

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *L.J. v. P.S.*, 2018 NSSC 118

Date: 2018-05-14
Docket: SFH MCA 093363
Registry: Halifax

Between:

L.J.

Applicant

v.

P.S.

Respondent

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Judge: The Honourable Justice Elizabeth Jollimore

Summary: The respondent was awarded costs of \$9,402.21 following a variation application. Application decision reported at 2018 NSSC 78.

Key words: Family, Costs

Legislation: *Nova Scotia Civil Procedure Rules*

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ENDORSEMENT

L.J. v. P.S.

SFH-MCA 93363

May 14, 2018

- Tanya G. Nicholson for L.J.
- Christine J. Doucet for P.S.

Ms. S seeks costs of \$9,402.21, based on Scale 2 of Tariff A and a hearing of one and one-half days. This amount is inclusive of disbursements of \$152.21. Mr. J asks that I not award costs.

Decision:

L.J. shall pay P.S. \$9,402.21 in costs, comprised of \$9,250.00 as a contribution to her legal fees and \$152.21 as disbursements. This amount shall be paid by June 29, 2018.

Reasons:

1. Mr. J applied to vary the terms of a shared parenting order, so he would have equal parenting time and sole authority to make health and education decisions.
2. Both Mr. J and Ms. S wanted to adjust child support. Mr. J asked that I terminate his child support payments. Ms. S asked that I order Mr. J to pay her the table amount of child support while she received long-term disability benefits. They agreed that the proportionate sharing of child care expenses should continue.
3. The application was heard over one and one-half days. Mr. J's request to vary the parenting and custodial terms of the existing order was dismissed.
4. Child support was adjusted: neither parent received the order she or he had sought. Mr. J had asked to pay nothing, and Ms. S wanted him to pay \$700.00 each month. Mr. J was ordered to pay \$325.00 each month.
5. Civil Procedure Rule 77.03(3) provides that "Costs of a proceeding follow the result". Costs are in my discretion. A decision not to award costs must be principled.
6. Civil Procedure Rule 77.02(1) states that I "may, at any time, make any order about costs as [I am] satisfied will do justice between the parties."
7. The parties exchanged settlement proposals before the trial. Ms. S's proposals were better than the result Mr. J achieved at trial. She was more successful at trial.

8. Mr. J says there were discrepancies in Ms. S's evidence that were revealed at trial. These discrepancies do not detract from her position as the more successful party.
9. Mr. J said that Ms. S agreed to certain things at trial. This is correct. Ms. S agreed with things that were part of her settlement proposals.
10. There is no principled reason to deny Ms. S costs.
11. Mr. J challenges the claim for costs, saying that Ms. S is seeking a contribution to costs which are unreasonable.
12. Ms. S provided an affidavit from the office manager at MDW Law itemizing the fees and disbursements she has been billed. Mr. J objects to the fees where Ms. S had two lawyers with her in court. Their combined hourly rate was \$475.00, and he says this amount "would exceed the standard hourly rate for legal expense for a hearing of this nature."
13. Ms. S was represented by Ms. Doucet. Throughout her retainer, Ms. Doucet worked with a more junior lawyer in her office, Ms. Donald, whose hourly rate was approximately one-half of Ms. Doucet's. Ms. Doucet conducted the hearing.
14. I have closely reviewed the account. It shows both Ms. Doucet and Ms. Donald were involved in preparing Ms. S's pre-trial brief, reviewing Mr. J's pre-trial brief, preparing for trial, attending the trial, and reviewing my decision. Ms. Doucet's fees for this work were \$6,100.00. Ms. Donald's were \$2,955.00.
15. Notably, when Ms. S was billed for services, there was a "courtesy discount" of \$2,000.00. This amount is equal to the fees that would be charged at Ms. Donald's hourly rate for approximately 40 percent of the work Ms. Donald did for Ms. S.
16. The discount is sufficient to recognize any duplication of effort.
17. Based on Scale 2 of Tariff 1 and allowing \$3,000.00 to recognize the duration of the hearing, Ms. S calculates an award of \$9,250.00 and I award her this amount as costs, payable by June 29, 2018.
18. I further order Mr. J to pay Ms. S \$152.21 toward her disbursements, also by June 29, 2018.
19. Ms. S's counsel will prepare the costs order.

Elizabeth Jollimore, J.S.C.(F.D.)