
CANADA / JUDGMENT

Y.Z. v. A.C.

2019 BCSC 1564

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 1564 Y.Z. v. A.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Y.Z. v. A.C.,

2019 BCSC 1564

Date: 20190917

Docket: E153224

Registry: Vancouver

Between:

Y.Z.

Claimant

And

A.C. also known as W.C.

Respondent

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

April 15, 24-26, 29-30, and

May 1-3, 6-10, 13-17, 27-31,

and June 3-7, 2019

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Vancouver, B.C.

September 17, 2019

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I. Introduction

- [1] The claimant, Y.Z. and the respondent, A.C., were married at Guangzhou, in the Peoples' Republic of China ("PRC"), on January 12, 1995 and moved to Canada two years later. They separated in April 2014 and formally divorced on June 20, 2017. They have two daughters, S.Z., aged 22 and C.Z., aged 16.
- [2] The breakdown of their marriage has been particularly acrimonious. They and their children have been deeply hurt by it in various ways. The evidence at trial included allegations of family violence, of various kinds, by both parties. Both accuse the other of misconduct aimed at securing an unfair advantage in these and other proceedings. The years since their separation have been marked by prolific litigation both in the PRC, where the family businesses are located, and here in British Columbia, where the children were raised.
- [3] The issues to be resolved by this judgment fall into several broad categories.

- [4] First, there are parenting issues. There is, in particular, a dispute about whether Y.Z. should continue to be a guardian of C.Z. Since 2014, both daughters have chosen to have no relationship with him. He was prohibited by an earlier order of this Court from communicating with them except in writing through social media. He has resigned himself to the present state of his relationship with S.Z., at least for the time being. With respect to C.Z., however, he seeks to have at least some personal contact with her going forward. C.Z. has indicated her willingness to meet in person with him twice per year, on certain terms. The main issue before me in that regard concerns the terms on which that should be allowed to occur.
- [5] The other issues in dispute are financial.
- [6] A.C. seeks child support, both retrospectively and prospectively, and a contribution to the extraordinary expenses she has incurred and will be incurring for the children for so long as they remain children of the marriage. While acknowledging his responsibility to some extent in that regard, Y.Z. says that the amounts he ought to have to pay are considerably less than those claimed.
- [7] Finally, the parties differ on how the family assets, primarily their businesses in the PRC, should be divided between them.
- [8] Because of the strong ties of the parties and their companies to the PRC, many of the values and transactions discussed in these reasons are denominated in Chinese Renminbi ("RMB") which, for the sake of consistency and simplicity, I have treated in all cases as exchangeable for 20 Canadian cents to the RMB.

II. The Background Facts

- [9] The parties were born and raised in the PRC. They first met when Y.Z. was 29 and A.C. 19. At the time Y.Z. was employed as an engineer with a steel company. Although he was interested from the beginning in pursuing a more serious relationship with A.C., her family was resistant and their lives diverged for a period of time.
- [10] In 1987, Y.Z. married another woman. They had a daughter, M.Z., in 1989. That marriage did not last long, however, and the couple divorced in 1994. Thereafter, M.Z. lived initially with her mother in the PRC.
- [11] In 1989, A.C. completed a post-secondary degree in French literature. She then worked for a French automobile company for four years as a translator. After that, she found translation work with a Chinese municipality.

- [12] The relationship between Y.Z. and A.C. resumed in 1993 and, this time, quickly became more serious. They began cohabitating that year and were married one year after that. Over the next two years, they planned a move together to Canada. In the meantime, Y.Z.'s former spouse was planning a move of her own to the United States, but without her daughter, M.Z., whom she intended to leave behind in the PRC. In the result, Y.Z. arranged to bring M.Z. with him and A.C. when they moved to Canada.
- [13] Y.Z. and A.C. opted initially to settle in Montreal. They arrived there in 1997. Soon after that, their first daughter, S.Z., was born. They found the climate in Montreal too harsh, however, and they eventually decided to move to British Columbia, where C.Z. was born.
- [14] In 2001, Y.Z. started his own steel wool manufacturing business in the PRC through a company that came to be called Guangzhou Sunny Metal Inc. ("GSM"). I will describe the business in more detail when I address the division of the corporate assets below. Suffice it to say for now that it was eventually very successful and the family consequently became very wealthy. They moved from Burnaby to a home on Minto Crescent in the Shaughnessy neighbourhood of Vancouver. They eventually acquired numerous other residential properties in Vancouver, Whistler and the PRC.
- [15] Although Y.Z. was away from home for work for long periods of time, the evidence suggests that he was a good father to the children, at least until they reached their teenage years.
- [16] Until 2004, M.Z. was the biggest source of strain in the marriage. M.Z. appears to have had a difficult childhood. She testified that while she was living with Y.Z. and A.C. in British Columbia, A.C. abused her severely, both physically and emotionally. A.C. denies this. By A.C.'s account, M.Z. was a troubled and rebellious teenager who was a bad influence on her two younger daughters. Matters came to head with an incident in 2004 when, during a heated argument with A.C., M.Z. drew a kitchen knife and threatened to hurt herself with it. After that incident, M.Z. was sent overseas to boarding school and ceased to reside in the family home.
- [17] Y.Z.'s relationship with S.Z. and C.Z. deteriorated as they entered into their teenage years. His relationship with C.Z. was particularly strained. He considered her spoiled and disrespectful. Although Y.Z. recalls having a better relationship with S.Z. during this period, S.Z. testified that she tried to make the best of her relationship with her father for many years in order to keep the peace, but inwardly she too was increasingly alienated by his behaviour, particularly what she considered to be his dictatorial manner and his inclination to speak ill of A.C., C.Z. and other family members. S.Z. also recounted a few episodes in which she encountered what she took to be evidence of extra-marital relationships Y.Z. was pursuing with younger women in the PRC.

- [18] The relationship between Y.Z. and A.C. also deteriorated rapidly as the children were coming of age. They argued about both personal and financial issues - particularly Y.Z.'s infidelities, the management of the family business and the role that A.C. herself and her brother, W.C., had come to play in it.
- [19] The altercations between Y.Z. and A.C. often became violent. In the course of an argument that took place on Y.Z.'s 50th birthday in 2009, for example, A.C. threw a cup at him in a fit of anger, causing a wound to his upper lip that required stitches. A.C. later apologized for this and explained that she had not been aiming at him. On another occasion she threw her cell phone at him or in his direction, this time missing the mark.
- [20] Their relationship eventually deteriorated to the point that A.C. announced that she was leaving Y.Z. and had begun a new relationship with a music teacher. Y.Z. tried to win her back. As part of that effort, he bought her expensive gifts, including a diamond ring that has been valued in this trial at \$940,000, for which Y.Z. says he paid considerably more than that.
- [21] A.C. agreed to go back to him but the relationship did not improve. They continued to quarrel, often violently. As Y.Z. became more successful in his business life, he felt he was entitled to have mistresses, a practice which he described as being more culturally acceptable in the PRC than may be the case in North America.
- [22] The process that led to their final separation appears to have begun in March 2013. At that time, Y.Z. sought to liquidate and secure for himself assets worth approximately USD \$20 million from a charitable family trust that the couple had settled, known as the "Trajan Foundation." When A.C. discovered this, she initiated legal proceedings in the PRC and the couple began the process of negotiating and then litigating an orderly division of the family assets between them. As part of that process, each took half of the proceeds from the Trajan Foundation and those funds are therefore not directly in issue in this action.
- [23] As their relationship worsened, A.C. refused to allow Y.Z. to reside with her and the children in the family home on Minto Crescent. At first, she asked that he stay in the basement but eventually he came to reside, when in Vancouver, at a condominium they own on West Cordova Street.
- [24] According to A.C., the episode that shattered the relationship beyond repair occurred at the Minto Crescent home in July 2013. Y.Z. had left his computer there. A.C. testified that the computer suddenly came to life to indicate receipt of an incoming message from a person whom A.C. took to be one of Y.Z.'s mistresses. A.C. responded to the message and entered into a conversation with the sender. When he learned of this, Y.Z. became irate and drove over to the home at 3:00 a.m. to recover the computer. When he arrived, he demanded to be allowed in but A.C. refused him entry. He then broke into the home through the garage door with a hammer. A.C. called the police. Y.Z. was arrested and held in custody overnight. He was released the next morning on conditions that included a requirement that he participate in anger management counseling. C.Z. had been in the home at the time, asleep in her bedroom. She was awakened when a police officer came into her room and shone a

flashlight in her face.

- [25] The altercations between Y.Z. and A.C. were not confined to the home but also spilled over into the workplace. In the course of one of their quarrels there, Y.Z. punched A.C. in the face. A.C.'s cousin, a burly individual whom she had recently hired at least partly to protect her, chased Y.Z. into the company cafeteria, tackled him there and held him down while A.C. proceeded to slap him in front of a number of astonished employees. This incident led Y.Z. to hire his own private security guards as the war at work continued to escalate.
- [26] In September, 2013, W.C., along with five other senior managers, including Y.Z.'s nephew, Y.M., formed the view that the breakdown of the marriage was affecting Y.Z.'s effectiveness as a manager of GSM. They also believed that, for years, they had been promised an equity stake in the business and that Y.Z. was refusing to follow through with his promises in that regard, whereas A.C. was more willing to accommodate their demands. On September 4, 2013 they sent Y.Z. and A.C. a "letter to the shareholders" demanding that the managers receive an RMB 500,000-700,000 payment and a 30% equity interest in GSM and that Y.Z. cede day-to-day managerial control to A.C. Several days later, Y.Z. and A.C. signed a shareholders agreement by which he was to remain the legal representative and president of the company, in charge of "major strategic decisions" and "major technical routes", while A.C. was to be its general manager, in charge of "its daily operation, management and affairs." The ownership of the company was to be restructured in the coming year so as to allocate to management a 25% equity interest. The managers were to be paid the sum of RMB 5 million per person, an amount that was said to include all severance accrued to the end of 2013. Although Y.Z. had communicated his acceptance of these terms at the time, he testified that his agreement had not been freely given but was instead coerced, primarily by his hope to save the marriage.
- [27] The final separation process appears to have begun in April 2014, when the parties entered into a mediation to arrange for an orderly division of the family assets. That process culminated in a series of tentative agreements to achieve that end, but the agreements were never finalised and neither party is seeking to enforce them today. One lasting result of that process was that by 2015 Y.Z. had resumed his position as the general manager of GSM, leaving him in sole control of that company. With that authority, he eventually removed A.C. as a director and withdrew her signing authority at the bank. A.C. was left in control of the second of the family's operating companies, known as Zhangjiagang Sunny Metal Co., Ltd. ("ZSM"), a company that she had been managing from its inception in or around 2007.
- [28] A.C. says that while all this was going on she tried to encourage the two daughters to maintain a relationship with their father. She explained in her testimony that her intention in doing so was to facilitate a smooth divorce.
- [29] It was in that context that A.C. asked Y.Z. to take C.Z. to a summer camp near Geneva in July 2014. To the surprise of A.C. and C.Z., Y.Z. invited M.Z. to join them in Geneva for a few days before the camp session was due to begin. The visit did not go well. Y.Z. thought C.Z. was

being rude and disrespectful. He believed that she was blocking him on her phone but it appears that she had merely put the phone into airplane mode. When he asked to see the phone she refused to show it to him. In the course of the ensuing argument, he pulled the ear buds from her ears. C.Z. reacted to this by darting into the bathroom of the hotel room and refusing to come out. While Y.Z. was pounding on the bathroom door demanding that she come out, C.Z. became frightened and called S.Z., who was then in Vancouver. S.Z. then called Y.Z. and told him to stop yelling at C.Z. Y.Z. responded that it was C.Z. who was acting out and overreacting. He passed the phone to M.Z. who shared Y.Z.'s perspective. C.Z. finally left the bathroom after growing tired and getting S.Z. to tell Y.Z. and M.Z. to let her go to bed.

- [30] There is a dispute between the parties as to the significance of that episode. A.C. and the daughters view it as the pivotal turning point in their relationship with their father. Y.Z. believes that its importance has been exaggerated and that it was, or should properly be seen to have been, merely a minor event.
- [31] Regardless of its significance in objective terms, the daughters certainly viewed the episode as a watershed. What appears to have severed their ties with their father completely, however, is what occurred on the few subsequent occasions since then when he was given the chance to clear the air but instead made matters worse.
- [32] With respect to S.Z., this occurred in the immediate aftermath of the Geneva incident. Upon returning to Vancouver, Y.Z. went to see S.Z. to discuss what had happened. She refused to let him into the Minto Crescent house but agreed to go out with him for lunch. When he drove to the house to pick her up, she came out to the car but refused to go to lunch with him. She said that she was very upset by his behaviour and that she needed him to leave her alone for a month. Y.Z. responded that he would respect her wishes in that regard. S.Z. testified that she was encouraged by his willingness to accommodate her in that way, which she thought signalled a long overdue change in his attitude. She was therefore all the more dismayed when, on the very next day, he called her to tell her that he was so upset by her not wanting to see him that he was going to throw himself from the balcony of his apartment if she did not relent. S.Z. was sufficiently frightened by that remark that she called for emergency assistance. An ambulance arrived at Y.Z.'s apartment and he was taken to hospital. He later told S.Z. that he thought it was foolish of her to make that call.
- [33] In December 2014, the entire family was invited to a Christmas dinner with a family friend. During the meal, Y.Z. spoke critically of C.Z.'s behaviour, which led S.Z. and A.C. to leave the event early. In the spring of 2015, Y.Z. went unannounced to S.Z.'s school in an effort to meet with her in the school cafeteria. S.Z. felt trapped and demanded that he leave, which he did. She did not see him again until she testified as a witness in this trial, when once again there were harsh words exchanged between them - both in the hallway and in the courtroom during her testimony.

- [34] Meanwhile, the unrestrained warfare between Y.Z. and A.C. continued to play out on various fronts. Over the summer and fall of 2015, Y.Z. formed the view that A.C. had been absconding with family assets, including by removing valuable pieces of art from one of their apartments in Guangzhou. In what he claims was an effort to pre-empt such misconduct, he withdrew \$1.3 million in cash from one of the family companies.
- [35] The separation agreements they had been negotiating contemplated that each party would be allowed to use the family homes when the other party was not there. Y.Z. went to the Guangzhou apartment in November 2015 to see for himself if the artwork he was concerned about was still there. He brought an axe with him on that occasion because, he said, he continued to fear a physical assault by A.C.'s cousin. When he discovered that the locks had been changed, he used the axe to break into the apartment. He then wielded it inside the apartment with apparent abandon, causing extensive damage, including to the daughters' rooms. When she arrived some time later, A.C. took photographs of the damage, which she shared with the daughters.
- [36] In the spring of 2015, S.Z. graduated from high school and was accepted to a prestigious university in Boston, Massachusetts. Y.Z. was not invited to her graduation ceremony and did not attend. Nevertheless, he persisted in his efforts to make contact with her. On December 13, 2015, he sent her an email, with the subject heading "Dad just want to have a look at you." The body of the email stated as follows:
- Dear [S.Z.],
- Dad take a long trip to Boston just want to have a look at you and hope you are doing well. I will leave tomorrow. And wish you sometime later you may chang[e] your mind. I love you! Dad
- [37] S.Z. responded that same day as follows: "Sorry dad I'm studying right now and I don't think I'm ready to see you."
- [38] To this, Y.Z. responded as follows:
- [S.Z.]. It's ok. One more time, please pass your personal bank account information to me, let me fulfill my promises to support your university study. I love you. Dad.
- [39] S.Z. testified that these emails led her to fear that Y.Z. would show up in Boston and embarrass her or worse.
- [40] In the spring of 2015, Y.Z. engaged the services of Dr. Michael Elterman, a clinical and forensic psychologist, to assist him in his effort to repair his severed relationship with C.Z. In the course of his investigations, which took place over the better part of a year, Dr. Elterman interviewed Y.Z., A.C., S.Z., C.Z., M.Z., A.C.'s new partner, L.A., and various collateral references provided by the parties. He observed C.Z. at the home of each parent. When Dr. Elterman observed C.Z. at Y.Z.'s home, she spent much of the time sitting on a barstool texting on her phone. She was confrontational. She told Y.Z. that his "business is dying." She asked him "why did you cheat on mom for five years" and "why did you break

into the house." When Y.Z. confronted her about this behaviour, she responded by telling him that she would "spend more time if you didn't act like a jerk." At that point, according to Dr. Elterman's report, Y.Z.,

blew up, his face went red and he started yelling and pointing his finger at [C.Z.]. He acted very agitated and yelled at her in Mandarin. [C.Z.] then came over to me after he had yelled at her and she said to me quietly 'he just threatened to choke me to death.' [Y.Z.] clearly lost control and he started to throw things and was irate and yelling at [C.Z.]. At this point, I told [C.Z.] that we should leave and we left quickly after a very brief salutation to [Y.Z.] who still seemed extremely angry and irate even as we left the front door

- [41] Dr. Elterman delivered his report in May 2016. He concluded, among other things, that at least part of the reason for the estrangement between Y.Z. and his daughters was that A.C. had told them too much about the issues between the parents and, as a result, they had sided with her in the divorce. To address the situation, Dr. Elterman recommended reintegrative therapy with a counselor.
- [42] The parties followed up with that recommendation by enrolling in the "Family Forward" program operated by Alyson Jones & Associates. They participated in it during the second half of 2016. Initially the sessions appeared to be going well. Y.Z. had two lunches with C.Z., one at a restaurant and the second at his apartment. During the lunch meeting at Y.Z.'s apartment, Y.Z. asked C.Z. if she would pose with him for a photograph. She said she was not ready for that and Y.Z., at least outwardly, appeared to accept her decision gracefully. Inwardly, however, he was deeply disappointed that the counsellors in attendance had not done more to encourage her to comply with his modest request. He was also frustrated with the slow pace of the progress that was being made, the cost of the program, the expectation that he would travel to Vancouver for single meetings and the number of sessions proposed with counselors without C.Z. present. He sought to reschedule the third lunch with C.Z., citing what he said were conflicting court commitments in the PRC. In addition, he demanded that the program proceed in a manner more in keeping with his wishes and expectations. He refused to refresh his retainer when this was asked of him. As a result, the program did not proceed further.
- [43] C.Z. was disappointed by Y.Z.'s behaviour in failing to follow through with the Family Forward program. Y.Z. complained in his testimony that C.Z. was not given a fair explanation of his reasons for breaking their last lunch appointment, thereby further alienating her from him, but her disappointment appears to have flowed more broadly from her perception, not without foundation, that he was still not prepared to step outside his comfort zone for the sake of reconnecting with her.
- [44] In early 2017, there was another incident, this time involving a vacation property that the parties own in Whistler. A.C. had changed the locks there after Y.Z. had removed various items from the premises, including some of L.A.'s effects. When he learned of the lock change, Y.Z. left A.C. a voicemail message threatening to carry out another break-in. He was

caught on the security camera photographing the lock. These events led A.C. to obtain, without notice, a restraining order from this Court on February 3, 2017. That order was later vacated and replaced by a less restrictive order made June 20, 2017. By that second order, Y.Z. was, among other things, prohibited from communicating with the daughters except by way of email, text or WeChat. The order also provided that Y.Z. could seek to re-establish contact with the daughters through counselors, but Y.Z. has not pursued that option.

- [45] Despite the order, Y.Z. sent S.Z. an email on May 22, 2018, telling her, among other things, that "I just can't stop myself to come to Boston." It does not appear that he followed through and actually went to Boston, although S.Z. feared that he would.
- [46] Y.Z. has continued to try to resume contact with C.Z. as well. She reported to Dr. Elterman that he called her on her birthday in the fall of 2018 and that they spoke on the phone on that occasion for a few minutes. More recently, in the spring of 2019, he attended, unannounced, at C.Z.'s school. C.Z. had not expected or wanted him there. She informed the school officials that she did not want to see him and he left quietly.
- [47] Dr. Elterman conducted further interviews with C.Z. and others in April 2019, culminating with a supplemental report of May 14, 2019. That report notes, among other things, that C.Z. expressed some interest in having a more normal relationship with Y.Z. so that the atmosphere between them is not so toxic. To that end, she indicated her willingness to meet in person with him twice per year, in the presence of an adult third party such as a counselor, in exchange for his promise not to continue to "harass" her or show up in her life unpredictably. Her willingness to continue to be in contact with him on an ongoing basis would depend, she says, on his conduct.

III. The Parenting Issues

A. Guardianship

- [48] In his pleading, Y.Z. seeks, among other things, an order confirming that as C.Z.'s guardian, he has all of the statutory responsibilities enumerated in s. 41 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], which states as follows:
41. For the purposes of this Part, parental responsibilities with respect to a child are as follows:
- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
 - (b) making decisions respecting where the child will reside;
 - (c) making decisions respecting with whom the child will live and associate;
 - (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;

- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
- (f) subject to section 17 of the Infants A.C.t, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- (h) giving, refusing or withdrawing consent for the child, if consent is required;
- (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- (j) requesting and receiving from third parties health, education or other information respecting the child;
- (k) subject to any applicable provincial legislation,
- (i) starting, defending, compromising or settling any proceeding relating to the child, and
- (ii) identifying, advancing and protecting the child's legal and financial interests;
- (l) exercising any other responsibilities reasonably necessary to nurture the child's development.

[49] In argument at trial, the relief sought was more modest. His counsel submitted that he ought to remain as C.Z.'s guardian because he "should be entitled to understand what his daughter is doing." In the alternative, if continued guardianship is determined to be no longer warranted, he seeks an order to require A.C. "to provide him with updated information about [C.Z.]'s guardianship decisions in order to facilitate his ongoing involvement with her life."

[50] A.C. seeks an order removing Y.Z. as C.Z.'s guardian without qualification.

[51] The issue of guardianship falls to be determined pursuant to s. 51 of the FLA, which states in relevant part as follows:

51 (1) On application, a court may

- (a) appoint a person as a child's guardian, or
 - (b) terminate a person's guardianship of a child.
- (2) An applicant under subsection (1) (a) of this section must provide evidence to the court, in accordance with the Supreme Court Family Rules respecting the best interests of the child as described in section 37 [best interests of child] of this Act.

[52] It has been held that an order under s. 51 removing a parent as guardian is one that the courts are generally reluctant to make.

- [53] In *S.H. v. R.G.*, 2013 BCPC 114, for example, Hamilton P.C.J. stated that an order of that kind should be made "only in very rare case and the clearest of cases where cancelling guardianship was clearly in the child's best interests" (at para. 150). Similarly, in *D. v. D.*, 2013 BCPC 135, Merrick P.C.J. stated as follows, at paras. 24-25:
- [24] When considering an application to terminate a parent's guardianship, I am of the view that considering the factors enumerated in s. 37(2) of the Family Law Act, termination can only occur in the most extreme situations. The approach to be taken is, first, to ask whether, through an allocation of parenting responsibilities, it continues to be in the best interests of the children that the parent remain a guardian. If it is, guardianship should not be terminated. It must be remembered that once a parent is no longer a guardian, that parent loses all parenting responsibilities and rights and is simply an adult who may have contact with the children.
- [25] In my view, it will be rare when that is in the child's, or in this case, the children's best interests.
- [54] Those remarks were adopted by Fleming J. of this Court in *M.A.G. v. P.L.M.*, 2014 BCSC 126, where she stated as follows, at para. 43-46:
- [43] Pursuant to s. 39 of the FLA, each parent, while together and after separation, is a guardian of the child, unless otherwise agreed or ordered. Under s. 40(2), each guardian may exercise all parental responsibilities with respect to the child, in consultation with the child's other guardian(s), unless to do so would be inappropriate or unreasonable in the circumstances. Section 40(3) provides for the allocation of parental responsibilities between guardians by agreement or order based on the best interests of the child, as defined by the factors set out in s. 37. There are no presumptions regarding the allocation of parental responsibilities, including no presumption of an equal or shared allocation: s. 40(4). Parents who are guardians also exercise parenting time with their children. A parent who is not a guardian has contact instead.
- [44] On application the court may terminate a parent's guardianship of a child pursuant to s. 51(1). Such applications require notice, which was not provided here. In *D. v. D.*, 2013 BCPC 135 (CanLII), the Provincial Court considered an application to terminate the parent's guardianship. The application was made in the context of a joint child protection and family law proceeding. The children had been removed by the Director and a continuing custody order was sought. In discussing the application to terminate the parent's guardianship, the court expressed the view that guardianship should only be terminated in the most extreme situations and only after determining whether through an allocation of parental responsibilities, it is in a child's best interests that the parent(s) remain a guardian. The court noted that once a parent is no longer a guardian, the parent loses all parental responsibilities and becomes simply an adult who has contact with the children. Despite rather significant concerns about the parental capacity of both parents, the court declined to terminate guardianship. The thrust of the decision is that by allocating or reallocating

parental responsibilities to a more capable parent as opposed to terminating guardianship, a child may safely retain the benefit of having a parent remain a significant part of his or her life.

[55] The specific factors to be considered in deciding guardianship issues are enumerated in s. 37 of the FLA, as follows:

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
 - (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[56] Having regard to those considerations, I make the following observations:

- (a) C.Z.'s health and emotional well-being: I agree with A.C. that given the absence of any relationship at all between Y.Z. and C.Z. and the role he played in bringing about that situation, coupled with his lack of insight into her reasons for not wanting him in her life, it would be detrimental to C.Z.'s emotional well-being for Y.Z. to remain her guardian;
- (b) C.Z.'s views: it is apparent from Dr. Elterman's most recent report that C.Z. does not want Y.Z. to continue to be her guardian;
- (c) the nature and strength of the relationship between C.Z. and other significant persons in her life: it is clear that C.Z. has a strong relationship with A.C., L.A., and S.Z. and that she has effectively no relationship with Y.Z.;
- (d) history of the C.Z.'s care: C.Z. has been in the care of A.C. almost exclusively for many years and the few times since separation that she has been in the care of Y.Z. have not gone well for either of them;
- (e) C.Z.'s need for stability: for all practical purposes, Y.Z. has not acted as C.Z.'s guardian for many years and it would be disruptive for C.Z. if he were to assume such a role now;
- (f) Y.Z.'s abilities as a parent: while Y.Z. evidently was an able parent when C.Z. was a young child, he has had difficulty coping with her rebelliousness since she entered her teens; it is apparent that if he Y.Z. is to have any relationship with C.Z. at all, he will have to make profound changes in how he interacts with her;
- (g) the impact of family violence: although Y.Z. has never been physically violent with the children, I have concluded (for reasons set out in more detail below) that his verbal and emotional abuse of them, his stalking behaviour and his destruction of property fall within the statutory definition of that term in s. 2 of the FLA, and constitute another reason to remove him as a guardian;
- (h) whether Y.Z.'s actions indicate that he may be impaired in his ability to care for C.Z. and meet her needs: I agree with A.C. that Y.Z. has demonstrated a lack of insight and empathy that would be detrimental to C.Z.'s well-being if Y.Z. were to remain as her guardian; and
- (i) the appropriateness of any arrangement that would require continued cooperation between Y.Z. and A.C.: the lack of any realistic prospect of cooperation between these parents is another factor militating against continued joint guardianship in this case.

[57] Although the order sought by A.C. is one that the courts are generally reluctant to make, I find that this is one of those exceptional and clear cases in which it is warranted. I agree it would only be a recipe for further conflict between Y.Z. on the one hand, and C.Z. and A.C. on the other, if he were to exercise any responsibilities as her guardian. Although I also agree with Y.Z.'s counsel that the best interest of C.Z. lies in preserving the remaining thread of her relationship with Y.Z., I have determined that re-inserting him into her life in the manner sought by Y.Z., against her professed wishes, would be more likely to sever that

thread altogether. For similar reasons, I am also not prepared to order A.C. to share information about C.Z. with Y.Z. Given C.Z.'s age and evident level of maturity, the extent of the information about her life that she chooses to share with Y.Z. should be up to her.

[58] I am therefore ordering that Y.Z. be removed as guardian of C.Z.

B. Protection Order

[59] A.C. seeks to renew and extend the order of this Court restricting Y.Z.'s communications with her and the children. She also seeks to add a term that would prohibit Y.Z. from going within 500 meters of them. She is prepared to allow Y.Z. to meet in person with C.Z. with her agreement, provided another adult is present and he is prohibited from mentioning A.C. in any conversation they have.

[60] Y.Z. submits that a protection order is not warranted on the evidence, and indeed would be counter-productive in his effort to foster a renewed relationship with C.Z.

[61] The power to make the order sought by A.C. is found in s. 183 of the FLA, which states as follows:

183 (1) An order under this section

- (a) may be made on application by a family member claiming to be an at-risk family member, by a person on behalf of an at-risk family member, or on the court's own initiative, and
- (b) need not be made in conjunction with any other proceeding or claim for relief under this Act.

(2) A court may make an order against a family member for the protection of another family member if the court determines that

- (a) family violence is likely to occur, and
- (b) the other family member is an at-risk family member.

(3) An order under subsection (2) may include one or more of the following:

- (a) a provision restraining the family member from
 - (i) directly or indirectly communicating with or contacting the at-risk family member or a specified person,
 - (ii) attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,
 - (iii) following the at-risk family member,
 - (iv) possessing a weapon, a firearm or a specified object, or

- (v) possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;
- (b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;
- (c) directions to a police officer to
- (i) remove the family member from the residence immediately or within a specified period of time,
- (ii) accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or
- (iii) seize from the family member anything referred to in paragraph (a) (iv) or (v);
- (d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;
- (e) any terms or conditions the court considers necessary to
- (i) protect the safety and security of the at-risk family member, or
- (ii) implement the order.
- (4) Unless the court provides otherwise, an order under this section expires one year after the date it is made.
- (5) If an order is made under this section at the same time as another order is made under this A.C.t, including an order made under Division 5 [Orders Respecting Conduct] of Part 10, the orders must not be recorded in the same document.

[62] The considerations that must be weighed in deciding whether to make that kind of order are found in s. 184, which states as follows:

184 (1) In determining whether to make an order under this Part, the court must consider at least the following risk factors:

- (a) any history of family violence by the family member against whom the order is to be made;
- (b) whether any family violence is repetitive or escalating;
- (c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;
- (d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;

- (e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence;
- (f) the at-risk family member's perception of risks to his or her own safety and security;
- (g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.

[63] The protection order sought by A.C. can only be made if I determine that "family violence" is likely to occur: ss. 183(2)(a). That term is defined in s. 1 to include, among other things:

- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence.

[64] A.C. says that the "family violence" that she seeks to prevent is the "psychological or emotional abuse" of the children by Y.Z. She says that he has exhibited a pattern of abusive conduct against them and others, as evidenced by the following acts:

- (a) repeatedly denigrating their mother and other family members in his conversations with the children;
- (b) breaking into the Minto Crescent home to retrieve his computer in July 2013;
- (c) taking away C.Z.'s earbuds and yelling at her when they were in Geneva in July 2014;
- (d) in the immediate aftermath of that last incident, threatening S.Z. with suicide if she refused to meet with him;
- (e) emailing S.Z. in December 2015 indicating his intention to travel to Boston to see her;
- (f) breaking into the Guangzhou apartment in November 2015;
- (g) threatening to break into the Whistler apartment in February 2017;
- (h) emails sent to S.Z. in May 2018 in which, among other things, he expressed his desire to see her, indicated that he had booked a flight to Boston and complained about A.C.'s assault against him ten years before on his 50th birthday (attaching a picture showing his wounded face on that occasion);

- (i) showing up unannounced at Y.Z.'s school (in 2015) and C.Z.'s school (in 2019);
- (j) sending text messages to C.Z. seeking to have contact with her and telling her that "someone used you as a sharp knife and stab it into my chest "; and
- (k) sending threatening text messages, including to A.C. and, on another occasion, to a company employee.

[65] A.C. cites a number of authorities in which "family violence" was found to have occurred by way of psychological or emotional abuse (as opposed to physical violence). In *D.N.L. v. C.N.S.*, 2014 BCSC 1417, for example, the respondent was denied parenting time because of a history of family violence that was found to include the following conduct:

demeaning remarks about the claimant, his repeated assertions to the child that she has been 'brain washed' or manipulated by her mother, his threats to use physical force to compel her to accompany him and his suggestions to the child that her mother is responsible for the conflict that divides this family (at para. 72).

[66] In *K.R. v. J.D.*, 2017 BCSC 182, after citing *D.N.L.*, Jenkins J. likewise took away the respondent's parenting time upon finding that, "derogatory and demeaning comments regarding the claimant, on occasion in [the child]'s presence, clearly amount to family violence. They have disturbed [the child] and caused [the child] emotional harm" (at para. 17).

[67] In *S.M. v. R.M.*, 2015 BCSC 1344, Fitch J. (as he then was) had occasion to consider whether the following conduct justified a protective order (at para. 32):

the offensive emails and text messages speak to a four-year history on the part of the respondent of harassing and coercive behaviour directed at the claimant and their children. The respondent has repeatedly exposed the children to his anger and manipulations. He has made no effort to spare them from the hostility he holds towards the claimant, or the degrading and profane language he occasionally uses in his communications.

[68] In granting the order, he explained his conclusion as follows, at paras. 53-54:

[53] Viewing the communications collectively and contextually, I am satisfied that the respondent's behaviour meets the definition of 'family violence.' Further, I am satisfied that the respondent's behaviour is likely to repeat itself in the future. I draw this conclusion not only from the respondent's long-standing and entrenched pattern of communication with the claimant and his children, but from:

1. The persistence with which he has pursued his pattern of communication despite his acknowledgment, at the time he sent some of the communications, that he knew they were causing emotional upset to the claimant and the children;

2. His refusal to desist in the behaviour, even after he was warned by the claimant that if his behaviour continued, she would seek to have criminal charges laid against him. That warning was sent by the claimant to the respondent in January 2014. It apparently did not deter him from repeatedly communicating with her and the children in a similarly offensive fashion; and
 3. The fuel that is being added to the fire by the notice of civil claim filed by the respondent in March 2015. This is a contextual factor of recent origin that is clearly adding to the respondent's anger and ongoing sense of aggrievement. This is confirmed by an email the respondent sent to the claimant and the children in November 2014, advising that while he was contemplating only bringing the action against his physician, he was bringing it against all of the named defendants 'as an extra special tint of retribution'. At minimum, this speaks to the dynamic of the current relationship between the claimant and respondent which, in turn, informs the Court's assessment of risk.
- [54] I am satisfied that family violence is likely to occur and that the claimant and her children and common-law spouse are at-risk family members. I am satisfied that it is more appropriate to make a protection order than an order under s. 225 of the FLA.
- [69] A similar conclusion was reached by Schultes J. in *L.A.R. v. E.J.R.*, 2014 BCSC 966. There, the Court denied the respondent, E., parenting time on the basis of a history of family violence, including physical violence, that was described as follows, at paras. 148-150:
- [148] Without minimizing the serious acts of violence that E. inflicted on L., they occurred during the marriage and do not appear to have been repeated or threatened during the post-separation period, despite the often volatile circumstances. Very fortunately the children do not appear to have been exposed to any of the incidents.
- [149] However I think many of E.'s comments to her while in the presence of the children go well beyond the all too familiar nastiness that spouses often inflict on each other during disintegrating relationships, and amount to actual 'emotional abuse' of her for the purposes of s. 2(d) of the Family Law Act. I would add to this his gross parenting error of showing B. the lengthy and acrimonious text messages, which I find he did as payback for his assumption that L. had shown B. his message to her that she was 'fucking twisted.' Finally, I find that in general E. has not taken the care that a responsible parent should to avoid speaking disparagingly of a former spouse and her new partner, and to avoid involving children in topics that are beyond their maturity to cope with.
- [150] Even more serious is the assault on D.M. I appreciate that it was not directed at the children or L., and that D.M. does not yet qualify as a 'family member' under the Family Law Act, but this shocking act, for which E. still harbours a residual feeling of justification, is nevertheless highly relevant to determining the best interests of the children. Put simply, if he is capable of this appalling lapse of judgment to 'save his family' as he put it, I must be concerned about what else he might be capable of if further conflict with L. or D.M. leads him to deem it justified.

- [70] In addition, A.C. argues that, in the absence of a protection order, continuation of this history of abuse is likely because Y.Z. has shown himself to be incapable of appreciating the impact of his conduct but rather seeks to justify it by blaming others (primarily her) for what occurred. She cites *C.L.M. v. M.J.S.*, 2017 BCSC 799. There Donegan J. gave the following reasons for granting the protection order sought in that case, at paras. 412-414:
- [412] I turn now to the respondent's application for a Protection Order under s. 183 of the FLA. I have concluded the claimant has perpetuated family violence. I am satisfied the respondent has established that both he and the Child are at-risk family members under s. 182. I am also satisfied the claimant's behaviours, directed at both the Child and the respondent, were repetitive and are likely to continue to occur unless the claimant makes fundamental changes. The claimant's behaviours constitute part of a pattern of coercive and controlling behaviour directed at both the Child and the respondent.
- [413] The claimant does not acknowledge that she engaged in these behaviours with the Child and the respondent. She does not see that her behaviours harm her children. For these reasons, she is highly likely to continue this harmful behaviour, should there be contact. Accordingly, I order that the claimant is restrained from directly or indirectly communicating with the Child until further Order of the court. The claimant is further restrained from attending at, nearing or entering a place regularly attended by the Child, or the respondent, including their residence, property, school or place of employment, as the case may be. The claimant is further restrained from directly or indirectly communicating with the respondent, except email communication for the sole purpose of communicating about matters relating to the Child and about any address or contact information changes, until further Order of the Court.
- [414] The future review will also address these Protection Orders. If the claimant takes the steps that I have identified and presents admissible evidence that she no longer poses a risk to the Child and the respondent, these Protection Orders may be cancelled or varied.
- [71] Y.Z. argues that a protection order is not necessary here because, regardless of what occurred in the past, there is no longer any realistic risk of family violence today. Y.Z. says that the incidents that A.C. relies upon were "situational" in the sense that they arose directly from the conflict surrounding the parties' separation and, as such, are unlikely to recur. He submits further that it would send the wrong signal to the family members, particularly C.Z., if such an order were made now. He refers me to *Hodel v. Adams*, 2016 BCSC 910, in which Butler J. (as he then was) refused to grant a protection order on the basis that the prior history of family violence was unlikely to recur:
- [95] I decline to issue a protection order against Mr. Hodel. In order to make such an order I would have to conclude that 'family violence is likely to occur.' Ms. Adams has not provided sufficient evidence to allow me to arrive at such a finding. She testified, and I accept, that Mr. Hodel has a bad temper and is unpredictable when he is angry. I also accept that Ms. Adams' fear is genuine and is based upon her personal experiences with Mr. Hodel.

However, pursuant to s. 184(1), I must consider all of the factors which collectively allow a court to assess the likelihood of family violence. When I consider all of these factors, I cannot conclude that family violence is likely to occur.

- [72] I have concluded that the children are at-risk family members and that family violence, in the form of a pattern of psychological and emotional abuse, has occurred in the past. I have also concluded that the impugned conduct was not confined to the period immediately following the parties' separation and that it would be likely to occur in the future in the absence of an order. Some of the relevant events occurred very recently, such as when Y.Z. showed up unannounced at C.Z.'s school in the spring of 2019. I agree that Y.Z. has displayed a dangerously explosive temper. During the February 2016 session with Dr. Elterman at Y.Z.'s apartment, which was supposed to pave the way toward reconciling father and daughter and when one would have expected Y.Z. to be on his best behaviour, what occurred instead was that Y.Z. became so irate and abusive in response to C.Z.'s provocations (including threatening to choke C.Z. to death) that Dr. Elterman and C.Z. were forced to leave. There were also a few angry, abusive and intemperate outbursts by Y.Z. during the trial itself.
- [73] Another important factor that I am obliged to consider is that the daughters, now in or near adulthood, subjectively perceive themselves to be at risk in the absence of a protective order.
- [74] I am therefore satisfied that the evidence adduced at trial justifies renewing the protective order indefinitely. There will, in addition, be a term precluding Y.Z. from attending any place, such as a school or residence, where the children are known to be.
- [75] My order will include an exception to allow in-person visits with C.Z. as and when initiated by C.Z., with another adult of her choice, other than A.C., present. It will be a further term of my order that neither parent discuss the other parent with the children.
- [76] My order will also include a term, as in *C.L.M. and S.L.C. v. C.J.R.C.*, 2016 BCSC 656, allowing Y.Z. to apply to vary or set my order aside after one year upon showing, either through counselling he has received or in the progress he has made in improving his relationship with either of the daughters, that permitting him to be in more regular contact with one or both of them no longer poses a threat to their emotional well-being.
- [77] I am not without sympathy for Y.Z. in his predicament. His pain at the loss of his relationship with his daughters is sincere and heartfelt. What they perceive as "harassment" is often his genuine if sometimes misguided effort simply to express his feelings and regain contact with them. But it appears that Y.Z. has yet to acknowledge the extent of his own role in bringing about this state of affairs. If he truly wants to foster a relationship with C.Z., he will need to demonstrate to her that he can be respectful of her legitimate boundaries.

IV. The Financial Issues

A. Child Support

- [78] The parties agree that child support and extraordinary expenses are payable both prospectively and retroactively - back to when A.C. commenced action in the PRC in July 2015. Although Y.Z. asserts that an order was made or an agreement reached in the PRC that he would pay \$20,000 per year for the children, the evidence does not support that assertion. Y.Z. says he agreed to pay that amount at a court hearing in the PRC, but he did not actually make any such payments because he believed at the time that she controlled all of the family assets. In any event, such an agreement would not be binding on the Court today: *Richardson v. Richardson*, [1987] 1 S.C.R. 857.
- [79] Y.Z. also claims a credit against the child support payable flowing from an \$80,000 payment he erroneously made into one of the party's joint bank accounts from one of their companies. As mentioned earlier, he had withdrawn \$1.3 million from that company and was later ordered by this Court to replace it. He was unable to do that, he claims, because the money had been spent on other things, including expenses for his property on Cordova Street. By the time the matter came to court in the PRC in June 2016, there remained only \$7,388.54 in that account. He says most of the funds were spent by A.C. on other things.
- [80] More recently, on April 3, 2019, Y.Z. sent a letter to A.C. through counsel with two cheques, one payable to A.C. in the amount of \$4,086 and the other to S.Z. in the amount of \$3,000. A.C. refused to cash them.
- [81] I am unable to find on this evidence that Y.Z. is entitled to any credit for any previous payment made toward his child support obligations.
- [82] A.C. seeks to impute an income of \$625,000 to Y.Z. She arrives at that figure by adding to his declared income of \$71,760 the amounts he was shown to have paid from 2014 to 2017 to other family members and friends totalling \$2,229,925 (or \$557,481.25 per year). Y.Z. submits that an imputed income of \$500,000 would be more appropriate. I agree with A.C. that the evidence supports the higher figure of \$625,000 (after grossing up), given his lifestyle and the scale of the gratuitous payments to third parties that he has made since separation.
- [83] A.C. calculates the child support owing on the basis that S.Z. lived with A.C. during the summer since the fall of 2015 (or 25% of the year), which means that three quarters of each year must be calculated on the "one child" formula and the remainder of the year on the "two children" formula. Y.Z. submits that there is no evidence that S.Z. in fact returned home during the four months per year, but I agree with A.C. that this is a fair inference.
- [84] On that basis, A.C. calculates the retroactive child support payable as follows:

Year

Child

Months

Rate/month

Total

2015

C.Z.

6

\$4,838

\$29,028

2016

C.Z. and S.Z.

4

\$8,089

\$32,356

2016

C.Z.

8

\$4,838

\$38,704

2017

C.Z. and S.Z.

4

\$7,764

\$31,056

2017

C.Z.

8

\$5,061

\$40,488

2018

C.Z.

12

\$5,061

\$60,732

2019

C.Z.

5

\$5,061

\$25,305

Total

\$257,669

[85] I accept that calculation and find that Y.Z. owes A.C. \$257,669 on account of unpaid child support for the period from July 2015 to May 2019.

[86] Prospectively, S.Z. testified that she will need between USD \$10,000 and USD \$20,000 per year for the six years of her graduate degree. Y.Z. is willing to pay his half share of that amount, or USD \$60,000, which is roughly equivalent to \$80,000 in Canadian funds at current exchange rates.

[87] Y.Z. is willing to pay lump sum child support for C.Z. until she is expected to leave for university in August 2020. The relevant period extends from June 2019 to August 2020 (15 months), during which support is payable at \$5,061 per month, for a total of \$75,915.

[88] In summary, I am ordering Y.Z. to pay child support totalling $\$257,669 + \$80,000 + \$75,915 = \$413,584$.

B. Extraordinary Expenses

[89] For the period from July 9, 2014 to April 1, 2019, A.C. claims to have spent \$1,055,291.45 on extraordinary expenses for the children and seeks to be reimbursed for half of that amount, or \$527,645.73. Y.Z. acknowledges his responsibility to contribute to some of these expenses but disputes the validity of others. The undisputed expenses total \$621,463.

[90] The disputed categories are as follows:

- (a) S.Z.'s travel costs (\$68,198.83);
- (b) a Sparks event for S.Z. (\$3,376.49);
- (c) C.Z.'s travel costs (\$59,998.28);

- (d) the cost of renting an apartment for C.Z. so that she could attend high school in a neighbouring catchment area (\$20,680);
 - (e) C.Z.'s food, restaurant and entertainment costs (\$121,990.24);
 - (f) legal fees to pursue a legal action against C.Z.'s former school alleging wrongful expulsion (\$131,951.42); and
 - (g) Sparks and other miscellaneous costs incurred for C.Z. (\$24,632.31).
- [91] With one exception, I agree with Y.Z. that the disputed expenses were either not necessary, not reasonable, or fall more properly under the rubric of the general child support award I have made. The one exception is the travel costs incurred by S.Z. to attend university in Boston, which in my view ought to be shared as an extraordinary expense. I am therefore adding the difference between the two daughters travel costs (\$68,198.83- $\$59,998.28 = \$8,200.55/2 = \$4,100.28$) as a shared expense yielding a total of $\$621,463/2 = \$310,731.50 + \$4,100.28 = \$314,831.78$.
- [92] With respect to the prospective expenses for C.Z., A.C. seeks a lump sum payment to cover her extraordinary expenses while attending university in the coming years, in an amount equivalent to those that have been incurred for S.Z. A.C. argues that Y.Z. cannot be relied upon to comply with any order to pay support, particularly after the conclusion of this trial, when his ties to Canada will be tenuous. She argues that requiring his approval to incur expenses for C.Z. is a recipe for future conflict among the parties. She argues that Y.Z. may withhold his consent unreasonably in an effort to control their behaviour.
- [93] Y.Z. opposes this aspect of the claim on two grounds. First, he says that C.Z.'s expenses are not likely to be identical to those of S.Z. and it would therefore be more appropriate to deal with C.Z.'s expenses as and when they are actually incurred, particularly given that it is not yet clear what path she will take after she graduates from secondary school. In addition, Y.Z. says that he can be relied upon to pay reasonable expenses incurred for his daughters.
- [94] I am not prepared to make a lump sum, prospective award of special expenses for C.Z. I am not persuaded that it will be unduly burdensome, or require an unrealistic degree of cooperation between her parents if A.C. must periodically send Y.Z. a list of C.Z.'s expenses to which he is being asked to contribute. My order will be that the parties will share 50/50 in future reasonable expenses while C.Z. remains a student. Y.Z. will have an incentive to pay his half share of those expenses, if reasonably incurred, in order to preserve and build on the remaining thread of his relationship with C.Z. If that turns out to be unduly optimistic, A.C. can bring an application to the Court to compel his contribution. In that event, Y.Z. owns real property in British Columbia of sufficient value to cover any future liability that may arise in this category.

C. Property Division

1. The Companies

a) Preliminary Remarks

[95] The parties agree on the general formula for dividing their corporate assets between them. They differ on a number of valuation issues and on the consequent adjustments that will have to be made to effect a fair division.

[96] As I explained earlier, the parties have two operating companies carrying on business in the PRC, namely GSM and ZSM. GSM is controlled by Y.Z. and ZSM by A.C.

[97] GSM was originally established in 2001 to produce steel wool and later evolved to produce metallic fibres and ultimately diesel filters used to control exhaust emissions. GSM's original steel wool business was gradually transferred to ZSM in the period between 2009 and 2010. Y.Z. founded GSM and had managerial control of it until 2013 when partial control was transferred from Y.Z. to A.C. as a result of the events described earlier. That management regime lasted until 2015 when Y.Z. resumed full managerial control.

[98] ZSM was established in or around 2007 to produce sintered fleece. Its business evolved to include production of friction materials and metallic fibres. A.C. has been managing ZSM at all material times.

[99] GSM and ZSM are themselves owned through two holding companies:

- a) American Friction Raw Materials, Inc. ("AFRM"), a company incorporated as a non-resident corporation in the Marshall Islands: AFRM owns 60% of the capital of ZSM and 100% of the capital of GSM;
- b) Sunny Metal North America Inc. ("SMNA"), a company incorporated under the laws of British Columbia: SMNA owns 40% of the capital of ZSM.

[100] The parties also own, through nominees, 100% of the capital in two other PRC companies:

- a) Xinni Metallic Fiber Co., Ltd. ("Xinni"), which owns the real property in the City of Guangzhou where GSM conducts its operations; and
- b) Guangzhou Huayi Investment Co. Ltd. ("Huayi"), an investment company.

[101] The parties have agreed in principle that, after division, Y.Z. should own AFRM, GSM and Xinni and A.C. should own SMNA, ZSM and Huayi. They have also agreed that the present value of those companies (which I will refer to collectively as the "Companies") for this purpose should be calculated net of all non-arms length transactions recorded on their balance sheets. They agree further that the benefits that each party has received from the Companies from the date of their separation in 2014 should be tallied and an adjustment made to ensure each gets equal value in the division.

[102] On May 16, 2018, I made an order with the consent of the parties placing the parties' ownership interests in the Companies in trust with PricewaterhouseCoopers Inc. ("PWC") as judicial trustee. PWC, in that capacity, has provided three reports to the Court dated April 5, 14 and 26, 2019. Pursuant to my order, PWC has investigated and reported on,

among other things, the financial results of the Companies from January 1, 2016 to the present, transactions or conduct outside the ordinary course of business and payments made by the Companies to the shareholders since November 10, 2015.

[103] In addition, at the request of the parties, PWC has prepared separate reports setting out, among other things, its opinion as to the fair market value of the interests held by the parties in the Companies as at December 31, 2018 and March 31, 2014, based on the most recent set of financial statements for the year ended December 31, 2018, where available.

[104] Because the Companies had not demonstrated a regular income stream in recent years due to market trends and other factors, PWC opted to use an asset-based approach in its valuation, whereby the value ascribed to the Companies was that which a third party purchaser at arms' length would pay for their assets, net of the tax that would be payable on such a sale.

[105] The parties each took issue with various aspects of PWC's valuation opinions. In certain cases, I granted them leave to adduce separate valuation opinions from their own valuers to present those conflicting views.

[106] I will deal next with the contentious valuation issues.

b) ZSM's Inventory Write-off

[107] PWC delivered a preliminary draft of its valuation opinion to the parties on March 26, 2019. With respect to ZSM, that draft was based on the latest financial information then available, in the form of the unaudited financial statements for the period ending September 30, 2018. By the time PWC delivered its final valuation opinion dated April 8, 2019, ZSM had produced audited financial statements for the year ended December 31, 2018 and these contained a number of revisions to the balance sheet that had the effect of reducing the value of ZSM by approximately RMB 40 million.

[108] One of the more significant of these revisions was a write-off of certain inventory and equipment, now said to be obsolete, which had the effect of reducing the value of ZSM by RMB 6,563,353. The review of its inventory appears to have been triggered by a notation in the earlier report of the Judicial Trustee, to the effect that ZSM had until then been storing some RMB 842,000 in obsolete inventory that should be written off. The Judicial Trustee was apparently referring to a quantity of wire that could no longer be used due to changes in the applicable PRC government regulations and old metal fleece that had been removed from GSM to be stored at ZSM prior to 2015, when the companies were operating as a single enterprise.

[109] Y.Z. argues that the write-off was merely a sham designed to reduce the value of ZSM artificially and thereby improve the outcome for A.C. in this action. A.C. responds that it was only when the year-end financials were prepared with greater care under the supervision of its auditors that the issue was properly addressed on the balance sheet.

- [110] I heard evidence at trial from A.C. and W.C. about the inventory and equipment in question.
- [111] In his testimony, Mr. Boyer of PWC agreed with counsel for Y.Z. that the timing of the write-off was indeed suspicious. Nevertheless, he accepted the conclusion of ZSM's auditors that it was properly made and ultimately accepted its validity in arriving at the valuation of ZSM in his final report.
- [112] Y.Z. adduced a contrary opinion from Frances Potgieter, a business valuator. Ms. Potgieter was critical of Mr. Boyer's treatment of this issue, among others. In her view, "Mr. Boyer should have considered making an adjustment for the inventory provision when he estimated the [fair market value] of ZSM if he lacked support or evidence of the nature of the provision." In fact, however, Mr. Boyer testified that apart from relying on the processes followed by ZSM's auditors to verify the validity of the write-off, PWC itself had seen some backup documentation to support it.
- [113] The matter became more complicated during closing argument. Counsel for Y.Z. had asked W.C. in cross examination if ZSM would be willing to make some or all of the written-off inventory and equipment available to GSM, given that ZSM considered it to have no value. W.C. responded that it would be prepared to do so provided GSM paid the debts that it owed to ZSM. In his closing argument, counsel for Y.Z. submitted that Y.Z. could accept the validity of the inventory write-off in its entirety as long as ZSM would agree to allow GSM to salvage ten pieces of equipment from among those that ZSM had written off. I received no evidence as to the replacement value of the items it wanted. Despite knowing of the inventory write-off since March 2019, Y.Z. had taken no steps to preserve those items for GSM. When that argument was made, I asked A.C. to confirm if the ten items were still available.
- [114] It later emerged that although the items were still in the possession of ZSM, at least four of them had, by a contract signed May 16, 2019, already been sold to a third party, along with an option to buy four more, at a price of RMB 51,300 each.
- [115] On the application of Y.Z. brought after trial to prevent that sale from completing, I granted Y.Z. an interim injunction directing A.C. to cause ZSM to hold the eight desired items in its possession for two more weeks so that Y.Z. could attempt to make arrangements with the third party to acquire them directly from that source. I also ordered A.C. to cause ZSM to make available to GSM the remaining items (two vacuum machines) on certain terms, insofar as ZSM had not already committed to sell them as well.
- [116] The parties subsequently informed me by way of correspondence that the two vacuum machines have since been transferred from ZSM to GSM for no consideration but that Y.Z. was unable to make any arrangement with the third party.
- [117] In the circumstances, I accept that the impugned inventory write-off was properly made but I find that it is appropriate to add back in to the value of ZSM the price that it is expecting to receive for the eight items it has sold, or RMB 410,400.

c) ZSM's Severance Liability Accrual

- [118] Another significant change that was reflected in ZSM's audited year end financial statements as of December 31, 2018, and not previously recorded on its books, was a new accrual reflecting ZSM's "latent" liability for severance in respect of its entire workforce, for a total of RMB 5,028,514.
- [119] Y.Z. argues that this was not a legitimate accrual but rather another artifice concocted at the last minute to reduce the value of ZSM in this litigation.
- [120] For the purpose of his valuation of ZSM, Mr. Boyer accepted the approach of ZSM's auditors in treating this as a proper accrual, despite the admittedly suspicious timing of it. Ms. Potgieter took issue with that approach. Her view was that Mr. Boyer lacked a proper basis to conclude that the latent severance liability was accrued for a valid business purpose, particularly given the state of ZSM's finances.
- [121] No evidence was adduced by either party as to whether there is a practice in the PRC to accrue liability in this way for latent severance obligations to employees. ZSM had never done this before. GSM never did so either, at least not across the board for every employee. The Judicial Trustee noted, however, that GSM has had an inexplicably high level of turnover in its workforce. It has paid an unusually high amount (RMB 3.4 million between 2014 and September 2018) by way of severance to employees, many of whom either remained on the payroll or were terminated temporarily and then rehired a short time later - a practice that appeared to the Judicial Trustee to have been outside the ordinary course of GSM's business.
- [122] The evidence supports A.C.'s contention that GSM has, in recent years, overpaid in severance to its employees and thereby reduced its value artificially. It does not follow, however, that the appropriate response was for ZSM to accrue a latent severance liability for its entire workforce in one year. To accept that accrual as properly booked would overshoot the mark because GSM has not accounted for its entire latent severance obligation in that manner. I have concluded that the fairer approach would be to add the disputed severance accrual back into the value of ZSM and to account for the excessive severance payments already made by GSM by adding half of those, or RMB 1.7 million, back into the value of that company.

d) GSM's Patents

- [123] On its financial statements, GSM has ascribed no value to the intellectual property it holds. Y.Z. explained in his testimony that the products GSM sells must meet emission standards set by the Chinese government. The patents it has acquired for that purpose pertain only to technology meeting the so-called "China IV" standard. That standard has long since been overtaken by the "China V" standard. Although GSM sells some products that meet that standard, it does not hold the patents for them. GSM is currently working with other companies to produce products that will comply with the next generation "China VI"

standard. That standard is expected to come into effect in July 2020 and GSM expects to begin producing compliant products in the first half of 2020, but it does not yet have any signed contracts to allow for that to occur.

[124] The Judicial Trustee reported that GSM's revenues have declined significantly in recent years as a result of its failure to keep up with these standards:

4.14.1 GSM revenue declined by approximately 60% in one year from roughly Rmb 49.7 million in 2016 to Rmb 20.3 million in 2017 and then declined a further 68% to only Rmb 4.9 million for the first 9 months of 2018. This means that monthly revenue in the first nine months of 2018 are a mere 13% of the levels in FY16.

4.14.2 GSM personnel explained that the revenue decline in 2017 was due to GSM's products being rendered obsolete by changes in China's emission standards. GSM's products meet the China IV emission standard which was replaced by China V. In July 2017, only products that met the China V emission standard could be sold. Further upgrades to the emission standards have been made since then and the current standard is China V. To date, GSM has failed to upgrade its products to meet the China V standard. GSM personnel noted that GSM's General Manager, [Y.Z.], was distracted by personal and matrimonial matters which resulted in GSM not conducting appropriate research and development to upgrade GSM products.

4.14.3 It is interesting to note that the upgrade to the emission standard requirements to China V were initially announced in 2005 and subsequent announcements were made over the years leading up to the current standards coming into effect. In our view, it would be reasonable to expect that GSM management would have considered it of critical importance to GSM's survival to ensure that China V products developed and available for sale by 2017. The failure to take action to develop China V compliant products and the ongoing lack of progress with developing products compliant with China V could be considered conduct outside the ordinary course of business which has devalued the Parties' direct and indirect interests in GSM.

[125] On that basis, Mr. Boyer accepted for the purpose of his valuation opinion that the intellectual property of GSM had no value.

[126] Contrary to that gloomy picture, however, Y.Z. testified during his examination for discovery, which testimony he confirmed in his cross-examination at trial, that GSM expects to be supplying components to a customer who has already satisfied the China V standard and that GSM expects to be mass producing that product by the middle of 2019. His counsel argues that I should disregard this testimony as mere bravado on his part. I disagree. I find that the evidence supports A.C.'s contention that GSM's intellectual property has value that is not properly reflected on its balance sheet, and hence in Mr. Boyer's valuation.

- [127] A.C.'s counsel argues that in the absence of evidence of a reliable revenue stream associated with it (an absence he attributes to Y.Z.'s failure to produce the relevant budgets and contracts evidencing that future cash flow), GSM's technology should be valued based on the research and development costs it incurred (either itself or with a related company) in 2017 and 2018, for a total added value of RMB 17,523,000.
- [128] In support of that approach, A.C. has adduced the expert report of Richard Crosson, a business valuator. Mr. Crosson agreed with Mr. Boyer that a cost-based valuation is less reliable than an income based valuation and an income based evaluation would be impossible to prepare here for want of budgets or other reliable cash flow projections. But he disagreed with Mr. Boyer that in order to value technology using the income approach or otherwise it was necessary to have in hand a "bankable" contract (i.e., essentially a guaranteed source of revenue).
- [129] In support of his recourse to the cost approach in valuing the technology in issue in this case, Mr. Crosson noted a loose correlation between GSM's historical spending on research and development and its revenues in succeeding years, although he acknowledged that the connection between the research and development costs in 2017 and 2018 and the technology he was asked to value is not clear.
- [130] The fundamental disagreement between Mr. Boyer and Mr. Crosson is that while Mr. Crosson was prepared to accept that Y.Z.'s discovery evidence of imminent mass production may, at most, justify adopting a valuation figure for GSM at the high end of the range, as opposed to the middle (a difference of approximately RMB 6 million), Mr. Crosson concluded that Mr. Boyer's approach was overly conservative and had significantly understated the true value of GSM's technology.
- [131] I agree with Mr. Crosson that a significant portion of GSM's research and development costs in 2017 and 2018 is likely to be indicative of the present value of its technology and that that value is likely in excess of the RMD 6 million swing that Mr. Boyer was prepared to allocate to it. But I am not persuaded that anything close to the entire RMB 17,523,000 cost can fairly be assumed to be indicative of that value, as Mr. Crosson tentatively concluded.
- [132] I have concluded instead that it is appropriate to add RMB 8,761,500, which is half of the 2017 and 2018 research and development costs incurred, to GSM's stated mid-range value to reflect what I find to be the missing element of GSM's intellectual property.
- e) The Xinni Lands
- [133] Xinni is the corporate vehicle that holds the lands on which GSM's manufacturing facility is situated. The parties disagree about the value of those lands. They have been appraised by PWC at RMB 25,800,000 (comprised of 7,800,000 for the buildings and 18,000,000 for the "land use rights"), based on their current use, yielding a value to GSM of RMB 16.3 million after accounting for property disposal taxes and selling costs.

- [134] The controversy arises from the fact that a local government authority approached Y.Z. in 2015 expressing its interest in expropriating the lands in order to build a hospital on the site. Discussions to that end have been underway since then. As a matter of Chinese practice, the expropriating authority will pay the owner a premium to reflect the new use to which the land will be put, as well as, in the case of an industrial facility like GSM's, a contribution toward the cost of relocating it. The price under discussion with the expropriating authority, based on a local appraisal it commissioned, is RMB 45,187,886 (comprised of 17,717,714 for the buildings and 27,470,172 for the "land use rights").
- [135] PWC has valued the Xinni lands without regard to the prospect of an expropriation. That approach drew criticism from Mr. Crosson, who believes that a better approach would be to recognise a premium to reflect the probability of the expropriation proceeding at the price proposed. He recalculates the value of the Xinni lands, assuming that the expropriation is certain to occur, at RMB 24,097,000, after accounting for taxes and selling costs. The difference between the two appraisals, after netting out taxes and selling costs, is RMB 7,794,000.
- [136] At issue is the likelihood of the expropriation proceeding and yielding the higher price or more.
- [137] The parties wish to have further discussions with the expropriating authority with a view to maximizing the price that will be received for the lands. Among the many issues that the parties have been litigating in the PRC is a dispute about whether Xinni, controlled at least partly by A.C., properly holds title to the lands or whether title was effectively transferred from Xinni to GSM, as Y.Z. contends. Given the lack of trust between the parties on this and many other issues, they agreed to carry on the negotiations with the expropriating authority through a consultant, Mr. Bin Situ. Mr. Situ gave evidence in the trial. He professes to have a good sense of how the expropriating authority is likely to behave, if for no other reason than because he works there.
- [138] There has been no progress in the negotiations thus far, primarily because Y.Z. has not reached agreement with Mr. Situ on the terms of his retainer. Y.Z. has rejected Mr. Situ's proposed fee structure and seeks to impose a deadline of 30 days to reach a deal with the expropriating authority, which Mr. Situ considers inadequate. Y.Z. says he is concerned that if a deal is not reached quickly the cost of acquiring replacement land may become prohibitive. Mr. Situ testified that if the expropriating authority loses patience the more likely outcome is that it will just force the expropriation through at its stipulated price, rather than abandon it.
- [139] I agree with Mr. Crosson that the possibility of an expropriation should be reflected in the value ascribed to the Xinni lands, and hence to GSM's shares. The evidence supports the conclusion that there is a reasonable chance that the expropriation will proceed. The more difficult question is what that means in practical terms for the value of GSM's shares. It is not clear what offsetting costs GSM would have to incur in order to acquire a replacement

site and resume operations there. Given the many uncertainties, I have concluded that the appropriate adjustment is to add a premium to the value of GSM reflecting 35% of the difference between the two net appraisals, or RMB 2,727,900.

f) Huayi Liquidity Discount

[140] Huayi's assets include an 8.2528% interest in the "Zhuhai Hengquin Zhongke Baiyun Share Investment Fund Partnership", which holds a 10.24% of the stock in a publicly traded company called "Foryou Corporation."

[141] A.C. urges me to apply a 40% liquidity discount to that value, on the basis that Huayi is not the general partner in the partnership and therefore may encounter difficulties when it tries to liquidate the investment, although no evidence was adduced to support that proposition. No such discount was applied by PWC in its valuation opinion. During his testimony, Mr. Boyer was challenged by A.C.'s counsel on this point. Mr. Boyer specifically disagreed with the suggestion put to him that a liquidity discount is justified in this case. I accept Mr. Boyer's evidence in that regard and have not included such a discount in my analysis.

g) Adjustment for Wasted Legal Costs

[142] Although the parties have generally agreed that an equal division of the family assets and debts is appropriate, A.C. argues that an adjustment should be made to allocate to Y.Z. the legal costs incurred by GSM and ZSM in litigation in the PRC between 2015 and 2018, in which the parties or their nominees fought for control over and ownership of the entities in the corporate group and their assets. The Judicial Trustee reported that GSM and ZSM each spent approximately RMB 5 million on legal fees in those legal battles. On that basis, A.C. urges me to make a \$1 million adjustment to Y.Z.'s side of the ledger to compensate her for those wasted legal costs.

[143] A.C. relies in this regard on s. 95 of the FLA, which states in relevant part as follows:

95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

(a) equally divide family property or family debt, or both

(2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:

(g) the fact that a spouse, other than a spouse acting in good faith,

(i) substantially reduced the value of family property, or

(ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;

[144] A.C. submits that it would be significantly unfair to divide the family assets equally owing to the reduction in the value of the family businesses brought about by Y.Z.'s abusive law suits in the PRC, which A.C. alleges were pursued for no legitimate purpose but only to defeat the process of this Court in this action.

[145] There have indeed been many legal battles between the parties or their nominees in the PRC, including the following:

- a) an administrative proceeding before the Chinese market administration authority to deal with ownership of AFRM and its share certificates (in which Y.Z. asserted that he was its sole owner and the certificates were lost, while A.C. asserted that she held the certificates making her its sole owner);
- b) an action by GSM, then controlled by Y.Z., to recover an RMB 57 million investment that it had made in Huayi;
- c) an action by ZSM to collect an RMB \$15.7 million debt from GSM (in which Y.Z. arranged for his own lawyers to appear as counsel to ZSM and discontinue the proceeding);
- d) two unsuccessful actions by Y.Z. seeking to wrest ownership and control of Xinni from A.C. and her mother;
- e) an action by Y.Z. against Xinni seeking to recover on an RMB 3.3 million debt;
- f) an action by GSM against Xinni seeking to have most of the Xinni lands transferred to GSM (in which Y.Z. arranged for Y.M. to be appointed as Xinni's legal representative and, in that capacity, to accept service of the claim in order for it not to be defended, leading to a default judgment); and
- g) an administrative proceeding before the Chinese market administration authority to decide who, as between them, was the proper legal representative of ZSM (in which Y.Z., by filing an appeal to preserve his right of appeal, breached an interim order of this Court not to take any steps to alter the status quo in that regard).

[146] I am not persuaded that it would be significantly unfair, on those grounds, to divide the corporate assets equally between the parties. In effect, A.C. seeks to be indemnified for legal costs incurred in these foreign proceedings. That is not the kind of relief that is contemplated by the FLA in s. 95, at least not directly. In any event, I am not persuaded that Y.Z. was, in these cases, acting demonstrably in bad-faith to defeat the process of this Court. Rather, I accept that he believed he was asserting rights to which he was properly entitled as the original founder of the business. His view, as he explained it, was that A.C. was incrementally wresting control of his companies from him and he was merely fighting back. Even if, as A.C. argues, his belief in that regard was not a reasonable one, I am not prepared to conclude that he did not honestly hold it. I also accept that Y.Z. may have resorted, at times, to duplicitous tactics in the prosecution of that litigation but I do not find that any such misconduct rises to a level that could justify an unequal division of the family

assets in this action.

[147] I therefore refuse to make any adjustment to the division of the corporate assets on this ground.

h) Summary of Adjustments to Company Valuations

[148] My conclusions with respect to the division of the corporate assets between the parties are summarised in the following chart (all values are in RMB except for those appearing on the bottom line, where I have set out the total values in Canadian dollars, calculated at 20 cents per RMB):

Adjustment

Huayi

ZSM

GSM

Total value as per Judicial Trustee Reports

2,300,000

182,000,000

57,000,000

Interest payable by Huayi to GSM

7,148,000

Dividend payable to AFRM

94,400,000

Debt owing by GSM to ZSM

16,898,000

Receivable owing by A.C. to GSM

(6,044,000)

Receivable owing by Y.Z. to GSM

(3,910,000)

Receivable owing by A.C. to ZSM

(3,460,000)

Amount received by ZSM from scrap dealer for written-off inventory

410,400

Value of GSM's technology

8,761,500

Premium for value of Xinni lands in the event of an expropriation

2,727,900

Restore ZSM's severance reserve

5,028,514

Restore half of GSM's suspect severance payments

1,700,000

Net adjusted value (RMB)

9,448,000

183,978,914

171,533,400

Net adjusted value (\$ at 20 cents per RMB)

\$1,889,600

\$36,795,782.80

\$34,306,680

[149] In the result, the combined value of ZSM and Huayi exceed the value of GSM by \$4,378,702.80, yielding a net credit in favour of Y.Z. of \$2,189,351.40.

2. Benefits Received by the Parties from the Businesses

a) Preliminary Remarks

[150] The Judicial Trustee has reported on, among other things, the benefits each of the parties was found to have received, either directly or indirectly through family members and other nominees, from the companies in the corporate group in the years between 2014 and 2018. The total attributed to Y.Z. is \$9,767,000. The total attributed to A.C. is \$6,745,000.

[151] In reconciling those benefits as between them, the parties seek to have those totals reduced by excluding payments that they say were not used for their own personal benefit or not sourced from family assets. The proposed exclusions fall into two categories:

a) payments made to employees; and

- b) payments received from companies in the corporate group other than GSM and ZSM, namely, SMNA, Guangzhou Xinli Auto Technology Co. Ltd., formerly known as Sunny Automotive Technology Co. Ltd. ("Sunny Auto") and Sunny Might Automotive System Co. Ltd. ("Sunny Might").

b) Payments to Employees

- [152] During the relevant years, both parties followed a practice of drawing corporate funds in their own names to pay employee bonuses. The purpose of this practice was to reduce the Chinese income tax payable by the employees. The parties agree that payments made by them to employees for that purpose should not be included in the tally of personal benefits received from the Companies.
- [153] The parties also agree that the total of A.C.'s benefits should be reduced by RMB 16,822,000, or \$3,333,000, to reflect the amount that she paid to employees as bonuses, less the RMB 8,736,000 or \$1,731,000 of that amount that she paid to her brother. That adjustment is already reflected in the Judicial Trustee's calculation of A.C.'s net total benefit in the amount of \$6,745,000.
- [154] The Judicial Trustee was not given any details of Y.Z.'s payments to employees, and therefore those payments are not reflected in the calculation of the value of the benefits that Y.Z. received. Y.Z. testified at trial that he paid bonuses to employees totalling RMB 9,722,425. A.C. accepts that RMB 6,200,000 of that sum qualifies as legitimate employee bonuses but she disputes the validity of the remainder. A.C. asserts that those disputed payments were not true bonuses but rather bribes or other illicit transactions for Y.Z.'s benefit rather than that of the employee concerned.
- [155] Many of the disputed payments were made to Y.M. (Y.Z.'s nephew). I agree with Y.Z. that at least some of Y.Z.'s payments to Y.M. were in the nature of a bonus for Y.M.'s benefit. A.C. herself paid Y.M. bonuses and has included such payments in the tally of bonuses paid by her and for which she has been credited in the report of the Judicial Trustee. Y.M. was also one of the key employees who participated in the actions that led to the partial transfer of managerial control of GSM from Y.Z. to A.C. in September 2013.
- [156] Nevertheless, I also agree that at least some of the disputed payments by Y.Z. are of questionable validity. For example, Y.Z. seeks to be credited with an RMB 400,000 bonus paid to Y.H., a GSM employee, for what Y.Z. describes as a "reward for patent of washable disc filter." A.C. alleges that this transaction was not a true bonus at all, but rather a sham by which Y.Z. attempted to disguise his own investment in Sunny Auto with a view to transferring assets out of GSM in order to defeat A.C.'s claim (as more fully described in the next section). Another recipient of Y.Z.'s alleged bonus payments was R.W., a GSM employee to whom Y.Z. claims to have paid a severance bonus. According to the Judicial Trustee, however, R.W. had already received a severance package large enough to be considered outside the ordinary course of business. A.C. disputes whether another recipient of Y.Z.'s alleged bonus payments, Y.X., was truly an employee. In his testimony, Y.Z. asserted that

Y.X. worked for GSM but only part time.

[157] Given the dubious nature of these disputed payments, I am prepared to treat only half of the disputed amount ($9722,425 - 6,200,000 = 3,522,425/2 = 1,761,212.5$ RMB) as legitimate employee bonuses, yielding a net credit in favour of Y.Z. of $6,200,000 + 1,761,212.5 = 7,961,212.5$ RMB or \$1,592,242.5.

c) Payments from SMNA, Sunny Auto and Sunny Might

[158] In addition to the bonus payments he made to GSM employees, Y.Z. also seeks to exclude certain payments made by SMNA, Sunny Auto and Sunny Might.

[159] A.C. accepts that the \$1,140,000 payment made by SMNA is properly excluded but she disputes the legitimacy of the exclusions claimed for the payments from Sunny Auto and Sunny Might. A.C. argues that those latter two companies were not bona fide businesses but rather fraudulent vehicles set up by Y.Z. to transfer family assets beyond her reach with a view to defeating her claim.

[160] The Judicial Trustee reports the following payments by them:

a) Sunny Auto paid 74,000 RMB (\$15,000) to Y.M. and 4,500,000 RMB (\$891,000) to Y.Z. between 2015 and 2018;

b) Sunny Might paid 2,838,000 RMB (\$562,000) to B.L. (Y.Z.'s secretary).

[161] Y.Z. asserts that those payments should not be included in the tally of benefits he received because his investment into those companies came from his own private funds derived from the distribution of the Trajan Foundation at the time of the parties' separation, rather than family assets. I agree with A.C. that this assertion is not well supported by the evidence.

[162] First, I must be cautious in accepting Y.Z.'s evidence on its own, where it is not either against interest or independently corroborated. I say this in part because Y.Z. has acknowledged having sworn a false affidavit in this proceeding in relation to this issue in particular.

[163] Y.Z. originally averred in his affidavit #4 that the investments made in those companies had nothing to do with him or family assets. He later adduced another affidavit (#11) acknowledging that that was not entirely true and that he had made that false statement in order to conceal his involvement for the benefit of the other investors, who did not want to see their investment mixed up in his divorce proceedings.

[164] The evidence does not support the revised story that he was protecting the co-investors either. The Judicial Trustee reports that Sunny Auto was initially capitalised between May 2015 and January 2016 with RMB 1 million (600,000 from Y.M. and 400,000 from Y.H., both former GSM employees). On the day before Y.H. made his investment, Y.Z. had transferred RMB 400,000 to him, presumably for that purpose. Within a few months of Y.M.'s

investment, Y.Z. had transferred RMB 650,000 to him. I have no difficulty in finding that even the initial investment into Sunny Auto came entirely from Y.Z. Later, Y.Z. invested RMB 8.8 million into Sunny Auto.

[165] What remains to be determined is whether any part of that investment or the investment into Sunny Might was derived from Trajan Foundation funds, as Y.Z. asserts.

[166] A.C. argues that the assertion is not credible because Y.Z. never said as much prior to the delivery of closing argument in the trial. In fact, however, Y.Z. had averred in his affidavit #11 that he invested RMB 5 million (\$1 million) in Sunny Might "from the \$10 million US that was distributed to me after separation." I take that to be a reference to the distribution of the Trajan Foundation funds. Nevertheless, although Y.Z. may have asserted previously that his investment in Sunny Might came from the Trajan Foundation funds, I am not persuaded that it actually did. Neither party adduced any evidence to trace what became of the Trajan Foundation funds, even though such evidence should have been readily available to them. In the absence of such evidence, I can only conclude that the funds taken from the family businesses, including the payments received from Sunny Auto and Sunny Might, were family assets. I therefore refuse to deduct those payments from the tally of benefits received by Y.Z., as calculated by the Judicial Trustee.

d) Renovations at Minto Crescent

[167] A.C. claims a credit for the cost of certain renovations she had done at the Minto Crescent property.

[168] The FLA deals with the division of family assets and debts in s. 81 as follows:

81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],

- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
- (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.

[169] The FLA defines the term "family debt" in s. 86 as follows:

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.

[emphasis added]

- [170] A.C. described the renovations in her evidence in very general terms. She also adduced in evidence an invoice from her contractor. Although some of the work done falls under the rubric of maintenance, most of it appears to have been in the nature of improvements. The distinction has been recognised by this Court in *D.M.B. v. D.W.A.L.*, 2018 BCSC 1254, where it was held that an expense incurred to improve family property does not count as family debt but may be considered as a basis to reapportion under s. 94(2)(f) if the improvement increased the value of the property beyond market trends. Punnett J. explained his conclusion in that regard as follows, at paras. 118 and 120:
- [118] These expenses do not fall into the s. 86 definition of family debt as they were incurred not for the maintenance of the former family home but rather for improvements and renovations. Therefore s. 94 of the FLA applies.
- [120] The valuation of contributions post-separation is not determined by the funds expended on family property. Rather it is determined by the increase in value beyond market trends due to the work carried out and considered in the context of reapportionment (see: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 39-44).
- [171] There was no evidence adduced to show that this work increased the value of the Minto Crescent property beyond market trends. On that basis, I am prepared to treat a quarter of the total renovation cost (\$1,149,909.71), or \$287,477.43, as a family debt for which A.C. should be credited.

e) Summary of Benefits Received

- [172] The benefits received by the parties, as I have found them to be, can be summarised as follows:

Description

A.C. Benefit (RMB)

A.C. Benefit (Cdn\$)

Y.Z. Benefit (RMB)

Y.Z. Benefit (Cdn\$)

Total benefits as per Judicial Trustee report

\$6,745,000

\$9,767,000

Remove payments to W.C.

(8,736,000)

(\$1,731,000)

Remove payments to Y.M. for bonuses and salaries

(1,103,000)

(\$219,000)

Remove payment to Y.M.'s widow

(300,000)

(\$59,000)

Remove payment from SMNA

(\$1,140,000)

Remove payments made by Y.Z. from his personal bank account to employees on account of bonuses and other rewards to employees

(7,961,212)

(\$1,592,242.50)

Remove one quarter of the cost of the Minto Crescent renovation

(\$287,477.43)

Net benefit received

\$4,726,522.57

\$6,756,758

[173] The difference between the two is \$2,030,235.43, for which Y.Z. must account to A.C. for half, or \$1,015,117.72.

3. The Other Assets

a) Canadian Real Estate

[174] The parties agree that Y.Z. is to retain the apartment on West Cordova Street valued at \$7 million and that A.C. is to retain the house on Minto Crescent valued at \$8.28 million and an apartment in Whistler valued at \$2.25 million. They also agree that my order should require them to transfer their legal interests in those properties as necessary to bring about that result.

[175] To reconcile the value of those allocations, Y.Z. is entitled to a credit of \$1,765,000.

b) Chinese Real Estate

- [176] The parties have reached a similar agreement with respect to the disposition of the Chinese real property that they own. Y.Z. owns nine properties in the PRC worth a total of RMB 72,309,348 (\$14,461,869). A.C. owns 14 properties there worth a total of RMB 61,678,477 (\$12,335,695).
- [177] This translates into a credit in favour of A.C. of RMB 5,315,433 or \$1,063,086.
- c) Aircraft
- [178] Y.Z. owns two aircraft valued at USD \$625,000 and USD \$105,000, respectively, for a total of USD \$730,000.
- [179] A.C. is entitled to a credit for half of this amount (USD \$365,000), or \$490,000.
- d) Jewelry
- [180] A.C. owns various pieces of jewelry appraised, collectively, at \$1,056,025. Y.Z. argues that the most valuable of those items - a diamond ring appraised at \$940,000 - should be found to be worth 10% more than that, on the basis that A.C. has failed to produce a certificate that would have come with the ring when it was purchased and may have increased its appraised value if the appraiser had been able to consider it. I am not satisfied that an adverse inference should be drawn against A.C. by virtue of her failure to produce the certificate, given that the evidence did not establish that she ever had it in her possession.
- [181] Y.Z. is therefore entitled to a credit for half of the value of the jewelry as appraised, or \$528,012.50.
- e) Bank accounts and other liquid assets as at April 1, 2014
- [182] The parties agree that on separation they held cash and other liquid assets in their respective accounts totalling, for Y.Z., RMB 23,002,327.23, and for A.C., RMB 5,411,493.78 (which amount excludes those funds that A.C. received from ZSM and that she later used to pay employee bonuses).
- [183] To reconcile those amounts, A.C. is entitled to a credit of RMB 8,795,416.73, or \$1,759,083.35.
- [184] The parties agree that their jointly held accounts should be closed and the funds remaining in them divided equally between them.
- f) Art and Furniture
- [185] The parties own six pieces of art and furniture that must be divided between them. They differ on how this division should be accomplished.

[186] Y.Z suggests that the parties should take turns selecting the items alternately until they are all allocated to one of them or the other. A.C. suggests that they should be auctioned off under the auspices of PWC or another neutral party and paid for out of the reconciliation flowing from the division of their other assets.

[187] I agree with A.C. that an auction is likely to lead to a fairer result because the parties will each place different values on the individual items and they both ought to be free to bid as much or as little as they wish on each one.

4. Summary of Reconciliations

[188] I have reconciled the parties' respective interests in the family assets and debts as follows:

Asset Class

Payor

Amount

Canadian Real Estate

A.C.

\$1,765,000

Chinese Real Estate

Y.Z.

\$1,063,086

Aircraft

Y.Z.

\$490,000

Jewelry

A.C.

\$528,012.50

Accounts as at April 1, 2014

Y.Z.

\$1,759,083.35

Companies

A.C.

\$2,189,351.40

Benefits Received

Y.Z.

\$1,015,118

[189] In sum, A.C. is entitled to a setoff of \$4,327,287 against Y.Z.'s credit of \$4,482,363.90, yielding a net credit in favour of Y.Z. in the amount of \$155,076.

V. Conclusions

[190] I have found that Y.Z. owes A.C. child support (prospective and retrospective) of \$413,584 and special and extraordinary expenses of \$314,831.78, for a total of \$728,415.78. Future special and extraordinary expenses for C.Z., as agreed between the parties, are to be shared equally or, failing agreement on the appropriateness of any particular expense, as determined on application to the Court.

[191] As a result of my rulings on the division of family assets and debts, Y.Z. is entitled to a credit of \$155,076 against the amount he owes in respect of the children, yielding a net judgment in favour of A.C. in the amount of \$573,339.78.

[192] Y.Z. is to be removed as guardian of C.Z.

[193] Under s. 183(3)(a) of the FLA, Y.Z. shall not have contact or communicate directly or indirectly with S.Z. or C.Z. except that Y.Z. may meet in person with C.Z. upon receiving her written agreement in advance to such a meeting, and provided a third person of her choice is in attendance.

[194] Under s. 183(3)(a) of the FLA, Y.Z. is restrained from attending at, nearing or entering the residence, place of employment or school of S.Z. or C.Z.

[195] Under s. 183(4) of the FLA, the orders made in the previous two paragraphs will continue indefinitely, except that Y.Z. may apply to set aside this Order after one year.

[196] The art and furniture claimed by both parties is to be auctioned between them in the manner described above.

[197] Finally, A.C. seeks an order allowing for a registrar of the Court to sign instruments on Y.Z.'s behalf as necessary to give effect to this judgment. I am not prepared to make that order now. If a problem arises in the implementation of my order, the parties should seek directions to address it.

[198] The parties have leave to speak to costs if they are unable to agree on the appropriate order in light of these reasons.

"Milman J."

The Honourable Mr. Justice Milman

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