

CANADA / JUDGMENT

Jagpal (Re)

2024 BCSC 1620

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2024 BCSC 1620 Jagpal (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jagpal (Re),

2024 BCSC 1620

Date: 20240904

Docket: S236436

Registry: Vancouver

The Patients Property Act, R.S.B.C. 1996, c. 349, and amendments thereto

- and -

In the Matter of Gulsharanjit Kaur Jagpal also known as Gulsharanjit Kaur Dhaliwal

- and -

Docket: E232905

Registry: Vancouver

The Patients Property Act, R.S.B.C. 1996, c. 349, and amendments thereto

- and -

In the Matter of Gulsharanjit Kaur Jagpal also known as Gulsharanjit Jagpal

Before: The Honourable Justice Fitzpatrick

Reasons for Judgment

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W. Slater

Counsel for the Public Guardian and Trustee:

R. McLarty

For Rina Jagpal, also known as Ramenjit Kaur Jagpal:

No Appearance

For Ramandeep Kaur Brar:

No Appearance

Place and Dates of Hearing:

Vancouver, B.C.

July 3-4, 2024

Place and Date of Judgment:

Vancouver, B.C.

September 4, 2024

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INTRODUCTION

- [1] Earlier in these proceedings (Action S236436), I appointed the petitioner, Sevina Samra ("Sevina"), as committee of the person and estate of the respondent, her mother, Gulsharanjit Jagpal ("Sharan"). I did so after finding that Sharan was incapable by reason of mental infirmity under the Patients Property Act, R.S.B.C. 1996, c. 349 [PPA].
- [2] I also dismissed the competing petition filed by Sharan's other daughter, Rina Jagpal ("Rina") (Action E232905) by which Rina sought to be appointed as committee or, in the alternative, that Ramandeep Brar, a caregiver, be appointed.
- [3] The Public Guardian and Trustee (the "PGT") was served with the various court materials and attended the 4-day hearing to decide the heavily contested issues. That was necessary, particularly because Sevina's alternative relief was to appoint the PGT as committee of Sharan's person and estate.
- [4] On February 28, 2024, I issued my reasons for the above orders, including an extensive list of terms in the appointment order to address the complexities of the matter: Jagpal (Re), 2024 BCSC 343 [RFJ]. As I did in the RFJ, for ease of reference, I will continue to refer to the family members and other persons by their first names, meaning no disrespect in doing so.
- [5] In the RFJ at para. 190, I noted that Sevina was potentially seeking special costs of the proceedings. Accordingly, I indicated that, if the parties were unable to agree to the appropriate order for costs, an application could be brought within two months.
- [6] The issue now before the Court relates to costs of the proceedings to date. There are also subsidiary issues as to the level of costs sought and who should pay those costs.
- [7] Sevina seeks an award of special costs, payable by the estate, but recoverable ultimately from Rina. Similarly, the PGT also seeks an award of special costs, payable from the estate. In that event, Sevina seeks an order that the PGT's costs also be recoverable from Rina.
- [8] Rina does not seek any costs award in her favour for herself or Ramandeep. Rina has filed a response and various affidavits in relation to these applications, opposing the relief sought by Sevina, including any order that would allow for ultimate recovery of those costs from her. Nevertheless, Rina who is now self-represented, did not appear on these applications; neither did Ramandeep.
- [9] Slater Law Corporation ("SLC") has also attended this hearing, given certain relief sought by Sevina.

BACKGROUND

- [10] I need not reproduce the background facts set out in the RFJ, which are extensive. I will continue to use the definitions used there.

- [11] It does however bear repeating that these proceedings have involved a toxic mix of fractious family relationships and substantial amounts of money, all overlaid with elements of suspicion, distrust and anger. As I stated in the RFJ:
- [175] I agree with the PGT that this is a complicated and nuanced matter. The family dynamics are such that the impartiality of all family members is potentially in issue, including both Sevina and Rina to a degree (although perhaps varying degrees). There is a distinct distrust among many family members, which is overlaid with the substantial amount of money involved, again invoking the suggestion of motivations toward securing those sums.
- [176] In the middle of this family drama stands Sharan, who has, as I noted above, significant capacity issues.
- [177] To a large degree, Sharan has become the "pawn" on the chessboard of this family.
- [12] Shortly after my orders of February 28, 2024, since March 1, 2024, Sharan has been staying at Sevina's home.
- [13] The FLA Proceeding is continuing. I understand that the issues of Sharan's capacity at certain times prior to my ruling is still yet to be determined. For the purposes of these applications, no determination has yet been made as to what assets are "family assets" to which Sharan has some entitlement and, if so, the value of Sharan's entitlement, in terms of the estate bearing the substantial costs of these committee proceedings.
- [14] As is evident from Sevina's applications, and the various affidavits filed in support or opposition, the situation among these family members has not improved. It appears that tensions, if not outright disputes, are still ongoing and yet to be resolved. I can only describe the later course of events, and the acrimony between them, as all out warfare.
- [15] Since the RFJ was released in late February 2024, the battle between Sevina and Rina and other family members has continued. In particular, Sevina's attitude toward the matter has not been to allow matters to settle down; rather, Sevina's approach has become increasingly aggressive and overreaching, now when she is armed as Sharan's Committee. This is evident from many aspects of Sevina's applications before me which were without merit.
- [16] That approach is also evident in that, what should have been a fairly straightforward application to settle costs, is not. What is now before me is an extensive application record with many newly filed affidavits from many family members dating from March-June 2024. The issues addressed in those affidavits appear to relate to ongoing disputes, matters that were only or briefly tangentially addressed in the RFJ or are, indeed, issues in the FLA Proceedings.

- [17] Sevina's overreaching approach is also evident by the application record, which is beyond what might have been expected to be filed on most costs applications, if not this one (and which meets, if not exceeds the volume of original application materials). The "new" materials are contained in five binders and hundreds of pages. Sevina's written argument alone was over 100 pages.

ISSUES

- [18] The issues to be addressed are:

- a) Is Sevina entitled to her costs of the proceedings and, if so, at what level and how should those costs be determined?
- b) Is the PGT entitled to its costs of the proceedings, and if so, at what level and how should those costs be determined?
- c) How should the costs of SLC be addressed?
- d) Should Rina be required to pay any costs awarded in favour of Sevina and/or the PGT? and
- e) Should costs of these applications be awarded and, if so, on what level?

SEVINA'S COSTS

- [19] The first issue is whether Sevina entitled to her costs of the proceedings and, if so, at what level and how should those costs be determined.
- [20] Section 27 the PPA provides that costs of committee proceedings are in the discretion of the Court.
- [21] In *Vieira (Re)*, 2013 BCCA 420, the court set out the principles governing the exercise of judicial discretion under s. 27:
- a) Section 27 should be interpreted consistently with costs in other civil proceedings (para. 15);
 - b) In committee applications, the usual practice is to award the successful applicant special costs from the patient's estate. A party who has brought an application found to be in the best interests of the patient, and with no ulterior motive, should be reimbursed for doing so (i.e. awarded their special costs on a full indemnity basis) (para. 17); and
 - c) There is discretion to depart from this usual practice if, for example, there are concerns about the applicant's motive or their conduct of the application (para. 18).

- [22] More recent authorities have confirmed the Court's broad discretion under the PPA: *Pellerin v. Dingwall*, 2018 BCCA 110 at paras. 45 and 47. As noted in *Pellerin* at para. 39, the costs provisions of R. 14-1 of the Supreme Court Civil Rules [SCCR] also apply, including R. 14-1(9) which provides that costs of a proceeding must be awarded to the successful party, unless the court otherwise orders. See also *Vieira* at para. 16, citing the oft-quoted general purposes of costs awards from *Giles v. Westminster Savings Credit Union*, 2010 BCCA 282 at para. 74.
- [23] Although a successful applicant for a committee order is usually awarded special costs from the estate, even an unsuccessful applicant may still be awarded his or her costs: *McCoy (Re)*, 2020 BCSC 2182 at paras. 6-7; *Swereda (Re)*, 2020 BCSC 701 paras. 42-44; *McCormack (Re)*, 2022 BCSC 1660 at paras. 10-11. Partial costs awards is also an option where an applicant has split success: *Wong (Re)*, 2023 BCSC 22 at paras. 25-26.
- [24] At para. 45 of *Swereda*, Justice Shergill distilled the *Vieira* considerations in terms of a successful applicant as follows:
- a) was the applicant successful or would the applicant have been successful;
 - b) was the application in the best interests of the patient;
 - c) was the application brought in good faith;
 - d) did or would the applicant have received a benefit from her appointment; and
 - e) does the estate have the ability to bear an order for costs.
- [25] I find that *Sevina* is entitled to her costs as special costs payable from the estate. It will be apparent from the RFJ that I found that she brought the application in good faith and toward the best interests of *Sharan*. It must be recalled, however, that the appropriateness of *Sevina* to act was not entirely without issue. There were issues of potential conflict that arose in relation to her, including in relation to her receipt of a substantial amount of money said to have been gifted to her by *Sharan*. I also found that *Sevina's* appointment would not provide her with a benefit, although that matter was ensured by the various restrictions that I granted in the order. At bottom, in the RFJ, I considered that *Sevina* was the better choice to be committee only versus *Rina*.
- [26] It appears that *Sevina's* legal costs are significant, about \$300,000 to May 2024. No doubt that high level of costs arises from *Sevina's* approach to the matter, as stated above. However, there is no need to proceed to a taxation of *Sevina's* costs. They can be considered on the passing of her accounts as committee, which will be addressed after the PGT has reviewed those accounts: *Marczak (Re)*, 2007 BCSC 684 at para. 4, citing *Royal Trust Corp. of Canada v. Clarke* (1989), 35 B.C.L.R. (2d) 82 at 90-91 (C.A.).

- [27] Finally, there is the matter of the status of the estate. At the time of the hearing before me, that matter was quite uncertain. At the time, the only income accruing to Sharan were modest amounts from government benefits, such as Canada Pension Plan and Old Age Security. That appears to be the case now.
- [28] Sevina seeks an order that her special costs be paid from the funds currently held in trust at Origin Law Group ("Origin"). I agree that large amounts of money have been secured in trust at Origin, however, it remained to be determined in the FLA Proceedings whether that money arose from family assets and if so, what share would be allocable to Sharan.
- [29] I have no information as to the legal status of the funds held at Origin and whether any withdrawals from those funds can be made. There are various parties to the FLA Proceedings, including Sharan's litigation guardian who was appointed in January 2024 and who is not involved in these proceedings. Sevina and Rina's father, Sadhu, consents to this payment from the Origin funds but that does not answer the question as to Sevina's entitlement to be paid from those funds.
- [30] I decline to grant any order that Sevina's costs be paid from the monies that are on hand at Origin. I presume that the disposition of those funds will be addressed in the context of the FLA Proceedings.

THE PGT'S COSTS

- [31] The PGT seeks its special costs of the proceedings, payable by the estate after assessment by the Registrar.
- [32] For reasons that are not clear to me, Sevina opposes any costs award in favour of the PGT. Specifically, she points to the PGT's initial response to oppose her petition. However, she seemingly forgets about the later nuances in the PGT's position in these unusual circumstances. She forgets about the fact that the PGT did not oppose a finding of incapacity at the hearing and that it took no position as to who should be appointed as committee if that appointment was made. Finally, Sevina ignores the fact that her petition sought in the alternative an appointment of the PGT as committee of Sharan's person and estate, which the PGT said was inappropriate and not desired from its point of view.
- [33] In the alternative, Sevina suggests that it was not necessary for the PGT to attend the entire 4-day hearing.
- [34] I disagree on both fronts. The PGT's involvement in the hearing was very helpful to the Court. As all counsel were aware, there were serious allegations by various family members against each other and, practically, all of them were in conflict positions, including Sevina. The PGT's involvement brought an independent perspective that was sorely missing between the parties.

- [35] Further, early into the hearing, I requested a draft form of order that was being sought by Sevina. I was then advised by Sevina and the PGT's counsel that they were working on a draft order to address the complexity of Sharan's circumstances and the family dynamics and to set out guardrails in terms of securing the possible substantial monies that may come into Sharan's possession and control.
- [36] A draft order was provided by Sevina's counsel on the third day of the hearing (January 25). Sevina now suggests that the PGT should have left the hearing at that time.
- [37] In fact, the drafting of the order continued after that time and it was only on the fourth/last day of the hearing (January 29) when the final draft order was presented to the Court. That was the same day that the PGT's counsel made his substantive submissions, after then having heard from both Sevina's counsel and Sharan/Rina's counsel, and after participating in the drafting process for the order over the course of the hearing.
- [38] The January 29, 2024 draft order was the one granted by the Court: RFJ at paras. 184-185.
- [39] I conclude that the PGT's involvement in this matter was invaluable in assisting the Court, particularly in identifying legal or other issues for consideration, and suggesting safeguards for Sharan's best interests, including in relation to Sevina. The PGT's involvement was necessary in that sense and it is wholly appropriate that the PGT recover its special costs, as is usually the case: Marczak at paras. 6, 8 12; Swereda at para. 86.

COSTS OF SLATER LAW CORPORATION

- [40] SLC claims that Sharan owes the law firm its legal fees arising from its representation of her in these proceedings, from October 10, 2023 to March 27, 2024.
- [41] The documentation filed by SLC in these two actions indicates that the law firm was acting as counsel for both Sharan and Rina. William Slater of SLC appeared as counsel for both of them at the January 2024 hearing dates (as indicated on the RFJ) and also, at the earlier applications leading to those hearing dates.
- [42] On May 9, 2024, Rina filed a notice of intention to act in person. As above, she has filed a response to Sevina's application and numerous affidavits. On June 5, 2024, SLC filed a notice of withdrawal as Sharan and Rina's counsel in both actions.
- [43] SLC's submissions are now that, at all times in these proceedings, SLC was acting for Sharan via Rina, in Rina's capacity as Sharan's Attorney and Health Representative (the RFJ at paras. 27, 33 and 35 refers to Rina's POAs and RA). SLC takes the position that the law firm was not at any time in these proceedings acting for Rina in her personal capacity. I acknowledge that, while this is certainly not the impression left with the Court during the January 2024 hearing, it may in fact have been the case given the retainer letter under which SLC was apparently acting and Mr. Slater's description of the course of that retainer.

- [44] In March 2024, SLC advised Sevina, as committee, that Sharan is liable to pay various legal fees pursuant to invoices issued to Sharan/Rina, totalling approximately \$50,000.
- [45] Sevina's response to SLC's request for payment was to challenge SLC's assertion that the firm was acting only for Sharan. Sevina argues that SLC was acting only for Rina personally which does not give rise to any liability on the part of Sharan's estate.
- [46] Indeed, consistent with her aggressive attitude toward Rina and her counsel, at one point, just days before this hearing, Sevina indicated that she would seek to impose the costs of the committee proceeding not just on Rina, but on SLC, arising from Mr. Slater's filing of Rina's response and affidavit.
- [47] Sevina further argues that Sharan was incapable of retaining and instructing counsel for the purposes of the committee proceedings, and that SLC was aware of that incapacity. That argument may be met, in part, by the fact that the powers of attorney executed by Sharan in favour of Rina are enduring ones, which means that they survive any later incapacity of Sharan: s. 14 of the Power of Attorney Act, R.S.B.C. 1996, c. 370. As I understand it, there may be issues in the FLA Proceedings or otherwise as to the validity of Rina's POAs executed in August 2022 and May 2023 and the RA executed in March 2023: RFJ at para. 37. Finally, Sevina argues that, if Rina was Sharan's litigation guardian, she did not file any consent as litigation guardian of Sharan in these proceedings pursuant to the SCCR, R. 20-2(7).
- [48] The above issues between SLC and Sevina, as committee, do not directly relate to the matter of what costs may be ordered as a result of these proceedings. Rather, it is an issue that arises directly between SLC and Sharan, whose estate is now represented by Sevina.
- [49] The only reason that the matter of SLC's legal fees are before me now is because Sevina's application seeks relief as against SLC, as follows:

Regarding costs of Sharan, an Order that [SLC] shall not recover any legal fees or disbursements in connection with its representation of Sharan. Alternatively, an Order that there be a reference to the Registrar to determine the legal fees to be paid to [SLC] in connection with its representation of Sharan, with direction.

- [50] The issues raised by Sevina regarding Sharan's ability to retain and instruct counsel (i.e., SLC) were not issues that arose in these committee proceedings, particularly as it now relates to the issue of what cost awards should be made at the end of those proceedings. To the point, Sevina's challenge to SLC's retainer by Sharan in the unusual and complex circumstances here, whether related to the POAs, RA or otherwise, is not an issue before me.
- [51] Certainly, Sharan's liability to pay SLC for legal fees incurred in these proceedings is not an issue that I would decide on this costs application so as to disentitle SLC from any recovery from the estate, as Sevina seeks. The circumstances are far different than those considered in Marczak at paras. 15-17.

- [52] As counsel for Sevina and SLC know, the usual procedure to confirm amounts that may be payable to a lawyer for legal fees is a taxation under the Legal Profession Act, S.B.C. 1998, c. 9 [LPA]: Seifred v. Arnold, 2021 BCSC 1418 at para. 8. In the ordinary course, a taxation of a lawyer's accounts will usually involve such issues as a determination of what legal services were provided, the basis upon which those services were provided and whether the claimed fees and disbursements are reasonable in the circumstances.
- [53] In her alternative argument, Sevina requests that this Court provide directions to the Registrar in respect of any such taxation. Her suggested directions include that I find that Sharan was incapable of instructing counsel in summer 2023. Sevina seeks other directions regarding the issues at a Registrar's hearing, similar to what was ordered in Seifred at para. 9 (i.e. relating to the value of legal services that were either desired or required by the incapable person).
- [54] There is no basis upon which I would make such a finding of incapacity on this costs application beyond what is already found in the RFJ, particularly given the issues concerning the nature of Rina's POA, as above.
- [55] In my view, there should be reference to the Registrar to consider SLC's legal accounts rendered to Sharan, and the Registrar should consider whatever issues arise in the taxation. However, I do not consider the more fundamental capacity issues or other factual issues now raised by Sevina as being within the purview of a taxation to be conducted by a Registrar under the LPA. I certainly did make a finding as to Sharan's capacity as of February 28, 2024 per the RFJ. However, I understand that various other capacity issues are yet to be determined in the FLA Proceeding.
- [56] I will leave it to the parties and SLC to sort out how the Registrar's hearing may proceed.
- [57] In conclusion, there is no basis upon which I would accede to Sevina's request that I disentitle SLC to any legal fees at this costs application. I also decline to provide any specific directions to the Registrar.
- [58] In my view, this aspect of Sevina's application was entirely unnecessary and resulted in SLC having to formally respond to the application and attend this 2-day hearing. It was abundantly clear that a taxation of SLC's fees was required if Sevina, as committee, opposed such payment on behalf of Sharan. Further, it was also clear that, if Sevina wished to raise other justiciable issues as relevant to Sharan's liability for SLC's legal fees, this costs application was not an appropriate forum to do so.
- [59] I order that SLC, as part of the taxation of its legal fees, may claim and recover its fees and disbursements for the legal work to respond to this application and attend this hearing. These costs are payable by the estate.

- [60] The matter of Sevina's decision to engage the issue of SLC's retainer on this costs application when it was not necessary or required is one that may be considered on a later passing of her accounts as committee.

COSTS RE RINA AND RAMANDEEP

- [61] For reasons that escape me, Sevina seeks orders that Rina and Ramandeep bear their own costs of these proceedings. In my view, this order is unnecessary.
- [62] Rina does not seek any costs award; neither does Ramandeep, who was the person who Rina proposed as an alternative committee. Since Rina was the unsuccessful party in these proceedings, that is understandable: Pellerin at para. 49. The parties refer to case authorities where costs were denied to an unsuccessful applicant: Sangha (Re), 2013 BCSC 1965 at paras. 114-117; Kirkwood (Re), 2016 BCSC 1250 at paras 12, 14-15.
- [63] The more substantive issue raised by Sevina is whether Rina should be ordered to pay any costs that may be recovered against the estate by Sevina and/or the PGT. Sevina's position is that Rina should pay all of Sevina's and the PGT's legal expenses in both proceedings and that only in the alternative should they be payable by Sharan's estate. Sevina also seeks an order that, if Sharan dies, and Rina has not paid those costs, any of Sevina's or the PGT's costs still payable by Rina should be deducted from any amount payable from Sharan's estate to Rina as a beneficiary or intestate heir.
- [64] Justice Francis in McCoy described circumstances where an unsuccessful party was deprived of a costs award:
- [8] where the court is not persuaded that a party, successful or unsuccessful, has acted with the best interests of the patient in mind because the party had improper motives, was seeking to advance their own interests, or otherwise failed to act in the best interests of the patient, a court will not hesitate to deprive a party of special costs from the estate. This can take the form of requiring parties to bear their own costs (Kirkwood (Re), 2016 BCSC 1250), ordering one party to pay party-and-party costs of another party (Sangha (Re), 2018 BCSC 54), or depriving a party of some portion of their costs from the estate (Vranic (Re), 2007 BCSC 1949).
- [65] The authorities establish that special costs can be awarded to punish and deter a litigant's behavior that is considered to be reprehensible conduct only if such conduct arises during the course of the proceedings: Smithies Holdings Inc. v. RCV Holdings Ltd., 2017 BCCA 177 at para.134; Pellerin at paras. 51-52.

- [66] in McCoy, Francis J. was met with a similar argument, where the successful applicant (then committee) sought an order that her special costs should be paid by the unsuccessful applicant. At paras. 9-12, the Court noted that such an award was extraordinary and without precedent under the PPA, absent a finding of reprehensible post-litigation conduct. Citing Pellerin, the Court in McCoy at para. 16 declined to extend the principle upon which a conduct-based special costs award might be made.
- [67] A similar application for the unsuccessful applicant to pay the successful applicant's special costs was also considered in McCormack. At paras. 4 and 18, Justice Hughes also described the relief as "exceptional". She considered various authorities, also cited by Sevina on this application, including Sangha and Klop (Re), 2021 BCSC 644.
- [68] In Sangha, the Court ordered that the successful applicants would receive the special costs from the estate. The Court found that the unsuccessful party was in breach of her fiduciary duty and that she had employed aggressive tactics in the litigation. Accordingly, that party did not receive her costs from the estate and she was ordered to pay the estate the patient's costs (not successful applicant's costs) at Scale B relating to certain aspects of the proceeding.
- [69] In Klop, the Court awarded ordinary costs of the successful applicants to be paid by the unsuccessful applicants. However, as was discussed in McCormack at paras. 24 and 36, it does not appear that other authorities, such as Pellerin and McCoy, were brought to the Court's attention.
- [70] More recently, an unsuccessful litigant in committee proceedings was ordered to pay the costs of other parties. In Kierans (Re), 2024 BCSC 181, the Court was addressing costs outcomes where the patient's assets were very modest (\$29,405), one of the Vieira considerations noted above. In that case, the unsuccessful applicant had brought numerous applications and was found not to have acted in the patient's best interests. The Court imposed a conduct-based costs order on that party to deny her any costs from the estate and to require her to pay the Scale B costs of the successful party and the PGT. In that respect, the costs order in Kierans was consistent with McCoy and McCormack in being grounded in a finding of reprehensible conduct and also apparently driven by the fact that the estate could not bear these costs.
- [71] Sevina referred to a final authority which she suggested justified an order that a committee litigant pay the special costs of the other parties. The only document before me is the order itself granted in Harvey v. Wolf (27 March 2012), Vancouver No. S105738 (B.C.S.C.). In the order, Justice Burnyeat replaced the committee of Irina Wolf who had been previously appointed (Kristina Harvey) and substituted others in Ms. Harvey's place (Sabrina Ball and the PGT). The order indicates that the costs of Ms. Ball and the PGT were to be paid as special costs from the estate and that Ms. Harvey was to reimburse the estate for those costs.

- [72] My first observation is that the issue addressed in Harvey was different than what was before me, namely a removal of a committee, not an appointment. Secondly, and unfortunately, without the benefit of Burnyeat J.'s reasons in Harvey, I do not see that this order stands as a precedent for the principle proposed by Sevina, namely to provide a basis for an award of special costs of successful parties to be paid by unsuccessful parties without a finding of reprehensible conduct.
- [73] After having considered all of the above authorities, I adopt the following statement in McCormack, following McCoy, that such a costs award, as sought by Sevina, requires a finding of reprehensible conduct:
- [25] The jurisprudence thus does not support award of special costs being made against an unsuccessful committee ship applicant based on a party having improper motives, absent reaching the threshold of reprehensible conduct sufficient to warrant a special costs order.
- [74] Sevina argues that an award of special costs against Rina is justified based on what she alleges is reprehensible litigation conduct that unnecessarily prolonged, complicated and increased the costs of these proceedings. In that respect, Sevina has meticulously mined the course of these proceedings for every alleged infraction on Rina's part, however minor, that she can muster - hence, comprising some 80 pages of the argument she submitted.
- [75] I do not intend to address the myriad allegations contained in Sevina's argument. Sevina's allegations can be grouped as follows:
- a) Breaches of court orders, including: the order of Justice Loo (November 14, 2023 regarding visitations); the order of Justice Elwood (November 29, 2023 in the FLA Proceedings regarding disclosure of police records); my orders of February 28, 2024 and March 1, 2024 (the police enforcement order); and, the order of Justice Basran (March 15, 2024 requiring Rina to produce documents) (the "Basran Order");
 - b) Material non-disclosure following the February 28, 2024 committee ship orders, misappropriation of assets by Rina and Rina's refusal to account, save by the tendering of false or misleading evidence in purported compliance with the Basran Order; and
 - c) Swearing of false or misleading evidence in relation to the committee ship issues;
 - d) Refusing to recognize weakness of her case and that Rina pursued a meritless claim;
 - e) Making the resolution of the issues far more difficult; and
 - f) Rina's motives.
- [76] In my view, with one exception discussed below, none of the above allegations has been established to the point where it might be considered reprehensible conduct on Rina's part in the overall context of this matter. In the alternative, in my view, if there is some substance to these numerous allegations, there is sufficient punishment to Rina by addressing that in her own entitlement to costs (which again is not sought by her).

- [77] In particular, the issue relating to the alleged breaches of pre-hearing orders was very much contested. I was not in a position to determine these substantial contested matters in the RFJ and that situation has not improved on this costs application. Further, the matter of Rina's disclosure and accounting to Sevina as committee, including under the Basran Order, is also a substantial matter of dispute in the evidence that I cannot resolve on this costs application. There is one post-hearing matter that I will address below concerning the compliance with my order of February 28, 2024.
- [78] Sevina's allegations as to Rina's actions in relation to the substantive issues addressed in the committee's applications are also without merit. The allegations that Rina swore false or misleading evidence relates to minor or inconsequential matters that were not even addressed in the RFJ. Sevina also argues that Rina refused or failed to provide material evidence. That is true and that matter was addressed in the RFJ (see for example, para. 147) and in part was the basis for preferring Sevina over Rina as committee. However, failure to provide material evidence does not necessarily mean that the party is guilty of reprehensible conduct.
- [79] The same comment applies to Sevina's argument that Rina advanced meritless claims or refused to recognize the weakness of her case and that she made the resolution of the issues more difficult. At the end of the day, Rina was unsuccessful. I also accept that her behavior toward the issues was, at times, questionable and concerning. However, all of the issues were hard fought and I did not consider that there was such an abject absence of an arguable point on Rina's part so as to attract a conduct-based special costs order: *Chesko v. Chesko Estate*, 2024 BCSC 757 at paras. 11-14, citing *Berthin v. British Columbia (Registrar of Land Titles)*, 2017 BCCA 181 at para. 53.
- [80] Finally, there is the matter of motives. Sevina refers to my discussion of Rina's motives at paras. 177, 180 and 182 of the RFJ where I raised questions concerning her motives, but did not make any definitive finding concerning those motives. Sevina conveniently disregards my comments at para. 181 of the RFJ where I discussed Rina's concerns regarding other family members (including Sevina) and also raised potential issues as to their motivations in the matter.
- [81] Simply put, I was skeptical of the motives of all family members concerned, including Rina and Sevina. In the result, I disagreed with Rina's approach to the matter, including her isolation of Sharan from other family members. However, I accepted that Rina did honestly hold the belief that her approach was in her mother's best interests, given the security concerns that appeared to be based on the past conflicts between family members.
- [82] I am also mindful of the caution noted by Francis J. in *McCoy* about the potential chilling effect of punitive costs awards in what are usually sensitive and highly charged family matters where family members have very different views as to how to care for a loved one. She said:

- [19] As I found in the reasons for judgment, at all times Ms. Lebedovich was acting in good faith, doing what she believed was in Mr. McCoy's best interests. It is exceedingly common in committeeship disputes for families and loved ones to have diametrically opposed views of the best interests of the patient. These views are often deeply felt. Where a party is acting in good faith and genuinely seeking to protect the best interests of the patient, with no personal interest or improper motive, it would be highly unusual for the court to make a punitive costs order against them. Doing so could discourage family members and others from coming forward to engage in this kind of protective litigation and could have a chilling effect that would leave incapable adults more vulnerable than they already are.
- [83] The above comment equally applies here to the disputes between Sevina, Rina and other members of the Jagpal family. With one exception, I do not find any basis for imposing a punitive costs award against Rina in the circumstances.
- [84] The exception that I have mentioned above relates to the post-order issues that arose when Rina refused to allow Sevina to have access to Sharan and to collect her in order to relocate Sharan to her home.
- [85] Paragraph 4(c) of my order dated February 28, 2024 (S236436) allowed Sevina to change Sharan's residency after advising and seeking the input of all of Sharan's children. When Sevina attended Rina's home on February 29, 2024, she was unable to access Sharan even with the involvement of the police. On March 1, 2024, Sevina appeared before me to obtain a police enforcement order to allow Sevina to remove Sharan from Rina's home and place her in her own home. On March 1, 2024, Sharan was secured by Sevina, but only after Rina attempted to drive away from her home with Sharan in tow but was chased by a private investigator and ultimately pulled over by the police.
- [86] Reprehensible conduct post-judgment may justify an award of special costs: *Zhong Tie Enterprise Inc. v. Topcorp Development Inc.*, 2024 BCSC 1016 at para. 28.
- [87] I find that Rina's behavior in relation to handing over Sharan to Sevina was reprehensible and is deserving of rebuke and censure. There is simply no basis upon which Rina should have withheld Sharan from Sevina after my February 28, 2024 order and then attempted to evade active efforts to relocate Sharan to Sevina's home, as Sevina was entitled to do. Accordingly, I order that Rina pay the estate for Sevina's legal costs relating to the enforcement of my order to secure Sharan herself, including obtaining the police enforcement order of March 1, 2024. These costs will be payable on a special costs basis.

COSTS OF THESE APPLICATIONS

- [88] Sevina also seeks her costs of these applications, on a special costs basis or alternatively, as ordinary costs.

- [89] As I discussed at the outset of these reasons, in my view Sevina's approach to these costs applications has been overreaching and, to a degree, unsuccessful in relation to the PGT, SLC, Rina (with the exception of the enforcement of my February 28, 2024 order) and Ramandeep. There is no reason why the estate should bear any costs in that respect.
- [90] In the circumstances, I decline to order that Sevina recover any legal costs for one-half of the total costs of this hearing. She will be entitled to add only one-half of these costs to the overall amounts to be paid from the estate to her for her special costs, as ordered above.
- [91] The PGT will recover its special costs of attending these applications as part of its entitlement, as above.
- [92] I also order that SLC, as part of the taxation of its legal fees, may claim and recover its fees and disbursements for the legal work to respond to this application and attend this hearing. These costs are payable by the estate notwithstanding the results of any taxation of the other costs claimed by SLC.

CONCLUSION / ORDERS

- [93] In conclusion, the following orders are granted:
- a) Sevina is entitled to her special costs of these proceedings to be paid from the estate;
 - b) The PGT is entitled to its special costs of these proceedings to be paid from the estate, to be assessed by the Registrar;
 - c) Sevina's application for costs against Rina to pay the costs in (a) and (b) above is dismissed, save and except that Rina will pay the estate the special costs of Sevina relating to the post-February 28, 2024 efforts to secure Sharan in order to relocate her to Sevina's home;
 - d) Sevina's applications that Rina and Ramandeep bear their own costs are dismissed;
 - e) Sevina's applications in relation to SLC are dismissed. I grant an order that there be a reference to the Registrar to determine the legal fees to be paid to SLC based on its representation of Sharan; and
 - f) The costs of these applications is as set out above.

"Fitzpatrick J."

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