

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Kenny v. Kenny, 2009 NSSC 385

**Date:** 20091214

**Docket:** 1201-063135

**Registry:** Halifax

**Between:**

Sharon Lynn Kenny

Petitioner

v.

Maurice Joseph Kenny

Respondent

**Judge:**

The Honourable Justice Moira C. Legere Sers

**Heard:**

November 4, 2009

**Counsel:**

Judith Schoen, counsel for Sharon Kenny  
Sarah Harris, counsel for Maurice Kenny

**By the Court:**

[1] This is the decision on costs on this matter. Counsel have cited and I have reviewed relevant decisions on costs and these will not be repeated within this brief decision.

[2] The Petition was commenced and an Answer filed December 17, 2008. The respondent sought joint custody with primary residence remaining with the petitioner.

[3] This position changed late in the process. Closer to the trial process the respondent amended his position to include a request for shared custody in a situation in which there was no historical factual support for a shared custody arrangement.

[4] As the parties approached the trial process, it appeared all issues were in dispute. At the commencement of the proceeding the parties were able to agree on a number of issues including equal division of the property, addressing first the necessary disbursements that were required to be made to make the matrimonial home saleable. The petitioner was successful in having these disbursements included before determining equity.

[5] The parties had agreed on child support issues.

[6] The mother held out on allowing overnight parenting time for the father. The court granted overnight parenting time. The father held out on the imposition of certain conditions to the exercise of this time, primarily related to alcohol consumption. Facts not seriously disputed supported this was a reasonable condition and if adhered to would facilitate the proposed schedule.

[7] There was mixed success on this parenting issue.

[8] With respect to the division of property, the petitioner was more successful than the respondent. The petitioner sought to have a list of disbursements incurred to ready the home for sale included before the equity was determined. The court discussed this with the counsel and the parties before the commencement of the hearing and the parties were able to reach an agreement on those disbursements.

[9] The second significant issue was the question of entitlement to spousal support, quantum and duration.

[10] Throughout, the respondent maintained that the applicant was not entitled to spousal support. He did offer lump sum support in negotiations with the mother's counsel.

[11] The mother did not willingly disclose or admit her income earning potential in order to assist the court in addressing her ability to be self-sufficient. The decision indicated that given the father's income and obligations and the mother's ability to earn income it would not be reasonable to expect, based on the facts, that the father could ever fully cover the mother's financial deficit or needs.

[12] Considering this was a 19-year traditional relationship/marriage, it was unreasonable to presume in these circumstances that (1) there was no entitlement and (2) that the court would impose a termination date without the parties' consent.

[13] I have reviewed the offers exchanged and conclude that the petitioner was successful in her claim in establishing entitlement and current need. She was less successful than she had hoped in establishing quantum and ability to pay. In addition, she was successful in obtaining a retroactive award although not to the extent requested.

[14] The parties' position on division of pension and severance up to the date of trial was not realistic given well-established case law. Immediately previous to the commencement of the proceeding it was acknowledged that there would be an equal division of the pension and superannuation package.

[15] The parties did agree on other collateral issues.

[16] While it is clear that there was mixed success, the petitioner was more successful on more issues than the respondent.

[17] Much of the time that could have been saved was focused on parenting issues and spousal support issues.

[18] Considering all the circumstances, I order costs in the amount of \$2,500.00 in favour of the petitioner.

Legere Sers, J.

December 14, 2009  
Halifax, Nova Scotia