

CANADA / JUDGMENT

P.M.Z. v. D.J.T.

2024 BCSC 146

COURT

Supreme Court of British Columbia

DECIDED

31 January 2024

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2024 BCSC 146 P.M.Z. v. D.J.T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.M.Z. v. D.J.T.,

2024 BCSC 146

Date: 20240131

Docket: E210455

Registry: Vancouver

Between:

P.M.Z.

Claimant

And

D.J.T.

Respondent

Before: Registrar Gaily

Reasons for Decision

Counsel for the Claimant:

R. Kinghorn

Respondent, D.J.T., appearing in person:

D.J.T.

Place and Date of Hearing:

Vancouver, B.C.

January 17, 2024

Place and Date of Judgment:

Vancouver, B.C.

January 31, 2024

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Introduction

- [1] This is an assessment of the special costs awarded to the claimant, P.M.Z., at the conclusion of a seven-day family trial heard in July 2023 before Justice Forth. Justice Forth released her reasons for judgment on August 18, 2023 and they are indexed as P.M.Z. v. D.J.T, 2023 BCSC 1444 (the "Reasons"). The Reasons and the order entered on August 22, 2023 (the "Order"), reflect that Forth J. found that the claimant was entitled to special costs of the family law proceeding, and that the special costs were to be paid from the respondent's share of the net sale proceeds of the family home.

- [2] The claimant seeks \$121,755.35 in special costs, comprised of \$103,326.00 in legal fees, plus applicable taxes of \$5,166.30 (GST) and \$7,232.82 (PST), as well as \$6,030.23 in disbursements, based on the invoice issued to the claimant on December 4, 2023, which was exhibited to the affidavit of Ryan Kinghorn, one of the claimant's counsel, made on December 4, 2023 ("Kinghorn Affidavit #2") (Ex. A, pp. 1-21) (the "Bill").
- [3] The assessment of special costs awarded in family proceedings is governed by Rule 16-1(2) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR]. The parties appeared before me for a pre-hearing conference ("PHC") on November 23, 2023, and the assessment hearing proceeded on January 17, 2024. The evidence before me consisted of two affidavits of Mr. Kinghorn, the first made on October 19, 2023 ("Kinghorn Affidavit #1"), as well as Kinghorn Affidavit #2. Mr. Kinghorn spoke to his affidavits. The respondent left the assessment before the morning break and did not cross-examine Mr. Kinghorn on his affidavits. I questioned Mr. Kinghorn about the Bill and reserved my decision.
- [4] For the reasons set out below, I have minimally reduced some of the legal fees claimed, and I have allowed the claimant's special costs at \$117,036.32 (which includes fees, disbursements and applicable taxes).

Background and History of the Proceedings

- [5] The background of this high conflict family case is set out in the Reasons and I have only summarized the chronology of the proceedings. The parties were married on March 16, 2011, and separated on December 30, 2019. There are two children of the marriage, born in April 2011 and February 2018; they have lived with the claimant since the separation. In the Reasons, Forth J. outlines the history of family violence, as well as the respondent's breaches of a probation order made in the criminal proceedings, which continued into September 2023 (para. 77).
- [6] The claimant, who was initially represented by counsel appointed through legal aid, filed the notice of family claim on March 8, 2021 ("NOFC #1"). The respondent, who was also represented by counsel, filed his response on July 13, 2021, agreeing to a divorce and the division of the family property and family debt (Reasons, para. 62).
- [7] On September 27, 2021, the claimant retained Race & Company LLP (the "Law Firm"). Karin Emond had conduct of the claimant's file and she prepared for and attended the trial. To keep the claimant's costs low, junior lawyers performed the bulk of the work, including preparing for and attending applications, preparing affidavits, lists of documents and Form F8 financial statements ("F8").
- [8] The SCFR provide that a party may request a judicial case conference ("JCC") at any time (R. 7-1). On December 31, 2021, the Law Firm filed a notice of a JCC. The Law Firm also assisted the claimant prepare her F8, which was filed on January 26, 2022. The parties appeared virtually at a JCC before Justice Fleming on February 2, 2022 through MS Teams. At the JCC, Fleming J. made several orders to which the parties had agreed, including that the

respondent shall file and serve his completed F8 no later than March 2, 2022 (the "JCC Order") (Reasons, para. 65). The respondent did not provide his F8 in compliance with the JCC Order (Reasons, para. 68).

- [9] The Law Firm encouraged the claimant to take some steps in the family proceedings herself, such as registering the JCC Order with the Family Maintenance Enforcement Program ("FMEP"), which she did in early 2022 (Reasons, para. 78).
- [10] An incident arose at the respondent's first supervised visit with the children on or about February 5, 2022 (shortly after the JCC). It was also around this time that the respondent dismissed his counsel, who formally withdrew on February 9, 2022 (Reasons, para. 67). The respondent did not retain new counsel and, because the terms of the probation order prohibited him from direct communication with the claimant, he then began to communicate with the Law Firm, primarily through email.
- [11] The parties had planned to attend family mediation, but this was cancelled after the JCC and the incident at the respondent's first supervised visit (which is described in the Reasons, para. 66). The respondent refused to consent to an educational psychological assessment of one of the children who had some learning disabilities. As a result of this refusal, as well as his failure to provide an F8 in compliance with the JCC Order, the Law Firm prepared an application seeking various orders, which included preparing affidavits in support.
- [12] On April 12, 2022, the parties appeared before Master Muir on the claimant's application by video on MSTeams, but the respondent did not return after the lunch break. Master Muir made a series of orders, including one that required the respondent to file and serve his F8 no later than April 15, 2022, and another that imposed a fine of \$500 for failure to comply with the JCC Order (the "Muir Order") (Reasons, para. 69). The respondent did not comply with the Muir Order (Reasons, para. 71). On April 14, 2022, Master Muir also granted a protection order, which was to expire on July 12, 2023 ("Protection Order #1") (Reasons, para. 71).
- [13] The respondent refused to comply with the Muir Order and refused to disclose financial information and by late August 2022, he had breached the terms of both the probation order and Protection Order #1. Mr. Kinghorn testified that by this point, the Law Firm advised the claimant that a trial was necessary given the respondent's ongoing conduct.
- [14] The Law Firm prepared an application seeking financial disclosure from the parties' financial institutions, as well as other relief, and prepared affidavits in support. On February 8, 2023, the parties appeared in person before Master Nielsen on the claimant's application. Among other things, Master Nielsen ordered disclosure from the parties' banks, the respondent was to file and serve his F8 no later than March 1, 2023, and the respondent was to pay a fine of \$1,000 for failing to comply with the Muir Order (the "Nielsen Order") (Reasons, para. 79). The Nielsen Order also directed that the claimant could keep one of the couple's cars as her property (the respondent was entitled to keep the other).

- [15] The respondent did not file and serve the F8 as required by the Nielsen Order, as noted by Forth J.:
- [81] Mr. T continued to refuse to file and serve a financial statement and at trial he still had not done so. His excuse for not filing a financial statement is that he was using this as a strategy to pressure Ms. Z into a mediation. He also stated that he would only provide it if Ms. Z admitted she did not tell the truth in her statement to the Crown. (Reasons, para. 81).
- [16] Given the respondent's ongoing refusal to provide financial information, as well as his breaches of the probation and protection orders, the Law Firm prepared an amended notice of family claim ("NOFC #2"), which was filed on April 27, 2023. In the NOFC #2, the claimant sought an unequal division of family property and debt, a relocation order and a protection order, but the respondent did not file a response to NOFC #2 (Reasons, para. 82).
- [17] On June 6, 2023, the parties attended a trial management conference ("TMC") before Master Harper. Among other things, Master Harper ordered the respondent to file and serve a completed schedule of assets and debts at least three weeks before the start of the trial (a "Scott Schedule"). As Forth J. noted, the respondent did not file a Scott Schedule in contravention of the TMC order (Reasons, para. 83). On June 16, 2023, the Law Firm filed the claimant's updated F8 in compliance with the TMC order.
- [18] The respondent refused to sign the necessary papers transferring the car to the claimant as directed under the Nielsen Order, and Protection Order #1 was set to expire in early July, before the start of the trial. The Law Firm prepared an application seeking orders regarding the transfer of the car and a further protection order. The parties appeared before Master Robertson on June 22, 2023, who ordered the Insurance Corporation of British Columbia ("ICBC") to transfer the car to the claimant without the respondent's signature (Reasons, para. 85). Master Robertson also granted a further protection order on the same terms as Protection Order #1 ("Protection Order #2") (Reasons, para. 84). Protection Order #2 will expire on June 22, 2024.
- [19] The trial before Forth J. took seven days, July 17-21, 24 and 26, 2023. Both Ms. Emond and Mr. Kinghorn attended the trial. In addition to the claimant, the claimant's stepmother testified, appearing remotely by MSTeams; the respondent testified and one of his friends was also a witness for him. Mr. Kinghorn said that the respondent's cross-examination of the claimant took one day, but Forth J. was required to redirect the respondent's questions and maintain order. At paragraphs 6 and 7 of her Reasons, Forth J. described the respondent's conduct on the last day of trial, when he left the trial during the claimant's closing submissions and did not return or make his own closing submissions.

- [20] The claimant's counsel prepared the Order (Forth J. ordered that the respondent's signature was dispensed with), filed it and sent a copy of the entered Order to the respondent (Order, para. 45). The Order is comprehensive and lengthy (45 paragraphs over seven pages) and Mr. Kinghorn testified that he had to spend time explaining the terms of the Order to the claimant and advising her about its effect.
- [21] In the Order, Forth J. ordered the Family Home (as defined) to be listed for sale forthwith (para. 17). She ordered that the claimant was to have sole conduct of the sale and that the requirement for the respondent's signature on real estate documents and title registry forms related to the sale of the Family Home was dispensed with (paras. 22 and 23).
- [22] Justice Forth also ordered that the respondent was entitled to attend at the Family Home and remove his personal belongings from outside it (but not go inside), and he was to provide the claimant's counsel 48 hours' written notice of his intention to attend and remove his belongings, but it must take place within 14 days of the pronouncement of the Reasons (Order, paras. 18-19). Justice Forth contemplated that the respondent might not comply with these terms, and the Order provides that if he did not remove his belongings as ordered, the claimant was entitled to have them removed and disposed of and the costs shall be paid out of the respondent's share (para. 20).
- [23] The respondent did not comply with the terms of the Order regarding the removal of his belongings and the claimant incurred costs to have them removed and delivered to him. Because the Order granted the claimant the sole conduct of the sale of the Family Home and dispensed with the respondent's signature on transfer documents, and because there were some complications relating to the title (I was advised that the respondent's deceased father was still listed on title), Mr. Kinghorn testified that he had to work with the claimant's realtor to ensure compliance with the Order. Mr. Kinghorn testified that although the Law Firm did the conveyance of the property, the fees associated with the conveyance are not included in the special costs before me.
- [24] As noted, given the terms of the probation and protection orders, the respondent was required to contact the claimant through her counsel. In the Reasons, Forth J. notes that after the respondent dismissed his lawyer in February 2022, he began to correspond with the claimant's counsel, sending in excess of 350 emails to the Law Firm by the time of the trial. These emails were in evidence before her and she reproduced some of them in the Reasons, describing the content of some as disturbing for the manner in which he referred to the claimant and her lawyers, and noting that some contained threatening language (paras. 72-73).
- [25] The respondent has continued to send disturbing and threatening emails, as Mr. Kinghorn attested in his affidavits and testified at the assessment. For example, in response to Mr. Kinghorn asking the respondent if he was available for dates for the PHC and assessment of the special costs, the respondent wrote the following email on August 31, 2023 at 8:37 p.m. (Kinghorn Affidavit #1, Ex. F, p. 135):

Having the nerve to talk to me about my shit but not about my kids! You're a piece of shit and she is too! You people are sick beyond compare. I will be moving out east to see my kids as much as I can. So you can tell your lying client that when she said to me 'I want full custody of the kids and you'll be able to see the kids wherever you want!' This Had better materialize.

Followed less than an hour later by this email at 9:10 p.m.: "Burn it asshole".

- [26] Mr. Kinghorn exhibited some more of the emails from the respondent, which he received between August 17 and October 13, 2023 (Kinghorn Affidavit #1, Ex. G) and between October 19 and December 1, 2023 (Kinghorn Affidavit #2, Ex. B, pp. 22-56). He testified that the respondent continues to send him emails, all of which are similar to the ones reproduced by Forth J. and above.
- [27] Mr. Kinghorn testified that he has not billed for all of the time he has spent to review the respondent's emails because the vast majority of the respondent's emails "included inappropriate comments, disparaging remarks and references to a family violence incident that caused the parties to separate and resulted in the Respondent pleading guilty to assault" (Kinghorn Affidavit #2, para. 11).
- [28] At the hearing, Mr. Kinghorn said that he has been billing his time for reviewing the respondent's emails since the conclusion of the trial as the respondent has escalated his threats towards the claimant and her lawyers, and he has had to contact the claimant to caution her about the respondent's emails and advise her to contact the police and the children's school (Kinghorn Affidavit #2, paras. 12-16). For example, the respondent sent an email to Mr. Kinghorn on September 5, 2023, indicating that he was in the same province as the claimant and the children, including a screenshot from Google Maps showing the route and distance from where he was to them, writing "maybe [the claimant] would be open to myself visiting kids? Perhaps the [town] police could supervise us while at their station? That way she's guaranteed I won't say anything bad about her. I was hoping for a visit after they're [sic] school is out" (Kinghorn Affidavit #1, Ex. B, p. 162). The respondent did not, in fact, drive to the location, but Mr. Kinghorn spent time advising the claimant about actions she could take as a result of the email.
- [29] At paragraphs 352-355 of her Reasons, Forth J. set out the basis on which she determined that the respondent's conduct was reprehensible and deserving of rebuke, resulting in the special costs award. As I explained to the respondent when he was before me, as registrar, I have no jurisdiction to vary the costs order of a justice.
- [30] At paragraph 98 of the Reasons, Forth J. noted the following about the respondent's demeanour before her:
- [98] ... It is clear that Mr. T has become obsessed with a number of issues. The first being the fact that he was charged with assault by the Crown. Although he pleaded guilty to the assault charge, he is of the view that it really was not an assault since Ms. Z suffered what he describes as "zero injuries". He continuously referred to the events of December 29, 2019 as a

"consensual argument". He further became fixated that there was a failure of Ms. Z and her counsel to agree to have the matter resolved by way of "mediation and communication". He harbors a great deal of anger and resentment against Ms. Z and her counsel for this. His evidence and statements in court were permeated with references to topics irrelevant to the issue before me, such as global warming, the garbage on the streets of Vancouver, the failures of the government relating to climate change, that the Crown is somehow involved in his family law trial, and his opposition to the zero tolerance policy on domestic violence.

- [31] The behaviour noted above was continued before me at the PHC and at the assessment. Each time he appeared before me, the respondent repeated the following: that the claimant suffered "zero injuries" and he did not assault her; that the zero tolerance policy on domestic violence is unfair and unjust (holding up a sign to that effect during counsel's opening submissions at the assessment); that the claimant lied in court and refused to mediate or communicate with him; that the court does not care about global warming and climate change; and that he has been "stonewalled" for over five years and prevented from seeing his children by the claimant's counsel, the Crown, and the courts.
- [32] The respondent was disruptive at both the PHC and the assessment. Each time, he refused to provide the court clerk with his name or go on record, and he refused to make submissions relating to the bill of special costs, referring to the assessment proceedings as "extortion". He said that he did not know why he was forced to attend the assessment; when I explained to him that he was free to leave, but that if he did, the assessment would proceed in his absence, he left and did not return, which was what he did on the last day of trial before Forth J.

Applicable Principles and Discussion

- [33] Pursuant to SCFR R. 16-1(2), on an assessment of special costs, the registrar must allow those fees that were properly or reasonably necessary to conduct the family law case, and 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; and

viii. Rule 1-3.

- [34] Rule 1-3 of the SCFR sets out the object of the SCFR, which encompasses proportionality (that is, that 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 the interests of any child affected, the importance of the issues in dispute, and the complexity of the family law case).
- [35] Rule 16-1(4) directs that when assessing costs under R. 16-1(2), a registrar must determine which disbursements have been necessarily or properly incurred in the conduct of the family law case, and allow a reasonable amount for those disbursements.
- [36] Rule 16-1(2) of the SCFR mirrors Rule 14-1(3) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [SCCR], and the authorities decided under R. 14-1(3) are applicable to the assessment of special costs awarded in family proceedings.
- [37] Whether the work for which fees are claimed was "proper or reasonably necessary to conduct the family law case" is assessed on an objective basis. Special costs are intended to capture "the fees that a reasonable client would pay a reasonably competent solicitor for performing the work described in the bill" (see *Gichuru v. Smith*, 2014 BCCA 414 (*Gichuru*)).
- [38] In *567 Hornby Apartment Ltd. v. Le Soleil Restaurant Inc.*, 2020 BCCA 69 (567 Hornby), the Court of Appeal described the nature and purpose of special costs as follows:
- [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.
- [39] Work for which fees are claimed will be deemed to be "necessary" if that work was indispensable to conduct the family law case. Work for which fees are claimed will be deemed "proper" if, while not strictly necessary, it is nevertheless reasonably undertaken or incurred for the purpose of the family law case (see *Brown v. Goodacre*, 2019 BCSC 1008).
- [40] As noted earlier, the claimant seeks a total of \$121,755.35 as her special costs, and submits that this amount was reasonably necessary to properly conduct this high conflict family case.
- [41] As I am required to do, I will address the factors set out under R. 16-1(2)(b) in the context of this case.

Complexity and the difficulty or the novelty of the issues involved

- [42] It is clear to me that this was a high conflict family case, which was exacerbated and made more difficult by the respondent's behaviour and refusal to comply with court orders. The Reasons are 92 pages long, detailing Forth J.'s findings and her conclusions with respect to the issues of the claimant's relocation with the children, the parties' parenting arrangements and responsibilities, lump sum child and spousal support, division of family property, and ongoing conduct orders.
- [43] Mr. Kinghorn submits that relocation is always a difficult and complex issue, which is reflected in the Reasons. Justice Forth devoted 20 pages to addressing the claimant's application to relocate with the children, reviewing the law and its application to the facts before her; she granted the relocation order because she found it was in the children's best interests.
- [44] Mr. Kinghorn agrees that the parties only had one asset to divide, the Family Home, but given the respondent's failure to provide financial disclosure until mid-way through the trial, despite three court orders, Forth J. had to impute income to him. The lawyers had to make submissions regarding the lump sum payment of child and spousal support, which is not ordinarily ordered. As the Order indicates, Forth J. ordered the payment of past and lump sum future child and spousal support, as well as lump sum prospective spousal support, paid out of the respondent's share of the net proceeds of the sale of the Family Home.

The skill, specialized knowledge and responsibility required of the lawyer

- [45] Mr. Kinghorn testified that Ms. Emond did not have a great deal of experience in high conflict family cases, but that he had gained some experience with these types of cases as a law student so he came onto the file when the junior associate who had been dealing with it left the Law Firm. Mr. Kinghorn admitted that the issues in this family case did not require specialized knowledge, but that the respondent's conduct throughout the proceedings required increased responsibility on the part of the lawyers. I agree that in this case, particularly where the respondent is self-represented and refuses to engage in the process and repeatedly fails to comply with court orders, the responsibility of the counsel is increased.

The amount involved in the family law case

- [46] The Family Home was listed for sale at \$1.6 million, but there was no evidence before me at the assessment of the sale price. The amounts Forth J. ordered the respondent to pay the claimant set out in para. 43 of the Order total \$476,817 (which does not include the unpaid fines, the claimant's costs for removing and disposing of the respondent's personal property, and the special costs). While the amount involved is not insignificant, this was not a case focused on money.

The time reasonably spent in conducting the family law case

- [47] The family law case commenced in early March 2021 and the Reasons were released in August 2023; with the assessment of the special costs in mid-January 2024, this family law case has spanned approximately three years. The Bill reflects that the lawyers spent approximately 424 hours on the claimant's file (to Dec. 4, 2023). The claimant executed two retainer agreements with the Law Firm: the first dated September 27, 2021, when she retained them ("Retainer #1") (Kinghorn Affidavit #1, Ex. C, pp. 30-37); and the second on May 23, 2023, when the claimant confirmed that she was continuing to retain the Law Firm for the upcoming trial ("Retainer #2") (Kinghorn Affidavit #1, Ex. C, pp. 27-29).
- [48] The Law Firm is an eight-person firm with offices in Squamish and Whistler. Ms. Emond and Mr. Kinghorn, as well as another junior associate, Mark Chandler ("~NC"), who left the firm after the JCC in early March 2022, performed the bulk of the work on the claimant's file. Mr. Kinghorn identified entries on the Bill by an articling student ("MB"), as well as another junior associate ("KEF"), both of whom assisted with the trial preparation.
- [49] Ms. Emond was called to the bar in 2007; Mr. Kinghorn was called to the bar in June 2021, shortly before the claimant retained the firm. Mr. Kinghorn's evidence was that his billing rate throughout the family case was \$200 per hour (not \$275 as indicated in Retainer #2). Ms. Emond's hourly rate increased from \$300 (as set out in Retainer #1) to \$360 (as provided in Retainer #2) over the duration of the file. The other associate, ~NC, billed at an hourly rate of \$280, KEF billed at an hourly rate of \$110 and the articling student's rate was \$100 per hour.
- [50] The Bill identifies each lawyer who recorded their time, and separate entries are made for each task performed on a given date (some dates have several entries, separated by task). The Bill reflects that Ms. Emond wrote off some of Mr. Kinghorn and ~NC's time in early June 2023 (totalling \$706). Mr. Kinghorn reviewed the Bill in detail at the assessment, speaking to the tasks performed.
- [51] For the most part, I find that the time recorded on the Bill was reasonably spent to conduct the claimant's family case in the circumstances, particularly given the respondent's conduct after he dismissed his counsel. However, I have found a few instances where, in my view, the fees should be reduced because I have found that the amount charged in those instances was unreasonable, although it is not a significant amount.
- [52] Mr. Kinghorn testified that one of the Law Firm's paralegals, Jen Benson ("JB"), also worked on the claimant's file leading up to and during the trial, as well as assisting with the preparation of the Bill.

- [53] I note some discrepancies with the rates charged by JB on the Bill. As set out in both of the retainer agreements, the paralegal's rate was set at \$125 per hour. However, on the Bill, JB's rate was recorded at \$150 per hour for her entries from May 23, 2023 through July 24, 2023 (from the date Retainer #2 was signed, through to the second last day of the trial), and then at \$125 per hour for entries from September 6, 2023 to the end of the Bill.
- [54] I have calculated the fees attributed to JB for her time on the trial at the increased rate to be \$1,035 (6.9 hours at \$150 per hour), plus taxes of \$51.75 (GST) and \$72.45 (PST) (totalling \$1,159.20). I note that Retainer #1 (which is lengthier than Retainer #2) expressly provides that if the Law Firm's fees increase, the claimant would be given "at least three months' notice of such change" (Kinghorn Affidavit #1, Ex. C, p. 32). While this may seem to be nit-picking, there was no evidence before me that although the paralegal hourly rate set out in Retainer #2, dated May 23, 2023, was \$125, the claimant was advised and consented to the increased hourly rate of \$150 for JB's time working on the trial. As a result, I have reduced these fees of JB from \$1,035 to \$862.50 (a reduction of \$172.50 before taxes), plus taxes of \$43.13 (GST) and \$60.38 (PST), for a revised total of \$966.01.
- [55] Mr. Kinghorn also testified that another of the Law Firm's paralegals, Anna Peterson ("AP"), who specializes in real estate, assisted with the issues relating to the title of the Family Home. As noted above, Mr. Kinghorn testified that time spent on the conveyance of the Family Home was not included in the Bill. I note that, like JB's time during the trial, AP's time was billed at a higher rate than the paralegal rate in the retainer agreements, charging \$160 per hour. In reviewing AP's entries, in my view, based on the narratives, nearly all of them are related to the conveyance of the Family Home, and they should not be included in the special costs claimed. Although the Law Firm's bill for the conveyance and legal fees associated with it were not before me, I find the following narratives are all primarily for tasks associated with the conveyance: on Nov. 1, 2023, AP recorded 2 hours for "to: receipt of certificate of death and certified copy of Order; to preparation of Form 17 Transmission, Property Transfer Tax Return and Transparency Declaration"; 1 hour for "preparation of Form 17 Transmission, Property Transfer Tax Return and Transparency Declaration and providing same to client for signature"; she also recorded 1.00 hour that day for "receipt of signed title transfer documents and filing Form 17 Transmission, Property Transfer Tax Return and Transparency Declaration in the Land Title Office"; and on Nov. 15, 2023, AP recorded 0.30 hours for "receipt of notice of registration from Land Title Office."
- [56] I allow one hour of AP's time on Nov. 1, 2023 as relating to clearing the title, but for the same reason as identified with JB's rate, I have reduced AP's hourly rate to \$125, for a total with taxes of \$140 (\$125 plus \$6.25 GST and \$8.75 PST). The remaining time billed for AP's time (3.30 hours @ \$160 per hour) is \$528 (together with taxes of \$26.40 GST and \$36.96 PST). I find that these fees totalling \$591.36 should be removed from the Bill.
- [57] I also questioned Mr. Kinghorn about the time recorded by Ms. Emond to travel to and from Vancouver for the trial. Mr. Kinghorn testified that Ms. Emond stayed in Vancouver with friends for the first five days of the trial (July 17 to 21), but on July 24 and 26, she travelled

from Whistler to Vancouver and back each day. The Bill reflects that Ms. Emond recorded 2.00 hours on July 17 "travel to Vancouver for trial", 2.00 hours on July 21 "travel from Vancouver to Whistler back from trial", 4.00 hours on July 24 (2 hours each way for travel to and from Vancouver for trial) and 4.00 on July 26 "travel to and from Whistler for last day of trial." The Law Firm is located in Squamish (where Mr. Kinghorn practices) and Whistler (where Ms. Emond practices), and I find billing for some travel time to Vancouver where the trial was held was necessary. However, the Bill reflects that Ms. Emond charged the claimant her regular hourly rate (\$360) for all of her travel time, which I find to be unreasonable. Neither retainer agreement addresses this and I find that it was not reasonable for Ms. Emond to charge her full hourly rate for her travel, particularly where, as Mr. Kinghorn reiterated several times, the Law Firm was keeping its costs low for this claimant and the practice standard is typically to charge 50% of hourly rate for travel time.

[58] As a result, I have reduced Ms. Emond's hourly rate for her travel time by half, from \$360 per hour to \$180. Accordingly, the 12 hours recorded for Ms. Emond's travel at \$4,320.00 is reduced to \$2,160 (and the taxes will be \$108 GST and \$151.20 PST).

The conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the family law case

[59] It is clear that the respondent's conduct unnecessarily lengthened the family law case, as Forth J. set out in the portion of the Reasons addressing special costs:

[353] I accept that [the respondent] purposely made this family law proceeding extremely difficult in the positions he took with counsel. He deliberately refused to produce relevant financial information, using it as a strategy to try and force Ms. Z to comply with his demand for "mediation and communication." He failed to comply with the Rules for production of an F8 financial statement and for a list of documents. He deliberately, with intent, breached several pre-trial disclosure orders, including the TMC Order for the production of a Scott Schedule. His actions made the assessment of the claims difficult, since he walked out of court without making any closing submissions.

[354] He continuously and relentlessly harassed Ms. Z's counsel using derogatory and offensive language and taking unreasonable positions in his email communications. He made a number of threats against counsel and Ms. Z.

[355] I found his conduct has been reprehensible and deserving of rebuke.

[60] The respondent's reprehensible conduct continued at the PHC and the assessment of special costs before me. In my view, this factor weighs heavily in favour of the special costs claimed by the claimant.

The importance of the family law case to the party whose bill is being assessed, and the result obtained

[61] In my view, it is clear that the family law case was extremely important to the claimant and although she had to move from Squamish, where she had lived for ten years, she obtained good results. Given the history of family violence outlined by Forth J., as well as the respondent's ongoing threats, the claimant prevailed at the family trial and the Court ordered that she has sole custody of the children and can relocate with them to another province. The claimant was also awarded child and spousal support and Forth J. purposely crafted the Order so that the claimant was able to secure these funds on the sale of the Family Home.

The benefit to the party whose bill is being assessed of the services rendered by the lawyer

[62] The claimant clearly benefited from the services of the lawyers, who helped her throughout the family claim.

Rule 1-3.

[63] Proportionality is set out in R. 1-3(2), which states that 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 the interests of any child affected, the importance of the issues in dispute, and the complexity of the family law case."

[64] The Order awards the claimant special costs of the "family law proceeding" (para. 42) and the Court of Appeal has held that "when a trial judge orders special costs of a proceeding, the award of special costs includes the cost of any special costs application and any subsequent proceedings to assess costs unless the court orders otherwise" (567 Hornby, para. 141). As such, the claimant is entitled to claim the costs to prepare for and assess the special costs as special costs.

[65] In the interests of proportionality, I asked Mr. Kinghorn to identify those fees, which were for the preparation and attendance at the assessment hearing, claimed as special costs. He attested that this file was the first time that he, or any of the lawyers at the Law Firm, have dealt with the issue of special costs in a litigation proceeding (Kinghorn Affidavit #2, para. 4). Mr. Kinghorn estimated that the fees associated with the preparation of the Bill and the assessment of the special costs was "about 5 or 6%" of the total bill, but he had not separated them out.

[66] I reviewed the Bill for entries related to the preparation of the Bill and attendance at the assessment. I calculate the amount of fees recorded on the Bill for activities related to the preparation of the Bill and attendance at the PHC before taxes is \$6,800 (I have rounded it up by \$0.50). Of this amount, Mr. Kinghorn recorded the most time, at 29.6 hours (\$5,920.00 at his discounted hourly rate of \$200).

[67] I also note that on October 16, Mr. Kinghorn included on the Bill several estimates of time, totalling 12 hours (\$2,400), which I did not factor into the hours spent on the special costs assessment above. As I explain below, I find that 8 of these estimated hours should not have

been included in the Bill and I would not allow them (reducing it by \$1,600). Including the 4 hours of Mr. Kinghorn's estimated time I have allowed, which totals \$800, the fees for the preparation for and attendance at the PHC and assessment of the special costs amount to \$7,600. This is about 7% of the total fees claimed on the Bill (close to Mr. Kinghorn's estimate).

- [68] On October 16, Mr. Kinghorn has entered 4.00 hours at his hourly rate of \$200 (\$800 total) as "estimated amount for travel and attendance at the special costs pre-hearing conference." The PHC was held on Nov. 23 and lasted about an hour (normally, PHCs take 30 minutes, but the respondent's conduct at the PHC extended it). The Bill reflects that on Nov. 23, Mr. Kinghorn recorded the following tasks associated with attending the PHC totalling 4.30 hours: 4.00 hours for "all tasks associated with attending [PHC] re special costs, enter order made after hearing; call with [the claimant] to discuss same"; 0.10 to "instruct JB to prepare requisition to re-set special costs assessment to Jan. 12; review requisition and instruct JB to file in court"; and 0.20 for "email to [the respondent] serving order made after [PHC] and requisition re-setting down special costs hearing". As is evident, Mr. Kinghorn has double-billed for attending the PHC and I find it unreasonable to allow the 4.00 hours of his estimated time entered on Oct. 16 (\$800 plus applicable taxes).
- [69] On Oct. 16, Mr. Kinghorn also recorded 2.0 hours at his hourly rate of \$200 (\$400) for "estimated amount for further research and preparation in advance of the special costs [PHC]". The Bill reflects that on November 10, Mr. Kinghorn recorded 3.30 hours (\$660 total) for "all tasks related to preparing for special costs hearing", and on Nov. 14, he recorded .80 hours (\$160) to "prepare memo in prep for special costs [PHC]" and for "review hearing record index and cover page prepared by JB". In advance of the PHC, he also recorded 1.00 hour on Nov. 22 to "prepare oral submissions for special costs [PHC]". Again, as a result of including the estimate on Oct. 16, Mr. Kinghorn has double-billed and I find it unreasonable to allow the 2.00 hours of his estimated time entered on Oct. 16 at \$400 (plus applicable taxes).
- [70] On Oct. 16, Mr. Kinghorn also entered 2.0 hours (\$400) for "further research and preparation in advance of the special costs assessment" and 4.00 hours (\$800) for "estimated amount for travel and attendance at the special costs assessment". I acknowledge that the Bill does not include Mr. Kinghorn's time when he attended before me on January 17, 2024 for the assessment, which lasted just under one full day, but I note that on Dec. 4, he recorded 4.00 hours for "continued research and finalization of written submissions for the special costs assessment". I find that the 2.00 hours estimated on Oct. 16 should not be included in the Bill as I find this to be double-billing. I note that Mr. Kinghorn lives and works in Squamish and he did not separate out his travel time, but I assume that like Ms. Emond, he was not discounting it by 50%, which I would expect. Bearing this in mind, I have not applied a further discount for this to account for the increased time at the assessment.

- [71] With the discounts I have noted above, I find the fees of \$7,600 (excluding taxes) for the preparation of the Bill and assessment of the claimant's special costs to be proportionate and reasonable in the circumstances of this case.

Disbursements

- [72] The claimant's special costs include a total of \$6,030.23 (including taxes) for disbursements. At the assessment, Mr. Kinghorn also reviewed all of the disbursements on the Bill. These include the standard court filing fees, as well as courier fees and agent's fees, which I find were all necessarily incurred given that the Law Firm is located in Squamish and the documents had to be filed in Vancouver. The disbursements also include charges for Mr. Kinghorn to take the "Squamish Connector" (at a cost of \$40 each trip) on three days of the trial, as well as parking for four days of the trial, and some meals. The largest disbursement is for photocopying 13,000 pages at the Law Firm's rate of \$0.30 per page. Mr. Kinghorn explained that after the JCC, they made copies of all the application and trial materials, as well as the special costs assessment materials, for the respondent because he was representing himself.
- [73] In my view, the disbursements claimed were necessarily and properly incurred in the conduct of this family law case, and I find that the amounts claimed are reasonable.

Disposition

- [74] As explained above, I have determined that fees totaling \$4,460.50 (excluding taxes) should be deducted from the total fees claimed on the Bill, reducing the fees to \$98,865.50. With taxes, I allow total fees of \$110,729.387 (\$98,865.50 in fees, plus \$4,943.28 GST plus \$6,920.59 PST).
- [75] The Law Firm did not separate the taxes on the disbursements from the taxes on the legal fees on the Bill. By my calculation, of the \$6,030.23 in disbursements, \$935.17 are non-taxable (designated as such on the Bill by an "*"). Some of the disbursements attracted only GST, and I have calculated the total of these disbursements to be \$4,824.06. The GST on these disbursements is \$241.20. Finally, some of the disbursements (those designated with "#") attracted both GST and PST. I have calculated the total of these disbursements to be \$271, and the applicable taxes (GST and PST) to be \$35.52. Accordingly, I calculate the total of the disbursements and applicable taxes to be \$6,306.95.
- [76] Considering all of the circumstances of this case, as well as the factors under R. 16-1(2) set out above, I have allowed the claimant's special costs at \$117,036.32.
- [77] Mr. Kinghorn did not include a blank certificate of costs in Form F72 in the hearing record for me to complete at the conclusion of the assessment of the special costs.

[78] As a result, I direct the Law Firm to prepare a certificate of costs in Form F72 for my signature, showing that following assessment, on January 31, 2024, the special costs of the claimant have been allowed against the respondent in the amount of \$117,036.32. As the certificate is prepared after assessment, the signatures of the parties are not required. The Law Firm may submit it for my signature.

"Registrar Gaily"

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