

CANADA / JUDGMENT

Fairleigh v. Grieser

2023 BCSC 1052

COURT

Supreme Court of British Columbia

DECIDED

20 June 2023

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2023 BCSC 1052 Fairleigh v. Grieser IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Fairleigh v. Grieser, 2023 BCSC 1052 Date: 20230620 Docket: E201161 Registry: Vancouver Between: Gregory Hamilton Fairleigh aka Gregory Hamilton Boner Claimant And Jenna Marie Grieser Respondent Before: The Honourable Madam Justice W.A. Baker Reasons for Judgment on Costs Counsel for Claimant: M. Golden Counsel for Respondent: A. Oberoi Written Submissions of Claimant: May 9, 2023 Written Submissions of Respondent: May 28, 2023 Place and Date of Judgment: Vancouver, B.C. June 20, 2023

- [1] Judgment in this family case was rendered on March 29, 2023, indexed as 2023 BCSC 479. This decision addresses costs arising out of the litigation.
- [2] The claimant seeks costs of the litigation, while the respondent argues that each side should bear their own costs.
- [3] The issues in the litigation were the following:
- a) Was an agreement made by the parties enforceable?
 - b) What orders should be made in relation to property?
 - c) Is the respondent entitled to spousal support?
 - d) What are the appropriate parenting orders?
 - e) What are the appropriate child support orders?
- [4] The claimant was successful on the issue of the parties' agreement and spousal support. With respect to parenting arrangements, while the parties were in agreement with orders for joint parenting responsibilities and guardianship, there was a significant dispute regarding parenting time and the residence of the child during the school week. The claimant was successful on the parenting issues in dispute. The claimant and the respondent had mixed success on the orders relating to property. On the issues relating to child support, the result was mixed but the claimant was generally more successful than the respondent.

- [5] Pursuant to Supreme Court Family Rules, Rule 16-17, costs are to be awarded to the successful party unless the court determines otherwise.
- [6] In *S.A.M. v. J.A.M.*, 2017 BCSC 2348 at para. 7 the court summarized the applicable principles in costs awards in family litigation:
- (a) The costs of a family law case must be awarded to the successful party, unless the court otherwise orders (Rule 16-1(7)) of the Supreme Court Family Rules [Rules];
 - (b) The "successful party" is the party who has achieved substantial success at the trial/hearing (*Fotheringham v. Fotheringham*, 2001 BCSC 1321; *Marquez v. Zapiola*, 2014 BCCA 35);
 - (c) The court's discretion to "order otherwise" must be exercised judicially, bearing in mind a non-exhaustive list of factors that includes hardship, earning capacity, the purpose of the particular award, the conduct of the parties in relation to the litigation, and the importance of not upsetting the balance achieved by the court in relation to the substantive issues (*Gold v. Gold* (1993), 1993 CanLII 1248 (BC CA), 106 D.L.R. (4th) 452 (B.C. C.A.));
 - (d) The party who asks the court to "order otherwise" bears the onus to persuade the court why it should do so (*S.D.W. v. C.W.W.*, 2006 BCSC 162).
 - (e) Financial hardship, without more, is not a sufficient basis for the court to exercise its discretion to depart from the usual rule that successful parties are entitled to their costs (*S.D.W. v. C.W.W.*, *supra.*; *K.D.P. v. A.R.K. aka R.K.*, 2012 BCSC 1025; *Brown v. Kuchar*, 2016 BCSC 194).
 - (f) Where an offer to settle a family case has been made, the court may award double costs for all or some of the steps taken after the date of delivery or service of the offer (Rule 11-1(5) of the Rules).
 - (g) As a general rule, an award of double costs should be made against a party who did not accept an offer to settle that should, in all the circumstances, have been accepted (*Hartshorne v. Hartshorne*, 2011 BCCA 29); and,
 - (h) In determining whether a double costs order should be made, the court may consider any factor the court considers appropriate, including whether the offer was one that ought reasonably to have been accepted upon receipt or at any later date, the relationship between the offer and the judgment, and the relative financial circumstances of the parties (Rule 11-1(6) of the Rules).
- [7] While the parties were in dispute on the issues set out above, there is no question that the primary animating dispute between them related to parenting arrangements, in particular which parent their child should live with during school days. The issues relating to child support were not the primary dispute, as both parents agreed to pay child support in accordance with the Federal Child Support Guidelines, SOR/97-175 (Guidelines). There were simply some historical adjustments which needed to be made, and some issues relating to s. 7 expenses. These were not the driving issues in the litigation. The property issues also did

not drive the dispute between the parties. The claim advanced by the respondent was founded in contravention of the parties' agreement, which I upheld. The claim by the claimant in relation to a loan to him made by the respondent was not well founded, but again was not the primary driver of the issues at trial.

- [8] I am satisfied that the claimant was substantially successful at trial.
- [9] The respondent submits that because the parties are at the very early stages of a co-parenting regime, an award of costs would run counter to their ability to work together and would not be in the child's best interests.
- [10] The respondent also argues that her positions in the litigation were well founded and reasonable, and her conduct in the litigation does not justify an award of costs.
- [11] I am not persuaded that costs should not be awarded in this case. The respondent has not advanced any evidence that would justify a variation from an award of costs in the ordinary course.
- [12] I find the claimant is entitled to his costs of this action.
- [13] The claimant also seeks double costs arising from the date of an offer made June 22, 2022. The claimant offered the following:
- a) The parties be divorced.
 - b) The parties have joint parenting responsibilities and guardianship.
 - c) The child reside with her mother during the week and attend school in Maple Ridge.
 - d) The claimant have parenting time for five out of six weekends, including any extra days associated with long weekends.
 - e) Parenting time on holidays be shared equally.
 - f) No child support would be payable by either party, and arrears would be cancelled.
 - g) No spousal support would be payable.
 - h) The respondent's claim to family property would be dismissed.
 - i) Each side would bear their own costs.
- [14] The respondent notes that the offer did not address her claim to the \$39,000 loan, which I found to be payable to her by the claimant. The offer did not provide for child support, which would have been payable under the Guidelines given the time the child was proposed to live with the respondent. Also, while the respondent was agreeable to some terms but not all, the offer was to resolve all terms or go to trial.

[15] While ultimately the respondent was not successful on many of the issues at trial, I am not persuaded that the June 2022 ought to have been accepted by her. For the reasons expressed by the respondent, I agree that the offer was not one that should, in all the circumstances, have been accepted.

[16] I find an award of double costs would not be appropriate in this case.

[17] I order ordinary costs in favour of the claimant. "W.A. Baker J."

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