

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Dimick v. Dimick 2009 NSSC 172

Date: 2009/05/29

Docket: SBWD No. 032113

1203-001880

Registry: Bridgewater

Between:

Jon MacPee Dimick

Petitioner

v.

Vicki Lynn Dimick

Respondent

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Judge: The Honourable Justice David MacAdam

Heard: July 3rd, 4th, & 6th, September 27th, and 28th, and November 19th and 21st,
2007 in Bridgewater, Nova Scotia

Final Written

Submissions (Costs): March 2, 2009

Written Decision: May 29, 2009

Subject: Costs - Family - Counsel Travel Costs.

Summary: At trial, the respondent unsuccessfully sought child support, and failed in challenging the validity of the parties' separation agreement and minutes of settlement. She also sought, unsuccessfully, to impute a higher level of income to the petitioner, and raised arguments pertaining to section 7 expenses and the proper designation of a house that had been excluded from the matrimonial assets under the separation agreement. She had partial success on a single issue, the division of certain medical expenses for the parties' two children. The petitioner was successful on virtually all of the issues.

Result:

The petitioner was entitled to costs. The respondent relied on the respective financial positions of the parties, alleged failures of disclosure, the timing of offers to settle, use of court time and the allegedly unsettled state of the law on separation agreements and court oversight of matrimonial property division as a basis to deny costs. With the exception of the parties' respective financial circumstances, these issues were not sufficient to displace the petitioner's entitlement to costs, or to affect the quantum. The court rejected the submission that varying or setting aside a separation agreement was a novel point of law.

The court rejected the petitioner's submission that the unsuccessful party should bear the additional costs of counsel's travel to the locality of the trial, in the absence of evidence that there were no reasonably competent counsel available locally.

The petitioner sought costs of up to \$100,000.00. It was necessary to consider, however, that the parties would be required to continue to interact for the benefit of the children. It would not be in the best interests of the children to award a quantum of costs that was likely to endanger the respondent's ability to meet her responsibilities to the children. The quantum of costs sought by the petitioner, if ordered, would have the effect of impoverishing the respondent to the point that she would be unable to meet her obligations under the separation agreement and the minutes of settlement. It was necessary to balance the petitioner's entitlement to costs with the respondent's ability to maintain these obligations. On this basis, the petitioner was awarded costs of \$15,000.00, plus disbursements of \$8,592.17.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
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