

CANADA / JUDGMENT

Zhao v. Guo

2024 BCSC 1243

COURT

Supreme Court of British Columbia

DECIDED

11 July 2024

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2024 BCSC 1243 Zhao v. Guo

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhao v. Guo,

2024 BCSC 1243

Date: 20240711

Docket: E200188

Registry: Vancouver

Between:

Liang Zhao also known as Zhao Liang

Claimant

And

Rui Guo also known as Guo Rui

Respondent

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

Counsel for the Claimant:

G. Vlug

Counsel for the Respondent:

T. Yu

L. Zhang

Place and Dates of Trial:

Vancouver, B.C.

April 8-12, 15-18

and 22, 2024

Place and Date of Judgment:

Vancouver, B.C.

July 11, 2024

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Introduction

- [1] In this family law trial, the relief sought by Ms. Guo includes child and spousal support, contribution for alleged loans received during the marriage from her mother; and title to properties in the Lower Mainland and China.
- [2] Mr. Zhao opposes most of this relief, and seeks \$269,077 owed to him under the parties' written divorce agreement. He also seeks increased parenting time and shared decision-making authority for their daughter M., who is almost 17.
- [3] Underlying the financial issues is a complex and contentious tracing dispute regarding ownership of property and funds in China.

Background Facts

Marriage and Arriving in Burnaby

- [4] Now in their mid-40s, the parties met in China as college classmates in the late 1990s. They married in China in April 2003. After sixteen years of marriage, they divorced in May 2019.
- [5] Before their marriage, Ms. Guo worked for five years as a technical consultant and marketer in the computer software industry, having studied computer software in college. Mr. Zhao's pre-marriage personal history was not elucidated in the evidence.

- [6] Soon after marrying, they opened a furniture company in Xi'an, China, specializing in the sale and installation of office furniture and after-sale service. Mr. Zhao managed the business and Ms. Guo was involved in most aspects of operations. The business grew and they eventually invested the profits in real estate in Canada and China.
- [7] In 2005, Ms. Guo became a permanent resident of Canada via the federal skilled-worker program, based on her computer software background. In the summer of 2007, M. was born in Burnaby, British Columbia. Ms. Guo decreased her role in the furniture company as she looked after M. From 2005 to 2010, she divided her time between China and Canada.
- [8] In around 2006, the parties bought their first home, an apartment in China, which they sold in 2014 to pay living expenses in Canada. Next, they bought a commercial property, which they rented out until 2018 when they sold it to settle litigation that is described below. They also bought another Chinese investment property, a residential unit in Peacock City, which Ms. Guo still owns.
- [9] In 2010, they bought a townhouse in Burnaby. By then, Ms. Guo was taking care of M. full-time. In 2012, they sold the townhouse and bought a home on Smith Ave. in Coquitlam.
- [10] Around this time, Mr. Zhao borrowed RMB 1 million from Mr. Jun Ping Yang, an acquaintance with whom he had prior business dealings. He signed an IOU note dated March 2, 2012. The parties both testified that the RMB 1 million loan was used to finance their furniture business.
- [11] In late 2012, Mr. Zhao immigrated to Canada as a permanent resident through the family reunion program, and moved into Smith Ave. with Ms. Guo and M. They wound up their Chinese furniture business.
- [12] In around 2013, Mr. Zhao began working for Mr. Yang's company, Hell's Gate Airtram Inc., which operated an aerial tramway over the Fraser Canyon.
- [13] In 2015, the parties bought a new home on Burns St. in Burnaby, and rented out the Smith Ave. home. Ms. Guo and M. continue to reside in the Burns St. property. Smith Ave. has been sold as described below.

Litigation against Mr. Yang and Hell's Gate

- [14] In March 2016, Mr. Zhao was fired from his job at Hell's Gate. This precipitated a flurry of litigation between Mr. Zhao and Mr. Yang, which was financially disastrous for the family.
- [15] On June 23, 2016, Mr. Yang sued Mr. Zhao in this court for repayment of his RMB 1 million loan. He also sued Ms. Guo because he sought to trace his money into the purchase of the Smith Ave. and Burns St. properties. Unbeknownst to the parties at the time, Mr. Yang also sued in China for repayment of his loan, where he ultimately obtained a judgment on December 8, 2016.

- [16] In October 2016, Mr. Zhao sued Hell's Gate, Mr. Yang, and others, in this court, alleging breach of his employment contract and wrongful termination. Hell's Gate counterclaimed and also brought tracing claims involving funds allegedly paid to Ms. Guo.

Investment in Log Barn

- [17] In late 2016, through their holding company, Viewsure Holdings Ltd, the parties bought a 22% interest in Log Barn 1912 Enterprises Corp., which owned a farm and general store in Armstrong, BC. The financial records show that Viewsure loaned \$285,883 to capitalize Log Barn, and that the source of these funds was Ms. Guo's HSBC account.
- [18] Mr. Zhao began working as Log Barn's general manager, responsible for daily operations, marketing, etc. He testified that he was phased out of this role in 2022. Through Viewsure, he remains a 22% owner of Log Barn and is also a director.

Ms. Guo Returns to Work

- [19] Beginning in 2017, Ms. Guo worked for just over a year for a financial management company, assisting with marketing and service of clients in China. She resigned in the second half of 2019, when the parties enrolled M. at Pear Tree, a private elementary school in Vancouver, because she could not combine her job with the school commute and other parenting responsibilities.
- [20] Mr. Zhao alleged that Ms. Guo then ran a business buying luxury goods in Canada for resale in China, and also worked for a furniture company called "Home Quarters" and an online legal consulting company. Ms. Guo denied this, saying that her only employment since 2019 was working briefly for a legal consultant where she earned very little money. I accept Ms. Guo's financial disclosure, including her tax returns, indicating that the last employment income she earned was \$27,774 in 2019.

Settling the Litigation

- [21] On April 18, 2017, the Chinese court granted Mr. Yang enforcement of his judgment against Mr. Zhao. Shortly thereafter, Mr. Zhao paid the judgment of RMB 1.186 million, and the Chinese court issued a receipt for payment of the judgment.
- [22] In late 2018, the parties also settled the Hell's Gate litigation just before the trial was to commence. In February 2019, they paid Hell's Gate a settlement amount of \$120,000.
- [23] Ms. Guo's contention was that her mother, Xiao Ping Guo, loaned the parties the entire settlement amount for the Yang litigation and \$65,000 towards settlement of the Hell's Gate litigation. Mr. Zhao contended that the settlement funds came from the parties' assets in China and denied receiving any money from his mother-in-law.

The Chinese Divorce Agreement

- [24] In March 2019, the parties met in China to obtain a divorce. Ms. Guo testified that they had discussed ending their marriage for some time, but she did not insist on it until the litigation against them was resolved.
- [25] Their Chinese divorce agreement is dated March 22, 2019 ("CDA"). Its terms were handwritten by Ms. Guo on a Chinese government form. It was signed and fingerprinted by both parties, and notarized by a Chinese notary public on January 21, 2020. Although the parties did not make submissions on this, in my view, on the evidence, March 22, 2019 was their date of separation.
- [26] The CDA dealt with initial custody of M., who was 11 at the time, and division of their real estate and shares in Viewsure. During the trial, the parties accepted the validity of the CDA and their intention to abide by its terms, with the one exception that Ms. Guo sought damages for her claim that, at the time of the CDA, Mr. Zhao misled her about the value of their Viewsure shares.
- [27] Regarding M., the agreement gave custody to Mr. Zhao, and obliged Ms. Guo to pay child support of RMB 5,000 per month. The parties did this because Ms. Guo intended to spend the next few months in China, while Mr. Zhao returned to the Lower Mainland and arranged for M.'s schooling in the fall. They gave him formal custody to avoid problems enrolling her at a new school.
- [28] The CDA gave Smith Ave. to Mr. Zhao, and Burns St. to Ms. Guo. It allocated all five Chinese properties to Ms. Guo, with Mr. Zhao receiving only the promise of RMB 200,000 when the Peacock City property was sold. Each party was to be solely responsible for the mortgages on their respective properties.
- [29] The CDA allocated Ms. Guo's 49% of Viewsure to Mr. Zhao. Ms. Guo alleges that she agreed to this in reliance on Mr. Zhao's misrepresentation that the shares had little if any value.

After the CDA

- [30] After signing the CDA, Mr. Zhao and M. returned to Burns St.
- [31] Ms. Guo remained in China for a few months before returning. In June 2019, she remarried. She and her husband have a four-year-old daughter who lives with Ms. Guo in Burns St. Her husband divides his time between there and China.
- [32] In the summer of 2019, M. came to China to be with Ms. Guo. In August, she returned to her father in Burnaby, to interview for a place at John Knox Christian School, where she was then accepted for grade 7.

- [33] In September 2019, Ms. Guo returned to Burns St. She testified that she agreed that Mr. Zhao could stay there only until her return. After returning, she pressed him to move out and retain a Canadian lawyer or notary to address their remaining marital issues, including parenting of M., but Mr. Zhao kept putting things off.
- [34] On November 8, 2019, pursuant to the CDA, Ms. Guo transferred her 49% interest in Viewsure to Mr. Zhao, and the parties cooperatively sold Smith Ave. for \$1,248,000, with net sale proceeds of \$569,076.66. Ms. Guo gave Mr. Zhao a cheque for \$519,269.30 of the Smith Ave. proceeds, but it was returned "NSF". Ms. Guo's evidence was she had told him to wait a few days for it to clear, but he deposited it right away. On December 18, 2019, Ms. Guo paid Mr. Zhao \$300,000 of the Smith Ave. proceeds. The parties signed a written agreement confirming this payment and agreeing to shared parenting of M.
- [35] In January 2020, after some difficulties between the parties, Mr. Zhao moved out of Burns St. On January 27, 2020, he commenced these proceedings, seeking, among other things, the balance of the Smith Ave. proceeds.

Analysis

Credibility

- [36] As described below, I found each party's evidence on certain issues self-serving and unlikely given the surrounding circumstances. I have therefore taken a cautious approach to the evidence, guided as much as possible by reliable documentary evidence, agreed facts, and evidence that seemed most plausible or reasonable in the circumstances.
- [37] The primary credibility dispute was whether certain property and money in China was beneficially owned by the parties or by Xiao Guo.
- [38] Ms. Guo says that the five Chinese properties allocated to her under the CDA were always beneficially owned by her mother, despite none of their legal titles being in Xiao Guo's name. She also says that, from 2016-2018, her mother loaned the couple significant amounts for living expenses, legal fees and litigation settlements. She seeks a finding that her mother loaned the couple \$745,871, based on what she can trace through banking and real estate records (though she claims more was actually paid), and for Mr. Zhao to be 50% responsible for repayment of these loans.
- [39] This dispute does not affect the division of family assets. Neither party challenged the validity of the Chinese properties being allocated to Ms. Guo by the CDA, and the disputed funds were all spent before the parties' divorce.
- [40] Instead, what turns on this dispute is whether the parties owe a significant family debt to Xiao Guo for money she loaned them, and whether the CDA provided Ms. Guo with financial independence by allocating to her numerous income-producing properties previously owned by the parties in China.

- [41] Ms. Guo's evidence was that her father was a successful investor in stocks, currency and real estate in China, the benefits of which passed to her mother when he died suddenly in August 2006. She testified that, after his death, her mother asked her to manage the properties for her because her father had always taken care of such things and she was not in a state to do so.

Ownership of the Chinese Real Estate in the CDA

- [42] Ms. Guo testified that five of the six properties allocated to her in the CDA belonged to her mother, despite their titles not being in her mother's name. Of the five, two were in Ms. Guo's name and two had no titles issued as yet because they were transferred to her parents by the government in exchange for expropriation of their family home. The fifth title was in Mr. Zhao's name, which Ms. Guo said was because she could not obtain financing to purchase it in her name because of the amount of debt associated with the other properties in her name.
- [43] Mr. Zhao conceded that the two properties without titles belonged to Xiao Guo. Other than that, his evidence was that this Chinese real estate, and most of the money sent to the couple by Xiao Guo from China, belonged to the parties and came from the profits from their furniture business.
- [44] I wholly accept Ms. Guo's evidence regarding beneficial ownership of the Chinese real estate and the tracing of the source of the funds that came to the parties from her mother in China. Ms. Guo's direct evidence combined a systematic tracking of funds through financial records, in conjunction with the real estate purchase and sale documents, and a reasonable and convincing description and explanation of the sequence of transactions. This evidence fully withstood the challenges put to her in cross-examination.
- [45] By contrast, I found Mr. Zhao's evidence not credible or reliable regarding these financial issues, and many other financial issues in the case. His evidence was vague, unsupported by financial records, and contradicted in key places by Ms. Guo's records. His testimony about ownership of individual properties was extremely general and supported only by his assertion that profits from the furniture business paid for properties in China. He gave no details or supporting documents regarding the furniture business profits, nor any description of paying the mortgages or otherwise managing the properties in issue. In cross-examination, he admitted that much of the information about dates of purchases and sales of properties on the one-page summary he had created was incorrect. These shortcomings in his financial evidence extended to other issues as well, such as amounts that he initially claimed to have paid for M. after separation, which were later shown in cross-examination to have come from Ms. Guo's personal account. He was also not forthcoming about his 2023 employment income as discussed below.

- [46] For these reasons, I accept Ms. Guo's evidence that, apart from Peacock City, the properties allocated to her in the CDA were purchased with her parents' money and were beneficially owned by her mother after her father's death. I accept that the properties were in her and Mr. Zhao's names only because her mother told Ms. Guo she did not want the responsibility of dealing with them after her husband's death. I accept Ms. Guo's evidence that the regular payments of \$3,000 into her account was not rental income from the Chinese properties, but regular payments from her second husband.
- [47] Ms. Guo's detailed accounting evidence is accurately summarized in her final submissions, particularly paragraphs 74-126. I accept this summary as an accurate tracing of the funds in question, demonstrating that all the properties allocated to Ms. Guo in the CDA, apart from Peacock City, were bought with funds belonging to her parents. The fact that only Peacock City was actually owned by the parties explains why, in the CDA, it was only for that property that Mr. Zhao received a share of the ultimate sale proceeds.

Ownership of the Money from China

- [48] I also accept Ms. Guo's evidence that, from 2016-2018, her mother paid \$745,871 to the parties from her mother's own funds in China. Ms. Guo's accounting evidence was well supported by the financial records, and explained by her in a step-by-step, reasonable way. It withstood cross-examination and was unchallenged by any rival theory consistent with the financial records.
- [49] I accept Ms. Guo's evidence that her mother paid the money because of Ms. Guo's repeated requests for help with their financial difficulties. Mr. Zhao was not working, and the parties faced the litigation and settlement costs of the Hell's Gate and Yang lawsuits, and they needed money for Viewsure to purchase its interest in Log Barn.
- [50] Ms. Guo's evidence demonstrated that the source of most of this money was the sale of properties in China belonging to Ms. Guo's parents. This evidence of the bank and real estate records showing the payments originating from Ms. Guo's mother is helpfully and accurately described in Table 1 of Ms. Guo's submissions. The origins and tracing of the mother's funds paid to the parties, and then used to pay the Yang judgment and Hell's Gate settlement, are helpfully and accurately summarized in Table 2, and the tracing of the source of those funds is accurately set out in Appendices A and B of her submissions.
- [51] Ms. Guo's evidence traced the funds from bank accounts in China belonging to Xiao Guo into Ms. Guo's HSBC account. For example, Appendix A accurately depicts Ms. Guo's evidence regarding the origins and tracing of the approximately \$240,000 her mother sent the couple to pay Mr. Yang's judgment against them in late 2018. It shows that, in October 2016 and June 2017, Ms. Guo arranged for the sale of two of her mother's properties, referred to in the trial as the Rong Qiao and Nan Xiao Xiang properties, for a total of RMB 1,450,000. RMB 1,186,074.95 of this was used to pay Mr. Yang's judgment, and the Chinese court issued a receipt for payment in late 2017.

- [52] Appendix B traces approximately \$65,000 from the sale proceeds of a commercial property belonging to Xiao Guo, known as Ludi 10106, sold in December 2018 to assist with the settlement of the Hell's Gate litigation.
- [53] There was also one transfer that went from Xiao Guo's account into an account belonging to Mr. Zhao's parents, and from there to the parties in Canada. Because of the overall reliability of her accounting evidence, and because it fits with what occurred with so much of the money paid to the parties from China, I accept Ms. Guo's explanation that the transfer had to be routed this way because Xiao Guo had reached her personal limit for transferring money out of China.

Chinese Divorce Agreement

- [54] Having accepted Ms. Guo's evidence regarding her mother's ownership of the Chinese real estate and the money sent from China by Xiao Guo, I find that the basic structure of the CDA was that:
- a) The parties divided their two properties in Greater Vancouver, so that each received one. They both testified to this intention. Ms. Guo got Burns St., which was purchased in November 2015 for \$1.8 million with a \$1,155,600 mortgage. Mr. Zhao got Smith Ave., purchased in June 2012 for \$805,000 with a mortgage of approximately \$640,000.
 - b) Mr. Zhao got 100% of Viewsure, which owned 22% of Log Barn.
 - c) Ms. Guo got title to her mother's five properties in China and to the property in Peacock City, China. Mr. Zhao was to receive RMB 200,000 when the Peacock City property is sold.
- [55] I accept Ms. Guo's evidence that, when negotiating the CDA, the parties did not deal with all the issues arising from their divorce. Because they were just emerging from stressful financial times, they dealt just with the most pressing and non-contentious matters. I did not understand Mr. Zhao to dispute this, and it fits with the evidence as a whole.

Did Mr. Zhao misrepresent the value of Viewsure?

- [56] I do not accept Ms. Guo's allegation that, when negotiating the CDA, she was misled by Mr. Zhao telling her that Viewsure had no value, was losing money, and had a lot of debt. I do not accept that she needed, or received, any assessment of the value of Viewsure at the time of the CDA. Instead, I accept Mr. Zhao's evidence that she was involved in Viewsure and generally understood the financial aspects of its investment in Log Barn.
- [57] I base this finding on the following uncontested facts suggesting her involvement and knowledge: (a) in the past, she had been an active participant in the furniture business with her husband; (b) she was a director and shareholder of Viewsure; (c) the funds for Viewsure's investment in Log Barn came from her HSBC account; (d) in January 2017, she certified in writing to receiving independent legal advice when she personally guaranteed Log Barn's \$1.6 million loan from BMO to purchase its property in Armstrong, BC; and, (e)

she regularly signed documents for Viewsure, including its incorporation documents, cheques, and director and shareholder resolutions.

- [58] I would add that the evidence at trial shed little light on the actual value, at the time of the CDA or now, of Viewsure's 22% ownership of Log Barn or of its ability to repay Viewsure's shareholder loan. Mr. Zhao's evidence, which I accept because of its plausibility, is that Log Barn's tourist business has suffered from Covid-19 and forest fires. On the evidence, as of 2019, Viewsure's financial statements did not indicate material net equity and, as of trial, its shareholder loan to Log Barn remained unpaid. Ms. Guo's final submissions acknowledged the "apparent lack of any evidence as to the value of the 22% in Log Barn".
- [59] I dismiss Ms. Guo's claim for Mr. Zhao's alleged misrepresentations about the value of their Viewsure shares.

Parenting

- [60] Both parents expressed their love and concern for M., and their pride in how well she is doing in school and more generally. They expect her to attend university next year, after completing grade 12. They are clearly both devoted to her best interests. They agree they should both be her guardians.
- [61] Mr. Zhao seeks an order for parenting time of M. on the weekends. Ms. Guo seeks continuation of the status quo, whereby M. makes her own decisions about where she lives and the parties continue with a "Joyce Model" of parental decision-making, whereby they consult about significant decisions but Ms. Guo has the final say subject to Mr. Zhao's right to challenge her decisions in court.
- [62] Over the years, Ms. Guo kept records of how M. divided her time between her parents. Mr. Zhao did not dispute its accuracy and generally accepted it, as do I.
- [63] In 2019, M. divided her time roughly equally. In 2020, she lived exclusively with her mother. In 2021 and 2022, she went back to living with both parents, spending around 13.5 months with her mother and 10.5 months with Mr. Zhao. Since the beginning of 2023, she has lived exclusively with her mother in Burnaby and seen Mr. Zhao only on holidays and special occasions.
- [64] In December 2021, Dr. Michael Elterman prepared a s. 211 report, recommending joint guardianship and joint parenting responsibilities, with Mr. Zhao having weekends from Friday to Sunday. I give little weight to this recommendation of equal parenting, however, because it was made two and a half years ago, when M. was at a different stage of her life, and since then, she has spent the past 18 months with her mother.

- [65] As Mr. Zhao's counsel acknowledged, M. is almost 17 and will make her own decisions about how to divide her time between her parents. The evidence indicated that is what M. is doing already. Given M.'s age, how well she is doing, and the absence of any evidence that Ms. Guo is alienating her from her father, in my view it is in her best interests not to disrupt the current living situation which has been in place for the past 18 months or so.
- [66] I therefore decline to make the order sought by Mr. Zhao regarding his parenting time. I agree that the "Joyce Model" is in M.'s best interests, with Ms. Guo having the ultimate decision-making authority.

Child Support

- [67] The child support issues are: (i) what income should be imputed to Mr. Zhao for 2023, given that he provided little financial information for that year; and, (ii) whether income should be imputed to Ms. Guo since 2019.
- [68] The parties agreed that, once those issue are determined, Mr. Zhao's past and future child support can be calculated according to the table amount in the Federal Child Support Guidelines, SOR/97-175.
- [69] On issue (i), I find that Mr. Zhao's Guidelines income for 2023 should be the higher of: (a) an imputed income of \$70,834, and (b) his actual 2023 line 15000 income (excluding any amounts from his RRSP and TFSA accounts).
- [70] On issue (ii), I find that a minimum wage income of \$35,000 should be imputed to Ms. Guo (based on 40 hours/week x \$16.75/hour x 52 weeks = \$34,840), commencing January 1, 2022.
- [71] The following Table 3 from Ms. Guo's closing submissions accurately depicts, for 2019-2022, the parties' undisputed parenting time and their tax return line 15000 incomes. Based on this, I find shared parenting time in 2019, 2021 and 2022, and primary parenting time with Ms. Guo in 2020. Since the beginning of 2023, M. has lived exclusively with Ms. Guo. Pursuant to an order of January 20, 2023, Mr. Zhao has paid interim child support since February 1, 2023 on Guidelines annual income of \$67,000/year (\$5,583.33/month).

M. with Ms. Guo

M. with Mr. Zhao

Ms. Guo's Guidelines Income

Mr. Zhao's Guidelines Income

2019

4 months

5 months

\$27,774

\$93,116

2020

12 months

0

\$60

\$70,399

2021

7.5 months

4.5 months

\$0

\$89,359

2022

6 months

6 months

\$8,450

\$106,708

[72] In 2023, Mr. Zhao worked in the furniture sales business, at Inspiration Furniture for four months and Jordans Furniture for eight months. In his testimony, he declined to estimate his 2023 income, despite his income taxes being due in a few weeks, and his T4s presumably being available. The most he would say was that he expected a lower income than in 2022, partly because he was no longer employed by Log Barn. In 2022, he earned around \$24,000 from Log Barn, as he transitioned management duties to someone else.

[73] Ms. Guo submits that, for 2023, Mr. Zhao's imputed income should be based on pro-rating his 2022 income from his past years at Inspiration Furniture for four months (4 months = \$27,500), plus eight months at Jordans Furniture based on the payment terms in his employment contract (8 months = \$43,333). I accept this as a reasonable estimate in the circumstances, for a total of \$70,833.

[74] Ms. Guo seeks to add \$34,800, for the RRSP and TFSA holdings Mr. Zhao sold in 2023 to pay legal fees, for a total of \$105,634. In my view, this should not be included in his income for support purposes. These funds are not a recurring part of Mr. Zhao's income used to fund his lifestyle, but were withdrawn to pay legal fees: *McKenzie v. Perestrelo*, 2014 BCCA 161, at paras. 80-82.

- [75] So that Mr. Zhao does not unfairly benefit from his lack of disclosure, his imputed amount for 2023 should be adjusted upwards if his actual 2023 income (excluding RRSP and TFSA amounts) is greater than \$70,833. Mr. Zhao should therefore provide to Ms. Guo, as soon as possible, his 2023 T4s, T1 Income Tax and Benefit Return and Notice of Assessment/ Reassessment. For 2024, Mr. Zhao's support should be based on the actual figures for 2023, since there was no evidence that he was under-employed in 2023.
- [76] Regarding imputing income to Ms. Guo, her evidence was that she was unable to work for the past four years while caring for her younger daughter and to a lesser extent M. She also pointed to the public health measures in 2020-2021 due to the pandemic. Mr. Zhao submits that she could have at least held a minimum wage job (40 hours/week x \$16.75/hour x 52 = \$34,840).
- [77] Each parent bears responsibility for the support of their children under s. 19 of the Guidelines. The test for imputing income to an unemployed or under-employed parent is one of reasonableness, having regard to their capacity to earn income in light of age, education, health, other obligations, work history and work availability.
- [78] Section 19(1)(a) of the Guidelines says that the circumstances to consider include whether the party is:
- intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- [79] Generally, a newborn or very young child needs care at home in the context of s. 19(1)(a), but this does not provide automatic relief from a parent's child support obligations (*Koch v. Koch*, 2012 BCCA 378, paras. 35-37, 59).
- [80] Ms. Guo's computer experience is long out of date. She testified through an interpreter and appeared to have relatively limited English language skills. On the other hand, for over a year, in 2017-2019, she was able to work for a financial management company.
- [81] Her financial statement of December 2022 shows annual personal expenses of \$246,000, which she testified were funded by loans from her husband and her mother. In my view, this indicates she had funds for full- or part-time in-home assistance. I do not accept her evidence that these amounts received from her husband and mother were loans. Ms. Guo provided no details about the context of any such agreements, their terms, or any corroborative evidence.
- [82] Taking all this into account, for purposes of child support for M., it would have been reasonable for Ms. Guo to have returned to the workforce by January 1, 2022, when M. was 15 and was living with each parent close to 50/50, but I would not impute more than minimum wage to her for 2022-2024.
- [83] In sum, child support should be calculated as follows:

- a) for 2019-2022, based on the parenting time and incomes in the table at para. 71, except Ms. Guo should be imputed income of \$35,000 for 2022;
- b) for 2023, based on Mr. Zhao's income being the higher of \$70,833 and his actual 2023 line 15000 income (excluding RRSP and TFSA amounts). Ms. Guo should be imputed income of \$35,000; and
- c) for 2024, based on Mr. Zhao's actual 2023 income (excluding RRSP and TFSA amounts). Ms. Guo should be imputed income of \$35,000.

[84] As a result, Mr. Zhao owes child support of \$37,386 up to and including to June 2024, calculated as set out in the table below. This assumes he has paid child support of \$636 per month since February 1, 2023, as ordered. If not, this amount may be adjusted to account for any missed payments. This amount for past child support shall be paid to Ms. Guo from the Smith Ave. proceeds. The amount of child support owing from January 1, 2023 through June 30, 2024 is subject to adjustment upon Mr. Zhao making the financial disclosure ordered above in para. 75.

Year

Child support payable by Mr. Zhao

Child support paid by Ms. Guo

2019

9 mo x \$638 = \$5,742

2020

12 mo x \$670 = \$8,040

2021

12 mo x \$854 = \$10,248

2022

12 mo x \$1,003 = \$12,036

2023

12 mo x \$674 = \$8,088

11 mo x \$636 = \$6,996

2024

6 mo x \$674 = \$4,044

6 mo x \$636 = \$3,816

Totals

\$48,198

\$10,812

Child support payable by Mr. Zhao to Ms. Guo

\$37,386

[85] Starting January 1, 2025, child support is subject to adjustment every year, and continuing for as long as M. remains a child of the marriage as defined in the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), or until further order of the court.

Special and Extraordinary Expenses

[86] In my view, the parties should share these expenses 50/50, rather than in proportion to their income, because of Ms. Guo's significant financial support from her mother and husband, as indicated in her December 2022 financial statement: M.L. v. G.L., 2015 BCSC 1107, para. 127

[87] The significant past expenses in issue are fees for M.'s private schooling and the Bolton Academy of Spoken Arts ("BASA") spoken arts program. Since separation, Ms. Guo has paid these costs. The parties should share them 50/50 as they were both in favour of these expenditures for her. John Knox's fees are relatively modest by private school standards (between \$8,500-\$13,000/year) and BASA is around \$3,000.

[88] Going forward, due to his financial circumstances, Mr. Zhao is reluctant to pay for John Knox in grade 12 unless able to do so from the remaining funds owed to him from Smith Ave. In my view, it would be contrary to M.'s interests to make her change schools for grade 12, when she has gone to John Knox throughout high school, is doing well there, and plans to go on to university. I therefore order that the parties continue to share the John Knox tuition for M.'s grade 12 year on a 50/50 basis.

[89] Regarding BASA going forward, given Mr. Zhao's income level, this is not justified as a special and extraordinary expense that he should have to contribute to. Mr. Zhao is not obliged to contribute to BASA from July 1, 2024 forward.

[90] Regarding the additional contributions sought by Ms. Guo - for a computer, medications, skis, art, a food safety class, AP exams and contact lenses - in my view, these are payable from child support, and many are less than \$100 and should not have been claimed.

[91] For purposes of calculating the past amounts owed, I accept the school and BASA fees to date in Tables 5 and 6 of Ms. Guo's submissions. From my review, they are consistent with the documentary evidence. I also accept her evidence, supported by the banking records, that these payments all came from her funds and not Mr. Zhao's. Thus, Mr. Zhao owes 50% of \$67,000 (using round numbers), or \$33,500. It appears Mr. Zhao made some additional contributions to John Knox which were voluntary donations rather than tuition fees, though

I cannot find these referred to in his closing submissions. In any event, I find them not to be special expenses because they were voluntary donations rather than tuition payments for M.'s schooling.

[92] For orthodontics, Ms. Guo owes Mr. Zhao \$1,442.00 to equalize their contributions to 50/50. She also owes him \$7,141.50, as 50% of the cost of Dr. Elterman's report plus interpreter costs.

[93] Putting all this together, Mr. Zhao owes \$24,916.

Spousal Support

[94] Ms. Guo seeks both compensatory and needs-based support.

[95] As explained in *Chutter v. Chutter*, 2008 BCCA 507, at paras. 50-61:

- a) Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise. The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success.
- b) Needs-based support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state. Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support. The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties.

[96] From around 2010-2017, Ms. Guo worked little if at all while she cared for M. From around 2017-2019, she worked for around a year for a financial management company, assisting with clients in China. In 2019, when the parties divorced, M. was 12.

[97] In my view, Ms. Guo does not meet the criteria for needs-based support because of the significant financial support received from her mother and husband indicated in her financial statement. Her expenses in 2022 of almost \$250,000 suggest that, after the separation date, her standard of living did not fall below the level she enjoyed during the marriage, and her financial security and lifestyle have been beyond that of Mr. Zhao.

- [98] Ms. Guo does however meet the criteria for compensatory support, having been financially disadvantaged during the marriage, as compared to Mr. Zhao, by the years she was out of the workforce caring for M. As a result, after the divorce, she had lower earning potential and fewer future prospects of financial success. In my view, however, because of the strong financial support from her mother and husband, Mr. Zhao's support obligations should be at the low end of the range and for a short term. I find that Ms. Guo is entitled to spousal support, on a compensatory basis, commencing April 1, 2019, for a period of eight years, at the low end of the range.
- [99] The amount of spousal support owed by Mr. Zhao for April 1, 2019 through June 30, 2024 is \$69,081, as calculated below. Given Mr. Zhao's reduced income, and because his obligations of child support and special expenses take priority over payment of spousal support, in accordance with s. 173 of the Family Law Act, S.B.C. 2011, c. 25, no spousal support is payable by Mr. Zhao from January 1, 2023. This is subject to review and adjustment if Mr. Zhao's 2023 income is shown to be materially above \$70,833 pursuant to the disclosure in para. 75.

Year

Spousal support payable by Mr. Zhao

2019 (9 months)

$\$949 \times 9 \text{ mo} = \$7,992$

2020

$\$1,220 \times 12 \text{ mo} = \$14,640$

2021

$\$1,961 \times 12 \text{ mo} = \$23,352$

2022

$\$1,494 \times 12 \text{ mo} = \$22,368$

2023

$\$0 \times 12 \text{ mo} = \$0$

2024 (6 months)

$\$0 \times 6 \text{ mo} = \$0$

Total spousal support

\$69,081

[100] Mr. Zhao's spousal support payable after June 30, 2024 is subject to variation based on a material change in circumstances, including M. ceasing to be a child of the marriage as defined in the Divorce Act. While remarriage or re-partnering does not necessarily terminate spousal support, support may be reduced on this basis: Spousal Support Advisory Guidelines, chapter 14.7. The impact of Ms. Guo's remarriage will be addressed more appropriately on a variation application, where the specifics of funds available from her husband and mother should be disclosed (*L.J.H. v. J.A.Z.*, 2014 BCSC 1384, paras. 29-39).

Family Debt

\$746,000 to Xiao Guo

[101] As explained above, I accept Ms. Guo's accounting of the almost \$746,000 that her mother paid to her and Mr. Zhao from 2016-2018. I find however that it was paid as a gift, not a loan, and so is not family debt.

[102] *Kuo v. Chu*, 2009 BCCA 405, at para. 9, lists the factors for assessing if payments were intended as gifts or loans. In this case, the factors strongly support the finding of a gift, due to the absence of:

- a) contemporaneous documents evidencing a loan;
- b) specification of a manner for repayment;
- c) reasonable expectation, or likelihood, of repayment when the funds were advanced
- d) security (which presumably would have been available from one of the couple's properties);
- e) advances of unequal amounts to other children (Ms. Guo is her parents' only child);
- f) demand for payment before, or at the time of, separation of the parties; and
- g) partial repayment by Ms. Guo.

[103] To this list, I add that Xiao Guo did not testify to support that her funds were loaned, and Ms. Guo offered no explanation for her absence.

[104] Ms. Guo pointed to evidence surrounding the transfers on May 17 and 18, 2018, to support her claim that all funds from her mother were loans. Because Xiao Guo had already sent out of the country the maximum amount permitted, those payments were routed from Ms. Guo's account in China to Mr. Zhao's parents, and from them to the parties in Canada. On the May 17, 2018 cheque from Mr. Zhao's father was written "Cost of living loan" (emphasis added).

[105] In my view, this one piece of evidence, apparently written by a party who would not have been privy to the arrangements between Ms. Guo and her mother, is far outweighed by the considerations mentioned above.

[106] I therefore find that the funds were advanced by Xiao Guo as a gift to the couple to assist with their difficult financial situation, and they are not family debts.

RMB 400,000 to Mr. Du

[107] It was uncontested that Mr. Du paid the parties RMB 400,000 in 2016, but they disagreed about whether this was a loan that remained outstanding.

[108] Ms. Guo testified that it was. She said that Mr. Zhao organized a loan from Mr. Du of approximately RMB 400,000 to pay out the mortgage of a Chinese property, so it could be sold by Xiao Guo and the proceeds used for the couple's legal fees and lawsuits. She took the position this is a family debt for which each party should be 50% responsible.

[109] Mr. Zhao denied the debt. His evidence was that, after the furniture business was sold, he wanted to use the proceeds to repay Mr. Yang, but Ms. Guo insisted they loan the money to Mr. Du, and that Mr. Du eventually repaid the loan with interest.

[110] There was no documentary or other corroborative evidence to support either party's version of events. Against Ms. Guo's version is the lack of any documentary evidence of this alleged loan or any demand for payment from Mr. Du. Ms. Guo testified that she spoke with Mr. Du before trial to advise this issue was being dealt with. She did not explain why he was not called as a witness to confirm his loan. On the other hand, in support of her version are the banking records showing that the RMB 400,000 mortgage on the property known as "Rong Qiao" was repaid just before sale of this property.

[111] Against Mr. Zhao's version is, first, that he provided no details or supporting documents for the alleged loan to Mr. Du, or its repayment, or what the repayment was used for, or even why the loan was made in the first place. Second, he admitted in cross-examination that the furniture business was not actually sold but simply stopped operating and that money was tight in 2012-2013, which is inconsistent with his version of events. He too could of course have called Mr. Du to confirm his version of events.

[112] In these circumstances I am unable to find whether or not the parties owe this debt to Mr. Du, though there is some evidence that they might. In my view, the reasonable approach in the circumstances is to order that, to the extent in the future that Mr. Du establishes a valid debt owed to him by the parties for funds paid during their marriage, this is a family debt which they should share equally.

Accounting Adjustments

[113] It was undisputed that Ms. Guo owes Mr. Zhao \$269,076.66, being the outstanding balance for the proceeds of sale of the Smith Ave. property.

[114] Ms. Guo seeks to set off against that the amounts of child and spousal support and special expenses dealt with above, plus:

- a) \$10,800 for the rent and security deposits, from July 2019 to February 2020, for the basement of the Burns St. property;
 - b) \$21,256.67 for the mortgage and property taxes, from March 23 to November 8, 2019, for Smith Ave.
- [115] I agree these two amounts should be set off against the Smith Ave. proceeds payable to Mr. Zhao.
- [116] Regarding the Burns St. rent, it is undisputed that, while in China after the divorce, Ms. Guo asked Mr. Zhao to assist with renting out the basement at the Burns St. property, and that he entered into a residential tenancy agreement with a tenant for July 1, 2019 to June 30, 2020 on her behalf, for rent of \$1,200 per month and a \$1,200 security deposit.
- [117] Ms. Guo testified that Mr. Zhao did not give her the rent from July 2019 to February 2020 or the deposit. She testified that she started collecting the rent in March 2020. Mr. Zhao testified that, when Ms. Guo returned from China, he gave her the 2019 rent and damage deposit in cash.
- [118] I accept Ms. Guo's version of events over Mr. Zhao's for two reasons. First, in Mr. Zhao's 2019 tax return, he reported \$8,400 of rental income from the Burns St. property, which matches the rent from July to December 2019, plus the damage deposit. Mr. Zhao tried to explain this away by saying that his accountant advised him to report this as income, even though he did not receive the money, because he was named as the landlord on the lease, but I reject that as implausible.
- [119] Second, the evidence contained many instances of Mr. Zhao taking funds from Ms. Guo's HSBC account - which he had signing authority for from 2013 until November 2019 - but virtually no examples of him repaying her. He admitted that his own salary did not go into that account. At trial, he initially took credit for payments for school tuition of BASA, which was then shown in cross-examination to have been taken by him from Ms. Guo's account and deposited into his own.
- [120] Given that the parties allocated Burns St. to Ms. Guo in the CDA, she is entitled to payment of \$10,800 for the Burns St. rent and deposit which I find Mr. Zhao retained.
- [121] Regarding the Smith Ave. payments, Ms. Guo provided documentary evidence showing she made these mortgage and tax payments for Smith Ave., after that property had been allocated to Mr. Zhao under the CDA. The CDA says that each party is responsible for the mortgages on the properties allocated to them under the agreement. Ms. Guo should be repaid for these payments from the Smith Ave. proceeds.

- [122] Ms. Guo drives a BMW X5, purchased in 2015 and registered in her name. Mr. Zhao claims that he is entitled to half of the vehicle's value because Viewsure made payments towards its financing. Ms. Guo testified that Viewsure paid some of the monthly payments for the vehicle, as a means of repaying her for money she loaned the company. Overall, the evidence on this issue was too sparse and vague for any finding other than that Ms. Guo is the owner of the vehicle and should retain it without any equalization payment.
- [123] Ms. Guo also sought an order that Mr. Zhao collect his hunting rifles from Burns St. Her evidence was that he has not retrieved them despite her repeated requests. Mr. Zhao took no position on this. I therefore order that, if Mr. Zhao does not arrange to collect his hunting rifles within 14 days of this judgment, then Ms. Guo may dispose of them free and clear of any claims from Mr. Zhao.

Conclusion

- [124] I make the following declarations and orders pursuant to the Divorce Act.

Parenting

- [125] The parties are both guardians of M., whose primary residence is with Ms. Guo.
- [126] Mr. Zhao and Ms. Guo will share decision-making responsibility for M. pursuant to the Joyce Model as follows:
- 1) in the event of the death of either party, the surviving party will be the only party with decision-making responsibility for M.;
 - 2) each party will have the obligation to advise the other party of any matters of a significant nature affecting M.;
 - 3) each party will have the obligation to discuss significant decisions about M. with the other, and the obligation to try to reach agreement on those decisions. In the event that the parties cannot reach agreement on a significant decision despite their reasonable best efforts, Ms. Guo will be entitled to make those decisions, and Mr. Zhao will have the right to apply for directions on any decision he considers contrary to M.'s best interests; and,
 - 4) each party will have the right to obtain information concerning M. directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third-party caregivers.

Child Support and Expenses

- [127] Mr. Zhao owes child support of \$37,386, up to and including June 30, 2024. This calculation assumes he has paid child support of \$636 per month since February 1, 2023 as ordered. If not, this support amount may be adjusted to account for any missed payments. This child support amount shall be paid to Ms. Guo from the Smith Ave. proceeds.

- [128] The amount of child support owing from January 1, 2023 through December 31, 2024, which is set out in the table following para. 84 above, is subject to re-calculation upon Mr. Zhao making the financial disclosure required of him in para. 75.
- [129] Starting January 1, 2025, child support is subject to adjustment every year, and continuing for as long as M. remains a child of the marriage as defined in the Divorce Act, or until further order of the court. The adjusted child support payments for each calendar year should be calculated by June 30 of that year.
- [130] By June 1st of each year, beginning on June 1, 2025 and for as long as M. is eligible to receive child support, the parties will exchange income information as set out in s. 21 of the Guidelines, which shall include:
- i. every personal income tax return filed by the parties for the previous year and every notice of assessment and reassessment issued to the parties;
 - ii. if the spouse is an employee, documentation from their employer indicating the total earnings paid in the previous year, their total earning paid in the year to date, and the spouse's rate of annual salary or remuneration;
 - iii. documents evidencing all sources of income, and the amount of income, received by the parties for the previous year; and
 - iv. documents evidencing the gross and net income of any corporate entities in which the parties' have a beneficial or legal interest, including any financial statements and income tax returns.
- [131] Mr. Zhao owes \$24,916 for special and extraordinary expenses. This shall be paid to Ms. Guo from the Smith Ave. proceeds.
- [132] The parties will share 50/50 M.'s John Knox grade 12 tuition as a special and extraordinary expense. Going forward, the parties will contribute equally to M.'s future s. 7 special and/or extraordinary expenses that are agreed upon in writing and in advance or are ordered to be shared by the court.

Spousal Support

- [133] Ms. Guo is entitled to spousal support, on a compensatory basis, commencing April 1, 2019, for a period of eight years, at the low end of the range.
- [134] Mr. Zhao owes spousal support for April 1, 2019 through June 30, 2024 of \$69,081. This shall be paid to Ms. Guo from the Smith Ave. proceeds. This amount is subject to review and adjustment if Mr. Zhao's 2023 income is shown to be materially above \$70,833, pursuant to the disclosure in para. 75.
- [135] Mr. Zhao's spousal support payable after June 30, 2024, is subject to variation based on a material change in circumstances, including M. ceasing to be a child of the marriage as defined in the Divorce Act.

Family Debt

[136] Ms. Guo's claim for contribution from Mr. Zhao for family debts owed to Xiao Ping Guo is dismissed.

[137] To the extent Mr. Du establishes a valid debt from either of the parties for funds received from him during their marriage, this is a family debt which they should share equally.

Implementation of the CDA

[138] By consent, Mr. Zhao is to implement the terms of the CDA by transferring his interest in the titles to the Burns St. and Ludi 10115 properties to Ms. Guo forthwith.

[139] Ms. Guo is to pay Mr. Zhao the outstanding \$269,076.66 from the proceeds of sale of Smith Ave., subject to the following set-offs:

- a) \$10,800 for the Burns St. rent and security;
- b) \$21,256 for the Smith Ave. mortgage and property taxes;
- c) \$37,386 for child support (assuming he has paid child support of \$636 per month since February 1, 2023);
- d) \$24,916 for special and extraordinary expenses; and
- e) \$69,081 for spousal support, subject to review and adjustment if Mr. Zhao's 2023 income is shown to be materially above \$70,833, pursuant to the disclosure in para. 75.

[140] Ms. Guo's claim for misrepresentation regarding the value of Viewsure is dismissed.

[141] Except as otherwise set out in this order:

- i. the parties shall each retain, as their sole and separate property, all assets registered in their name or held in their possession; and
- ii. the parties shall each bear sole responsibility for their debts, and shall save harmless and indemnify the other with respect to same.

Miscellaneous

[142] Ms. Guo is the owner of the 2015 BMW X5 registered in her name, free and clear of any claims by Mr. Zhao or Viewsure.

[143] If Mr. Zhao does not arrange to collect his hunting rifles from Burns St., Ms. Guo may dispose of them as she wishes free and clear of any claims by Mr. Zhao.

Costs and Interest

[144] Subject to the parties wishing to make submissions on costs, my view is that success was divided such that each party should bear their own costs. If the parties wish to make submissions on this issue, they should arrange a brief case management conference to discuss scheduling of exchange of materials and a hearing.

[145] Calculation of pre-judgment and post-judgment interest is left to the parties, with a right to apply for determination if necessary.

"Coval J."

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