

CANADA / JUDGMENT

Y.W. v. X.B.

2024 BCSC 1899

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 1899 Y.W. v. X.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Y.W. v. X.B.,

2024 BCSC 1899

Date: 20241016

Docket: E211884

Registry: Vancouver

Between:

Y.W.

Claimant

And

X.B.

Respondent

Before: The Honourable Justice Stephens

Reasons for Judgment

Counsel for the Claimant:

J. Ling

A. Saeedi, Articled Student

The Respondent, appearing in person:

X.B.

Place and Dates of Trial:

Vancouver, B.C.

April 8-12, 2024

May 1-2, 2024

May 28, 29, 2024

July 4-5, 2024

Place and Date of Judgment:

Vancouver, B.C.

October 16, 2024

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Overview

- [1] Y.W. and X.B. were married in 2014 and have two children, ages 8 and 9. They subsequently separated, and this trial concerns the resolution of issues including parenting time, child and spousal support, and family property and debt division.
- [2] X.B. is self-represented. He filed no response to family claim in this proceeding, even after being ordered to do so at a Judicial Case Conference ("JCC") on March 11, 2022. Accordingly, having not filed a response to family claim, he is not technically a respondent or a party to this proceeding and, as this court has observed, in such cases the proceeding is an undefended family law case: *Saric v. Banden*, 2017 BCSC 1507 at para. 3 and 14; *Bains v. Bains*, 2023 BCSC 670 at paras. 9-10.
- [3] However, X.B. attended the trial and sought to participate in it. On the first day of trial, I ordered that X.B. be permitted to attend the trial seated at the counsel table, have access to exhibits, and make closing submissions at the close of evidence. I further ordered, noting there are two children of the marriage, that X.B. be permitted to give evidence on topics relating to the best interests of the children -- namely parenting time and child support claims -- and to cross examine the claimant on those topics. I subsequently ruled that the permissible topics of X.B.'s participation included Y.W.'s allegations of family violence.
- [4] In these Reasons I may at times refer to X.B. as the "respondent" or one of the "parties", though when I do so it is in a colloquial sense, and for convenience: *Saric* at para 3.

Prior Court Orders

- [5] Several court orders have been made in this proceeding prior to trial.
- [6] On March 11, 2022, an order made at JCC by Basran J. permitted service of an amended notice of family claim by email and required X.B. to file a response to family claim and serve it on counsel for Y.W. within 30 days of receipt of the amended notice of family law claim. It further required X.B. to serve a list of documents by April 11, 2022.

- [7] On September 7, 2022, Associate Judge Robertson made an order imputing income to X.B. of \$150,000 on an interim and without prejudice basis, for the purposes of calculating interim child and spousal support. The Order required monthly child support in the amount of \$2,159 and ordered that X.B. pay \$28,067 in retroactive child support from his share of the sale of the former family home.
- [8] On September 9, 2022, an order was made that Y.W. receive \$50,000 as interim distribution of family property from the sale proceeds of the former family home.
- [9] On November 25, 2022, Kirchner J. ordered that the X.B. provide a list of documents to Y.W.'s counsel by December 30, 2022, which included certain specified information. A fine of \$500 was ordered for failure to file his list of documents in accordance with the JCC order dated March 11, 2022.
- [10] On April 11, 2023, Fleming J. (then of this court) made orders for the production of documents in possession of third parties, and also ordered that X.B. pay Y.W. \$2,000 for breach of the orders dated November 25, 2022, and March 11, 2022.
- [11] On April 17, 2023, Warren J. ordered that Y.W.'s receipt of the February 2023 child and spousal support from X.B. in the aggregate amount of \$4,730 advanced from the sale proceeds be accounted from the respondent at the settlement of division of property and debt in this action; and that Y.W. be paid March 2023 to June 2023 child and spousal support in the amount of \$18,920 from the sale proceeds of the former family home. The order further stated that, starting from July 2023, child and spousal support payments in the total amount of \$4,730 be paid from the proceeds of the former family home until April 2024 and be accounted from the respondent at the settlement of the division of property and debt.
- [12] By further orders which I made during the course of this trial, X.B.'s payment of child and spousal support from proceeds of the former family home was extended until October 2024.

Factual Background

The Parties and their Children

- [13] Y.W. is 43 years old, was born in China, and came to Canada from China in November 2012. She is a permanent resident of Canada.
- [14] X.B. is 42 years old. He received a diploma in China. Y.W. testified that X.B.'s highest level of education is at Coquitlam College, but there was no evidence about what specific courses he took there. He received permanent residency in Canada in 2017.
- [15] Y.W. and X.B. began dating in 2010 or 2011.
- [16] In 2010, X.B. earned the equivalent of CAD \$6 million (30 million RMB) as a consulting fee in China.
- [17] The parties were married on February 13, 2014, in Victoria, BC.

- [18] In April 2014, they purchased a property together on Continental Street in Vancouver for approximately \$606,000. In part to fund the purchase of this property, Y.W. received transfers of funds from friends and relatives in China in total amount of approximately \$386,000.
- [19] Their first child, M., was born later in 2014, and their second child, J., was born in 2016.
- [20] The parties sold the Continental Street property in October 2018 and purchased a different property on Maple Street in July 2019 for \$1.738 million.
- [21] In November 2018, the parties purchased a Porsche for \$252,000, using part of the proceeds from the sale of the Continental Street property.
- [22] Even though the parties married in Victoria, BC in 2014, X.B. did not live in Canada until December 2019. Prior to that, he travelled back and forth between China and Canada, living primarily in China. After December 2019, he spent a considerable amount of time in Powell River, BC on a business venture or ventures.
- [23] Y.W. testified that, during the marriage, she was the primary caregiver for their children, though before December 2019, X.B. would help take care of the children when he was in Canada. There was also a two-and-a-half-year period, after Y.W. became pregnant with their second child, when their older child went to live in China.
- [24] During their marriage, X.B. worked and earned money, and Y.W. was a homemaker; she did not work outside the home.
- [25] Prior to their marriage, Y.W. graduated from a university in China with an associate degree, where she studied performing arts and drama. After graduation, Y.W. worked in China for over a year in customer relationship management and then for less than a year in the television industry. Since separating, Y.W. has taken a manicure course, but remains unemployed.
- [26] Shortly after X.B. arrived in Canada, the COVID pandemic began. The parties then separated in circumstances described below. The separation date is disputed, but I find below that the parties separated on November 20, 2020.
- [27] Y.W. alleges that during their marriage, from 2019 to 2021, she was the subject of family violence.
- [28] Y.W. testified to a number of family violence incidents, including an instance in November 2020 when X.B. got physical with her, and, after he asked her to be the guarantor of loan and she did not agree, he said he would teach her a lesson.
- [29] On November 20, 2020, Y.W. left the family home with the two children and stayed in a hotel for a few days, then moved to a rental apartment in Vancouver. She stayed there until approximately April 2021.

Events After November 2020

- [30] In December 2020, Y.W. sold the Porsche for \$110,000. She used the proceeds of the Porsche, and sold some personal items, to fund her and the children's living expenses.
- [31] At X.B.'s suggestion, Y.W. moved back into the Maple Street residence in April 2021. At that time, X.B. was still living primarily in Powell River.
- [32] Y.W. testified that during 2021, other incidents of family violence occurred. She testified that:
- (a) in May, 2021, while the children were in the home, X.B. hit her, pushed her to floor, and told her not to call police; and
 - (b) during a trip to Powell River sometime in 2021, she was again subject to family violence and she left on her own, and on her drive back from Powell River X.B. sent her a message that there was a gun in her trunk.
- [33] Y.W. sought a protection order against X.B. in August 2021.
- [34] On August 6, 2021, a protection order was made by this Court restraining X.B. for a duration of one year. On July 27, 2022, the protection order duration was extended for an additional year. The protection order expired on August 6, 2023.
- [35] She testified that in January 2022, X.B. breached the protection order by driving past her vehicle in an underground parking garage, which scared her.
- [36] Y.W. submitted that X.B. began parenting time with the children around July 2021, initially for one day a week with no overnights (and as described further below).
- [37] On January 22, 2022, Y.W. testified that X.B. picked up their child M. after a dance class without her consent.
- [38] Y.W. testified that X.B. was in police custody for 3-4 days, and then approximately one month, in respect of another matter. X.B. was subject to a release order in this criminal proceeding dated February 22, 2022, with a bail amount of \$100,000.
- [39] The Maple Street property was sold in July 2022 and completed on September 12, 2022, at a sale price of \$1.541 million. The parties obtained approximately \$286,500 from the sale and, together with other amounts received, the total net funds received by the parties into counsel's trust account was \$329,656.56.

Parties' Current Living Arrangements

- [40] Y.W. currently lives in Vancouver in a two bedroom and den apartment.
- [41] X.B. currently lives in an apartment in the same area, which he testified is owned by his girlfriend.
- [42] The children attend a school close by.

Criminal Charges Against X.B.

- [43] At the commencement of this trial in April 2024, X.B. was facing criminal charges including of assault with a weapon, use of an imitation firearm, break and enter with intent to commit an offence, and uttering threats, at or near Powell River, BC.
- [44] During the course of this family law trial, the criminal trial against X.B. was ongoing. On or about May 31, 2024, X.B. was acquitted of those criminal charges.
- [45] There was evidence at trial that X.B. faced another criminal charge of assault at or near Vancouver BC, on May 25, 2021, but X.B. testified that the Crown did not proceed with that charge.
- [46] The evidence before me is that there are no outstanding criminal charges against X.B. as at the conclusion of the trial.
- [47] Counsel for Y.W. did not dispute X.B.'s evidence that there are no other criminal proceedings against him.
- [48] There is no evidence that X.B. has a prior criminal record, though his affidavit filed as Exhibit 83 states he was found guilty of unspecified driving offences in 2004.
- [49] I was further advised that previous civil protection orders have expired and there are no outstanding child protection orders, and that a previous Ministry of Child and Family Development ("MCFD") file has been closed.

X.B.'s Parenting Time

- [50] Y.W. advised that the history of X.B.'s parenting time is as follows:
- i. In July 2021, X.B. began parenting time with the children for 1 day a week with no overnights. The children were picked up by a third party.
 - ii. From July 2022, X.B. had parenting time every Sunday from 11:00 a.m. until 4:00 p.m., with exchanges occurring at the family residence, where Y.W. was living at the time. Y.W. brought the children to the main entrance while X.B. waited in his car. Initially, a mutual friend facilitated the transfer of the children to X.B.'s car.
 - iii. From August 2022, X.B.'s parenting time extended from 11:00 a.m. to 6:00 p.m. on Sundays. The need for a facilitator ceased, and the children walked out of the building to X.B.'s car.
 - iv. Starting from the third week of September 2022, X.B.'s parenting time increased from 11:00 a.m. to 7:00 p.m. on Sundays. Again, no facilitator was needed, and the children walked directly to X.B.'s car.
 - v. A hiatus in X.B.'s parenting time occurred from February 2023 to May 2023.

vi. Resuming in the third week of May 2023, X.B. had parenting time from 10:00 a.m. to 8:00 p.m. on Sundays, with no facilitator required, and the children walking between X.B.'s car and the building entrance.

vii. Since February 2024 to the trial, X.B. has had parenting time from Sundays at 10:00 am, until Tuesdays at 9:00 am., when X.B. drops the children off at school, or at Y.W.'s residence if there is no school.

Issues

[51] The issues at trial I must decide are:

1. What parenting time order and related parenting orders are appropriate?
2. What amount of child support should be ordered, including:
 - (a) Is an imputation of income to X.B. appropriate and, if so, what amount?
 - (b) What amount for child support and what order for s. 7 special expenses is appropriate?
3. What is the date of separation?
4. What division of property and debt is appropriate?
5. What amount of spousal support is appropriate?
6. Should a divorce be granted?
7. What order of costs is appropriate?

Positions of the Parties

- [52] Y.W. seeks an order for the majority of parenting time, and the right to make all parenting decisions. She does not seek an order that X.B.'s parenting time be supervised. She seeks orders for imputation of income to X.B., for payment of s. 7 expenses, and orders for child and spousal support.
- [53] Y.W. also seeks an unequal division of family property and debt in her favour. She asks the court to draw an adverse inference against X.B. and, among other things, find X.B. has undisclosed family assets of approximately \$440,000, which she says should be accounted for in the parties' family property division assessment.
- [54] On the basis of her proposed division of property, and other adjustments for payments made to the parties from prior court orders or otherwise owing by X.B., Y.W. seeks an equalization payment from X.B. of approximately \$350,000.
- [55] X.B. opposes the relief sought by Y.W. He says that her assertions of family violence "are not fact" and submits in this respect that while he had been arrested, he was never charged. He submits that there are no photos or evidence of Y.W.'s asserted injuries. X.B. further submits that he should have 50% parenting time, and that Y.W. should not have sole decision-making

responsibility. He further opposes Y.W.'s request that the court impute income to him. In general, X.B. contends that Y.W. is required to provide evidence for her claims, but she has not done so.

Credibility

- [56] I find Y.W., who testified through an interpreter, to be generally credible. Mindful not to place too much weight on witness demeanour, she testified at times with emotion with respect X.B.'s treatment of her. She testified that she gave evidence at trial about difficult matters concerning her assertions of family violence, "because I need to put this terrible relationship behind me", and "I need to have a new start, I need to move on to have a happier sunnier life; that is why I am able to sit here and tell the court what I experienced". Cross-examination did not detract from the credibility of her evidence.
- [57] However, as to financial matters, Y.W.'s testimony largely read from documentary records put to her. I am concerned about the reliability of her evidence on financial matters and prefer the evidence of financial and other business records which I find to be authentic and reliable in that regard.
- [58] X.B.'s evidence at trial included his testimony regarding, among other things, the children, allegations of family violence, and financial matters.
- [59] I find X.B. lacked credibility and reliability with respect to his financial circumstances. X.B. failed to file a response to family claim, and to comply with court orders requiring that he provide a list of documents in this proceeding (although I was advised he did produce certain documents mid-trial under a court order). His failure to comply with court orders, follow pre-trial court procedures, and properly disclose documents is a basis for me to infer that he was not transparent about his financial circumstances, which counts against his credibility and reliability. He is also angry with Y.W., who he testified set him up, and he submitted during closing argument that Y.W. "use[d] police and court to kick the Respondent out from family home, so that she can sell the family properties with impunity". Further, he testified at trial that that he and Y.W. together made the \$6 million CAD in 2010, but a subsequently produced Consulting Service Agreement did not support his suggestion that Y.W. was involved in obtaining the \$6 million CAD consulting fee.
- [60] In sum, I do not have confidence in X.B.'s testimony about any financial matters.
- [61] However, in regard to evidence about the children, X.B. fairly acknowledged that Y.W. is a "good mom". He further testified about the children and his care for them, at times with emotion, which is consistent with Y.W.'s willingness to increase his parenting time over time since July 2021. I find that X.B.'s evidence with regard to the children has a greater measure of credibility than his evidence on other matters.

[62] The parties' separation occurred around the time when X.B. testified he had depleted the substantial commission which he earned in 2010 in China, when his business venture or ventures in Powell River were failing, and when events had occurred which led to the criminal charges against him which he was later acquitted. At this time, from 2019 to 2021, X.B.'s marriage with Y.W. deteriorated, Y.W. called the police, and the MCFD later became involved. X.B. testified that he found this phase of his life not easy. He asserts Y.W. has prosecuted this family law proceeding against him for financial reasons. He has failed to fully participate in the pre-trial court process to reveal his financial circumstances. From documents disclosed up to 2021, X.B. continued to have significant sources of money, which he says is partly from his parents, and with support from friends, but he has not been fully transparent about this. I find that while X.B. cares for his children, he has not been transparent with the court about his financial circumstances, and his testimony lacks credibility and reliability generally.

Issue #1: Parenting Time and Related Orders re Parenting

General Factors - Divorce Act, s. 16(3)

[63] Sections 16(1) and (2) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) state:

Best interests of child

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

[64] Subsection 16(3) sets out the factors that must be considered in assessing the best interests of the child. I address each in turn.

[65] Where I refer to aspects of the parties' past conduct in these Reasons, I do so since I consider them relevant to the exercise of parenting time: Divorce Act, s. 16(5).

[66] Further, when making my decision about parenting time in these Reasons, I do so consistent with the principle that the children should have as much time with each parent as is consistent with their best interests: Divorce Act, s. 16(6).

(a) The child's needs, given the child's age and stage of development, such as the child's need for stability

[67] The children are of a young age: 9 and 8. They are in need of stability in their lives. Since they were born, they have been cared for chiefly by their mother, Y.W. I infer and find they are close to their mother. This factor tends to support the children living primarily with Y.W.

- (b) The nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life
- [68] There is little direct evidence of the nature and strength of the child's relationship with Y.W., but I find, as their primary caregiver from birth, they have a close relationship.
- [69] I also find X.B. cares for his children, and Y.W.'s willingness to continue for him to have parenting time with the children supports this inference and militates toward continued parenting time for X.B.
- (c) Each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse
- [70] There is no evidence to suggest either spouse is not willing to support the development and maintenance of the children's relationship with the other spouse.
- (d) The history of care of the child
- [71] The children have lived predominantly with their mother, who has been their main caregiver, over the course of their lives. X.B. has had limited, albeit gradually increasing, parenting time with the children since July 2021. This factor tends to support the children living primarily with Y.W.
- (e) The child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained
- [72] I have no evidence about this factor.
- (f) The child's cultural, linguistic, religious and spiritual upbringing and heritage, including indigenous upbringing and heritage
- [73] The children are able to engage with their heritage with both parties.
- (g) Any plans for the child's care
- [74] Both parties intend for the children to continue to live with them during parenting time in their residences close to the children's current school in Vancouver. This is a neutral factor.
- (h) The ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child
- [75] Y.W. is able and willing to meet the needs of the children.
- [76] In this regard, I again rely on Y.W.'s support for X.B. having continued parenting time. Y.W. submits, and I accept that, "through [X.B.'s] graduated parenting time with the Children, he has evidenced his ability and willingness to care for and meet the needs of the Children". This factor supports the children having parenting time with both Y.W. and X.B.

- (i) The ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child

[77] I find Y.W. is willing and able to communicate and cooperate with X.B. on matters affecting the children.

[78] I have some concerns about X.B.'s willingness to communicate and cooperate with Y.W. on matters affecting the children due to his decision to unilaterally pick up M. in January 2022 without obtaining Y.W.'s consent. This factor therefore detracts from X.B.

- (j) Any family violence

[79] Section 16(4) further provides that the court consider:

Factors relating to family violence

- (4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:

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

Y.W.'s Allegation of Family Violence

[80] The claimant Y.W. submits that X.B. has "perpetrated serious family violence against [her]", including threats and physical violence, leading her to file a police report and obtain a protection order against X.B.

[81] Y.W. testified that "from October 2019 to June 2021, I was subject to mental torture on a long term basis, and physical abuse, slander, and a threat to my life, all those are from [X.B.]". Y.W. alleges that X.B. told her, "if children are removed, I will kill you" and testified that "the punches that fell on my head, my face, and my body, and the steps he stepped on me, and the slanders the defamatory words he uttered against me, I will never forget".

[82] Y.W. further submits as follows with respect to specific incidents of family violence:

A. October 2019: [X.B.] grabbed the Claimant's hair, and knocked her head against the wall. Grabbing her hair, [X.B.] dragged the Claimant to the kitchen, and knocked her head against the oven. The Claimant cried out for help to [X.B.]'s mother, who was living with them at that time, but [X.B.]'s mother did not do anything. She took the young Children and went into her room, but left the door ajar. The Claimant was thrown to the floor by [X.B.].

B. Summer 2020: When the Claimant saw that [X.B.] was getting angry, she ran from the living room into the bedroom, as [M] was in the living room. In the bedroom, the Claimant hid in the closet, but [X.B.] came at her and tore her clothes, and hit the Claimant's head and shoulders. [X.B.] rammed his head against her face, and punched the Claimant. The Claimant was screaming, and [M] came into the room, and only then did [X.B.] stopped.

C. November 2020: [X.B.] took the Claimant to their bedroom, and made the Claimant kneel before him. [X.B.] smashed his cell phone on the Claimant's thumb, and grabbed her hair. Then, [X.B.] violently stepped on the Claimant's toes until it bled. The Claimant ran out of their family residence.

D. May 5, 2021: [X.B.], while the Claimant was in bed, forced the Claimant to get out of bed to kneel and mop the floor. [X.B.] grabbed the Claimant's hair, and pushed the Claimant against the wall.

[83] Y.W. submits that X.B. has anger management issues and during their marriage X.B. displayed controlling behaviour "characterized by intimidation tactics such as forcing her to kneel before him, making threats, grabbing her hair, and knocking her head on the wall or something hard, tearing her clothes, and self-inflicting injuries to falsely implicate the Claimant". She further submits that when X.B. would lose his temper and get angry with her, family violence would ensue, and, out of fear for her safety, "she would open the door or the window so that others would know that she was being abused, in the hope that her neighbours would call the police".

[84] Y.W. submits that while the family violence was only directed towards her, the children were indirectly exposed when "they heard their mother crying out for help in the October 2019 incident", and that M. witnessed family violence in the summer 2020 incident, when she rushed into the bedroom while X.B. was abusing Y.W.

[85] Y.W. testified that the MCFD became involved. On December 22, 2022, the MCFD sent a letter to X.B. stating that the social worker had completed their work with the parties' family as required by the Child, Family, and Community Service Act and the goals that X.B. had

completed with a family counselor "around the impacts of violence on child development, stress management, the ability to implement healthy coping strategies and rebuilding your relationship with your daughters has addressed the Ministry's child protection concerns". The MCFD advised it had closed its file.

- [86] Y.W. submits that the family violence caused her to be afraid of X.B., and she obtained a protection order "to protect herself from [X.B.], and at the same time improve the ability to care for and meet the needs of the Children". Y.W. further submits that in January 2022, X.B. "breached the Protection Order by being in the underground garage, where he was in his vehicle", and driving past the Claimant's vehicle.
- [87] Y.W. submits that she has undergone counselling and "has shown resiliency and courage" in the face of family violence, to "provide a 'normal' environment for her Children, [and] continued to provide the best care she can for them".
- [88] With respect to the impact of family violence on what parenting arrangements are in the best interests of the children, Y.W. submits that:

Reviewing the factors in section 16(4), it is in the Children's best interests that the Claimant to be maintained to be the primary caregiver of the Children, and for the Children to primarily reside with the Claimant. [X.B.]'s history of family violence showed that he has anger management issues, and therefore he is volatile. The Children need stability in their lives. The Claimant has shown great resiliency and courage, and that in the face of family violence, had underwent counselling to overcome the trauma of the family violence, for her Children's sake, so that care for them [sic] and shield them from family violence.

Reviewing the factors in section 16(3) and 16(4), it is in the Children's best interests that the Claimant to be maintained to be the primary caregiver of the Children, and for the Children to primarily reside with the Claimant.

- [89] X.B. denies there was any family violence. In his testimony, he stated there was "not real violence", but arguments, including a big argument around November 2020. He testified that Y.W. was never injured and that "there is no violence for [Y.W.]". In his closing submissions at trial, he stated that he "den[ies] all the family violence that claimed by the Claimant", that "[a]ll of the Claimant's allegations of family violence against her by the Respondent are false", and he "disagree[s] the children were exposed the family violence". In support of his assertions, X.B. submits that although Y.W. reported to the police, he "has not been charged by the crown prosecutor, also there's no medical report from her family doctor".
- [90] Y.W. testified that while X.B. had a "very bad temper and would scare me", there has been no family violence directed at the children. Y.W. testified that the children do not need psychological counselling. Y.W. is supportive of X.B. having parenting time and says she "cannot deprive [her] children of a father's love".

[91] Thus, despite her assertions of family violence, Y.W. seeks an order that X.B.'s current parenting time continue, and submits:

Despite [X.B.]'s physical and verbal abuse of the Claimant in front of the Children, the Claimant has not denied [X.B.]'s parenting time and is committed to fostering their relationship.

Through the implementation of a graduated parenting time for [X.B.] since July 2022, [X.B.]'s parenting time is now from Sundays at 10:00 A.M. to Tuesdays at 9:00 a.m

As [X.B.] is found not guilty of his criminal charges, [X.B.]'s current parenting time be maintained.

[92] Y.W. further submits that:

There was Protection Order against [X.B.]. But, through [X.B.]'s graduated parenting time with the Children, he has evidenced his ability and willingness to care for and meet the needs of the Children" [and]

There are no issues with [X.B.]'s current parenting time, which is from Sundays at 10:00 A.M. to until Tuesdays at 9:00 a.m.

Findings Regarding Asserted Family Violence

[93] What constitutes "family violence" is broadly and specifically defined in s. 2(1) of the Divorce Act: it "means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person -- and in the case of a child, the direct or indirect exposure to such conduct", including conduct enumerated in sub-paragraphs (a) to (h) of the definition. Physical and psychological abuse are included within the statutory definition of family violence. The standard of proof in this civil trial is a balance of probabilities (more likely than not).

[94] I find it is more likely than not that "family violence" occurred as defined in the Divorce Act, directed at Y.W.

[95] I am unable to make specific findings about all the asserted incidents of family violence as described in Y.W.'s testimony. For example, I am unable, on the evidence before me, to make findings as to whether and the extent to which Y.W. was physically injured by X.B. The parties' testimony is in conflict, and the photos of Y.W.'s toe and head put in evidence, in particular the photo of her ear area which was unclear, do not assist me to find on a balance of probabilities that the injuries occurred as she contends.

- [96] However, I find that it is more likely than not that X.B. was aggressive with Y.W., and exhibited violent or threatening behaviour and coercively and controlling behaviour to Y.W., and was at times "physical" with her, as she testified, which caused her to fear for her safety. I find this occurred prior to and up to the date of separation on November 20, 2020, and then until June 2021.
- [97] While the parties' oral testimony is in conflict on Y.W.'s assertions of family violence, I rely on the objective circumstantial evidence that on November 20, 2020, Y.W. left the family home and moved into a hotel, and then an apartment, substantially disrupting her and the children's lives, which I find she did out of fear for her safety. I further rely on the fact that the MCFD became involved and engaged with X.B. in a process that concluded in December 2022, as objective evidence of the existence of prior family violence on a balance of probabilities.
- [98] There is no evidence that physical abuse was directed specifically at the parties' children, as is supported by Y.W.'s continued willingness for X.B. to have parenting time.
- [99] Y.W. testified that their youngest daughter was not aware of too much of what occurred between the parties, though she believes the older daughter remembers.
- [100] Y.W. did not suggest in her evidence or closing submission that X.B. having parenting time in future would compromise the safety of the children.
- (k) Any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child
- [101] There was a prior criminal proceeding against X.B. for an incident in Powell River, in which X.B. has been acquitted. Y.W. did not suggest she was the complainant or that these charges related to her assertions of family violence, or that the children were involved. X.B. did not testify in direct or cross examination about the details of what occurred during this incident, and I was not provided any reasons for judgment in this criminal proceeding acquitting X.B. of these charges.
- [102] The evidence indicates there was an additional criminal charge of assault against X.B., with which the Crown did not proceed.
- [103] There was a MCFD file involving X.B., which has been closed.
- [104] Further, while there is evidence X.B. was found guilty of unspecified driving offences, this was approximately 20 years ago and Y.W. does not suggest this is a basis to deny X.B. parenting time.

Finding and Decision on Parenting Time and Related Orders

- [105] Considering the above relevant factors, I order that:

- (a) The parties shall remain the guardians of the children, pursuant to s. 39(1) of the Family Law Act, S.B.C. 2011, c. 25 (the "FLA");
- (b) Y.W. shall have primary residence of the children;
- (c) X.B.'s current parenting time shall continue, being Sunday at 10:00 a.m. to Tuesday at 9:00 a.m.;
- (d) At all other times when X.B. does not have parenting time, Y.W. shall have the parenting time with the children; and
- (e) Y.W. shall have liberty to apply to court on 48 hours notice for a change in X.B.'s parenting time, or its terms.

[106] In my view, it is in the best interests of the children that these orders be granted.

[107] Despite my findings as to past family violence by X.B. directed at Y.W., and the existence of a prior criminal proceeding against X.B., wherein he was acquitted, I place significant weight on the evidence and the views of Y.W., who I find loves her children and is attentive to their safety and well-being, that continued parenting time with X.B. is both appropriate and beneficial for the children. Y.W. is supportive of X.B. having continued parenting time, and continuing the status quo. I further rely on absence of evidence of adverse effects to the children arising from X.B.'s parenting time since July 21, 2021: a period of three years.

[108] However, I also order that Y.W. will be at liberty to apply to court on 48 hours notice for a change to X.B.'s parenting time, or its terms, in the event there is a change in circumstances, and I will remain seized of any applications for a change in parenting time, for protection orders, or for orders with respect to the children's travel, for a period of 12 months.

[109] I also order that after a period of one year, the parties shall have liberty to apply to court for a review of X.B.'s parenting time.

Parenting Orders

[110] I will make the following parenting orders within the meaning of s. 16.1 of the Divorce Act.

Allocation of Parenting Time

[111] Pursuant to ss. 16.1(4) and 16.2 of the Divorce Act, Y.W. will have primary residence of the children and X.B. will have parenting time each week between Sunday at 10:00 a.m. to Tuesday at 9:00 a.m.

Day-to-Day Decisions and Decision-Making Responsibility

[112] Pursuant to s. 16.2(2) of the Divorce Act, the party to whom parenting time is allocated under s. 16.1(4)(a) has exclusive authority to make, during that time, day-to-day decisions affecting the children.

- [113] I also find that Y.W. should have sole "decision-making responsibility" as defined by s. 2(1) of the Divorce Act. That is, I find Y.W. shall make the final decision, and X.B. having the right to review such decisions by application to the court.
- [114] X.B. opposed Y.W. having final decision-making authority. However, I find it is appropriate and in the best interest of the children for Y.W. to have decision making authority since she has been the children's primary caregiver and is willing to encourage and cultivate a relationship between X.B. and the children. X.B., on the other hand, has failed to file a response to notice of family claim and comply with court orders in this proceeding, reflecting poor judgment and decision-making. I do not find X.B.'s criticism of Y.W. that she did not know how to spell M.'s middle name to be a basis to deny her decision-making responsibility, and instead find that X.B.'s argument in this regard had a demeaning quality. Further, my findings as to the existence of past family violence is a factor militating against a joint decision-making model.
- [115] Accordingly, I find it in the best interests of the children that pursuant to s. 16.3 of the Divorce Act, Y.W. will have final "decision-making responsibility" of the children within the meaning of s. 2 of the Divorce Act, as follows:
- (a) Each party will have the obligation to advise the other party of any matters of a significant nature affecting the children; and
 - (b) Y.W. will be entitled to make the final decision, and X.B. will have the right to apply for directions on any decision X.B. considers contrary to the best interests of the children.

Guardianship

- [116] Y.W. and X.B. shall be the joint guardians of the children pursuant to s. 39(1) of the FLA, subject to the modifications and to the extent that parental responsibilities and decision-making responsibilities have otherwise been allocated in this decision.

Issue #2: Child Support

Entitlement to Child Support

- [117] X.B.'s parenting time does not exceed 40% of the parenting time with the children. Accordingly, he is required to pay child support to Y.W.
- [118] The quantum of child support requires an assessment of each party's income in accordance with s. 3(1) of the Federal Child Support Guidelines (the "Guidelines").

Guidelines Income

- [119] Y.W. is currently unemployed. She has no income.
- [120] According to his notices of assessment, X.B.'s income was \$0 for 2018 and 2019, and \$15,291 for 2020.

- [121] Y.W. asks the court to impute an income to X.B. of \$150,000, which is the amount imputed by Robertson A.J. in her order dated September 7, 2022, on an interim and without prejudice basis. Y.W. relies on s.19(1)(a) and (f) of the Guidelines, and *G.R.C. v. L.M.E.C.*, 2006 BCSC 1479 at paras. 6-7.
- [122] X.B. failed to serve a list of documents in this proceeding, as was required by court orders, which justifies imputing income under s.19(1)(f) of the Guidelines. Counsel for Y.W. submits that X.B. failed to produce documents, including documents regarding his financial support from his parents.
- [123] Y.W. also submits that X.B. has failed to comply with the JCC order, and with s. 21(2) of the Guidelines, justifying an adverse inference against him pursuant to ss. 23 and 24(c) of the Guidelines. Failure to make disclosure required by the Guidelines is a ground for imputation of income: *Motyka v. Motyka*, 2001 BCCA 18 at paras. 16, 19; and *Ren v. Yang*, 2012 BCCA 164 at paras. 17-18, 45-46.
- [124] A court can also impute income in situations where a payor parent appears to have averted income, fails to provide information concerning his or her income, or appears to have a greater income given their lifestyle and expenses: *G.R.C.* at para. 11.
- [125] I am satisfied that an adverse inference should be drawn against X.B., and income should be imputed to X.B., for failure to disclose documents and non-compliance with the JCC order requiring delivery of a list of documents.
- [126] Further, I find that X.B. has been intentionally underemployed or unemployed. A court does not have to find that a payor parent intended to evade or minimize child support payments for a finding of intentional underemployment or unemployment, nor is a finding of bad faith required: *G.R.C.* at paras. 8-9.
- [127] X.B. is capable of earning income. However, he testified that after separation he spent his time reading books and going fishing. When asked on cross examination whether he was intentionally not working, X.B. agreed, stating he did not work after separation.
- [128] In closing submissions, X.B. stated he has been wearing electronic supervision equipment due to his criminal proceedings, but I find that he nevertheless was able to earn income during this time period and, further, that this criminal proceeding has now concluded. Further, in closing submissions X.B. stated he had plans to work again in business.
- [129] X.B. has also been receiving financial support from his parents. He testified that his father is a successful businessman in China. He testified that he has received financial assistance directly, and indirectly (from financial assistance from his girlfriend, subsequently reimbursed by his parents), from his parents; and that his parents are prepared to assist him to purchase another place to live for him and the children, which implies a significant amount of financial support. The regular receipt of financial support from his parents, and evidence they will support him in future, also justifies imputing income to him: *J.L.M. v. G.G.M.*, 2024 BCSC 999 at paras. 33-38.

[130] In my view, imputation of income is appropriate under s. 19(1)(a) and (f) of the Guidelines, and I find that X.B.'s income should be imputed at \$150,000. This finding is consistent with Robertson A.J.'s order and the fact that X.B.'s annual expenses exceed his declared income.

Amount of Child Support

[131] I order that X.B. shall pay child support to Y.W. based on his imputed income of \$150,000. That results in a monthly payment from X.B. to Y.W. of \$2,159, according to the Guidelines.

[132] Y.W. is unemployed, and I have imputed income of \$150,000 to X.B. Accordingly, I further order X.B. shall pay 100% of the children's special and extraordinary expenses, subject to any further order of the court.

[133] I further order that for as long as the children are eligible to receive child support, the parties will exchange:

- (a) copies of their respective income tax returns for the previous year, including all attachments, not later than June 1 each year (starting in 2025); and
- (b) copies of any notice of assessment or reassessment provided to them by the Canada Revenue Agency, immediately upon receipt.

[134] The parties shall conduct a review of child support and the children's special or extraordinary expenses on an annual basis, and payments shall be adjusted as necessary by November 30 of every year.

[135] Y.W. further sought an order for a retroactive child support payment for the ten-month period of November 2020 to August 2021, in the amount ordered by Robertson A.J. of \$2,159 monthly. I grant this order for retroactive child support in the amount of \$21,590.

Issue #3: Separation Date

[136] Y.W. submits that the date of separation was November 20, 2020; X.B. submits they separated on June 1, 2021.

[137] I find the date of separation to be November 20, 2020, which is the date Y.W. left the family residence, moved herself and the children to a hotel, and later to an apartment. While Y.W. did briefly move back into the family residence in April 2021 until June 2021, a place more convenient for the children's school, X.B. was often away working in Powell River. I find this did not constitute a reconciliation between the parties. Further, the Wechat evidence submitted by X.B., which includes a message from Y.W. to X.B.'s mother in February 2021 saying words to the effect "I know I am wrong", is not a basis for finding separation occurred some time after November 20, 2020.

Issue #4: Family Property and Debt Division

- [138] I will decide division of family property and debt before I consider spousal support: *Tereposky v. Fooks*, 2023 BCSC 1989 at paras. 32-35.

Legal Principles - Property and Debt Division

- [139] Unless there is an order or agreement, or as set out in Parts 5 and 6 of the FLA, both spouses are entitled to family property and are responsible for family debt, regardless of their respective use or contribution. On separation, each spouse has an undivided half interest in all family property as tenant in common and is equally responsible for family debt: FLA s. 81.
- [140] Family property and family debt are defined in ss. 84 and 86 of the FLA, respectively.
- [141] In accordance with s. 84(1)(a) of the FLA, unless property is excluded under s. 85, family property is all real property and personal property that, on the date of separation, is owned by at least one spouse or is a beneficial interest of at least one spouse in property.
- [142] Family property also includes property acquired by at least one spouse after the date of separation, if that property is derived from family property held prior to separation: FLA, s. 84(1)(b).
- [143] The claimant Y.W. seeks an unequal division of family property, or adverse inference against X.B. following the principles as laid out in *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.), 1994 CanLII 3195, and an unequal division of family debt.

Division of Family Assets - Discussion and Findings

- [144] Y.W. submits that X.B. has persistently resisted requests and court orders for disclosure of financial information. She submits that "[X.B.] has hidden his assets well as the Claimant still does not know where his assets are", and that X.B.'s true financial state is still unknown to her.
- [145] In his closing submissions a trial, X.B. asserted that Y.W. lacked evidence to substantiate her arguments and position at trial. Nevertheless, the law does in certain circumstances permit that an adverse inference be drawn against a party: see e.g. *Wu v. Sun*, 2011 BCCA 239 at paras. 35-45.
- [146] Y.W. asks the court to make a finding that X.B. owns approximately \$440,000 in undisclosed family assets. As Gomery J. held in *Devathasan v. Devathasan*, 2019 BCSC 661, this kind of reasoning must be "undertaken with caution":
- [204] This kind of reasoning must be undertaken with caution, in light of the warning stated by Donald J.A. in *Wu v. Sun*, 2011 BCCA 239, at para. 41:

41. I am not the first to observe that non-disclosure is the Achilles heel of family assets litigation. Strong measures are justified in discouraging it. However, one cannot make something out of nothing. The right note of caution was sounded by Madam Justice Baker in *Palanca v. Palanca*, 2005 BCSC 1014:
127. Counsel for Mrs. Palanca submitted that the court could draw an adverse inference against Mr. Palanca's estate in relation to the existence of family assets in the Philippines because Mr. Palanca failed to comply with court orders relating to accounting and disclosure. I accept that Mr. Palanca did not meet his obligations in this regard, but an adverse inference is not an adequate substitute for evidence about specific assets, the ownership of those assets, whether the assets were used for a family purpose, or otherwise met the definition of family assets, or the value of the family assets, sufficient to allow for the making of a compensation order that is more than a guess.

[Emphasis added.]

[205] In *Kiamanesh v. Kiamanesh*, 2004 BCSC 1052 at para. 38, McEwan J. stated that:

even if a court finds that one party has engaged in a plan to conceal or dissipate assets, has no credibility and has misled others, if by the end of the trial, the court can ascertain most of the assets the rule in *Cunha* should not be applied, and the appropriate remedy is in costs (see *Novin v. Novin* (Dec. 1, 1997) New Westminster Registry D033740/S0-6603 (B.C.S.C.); *Atherton v. Atherton* (December 3, 1998) Vancouver Registry A901194 (B.C.S.C.)).

[Emphasis added.]

[147] Gomery J. went on to state, on the basis of the authorities, that "the kind of inference drawn in *Cunha* and *Lombardo* should only be invoked as a last resort, if it is clear that there are concealed assets in [the party's] possession or control that I cannot ascertain or value, and only then if I am able to come to conclusions that are more than a guess": *Devathanasan* at para. 206.

[148] X.B. testified that, despite receiving a \$6 million CAD commission in 2010, his savings have been depleted since the end of 2019. However, in 2020, X.B. received deposits into his Canadian bank account of approximately \$800,000, some of which he testified was from his parents, and some from classmates in China. In 2021, the deposits into X.B.'s Canadian account were approximately \$300,000.

[149] In her written submissions at trial, Y.W. contends that X.B. has hidden sources of his finances:

[X.B.]'s F8 Financial Statements are not a true reflection of his true financial state as he inflates his debt, real or otherwise. Yet, from 2017 to 2019, in [X.B.]'s main bank account, CIBC Account 4434, he received at least about \$200,000/year into his bank account. During this period, his Notice of Assessment 2018 - 2020, showed \$0 income and \$15,000 income.

There is an obvious hidden source of his finances.

- [150] I accept the claimant's submission that, considering X.B.'s banking records, there is evidence from which to infer X.B. has concealed family assets. He received substantial amounts into his Canadian bank account, both before and after he says he depleted his \$6 million CAD commission at the end of 2019. There is, in my view, a sound evidentiary basis to believe X.B. has failed to fully disclose financial assets in his possession: Devathanan at para. 212; *A.K.K. v. A.S.K.*, 2024 BCSC 1237 at para. 25.
- [151] Since X.B. has concealed assets in this proceeding, I find that that division of family assets should be affected accordingly: *Cunha* at paras. 9-11, 15; *Chang v. Xia*, 2015 BCSC 1994 at paras. 47-50; *Saric v. Banden*, 2017 BCSC 1508 at para. 52. However, there "must be some evidence of the value of the undisclosed assets before the inference is appropriate, although that evidence may be sparse": *Chang* at para. 50, citing *Wu*. In *Wu*, the Court of Appeal held that a court "cannot make something out of nothing" and that it is an error to value an asset when there is no evidentiary basis: paras. 41-44. In other words, the finding and valuation of undisclosed assets must be more than a "guess": *Devathanan* at para. 206.
- [152] I decline to find the value of the undisclosed family assets to be equal to the value of the disclosed assets, in an amount of approximately \$439,000, as contended by Y.W. The methodology of valuing undisclosed assets at a 1:1 ratio of disclosed assets was not endorsed by the Court of Appeal in *Wu*.
- [153] However, the presence of unknown bank transactions can ground a permissible inference as to the existence and quantum of undisclosed assets: *Devathanan* at paras. 212, 218. The evidence in this case shows that X.B. received deposits in his Canadian bank account (summarized in Exhibit L) of approximately \$200,000 per year from 2017 to 2019 (net of approximately \$640,000 of which was used to purchase the Maple Street family residence in 2018), approximately \$640,000 in 2020 (net of the private loan proceeds), and approximately \$300,000 in 2021. I find that this forms a basis, however sparse, to value his undisclosed family assets. Receipts of amounts this significant leads me to infer that the undisclosed financial assets held by X.B. are equal to the average of at least one year of those transfers.
- [154] In my view, there is evidence, albeit sparse (*Wu* at para. 45), to find there exist undisclosed assets held by X.B. of at least \$300,000. Looking at the matter broadly and doing the best I can with the evidence, yet proceeding with caution as instructed by the case law, I find that X.B. is in possession of undisclosed financial assets that are family property worth \$300,000.

[155] In deciding whether an unequal division of family property and debt is appropriate, I consider s. 95(2) of the FLA. The Court in *Chang* at para. 47 held that, "[w]here a spouse fails to disclose financial assets and dissipates family assets after separation, the court may impute assets to the spouse and/or reapportion family assets or debt pursuant to s. 95(2) of the FLA if the court finds it would be significantly unfair to order an equal division, or the common law."

[156] I find it appropriate to infer and find an amount of undisclosed family assets held by X.B. in the amount of \$300,000. In my view, this finding addresses issues of fairness arising from the concealment of family property, and it would not be significantly unfair to equally divide the resulting total family property. I therefore find it appropriate to divide the family assets on a 50-50 basis.

Division of Family Debt - Discussion and Findings

[157] Section 86 of the FLA provides the following definition of family debt.

Family debt

86 Family debt includes all financial obligations incurred by a spouse

- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
- (b) after the date of separation, if incurred for the purpose of maintaining family property.

[158] Both of X.B.'s CIBC and HSBC debts were incurred in March 2022, after the date of separation. The dates of loans from X.B.'s girlfriend and from Webank were also post-separation, and these asserted debts were not incurred for the purpose of maintaining family property. Therefore, they do not constitute family debts.

[159] X.B. asserts that he received a loan from his father in April and May 2018 in the amount of \$700,000, which was advanced toward the purchase of the family residence. This is contrary to Y.W.'s testimony that funds for the purchase for this property were from X.B.'s money in China. X.B. attached a copy of a \$700,000 loan document said to be dated April 10, 2018 to his F8, and a declaration of a loan was appended to an affidavit. I find that this is not a true loan. X.B. did not demonstrate any objective intention to repay any such loan following the sale of the family residence on Continental Street in October 2018. In addition, X.B. purchased a Porsche in November 2018 in the amount of approximately \$250,000, belying any intention to pay his father back a loan. I find there was no expectation or likelihood of repayment of monies to his father and find that this is not a true loan: *Locke v. Locke*, 2000 BCSC 1300 at paras. 21-24. Accordingly, I do not characterize this as a family debt.

- [160] Finally, in November 2020 X.B. took out a private loan of \$160,000 secured against the family residence, which was paid out following the sale of the residence and reduced the net sale proceeds. At the time of sale of the family residence, the amount outstanding on the loan was \$179,066.93.
- [161] The documents pertaining to this private loan were signed on November 26, 2020, after the date of separation. Therefore, this loan is not a family debt, is solely a debt of X.B., and I shall account for it as such in the final reconciliation between the parties. Alternatively, if I were wrong about this, I would have in any event found that this loan was outside the normal course of the parties' relationship, substantially reduced the value of family property, and it would be significantly unfair to equally divide this private loan between the parties. On that basis, I would have allocated this debt entirely to X.B. pursuant to s. 95(2)(g) of the FLA.
- [162] In the result, there are no family debts, there is no need to divide any debt, and each party will be responsible for debts in their own name.

Quantum of Equalization Payment Consequent Upon Division of Family Property and Debt

- [163] I calculate the quantum of the equalization payment owing by X.B. to Y.W. in a manner different than set out in the claimant's Scott Schedule, which appeared to conflate the value of the parties' family assets with cash amounts paid from the proceeds of the sale of the family residence and from other amounts owing by X.B. pursuant to court orders.
- [164] Y.W.'s share of the family assets is 50% of the net proceeds of the sale of the family home of \$164,828.28 ($\$329,656.56 / 2$) + \$110,000 (her proceeds of the sale of the Porsche Panamera) = \$274,828.28.
- [165] X.B.'s share of the family assets is \$164,828.28 (one half of the net proceeds of the former family home) + \$300,000 (the value of X.B.'s undisclosed family assets) = \$464,828.28.
- [166] I find the amount in the parties' bank accounts to be nominal and do not take them into account.
- [167] The total value of family assets is therefore \$739,656.56 ($\$274,828.28 + \$464,828.28$), and each party's 50% portion is \$369,828.28 ($\$739,656.56 / 2$).
- [168] This would result in an equalization payment from X.B. to Y.W. of \$95,000 ($\$369,828.28 - \$274,828.28$), before adjustments. However, this amount of compensation payment would assume that the proceeds of the family residence are still available, but instead the proceeds have been diminished by subsequent payments made to Y.W. including payments owing by X.B. to Y.W. Further, the net proceeds of the family residence were reduced by the payout of the \$179,066.93 private loan which I have found should solely be X.B.'s responsibility.

[169] Therefore, adjustments must be made to account for payments made to or on behalf of the parties from the proceeds of the former family home, and other amounts owing from X.B. to Y.W. pursuant to court orders, resulting in an equalization payment from X.B. to Y.W. in the total amount of \$324,170.97, calculated as follows:

Equalization Payment from X.B. to Y.W., before adjustments

\$95,000

Adjustments:

Y.W.'s interim property distribution from the net proceeds of family residence on September 9, 2022 (x 50%)

-\$25,000

X.B.'s Child Support Payments, Special Expenses and other amounts, described in the Claimant's Scott Schedule as:

"-> Retro Child Support to be paid to Clmt pursuant to OMMA dd Sept, 7, 2022 \$28,067.00

> Cost of application to be paid to Clmt as per OMMA Sept 7, 2022 \$1,500

> Cost of application to be paid to Clmt as per OMMA Sept 9, 2022 \$1,000

> Per Nov 16, 2023 letter to [X.B.] - pymt to Clmt for Special Expenses \$1,369.15

> Per Feb 27, 24 letter to [X.B.] & verbally agreed by him - Payment towards [M] and [J]'s childcare services \$1,401.00

> As per [X.B.]'s instructions: Estimate of [J]'s Dental treatment \$7,527.00

> As per [X.B.]'s instructions, payment for children's dance classes \$564"

\$41,428.15

X.B. child and spousal support payments from November 2022 to July 2024, to be accounted for pursuant to Orders of Kirchner J., Fleming J., Warren J., and Stephens J.

\$109,019.35

Private loan taken out by X.B. which was paid from the net proceeds of the sale of the family residence, to be reimbursed to Y.W. (x 50%)

\$89,533.47

X.B. child and spousal support payments (\$4,730 monthly) from August to October 2024 to be accounted for pursuant to Orders of Stephens J.

\$14,190.00

Total Equalization Payment from X.B. to Y.W. for Division of Family Assets, after adjustments

\$324,170.97

[170] In the table above, I have made adjustments at a rate of 50% for the \$50,000 advance to Y.W. from the net proceeds of the family home, and the \$179,066.93 private loan taken out by X.B. which was paid from the net proceeds of the sale of the family residence. Both these payments reduced the net proceeds of the sale of the family home, which I have equally divided between the parties, and had the effect of reducing the other party's equal share of the net proceeds by 50% of these amounts.

[171] At the conclusion of trial, I was advised that the remaining proceeds of the former family home was \$129,773.06 (as at July 5, 2024). This amount will have now been reduced by further months of child and spousal support payable by X.B. to Y.W. from the proceeds of the former family home by court order. I order that the balance of the amount of proceeds of the former family home remaining may be paid out by Y.W.

[172] I have discretion to allow a period of time for X.B. to pay Y.W. the compensation order (equalization payment), and provide him 45 days to do so: *Tereposky v. Fooks*, at para 97, citing *Robinson v. Robinson*, 2011 BCSC 1489 at paras. 131-132, *aff'd* 2012 BCCA 497.

Issue #5: Spousal Support

[173] While the parties were married, Y.W. was a homemaker and cared for the children while X.B. pursued business ventures in China and Powell River, BC. The parties lived an affluent lifestyle funded by X.B. Y.W. is currently unemployed.

[174] I find that Y.W. is entitled to spousal support on a compensatory and non-compensatory basis: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 49, 1999 CanLII 715; *Chutter v. Chutter*, 2008 BCCA 507 at paras. 45-54; ss. 15.2(1) and (6) of the Divorce Act. I do not impute any income to Y.W. in the circumstances: *Hsieh v. Lui*, 2017 BCCA 51 at para. 48.

[175] Y.W. is entitled to spousal support from X.B. in an amount as calculated pursuant to the Spousal Support Advisory Guidelines (the "SSAG") on the basis of: XW's Guideline income of \$150,000.

[176] I find Y.W. is entitled to spousal support for approximately 10 years, based on the age of children test under ss. 8.5.3 and 8.5.4 of the SSAG. As explained by the Court in *M.G. v. J.M.*, 2015 BCSC 580 at para. 78, the age of children test creates a range between the date when the youngest child would start kindergarten to the time they would graduate from high school. The upper end of the range under this test is the date when the youngest child finishes high school. The parties' youngest child is currently 8 years old and will finish high school in approximately 10 years.

[177] Based on X.B.'s imputed income of \$150,000, the range of monthly spousal support provided by the SSAG is \$2,110 (low end), \$2,440 (midpoint), and \$2,822 (high end).

[178] I order that the claimant Y.W. is entitled to spousal support at the mid range of \$2,440 monthly, based on an imputed income of \$150,000, for 10 years.

[179] However, I recognize that one of the objectives of spousal support is to promote steps toward economic self-sufficiency, pursuant to the Divorce Act, s.15.2(6)(d). Before the marriage, Y.W. received post-secondary education and gained some work experience in China, although I acknowledge she testified through an interpreter and that working in Canada will likely be a challenge. Taking into account all of the circumstances, I order that the quantum of, though not entitlement to, spousal support may be reviewable after three years from the date of my order.

Issue #6: Divorce Order Sought

[180] The divorce was not spoken to at this trial, and so an application for divorce may be brought separately (I am not seized of such an application).

Issue #7: Costs

[181] If the parties cannot agree on costs and wish to make submissions on costs, they may do so in writing, with Y.W. providing submissions of no more than five pages within 14 days, and with X.B. providing responsive written submissions of no more than five pages within 14 days thereafter. Y.W. shall have five days to provide a written reply, if any, of no more than three pages.

Conclusion and Orders Granted

[182] I order that Y.W. receive the balance of the proceeds of the former family home, that X.B. pay Y.W. a compensation order payment of \$324,170.97 within 45 days of the date of this order, that X.B. pay Y.W. retroactive child support in the amount of \$21,590 (from November 2020 to August 2021), that Y.W. have primary residence of the children, and that X.B.'s parenting time shall be Sunday at 10:00 a.m. to Tuesday at 9:00 a.m. , and grant the other orders as set out in these Reasons.

"Stephens J."

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