

CANADA / JUDGMENT

Rogers v. Rogers

2016 BCSC 2590

COURT

Supreme Court of British Columbia

DECIDED

7 March 2016

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2016 BCSC 2590 Rogers v. Rogers IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Rogers v. Rogers, 2016 BCSC 2590 Date: 20160307 Docket: 22570 Registry: Fort St. John Between: Linda Marie Rogers Claimant And Geordan Charles John Rogers Respondent And Michael Gauthier Respondent by Counterclaim Before: The Honourable Madam Justice Fitzpatrick Oral Ruling on Costs In Chambers Counsel for the Claimant: P.S. Boles Counsel for the Respondent: N. Nasser Place and Date of Trial/Hearing: Fort St. John, B.C. March 7, 2016 Place and Date of Judgment: Fort St. John, B.C. March 7, 2016

- [1] THE COURT: The final matter to be addressed today is the matter of costs of today's attendance. I have already recounted, in some detail, the sorry circumstances relating to the conduct of aspects of this litigation, particularly by counsel for Mr. Rogers.
- [2] The hearing today resulted in my adjournment of Ms. Rogers' application at the request of Mr. Rogers. The circumstances under which that adjournment application arose are clearly troubling, from my point of view. It is astounding to me that Mr. Rogers' counsel would deal with the matter in the manner in which they did, in terms of scheduling the hearing to be handled by a lawyer in their firm who was not available; or, if scheduling issues subsequently arose, finding alternate counsel or proposing an appropriate time that was available to counsel and amenable to opposing counsel in a timely manner. None of that was done.
- [3] This course of action was exacerbated by the fact that, despite Mr. Rogers' counsel having asked for consent to an adjournment (that was not forthcoming and was in fact adamantly opposed), no application was brought to adjourn this matter until after the close of court here in Fort St. John on Friday, March 4, 2016. Even then, there were clear deficiencies in the application materials, in terms of not even disclosing that this date had been set, by consent, through Supreme Court Scheduling some weeks earlier.
- [4] The manner in which this adjournment application was brought under Supreme Court Family Rules, Rule 22-6(4) also raises some concern. MacLean Law filed an ex parte requisition in an attempt to get approval to appear by telephone on this adjournment application. Contrary to the usual practice, that request was not forwarded to Ms. Rogers' counsel so that she could be aware that counsel were seeking approval for such telephone

attendance. For obvious reasons, it is difficult for the Court to assess such requests unless other counsel know of the request and are able to state their position. I have no doubt now that this request would have been vigorously opposed and would not have been approved by me in the face of such opposition. In fact, if Mr. Rogers' counsel had been allowed to appear by phone, and the adjournment request was denied, given the limitations that typically arise, it is likely that Ms. Rogers' application for special costs could not have proceeded in any event. As it was, I was able to discern from the requisition that this was likely the case, and the request was refused.

- [5] Ms. Rogers seeks special costs against Mr. Rogers with respect to today's attendance.
- [6] The leading authority on special costs is *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 at para. 17 (C.A.), which sets out that they should not be awarded unless there is some form of "reprehensible conduct". The Court further commented on the meaning of "reprehensible": 17 the word "reprehensible" is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke.
- [7] In my view, it is overwhelmingly the case that the manner in which this adjournment application was brought is deserving of rebuke. This, as Ms. Boles contends, is representative of a fairly long-standing way of dealing with matters on the part of Mr. Rogers' counsel. This behaviour has to stop at some point, in the sense of getting these issues before the Court in a proper manner which does not cause or contribute to the ongoing hostility between these parties.
- [8] I would hope that, in the future, there will be an elevation in the manner in which MacLean Law deals with this matter. The manner in which this adjournment application has been brought has resulted in much unnecessary strife and, in addition, Ms. Rogers having incurred expenses that should not have been necessary.
- [9] Accordingly, I conclude that special costs are appropriate in the circumstances and they are so awarded for today's attendance.
- [10] MS. BOLES: I would ask they be for preparation, attendance, and that they be payable forthwith upon taxation thereof.
- [11] THE COURT: Ms. Nassar, do you have any comments on that?
- [12] MS. NASSAR: My Lady, well, my -- I submit that the award of special costs not be payable forthwith but, rather, it would be dealt with at the conclusion of the trial of this matter, and --
- [13] THE COURT: Do you mean the cross-applications?

- [14] MS. NASSAR: Well, there's the application and, also, I mean, perhaps this matter could go to trial, so my suggestion is that it would not be payable forthwith, so that if there are any other costs awarded, it would be offset against, sort of, whatever costs awards there may be.
- [15] THE COURT: I am not going to order that the special costs be payable forthwith. I will order that the timing of the payment will be addressed at the time of the merits of the applications, consistent with my earlier decision on the adjournment. The deadline mentioned in my earlier reasons today will be April 25, 2016. If the hearing of the applications does not proceed on April 25, 2016 or such later date as may be agreed to by the parties, Ms. Rogers will be at liberty to reset her application for special costs on the earlier applications on January 5 and 18, 2016 and also to address the timing of the special costs awarded on this application today. "Fitzpatrick J."

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