

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *MacDonald v. Christian*, 2018 NSSC 72

Date: 2018-03-27
Docket: SFHMCA-101428
Registry: Halifax

Between:

John MacDonald

Applicant

v.

Carol Christian

Respondent

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Judge: The Honourable Justice Cindy G. Cormier

Heard: September 18, 2017

Summary: Costs awarded after a Hearing. The Respondent was more successful than the Applicant.

Key words: Family, Parenting, Custody, Access, Imputing Income, Retroactive Support, Disclosure, Costs

Legislation: *M.C.Q. [sic M.Q.C.] v. P.L.T.*, 2005 NSFC 27 (CanLII)
A.E.M. v. R.G.L., 2004 BCSC 65 (CanLII)
Costs and Fees Act, R.S.N.S. 1989, c. 104
Maintenance and Custody Act, R.S.N.S. 1989, c. 160
Matrimonial Property Act, R.S.N.S. 1989, c. 275
Nova Scotia Civil Procedure Rules

***THIS INFORMATION SHEET DOESN'T FORM PART OF THE COURT'S DECISION.
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ENDORSEMENT

Citation: *MacDonald v. Christian*, 2018 NSSC 72

March 27, 2018

John MacDonald and Carol Christian

Court File No. SFHMCA-101428

- Hearing held September 18, 2017
- Decision rendered September 18, 2017
- Costs submissions due October 2, 2017. Costs submissions received on behalf of Carol Christian on September 26, 2017. No response received from John MacDonald.

Request an award of \$1,500.00 costs, based on a trial of two hours duration. No arguments were received from Mr. MacDonald.

Decision:

Mr. MacDonald shall pay **\$750.00 in costs** (\$250.00 for failure to file information as directed and \$500.00 of the \$1,500.00 requested by Ms. Christian in relation to the hearing regarding child support (as Mr. MacDonald was forced to bring the application to deal with the issue of parenting time). **Mr. MacDonald must pay Ms. Christian \$750.00 before September 17, 2018.**

Reasons:

1. In June 2016 John MacDonald filed a Notice of Application pursuant to section 18 of the *Maintenance and Custody Act* seeking an Order for custody and access.
2. On September 13, 2016 both parties appeared before me. Ms. Christian advised the court she would be amending her response to request child support. The matter was adjourned to October 17, 2016.
3. On October 4, 2016 Ms. Christian filed a Response to Application seeking a determination with respect to child support.
4. On October 17, 2016 both parties appeared for a further conference. Agreement was reached with respect to terms for custody and parenting time. Filing deadlines were provided regarding filing of financial information to determine the quantum of child support. Mr. MacDonald was directed to file his financial information no later than November 14, 2016. The matter was adjourned to a settlement conference on January 3, 2017, and if the settlement conference was not successful, a conference on March 27, 2017 to set further filing deadlines. A hearing was scheduled for April 28, 2017.

5. The settlement conference date was removed from the docket on January 3, 2017, as Mr. MacDonald had not filed any financial information.
6. On March 27, 2017, a conference was held. Mr. MacDonald failed to appear. The court noted that costs awards were likely due to Mr. MacDonald's failure to file his financial information, and in addition that the court may draw an adverse inference and impute income to Mr. MacDonald if he did not file adequate financial information. Filing deadlines were provided for the hearing scheduled April 28, 2017. The Court re-scheduled the hearing to September 18, 2017.
7. May 18, 2017, Ms. Christian filed an ex-parte motion for substituted method of giving notice of a proceeding for the hearing to deal with child support scheduled September 18, 2017. On May 29, 2017, the motion was heard and granted.
8. Trial was held September 18, 2017 with an oral decision given on that same date.
9. Mr. MacDonald did not file any financial information in advance of the hearing. At the commencement of the hearing he provided counsel for Ms. Christian with financial information for 2014, 2015, and 2016. The court allowed the information to be filed.
10. Ms. Christian took the position that Mr. MacDonalds's income should be imputed at \$30,000.00, for the purpose of calculating prospective child support and retroactive child support. The court imputed an income of \$30,000.00 on a prospective basis and an income of \$21,700.00 for the retroactive period, for a retroactive award of \$4,260.00 rather than the \$7,032.00 Ms. Christian was seeking.
11. Ms. Christian was substantially successful with regard to the child support issues.
12. The hearing required two hours.
13. The most significant issue at the hearing was ongoing child support and retroactive child support.
14. Ms. Christian was mostly successful. Mr. MacDonald did have to file the application to address the issue of parenting time.

15. 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.
16. I may consider a party’s ability to pay costs in making a costs award. In *M.C.Q. [sic M.Q.C.] v. P.L.T.*, 2005 NSFC 27 (CanLII), Judge Dyer reminded me that some litigants may “consciously drag out court cases at little or no actual cost to themselves (because of public or third party funding) but at a large expense to others who must “pay their own way”.” If this happens, he said, “Fairness may dictate that the successful party’s recovery of costs not be thwarted by later pleas of inability to pay. [See *A.E.M. v. R.G.L.*, 2004 BCSC 65 (CanLII)].” Ms. Christian retained counsel in this matter while Mr. MacDonald represented himself.
17. The issue of child support took additional time to resolve due to Mr. MacDonald’s failure to file the necessary financial documentation, his failure to file any financial information in advance of a scheduled settlement conference resulting in the cancellation of the settlement conference, his failure to attend a pre-trial conference (which resulted in Ms. Christian having to file a motion for substituted method of giving notice of a proceeding), and his general failure to cooperate with Ms. Christian’s legal counsel’s efforts to determine an appropriate amount of child support.
18. 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.”
19. Ms. Christian requested costs and did file argument. There was a delay in waiting to determine if Mr. MacDonald would be filing any response. He has not filed a response and I must provide Ms. Christian with a decision.
20. Pursuant to Civil Procedure Rule 77.02(2) I have a general discretion to award costs to do justice between the parties.
21. Having regard to the conduct of both parties, to Ms. Christian’s and Mr. MacDonald’s personal circumstances and the duration of the hearing and the mixed success (parenting / child support), I order Mr. MacDonald to pay Ms. Christian costs of **\$750.00** by **September 17, 2018**. This amount is inclusive of all disbursements.

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