

FAMILY COURT OF NOVA SCOTIA

Citation: *A.T.S. v. C.T.L.M.*, 2016 NSFC 6

Date: 2016 03 08

Docket: FLBMCA No. 097693

Registry: Bridgewater

Between:

A.T.S.

Applicant

v.

C.T.L.M.

Respondent

Editorial Notice: Identifying information has been removed from this electronic version of the judgment.

Judge: The Honourable Judge William J. Dyer

Heard: March 8, 2016, in Bridgewater, Nova Scotia

Oral Decision: March 8, 2016

Supplemental Costs

Decision: April 1, 2016

Counsel: Rubin Dexter, for the Applicant
Gregory Englehutt, for the Respondent

By the Court:

[1] At the conclusion of a contested interlocutory hearing, I dismissed a motion launched by the mother for reasons stated on the record. I awarded the father party-and-party costs to be paid within 30 days of issuance of an order.

[2] Mr. Dexter, counsel for the father, asked for an award of \$700 on behalf of his client. That met with opposition from Mr. Englehutt on behalf of his client. I gave counsel and the parties a brief period within which to settle the question, failing which I said I would set the amount.

[3] No agreement was reached. No briefs were submitted regarding the costs issue.

[4] Briefs had been submitted incidental to the hearing which consumed less than one half day, inclusive of my decision.

[5] The underlying litigation was prompted when the mother absconded from the Province with the parties' child. I granted an order authorizing return of the child to Nova Scotia which was subsequently reinforced by an order approved in Alberta. After a contested interim hearing, I vested interim care and custody in the father and imposed terms and conditions for parenting times by the mother. At that juncture, I reserved my decision on court costs pending final conclusion by negotiated settlement or by court decision. A final hearing date has not been set.

[6] The case languished until the mother recently brought an application to have several individuals, who are not parties to the proceeding, subjected to hair follicle testing in aid of allegations by her that one or more of these individuals may be using non-prescription drugs. As mentioned, the motion was dismissed for reasons stated on the record. In brief, I determined that there was no authority to make such an order under the **Maintenance and Custody Act**, the **Family Court Rules**, or otherwise and, suffice it to say, the father achieved unqualified success in defending the mother's motion.

[7] Both parents are currently employed - she in Alberta; he in Nova Scotia. The mother's estimated annual income for **Child Maintenance Guidelines** purposes is a modest \$28,080. By a consent order (interim and without prejudice), the mother must pay to the father basic child support of \$230 monthly plus \$100

monthly against \$950 in support arrears. At this stage, little is known about the mother's global financial or living circumstances (or the father's for that matter).

[8] Under the **Family Court Act** and the **Family Court Rules**, court costs awards are entirely within the discretion of the court.

[9] As mentioned, when the father was twice similarly successful in achieving interim relief, I reserved on the costs issue and directed that it be addressed at the conclusion of the case. However, I was not so inclined at the interlocutory hearing for reasons I gave.

[10] I am mindful that many parties in Family Court are represented by Legal Aid staff lawyers or by lawyers retained on so-called Legal Aid Certificates, and that in such cases costs are rarely sought. However, many do not have their expenses underwritten by Legal Aid or by other third party sources. To state the obvious, real-life litigation expenses are a heavy burden for many. Moreover, with respect, gone are the days when costs in family law cases were "the exception, not the rule".

[11] Party-and-party costs are not intended to provide full indemnification of solicitor/client expenses – rather to recognize that successful parties are usually entitled to some contribution towards their litigation expenses, when requested. In the present case, neither party disclosed her/his solicitor/client funding arrangements or their litigation expenses to date.

[12] In Family Court there is no tariff or suggested table of costs. However, Family Court Judges may have regard to the **Civil Procedure Rules** when appropriate. In the present circumstances, I find it unnecessary to embark on a full blown dissertation of the principles to be applied in fixing quantum. But, a helpful reference for the relevant principles is *Higgins v. Bourgeois Higgins* 2015 NSSC 293. I incorporate Associate Chief Justice O'Neil's summary by reference.

[13] I exercise my discretion and fix costs in the amount of \$600, payable by the mother to the father within 30 days of issuance of the order.

[14] A draft order has been submitted. I will insert the sum and authorize issuance.

Dyer, J.F.C.