

CANADA / JUDGMENT

O.M. v. V.G.

2025 BCSC 1187

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1187 O.M. v. V.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

O.M. v. V.G.,

2025 BCSC 1187

Date: 20250625

Docket: E19253

Registry: Duncan

Between:

O.M.

Claimant

And

V.G.

Respondent

- and -

Docket: S20020

Registry: Duncan

Between:

P.G.

Petitioner

And

V.G. and O.M.

Respondents

Before: The Honourable Mr. Justice Veenstra

Reasons for Judgment re Costs

Counsel for O.M.:

L. Muratkina

Counsel for V.G.:

V. Hemminger

P.G., appearing in person:

P.G.

Written Submissions received from O.M.:

March 21, 2025

Written Submissions received from V.G.:

May 21, 2025

Reply Written Submissions received from O.M.:

May 26, 2025

Place and Date of Judgment:

Duncan, B.C.

June 25, 2025

Table of Contents

Introduction.. 3

Legal Principles. 5

Substantial Success. 5

Whether to Order Otherwise. 6

Special Costs. 7

Scale of Costs. 8

Positions of the Parties. 10

Substantial Success. 10

Whether to Order Otherwise. 11

Special Costs. 12

Scale of Costs. 13

Analysis. 14

Conclusion and Comments With Respect to Assessment. 16

Introduction

- [1] On February 10, 2025, I gave judgment in these two matters, which dealt primarily with the status of a residential property in Duncan (the "Duncan Home"). My reasons for judgment are indexed at 2025 BCSC 209 (the "Trial Judgment"). With respect to the Duncan Home, I concluded at para. 300 that the interest of V.G.'s brother, P.G., in the Duncan Home was the 1% interest as shown on title, rather than the 50% interest he had claimed. I concluded that the 99% interest as to which V.G. was the registered owner was family property, with respect to which I concluded as follows at paras. 313-316:
- [313] In my view, this is a case in which there has been a significant increase to the value of family property after separation, and it would be significantly unfair not to appropriately recognize V.G.'s post-separation contributions. In my view, the most appropriate means to recognize that contribution would be to provide a credit to V.G. before division of the equity in the property. Providing some recognition for the renovation work (which should not be substantial in light of the lack of specific evidence as to the value generated thereby), I would assess that credit as \$60,000.
- [314] The 2024 appraisal values the Duncan Home at \$800,000. The mortgage balance is \$340,000. The net value of the family property is \$460,000. Crediting \$60,000 to V.G. in respect of his post-separation increases to the value of family property, the net amount to be divided is \$400,000. Equally dividing V.G.'s 99% interest in the Duncan home gives rise to a value for O.M.'s interest of \$198,000.
- [315] I do not accept V.G.'s submissions that there should be an advance adjustment for the \$24,000 P.G. claims to have invested in the Duncan Home. There is no evidence that these funds were actually invested in the Duncan Home, and in any event I have concluded that P.G. has a 1% interest in the Duncan Home. Any dealings with respect to the \$24,000 payment are a matter to be accounted for as between V.G. and P.G. The same would apply to the funds that P.G. deposited into TD Account 7139 after this litigation was commenced.

- [316] I would direct that V.G. be given 60 days from the release of these reasons for judgment to purchase O.M.'s interest in the Duncan Home for \$198,000. If he does not do so, then the Duncan Home should be listed for sale, with joint conduct of sale, and 49.5% of the net sale proceeds (less the \$60,000 credit to V.G.) to be paid to O.M.
- [2] I dealt briefly with the remaining issues at paras. 317-332. My conclusions with respect thereto were summarized at paras. 333-335 of the Trial Judgment:
- [333] On the main issue at trial, I have concluded that the Duncan Home is family property, the related mortgage is a family debt, and the net equity should be divided as set out above.
- [334] On the other issues:
- a) I have declined to impute income to V.G., other than \$3,000 per annum in respect of his vehicle repair work;
 - b) I have found that O.M. has established entitlement to spousal support with a duration beginning on the date of separation and ending June 2024; and
 - c) I have asked the parties to calculate the amounts of child support arrears and of the spousal support payable, based on my conclusions, and will determine the amounts if the parties are unable to agree.
- [335] With respect to parenting, I have directed that, unless otherwise agreed, O.M. is to drop off A.G. at V.G.'s home at the start of V.G.'s parenting time, and V.G. is to drop off A.G. at O.M.'s home at the conclusion of V.G.'s parenting time. Otherwise, the existing interim orders will become final.
- [3] With respect to costs, I directed as follows at paras. 336-337:
- [336] One of the parties asked that the question of costs be left for further submissions once the result at trial is known. Any submission seeking costs should be made through Supreme Court Scheduling within six weeks of the date this judgment is released. Any submission in response should be made within three weeks thereafter. The applicant may submit a brief reply submission within seven days of the other party's submission. I will determine after reviewing the submissions whether a hearing is necessary.
- [337] There are certain issues that I have left for the parties to resolve, based on directions given. If the parties are unable to resolve those matters, or if I have failed to deal with any matter that was properly before me, or if there are any mathematical errors in the calculations I have made, those can be drawn to my attention by way of submissions that should be made in accordance with the same timeline as for submissions on costs.
- [4] O.M. filed a submission seeking orders for costs as follows:

- a) In respect of proceeding E19253, costs as against V.G., to be assessed as special costs pursuant to Rule 16-1(1)(b) of the Supreme Court Family Rules (SCFR) or, alternatively on the basis that this was a proceeding of more than ordinary difficulty;
 - b) In respect of proceeding E19253, a fine of \$5,000 as against V.G. pursuant to s. 213(2)(d)(ii) of the Family Law Act in respect of incomplete and delayed disclosure; and
 - c) In respect of proceeding S20020, costs as against P.G. to be assessed as special costs pursuant to Rule 14-1(1)(b) of the Supreme Court Civil Rules (SCCR) or, alternatively, as elevated or uplift costs pursuant to SCCR Appendix B s. 2(5).
- [5] V.G. submits that neither party was substantially successful at trial, and the parties ought to bear their own costs. Alternatively, if the court finds that O.M. was substantially successful, V.G. submits that the court should exercise its discretion in any event to order the parties to bear their own costs. V.G. submits that the standard for an award of special costs is not met in the circumstances of this case, and that the case was not of more than ordinary difficulty.

Legal Principles

- [6] The legal principles governing costs in family matters are well established. Rule 16-1(7) of the Supreme Court Family Rules [SCFR] provides that, subject to Rule 16-1(9) (which deals with costs of applications):

Costs to follow event

- (7) [] costs of a family law case must be awarded to the successful party unless the court otherwise orders.
- [7] Rule 14-1(9) of the Supreme Court Civil Rules [SCCR], which applies in civil proceedings (which would include action S20020), is to the same effect.

Substantial Success

- [8] The successful party is the party that achieves "substantial success". As summarized in *Jin v. Cheng*, 2019 BCSC 148:
- [19] Substantial success, as defined in the authorities, is when the prevailing party succeeds on 75% or more on the matters in dispute. The trial judge is to measure substantial success in the litigation objectively by considering the disputed matters globally and comparing the results achieved with the submissions made at trial. The weight and importance of all the matters in dispute are to be taken into account together with the parties' corresponding relative success or failure. The 75% success threshold is intended to serve as a "rough and ready guide" and the Court is not required to evaluate the substantial success threshold with mathematical precision: *Gold v. Gold* (1993), 82 B.C.L.R. (2d) 180, 106 D.L.R. (4th) 452 (C.A.), leave to appeal ref'd [1993] S.C.C.A. No. 441 [Gold]; *Fotheringham v. Fotheringham*, 2001 BCSC 1321, leave to appeal ref'd 2002 BCCA 454 [Fotheringham]; *Marquez v. Zapiola*, 2014 BCCA 35 at paras. 15-16 [Marquez]; *D.R. v. E.P.R.*, 2016 BCSC 550 at para. 8, aff'd 2016 BCCA

517 [D.R.].

- [9] The weight or importance of an issue is more significant than the time spent on an issue, and the complexity of each issue is also significant: *D.R. v. E.P.R.*, 2016 BCSC 550 at para. 8, *Gadhri v. Dhanoa*, 2022 BCSC 225 at paras. 5-6. Justice Bouck in *Fotheringham v. Fotheringham*, 2001 BCSC 1321, leave to appeal ref'd 2002 BCCA 454 at para. 46 suggested a four-step inquiry:
1. First, by focusing on the "matters in dispute" at the trial. These may or may not include "issues" explicitly mentioned in the pleadings.
 2. Second, by assessing the weight or importance of those "matters" to the parties.
 3. Third, by doing a global determination with respect to all the matters in dispute and determining which party "substantially succeeded," overall and therefore won the event.
 4. Fourth, where one party "substantially succeeded," a consideration of whether there are reasons to "otherwise order" that the winning party be deprived of his or her costs and each side then bear their own costs.
- [10] While these four steps provide a framework, the evaluation of substantial or divided success is not a mechanical, mathematical exercise: *Harras v. Lhotka*, 2016 BCCA 246 at para. 49.

Whether to Order Otherwise

- [11] Rule 16-1(7) establishes a usual rule that applies "unless the court otherwise orders". As noted in *S.A.M. v. J.A.M.*, 2017 BCSC 2348 at para. 7:
- [7] []
- (c) The court's discretion to "order otherwise" must be exercised judicially, bearing in mind a non-exhaustive list of factors that includes hardship, earning capacity, the purpose of the particular award, the conduct of the parties in relation to the litigation, and the importance of not upsetting the balance achieved by the court in relation to the substantive issues (*Gold v. Gold* (1993), 106 D.L.R. (4th) 452 (B.C.C.A.)).
- (d) The party who asks the court to "order otherwise" bears the onus to persuade the court why it should do so (*S.D.W. v. C.W.W.*, 2006 BCSC 162).

Special Costs

- [12] With respect to special costs, the applicable principles were conveniently summarized in the family context by Justice Warren (as she then was) in *Hu v. Dickson*, 2015 BCSC 218:

- [46] Special costs are awarded where a party's litigation conduct can be characterized as "reprehensible". In this context the word reprehensible encompasses both scandalous and outrageous conduct and also milder forms of misconduct deserving of reproof or rebuke: Garcia, para. 17. This does not mean that all forms of misconduct justify a special costs order - rather, the misconduct must be such as to be deserving of reproof or rebuke: Westsea Construction Ltd. v. 0759553 B.C. Ltd., 2013 BCSC 1352 at paras. 32 and 73.
- [47] The purpose for this high level of costs is punitive and intended to express the court's disapproval of the party's conduct. It is not necessary that all aspects of a party's conduct in the litigation be reprehensible in order to make an award of special costs that applies to the entire action: Bradshaw v. Stenner, 2012 BCSC 237 at para. 9, leave to appeal ref'd 2012 BCCA 481. However, pursuant to Rule 16-1(14) of the Supreme Court Family Rules, the court has the discretion to award costs that relate to only certain aspects of a proceeding and may do so where it would be disproportionate to award special costs of the entire proceeding: Gichuru [v. Smith, 2014 BCCA 414], para. 91.
- [48] The court must exercise restraint in awarding special costs and as such the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order: Westsea, para. 73.
- [49] In Kim v. Hong, 2013 BCSC 2248, Justice Griffin quoted extensively from the judgment of Justice Williams in Schwabe v. Dr. Lisinski, 2005 BCSC 1284, where he summarized a number of cases in an effort to discern the kinds of conduct that had been characterized as reprehensible and thus warranting an award of special costs. Justice Griffin also categorized the conduct that had been found to justify an award of special costs in a number of family cases. From her reasons, it is apparent that the kinds of conduct that warrant an award of special costs include the following:
- acting with an improper motive, such as to intimidate, exhaust or financially drain the other party in the hopes that they will give up or soften their position in the litigation;
 - dissipating and/or not disclosing assets;
 - abusing the court's process by, among other things, failing to disclose documents, delaying in disclosing documents, failing to respond to reasonable requests, causing unnecessary interlocutory applications, and breaching the Rules of Court in a manner that prejudices the other party;
 - misleading the court, through outright fabrications or through evasive and/or equivocal responses; and
 - disobeying a court order.
- [13] As noted in McIntyre v. McIntyre, 2018 BCSC 472:

- [7] Another purpose for rules relating to costs can be "to encourage conduct that reduces the duration and expense of litigation and to discourage conduct that has the opposite effect": see *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (2d) 2, 122 D.L.R. (4th) 330, at para. 28 (C.A.). In family cases, this latter purpose is particularly significant in cases where one party controls and has access to considerably more assets than the other, and attempts to wear down the other party to the point where the latter can no longer afford counsel or simply gives up his or her efforts in frustration.

Scale of Costs

- [14] Section 1(1) of Appendix B to the SCFR provides that:

- (1) If a court has made an order for costs, it may determine if the family law case involves less than ordinary difficulty, ordinary difficulty or more than ordinary difficulty.

- [15] The leading case on scale of difficulty under the SCFR is *Kopp v. Kopp*, 2012 BCCA 140 at para. 86:

- [86] The scale is thus determined by reference to the level of difficulty of the case. In determining the scale of costs, the court may also consider whether a difficult issue of law, fact or construction is involved; whether the issue is of interest to a class or body of persons, or is of general interest; and whether the result of the proceeding effectively determines the rights and obligations as between the parties beyond the relief that was actually granted or denied (s. 2(3) of Appendix B of the Supreme Court Civil Rules, B.C. Reg. 168/2009).

- [16] Ms. Kopp relied on Mr. Kopp's lack of cooperation and diligence with respect to document production. While this was accepted by the trial judge, the Court of Appeal disagreed:

- [89] On the basis of these facts, this case does not give rise to "more than ordinary difficulty". While the appellant could have been more cooperative, it is likely the parties would have had to resort to the court for assistance in defining their obligations under the separation agreement. One application for disclosure does not seem unreasonable given the difficult relationship between the parties. Once disclosure was ordered, there is no evidence that respondent's counsel had to undertake any extra work to determine the extent or value of the appellant's income or assets. Furthermore, the appellant had the legal right to argue that the separation agreement was determinative of all issues in accordance with his interpretation. None of the appellant's arguments were frivolous, untenable, or without any merit whatsoever.

- [90] In other family law cases in which costs have been awarded on a scale reflecting more than ordinary difficulty, the evidence has shown deceit (*Ahenkora v. Ahenkora*, [1999] B.C.J. No. 1770 (QL) (S.C.), appeal dismissed 2000 BCCA 85), disregard for court orders, procedure or process that lengthened the trial and made it more difficult (*Xu v. Leung*, 2001 BCCA 163); misleading the court by failing to provide full and proper disclosure (*Friedl v. Friedl*, 2010 BCSC 139); or failure to provide information in a cooperative manner or other conduct which increased the difficulty of the case (*Dhalla v. Dhalla*, 2002 BCSC 984; *McPhail v.*

McPhail, 2001 BCCA 250). None of these factors is present here.

[91] The evidence does not show that the appellant's conduct in this case gave rise to "more than ordinary difficulty". There was no difficult issue of law, fact or construction involved; the issues in the case were not of general interest to a class or body of persons; and the result of the proceeding did not determine the rights and obligations as between the parties beyond the relief that was actually granted or denied.

[17] Costs under the SCCR are somewhat different. In each case, the court is to determine whether costs should be assessed under Scale A (matters of little or less than ordinary difficulty), Scale B (matters of ordinary difficulty), or Scale C (matters of more than ordinary difficulty). Appendix B of the SCCR provides principles for determining which scale is to apply. Section 2(5) of Appendix B of the SCCR then provides that the court may, after fixing the scale of costs applicable to a civil proceeding, order what are often referred to as "uplift" costs--which increases the amount provided for each tariff item by 50%. This can be done where the court concludes that:

[] as a result of unusual circumstances, an award of costs on that scale would be grossly inadequate or unjust []

[18] Conduct justifying such an order may include misconduct in the litigation falling short of the standard required for special costs: *AM Gold Inc. v. Kaizen Discovery Inc.*, 2022 BCCA 284 at paras. 88-91.

Positions of the Parties

Substantial Success

[19] O.M. says that determination of the date of separation was the main issue at trial and occupied most of the trial time. It was crucial to the classification of the Duncan Home as family property, and the Duncan Home was the primary asset. O.M. says that she was successful on this primary issue.

[20] With respect to action S20020, O.M. says that the sole issue in that proceeding was whether or not P.G. owned more than the 1% interest in the Duncan Home recorded on title, and that she was entirely successful in defeating P.G.'s claim to be a 50% owner. That meant that the interest in the Duncan Home that was family property was the entire 99% interest registered in V.G.'s name.

[21] O.M. acknowledges that the division of the Duncan Home was not entirely equal, as the court ordered that there be a credit of \$60,000 to V.G. to reflect his contribution to post-separation improvements to the Duncan Home. However, O.M. notes that the claim for unequal division was not pleaded, there was very little evidence related to it, and that the primary time devoted to it was in closing submissions. In any event, V.G. sought a 10/90 or 20/80 division in his favour--a submission as to which he enjoyed only a small amount of partial success.

- [22] O.M. notes as well that she was successful in having the Court refuse to accept V.G.'s allegations of a significant family debt.
- [23] O.M. says that she was partially successful in her arguments for imputation of income. While she had argued for a much higher annual income, she notes that the Court included an additional \$3,000 per annum in V.G.'s income.
- [24] O.M. says that she was successful on establishing entitlement to spousal support on both a compensatory and non-compensatory basis.
- [25] As noted at paras. 322 and 327 to 328 of the Trial Judgment, I left it to the parties to calculate the arrears of child support and quantum of spousal support on the basis of my conclusions as to V.G.'s income and entitlement to spousal support.
- [26] V.G. says, although the Court ruled in favour of O.M. with respect to the date of separation, and as to the extent of P.G.'s interest in the Duncan Home, there were other issues on which success was mixed:
- a) V.G. was partially successful in obtaining an unequal division of the Duncan home based on his post-separation contributions;
 - b) The allegation that V.G. had substantial unreported cash revenues and should be imputed significant additional income was not accepted by the court;
 - c) V.G. was successful on the one parenting matter in issue, and notes that this entire issue arose because O.M. had moved from Duncan to Victoria without notifying V.G.;
 - d) V.G. says that the award of child support arrears was closer to his calculation than to that advanced by O.M.;
 - e) V.G. says that while O.M. was successful in establishing entitlement to spousal support, the quantum was substantially less than what she sought.

Whether to Order Otherwise

- [27] O.M. submits that there are no good reasons to depart from the usual rule that costs follow the event, noting that she was the financially disadvantaged party after their separation.
- [28] V.G. says that in this case, the parties' assets are modest, and draws parallels to the situation in *Purewal v. Purewal*, 2007 BCSC 901 where Justice Dorgan noted at para. 12 that:
- [12] Given that the family assets are modest, a cost award could upset the reapportionment ordered. Although the parties did not provide any details as to the legal fees and disbursements incurred, this was a six-day trial and costs are likely to be substantial. By reapportioning assets in the defendant's favour, the court acknowledged that the defendant had greater needs in order to become economically independent and self-sufficient. The purpose of reapportionment was to address this greater need; such a purpose could be subverted by a cost award.

- [29] V.G. submits that an award of costs against him would cause great hardship, given the substantial legal fees he had incurred, and would upset the balance achieved by the division of the Duncan Home--effectively eliminating the intended division of assets mandated by the Court at trial.
- [30] V.G. notes as well that there were negative credibility findings made in respect of all parties, and submits that that should also militate against awarding costs to any party.
- [31] In reply, O.M. argued that Purewal is a case in which the reapportionment referred to was to address the greater need of the defendant (the party against whom costs were being sought), rather than to address post-separation contributions to the value of an asset.

Special Costs

- [32] O.M. seeks special costs based on the litigation conduct of V.G. and P.G. She says that V.G. initially produced only a limited number of emails and only partial translations of selected parts of those emails. She says that V.G. and P.G. both continued to produce documents throughout the trial, without ever listing them and, in one case, attempted to "ambush" O.M. by putting a previously undisclosed document to her in cross-examination. While some documents were disclosed late, others were never disclosed. O.M. submits that her cross-examination was unnecessarily lengthy and repetitive, and that V.G. refused to agree on a joint book of documents. She said that V.G.'s evidence with respect to the purchase of the Duncan Home was inconsistent and misleading. She also says that P.G.'s cross-examinations were longer than necessary because he was attempting to prosecute V.G.'s position in respect of the family law claims.
- [33] V.G. says that this is not a case in which special costs should be awarded. V.G. notes the Court's comments at para. 37 of the Trial Judgment that:
- [37] It also became clear over the course of the trial that none of the parties had treated their pre-trial disclosure obligations particularly seriously, and there was a steady stream of new documents produced as the trial proceeded.
- [34] V.G. asserts as well that O.M. made "baseless allegations of unreported cash income", and was found to have engaged in one act of family violence: Trial Judgment at paras. 307-308.
- [35] V.G.'s counsel submits, on behalf of P.G., that the court ordered the two proceedings to be tried together, and that challenges to P.G.'s right to present evidence at trial are contradictory to the nature of the trial process and without merit.

Scale of Costs

- [36] In the alternative to her claim for special costs, O.M. argues that costs should be assessed on the basis that the proceeding was of more than ordinary difficulty. She relies on the line of authorities noted at para. 90 of Kopp (cited above), and says that the conduct of V.G. and P.G. made the action of "more than ordinary difficulty". She bases this position on the same

allegations that underlie her claim for special costs, including the allegations with respect to V.G.'s failure to make proper document disclosure. For similar reasons, she seeks uplift costs in respect of the civil proceeding.

- [37] She also submits that, in addition to costs on this higher scale, there should also be a fine against V.G. pursuant to s. 213(2)(d)(ii) of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. That section provides for various relief, including a fine of up to \$5,000, where a party fails to comply with document disclosure obligations either under the SCFR or pursuant to a court order. She notes *Sanai v. Mahmoud*, 2017 BCCA 155 at para. 52, in which the Court of Appeal found no error in principle where a judge had ordered a fine pursuant to s. 213(2)(d)(ii) in his trial judgment, then later ordered costs on a scale of greater than ordinary difficulty, both on the basis of the same failures in document disclosure.
- [38] V.G. argues that there is no basis to award costs on the basis that the proceeding was of greater than ordinary difficulty. V.G. notes that the court concluded that neither of the parties had treated their pre-trial disclosure obligations particularly seriously. As well, both parties had initially sought to reduce translation costs through reliance on partially translated documents--which ultimately turned out to be unsatisfactory once the trial commenced.
- [39] V.G. says that for substantially the same reasons, a penalty under s. 213 of the FLA would be inappropriate.

Analysis

- [40] I agree that the major issue at trial was determination of the date of separation. That issue was of great importance because it largely determined O.M.'s claim to V.G.'s interest in the Duncan Home being family property. Similarly, O.M. was entirely successful in respect of V.G.'s claims of an ongoing family debt owed to one of his friends, Mr. Linevich.
- [41] A second significant issue was whether P.G. had an interest greater than the 1% shown on title. This again was key because only V.G.'s interest in the Duncan Home would be family property.
- [42] Each of P.G. and V.G. joined with the other in contesting O.M.'s position on these key issues. O.M. was completely successful on them.
- [43] I accept that V.G. had some success on the other issues. In my view, however, those issues did not, as a group, carry sufficient weight to overcome the importance of and the time spent on the key issues. In my view, the fact that those other issues were resolved in less than 20 paragraphs at the conclusion of the judgment is roughly indicative of their relative importance at trial.
- [44] In my view, O.M. was substantially successful in respect of both proceedings.

[45] This is not a case in which the court should exercise its discretion to not order costs. While the legal costs, given the length of trial, will be of significance, I note that it is the parties with the greater economic power who will be responsible for costs.

[46] In my view, this is not a case in which an order for special costs is appropriate. As I noted at para. 37 of the Trial Judgment, all of the parties were implicated in failures with respect to document production. And while I found that V.G. and P.G. were the least credible witnesses, I also expressed concern about the evidence of O.M. (see paras. 221-223 of the Trial Judgment). As I concluded at paras. 237 and 302:

[237] My conclusion is that I believe little of what either V.G. or P.G. have said, unless it is supported by contemporaneous documents. I approach O.M.'s evidence with caution as well, although where her evidence and that of V.G. or P.G. differs, and subject always to other surrounding circumstances, I generally prefer her evidence.

[]

[302] I am suspicious given the number of payments made from V.G.'s US\$ Account that some of those payments may relate to other assets elsewhere that have not been disclosed. I am also concerned about O.M.'s lack of disclosure with respect to her Ukraine banking arrangements. Although, as noted above, I have doubt's about O.M.'s ability to have acquired any assets of substance in Ukraine, the non-disclosure of all parties is of concern.

[47] In my view, the court regularly makes credibility findings, and an adverse credibility finding does not automatically lead to a finding of reprehensible conduct that would found an order for special costs. In this case, I expressed concern about both parties' credibility and both parties' compliance with document production.

[48] With respect to the allegations of litigation conduct (other than document production and credibility):

- a) My understanding at the start of trial was that both O.M. and V.G. had agreed that the trial could proceed based only on partial translations of the Russian-language emails. It was only after cross-examination began and it became clear to me that the balance of the emails provided important context, that I directed that full translations be obtained; and
- b) The balance of the trial was, in my view, reflective of hard-fought litigation. P.G. was self-represented, and, in my view, did his best to advance his positions at trial given his lack of familiarity with the legal process.

[49] More generally, my sense was that leading up to the initial trial date, counsel engaged in a reasonable degree of cooperation with a view to obtaining an efficient resolution of the parties' dispute. As noted at para. 203 of the Trial Judgment, that included a summary trial application that came on for hearing before (and was adjourned by) Justice Saunders in May 2023. While it ultimately became apparent that this case required a full trial, it is my view that the joint efforts to resolve matters in a cost-effective manner may underlie the issues

that arose with respect to translation as well as some of the failures of both parties in terms of disclosure.

- [50] In my view, although the facts of this case were somewhat unusual, I did not see the case as one of greater than ordinary difficulty. Nor for the reasons outlined above in respect of special costs did I see the conduct of either party as making the proceeding of greater than ordinary difficulty. For completeness, I also conclude that there are no unusual circumstances that would make an award of ordinary costs grossly inadequate or unjust.

Conclusion and Comments With Respect to Assessment

- [51] In my view, O.M. is entitled to her costs of both proceedings, assessed on the basis that this was a matter of ordinary difficulty.
- [52] The trial included a brief appearance on February 26, 2024, at which time I ordered an adjournment to permit O.M. time to retain new counsel. In my view, O.M. should not be entitled to costs for that day.
- [53] None of the parties addressed the manner in which costs would be assessed given that the trial involved both a family and a civil proceeding heard together. I note that s. 2 of Appendix B of the SCFR provides that:
2. If 2 or more family law cases have, by order, been tried at the same time or tried one after the other and no order has been made as to apportionment of costs, the registrar may
 - (a) assess 2 or more bills as one bill,
 - (b) allow an item once or more than once, or
 - (c) apportion the costs of an item or of the whole bill between the family law cases.
- [54] A similar provision is found in s. 7 of Appendix B of the SCCR, but applies to a "proceeding" as that term is defined in SCCR Rule 1-1.
- [55] An interesting issue arises as to whether the registrar has jurisdiction to apportion costs where one proceeding under each set of rules is tried together. None of the parties identified or made submissions on that point.
- [56] It may make sense to simply assess costs of both proceedings pursuant to the SCFR, which will make clear the registrar's jurisdiction to take account of s. 2 of Appendix B. Alternatively, the parties could agree that the registrar will have that jurisdiction notwithstanding that the two proceedings are governed by different rules.
- [57] To the extent it is of assistance in assessing costs, I express the view that it would be fair to attribute two days of trial time to P.G.'s claims in action S20020, and the balance of the trial time to action E19253.

[58] In my view, the order that is to be entered with respect to costs should reflect the basis on which the registrar will assess the costs. If the parties are unable to agree on that, they can seek further direction from me. I would direct that any such request be made within six weeks of these Reasons for Judgment.

"Veenstra J."

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