
CANADA / JUDGMENT

Y.Q. v. J.D.

2022 BCSC 2189

COURT

Supreme Court of British Columbia

DECIDED

26 August 2022

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2022 BCSC 2189 Y.Q. v. J.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Y.Q. v. J.D.,

2022 BCSC 2189

Date: 20220826

Docket: E201247

Registry: Vancouver

Between:

Y.Q.

Claimant

And

J.D.

Respondent

Before: The Honourable Justice Kirchner

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

B. Pei-Yu Lin

The Respondent, appearing on his own behalf by teleconference:

J.D.

Place and Dates of Hearing:

Vancouver, B.C.

August 23-24, 2022

Place and Date of Judgment:

Vancouver, B.C.

August 26, 2022

- [1] THE COURT: The claimant in this family law proceeding applies for various orders. The most significant is an order that the respondent return the parties' child, A.D., to the claimant's care in Metro Vancouver within seven days, at the respondent's cost.
- [2] A.D. is currently living in China with the respondent and his family, and has been since October 2019.
- [3] Related to this order, the claimant also seeks a declaration under the Family Law Act, S.B.C. 2011, c. 25 [FLA] that A.D.'s habitual place of residence is Richmond, British Columbia, Canada, and a declaration, also pursuant to the FLA, that A.D. has been wrongfully detained in China by the respondent.
- [4] The claimant also seeks a declaration that the respondent is in contempt of an order made by Justice Matthews dated May 25, 2021, an order that he pay a fine for each breach of that order, and an order that he provide certain tax documents to accompany his Form 8 financial statement.
- [5] In his submissions, the respondent asked for an order that some of the money held in trust by the claimant's legal counsel from the sale of the parties' condominium be paid out to him so he can retain a lawyer. However, there is no filed application before me seeking that relief, so I will not address it further. The respondent is free to bring an application to seek that order in the proper way, by filing an application with the court and serving it on the claimant through her counsel.
- [6] By far the most pressing matter is the application for the return of A.D. to Vancouver and the related declarations. Due to time constraints, the contempt application and related applications for fines could not be addressed in this hearing, and I am adjourning that relief generally on terms I will discuss later.
- [7] These reasons therefore focus on the issue of whether A.D. should be returned to Metro Vancouver. I will also address the issue of the production of the tax documents.

- [8] The respondent opposes an order for A.D.'s return to British Columbia, essentially arguing that she is well settled in China, that she is being looked after by him and his family, and it would not be in A.D.'s best interests to disrupt that and have her return to British Columbia. He also points to an order by a court in China giving him custody of A.D.

Background

- [9] This proceeding has come before the court on other occasions. On May 17, 2021, Justice Matthews gave a judgment on an application brought by the respondent to stay the proceedings on the grounds that the court lacks jurisdiction. Justice Matthew rejected that application and held that this court has jurisdiction on all matters relating to the claim, including parenting of A.D.
- [10] In an oral judgment made on May 25, 2021 following another hearing, Justice Matthews made certain interim parenting orders which I will discuss in a moment.
- [11] In the course of deciding those two applications, Justice Matthews made a number of findings of fact that bear directly on the issue I am asked to decide. She also set out the background to the case. I rely heavily on her two judgments in setting out the background here.
- [12] The parties met in the City of Chengdu in the Province of Sichuan, China, in or about October 2013, while both working for Sichuan Airlines. In 2015 they moved to Richmond, British Columbia where they were married on December 6, 2015. The respondent was still employed as a pilot for Sichuan Airlines. The claimant had left the airline and, once in Richmond, was studying at Kwantlen Polytechnic University.
- [13] Justice Matthews found that from after the time the parties came to British Columbia, the claimant resided here and the respondent resided with her in Richmond during his twice-monthly flight layovers, which lasted three to four days at a time, and when he had vacation time.
- [14] The parties bought a condominium in Richmond in 2016.
- [15] Justice Matthews found that the evidence does not disclose a common habitual residence during their marriage other than British Columbia, between 2015 and 2019.
- [16] A.D. was born in June 2016. She is now seven years old.
- [17] After A.D. was born, the claimant's mother visited from China and assisted with A.D.'s care. The claimant's mother had a visitor's visa that required her to return to China twice a year. On most of those occasions, A.D. went with her.
- [18] When in Richmond, the respondent participated in A.D.'s care, including taking her to and from daycare.

- [19] At some point in 2019, the parties' marriage began to strain. In October 2019, A.D. travelled with the claimant's mother to Chengdu. The respondent piloted the aircraft on which they travelled.
- [20] Justice Matthews found that the parties had agreed that A.D. was to spend two months in Chengdu with the claimant's mother and the respondent. When A.D. left British Columbia in October 2019, she had a return ticket with a flight home to Vancouver or Richmond on December 31, 2019.
- [21] During the time from October 2019 to the end of 2019, the parties were addressing the breakdown of their marriage, whether they could continue with their marriage and on what conditions, and issues pertaining to property.
- [22] Justice Matthews found that the parties had agreed that A.D.'s flight home would be rescheduled to December 6, 2019. However, they subsequently agreed to reschedule it to December 27, 2019, because A.D. had been ill with pneumonia and was not fully recovered in time to take the December 6 flight.
- [23] By late December the parties were no longer communicating frequently or civilly due to the breakdown of their relationship. The respondent did not return A.D. to Vancouver on December 27 as agreed.
- [24] On December 30, 2019, the claimant complained to the respondent about this and said she adamantly disagreed with A.D. staying in China. She complained that the respondent had not let her see their daughter. The respondent replied that it would be "impossible for you to bring my daughter abroad without my consent and permission".
- [25] The claimant has not seen A.D. since before she left for China in October 2019.
- [26] Justice Matthews found that as late as June 23, 2020, the respondent sought to justify his refusal to provide parenting time to the claimant by reference to infidelity and her subsequent behaviour towards him. The claimant denies any infidelity.
- [27] In her jurisdictional judgment, Justice Matthews found as a fact that the respondent imposed conditions on the claimant for continuing their marriage that included making changes to her body and having tattoos.
- [28] Justice Matthews found the respondent put the claimant's ability to have a future relationship with A.D. into the negotiations about their marriage and threatened the claimant about A.D. Justice Matthews found this constituted family violence and that the respondent perpetrated this family violence. She specifically held this violence involved A.D. and had the potential to threaten her, as it included threats of alienating A.D. from her mother.

- [29] Justice Matthews also held that the respondent precluded A.D. from seeing her maternal grandmother. She found that the claimant and the claimant's mother had been the two persons with whom A.D. had the most contact from birth until October 2019, and this alienation was not in A's best interests.
- [30] On May 19, 2020, the respondent filed a civil complaint against the claimant in the Chengdu Wuhou District People's Court. In the civil complaint the respondent sought a divorce, an order that he raise A.D., an order that the claimant pay monthly alimony, division of the claimant's Wuhou property, and divorce damages.
- [31] Justice Matthews found as a fact that the respondent identified the Wuhou property in the court documents as the address for the claimant, despite the fact he knew that she did not live there. She thus found that the respondent had falsely represented to the Chengdu court that the claimant resides in Chengdu.
- [32] Justice Matthews also found as a fact that the respondent had obtained a Chinese residence card for A.D. by falsifying a declaration in the claimant's name in support of that application.
- [33] For these reasons, Justice Matthews found the respondent's conduct gives rise to obvious concerns that he is not forthright with the court and is willing to manipulate facts to his advantage.
- [34] At this point, I note that much of the respondent's argument in opposing the order for A.D.'s return to British Columbia constitutes challenges to Justice Matthews' findings of fact. He also asserts the orders she made are not workable, as they are based on a misunderstanding of how things operate in China.
- [35] I have read the respondent's affidavits and, in my view, there is nothing new of any substance that was not already considered by Justice Matthews in either the jurisdiction decision or the parenting decisions. Much of what is in his affidavits are assertions without supporting evidence. Even if it was open to the respondent to revisit Justice Matthews' findings of fact, I am not persuaded there is any basis to do so on the evidence he has presented.
- [36] In some cases, such as with respect to obtaining the residency card, the respondent has provided no new evidence but sought to explain the matter away with more assertions that he made orally during submissions. Even if these oral assertions had been in the form of sworn evidence, and having regard to Justice Matthews' findings on the matters pertinent to the respondent's trustworthiness as a witness, I do not accept these assertions and explanations.
- [37] On June 23, 2020, the respondent advised the claimant's counsel that he had commenced the proceedings in the Chengdu Wuhou District People's Court. On July 6, 2020, the claimant commenced these proceedings in this court.

[38] The respondent filed a jurisdictional dispute and, as noted, that matter came on for hearing before Justice Matthews in April 2021. She held that this court has jurisdiction over this matter because A.D.'s is ordinarily resident in B.C., and her removal to and retention in China does not negate this residency. In reaching these conclusions, Justice Matthews made a number of findings regarding A.D.'s residency and the respondent's refusal to bring her back to Canada.

[39] Specifically, she found:

- A.D. is habitually resident in B.C., notwithstanding that she had been in China since October 2019.
- The respondent removed A.D. from British Columbia without the claimant's consent or acquiescence. Although the claimant consented to A.D. going to China in October 2019, it was on the agreement that she would come back by the end of December 2019. She did not consent to A.D. relocating to China or staying beyond December 31, 2019.
- Section 72(3) of the FLA provides that the removal or withholding of a child from British Columbia without the consent of a guardian does not affect the child's habitual residence in British Columbia, unless the guardian from whom the child is being removed or withheld acquiesces or delays in applying for an order for the child's return.
- The claimant did not unreasonably delay in contesting the removal or retention in this court.

[40] The respondent did not appeal or seek leave to appeal either of Justice Matthews' judgments. Her findings therefore stand and I consider myself bound to follow them in this proceeding.

[41] Regardless, as I have stated earlier, I am not persuaded by the respondent's arguments or his evidence seeking to cast those facts in a different light. Nothing in the respondent's evidence gives me cause to question or doubt Justice Matthews' findings.

[42] Shortly after Justice Matthews released her written reasons on the jurisdiction issue, the parties appeared before her again on an application brought by the claimant for interim parenting orders, including video parenting time while A.D. remained in China. At that time, the claimant did not pursue an order for A.D.'s return to British Columbia, because the parties - or at least the claimant - was concerned about A.D. travelling during the COVID pandemic. At that time there was no vaccine available for a child of A.D.'s age.

[43] In her reasons for judgment on the parenting issues, Justice Matthews found that A.D. was resistant to video chats as arranged by the claimant and the respondent. She found that the respondent was making attempts to facilitate video chats but noted that on one occasion he had his mother videotape the chat and on another occasion his lawyer in China was present for the chat. She noted the claimant's concern that this heightened the stress for A.D. and may be enhancing A.D.'s reluctance to participate in the video chats.

[44] Justice Matthews went on to state at para. 13:

- [13] . . . it is not clear what is the source of [A.D.]'s reluctance, but she has been physically apart from her mother for over 18 months and given her very young age, it may be that she simply does not understand why she has not seen her mother for that period of time and does not understand how to re-instigate a relationship with her mother or why she should.
- [45] And at para. 14:
- [14] It is clear that in any event, the issues that are playing a role in disrupting [A.D.]'s relationship with her mother are all due to [the respondent]'s actions in retaining [A.D.] in China and putting [A.D.] into the middle of the negotiations between [the claimant] and [the respondent] over the breakdown of their relationship.
- [46] Justice Matthews made very specific orders for video chats to take place on Mondays at 8:30 p.m. Beijing time, and on Thursdays and Saturdays at times to be arranged by the claimant's mother who lives in China. She also ordered video chat time on International Children's Day at 8:30 p.m. Beijing time, and on A.D.'s birthday.
- [47] She ordered that commencing on May 27, 2021, the respondent will facilitate A.D.'s contact with her maternal grandmother on Thursdays after kindergarten until 8:00 p.m., and Saturdays from 11:30 a.m. to 8:00 p.m., all Beijing time.
- [48] She specified that the maternal grandmother will pick A.D.'s up at the start of the contact time, and the respondent would pick A.D.'s up at the end.
- [49] The claimant attempted to implement this order, first through her legal counsel proposing a plan to the respondent's then legal counsel in Vancouver, and later by the claimant contacting the respondent directly through WeChat.
- [50] The respondent denied knowing about Justice Matthews' order, even though his Vancouver legal counsel attended the hearing when the oral judgment was given. He described the claimant's mother as a "third party" who the claimant was using to "meddle in matters" between the parties. He said he condemned what he described as the claimant using her mother to "kidnap" A.D.
- [51] The claimant deposes that her mother attempted to pick A.D. up from kindergarten on May 27, 2021, as specified in Justice Matthews' order. She arrived more than an hour before kindergarten was to end and waited to pick A.D. up, but she did not see A.D. come out of the school, although the teacher apparently reported to the claimant's mother that A.D. had attended that day. The claimant then reported this to the respondent through WeChat and asked if he picked up A.D. early to avoid allowing the claimant's mother to see her. After some time, the respondent replied, telling the claimant to immediately stop getting her mother involved in the matter. He also said she should not force A.D. to have video chats with her.

- [52] The claimant deposes that because of this response, she told her mother to stop attempting to proceed with the contact ordered by Justice Matthews until further notice from the claimant.
- [53] As a result of all this, the claimant and A.D. have not had the video parenting time on Thursdays and weekends that was to be facilitated by her mother during her mother's contact time.
- [54] The respondent has not denied in his affidavits that he has withheld A.D. from the claimant's mother, nor has he explained why he has not facilitated the contact time with her as ordered by Justice Matthews.
- [55] Video parenting time has been sporadic and infrequent since Justice Matthews' orders. The respondent asserts that this is because it is hard to get A.D. to focus on video parenting time but, given the wide array of structured activities she is involved with in China, including piano lessons, piano competitions, ballet lessons, painting classes, and structured play at a play centre, I am not persuaded that the respondent has made a genuine effort to facilitate meaningful video chat time between A.D. and the claimant.

The Parties' Positions

- [56] This brings me to the application for an order that the respondent return A.D. to British Columbia. The claimant argues that, based on Justice Matthews' findings, the respondent wrongfully removed A.D. to China and is wrongfully detaining her there. She says this alone is a sufficient basis to order that the respondent return A.D. to British Columbia. She further argues it is in A.D.'s best interests to return to British Columbia because that is where she is habitually resident, and A.D. has been alienated from the claimant as a result.
- [57] She argues the respondent has not made reasonable efforts to facilitate video chats and that medium is not working to rebuild or maintain a relationship between the claimant and A.D. She argues the respondent can have parenting time in Vancouver with A.D. when he has layovers in Vancouver, as things were before he took A. to China. But even if he no longer flies to Vancouver for work, she says he gets free or discounted flights as a perk of his employment with the airline and can use those benefits to travel to Vancouver to see A.D.
- [58] The respondent argues that ordering A.D. be returned to B.C. is not in her best interests because it will substantially disrupt her established routines of school and extracurricular activities in China. He argues she is doing very well in China, is well looked after, is doing well in school, and is thriving outside of school with activities and friends. He says she has been in China for almost three years and, at seven years old, it is the only home she really knows. He argues it would be disruptive for her to come back to Vancouver now and that there is no urgency to this application, which is for an order that would disrupt what he says is the status quo.

- [59] The respondent also argues that a Chinese court has made an order giving him custody of A.D., and an order of this court that he return A.D. to British Columbia would conflict with that.

Analysis

- [60] The law on this matter is clear. It was recently reviewed by Justice Kent in *Roman-Manarovici v. Manarovici*, 2022 BCSC 1159. In that case, the mother unilaterally moved from Calgary, Alberta, to Vancouver, British Columbia, with the parties' two young children without the father's consent. The mother then filed a notice of family claim in British Columbia seeking various orders for parenting and child support. The father filed a jurisdictional response challenging the jurisdiction of the B.C. court to hear the matter. He filed a competing claim in Alberta, including for an order that the mother return the children to Calgary. He then filed an application in B.C. court to challenge the jurisdiction and an order that the children be returned to Calgary within 30 days.
- [61] In response to that application, the mother argued that it was the court's duty under the Divorce Act and the FLA to consider only the best interests of the children, regardless of her unilateral removal of the children from Alberta to British Columbia.
- [62] Justice Kent noted that both the Divorce Act, R.S.C. 1985, c. 3 and the FLA require a guardian to give notice of a proposed relocation of a child to the other parent, and if the other parent does not consent to the relocation, the guardian must seek a court order authorizing the relocation. This must be done before the child is relocated out of the jurisdiction. The mother in the case before Justice Kent had not complied with these requirements, thus Justice Kent said that she was effectively asking the B.C. court to retroactively rule on the merits of a relocation application that was never made.
- [63] In addressing the mother's argument that the best interests of the child factors alone must govern the jurisdictional question regardless of her unilateral removal of the children from Alberta, Justice Kent stated that there is another fundamental principle besides the best interests of the children that must be considered, namely that a unilateral removal of the child by one parent amounts to child abduction. He said at para. 11:
- [11] . . . the unilateral removal to another province by one parent of children formerly co-parented by both parents in a different province amounts to child abduction. Absent consent by both parents, both the FLA and the newly amended Divorce Act now require formal notice and a court hearing before any such relocation is permitted. Except perhaps in extraordinary circumstances, such as urgently removing the children to safety from ongoing family violence or the like, the Court is rightly reluctant to endorse unilateral self-help relocation remedies such as the one which has occurred in this case.

- [64] In the case now before me, that is precisely what the respondent is asking this court to do, namely endorse his unilateral removal of A.D. from British Columbia and treat this application not as one for the return of a child who has been abducted, but as an application by the claimant for relocation of A.D. back to British Columbia.
- [65] In my view, that would be abhorrent and directly contrary to the objectives stated in Division 7 of the FLA to discourage child abductions.
- [66] The respondent's removal of A.D. from British Columbia without the claimant's consent is an abduction, a most serious matter. As Justice Kent observed, in the face of a child abduction, the analysis is more complex than a straight application of the best interests of the child. He said at para. 13:
- [13] In the course of his submissions, counsel for the mother argued that the question of "wrongful" removal/retention is not determined with reference to parental "rights" but rather with reference only to the best interests of the children. I do not agree. And neither does our Court of Appeal . . .
- [67] Justice Kent then quoted the following passage from the British Columbia Court of Appeal's decision in *Shortridge-Tsuchiya v. Tsuchiya*, 2010 BCCA 61 at para. 68:
- [68] It is not the case that a parent's only rights to custody of, and/or access to, their children are defined by court order. At common law, and under [the now Family Law Act] the mother and father of a child who are living together are the joint guardians of the child with joint rights and obligations in relation to the child. If one parent unilaterally removes the child from the jurisdiction without the knowledge or consent of the other parent, this amounts to a wrongful taking of the child and a breach of the other parent's rights as joint custodial parent. . . .
- [68] Further, as Justice Kent observed, the *Tsuchiya* case also states that the best interests of the child requirement under the FLA must be read in the context of the stated purposes of Division 7 of the FLA which concerns extraprovincial matters respecting parenting arrangements. One of the stated purposes of that division is "to discourage child abduction as an alternative to determining by due process the guardianship of, or parenting arrangements with respect to, a child".
- [69] In *Tsuchiya*, the Court of Appeal stated at para. 38:
- [38 . . . Those purposes reflect the underlying assumption that a wrongful removal of children from one jurisdiction to another will, in most cases, be contrary to the children's best interests. This is so because such a move almost invariably interferes with meaningful contact between the children and one of their lawful parents or guardians, and with their other family, friends, school, and home in a manner which is necessarily disruptive of their sense of stability and security.

- [70] In short, the respondent's wrongful removal of A.D. from British Columbia is presumptively contrary to A.D.'s best interests. It has not merely interfered with meaningful contact between A.D. and her mother, it has put a stop to it. I am not persuaded that video chats are any kind of substitute for meaningful contact. Nor am I persuaded that the respondent has or will put in the effort to make such video calls productive.
- [71] A.D.'s best interests require that she be reunited with her mother. Returning A.D. to British Columbia is therefore an imperative to remedy the respondent's unlawful removal of A.D. and his retention of her in China. That is an abduction that must be addressed by way of an order for her return. It is also in A.D.'s best interests.
- [72] In Vancouver or Richmond, A.D. will continue to have contact with the respondent. Even if he does not have layovers in Vancouver anymore, and even if he does not get free or discounted flights to Vancouver from his employer, he has said in his affidavit that he would pay for the claimant to fly to China to see A.D. If he can fly the claimant to China, he can fly himself to Vancouver. He can also bring an application in this court to relocate A.D. to China, but that application will only be entertained after A.D. is returned to B.C. and reunited with the claimant.
- [73] With regard to the order made by the Chinese court, s. 75 of the FLA states that this court must recognize an extraprovincial order respecting guardianship or parenting only where certain factors exist. One of those factors is the extraprovincial tribunal was required by law to consider the best interests of the child, and another is where it would not be contrary to public policy in British Columbia to recognize the order.
- [74] The decision of the Chinese court provided by the respondent purports to address the best interests of the child, but I have no evidence that the Chinese court was required by law to do so.
- [75] Regardless, in the circumstances of this case, it is contrary to public policy in British Columbia to recognize the order of the Chinese court. As Justice Watchuk stated in *Mei v. Li*, 2019 BCSC 2121 at para. 28 when faced with similar circumstances to this case:
- [38] . . . it would be contrary to public policy to recognize the Chinese order. A central purpose of the division as set out in [s.] 73(c) is, "to discourage child abduction as an alternative to determining by due process the guardianship of, or parenting arrangements with respect to, a child." By seeking and obtaining the Chinese order, Mr. Li has engaged in impermissible forum shopping and sought to usurp the jurisdiction of this court to make orders respecting parenting and guardianship in respect of the children habitually resident in British Columbia. As in the *Stebbins* case, to decline jurisdiction and defer to China would reward Mr. Li for his wrongful withholding of the children.

- [76] The respondent has asked this court how he is to reconcile an order of this court to return A.D. to British Columbia with the order of the Chinese court giving him custody. That is something he will need to work out for himself. I will say, though, that if he does not comply with an order of this court to return A.D. to British Columbia, he will be in contempt of this court in the context of a child abduction which, as I have said, is a most serious matter.
- [77] The respondent also argues that the claimant has delayed in seeking this order and it is not urgent. I do not agree. The claimant deposed, and Justice Matthews accepted, that the claimant was not pursuing the immediate return of A.D. last year because A.D. was not vaccinated for COVID, and there were concerns for her health and safety if she were to travel without being vaccinated.
- [78] A.D. was recently vaccinated in China and this application was brought forthwith after that. There has been no undue delay.
- [79] The urgency of the application is twofold. First, the unlawful circumstances of the wrongful removal of A.D. from British Columbia must be remedied at the earliest opportunity. That alone makes this application urgent. Second, the new school year is about to start and A.D. should be in the Vancouver area to start Grade 1 in September. That alone makes this application urgent.
- [80] For these reasons I have just given, I am granting the order sought in para. 2 of the notice of application, with the amendment that A.D. is to be returned to the Metro Vancouver area within seven days, rather than 30 days.
- [81] Ms. Lin, I expect you will be preparing the order. The geographical description I suggest needs to be more precise than "Lower Mainland". It should refer to a municipality or a specific place for A.D. to be returned to.
- [82] MS. LIN: Yes.
- [83] THE COURT: The respondent has sworn in his Affidavit Number 6, dated May 27, 2022, at paragraph 46 that, "The status of [A.D.'s] Canadian passport does not affect her ability to travel." That being the case, there is no reason why he cannot return A.D. to British Columbia forthwith in compliance with the order I have just made.
- [84] Out of an abundance of caution, however, I am also going to order that if, and only if, A.D. is not able to travel to Vancouver without a new Canadian passport, the respondent will return her to British Columbia within five days of receipt of that new passport. To be clear, as I have said, this qualification will only apply if A.D. requires a Canadian passport to travel. If she can travel on her Chinese passport or otherwise, as stated by the respondent in his affidavit, then she must be returned within seven days of the date of this order.
- [85] I will also order that the respondent will cooperate with the claimant to renew A.D.'s passport on an expedited basis.

- [86] I will make the same order that Justice Matthews made in para. 11 of her May 25, 2021, order, but I would specify in my order that the renewal of the passport is to be done on an expedited basis, and I would replace the reference to seven days sated in Justice Matthews' order with 24 hours in my order, and the reference to 14 days is to be replaced with 48 hours.
- [87] I will also grant the declarations sought in paras. 3 and 4 of the notice of application, as they necessarily follow from Justice Matthews' findings in the jurisdiction and parenting applications.
- [88] I will briefly address the issue of the respondent's financial statement. The respondent maintains in oral argument that the Chinese government does not issue the tax documents that the claimant is seeking. I find this assertion very hard to believe. I am ordering that within 30 days of the date of this order, the respondent will provide the claimant's counsel with all documents in his possession or control that identify or relate to his pre-tax and after-tax income for the years 2021, 2020, and 2019.
- [89] I consider any documents that the respondent may able to obtain from the Chinese government regarding his taxes to be in his control. This means he must request all relevant tax documents from the Chinese government and make reasonable efforts to obtain them.
- [90] I am also ordering that within 30 days, he provide a sworn or affirmed affidavit verifying:
- that he has produced all the tax documents in his possession or control that I have ordered that he produce; and
 - detailing his efforts to obtain those documents from other sources, including the Chinese government.
- [91] I am adjourning the contempt proceedings generally. The claimant has liberty to bring that application on again. I am not at this point going to seize myself of that application, but I will allow the claimant to make a request through trial scheduling that I hear that application, should she wish to bring it on, and I will keep the file material in the event that I am able to hear that application.
- [92] I would think, though, that in light of the order I have just made, that the claimant's priority will now shift to ensuring that this new order is complied with, and I do not wish to seize myself of any proceedings that might be necessary in that regard, lest it restrict the claimant's ability to get on before a judge on an urgent basis.
- [93] The claimant is entitled to her costs of this proceeding in any event of the cause, payable forthwith upon assessment.
- [94] I am dispensing with the need for the respondent's signature on the form of order.

- [95] Ms. Lin, if you wish to draft the order today and have it vetted by the registry, I will be here all day and you can either bring a vetted order to Madam Registrar to pass on to me, or we will let the Family Registry know that the order is to be brought to me immediately for signature today.
- [96] MS. LIN: Yes, I will stay around in the afternoon and I will attend to that in the afternoon. And I -- I do wish to address the service of this order on Mr. D., if possible. What I suggest is that service be effected by an email to Mr. D. at his email address indicated on the record. This is the recent email address that he's contacted our office with.
- [97] THE COURT: Can you just state what the email address is on the record?
- [98] MS. LIN: Yes, the email address is [email address stated].
- [99] THE COURT: Mr. D., is that your email address?
- [100] MS. LIN: [email address stated].
- [101] THE COURT: Mr. D., is that your email address?
- [102] J.D. (via interpreter): Should be this address because I have received an email communication with Mr. -- with Counsel Lin.
- [103] THE COURT: Okay. I am going to order that service of the order be effected by sending a copy of the order to that email address.
- [104] MS. LIN: Yes, and I'm sorry, Your Justice, regarding the geographic location, if we can state that the child be returned to Richmond, B.C., since I understand the claimant would wish to receive the child at the airport. Could we also order that Mr. D. provides the flight itinerary 48 hours before the seven days?
- [105] THE COURT: Okay, I am also going to order that the respondent will provide the claimant, personally or through her legal counsel, the flight itinerary for A.D.'s return to Richmond, British Columbia, 48 hours before departure from China.
- [106] Is that everything?
- [107] MS. LIN: Yes.
- [108] THE COURT: Thank you. We will adjourn.
- "Kirchner J."

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Prepared on 26 October 2026 · Esheria