
CANADA / JUDGMENT

S.D.H. v. T.H.

2016 BCSC 780

COURT

Supreme Court of British Columbia

DECIDED

2 May 2016

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2016 BCSC 780 S.D.H. v. T.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.D.H. v. T.H.,

2016 BCSC 780

Date: 20160502

Docket: E091663

Registry: Vancouver

Between:

S.D.H.

Claimant

And

T.H.

Respondent

Before: The Honourable Mr. Justice Greyell

Reasons for Judgment

Re: Costs

Counsel for the Claimant:

S.G. Label

Counsel for the Respondent:

S.N. Mansfield

Date of Written Submissions:

April 4, 6 and 8, 2016

Place and Date of Judgment:

Vancouver, B.C.

May 2, 2016

- [1] In *S.D.H. v. T.H.* indexed as 2016 BCSC 380, I made orders concerning the allocation of parenting time and parenting responsibilities on an application by the claimant to increase his parenting time and to share parenting responsibilities with the respondent. The case involved the courts continued involvement in this high conflict dispute between the parties.
- [2] In my decision, I invited the parties to make submissions on costs should they not be able to agree. Not surprisingly the parties have not agreed and each has made a submission on how costs should be awarded.
- [3] The claimant's position is that the parties should bear their own costs because the court increased the claimant's parenting time with the two children of the marriage although the court did not remove final decision-making authority from the respondent. The claimant sees the decision as being one of divided success and hence the parties should bear their own costs. The claimant's position is that the parties should share equally in the cost of Dr. Krywaniuk in the preparation of his section 211 report.
- [4] The claimant says that his primary goal in bringing the application was to "normalize his parenting time ". With the time to be "gradually increased to roughly equal parenting time". And that he was successful in achieving this goal as well as his secondary goal to have a parenting coordinator appointed.
- [5] The respondent's position is that when a comparison is made between her parenting plan, the claimant's parenting plan and the parenting plan ordered by the court, the latter is more closely aligned with the respondent's proposed parenting plan. The respondent says the issue of parental decision-making was "undoubtedly the most significant and adversarial issue" which the court dealt with and was an issue on which she was substantially successful. She also says she was successful in her position requiring the claimant to have the children attend as and when directed by Ms. Rypkema, the appointed Child Therapist.
- [6] The Court must take a principled approach in awarding costs in a family law matter as in the award of costs arising from any litigation.
- [7] Rule 16-1(7) of the Supreme Court Family Law Rules provides costs must be awarded to a successful party unless the court otherwise orders.

- [8] There are no special rules which apply to an award of costs in a case involving parenting time or parenting arrangements: *S.J.C. v. S-J.C.A.*, 2010 BCCA 31 at para. 62.
- [9] The determination of what constitutes "success" or "substantial success" was discussed by Mr. Justice Bouck in *Fotheringham v. Fotheringham*, 2001 BCSC 1321 [Fotheringham] as involving a four step inquiry:
- (1) focus on the matters in dispute at trial which may or may not include issues explicitly mentioned in the pleadings;
 - (2) assess the weight or importance of those matters to the parties;
 - (3) conduct a global determination with respect to the matters in issue and determine which party substantially succeeded overall;
 - (4) if one party substantially succeeded, consider whether there are reasons to deprive the winning party of costs.
- [10] The substantial success inquiry suggested in *Fotheringham* was approved by the Court of Appeal in *Marquez v. Zapiola*, 2014 BCCA 35. See also the recent decision of Madam Justice Sharma in *R.A. v. W.A.*, 2016 BCSC 663.
- [11] There is little question that the issues involved in the claimant's application were of significant importance to both parties. The number of affidavits and extensive involvement of expert witnesses with attendant costs established each party held sharply different and bitterly divided positions on the issues.
- [12] The main issues raised in the claimant's application were whether there had been a material change in circumstances since the making of the Final Order. If a finding was made there had been such a change in the circumstances, how should that change impact on each party's parenting time with the children and on the respondent's parenting responsibilities granted to her in the Final Order. These issues had to be assessed against the high conflict relationship between the parties that has continued subsequent to the Final Order and against an assessment of what order would, in the court's opinion, fulfill the requirements of the Family Law Act, S.B.C. 2011, c. 25 and, in particular, be in the best interests of the party's two children.
- [13] The claimant chose to indirectly attack the premise underlying the Final Order: that is, the "Findings" made by Ms. Korpach, the author of the s. 211 Reports which formed the basis of and were attached to the Final Order. The "Findings" were affirmed by an affidavit signed by each party. The claimant sought to attack the credibility of the Child Therapists at the time and upon whom Ms. Korpach relied in part in preparing her Report. He attacked the credibility and impartiality of Ms. Korpach herself. He was not successful in doing so. The challenge to the Findings (and the credibility of the Child Therapists and Ms. Korpach) took a significant amount of court time. The Claimant was successful on this issue.

- [14] Notwithstanding, I found the claimant was successful in establishing there had been a material change in circumstances based on a number of factors including the number of years which had transpired since the Final Order, the fact the claimant had been proactive in taking counselling and courses to improve his parenting skills, the children were older, the claimant had taken steps to become more involved in the children's activities when he had parenting time with them, particularly over the summer months, the fact the children's wished to see their father on a more frequent basis and that Dr. Krywaniuk recommended the claimant have increased parenting time but that it should be phased in over a period of time. The claimant was successful then establishing a material change in circumstances and in increasing his parenting time.
- [15] Neither the claimant nor respondent were successful in maintaining their respective positions as to the amount of parenting time the claimant should have. The claimant sought much more parenting time on a sooner basis than that ordered while the respondent sought granting the claimant much less parenting time than that ordered.
- [16] The increased parenting time granted to the claimant was couched with an "ongoing concern about his behavior" and by ongoing supervision by child therapists and a parenting coordinator.
- [17] The claimant was not successful in his claim for equal parenting responsibilities. I concluded that granting him equal responsibilities would only raise the opportunity for conflict in this already conflict ridden relationship, delay appropriate decisions and not be in the best interests of either of the children as I was of the opinion a quicker resolution of disputes was preferable to the potential each difference of opinion would form the potential for a new battleground. Particularly, I expressed concern with the claimant's attitude and conduct concerning the administration of MH's ADHD medication.
- [18] I found the respondent had exercised good judgment in the health and educational decisions she had made for the children and the best interests of the children was served by her continuing to make such decisions. In an effort to test the grounds upon which the parties might learn to cooperate in decision making concerning the best interests of the children I included a requirement she "consult" before making a decision. The duty to consult means to discuss: it is not meant to derogate from the respondent's ultimate right to make a decision.
- [19] The claimant takes the position he was successful in having the reports of Dr. Ley and Mr. Barker admitted as evidence. While this is true, as set out in my reasons, I did not find the reports particularly helpful to my analysis as they were one sided, reporting only what the authors were told by the claimant.

[20] The claimant also says he accepted Dr. Krywaniuk's recommendation of a graduated return to parenting time. A parenting plan delivered to the court at my request by the claimant's counsel in January 2016 set out that the claimant sought week on/week off parenting time with the children commencing the summer of 2016 and continuing into the school year commencing September 2016. As stated above the claimant was clearly not successful in achieving the parenting time he sought.

Disposition

[21] Each party had achieved some degree of success on the substantive matters. The respondent has been more successful than the claimant on the issues before the court. In my view the appropriate award to reflect the balance of success achieved is to award the respondent 75% of her costs against the claimant.

"Mr. Justice B. M. Greyell"

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Prepared on 26 October 2026 · Esheria