

CANADA / JUDGMENT

Nolletti v. Brizzi

2024 BCSC 2293

COURT

Supreme Court of British Columbia

DECIDED

16 December 2024

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2024 BCSC 2293 Nolletti v. Brizzi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nolletti v. Brizzi,

2024 BCSC 2293

Date: 20241216

Docket: S244788

Registry: New Westminster

Between:

Francesca Nolletti

Petitioner

And

Nicola Brizzi

Respondent

Before: The Honourable Justice Doyle

Reasons for Judgment on Costs

Counsel for the Petitioner:

F.N. Qamar

T.D. Affoo, agent for

F.N. Qamar (December 5, 2024 only)

The Respondent, appearing in-person:

N. Brizzi

Place and Dates of Hearing:

New Westminster, B.C.

December 4-5, 2024

Place and Date of Decision:

New Westminster, B.C.

December 4, 2024

Place and Date of Judgment:

New Westminster, B.C.

December 16, 2024

- [1] The petitioner applies for costs related to the petition at Scale B. The petition and related applications have resulted in multiple hearings and multiple orders before multiple justices of this Court. The petitioner and the respondent are siblings.
- [2] The respondent has represented himself throughout these proceedings. Although he received the application and all materials, including the petitioner's tariff schedules, he has not filed a response. He resists the order sought by the petitioner, not based on the amounts sought, but on the general grounds that the various applications were not necessary.
- [3] I heard submissions on the matter on December 4, 2024. I indicated that I was going to award costs to the petitioner on Scale B, with the amount to be determined based on the submissions. The matter was adjourned to the next morning at 9:00 a.m. for me to provide reasons, but circumstances prevented me from doing so. I did hear further from the respondent regarding a timeline for him to pay costs. The matter was then adjourned with reasons to follow, and these are those reasons.

Award of Costs

- [4] I will first elaborate upon my decision on December 4, 2024 that costs are payable to the petitioner.
- [5] The petition sought various relief in relation to the parents of the petitioner and the respondent. The issues included the enduring powers of attorney of both parents and caregivers for the parents.
- [6] On June 10, 2022, the petitioner brought an application on short notice before Justice Girn, and the petition was set for hearing on June 16, 2022.

- [7] On June 16, 2022, Justice Taylor heard the parties and made consent orders including that the respondent cease acting under a power of attorney dated January 28, 2017; agreement on a caregiver for the parents; limiting the respondent from opening mail addressed to the parents; arrangements for the petitioner to pay the parents' bills; and limiting the respondent from attending the bank with the parents for any financial purposes. Term 6 of that order stated that "By Consent, each Party will bear its own costs for the matter". The respondent has never filed a response to the petition.
- [8] The June 16, 2022 order addressed much of the relief sought in the petition.
- [9] That was not the end of the matter.
- [10] Matters transpired such that several other applications were brought by the petitioner. Those resulted in various orders summarized below:
- a) On February 22, 2023, Justice Blok's order included that the respondent not contact any of his parents' service providers, notably Telus and Shaw; cameras or other recordings would be disabled when the petitioner visited the parents and that the petitioner be allowed to cover such cameras when visiting; and that the petitioner may repair or modify the garage door. The order was silent as to costs;
 - b) On June 12, 2023, Justice Riley's order included that the respondent make a mailbox key and provide it to the petitioner and not remove the parents' mail, which was only to be accessed by the petitioner; and that the respondent not modify the living arrangements at the parents' home (including moving furniture or making other alterations) without the written consent of the petitioner. Applications for contempt and police protection were dismissed with leave to the petitioner to reapply. Costs were adjourned for consideration upon further application by the petitioner;
 - c) On October 31, 2023, Justice Devlin's order confirmed the orders of Justices Taylor, Blok and Riley, then added police protection orders with respect to anyone who contravened any of the orders. The basis for this protection order is set out in the notice of application and materials. In short, it resulted from actions of the respondent subsequent to Justice Blok's order. Orders related to contempt, fine and imprisonment of the respondent, and restricting the respondent from allowing any individual to reside with him at their parents' address, were adjourned. The issue of costs was adjourned for consideration upon further application by the petitioner; and
 - d) On June 18, 2024, Justice Armstrong's order removed the respondent as joint power of attorney for their mother.
- [11] The respondent did not file responses to any of the applications leading to the orders of Justices Blok, Riley, Devlin or Armstrong. Nonetheless, he appeared and made submissions before Justices Blok, Riley and Devlin.

- [12] The respondent consented to the order of Justice Armstrong, and did not appear at that hearing.
- [13] There have been no further applications. The parties' father has now passed away, but their mother is alive. The issues adjourned generally remain outstanding, as do the various orders.
- [14] The petitioner seeks costs for the hearing before Justice Taylor on June 16, 2022. She submits that although that should have been the end of the matter, the further applications were required. However, Taylor J.'s order specifically stated that the parties will bear their own costs. No costs will be awarded for that hearing (the petitioner does not seek costs for the short notice hearing before Girn J. on June 10, 2022 at which the June 16, 2022 hearing date was set).
- [15] The petitioner does seek costs at Scale B for the hearings before Justices Blok, Riley, Devlin. All hearings were contested, and broadly speaking the petitioner was successful. Other remedies sought were either dismissed with leave to reapply or adjourned generally. The respondent says these applications were not necessary. Respectfully, the Court orders granting relief to the petitioner make it clear that they were necessary. The petitioner is entitled to costs at Scale B for those hearings.
- [16] With regard to the hearing before Armstrong J., the respondent consented to it and did not appear. The hearing was of substance, in particular removing the respondent as a joint power of attorney. The petitioner is entitled to costs at Scale B.
- [17] The petitioner is also entitled to costs for this application, which she seeks in the amount of \$1,000 (plus taxes).

Assessment of Costs

- [18] The petitioner seeks that in these circumstances, the Court assess costs pursuant to Rule 14-15 of the Supreme Court Civil Rules, B.C. Reg. 168/2009, without a reference to the Registrar.
- [19] The petitioner submits that this is appropriate because the matters are all intertwined, and stem from the petition and the consequent applications brought following the June 16, 2022 order of Taylor J. The petitioner submits that the hearings subsequent to the order of Taylor J. had to be brought to address the respondent's continuing actions in relation to the petitioner and the parents.
- [20] The respondent made it very clear that he does not wish to have another hearing, since this hearing and all the other hearings caused him to miss work. He does not dispute the amounts in any detail, as noted above.

- [21] In the course of hearing this matter, I was provided with fulsome details and submissions. The materials included an extensive application record containing eleven affidavits of the petitioner and a further affidavit of a legal assistant to counsel for the petitioner. The latter included all the orders referred to above aside from that of Armstrong J., as well as Court Services Online summaries of appearances between June 10, 2022 and June 18, 2024. All the underlying notices of application and materials are part of the Court's file.
- [22] I also heard submissions from the petitioner regarding the items set out in Schedules A and B of her notice of application, as well as hearing from the respondent regarding the time required to pay any order made against him.
- [23] I am satisfied that this is an appropriate case to award costs pursuant to Rule 14-1(15).
- [24] The petition was filed in June 2022, and the matter continued with several applications brought by the petitioner over the next two years before several justices of this Court. The respondent did not file a response to any of those applications. Proceeding under Rule 14-1(15) will assist the parties by avoiding the delay and expense of an assessment by the Registrar, and notably will relieve the respondent of a further attendance that causes him to miss work.
- [25] The petition, the several applications, and the substantial supporting materials were not straightforward. The various contested matters led to Devlin J.'s October 31, 2023 order confirming the earlier orders of Justices Taylor, Blok and Riley, plus adding the police protection order initially sought before Riley J.
- [26] All the contested hearings took place without the petitioner having any response materials from which to prepare and conduct those applications. The respondent's response was only heard orally at those hearings.
- [27] In assessing costs, and with reference to the tariff items referenced by the petitioner:
- a) The maximum of 30 units is claimed for item 2. There was substantial material, correspondence and investigation into the matter, but in my view, the mid-range (15 units) is appropriate.
 - b) The maximum of 10 units is claimed for item 6. The petition and related applications were somewhat unusual. The respondent's non-responsive approach, until he made oral submissions at the three contested applications, complicated the proceeding and made it more difficult for the petitioner to prepare for and prosecute the proceeding. In my view, mid-range (5 units) is appropriate.
 - c) Leaving aside the hearings before Justices Girn and Taylor, there were four applications including the last, uncontested one before Justice Armstrong.

The other three hearings were opposed, and the court summary sheets show each was a half day. For those three hearings, items 21 and 22 are 1.5 and 2.5 units each, for a total of 12 units.

The unopposed hearing before Armstrong J. was a half day. Item 21 is 1 unit and item 22 is 2 units, for a total of 3.

Accordingly, those four hearings total 15 units.

d) Finally, three other hearings were set and did not proceed: one was adjourned by consent; one was adjourned because of lack of court time; and one was adjourned because the respondent brought his father to court to testify in Chambers, and the father had to be taken home. I only have submissions of each party regarding the cause of the third of those. The first was by consent. For the adjournment due to lack of court time, 3 units are allowed under item 37.

[28] The total of the units for items 2, 6, 21, 22 and 37 is 38 units at \$110.00 each, or \$4,180.00 plus GST (\$209.00) and PST (\$292.60) for a total of \$4,681.60 plus disbursements.

[29] The most significant disbursements listed are courier fees for personal service or delivery and photocopies at the required rate. The materials produced were substantial, and service by courier was prudent in circumstances where no responses were filed. I allow those claimed, for a total of \$2,882.83.

[30] Accordingly, for the matters prior to today's application, I award the petitioner costs and disbursements of \$7,564.43.

[31] With regard to this application, the petitioner seeks costs of \$1,000.00. The tariff for preparing and attending a half day opposed application, at Scale B, totals 4 units (items 21 and 22) at \$110.00 per unit. Costs for today's application are \$440.00, plus GST (\$22.00) and PST (\$30.80) for a total of \$492.80.

[32] The total amount awarded is \$8,057.23 (\$7,564.43 plus \$492.80).

[33] The respondent advised me that he could pay costs in the range sought by the petitioner in fairly short order. I have awarded a lesser total amount.

[34] I order that the respondent pay costs to the petitioner in the amount of \$8,057.23 on or before January 10, 2025.

"Doyle J."

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