
CANADA / JUDGMENT

Shih v. Shih

2020 BCSC 76

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 76 Shih v. Shih

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Shih v. Shih,

2020 BCSC 76

Date: 20200121

Docket: E141017

Registry: Vancouver

Between:

Vanya Karmalita Shih aka Karli Shih

Claimant

And

Rick Shih

Respondent

Corrected Judgment: The text of this Decision was
corrected at paragraphs 25 and 48 on February 14, 2020

Before: Master Elwood

(As Registrar)

Reasons for Decision

Counsel for the Claimant:

G. Allison

The Defendant appearing in person:

Rick Shih

Place and Date of Hearing:

Vancouver, B.C.

September 30, 2019

Place and Date of Judgment:

Vancouver, B.C.

January 21, 2020

Table of Contents

I. INTRODUCTION.. 3

II. BACKGROUND.. 4

A. Litigation History. 4

B. Proceedings and Legal Services. 9

C. Amounts Invoiced to the Claimant 12

III. ANALYSIS. 13

A. Complexity, Difficulty or Novelty. 14

B. Skill, Specialized Knowledge and Responsibility. 15

C. Amount Involved. 15

D. Time Reasonably Expended. 16

E. Conduct that Tended to Shorten or Lengthen the Proceedings. 18

F. Importance of the Proceeding; Benefit to the Claimant 18

G. Rule 1-3. 19

IV. CONCLUSION.. 20

I. INTRODUCTION

[1] This is an assessment of special costs awarded to the claimant in a family law case. The following costs awards have been made in the claimant's favour in this proceeding:

- a) By order of Master MacNaughton (as she then was) on March 23, 2015, the claimant was awarded party-and-party costs of a trial management conference;
 - b) By order of Madam Justice Warren on April 27, 2016, the claimant was awarded party-and-party costs of an application by the respondent to stay the execution of a trial judgement;
 - c) By order of Mr. Justice Greyell on October 14, 2016, the claimant was awarded special costs of an application to have the respondent found in contempt of court;
 - d) By order of Madam Justice Watchuk on May 31, 2017, the claimant was awarded party-and-party costs of an application by the respondent on September 7, 2016, to set aside a consent order, and special costs of an application by the claimant on October 14, 2016, to settle the terms of an order after application;
 - e) By order of Madam Justice Donegan on September 5, 2019, the claimant was awarded special costs of an application by the respondent impugning the conduct of the claimant's counsel.
- [2] The current appointment was taken out by the claimant for an assessment of the three bills of costs under the ordinary tariffs and the first two of the three awards of special costs. The parties reached an agreement prior on the bills of costs under the ordinary tariffs, leaving the two awards of special costs to be assessed (Greyell and Watchuk JJ.).
- [3] The claimant asks that she be awarded the full amount invoiced by her counsel in connection with the two applications at issue as special costs. She argues that all of the fees and disbursements she incurred were proper and reasonably necessary to conduct the applications. The respondent objects to specific aspects of the amounts billed, as well as the claimant's tactics in the litigation generally. He has provided a detailed breakdown of the items he accepts and those he rejects for the purpose of assessing the two awards of special costs.

II. BACKGROUND

A. Litigation History

- [4] This family law litigation has a long history. Madam Justice Donegan took the time to summarize this history in the most recent reasons for judgment in the proceedings, indexed at 2019 BCSC 1681. I find it useful to reproduce her summary at some length to provide context for the issues on this assessment:

11 Mr. and Mrs. Shih lived together for about eight and a half years starting in June 2005. They married in May 2006 and separated in January 2014. They have two children. Counsel for Mrs. Shih at the time, Ms. Somerville, filed her client's Notice of Family Claim on April 11, 2014, seeking relief under all headings. Mr. Shih acted on his own behalf before retaining counsel in July 2014.

12 2014 saw several applications and a judicial case conference resulting in several orders regarding a variety of issues. Mr. Shih filed a Notice of Intention to Act in Person on March 17, 2015. On March 26 and 27, 2015, the parties appeared before Justice Watchuk for a settlement conference, and a number of orders were made by consent (the "Consent Order"). On April 2, 2015, the parties appeared before Watchuk J. again to settle the terms of the Consent Order. The trial commenced a few days later in front of Justice Warren. The trial was held over a period of 15 days between April and September 2015.

13 The primary issue at trial concerned the division of family property and, in particular, whether certain assets were properly considered excluded property and, therefore, not subject to division under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Other issues included whether a parenting coordinator should be appointed, the meaning of the terms of the Consent Order, whether the family property remaining after excluded property had been identified should be divided unequally in favour of Mr. Shih, whether income should be imputed to Mr. Shih for the purposes of calculating child and spousal support and the amount of income to be imputed to Mr. Shih for these purposes

14 Mrs. Shih was represented at trial by Ms. Somerville. Mr. Shih represented himself for the first nine days of the trial. During final submissions, the trial was adjourned to permit him to retain counsel for the purpose of applying to reopen his case. The adjournment was granted, and he did retain counsel. Justice Warren permitted him to reopen his case and the trial continued with Mr. Shih represented by counsel.

15 Justice Warren delivered Reasons for Judgment on November 18, 2015, indexed at 2015 BCSC 2108 (the "Trial Reasons"). In total, Justice Warren made 42 final orders. Mr. Shih filed his Notice of Appeal of these final orders on December 18, 2015. While his appeal was pending, Mr. Shih made other applications, including an application to settle the terms of the final orders and for a stay of the final orders pending appeal. His application for a stay was heard and dismissed by Justice Warren on April 27, 2016 (the "Stay Reasons").

16 In the course of dismissing his stay application, Justice Warren noted her findings at trial that she had rejected Mr. Shih's assertion that he was forced to quit his job in order to represent himself at trial, had found he was unemployed by choice and that she had imputed income of approximately \$230,000 per year to him: para. 6 of the Stay Reasons. Justice Warren also found that Mrs. Shih has paid the sum that was required of her and had done everything she could to comply with the final orders (para. 9) and that Mr. Shih had not complied with any aspects of the final order: para. 10.

17 In explaining why Mr. Shih had failed to establish that he would suffer irreparable harm if the stay was not granted, Justice Warren rejected Mr. Shih's unsubstantiated belief that Mrs. Shih would hide assets or fail to comply with an order to return funds if his appeal was unsuccessful. She also found that Mr. Shih attempted to fill in the gaps in his affidavit material with unsworn statements made verbally at the hearing. Ultimately, Justice Warren concluded that the application was unnecessary and awarded costs against Mr. Shih.

18 On August 8, 2016, Mrs. Shih obtained a garnishing order after judgment ordering all debt obligations and liabilities owing payable or accruing due from two banks and a law corporation to Mr. Shih be attached up to the amount of \$96,199.58 and paid into court.

19 Then, following all of this, while Mr. Shih's appeal was still pending, Mr. Shih tried again in this court to have the Consent Order "vacated." On September 1, 2016, Mr. Shih filed a Notice of Application seeking to vacate the "incorrectly processed consent order", an order of "abuse of process with malicious intent," an order for special costs for trial, appeal and re-trial and a stay order. This is despite the fact that this court had already addressed the validity of the Consent Order and his stay application. His applications made allegations of improper conduct against Ms. Somerville and referenced that he had filed a complaint against her to the Law Society of British Columbia.

20 Although Mr. Shih's application was not brought in accordance with the Family Rules, Justice Watchuk nevertheless heard it on September 7, 2016. In unreported reasons delivered on September 7, 2016, Watchuk J. dismissed Mr. Shih's application and, in the course of her reasons, addressed Mr. Shih's allegations against Ms. Somerville. In short, Justice Watchuk did not accept these allegations and found instead that counsel had acted entirely appropriately and in accordance with accepted process, the Family Rules and the request of the court: para. 8.

21 On September 16, 2016, Mrs. Shih filed a Notice of Application seeking to have Mr. Shih found in contempt of the provisions of the final order and one of the orders made by Justice Warren on April 27, 2016, as well as other relief. Justice Greyell heard the contempt application on October 5, 2016.

22 In reasons delivered October 14, 2016 and indexed at 2016 BCSC 1890, Justice Greyell found Mr. Shih in contempt of court. Mr. Shih's position at the hearing had been that he did not receive a copy of the final order and, accordingly, did not have notice of its terms, that he was financially broke and other things unrelated to the contempt application.

23 First, Justice Greyell concluded that Mrs. Shih had done everything she could to comply with the terms of the final order, and that those terms that she had not complied with required the cooperation and/or consent of Mr. Shih, which Mr. Shih had not provided. Second, Justice Greyell rejected Mr. Shih's assertion that he did not have notice of the terms of the final order. Calling them "obvious", Justice Greyell outlined several reasons why Mr. Shih clearly had notice of the terms: para. 18. In short, the court found that Mr. Shih willfully disobeyed some of the terms of the final order, of which he was fully aware, simply because he disagreed with Justice Warren's conclusions. Justice Greyell further found that Mr. Shih was in breach of Justice Warren's subsequent order refusing his application to stay the terms of the final orders pending appeal. In terms of sentence, Justice Greyell afforded Mr. Shih the opportunity to purge his contempt and ordered him to do a number of things before a certain date. Mrs. Shih was awarded special costs.

24 Mr. Shih's appeal of the final orders was heard on November 28 and 29, 2016. Mrs. Shih was now represented by her current counsel, Ms. Allison. Prior to this hearing, Mrs. Shih had applied to dismiss Mr. Shih's appeal on the basis that Mr. Shih had not complied with the request to

endorse Justice Greyell's order. Mrs. Shih's application was dismissed by the Court of Appeal on the first morning of the hearing, but only because Mr. Shih had finally complied with the request to endorse the order, which in turn allowed payment out of court of nearly \$100,000.00 paid under the garnishing order.

25 In reasons indexed at *Shih v. Shih*, 2017 BCCA 37, the Court of Appeal allowed the appeal to the extent of Mr. Shih's claim for excluded property relating to certain bank accounts and the mortgage. All other grounds were dismissed. Mr. Shih was awarded costs of the appeal (the "Appeal Decision").

26 The Court also addressed costs in relation to Mrs. Shih's application to dismiss Mr. Shih's appeal. In awarding costs of that application to her, the Court discussed some of the allegations made by Mr. Shih against Mrs. Shih's counsel. The Court explained that Mrs. Shih's application to dismiss the appeal was justified, holding:

[79] Having reviewed the correspondence between Mr. Shih and Ms. Shih's counsel, it is apparent that Ms. Shih was justified in bringing the application to dismiss. Counsel for Ms. Shih tried for months to have Mr. Shih comply with the trial order. When those efforts proved unsuccessful, counsel issued a garnishing order on August 8, 2016. Payment into court was made the same day in the sum of \$96,199.58.

27 The Court went on to reject Mr. Shih's assertions of misconduct by Ms. Shih's counsel at paras. 80-82:

[80] Mr. Shih considered the garnishment amounted to misconduct. He expressed his dissatisfaction by notifying Ms. Shih's trial counsel that he was reporting her to the Law Society.

[81] In my opinion, Ms. Shih's counsel was reasonable in her request that Mr. Shih provide a fully endorsed copy of the contempt order rather than only the signature page. The entire episode could have been avoided if Mr. Shih had done what is expected of any litigant - sign the order as presented or have the order settled.

[82] In these circumstances, I would grant Ms. Shih her costs of the application to dismiss.

28 The Court then considered Mr. Shih's new arguments advanced on appeal. Those too involved allegations of fraud and misconduct by trial counsel. The Court rejected those assertions as well at paras. 84-90, holding:

[84] I first note that Mr. Shih's attempts to have these issues litigated at this stage and in this manner is highly irregular and not to be condoned.

[85] I will address the issues summarily.

[86] Mr. Shih submitted that the Consent Order was invalid because, he contended, Mrs. Shih's trial counsel changed the terms of the order without his consent. In particular, he alleged that Mrs. Shih's trial counsel inserted the impugned excluded asset clause ("subject to the determination of the issue of excluded assets which is adjourned to the trial judge") 15 minutes before the end of the three-day the settlement conference, without his knowledge or consent.

[87] Appellate counsel for Mrs. Shih understandably considers Mr. Shih's allegation amounts to a contention that counsel committed a fraud on the Court.

[88] Quite apart from this scandalous allegation, appellate counsel for Mrs. Shih noted that Mr. Shih made this argument on September 7, 2016, when he applied before the settlement conference judge, Madam Justice Watchuk, to have the Consent Order vacated on the basis of the alleged fraud.

[89] Since the hearing of the appeal, counsel for Mrs. Shih has obtained the oral reasons for judgment of Madam Justice Watchuk. It is clear Madam Justice Watchuk found that the Consent Order reflected the manifest intention of the court. She dismissed Mr. Shih's application to vacate the order.

[90] There is no foundation to Mr. Shih's argument disputing the validity of the Consent Order.

29 Since the Appeal Decision, this litigation has continued, unabated. Mrs. Shih applied to Justice Watchuk for special costs of two applications (the application that had been decided on September 7, 2016, and the other that had been decided on October 14, 2016). After what looks to be a few rounds of written submissions, Watchuk J. delivered reasons on May 31, 2017 (indexed at 2017 BCSC 905), where she ordered that Mrs. Shih was entitled to ordinary costs of the first application and special costs in relation to the second.

30 With respect to the special costs award, Justice Watchuk held at paras. 16-19:

16 There was, however, no excuse for Mr. Shih's refusal to sign the order arising from the first application. When counsel for Mrs. Shih requested that his signature be dispensed with, he objected and stated that he preferred to sign the order. At that time Mr. Shih was advised by the Court that signing an order was not an opportunity to veto the proceedings reflected in the order. However, he later informed counsel for Mrs. Shih that he would not sign the order and intended to pursue his challenge of Mrs. Shih's counsel to remedy the orders made in the Trial Reasons. He did not provide any specific concerns regarding the draft order to counsel for Mrs. Shih.

17 Mr. Shih then challenged the order on the basis that he did not have a copy of the transcript of the April 2, 2015 hearing that I had referred to at the hearing of the first application. In correspondence with Supreme Court Scheduling, Mr. Shih requested a copy of that transcript. He was advised that copies of transcripts are available from the transcriber. He persisted in his communications with Scheduling regarding the transcript. It does not appear that Mr. Shih obtained a copy of the transcript.

18 Counsel for Mrs. Shih set down the hearing of the second application for October 14, 2016. The order arising from the first application was settled and signed by Mr. Shih and the Court in the courtroom.

19 Mr. Shih's wilful failure and deliberate refusal to sign the order arising from the first application led to the completely unnecessary hearing of the second application. His failure to sign the September 7, 2016 order is egregious conduct deserving of rebuke. Mrs. Shih is entitled to special costs of the hearing of the second application.

[5] On the application before Madam Justice Donegan, the respondent sought punitive orders against the claimant's counsel, alleging that counsel engaged in misconduct and committed a fraud on the court. Madam Justice Donegan dismissed all of these allegations:

51 Clearly these are very serious allegations. They are scandalous. They are completely without any evidentiary foundation. In the context of this litigation as a whole, which I have taken some time to outline here, I have no hesitation in concluding that Mr. Shih's application lacks bona fides and was brought for a retaliatory purpose, to harass the claimant and her counsel and to try to extract leverage in the proceedings.

[6] In awarding special costs of the application (which will be the subject of a further assessment), Madam Justice Donegan said this:

63 Mrs. Shih was wholly successful in this application. She seeks special costs. I am satisfied that her application for special costs of this application should be granted. The circumstances of this application fall within the principles set out in *Garcia v. Crestbrook Forest Industries Ltd.*, [1994] B.C.J. No. 2486 (BCCA) and *Moon Development Corporation v. Pirooz*, 2015 BCCA 213. Mr. Shih's conduct in making these unfounded and scandalous allegations against counsel is conduct deserving of rebuke in the strongest terms.

64 The reader, should these reasons be reduced to writing, may wonder why I have taken the time to review the history of these proceedings and some of the details of the correspondence between Mr. Shih and Ms. Allison in the detail that I have. Given Mr. Shih's non-compliance with the Family Rules, the complete absence of an evidentiary foundation and the complete absence of any legal basis for any of the relief he seeks, I could have dismissed his applications outright. I thought it necessary to outline in some detail what has occurred so that it is abundantly clear that Mr. Shih has been employing accusations of dishonesty against counsel irresponsibly.

[7] With this context in mind, I turn to the proceedings and legal services at issue on the current assessment.

B. Proceedings and Legal Services

- [8] The claimant's counsel for the proceedings at issue was Gwendoline Allison. Ms. Allison was retained by the claimant to assist the claimant's trial lawyer, Kerry Somerville, with enforcing the trial judgment of Madam Justice Warren and conducting the appeal. Ms. Allison's involvement in the proceedings began in June 2016, when she exchanged e-mails with the respondent for the purpose of setting an application to enforce the trial judgment.
- [9] Through the course of this litigation, the respondent has been represented by six lawyers. Ms. Allison dealt with two of those lawyers. At times, she deposes, it was unclear with whom she should communicate; however, for the most part, the respondent represented himself in the matters at issue on this assessment.
- [10] Ms. Allison corresponded with the respondent in writing only. The written correspondence was extensive. Between March 2016 and June 2017, the respondent, his lawyers and the claimant's lawyers exchanged over 200 e-mails and letters. These communications demonstrate that the respondent is not unsophisticated; nor is he lacking in an understanding of court procedures and rules.
- [11] Ms. Allison tried for several months to have the respondent comply with the trial order. When those efforts proved unsuccessful, Ms. Allison issued a garnishing order after judgment on August 8, 2016, pursuant to which funds were paid into court. Ms. Allison determined that, to obtain an order for payment of these funds out of court, s. 13(2) of the Court Order Enforcement Act, R.S.B.C. 1996, c. 78, required the claimant to serve the respondent personally with the application materials.
- [12] On August 22, 2016, Ms. Allison wrote to the respondent and asked for his co-operation with personal service. The respondent objected to being served personally rather than by e-mail, as it was his expectation based on a trial management direction by Master MacNaughton that he would receive all service by e-mail. The respondent also objected to the garnishing order itself, which he considered harassment. Matters escalated. The respondent accused Ms. Allison of professional misconduct. Ms. Allison deposes that she did not include in the bills on this assessment the time she spent dealing with these allegations, which included taking legal advice.
- [13] Ms. Allison eventually effected personal service of the garnishing order and supporting affidavit on the respondent at a hearing in court on September 7, 2016. At that hearing, Madam Justice Watchuk dismissed an application by the respondent to vacate or stay a consent order between the parties. The respondent declined to endorse the draft order prepared by Ms. Allison following the hearing. Ms. Allison filed a requisition to appear again before Watchuk J. to settle the terms of the order.

- [14] Ms. Allison began drafting materials for the contempt application on September 8, 2016. Her preparation included a review of the reasons for judgment of the trial judge, the applicable rules and the governing case law. The affidavit she prepared in support of the application was 145 pages in length including exhibits.
- [15] In accordance with Rule 4-1(3)(i) of the Supreme Court Family Rules, Ms. Allison arranged for the contempt application materials to be served on the respondent personally.
- [16] On September 29, 2016, the respondent's counsel of record in the appeal, Michael Ranspot, wrote to Ms. Allison, stating that he had reviewed the contempt application materials with the respondent. Mr. Ranspot set out a proposal from the respondent to resolve the contempt. Ms. Allison discussed the proposal with her client and responded with the terms to which the claimant would agree. Neither Mr. Ranspot nor the respondent responded to this counter offer.
- [17] The respondent delivered two affidavits in response to the contempt application. Ms. Allison discussed these affidavits with the claimant and obtained responding affidavits. The eventual application record included eight affidavits. Ms. Allison prepared a written argument for the application. Her assistant put together a brief of authorities.
- [18] On the morning of the hearing of the contempt application, the respondent took the position, for the first time, that he had not received the trial order of Madam Justice Warren, and could not, therefore, be in contempt of that order.
- [19] In reasons for judgment dated October 14, 2016, Mr. Justice Greyell held the respondent in contempt of court, finding that he clearly had notice of the order of Madam Justice Warren and wilfully disobeyed its terms because he disagreed with her conclusions. Mr. Justice Greyell ordered the respondent to purge his contempt within two weeks. He also ordered that the funds held in court be paid out to the claimant, and awarded the claimant special costs of the application.
- [20] Also on October 14, 2016, Ms. Allison and the respondent appeared before Madam Justice Watchuk to settle the terms of Her Ladyship's order of September 7. The order was settled on the terms drafted by Ms. Allison. In subsequent reasons for judgment, Watchuk J. awarded the claimant special costs of the October 14th hearing.
- [21] Between October 14 and November 23, 2016, Ms. Allison exchanged more than 30 e-mails with the respondent to obtain his endorsement on the order of Mr. Justice Greyell. The claimant needed an endorsed order, amongst other reasons, to permit payment out of court of the funds paid under the garnishing order. The point of contention with respect to the order was the format in which the respondent provided his endorsement. The respondent maintained that a photograph of the signature page with his endorsement should be sufficient. Ms. Allison required the respondent to provide a full copy of the order.

- [22] Ms. Allison also spent time obtaining the respondent's compliance with the trial order so as to purge his contempt. These steps included securing the appointment of a parenting coordinator, providing information to the claimant and her financial advisor to complete a transfer of RRSPs and other investments and determining whether the Family Maintenance Enforcement Program ("FMEP") had collected the outstanding spousal and child support.
- [23] Ms. Allison eventually obtained an original endorsed copy of the draft order of Greyell J. from the respondent on November 24, 2016. The draft order was initially rejected by the court registry because of a typographical error. Ms. Allison deposes that she did not invoice the claimant for the correction and re-filing of the draft order.
- [24] The registry also rejected a requisition filed by Ms. Allison for payment out of court of the funds paid in pursuant to the garnishing order. Ms. Allison followed up with the registry in January 2017, and, with their assistance, filed the correct form of requisition and received the payment out of court. Ms. Allison invoiced the claimant for these services, which are included in the claimant's claim to special costs of the application before Mr. Justice Greyell.

C. Amounts Invoiced to the Claimant

- [25] The claimant has put into evidence Ms. Allison's statements of account for the time period July to December 2016, covering the preparation and appearance on the contempt application before Mr. Justice Greyell. The claimant has also put in evidence Ms. Allison's statement of account for January 2017, when she re-filed the requisition for payment of funds out of court.
- [26] The invoices total \$39,747.49, of which \$33,360 are legal fees.

III. ANALYSIS

- [27] The Court of Appeal explained the function of special costs recently in *Tanious v. The Empire Life Assurance Company*, 2019 BCCA 329, as follows:
- [49] Special costs provide a much greater degree of indemnity than party and party costs. However, while there may be a close relationship between actual legal expenses and special costs, they are not necessarily the same. In fairness to the losing party who must pay the special costs, the successful party is entitled only to those fees and disbursements that were proper or reasonably necessary to conduct the proceeding. In *Bradshaw Construction Ltd. v. Bank of Nova Scotia* (1991), 54 B.C.L.R. (2d) 309 at para. 28 (S.C.), aff'd 73 B.C.L.R. (2d) 212 (C.A.), Justice Bouck stated that a special costs assessment will usually amount to about 80 to 90 per cent of an assessment of a similar bill reviewed under the Legal Profession Act, S.B.C. 1998, c. 9.

[50] Rule 14-1(3)(b) sets out a non-exhaustive list of factors for a registrar to consider in undertaking a special costs assessment. These include the complexity of the proceeding, the amount involved and the conduct of any party. When a judge fixes special costs under Rule 14-1(15), he or she must consider the same factors: *Gichuru* at paras. 85, 91, 102.

...

[53] [Special costs] address the results and conduct of the parties in the course of litigation and are generally awarded where there has been some form of reprehensible conduct: *Young v. Young*, [1993] 4 S.C.R. 3 at 134-135; *Marchen* at para. 69. In these circumstances, their purpose is to censure and deter litigation misconduct, not to compensate the plaintiff. Pre-litigation misconduct is not to be considered in determining whether special costs should be awarded for purposes of censure because there are other suitable mechanisms of censure that apply: *Smithies Holdings* at para. 134.

[28] Rule 16-1(2) of the Supreme Court Family Rules governs the assessment of special costs in family law litigation. It provides that "a registrar must allow those fees that were proper or reasonably necessary to conduct the family law case". Rule 16-1(2) requires that the registrar "consider all of the circumstances", including the following:

- (i) the complexity of the family law case and the difficulty or the novelty of the issues involved;
- (ii) the skill, specialized knowledge and responsibility required of the lawyer;
- (iii) the amount involved in the family law case;
- (iv) the time reasonably spent in conducting the family law case;
- (v) the conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the family law case;
- (vi) the importance of the family law case to the party whose bill is being assessed, and the result obtained;
- (vii) the benefit to the party whose bill is being assessed of the services rendered by the lawyer;
- (viii) Rule 1-3.

[29] In *Gichuru v. Smith*, 2014 BCCA 414, the Court of Appeal affirmed that, on an assessment of special costs, only those costs which are objectively reasonable are recoverable: see paragraphs 104, 105, 119 and 155 to 156.

A. Complexity, Difficulty or Novelty

- [30] Contempt proceedings, by their nature, require careful attention to detail and procedure. As the Court of Appeal stated in *Larkin v. Glase*, 2009 BCCA 321, "the court must ensure that no one is found to have transgressed without a full consideration of all the relevant information" (para. 9). Contempt is an issue between a party and the court. Although the issue is pursued by a litigant, a finding of contempt transcends the dispute, and "strikes at the very heart of the administration of justice".
- [31] Civil contempt has three elements which must be established beyond a reasonable doubt. These three demanding elements, coupled with the heightened standard of proof, help to ensure that the potential consequences of a contempt finding ensue only in appropriate cases: *Carey v. Liken*, 2015 SCC 17, at para. 32.
- [32] The already challenging task of proving contempt was made more difficult in this case by the respondent. Communication with the respondent on even routine matters of procedure was laborious and time-consuming. The respondent took positions - for example, his position that he never received the order after trial - that added to the complexity of the proceeding. The respondent's repeated allegations of misconduct against counsel further added to the difficulty of representing the claimant and the care and attention required of her counsel at every step in the proceedings.

B. Skill, Specialized Knowledge and Responsibility

- [33] Ms. Allison is not a specialist in family law. Her practice is primarily in the areas of employment law, human rights, constitutional law and general litigation. She has particular experience with injunctions and garnishing orders. Ms. Allison was called to the Bar in 1995, and practised with a number of well-regarded regional law firms before founding her own firm. I consider Ms. Allison to be a senior member of the Bar with expertise in civil contempt proceedings.
- [34] Ms. Allison's experience was well-suited to represent the claimant in the applications before Greyell and Watchuk JJ. At this stage of the proceedings, the case was not so much about family law as it was about obtaining compliance with the court's orders in difficult circumstances. These issues were within Ms. Allison's particular skill set. The contentious nature of the proceedings and the respondent's allegations of professional misconduct added additional responsibility to her role as counsel.
- [35] Ms. Allison's normal hourly rate is \$425 per hour. She charged the claimant \$400 an hour on this file. I am satisfied that this rate is appropriate given Ms. Allison's level of experience and the issues she dealt with on behalf of the claimant in this case.

C. Amount Involved

[36] The family law proceedings involved a division of approximately \$3 million of property. Just under \$100,000 was paid into court under the garnishing order and paid out to the claimant pursuant to the order of Mr. Justice Greyell. These are significant sums of money.

D. Time Reasonably Expended

[37] The claimant submits that the time spent by Ms. Allison was all reasonably expended, commiserate with the complexity of the proceedings and the difficulty of obtaining co-operation from the respondent.

[38] While objecting to specific items which he says were unnecessary or unreasonable, the respondent acknowledges that much of Ms. Allison's time was reasonably expended. The respondent's objections fall into the following categories:

- a) The invoices include billings for personal service, including process servers, whereas the TMC order of Master MacNaughton required the claimant to serve the respondent at his e-mail address. Ms. Allison knew that he travelled extensively, the respondent submits, and ought to have simply e-mailed him the application materials;
- b) The invoices include communications with Mr. Ranspot whom the respondent retained solely for the appeal and did not represent him in the Supreme Court proceedings;
- c) The invoices include communications with the Law Society, the National Bank, the respondent's mother, FMEP and disputes about the children's possessions, none of which was relevant, the respondent says, to the applications for which special costs were awarded;
- d) Ms. Allison ought to have accepted his digital signature on the order of Mr. Justice Greyell; it was not necessary for her to insist on an original signed copy of the order;
- e) The invoices include time for re-drafting and re-filing requisitions rejected by the court registry.

[39] I disagree with most of these objections, for the following reasons:

- a) The Court Order Enforcement Act requires personal service of garnishing order materials; likewise, the Family Rules require personal service of contempt of court materials. The time that Ms. Allison spent to effect personal service was both reasonable and necessary in the circumstances of this case;
- b) Mr. Ranspot initiated the contact with Ms. Allison and represented to Ms. Allison that he was instructed by the respondent to communicate a proposal to resolve the contempt. Ms. Allison's communication with Mr. Ranspot was therefore appropriate and reasonable;
- c) The communications with the National Bank flowed from the garnishing order and the respondent's contempt of court. The time that Ms. Allison spent in this regard was necessary to implement the order of Mr. Justice Greyell. The communications with the FMEP also

related to the respondent's contempt and obtaining his compliance. The time that Ms. Allison expended was necessary to confirm the status of FMEP collections and resolve an apparent discrepancy in the amount of child support owing based on FMEP's interpretation of the trial order. The communications with the respondent's mother related to the respondent's travel and attempting to serve him personally, and was necessary for the reasons stated above. I would note, however, that the time Ms. Allison spent on the matters referred to in this sub-paragraph was slightly more time than I would expect given the nature of the tasks involved;

- d) The time spent resolving the disagreement over the respondent's endorsement on the order of Greyell J. was unfortunately necessary. I do not agree with the respondent that Ms. Allison ought to have accepted the digital copy. As the Court of Appeal found, at para. 81 of the appeal decision:

In my opinion, Ms. Shih's counsel was reasonable in her request that Mr. Shih provide a fully endorsed copy of the contempt order rather than only the signature page. The entire episode could have been avoided if Mr. Shih had done what is expected of any litigant - sign the order as presented or have the order settled.

[40] There are three items on which I agree with the respondent:

- a) It is unclear to me why the current assessment of special costs includes communications with the Law Society. Ms. Allison deposes that she has not included time spent dealing with the respondent's allegations against her in relation to personal service and the contempt proceedings. To the extent her invoices include any communications with the Law Society, those communications appear to have been related to the allegations by the respondent against the claimant's trial counsel in the context of the claimant's application for special costs of the September 7 application before Madam Justice Watchuk. Her Ladyship declined to award special costs of that application. They should not be part of this assessment; however, the time involved appears to have been very minor;
- b) It is also unclear to me why time spent on disputes about "the boys' stuff" and s. 7 expenses is included in the assessment of special costs. The claimant decided not to pursue the s.7 expenses. Again, the time involved on these matters appears to have been minor;
- c) In my view, the full amount of time Ms. Allison spent to re-file the requisition for payment of funds out of court should not be included in the special costs award. While rejected filings is something that happens to all counsel at some point, legal fees of almost \$1,000 exceed what is objectively reasonable for obtaining payment out of court, in my view.

E. Conduct that Tended to Shorten or Lengthen the Proceedings

- [41] The respondent's conduct clearly tended to lengthen the proceedings. The extensive written communications, some of the positions he took and his unfounded allegations against counsel all made the proceedings longer.

F. Importance of the Proceeding; Benefit to the Claimant

[42] The contempt proceedings were important, both to the claimant personally and to the administration of justice generally. Proceedings of this nature are unfortunately necessary to bring closure to some family law cases and maintain respect for the court and its orders.

[43] The proceedings benefitted the claimant by enforcing the trial judgment, moving the proceedings toward a final conclusion and helping to secure her financial security.

G. Rule 1-3

[44] Rule 1-3 of the Family Rules provides that:

Object

- (1) The object of these Supreme Court Family Rules is to
 - (a) help parties resolve the legal issues in a family law case fairly and in a way that will
 - (i) take into account the impact that the conduct of the family law case may have on a child, and
 - (ii) minimize conflict and promote cooperation between the parties, and
 - (b) secure the just, speedy and inexpensive determination of every family law case on its merits.

Proportionality

- (2) Securing the just, speedy and inexpensive determination of a family law case on its merits includes, so far as is practicable, conducting the family law case in ways that are proportionate to
 - (a) the interests of any child affected,
 - (b) the importance of the issues in dispute, and
 - (c) the complexity of the family law case.

[45] The respondent argues generally that the claimant engaged in unnecessarily aggressive and harassing conduct in this litigation. The claimant involved the police, invaded his privacy and impacted the lives of the children beyond what was, in the respondent's submission, necessary or appropriate. According to the respondent, the claimant froze his assets and disputed every issue, so as to obtain his capitulation. The garnishing order, in particular, he submits, was unnecessary and unduly aggressive.

[46] In my view, the respondent's complaints with the complaint's tactics in the underlying litigation are irrelevant to this assessment of special costs. Regardless of who might be blamed for the level of conflict in these proceedings, the garnishing order and the contempt application were lawful mechanisms to enforce the trial order. As the Court of Appeal said at paragraph 79 of the appeal decision:

Counsel for Ms. Shih tried for months to have Mr. Shih comply with the trial order. When those efforts proved unsuccessful, counsel issued a garnishing order on August 8, 2016. Payment into court was made the same day in the sum of \$96,199.58.

[47] In these circumstances, I do not agree with the respondent that the claimant's conduct in relation to the matters at issue was objectively unreasonable. While I agree that high conflict family litigation has costs to the children involved, I cannot find any fault on the part of the claimant or her counsel in the conduct of the applications at issue on this assessment.

IV. CONCLUSION

[48] Having considered all of the circumstances, I would award \$38,000 to the claimant as special costs pursuant to the order of Greyell J.

[49] The claimant is entitled to special costs of this assessment: *Le Soleil Hospitality Inc. v. Louie*, 2017 BCSC 162.

"Master Elwood"

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