

CANADA / JUDGMENT

K.S.P. v. J.T.P.

2025 BCSC 2181

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2181 K.S.P. v. J.T.P

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.S.P. v. J.T.P.,

2025 BCSC 2181

Date: 20251104

Docket: E162647

Registry: Vancouver

Between:

K.S.P. aka K.S.

Claimant

And

J.T.P.

Respondent

Before: The Honourable Chief Justice Skolrood

Reasons for Judgment

Counsel for the claimant:

A. Ouellet

The Respondent, J.T.P.:

In Person

Place and Date of Hearing:

Vancouver, B.C.

August 20 and 21, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 4, 2025

Introduction

- [1] On July 11, 2023, Justice MacNaughton, then of this Court, issued a Final Order (the "Final Order") in this contentious family law proceeding. As part of the Final Order, Justice MacNaughton granted the claimant her costs payable by the respondent, however she granted the parties liberty to appear before her to address the scale of costs.
- [2] In keeping with the terms of the Final Order, the claimant now seeks an order for special costs, albeit with some modifications that I will address below. She also seeks certain orders dealing with the sale of a property, referred to as the "Orlohma Place Property". The Final Order included a term that the Orlohma Place Property be sold forthwith, but that has not occurred.
- [3] Justice MacNaughton was translated to the Court of Appeal in March 2025. I then seized myself of this matter, including any issues arising out of the Final Order.
- [4] During the hearing of these matters, the respondent raised the spectre of a possible conflict on my part, due to the fact that while a member of the Court of Appeal, I sat on a division that heard a review application brought by the respondent in connection with his appeal in this proceeding.
- [5] The respondent did not apply to have me recuse myself and, in any event, I am satisfied that there is no basis for me to do so, keeping in mind the well-established principles governing recusal: see e.g., *Pereira v. Dexterra Group Inc.*, 2023 BCCA 201 at paras. 10-14.

Background

- [6] I do not propose to go into the background of this matter in any detail. The facts are canvassed in Justice MacNaughton's extensive reasons for judgment, indexed at 2023 BCSC 1188 (the "RFJ"), which span 701 paragraphs over 177 pages. The respondent's appeal was dismissed by the Court of Appeal in reasons indexed at 2025 BCCA 112 (the "CA Reasons").
- [7] The parties were also involved in a lengthy civil proceeding. The reasons for judgment of Justice Fleming, then of this Court (2021 BCSC 2209), and of the Court of Appeal, dismissing the respondent's appeal on all but a narrow ground related to costs (2023 BCCA 334), provide additional useful background and context.

- [8] I therefore will highlight only those facts necessary to decide the issues before me.
- [9] One other point to note at the outset. The respondent did not adduce any additional evidence in affidavit form for this hearing. At the commencement of the hearing, he applied for an adjournment, which I denied. During the hearing, I permitted the respondent to be sworn in and to provide vive voce evidence, which largely addressed his attachment to the Orlohma Place Property and the importance of maintaining it for the benefit of the parties' children.

Sale of the Orlohma Place Property

- [10] As noted, the Final Order required that the Orlohma Place Property be sold. The specific term of the Final Order stated:
34. The Orlohma Place Property shall forthwith be listed for sale and remain listed for sale until sold upon terms similar in nature to those put in place for the sale of the Anne MacDonald Way Property. If the parties cannot agree on terms, they have leave to reappear before the Honourable Justice MacNaughton.
- [11] The Anne MacDonald Way Property was another property included in the parties' family property that had also been ordered to be sold.
- [12] Of note, in her reasons (at para. 473), Justice MacNaughton referred to the respondent's stated interest in purchasing the claimant's interest in the Orlohma Place Property, however she thought it unlikely that he would be able to do so given his financial situation, including the impacts of the family litigation. She therefore denied the respondent a right of first refusal in the sales process.
- [13] Since the date of the Final Order, there has been extensive communication between the parties about the sale of the Orlohma Place Property but, as noted, two plus years after the date of the Order, it remains unsold. One of the key impediments has been the fact that the respondent resides in the Orlohma Place Property and has continued to express the desire to purchase it, although he has taken minimal steps to effect this desire.
- [14] That said, in July of this year, the respondent contacted counsel for the claimant indicating that he had invited a realtor, Mr. Jarvis, to view the Orlohma Place Property with a view to determining a price at which the respondent would offer to purchase the claimant's interest in the property. Mr. Jarvis was the realtor who acted on the sale of the Anne MacDonald Way Property.
- [15] At the hearing before me, the respondent took the position that in fact, the parties should solicit proposals from three different realtors, which is consistent with the process used to sell Anne MacDonald Way. He maintains that, regardless of the process implemented, he intends to make an offer to purchase the Orlohma Place Property. He insists the parties can cooperate in a process that will both permit him that opportunity and will maximize the available purchase price.

- [16] The claimant seeks sole conduct of sale and a number of ancillary orders to facilitate a timely sale. The ancillary orders include an order that the respondent vacate the property, so that he will not be able to impede the listing, viewing and sales process.
- [17] In *Etemadi v. Maali*, 2021 BCCA 298, Justice Butler (dissenting but not on this issue) discussed the principles governing an application for sole conduct of sale:
- [102] In *Dhillon v. Khumar*, 2014 BCSC 2366, Master Keighley set out considerations relevant to orders for conduct of sale in family litigation:
- [34] As to whether the claimant should be given sole conduct of sale, while there is no singular test for granting sole conduct of sale, the Court should consider all factors including the willingness of a party to facilitate sale, the inability of the parties to agree on routine aspects of sale and the inability of the parties to cooperate: *McLachlan v. McLachlan*, 2013 BCSC 1733.

[Emphasis added.]

- [103] These considerations have been applied in many cases. In *Dosanjh v. Lalli*, 2021 BCCA 204, this Court set aside the approval of a non-arm's length sale to the respondent's parents and granted an order for joint conduct of sale. Justice Dickson made the order for joint conduct, with liberty to apply for directions and such further orders as may be necessary, because the evidence failed to establish that the parties could not cooperate with one another in connection with the court-ordered sale, particularly with the assistance of professional advisors: at para. 40.
- [104] Trial courts frequently make orders for sale of property jointly held by spouses in acrimonious family disputes. Usually courts grant orders for joint conduct of sale because both parties have a profound interest in the terms of any sale. This is so even where there is evidence that the parties have difficulty in cooperating. For example, in *McClaughry v. McClaughry*, 2009 BCSC 501, at paras. 41-43, the court granted joint conduct of sale despite the husband's position that the sale could not proceed in an orderly fashion if a joint conduct order was made because the wife would not cooperate and would "take steps to block any timely sale". In *Kubas v. Kubas*, 2017 BCSC 81, at para. 81, the court ordered joint conduct of sale over the wife's objection. The judge noted that the husband's lack of cooperation related to separate issues of document disclosure, not the sale of property, and that he should be given the opportunity to cooperate in joint conduct of sale. Similarly, in *Stewar[t] v. Sanddar Estate*, 2020 BCSC 1898, at paras. 15-18, although not a family case, the court-ordered joint conduct of sale despite the petitioner's allegations that the parties could not cooperate.

...

- [106] . . . It is usual to give spouses in family litigation the opportunity to work together, through an order for joint conduct of sale, and only if they are unable to do so, to grant sole conduct to one party on specific terms: see, e.g., *McClaghry* at para. 43; *Kubas* at para. 81; *Dosanjh* at para. 40.
- [18] In my view, the history of this litigation demonstrates a prolonged inability of the parties to cooperate on any matters, including the sale of the property, and further, a clear unwillingness on the part of the respondent to facilitate the sale. It is particularly telling that Justice MacNaughton ordered the sale over two years ago and no meaningful steps have been taken to comply with that order.
- [19] Thus, this is an appropriate case in which to grant sole conduct of sale to the claimant, subject to the terms I will outline below.
- [20] Despite the respondent's proposal at the hearing that the parties solicit proposals from three realtors, I am satisfied that Mr. Jarvis should be retained, assuming he is willing to do so. As noted, he handled the sale of the Anne MacDonald Way Property and he was put forward by the respondent to assist in the sale of the Orlohma Place Property. In my view, there is no reason to further prolong the sale process by soliciting proposals for other realtors, given that it has been demonstrated that Mr. Jarvis is acceptable to both parties.
- [21] As noted, the claimant seeks an order that the respondent vacate the Orlohma Place Property within 30 days and a further order enjoining him from attending the property except with leave of the Court.
- [22] In my view, an order requiring the respondent to vacate the property is unnecessary in the circumstances, particularly taking into account the fact that the respondent currently resides in the property. The claimant's not unfounded concern about the respondent interfering in the sales process can be addressed through suitable terms.
- [23] Another issue that arose at the hearing was whether the respondent will be permitted to submit an offer to purchase the property. The claimant did not strenuously oppose his right to do so, although noted that he has had ample opportunity to make such an offer.
- [24] Given the respondent's desire to maintain the property for the benefit of the children when they visit, it is only reasonable that he be permitted to make an offer to purchase. To be clear, his right to do so does not amount to a right of first refusal. Rather, his offer will be evaluated alongside any other offers received in order to ensure maximum realization on the sale.
- [25] The claimant is therefore granted sole conduct of sale on the following terms:
- a) Dan Jarvis of Royal LePage Sussex (the "Realtor") will be appointed to list the Orlohma Place Property;

- b) Both parties shall forthwith sign a Multiple Listing Contract listing the Orlohma Place Property for sale with the Realtor as the listing agent. If the respondent refuses to sign the listing contract, or unduly delays in doing so, the claimant may apply to the Court for an order dispensing with the respondent's signature;
 - c) The list price will be set by the Realtor in consultation with the claimant;
 - d) The respondent will be given 24 hours' notice of any showings or open houses, and he will vacate the property for the duration of such showings or open houses. Further, the respondent will not send anyone, including family members, friends or agents, to attend the showings and/or open houses on his behalf;
 - e) The claimant shall be entitled to facilitate any repairs, maintenance, staging and/or improvements as recommended by the Realtor at her discretion and if she chooses to do so, she shall be reimbursed from the sale proceeds prior to the sale proceeds being disbursed against the parties' respective interests;
 - f) The claimant will have full authority to accept a sale and to enter into a Contract of Purchase and Sale, however any sale is subject to Court approval. The claimant may apply to the Court for approval of any sale on 48 hours' notice to the respondent;
 - g) The respondent is entitled to submit an offer to purchase the Orlohma Place Property; and
 - h) The Realtor will communicate with the respondent in writing by email and provide copies of all offers to purchase and a copy of the final Contract of Purchase and Sale to the respondent but the respondent will not be required to approve any offers or sign the Contract of Purchase and Sale.
- [26] The Final Order contained terms (paras. 35-37) directing how the proceeds from the sale of the Anne MacDonald Way Property and the Orlohma Place Property were to be distributed. Some of those terms have been satisfied by the sale of Anne MacDonald Way and the distribution of those sale proceeds, however certain of the terms continue to apply to the sale of the Orlohma Place Property. In addition, a number of matters have arisen since the date of the Final Order that need to be factored in. Some of those matters are yet to be finalized, for example various costs orders.
- [27] In the circumstances, rather than make an order at this time as to the pay out of all of the sale proceeds, it makes sense to direct payment of the "usual" costs associated with the sale of a property, plus other registered encumbrances, with the balance to be held in trust by the claimant's counsel subject to further directions following the completion of the sale.
- [28] The additional encumbrances reflect amounts that the respondent owes the claimant pursuant to various Court orders. They include:
- a) \$8,868.82 (BCCA costs January 9, 2024);
 - b) \$4,507.20 (BCSC costs October 8, 2024);

- c) \$110,966.15 (BCSC Scale B trial costs);
- d) \$58,640.52 (Post-judgment interest on civil damages award).

[29] These payments, when made, will be credited against the respondent's ultimate share of the proceeds from the sale of the Orlohma Place Property.

[30] Accordingly, the proceeds from the sale of the property will be distributed as follows:

- a) Payment of the existing Toronto Dominion Line of Credit registered against the property;
- b) Payment of all real estate commissions and other ordinary disbursements, adjustments and/or fees related to the sale;
- c) Reimbursement of the claimant of any additional costs incurred in connection with the sale, for example staging, repairs etc.;
- d) Payment of the additional registered encumbrances set out above.

[31] The balance of the sales proceeds will be paid into the trust account of the claimant's counsel pending further directions from the Court.

[32] One additional point to note. The claimant also seeks an order requiring the respondent to pay occupational rent for the period that he has continued to live in the Orlohma Place Property. I decline to make such an award, in that there has not been an application brought for such an order and it goes beyond the intended scope of the hearing, which was scheduled to set the terms of the sale of the Orlohma Place Property and deal with costs.

Costs

Is the Claimant Entitled to Special Costs?

[33] As noted at the outset, the claimant seeks an order for special costs, although she proposes a modified order of 75% of special costs fixed as a lump sum by the Court on this application. The claimant values her costs assessed on this basis at \$750,000 inclusive of tax and disbursements.

[34] The respondent opposes the order for special costs and takes the position that the Court cannot fix the amount on a lump sum basis and thereby deprive him of the opportunity to have the costs reviewed by the Registrar.

[35] I will first address the issue of whether the claimant has established an entitlement to special costs.

[36] The principles governing the award of special costs are well-established. In the oft-cited decision in *Garcia v. Crestbrook Forest Industries Ltd.*, 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (C.A.), the Court of Appeal held that the standard for awarding special costs is that the conduct in question must be categorized as "reprehensible", which can encompass scandalous or outrageous conduct as well as milder forms of misconduct deserving of

rebuke (at para. 17). See as well: *Smithies Holdings Inc. v. RCV Holdings Ltd*, 2017 BCCA 177; *Bulla v. Clark*, 2023 BCSC 1673; *P.M.Z. v. D.J.T.*, 2023 BCSC 1444; and *Hu v. Dickson*, 2015 BCSC 218.

[37] The claimant submits that this standard has clearly been met in this case. She relies on a number of findings made by Justice MacNaughton concerning the respondent's conduct:

- a) Justice MacNaughton made extensive findings concerning the respondent's conduct, both in and out of court, that severely undermined his credibility, leading Justice MacNaughton to make the blunt statement that "I do not find [the respondent] to be a credible witness" (RFJ at paras. 193-275);
- b) The respondent "repeatedly breached court orders", including orders concerning child support and the allocation of parenting responsibilities, and refused to accept responsibility for doing so (RFJ at paras. 236-37);
- c) He misused the Court's processes. While Justice MacNaughton describes many incidents of such misconduct, the respondent's approach is well captured by her findings at para. 434 of her reasons:

[The claimant] has complied with every order made by the court and has said she will continue to do so. [The respondent], on the other hand, has not followed court orders. He uses the court system to put inappropriate pressure on both [the claimant] and court resources. He has said that he will appeal any ruling I make in this case. On two occasions, he threatened and then withdrew applications for me to recuse myself. On both occasions, the applications were made after he received a decision or ruling with which he did not agree. He formally withdrew the second application through his counsel. . . . He attended in regular chambers when he knew I was assigned as the case management and trial judge for this case. And, as I have said, he has repeatedly failed to comply with court orders.

- d) His conduct during the trial unduly complicated and prolonged the proceeding. Justice MacNaughton described the respondent in these terms (RFJ at para. 576):

During the conduct of this litigation, [the respondent] frequently conducted himself in a controlling, dominant and insistent manner. He tended to fixate on his own needs and wishes and was intolerant of the views of others, including when it came to court rulings not in his favour. The history of this litigation is set out in some detail in these reasons. The parties were repeatedly in court dealing with applications.

[38] This conduct of the respondent manifested itself in his approach to questioning the claimant and in his behaviour in cross-examination, which Justice MacNaughton described as "inconsistent with that of a truthful, forthright, and credible witness" (RFJ at para. 254).

- [39] Justice MacNaughton's observations about the course of the litigation are particularly relevant to the costs issue. As she notes, the family litigation has been long and drawn out, involving numerous court appearances, the majority of which were initiated by the respondent. Justice MacNaughton's description of the procedural history spans 26 pages in her reasons. Numerous interlocutory orders were issued many of which, as Justice MacNaughton again found, were "repeatedly breached" by the respondent.
- [40] As the respondent submits, the length of a proceeding or the fact that it was hard fought, is not sufficient to attract an award of special costs: *Nardulli v C-W Agencies Inc.*, 2014 BCCA 31 at para. 79. However, when the entire course of the respondent's conduct throughout the litigation, including at trial, is considered, it leads to no possible conclusion other than that the respondent has abused the Court's processes to the extreme prejudice of the claimant. I note that the Court of Appeal came to a similar conclusion with respect to the appeal in this matter (CA Reasons at para. 121).
- [41] Additionally, Justice MacNaughton's reasons were issued over two years ago yet the proceeding has continued, and there have been numerous steps taken independent of the respondent's appeal to the Court of Appeal. Those steps mirror the pattern of the litigation leading to trial.
- [42] One of those steps included a further appearance before Justice MacNaughton in which the respondent sought to stay various aspects of the Final Order, including the order requiring the sale of the Orlohma Place Property. Justice MacNaughton dismissed the respondent's stay application in reasons indexed at 2023 BCSC 1365. During the hearing, and as part of her reasons, Justice MacNaughton finalized the terms of the Final Order.
- [43] On December 20, 2023, the claimant filed a request to appear before Justice MacNaughton in order to enforce the sale of the Orlohma Place Property. The respondent resisted efforts to set a hearing until ultimately Justice MacNaughton directed that it be set for April 25, 2024.
- [44] After the hearing date had been set, the respondent filed a notice of application seeking an order that Justice MacNaughton recuse herself. Justice MacNaughton had previously explained to the parties in response to earlier threatened recusal applications by the respondent that if such an application was brought, she would need to hear it before any other applications proceeded.
- [45] The recusal application was therefore scheduled for April 25, 2024, the date previously reserved for the claimant's application concerning the Orlohma Place Property. That application was adjourned generally.
- [46] On April 25, 2024, the respondent's recusal application was adjourned given that the respondent filed a lengthy affidavit which Justice MacNaughton found to be inadmissible in its entirety. However, she granted the respondent leave to file a new affidavit in support of his application.

- [47] The respondent took no steps to re-set his application. His failure to proceed with the application was a significant factor in the lengthy delay in getting the present applications heard. However, on December 13, 2024, the respondent submitted a request to appear before Justice MacNaughton to address what he characterized as an urgent issue concerning parenting time for the children over Christmas.
- [48] On December 16, 2024, the parties were advised that Justice MacNaughton would not hear the application and that they were expected to work out the parenting issues. However, she granted them leave to appear in regular chambers if they could not agree. They ultimately appeared before Justice Baker in chambers on December 19, 2024. This appearance was necessitated by the respondent's insistence that his parenting time was to begin on December 20th in Germany rather than on December 21st as proposed by the claimant.
- [49] In early 2025, the respondent again sought an appearance to address his February parenting time. Specifically, he wanted the parenting time to coincide with travel arrangements that he had made unilaterally. The parties appeared before Justice Majawa on January 20, 2025, and he gave oral reasons for judgment on January 21, 2025. Justice Majawa found that the respondent had made unilateral decisions about his parenting time that were not consistent with the terms of the Final Order. Justice Majawa dismissed the respondent's application with costs to the claimant.
- [50] The respondent then refused to sign a draft of Justice Majawa's order but instead submitted three requests to appear, one to appear before Justice MacNaughton and another to appear before Justice Majawa seeking to vary his order. Ultimately the parties had to appear before Associate Judge Muir to settle the terms of Justice Majawa's order. Associate Judge Muir ordered costs payable by the respondent.
- [51] On April 8, 2025, the respondent filed a requisition seeking to have certain matters relating to his May-June 2025 parenting time set in chambers in New Westminster and to move the home registry for this matter to New Westminster. This action was in breach of Justice MacNaughton's order directing that the respondent be required leave to bring further applications.
- [52] On April 9, 2025, I advised the parties that I had assumed the role of case management judge.
- [53] As indicated above, the respondent's post-trial conduct in connection with the litigation has continued in the same abusive pattern as in the period leading up to trial.
- [54] For all of these reasons, I am satisfied that an order for special costs is appropriate.
- Should the Court Award Lump Sum Special Costs?
- [55] I now turn to the claimant's request that the Court award lump sum special costs.

[56] Costs of a family law proceeding are governed by Supreme Court Family Rules 16-1. The following sub-rules are relevant:

Tariff of costs

- (1) If costs are payable to a party under these Supreme Court Family Rules or by order, those costs must be assessed in accordance with Appendix B unless any of the following circumstances exist:
 - (a) the parties consent to the amount of costs and file a certificate of costs or expenses setting out that amount;
 - (b) the court orders that
 - (i) the costs of the family law case be assessed as special costs, or
 - (ii) the costs of an application, a step or any other matter in the family law case be assessed as special costs in which event costs in relation to all other applications, steps and matters in the family law case must be determined and assessed under this rule in accordance with this subrule;
 - (c) the court awards lump sum costs for the family law case and fixes those costs under subrule (14) in an amount the court considers appropriate;
 - (d) the court awards lump sum costs in relation to an application, a step or any other matter in the family law case and fixes those costs under subrule (14), in which event costs in relation to all other applications, steps and matters in the family law case must be determined and assessed under this rule in accordance with this subrule.

Assessment of special costs

- (2) On an assessment of special costs, a registrar must
 - (a) allow those fees that were proper or reasonably necessary to conduct the family law case, and
 - (b) consider all of the circumstances, including the following:
 - (i) the complexity of the family law case and the difficulty or the novelty of the issues involved;
 - (ii) the skill, specialized knowledge and responsibility required of the lawyer;
 - (iii) the amount involved in the family law case;
 - (iv) the time reasonably spent in conducting the family law case;
 - (v) the conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the family law case;

(vi) the importance of the family law case to the party whose bill is being assessed, and the result obtained;

(vii) the benefit to the party whose bill is being assessed of the services rendered by the lawyer;

(viii) Rule 1-3.

Assessment officer

(3) The officer before whom costs are assessed is a registrar.

Costs of whole or part of family law case

(14) The court may award costs

(a) of a family law case,

(b) that relate to some particular application, step or matter in or related to the family law case, or

(c) except so far as they relate to some particular application, step or matter in or related to the family law case

and in awarding those costs the court may fix the amount of costs, including the amount of disbursements.

[57] Both parties cite the Court of Appeal's decision in *Gichuru v. Smith*, 2014 BCCA 414, where the Court discussed the principles governing the summary assessment of costs by a judge as distinct from the Registrar. While *Gichuru* was concerned with the assessment of costs under the Supreme Court Civil Rules, the Court's analysis is applicable to costs in a family proceeding as well given the considerable similarity in the two sets of costs rules.

[58] Despite that similarity, there is at least one significant difference between costs under Appendix B to the Supreme Court Civil Rules and Appendix B to the Supreme Court Family Rules. Under s. 2(5) of Appendix B to the Supreme Court Civil Rules, the Court may order increased or "uplift" costs of 1.5 times the normal value where it finds that, as a result of unusual circumstances, an award of ordinary costs would be "grossly inadequate or unjust". There is no similar provision in the Supreme Court Family Rules.

[59] In *Gichuru*, Justice Goepel acknowledged that the Supreme Court Civil Rules authorize a judge to assess costs, however he noted that the Rules are silent as to when and how a judge should exercise that authority (at para. 99). In considering this issue, Justice Goepel identified a number of governing principles:

a) A judge cannot act arbitrarily or capriciously but rather must act in accordance with the principles established under the Rules and the relevant jurisprudence (at para. 100);

- b) Parties are only entitled to their objectively reasonable legal costs as determined according to the particular costs scale that they were awarded. This applies to assessments conducted by both the registrar and by a judge. This reflects the requirement that only those costs properly and reasonably necessary to conduct the proceeding may be allowed (at para. 101);
- c) The ultimate costs award made by a judge must be consistent with the award that a registrar would make in similar circumstances. In making a determination of special costs, a judge (and a registrar) must consider the non-exhaustive list of factors in Supreme Court Civil Rule 14-1(3)(b) [SCFR 16-1(2)(b)] (at para. 102);
- d) Natural justice requires a certain level of procedural fairness, which typically means providing an opportunity for the party against whom costs are being awarded to test the reasonableness of the fees underlying the award. This reflects the basic costs principle that cost awards are meant to be an indemnity for fees incurred rather than to provide a windfall (at para. 103);
- e) In order to determine if a legal fee is objectively reasonable, it is often necessary to know the particulars of what the lawyer did to accrue it. It is difficult to conceive that a proper examination of a party's incurred legal costs can take place without disclosure of the other side's file and an examination of the other side's lawyers in respect of the file and the matters arising therefrom (at para. 104);
- f) It is a matter of discretion whether a judge should exercise the authority to summarily determine the quantum of costs. That discretion should be exercised sparingly, recognizing that the registrar is often best placed to determine the reasonableness of a lawyer's fees given their knowledge and experience in assessing legal bills (at para. 106);
- g) An exception to this general proposition can arise when the judge is intimately familiar with the litigation or the time and costs of a registrar's hearing cannot be justified, such as when the litigation has taken far too much of the public resource of judicial time as it is and sending the claim to the registrar will likely engage a large amount of the time of the registrar and needlessly delay resolution (at para. 107);
- h) It is a concern that the party who may have to pay costs will prolong any assessment by requiring microscopic review of the services undertaken by counsel for the successful party. This concern must be weighed against the right of a party to challenge the reasonableness of the opposing party's proposed costs (at para. 109);
- i) Where a court elects to make a summary assessment of costs, the party facing a costs order must have a meaningful opportunity to challenge the reasonableness of the fees allegedly incurred by the other party; this opportunity is denied where there is insufficient evidence as to the scope and nature of the actual legal fees. Assessing special costs on a summary basis absent sufficient evidence of the objective reasonableness of those fees is an error of principle (at para. 111); and

- j) A party seeking an assessment of special costs must tender evidence of the legal fees incurred and a sufficient description of the nature of the services and the matter involved to afford any lawyer sufficient information to advise a client of the reasonableness of the charges made. This will usually be provided in the same form as a bill between solicitor and client under the Legal Profession Act. Those cases that have held that a court can assess special costs absent evidence of actual legal costs were wrongly decided (at para. 119).
- [60] As can be seen by Justice Goepel's summary of key principles, the summary assessment of special cost by a judge occurs rarely and generally only in exceptional circumstances. Certain relatively recent cases illustrate the types of circumstances that would warrant such an approach.
- [61] In *Turabi v. Nabi*, 2025 BCSC 1773, Justice Majawa awarded special costs and summarily assessed the costs as lump sum costs in the amount of \$134,451. Justice Majawa determined that this was an appropriate case to assess the quantum of costs summarily because the time and cost of the registrar's hearing was not likely to be proportionately justifiable in the circumstances and the claimant was unlikely to recoup the costs of a likely lengthy assessment, resulting in further delay and a significant increase in expense which the claimant was unlikely to recover (at para. 27). Justice Majawa had also presided over the trial and was intimately familiar with the litigation (at para. 25). After considering the factors in R. 16-1(2)(b) of the Supreme Court Family Rules, Justice Majawa determined that the full amount claimed was proper and reasonably necessary.
- [62] In *C.S. v. C.B.*, 2021 BCSC 879, Justice Funt awarded partial special costs by way of lump sum in the amount of about \$108,000. Justice Funt determined that this amount was objectively reasonable in the circumstances given the general complexity of the matter and the fact that the respondent's legal costs for the relevant period were greater than the sum the claimant sought (at para. 71). In considering the factors listed in R. 16-1(2)(b) of the Supreme Court Family Rules, Justice Funt found the costs awarded defensible (at paras. 76-81). Justice Funt made a 25% reduction to the disbursements claimed to ensure the total amount awarded was conservative (at paras. 73). He also noted that in seeking partial special costs by way of lump sum, the claimant had been conservative relative to her actual costs, as her actual costs were double the costs sought (at para. 82).
- [63] In *Somani v. Jilani*, 2018 BCSC 1331, Justice Sharma awarded costs at Scale C (matters of more than ordinary difficulty) as well as increased costs at 1.5 the normal value under Supreme Court Civil Rule Appendix B. Justice Sharma summarily assessed the costs as lump sum costs in the amount of \$75,000 due to the plaintiff's "misfeasance and conduct during the litigation" (at para. 308) and the fact that he put the defendant through a "horrendous ordeal without any legal justification" (at para. 311). Justice Sharma expressed the view that sending the issue of costs to a registrar's hearing would not serve the interests of justice in the circumstances of that case (at para. 302). I do note that Justice Sharma did decline to order lump sum special costs (at para. 301).

- [64] In *Jones v. Jones*, 2024 BCSC 88, Justice E. McDonald awarded ordinary costs in the lump sum amount of \$75,000 (including double costs for a period of time resulting from an offer to settle). Justice McDonald noted that the successful party had presented a bill of costs totalling more than \$92,000 (at para. 26), but sought a reduced amount which he submitted was less than he would receive at an assessment before the registrar (at para. 29). Justice McDonald agreed with this approach. *Harms v. Harms*, 2025 BCSC 170, *C.Y.J. v. R.J.*, 2023 BCSC 140, and *Popa v. Oland*, 2015 BCSC 919, are other examples of cases in which the judge saw fit to award lump sum costs in the particular circumstances of the case. In *Popa*, Justice Sharma made a global award of \$33,000 for special costs for a summary trial application.
- [65] The claimant submits that the circumstances of this case are exceptional and justify the Court summarily assessing lump sum costs. She points to the following factors:
- a) The length of time that the litigation has been ongoing and the extreme amount of judicial resources already expended;
 - b) The likelihood that the respondent will unduly drag out a special costs assessment with a "microscopic review of services undertaken by counsel" (*Gichuru* at para. 109), thus rendering the process disproportionately expensive and a further abuse of the court's processes. I note that the special costs assessment in the civil matter required nine days of hearing time;
 - c) The fact that it is unlikely the claimant would ever recover the costs of a drawn out costs assessment;
 - d) The need for finality, particularly given the claimant's vulnerability;
 - e) The clear findings by multiple judges that the respondent has abused the court's processes; and
 - f) The respondent's demonstrated disrespect for the Court and its orders.
- [66] The respondent argues that a summary assessment of costs is not appropriate. He submits that there is an insufficient evidentiary record to permit the Court to assess the objective reasonableness of the fees charged. Further, he points out that as I was not the trial judge, I lack the "intimate familiarity" with the record that the court in *Gichuru* (at para. 107) identified as an exceptional circumstance.
- [67] With respect to this latter point, while it is true that I was not the trial judge, the procedural history and the respondent's conduct throughout the litigation is again described in considerable detail in Justice MacNaughton's reasons. Those reasons, as well as the list of extensive court appearances by the parties, provide a more than adequate basis for the Court to conduct an assessment.

- [68] Further, the judge who conducted the trial, Justice MacNaughton, was prevented from dealing with costs due to the respondent's delay in permitting the matter to be scheduled and his application to have Justice MacNaughton recuse herself. Thus, the respondent cannot reasonably complain about another judge stepping in to that position.
- [69] The real issue is whether there is sufficient evidence before the Court to enable a summary assessment and whether the requirements of fairness and natural justice demand that the respondent be able to review the claimant's legal costs in a registrar's hearing.
- [70] The evidence that the claimant relies on in support of her position includes the following:
- a) Counsel for the claimant has produced a bill of costs for the litigation up to and including trial totalling \$204,291.16 inclusive of tax and disbursements. The bill of costs includes claims for costs under tariff items 1 and 2 at the "more than ordinary difficulty" scale of \$5,000 each. Counsel for the claimant has also produced a bill of costs for relating to the respondent's post-trial conduct totalling \$29,785.06;
 - b) The claimant has produced a detailed timeline of events in the litigation, including the related criminal and civil cases detailing the extensive steps taken and the numerous court appearances required;
 - c) The procedural history specific to the family litigation is again detailed in Justice MacNaughton's reasons for judgment;
 - d) A paralegal to the claimant's counsel has deposed that the claimant has paid fees and disbursements in this matter in excess of \$900,000 since September 2018, although approximately \$51,000 of that amount is attributable to the appeal proceedings. There is approximately an additional \$98,000 currently outstanding. It is worth noting that the claim for special costs does not cover the whole of the action, but only the period since September 2018, although the action was commenced in 2016; and
 - e) Since the commencement of the family litigation, the claimant's counsel has charged the claimant an hourly rate of \$395. That rate has remained constant throughout the litigation, despite counsel's normal rate rising to \$550 in 2023 and \$600 in 2024. The fees charged were also discounted in relation to the retainer agreement signed by the claimant that estimated likely trial costs at \$3,500-5,000 per day. Additionally, counsel has not charged the claimant interest on any late paid or outstanding fees, again notwithstanding the terms of the retainer agreement.
- [71] If the claimant was advancing a claim for special costs in the ordinary course, which typically amount to 80%-90% of actual fees assessed (*Bradshaw Construction Ltd. v. Bank of Nova Scotia*, [1991] 54 B.C.L.R. (2d) 309 at 319, 1991 CanLII 4019 (S.C.)), I agree with the respondent that the Court would be challenged to determine that claim summarily, absent more detailed evidence about the services provided and fees charged.

- [72] As noted however, the claimant is seeking an award of lump sum special costs in the amount of \$750,000, which she says represents 75% of full special costs. The claimant submits that discounting the award in this manner more than adequately compensates for any reductions that the respondent would achieve through a taxation. She also submits that such a discount would eliminate the possibility of "double-dipping" meaning that the special costs award would not include steps in the litigation for which specific costs awards were previously made.
- [73] In my view, the costs order sought by the claimant would be disproportionate and would potentially deprive the respondent of his right and ability to challenge the reasonableness of the fees charged. Those concerns diminish however if the special costs award is discounted further to a more reasonable and proportionate amount.
- [74] Specifically, I am prepared to order special costs in the lump sum amount of \$400,000 inclusive of all taxes and disbursements. This represents approximately 40% of the total fees charged to the claimant and approximately 50% of full special costs. In doing so, I agree that the factors identified by the claimant (see para. 65 above) weigh heavily in support of this approach. Of particular concern is the likelihood, given the history of the respondent's conduct, that a registrar's hearing would be drawn out over many months, if not years, thus placing additional strains on the Court's resources and further prejudicing the claimant.
- [75] In my view, awarding a lump sum in the amount of \$400,000 would not unfairly deprive the respondent of his ability to challenge the reasonableness of the fees charged. Taking account of the length and complexity of the proceeding, as well as the fact that the claimant's counsel billed her at a discounted rate, it is readily apparent that this result puts the respondent in a better position than he could ever hope to achieve through a taxation.
- [76] I am also satisfied that this amount was proper and reasonably necessary to conduct this family law case, particularly when considered in light of the factors listed in R. 16-1(2)(b) of the Supreme Court Family Rules. As already noted, this amount is clearly justified by the length and complexity of the proceeding. As is clear from the extensive reasons for judgment issued in this matter, the respondent's conduct unduly complicated and prolonged the proceedings. This naturally led to counsel needing to spend significant time conducting the case.
- [77] Further, this case was of extreme importance to the claimant. The core issues were parenting arrangements and the claimant's desire to relocate with her children to Germany. As a result of the litigation, she was allowed to relocate with her children and have her children's primary residence be with her. In pursuing these objectives, counsel's services provided a clear benefit to the claimant, particularly given the respondent's combative approach to this litigation. Noting that both the respondent's "reactive and combative approaches to parenting conflicts" and the violent incident limited the claimant's ability to interact directly with the respondent, Justice MacNaughton found there was "a real concern that without the support of her counsel, with all the expense that incurs, [the claimant] will

be unable to withstand pressure from [the respondent]" (RFJ at para. 392). Handling this situation clearly required adept and attentive counsel.

[78] In light of these factors, and in the circumstances, I am satisfied that fees in the amount of \$400,000 are proper and reasonably necessary for the conduct of the family law case.

[79] I recognize that awarding lump sum special costs in the significant sum of \$400,000 may be seen as unusual and extraordinary. However, as I have touched on, and as made very clear in Justice MacNaughton's reason for judgment, this is an unusual and extraordinary case that has gone on far too long and has already placed an extraordinary strain on the parties' emotional and financial resources. It has also consumed extensive, indeed excessive, judicial resources. Some degree of finality is required and that is a fundamental objective underlying the award I am making. To subject the claimant to further proceedings in the form of a lengthy, expensive, and no doubt financially and emotionally draining costs assessment, would do untold damage to the objectives of minimizing conflict and securing a just and speedy determination that lie at the core of the Supreme Court Family Rules; objectives that have already been severely strained in this proceeding.

Conclusion

[80] The claimant is granted sole conduct of sale of the Orlohma Place Property, on the terms set out in para. 25, with the proceeds of sale to be distributed in accordance with the directions set out in paras. 27-31.

[81] The claimant is awarded special costs in the lump sum amount of \$400,000.

[82] The claimant is entitled to her costs of this application, which I fix in the lump sum amount of \$4,000 in accordance with Appendix B to the Supreme Court Family Rules.

"The Honourable Chief Justice Skolrood"

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