
CANADA / JUDGMENT

Xi v. Zhang

2018 BCSC 741

COURT

Supreme Court of British Columbia

DECIDED

8 May 2018

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2018 BCSC 741 Xi v. Zhang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Xi v. Zhang,

2018 BCSC 741

Date: 20180508

Docket: E170575

Registry: Vancouver

Between:

Jinjin Xi

Claimant

And

Qing Zhang and

Zegui Zhang also known as Ze Gui Zhang

Respondents

Before: Master Muir

Reasons for Judgment

Counsel for the Claimant:

H.B. Chiu

Counsel for the Respondent, Qing Zhang:

J. Kang

Respondent, Zequi Zhang also known as Ze Gui Zhang:

No appearance at this hearing

Place and Date of Hearing:

Vancouver, B.C.

April 27, 2018

Place and Date of Judgment:

Vancouver, B.C.

May 8, 2018

introduction

[1] This is an application by the claimant, Ms. Jinjin Xi ("Ms. Xi"), for the following orders:

- a) that Ms. Xi have sole guardianship of the child of the marriage, Vincci Zhang also known as Yaxuan Zhang ("Vincci"), born July 11, 2014;
- b) that pursuant to the Family Law Act, S.B.C. 2011, c. 25 ["FLA"] and the Federal Child Support Guidelines, SOR/97-175 ("Guidelines"), the Respondent, Qing Zhang ("Mr. Zhang") pay to Ms. Xi child support for Vincci commencing May 1, 2016 and continuing on the first day of each and every subsequent month until further order or written agreement;
- c) that pursuant to s. 7 of the Guidelines, Mr. Zhang pay to Ms. Xi his proportionate share of Vincci's s. 7 special or extraordinary expenses commencing May 1, 2016 and continuing on the first day of each and every subsequent month until further order or written agreement;
- d) that pursuant to the FLA and the Spousal Support Advisory Guidelines ["SSAGs"], Mr. Zhang pay spousal support to Ms. Xi, commencing May 1, 2016 and continuing on the first day of each and every subsequent month until further order or written agreement;
- e) that Mr. Zhang have contact with Vincci when he is in Metro Vancouver, with the times to be agreed to between the parties;
- f) that pursuant to s. 213(2)(d) of the FLA and Rule 5-1(28) of the Supreme Court Family Rules, B.C. Reg. 169/2009, Mr. Zhang pay to Ms. Xi a fine not exceeding the sum of \$5,000 for failure to comply with the Order of the Honourable Madam Justice Holmes pronounced February 22, 2018 ("Justice Holmes' Order") that he file and serve on Ms. Xi a complete Form F8 financial statement within 21 days of Justice Holmes' Order;

- g) that pursuant to s. 213(2)(d) of the FLA and Rule 5-1(28) of the Supreme Court Family Rules, Mr. Zhang pay to Ms. Xi a fine not exceeding the sum of \$5,000 for failure to comply with Justice Holmes' Order that he file and serve on Ms. Xi a comprehensive list of documents within 21 days of Justice Holmes' Order; and
- h) Costs.

Background

- [2] Ms. Xi and Mr. Zhang were married on January 9, 2014.
- [3] The respondent, Zegui Zhang also known as Ze Gui Zhang is Mr. Zhang's father and Ms. Xi's father-in-law (the "father-in-law").
- [4] Ms. Xi and Mr. Zhang are the parents of Vincci.
- [5] Ms. Xi alleges that when she was pregnant with Vincci, Mr. Zhang and his parents encouraged her to come to Canada to have the child so that the child would have Canadian citizenship. To do so, Ms. Xi alleges that she gave up a prominent and well-paying position in China and came to live in Richmond, B.C. where she is unable to work as she is on a visitor's visa and because she speaks little English.
- [6] Ms. Xi says that Mr. Zhang's parents lived in premises in Richmond that are a subject of this action (the "Richmond house") and that she understood that if she moved and had the child in Canada, the Richmond house would be gifted to her and Mr. Zhang.
- [7] Ms. Xi alleges that Mr. Zhang's family is extremely wealthy, owning a development company worth at least \$80 million Canadian.
- [8] Ms. Xi says she resided in the Richmond house with Vincci, initially travelling back and forth to China about half the time but since January 2016, she has been residing in the Richmond house permanently with the child. Mr. Zhang largely resided and continued to work in China.
- [9] Ms. Xi says that the parties had a lavish lifestyle before separation. For example, they spent \$80,000 Canadian on their wedding flowers, Mr. Zhang's family provided a betrothal gift of \$230,000 Canadian to Ms. Xi's parents, they enjoyed extensive first or business class travel, Ms. Xi had a nanny when she and Vincci travelled in China, and she would receive \$38,860 Canadian every three months for her and the child's personal expenses, on top of housing and transportation expenses that were paid by Mr. Zhang.
- [10] Mr. Zhang does not dispute that the parties had a lavish lifestyle, but he says that this was supported by his parents in order to benefit Vincci. Mr. Zhang claims that his income is limited to an annual salary of \$28,320 Canadian and dividends of approximately \$100,000 Canadian per year. Although he disputes Ms. Xi's entitlement to spousal support, Mr. Zhang would consent to child and spousal support based on a guideline income of \$128,320 per year, with spousal support at the low end of the SSAGs and presumably on a without-

prejudice basis.

- [11] Although the father-in-law has provided an affidavit in this action, he does not confirm that he supported Ms. Xi in any way. Nor does he confirm the limited income claimed by Mr. Zhang.
- [12] Ms. Xi and Mr. Zhang separated on April 29, 2016.
- [13] Ms. Xi says that initially after separation, she was paid informal child support in the form of payments of \$30,000 Canadian in September 2016 and \$30,000 Canadian in January 2017. The child's daycare cost of \$1,600 per month has also been paid.
- [14] Ms. Xi has been Vincci's sole caregiver since separation and has made all decisions with respect to Vincci's health, education and day-to-day activities. Ms. Xi says Mr. Zhang has shown no interest in being involved with Vincci's care and has only seen Vincci once since separation for a period of about an hour, despite her offering him more time with Vincci.
- [15] Ms. Xi filed the notice of family claim on March 3, 2017. In the notice of family claim, Ms. Xi takes the position that Mr. Zhang earns \$2 million Canadian per year.
- [16] Both of the respondents were served with the notice of family claim in China on March 14, 2017 by Ms. Xi's maternal aunt.
- [17] Mr. Zhang filed a jurisdictional response on April 25, 2017. He filed and served a response to family claim on June 7, 2017.
- [18] The father-in-law filed and served a response to family claim on June 16, 2017.
- [19] A curious twist is that it is alleged that the father-in-law and Ms. Xi's mother and maternal aunt negotiated a settlement agreement in the middle of June 2017 while they were all in China (the "agreement"). The agreement is alleged to have been signed by the father-in-law, but not by Mr. Zhang. It provides that the respondents will purchase a house for Ms. Xi and Vincci in the City of Vancouver, B.C. with a value of approximately \$3 million, pay all expenses for maintenance, upkeep and preservation of the home, and pay \$200,000 per annum for support of Ms. Xi and Vincci. The enforceability of that agreement is disputed.
- [20] On September 1, 2017, Ms. Xi filed a notice of application seeking, amongst other things, orders that this court has jurisdiction to deal with this family law proceeding and should exercise its jurisdiction over this action.
- [21] That application was scheduled for September 14, 2017, but was adjourned to November 22, 2017.
- [22] On November 1, 2017, Mr. Zhang filed a notice of application seeking, amongst other things, orders that this court does not have jurisdiction to deal with this family law proceeding or in the alternative, that this court should decline jurisdiction.

- [23] Both applications were adjourned due to a lack of judges and were heard on January 22 and 25, 2018 before Madam Justice Holmes.
- [24] In her reasons for judgment pronounced February 22, 2018, Holmes J. determined that this court did have, and should exercise, jurisdiction over this proceeding and made, amongst others, the following orders:
6. Within 21 days of this Order, the Respondent Qing Zhang must file and serve a counterclaim if he intends to file and serve a counterclaim in this family law proceeding;
 7. Within 21 days of this Order, the Respondent Qing Zhang must file and serve a complete Form F8 Financial Statement pursuant to Rule 5-1 of the Supreme Court Family Rules;
 8. Within 21 days of this Order, the Respondent Qing Zhang must file and serve on the Claimant a comprehensive list of documents in accordance with Rule 9-1(1) of the Supreme Court Family Rules;
- [25] Pursuant to Justice Holmes' Order, Mr. Zhang should have filed and served a counterclaim, a complete Form F8 financial statement and a comprehensive list of documents by March 16, 2018. He did not do so. He provided to Ms. Xi's counsel his unfiled Form F8 financial statement and counterclaim on April 12, 2018, and the filed counterclaim on April 16, 2018. Mr. Zhang's Form F8 financial statement has no attachments.
- [26] Mr. Zhang's list of documents was provided to Ms. Xi's counsel on April 20, 2018. It could hardly be described as comprehensive, as it contains only eight documents and six of those are with respect to an action commenced by him in China. The financial documents consist of one statement from the Canadian Imperial Bank of Commerce dated April 19, 2018.
- [27] The excuses advanced by Mr. Zhang for his failure to comply with Justice Holmes' Order were:
- a) that he had bronchitis and was hospitalized at the end of March 2018, which, of course, is after the deadline set out in Justice Holmes' Order, and
 - b) that it is difficult to obtain financial documents in China. As there are no financial documents either attached to Mr. Zhang's Form F8 financial statement or listed in his list of documents, that excuse rings rather hollow.
- [28] The delay in determining the jurisdictional applications resulted in no formal support being paid for Ms. Xi or Vincci since separation.
- [29] In addition, Ms. Xi claims that Mr. Zhang reported to the RCMP that he believed Ms. Xi was going to remove the child from the jurisdiction and that on April 16, 2016, the RCMP seized Vincci's passport -- effectively stranding Ms. Xi in B.C. where she is unable to work, without any formal support.

- [30] The passport was given to Mr. Zhang's counsel by the RCMP on his undertaking to keep it pending agreement or court order and I gather the passport has recently been turned over to Ms. Xi's counsel.
- [31] Ms. Xi has deposed that she is now trying to obtain permanent residency in Canada as Vincci's health is better here and she believes that it is in Vincci's best interests to stay in Canada.
- [32] Ms. Xi's notice of application was filed March 26, 2018 and the hearing before me was originally scheduled for April 12, 2018, which was adjourned to today. A Judicial Case Conference was held on April 20, 2018 but Mr. Zhang did not attend.
- [33] Mr. Zhang did not file a response to Ms. Xi's application until April 27, 2018, the day of the hearing. The affidavit he swore and relied upon was not filed prior to the hearing.

Analysis

- [34] Mr. Zhang's counsel took issue with the contents of Ms. Xi's notice of application. He argued that the application should be dismissed as it was clear that she was proceeding on the basis of an imputed income for Mr. Zhang, but that was not specifically stated in her notice of application, nor was the legal basis for such an imputation specified.
- [35] I found no merit in this position. First, Mr. Zhang did not serve his unfiled Form F8 financial statement on Ms. Xi until well after the notice of application was served, hence, there was no other basis upon which Ms. Xi could claim support other than an imputed income. Second, it hardly lies in the mouth of Mr. Zhang to find fault with Ms. Xi's notice of application when he did not even file a response to that application until the day of the hearing and he does not mention taking any issue with the notice of application in his response. In any event, it is clear from Mr. Zhang's affidavit that he understood Ms. Xi was seeking to have support based on an imputed income.

Imputing income to Mr. Zhang

- [36] All of the evidence satisfies me that Mr. Zhang's true annual income is far greater than the \$128,320 as claimed by him.
- [37] The assets he lists on his Form F8 financial statement are in excess of \$9 million.
- [38] He has real estate holdings with a declared value of \$4,600,000.
- [39] He owns a Mercedes Benz that he values at \$100,000.
- [40] He deposes that he has \$150,000 in chequing accounts.
- [41] He values the interest that he has in five corporations at \$4,180,000 as follows:
- a) 4.9% (\$3,920,000) of Henan Dong Fang Cheng Real Estate Development Company (the "development company"), total value \$80 million.

- b) 11% (\$0) Henan Dong Fang Zhong Ying Property Management Co., said to not be in operation.
 - c) 33% (\$0) of Henan Long Teng Chuang Yuan Cultural Communications Company, said to not be in operation.
 - d) 40% (\$190,000) of Woaiwo ("technology company"), total value \$400,000.
 - e) 35% (\$70,000) of Xinyang Jixian Fitness Club, worth \$200,000.
- [42] Mr. Zhang indicates that the only debt he has is \$2,500,000 in personal loans from the development company used to invest in the technology company.
- [43] Mr. Zhang's declared income compared with his assets and the former lifestyle enjoyed by the parties before separation presents a picture that is simply incredible.
- [44] Without any substantiation from the father-in-law, I do not accept that the source of funds for all of this was Mr. Zhang's father.
- [45] It is clear that, in such circumstances, the court may impute an income to Mr. Zhang that accords with his real financial circumstances.
- [46] Ms. Xi deposes that while the parties were together, she was receiving \$38,860 every three months, on top of transportation and housing expenses, as well as lavish travel and a nanny while in China.
- [47] In my view, it is reasonable to impute an income to Mr. Zhang sufficient to support such payments.
- [48] The direct payments to Ms. Xi amounted to \$12,953 per month. Her claimed monthly housing costs amount to approximately \$4,000. While I appreciate that her present circumstances may be different than they were before the parties' separation, I conclude that she is living in similar premises. Her claimed monthly transportation costs are \$1,940. Those alone total \$18,893 (\$12,953 + \$4,000 + \$1,940) per month. Rounding up to allow for her travel and expenses while in China, I will use a total of \$22,000 per month or \$264,000 per year. I note that is significantly less than the expenses claimed by Ms. Xi of \$34,392 per month.
- [49] If \$264,000 was received by Ms. Xi annually, all but child support would be taxable in her hands. Assuming \$60,000 of that is child support, \$204,000 (\$264,000 - \$60,000) grossed up, using a notional tax rate of 50%, would be \$306,000 (\$204,000 x 1.5). Adding back the \$60,000 child support, gives an annual support amount of \$366,000 or \$30,500 per month.
- [50] Working backwards, I estimate that to provide child support under the Guidelines and spousal support under the SSAGs at the mid-range totalling \$30,500 per month would require an annual income of at least \$850,000.
- [51] I will, therefore, impute income of \$850,000 per annum to Mr. Zhang.

Guardianship

- [52] The case law is clear that the presumption of joint guardianship will only be overcome in exceptional circumstances.
- [53] Here, although Mr. Zhang resides in China and sees the child rarely, there is no suggestion that he does not love his child. His evidence is that he wants to spend more time with her.
- [54] I will, therefore, not grant the order sought but, on an interim basis, will allocate all parental responsibilities to Ms. Xi and order that the primary residence of Vincci is to be with Ms. Xi.
- [55] Mr. Zhang will have parenting time with Vincci as is agreed between the parties. If there is difficulty, there is leave to apply.

Child support and special expenses

- [56] No reasons are apparent to me that would make it appropriate to depart from the Guidelines, despite the large income being imputed to Mr. Zhang. Mr. Zhang will, therefore, pay interim child support in accordance with the Guidelines based on an income of \$850,000 per annum. Child support is payable monthly commencing March 1, 2018 and on the first day of each month thereafter.
- [57] Mr. Zhang will also be responsible for payment of 60% of the child's s. 7 special or extraordinary expenses. Mr. Zhang does not dispute any of the special or extraordinary expenses claimed. Those are private school tuition fees of \$2,100 per month and extracurricular activities and lessons as noted in Ms. Xi's Form F8 financial statement in the amount of \$1,146.23 per month.
- [58] In order to simplify matters for the parties, on an interim basis, Mr. Zhang will pay Ms. Xi an additional \$2,000 per month for the child's special expenses, payable commencing March 1, 2018 and on the first of each month thereafter.
- [59] The issues of retroactive child support and special or extraordinary expenses are adjourned to be dealt with at the trial of this matter, or as agreed.

Spousal support

- [60] Although this was a short marriage, as it was agreed between the parties that Ms. Xi should give up her job in China and move to British Columbia where she is on a visitor's visa and incapable of working, I conclude that she is entitled to interim spousal support.
- [61] Mr. Zhang will pay interim spousal support at the mid-range of the SSAGs based on an imputed income of \$850,000 per annum.
- [62] If there is any difficulty on agreeing on the calculation of spousal support, there is liberty to apply.

[63] Spousal support is payable commencing March 1, 2018 and on the first day of each month thereafter. The claim for retroactive spousal support is adjourned to be heard at the trial of this matter, or as agreed.

Fine

[64] Mr. Zhang failed to comply with Justice Holmes' Order that he produce his Form F8 financial statement, counterclaim and list of documents by March 16, 2018. He has shown no credible reason for his failure to do so. He has also shown a blatant disregard of many other rules of court. I conclude that a fine is appropriate in order to bring home to Mr. Zhang the importance of complying with court orders. Accordingly, Mr. Zhang will pay \$2,500 forthwith to Ms. Xi in accordance with s. 212(2)(d)(ii) of the FLA.

Costs

Ms. Xi will have her costs of this application in the cause.

"Master Muir"

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