

**SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION**

**Citation: *England v. Fitzpatrick*, 2018 NSSC 139
ENDORSEMENT**

June 11, 2018

Orin England and Samantha Fitzpatrick

September 8, 2017 – simplified process to deal with issue of consent to travel

Ms. Fitzpatrick has requested costs of \$1,300.00, based on a hearing of forty minutes, with an additional amount of \$145.32 for disbursements, following a simplified hearing. Total costs requested: \$1,445.32.

Decision:

Mr. England shall pay costs and disbursements of \$395.32 to Ms. Fitzpatrick. Mr. England shall pay costs of \$250.00 on or before August 1, 2018 and \$145.32 in disbursements by September 1, 2018.

Reasons:

History

1. A Notice of Variation Application was filed September 14, 2015 to address the issue of parenting time as Mr. England had moved back to the Halifax Regional Municipality, and “as part of the variation application, Mr. England applied under sections 15 and 46 of the *Maintenance Enforcement act* for an order addressing arrears of support or maintenance, in particular, suspending enforcement of arrears and ongoing support beyond a reduced amount as determined by the Court”.
2. Initial steps to arrange for the parties to attend the parent information centre were taken, both parties retained legal counsel and were advised the matter would not proceed to conciliation.
3. On August 29, 2017 Samantha Fitzpatrick filed a Notice of Variation Application to address the issue of consent to travel with the child, and specifically seeking an order directing Mr. England to complete any documentation necessary for Ms. Fitzpatrick to obtain a passport for the parties’ child and to allow Ms. Fitzpatrick to travel with the child at a specified time, and costs of the application.

- a. On September 7, 2017 Mr. England filed a letter with the court indicating he would be agreeable to signing a letter allowing Ms. Fitzpatrick to travel with the child.
- b. The parties appeared on September 8, 2017 to deal with the issues of consent to travel, consent to obtain a passport, and costs.
- c. An Order was granted on September 8, 2017 directing Mr. England to sign all documents necessary to allow Ms. Fitzpatrick to obtain a passport and to allow Ms. Fitzpatrick to travel with the child at a specified time.
- d. Mr. England advised the court he would be able to file copies of texts messages proving he had agreed to sign the travel papers. The parties were provided with additional time to file submissions related to costs, including any relevant text messages.
- e. The parties' submissions were filed in October 2017.
- f. In his written submissions on costs Mr. England included evidence he had not filed at the hearing, he has stated and or has argued as follows:
 - i. that he was not aware he would need to file formal submissions in advance of the simplified hearing scheduled on September 8, 2017.
 - ii. that Ms. Fitzpatrick failed to provide him with the necessary consent form to sign.
 - iii. that Ms. Fitzpatrick failed to provide him with an itinerary until he was served with the court application.
 - iv. that Ms. Fitzpatrick has denied him his parenting time with the child and has signed the child up for programs which have interfered with his parenting time with the child.
 - v. that while dealing with the issue of travel he did seek to also deal with the issue of child support (retroactive reduction), and parenting "time lost" due to Ms. Fitzpatrick's previous travel plans lasting longer than he had been informed they would". Mr. England seemed to indicate he had asked Ms. Fitzpatrick to deal with all the issues at the same time.
 - vi. Text messages Mr. England was submitting to prove he had agreed to sign the documents, were attached to Mr. England's submissions as directed by the court.

- g. I find that the text messages filed by Mr. England were not reliable (incomplete), and did not prove conclusively that Mr. England was prepared to sign the documents Ms. Fitzpatrick's agreement to discuss and resolve issues he had raised regarding child support and other parenting issues.
 - h. On behalf of Ms. Fitzpatrick Mr. Walker submitted arguments with respect to costs, including:
 - i. Ms. Fitzpatrick was asking for costs of \$1,300.00 plus \$145.32 in disbursements.
 - ii. Attached text messages as directed by the court. Ms. Fitzpatrick claims that the text messages she has submitted span the period when Ms. Fitzpatrick was asking Mr. England to sign the consent forms necessary for her to travel with the child.
 - iii. Ms. Fitzpatrick noted there was a previous application to the court in January 2011, seeking that the court direct Mr. England to cooperate with travel plans at that time and she explained that the application was discontinued after Mr. England agreed to sign the papers.
 - i. It appears from a review of the file that there was an application in 2015 asking the court to intervene in a similar situation. The parties settled and the matter was discontinued.
4. The hearing was set for fifteen minutes and required forty minutes.
 5. The most significant issues at the hearing were Ms. Fitzpatrick's ability to obtain a passport for the child and to travel with the child, given that Mr. England had not signed documents allowing Ms. Fitzpatrick to obtain a passport or to travel with the child.
 6. Ms. Fitzpatrick was successful. The text messages submitted by both parties support a finding that Mr. England did not and was not prepared to sign any consent forms to allow Ms. Fitzpatrick to travel unless she agreed to negotiate certain other issues related to parenting and child support.
 7. 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.
 8. Mr. England failed to cooperate with Ms. Fitzpatrick when she made a simple request for him to sign documents allowing her to travel with the parties' child. Ms. Fitzpatrick incurred expenses when she retained legal counsel and filed an application

to ask the court to intervene. There was little or no actual cost to Mr. England. Fairness does dictate that Ms. Fitzpatrick should recover costs despite Mr. England's pleas of inability to pay. [See *A.E.M. v. R.G.L.*, 2004 BCSC 65 (CanLII)].”

9. According to Tariff C, costs are determined having regard to the complexity of the proceeding, the importance of the issues, and the amount of effort involved in preparing for and conducting the application. The simplified hearing took forty minutes, was not complex and the preparation time would be minimal.
10. 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.”
11. Ms. Fitzpatrick did claim costs in her pleadings.
12. I order Mr. England to pay Ms. Fitzpatrick costs of \$250.00 by August 1, 2018, and to pay Ms. Fitzpatrick for disbursements in the amount of \$145.32 by September 1, 2018, for a total of \$395.32.

Cindy G. Cormier, J.S.C.(F.D.)