

CANADA / JUDGMENT

Tung v. Lu

2025 BCSC 71

COURT

Supreme Court of British Columbia

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2025 BCSC 71 Tung v. Lu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tung v. Lu,

2025 BCSC 71

Date: 20250117

Docket: E69748

Registry: New Westminster

Between:

Joseph Tung

Claimant

And

Jie Lu also known as Nancy Lu

Respondent

Before: The Honourable Justice Kirchner

Reasons for Judgment

Counsel for the Claimant:

T. Yu

Counsel for the Respondent:

S.Y. Kim

Place and Dates of Hearing:

New Westminster, B.C.

November 21-22, 2024

Place and Date of Judgment:

New Westminster, B.C.

January 17, 2025

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Introduction

- [1] The respondent in this family law proceeding applies for a number of interim orders relating to parenting, guardianship, child and spousal support, conduct, and penalties for alleged non-compliance with an order made earlier in these proceedings by Justice Milman. The claimant opposes most of the relief.
- [2] This case is at an early stage. It was initiated on March 28, 2024 and there has not yet been a Judicial Case Conference. Despite that, this is the fourth application that has come before the court since the claim was started. The orders now being sought are interim only and do not strike me as having the urgency that would justify proceeding in advance of a Judicial Case Conference. However, the hearing consumed two days of court time and obviously involved considerable preparation by counsel. In the interests of judicial economy, I will reluctantly give judgment on the application rather than adjourn the matter pending a

Judicial Case Conference. In keeping with the legal principles for interim orders in family cases, I will not delve deeply into the matters in dispute and will make orders that will serve as "rough justice" until the principal matters in dispute can be resolved after trial.

Background

- [3] The parties are both in their mid 30s. They were married in August 2015. They did not previously live together. After the marriage, the claimant, Joseph Tung, moved into a home in Delta (the "Delta Home") that the respondent, Jie Lu, bought before the marriage using money gifted to her by her father. The parties have one child, K., who was born in December 2019. K. is now five years old.
- [4] Ms. Lu says soon after K. was born Mr. Tung's behavior toward Ms. Lu changed. She says he frequently belittled and criticized her. She says he called her "stupid", "ignorant", and a "fucking idiot" and would yell at her in front of K. Her counsel played several audio recordings Ms. Lu made of some of these confrontations, including some where K. was present and can be heard in the background. In one recording, Mr. Tung directs his anger at K., using words and a tone that would unquestionably be frightening to a (then) four-year-old child and likely undermine her sense of security. The recordings are disturbing, especially the one in which Mr. Tung directs his anger at K. The incidents can fairly be characterized as verbal outbursts of rage over what seem to be rather trivial matters.
- [5] Mr. Tung was not aware that Ms. Lu was recording these exchanges. He describes them as "selective" and says they do not capture his true nature as a loving father and husband. He admits he yelled at K. on the one recorded incident and that he used what he called "choice words in the heat of the moment" which he says he regrets. He seeks to deflect some blame to Ms. Lu and suggests she recorded the incidents to "bolster her case".
- [6] Mr. Tung says he regrets some of what he has said, particularly to K. However, based on the tone that he used in these recorded outbursts and the contents of what he said to both Ms. Lu and especially to K., I find these incidents invoke emotional abuse and thus constitute family violence within the meaning of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Ms. Lu argues the recordings support limiting Mr. Tung's parenting time to one night per week based on what is in K.'s best interests.
- [7] After the June 18, 2023 incident, Ms. Lu left the Delta Home with K. and moved into a condominium in New Westminster. The condominium is registered in her name but she claims it is owned by her father. She later asked Mr. Tung to leave the Delta Home so she could move back in with K. but he refused.
- [8] Mr. Tung commenced this action on March 28, 2024 and immediately applied, without notice, for an order restraining Ms. Lu from disposing, encumbering, or assigning certain property (mostly bank accounts) without Mr. Tung's consent or further order of the court. That order was granted by Associate Judge Krentz. Among the property specified in the order are bank accounts that Ms. Lu holds jointly with her father who, at the time this

application was heard, was not a party to the proceedings. Ms. Lu's former counsel brought an application seeking to set aside Associate Judge Krentz's order but that application was dismissed by Associate Judge Nielsen on April 19, 2024.

- [9] On August 2, 2024, Ms. Lu's present counsel applied for an order to extend the time to appeal Associate Judge Nielsen's order and for an order for exclusive possession of the Delta Home. On August 16, 2024, Justice Milman dismissed the application for an extension of time for the appeal on the basis that Associate Judge Krentz's order is in personam and only restrains Ms. Lu from dealing with the property. It does not restrict her father from doing so. However, on December 17, 2024, while I had this judgment in reserve, Mr. Tung applied, apparently without notice, for an order adding Ms. Lu's father as a respondent to this proceeding and enjoining him on an interim basis from disposing of monies in any bank accounts he holds on his own or jointly with Ms. Lu at CIBC and the Royal Bank. Justice Taylor granted that order but he gave any party leave to apply to set the order aside on three days notice. At this point, I am not aware that any party has so applied.
- [10] Returning to Milman J.'s August 16, 2024 order, he granted Ms. Lu exclusive possession of the Delta Home and its contents on an interim basis. He was satisfied, albeit "with some reluctance", that living separately within the same home was a practical impossibility for the parties because, inter alia, K. was at risk of being exposed to conflict between the parties if they shared the home.
- [11] Ms. Lu returned to the Delta Home in September 2024 pursuant to Milman J.'s order. Mr. Tung, who had been living alone in the home for more than a year, left it in a deplorable state. Clothing, empty pizza boxes, paper coffee cups, and personal items were strewn over the floors throughout the house. He left dirty dishes and unwashed moldy pots in the kitchen. There were rodent droppings and urine on the carpets and rodent traps on the living room floor. There were droppings from the parties' pet chinchillas on the laundry room floor. There were also structural and plumbing issues with the house such as wood rot on the outside deck, a water leak in the master bathroom that had soaked the adjacent bedroom, fallen gutter pipes, and overgrown vegetation in the yard.
- [12] Mr. Tung said the house was always messy when the parties lived in it together and provided some photos of the state of the house from before Ms. Lu left. He said he could never have his parents in for visits while the parties were living there together because of the state of the house. He said there have always been rodent problems which worsened after Ms. Lu left because she took their pet cat with her. He said it was Ms. Lu's idea to get the chinchillas and the mess they left in the basement is typical of the basement's pre-separation condition.
- [13] I accept that Mr. Tung may not bear responsibility for some amount of the structural deterioration of the house. It is likely that issues such as the rotting outside deck and issues with the roof were longstanding. However, other issues seem to be matters of general maintenance that one would reasonably have expected Mr. Tung to have addressed while he was living there.

- [14] However, I cannot accept that the deplorable state in which he left the house for Ms. Lu and K.'s return is explained as simply a continuation of the parties' messy lifestyle from before separation. If that lifestyle troubled Mr. Tung, as his evidence seems to suggest, it is clear he did nothing to address it in the year he lived alone in the house. In fact, he made matters worse. Most troubling, though, is the fact that Mr. Tung knew that his five-year-old daughter would be returning to live in the house yet he saw fit to leave it in this horrendous condition for her to return to. That shows a selfish disregard for K. and how his actions would impact her.
- [15] Mr. Tung also removed a number of items from the home when he left, despite Milman J.'s order that Ms. Lu was to have exclusive possession of the personal property used or stored in the home, including furnishings. Many of the items he took are relatively insignificant, such as an electric rice cooker, but he also removed a keyless entry lock from the front door, leaving the home unlocked when he left. More significantly, he took K.'s bed and mattress with him, asserting that it was his property because he had bought it before the parties were married. That may well have been the case but it had become K.'s bed, and she undoubtedly expected it would be waiting for her upon her return to her home after a year's absence. She certainly would not have expected to find she had no place to sleep in her own bedroom. Worse still is the fact that Mr. Tung left K.'s room in as bad a mess as other parts of the house. Again, Mr. Tung appears to have had no regard for how his actions might have impacted K. or her sense of security.

Issues

- [16] The issues for determination are interim parenting time, interim child and spousal support and whether fines or penalties should be imposed for alleged non-compliance with Milman J.'s order. While this matter was under reserve, counsel for Ms. Lu requested an opportunity to reopen the hearing to address issues arising from Justice Taylor's December 17, 2024 order and to lead further evidence respecting a late affidavit I accepted from Mr. Tung at the hearing. I declined to reopen the application and will allude to some reasons for that in these reasons for judgment.

Parenting Time

- [17] I will deal first with parenting time. At present, Ms. Lu has most of the parenting time with K. and Mr. Tung has two consecutive overnights each week, alternating between weekday overnights one week and weekend overnights the other. This arrangement has been in place since April 30, 2024 when the parties attended a mediation, although it is not formalized in an agreement or order. The parties have largely followed this schedule but Ms. Lu now applies to reduce Mr. Tung's parenting time to one overnight a week.

- [18] Ms. Lu argues it is not in K's best interest for Mr. Tung's parenting time to continue with two overnights a week. She relies in part on the recorded evidence of Mr. Tung's enraged outbursts, the deplorable state in which he left the Delta Home for K.'s return, and sentiments K. expressed to her about not wanting to spend two consecutive nights with Mr. Tung.
- [19] Despite my serious concerns about Mr. Tung's behavior and his apparent disregard for K.'s feelings and sense of security, I am not persuaded the current parenting schedule should change on an interim basis. I agree the outbursts are troubling and disturbing to listen to. The fact they occurred in front of K. and, on at least one occasion, were directed at K., certainly reflects negatively on Mr. Tung's parenting. Since I view the form and content of those outbursts as family violence, I am obliged to consider them in assessing what is in K.'s best interests and Mr. Tung's ability to meet her needs. However, these recordings pre-date separation and Ms. Lu was fully aware of them when she accepted the current parenting schedule at the mediation. There is no evidence of any further outbursts since the parties separated or that Mr. Tung's ability to meet K.'s needs in the two nights he has her for parenting on an interim basis is compromised by these past events.
- [20] I have also considered Mr. Tung's extremely poor judgment in leaving the Delta Home in a deplorable state knowing that K. would be returning to it. I view this as a serious matter where Mr. Tung exercised extremely poor and selfish judgment as a parent. However, the Ministry of Children and Family Development investigated Mr. Tung after this incident (perhaps on a report from Ms. Lu, although this is not clear) and found no reason to be concerned for K.'s safety and I am not persuaded this incident should now further constrain Mr. Tung's already limited parenting time.
- [21] With respect to K.'s sentiments about not wanting to stay with Mr. Tung, it is not unusual for a five-year-old to express reluctance at spending time away from the home where she lives most of her time with the parent who has her primary care. The views of the child are to be considered under s. 37(2)(b) of the FLA unless it would be inappropriate to do so. K.'s view, to the extent they are considered, must be looked at in the context of her very young age and the circumstances in which she has lived since separation. I am not persuaded that her emotional well being and need for stability is diminished by the current parenting schedule.
- [22] I would therefore dismiss the application to vary the currently-followed schedule for parenting time.
- [23] Before leaving this point, I would add that the evidence Ms. Lu relies upon as setting out K.'s views is a recording she made of a conversation she had with K. about K.'s unwillingness to stay with Mr. Tung. I agree with counsel for Mr. Tung that recording a conversation with a child to use as evidence in a parenting dispute shows poor judgment in that it brings the child into the dispute. Further, the transcript contains no words of encouragement or positive statements about Mr. Tung. It may be difficult for Ms. Lu to speak positively of Mr. Tung but she earlier agreed that Mr. Tung should have two overnights of parenting a week

and she now seeks conduct orders that would require both parties to speak positively about the other parent to K. and encourage K. to have a good relationship with that parent. The recorded conversation with K. is not consistent the very orders Ms. Lu now seeks.

- [24] Mr. Lu also seeks an order that requires the parties to consult with one another and try to reach agreement on important parenting decisions for K. but that Ms. Lu would make the final decision if they cannot otherwise agree. She says Mr. Tung takes unreasonable positions on simple matters and this makes joint decision-making difficult.
- [25] I agree that it appears challenging for the parties to find agreement on fairly routine parenting matters. I observe from the text and email exchanges in evidence that Mr. Tung is prone to expressing himself in an unnecessarily curt and antagonizing tone, even on matters where his underlying position has some merit (such as the cost of school lunches which I will discuss below).
- [26] Nevertheless, I am not persuaded it is in K.'s best interest at this stage to give one parent the final right of decision making on important parenting issues. I will make the conduct orders sought by Ms. Lu (and agreed to by Mr. Tung). I will also make the order sought by Ms. Lu that the parties communicate through the Our Family Wizard application which, as I understand it, screens written correspondence to flag inflammatory or disrespectful communications before they are sent. In my view, it would be premature to give one parent the final decision-making authority in respect of K. before other less severe measures, such as communicating through Our Family Wizard, are used to try to foster better communications between the parties about K.'s needs.
- [27] I also decline to make the protection order sought by Ms. Lu at this point. While I accept Mr. Tung's outbursts qualify as family violence, I am not persuaded Ms. Lu remains at risk for these to reoccur now that the parties are separated. At this point, it is hoped that the use of Our Family Wizard will bring down the tone of their communications.
- [28] It is unnecessary to make a guardianship order at this point as both parties are already guardians under the FLA. There is some dispute over who should hold K.'s passport and over potential travel outside of Canada. I will order on an interim basis that neither party may travel with K. outside of Canada without the consent of the other parent, such consent not to be unreasonably withheld. Unless the parties can agree to a more convenient arrangement, I will order that counsel for Ms. Lu will hold K.'s passport on behalf of the parties pending trial.

Child and Spousal Support

Parties' Positions

- [29] Ms. Lu seeks interim orders for child and spousal support. Mr. Tung acknowledges his obligation to pay child support and has been paying support in the amount of \$1,197 per month since April 2024. That is the Federal Child Support Guidelines ("Guidelines") table

amount based on an income of \$130,000 per year. However, Ms. Lu argues Mr. Tung is likely earning much more than that and asks the court to impute an annual income of \$200,000 to him on an interim basis pending trial and order child and spousal support based on that imputed income.

- [30] Mr. Tung argues he does not come close to earning \$200,000 and suggests his income for 2024 will be in the range of \$105,000 which is lower than his income for the last several years. He also argues that Ms. Lu has no entitlement to spousal support as she is intentionally underemployed. He says she has significant qualifications as an investment advisor and is capable of earning at least as much as Mr. Tung.

Legal Principles

- [31] In *Robles v. Kuhn*, 2009 BCSC 1163 Master Keighley summarized the principles applicable to interim support orders as follows:

- [12] On interim support applications, the application of these provisions must be qualified by certain established considerations:

1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 3299; *Newson v. Newson*, [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
4. The courts should not unduly emphasise any one of the statutory considerations above others;
5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
7. Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);

8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: L.G.B.

Parties' Income

[32] I deal first with the parties' income, recognizing that an in-depth analysis of the disputed points is best left for trial.

[33] Mr. Tung is an investment advisor with CIBC Wood Gundy. He works alongside his father, Hans Tung, who is a senior wealth advisor. Ms. Lu says Mr. Tung and his father have a large client base which they serve together and Mr. Tung earns substantial commissions from this work. She says he has earned in excess of \$200,000 annually in the past. Mr. Tung claims he is not able to earn the same commissions he did before he and Ms. Lu separated because he no longer earns commissions from managing the very substantial wealth of Anshan Lu, Ms. Lu's father. After the parties separated, Anshan Lu switched his portfolio to another investment advisor at CIBC. Mr. Tung says his 2024 earnings are on track to be around \$105,000 based on his year-to-date pay as of November 30, 2024 of \$94,718. His tax returns for past years show the following taxable income:

- 2023: \$155,968;
- 2022: \$166,060;
- 2021: \$304,695 which includes a taxable capital gain of \$138,742 from the disposition of over \$12 million in securities that were acquired and disposed of in 2021. If the full capital gain (i.e. both the taxable and non-taxable portions) is included, his income for 2021 was \$402,058;
- 2020: \$204,523 and a capital loss of \$192,216 that derives from the disposition of \$7.5 million in securities.

[34] In a late-filed affidavit, Mr. Tung deposed that the transactions that generated the large capital gain in 2021 and the loss in 2020 relate to a joint account he held with his father, Hans. He stated Hans wanted to put some of his wealth into joint accounts with each of his children for inheritance purposes such that upon Hans' eventual death, each child would inherit a fund through the right of survivorship rather than through Hans' estate. However, Hans maintained that the money in the joint accounts belong to him until his death. Mr. Tung has provided a memorandum dated March 18, 2020 that he and his sister each signed in which it is acknowledged that the funds in the joint accounts belong to Hans while he is still alive. Mr. Tung says Hans removed the money from the account after Ms. Lu and Mr. Tung separated because he did not want his money mixed up in family law proceeding. Mr. Tung acknowledges that he reported capital gains and losses from these joint accounts on his 2020 and 2021 tax returns but claims Hans paid the taxes relating to the 2021 gain.

- [35] Ms. Lu also worked for CIBC Wood Gundy until November 2023. She started in 2018 as an assistant earning approximately \$35,000 a year but after she returned from maternity leave in 2020 she began working as an associate investment advisor. She said she worked with Mr. Tung and this allowed them to income-split the commissions that Mr. Tung earned from the book of business he shared with Hans. In 2022, her income was \$205,858 consisting of employment income, commissions, investment income, and interest. She did not produce her 2023 tax return for the present application and offered no explanation for its omission.
- [36] Mr. Tung denies that he and Ms. Lu shared commissions and split his income. He said this is not possible at CIBC. He said Ms. Lu managed her father's accounts and earned her own commissions from this, but this evidence seems inconsistent with his evidence that his own income is now lower because he no longer has Anshan Lu in his client group. He also said Ms. Lu worked under Hans Tung and earned commissions from accounts that were her responsibility.
- [37] Ms. Lu said that in April 2023, before separation, the parties agreed she should resign from CIBC to be a full-time stay-at-home parent for K. She said she submitted a resignation letter in April 2023 with an effective date of November 2023. Mr. Tung disputes this and said there was no agreement for her to be a stay-at-home parent and she has never been one. He said she began looking for jobs in the insurance industry before her resignation date.
- [38] After the June 2023 separation, Ms. Lu continued to work at CIBC until November when her resignation took effect. She said she needed a way to earn an income after separation but could not stay at CIBC because she had already submitted her resignation. Thus, in December 2023 she began working as an insurance agent with Affinity Financial where her income is solely commission-based. According to her commission statements, she earned approximately \$24,749 in commissions from January to the date of this hearing on November 21, 2024. This puts her on track to earn approximately \$26,000 in 2024.
- [39] Mr. Tung argues Ms. Lu is intentionally underemployed. He said she earned in excess of \$200,000 annually while working at CIBC and she is capable of earning that income now. Ms. Lu maintains she could not stay at CIBC because of her resignation letter but she did not say whether she made attempts to withdraw her the letter or if she asked CIBC if she could stay on despite the resignation. Regardless, she said she would need to build up her own client base because she had previously worked in the group with Hans Tung.
- [40] There are several contentious issues for trial respecting the parties' income. It is not for me to delve deeply into these disputes on this interim application or attempt to resolve the stark factual disputes in the affidavit evidence. In particular, I am not able to determine whether Ms. Lu's ability to earn the kind of income she had before separation is dependent on working in Hans Tung's group or whether she could achieve that independently working elsewhere. Given the high conflict between the parties, I accept it would be practically impossible for Ms. Lu to continue working in Hans Tung's group at CIBC alongside Mr. Tung.

- [41] Nor am I able to resolve the issues respecting the large securities portfolio that appears in Mr. Tung's 2020 and 2021 tax returns and whether the gains realized from it ought to be considered his income for support purposes. Counsel for Mr. Tung has not directed me to any laws that permit this and I make no finding on the point. I acknowledge Ms. Lu's request, made by her counsel in January 2025, to reopen this application to further address this point, including to submit that there are no rules that permit Hans Tung to attribute this income to Mr. Tung. I do not consider this to be an issue that requires resolution on an interim application. It is a matter for trial. It is open to Ms. Lu to argue at trial that the capital gain attributed to Mr. Tung from these securities should be counted as income for the purposes of a retroactive award of spousal and child support but it is not necessary to resolve the issue for the purposes of an interim support order.
- [42] Both parties appear to have shared or continue to be sharing (at least in name) substantial assets with their respective fathers, both of whom are clearly very wealthy. Whether and to what extent each party presently may access these assets for income purposes is unclear and a matter for trial. To the extent Ms. Lu might be able to access accounts she holds with her father, her present ability to do so is impeded by the restraining order obtained by Mr. Tung. Further, the addition of her father as a party and the new restraining order against him may further limit Ms. Lu's ability to access funds through her father for her own support. Ultimately, I am unconvinced that either party's stated annual income represents the full extent of what might be available to them but I cannot determine the extent of that on this application. I have assessed both the parties' income and Ms. Lu's need for interim support without considering their ability to supplement their income with their respective fathers' help. Thus, I did not consider it necessary to reopen the application to address the December 17, 2024 order.
- [43] As I am asked to make only interim orders, and in view of the many uncertainties I have just outlined, I will make orders that achieve "rough justice" until all these matters can be addressed at trial. As these are interim orders, they may be adjusted retroactively at trial.
- [44] Mr. Tung has earned in excess of \$150,000 in all years for which there is evidence except potentially 2024. In some years he has earned in excess of \$200,000 and in 2021, if capital gains are included, he earned in excess of \$400,000. Excluding the capital gains for that year, which he claims is his father's, his own income was still in excess of \$150,000. In my view, it is appropriate to impute \$150,000 to Mr. Tung for the purposes of interim support only.
- [45] For Ms. Lu, I accept there is at least a prima facie case that she is not presently able to earn the income she made before separation when she was working in Hans Tung's group at CIBC and that she could not practically continue in that role after separation. I accept there is a prima facie case for spousal support given her present reduced income, although that may well change by the time of trial. I acknowledge Mr. Tung's submission that Ms. Lu's need for support cannot be properly considered without disclosure of her 2023 tax return and certainly the failure to disclose that leaves me with questions about her present need. However, her 2023 income will consist mostly of her earnings from CIBC before her

resignation took effect so it will have limited value in assessing her present ability to earn an income elsewhere or outside of Hans Tung's group. Based on Ms. Lu's expected earnings for 2024, I impute an annual income of \$26,000 for the purposes of an interim support order only. Of course the parties are obligated to produce their financial information on an ongoing basis between now and trial and ongoing production may shed light on Ms. Lu's actual need and Mr. Tung's ability to pay support.

Amounts of Interim Support

- [46] The monthly child support payment under the Guidelines for \$150,000 of imputed income is \$1,356 per month. For spousal support, the Spousal Support Advisory Guidelines (SSAG) indicate \$2,373 in the mid-range and \$1,854 at the low end. It does not appear that Ms. Lu has a particularly strong claim to compensatory support given the substantial increase in her income after she returned from maternity leave, although this may depend on the extent to which that income was tied to working in Hans Tung's group. Regardless, I do not see a prima facie case at this stage for compensatory support. Her need for support is also significantly diminished by the fact she lives mortgage-free in a home purchased with money gifted to her by her father. Thus, her housing costs are minimal, amounting to property taxes and maintenance costs. In my view that is an exceptional circumstance that justifies a departure from the SSAG range. I will make an order for interim spousal support in the amount of \$1,350 per month.
- [47] Thus, there will be an order that Mr. Tung pay Ms. Lu, on an interim basis only, \$1,356 per month in child support and \$1,350 per month in spousal support, due on the first day of each month. I decline to impose a method of payment as requested by Ms. Lu. It is Mr. Tung's responsibility to ensure payment is made on time and in a form that the money is immediately accessible to Ms. Lu.

Section 7 Expenses

- [48] Ms. Lu seeks an interim order that the parties pay special and extraordinary expenses in proportion to the respective incomes. Taking into account the support payments I have ordered, I assess that to be approximately 75% to Mr. Tung and 25% to Ms. Lu. I will make that order.
- [49] In view of the parties' disputes over what constitutes an extraordinary expense, I offer this clarity for their benefit. Child care (including K.'s after-school care) and health-related expenses (including K.'s dental care) fall within the special expenses expressly included in s. 7(1) of the Guidelines. Beyond those enumerated in s. 7, extraordinary expenses are described in s. 7 as being those that "exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table". The Guideline table amounts of child support are designed to cover the "ordinary" costs of raising a child: *Clarke v. Clarke*, 2014 BCSC 824 at para. 49. These include "ordinary" extracurricular

activities such as the basic skating and dance lessons that K. takes: S.H. v. L.H., 2016 BCSC 353 at paras. 84-85; DLC v. FMC, 2010 BCSC 1312 at para. 67. I do not consider those activities to be extraordinary. I also do not consider K.'s school lunch program, being meals outside the home and a relatively inexpensive substitute for Ms. Lu preparing K.'s lunch each day, to be "extraordinary". That item is not subject to reimbursement from Mr. Tung under s. 7 because it is an expense that is covered by the table amount of spousal support: Clarke, para. 54.

Penalties for Non-Compliance with Milman J. Order

- [50] Ms. Lu seeks the imposition of a \$5,000 penalty under s. 230(2)(b)(iii) of the FLA for alleged non-compliance with Milman J.'s order. She points to the removal of items from the home contrary to the order that Ms. Lu was to have exclusive possession of the personal property in the home, including appliances and furniture, save for Mr. Tung's personal effects. She also argues Mr. Tung failed to comply with an order respecting the transfer of a Tesla account relating to Ms. Lu's vehicle. She also argues that Mr. Tung failed to make timely disclosure of certain financial information. The disclosure was not ordered by Milman J. but of course financial disclosure is a fundamental obligation in all family law cases.
- [51] With regard to the Tesla account, I am not persuaded Mr. Tung breached the order. It was framed in terms drafted by counsel for Ms. Lu and, as became apparent at the hearing before me, a more detailed order was necessary to give it effect. I made that more detailed order at the end of the hearing and that should have resolved the issue.
- [52] With respect to the removal of items from the home, Mr. Tung said he understood Milman J.'s order permitted him to remove the things he took. He claims he understood the exception for his personal effects extended to anything that belonged to him. He asserted that since K.'s bed was something he had bought before the marriage, he believed it was included among his personal effects. He argues the other items are of little significance and could reasonably have been understood as personal effects.
- [53] I have my doubts about Mr. Tung's explanation and, in my view, things like the lock on the door and K.'s bed clearly do not count as "personal effects". I agree that many of the other items are of little significance. I am not persuaded that these items can reasonably be viewed as "personal effects" but I will give Mr. Tung the benefit of the doubt with respect to his subjective understanding of that.
- [54] However, I have much difficulty with Mr. Tung's removal of K.'s bed. Even if Mr. Tung had bought the bed himself many years before K. was born, it had clearly become K.'s and it was no longer his to take. What I find most troubling about this act is not a dispute over who owns the bed or whether it is a "personal effect" (and I suggest it most clearly is not), but rather it is the act of removing a child's bed from her home when she was set to return after a year's absence. This selfish act was made all the worse by the deplorable condition in which Mr. Tung left not only the house, but K's bedroom specifically. The whole incident

strikes me as a thoughtless and callous act of retribution against Ms. Lu, done without any regard for the impact it would have on a five-year-old child, let alone on Ms. Lu.

- [55] That said, s. 230 of the FLA primarily serves to enforce and secure a party's future compliance with court orders and the measures the section sets out should be resorted to only when necessary and appropriate to enforce and secure compliance with court orders: *Kanta v. Kanta*, 2017 BCSC 2321 at para. 19; *A.J.F. v. N.L.S.*, 2020 BCSC 26 at para. 85. In this case, the proposed penalty would essentially serve to punish Mr. Tung for his past behavior rather than foster future compliance with an order.
- [56] Section 230 is part of a larger scheme in the FLA that "mandates a more holistic approach to resolve family disputes that minimizes delay, formality and conflict between the parties" and empowers the court to "provide progressively more serious responses as a particular case may dictate": *A.J.F.*, para. 86. The behavior in question relates more to how the parties conduct themselves around and in respect of K. which is one of the objectives of the conduct orders I will make. While I view the removal of K.'s bed and the state Mr. Tung left the Delta Home to be deserving of a rebuke, I prefer at this early stage of the litigation for Mr. Tung to be guided by what I have said in these reasons for judgment as he works to ensure his full compliance with the conduct orders I am now making.
- [57] With respect to financial disclosure, I understand that Mr. Tung has now produced the documents sought in the notice of application such that an order on that issue is no longer necessary.

Summary and Conclusion

- [58] In summary, I make the conduct orders sought in paragraphs 2 and 3 of the notice of application as well as an order that the parties will communicate with one another using the Our Family Wizard application. I order on an interim basis only that Mr. Tung will pay Ms. Lu child support in the amount of \$1,356 per month and spousal support in the amount of \$1,350 per month, both due on the first day of the month in a form by which the money is immediately available to Ms. Lu. These orders are based on interim imputed annual incomes of \$150,000 for Mr. Tung and \$26,000 for Ms. Lu. Spousal support is set below the low end of the SSAG range because the exceptional circumstance of Ms. Lu living mortgage-free in the family home purchased with money gifted to her by her father. I order that the parties share s. 7 expenses as I have described those in these reasons with Mr. Tung paying 75% of the cost and Ms. Lu paying 25%. It is not necessary to make a guardianship order at this time but I order that neither party may travel with K. outside of Canada without the other party's permission which is not to be unreasonably withheld. Unless the parties agree to a more convenient arrangement, counsel for Ms. Lu will hold K.'s passport on the parties' behalf pending trial. It should not be necessary to make the order sought by Ms. Lu that Mr. Tung will maintain K. on his extended benefits plan but if such an order is necessary, I will make it. All other relief sought in the notice of application is dismissed. Cost of the application will be in the cause.

"Kirchner J."

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