

CANADA / JUDGMENT

Ward v. Ward

2025 BCSC 1803

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1803 Ward v. Ward

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ward v. Ward,

2025 BCSC 1803

Date: 20250916

Docket: E31153

Registry: Cranbrook

Between:

Beverly Donna Ward

Claimant

And

Gordon Kenneth Ward

Respondent

Corrected Judgment: The text of the judgment was corrected at paras. 96, 108 and 109 on October 28, 2025;

Before: The Honourable Madam Justice Lyster

Reasons for Judgment

Counsel for the Claimant, appearing via teleconference:

D.F. Collins

Counsel for the Respondent, appearing via teleconference:

K.E. Pintye (January 21 and February 11, 2025 only)

Place and Date of Trial:

Nelson and Kamloops, B.C.

January 21 and February 11, 2025 (Nelson) and March 26, 2025 (Kamloops)

Place and Date of Judgment:

Cranbrook, B.C.

September 16, 2025

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Introduction

- [1] This is an application for summary trial in this family law action. Beverly Ward seeks, by way of this application, to have all outstanding issues between the parties, relating generally to the sale of the former family home and the division of family property and debts, finally resolved. The only issue not addressed in this application is an order for divorce.
- [2] Gordon Ward appeared through counsel on the first two of the three days over which this application was heard. He submitted that the matter was not appropriate for summary disposition, and made limited submissions with respect to the merits of the application.

- [3] For the reasons that follow, I have concluded that this matter is suitable for summary disposition and make orders regarding the sale of the former family home, the sale of the business known as Gordon Ward Trucking (the Business), and the division of the parties' property and debts.

Overview of the Parties' History and the Matters in Issue

- [4] The parties disagree about the date upon which they commenced living together in a marriage-like relationship. Ms. Ward says it was in July 2007.
- [5] The parties married on July 2, 2010. If I understand Mr. Ward's position correctly, as presented by his counsel in this hearing and as pled in his response to notice of family claim and counterclaim, he denies that they began living together in a marriage-like relationship until the date of their marriage. Inconsistently with this, Mr. Ward says in his first affidavit, made March 24, 2023, that they began living together in a marriage-like relationship in approximately the summer of 2008. He also says that Ms. Ward moved into the former family home by Christmas 2007.
- [6] The parties had no children together.
- [7] The parties agree that they separated in 2022. Ms. Ward says they did so on January 21, and Mr. Ward pleads in his counterclaim that it was on March 1, 2022. Nothing turns on this difference for the purposes of this decision. There is no dispute that the parties continued to live in the former family home together after separation until November 2022. This is when Mr. Ward was required to leave the former family home due to Ms. Ward obtaining a protection order.
- [8] Mr. Ward purchased the property on which the former family home is located in Wasa, B.C. on August 26, 1994. He built the home on the property. The parties resided there together once they started living together.
- [9] In 2008, Ms. Ward purchased a one-half interest in the former family home. She says this was accomplished by her paying out the mortgage that was registered against the home at that time. Ms. Ward claims a one-half interest in the home, while Mr. Ward appears to both make an excluded property claim and to plead that it would be significantly unfair for Ms. Ward to receive an equal share of the value of the home. I will return to the circumstances surrounding Ms. Ward's purchase of a one-half interest in the home, and the parties' contributions to the home, later in my decision.
- [10] During the parties' relationship, in 2011, Mr. Ward left his employment and purchased a trucking business, which he ran as Gordon Ward Trucking. Ms. Ward estimates the value of the assets of the Business at over \$400,000. Mr. Ward says in his first affidavit that it is worth considerably less than that and "she would not be entitled to any of it anyways because she had nothing to do with the business".

- [11] According to Ms. Ward, to facilitate the purchase of the Business in 2011, they took out a \$350,000 line of credit, secured against the former family home. At the date of separation the balance was approximately \$286,000. Ms. Ward says that the line of credit was used solely to fund the Business, while Mr. Ward says it was also used for personal use.
- [12] I will return to the question of the valuation of the Business and its division later in these reasons.

Procedural History

- [13] This matter has a tortured procedural history. I will summarize only the most salient aspects.
- [14] Ms. Ward filed the notice of family claim on February 25, 2022. Although duly served, Mr. Ward did not file a response to Ms. Ward's notice of family claim at that time.
- [15] Ms. Ward filed an application for summary trial (the "First Summary Trial Application") on May 27, 2022. Mr. Ward was provided a copy of the application and affidavit filed in support, but did not respond. I presided over the hearing of the First Application on June 6, 2022. On August 2, 2022, I released my judgment, in which I granted Ms. Ward judgment, including an order for sale of the former family home and orders for the division of family property and debt: 2022 BCSC 1293 (the "First Summary Trial Decision").
- [16] On October 27, 2022, Ms. Ward filed an application for a protection order. Master Keim granted the protection order on October 31, 2022 for a six-month term.
- [17] On February 22, 2023, Mr. Ward began a separate action by filing a notice of family claim.
- [18] On March 20, 2023, Ms. Ward filed an application in which she sought an extension of the protection order and other relief. On March 24, 2023, Mr. Ward filed an application to set aside the First Summary Trial Decision and to terminate the protection order. The parties appeared before Justice Groves on March 31, 2023. Both parties' applications were adjourned and rescheduled.
- [19] On April 11, 2023, I heard Ms. Ward's application for an extension of the protection order and other relief. On April 13, 2023, I pronounced oral reasons in which I found that Mr. Ward had breached the existing protection order, terminated the existing protection order, granted a new protection order, and ordered costs in favour of Ms. Ward.
- [20] On June 15, 2023, Justice Schultes began to hear Mr. Ward's application to set aside the First Summary Trial Decision. The hearing continued on September 11 and October 4, 2023. He reserved judgment.

- [21] Meanwhile, on July 27, 2023, Ms. Ward filed an application to approve the sale of the former family home. That application was adjourned on or about August 29, 2023, with the court ordering that the application could be continued after Schultes J. rendered his decision on the application to set aside the First Summary Trial Decision.
- [22] On September 22, 2023, Mr. Ward filed an application to set aside the existing protection order and for exclusive possession of the former family home. On October 30, 2023, Justice G.C. Weatherill ordered that the protection order be extended until further order of the court. Mr. Ward's application remains outstanding.
- [23] On November 24, 2023, Schultes J. rendered his decision on the application to set aside the First Summary Trial Decision. He set that decision aside, with costs in the cause: 2023 BCSC 2584 (the "Set Aside Decision").
- [24] Ms. Ward filed the present application on August 16, 2024 (the "Second Summary Trial Application"). It first came on for hearing before me on January 21, 2025. At that time, Mr. Ward had not filed an application response or a response to the notice of family claim. His counsel applied for an adjournment, which I granted on the following terms: 2025 BCSC 366:
- a) The application was adjourned, to be heard on the first available day in Nelson, Cranbrook or Rossland, with a time estimate of one day;
 - b) Mr. Ward was granted leave to file a response to the notice of family claim no later than January 24, 2025;
 - c) Any Supreme Court Family Rules, B.C. Reg. 169/2009, that might apply upon the filing of the response to the notice of family claim were abridged;
 - d) Any application response and supporting materials were to be filed and served no later than January 24, 2025;
 - e) Counsel for Mr. Ward was to provide a draft of the order of Schultes J. no later than January 24, 2025; and
 - f) Ms. Ward was to have her costs of the adjournment application forthwith in any event of the cause.
- [25] The hearing of the Second Summary Trial Application continued before me on February 11, 2025. By that time, I believe that most, if not all, of the steps required under the adjournment order, including the filing of a response to the notice of family claim, an application response, and supporting affidavit, had been completed. Mr. Ward had also filed a counterclaim. I heard the parties for a full day, at the conclusion of which counsel for Mr. Ward had not concluded her submissions. I adjourned the hearing, with the direction that it be scheduled for a half day continuation at any of the three Kootenay registries.

- [26] Ms. Ward scheduled the continuation for March 26, 2025, while I was sitting in Kamloops. When the case was called at 2:00 p.m., counsel for Mr. Ward was not in attendance. The matter was stood down, and ultimately recalled at 4:00 p.m. Counsel for Mr. Ward was still not in attendance. I asked counsel for Ms. Ward to provide submissions on whether the matter should proceed in the absence of Mr. Ward or his counsel.
- [27] Counsel advised that the continuation had been scheduled for the March 24 Kamloops assize. Counsel for Mr. Ward confirmed her availability in a February 18, 2025 email. Counsel for Ms. Ward served her with the requisition scheduling the continuation on February 28, 2025. On March 18, 2025, counsel for Mr. Ward appeared on a parallel criminal proceeding involving an alleged breach of the protection order.
- [28] On March 21, 2025, at 3:19 p.m. a legal assistant at Mr. Ward's counsel's law firm sent an email to the Scheduling Manager in Kamloops, counsel for Ms. Ward, and Mr. Ward's counsel, at a new email address, stating that that was her last day at that law firm, and providing her new email address. No notice of intention to withdraw was provided by Mr. Ward's counsel. Counsel for Ms. Ward emailed counsel for Mr. Ward at the email address provided on March 24, 2025, advising her that it was his intention to proceed on March 26. She did not provide a response, nor had counsel for Ms. Ward received any other direct communication from counsel for Mr. Ward since March 21.
- [29] Having heard from counsel for Ms. Ward, I decided that it was appropriate to proceed in the absence of Mr. Ward or his counsel. Counsel was clearly aware of the continuation of the hearing. Neither Mr. Ward, nor anyone on his behalf, appeared to request an adjournment. Given the history of this matter, it would have been unduly prejudicial to Ms. Ward to decline to hear the continuation of this application. After my ruling, counsel for Ms. Ward made brief closing substantive submissions. I reserved judgment.

Suitability for Summary Trial

- [30] The law with respect to determining the suitability of determination of summary trial in family cases was helpfully summarized by Mr. Justice Verhoeven in *Villeneuve v. Agnew*, 2018 BCSC 546 at para. 38:
- [38] I adopt my comments regarding principles applicable to determining suitability of summary trial determination in family cases set out in *MacCarthy v. MacCarthy* 2014 BCSC 2229; varied 2015 BCCA 496 (on the appeal, no issue was taken with the question of suitability):
- 75 Supreme Court Family Rule 11-3 permits a party to apply for judgment on summary trial. Rule 11-3(15) states that the court may grant judgment after a summary trial unless:
- (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application.

76 Both of these conditions must be satisfied for the court to grant judgment after a summary trial. In determining whether the court ought to grant judgment, the test set out in relation to Rule 18A of the former Rules of Court, 1990 in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) is instructive. The test is stated by Chief Justice McEachern, at p. 215, as follows:

The test for R. 18A, in my view, is the same as on a trial. Upon the facts being found the chambers judge must apply the law and all appropriate legal principles. If then satisfied that the claim or defence has been established according to the appropriate onus of proof he must give judgment according to law unless he has the opinion that it will be unjust to give such judgment.

77 McEachern C.J.B.C. listed the following factors, at p. 214, a court is entitled to consider in determining whether it would be unjust to grant judgment:

...the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings and any other matters which arise for consideration on this important question.

78 To this list has been added other factors, including the cost of the litigation and the time of the summary trial, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices: see *Gichuru v. Pallai*, 2013 BCCA 60 at para. 31.

79 The court must also consider the objectives of the SCFR, codified in Rule 1-3. Rule 1-3(1)(b) provides that an object of the SCFR is to "secure the just, speedy and inexpensive determination of every family law case on its merits." Rule 1-3(2) provides that securing that object includes conducting the family law case in ways that are proportionate to: (a) the interests of any child affected, (b) the importance of the issues in dispute, and (c) the complexity of the family law case.

80 The Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7 recently called for a shift in litigation culture to utilize alternative tools for dispute resolution to improve access to justice. Summary trial is one such tool.

81 While *Hryniak* emphasizes the importance of proportionality and the balancing a judge must undertake when determining a matter's suitability for summary trial, it does not alter the former approach that had developed in the case law in British Columbia: see *N.H. v. Aitken Estate*, 2014 BCSC 419 at para. 33. In *Ghavim v. Jamali*, 2014 BCCA 21 at para. 32, Mr. Justice Willcock cautioned that, when proceeding summarily, the court must "recognize the preeminent objective of determining cases fairly on their merits".

- [31] In *Jeerh v. Jeerh*, 2015 BCSC 1614, at para. 85, another family law case, Mr. Justice N. Smith quoted at length from the Court of Appeal's judgment in *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-35 for the applicable principles. At para. 86, Smith J. stated:
- [86] The parties are obliged to take every reasonable step to put them in the best position possible for a summary trial. Failure to take such steps cannot frustrate the summary trial process and the respondent cannot simply insist on a full trial in the hopes that, with the benefit of viva voce evidence, something might turn up: *Everest Canadian Properties Ltd. v. Mallmann*, 2008 BCCA 275, at para. 34.
- [32] A significant part of Mr. Ward's counsel's submissions were directed to his position that this matter is not suitable for summary trial.
- [33] Mr. Ward submitted that the number of affidavits filed in this matter suggests that it is not suitable for summary trial, as the parties disagree on a number of points. He submitted that the appropriate course of action was for the parties to schedule a judicial case conference ("JCC"), set a trial date, conduct examinations for discovery and attempt to mediate the dispute. He submitted that the parties needed to get the family property valued and that they should retain a joint expert for that purpose.
- [34] Mr. Ward acknowledged that he had failed, until my adjournment order, to file a response to the notice of civil claim. Counsel was of the view that he was time-barred from doing so. Counsel also acknowledged that Ms. Ward had requested that Mr. Ward file a financial statement in Form F8, and that he had not done so, but said that was because he was barred from doing so. Counsel submitted that this was why they had filed the separate notice of family claim.
- [35] Overall, Mr. Ward submitted that this matter is too complex for the court to be able to decide the matters in issue on the basis of affidavit evidence, and that it would be unjust to decide this case in that manner.
- [36] The difficulty Mr. Ward faces in submitting that the matter is not appropriate for summary trial is that any weaknesses or inadequacies in the evidence before the court are entirely his responsibility. It was Mr. Ward who chose not to file a response to the notice of family claim for nearly three years. The notion that he was time-barred from doing so is without merit. At worst, he would have had to make an application to file his response to the notice of family claim.
- [37] Justice Schultes made his decision setting aside the First Summary Trial Decision on November 24, 2023. In doing so, Schultes J. stated at para. 67 the following with respect to Mr. Ward's excluded property claim with respect to the former family home:
- [67] On any version of the evidence, the claimant paid less than half of the apparent value of the family property, ostensibly for a joint share on title, and paid off a specific identifiable debt in the course of doing so. The possibility that as a result the title is not a conclusive indication of their respective interests, and that she held some portion of it exceeding the

amount of her contribution for him in trust, is at least worthy of investigation at this stage, whether or not a trust claim has yet been pleaded. In some respects, this analysis is potentially even more compelling if the parties had not yet acquired the status of spouses, leaving their agreement to be construed only as concerning their respective degrees of investment in the property. If it is accepted that the transfer was not a reflection of the parties' actual intentions, then the loss of the respondent's exclusion based on it would also not necessarily follow. By no means do I characterize these as ironclad or overwhelmingly strong defences - I can only say that they meet the threshold set out in the authorities.

[38] Similarly, at para. 68, Schultes J. stated the following with respect to the valuation of Mr. Ward's Business:

[68] Similarly, however much the purchased goodwill of the previous owner and the accumulated assets of the business may add up to when the entire period since 2011 is considered, the respondent has put forward a defence at least worthy of investigation that its overall value, in light of its actual profitability and the ability to realize on those assets at their current age and remaining usefulness, does not actually exceed the balance of the line of credit, as Lyster J. found on the only evidence before her. I appreciate his position that the claimant had no interest in that business, but I do not see how that could be so, since it was acquired during the relationship and there is no evidence of an agreement between the parties that it was to be held separately. This means that it is by no means clear that the line of credit is not family debt, even if it was used principally to fund the acquisition of equipment for the business.

[39] So far as the record before me shows, Mr. Ward has done nothing since Schultes J. rendered his decision to investigate those issues, or otherwise move this case forward. Ms. Ward, for her part, filed the present application in an attempt to bring this case to resolution. The ideas put forward by Mr. Ward's counsel for moving this case forward - scheduling a JCC, conducting examinations for discovery, attending a mediation - might all be of value in resolving this case. But Mr. Ward has done nothing to make any of those things happen. His conduct is consistent with the words of Madam Justice Newbury in *Everest Canadian Properties Ltd. v. Mallman*, 2008 BCCA 275, cited in *Gichuru* at para. 32:

It is trite law that where an application for summary determination under Rule 18A is set down, the parties are obliged to take every reasonable step to put themselves in the best position possible. As this court noted in *Anglo Canadian Shipping Co. v. Pulp, Paper & Woodworkers of Canada, Local 8* (1988) 27 B.C.L.R. (2d) 378 at 382, a party cannot, by failing to take such steps, frustrate the benefits of the summary trial process. Where the application is brought by a plaintiff, the defendant may not simply insist on a full trial in hopes that with the benefit of viva voce evidence, 'something might turn up'

[Emphasis added.]

[40] I am able to find any necessary facts in dispute on the basis of the affidavit evidence. Like Justice Fleming in *McManus v. McManus*, 2019 BCSC 123 at para. 23:

I have resolved any material conflicts by assessing the quality of each party's evidence, considering its internal and external consistency, the extent to which it aligns with the probabilities affect the case and its reasonableness.

[41] I conclude that I can decide the matters in issue on the evidence before me, and that it would be manifestly unjust not to do so.

Credibility and Reliability

[42] In assessing the evidence, I find that, to the extent it is necessary to do so, I prefer Ms. Ward's evidence to that of Mr. Ward. Further, unless it is corroborated by objective evidence, I am unable to rely on Mr. Ward's evidence.

[43] This is because Mr. Ward has made demonstrably false statements in his affidavits. The most serious example of this was with respect to text messages which he swore were sent by Ms. Ward on January 24, 2023, telling her that she loved him and missed him. He attached those texts to his first affidavit, sworn in response to Ms. Ward's application, heard by me on April 11, 2023, to extend the then existing protection order. I concluded that Ms. Ward did not send the texts to Mr. Ward, at least not on the dates claimed or at any time after the protection order was granted. In his second affidavit, made May 31, 2023, Mr. Ward admitted that he realized they were old messages. He offered no explanation of why he used texts, which he knew to be old, in an attempt to mislead the court into thinking Ms. Ward was warmly contacting him while the protection order was in place.

[44] Other, perhaps less egregious, but nonetheless concerning, examples of Mr. Ward providing unreliable and incredible evidence include his assertions in multiple affidavits that Ms. Ward made no contributions to the former family home. For example, in his fifth affidavit, made January 24, 2025, Mr. Ward says that Ms. Ward "never in any way shape or form put money in other than the \$160,000 to pay off the mortgage." In the same affidavit, he says that the only investment she ever put into the home was replacing a furnace. In her ninth affidavit, made February 4, 2025, Ms. Ward provided receipts for a number of times she had purchased for the former family home, including flooring, a pressure tank, window shades, and a washer and dryer. At the very least, this shows that Mr. Ward is prepared to grossly exaggerate his evidence to bolster his case.

[45] Similarly, Mr. Ward alleged in his fifth affidavit that Ms. Ward "never paid the land taxes". Ms. Ward provided printouts from eTaxBC showing that taxes were paid for 2022, 2023, and 2024. She says, and I accept, that she paid the taxes without contribution from Mr. Ward.

[46] Mr. Ward has also taken inconsistent positions, such as with respect to when the parties began living together in a marriage-like relationship.

[47] These are only some of the areas in which Mr. Ward gave evidence that was demonstrably untrue at worst, or unreliable at best. I am unable to rely on his evidence.

Analysis

Applicable legal principles

- [48] Under s. 81(a) of the Family Law Act, S.B.C. 2011, c. 25 [FLA], both parties are entitled to an undivided one-half interest in all family property, and are equally responsible for family debt, regardless of their respective use or contribution.
- [49] Family property is defined in s. 84(1) to include all real property and personal property on the date the spouses separated that is owned by at least one spouse. Family property includes, under s. 84(2)(b), an interest in a business.
- [50] Section 85 defines excluded property. Excluded property includes property acquired by a spouse before the relationship between the spouses began. Pursuant to s. 85(2), the burden is on the spouse making an excluded property claim to demonstrate that it is excluded. Under s. 85(3), if property is excluded, then the exclusion applies despite any transfer of legal or beneficial ownership of the property from a spouse to the other spouse.
- [51] Pursuant to s. 95(1), the court may order an unequal division of family property or debt if it would be significantly unfair to equally divide them. Section 95(2) sets out the factors the court may consider in determining if equal division would be significantly unfair.

Former family home

History and findings of fact

- [52] There is no dispute that Mr. Ward owned the former family home prior to the beginning of the parties' relationship. On this basis, he makes an excluded property claim. As I understand his position, he claims not only the value of the property at the time the parties began living together in a marriage-like relationship, but the entire value of the home, less the \$161,160.35 mortgage that Ms. Ward paid off at the time she was put on title.
- [53] Ms. Ward's position is that she is entitled an undivided one-half interest in the former family home. She bases this position on her claim that she purchased a one-half interest in the home by her paying out the mortgage.
- [54] I will now turn to a closer examination of the parties' evidence in relation to the home. In her first affidavit, Ms. Ward swore that shortly after the parties commenced their marriage-like relationship in 2008, she purchased a half interest in the home. She says that she paid off the mortgage Mr. Ward had against the home in the approximate amount of \$160,000 from funds she had acquired previous to the relationship, as well as the proceeds from the sale of a property she had owned previously.

- [55] Ms. Ward also says that over the course of their relationship she contributed to the installation of a new furnace, and that they finished the basement and the backyard, installed a hot tub and a patio.
- [56] Ms. Ward's interest in the home is reflected in the state of title certificate, which shows the parties as the registered owners in fee simple as joint tenants. The property transfer tax notice of assessment shows that the assessed value of the property transferred at the time of the transfer was \$328,500. Ms. Ward paid the tax of \$4,570 assessed.
- [57] In his first affidavit, Mr. Ward says that he bought the property in August 1994. It was bare land at the time, and he describes the work he did to clear the land and build the house. Mr. Ward acknowledges that, in 2008, Ms. Ward paid off the mortgage. He says that given all the work and money he contributed to the home, he thinks it would be extremely unfair to give Ms. Ward half the value of the home.
- [58] With regards to putting Ms. Ward on title, Mr. Ward says that "it was clearly an emotional endeavour to add her on title". He says it was for \$1 and "love and affection". He says he was doing it out of love for Ms. Ward, not thinking he would need to protect himself in the event of a breakup, but that she was asking to be put on title to protect her interest in the money she used from the sale of her home to pay off the mortgage. He says that he understood this was simply a placeholder of sorts so that if they broke up she would get her excluded contribution back for paying off the mortgage. He says that when they talked about it, Ms. Ward always told him she just wanted that money back.
- [59] Mr. Ward also says that Ms. Ward owned a property when she moved in with him and that she rented out her house for a bit then sold the house. He says that he "did not see any money" for rental income or the proceeds from the sale until Ms. Ward wanted to pay off the mortgage and have her name put on title. He says that he wanted to continue renovating the house, but Ms. Ward was not interested in doing so.
- [60] In her fifth affidavit, Ms. Ward replied to Mr. Ward on these issues. She denies that any time pre-separation that Mr. Ward ever told her that her purchase of a half interest was a placeholder. She says that if he had said that, she would not have paid out the mortgage. She says that it is false that she never assisted with renovations, and says she assisted with both financing and physical labour.
- [61] The home was appraised in December 2010 for the lender who was considering granting the line of credit as having a market value of \$563,000.
- [62] As of 2022, the home was assessed at \$724,000. There is no appraisal from the date of separation. As of the date of separation, the approximate amount owing on the line of credit was \$230,000.
- [63] The former family home is family property. Mr. Ward has not established an excluded property claim. While it is true that he owned the property prior to the parties' relationship, the evidence shows that Ms. Ward purchased a one-half interest in the property in August

2008. She did so for good and valuable consideration - the pay out of the existing mortgage. The contemporary documents, including the fact that Ms. Ward paid the property transfer tax owing on the sale of the half interest, show that this was not a mere "placeholder" devised to protect the money she used to pay off the mortgage.

[64] Section 23(2) of the Land Title Act, R.S.B.C. 1996, c. 250 provides that an indefeasible title:

is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title.

[65] The parties are described as owning the former family home as joint tenants on the certificate of title. Mr. Ward has not clearly pled that Ms. Ward holds her half interest in trust for him. Regardless of the deficiencies in his pleadings, he has not shown that he is the beneficial owner of Ms. Ward's legal interest.

[66] Nor would it be significantly unfair to divide the former family home equally. During the course of their relationship, both parties contributed to the property, including financially and through physical labour.

[67] I, therefore, find that the former family home is family property, and that each party is entitled to a one-half undivided interest in it. I will return to the line of credit registered against the former family home after my consideration of the Business.

Sale of the former family home

[68] Ms. Ward seeks an order for sale of the former family home. Mr. Ward opposes such an order being made. He submits that while he has agreed that the former family home should be sold eventually, that Ms. Ward has not shown that its sale is necessary. He says that he wishes to continue work on the home, which he believes would increase its value. To do so, he would require exclusive occupancy of the former family home.

[69] This is an application for a final order of sale, not an interim order. As such, the court's authority to order sale comes from s. 97(2)(d) of the FLA, which gives the court the power to require the sale of family property. The court is, therefore, not strictly limited to the considerations set out in Rule 15-8(1), that is, that the sale be "necessary or expedient".

[70] In the present case, there is no evidence that Mr. Ward wishes to or has the means to purchase Ms. Ward's interest in the former family home. In his affidavits, Mr. Ward repeatedly says that the Business is making no money, and that he is suffering financial hardship. It is impossible to assess the veracity of those claims on the evidence he has provided, but if it is true, it demonstrates that he cannot afford to buy out Ms. Ward. His affidavit evidence on the issue of the sale of the former family home is directed to the projects he wants to complete which he believes would increase the sale price.

- [71] While not strictly necessary to my analysis on this issue, I am persuaded that the sale of the former family home is necessary. The dispute between the parties is intractable. The former family home has been the focal point of the protection orders that have been made by this court.
- [72] There is no evidence that either party wishes to or has the means to buy the other out. Ms. Ward has had exclusive occupancy since November 2022, and has been solely responsible for paying for the expenses associated with the home, including property taxes, since that time. She says that she has had to deplete her savings and borrow from family to resolve this dispute. Due to an ongoing dispute between the parties, the details of which are difficult to discern, the home is uninsured, which represents an obvious risk to both parties' financial interests. This is particularly true given the ongoing risk of wildfire in the Interior. Mr. Ward claims that Ms. Ward has allowed the property to fall into disrepair. She disputes that, but, if it is true, it is all the more reason for the property to be sold, rather than fall to waste.
- [73] The former family home is the main asset held by the parties. Its current assessed value is \$943,000. Its sale would free up the equity that would enable both of the parties, who are in their early 60s, to move on with their lives.
- [74] I, therefore, grant the order requested for the sale of the former family home.
- [75] I also grant the order sought for Ms. Ward to have sole conduct of sale. It is self-evident that the parties would be unable to cooperate in the sale of the former family home. After I ordered the sale of the home in the First Summary Trial Decision, Mr. Ward actively obstructed its sale, contrary to my order and the terms of the protection order. His conduct included posting a note next to the lockbox on the property, which read:

Attention Realtors

This property is not for sale and anyone caught on the property will be charged to the fullest extent of the law.

There was a court judgement and that had 30 days to appeal it as been appealed and the parties involved are being sued for their action in this matter. There is also a letter drafted to the federal and provincial realtor boards to have Jason Wheeldons license revoked to sell realstate.

This property will be up for sale in spring or early summer of 2023 and will be on the market for the listed price at that time, which is almost double what it is priced at now for a quick sale

Regards

The Land Owner

[reproduced as written]

- [76] In his second affidavit, Mr. Ward acknowledged putting the notice up beside the lockbox. He said he did so because he had no lawyer to help him so he did not have any advice about how to deal with the situation. He says he threatened to call the police so he would never have done anything to anyone and he "wanted the law involved".
- [77] To say the obvious, the law was already involved, and an order had been made for the sale of the property. As Schultes J. put it in the Set Aside Decision at para. 65, Mr. Ward's "cantankerous and disruptive response to the order for sale, show[s] a lack of regard for court orders".
- [78] Nothing that has occurred since that time leads me to believe that Mr. Ward will be any more cooperative with a court-ordered sale at this time. I, therefore, grant Ms. Ward sole conduct of sale. The sale of the former family home will be subject to court approval. I will return to the orders relating to the sale of the former family home after I address the Business.

Gordon Ward Trucking

- [79] In her notice of application, Ms. Ward seeks an order that Mr. Ward pay her half the value of the Business, and of the value of a number of listed assets, including a 2018 Kenworth dump truck.
- [80] In the First Summary Trial Decision, I made the order sought by Ms. Ward at that time with respect to the Business, which was that Mr. Ward retain all right, title and interest in the Business, including all of its assets and debts. That included Mr. Ward being solely liable for the line of credit registered against the former family home.
- [81] In submissions before me on this application, Ms. Ward submitted that the order I made in the First Summary Trial Decision remained appropriate. She offered three alternatives. They were as follows:
- a) An order for the sale of the former family home, with the proceeds to be divided equally, and the assets of the Business to be sold, with the proceeds to be divided equally;
 - b) An order for the sale of the former family home, with the proceeds to be divided equally, and Mr. Ward to retain the Business and pay Ms. Ward half the value; or
 - c) An order for the sale of the former family home, with the proceeds to be held in trust.
- [82] The third alternative set out above would, in Ms. Ward's submission, only be appropriate if I were to determine that I could not determine this matter in a summary trial.
- [83] The second alternative is complicated by the fact that there is no current valuation of the Business or its assets. For this reason, Ms. Ward proposes that the purchase price of the assets be used to determine their value.

- [84] I have already determined that an order for sale of the former family home should be granted. The issue I must now decide is what is to be done about the Business.
- [85] Mr. Ward opposes any order being made with respect to the Business. His position is summarized as follows in his first affidavit:
14. When I read through the judgment and the affidavits from Beverly there was a lot of information that was wrong. My business is not worth \$400,000.00 and she would not have been entitled to any of it anyways because she had nothing to do with my business. The only value in my company is in the few items that the corporation owns and my own ability to keep on trucking and doing the work. My business costs a lot of money to operate as gas and maintenance costs are huge so there is no huge windfall to me. In the judgment, it gives her half the equity in the home as well as giving her the money back for the mortgage but she and her lawyer failed to mention that I owned the property for 14 years before she ever had anything to do with paying off the mortgage and if she is entitled to her excluded property, than I should have mine as well or its significantly unfair as she did not contribute aside from the payout of the mortgage. She was able to keep any money she made and the focus was on my property and debt and there was no mention that she should be on the hook for the lines of credit as they are not entirely business lines of credit and she knew full well that she was agreeing to taking on half the responsibility for the lines of credit as they started out as personal lines of credit, one still is, and that we were using the money for things other than my business. As well, the money I received from my work at the mill was given out as two lump sum payments and is untouchable until I am 65 so I have no access to those funds. There are other assets and debts that were listed for sale or division and the numbers used to value all the property are not accurate and may require a different valuation. The house and all other property was listed based on things like invoices or BC assessments which may not accurately reflect the value of these items and there is some specialized knowledge required in valuing many of these items which no one present in Court at the summary trial held.
- [86] In the First Summary Trial Decision, I addressed the difficulties with valuing the Business as follows:
- [29] It will be seen that the orders sought by Ms. Ward would provide that Mr. Ward would retain the business, including the indebtedness associated with that business. She submits that this would provide him with a windfall which would be to his advantage. She submits that the business is worth more than the debt she is seeking to have him be responsible for. In this regard, she estimates the value of the equipment owned by the business at over \$400,000.00, based on the purchase price for the various pieces of equipment. She has provided photographs of the equipment, and invoices for some of the items in support of this estimate. The most valuable items appear to be a 2018 Kenworth dump truck, purchased for \$241,379.25 in 2017; and a 2015 quad trailer, purchased for \$82,152.00 in 2018. Both prices are inclusive of taxes. I have no evidence about how much these or the other pieces of equipment owned by the business may have depreciated since they were purchased.

- [30] When Mr. Ward purchased the business in 2011, the Sales Agreement included a number of pieces of equipment, valued at \$100,000.00 plus HST of \$18,000.00. It also included "#1 Selfload Call Back position as shown on the Truckers Date for Hire List for the Cranbrook Area with Tembec Enterprises, Cranbrook Division for \$150,000.00 Plus \$18,000.00." There was no evidence about the current value of this call back position, and Ms. Ward did not rely on it in her estimation of the value of the business.
- [31] The evidence before the court does not allow me to determine the value of the business with any degree of precision. I am satisfied, however, that the value of the business likely exceeds the line of credit, which it will be recalled is approximately \$286,000.00.
- [32] Under s. 81 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] both parties are entitled to an undivided one-half interest in all family property, and are equally responsible for family debt. The property in respect of which Ms. Ward seeks orders is all family property, save and except for the two investment accounts, which are in whole or large part excluded property. Under the orders sought by Ms. Ward, I am satisfied that each party would receive approximately one-half of the family property. I cannot be precise about that, given the lack of certainty regarding the precise value of the business, but I am satisfied that Mr. Ward would receive not less than one-half of the value of the family property following the sale of the family home.
- [33] Mr. Ward would likely be in the stronger position to provide evidence regarding the value of the business. If Ms. Ward has overvalued the business, he could have participated and provided evidence about the value of the business. Mr. Ward has chosen not to participate in these proceedings, however, despite being given notice. In the circumstances, I consider it appropriate to proceed on the evidence of Ms. Ward, including her estimate of the value of the assets of the business.
- [87] In the Set Aside Decision, Schultes J. commented on the issues surrounding the valuation of the Business as follows at para. 68:
- [68] Similarly, however much the purchased goodwill of the previous owner and the accumulated assets of the business may add up to when the entire period since 2011 is considered, the respondent has put forward a defence at least worthy of investigation that its overall value, in light of its actual profitability and the ability to realize on those assets at their current age and remaining usefulness, does not actually exceed the balance of the line of credit, as Lyster J. found on the only evidence before her. I appreciate his position that the claimant had no interest in that business, but I do not see how that could be so, since it was acquired during the relationship and there is no evidence of an agreement between the parties that it was to be held separately. This means that it is by no means clear that the line of credit is not family debt, even if it was used principally to fund the acquisition of equipment for the business.

- [88] Mr. Ward has done nothing to investigate the defence which Schultes J. held was at least worthy of investigation. By this I mean that Mr. Ward has failed to provide evidence that would assist the court in valuing the Business. In his fifth affidavit, made January 24, 2025, Mr. Ward purported to provide materials to support his claim and act as a defence to the summary trial application. He said he has further materials and evidence which he did not include. He says that he could not gain access to the former family home to obtain those materials. He says that he has witnesses to support his defence and claims, but has not provided any affidavits from any such witnesses.
- [89] By the time he finally responded to the Second Summary Trial Application, Mr. Ward had had nearly three years to gather and produce any materials he needed to put forward his claim and defence and to obtain affidavits from supporting witnesses. I do not accept his assertions that he was prevented from obtaining any materials he might have required from the former family home. The October 31, 2022 protection order permitted Mr. Ward to attend the former family home, accompanied by a police officer, to remove his personal belongings. In my April 13, 2023 oral judgment, I found that he did so on November 12, 2023. Also on April 13, 2023, in the new protection order I granted that day, Mr. Ward was given an additional opportunity to attend the former family home with a police officer to remove any tools or equipment needed for the Business. In May 2023, there was correspondence between counsel with respect to Mr. Ward obtaining various items, including documents, which Ms. Ward consented to him retrieving, provided he did not enter the house and certain other conditions were met. According to his fifth affidavit, Mr. Ward was worried about the fact of him returning to the property being used against him. It would appear that he chose not to take advantage of the opportunity provided to him to obtain any documents he needed from the former family home.
- [90] Ms. Ward produced invoices for equipment purchased and used by the Business totalling approximately \$320,000. She estimates the total value of the assets at over \$400,000. The single most expensive piece of equipment is the 2018 Kenworth dump truck and Nahanni trailer, purchased for \$230,000. The business itself was purchased for over \$200,000 in 2011.
- [91] In his fifth affidavit, Mr. Ward said the following about the value of the Business:
7. My trucking business is not worth what the claimant has made claims to and I have had to incur huge amounts of debt to have the truck on the road and viable. My tools and other items I use personally and for the truck are only of value if they have to be replaced as those would be new and costly to replace, but all of the less larger items I use from my shop at home, are not owned by the business. There is little value in the truck, and that is the only part of my business that really has value. Anything else that I have received from or on behalf of myself as the owner of the business has not been put into the business but myself personally and which I use to keep the business going as the business itself is not in receipt of any funds from pensions or buy outs etc.

8. Any money that flowed to myself that I received when I left the mill or other employment was not owed to my trucking business but myself so any funds other than what I earn from my own trucking business have nothing to do with the business and are my personal funds I put back into the business just to keep it going. I do not keep large amount of money in the business, and it runs at a huge cost as I have to put much of the money I earn from the business back into the day to day running of the truck - such as gas, tools, parts for the truck, or any other anything else incidental to running the truck. The only value of the business would be how much the truck would be worth that it could sell for which, and any funds received for the loads I hauled at the date of separation, all of which were negligible. I have more debt than assets or worth in the trucking business at any give time given that I am constantly going to Kenworth or accruing other debt to continue running. The truck is worth maybe a best price and FMV \$150-200,000, and what the business was worth at the time would have to be set off against anything debts or expenses owed and paid, the value of the truck, and any potential money that I had received that would be set off against any debt/expenses/etc, owed at the time, or owed after date of separation but incurring during the marriage. I do not have access to that information and have been denied the ability to pick up much of my items including many of my documents.
- [92] Elsewhere in that affidavit, he says that the two bobcats are worth between \$20,000 and \$40,000 each. Mr. Ward does not provide any documentary evidence to substantiate his vague evidence about the Business. On his evidence, however, the truck and two bobcats alone would be worth, at the high end, \$240,000.
- [93] Mr. Ward was in the best position to provide evidence about the value of the Business, but has failed to do so. He has never filed a financial statement in Form F8 in these proceedings, and has produced no tax returns for himself or tax returns or financial statements for the Business.
- [94] What is clear, on all of the evidence, is that the court continues to have inadequate reliable evidence of the value of the Business. Ms. Ward has provided evidence showing what the parties paid for assets related to the Business, but that can only be relied on so far as assets are likely to have depreciated over time. Given Mr. Ward's litigation conduct to date, it is doubtful that the court will ever have better evidence of the current value of the Business or its assets. Ms. Ward should not be forced, by virtue of Mr. Ward's dilatory behaviour, to wait indefinitely and perhaps forever, for this matter to be resolved.
- [95] On the law, it is clear that the Business, including all of its assets, whatever their value may be, is family property. The same is true of any debts associated with the Business. Mr. Ward had no excluded property claim to the Business, nor is there any basis on the evidence to conclude that it would be significantly unfair to not divide the assets and debt associated with the Business equally.

- [96] In the circumstances, I have concluded that the first alternative offered by Ms. Ward is the fairest and most just remedy available in the circumstances. I, therefore, order that the assets of the Business be sold at auction. Mr. Ward would be best situated to have conduct of sale, but I do not believe he would cooperate with such a sale. I, therefore, grant Ms. Ward sole conduct of sale of the assets of the Business. The net proceeds of sale are to be equally divided and paid out to the parties in equal shares.
- [97] The line of credit registered against the former family property remains to be dealt with. Mr. Ward says, and I do not understand Ms. Ward to disagree, that he has been solely responsible for payments on the line of credit. The parties disagree about whether the line of credit was obtained solely for business purposes. Ms. Ward says that it was used solely for business purposes, while Mr. Ward says it was used for both business and personal purposes. Regardless, it is family debt, to be divided equally. I, therefore, order that line of credit be paid from the proceeds of sale of the former family home. After payment of the usual expenses, such as real estate commissions and legal fees, the balance of the net sale proceeds are to be divided into equal shares and paid out to the parties.

Miscellaneous other property and debts

- [98] Ms. Ward sought a number of orders regarding other assets and debts. As set out in the notice of application, those orders were as follows:
6. The Respondent shall retain the 2019 KLM motorcycle and Royal cargo trailer.
 7. The Claimant shall retain the 2020 Subaru Cross Trek car currently in her possession.
 8. The Gravely ride on mower and Yamaha side by side quad currently in the Claimant's possession be sold with the proceeds divided equally between the parties.
 9. The Claimant retain all right, title and interest in her CIBC investment account.
 10. The Respondent retain all right, title and interest in his Quadrus Investment account [# omitted].
 11. Except as set out above, each party shall retain all other chattels, financial assets, pensions and household contents currently in their possession and shall be responsible for all debts in their name.
- [99] Ms. Ward continues to seek those orders, which mirror the orders sought in the First Summary Trial Application, except that they do not address the Spyder motorcycle, which has been sold. She says in her eighth affidavit that she has depleted her savings and transferred her remaining investments from Quadrus to the CIBC, which are now held in GICs in the approximate amount of \$225,000.
- [100] Mr. Ward opposes all orders sought, but it is difficult to glean from his submissions and materials his precise position with respect to most of these items. In his fifth affidavit, he refers to a peddle bike and battery, which he says are worth \$2,599 together. It is not clear

whether these items are included in Ms. Ward's orders sought, or in whose possession they may be. Of more significance, Mr. Ward says his guns are worth around \$55,000 and the scopes and straps are worth \$10,000. Ms. Ward makes no claim to those items, which obviously have significant value. Mr. Ward refers to his "1845 size machine" being worth around \$80,000 and his "1840" being around \$60,000. In submissions, counsel for Ms. Ward said these were the two bobcats, but that is impossible to square with Mr. Ward's evidence about the value of the two bobcats. Mr. Ward says there is around \$10,000 in tires that now have sun rot. I do not know what tires he is referring to. Mr. Ward says his motorcycle trailer would cost about \$12,000 to replace.

[101] In his second affidavit, Mr. Ward said that he does not want any part of Ms. Ward's Quadrus account that is her inheritance. Those are the funds which have been transferred to the CIBC.

[102] Mr. Ward says he does want half of the profit from rent and the sale of Ms. Ward's house in Cranbrook. He also submits that he is entitled to occupational rent. He has provided no submissions or evidence to substantiate either request beyond stating in submissions that the occupational rent would be in the neighbourhood of \$2,000 to \$3,000 a month.

[103] I will deal with the issues relating to the rent earned from Ms. Ward's property and the profits from its sale. It will be recalled it was that profit which she used to pay off the mortgage on the former family home. As I understand Mr. Ward's position as put forward by his counsel in submissions before me, it is that the parties, while they lived together, were not in a marriage-like relationship at the time that Ms. Ward sold her home and paid off the mortgage. If I understand his position correctly, he further submits that they were not in a marriage-like relationship at any time prior to the date of their legal marriage. If that position is accepted, then Mr. Ward would have no claim under the FLA to any rent or profits Ms. Ward received from her former home. Further, if that position is accepted, then it would mean that each of the parties came into the marriage with a half interest in the former family home, eliminating any possibility of an excluded property claim. In short, Mr. Ward has no legal claim to the rent or profits from the sale of Ms. Ward's former home.

[104] In terms of the undeveloped claim for occupational rent, neither party provided any legal authority. In *McManus, Fleming J.* summarized the factors relevant to the consideration of such a claim as follows at para. 76:

[76] In *Shen* and other authorities identified various factors that may be relevant to assessing a claim for occupation rent:

- Aside from ouster, the circumstances under which the non-occupying spouse left the home, and if and when the non-occupying spouse moved for a sale of the home;
- Whether children are residing with the occupying spouse;

- Whether the occupying spouse has made a claim for contribution from the non-occupying spouse for the expenses related to the premises;
- Whether support has been paid;
- Whether the occupying spouse increased or decreased the value of the property;
- The duration of the occupancy; and
- Other competing claims in the litigation that may offset an award of occupation rent.

[105] I find that Mr. Ward is not entitled to occupational rent. In coming to this conclusion I have taken into account the following facts. Mr. Ward left the former family home due to the protection order. Ms. Ward has been wanting to sell the home at least since May 2022, when she applied for an order for sale in the First Summary Trial Application. Mr. Ward has obstructed any sale occurring, and still opposes the home being sold at this time. There are no children residing in the former family home. Both parties have paid some expenses relating to the home: Mr. Ward has made payments on the line of credit which is secured against the home, while Ms. Ward has paid property taxes and other expenses. No support has been paid. I do not accept Mr. Ward's allegations that Ms. Ward has decreased the value of the former family home: the significant increase in its assessed value belies such a claim.

[106] Returning to the parties' assets and debts, I have already held that the line of credit is to be paid out of the proceeds of sale of the former family home, so each party will be responsible for half the cost of paying it off.

[107] In the circumstances of this case, I have concluded it is just and equitable to make the orders sought by Ms. Ward with respect to the parties' miscellaneous assets and debts. They represent a reasonable attempt to divide the parties' property more or less equally. That is the best that can be done in this case. In this regard, I note that Mr. Ward will retain his guns, which on his valuation represent a significant asset.

Summary

[108] In summary, I have made the following orders:

1. That the lands and premises located at 6006 Wolf Creek Road, Wasa, B.C. (the former family home) and more particularly described as Lot 3, District Lot 334, Kootenay District, Plan 15988, be sold, with Ms. Ward having sole conduct of sale including, but not limited to, signing any listing agreement, contacts or transfer documents, determining listing price, accepting and rejecting any offers to purchase, making any counteroffers, and all other things necessary to sell the lands and premises without requiring the signature or consent of Mr. Ward.
2. The proceeds of the sale to be paid as follows:
 - a. Payment of all real estate commissions;

- b. Payment of all financial encumbrances registered against title;
 - c. Payment of all real estate taxes, taxes, utilities, interest, penalties, and all other necessary adjustments as set out in the vendor's statement of adjustments;
 - d. Payment of all legal fees and disbursement to clear title;
 - e. The balance of the net sale proceeds to be divided into equal shares and paid out to the parties, subject to (f); and
 - f. The sum of \$50,000 to be paid into Ms. Ward's solicitor's trust account from Mr. Ward's half share of the net sale proceeds to secure her costs, and not to be disbursed without further court order or written agreement of the parties.
3. The sale of the former family home is subject to court approval.
 4. The assets of the Business known as Gordon Ward Trucking are to be sold at auction. Without limiting the generality of the foregoing, this is to include:
 - a. 2018 Kenworth T800 dump truck with Nehanni quad trailer;
 - b. 2015 Cross Country quad trailer;
 - c. 2000 Midland pup trailer;
 - d. 2001 Ford F350 dump truck;
 - e. 2007 Load Max flat deck trailer;
 - f. Mini excavator;
 - g. Case Model 1845C bobcat; and
 - h. Case Model 1840 bobcat.
 5. Ms. Ward is to have sole conduct of sale of the assets of the Business.
 6. The net proceeds of sale of the assets of the Business are to be divided into equal shares and paid out to the parties.
 7. Mr. Ward shall retain the 2019 KLM motorcycle and Royal cargo trailer.
 8. Ms. Ward shall retain the 2020 Subaru Cross Trek car currently in her possession.
 9. The Gravely ride on mower and Yamaha side by side quad currently in Ms. Ward's possession are to be sold with the proceeds divided equally between the parties.
 10. Ms. Ward shall retain all right, title and interest in her CIBC investment account.
 11. Mr. Ward shall retain all right, title and interest in his Quadrus Investment account.

12. Except as set out above, each party shall retain all other chattels, financial assets, pensions and household contents currently in their possession and shall be responsible for all debts in their name.

[109] Ms. Ward is entitled to her costs of this application and of this proceeding throughout to the extent that other presiders have not made specific costs orders. In order to secure her costs, I have ordered that \$50,000 from Mr. Ward's share of the net proceeds of sale of the former family home be paid into trust. Any monies remaining in trust after payment of Ms. Ward's costs are to be paid out to Mr. Ward.

[110] Should further directions be required to carry out the intention of these orders, the parties may request to appear before me by contacting Supreme Court Scheduling.

"L.M. Lyster J."

LYSTER J.

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Prepared on 27 October 2026 · Esheria