

CANADA / JUDGMENT

Grynspn v. Grynspan

2020 BCSC 1949

COURT

Supreme Court of British Columbia

DECIDED

9 December 2020

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2020 BCSC 1949 Grynspan v. Grynspan IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Grynspan v. Grynspan, 2020 BCSC 1949 Date: 20201209 Docket: E201110 Registry:

Vancouver Between: Karen Grynspan Claimant And David Grynspan Respondent Before: The

Honourable Mr. Justice Edelmann Reasons for Judgment on Costs Counsel for the Claimant: M.

Sodagar Counsel for the Respondent: A. James Written Submissions Received: October 23, 2020

Place and Date of Judgment: Vancouver, B.C. December 9, 2020

Introduction

- [1] I issued reasons on an application by the claimant in this matter on September 25, 2020, providing 30 days for the parties to make submissions on costs. Submissions have been received from both parties.
- [2] The claimant seeks costs for the application, arguing that she was substantially successful in her application.
- [3] The respondent submits that the claimant was not substantially successful in the application and should not be awarded costs.

Analysis

- [4] Rule 16-1(7) of the Supreme Court Family Rules, B.C. Reg. 169/2009 states that costs must be awarded to the successful party unless the court orders otherwise, subject to subsection (9). Rule 16-1(9)(a) provides that, in the case of an application, if the application is granted, the party who brought the application is entitled to costs for the application if they are awarded costs at trial, unless the court orders otherwise.
- [5] To decide if costs should be awarded, the court must consider if one party was "substantially successful". This more flexible standard recognizes that a party does not necessarily need to be successful on every issue to be awarded costs, and is appropriate in the family law context where there are often multiple issues and divided success: *Litt v. Gill*, 2016 BCCA 288 at para. 53. Substantial success is determined by looking at the issues in dispute and weighing their relative importance, but the determination is not a mathematical exercise:

Marquez v. Zapiola, 2014 BCCA 35 at para. 16.

- [6] The respondent's position is that the claimant did not achieve substantial success taking into consideration both the requested terms that were not granted and those that were unopposed.
- [7] In particular, the respondent notes that the claimant sought to prohibit the respondent's access to medical or mental health records for the parties' eldest daughter, but did not succeed on the medical records aspect. The claimant also sought to be able to seek counselling and therapeutic treatment for her daughter without the respondent's consent. The wording of the order was narrowed down and exceptions for prescriptions and medical intervention were included.
- [8] While I recognize that the wording of the order granted differed somewhat from that set out in the claimant's application, the focus of that aspect of the application was clearly on the nature of the respondent's involvement in his daughter's mental health treatment. The changes in wording were largely conceded by the claimant and, in my view, she was substantially successful on this issue.
- [9] Additionally, the respondent argues that he ultimately consented to or did not oppose a number of items in the order, although in some respects only in the course of the full-day hearing of the application. While the respondent is to be commended for making reasonable concessions, in my view, the respondent was in large part conceding very obvious and deliberate breaches of the separation agreement and his obligations under it. His conduct included cancelling insurance policies and refusing to make child support payments for expenses under s. 7 of the Federal Child Support Guidelines, SOR/97-175, that would foreseeably have a direct negative impact on the best interests of his children.

Conclusion

- [10] In my view, considering the overall circumstances, I find that the claimant was substantially successful in her application, and she should have her costs for the application in any event of the cause. "Edelmann J."

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