

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Griggs v. Brooks*, 2017 NSSC 51

Date: 20170228

Docket: SFHMCA-083197

Registry: Halifax

Between:

Steven “Sam” Griggs

Applicant

v.

Pamela Brooks

Respondent

Judge:

The Honourable Justice Legere-Sers

Written Submissions:

October 28th, 2016, from Peter D. Crowther
November 4, 2016, from D. Mark Gardiner

Counsel:

D. Mark Gardiner, for Steven “Sam” Griggs
Peter D. Crowther, for Pamela Brooks

By the Court:

[1] In my decision, dated October 6th, 2016, I noted that there was mixed success in this matter.

[2] Nonetheless the Respondent is now seeking to be heard on costs. I have read the submissions and reviewed the decision and documentation. The Applicant does not wish the court to impose costs.

[3] This matter was commenced by Variation application within which the father sought a change to the historic parenting arrangement, a reduction in both child and spousal support because of a material change in both the father's living arrangements and proximity to the children and his income.

[4] The parties agree there has been a material change in circumstances.

[5] Historically, the father worked away from the ordinary residence of the children, returning monthly over the years for block periods of time. The father has been significantly involved in the support of the children and in their day to day care when the mother's circumstances removed her as primary parent.

[6] The father now travels less and lives closer to the children and the schedule designed when he was away for block periods, is no longer appropriate.

[7] His income has changed significantly. The latest orders were based on an income of \$140,000.00.

[8] I set his income now at approximately \$115,000.00 inclusive of employment and self-employed earnings.

[9] He argued his employment income was approximately \$98,000.00. However, he failed to disclose self-employment earning until interrogatories disclosed this income resulting in a total income in the range of \$115,000.00

[10] The father sought shared parenting of his two children. Due to his geographic circumstances, I found that shared parenting might be problematic and opted for an increased parenting schedule for the two children. I noted this may evolve and be increased should he move closer to the children. Geography, not his parenting was the driving force behind a significant increase in parenting time which stopped short of shared parenting.

[11] The oldest child is going to university soon. Her age and stage of development cause me to conclude that any changes to either parent's parenting time ought to be accomplished with her input and consent. I declined to create a parenting schedule that would bind her to either parent.

[12] The youngest child is the child who profits from a set schedule. I increased the fathers' time considerably including shared vacation and holiday periods as well as weekly overnights and block contact.

[13] The child support was reduced to reflect what I found to be the fathers' income as was the spousal support and to recognize that the mother has done little to assist herself to achieve whatever self-sufficiency is available to her.

[14] She has not proceeded diligently to consider her options.

[15] It is my view that this was a case where there was mixed success and if pushed to determine which of the two parties was more successful, the father was

the more successful parent. The mother refused to move from the current schedule and essentially stalled a hearing which continued her support payments at a level \$656.00 per month over and above what I eventually ordered without a calculation for tax consequences.

[16] The settlement offers presented by the mother reduced child support, and demanded ongoing spousal support at a level considerably higher than that which I ordered. To obtain the relief of child support the father would have to bargain away his parenting time with the youngest child.

[17] Since parenting time considers the child's best interests and reducing his parenting time would not be in the child's best interests it was appropriate for the father to reject that offer. He ought not to be penalized because he refused to settle on that point.

[18] Support and parenting are for many reasons considered separately. This is a good example of why they should be so considered.

[19] The mother notes the father's failure to disclose his self-employment income until late in the day merits costs and explains the length of time between application and conclusion.

[20] His counsel has responded it was not his clients error, rather his own that unintentionally albeit unreasonably prolonged disclosure.

[21] However, costs for this failure were already addressed. It would not be just to consider this again.

[22] The mother has not responded in a timely fashion to disclosure or to addressing the issue of material changes in income. She has not willingly

responded to the father's increased availability for parenting time; thereby requiring this hearing.

[23] I have already indicated there was mixed success and for that reasons I am declining to order costs.

[24] Finally, the issue of a review has arisen again and in my decisions, I have referred to the original order and the time after which there should be a review to address the mother's efforts at employment.

[25] My decision was not an attempt to further prolong that review and my decision speaks to the mother's' duty to assist herself in a reasonable time to become more self-reliant or at least as self-reliant as she can.

[26] Delaying a review will not address that issue.

Legere-Sers, J.