
CANADA / JUDGMENT

Wakeman v. Wakeman

2021 BCSC 1095

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2021 BCSC 1095 Wakeman v. Wakeman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wakeman v. Wakeman,

2021 BCSC 1095

Date: 20210607

Docket: E1546685

Registry: Prince George

Between:

Melissa Gail Wakeman

Claimant

And

Alan Daniel Wakeman

Respondent

Before: The Honourable Mr. Justice Schultes

Reasons for Judgment

Counsel for the Claimant, appearing via teleconference:

P. D. LeBlanc

Counsel for the Respondent, appearing via teleconference:

G.A. Petrisor

Place and Date of Hearing:

Prince George, B.C.

November 5, 2020

Place and Date of Judgment:

Prince George, B.C.

June 7, 2021

Introduction

- [1] Ms. Wakeman, the claimant in this family law matter, is applying to vary an existing order, to increase the amount of child support to be paid by the respondent Mr. Wakeman, both prospectively and retroactively.
- [2] In a more narrowly-focused application, Mr. Wakeman seeks to have the exchange of their child in furtherance of their shared parenting arrangement take place on a different night, to accommodate his work schedule.

Evidence

Background

- [3] The parties' began a marriage-like relationship in 2005 and married in 2006. They separated in May, 2014 but are not yet divorced. Their son, Jayden, is 11 years old.
- [4] They have been sharing equal parenting of Jayden, on a week-on/week-off basis, since 2015. This was established, along with joint guardianship and joint custody, by an interim consent order at a judicial case conference in May of that year. That order did not deal with child support.
- [5] The order that Ms. Wakeman seeks to vary in this application was arrived at by consent in March, 2016. It was comprehensive, and appears to have addressed all of the outstanding child-related and property issues between them at that time, including the transfer of Ms. Wakeman's interest in the former family home in return for an equalization payment.
- [6] Mr. Wakeman's annual income was stated in the order to be approximately \$49,920, consisting of employment income of \$42,880 and rental income of \$6,240. Ms. Wakeman's income was stated to be approximately \$47,000.
- [7] Building on the equal parenting established by the 2015 order, the order provided for child support to be paid on a set-off basis, which at the stated incomes resulted in nominal monthly payments of \$19.00 by Mr. Wakeman.
- [8] They were to share equally in any of Jayden's health expenses that were not covered by insurance, and in his child care expenses.

- [9] Their income tax returns and notices of assessment for the preceding year were to be exchanged by July 1, for as long as Jayden remained a "child of the marriage" as defined by the Divorce Act. This exchange of financial information between them was not carried out as required by the order.

Ms. Wakeman's Circumstances

- [10] She was originally trained as a dental assistant and she worked in that capacity throughout the relationship. After completing her training in 2003 she filled several temporary positions, and then from 2004 to 2017 she worked for three different dentists in the Prince George area, eventually earning her highest wage of \$27 per hour in the last position. She supplemented that work at various points with jobs as a medical office assistant, and as an operating room dental technician and a kitchen employee for Northern Health.
- [11] She describes a longstanding ambition to increase her earning potential by retraining as either a radiography technician or a registered nurse. Between 2007 and 2010, in addition to her full-time work, she upgraded her high school pre-requisites for admission to those programs. Her intermittent work with Northern Health was intended to get her "foot in the door" with that organization for future employment purposes, she explains.
- [12] She was admitted to both of those programs in 2011, in June and August respectively.
- [13] She says that following her acceptance into the radiography technician program, the respondent, who at that time was employed as a baker with Save-On Foods, told her that if she enrolled she would still be responsible for half of the household expenses as well as the entire cost of the program. She decided not to proceed with it.
- [14] Mr. Wakeman denies making that statement about her financial responsibilities if she entered the program. Rather, the situation was that Ms. Wakeman was ineligible for a student loan because of her income, and they were not able to manage the additional payments of a second mortgage to finance her studies. Additional considerations were the apparently static wages and competitive job market in that field. At the end of the day, he and Ms. Wakeman "could not find a way to pay for her to attend that program", although she said that she would "hold it against [him] for the rest of [his] life" if he did not do so.
- [15] Ms. Wakeman says that when she discovered that more extensive bank loans were available for the nursing program, Mr. Wakeman told her that the family could not do without her income, and that in any case he had decided to return to school to train as a heavy duty mechanic, which he felt entitled to pursue first because he was older than her. He agreed that she could attend the nursing program after he had completed the first year of his training. However, after he completed his first year, during which he continued to work part-time as a baker, he denied having agreed that she could begin her program then.

- [16] Once again Mr. Wakeman recalls the events differently. His understanding was that once again the only loans for that program available were through a second mortgage on their home, and he did not see how the family could manage without her income for a four-year period. He agrees that he saw his heavy duty mechanic training as being more viable, but explains that this was because it would not result in a significant decrease in his income while he was taking it (he had to reduce his hours as a baker only marginally), and he would then be earning more in a relatively short period of time. While they did agree, before he began his course, that at some point he would be earning enough that it would be feasible for her to "take course of study" herself, they did not discuss her beginning it after the first year of his program.
- [17] She eventually reapplied for the nursing program after the separation, and began it in September of 2017. In the preceding term, which began in January of that year, she had taken a full-time course load of electives for the program.
- [18] In 2016, her last year of full-time work, her total employment income on her tax return was \$51,633. When she entered into the consent order in March of that year, she was working full-time as a dental assistant, as a medical office assistant on the weekends that she did not have her son with her, and on a shift as a dental technician every three or four months with Northern Health, solely to maintain her seniority there.
- [19] Once she began full-time studies, she left the dental assistant position because of her academic demands. She initially maintained the part-time positions, but says the increasing difficulty and time requirements of the nursing program caused her to give up all but the occasional shift as of the summer of 2019.
- [20] Her course marks in the program so far have been largely in the "A" range. She expects to graduate in May of this year.
- [21] The wage scale for a registered nurse is considerably higher than her former positions. Her starting hourly wage will be \$34.83, with yearly increases to \$45.73/hour after nine years.
- [22] The income reported in her tax returns has reflected her decreased ability to work because of her studies. From 2017 to 2019 those figures were \$7,542, \$10,742, and \$6,844. At the time of her January, 2020 affidavit, she expected that the figure for 2020 would be lower than in 2019.
- [23] In her response affidavit in October she updates her situation with the information that she attended school full-time in the summer of that year, that she was laid off from her part-time work at the medical clinic in June, and that she is unable to work any further shifts as a dental technician because her qualifications have lapsed. As a result, she does not expect her 2020 income to exceed \$500.
- [24] She expects to begin employment as a nurse following her graduation in May of this year.

[25] In her January 2020 financial statement, Ms. Wakeman lists annual expenses of \$35,111. To address the shortfall between that figure and her annual income, she has set out in detail the additional amounts she has received in student loans, grants, scholarships and rental assistance, which have enabled her to meet these expenses while attending school. These sources were:

Year

Student Loan

Grants

Scholarships

Rental Assistance

Canada Child Benefit

2017

\$7,509

\$1,161

\$2,500

None (began in 2018)

\$2,067

2018

\$13,459

\$4,202

\$1,500

\$5,656

\$2,740

2019

\$17,570

\$8,135

\$6,500

\$8,484

\$2,801

2020

\$21,559

\$15,796

\$500

\$8,484

\$3,454

2021

None (received in 2020)

None (received in 2020)

None

\$2,828 (she expects that the benefit will be lost when she graduates in May and starts working)

Not stated

- [26] She began receiving rental assistance in 2018, after she moved out of her mother's home, where she had been paying only \$600/month, to an apartment suitable for her and Jayden, which costs \$1,100/month.
- [27] Rather than listing the child care benefit she receives separately, she has included the net amount she pays for Jayden's care, after applying the benefit, in her list of expenses.
- [28] In 2020 she also received \$6,000 in Canada Emergency Student Benefits, which I infer were related to the pandemic.
- [29] Ms. Wakeman indicates that she also occasionally draws on her savings to cover her expenses. These saving came from the payment that Mr. Wakeman made to her as part of the 2016 consent order, to purchase her interest in the former family home.
- [30] She has had two opportunities to travel as part of her studies. In 2017 she received a \$1,000 scholarship to offset the airfare costs of a "study abroad" program in South Korea, and in 2018 she received approximately \$5,000 in bursaries to fund a "field course" in Greece.

Mr. Wakeman's Circumstances

- [31] He clarifies that he was employed by Save-On until "approximately" 2012, at which point he left that position for employment as an apprentice mechanic. He suffered an injury at work that required a six-month rehabilitation period, during which he was receiving WorkSafe benefits. He was laid off when he returned to work. This was the point that he and the claimant separated.

- [32] He then enrolled in the heavy duty mechanic's program, and obtained a position with his current employer after completing the first year of the program. He completed his apprenticeship and has been with that employer since 2017.
- [33] His income on his tax returns for the years 2017-19 was \$66,039, \$102,429 and \$102,430 respectively. However, some of the income attributed to him in 2018 and 2019 was not actually received by him in those years. He explains that he is eligible to buy shares in his employer company and that as of his affidavit of September 2020 he had spent \$39,000 for that purpose. A shareholder's bonus of about \$29,000 was included in his 2018 T4 slip, but he did not actually receive the money until 2019. Similarly, he was credited with receiving a bonus of \$29,881.79 in 2019, but as of September, 2020 he was still owed \$24,321.79 of it. In his financial statement he has included the actual \$5,560 of the bonus that he had received by that point in the year.
- [34] He says that the last two years have been difficult for his employer. Based on his initial discussions with his general manager, he believed payment of the remainder of his 2019 bonus, and of any bonus for 2020 "do[es] not appear likely at this point." Despite this initial belief, in his follow-up affidavit he refers to additional information from his general manager that he may receive "as much as \$9,000 but perhaps less" for 2021, although none of it would be paid in that year or in early 2021.
- [35] He estimates his current annual income as \$70,010.41. Based on his most recent pay stub, for the period ending September 5, 2020, Ms. Wakeman's counsel calculates that he was actually on a pace to earn \$75,297 in that year.
- [36] He has also been receiving rental income from a suite in his home, as referred to in the 2016 consent order. The income has not been declared in his returns, although he included it in his financial statement. He previously rented the suite out for \$750/month, but after conducting repairs, which cost \$9,650 and required the suite to be vacant for more than two months, he now charges \$850/month. Although the repairs and vacancy will put his rental earnings into the negative for 2020, in his financial statement he estimates a net return going forward of \$478/month, or \$5,736/year.
- [37] In total, Mr. Wakeman lists his annual income for child support purposes as \$81,306. He lists his annual expenses as \$84,970.
- [38] As background to the current application, he describes that difficult financial circumstances that he found himself in as a result of the separation, including his purchase of Ms. Wakeman's interest in their former home pursuant to the 2016 consent order. He also had to take out a loan to replace his old and unreliable truck in 2017.
- [39] With respect to child-related expenses since separation, he asserts that Ms. Wakeman has always been able to rely on her family to provide child care, whereas he has had to pay for it - a total of \$8,612 since 2017.

- [40] As I have mentioned, Ms. Wakeman advises that she incurs child care expenses as well, at the same daycare provider Mr. Wakeman used until recently, and her financial statement lists \$924/year as her net cost after the application of the benefit. In her response affidavit she explains that after Mr. Wakeman withdrew Jayden from daycare at the end of August of 2020, her costs for that service increased to \$222/month.
- [41] The other special expense that Mr. Wakeman says he has taken on himself are Jordan's glasses. On two occasions he has paid the difference between the 40% insurance reimbursement and the \$250 cost of the glasses. To contradict this assertion, Ms. Wakeman's response affidavit attaches their text exchange from May, 2019, in which Mr. Wakeman refers to having insurance coverage of a maximum of \$500 over two years and having purchased two pairs of glasses for Jayden for a total of \$189. He does not mention being responsible for any uninsured portion of that cost in those messages.
- [42] As to the parenting exchange issue, Mr. Wakeman's difficulty, as he describes it, is that he is sometimes required to work on Friday nights. Jayden's transition from the care of one parent to another generally occurs after school on Friday and it is difficult for him to arrange childcare if his parenting time with Jayden starts then. He proposes that the exchange take place on Sunday or Monday evenings instead.
- [43] Ms. Wakeman denies that this is actually a problem. Her understanding, based on her knowledge of Mr. Wakeman's schedule, is that only six Friday evening shifts per year overlap with their parenting exchanges. She is prepared to assist him by caring for Jayden until he is finished work, as she has in the past, but says he has not asked her to do so recently. She opposes shifting to another day for the exchange, because the current one allows Jayden to transition to the different rules in each of their homes before starting school on Mondays, and allows each parent to have complete weekends and long weekends with him.

Notice of the Need for a Change in Support

- [44] Ms. Wakeman describes making efforts since the separation to comply with the financial disclosure requirements of the 2016 consent order and to obtain corresponding disclosure from Mr. Wakeman. This has included sending him her information by registered mail, which he refused to accept, and then providing it to his lawyer (2017); handing it to him during a parenting exchange (2018); and placing it in their son's backpack during such an exchange and then texting the respondent to advise him that it was there (2019). Based on her mistaken understanding of her obligations under the 2016 consent order, she included only her notices of assessment, and not the tax returns. She says that he did not provide any tax information in response to her efforts.
- [45] In October 2019 her counsel wrote to Mr. Wakeman's counsel, indicating that she wished to adjust the amount of child support. After being advised that his counsel was no longer acting for him at that point, her counsel wrote to him directly. He responded to her directly in December, advising that his income was "about 70k a year now give or take". He

suggested, based on advice from his former counsel, that she had "under employed" herself by taking the nursing program and that a judge would likely impute her former income to her. He expressed the view that "this is reasonable especially since neither of [us] have asked nor supplied wage info to this point."

- [46] Mr. Wakeman's version of events is that following the 2016 consent order, "time passed without any discussion regarding support or maintenance" and that "[w]e did not exchange income tax returns." Even though his income decreased initially, he continued the agreed set-off support payment. Further, Ms. Wakeman's statements at several points that she did not wish to pursue a divorce led him to the overall belief that "we were honouring the agreement in terms of child support being paid, and my being responsible for my own child care costs, but the divorce and the exchange of income information was not being followed by either [Ms. Wakeman] or me."
- [47] As to Ms. Wakeman's claims to have provided him with her income tax information, his position is that the first such disclosure was not until July 2019, when she provided him with her 2018 notice of assessment. He does not recall refusing to accept a registered mail delivery, or receiving tax information from her in person. He denies that she asked him when she could expect to receive his information. Finally, he has been advised that his lawyer has no record of receiving such documents from her or forwarding them to him.
- [48] According to him, after receiving her notice of assessment in 2019 they had a meeting at her house to discuss changing the payment. After a long conversation, he "thought it was likely that we would work out an agreement between us." He heard nothing further on the issue until he received correspondence from her counsel.
- [49] In her reply affidavit, Ms. Wakeman addresses to Mr. Wakeman's absence of memory with respect to refusing any registered mail by attaching the receipt for that correspondence from May of 2017, as well as an email from Canada Post indicating that he did not pick it up. In addition, she indicates his counsel has not responded to a request to confirm that he did not receive those documents from her later that year, as she described.
- [50] According to her, Mr. Wakeman only discussed the possibility of adjusting child support with her twice before she served him with this application in February 2020. Those were in his email responding to her lawyer's letter, in December 2019, and in two text messages to her in January of 2020.
- [51] She also elaborates on the sporadic nature of his financial disclosure once he began providing information. On January 25, 2020 he handed her two paystubs, on January 20 he sent her a text message advising that his current annual income was \$72,500, and on February 28 his lawyer sent his 2015-18 notices of assessment, his 2019 T4 slip and two more pay stubs. This was the first disclosure she had received since the 2016 consent order. As I have mentioned, his financial statement was not filed until September. It contained his first disclosure of tax returns since that order.

- [52] She denies that any discussion about adjusting support occurred, as Mr. Wakeman alleges, and maintains that his only comments on that topic were in the emails and text messages in late 2019 and early 2020 that I have summarized.

Discussion

- [53] The threshold issue is the actual nature of Ms. Wakeman's application, and whether it permits resolution of the issues that have been raised.
- [54] Her application has been made pursuant to s.17 (1)(a) of the Divorce Act, which permits a support order to be varied prospectively or retroactively. Such a variation requires a material change of circumstances since the original order was made.
- [55] However, the jurisdiction to make a support order under the Divorce Act is dependent on the granting of a divorce, whether the support order is made within a divorce proceedings or a corollary relief proceeding: *Chicoine v. Chicoine*, 2007 BCSC 735. In other words, a support order under the Divorce Act is not considered "final" until a divorce has been granted: *Yu v. Jordan*, 2012 BCCA 367 at para. 47. It is only an interim order. Of course no divorce has yet been granted in this case.
- [56] Section 17 of the Divorce Act does not apply to interim orders: *Hama v. Werbes*, (1999) 2 R.F.L. (5th) 203 (BCSC) at para. 15. Such orders "should only be varied when there is a compelling change of circumstances, such that one or both parties would be seriously prejudiced by waiting until trial": *Hama* at para. 10. Or, as it was expressed in *Chicoine*:

4 Although there is no statutory provision in the Divorce Act to vary an interim order, the Court has the inherent jurisdiction to vary its own orders where circumstances have materially changed and there is some urgency to the application that does not permit its resolution to wait until trial.

- [57] It seems clear that it was not the intention of the parties to proceed to trial after the 2016 consent order, with that order being intended to bridge the gap until then, nor is their intention to proceed to trial now. It was quite the opposite - the order represented their efforts to resolve matters without one. The current application is clearly intended to serve as an efficient and cost-effective means of resolving support issues.
- [58] Although the 2016 consent order remains an interim one for the purposes of the Divorce Act, leaving aside the divorce it represented an attempt to deal finally with parenting, support and property issues. The notice of family claim pleaded the Family Law Act (the "FLA") in relation to the first two of these issues, and it is the governing statute with respect to the third. Rule 1-1 of the Supreme Court Family Rules (the "SCFRs") defines a "final order" as "an order finally resolving a claim in a family law case even though the order may be subject to change." The 2016 consent order can therefore be fairly characterized as a final order for the purposes of the FLA relief that was obtained, allowing those provisions to be varied under the FLA: see for example *Audia v. Audia*, 2020 BCSC 1863, at paras. 23-35.

[59] Rule 10-3(1)(b)(i) provides that a "chambers proceeding" includes "an application to change or set aside a judgment". Thus, although a final order can only be obtained at a trial or a summary trial (see Rule 10-11), the SCFRs are structured so that a final order can at least potentially be varied by an ordinary chambers application.

[60] I say "at least potentially" because this ability is restricted by the decision of the Court of Appeal in *C.M.R. v. L.F.R.*, 2019 BCCA 371. Dealing with an appeal from the dismissal of an application to refer an application to vary a final order to the trial list, the Court reasoned as follows:

11 At this stage of proceedings, the question before the chambers judge was not whether the applications could be decided on conflicting affidavit evidence or must be referred to the trial list. The proper question was whether the applications raise a triable issue. If the applications raise a triable issue they must be referred to the trial list: *British Columbia (Milk Marketing Board) v. Saputo Products Canada G.P.*, 2017 BCCA 247 [Saputo]; *Kerfoot v. Richter*, 2018 BCCA 238; and *Robertson v. Dhillon*, 2015 BCCA 469.

12 This conclusion follows from a consideration of the relevant Rules. As noted in the introduction, in defended family law cases that are brought by the filing of a notice of family claim, final orders can only be obtained at a trial or by way of summary trial. If a party subsequently seeks to change a final order he or she must do so by way of application. An application to change or set aside a judgment is by definition a chambers proceeding (Rule 10-3(1)(b)(i)).

13 Rule 10-3(7) sets out the powers of the court on the hearing of a chambers proceeding. Rule 10-3(7)(d) gives the court the power to order a trial of the chambers proceeding. That subrule reads:

(7)Without limiting subrule (4), on the hearing of a chambers proceeding, the court may

...

(d)order a trial of the chambers proceeding, either generally or on an issue, and order a pleading to be filed and, in that event, give directions for the conduct of the trial and of pre-trial proceedings and for the disposition of the chambers proceeding.

14 The ordering of a trial of a chambers proceeding does not necessarily mean that a full trial with witnesses is required. Pursuant to Rule 11-3(2)(b) either party may apply for a summary trial in a family law case that has been transferred to the trial list. See also *Saputo* at para. 47.

15 While I note that *Saputo* concerned a petition, the same principles apply in relation to an application to change a final order. Such applications are of vital importance to the parties, and if they raise a triable issue, must be determined at a trial or summary trial.

16 The test as to whether an application should be converted to trial was set out in *Saputo* at para. 44:

In Robertson, the Court set out the test to determine whether a petition should be converted to a trial:

[55] On the hearing of a petition, a judge must be satisfied that there is no dispute as to the facts or law which raises a reasonable doubt or which suggests that there is a defence that deserves to be tried: *Douglas Lake Cattle Co. v. Smith* (1991), 1991 CanLII 3954(BC CA), 54 B.C.L.R. (2d) 52 (C.A.) at 59. If such a dispute exists, the judge may refer the matter to the trial list, pursuant to R. 22-1(7) (former R. 52(11)(d)).

In essence, if the defendant is bound to lose, the application should be granted, but if he is not bound to lose, then the application should be dismissed.

[Emphasis added in original.]

[61] I do not see any principled basis on which to distinguish the unfortunate effect of C.M.R. here. As that decision defines it, there are several obvious triable issues in Ms. Wakeman's application, including:

- The applicability of the factors for determining whether a retroactive child support order should be made, in accordance with the decision of the Supreme Court of Canada in *D.B.S. v. S.R.G.*, [2006] 2 S.C.R. 231. Particular concerns will be the reasonableness of Mr. Wakeman continuing to pay support in accordance with an existing order, whether the delivery of Ms. Wakeman's income information at several points before October 2019 (if it is found to have occurred) served as notice to him that the amount of support needed to be renegotiated, the explanation for the delay in her formal request, and whether his limited and arguably misleading financial disclosure before February, 2020 constituted "blameworthy conduct" as that term is used in the *D.B.S.* analysis. It will also be necessary to consider how Jayden's circumstances have been affected by the level of support that was paid, and any hardship that will result to Mr. Wakeman from a retroactive award at this point;
- The reasonableness of Ms. Wakeman's decision to give up her former income to pursue her nursing degree, whether any income should be imputed to her as a result, and how the various forms of support that she has received as a student should figure into the calculation of her income, if at all; and
- Rather than simply defaulting to a set-off of the Guidelines support amount at the parties' respective incomes, as is frequently proposed in such applications, a full consideration of the appropriate level of support in a situation of shared parenting, as directed by *Contino v. Leonelli-Contino*, [2005] 3 S.C.R. 217.

[62] Regardless of the apparent merits of their respective positions based on the material, it cannot be said that Mr. Wakeman is "bound to lose" on any of these issues.

Conclusion

- [63] Therefore, because of the existence of these triable issues, Ms. Wakeman's application must be referred to the trial list.
- [64] I regret the amount of time that it has taken me to reach this conclusion. To compensate as much as possible for the resulting delay in setting a trial date, I am prepared to remain seized of the matter, and to take whatever steps are necessary to expedite and focus the trial or summary trial process, including making myself available to hear some form of trial at an earlier date than might otherwise be available. For example, since counsel were of the view that any credibility issues in the main application could be resolved on the basis of the affidavits, it is possible that the current record could stand as the basis of a summary trial application, supplemented by additional material and submissions as required, and that I could proceed to decide it as originally intended. However, I am not required to be seized if the parties wish to proceed in some other manner.
- [65] Mr. Wakeman's application is on a different footing. It arises from the interim order made at the judicial case conference in May 2015, which established equal parenting but did not prescribe a specific schedule for it. Mr. Wakeman seeks to resolve an impasse in a schedule that the parties have reached themselves pursuant to that order. In that sense, I am really being asked to make an additional interim order, rather than vary an existing one. I conclude that this is an appropriate issue to resolve by means of such an order, pending whatever final resolution of the parenting arrangements that may take place.
- [66] Both parents raise valid points. It is reasonable for Mr. Wakeman to be able to adjust the start of his parenting time on those relatively infrequent Friday nights when he needs to work. On the other hand, I agree with Ms. Wakeman that it is in Jayden's best interests to have the weekend to transition to the other parent's home before starting his school week.
- [67] To balance these concerns, I will order that on those Friday evenings on which Mr. Wakeman is required to work and Jayden would normally come into his care, Jayden will remain in Ms. Wakeman's care until Mr. Wakeman's shift ends or, if that is after Jayden's normal Friday night bedtime, until Saturday morning. The weekly exchange time will remain Fridays after school for all other purposes.
- [68] Because no resolution of the main application was reached, the costs of it will be in the cause. Because success was divided on Mr. Wakeman's application, the parties will each bear their own costs in relation to it.

"Schultes J."

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