

CANADA / JUDGMENT

Brophy v. Ploskon-Ciesla

2022 BCCA 425

COURT

British Columbia Court of Appeal

DECIDED

15 December 2022

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2022 BCCA 425 Brophy v. Ploskon-Ciesla COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Brophy v. Ploskon-Ciesla, 2022 BCCA 425 Date: 20221215 Docket: CA47195 Between: Marianne Brophy Appellant (Defendant) And Anna Maria Ploskon-Ciesla Respondent (Plaintiff) Before: The Honourable Mr. Justice Harris The Honourable Madam Justice Stromberg-Stein The Honourable Mr. Justice Voith Supplementary Reasons to: Ploskon-Ciesla v. Brophy, 2022 BCCA 217, Vancouver Docket CA47195. Counsel for the Appellant: M.H. Wright J.E. Fergusson Counsel for the Respondent: T. Dennis J. Fearon Place and Date of Hearing: Vancouver, British Columbia May 12, 2022 Place and Date of Judgment: Vancouver, British Columbia June 17, 2022 Written Submissions on Costs Received: October 26, November 25, and November 29, 2022 Date of Supplementary Judgment: December 15, 2022 Supplementary Reasons of the Court Summary: Supplementary reasons directing the parties to bear their own costs of the appeal and referring trial costs to the trial court. Supplementary Reasons of the Court

- [1] The parties each apply in respect of costs arising out of this appeal, indexed at 2022 BCCA 217. The appellant seeks an order of costs on the basis that she was substantially successful on appeal. The respondent seeks an order that each party bear their own costs of the appeal, but that she be awarded double costs of trial for a certain period in light of her formal offer to settle. The damage award at trial and as modified on appeal significantly exceeded her formal offer.
- [2] The appeal concerned awards of loss of future earning capacity, past and future housekeeping capacity, and the cost of future care. In the result, this Court allowed the appeal in respect of the awards for loss of future earning capacity, cost of future care, and future loss of housekeeping capacity and:
- a) set aside the award of \$255,000 and substituted an award of \$75,000 for loss of future earning capacity;
 - b) set aside the award of \$17,199 and substituted an award of \$4,108 for cost of future care; and
 - c) set aside the award of approximately \$42,200 and substituted an award of \$15,000 for future loss of housekeeping capacity.

- [3] In the result, the trial judge's award of \$429,149.50 was reduced, by my calculation, to \$208,858.50.
- [4] On the face of it, it appears that the appellant was substantially successful, at least in securing a significant reduction in each of the damage awards. The Court set aside the trial judgment and substituted its own awards. But, in our view, this is a somewhat superficial analysis of the outcome.
- [5] The appellant's primary position on appeal was that the award for loss of future earning capacity should be set aside in its entirety. This was the principal award under appeal. Although the appellant referred to an alternative position that the judge had erred in the quantum of the award, we were not provided with any significant substantive submissions that acknowledged the foundation on which such an award could be based. The substance of the argument was that there was no evidence capable of supporting any award.
- [6] Even though the appellant succeeded in reducing the award for future loss of housekeeping, again, the primary thrust of the argument was that no such claim was properly established on the evidence. The issue of the cost of future care was a relatively minor issue in the appeal.
- [7] In our view, the gravamen of the appellant's position on appeal was that the various pecuniary awards should be set aside because they had not been established on the evidence. This position did not prevail. We concluded that there was an evidentiary basis for what remained significant awards, even if much reduced from the trial awards. To this extent, the respondent succeeded on appeal.
- [8] In these circumstances, having regard to the practicalities of the positions of the parties on appeal, we think the substance of the outcome is that success was divided. This is an appropriate case to order that each party bear their own costs.
- [9] As to the trial costs, we do not think this Court should address that issue. In our view, what the costs of trial should be, in light of the offer to settle and the outcome of the litigation, is properly a matter to be addressed by the trial court. We refer that issue to the trial court.
- "The Honourable Mr. Justice Harris" "The Honourable Madam Justice Stromberg-Stein" "The Honourable Mr. Justice Voith"

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Prepared on 28 October 2026 · Esheria