

CANADA / JUDGMENT

# Paulsen v. Wober

2017 BCSC 2163

## COURT

Supreme Court of British Columbia

## DECIDED

28 November 2017

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2017 BCSC 2163 Paulsen v. Wober IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Paulsen v. Wober, 2017 BCSC 2163 Date: 20171128 Docket: E41418 Registry: New Westminster Between: Nicole Kimberly Paulsen Claimant And Christian Wober Respondent Before: The Honourable Mr. Justice Macintosh Reasons for Judgment Addressing Costs Appearing on her own behalf: N.K. Paulsen Counsel for the Respondent: Ari Wormeli Place and Dates of Written Submissions: New Westminster, B.C. November 1, 9, and 14, 2017 Place and Date of Judgment: New Westminster, B.C. November 28, 2017

- [1] In this family case, I heard an application on January 31 and February 1 of this year, and gave my decision on February 2. At para. 10 of the February 2 order, I granted the parties liberty to apply for the costs of the application. Approximately 10 months later, Mr. Wober brought this application, seeking double costs and alternatively ordinary costs.
- [2] Most of the February 2 order addresses parenting time. Several paragraphs in the order varied an earlier order made by Mr. Justice Brown. Both orders contain detailed divisions of parenting time for the regular schedule, the summer holiday schedule and for Christmas and Easter.
- [3] In applying for double costs, Mr. Wober submits that his offer to settle, in a letter from his lawyer dated October 27, 2016, was less advantageous to Mr. Wober than were the results he achieved in the February 2 order. He relies on Supreme Court Family Rule 11-1 which deals with offers to settle.
- [4] Subrules (4), (5)(b) and (6) in Rule 11-1 provide as follows: Offer may be considered in relation to costs
- (4) The court may consider an offer to settle when exercising the court's discretion in relation to costs. Cost options ... (5)(b) award double costs of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle; ... Considerations of court
- (6) In making an order under subrule (5), the court may consider the following:
- (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;

- (b) the relationship between the terms of settlement offered and the final judgment of the court;
  - (c) the relative financial circumstances of the parties;
  - (d) any other factor the court considers appropriate.
- [5] It is apparent from those subrules that an award of double costs is a highly discretionary step.
- [6] In my view, having regard to subrule (6), paragraphs (a), (b) and (d), double costs should not be ordered against Ms. Paulsen.
- [7] An offer to settle parenting time is more complicated than an offer to settle, for example, a claim in debt for a stated amount of money. In that latter case, the assessment the offeree has to make is relatively straightforward. Parenting time, by comparison, carries with it a complex assessment of weekend time versus weekday time, 50/50 parenting time versus less but perhaps more desirable parenting time, holiday time versus school or working time, and dozens of subsets of analyses under those broad headings. Consequently, when a settlement offer is primarily, and almost exclusively, addressing parenting time, it is, in my view, difficult to conclude that it "ought reasonably to have been accepted", within the meaning of Rule 11-1(6)(a), quoted above. To repeat somewhat the point made earlier, it is generally far easier to determine whether an offer made in a debt claim ought to have been accepted. I acknowledge that a case addressing parenting time could arise in which the outcome was so markedly in favour of one party that double costs could flow from comparing the outcome with a prior offer, but this is not that case.
- [8] When I compare Mr. Wober's offer of October 27, 2016 with the terms of the February 2, 2017 order, it appears that Mr. Wober largely succeeded on the application. It does not appear however, that Ms. Paulsen had no reasonable position to present to the Court. An award of double costs in this context would be partly punitive. The Court would be punishing Ms. Paulsen for taking court time and for exposing Mr. Wober, and indirectly the child of the marriage, to court proceedings when her doing so was unwarranted. I do not see that the facts of this case lead to such a conclusion, and I dismiss the application for double costs.
- [9] Turning to ordinary costs, however, as I indicated above, Mr. Wober had the greater success in the January 31-February 1 application. Family law is like most other areas of law in that costs are ordinarily awarded to the successful party or the party who was predominantly successful. Mr. Wober claims ordinary costs of \$4,480, including taxes, plus \$1,036 in disbursements, also including taxes. I award him two-thirds of \$4,480 or \$2,987, plus the claimed disbursements of \$1,036. That costs award includes the costs of this costs application. "MACINTOSH J."

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Prepared on 28 October 2026 · Esheria