
CANADA / JUDGMENT

L.H. v. C.H.

2020 BCSC 287

COURT

Supreme Court of British Columbia

DECIDED

2 March 2020

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2020 BCSC 287 L.H. v. C.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.H. v. C.H.,

2020 BCSC 287

Date: 20200302

Docket: E160598

Registry: Vancouver

Between:

L.H.

Claimant

And

C.H.

Respondent

Corrected Ruling: The initials of the parties have been amended throughout the entirety of the Ruling on May 13, 2020.

Before: The Honourable Madam Justice Maisonville

Ruling on Costs

Counsel for the Claimant:

P.A. Fleming

The Respondent, appearing in person:

C.H.

Written Submission filed by the Claimant:

January 10, 2020

Written Submission filed by the Respondent:

January 16, 2020

Reply to the Respondent's Submission filed by the Claimant:

February 4, 2020

Place and Date of Ruling:

Vancouver, B.C.

March 2, 2020

- [1] This is a costs ruling following a four-week long trial that began February 19, 2019. Pursuant to my reasons issued August 13, 2019 and indexed at 2019 BCSC 1346, the parties were invited to provide written submissions setting out their position on costs. I have now reviewed those submissions.

ISSUES AT TRIAL

- [2] The issues at trial concerned parenting time; parenting responsibilities; a decision about what school the children should attend; and retroactive and ongoing spousal and child support, including the issue of the imputation of income to the claimant.
- [3] At trial, the claimant sought to vary the current regime of equal parenting time. She did not provide a reason other than that the current 50-50 shared parenting time was "not working well" and she felt that the respondent was not a proper caregiver.
- [4] An expert, Dr. Krywaniuk, was appointed to prepare a report pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c 25. Section 211 allows the court to assess the needs and views of the children in relation to the family law dispute. In his report, Dr. Krywaniuk concluded that equal parenting time was in the best interests of the children. The claimant spent considerable time at trial attempting to challenge the findings in the report.
- [5] In support of her claim for unequal parenting time, the claimant focused on an incident that had occurred in February of 2015. She said that she had gone with the children to stay at her parent's home in Richmond while they were away on vacation in order to get away from the respondent. She testified that the respondent arrived at her parents' house and a confrontation ensued, with the respondent ultimately leaving with the children. This incident was the subject of a protection order issued by Justice Steeves a year later. The claimant testified that this incident alarmed her, resulting in her advancing the position that the respondent should have reduced parenting time.

- [6] The claimant called a number of witnesses to corroborate her account of the above incident.
- [7] Dr. Krywaniuk was called as a witness and was extensively cross-examined by the claimant but ultimately his recommended position on parenting time being equal between the parties was found by the Court.
- [8] The respondent also testified about the incident, indicating that it was a misunderstanding and that he was under the impression he was supposed to have the children that day. He called five witnesses who testified that they had never seen the respondent mistreat the claimant and that he was an involved parent.
- [9] I ultimately concluded that it was in the best interests of the children to maintain equal parenting time.
- [10] The claimant also sought sole decision making ability in respect of the children's education and participation in extracurricular activities. She indicated that it was difficult for her and the respondent to agree on the activities the children should be participating in. I concluded that the claimant had not advanced a valid reason explaining why she should have these parenting responsibilities over the respondent. Rather than ordering a change in parenting responsibility, I ordered that a parenting coordinator be appointed to assist with decision making.
- [11] The parties were unable to reach an agreement respecting the education of the children. Given the long commute from the claimant's home to their current school, I granted the claimant's application to have the children's school changed.
- [12] While the respondent agreed that he should pay the claimant child and spousal support, he sought to impute income to her on the basis that she is underemployed. The claimant had previously worked in the information technology field, but resigned during the marriage to be a stay at home mother. She says that, given her time away from the industry, her skills are no longer relevant and she is no longer employable in that field. Instead, she is in the process of retraining as a preschool teacher.
- [13] I disagreed with the respondent's contention that income should be imputed to the claimant on the basis that she is capable of obtaining a position similar to the one she had prior to resigning. However, I found that she was capable of setting up a preschool-type business, and imputed some income to her on that basis. I found the fact that the claimant quit her technology career to be a stay-at-home parent to be relevant: it resulted in her losing the skills required to work in that field, entitling her to compensatory spousal support.
- [14] Based on my findings on the claimant's income and her entitlement to support, I also ordered the respondent to pay retroactive spousal support.

LEGAL PRINCIPLES

- [15] Both parties contend that they were substantially successful at trial and that they are therefore entitled to their costs.
- [16] Rule 16-1(7) of the Supreme Court Family Rules, B.C. Reg. 169/2009, states that costs must be awarded to the successful party unless the court orders otherwise. Success has been interpreted as "substantial success": *Marquez v. Zapiola*, 2014 BCCA 35 at para. 16.
- [17] In *Litt v. Gill*, 2016 BCCA 288, Justice Garson described the unique challenges of determining substantial success in family law cases involving the trial of multiple issues. She indicated that the concept of success may require a more flexible approach in the family context, endorsing Justice Bouck's description of the standard as follows in *Fotheringham v. Fotheringham*, 2001 BCSC 1321:
- [45] Gold now seems to say that substantial success in an action should be decided by the trial judge looking at the various matters in dispute and weighing their relative importance. The words "substantial success" are not defined. For want of a better measure, since success, a passing grade, is around 50% or better, substantial success is about 75% or better. That does not mean a court must descend into a meticulous mathematical examination of the matters in dispute and assign a percentage to each matter. Rather, it is meant to serve as a rough and ready guide when [looking] at all the disputed matters globally.
- [18] Substantial success is not determined by counting up the number of issues and allocating success on each one. Rather, success is measured by taking into account all of the matters in dispute, the weight or importance of the issues to the parties, and the parties' relative success or failures on those issues. The time consumed by an issue is also relevant: *Harras v. Lhotka*, 2016 BCCA 246 at para. 49; as is the importance of not upsetting the balance achieved by the awards itself: *Rattenbury v. Rattenbury*, 2001 BCSC 593 at para. 15. The Court must make an objective comparison of the result obtained with the submissions made at trial: *Bird v. Kohl*, 2012 BCSC 1424 at para. 22.

SUBMISSIONS ON COSTS

- [19] The claimant says that she was the substantially successful party. She argues that she was successful on 75% of the orders she sought, and that the respondent was only successful in obtaining 15% of the orders he sought. I do not find this is to be an appropriate approach to assessing success in a family law matter. Awarding costs in family matters such as this one involves a consideration of the importance of issues rather than simply ascribing success based on the number of orders obtained, without regard of their importance or the amount of time dedicated to their determination.
- [20] Next, the claimant argues that she was the successful party on the basis that she was successful in having the children's school changed, which she says was the most important issue to her, and in not having income imputed to her at the level sought by the respondent. While she concedes that substantial trial time was consumed by the parenting issues where she was not successful, she contends that her ultimate goal in seeking the majority of

parenting time was to simplify decision making in respect of the children. She argues that the Court's acknowledgment of these challenges justifies the time devoted to this issue. My understanding is that she submits that these challenges were addressed in other ways, such as through the appointment of a parenting coordinator.

- [21] Finally, the claimant contends that the trial was unduly drawn out by the respondent, who was unrepresented and displayed an "obsessive and intractable demeanour" throughout the trial.
- [22] The respondent contends that he was the substantially successful party. He says that the majority of the time at trial was consumed by the parenting time and parenting responsibility issues, which were also the issues that were most important to him. He called six witnesses who were largely questioned about parenting time and responsibilities, and Dr. Krywaniuk's testimony related to the parenting issues took multiple days.
- [23] The respondent further submits that the claimant cannot be seen as the successful party on the income imputation issue as she did not specify what her income should be imputed at. He says she was also unsuccessful in getting all of the retroactive support she sought, and it was ordered for a shorter duration than she had asked for.
- [24] Ultimately, this trial suffered from a lack of focus on both sides. The respondent would not have had to call the witnesses that he did had the claimant not sought to take away his parenting time or responsibility. However, I find that the respondent inappropriately focused on issues concerning the claimant's background in the information technology industry, which also consumed significant trial time.
- [25] I agree with the claimant that she was successful in having the children's school changed and had some success on the spousal support issue and on the issue of imputing income. These issues took up a large part of the trial. There is, however, no question that this trial was significantly extended by the parenting issues where the respondent was successful.
- [26] This was a case of divided success. Taking into account all of the matters in dispute, the importance of those issues to each party, and the time consumed by the trial of those issues, I am not able to find that one party was more successful than the other. I am mindful that any award of costs would impact on the judicial balancing of the awards made here as set out in *Rattenbury*. I therefore find that it would not be correct to award costs to either party, and each party should bear their own costs.

"Maisonville J."

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Prepared on 26 October 2026 · Esheria