

CANADA / JUDGMENT

Javaheri v. Heidari

2020 BCSC 1366

COURT

Supreme Court of British Columbia

DECIDED

25 September 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1366 Javaheri v. Heidari

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Javaheri v. Heidari,

2020 BCSC 1366

Date: 20200925

Docket: E180584

Registry: Vancouver

Between:

Setareh Javaheri

Claimant

And

Mahdi Heidari

Respondent

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment on Costs

Counsel for the Claimant:

J.C. Fiddes

Counsel for the Respondent:

M. Guy

Written Submissions of the Respondent Received:

June 18, 2020

Written Submissions of the Claimant Received:

June 26, 2020

Place and Date of Judgment:

Vancouver, B.C.

September 25, 2020

- [1] By way of Reasons for Judgment issued June 3, 2020, indexed at 2020 BCSC 816 (the "Trial Reasons"), I dismissed the claimant Ms. Javaheri's Family Law Act (S.B.C. 2011, c. 25) [FLA], claims for spousal support and division of property. My decision turned on the threshold issue of whether the duration and continuity of the parties' relationship was sufficient for them to be considered spouses under the FLA. I made no finding as to whether the parties' relationship ever reached the point of being "marriage-like". I did find that the parties began co-habiting no earlier than October 28, 2015, but I found that if the parties' relationship did ever reach the point of being marriage-like, Ms. Javaheri did not discharge her burden of proving that it was still in that state two full years later. I further found that the parties had ceased co-habiting for a period of two months or more, in the spring and summer of 2017, and that therefore, even if there had been any marriage-like relationship, that relationship could not have been continuous over the course of any two-year period.
- [2] Ms. Javaheri commenced this action in March 2018. She had counsel up until July 2019, when she filed a notice of intention to act in person. She was self-represented for the first 11 days of trial, up to September 18, 2019, when proceedings were adjourned due to insufficient court time having been booked. (See the reasons for judgment on the respondent's application to cancel a certificate of pending litigation, and for security for costs, indexed at 2019 BCSC 1682 (the "Interlocutory Reasons"), wherein I commented on the impact the claimant's disorganization, and her failure to follow my directions concerning the questioning of witnesses, had on the length of trial.) She retained new counsel when trial resumed in December 2019. Written closing submissions were exchanged in January and February 2020.
- [3] In dismissing the claim, I granted the respondent, Mr. Heidari, leave to make submissions as to costs. Mr. Heidari claims costs, and seeks an order that his costs be assessed as special costs; or alternatively, that he be granted double costs of steps taken after delivery of a settlement offer on January 31, 2019. The respondent also asks that I fix the amount of costs.

Ordinary Costs

- [4] Counsel for the claimant concedes that the respondent is entitled to ordinary costs, to be assessed under Appendix B to the Supreme Court Family Rules.

Special Costs

- [5] Rule 16-1(1) preserves the Court's discretionary power to order that costs in a family law case be assessed as special costs. Special costs are a punitive measure, awarded when the Court seeks to disassociate itself from some misconduct: *Fullerton v. Matsqui* (District) (1992), 74 B.C.L.R. (2d) 311 (C.A.). They are "generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties": *Young v. Young*, [1993] 4 S.C.R. 3 at 134. "Reprehensible" conduct may include "milder forms of misconduct. It means simply 'deserving of reproof or rebuke'": *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 119 D.L.R. (4th) 740 (C.A.) at para. 14.
- [6] In *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352, Madam Justice Gropper undertook a reconciliation of this Court's jurisprudence on the test of reprehensibility. She said, at para. 73:
- [73] I have undertaken a thorough review of the cases involving special costs. Having examined the authorities provided by both sides, it is apparent to me that the courts have been somewhat inconsistent in their determination of what amounts to reprehensible conduct and that those authorities must be reconciled. Based upon my review of the authorities, I have derived the following principles for awarding special costs:
- a) the court must exercise restraint in awarding special costs;
 - b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
 - c) simply because the legal concept of "reprehensibility" captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;
 - d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;
 - e) special costs can be ordered against parties and non-parties alike; and
 - f) the successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs are not awarded to a successful party as a "bonus" or further compensation for that success.

I adopt these principles, and add only that in family law cases, where emotions can run high, the need for restraint is increased.

- [7] In the present case, the respondent submits that special costs are warranted due to the combination of the claimant's dishonesty in testifying; her dilatory document production; her disorganization at trial; and economic hardship suffered by the respondent due to the claimant having filed a Certificate of Pending Litigation against lands he intended to develop.
- [8] The most problematic of these factors is the claimant's testimony. In the Trial Reasons I commented negatively on the claimant's credibility, and found some of her evidence contrived. However, in the absence of overt conduct intended to mislead the Court, dishonest testimony alone will generally not be sufficient to lead to special costs: *Gill v. Bassi*, 2016 BCSC 754 at paras. 13-15; *Jin v. Cheng*, 2019 BCSC 148 at para. 54.
- [9] The cases relied on by the respondent in claiming special costs are readily distinguishable from the present case. In *Yao v. Li*, 2013 BCSC 1314; *Kim v. Hong*, 2013 BCSC 2248; and *Strafford v. King*, 2015 BCSC 1842, the parties against whom special costs were ordered had repeatedly failed to comply with court orders. In *Bruce v. Vaughan*, 2014 BCSC 2249, the respondent was ordered to pay special costs because he, among other things, contrived and tampered with evidence to mislead the court. In *Hu v. Dickson*, 2015 BCSC 218, the husband failed to disclose financial documents in a timely manner. When he finally did so, they were incomprehensible and nonsensical, and found to be an attempt to mislead the claimant and the court. In *Isacson v. Isacson*, 2015 BCSC 736, the husband failed to provide full and timely disclosure, swore false affidavits, provided false and misleading evidence, and engaged in intimidation tactics. None of this misconduct, other than failing to provide timely disclosure, is alleged against Ms. Javaheri.
- [10] The deficiencies in the manner in which Ms. Javaheri conducted her case were not exceptional. The factors cited by the respondent, even if taken as a whole, do not rise to the level of reprehensibility. I find no justification for an award of special costs.

Double Costs

- [11] By way of a letter from the respondent's counsel to the claimant's then counsel dated January 31, 2019, the respondent offered to pay the claimant \$15,000 in settlement of all matters between them.
- [12] Under Rule 11-1(5)(b), a court may award double costs of all or some of the steps taken after the date of delivery of an offer to settle. Rule 11-1(6) provides that in making such an order, the court may consider whether the offer was one that reasonably ought to have been accepted; the relationship between the offer and the outcome; and the relative financial circumstances of the parties.
- [13] Taking these in reverse order, while the respondent is a man of some substantial means, the claimant's financial circumstances are more obscure; she testified at the trial that she had not worked as a real estate agent since the parties' separation, but as I noted in the Interlocutory Reasons I was far from satisfied that the claimant's financial statement

presented a true picture of her assets, and there was evidence of large sums of money flowing through the claimant's bank accounts for reasons not adequately explained or documented. The offer would have put the claimant in a better financial position than she obtained at trial. Unquestionably, given the frailties of the claimant's case, the offer was one that ought to have been accepted.

- [14] The claimant's counsel submits that awarding the respondent double costs, in particular for the extra trial days necessitated by her disorganization, would be to penalize the claimant for her naivete in legal matters. There are two answers to that point. The first is that throughout the first nine days of trial I repeatedly attempted to provide guidance to the claimant as to how to present her evidence efficiently, and she repeatedly ignored my directions. The second is that by conducting the trial herself, the claimant no doubt saved herself considerable legal fees; the cost of the resulting inefficiencies should not be borne by the respondent.
- [15] I award the respondent double costs in respect of all steps taken after January 31, 2019.

Fixed Costs

- [16] The Court's power to award costs in a fixed lump sum, rather than to have costs assessed by the Registrar, is granted by SCFR Rule 16-1(1)(c). I agree with the respondent's counsel that given the amount of judicial resources already devoted to this unsuccessful claim, this is an appropriate case for the exercise of that discretionary power.
- [17] As stated by Mr. Justice Goepel in *Herbison v. Canada (Attorney General)*, 2014 BCCA 461, at para. 31, costs cannot be assessed in a vacuum, and a litigant claiming party and party costs will normally provide an affidavit attaching a draft bill of costs. The respondent has filed an affidavit of his counsel's office manager, confirming that the respondent has paid \$129,911.50 in legal fees and disbursements of \$6,018.46. The affidavit describes the steps taken following delivery of the offer to settle. A draft bill of costs, without a supporting affidavit, was also submitted; it sets out a claim for ordinary costs of \$52,000, but does not differentiate between claimed items undertaken before and after the offer to settle. The draft bill itemizes a slightly higher amount of disbursements, \$6,046.92. The affidavit sets out no explanation or justification for any of the disbursements claimed.
- [18] The written submissions of the respondent's counsel asserts that double costs after January 31, 2019 would result in additional costs of \$43,000. The claimant's counsel's written submissions set out a calculation of the items for which double costs would be allowed - two examinations for discovery, two contested applications, a trial management conference, and 14 days of trial - but calculates the double costs increment at \$49,500. The correct amount of the double costs increment for those items is \$41,500.

[19] The respondent will be allowed his ordinary costs of \$52,000 and double costs of \$41,500. Given the lack of affidavit evidence justifying the disbursements, I reduce the disbursements claim by \$500 from the amount set out in the affidavit, to \$5,518.46. I therefore fix the respondent's costs at \$99,018.46.

"A. Saunders J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/13/2020BCSC1366.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/javaheri-v-heidari-2020>

Prepared on 29 October 2026 · Esheria