

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Bezanson v. Bezanson, 2005 NSSC 303

Date: 20051108

Docket: S.K. No. 1204-003281

SKD No. 016348

Registry: Kentville

Between:

Jeffrey Alan Bezanson

Applicant

v.

Belinda Colleen Bezanson-States

Respondent

Judge: The Honourable Justice Arthur J. LeBlanc

Heard: March 16, 2005, in Kentville, Nova Scotia

**Final Written
Submissions:** November 8, 2005

Counsel: R. Michael MacKenzie, for the applicant
Kelvin Gilpin, for the respondent

By the Court:

[1] This is a determination of costs arising out of an application to vary a corollary relief judgment.

[2] The parties were married in August 1986 and divorced in February 2003.

There are two children of the marriage: Alan, born in May 1988, and Amber, born

in February 1990. In a corollary relief judgment in April 2003, the parties were awarded joint custody, with primary day-to-day care of both children to be with Ms. Bezanson-States.

[3] In June 2003 Mr. Bezanson applied to vary the Corollary Relief Judgment by placing the parties' son Alan in his day-to-day care. Before hearing the matter I ordered that Alan be seen by an independent psychologist or psychiatrist in order to ascertain his wishes regarding his primary residence. I directed the parties to file financial information so as to allow the Court to determine what contribution, if any, each of them should make to the cost of the expert's report. Debra Garland, a psychologist, provided a report dated July 16, 2003. Her bill was \$500.00. The application did not proceed because Alan informed the applicant that he preferred to remain with the respondent.

[4] In December 2004 the parties daughter Amber began living with her father. In February 2005 Mr. Bezanson applied for a variation of corollary relief, pursuant to section 17 of the *Divorce Act*, granting him primary day-to-day care of Amber. By order dated February 23, 2005 ("the Order"), I directed that Amber be seen by Deborah Pick, a psychologist, regarding residence and access. Ms. Pick proved a

report dated March 4, 2005. The Order required that each party pay to the Court a percentage of the costs of the report, with the respective shares to be determined by the Court and pursuant to the *Costs and Fees Act*, in proportion to the parties' incomes.

[5] The Order also directed that the account of Ms. Garland, which was still outstanding, be paid by the Department of Justice, which would then collect the appropriate contributions from the parties in accordance with the *Costs and Fees Act*.

[6] In the course of several telephone calls and exchanges of correspondence between counsel for the applicant and counsel for the respondent it became evident that the respondent was failing to respond to the terms of the Order. Numerous conference calls between the Court and counsel for the parties made it clear that the respondent had not paid her share of the Ms. Pick's account. While the applicant was seeking to have the respondent pay a portion of the invoice, the respondent terminated the services of her counsel.

[7] The applicant now seeks a contribution or award of costs to compensate him for the efforts of himself and his counsel to cause the respondent pay her share of the account. He maintains that there was no reason for the delay except the refusal of the respondent to abide by the Order.

[8] I have reviewed the submissions of counsel on behalf of counsel on behalf of the applicant and I am not satisfied that the delay in fulfilling the terms of the Order by the respondent were entirely her own fault. I am not satisfied that counsel for the respondent made every possible attempt to secure the respondent's cooperation, and I am not satisfied that such conduct was necessarily attributable to the respondent.

[9] Accordingly I dismiss the application for costs.

J.