

CANADA / JUDGMENT

M.Y.T.C. v. L.H.N.

2023 BCSC 332

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 332 M.Y.T.C. v. L.H.N. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: M.Y.T.C. v. L.H.N., 2023 BCSC 332 Date: 20230307 Docket: E172700 Registry: Vancouver Between: M.Y.T.C. Claimant And L.H.N. Respondent Before: Master Muir (As Registrar) Reasons for Judgment Counsel for the Claimant: P. Paul The Respondent, appearing in person: L.H.N. Place and Dates of Hearing: Vancouver, B.C. January 30-31 and February 1-2, 6-8, 2023 Place and Date of Judgment: Vancouver, B.C. March 7, 2023 TABLE OF CONTENTS Introduction.. 3 Position of the Parties. 3 The claimant 3 The respondent 4 Ordinary Costs. 9 Disbursements Other Than Those Included in the Special Costs Award.. 10 Mr. Kahn's report 10 Other disbursements. 11 Special Costs. 11 Legal framework. 11 The Factors to be Considered per Rule 16-1(2) of the Rules. 12 The complexity of the family law case and the difficulty or the novelty of the issues involved. 12 The skill, specialized knowledge and responsibility required of the lawyer. 14 The amount involved in the family law case. 14 The time reasonably spent in conducting the family law case. 14 The conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the family law case. 15 The importance of the family law case to the party whose bill is being assessed, and the result obtained. 15 The benefit to the party whose bill is being assessed of the services rendered by the lawyer. 16 Rule 1-3 of the Rules. 17 Disbursements. 17 The medical opinions. 17 The respondent's dental practice valuations. 18 Special Costs Per the Order of Justice Milman.. 19 Special Costs Per the Order of Justice N. Smith.. 19 Interest. 20 Conclusion.. 21

Introduction

- [1] This is an assessment of costs in this family law action.
- [2] The underlying action was a very high conflict and acrimonious one. There were 23 interlocutory orders made.
- [3] The parties were married on August 15, 1998 and separated in 2017. They had one son, R.N., who was 17 in 2020.
- [4] The trial of this matter came before Justice Milman for 28 days between February 4, 2019 and January 17, 2020. The trial reasons are indexed as 2020 BCSC 414 (the "trial reasons").

- [5] In subsequent reasons dated May 12, 2020 and indexed as 2020 BCSC 729 (the "costs reasons"), Milman, J. made the following order for costs:
- [29] In summary, I am ordering that, subject to any costs orders previously made to the contrary, L.H.N. is to pay M.Y.T.C. ordinary costs for the entire proceeding, except for the period from July 14, 2018 to January 17, 2020, which will be payable as special costs.
- [6] No order as to the scale of difficulty was made for the ordinary costs and they are therefore assessed at ordinary difficulty.
- [7] In addition, special costs were ordered payable by the respondent for an application before Justice N. Smith on March 5, 2018. Position of the Parties The claimant
- [8] The claimant seeks the following costs: Ordinary costs: \$ 13,750.00 Disbursements (including for assessment): \$ 30,825.51 Special costs per order of N. Smith J.: \$ 11,543.21 Special costs per order of Milman J.: \$327,962.77 Total: \$384,081.49[1]
- [9] The claimant brings evidence from her counsel, Ms. Penny Paul, and from an expert, Mr. Lawrence Kahn, K.C., in support of her claim for costs.
- [10] Generally speaking, Ms. Paul's evidence was that the applications, the time spent, and the disbursements incurred were all necessary for the proper conduct of the litigation. She also noted that substantial discounts were given to the claimant out of consideration for the significant time that had to be spent in dealing with this acrimonious litigation.
- [11] Mr. Kahn provided an expert report for the claimant as is contemplated by Rule 16-1(29) of the Supreme Court Family Rules [Rules]: 16-1(29) A party to an assessment of costs may put in evidence the opinion of a lawyer as to the nature and importance of the services rendered and of the matter involved and the reasonableness of the charges made, but a party must not put in evidence the opinions of more than 2 lawyers, and a lawyer giving an opinion may be required to attend for examination and cross-examination.
- [12] Mr. Kahn was called to the B.C. Bar in 1972. He is an experienced and respected family lawyer who has had significant practice in providing expert opinions on fee reviews, including special costs. His report was very helpful and was confirmatory of my own conclusions.
- [13] One of his conclusions, at para. 67 of his report was: Ms. Paul's accounts are among the most reasonable that I have reviewed given the nature of the litigation, the length of the proceedings, including the interlocutory proceedings, the complexity of the issues as a result of [the respondent's] approach to the litigation, and the personal animosity that [the respondent] rained upon his former spouse and Ms. Paul. The respondent
- [14] The respondent was given the opportunity to particularize his objections to the bill of costs presented. He did not do so. Instead, at the hearing, he based his attack on a re-hash of a position that he has repeatedly taken in this action.

- [15] The respondent, throughout this litigation, has advanced the proposition that the claimant and her counsel presented false and incomplete information to the court, which resulted in flawed decisions--both for the interlocutory applications and for the trial itself.
- [16] At trial, this took the form of the respondent's abuse of process application, regarding which, in the trial reasons, Milman J. noted:
- [78] L.H.N. believes that this action has been litigated in a manner that has been fundamentally unfair to him. He says that both M.Y.T.C. and her counsel, Ms. Paul, have knowingly advanced rank falsehoods and used them repeatedly to obtain serial orders against him, to his and R.N.'s prejudice. That behaviour should, he argues, have precluded them from being heard further at all. [] []
- [79] The misconduct that is said to justify that relief originated with M.Y.T.C.'s successful application for the asset preservation and freezing order made October 20, 2017, from which all else has flowed. The four principal falsehoods that he says were used to obtain that and all subsequent interlocutory orders in this action were the following:
- (a) that L.H.N. had wrongfully drawn \$500,000 from the line of credit without any apparent warning or justification, when in fact M.Y.T.C. knew all along what he was doing and why, and even accepted his rationale at the time;
 - (b) that M.Y.T.C. was ill and incapable of earning income at her full capacity, when in fact she earns more and holds more in assets than she has disclosed;
 - (c) that L.H.N. moved out of the family home voluntarily and M.Y.T.C. had nowhere else to go, when in fact she locked him out and then secretly rented out the family home on Airbnb while residing at her parents' house; and
 - (d) that L.H.N. has alienated R.N. from M.Y.T.C., when in fact their estrangement was really the product of M.Y.T.C.'s mistreatment of R.N. []
- [94] Although I have rejected the central allegations supporting L.H.N.'s abuse of process applications, it does not follow that I have accepted all of M.Y.T.C.'s testimony at face value or that I consider the manner in which this action has been advanced to be beyond reproach in all respects. In that regard I note, by way of example, that Forth J. was critical of M.Y.T.C. and her counsel for having withheld important evidence on one of their prior applications to have L.H.N. found in contempt of court. I am not persuaded, however, that such misconduct justifies any of the drastic relief that L.H.N. seeks.
- [17] The respondent again advanced these assertions in seeking special costs against the claimant. In the costs reasons, Milman J. noted:
- [20] In arguing for an award of special costs in his favour, L.H.N. invites me to revisit many of my earlier findings of fact as having been arrived at erroneously in reliance on falsehoods advanced by M.Y.T.C. and her counsel. In this respect, his submissions are really an effort to reargue the merits of the case, which is not appropriate at this stage. I have already found

that M.Y.T.C. was substantially successful in the litigation overall. As I will explain below, I am also satisfied that his misconduct in this litigation has been far more extensive and impactful than hers. For those reasons, I am not prepared to make an award of costs, let alone special costs, in his favour.

- [21] On the other hand, although I dismissed L.H.N.'s abuse of process motions at trial, I noted (at para. 94 of my decision) that M.Y.T.C. had engaged in misconduct that, while serious, did not rise to a level justifying the drastic relief sought by L.H.N. on those motions. That misconduct may, however, now be relevant again in my determination of the appropriate costs award to make at the conclusion of the trial.
- [18] The respondent continued to press these assertions on an appeal taken from the judgement of Milman J. In that proceeding, the respondent brought an application to remove his appeal from the inactive list. Justice Harris of the Court of Appeal heard that application and commented in his March 17, 2022 decision:
- [24] It is difficult to make sense of the appellant's factum. He raises by way of general issues: · Whether the judge erred in law by misunderstanding and misapplying the applicable legal principles and instruments to the case. · Whether the judge erred in law by misapprehending his role in the administration of justice. · Whether the judge erred in fact by overlooking essential evidence. · Whether the judge erred by conducting the trial with a reasonable apprehension of bias.
- [25] More specifically, although without listing each problem the appellant raises with the judgment below, he claims: · The judge ignored much of his submissions and materials, or did not allow him to present evidence or make arguments, instead relying on the respondent's materials alone. · The judge was biased against him. This includes the conduct above. · The judge imposed heavy costs on him, including imprisonment. · The judge did not follow the correct judicial process. · The respondent and her lawyer often lied to the court, both in evidence and in argument; did not make full disclosure; illegally obtained materials; brought applications in a manner oppressive to him; and violated professional legal conduct standards. · The court condoned and encouraged the above behaviour. · The respondent subjected him and their child to similarly manipulative and abusive conduct throughout the parties' marriage. · The respondent threw him out of the family home and refused him re-entry, preventing him from amassing evidence; lured Dr. Nip to the house to collect belongings before staging an altercation; and rented out the family home. This all before he could make opening statements at trial. []
- [31] As I have already intimated, I see very little merit in the appeal. In my view, the appeal is doomed to fail. I see no realistic prospect that the appellant will be able to persuade a division of this Court that the trial judge made palpable and overriding errors in his appreciation of the evidence. I see little in anything in the materials to suggest that the appellant has made a legitimate effort to demonstrate such errors. I can discern no merit in the attack on the judge's integrity or on his appreciation of his judicial responsibilities.

- [19] Those same issues and alleged falsehoods were raised in opposition to the costs claimed on this assessment, though in a slightly different way. The respondent argued that Rule 16-1(13) of the Rules gave me jurisdiction to reduce or eliminate the costs claimed or in some cases to set off costs that the respondent incurred allegedly due to the claimant's misbehaviour. Rule 16-1(13) provides:
- (13) If anything is done or omitted improperly or unnecessarily, by or on behalf of a party, the court or a registrar may order (a) that any costs arising from or associated with any matter related to the act or omission not be allowed to the party, or
- (b) that the party pay the costs incurred by any other party by reason of the act or omission.
- [20] The respondent submitted that, on his version of events, the various applications made by the claimant were unnecessary. That the orders made were flawed as based on false or incomplete information, and this unduly prolonged the litigation, the applications, and the trial, and biased the proceedings against him. He submits that I can and must make an adjustment to the costs sought to account for what he perceives was a waste of time and essentially fraud perpetrated by the claimant.
- [21] A tremendous amount of time on this assessment was taken up by the respondent trying to revisit the factual basis for various actions or applications to attempt to show that the evidence advanced by the claimant was false or incomplete. He revisited each of the assertions that were pressed in the abuse of process application and dealt with by the trial judge, and others as well. He argued that the trial judge was bound by the erroneous interlocutory orders and as a result fell into error himself.
- [22] He went so far as to subpoena the claimant to try to examine her on these factual issues. That was short-lived.
- [23] I repeatedly tried to convey to the respondent that these issues had already been decided. Each presider dealt with the evidence before them and came to conclusions including on costs. The respondent's perception of events did not prevail. The trial judge was certainly alive to the fact that the claimant herself had done inappropriate things--but he took that into consideration in his costs award.
- [24] It is not for me to look, for example, at the initial without notice application for an asset restraining order--which the respondent points to and asserts was the start of a cascading series of deceptions and flawed decisions--and say that it was wrongly decided. The respondent was given leave to apply to set aside the order and he did make that application. He was not successful. He urged his view of events on the trial judge in his abuse of process application, and the trial judge dealt at length with the respondent's position in his reasons--the respondent was not successful.

- [25] Nor can I say that based on the respondent's view of events the time spent in preparation for all of these allegedly flawed applications was unnecessary. I can, and indeed must, consider whether the time spent was reasonable in order to conduct the litigation. But in doing so, I cannot go behind the findings that the respondent takes issue with and come to findings of fact that are more in line with his perception of reality and then use those findings to conclude that the costs for these applications should be reduced or eliminated.
- [26] As the respondent was self-represented, I gave him considerable latitude in advancing his case.
- [27] The respondent did raise issues which merit consideration. In particular, whether the costs claimed for the claimant's business valuation expert were necessarily or properly incurred and whether costs should be trimmed due to the failure of the claimant to succeed on her position regarding the parties' son.
- [28] In general, however, his submissions were based on a complete misapprehension as to the powers and function of a registrar on a costs assessment. Ordinary Costs
- [29] Ordinary costs are assessed based on the tariff schedule in Appendix B to the Rules.
- [30] The tariff provides lump sums for various categories of work done.
- [31] The respondent took no issue with the tariff items.
- [32] Mr. Kahn's evidence was that the tariff charges claimed were reasonable and not duplicative of any of the special costs awarded. I agree.
- [33] As to the costs of this assessment, they are not covered by the trial judge's award of special costs and, hence, the claimant is not entitled to recover any costs for the seven days involved in this assessment or the preparation for it. This follows from the decision of the Court of Appeal in *Waters v. Michie*, 2019 BCCA 218, where the court held:
- [14] On a plain reading, "application" does not extend to a costs assessment hearing. I see no reason to extend the meaning of application to cover a costs assessment. The drafters of the SCFR clearly decided to simplify the cost tariff and made a deliberate choice not to include in the tariff any items for costs assessments. That was a decision they were entitled to make.
- [34] The actions of the respondent throughout this costs assessment resulted in a costs assessment hearing that was unduly delayed and was much longer than necessary--to the prejudice of the claimant who cannot recover her costs of the assessment hearing.
- [35] Ordinary costs are allowed at \$13,750. Disbursements Other Than Those Included in the Special Costs Award
- [36] Recovery of disbursements is provided for in Rule 16-1(4) of the Rules as follows:
- (4) When assessing costs under subrule (1) or (2) of this rule, a registrar must

- (a) determine which disbursements have been necessarily or properly incurred in the conduct of the family law case, and
 - (b) allow a reasonable amount for those disbursements.
- [37] Although there is no tariff item for costs of the costs assessment, I am of the view that this rule is broad enough to provide recovery for disbursements that are necessarily or properly incurred for the assessment. Mr. Kahn's report
- [38] By far, the largest such disbursement is for the opinion of Mr. Kahn and his attendance at the costs hearing, as he was required for cross-examination by the respondent.
- [39] As noted above, I found Mr. Kahn's report to be most useful. He conducted a very thorough and systematic analysis of all of the work done, the difficulties encountered, and the accounts rendered. He reviewed the entire file, which I note includes seven binders of pleadings alone. His report broke down the accounts in a sensible way to allow ready analysis. It was clear that he did a considerable amount of work in reviewing and categorizing the materials here.
- [40] Mr. Kahn recorded 30.2 hours in preparation of his opinion, which, at his normal hourly rate of \$685 would have resulted in a fee of \$20,687. He reduced his account to \$13,247.41, a reduction of \$7,439.59.
- [41] He rendered a smaller account on his preparation for the original assessment dates in October 2022 of \$1,680 and a final account for his preparation for and attendance at the costs assessment hearing of \$3,600.85. Both of those accounts were also discounted.
- [42] I have concluded that the cost of Mr. Kahn's opinion and testimony, although, perhaps, not absolutely necessary, was certainly properly incurred. After a review of the work done, I am satisfied that his accounts are reasonable. They are allowed in full for a total of \$20,280.85. Other disbursements
- [43] The balance of the disbursements claimed in the ordinary costs period are unremarkable. They were not questioned by the respondent. They are allowed in full. Special Costs

Legal framework

- [44] For an assessment of special costs, Rule 16-1(2) of the Rules provide:
- (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.

[45] Master Vos summarized the law regarding special costs in *Negus v. Yehia*, 2021 BCSC 254 as follows:

[57] Special costs are fees a reasonable client would pay reasonably competent solicitor to do the work described in the bill: *Bradshaw Construction [Ltd. v. Bank of Nova Scotia (1991)]*, 54 B.C.L.R. (2d) 309 (S.C.), para. 44. A special costs award is to provide an indemnity to the successful party, but not a windfall; *Gichuru v. Smith*, 2014 BCCA 414, at para. 155. Although there may be a close relationship between actual legal expenses and special costs, they are not necessarily the same: *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329, para. 49. That is because legal fees a lawyer can recover from a client are determined on a subjective standard, pursuant to the Legal Profession Act, whereas only fees that are objectively reasonable in the circumstances are recoverable as special costs: *Gichuru*, para. 155; *Bradshaw Construction*, para. 45.

[46] It must be remembered as well that special costs are awarded because of reprehensible conduct on the part of the party against whom the award is made. As was noted by the Court of Appeal in *567 Hornby Apartment Ltd. v. Le Soleil Restaurant Inc.*, 2020 BCCA 69:

[42] Special costs are not compensatory; they are punitive: *Grewal v. Sandhu*, 2012 BCCA 26 at para. 106; *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 56. The purpose of special costs is to censure and deter litigation misconduct, not to compensate the plaintiff: *Tanious [v. The Empire Life Insurance Company]*, 2019 BCCA 329, at para 53. The Factors to be Considered per Rule 16-1(2) of the Rules The complexity of the family law case and the difficulty or the novelty of the issues involved.

[47] It is clear from the costs reasons that Milman J. considered this a difficult and novel case. He noted:

[25] First, I agree with M.Y.T.C. that L.H.N. made this litigation lengthier, more complicated and more expensive than it needed to be by failing and sometimes expressly refusing to comply with court orders and his obligations under the Supreme Court Family Rules. The following judicial pronouncements illustrate the problem:

- (i) the Order of Master Taylor made December 12, 2017, requiring that L.H.N. produce banking records and a Form 8 Financial Statement (costs were ordered payable in the cause); (ii) the order of N. Smith J. made March 5, 2018, finding L.H.N. in contempt of court for breaching

the Order of Master Taylor and ordering L.H.N., for the second time, to produce a financial statement (L.H.N. was ordered to pay special costs on that application, and that award remains unpaid); (iii) the order of Forth J. made July 13, 2018, finding L.H.N. in contempt of court for failing to pay the \$5,000 penalty imposed N. Smith J. (no costs were awarded on that occasion, due to the mixed success achieved by the parties on the applications before her); (iv) the decision of Sewell J. dated December 7, 2018, refusing L.H.N.'s application to adjourn the trial, in which Sewell J. commented on, among other things, L.H.N.'s failure to cooperate in arranging his examination for discovery and to pay spousal support as previously ordered (L.H.N. was ordered to pay costs in any event of the cause); and

- (v) my order of July 3, 2019, directing the parties' insurer to issue certain insurance proceeds to M.Y.T.C., which was made necessary because L.H.N. refused to comply with my previous order of May 6, 2019 that he endorse to M.Y.T.C. any cheque issued by the insurer to both of them jointly.

[26] Second, I agree that L.H.N. conducted the litigation in a manner that was often obstructive and dilatory. The trial lasted much longer than it should have partly because of L.H.N.'s repeated attempts to reargue issues that had already been decided against him, such as the manner in which his abuse of process motions would be heard. As I previously mentioned, those motions occupied a significant amount of trial time and were ultimately found to be without merit. In addition, it is apparent that M.Y.T.C. had to apply more than once for relief that should not have been controversial, such as for orders for production of critical financial information, to compel L.H.N. pick up his belongings from the family home and to arrange for the sale of the family home, among other things.

[27] Finally, I agree that the intemperate and inflammatory tone of L.H.N.'s testimony and submissions to the court, both orally and in writing, also contributes to the justification for an award of special costs in this case. L.H.N. regularly made unsubstantiated and unwarranted allegations of fraud against not just M.Y.T.C. herself but also her counsel. Even third parties, such as the arms-length purchasers of the family home, were not immune from the taint of his broad brush. Justice N. Smith found similar conduct to be among the factors justifying an award of special costs in *Negus v. Yehia*, 2018 BCSC 2319, aff'd 2019 BCCA 307.

[48] This case was clearly a very difficult case to marshal. The skill, specialized knowledge and responsibility required of the lawyer.

[49] Ms. Paul was called to the bar in 1983. She has practiced primarily in family law for her entire career. Ms. Paul had to deal with a very difficult respondent. Her experience in family law and in dealing with high conflict cases were obviously required in order to bring this case to a conclusion. The amount involved in the family law case.

- [50] There were total assets of approximately \$4.7 million divided and there were other assets in issue, e.g., assets held jointly with the claimant's parents. The time reasonably spent in conducting the family law case.
- [51] As noted, Mr. Kahn did a detailed analysis of the time spent by Ms. Paul on this litigation. In particular, he charted the amount of time spent in preparation compared to the time spent in court appearances. He noted that time spent on appeal issues had been subtracted from the amount claimed and that Ms. Paul had deducted many discounts from the accounts rendered.
- [52] Mr. Kahn's evidence was that in his experience preparation for a court proceeding is one to two times the court time spent. He noted:
50. []. This calculation is a rule of thumb, which I consider is an important guideline to assess time for court proceedings. I have adopted this guideline in other expert opinions which have been accepted by the court. I use this guideline to assess the reasonableness of my billings, as well.
- [53] He noted that Ms. Paul's recorded time, of approximately 264 hours for court proceedings and 483 hours for preparation, for matters covered by the special costs award was well within the range. I note that I would expect that a matter of this difficulty would merit preparation times that even exceeded the rule of thumb used by Mr. Kahn.
- [54] Of course, one must also determine that the time spent was reasonable in the global sense. On my review of the accounts covered by the special costs assessment, I have concluded that they are not only reasonable, but show considerable economy that I would not necessarily have expected.
- [55] I note too, that Ms. Paul's hourly rate, as provided for in her retainer agreement and reflected in her accounts, was \$375 per hour. She pointed out that her hourly rate has since increased to \$450 but that she did not increase the hourly rate charged to the claimant.
- [56] In my experience, this is a most reasonable rate for someone of Ms. Paul's experience, particularly when dealing with such difficult litigation. A rate of \$500 or more per hour would not have surprised me.
- [57] Mr. Kahn did an analysis of hourly rates as well. He noted that according to the Canadian Bar Association survey, the average charge out rate for a litigation lawyer called in 1983 in Metro Vancouver is \$549 per hour. He noted some firm's average hourly rates of \$460 and \$601. His own firm has a lawyer of 1983 call who charges \$515 per hour. A 1995 call in a leading family law firm is noted as charging \$550.
- [58] Thus, not only is the time spent by Ms. Paul reasonable, but her hourly charge is very modest. The conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the family law case.

- [59] The trial reasons and costs reasons both make it abundantly clear that the respondent's actions unnecessarily and dramatically lengthened this case. He refused to agree to the most routine matters, forcing many applications that should not have been necessary. His approach was combative and, as the trial judge noted, intemperate and inflammatory. The importance of the family law case to the party whose bill is being assessed, and the result obtained.
- [60] This matter was of extreme importance to the claimant. Not just in financial terms, although there were many significant financial issues--such as the respondent taking \$500,000 from the parties' joint line of credit for his own use. She was also driven by the fact that she had not seen her son since separation. Although that was caused to an extent by her own actions and her son's wishes, Milman J. noted in the trial reasons:
- [93] Finally, I am not persuaded that M.Y.T.C. deliberately misled the Court in asserting that L.H.N. has alienated R.N. from her. She obviously believes that is so, and I accept, having now heard the evidence of both parties in full, that there probably is at least some truth to the allegation. On the other hand, I also accept that M.Y.T.C. appears to be unable or unwilling to appreciate the extent to which her own conduct has contributed to the present state of affairs between her and R.N. Any lack of insight on her part in that regard is not, however, a fraud on the Court.
- [61] Mr. Kahn also commented on the importance of family law litigation in general:
66. There are rarely any more important court proceedings for an individual than those involved with the dissolution of a marriage. The proceedings cause a significant emotional turmoil for litigants. Those proceedings represent a division of a family's life work, and the outcome is the foundation of the future financial security and emotional stability for the spouses as they end their marriage or relationship. When those proceedings are litigated in the manner described by Mr. Justice Milman, the litigation was ever more vitally important to [the claimant].
- [62] I cannot say it better. The proceedings were of very great importance to the claimant. The benefit to the party whose bill is being assessed of the services rendered by the lawyer.
- [63] Although the claimant was not successful in her claims regarding the parties' son, it is fair to say that she succeeded in all other matters. She clearly benefitted by having the services of experienced counsel in over five years of dealing with the behaviour of the respondent.
- [64] I note too, that the trial judge considered the impact of her position regarding the son when awarding special costs for only part of the proceeding. Thus, I am satisfied that the claimant's lack of success in that regard has been accounted for. Rule 1-3 of the Rules
- [65] Rule 1-3 sets out the object of the Rules: Object
- (1) The object of these Supreme Court Family Rules is to

- (a) help parties resolve the legal issues in a family law case fairly and in a way that will
 - (i) take into account the impact that the conduct of the family law case may have on a child, and (ii) minimize conflict and promote cooperation between the parties, and
 - (b) secure the just, speedy and inexpensive determination of every family law case on its merits. Proportionality
- (2) Securing the just, speedy and inexpensive determination of a family law case on its merits includes, so far as is practicable, conducting the family law case in ways that are proportionate to
- (a) the interests of any child affected,
 - (b) the importance of the issues in dispute, and
 - (c) the complexity of the family law case.
- [66] I can only say that where the length and complexity of a case is driven by the intemperate actions of one party, that costs that are disproportionate to the result will be inevitable. Here, however, the costs are very reasonable in the circumstances. Disbursements
- [67] Generally speaking, the respondent did not take issue with the disbursements charged. The two matters that he did deal with were the medical opinions and the practice valuation costs. The medical opinions
- [68] The respondent took issue with the medical opinions obtained from the claimant's family doctor, Dr. Hatelid, as to the claimant's condition, as he argued they were based on false statements by the claimant and, therefore, useless.
- [69] There were two expert reports from Dr. Hatelid as to the claimant's ability to work. She was on disability for two years and was on disability at trial. Dr. Hatelid was required to give evidence because the respondent would not concede that the claimant was disabled. Dr. Hatelid's reports were used at the trial. The trial judge referred to the fact that the claimant was on disability. He did not question her status as disabled. I conclude that the reports had value and I see no reason to disallow their cost. The respondent's dental practice valuations
- [70] Pursuant to a consent order made by me on October 18, 2018, Henry Doyle of Al Heaps & Associates Inc. was appointed as a joint expert to value the respondent's dental practice.
- [71] Mr. Doyle also provided, at the behest of the respondent, an historic valuation of the respondent's dental practice as of 1998, which the respondent sought to have admitted. That was refused by Milman J. (see: 2019 BCSC 2456 at para. 5), but he subsequently gave leave for both parties to provide new reports on the historic valuation of the respondent's dental practice.

- [72] The respondent then produced two new reports from a different expert. The first was a current valuation of his practice. As this was flawed and not contemplated by the leave given by Milman J., it was not admitted. The second was an historic valuation, but it was not admitted either as it did not comply with the Rules.
- [73] The claimant produced two reports from Mr. Suffield of Professional Practice Sales. The first was an historic valuation which was not admitted as it was a rebuttal to the report that the respondent had produced that was not itself admitted.
- [74] The second report produced by the claimant was a valuation as of the date of separation. It was presented as a commentary on the initial report from Mr. Doyle. It was not admitted as it was out of time and the judge had some concerns with it.
- [75] Unfortunately, the claimant and her counsel did not know that Mr. Doyle had been previously retained by the respondent. They only learned this upon receipt of Mr. Doyle's full file--for which an application had to be made and was ordered by Milman J. in his 2019 BCSC 2456 reasons.
- [76] The respondent sold his dental practice during the trial and ultimately Milman J. held that the amount obtained, and the amount of the net cash and receivables retained by the respondent were family assets. Justice Milman accorded a nominal amount of \$20,000 as the value of the respondent's dental practice in 1998.
- [77] Ms. Paul's position was that it was not only necessary and proper for the claimant to have her own expert look at the valuation of the respondent's practice, it was critical to do so. The respondent was keeping information about the sale of the practice to himself, and the claimant could not know that it would sell before a trial valuation was necessary.
- [78] I am satisfied that the disbursements incurred by the claimant for the reports obtained were proper and likely necessary at the time. The amounts are reasonable, and they are allowed in full. Special Costs Per the Order of Justice Milman
- [79] For the reasons set out above, I am satisfied that the accounts presented in support of this special costs assessment are reasonable and, indeed, considerably less than what could have been expected.
- [80] Other than the disbursements dealt with above, there is nothing remarkable about the disbursements and the respondent took no issue with them.
- [81] Special costs are allowed in full as claimed at \$327,962.77. Special Costs Per the Order of Justice N. Smith

- [82] At the hearing on March 5, 2018 before N. Smith J., the respondent was found to be in contempt of two of Master Taylor's orders made December 12, 2017 for (1) failing to provide complete banking records and (2) failing to provide his Form F8 Financial Statement. The respondent was also ordered to pay a penalty of \$5,000 to the claimant for his failure to produce his Form F8 Financial Statement.
- [83] Justice N. Smith did not hold the respondent in contempt for failing to return the \$500,000 he took from the parties' joint line of credit but ordered the respondent to swear an affidavit as to what became of those funds within seven days. Documents were also ordered to be produced directly from the respondent's banks.
- [84] The respondent was also ordered to ensure that he and the parties' son met with the author of the Views of the Child Report within seven days.
- [85] The claimant's notice of application was filed on February 8, 2018. Work in preparation for filing the February 8, 2018 application was 7.35 hours.
- [86] The respondent then filed a 183-page affidavit in response. In dealing with the respondent's lengthy affidavit, his new counsel, and then later with a further 105-page affidavit of the respondent, Ms. Paul spent 6.6 hours. She then spent 4.5 hours to prepare for the application and 6.95 hours on the day of the application--both in court, before, and after. A further .5 hours was spent in preparing the draft order after application and sending it to respondent's counsel.
- [87] Although the time spent in preparation exceeds the rule of thumb referenced by Mr. Kahn, given the seriousness of the application the time spent appears perfectly reasonable to me. There is nothing remarkable about the disbursements and the respondent took no issue with them at the hearing before me. Special costs for this hearing are awarded as sought at \$11,543.21. Interest
- [88] The claimant is also entitled to post-judgment interest on the costs from the date of the costs award to the date of judgment, calculated as follows: \$384,081.49 x 49 days/365 x 3.95% \$2,036.68 \$384,081.49 x 2 years x 2.45% \$18,819.99 \$384,081.49 x 183 days/365 x 3.70% \$7,124.97 \$384,081.49 x 64 days/365 x 6.45% \$4,343.80 Total: \$32,325.44

Conclusion

- [89] The claimant is awarded her costs as follows: Ordinary costs: \$13,750.00 Disbursements (including for assessment): \$30,825.51 Special costs per order of N. Smith J.: \$11,543.21 Special costs per order of Milman J.: \$327,962.77 Total: \$384,081.49
- [90] Adding interest of \$32,325.44, the claimant's total costs are assessed at \$416,406.93. "Master Muir"
- [1] Wrongly calculated in the second amended Bill of Costs as \$385,731.49

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