
CANADA / JUDGMENT

L.V. v. D.V.

2013 BCSC 616

COURT

Supreme Court of British Columbia

DECIDED

10 April 2013

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

2013 BCSC 616 L.V. v. D.V.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.V. v. D.V.,

2013 BCSC 616

Date: 20130410

Docket: E101698

Registry: Vancouver

Between:

L.S.C.M.V.

Claimant

And

D.W.E.V. and

Veritas Properties Ltd.

Respondents

Before: The Honourable Mr. Justice Butler

Reasons for Judgment

Re Costs

Counsel for the Claimant:

George W. Gordon

The Respondent, D.W.E.V.:

In Person and on behalf of the

Respondent Veritas Properties Ltd.

Written Submissions on Costs of the Respondents filed January 10, 2013

Written Submissions of the Claimant in reply filed January 15, 2013

Place and Date of Judgment:

Vancouver, B.C.

April 10, 2013

[1] On November 22, 2012, I issued reasons in this family law case which can be found at 2012 BCSC 1734 (the "Reasons"). With respect to costs, I stated at para. 157:

The Claimant has been substantially successful in this matter. Subject to any submissions the Parties may wish to make regarding costs, the Claimant is entitled to costs at Scale B.

[2] The parties have subsequently filed written submissions regarding costs. D.V., the Respondent, represented himself throughout the proceedings. He argues that he was substantially successful at trial and should be awarded costs. Alternatively, he argues that given the relative success of the parties, each party should bear their own costs. The Respondent also argues he should be entitled to special costs given the conduct of the Claimant's counsel throughout the proceedings. The Claimant says the statement in the Reasons that she was substantially successful at trial is correct and so, costs should follow the event.

[3] Rule 16-1(7) of the Supreme Court Family Rules provides that costs of a family law case must be awarded to the successful party unless the court otherwise orders. This principle applies even where a dispute over parenting is the primary issue in the case: S.J.C. v. S.-J.C.A., 2010 BCCA 31. A successful party is a party that achieved "substantial success" over the matters in dispute. In *Fotheringham v. Fotheringham*, 2001 BCSC 1321 at para. 60, Bouck J. held:

... [s]ubstantial success is measured objectively taking into account all the matters in dispute, their weight or importance to the parties and the parties' relative success or failure with respect to those matters.

[4] I concluded that the Claimant, L.V., was substantially successful at trial based on my assessment of the relative success of the parties on the contentious issues. As of the date of trial, the parties had no assets and were operating under a parenting agreement. The most contentious issues to be determined were: 1) whether the Claimant's interests in the family trusts were a family asset; 2) how the parties' liabilities should be divided; and 3) whether the parenting agreement should be changed. The Claimant was substantially successful on each of these issues. The Respondent's claim against the Claimant's family trusts was

dismissed. The Respondent maintained that the liabilities should be apportioned 100% to the Claimant, but I ordered that the parties should share equally in the very substantial liabilities incurred during the marriage. The Respondent sought equal parenting time but I concluded that the arrangements set out in the parenting agreement required only minor changes.

- [5] I was also asked to determine past and future Guideline incomes for both parties for child and spousal support purposes. The Respondent had some success on this issue. I imputed income to the Claimant at a higher level and for a longer period of time than she argued was appropriate. I also imputed a lower level of income to the Respondent than the amount suggested by the Claimant. However, this issue took little court time and the imputed incomes still resulted in an order which required the Respondent to pay large amounts of past child and spousal support.
- [6] In these circumstances, I am not persuaded I was incorrect when I concluded that the Claimant was substantially successful at trial.
- [7] I will now turn to consider whether there are any factors which should lead me to exercise my discretion to decline to award costs to the Claimant. The onus of persuading the court that it should depart from the usual rule that costs should follow the event rests on the unsuccessful litigant. In *Gold v. Gold* (1993), 82 B.C.L.R. (2d) 180 at para. 20 (C.A.), the B.C. Court of Appeal discussed factors the trial judge might take into account in exercising the court's discretion:

Factors such as hardship, earning capacity, the purpose of the particular award, the conduct of the parties in the litigation, and the importance of not upsetting the balance achieved by the award itself are all matters which a trial judge, quite properly, may be asked to take into account.

- [8] I will consider each of the factors.

Hardship

- [9] There is no doubt that an award of costs will result in financial hardship to the Respondent. The Claimant has submitted a draft bill of costs and disbursements in the amount of \$121,799.51. The Respondent's financial situation is desperate. His share of the family liabilities is \$338,282.94, plus interest. Additionally, the Respondent owes the Claimant \$59,728 for outstanding child support and \$16,418 for outstanding spousal support.
- [10] Over the past several years, the Respondent's income has been negligible. At trial, the Respondent argued that his involvement in the litigation prevented him from earning a living. I found that he was underemployed and that it was appropriate to impute to him an income of \$90,000 per year. At present, the Respondent has no assets to draw from. He will have to find employment, as a contractor or otherwise, to meet his living expenses as well as child and spousal support obligations which total \$1,822 per month. This is in addition to finding a way to manage his significant debt.

The Respondent's Offers

[11] The Respondent argues that he made repeated attempts to settle the proceeding. Given these attempts, the Respondent asserts he should not be responsible for the costs of the litigation. I have reviewed the numerous emails and documentation the Respondent has attached to his costs submissions. Even if I were to conclude that the "offers" fall within the provisions of Rule 11-1(1)(c) of the Supreme Court Family Rules, (and this is a doubtful proposition) none of the offers could reasonably have been accepted by the Claimant.

[12] The document which most closely resembles an offer to settle is an e-mail dated March 5, 2012, with the subject "March 5, 2012 Settlement proposal by [D.V.].". The e-mail sets out a proposal to deal with virtually all of the matrimonial issues. It is lengthy and some of the terms are difficult to comprehend. A quick review of some of the proposed terms shows why it would have been difficult for the Claimant to accept and why the trial judgment was far less favourable to the Respondent than the position set out in his offer:

- while he proposed that he have Thursdays overnight to Monday mornings on alternate weekends he maintained his position that a 50/ 50 split of parenting time is in the best interests of the children;

- he asked that all child support arrears be cancelled;

- he asked that all orders be cancelled;

- he sought an order that no spousal support be paid by either party;

- he offered not to pursue perjury charges against R.M. and C.M. and not to bring fraudulent conveyance charges in relation to the Whistler property and Rathmore;

- it required payment of \$1,000,000 to him by Tamery or the family trusts.

[13] The Respondent's frustration with his inability to settle the litigation was caused to a large extent by his stubborn refusal to seek legal advice and give up on claims that were untenable. In these circumstances, the Respondent's offers are not relevant to a consideration of costs.

Other Conduct

[14] In his written submissions, the Respondent is highly critical of the steps taken by the Claimant and her solicitors in the course of the proceeding. Many of the arguments he advances were made by him at trial. There is no merit to his suggestion that the actions of counsel were somehow improper. I need not consider or comment on those allegations here.

[15] There are two matters regarding the Claimant's conduct of the litigation that require some comment. First, the Claimant was represented throughout the proceedings by two senior counsel. Mr. Gordon represented the interests of the Claimant while Mr. Coval represented

the indirect claims made by the Respondent against the family trusts and the proceeds of the Whistler property. Of course, the Respondent represented himself throughout the proceedings. While I do not fault the Claimant's counsel for ensuring that the indirect claims against the Claimant's parents' assets were effectively defended, the manner in which the Respondent conducted the trial did not require the presence of two senior counsel on the other side. Unfortunately, the Respondent viewed this as bullying and his perception, while inaccurate in any legal sense, contributed to his approach to the litigation. Second, the Claimant did not concede that the debt arising from the consent judgment in the prior proceedings was a family debt until argument. That was a concession which should have been made from the outset of the litigation. If it had been made earlier, it may have caused the Respondent to take a more realistic view of the litigation. While I accept that this is unlikely, such a concession might have streamlined the litigation.

- [16] Finally, on the question of the parties' conduct, it is worth noting that both parties took unreasonable positions throughout the course of their dispute. I summarize these at paras. 4 and 5 of the Reasons. While the Claimant interfered with the Respondent's parenting time and refused to relinquish control over any issue dealing with the children, the Respondent's contribution to the problems encountered in the litigation was far greater. He refused to communicate with the Claimant on parenting issues which increased conflict and cost. He ignored court orders dealing with procedural matters and completely disregarded his court ordered obligation to pay spousal and child support.

Purpose of the Award

- [17] In *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 25, the court summarized the purposes for which costs rules exist. These include: deterring frivolous claims or defences; encouraging conduct that reduces litigation expense; and encouraging settlement wherever possible.

Not Upsetting the Balance Struck by the Award

- [18] The question as to whether a costs award will upset the balance is difficult to answer in this case. What this family needs is for the Respondent to return to full-time work and provide support for his children. The trial decision is certainly intended to promote that goal. This is going to be a very difficult task in light of the Respondent's financial situation. It is possible that in light of his financial situation, the balance that I attempted to establish is already so far off centre that a costs award will not make a great difference. However, it is also possible that the Respondent might be able to get back on his feet if he arrives at a settlement with his creditors (mainly his former in-laws) and finds remunerative employment. An award of 100% of the costs would certainly further exacerbate the Respondent's situation and impact his ability to provide support for his family.

Balancing the Factors

- [19] In cases where one party has achieved substantial success, the court may nonetheless award only a portion of the successful party's costs: *K.D.P. v. A.R.K.*, 2012 BCSC 1025 at para. 18; and *MacLean v. Mio*, 2011 BCSC 148 at para. 49. While the balancing of the factors in this case is difficult, there are good reasons to award only a portion of the Claimant's costs. The Respondent has no assets to draw upon, and is under a heavy financial burden. He will have difficulty meeting his obligations even if no costs are ordered. However, an award of the full amount of the costs would further compound that difficulty. The Respondent has an obligation to provide financial assistance to his family. If a reduction in the costs award will assist in the possibility that he will meet those obligations, then it is appropriate to make such a reduction.
- [20] Financial hardship is not a sufficient reason on its own to depart from the usual rule that costs should follow the event: *S.D.W. v. C.W.W.*, 2006 BCSC 162. However, when I take into account the Respondent's limited earning capacity, the contribution of both parties to the litigation impasse, and the likelihood that a full costs award could upset any possibility of the Respondent meeting his obligations, I conclude it is appropriate to exercise my discretion to order a portion, rather than the full amount of the costs. If a substantial portion of the costs is awarded, it will still satisfy the purpose of the costs awards and recognize the Claimant's substantial success. In all of these circumstances, I award the Claimant 80% of her costs and disbursements.
- [21] I dismiss the Respondent's claim for special costs. That claim is without merit.

"Butler 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/13/06/2013BCSC0616.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/l-v-v-d-v-2013>

Prepared on 28 October 2026 · Esheria