

CANADA / JUDGMENT

Yang v. Zheng

2025 BCSC 509

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Supreme Court of British Columbia

DECIDED

21 March 2025

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2025 BCSC 509 Yang v. Zheng

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Yang v. Zheng,

2025 BCSC 509

Date: 20250321

Docket: E220142

Registry: Vancouver

Between:

Li Yang

Claimant

And

Dikang Zheng also known as Di Kang Zheng

Respondent

Before: Associate Judge Muir

Reasons for Judgment

Counsel for the Claimant:

C. Ke

Counsel for the Respondent:

C.L. Lee

S. Xu, Articled Student

Place and Dates of Hearing:

Vancouver, B.C.

January 27-28, 2025

Place and Date of Judgment:

Vancouver, B.C.

March 21, 2025

Table of Contents

Introduction.. 3

Background.. 3

The Claimant's Position.. 5

The Respondent's Position.. 9

Analysis and Conclusion.. 10

Respondent's income. 10

Child support 12

Section 7 Expenses. 13

Spousal Support 14

Retroactive child and spousal support 16

Updated Financial Information. 17

Costs. 17

Introduction

- [1] The claimant brings this application to have annual income of either \$646,736 or \$539,207 imputed to the respondent and for consequent orders for interim and retroactive child support, spousal support, and s. 7 special or extraordinary expenses ("s. 7 expenses"). In addition, the claimant seeks an order that the respondent update his Form F8 Financial Statement and provide her with a copy by June 30 of each year. She also seeks costs.

- [2] This was a two-day application in which the claimant provided voluminous financial evidence, including bank records and credit card account records. Counsel for the claimant took me through the documentation in support of her client's position that, prior to separation, although neither of the parties worked, they were receiving approximately \$300,000 to 350,000 per year, tax free, from the respondent's businesses in China.
- [3] It is that, grossed up, which provides the basis for the income sought to be imputed to the respondent.

Background

- [4] The claimant is 45 years old and the respondent is 52 years old.
- [5] The parties were married on September 22, 2004 in China.
- [6] The parties immigrated to Canada in 2012. Neither have been employed since.
- [7] The parties differ on the date of separation, the claimant is of the view that the parties separated on December 31, 2021, whereas the respondent says the separation began on February 15, 2022.
- [8] The respondent was arrested on December 31, 2021 and was charged with assaulting the claimant. She alleges a history of family violence at the hands of the respondent.
- [9] The parties have twin daughters who are 19 years old and attending university in Ontario. The evidence indicates that they are exceptional children in many ways.
- [10] Despite having no employment since coming to Canada, and declaring minimal income, the parties purchased two real properties in BC:
- a) 6088 Denbigh Avenue, Burnaby, BC (the "Denbigh Property"), and
 - b) 6250 Lakeview Avenue, Burnaby, BC (the "Lakeview Property").
- [11] The claimant notes that the Denbigh Property was purchased with a substantial mortgage that was paid down in a few years.
- [12] The claimant says a \$400,000 mortgage was taken out on the Denbigh property to partly fund the purchase of the Lakeview Property, which is mortgage free. A further mortgage of \$378,000 on the Denbigh Property was taken out by the respondent after separation.
- [13] The Denbigh Property was foreclosed and sold on June 21, 2024, with the net sale proceeds in the amount of \$1,560,707.05 held in the trust account of the respondent's counsel.
- [14] The Lakeview Property is vacant land and valued at \$2,174,000.00 based on the most recent BC assessment.
- [15] There are two companies relevant to this application.

[16] The respondent indicates that in 1999 he was employed by Changshu Metrological Measuring Institute, which founded Changshu Optometry. He says further that:

In or about June 2003, during the restructuring of state-owned assets, I took over Changshu Optometry and reorganized it as a corporation owned by myself.

[17] The financial statements of Changshu Optometry show that from 2017 to 2020, the company's annual net profit averaged \$2,437.26.

[18] There are also a series of "getihu" (sole proprietorships in China), namely, Dikang Optical, registered in 2013 with the respondent's sister, Yaxian Zheng ("Yaxian"), stated to be the proprietor, and I gather a successor, New Dikang Optical, registered in 2019 with the claimant's mother stated to be the proprietor.

[19] A new getihu business permit was obtained on February 14, 2022 in Yaxian's name, and the business was named Yaxian Optical. New Dikang Optical was apparently discontinued at this time. I will refer to these businesses generally as the Optical Store.

The Claimant's Position

[20] The claimant's evidence is that the Optical Store has no storefront and is used for the sole purpose of handling transactions for Changshu Optometry.

[21] The claimant says that the financial statements of Changshu Optometry do not reflect its actual income because that income is funnelled through the Optical Store.

[22] The claimant says that regardless of how these entities are named or managed, they are controlled by the respondent. She says further that, although Yaxian is stated to be the owner or manager of the optical businesses, that even when she was involved, she always asked the respondent for permission to take money from them. The claimant deposes, however, that Yaxian has not been involved in the optical business since 2012, yet, she has been receiving RMB200,000 to 300,000 a year from the businesses as directed by the respondent. Further, the claimant says that Yaxian never went to school and is illiterate.

[23] It is the claimant's evidence that she and the respondent lived a luxurious lifestyle with funds primarily from the optical companies, supplemented by rental of properties here in BC and in China.

[24] She deposes that she is not aware of any other source of income used to cover the expenses of their family.

[25] The claimant points out that the parties travelled extensively for pleasure and in one instance in 2013, paid for a nine-day cruise to Mexico for the parties, the children, his parents and her mother, with a total cost in excess of \$30,000. She deposes that they spent \$20,000 to \$30,000 annually on travel from 2013 to 2019. They did not travel in 2020 and 2021 due to COVID-19.

- [26] She deposes that their monthly expenses included \$1,000 dining out, \$2,500 on groceries, \$900 to \$1,000 on alcohol for the respondent, and \$600 to 800 on cigarettes for the respondent.
- [27] The parties had a 2012 Benz ML350, with expenses of \$800 or more a month.
- [28] The claimant estimates that the children's activities cost \$1,000 a month or more and that she herself spent \$800 a year on cosmetics.
- [29] In addition, she deposes that they made substantial lump sum payments on the mortgage registered against the Denbigh Property. She says that between 2012 when the Denbigh Property was purchased and 2020 when the Lakeview Property was purchased, the balance owing on the mortgage was decreased from over \$1,000,000 to less than \$1,000. She says that on average, they made lump sum payments of \$120,000 or more per year on top of the monthly mortgage payment.
- [30] On the Lakeview Property, the claimant says the parties spent at least \$232,980 on demolition, excavation, and preparation for new construction after its purchase in 2020.
- [31] As an example, in an affidavit from Ho Yin Samuel Chan, an assistant to counsel for the claimant, sworn December 3, 2024, he notes that on November 26, 2024, the respondent provided a supplementary list of documents which included two sets of financial documents. Those were defined as:
- a) A.10.4, being Bank of China credit card records from November 21, 2021 to November 19, 2024, and
 - b) A.11, described as June 4, 2018 to November 7, 2024 Industrial Commerce Bank of China statement for account #8440.
- [32] Mr. Chan then deposes that he is fluent in English and Chinese and:
7. I have read the document identified as A.10.4 and shown as Exhibit "D". I calculated the 14 counts of deposits that are equal to or larger than 10,000 and made between December 16, 2021 and November 6, 2024 as shown on this document. The total is 456,745 RMB yuan (equivalent to \$88,139 CAD with an exchange rate of 5.18 to be applied through out my calculations herein). Four counts of deposit totalling 150,000 RMB yuan (equivalent to \$28,958 CAD) were made from someone named Yaxian Zheng on December 26, 2023 and February 24, 2024.
 8. I have read the document identified as A.11, which shows that the account 8440 is owned by Dikang Zheng. The opening balance on June 4, 2018 is 10 RMB yuan. The closing balance on November 7, 2024 is 22,293.81 RMB yuan. There are hundreds of transactions recorded by A.11, with a total deposit of 2,275,083.94 RMB yuan (equivalent to \$439,234 CAD) and a total spending of 2,252,789.02 RMB yuan (equivalent to \$434,961 CAD). Three counts of deposit totalling 100,800 RMB yuan (equivalent to \$19,459 CAD) were made from someone named Yaxian Zheng on September 27, 2024, October 19, 2024 and November 6, 2024.

- [33] The claimant asserts the respondent historically, throughout the relationship, has taken an income of \$300,000 or more, free of tax, from the businesses.
- [34] Her evidence is that the parties withdrew the equivalent of \$474,626 in 2019, \$252,849 in 2020, and \$339,811 in 2021 from the accounts of the Optical Store.
- [35] She believes that the respondent still has access to the same level of income.
- [36] She argues that the income and expenses set out in the respondent's Form F8 Financial Statement, sworn July 31, 2024, are both understated. She points out, for example, that there is no provision for alcohol or tobacco, or the trips the respondent is making to China.
- [37] The claimant says she was a stay-at-home mom during the relationship, although she did help develop and manage the optical businesses.
- [38] As to her present financial ability, the claimant says that following separation, the respondent cut her off from any source of funds from the optical companies. He has paid no spousal support.
- [39] The claimant was able to find full-time employment about a year ago. She works at an eyeglass store and her gross income is \$46,000 per annum.
- [40] The children are full-time undergraduate students in their second year at an Ontario university, studying towards a professional degree. They had outstanding grades throughout their high school years and continue to excel.
- [41] The claimant deposes that it was always the intention of the parties that the children should have a top university education in a professional degree program. The parties provided an enriched life for the children with generous financial support for their education and activities.
- [42] The claimant has paid at least \$100,000 towards the children's post-secondary school-related expenses. She expects that their post-secondary expenses will continue to amount to approximately \$80,000 per year.
- [43] The children have obtained student loans of just over \$19,000 and the claimant has been using funds from the Registered Education Savings Plan to help pay their expenses. One child has a part-time job, that does not provide significant income. The children have no other sources of income.
- [44] The respondent has not paid anything towards the children's post-secondary education.
- [45] Further to a consent order made at the Judicial Case Conference on November 7, 2022, the respondent is to pay interim child support of \$681. The respondent failed to make some payments and provided some lump sum payments. It appears that, as of this application, he is up-to-date in these payments, although that is disputed.

- [46] The claimant says she has exhausted her savings supporting the children and herself and that she has an unmet need of approximately \$11,000 per month.

The Respondent's Position

- [47] The respondent's evidence is limited, vague, and does not directly address the evidence of the claimant. He asserts that the claimant made untrue allegations in her affidavits, but his affidavits lack specifics other than to assert that he did not have control over the optical businesses, that Changshu Optometry was and is losing money and the Optical Store is held by his sister.
- [48] His evidence is that he had no knowledge of the financial affairs of the Optical Store or the parties' finances prior to separation. He says that the claimant controlled the parties' finances.
- [49] He says that the Denbigh Property was paid for by funds the parties had saved in China and the net proceeds of sale of an excluded property of his in China.
- [50] He does not deny the evidence of the claimant as to the lifestyle and expenses of the parties prior to separation, although my note of his counsel's submission on that point is:

The claimant gives evidence about travel but there is no evidence the travel happened or that the travel was paid for by the respondent's account. His evidence is that his income was \$42,000 and gifts from time to time from family. His evidence is that their lifestyle was not as suggested in her affidavit. [I note that the respondent did not give any evidence about the parties' lifestyle in any of the affidavits before me.]

He is not denying that he went on these trips but says he did not have the money to pay for it. [This too is not in the affidavits before me.]

He said her evidence of their lifestyle and that the money came from him is not the truth. [Again, this is not in the affidavits before me.]

- [51] Counsel for the respondent went so far as to suggest that the income the parties enjoyed may have come from the claimant herself. That was despite the fact that there is zero evidence from the respondent that the claimant had any independent means that would account for the annual income of the parties.
- [52] As to the affidavit evidence of Mr. Chan regarding the financial records, the respondent swears:
50. Paragraph 8 of Samuel's 1st affidavit refers to historical transaction records of Industrial and Commerce Bank of China starting from January 1, 2018 to November 7, 2024.
51. I understand that there are transactions between my account with Yaxian's. I do not deny that I receive financial support from her. Yaxian had generously provided financial gifts to the claimant and I before the separation, and to myself after the separation.

52. [] I appreciate my sister for continuing supporting me financially. But I verily believe that Yaxian is helping me financially out of kindness. Her money is not mine, and she may stop the support at her will.
- [53] The respondent has, since separation, begun a new relationship with a woman in China. She has a teenage daughter from a prior marriage and is now expecting the respondent's child. He intends to sponsor her, her daughter, and the new baby for immigration to Canada.
- [54] The respondent claims that his present annual income is less than \$40,000 and his annual expenses are just over \$57,000. He has no debt.

Analysis and Conclusion

Respondent's income

- [55] The claimant asks that I impute income to the respondent and make orders for both interim ongoing and retroactive child support, spousal support and s. 7 expenses.
- [56] She seeks an imputation of income of either \$646,736 or \$539,207, based on the assertion that his net income from his optical business is \$300,000 to \$350,000 per annum.
- [57] In *P.W. v. G.Z.*, 2021 BCSC 467, Justice Murray dealt with a somewhat similar circumstance and she summarized the law regarding the various claims made here. Regarding imputation of income, she notes:
- [34] The question becomes how much interim support G.Z. should pay. P.W. asks this court to impute to him an income of \$300,000 for the purposes of calculating interim support on a without prejudice basis at trial.
- [35] In *MacCarthy v. MacCarthy*, 2015 BCCA 496 at para. 34, our Court of Appeal held that "the court has broad discretion to impute income to spouses for the purposes of determining child and spousal support". Spouses have a duty to make reasonable efforts to support themselves, however there is no burden on the party seeking support to prove that they could not become self-sufficient: para. 34. The party seeking to have income imputed to the other spouse must provide an evidentiary basis for the imputation of income: para. 35. Our Court of Appeal has also made clear that the imputation of income is best left to trial "where the parties have fully canvassed their respective earning capacities and an evidentiary basis for such a finding can be properly established": *Kouznetsova [v. Kouznetsova]*, 2014 BCCA 160] at para. 45.
- [36] In this case, I must have some basis upon which to order support. As the evidence pertaining to G.Z.'s income is so conflicting and his assertions that he has earned only a modest income of \$36,000 is substantially incongruous with the parties' lifestyle prior to separation, I must impute income to him to order interim support. I do so only for that purpose on a without prejudice basis at trial.

- [37] P.W. bases her claim on G.Z.'s spending patterns before separation and the fact that he had no financial difficulty until they separated.
- [58] Similarly, here, the evidence of the claimant as to the lifestyle and income of the parties prior to separation is compelling. Further, it is not denied by the respondent other than his essentially saying he did not know where the money was coming from.
- [59] The respondent's stated lack of knowledge and lack of income is simply not believable. Further, his evidence that his sister, Yaxian, generously gifted the parties' funds from the Optical Store, which is her business, is simply incredible. The optical businesses were clearly established by the respondent, they clearly funded the parties' lifestyle pre-separation, and I am satisfied that they remain in his control.
- [60] I am satisfied that the respondent is still able to and does access funds from his optical businesses and I conclude that his evidence regarding his income is disingenuous. Further, I conclude that he is intentionally minimizing the amounts taken from the businesses so that he can avoid paying appropriate child and spousal support.
- [61] I am bolstered in this view by the patent unreasonableness of the respondent now seeking a divorce so that he can marry and sponsor the immigration of his new spouse and what will soon be two children, despite alleged income limited to \$40,000 per annum plus "gifts" from his sister.
- [62] I am conscious of the caution with which an imputation of income must be undertaken. There are sufficient assets in BC, however, such that the respondent will be well able to be compensated for any overpayment.
- [63] I do not consider it appropriate to impute an income to the respondent on the level sought by the claimant, however. Again, if the amount is insufficient, she will be able to be compensated for any underpayment.
- [64] I conclude that, in all of the circumstances, it is fair to impute a gross income of \$400,000 to the respondent. This imputation is made for the purposes of this application and is without prejudice to an income determination at trial.

Child support

- [65] Although the children are both over 19, I am satisfied that it is appropriate that the respondent pay interim child support as they are in full-time post-secondary education and financially unable to withdraw from their parents' support. I accept that it was always the parties' intention that the children should be assisted in seeking post-graduate degrees.
- [66] Further, the evidence indicates that the children have been able to make only a minor contribution to their own expenses and are incurring student loans to support themselves.

- [67] Given this and the pre-separation lifestyle enjoyed by the parties and the children, there is no reason to depart from the Federal Child Support Guidelines, SOR/97-175 [Guidelines].
- [68] Thus, the November 7, 2022 Judicial Case Conference order will be varied commencing December 1, 2024 (immediately after the notice of application was filed) such that when the children are not attending university, the respondent will pay monthly interim child support to the claimant in accordance with the Guidelines. This results in interim child support of \$5,109 per month based on his imputed income of \$400,000. I expect that interim child support will generally be payable in the summer period.
- [69] Interim child support will be payable on the first of each month that the children will be attending one week or less of university. The interim child support will be payable until further order or agreement.

Section 7 Expenses

- [70] As noted, I am satisfied that it was the intention of the parties that the children attend post-secondary school, and I am of the view that the parties are able to support their children in that endeavor. The children's expenses in that regard are properly s. 7 expenses in accordance with the Guidelines. As noted, the children have not been able to make any substantial contribution to their own expenses.
- [71] I do consider it appropriate to make the s. 7 expense contributions of the respondent retroactive to the beginning of the school year. He was clearly aware that the children were in university and was aware of his obligation to support them.
- [72] As a result, commencing September 1, 2024, the children's post-secondary expenses for tuition, reasonable education and living expenses, airfare between BC and Ontario, cellphone bills, and a living allowance of \$500 per month per child, are declared to be s. 7 expenses under the Guidelines. These s. 7 expenses will be shared by the parties in accordance with their respective incomes of \$400,000 imputed to the respondent and \$47,290.98 as claimed by the claimant until agreement or further order.
- [73] The respondent's portion will be payable within 30 days of receipt of invoices, bills, or accounts for the above noted expenses.
- [74] If there is any dispute regarding the amounts the parties are responsible to pay for s. 7 expenses, there is liberty to apply. The parties may seek to appear before me if I can be made available, but I am not seized of any such application.

Spousal Support

- [75] As to interim spousal support, the Family Law Act, S.B.C. 2011, c. 25, provides:

Duty to provide support for entitled spouse

160 If, after considering the objectives set out in section 161 [objectives of spousal support], a spouse is entitled to spousal support, the other spouse has a duty to provide support for the spouse in accordance with section 162 [determining spousal support].

Objectives of spousal support

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[76] The principle considerations on an interim spousal support application were set out by Master Keighley in *Robles v. Kuhn*, 2009 BCSC 1163 at para. 12:

[12] On interim support applications, the application of these provisions must be qualified by certain established considerations:

1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 3299; *Newson v. Newson*, 1998 CanLII 6440 (BCCA), [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
4. The courts should not unduly emphasise any one of the statutory considerations above others;
5. On interim applications the need to achieve economic self-sufficiency is often of less significance;

6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
7. Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);
8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: *L.G.B.*

- [77] I am satisfied that a *prima facie* case for entitlement to interim spousal support has been made out by the claimant. She was the primary caregiver to the parties' two children and did not work other than to further the businesses of the respondent during the marriage.
- [78] The claimant is clearly in need of support. She has borne the costs of the two children attending university, she was left by the respondent with no income or spousal support, and was only able to find a job that supports a lifestyle that is nowhere near that enjoyed by the parties prior to separation. The respondent's ability to pay has been established.
- [79] Interim spousal support will be payable by the respondent to the claimant commencing December 1, 2024, at the mid-range of the Spousal Support Advisory Guidelines [SSAG] based on his imputed income of \$400,000.
- [80] The SSAG amounts differ depending on whether the claimant is receiving child support. As the respondent is only to pay child support when the children are not in university, the spousal support will have to be varied accordingly.
- [81] Thus, when the claimant is in receipt of child support as ordered above, her interim spousal support amount will be \$8,012 per month. When the claimant is not receiving child support, her interim spousal support amount will be \$9,001 per month.
- [82] Interim spousal support is payable on the first of each month, until agreement or further order.

Retroactive Child and Spousal Support

- [83] Again, from P.W., Murray J. notes:
- [29] The factors for whether to award retroactive child support from D.B.S. have been applied to retroactive spousal support: see *Reis v. Bucholtz*, 2010 BCCA 115; *McKenzie v. Perestrelo*, 2014 BCCA 161. In *Kerr v. Baranow*, 2011 SCC 10, Cromwell J. specifically applied the principles from D.B.S. to a retroactive award of spousal support and stated as follows:
- [207] While D.B.S. was concerned with child as opposed to spousal support, I agree with the Court of Appeal that similar considerations to those set out in the context of child support are also relevant to deciding the suitability of a "retroactive" award of spousal support.

Specifically, these factors are the needs of the recipient, the conduct of the payor, the reason for the delay in seeking support and any hardship the retroactive award may occasion on the payor spouse. However, in spousal support cases, these factors must be considered and weighed in light of the different legal principles and objectives that underpin spousal as compared with child support.

- [84] Here, the retroactive amounts claimed are quite large. Although the claimant has borne the weight of supporting the children since separation, largely without contribution from the respondent, I am concerned that a retroactive award at this juncture might not be paid other than by adjusting the entitlement to family assets. In those circumstances, I am of the view that it is better that this issue be left to trial.
- [85] Thus, I am going to adjourn the claim for retroactive interim child support, spousal support, and s. 7 expenses prior to September 1, 2024 to the trial of this matter. If the trial presently scheduled for June 1, 2026 does not proceed, there is liberty to apply.

Updated Financial Information

- [86] In addition, the parties are to file and serve updated Form F8 Financial Statements by June 30 of each year, also until agreement or further order.

Costs

- [87] As the claimant has been substantially successful, she will have her costs of this application. Given my findings as to the veracity and intentions of the respondent on this application, those costs will be payable forthwith in the tariff amount of \$4,000 plus \$500 for disbursements.

"Muir A.J."

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