

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Thompson v. Grant, 2009 NSSC 284

**Date:** 20090922

**Docket:** 1207-003114(055795)

**Registry:** Truro

**Between:**

Amy Melissa (Grant) Thompson

Petitioner

- and -

David Cox Grant

Respondent

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**DECISION ON COSTS**

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**Judge:** The Honourable Justice J. E. Scanlan

**Heard:** April 28, 29, 30 and May 1, 2009 at Truro, Nova Scotia

**Written Submissions:** September 18, 2009

**Counsel:** Ms. Leigh Davis, Solicitor for the Petitioner  
Ms. LouAnn Chiasson, Solicitor for the Respondent

**By the Court:**

- [1] This is a decision on the issue of costs relating to a dispute on custody, access and division of property. The parties were married on April 29, 2000 and separated in September of 2007. There are two children of the marriage.
- [2] The Respondent, David Grant, was forced to make two applications because of the actions of the Petitioner. First, he made an emergency application to have the children returned to Nova Scotia after the Petitioner unilaterally removed the children from Nova Scotia to Prince Edward Island. Second, he made an interim application and, after a contested hearing in April 2008, he was granted interim custody and exclusive possession of the matrimonial home.
- [3] The interim decision was appealed by the Petitioner without success and costs of \$1,500 were ordered paid by the Court of Appeal to the Respondent. Clearly that decision of the Court of Appeal on the issue of costs should have alerted the Petitioner to the fact that unsuccessful litigation may have cost consequences in family matters.
- [4] The final hearing in this matter proceeded over a period of four days. The Respondent was successful in virtually every aspect of his case. It is of importance that much of the Petitioner's case was based on her version, or

versions, of the evidence which the court found to be less than credible. The Respondent was forced to mount a defense to a case that was based largely on exaggerated or fabricated evidence. In other aspects of the case, I was satisfied the Petitioner was simply being unreasonable in her position.

[5] As examples of just how unreasonable the Petitioner was, I note that the Petitioner was asking for a division of matrimonial property in an amount payable to her in well in excess of \$465,000. The vast majority of that amount was based on her fabricated or exaggerated version as to her contribution to the Respondent's family farm. Much of the court time in the final hearing was expended in dealing with those exaggerated or fabricated claims. Even the valuation of the matrimonial home was disputed by the Petitioner, in spite of the fact the parties had jointly engaged an appraiser in relation to the matrimonial home. The Respondent was prepared to compromise and have that asset divided based on a value well in excess of the appraised value.

[6] On the issue of which parent should have primary care, again the Petitioner based much of her case on exaggerated or fabricated evidence. In the end the Respondent was largely successful in his requests as regards parenting arrangements as between the parties.

[7] In family law matters there are a number of issues that courts have taken into account when deciding the issue of costs. Although the general rule is that successful litigants are entitled to costs, in family matters there are often other considerations at play. In the end costs remain in the discretion of the trial judge.

[8] Even in family law cases one of the purposes of cost awards should be to encourage settlement and discourage improper or unnecessary steps in litigation. I have already referred to at least one step in the present litigation that should not have been required. That is the unilateral removal of the children from the province which made it necessary for the Respondent to seek the assistance of the court in having the children returned. Second, actions of the Petitioner leading up to the hearing where the Respondent was awarded interim custody and exclusive possession of the matrimonial home were somewhat reprehensible. The Respondent not only fabricated much of her evidence during that aspect of the case but went on to make vague allegations against non parties that, if believed, may well have destroyed those individuals careers. Those allegations were totally unfounded and directed at ensuring that non parties would perhaps not assist in arranging access for the children of the marriage.

- [9] It is also troubling that the Petitioner was claiming huge amounts of money from the Respondent based on exaggerated or fabricated evidence. Her claim for division of property sought a payment to her well in excess of \$465,000. Again the claim was based on some exaggerated and mostly fabricated evidence from the Petitioner. The final division of property awarded the Petitioner \$14,080.
- [10] The Respondent has referred to the **Cost and Fees Act** and suggested that under that **Act** costs in the amount of \$59,750 plus disbursements could be awarded. The Respondent has tempered his request for costs suggesting that \$25,000 would be an appropriate amount given the various considerations in this case. He asks that the \$14,080 equalization payment be set off as against the costs. I am satisfied the Respondent is extremely reasonable in his requests for costs, given the circumstances of this case.
- [11] It is especially important that litigants in family law matters understand that it is costly for parties to confront exaggerated or even fabricated evidence. The costs of that defense have a direct impact on the parties and the children in a case such as this. The costs to the Respondent in defending the many false allegations or unreasonable assertions by the Petitioner must have been

extensive. That expense will no doubt have long lasting consequences for this family of rather modest means.

[12] It is not enough for the Petitioner in a case such as this to say that the emotional issues of custody are part of this case and that the court should therefore have each party bear their own costs. This case was as much about the Petitioner's wholly unreasonable and unfounded demands for money as it was about the best interests of the children of the marriage. Even on the issues involving the custody and access for the children of the marriage, the Respondent was almost completely successful.

[13] The Respondent is entitled to costs in the amount of \$25,000. He is entitled to offset the \$14,080 equalization payment otherwise owing under the division of property. The net amount still owing to the Respondent by the Petitioner is \$10,920.

J.