's knowledge or cooperation. Second, as Ms. Tay is not working, her only sources of financial support are her parents and Mr. Pallain. If I am to believe Clarence Tay's evidence that he and his wife are not able or willing to provide further financial support to Ms. Tay, then Ms. Tay's only option is to call on Mr. Pallain for support. If Mr. Pallain is financially supporting Ms. Tay so that she can remain in Thailand after having abducted L., then he is complicit in the abduction and is actively involved in keeping L. away from his father.

[135] Thus, of the five adults involved in L.'s life, Mr. Passeri is the only one whose conduct remains beyond reproach. He is the only person that has credibly shown a desire and ability to foster a positive relationship with L. and the other important people in L.'s life.

[136] This brings me to the next factor for consideration.

c) Party's Willingness to Support Relationship with other Parent

[137] Section 16(3)(c) instructs the court to assess each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse.

[138] Even without Ms. Tay's abduction of L. the evidence raises serious concerns about Ms. Tay's willingness to engage Mr. Passeri in a co-parenting arrangement. There is reliable evidence that Ms. Tay was uncooperative with Mr. Passeri in relation to summer parenting time. She also unilaterally reduced his parenting time during the school year. In addition, after Ms. Tay fled to Thailand with L. she terminated all contact with Mr. Passeri. She did not permit

Mr. Passeri to speak to L. for several weeks, and when she did permit contact, it was for only a few minutes at a time.

- [139] Under this factor, the court may also consider the willingness of the extended family of a parent to support a child's relationship with the other parent: C.C. at paras. 58-61. The Court noted that supporting the child's relationship with the other parent requires demonstrating "judgment", putting the child's interests "ahead of their own", and "being respectful" of the parent who the child loves: C.C. at para 63. To that end, Clarence Tay refused to let L. stay overnight with Mr. Passeri when Ms. Tay was travelling. This refusal was unreasonable and against L.'s best interests.
- [140] Mr. Colby noted that Ms. Tay's cooperation "in facilitating parental contact is based on her requirements that Mr. Passeri relocate to Italy which is not his intention" (211 Report at p. 70).
- [141] Further, Mr. Colby raised concerns that "Ms. Tay may not readily facilitate Mr. Passeri's parenting role with L. She may not be as communicative with him about L.'s status on a regular basis. She may not be as facilitating to accommodate Mr. Passeri's parenting time with L." (211 Report at p. 71). He did not have similar concerns about Mr. Passeri.
- [142] Mr. Colby's concerns about Ms. Tay's willingness to support L.'s relationship with his father were borne out during this trial. This Court heard reliable and credible evidence that in the years following their separation, Ms. Tay has consistently impeded Mr. Passeri's ability to spend time with his son. She made unilateral decisions that prioritized her and her parents time with L. over that of Mr. Passeri.
- [143] The abduction has negated any suggestion that Ms. Tay is interested in co-parenting with Mr. Passeri. The abduction, as well as Ms. Tay's subsequent refusal to allow Mr. Passeri to have any meaningful contact with L., provides clear evidence of significant alienation of L. by Ms. Tay.

d) History of Child's Care

- [144] Section 16(3)(d) requires the court consider the history of the child's care.
- [145] The evidence indicates that Ms. Tay was the primary caregiver to L. prior to separation and after separation. However, this does not mean that Mr. Passeri was not actively involved. There is evidence that Mr. Passeri was engaged in the care of L. since his birth.
- [146] There is also evidence that Mr. Passeri wished to have greater involvement in L.'s life but could not do so due to external factors. These include:

- a) Mr. Passeri's work hours which impeded his ability to spend as much time with L.--Mr. Passeri testified that he was seeing L. as much as he could given his work hours. This is corroborated by Ms. Tay, who testified that when Mr. Passeri was not working, he was with her and L. Indeed, when Mr. Passeri was off work due to an injury, he substantially increased his time with L.
- b) Mr. Passeri experienced prolonged difficulty finding suitable and affordable accommodation where he could parent L.--for many months following their separation, Mr. Passeri had difficulty finding affordable housing that was close to Ms. Tay's residence and large enough for L. to stay over. Due in part to these limitations, he returned to live at the Tay Family Home for several months following the separation.
- c) Ms. Tay's frequent and unilateral decisions to decrease his parenting time--Ms. Tay decreased Mr. Passeri's time with L. in September 2024 against Mr. Passeri's wishes. She also unilaterally relocated with L. to Thailand in August 2025 and cut off all meaningful contact between L. and his father.

[147] The evidence leads me to conclude that Mr. Passeri's reduced parenting time with L. was dictated by external factors, rather than an active choice to be absent from L.'s life or to relegate the child's care to Ms. Tay or her parents.

[148] More recently, Mr. Passeri has retained counsel to bring a Hague Petition for return of L. to Canada so that he can exercise his parenting time.

[149] In the circumstances of this case, the history of care is a neutral factor and does not militate against parenting time in favour of Mr. Passeri.

e) Views of the Child

[150] Section 16(3)(e) says that the child's views and preferences, giving due weight to the child's age and maturity, must be considered unless they cannot be ascertained.

[151] In this case, L.'s views are not a factor given his young age, his ability to be easily influenced, and the highly conflicted nature of his views.

[152] L. is eight years old and was seven when he was interviewed by Mr. Colby. According to Mr. Colby, he presented as an outgoing and involved child who was comfortable in the presence of both parents. Mr. Colby noted that L. provided diametrically opposed views depending on who's care he was in. He was very aware of Ms. Tay's plans to move with him to Spain and then to Thailand. When at his mother's home he stated that he wanted to stay with his mother and Mr. Pallain. When at Mr. Passeri's house, he stated that he wished to live with his father (211 Report at p. 57).

[153] Under cross-examination, Mr. Colby stated that he could not imagine a more conflicted child. He also noted that L.'s interest in Thailand was influenced by his desire to see his dog (211 Report at p. 62).

[154] This court also has some evidence of L.'s views following the abduction. Ms. Tay indicated in a text message to Mr. Passeri that L. does not ask to see Mr. Passeri. Mr. Passeri denied this and testified that in the brief contact that Ms. Tay would permit L. to have with him, L. asked to see his father. Given Ms. Tay's influence over L. and my findings of her lack of credibility, I find Ms. Tay's statement about L.'s views unreliable.

f) Upbringing and Heritage

[155] Section 16(3)(f) states that the court should consider the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage.

[156] The parties have a distinctly different cultural and linguistic heritage which they have each tried to share with L.

[157] Ms. Tay is of Thai heritage, and she and her parents have focused on teaching L. the Thai language and culture. Mr. Passeri is of Italian heritage and has tried to do the same in relation to his own culture and language.

[158] Mr. Passeri testified that he does his best to speak Italian with L. during his parenting time to build on his language skills. This is corroborated by L.'s math teacher, who noted that L. and his father "always talked in Italian".

[159] Ms. Tay's unilateral relocation of L. to Thailand has effectively broken L.'s connection with his Italian heritage. It is unlikely that L. will be encouraged by Ms. Tay to maintain a connection with his Italian heritage and language so long as he is with her. During her testimony, Ms. Tay spoke about her desire for L. to learn multiple languages. Absent in this testimony were any concrete plans for L. to learn Italian. Ms. Tay explained her plans to enroll L. in a French school in Thailand, but she did not provide any concrete plans of how she would facilitate L.'s connection to his Italian heritage and language if L. was living in Thailand. Her action of unilaterally removing L. from Canada and restricting contact with his father is further evidence that L. will likely experience a loss of connection to his Italian culture and language while in Ms. Tay's care.

[160] I do not share similar concerns for L. if he is in his father's care. Mr. Passeri has shown a continued willingness to keep L. connected to his Thai family and roots even in the face of Ms. Tay's reprehensible conduct.

g) Plans for the Child's Care

[161] Section 16(3)(g) relates to the parties' plans for the child's care.

[162] When she gave evidence in the first part of the trial, Ms. Tay did not have clear plans for where L. would live or how she would afford the lifestyle she envisioned for the two of them.

- [163] Based on Ms. Tay's testimony, her move to Bangkok was imminent, and would occur before September 2025. She expressed a desire to live in an upscale neighborhood in Thong Lor, Bangkok, where she and Mr. Pallain had looked at some properties. Despite her stated intentions, as of August 1, 2025, Ms. Tay had not secured any residence in Bangkok, temporary or permanent. Her bald assertion that Bangkok had an oversupply of housing and it was an "easy process" to find a residence, was not corroborated. Her reliability is brought into serious doubt given the most recent evidence from Ms. Tay. In documents filed in the Thai Proceeding, Ms. Tay stated that she is residing in Ratchaburi, in the district of Potharam. If Ms. Tay really is in Ratchaburi, this likely means that she could not find a suitable residence in Bangkok. This also means that L. is not attending the school that she said he would be going to. If Ms. Tay is not living in Ratchaburi, then she has actively misled the Thai Courts as well as this Court, to hide her true location.
- [164] There is also very little evidence supporting Ms. Tay's financial stability or ability to afford such basic things as educational and healthcare costs for L. Ms. Tay stated that the elite private French school which she planned to enrol L. in, would cost approximately \$13,000 CDN per year (including about \$1,000 for registration and document fees). Ms. Tay testified that her father had already paid for the upfront fees for the current school year. The source for the remaining \$12,000 CDN is unclear. Ms. Tay admitted that she could not pay for the fees herself. Clarence Tay stated that he and his wife cannot give Ms. Tay any more financial assistance. This leaves Mr. Pallain.
- [165] While Mr. Pallain expressed a willingness to pay for L.'s private school education and healthcare costs, there is no objective evidence that he has the financial means to do so. This court was not provided any documents regarding Mr. Pallain's income or financial means. Further, contrary to Ms. Tay's assertion, Mr. Pallain was not supporting Ms. Tay prior to the trial. Finally, without knowing the extent of Mr. Pallain's involvement in the abduction, it is difficult to assess whether he is still willing to pay for L.'s education and private healthcare. What is clear however, is that as of September 18, 2025, Ms. Tay was still looking to Mr. Passeri to provide money to cover L.'s expenses.
- [166] In contrast, Mr. Passeri presented realistic plans for L.'s care. His testimony about his financial circumstances and means was realistic and supported by the evidence. This includes his assertion about his plans to change his work schedule so that he could take care of L. Mr. Passeri's employer corroborated this testimony.
- h) Ability and Willingness of Parent to Meet Child's Needs
- [167] Section 16(3)(h) relates to the ability and willingness of each parent to care for and meet the needs of the child.
- [168] It bears repeating that Mr. Colby's recommendations were made prior to the abduction.

[169] Mr. Colby's opinion was that Ms. Tay and Mr. Passeri were both good parents who were capable of meeting L.'s needs. He also noted that while each of them had a tendency to be self protective and present themselves in a favourable manner, this did not override his general view about their abilities: (211 Report at p. 56 and p. 75).

[170] Accordingly, Mr. Colby opined that the interests of L. would be best met if he was raised "in a manner that maximizes his involvement in both parental homes on a schedule that facilitates ongoing contact" (211 Report at p. 76). Mr. Colby also recommended that both parents remain guardians of the child and continue their involvement in L.'s schooling and extracurricular activities: (211 Report at p. 76).

[171] Mr. Colby raised concerns about L. "having an acute awareness of the content and disagreement of the parents and presenting L. with negative information and views regarding the other parent" (211 Report at p. 56). He explained this concern as follows:

One issue, in terms of meeting a child's needs in a manner that supports the child's

engagement with the other parent, raises issue of each parents' communication with

L. regarding the other parent. It is noted that in interview L. said regarding each

parent that he is told by them that he should not live with the other parent. L. has

raised issue that if he moves with his mother she would not let him see his father. L. says his mother has told him that he should not listen to his father and that his father screams, which L. says is not true. L. said that his father says the same things about his mother but does not say them often and that it is a "rare" event. L. also says that his mother would change the schedule resulting in him seeing his father less which makes him sad.

Such statements presented confusion to L. that undermines his relationship with each parent to the point that in separate interviews L. presents diametrically opposed statements regarding his choices regarding parental residence and contact.

(211 Report at p. 55)

[172] It is evident from the above that while both parties engaged in making disparaging remarks about the other parent, this was more of a concern in regard to Ms. Tay.

[173] Given Ms. Tay's actions following the end of the first part of the trial, I have serious doubts about Ms. Tay's ability and willingness to meet L.'s needs.

[174] Ms. Tay's abduction of L. and refusal to return him, displays a profound lack of insight into the harm she has caused to L. and continues to cause to L. Her actions also reveal that she is completely unwilling to meet L.'s needs for a stable and conflict free environment and his need to maintain a strong relationship with his father.

- [175] By abducting L. and limiting his contact with his father, Ms. Tay has placed L. squarely in the center of the parental dispute and potential civil and criminal investigations. Until such time as Ms. Tay returns L. to his place of habitual residence, L. will live in an uncertain and unstable environment orchestrated around Ms. Tay's unlawful activity.
- [176] This is in marked contrast to Mr. Passeri. Both in terms of his interactions with L. and the positions taken by him during this trial, Mr. Passeri has shown an understanding of L.'s needs and a clear willingness to put L.'s needs ahead of his own.
- i) Ability and Willingness of Parent to Cooperate
- [177] Section 16(3)(i) requires the court to consider the ability and willingness of each parent to communicate and cooperate, in particular with one another, on matters affecting the child.
- [178] Following the separation, both parties had difficulty communicating with each other on matters related to parenting and scheduling. Nevertheless, they managed to co-parent while living in the same community.
- [179] Ms. Tay's conduct since August 1, 2025, reveals that she has completely rejected any desire to cooperate with Mr. Passeri in matters affecting L. She unilaterally took L. to Bangkok, she knowingly breached two court orders, and she has refused Mr. Passeri's efforts to have meaningful contact and parenting time with L.
- [180] Mr. Passeri continues to show a willingness to cooperate with Ms. Tay, despite her conduct.
- j) Family Violence
- [181] Section 16(3)(j) requires the court to consider the presence of any family violence and its impact on, among other things:
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child
- [182] The Divorce Act describes family violence broadly as follows:
- family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person -- and in the case of a child, the direct or indirect exposure to such conduct -- and includes
- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
- (b) sexual abuse;

- (c) threats to kill or cause bodily harm to any person;
- (d) harassment, including stalking;
- (e) the failure to provide the necessities of life;
- (f) psychological abuse;
- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property;

[183] In determining the impact of family violence, the court is to consider the following factors set out in s. 16(4):

Factors relating to family violence

- (4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
 - (a) the nature, seriousness and frequency of the family violence and when it occurred;
 - (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
 - (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
 - (d) the physical, emotional and psychological harm or risk of harm to the child;
 - (e) any compromise to the safety of the child or other family member;
 - (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
 - (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
 - (h) any other relevant factor.

[184] Ms. Tay made numerous allegations of family violence perpetrated by Mr. Passeri. These spanned the entire history of their relationship--from 2011 (the year they met) to July 2020 (the date of their separation). Ms. Tay's father also alleges that Mr. Passeri threatened him during parenting exchanges in 2024 and punched a hole in his wall in the same year.

- [185] I have carefully considered all of the allegations and do not find them credible. The allegations range from specious complaints about Mr. Passeri arguing with his sister-in-law over a bread recipe in a language that Ms. Tay does not even speak, to him pushing her in the stairwell of a parkade, to throwing a large soup pot of water at her, to threatening her with a knife.
- [186] The knife incident allegedly occurred on September 20, 2015. Ms. Tay alleged that she and Mr. Passeri were arguing at their residence. Towards the end of their argument, Mr. Passeri took a knife from the kitchen. However, he put it back in the kitchen drawer when he heard a knock on the door. Mr. Passeri acknowledged that they had an argument but denied that he had a knife or otherwise threatened Ms. Tay. Constable Chow testified that the police were called to the parties' residence by a neighbour who reported hearing them arguing loudly. Constable Chow did not hear any voices behind the door when they arrived. Mr. Passeri answered when the police knocked on the door. The police spoke separately with the parties who both denied any violence and stated that they were just having a heated argument. The police completed their investigation and did not see any weapons or find anything untoward. They left with a warning to both parties.
- [187] I reject Ms. Tay's account of events but not because she did not report the knife to the police. Victims of domestic violence frequently fail to report or underreport family violence out of fear of repercussions. My decision to reject Ms. Tay's evidence stems from discrepancies in her testimony and my overall concerns about her credibility.
- [188] As for the soup pot incident, I find it implausible by Ms. Tay's own account. The soup pot was at least 3 feet in diameter. I find it implausible that Mr. Passeri could lift the soup pot high enough while it was filled with water, to be able to throw the water at her in the manner described.
- [189] I turn now to the events of July 12, 2020. At the time, the parties were living at the Tay Family Home with L. Though Ms. Tay's father, mother, and brother were also present during the incident, only Ms. Tay's father testified. Ms. Tay attempted to rely on some video and audio recordings that were made of parts of the altercation. The recordings were made by Ms. Tay's mother, who did not testify in the trial. The recordings were all deemed inadmissible. In any event, they did not reveal Mr. Passeri committing the acts of violence that are alleged.
- [190] The parties agree that they got into an argument that lasted several hours, and which culminated in their separation. L. was present in the house during the incident, though by all accounts he was in his bedroom the entire time. There is no indication that he saw the altercation, although it is possible that he may have overheard some of it.
- [191] The parties disagree fundamentally as to what happened during the argument. Mr. Passeri denies being drunk or violent or making any threats to kill anyone.

- [192] Ms. Tay testified that the argument started between her and Mr. Passeri but later spread to include her parents. During some moments when the parties were particularly heated, Ms. Tay's father told her to leave the room. According to Clarence Tay, Mr. Passeri was drunk and physically aggressive. At one point Mr. Passeri told him that he would find a gun and kill them all and would also kill himself. After some more yelling and aggressive behaviour, Mr. Passeri went to his room and packed his belongings. As he was leaving, he saw Pamela Tay with the camera and got angry. He then lunged at her. An altercation occurred between Mr. Passeri and Clarence Tay which lasted a few minutes. Mr. Passeri finally left around 11:00 p.m.
- [193] Clarence Tay also testified that at one point he told his wife to call 911 but his daughter cut off the call. When the police called back Ms. Tay cut off the call again. The police never called back after that to check on them.
- [194] I do not find Ms. Tay's or Clarence Tay's version of events credible. First, there is no reliable evidence to support that anyone called 911 on the evening in question. Second, I find it implausible that the police would not follow up and attend at the residence if Ms. Tay had indeed called the police and hung up on them. Third, both their testimony was internally and externally inconsistent: there were contradictions between Ms. Tay's testimony and that of her father about what transpired that day; their testimony also conflicted with messages exchanged between the parties after the event. All of this undermines Ms. Tay's and Clarence Tay's credibility.
- [195] In addition to my deep concerns about Ms. Tay's credibility (which are exacerbated by her willingness to swear false affidavits) I find her actions inconsistent. Despite her allegations of family violence and stated desire for a protection order in her court filings, Ms. Tay never once sought a protection order against Mr. Passeri.
- [196] I conclude that there is no evidence that Mr. Passeri has done anything that constitutes "family violence" as that term is defined in the Divorce Act.
- [197] Even if I was to have found some of Ms. Tay's allegations credible (which I do not), there is no indication that Mr. Passeri has ever directed violence at L. and no evidence that any concerning behaviour arose after 2020 between Mr. Passeri and Ms. Tay.
- [198] I also reject the suggestion that Mr. Passeri threatened Clarence Tay during some parenting exchanges in 2024. I find that this evidence was completely fabricated by Clarence Tay to support Ms. Tay's legal case and to hurt Mr. Passeri's position. It was clear that Clarence Tay was trying to set Mr. Passeri up so that he could get some incriminating evidence against him for use in this trial. His efforts proved fruitless. None of the recordings that Clarence Tay attempted to rely on revealed Mr. Passeri acting in a way that could be deemed violent. In addition, I am not swayed that Mr. Passeri punched a hole in the wall of Clarence Tay's home in March 2024. Clarence Tay's lawsuit for damages ostensibly arising from this event was not filed until a year after the alleged incident. The timing of the lawsuit (which Clarence Tay ultimately did not pursue) leads me to a strong inference that it was done for

strategic purposes rather than a legitimate belief that Mr. Passeri had caused damage to the Tay Family Home.

- [199] I turn finally to the allegation that was repeatedly made by Ms. Tay (and supported by her father) about Mr. Passeri drinking excessive amounts of alcohol. Aside from her and her father, there was no other witness that supported this. In fact, the other witnesses that testified did not observe any concerning behaviour on the part of Mr. Passeri that would suggest that he has a problem with overconsuming alcohol. In any event, even if Ms. Tay's allegations about Mr. Passeri's alcohol use are to be believed, there is no suggestion from her that Mr. Passeri was not appropriately caring for or neglecting L. on account of overuse of alcohol.
- [200] Finally, I note that abducting a child can constitute family violence. Courts have found that coercive and controlling behaviour constitutes family violence: *L.L. v. A.L.*, 2025 BCSC 551 at paras. 29-30, citing *M.A.B. v. M.G.C.*, 2022 ONSC 7207 at para. 183; *C.C. v. C.H.C.*, 2025 BCPC 9 at para. 10. Parents who disobey court orders, abduct their children, and prevent them from having meaningful contact with their other parent, are engaging in coercive and controlling behaviour. Additionally, it can be reasonably inferred that a likely outcome of abducting a child and refusing to allow the other parent meaningful contact with them will cause alienation of the child from the other parent. Parental alienation has been found to constitute family violence in some cases: *Zikmanis v. Zikmanis*, 2024 ONSC 701 at para. 20, citing *M.A.B.* at para. 371. In *M.A.B.*, the Ontario Superior Court of Justice held that parental alienation falls within the definition of family violence under Ontario's family law legislation because it is a pattern of coercive and controlling conduct that is psychologically abusive to the child and the alienated parent: at para. 371.
- [201] The psychological harm associated with ripping L. away from his home and his father, cannot be underestimated. Like parental alienation, this is coercive and controlling conduct that is psychologically abusive towards L. and Mr. Passeri.
- [202] Accordingly, I find that Ms. Tay has committed family violence, and continues to do so, by abducting L. and refusing to return him or disclose his whereabouts.
- k) Other Court Proceedings Relevant to Child's Well-being
- [203] Section 16(3)(k) instructs the court to contemplate any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.
- [204] There are no current civil or criminal proceedings in Canada that are relevant to the safety, security and well-being of L. However, there are pending proceedings in Thailand that have been initiated by Ms. Tay for custody of L. Mr. Passeri is also in the process of initiating proceedings to have the child returned to Canada. There is also the distinct possibility that Ms. Tay will face civil and criminal investigations related to her child abduction. In the circumstances of this case, this is a neutral factor and does not militate against parenting time in favour of Mr. Passeri.

l) Past Conduct

[205] Section 16(5) states that in determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

[206] I have not considered any past conduct that would be prohibited under this factor.

m) Parenting Time Consistent with Best Interests

[207] I arrive finally at s. 16(6) of the Divorce Act. This provision stipulates that in allocating parenting time the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

[208] I have taken this principle into consideration.

2. Conclusion

[209] After considering L.'s best interests, and in particular his physical, emotional and psychological safety, security and well-being, I conclude that L.'s best interests are met through an order that would grant sole guardianship, sole parenting time, and full parental responsibilities, to Mr. Passeri, pending L.'s return and further order of this Court.

B. Parenting Orders

[210] Sole or limited custody or guardianship or parental responsibilities are warranted where the other parent has sought to alienate the child from the other parent: *Lower v. Stasiuk*, 2010 BCSC 1081 at paras. 90, 98, *aff'd* 2013 BCCA 389, leave to appeal *ref'd*, 2014 CanLII 20989 (SCC); *C.A.J. v. N.J.*, 2014 BCSC 279 at paras. 138-144; and *A.A. v. S.N.A.*, 2007 BCCA 363 at paras. 26-27.

[211] Although not factually identical to the case at bar, in *Mei v. Li*, 2019 BCSC 2121 the Court found that where a parent has abducted their child, refused to comply with court orders, and initiated parallel proceedings in another jurisdiction to circumvent the jurisdiction of this Court, an appropriate parenting order is to order sole guardianship and responsibility for parenting the children to the other parent: at paras. 37-38.

[212] I agree with the Respondent that through the act of abduction Ms. Tay has removed L.'s father from his life. This is a serious form of alienation. While the harm to L. can never be undone, the only appropriate remedy that would ensure that L.'s best interests were met, is to grant sole guardianship, sole parenting time, and sole parental responsibilities to Mr. Passeri, until such time as L. has been returned to British Columbia under the care of his father.

[213] Consequently, Mr. Passeri is granted sole guardianship, sole parenting time, and sole parental responsibilities over L. This order is to remain in effect pending L.'s return and further order of this Court.

[214] Additionally, as was the case in Mei, I find that it is in the best interests of L. for Ms. Tay to lose her guardianship rights and right to exercise parental responsibilities: at paras. 37-38.

[215] The Respondent has leave to appear before me to speak to specific terms that might be further required to reflect the granting of sole guardianship and full parental responsibilities ordered herein.

V. Child Support

[216] Ms. Tay would like Mr. Passeri to pay retroactive child support from July 12, 2020, to November 30, 2024. She also seeks prospective child support, and future special or extraordinary expenses in accordance with section 7 of the Federal Child Support Guidelines, SOR/97-175[Guidelines]. There is no claim for retroactive s. 7 expenses, as the parties resolved this issue on the second day of the first part of trial.

[217] I will first address the claim for retroactive child support.

A. Retroactive Child Support

[218] The parties agree that for most of the time following the separation, L. was living primarily with his mother. As such, Mr. Passeri would be the payor parent for any retroactive child support award. However, Mr. Passeri argues that he should not be required to pay retroactive support, on the grounds of hardship.

[219] At the time of trial, Mr. Passeri was working full-time as a chef at Savio Volpe, and part-time as a cook at Superflux in British Columbia. When Mr. Passeri's tips are added to his Line 150 income, the following amounts are evident:

Tax Year

Amount

Tips

Total

2020

\$35,615

\$7,000

\$42,615

2021

\$37,873

\$7,000

\$44,873

2022

\$54,193

\$7,000

\$61,873

2023

\$66,800

\$7,000

\$73,800

2024

\$48,575

\$7,000

55,575

[220] It is important to note that Mr. Passeri's income for 2024 is substantially impacted by his work injury of November 15, 2023. As a result of the work injury, Mr. Passeri was off work until October 7, 2024. Mr. Passeri received Workers Compensation benefits from December 2023 to June 14, 2024.

[221] Ms. Tay worked as a software technical/engineer from February 28, 2022, until June 7, 2024. The parties agree that her Line 150 income is as follows:

Tax Year

Amount

2021

\$80,057

2022

\$96,664

2023

\$118,614

2024

\$54,524

[222] Ms. Tay's last day of work was June 7, 2024. On this date, Ms. Tay voluntarily quit her employment because she planned to relocate to Spain. She has not gone back to work since that time.

[223] I now turn to determining the claim for retroactive support.

[224] The law regarding retroactive child support is well established. The court has jurisdiction to order retroactive child support pursuant to s. 15.1 of the Divorce Act: *D.B.S. v. S.R.G.*, 2006 SCC 37 at para. 81. The applicable principles were most recently summarized by Justice Basran in *K.D.P.P. v. G.P.P.*, 2025 BCSC 1796. These are:

- a) Each parent and guardian of a child has a duty to provide support for the child pursuant to the Guidelines: *K.D.P.P.* at para. 168
- b) Unless otherwise provided for in the guidelines, the amount of child support is the amount set out in the table and the amount determined under section 7: Guidelines, s. 3; *K.D.P.P.* at para. 169.
- c) Even if a court order for child support has not been made, a parent has an obligation to financially care for their child: *K.D.P.P.* at para. 171.
- d) While the court exercises discretion in making a retroactive child support order, such awards should not be seen as exceptional: *K.D.P.P.* at para. 173; *D.B.S.* at para. 5.
- e) Determining whether a retroactive support award is appropriate requires the court consider all relevant factors, including: the circumstances surrounding the delay in applying, the payor parent's conduct, the child's circumstances, and any hardship caused by a retroactive award: *K.D.P.P.* at para. 174; *D.B.S.* at paras. 100-116; *Michel v. Graydon*, 2020 SCC 24 at para. 62; *Colucci v. Colucci*, 2021 SCC 24 at para. 38.
- f) After determining a retroactive child support award is appropriate, the date for the retroactive award should be the date on which the payor parent received effective notice of the claim: *K.D.P.P.* at para. 175. Effective notice only requires "raising the issue" not taking legal action: *K.D.P.P.* at para. 175; *D.B.S.* at para. 121.
- g) It will usually be inappropriate to make a support award retroactive to a date more than three years before formal notice was given to the payor parent *D.B.S.* at para. 123.

[225] There is no dispute that each parent has a financial obligation to support a child absent a court order or formal notice. In this case, formal notice was given by Ms. Tay on September 16, 2024, when she filed her Notice of Family Claim. Mr. Passeri urges me to find that this should also be the date for effective notice. However, I find that Ms. Tay raised the issue prior to filing her claim.

- [226] This is evidenced by the Interim Agreement the parties entered into on June 4, 2024. While the Interim Agreement did not provide for any child support, paras. 17 and 18 of the agreement contemplate that the parties would review child support in September 2024 (including retroactive support). It is reasonable to infer that the parties had some discussions about this clause in the days leading up to the finalization of the Interim Agreement.
- [227] However, there is no evidence that this issue was raised prior to June 2024. Following their separation on July 12, 2020, the parties frequently communicated by text message or email. There is nothing in those communications or the other evidence before me, to indicate that Ms. Tay told Mr. Passeri that he was not meeting his child support obligations. Indeed, there is a text message exchange on November 8, 2022, when Ms. Tay advised Mr. Passeri that he did not have to worry about money and L.'s future. This supports Mr. Passeri's position that the issue was not raised by Ms. Tay for the four years following their separation.
- [228] Ms. Tay did not provide any reasonable excuse for why support was not sought earlier than June 2024. Her decision not to do so was likely related in part to the fact that the parties continued to share a joint bank account until June 2024. This bank account was used to pay for at least some of the expenses related to L. In June 2024, the parties decided to equally split the remaining balance of \$95,000, from their joint bank account. This was memorialized in the Interim Agreement referenced earlier.
- [229] In light of the above, I find that the effective date of notice to Mr. Passeri is June 1, 2024.
- [230] On November 29, 2024, the parties consented to an interim child support order for Mr. Passeri to pay \$616 per month commencing December 1, 2024. This amount was based on Mr. Passeri's Guidelines income of \$65,000. Mr. Passeri has consistently paid child support since that time.
- [231] There is no evidence of blameworthy conduct.
- [232] Based on effective notice of June 1, 2024, and commencement of payments on December 1, 2024, Ms. Tay would be entitled to retroactive support for six months. Applying the Guidelines income of \$65,000 yields approximately \$3,700 in retroactive child support payments that would be owed by Mr. Passeri. This amount will be higher if the 2024 child support obligation is calculated off Mr. Passeri's actual income for 2023 (\$73,800), rather than the \$65,000 consented to at the November 2024 interim order.
- [233] Regardless of whether Mr. Passeri's income is at \$65,000 or \$73,800, I find that requiring him to pay retroactive child support will cause significant hardship to Mr. Passeri.
- [234] The Court may decline to make an award for retroactive child support, on grounds of significant hardship: *Sidhu v. Sidhu*, 2014 BCSC 296 at paras. 66-67, citing *Anderson v. Anderson*, 1999 BCCA 147 and *Llewellyn v. Llewellyn*, 2002 BCCA 182 at paras. 39-40

- [235] In assessing significant hardship, the court is to consider the payor's present circumstances and how payment of the arrears would impact upon him and his other family obligations: *Shaw v. Kirk*, 2019 BCSC 23, at para. 26, citing *Sidhu* at para. 68.
- [236] Mr. Passeri testified that following separation, Ms. Tay remained living in the home the parties shared with her parents on a rent free or reduced rent basis, while he had to establish himself at another residence while earning under \$50,000 per year. Though her parents provided him with some assistance, this was not enough to offset the enormous costs associated with rental accommodations in the Metro Vancouver area.
- [237] There is ample evidence that Mr. Passeri is a hard-working man who worked long hours and multiple jobs just to make ends meet. But he is not a high-income earner. Even with working multiple jobs at a time, his highest income was less than \$74,000.
- [238] Mr. Passeri is actively considering selling his property in Italy where his elderly aunt resides in order to fund his litigation costs. He also testified that he is looking for a third job to pay for his mounting legal bills.
- [239] Mr. Passeri has already expended over \$150,000 on the within proceeding to oppose relocation of L. He is unlikely to recover even the tariff costs that would be payable to him based on his success.
- [240] Ms. Tay's actions of abducting L. have forced Mr. Passeri to incur substantial legal expenses to try to have L. returned home safely. He has already paid over \$40,000 in legal retainers to lawyers in Thailand, and the cost may increase depending on what transpires.
- [241] Given that Ms. Tay is not working and does not appear to have any tangible assets, it is unlikely that Mr. Passeri will ever be able to recover those expenses.
- [242] In the circumstances, I find that Mr. Passeri has established that he will suffer significant hardship if a retroactive child support award is made.
- [243] Ms. Tay's claim for retroactive child support is dismissed.

B. Prospective Child Support and S. 7 Expenses

- [244] I also find that Mr. Passeri is not required to pay prospective child support.
- [245] This court has refused to order child support where a parent has frustrated or discouraged one parent's access to a child: *Hughes v. Hughes*, 2014 BCCA 196, at paras. 98,110-112, 114, leave to appeal ref'd, 2014 CanLII 74396 (SCC). In *Hughes*, the mother abducted the child to Italy in contravention of a court order which granted the father "joint custody and joint guardianship of the child, with reasonable and generous access": at para. 98. The Court found that the father in *Hughes* was unable to fulfill his primary care responsibilities to the child on account of the abduction: *Hughes* at para. 112. The Court of Appeal dismissed the appeal and held that these circumstances justified the chamber's judge's decision to rescind the child support order and cancelling arrears of child support: *Hughes* at para. 114.

- [246] The circumstances of this case are in many respects similar to those in Hughes.
- [247] The August Order ended Mr. Passeri's obligation to pay interim child support beyond August 2025, pending further order of this Court. The August Order was predicated on the child remaining in British Columbia pending completion of the trial and final adjudication of the relocation application. It contemplated two scenarios, neither of which obliged Mr. Passeri to pay interim child support:
- a) Scenario 1: Ms. Tay stays in Metro Vancouver until the trial is concluded, and L. splits his time between both parents' homes on an equal shared parenting basis; or
 - b) Scenario 2: Ms. Tay moves to Bangkok prior to the conclusion of the trial, and L. resides with his father who assumes all parental responsibilities over L.
- [248] Ms. Tay's failure to comply with the August Order means that Mr. Passeri cannot fulfill his parental responsibilities to L. The only reason L. is not presently enjoying the support of his father, is because Ms. Tay unilaterally removed him from his care.
- [249] By virtue of these Reasons for Judgment, I have also found that the best interests of the child are served if Mr. Passeri is granted sole guardianship, sole parenting time, and sole parental responsibilities of L. Attendant with these is this Court's finding that L. has the right to support from his father by reason of his primary care of the child. Mr. Passeri is unable to fulfill those responsibilities solely because of Ms. Tay's abduction and refusal to return L. to British Columbia so that he can be placed in his father's care.
- [250] Finally, I note that even if prospective child support was warranted, this Court has no information about L.'s needs and circumstances in Thailand to make further determinations regarding child support or s. 7 expenses.
- [251] I note also the existence of the Thai Proceeding and inevitable Hague Proceeding. It would also be more appropriate to deal with child support once those proceedings are concluded.
- [252] In light of the above, I do not find it necessary to engage in the two-step analysis under s. 10 of the Guidelines, to address Mr. Passeri's argument that a prospective child support award would pose undue hardship on him. Suffice it to say that there is ample evidence to support such a finding.
- [253] I come to a similar conclusion regarding the payment of prospective s. 7 expenses. For the same reasons set out earlier, s. 7 expenses are not warranted given Ms. Tay's abduction and continued retention of L. away from his father's care and support.
- [254] Ms. Tay's claim for prospective child support and prospective s. 7 expenses is dismissed.

VI. Special Costs

- [255] Mr. Passeri asks for an order awarding him special costs of this proceeding. For the reasons that follow, I find that such an award should be made.

- [256] Special costs are intended to sanction a party for "reprehensible conduct during the litigation, conduct from which the court seeks to disassociate itself": *Chapman v. Chapman*, 2020 BCSC 1896 at para. 5, citing *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (B.C.C.A.).
- [257] Special costs are punitive in nature rather than compensatory. The aim behind a special costs award is to deter misconduct: *567 Hornby Apartment Ltd. v. Le Soleil Restaurant Inc.*, 2020 BCCA 69 at para. 42, leave to appeal ref'd, 39145 (1 October 2020).
- [258] An award for special costs is discretionary. The test for special costs in family cases is the same as for civil proceedings. At issue is "whether the party against whom costs are awarded has engaged in reprehensible conduct or conduct that is deserving of reproof or rebuke": *Tomic v. Tough*, 2013 BCCA 355 at para. 35, citing *Garcia*.
- [259] The kinds of conduct that can attract an award of special costs was summarized in *Wang v. Jiang*, 2020 BCSC 1761 at para. 17, as follows:
- acting with an improper motive, such as to intimidate, exhaust or financially drain the other party in the hopes that they will give up or soften their position in the litigation;
 - dissipating and/or not disclosing assets;
 - abusing the court's process by, among other things, failing to disclose documents, delaying in disclosing documents, failing to respond to reasonable requests, causing unnecessary interlocutory applications, and breaching the Rules in a manner that prejudices the other party;
 - misleading the court, through outright fabrications or through evasive and/or equivocal responses; and
 - disobeying a court order.
- [260] In *Westsea Construction Ltd. v. 0759553 BC Ltd.*, 2013 BCSC 1352 at para. 73, Justice Gropper summarized the principles that apply for determining special costs:
- a) the Court must exercise restraint in awarding special costs;
 - b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
 - c) simply because the legal concept of "reprehensibility" captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;
 - d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the Court's process, misleading the Court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;
 - e) special costs can be ordered against parties and non-parties alike; and

- f) the successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs are not awarded to a successful party as a "bonus" or further compensation for that success.
- [261] There is ample evidence in this case of egregious conduct on the part of Ms. Tay that warrants an award of special costs against her.
- [262] Ms. Tay's conduct displays a wonton disregard for this Court's authority. She has breached multiple court orders, lied in court documents, and initiated parallel legal proceedings in another jurisdiction. Her abduction of the child out of the jurisdiction of this Court has effectively thwarted the judicial process which she herself initiated but failed to complete. It is hard to conceive of conduct that is more deserving of rebuke.
- [263] It is also clear from Ms. Tay's communication seeking an adjournment of the trial, that she continues to lack insight into the reprehensible nature of her actions.
- [264] A special costs award in this case would act as a specific deterrent, since this matter remains active in litigation. It would also serve as a general deterrent to other parents who consider taking such steps.
- [265] In the circumstances it is appropriate to award Mr. Passeri special costs of this proceeding, on a full indemnity basis.

"Shergill J."

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