

CANADA / JUDGMENT

R.C.T. v. A.K.T.

2025 BCSC 577

COURT

Supreme Court of British Columbia

DECIDED

28 March 2025

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2025 BCSC 577 R.C.T. v. A.K.T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.C.T. v. A.K.T.,

2025 BCSC 577

Date: 20250328

Docket: E200747

Registry: Vancouver

Between:

R.C.T.

Claimant

And

A.K.T.

Respondent

Before: The Honourable Madam Justice Sharma

Reasons for Judgment on Costs

In Chambers

Counsel for the Claimant:

K. Craig

Counsel for the Respondent:

T.R. Bell

Written Submission from the Claimant:

March 7, 2025

Written Submission from the Respondent:

March 6, 2025

Place and Date of Judgment:

Vancouver, B.C.

March 28, 2025

- [1] This judgment addresses costs arising from a decision I rendered orally on February 13, 2025: *R.C.T. v. A.K.T.*, 2025 BCSC 533. That judgment addressed two applications, one filed by the claimant and one filed by the respondent. The respondent was successful on both.
- [2] In the closing paragraphs of that judgment, I gave leave to the parties to provide written submissions on costs, with supporting documents, which they have now done.
- [3] Rule 16-1(7) of the Supreme Court Family Rules states that costs of a family case must be awarded to the successful party unless the court otherwise orders. Rule 16-1(14) permits a court to award costs in relation to the whole case, or an application in a family law case.
- [4] The respondent seeks double costs in relation to her success on her application. The claimant submits each party should bear their own costs.

Background

- [5] These parties had an 11-day trial before Justice Donegan, resulting in the judgment indexed: *R.C.T. v. A.K.T.*, 2023 BCSC 654, and a final order entered on June 12, 2024 (the "Final Order"). The following terms of the Final Order are relevant to this judgment:
 - 25. Pursuant to s. 228(1)(c)(ii) of the FLA, the Claimant shall pay the Respondent the sum of \$3,000 within six months of the date of this judgment.
 - 27. The claimant will pay to the Respondent his proportionate share for the Children's special or extraordinary expenses. The parties' proportionate shares are: the Claimant 60% and the Respondent 40%. The following expenses will be special or extraordinary expenses:
 - a) All childcare expense incurred as a result of either's party's employment, illness, disability or as necessary given the specific needs of the Children;
 - b) Health-related expenses that exceed insurance reimbursement[;]
 - c) Extracurricular activities agreed to by the parties;

- d) Morning and evening nannies;
 - e) Day camps;
 - f) Vancouver School Board fees;
 - g) Tutoring fees;
 - h) Sport fees;
 - i) Sensory clothing;
 - j) Specialized food and nutritional supplements; and
 - k) Expenses arising in the future that the parties agree qualify as special or extraordinary expenses within the meaning of the Guidelines, or as determined by the parenting coordinator.
30. Both parties will cooperate to maximize any private sector, non-profit or government funding available to off-set s. 7 expenses.
31. The Claimant will continue to pay the Respondent the amount of \$800 on the first day of each month toward his proportionate share of s. 7 expenses. The parties will conduct a reconciliation of s. 7 expenses on April 1 and October 1 of each year. Any over-payment by the Claimant may be remedied by a reduction of not more than \$300 from basic child support per month until the over-payment has been reimbursed. Any under-payment by the Claimant will be paid by an additional payment of \$300 per month until satisfied.
33. The arrears owing from the Claimant to the Respondent with respect to s. 7 expenses as of December 31, 2022 is \$34,849, subject to the reconciliation for 2022 to be conducted by the parties. The Claimant will pay the Respondent this amount, in full, by no later than May 1, 2024. The Claimant is permitted to pay this amount in installments or in a lump sum as he prefers.
35. By consent, after accounting for debt, the Respondent will pay the Claimant the sum of \$3,954. This amount may be set-off against amounts owing by the Claimant pursuant to the orders made herein.
- [6] On September 16, 2024, the respondent filed a notice of application ("NOA") seeking, among others, the following:
- a) an order regarding travel, which was adjourned by consent;
 - b) an order to alter paragraph 31 of the Final Order to increase the monthly special and extraordinary expenses payment from \$800 to \$1,500, and that the Family Maintenance Agency (FMA) enforce that monthly payment;
 - c) the \$3,000 fine pursuant to para. 25 of the Final Order which remained outstanding be enforced by FMA;

- d) the immediate payment of \$34,849 in retroactive special expenses for the years 2019 to 2022 as ordered in paragraph 33 of the Final Order be enforced by FMA;
 - e) immediate payment of \$9,928 for s. 7 special expenses for the period of January 1, 2023, to June 30, 2024, be enforced by FMA.
- [7] I granted all orders sought by the respondent. The respondent seeks double costs because she sent a proposed settlement to the claimant before the hearing.
- [8] The claimant filed an amended application on January 22, 2025, seeking, among other things, to increase his parenting time to 50/50. He also sought to amend the Final Order in relation to how s. 7 expenses were handled. I dismissed the claimant's application. The respondent is not seeking double costs with regard to her success at having the claimant's application dismissed. Therefore, she is entitled to costs at the usual scale, unless I order otherwise.

Legal Principles on Double Costs

- [9] Double costs can be awarded where one party refuses a reasonable offer that would have been more favourable to that party than they faced after the court proceeding. It is considered a punitive measure: *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 25. Double costs are not often awarded in family law context: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 72-73. In that case, the Court of Appeal was not persuaded that the trial judge erred in her exercise of discretion not to award double costs. In particular, the court noted the difficulties the parties had in assessing the reasonableness of the offers in light of the uncertainty about the law at the time.
- [10] The claimant emphasized that parents who genuinely seek a judicial determination about a child's best interests ought not to be punished by the application of double costs: *Chera v. Chera*, 2008 BCSC 1640 at paras. 14-15. However, those concerns do not rise since the respondent is only seeking double costs in relation to the success on her application, not her success in having the claimant's application for increased parenting time dismissed.

The Offer

- [11] The respondent made the following offer regarding her application on February 1, 2025:
- a) To increase the set monthly payment of s. 7 expenses to \$1,250 with annual reconciliations; in the NOA she sought an increase to \$1,500 without any reconciliation;
 - b) The respondent had until February 7 to pay the \$3,000 fine ordered by Justice Donegan under paragraph 25 of the Final Order; in the NOA she sought to have that fine enforced by FMA;

- c) The claimant was to pay \$29,773 pursuant to paragraph 33 of the Final Order by February 7, 2025; in the NOA she sought immediate payment of \$34,849, as set out at paragraph 33, and that the payment be enforced by FMA;
 - d) For retroactive s. 7 special expenses owing for 2023 to 2024, which the respondent calculated to be \$16,997, the claimant would pay \$13,597 without reconciliation. If not paid in full, the \$13,597 can be paid at the rate of \$500 per month in which case the parties would enter a consent order to that effect which would also allow the amount to be enforced by FMA. Counsel explained this figure was updated from what was in the notice of application based on the respondent providing in her affidavit a detailed list of expenses and supporting documents for the time period, which was in response to the claimant's position, and filed after the notice of application.
- [12] The claimant replied to the respondent's offer by letter dated February 5, 2025. The bulk of that letter explains why the claimant does not accept the offer. While he specifically mentions Rule 11-1, reserving his right to rely on the letter with regard to the issue of costs, in my view, his response does not constitute a true "counter-offer" as he alleges.

Analysis

- [13] The claimant's submissions about costs mostly repeat his submissions made at the hearing. He does not directly address the key issues, which are:
- a) whether it would have been financially advantageous for him to accept the offer; and,
 - b) whether the respondent's offer was a reasonable one.
- [14] There is no doubt that had he accepted the offer, he would have been better off financially compared to what was ordered.
- [15] I also find it relevant to consider the position from which he was starting. With regard to two aspects, the claimant was non-compliant with the Final Order.
- [16] First, the claimant never complied with paragraph 33 that required him to pay \$34,849 in s. 7 expenses for the years 2019 to 2022 by May 1, 2024. His position is that he was not required to pay that amount because it was "subject to reconciliation", which he claims the parties never did.
- [17] I do not agree. The Final Order is clear: paragraph 33 states that the claimant owed the respondent \$34,849 in s. 7 "arrears", and that he was to pay that amount "in full, by no later than May 1, 2024". That amount was "subject to the reconciliation for 2022", but that phrase did not relieve the claimant of the responsibility as of April 2023 to pay the full amount of the arrears, being \$34,849. The reconciliation only meant that if it turned out, after conducting the reconciliation, that there was any over-payment or under-payment, that could be taken into account for future years. He had no basis not to pay the amount by May 1, 2024.

- [18] The second is the requirement that within six months, he pay a \$3,000 fine. As of the hearing date, that had never been paid. The claimant asserts that the respondent was "non-compliant" because she owed him \$3,954 pursuant to paragraph 35 of the Final Order. Paragraph 35 of the Final Order specifically states the respondent was entitled to set off the amount she owed the claimant against what he owes her. Given his failure to pay over \$30,000, his argument that she was also non-compliant is untenable.
- [19] It is also relevant that it was not until the claimant retained his current counsel that he finally paid the costs from trial awarded to the respondent.
- [20] Also, the claimant's position at the hearing of the application was largely an attempt to re-argue issues settled by the Final Order and Justice Donegan's judgment. As such, the legal basis for his opposition to the claimant's NOA was weak.
- [21] I add that the claimant's position that the parties bear their own costs is surprising given the respondent's overwhelming success on both applications.
- [22] The claimant also asserts that there was "no blameworthy" conduct on his part. That is not an element of consideration for double costs, but I repeat again my view that he remains non-compliant with at least two terms of the Final Order, which could be construed as being blameworthy conduct.
- [23] The claimant raises the issues of financial hardship. The record is clear that both parties face difficult financial situations, but the respondent's position, based on the evidence in the record, is far worse based on their income alone. I add that the claimant's non-compliance with paragraph 33 of the Final Order means he got the benefit of the respondent bearing the significant carrying costs of over \$30,000 for almost a year.
- [24] For all those reasons, I find that the respondent's offer to settle the issues on her application prior to hearing was reasonable, and had the claimant accepted it, he would have been in a better financial position. Together with what I have found to be his non-compliance with at least two terms of the Final Order, I am satisfied an award of double costs is justified.

"Sharma J."

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