

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Hopkie v. Hopkie, 2010 NSSC 345

Date: 20100914

Docket: 1201-062717

Registry: Halifax

Between:

Darrin James Hopkie

Petitioner

v.

Sandra Lynn Hopkie

Respondent

Judge:

The Honourable Justice Deborah Gass

Heard:

March 23, 2010, in Halifax, Nova Scotia

Counsel:

Brian Bailey, for the Petitioner

Janice Beaton, for the Respondent

By the Court:

[1] The Respondent in this proceeding has applied for an order for costs. The original variation application had been brought by the Applicant seeking a termination of a time limited spousal support order. The application was denied.

[2] The Corollary Relief Judgment provided for a fixed term of 36 payments of spousal support of \$700/month and specifically prohibited an application to vary even if there was a change in circumstances. The court found, after hearing the evidence, that there was not a change in circumstances sufficient to warrant a termination in any event.

[3] An award of costs is within the discretion of the trial judge. Rule 70 does not deal with costs and therefore Rule 63 governs.

[4] Generally speaking, costs may be awarded to a successful party, and although costs are sometimes not awarded in family matters, there should still be a good reason for not awarding them. The real difficulty in family matters is in quantifying those costs because so often there are multiple issues, many of which do not involve money, at least in a direct sense.

[5] Here, however, there is an amount involved. The order was for 36 months at \$700/month commencing May 1, 2009.

[6] The Applicant sought termination effective August 1, 2009. In other words, the relief he was seeking was the amount of \$23,100.

[7] It has been argued that the court should apply Tariff "C" and not Tariff "A" as the latter is for trials and this is an application. However, most of the contested hearings in matrimonial matters are formally considered "applications" but are, in reality "trials" as they carry with them all of the same features of a trial, including pre-trial preparation and court time, whether it be for one half day or several days.

[8] The Respondent was clearly successful in defending the application. Tariff "A" should apply. For the amount involved, Scale 3 (\$5,000) applies. In addition, the court determines that, in addition to the amount involved, the length of trial is a consideration. The matter consumed most of the day, in that it began mid-morning and concluded close to mid-afternoon. Therefore, the court will add \$2,000,

resulting in an award of costs to Ms. Hopkie in the amount of \$7,000, payable forthwith.

J.