SUPREME COURT OF NOVA SCOTIA
Citation: *Redmond v. Redmond*, 2016 NSSC 350

Date: 2016-12-28
Docket: 1204-005330
Registry: Kentville

Between:

Sherry Lyn Redmond

Applicant

v.

Alan Scott Redmond

Respondent

Judge:	The Honourable Justice Gregory M. Warner
Heard:	November 22 and 23, 2016, in Kentville, Nova Scotia
Final Written Submissions:	December 13, 2016
Counsel:	Alan G. Ferrier Q.C., counsel for the applicant Heidi Foshay Kimball Q.C., counsel for the respondent

By the Court:

[1] This is a costs decision resulting from an application by Ms. Redmond to vary the parenting of their three children, aged 12, 11 and 9, from a shared parenting arrangement to a primary care in her favour and, alternatively, to change the school the children attended. The application was dismissed on the basis that the applicant failed to prove a material change in circumstances.

Background

[2] As background, the parties separated in 2009. They each had a residence in New Minas. In June 2010, the Family Court issued a shared parenting order. A divorce petition followed shortly after. At a settlement conference in June 2011, the parties agreed to continue the shared parenting and it was incorporated into a Consent Corollary Relief Order.

[3] Shortly after the Consent Corollary Relief Order was issued, Ms. Redmond sold the former matrimonial home in New Minas and moved the Aylesford. In May 2012, she applied for primary care and to allow the children to move from the New Minas school system to Berwick.

[4] After receipt of a court ordered custody assessment by Dr. Symons, the parties participated in a settlement conference in September 2012, which resulted in dismissal of her application.

[5] In this matter, a Voice of the Child Report was obtained. It showed that the 12-year-old son wanted to remain in his father's care; the 11-year-old daughter wanted to move to the mother's care and a new school; and, the 9-year-old daughter wished to retain the *status quo*.

[6] In lengthy affidavits, Ms. Redmond sought to change primary care of all three children to herself and, alternatively, a change of the schools to her neighbourhood; Mr. Redmond sought to retain the *status quo*. The parties were cross-examined on their affidavits on November 22, 2016; counsel made oral submissions on the morning of November 23, 2016, and an oral decision was rendered in the afternoon of November 23, 2016.

[7] The parties have been unable to agree on costs and have filed written submissions.

Submissions

[8] Mr. Redmond says he was successful. He asked the court to impute the "amount involved" as $40,000 - $20,000 for each day of the hearing. He submits that Ms. Redmond raised the same factual concerns that she raised in her unsuccessful 2012 application, made months after a Consent Corollary Relief Order. He says that the parties had made adjustments in their parenting scheduling since 2012 and this application was unreasonable.

[9] He cites *Arab v Izsak*, 2009 NSSC 275 ("*Arab*"), and seeks the application of Tariff A, Scale 3. This would result in a costs award of $7,813 plus disbursements of $192.36.

[10] Ms. Redmond acknowledges that while this court found that she had not met the threshold test for a material change in circumstances, it was not an unreasonable application because the 11-year-old daughter had expressed a desire to live with her and attend a different school, a desire confirmed by the court ordered Voice of the Child Report.

[11] Ms. Redmond cites this court's recent costs decisions in *Lake v Lake*, 2016 NSSC 255 ("*Lake*"), as well as *Gagnon v Gagnon*, 2012 NSSC 137 ("*Gagnon*"), cited in *Lake*.

[12] Ms. Redmond suggests that the hearing only consumed one-and-a-half days and, if Tariff A is applied, the amount involved should be $30,000 and the Scale that should be applied is Scale 1 ($4,688).

[13] Counsel submits because Mr. Redmond has provided no evidence of his actual, reasonable legal costs, the court cannot quantify what might be a "substantial contribution" to his costs. The "substantial contribution" analysis was endorsed in this court's decision in *Lake*.

Analysis

[14] In the court's oral decision, the court found that the facts and arguments advanced by Ms. Redmond to change the *status quo* and obtain primary care were the same as those advanced and considered in 2012. The children have been in a shared parenting arrangement for over six years, since shortly after their separation, and have always lived and attended school in New Minas.

[15] There was one significant difference in the family situation in this application. The Voice of the Child Report suggests that the 12-year-old son wants to remain living with dad and remain in the New Minas school system and has some issues with mom; the 11-year-old daughter prefers to live with mom and change schools; and, the 9-year-old daughter wishes to retain the *status quo* and remain in the New Minas school system.

[16] The court's difficulty was that both parties submitted that the children should not be separated. Mom's sought primary care of all three children and a change of schools. Dad sought the *status quo* for all three children and that they all remain in the New Minas school system

[17] Parenting of children in broken marriages can be problematic when the parents have difficulty putting the children's interests first. The best interests of children are not static. It changes with their age and needs. Neither parent appeared to have been open, before this hearing, to other alternatives.

[18] For this costs decision, I incorporate my review of recent costs awards in family matters, set out in the *Lake* decision, beginning at paragraph 31.

[19] In the districts, Tariff C applies, but the costs results should not vary significantly from those awarded under Tariff A. See, for example, Justice MacLeod-Archer's decision in *Chisholm v Chisholm*, 2016 NSSC 325.

[20] As noted in the *Access to Justice Report*, judges should use costs award more freely and more assertively to contain process and encourage reasonable behaviour. Egos, finger-pointing and some animosity interfered with a reasonable resolution of this important parenting decision.

[21] Both parents in this proceeding earned about $45,000 per year in 2015. This proceeding hurts both parents financially and, as a result, adversely affects their children. These parenting issues should be resolved in a conciliatory manner.

[22] The bottom line is that the hearing consumed two days. The court has no evidence as to Mr. Redmond's actual reasonable legal costs upon which to conduct a substantial contribution analysis. The starting point under Tariff C for a hearing of one day or more is $2,000 per day. The court orders costs of $4,000 plus the respondent's disbursements of $192.60.

Warner, J.