

CANADA / JUDGMENT

D.Z. v. R.H.Z.

2020 BCSC 1454

COURT

Supreme Court of British Columbia

DECIDED

9 September 2020

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2020 BCSC 1454 D. Z. v. R. H. Z. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: D. Z. v. R. H. Z., 2020 BCSC 1454 Date: 20200909 Docket: E55576 Registry: New Westminster Between: D. Z. Claimant And R. H. Z. Respondent Before: The Honourable Madam Justice Adair (by telephone) Supplementary Oral Reasons for Judgment on Costs In Chambers Counsel for the Claimant (by telephone): D. Glass Counsel for the Defendant (by telephone): R. Chambers Place and Date of Hearing (by telephone): New Westminster, B.C. September 9, 2020 Place and Date of Judgment: New Westminster, B.C. September 9, 2020

- [1] THE COURT: On August 28, 2020, my judgment on costs in this matter was released, indexed as 2020 BCSC 1265. As set out in my Reasons following the trial, indexed as 2020 BCSC 891 (the "Trial Reasons"), the parties had leave to make written submissions on costs, provided those submissions were filed within 60 days of the date of the Trial Reasons. The deadline for filing submissions expired on Monday, August 17, 2020.
- [2] Written submissions were filed on behalf of the claimant on August 14, 2020. As of August 27, 2020, when my Reasons on costs were signed for release on August 28, no submissions had been filed on behalf of the respondent. Counsel for the respondent filed her written submissions on costs the morning of August 28, 2020, shortly before my Reasons on costs were released.
- [3] In a request to appear back sent last week, counsel for the respondent requested that my order for costs: . . . be set aside or revised to include the Respondent's submissions. Submissions were provided late due to action/inaction of opposing counsel in setting a schedule as per the court's direction and extenuating circumstances on the part of the Respondent's counsel, through no fault of the Respondent.
- [4] On September 8, 2020, counsel for the respondent filed a notice of application returnable today, seeking essentially the same relief.
- [5] I do not agree with counsel for the respondent that my August 28 order was in the nature of a default judgment. Rather, the provisions that likely apply in the current circumstances are Family Rules 10-3(2) and (3).

- [6] In any event, I have now heard oral submissions on the request that my August 28 judgment and order be set aside or revised to include the respondent's submissions.
- [7] I do not accept that the respondent's submissions on costs were provided late due to action or inaction of claimant's counsel. In my view, assuming she had instructions from the respondent to make submissions on costs, counsel for the respondent must accept responsibility for not filing those submissions by the August 17, 2020 deadline. She cannot shift that responsibility onto claimant's counsel. Even a week after the deadline, and 10 days after the claimant's submissions had been filed, respondent's counsel had failed to file any submissions on costs. That "inaction" can only be attributed to counsel for the respondent. The attempt to shift at least some of the responsibility and blame onto counsel for the claimant is troubling. It is not consistent with the professionalism and courtesy the court expects counsel to afford one another, even in high-conflict litigation.
- [8] In addition, before sending any communications to the court, counsel should ensure that they consult Civil Practice Direction PD-27, which also applies to family law cases. I note in particular item no. 3 of the Practice Direction. Among other things, correspondence is not to be addressed to a particular judge, even if she is seized of the matter. It appears that the Practice Direction was not consulted here.
- [9] A deadline set by the court is not a polite suggestion. As with all court orders, the court expects its orders in that regard to be obeyed. See also my comments in the Trial Reasons, at para. 214. As this matter illustrates, a failure to obey court orders wastes scarce judicial resources, frustrates the object of having a speedy and efficient determination of matters on their merits, and increases expenses.
- [10] On the other hand, where the interests of justice require it, a party should not be prejudiced by the conduct of his or her counsel. In this case, that conduct is failing, without reasonable excuse, to file submissions by the court-ordered deadline or treat the filing of submissions with the appropriate degree of priority and urgency. Indeed, no submissions were filed on behalf of the respondent until after counsel had been notified the Reasons on costs were about to be released. However, I have concluded the respondent should not be prejudiced by that conduct. I note that counsel for the claimant essentially took no position on the court considering the respondent's submissions on costs.
- [11] Accordingly, I grant leave to the respondent to file his submissions on costs late. I have reviewed and considered those submissions.
- [12] In my view, those submissions do not justify either setting aside or modifying my order concerning costs pronounced August 28, 2020.
- [13] Much of the respondent's submissions on costs concern settlement offers, and what counsel for the respondent asserts were the respondent's ongoing attempts to settle the issues and avoid a trial. The submissions mention that, to that end, the respondent made two applications to adjourn the trial, one shortly before the beginning of trial, and one at the

beginning of the trial. However, both of those applications were dismissed, and the order made on October 10, 2019 ordered the respondent to pay costs to the claimant in any event of the cause. The respondent's submissions also disclosed positions taken and exchanged in the context of a mediation. However, as the mediation did not produce a settlement or concluded agreement, I have doubts about whether such disclosure is appropriate.

- [14] While I note that counsel for the respondent submitted that success should be considered mixed, the respondent's position is that he should be awarded costs, and awarded double costs from an offer to settle dated September 29, 2019.
- [15] A threshold issue on costs here was whether one of the parties was "substantially successful" so as to be entitled to costs. If neither was substantially successful, then any offers to settle that had been served were essentially irrelevant and could not provide a basis for an award of double costs: see *Paul v. Pumple*, 2013 BCSC 1844, at para. 27.
- [16] As I read the respondent's submissions, one of the main arguments advanced against the claimant being found to be substantially successful concerns spousal support. Counsel for the respondent asserted that the claimant had only been awarded a dollar in spousal support, and that, since (in counsel's submission) spousal support was the main issue that prevented a mediated settlement agreement, the respondent should be awarded costs.
- [17] However, as is apparent from a review of the Trial Reasons, that quantum award is only a small part of the overall picture. The respondent's position at trial was that the claimant had no entitlement to spousal support, either retroactive or ongoing. I rejected that submission. I ordered the respondent to pay retroactive spousal support. I explained in the Trial Reasons why, at this time, the quantum of spousal support was set at a dollar, and I provided for a review. In the respondent's submissions on costs, counsel also misstates the position taken by the claimant concerning the quantum of support as of trial.
- [18] In the result, having now considered the respondent's late-filed submissions on costs, I confirm my August 28, 2020 order. The claimant is entitled to her costs under Appendix B of the Supreme Court Family Rules, on the basis that the case involved ordinary difficulty, and double costs after October 9, 2019, together with taxes, and necessary and reasonable disbursements.
- [19] That concludes my ruling. "Adair J."

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