

CANADA / JUDGMENT

Bordignon v. Bordignon

2025 BCSC 2195

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2195 Bordignon v. Bordignon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bordignon v. Bordignon,

2025 BCSC 2195

Date: 20251105

Docket: E127941

Registry: Kelowna

Between:

Lucille Bordignon also know as Lucille Puglisi

Claimant

And

Mark Angelo Bordignon, Giovanni Bordignon, Rebo Beton Pumping Ltd., 461334 B.C. Ltd. and
Rebo Beton Pumping Placing Finishing Ltd.

Respondents

Before: The Honourable Justice Hardwick

Reasons for Judgment re: Primary Trial Costs

The Claimant, appearing on her own behalf:

L. Bordignon

Counsel for the Respondents, Mark Angelo Bordignon, and Rebo Beton Pumping Ltd.:

D.M. King

Counsel for the Respondents, Giovanni Bordignon, 461334 B.C. Ltd., and Rebo Beton Pumping Placing Finishing Ltd.

D R. Greig

Place and Date of Hearing:

June 23, 2025

Kelowna, B.C.

Place and Date of Judgment:

Kelowna, B.C.

November 5, 2025

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Introduction

- [1] This is the second, and final, set of reasons for judgment addressing the issue of costs arising from the 20-day trial in this family law action (the "Action"). The trial, presided over by Mr. Justice Betton, commenced in December 2023 and concluded in March 2024.
- [2] The reasons for judgment resulting from the trial were released back on July 10, 2024, and are indexed at 2024 BCSC 1226 (the "Trial Reasons"). The Trial Reasons do not substantively address the issue of costs: see para. 352.
- [3] Between the completion of the trial and the release of the Trial Reasons, Justice Betton retired from this Court.

- [4] On November 4, 2024, I was appointed the ex mero motu trial judge in place of Justice Betton and thereafter have also been case managing the Action. By virtue of my role as the ex mero motu trial judge, I am required decide about the issue of costs of the Action in accordance with the Supreme Court Family Rules [Rules].
- [5] The primary players in the Action, whom I shall refer to by their first names, meaning no disrespect, are:
- a) the claimant, Lucille Bordignon also known as Lucille Puglisi ("Lucille");
 - b) the respondent, Mark Bordignon ("Mark"); and
 - c) the respondent, Rebo Beton Pumping Ltd. (the operating company controlled by Mark and generally referred to as "Pumping").
- [6] The other parties in the Action are Giovanni Bordignon ("Giovanni"), 461334 B.C. Ltd., and Rebo Beton Pumping Placing Finishing Ltd. (collectively, the "Other Respondents").
- [7] In reasons for judgment indexed at 2025 BCSC 1691, I addressed the claim by the Other Respondents for costs as against Lucille in the Action (the "First Costs Decision"). In the First Costs Decision, I ordered that Lucille pay lump sum costs to the Other Respondents in the amount of \$92,414.77.
- [8] Subject to any possible enforcement measures, the First Costs Decision concludes the participation of the Other Respondents in the Action.
- [9] Live issues remain as between Mark and Lucille, both before me in this Court and in the Court of Appeal.

Litigation History

- [10] Lucille commenced the Action by filing a notice of family claim (the "NOCC") on June 26, 2020.
- [11] As I described in the First Costs Decision, the relief sought in the NOCC was fairly typical for a family law proceeding resulting from the breakdown of a long-term marriage wherein the parties had two "children of the marriage" as defined by the Divorce Act, R.S.C. 1985, c. 3 (the "Children"), had accumulated assets during the course of the marriage, and had made a familial decision that Mark would be the primary income earner and Lucille would assume the primary parenting responsibilities for the Children.
- [12] On April 12, 2022, almost two years after Lucille commenced the Action, Lucille brought a without notice application to, inter alia, amend the NOCC and add the Other Respondents as parties. Lucille pled numerous additional claims, including allegations of the tort of predominant purpose conspiracy and what I described in the First Costs Decision as a derivative claim for unjust enrichment.

- [13] (Then) Master Keim granted the relief on April 26, 2022, and the amended notice of family claim was filed on May 2, 2022 (the "ANOFC").
- [14] The claims advanced in the ANOFC substantially increased the complexity of the financial issues as between the parties.
- [15] Ongoing at the same time were very significant issues involving the parenting of the Children who were still of elementary school age at the time the parties separated. These difficulties resulted in multiple court orders and extensive professional involvement.
- [16] Specifically, by my review of the materials, there were at least 12 orders made between August 12, 2020 and September 11, 2023. It is possible there were more as not all of the court appearances resulted in orders - or at least entered orders.
- [17] Two of the many expert reports tendered for the purposes of trial were assessments prepared by Dr. Michael Elterman pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. There was also a "views of the children" report prepared pursuant to s. 202 of the FLA, by order of Justice Betton at Mark's request, during the trial.
- [18] On key financial issues, the parties retained Simone Brunton of Grant Thornton as the joint business valuator. However, Lucille had a shadow expert, Daniel Sturgess of Crowe MacKay, whose involvement was revealed on what might be described as the eve of trial. This is not exhaustive; there were also multiple appraisal reports.
- [19] The result of the foregoing was a trial which Justice Betton accurately described as follows in the Trial Reasons:
- [1] The parties seek a full spectrum of orders in this high-conflict family law case. There is virtually no common ground on any of the issues or the underlying factors that should determine them. This extends to such base issues as the date of the commencement of their relationship and their separation date.

Adequacy of Reasons and Summary of Issues

- [20] In *Plaza 500 Hotels Ltd. v. SRC Engineering Consultants Ltd.*, 2024 BCCA 288, Justice Dickson addressed the issue of adequacy of reasons for judgement and stated as follows:
- [72] Reasons for judgment serve several important functions. In the context of civil proceedings, they justify and explain the result, tell the losing party why they lost, provide for informed consideration of possible grounds of appeal, and satisfy the public and the parties that justice has been done: *Hague* at para. 18.
- [73] Judges are duty-bound to provide sufficient reasons for their decisions. However, the extent of that duty is driven by the circumstances of each case. In *G.F.*, Justice Karakatsanis explained that reasons are to be read functionally and contextually. In other words, reasons are to be read as a whole, in the context of the live issues and informed by the positions of the parties. They are not to be finely parsed in a search for error. The salient question is

whether the reasons respond to the live issues and key arguments, and whether the foundations of the decision are discernable: G.F. at paras. 68-69; Hague at para. 20.

- [74] A failure to express reasons well does not provide an independent ground of appeal of the order in question. When an appellate court assesses reasons for sufficiency, it reviews the record in an effort to discern the "what" and the "why" of the decision. If the answers to those questions are clear in the record, there will be no reversible error: G.F. at para. 70; Hague at para. 21. For example, in *Rise & Shine* it was obvious from the transcript of proceedings in chambers that the judge's exercise of discretion was grounded in the plaintiff's unexcused non-compliance with its litigation obligations, and that the claim was dismissed "for the reasons set out in the notice of motion": *Rise & Shine* at paras. 23, 30.
- [21] *Plaza 500* was a civil matter and not family law proceeding. It also concerned an oral decision rendered contemporaneously in chambers, which makes it potentially dually distinguishable.
- [22] However, I consider there are some important parallels.
- [23] *Lucille, Mark and the Other Respondents* received the full attention of Mr. Justice Betton for 20 days. The Trial Reasons are 77 pages long, containing some 352 paragraphs. While portions of Justice Betton's orders remain under appeal and cross appeal, it cannot be realistically suggested that they are inadequate.
- [24] Since my appointment as ex mero motu trial judge, this matter has been before me on multiple occasions. The parties have both had the opportunity to observe during these appearances that I have read the Trial Reasons on so many occasions that I can now cite significant paragraph numbers of the Trial Reasons from rote memory.
- [25] With an appreciation of that context, I am simply going to summarize that for the purposes of addressing costs, the issues in the Action which were live at trial. Those issues included the following:
- a) Date of separation;
 - b) Parenting;
 - c) Guideline income determination;
 - d) Quantum of prospective support;
 - e) Retroactive support adjustment;
 - f) Occupational rent;
 - g) Valuation of the Former Family Home;
 - h) Division of family property;
 - i) Excluded property;

- j) Family debt;
- k) Conspiracy and unjust enrichment claims; and
- l) Claims re Mark Angelo Family Trust/Mark Bordignon (2017) Family Trust, Mark Angelo Investments Inc., and Bordignon Family Holdings Ltd

Parties' Position on Costs

[26] Lucille's position on costs vis-à-vis Mark is as follows:

- a) Special costs of the trial of the Action; and
- b) Such other costs order as this Court deems fit having regard to Mark's conduct in the Action.

[27] Mark position on costs vis-à-vis Lucille is as follows:

- a) Ordinary costs of the Action to May 2, 2022 (the date the ANOFC was filed) and special or enhanced costs thereafter;
- b) Alternatively, enhanced costs or ordinary costs of the Action;
- c) In the further alternative, partial costs of the Action; and
- d) In the further, further alternative, that the parties each be entitled to their own costs.

The Law Regarding Costs in Family Law Proceedings: Substantial Success

[28] Rule 16-1(7) of the Rules provides that costs of a family law case must be awarded to the successful party unless the court otherwise orders.

[29] In *J.L.M. v. G.G.M.*, 2024 BCSC 1643, I had the opportunity to consider various instructive authorities which assist in determining who is the successful party within the context of R. 16-1(7). Although not exactly on all fours given the complexity of the financial issues in the Action versus *J.L.M.*, there are a number of similarities between the two proceedings which both required lengthy trials spread over the course of a number of months when initial time estimates proved to be highly inadequate.

[30] Starting at paragraph 41 of *J.L.M.*, I stated as follows:

[41] There are two leading decisions interpreting Rule 16-1(7) or its predecessor: *Gold v. Gold* (1993), 1993 CanLII 1248 (BC CA), 82 B.C.L.R. (2d) 180 (C.A.); and *Fotheringham v. Fotheringham*, 2001 BCSC 1321, leave to appeal ref d 2002 BCCA 454.

[42] In *S.A.M. v. J.A.M.*, 2017 BCSC 2348 at para. 7, Justice Bernard helpfully summarized the principles applicable to costs awards in family cases:

- (a) The costs of a family law case must be awarded to the successful party, unless the court otherwise orders (Rule 16-1(7)) of the Supreme Court Family Rules [Rules];

- (b) The "successful party" is the party who has achieved substantial success at the trial/hearing (*Fotheringham v. Fotheringham*, 2001 BCSC 1321; *Marquez v. Zapiola*, 2014 BCCA 35);
 - (c) The court's discretion to "order otherwise" must be exercised judicially, bearing in mind a non-exhaustive list of factors that includes hardship, earning capacity, the purpose of the particular award, the conduct of the parties in relation to the litigation, and the importance of not upsetting the balance achieved by the court in relation to the substantive issues (*Gold v. Gold* (1993), 1993 CanLII 1248 (BC CA), 106 D.L.R. (4th) 452 (B.C.C.A.));
 - (d) The party who asks the court to "order otherwise" bears the onus to persuade the court why it should do so (*S.D.W. v. C.W.W.*, 2006 BCSC 162);
 - (e) Financial hardship, without more, is not a sufficient basis for the court to exercise its discretion to depart from the usual rule that successful parties are entitled to their costs (*S.D.W. v. C.W.W.*, *supra.*; *K.D.P. v. A.R.K aka R.K.*, 2012 BCSC 1025; *Brown v. Kucher*, 2016 BCSC 194);
 - (f) Where an offer to settle a family case has been made, the court may award double costs for all or some of the steps taken after the date of delivery or service of the offer (Rule 11-1(5) of the Rules);
 - (g) As a general rule, an award of double costs should be made against a party who did not accept an offer to settle that should, in all the circumstances, have been accepted (*Hartshorne v. Hartshorne*, 2011 BCCA 29); and,
 - (h) In determining whether a double costs order should be made, the court may consider any factor the court considers appropriate, including whether the offer was one that ought reasonably to have been accepted upon receipt or at any later date, the relationship between the offer and the judgment, and the relative financial circumstances of the parties (Rule 11-1(6) of the Rules).
- [43] Substantial success is to be measured objectively taking into account the matters in dispute, their weight or importance to the parties, and the parties' relative success or failure with respect to those matters: *Fotheringham* at para. 60.
- [44] At para. 46 of *Fotheringham*, Justice Bouck suggested that a judge considering whether to award costs follow a four-step inquiry:
1. First, by focusing on the "matters in dispute" at the trial. These may or may not include "issues" explicitly mentioned in the pleadings.
 2. Second, by assessing the weight or importance of those "matters" to the parties.
 3. Third, by doing a global determination with respect to all the matters in dispute and determining which party "substantially succeeded," overall and therefore won the event.

4. Fourth, where one party "substantially succeeded," a consideration of whether there are reasons to "otherwise order" that the winning party be deprived of his or her costs and each side then bear their own costs.
- [45] Substantial success is to be "measured in broad terms" and the court should not finely parse issues: *Stearman v. Powers*, 2017 BCCA 165 at para. 65.
- [46] As the Court of Appeal noted in *Marquez*, the consideration should not be an overly complicated mathematical problem:
- [16] Success in the event has been interpreted as "substantial success": see *Fotheringham v. Fotheringham*, 2001 BCSC 1321, 13 C.P.C. (5th) 302, leave to appeal ref d 2002 BCCA 454. In *Fotheringham*, Mr. Justice Bouck described this standard as follows:
- [45] Gold now seems to say that substantial success in an action should be decided by the trial judge looking at the various matters in dispute and weighing their relative importance. The words "substantial success" are not defined. For want of a better measure, since success, a passing grade, is around 50% or better, substantial success is about 75% or better. That does not mean a court must descend into a meticulous mathematical examination of the matters in dispute and assign a percentage to each matter. Rather, it is meant to serve as a rough and ready guide when [looking] at all the disputed matters globally.
- [47] In *Litt v. Gill*, 2016 BCCA 288, Justice Garson commented on the unique problem costs pose in family law cases involving multiple issues, noting that a more flexible approach may be required in assessing the concept of "success" for the purposes of assessing costs:
- [53] At its most basic, the successful party is the plaintiff who establishes liability and obtains a remedy, or the defendant who obtains dismissal of the plaintiffs case: *Loft v. Nat*, 2014 BCCA 108 at para. 46. This general principle is more difficult to apply in the context of family cases, where there may be a panoply of claims advanced by each party, and divided success. There, a more flexible "substantial success" test may be more appropriate: see this Court's decisions in *Harras v. Lhotka*, 2016 BCCA 246 at para. 48 and *Marquez v. Ziapola*, 2014 BCCA 35 at para. 16.
- [48] In *Reid v. Reid*, 2017 BCCA 191, the Court of Appeal said:
- [9] We do not read *Marquez* as requiring that the Court, in determining "substantial success", undertake a mathematical comparison of the amount claimed to the amount awarded. Rather, the Court has broad discretion to take into account myriad considerations in assessing whether a party has been substantially successful.
- [31] There is also a helpful instruction of Justice Branch on the issue of determining costs in family law actions in *Wallace v. Pichichero*, 2021 BCSC 2347 at paras. 13-16.

Substantial Success: Analysis

- [32] Unlike with the Other Respondents in the First Costs Decision, where determining substantial success was simple given outright the dismissal of the claims and the absence of any counterclaims, the task is much more complicated as between Lucille and Mark/Pumping. My conclusions are as follows:
- a) **Date of Separation:** Justice Betton accepted Mark's evidence that the parties separated when Lucille filed the NOCC in June 2020 and rejected Lucille's position that they had separated but remained living separate and apart in the Former Family Home from late December 2019. Although the date of separation is not overly significant for the purposes of support given the length of the relationship/marriage generally and there was not a significant amount of evidence tendered on the issue, it bears noting that proving an earlier separation date was tied to certain of Lucille's key property claims. Mark was successful on this issue;
 - b) **Parenting:** As noted by Justice Betton, a substantial portion of the trial time was dedicated to the issue of parenting. Notwithstanding that Lucille was the Children's primary caregiver prior to separation, Lucille's relationship with the Children was highly strained for a period of time after separation and extensive professional involvement was required as noted above. Lucille's own conduct played a role - resulting in a period of supervised parenting time; as did Mark's - most notably his "messaging" to the Children and his encouragement of them to align with him. At trial, Lucille generally took the position that there should be a week on/week off parenting schedule but did seek a 90-day period of exclusive parenting. Mark's position was that the Children should primarily reside with him under a 70/30 parenting time schedule. Justice Betton ordered a week on/week off parenting schedule with the prospect of a 28-day period of exclusive parenting if Mark did not engage in certain mandated counseling. On the issue of parenting, which as noted was a primary issue at trial, Lucille was substantially successful;
 - c) **Guideline Income determination:**
 - i. The determination of Mark's Guideline income was, in my view, effectively deferred by Justice Betton. I addressed this in my reasons for judgment indexed at 2025 BCSC 1691, which I recognize are under appeal (the "Support Review Reasons"). Although Justice Betton did set Mark's Guideline income at \$125,000, which is the base salary which Mark pays himself from Pumping, it was subject to a review effective June 2024 - the very month the Trial Reasons were released. Justice Betton also did not dismiss Lucille's argument as to the shareholder loans Mark had withdrawn from Pumping during the litigation, he directed a "wait and see" approach as to whether they would be taken into income by Mark under the Income Tax Act. I conclude that the parties had divided success on this issue; and

ii. Lucille's Guideline Income was set at \$51,000 per annum. Although required to be determined by the Court, this was effectively a non-issue at trial as Lucille was employed on a full-time basis for an arms-length employer at a position very commensurate with her skillset given her role during the marriage as the primary caregiver to the Children. I do not consider this a significant relevant factor in considering costs.

- d) Quantum of prospective support: Although child support was inextricably tied to the conclusion regarding parenting - namely whether it would be shared parenting - Lucille's entitlement to spousal support was not disputed by Mark. Having been successful in obtaining an order for shared parenting, Lucille was successful in obtaining an order for child and spousal support (mid-range under the Spousal Support Advisory Guidelines [SSAG]) that was, as noted commensurate with the Guideline incomes determined by Justice Betton pending the 2024 review. Mark had argued for the low end of the SSAG range. I ultimately conclude Lucille was substantially successful on this issue, with recognition that the arguments on the range of support on the SSAG, given that entitlement was conceded, was not a particularly contentious issue;
- e) Retroactive support adjustment: Unlike in many trials where there is a claim for a retroactive support by the recipient spouse, it was Mark who sought a retroactive adjustment on the basis that he had overpaid under the various interim orders that had been made over the course of the Action. This claim was dismissed. Lucille was substantially successful on this issue;
- f) Occupational Rent: Lucille departed the Former Family Home after filing the NOCC and never returned. Following her departure Mark was responsible for all costs associated with maintaining that property. Justice Betton dismissed Lucille's occupational rent claim - a claim that I described in my Support Review Reasons as a competing claim with Mark's claim for a retroactive support adjustment. Mark was substantially successful on this issue;
- g) Valuation of the Former Family Home: Justice Betton accepted Mark's position that the fair market value of the Former Family Home was \$1.5 million. This was a bit of a pyrrhic success given that I cannot ignore my knowledge that the Former Family Home is currently listed for sale and so the arguments about its value using appraisals obtained in 2023 were essentially academic. Nonetheless, Mark was successful on this issue;
- h) Division of family property: Beyond parenting, the next most significant issue at trial was Lucille's companion/alternative claims for unequal division or the selection of an alternative valuation date on the basis of s. 95(2)(f) of the FLA. There was a modest unequal division in Lucille's favour in which Mark retained the shares in Pumping and was ordered to pay Lucille a compensation payment of \$350,000, Lucille's claims in this regard were largely dismissed by Justice Betton. Mark was substantially successful on these issues;

- i) Excluded Property: Lucille conceded that Mark was presumptively entitled to an exclusion of \$150,000 under s. 85 of the FLA for his pre-relationship property but sought a division of that excluded property under s. 96 of the FLA based on significant unfairness. Lucille was substantially successful in this claim;
 - j) Family Debt: Justice Betton accepted Lucille's position that Mark was solely responsible for some \$50,589.50 drawn against the line of credit in June 2020. Lucille was successful on this issue;
 - k) Conspiracy and Unjust Enrichment Claims: Lucille was not successful in proving her conspiracy claims or her derivative unjust enrichment claims. Unlike with the Other Respondents, Justice Betton did make a specific reference to Mark's "lack of good faith". Notwithstanding those comments, Mark was substantially successful in defending these claims;
 - l) Mark Angelo Family Trust/Mark Bordignon (2017) Family Trust, Mark Angelo Investments Inc., and Bordignon Family Holdings Ltd: As Justice Betton stated in the Trial Reasons there was very little evidence lead in relation to these entities and very limited submissions were received as to how the Court should deal with them. Justice Betton made the best orders he could fashion in the circumstances, but I cannot conclude that either party was substantially successful.
- [33] Considering the foregoing, I am of the view the parties had divided success at trial and that the appropriate result is that the parties bear their own costs of the Action. The Action is a perfect example of why a mathematical calculation of issues is not the appropriate method. Moreover, when there is a mix of parenting and financial issues, it is incorrect to place an undue amount of emphasis that the amount of money that Lucille was awarded at the conclusion of the trial was substantially lower than Lucille was seeking, for example, if she had been successful on the issue of setting an alternative valuation date. Parenting cannot be quantified in that same manner.

Otherwise Ordering: Analysis

- [34] Despite any conclusion as to substantial success, R. 16-1(7) still permits the court to otherwise order.
- [35] Ordering "otherwise" invokes the discretion of the court, but it is a discretion which must be exercised judicially: see J.L.M. at para. 42(c).
- [36] Financial hardship alone will not form a sufficient basis to otherwise order: see J.L.M. at para. 42(e).
- [37] In this Action, were I to be incorrect in my conclusion that there was truly divided success as between Lucille and Mark/Pumping, I would still exercise my discretion to otherwise order that these parties bear their own costs.

[38] This litigation has been financially devastating to this former family unit. Both parties share responsibility for that. It was not a one-sided scorched earth war. There were torches being wielded on each side. This goes beyond mere hardship.

Special Costs: The Law

[39] The court has the discretion to order that costs of a family law proceeding be assessed as special costs: see R. 16-1(1)(b)(i).

[40] Special costs are designed to sanction reprehensible conduct that is deserving of reproof or rebuke: see *Hu v. Dickson*, 2015 BCSC 218 at para. 46.

[41] As stated by Justice Warren at para. 47 of *Hu*, "[t]he purpose for this high level of costs is punitive and intended to express the court's disapproval of the party's conduct." The court must exercise restraint in awarding special costs, which means the party seeking special costs must demonstrate exceptional circumstances to justify an award of special costs: *Hu* at para. 48, citing *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para. 73.

[42] *Westsea* was a decision of Justice Gropper. In *Friedlander v. Claman*, 2015 BCSC 482, Justice Gropper applied those same principles in a high conflict family law proceeding, stating as follows:

[23] In *Tomic v. Tough*, 2013 BCCA 355 at para. 35, our Court of Appeal confirmed that the test for a special costs award as set out in *Garcia* [*Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.)] applies in the family law context.

[24] I went on to say at para. 38 of *Westsea* that despite Lambert J.A.'s effort to clearly articulate the threshold for awarding special costs in *Garcia*, it can be difficult to apply this standard because the concept of "reprehensibility" captures a wide range of misconduct, special costs awards are determined on a case by case basis, and it is sometimes challenging to pinpoint the outer limits of what is reprehensible. What is key to the analysis is the exceptional element or "something more". I agree that the application of special costs should be limited to exceptional circumstances. The Supreme Court of Canada very recently affirmed this "exceptional" circumstances threshold at para. 137 of *Carter v. Canada (Attorney General)*, 2015 SCC 5, when clarifying the test for special costs in cases involving public interest litigants.

[25] In *Westsea*, I reviewed the jurisprudence in the following thematic groups: meritless claims and improper motive (paras. 42 - 52); abuse of the court's process (paras. 53 - 57); sharp practice derogating from the rules of professional conduct and the rules of court (paras. 58 - 64); and misleading the court (paras. 65 - 72). I proceeded in this way not to impose a categorical approach upon special costs awards, but to provide a guide when faced with similar factual circumstances.

[26] I summarized my findings at para. 73 by providing principles for awarding special costs:

[73] I have undertaken a thorough review of the cases involving special costs. Having examined the authorities provided by both sides, it is apparent to me that the courts have been somewhat inconsistent in their determination of what amounts to reprehensible conduct and that those authorities must be reconciled. Based upon my review of the authorities, I have derived the following principles for awarding special costs:

- a) the court must exercise restraint in awarding special costs;
- b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
- c) simply because the legal concept of "reprehensibility" captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;
- d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;
- e) special costs can be ordered against parties and non-parties alike; and
- f) the successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs are not awarded to a successful party as a "bonus" or further compensation for that success.

[43] Also instructive is *Kim v. Choi*, 2019 BCSC 1792, wherein Justice Dley set out the following overview as to the appropriateness of special costs in a family law proceeding at paras. 22-25:

[22] Special costs may be awarded where the conduct of a party is reprehensible. Reprehensible conduct includes conduct that is scandalous or outrageous, or milder forms of misconduct that are deserving of reproof or rebuke: *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 119 D.L.R. (4th) 740 at 747 (B.C.C.A.).

[23] In *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 11, Walker, J. set out those circumstances that warranted the attraction of special costs:

- (a) where a party pursues a meritless claim and is reckless with regard to the truth;
- (b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;
- (c) where a party has displayed "reckless indifference" by not recognizing early on that its claim was manifestly deficient;
- (d) where a party made the resolution of an issue far more difficult than it should have been;

- (e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;
 - (f)
 - (g) where a party brings a proceeding for an improper motive;
 - (h) where a party maintains unfounded allegations of fraud or dishonesty; and
 - (i) where a party pursues claims frivolously or without foundation.
- [24] Special costs are punitive and serve to chastise the offending party: *Ip v. Insurance Corp of British Columbia* (1994), 89 B.C.L.R. (2d) 251 at para. 7.
- [25] Special costs are the exception. Special costs should not be awarded where the only issue is a party's credibility: *Schwabe v. Dr. Lisinski*, 2005 BCSC 1284 at para. 26; *Grewal v. Sandhu*, 2012 BCCA 26 at para. 107, leave to appeal ref'd [2012] S.C.C.A. No. 120. However, a party who lies, falsifies evidence and attempts to deceive the court can be subjected to special costs: *Hoffman v. Percheson*, 2011 BCSC 1175 at paras. 19-23.

Special Costs: Analysis

- [44] This family law proceeding has been and remains extremely acrimonious. The level of distrust and tension between the parties in the courtroom is palpable even in post-trial proceedings.
- [45] Justice Betton certainly viewed some of Mark's conduct in a quite dim light.
- [46] Lucille advanced and continues to advance a theory of the case regarding Mark's dealings with the Other Respondents that was ultimately wholly unsuccessful at trial. That theory involves intentional dishonesty by Mark. I referenced this in my recent reasons for judgment indexed at 2025 BCSC 1899 regarding Mark's application for a stay of my orders increasing his child and spousal support obligations pending appeal: see paras. 19-21.
- [47] However, considering the above law, and viewing the Action holistically, I cannot find that the conduct of either Mark or Lucille would merit an award of special costs. The law sets a very high threshold for special costs for the reasons articulated. Both Mark and Lucille could have and could now behave better but their conduct is not reprehensible.
- [48] Further, as it relates to Lucille's unsuccessful attempt to pursue a claim for the tort of conspiracy (and other relief as described in the First Costs Decision), Lucille has been ordered to pay the Other Respondents a significant sum of ordinary costs. Imposing a special costs award in favour of Mark/Pumping would be inconsistent with the direction that the court must exercise restraint in awarding special costs.

Conclusion

[49] In conclusion, I am ultimately satisfied that there was divided success at trial and that that the appropriate result as between Lucille and Mark/Pumping is that they bear their own costs of the Action unless there has been a previous order entitling them to costs of an interlocutory or post-trial application in any event of the cause.

[50] Consistent with the foregoing, I am ordering that Lucille and Mark/Pumping bear their own costs of the "costs hearing" which occurred on June 23, 2025.

"Hardwick J."

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