

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Dauphinee v. Fralick Estate*, 2004 NSCA 37

**Date:** 20040310

**Docket:** CA 189114

**Registry:** Halifax

**Between:**

Harvey Dauphinee and Joseph C. McDonald

Appellants

v.

Gary Meade and Beverly DeWolfe,  
Executors and Trustees of the Estate of the  
late Beatrice Fralick

Respondent

**Judges:** Glube, C.J.N.S.; Cromwell and Oland, JJ.A.

**Appeal Heard:** September 19, 2003, in Halifax, Nova Scotia

**Held:** Respondents to pay the appellant all its trial disbursements, together with costs of \$500 and \$250 for an attendance and an interlocutory application as awarded by the trial judge and costs of \$3,500 inclusive of disbursements on the appeal to the appellant, Harvey Dauphinee as per supplementary reasons for judgment of Oland, J.A.; Glube, C.J.N.S. and Cromwell, J.A. concurring.

**Counsel:** Brian J. Hebert, for the appellants  
Jeanne E. Desveaux, for the respondent

Supplementary reasons for judgment:

[1] In our decision reported as 2003 NSCA 128, we allowed the appeal and awarded costs. This supplemental decision deals with the costs awarded the appellant. The order which this court issued on December 2, 2003 ordered the respondents to “repay the costs awarded at trial and pay \$2,000 in costs inclusive of disbursements” to the appellants. The order of the trial judge dated April 14, 2003 had provided that the respondents pay “costs” of \$1,395.97 and did not mention disbursements.

[2] After our order issued, the appellant Harvey Dauphinee through his counsel advised that on November 12, 2002 the trial judge had rendered a separate decision on costs post-trial. In that decision, of which this court had not been made aware, the trial judge stated that each side had been partially successful and awarded no party and party costs for the trial. However, he considered several specific disbursements, increased costs for a certain attendance and costs for an interlocutory application. It appears that the figure of \$1,395.97 in his order pertained to those disbursements and costs, and not to party and party costs. It also appears from his costs decision that an error was made in the calculations and the figure should have been \$1,895.97. That amount included \$1,145.97 for half only of the surveyors fees and costs of plans incurred by the appellant. The appellant indicated that the respondents had not paid the amount ordered by the trial judge and that their disbursements for the appeal were sizeable. Counsel had not raised the matter of disbursements at the hearing of the appeal.

[3] The appellant sought directions as to the meaning of this court’s order as to costs in these circumstances. The respondents eventually advised that they did not wish to address the matter and did not dispute any of the appellant’s assertions.

[4] The costs on appeal and of the proceeding in the court below are as directed by the judgment of this court: *Civil Procedure Rule* 63.08. Had the court been fully apprised of all relevant factors before it issued its order, either by having been provided with a copy of the costs decision or by having received fuller responses from counsel when they addressed costs at the hearing of the appeal, its order would have been different. It can amend an order for judgment to correct any

errors or to otherwise better express its intent: *Rule 62.26*. Having considered the result obtained by the appellant and the additional information referred to, we would delete the last paragraph of our order of December 2, 2003 and replace it with the following:

**AND IT IS FURTHER ORDERED THAT** the respondents shall pay the appellant all its trial disbursements, together with costs of \$500 and \$250 for an attendance and an interlocutory application as awarded by the trial judge and costs of \$3,500 inclusive of disbursements on the appeal to the appellant, Harvey Dauphinee.

Oland, J.A.

Concurred in:

Glube, C.J.N.S.

Cromwell, J.A.