

CANADA / JUDGMENT

W.H. v. I.R.

2013 BCSC 1144**COURT**

Supreme Court of British Columbia

DECIDED

26 June 2013

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

2013 BCSC 1144 W.H. v. I.R. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: W.H. v. I.R., 2013 BCSC 1144 Date: 20130626 Docket: E052607 Registry: Vancouver Between: W.H. Claimant And I.R. Respondent Before: The Honourable Madam Justice Ross Reasons for Judgment Counsel for the Claimant: Paul M. Daykin, Q.C. Counsel for the Respondent: Grace G. Choi Place and Date of Hearing: Vancouver, B.C. March 28, 2013 Place and Date of Judgment: Vancouver, B.C. June 26, 2013

- [1] This is an application to deal with the issue of costs after trial. This was a family law proceeding in which the issues to be determined were:
- (a) whether the marriage agreement entered into by the parties prior to their wedding should be set aside or varied;
 - (b) division of family assets;
 - (c) spousal support; and
 - (d) whether the respondent's son O, who is 22 years old, remains a child of the marriage and if so, what arrangements are required for his support. The reasons for judgment are indexed at 2012 BCSC 1483.
- [2] The claimant's position is that in this case success was divided and each party should bear their own costs. The position of the respondent is that she enjoyed substantial success, should be awarded costs of the action and that the litigation was of greater than average difficulty which should attract an order for costs at Scale C.
- [3] The Supreme Court Family Rules deal with costs in Rule 16-1. The applicable rules in relation to this matter are as follows:
- (7) Subject to subrule (9), costs of a family law case must be awarded to the successful party unless the court otherwise orders.
 - (9) Unless the court hearing an application otherwise orders,

- (a) if the application is granted, the party who brought the application is entitled to costs of the application if that party is awarded costs at trial or at the hearing of the petition, but the party opposing the application, if any, is not entitled to costs even though that party is awarded costs at trial or at the hearing of the petition, and
- (b) if the application is refused, the party who brought the application is not entitled to costs of the application even though that party is awarded costs at trial or at the hearing of the petition, but the party opposing the application, if any, is entitled to costs if that party is awarded costs at trial or at the hearing of the petition.
- [4] In *Kawana v. Shemal*, 2011 BCSC 1267, Pearlman J. noted at para. 28: In determining which party is "successful" under Rule 16-1(7), the court, in a case involving multiple issues, must consider whether one party has been "substantially successful". This requires an objective comparison of the relief granted and the results obtained by the parties with the submissions made at trial: *MacLean v. Mio*, 2011 BCSC 148 at para. 30. On finding substantial success for a party, the court, exercising its discretion judicially, must then consider whether it should "order otherwise": *Gold v. Gold* (1993), 82 B.C.L.R. (2d) 180 (C.A.) at para. 20.
- [5] A review of the essential issues and outcomes demonstrates divided success in the litigation. The following chart sets out a summary of the positions of the parties and the outcomes at trial. The chart, with some modifications, was prepared by counsel for the claimant.
- | Issue | Claimant Position | Respondent Position | Result | Success | Procedural fairness of marriage contract |
|---|------------------------------|------------------------|---|----------------|--|
| Fair Unfair Unfair | Fair | Unfair | Unfair | Respondent | Substantive fairness of marriage agreement |
| Conceded to be unfair on issue of spousal support; fair on property | Unfair | Unfair | Unfair | Respondent | Characterization of shares in Craftsman Group Business asset |
| Family asset | Respondent | Value of Business | \$41.1 million ~\$48 million | \$41.1 million | Claimant |
| Reapportionment of Business | 0% | 10% | 5% | Divided | Reapportionment of Family Assets |
| 50% | 40% | Divided | Compensation Order for shareholder loan disposition | \$0 | Order sought in unspecified amount |
| \$0 | Claimant | Husband's Income | Not Material | \$2,590,000 | Not Material |
| Claimant Quantum and duration of spousal support | \$13,500 until Sept. 1, 2016 | \$35,000 for 6.3 years | \$13,500 until Sept. 1, 2016 | Claimant | Status of O and child support |
| Not a Child | Child | Child | Child | Child | but more evidence required re plan |
| Divided | | | | | |
- [6] A conclusion that success was divided with neither party enjoying substantial success in the litigation also emerges from a more global analysis of the outcomes compared with the positions advanced at trial.
- [7] The position advanced by the claimant would have resulted in an award to the respondent in relation to division of family assets of either \$669,000 or \$1,034,000 depending upon which value was adopted for the matrimonial home in addition to prior advances, together with spousal support of \$13,500 until September 2016.

-
- [8] The respondent sought an award of \$8.65 million together with a compensation order arising from the depletion of the shareholder loan account in relation to division of family assets, in addition to prior advances, together with spousal support of \$35,000 per month for 6.3 years, retroactive to October, 2010 net of interim support already paid.
- [9] The reasons awarded the respondent \$3,756,000 in relation to division of family assets, in addition to prior advances, together with spousal support of \$13,500 until September 2016.
- [10] I have concluded that given the divided success in the litigation there will be no order for costs. Each party will bear their own costs. "Ross 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/13/11/2013BCSC1144.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/w-h-v-i-r-2013>

Prepared on 25 October 2026 · Esheria