

CANADA / JUDGMENT

C.K.M. v. H.R.M.

2021 BCSC 2006

COURT

Supreme Court of British Columbia

DECIDED

14 October 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 2006 C.K.M. v. H.R.M. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: C.K.M. v. H.R.M., 2021 BCSC 2006 Date: 20211014 Docket: E79286 Registry: Nanaimo Between: C.K.M. Claimant And H.R.M. Respondent Corrected Judgment: The text of the judgment was corrected on the page 1, page 2, and paragraph 9 on October 19, 2021. Before: The Honourable Madam Justice Jackson Reasons for Judgment on Costs (In Chambers) Counsel for the Claimant: K.A. Sugiyama G. Slocombe Counsel for the Respondent: A. Mattila Written Submissions of the Claimant Received: August 3, 2021 Written Submissions of the Respondent Received: August 16, 2021 Place and Date of Judgment: Nanaimo, B.C. October 14, 2021 Table of Contents I.

INTRODUCTION. 3 II. THE POSITIONS OF THE PARTIES. 3 III. ANALYSIS. 4 I. INTRODUCTION

- [1] On July 5, 2021, I issued reasons for judgment indexed at 2021 BCSC 1297 (the "Reasons") following a summary trial of a family law case. I found that the respondent, H.R.M., was the successful party: Reasons at para. 218. I directed the parties to bring any matters they viewed as relevant to costs to my attention either by filing written submissions or by arranging for a brief oral hearing. Both parties subsequently presented me with written submissions on the issue of costs. II. THE POSITIONS OF THE PARTIES
- [2] The claimant, C.K.M., submits the respondent should pay her costs of the summary trial application, and that these costs should be deducted from the respondent's share of the net sale proceeds prior to distribution. She submits this is the appropriate costs consequence because:
- a) the respondent was unsuccessful in having the claimant's bankruptcy annulled;
 - b) neither party can be said to have been substantially successful because the percentage of the net sale proceeds the respondent was ordered to receive (75%) fell between what each of the parties sought at the summary trial application; and
 - c) the claimant, by way of her trustee in bankruptcy, offered to settle the matter based on a payment of 75% of the net sale proceeds (the "Trustee Offer"), which the respondent had ample time to consider and which matched the ultimate result, but which the respondent rejected.

- [3] In the alternative the claimant submits that each party should bear their own costs.
- [4] The respondent argues the Trustee Offer was not a settlement offer made in compliance with the Supreme Court Family Rules [SCFR] capable of attracting adverse cost consequences against him. The respondent further submits that in any event, the Trustee Offer was not equivalent to the ultimate result following the summary trial because it did not address responsibility for the family debt (for which both parties were found to be equally responsible following the summary trial application) and did not include the relinquishment of the claimant's father's claim involving an alleged \$20,000 loan (which the summary trial determined was not a family debt for which the respondent had any responsibility). The respondent says the claimant provided an another offer in December 2020, which was without prejudice except as to costs, and was not in line with what was ordered following the summary trial application. III. ANALYSIS
- [5] The statutory provisions governing costs are found in R. 16-1 and Appendix B of the SCFR. Costs can be ordered for a family law case as a whole, or for a particular application or step in a family law case: SCFR, R. 16-1(14). Costs of a family law case must be awarded to the "successful party" unless the court orders otherwise: R. 16-1(7). The term "successful party" is interpreted to mean the party who has achieved substantial success at the trial or hearing: *Fotheringham v. Fotheringham*, 2001 BCSC 1321 at paras. 7, 28, leave to appeal ref'd 2002 BCCA 454; *Chinn v. Hanrieder*, 2013 BCCA 413 at paras. 6-7; *H.K. v. W.K.*, 2018 BCSC 1447 at paras. 9 [H.K.], citing *S.A.M. v. J.A.M.*, 2017 BCSC 2348 at para. 7. The court's ability to exercise its discretion to "otherwise order" necessitates consideration of the relevant factors, including hardship, earning capacity, the purpose of the award, the conduct of the parties in the litigation, and the importance of not upsetting the balance achieved by the award itself: *Gold v. Gold*, [1993] 106 D.L.R. (4th) 452 at para. 20 (B.C.C.A.). The party who asks the court to order otherwise bears the onus to persuade the court it should do so: *H.K.* at para. 7.
- [6] Neither party seeks special costs or suggests the case involved less or more than ordinary difficulty. The issue is whether the respondent was successful on the summary trial application, and if so, whether there is a basis to depart from the default rule that he is entitled to costs.
- [7] The respondent was the successful party on the summary trial application. The primary issues in dispute were whether there was a basis to order an unequal division of family property, and if so, whether such an unequal division was barred by the claimant's assignment in bankruptcy. I accepted the respondent's position on both issues.
- [8] With respect to the claimant's argument that the respondent was unsuccessful in having her bankruptcy annulled, I found that I did not need to consider his application to annul the bankruptcy as I had concluded that the assignment did not preclude an order for the unequal division of family property in his favour, which in turn made him the successful party: Reasons at para. 217.

- [9] There is no basis to depart from the ordinary rule that the respondent, as the successful party, is entitled to his costs. The Trustee Offer did not involve a full resolution of the issues as the alleged \$20,000 loan would have remained outstanding to the financial detriment of the respondent. The claimant's subsequent offer was for less than what the respondent was awarded at the summary trial.
- [10] Accordingly, the respondent is entitled to his costs to be assessed by the registrar in accordance with appendix B of the SCFR. "Jackson J."
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/20/2021BCSC2006cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/c-k-m-v-h-r-m-2021>

Prepared on 28 October 2026 · Esheria