

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Lavers v. Lavers, 2007 NSSC 275

Date: 20070918

Docket: 1207-002751

Registry: Truro

Between:

Sherrylee Lavers

Petitioner

v.

Bryan Lee Lavers

Respondent

Judge: The Honourable Justice Arthur J. LeBlanc

Heard: May 25, 2006 and June 7, 2006, in Truro, Nova Scotia

**Last Written
Submission:** February 21, 2007

Counsel: Bradford G. Yuill, Esq., for the Petitioner
Kerri-Ann Robson, for the Respondent

By the Court:

[1] The parties have submitted that they are each entitled to costs.

[2] Mrs. Lavers argues that as she was successful in obtaining an award of general damages, an award of costs should be made in respect of that claim.

Furthermore, she says there were numerous interlocutory proceedings before the divorce hearing, which were made necessary on account of Mr. Lavers's attempts to disrupt the proceedings and to deny her exclusive possession of the matrimonial home, and his refusal to pay spousal support. She also claims that actions of Mr. Lavers resulted in criminal proceedings, underlining the seriousness of her claims against him.

[3] Mr. Lavers claimed that he was successful in the matrimonial proceedings, given that Mrs. Lavers did not succeed in her claim for spousal support or an unequal division of matrimonial assets. He claims that the criminal proceedings dealt with the question of penalty and that the requirement that the matter be dealt with by the criminal courts should be sufficient to answer any claim for costs.

[4] Costs are in the discretion of the court. Rule 63 provides clearly that any costs award is subject to the discretion of the trial judge. Generally, costs follow the event. If a party succeeds at trial, costs are customarily awarded to that party.

[5] In terms of length of proceedings, the hearing took place over a period of three days, with the greater proportion of time being allocated to the matrimonial issues. Mrs. Lavers initiated several interlocutory applications, resulting in several orders being granted. However, the Chambers judges did not award costs in respect of any of these interlocutory proceedings. I infer from that fact that they did not intend to award costs to Mrs. Lavers. It would be inappropriate for me to award costs on these interlocutory proceedings where the Chambers judges did not do so. Therefore, I decline to do so.

[6] I am also entitled to award lump-sum costs rather than costs based on the amount involved (see Rule 63.02(1)(a)). I elect to do so in this instance because the claim for general damages was consolidated with the family proceeding for divorce, spousal support and division of matrimonial assets. It would be inappropriate to rely on Scale 1 or Scale 2 as suggested by counsel.

[7] At trial, I determined that Mrs. Lavers should recover general damages of \$4,000.00 on account of the assault. It would be appropriate, given Mr. Lavers's treatment of Mrs. Lavers, that he be required to pay costs to her. As such, I award costs of \$2,500.00, representing a substantial contribution to her costs but not

complete indemnification. Such an award is in keeping with the philosophy to be applied in such instances where the amount involved in itself would be an inadequate measurement of the time expended in bringing the matter to trial. As these proceedings were undertaken after September 2004, they are covered by the current *Tariffs of Costs and Fees*.

[8] It appears to me that many of the claims being made by Mrs. Lavers, both as to the valuation of the matrimonial assets and her claim to an unequal division, clearly lacked a strong basis in fact. The valuation she placed on the items in the garage were without any justification or support. The valuation she placed on the Toyota truck was exaggerated. Furthermore, there was no basis in the evidence to conclude that she was entitled to spousal support. Her attempts to establish that the assets had much greater value than their actual value consumed a great deal of time.

[9] Mr. Lavers's position on the valuation was more realistic. He took the position that the assets, apart from the grandfather clock, should remain as divided. He did not seek an unequal division of the matrimonial assets, apart from a few personal items made by his late father. I also find that Mrs. Lavers did not take a

reasonable position in claiming the entirety of her pension benefits, arguing that Mr. Lavers had in effect, waived any claim to a share of her pension benefits.

[10] In view of the results of the matrimonial proceedings, I award costs to Mr. Lavers in the amount of \$2,000.00. The net result, therefore, is that Mr. Lavers owes Mrs. Lavers costs of \$500.00.

[11] The parties have not addressed disbursements. As they did not file an affidavit to substantiate these, each party will be responsible for their own disbursements.

J.