

CANADA / JUDGMENT

S.A.H. v. I.B.L.

2018 BCSC 1212

COURT

Supreme Court of British Columbia

DECIDED

19 July 2018

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2018 BCSC 1212 S.A.H. v. I.B.L. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: S.A.H. v. I.B.L., 2018 BCSC 1212 Date: 20180719 Docket: E13366 Registry: Smithers Between: S.A.H. Claimant And I.B.L. Respondent Before: The Honourable Madam Justice Shergill Reasons for Judgment - Costs The Claimant. appearing in person: S.A.H. The Respondent, appearing in person: I.B.L. Written Submissions of the Claimant: May 7, 2018 Written Submissions of the Respondent: May 17, 2018 Place and Date of Judgment: Smithers, B.C. July 19, 2018

- [1] Following a trial of this action, I issued reasons for judgment on April 5, 2018, indexed at 2018 BCSC 544 (the "Trial Reasons").
- [2] As success was divided on the various issues raised at trial, I did not award costs to either party. However, I invited the parties to make written submissions on costs if they wished to argue for costs. I received written submissions from both parties.
- [3] Mr. L's written submissions on costs contained a request for the Court to make a determination with respect to certain items which he claimed as family debts. It was Mr. L's position that I had not resolved these issues in my Trial Reasons. As the issue of family debts was determined in the trial judgment on the basis of evidence provided and submissions made by both parties, I invited Mr. L to seek a re-opening of the trial if he wished me to address additional matters. I advised the parties that I would not be making a decision on the question of costs until after the matter of a re-opening was addressed.
- [4] A deadline for filing an application for a re-opening was set for June 30, 2018. No application material was filed by Mr. L seeking a re-opening of the trial. As such, the following is my determination with respect to the issue of costs.
- [5] Ms. H argues that she was substantially successful and thus ought to be awarded costs on the basis of a case of more than ordinary difficulty. She also seeks special costs. Mr. L argues that success was divided, and thus neither party should be awarded costs.
- [6] Rule 16-1(7) of the Supreme Court Family Rules, B.C. Reg. 169/2009 states that, subject to subrule (9), costs of a family law case must be awarded to the successful party unless the court otherwise orders.

- [7] Costs in family matters are normally assessed on the same principles as those in civil matters, i.e. they follow the result. However, as there are often multiple issues in family law cases on which success may be divided between the parties, in the absence of special circumstances, costs in family proceedings will favour the party who has achieved substantial success: *Barnard v Barnard*, 2017 BCSC 2162 at para. 25.
- [8] At para. 28 of *Barnard*, Armstrong J. elaborated on the rationale for the "substantial success" test, noting the unique difficulties that arise in family law cases:
- [28] In *Litt v. Gill*, 2016 BCCA 288, Garson J.A. described the unique problems presented in family law cases involving multiple issues. At para. 53, she pointed out that the concept of "success" may require a more flexible approach in multi issue family cases for the purposes of assessing costs as follows:
- [53] At its most basic, the successful party is the plaintiff who establishes liability and obtains a remedy, or the defendant who obtains dismissal of the plaintiff's case: *Loft v. Nat*, 2014 BCCA 108 at para. 46. This general principle is more difficult to apply in the context of family cases, where there may be a panoply of claims advanced by each party, and divided success. There, a more flexible "substantial success" test may be more appropriate: see this Court's decisions in *Harras v. Lhotka*, 2016 BCCA 246 at para. 48 and *Marquez v. Zapiola*, 2014 BCCA 35 at para. 16.
- [9] Substantial success occurs when the level of one party's success is 75% or better: *Barnard* at para. 26.
- [10] In *Marquez v. Zapiola*, 2014 BCCA 35 at para. 20, the Court accepted the analysis of Bouck J. in *Fotheringham v. Fotheringham*, 2001 BCSC 1321, wherein at para. 46 he applied a four step inquiry in determining whether substantial success has been achieved, and costs should be awarded:
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.
- [11] In the case at bar, there were five substantive issues requiring resolution: division of family property; division of family debt; spousal support; child support; and section 7 expenses. Resolution of these issues necessitated findings on two critical issues: the parties' date of separation and the parties' incomes. Determination of the former informed the date for division of assets and debts; determination of the latter affected calculations of support

obligations. As such, a significant amount of trial time focussed on the date of separation and imputation of income.

- [12] Ms. H was successful on: · separation date; · RRSP division; · income imputation (only partial success); · entitlement to spousal support; · child support; and · division of the family home (low impact).
- [13] Mr. L was successful on: · division of his law practice; · the termination date for the interim separation agreement; · division of household effects (substantial success but low impact); · valuation of vehicles; and · section 7 expenses.
- [14] Neither party was successful on the question of division of family debts.
- [15] Ms. H's partial success on the issue of imputing income to Mr. L is due to the fact that while I did impute income to Mr. L, the amount I imputed was substantially less than what Ms. H sought.
- [16] The parties' positions with respect to division of the family home and RRSPs were directly connected to the date of separation. As such, Ms. H's success on this issue meant that she succeeded on the question of division of the family home and RRSPs. However, the decision with respect to division of the family home ultimately was one of low impact to the parties, as was the division of the household effects. While the date of separation was a significant issue dividing the parties and took up a majority of trial time, ultimately, it had minimal impact on the financial outcome in relation to the division of the matrimonial home; the home was divided at trial in a manner close to what the parties had agreed to in the Interim Separation Agreement. Similarly, the amount of trial time spent on the division of household effects was disproportionate to the monetary value of these items.
- [17] Having regard to all the matters in dispute, assessing the weight or importance of the matters to the parties, and looking at the global outcome, I am unable to find that Ms. H attained the high bar required to meet the test of "substantial success".
- [18] Further, even if I were to find that Ms. H had "substantially succeeded," there are reasons to "otherwise order" that the winning party be deprived of her costs and each side bear their own costs. Up until the first day of trial, when she filed her Amended Notice of Family Claim, Ms. H's own pleadings alleged the very date of separation pursued by Mr. L at trial. In addition, while I did find Ms. H to be more objective in her view of the parties' relationship, her deliberate failure to disclose important assets did little to advance the trial process. As such, Ms. H is not entitled to her costs of the proceeding.
- [19] Each party shall bear their own costs with respect to the trial. "Shergill J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/18/12/2018BCSC1212.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/s-a-h-v-i-b-l-2018>

Prepared on 27 October 2026 · Esheria