

CANADA / JUDGMENT

Jourabchi v. Masbough

2025 BCSC 70

COURT

Supreme Court of British Columbia

DECIDED

17 January 2025

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2025 BCSC 70 Jourabchi v. Masbough

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jourabchi v. Masbough,

2025 BCSC 70

Date: 20250117

Docket: E220775

Registry: Vancouver

Between:

Parisa Jourabchi

Claimant

And:

Arash Masbough

Respondent

Before: The Honourable Justice Hori

Reasons for Judgment on Costs

Counsel for Claimant:

J. Dubas

Counsel for Respondent:

M. Zimmerman

Place and Date of Trial:

Vancouver, B.C.

January 8-12, 15-17

and March 11-14, 2024

Place and Date of Judgment:

Vancouver, B.C.

January 17, 2025

Introduction

- [1] On October 3, 2024, I issued reasons for judgment in this family law case after 12 days of trial. The trial commenced on January 8, 2024, but the parties did not complete the trial in the allotted time. The trial recommenced on March 11, 2024, and concluded on March 14, 2024.
- [2] At the conclusion of my reasons for judgment I provided the parties with my preliminary views on the issue of costs. However, I granted the parties leave to make written submissions on costs if they could not agree. The parties could not agree on costs so they have filed written submissions. These are my reasons on the issue of costs.

Preliminary Matters

- [3] The written submissions on costs filed by the parties are lengthy. Between the claimant and the respondent, their submissions are 98 pages in length. In addition, the respondent has filed an affidavit sworn by his counsel's legal assistant that is 180 pages long and is more advocacy than a recitation of facts.
- [4] This response to my invitation to file written costs submissions is indicative of not only the way in which the parties conducted this case, but is a trend that is becoming common place in family law litigation. There is a growing trend to barrage the court with volumes of documents that have no impact on the decisions that the parties seek from the court.
- [5] In the course of this trial, the parties presented me with over 11 binders of documents and no clear path to match documents with the issues. Only after investing a significant amount of time reviewing the documents did I discover that the vast majority of the documents presented at the trial were not helpful to me in deciding the issues.
- [6] In addition, during the course of the trial, the parties continued to produce documents, some of which had not been previously disclosed. This, of course, added to the trial time. Some of the documents the parties' sought to introduce during the trial were copies of pages taken from the internet without any verification as to authenticity, accuracy or reliability.

- [7] The parties also presented written reports prepared by accountants purporting to be the opinions of experts. The claimant's accountant sought to establish the value of corporate shares held by the respondent. However, the valuation of the shares did not require any expert analysis because the value was simply the value of the shares set by the company.
- [8] In fairness to the claimant's accountant, he did provide an opinion on whether a disposition of the corporate shares would attract capital gains tax. However, admissions made by the respondent during the trial significantly diminished the necessity for the tax opinion. Had the respondent made those admissions in advance of the trial, the need for the opinions of the claimant's accountant may have been avoided.
- [9] The respondent also retained an accountant to give an opinion on the average earnings of a person employed in a field for which the claimant was qualified. However, the respondent's expert simply restated the data available from Statistics Canada.
- [10] During the trial, I found that the evidence of the respondent's expert did not meet the requirements for admissibility set out in *R. v. Mohan*, [1994] 2 S.C.R. 9. The expert did not apply any special expertise to the Statistics Canada data. Therefore, his evidence was not admissible as opinion evidence. As a result, I excluded the evidence as unnecessary.
- [11] At the conclusion of the trial, the parties left me with volumes of documents and days of testimony with no clear explanation as to how the documents, the testimony and the law combined to reach the conclusions that the parties wished me to make.
- [12] If the court is to provide reasoned decisions in a timely way, more effort needs to be made by the parties to streamline the trial. It requires more communication between counsel. It requires more cooperation between counsel to narrow the issues, to understand their case and the opposing case and to eliminate the tendering of volumes of documents that largely do not impact on the final results.

Issues Decided at Trial

- [13] After the trial of this action, I disposed of the issues as follows:
- a) The claimant did not establish a claim for excluded property;
 - b) The respondent's payment to his sister was a disposition of family property for which the respondent was required to account;
 - c) The proceeds from the sale of the former family home were divided equally;
 - d) The respondent's shares in his employer's company ("Ashco") were valued at \$475,323, which was divided equally with the respondent retaining all of his shares but making an equalization payment of 50% to the claimant;
 - e) The disposition of the Ashco shares by the respondent will not have tax consequences for the respondent so I made no adjustment for taxes on the valuation of the Ashco shares;

- f) The Ashco shares held by the claimant were sold for \$50,660 of which the respondent received half;
- g) I valued each of the various investments and bank accounts held by the parties and divided them equally between them;
- h) The claimant was not responsible for any part of the respondent's income tax liability for the year of separation;
- i) I determined the incomes of the parties for the purposes of child support and spousal support;
- j) I did not impute an income to the claimant based on the income that she could have generated by investing the payment she received from the respondent for her interest in his Ashco shares;
- k) The respondent's income should only include the income from 50% of his Ashco shares after he pays 50% of the value of those shares to the claimant;
- l) The claimant was entitled to spousal support;
- m) The respondent was required to pay child support and spousal support from the date of separation; and
- n) I established the amount of child support and spousal support payable by the respondent in each year since the separation.

Analysis

- [14] Rule 16-1(7) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules] provides that "costs of a family law case must be awarded to the successful party unless the court otherwise orders".
- [15] A successful party in litigation is the party who has achieved substantial success in the action: *Marquez v. Zapiola*, 2014 BCCA 35 at para. 16.
- [16] In the context of a civil litigation case, the successful party is, at its most basic level, the plaintiff who establishes liability and obtains a remedy or the defendant who obtains a dismissal of the plaintiff's case: *Litt v. Gill*, 2016 BCCA 288 at para. 53; *Loft v. Nat*, 2014 BCCA 108 at para. 46. As the Court stated in *Loft*, at para. 47, "[t]he fact that [the plaintiff] obtained a judgment in an amount less than the amount sought is not, by itself, a proper reason for depriving him of costs: 3464920 Canada Inc. v. Strother, 2010 BCCA 328, 320 D.L.R. (4th) 637".

- [17] In *Litt*, at para. 53, the Court recognized that this general principle is more difficult to apply in the context of a family law case where there may be numerous issues and divided success. However, where the result is dependant on a threshold issue and the remedy is, for the most part, measured in financial terms, the costs principle from *Loft* may be applicable to assess whether a party achieved substantial success.
- [18] In this case, there was no threshold issue on which the overall result of the case depended. There were a number of issues that were independent of each other and many of the main issues required the resolution of sub-issues. The claimant was successful on some of those issues and the respondent achieved success on others. In that sense there was divided success.
- [19] In the context of this case and the issues presented to the court for determination, I find that the appropriate order for costs is that each party bear their own costs of the action because:
- a) There was divided success;
 - b) It is not possible to conclude that one party was substantially successful over the other given the number and complexity of the issues;
 - c) An order of costs in favour of one party will upset the balance that I sought to achieve in deciding the financial issues; and
 - d) The conduct of both parties has unnecessarily lengthened the process.
- [20] There were three settlement offers made by the respondent and one offer made by the claimant. These offers are outlined in the respondent's submissions on costs and the respondent appears to place great significance on his final offer to settle. However, in my view, the reliance on the offer to settle is misplaced in that the respondent does not seek any remedy as a result of the claimant's failure to accept the offer.
- [21] The delivery of an offer to settle is relevant to the costs issue only where a party seeks a remedy pursuant to Rule 11-1(5). The respondent does not seek to engage Rule 11-1(5) in that he seeks to recover costs assessed as though the case involved ordinary difficulty. Therefore, I will not embark upon an assessment of whether any of those offers ought to have been accepted.
- [22] The respondent also suggests that the claimant has been dilatory in preparing orders of the court for filing and in paying costs awarded to him in previous orders. I have not placed any significance on these allegations for the following reasons:
- a) There is no allegation that the delay in preparing orders was prejudicial to the respondent;
 - b) There appears to be some disagreement between the parties about the terms of the order arising from my reasons for judgment;

- c) The costs awards which the respondent alleges remain unpaid were not payable forthwith and are subject to Rule 16-1(10) which provides that unless the court orders otherwise, costs awarded to a party are payable on the conclusion of the family law case.

[23] Accordingly, there will be no order as to costs for the action. This costs order is subject to any orders for costs associated with interim orders that the court has already made.

"D.K. Hori J."

HORI J.

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