

CANADA / JUDGMENT

El Issa v. Batista

2022 BCSC 643

COURT

Supreme Court of British Columbia

DECIDED

25 April 2022

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2022 BCSC 643 El Issa v. Batista IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: El Issa v. Batista, 2022 BCSC 643 Date: 20220425 Docket: E30734 Registry: Cranbrook Between: George El Issa Claimant And Carolina Gouveia Batista Respondent Before: The Honourable Mr. Justice Macintosh Costs Ruling Counsel for the Claimant: C.A. Gomez Counsel for the Respondent: A. Grewal Written Submissions of the Claimant Received: March 18, 2022 Written Submissions of the Respondent Received: April 1, 2022 Place and Date of Judgment: Cranbrook, B.C. April 25, 2022

- [1] On March 4, 2022, I gave a brief oral ruling addressing the Respondent's application argued on March 4, having been filed January 11, 2022. My ruling said nothing about costs.
- [2] The Claimant filed costs submissions on March 18, 2022. The Respondent submitted her position on April 1, 2022.
- [3] The Claimant argues for special costs, in any event of the cause, payable forthwith. The Respondent says that the costs from the March 4 hearing should be in the cause.
- [4] Supreme Court Family Rule 16-1 gives the Court broad discretion in matters of costs. By way of illustration, most of the subrules under 16-1, setting out the normal rules to be followed on costs, permit the Court to "order otherwise".
- [5] The substantial success on March 4 was with the Claimant. He wants to have the child remain in Cranbrook pending trial. The Respondent wanted the child "returned to the lower mainland forthwith", to quote from her application.
- [6] I ruled that the child remain in Cranbrook pending trial, which, as of March 4, was set to proceed in June of this year. The Claimant was also substantially successful on most of the other issues argued on March 4. The preservation of the status quo until trial, for the sake of the child's stability, spoke strongly in favour of not moving him to the Lower Mainland pre-trial, as the Respondent had requested.
- [7] I am awarding the costs of the March 4 application to the Claimant in any event of the cause.

- [8] However, costs will not be paid forthwith. They will be credited to the Claimant when costs are tallied and ordered after the trial or the settlement of the case.
- [9] I am not ordering special costs. Special costs are normally the consequence of reprehensible conduct on the part of a party in the course of the litigation itself. In other words, speaking in broad terms, damages stem from the conduct giving rise to the litigation, whereas special costs stem from conduct within the course of the litigation.
- [10] The only litigation conduct to be examined for this costs ruling is that connected to this particular application. The Claimant cannot argue otherwise when he is asking for a discrete costs award, pre-trial, specifically based on this one application only.
- [11] When the lens is focused on the March 4 application, there is no evidence of reprehensible conduct on the Respondent's behalf, or by the Respondent herself. What happened in this case in Brazil, for example, is outside the sphere of conduct to be scrutinized in deciding whether to order special costs specific to this application.
- [12] The costs award granted to the Claimant here, from the March 4 hearing and its preparation, is fixed at \$4,400, including all disbursements and taxes, in any event of the cause but not payable forthwith. "Macintosh J."

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Prepared on 28 October 2026 · Esheria