

CANADA / JUDGMENT

C.M.L.S. v. F.C.M.S.

2017 BCSC 225

COURT

Supreme Court of British Columbia

DECIDED

10 February 2017

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2017 BCSC 225 C.M.L.S. v. F.C.M.S. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: C.M.L.S. v. F.C.M.S., 2017 BCSC 225 Date: 20170210 Docket: E46375 Registry: New Westminster Between: C.M.L.S. Claimant And: F.C.M.S. Respondent Before: The Honourable Mr. Justice Verhoeven Supplementary Reasons to C.M.L.S. v. F.C.M.S., 2016 BCSC 1298. Supplementary Reasons for Judgment Re: Costs Counsel for Claimant: L. Spencer Counsel for Respondent: J. Broadhurst Date of Written Submissions: August 15, September 6, September 13, 2016 Place and Date of Judgment: New Westminster, B.C. February 10, 2017 I. Introduction and Background

- [1] I issued reasons for judgment in this family law matter on July 13, 2016, indexed as 2016 BCSC 1298 (the "reasons for judgment").
- [2] As noted in the conclusion of the reasons for judgment, the mother requested an opportunity to address costs following issuance of the reasons.
- [3] The parties have provided written submissions as to costs.
- [4] The claimant mother argues that she should be awarded costs because she was substantially successful at trial, in that she succeeded on the main issue, which as noted at para. 2 of the reasons for judgment was the parenting schedule for the parties' daughter C. The respondent father concedes this point.
- [5] The mother also argues that costs should be awarded in her favour because the result of the trial was more favourable to her than the terms of an offer to settle contained in a letter from her counsel to the father's counsel dated May 27, 2016.
- [6] In response the father argues that the court should exercise its discretion to deny costs to the mother as a result of her conduct in the litigation, and should order that each party bear their own costs of the trial. The father further submits that the mother should be ordered to pay costs for the contested pretrial applications at which the mother knowingly relied on false evidence she had provided to the court. In particular, as set out at paras. 39-41 of the reasons for judgment, the mother failed to reveal the results of a number of drug tests, as she was required to do by an order Justice Williams made on March 20, 2015, and then lied about the test results, deposing in affidavits that she had not failed any of the required tests when in fact she had tested positive for cocaine on more than one occasion. II. Analysis and

Conclusion

- [7] An unusual feature of this case was that there was a high level of acrimony between the parents, despite the fact that they agreed that joint custody and joint guardianship of C. was in her best interests and could be made to work. However their conduct during the course of the legal proceedings prior to trial, as set out at para. 105 of the reasons for judgment, was a discredit to both of them. At para. 106, I urged the parties to stop their damaging behaviours. As I remain seized of the matter but have not been asked to deal with any contentious issues for several months, I sincerely hope that they have succeeded and have found a way to cooperate with each other in C.'s best interests.
- [8] The court has a broad discretion in respect of costs. Rule 16-1(7) of the Supreme Court Family Rules, B.C. Reg. 169/2009 provides that the costs of a family law case must be awarded to the successful party, "unless the court otherwise orders". Knowingly giving false evidence at any stage of the proceedings can support a denial of costs: see *Brown v. Lowe*, 2002 BCCA 7 at paras. 144-151; *G.M.G. v. M.A.*, 2014 BCSC 2074 at para. 51; *Cardwell v. Perthen*, 2007 BCSC 366 at para. 13; and *Medeiros v. Vuong*, 2001 BCSC 326 at paras. 11-12.
- [9] At para. 97 of the reasons for judgment, I described the mother's conduct in failing to reveal the results of the failed drug tests and then wilfully lying about them as "reprehensible" as well as "astonishingly foolish".
- [10] I am satisfied that in the circumstances of this case it is appropriate to deny the mother the costs that she would otherwise be awarded. I observed at para. 105 of the reasons for judgment that the mother's dishonesty "caused enormous difficulties". Her conduct was designed to mislead the court in order to gain an advantage in the proceedings.
- [11] At trial she displayed little contrition and attempted to justify her conduct. Among other excuses, she stated that she was "prepared to lie to keep my daughter". Every parent involved in a custody dispute could be tempted to adopt that falsely noble rationale for misleading the court. Too many do so. Beyond the immediate damaging consequences to the other party and to the justice system, such conduct can only serve to cause harm to the child. The harm may be enormous. It may be permanent. Such conduct must be firmly denounced, and others must be deterred from it. Denial of costs serves these purposes, albeit inadequately.
- [12] The mother's offer to settle of May 27, 2016 does not alter my conclusion. There, the mother offered to continue the parenting schedule as it then existed, which is what I ultimately ordered. As noted, the father has conceded that the mother succeeded on this issue at trial. However, in respect of this issue, there is no sense in which the result at trial exceeded or was superior to the offer to settle. The offer to settle is of no significance to this issue, which was overwhelmingly the major issue at trial.

- [13] The offer to settle also dealt with some financial matters, but these were relatively minor both in the context of the offer to settle and the issues at trial. The mother contends that if the offer had been accepted, the father would have received \$11,000 more than he was awarded at trial in respect of the occupational rent and household maintenance and expense issues. In overall terms, however, this is a minor point and is not sufficient to affect my decision.
- [14] As noted, the father argues that the mother should be ordered to pay him the costs of the contested pretrial applications regarding the parenting schedule at which she relied on false evidence.
- [15] I faulted both parents and sharply criticized their behaviour in the reasons for judgment, particularly at paras. 58 and 105. I criticized the father's conduct as being "inappropriate and unjustified" at para. 58. I concluded that he abused his power to limit the mother's access to C. I noted that he ignored the cautionary comments Justice Schultes made in his interlocutory decision on December 22, 2015 regarding the father's responses to the mother's drug testing. The father made unsubstantiated and unfair allegations against the mother, as well as some of her other children and her friends. He needlessly antagonized the mother on many occasions. Accordingly, his conduct is also worthy of rebuke. Several of the applications for which the father seeks costs were necessitated by his inappropriate conduct.
- [16] I therefore consider it inappropriate to make any further order respecting the costs of the interlocutory applications. Any orders for costs previously made in any event of the cause will remain in place.
- [17] In conclusion, there will be no order for costs to either party. "The Honourable Mr. Justice Verhoeven"

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