

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Blais v. Blais, 2006 NSSC 301

Date: 20061011

Docket: 1201-002501 SBWD-040376

Registry: Bridgewater

Between:

Ralph Blais

Petitioner

v.

Doreen Blais

Petitioner by Counter Petition

Judge:

The Honourable Justice Gordon A. Tidman

Heard:

October 6, 2006, in Bridgewater, Nova Scotia

Written Decision

re Costs:

October 11, 2006

Counsel:

Erica Green, for the Applicant

Shawn O'Hara, for the Respondent

Tidman, J.:

Costs Decision

[1] The counter petitioner wife, Doreen Blais, seeks costs of the divorce action.

[2] The trial took place over most of one day and an application for costs took place over one-half day.

[3] The major issues were spousal support and the wife's entitlement to share in the husband's anticipated severance allowance at the time of his retirement from the Canadian Armed Forces.

[4] Mr. O'Hara on behalf of the wife submits that considering the value of the husband's anticipated severance allowance and spousal support that the court, using the new scale, should set the "amount involved" between \$25,000 and \$40,000 and apply scale two setting the amount of costs at \$6,250.00. He submits further that since his client made an offer to settle which was not accepted and the wife received an award, as good or better than the offer, the wife under **Civil Procedure Rule** 41A.09 is entitled additionally to double costs from the time of

service of the offer. Mr. O’Hara suggests that to achieve an appropriate cost award in that circumstance the court should add \$2,000 to \$4,000 to a Scale 2 award or go to Scale 3.

[5] Ms. Green for the husband submits that the court should adopt the approach of Justice Goodfellow in **Urquhart v. Urquhart**, [1998] N.S.J. No. 310 and set the amount involved at the rate of \$15,000.00 per trial day.

[6] Deciding cost issues in divorce actions has long been a troubling exercise for trial judges. Some years ago it was the norm not to award costs in divorce actions. That has since changed to bring divorce actions more in line with other actions on the issue of costs.

[7] The tariff of fees for party and party costs has worked well in determining a proper award for costs. However, judges have strained to find a formula in arriving at the “amount involved” in order to determine quantum in domestic actions.

[8] Counsel have, in support of both their positions, referred the court for guidance to **Urquhart** (*supra*), **Grant v. Grant** (2002), 200 N.S.R. (2d) 173 and **Robillard-Cole v. Cole**, [2006] N.S.J. No. 373.

[9] Those three cases are good illustrations of the difficulty judges have in adopting an appropriate formula in determining an “amount involved” and demonstrate that the court must consider the particular circumstances in each and every domestic case in deciding a costs award.

[10] **Robillard-Cole** was an application to determine the amount of maintenance payments arrears and to secure the award. There were nine court appearances although most took no more than one-half hour. The actual hearing took one-half day. There were obviously extensive negotiations by the parties and the parties provided briefs on the law to the court. The husband had not discharged his obligations for maintenance and in the final order his home was liened to secure past and future maintenance payments. Associate Chief Justice Ferguson awarded costs of \$2,700.00

[11] **Grant** was a divorce action in which several issues were determined by the trial judge. There were several trial dates and other appearances which the trial judge equated to 9 days of trial. The conduct of the wife and her counsel unnecessarily complicated and lengthened the proceeding where they raised improper, incorrect, vexatious and unnecessary allegations. The husband made an offer to settle which the trial judge, because of the actions of the wife, had difficulty in determining whether his decision was as good as or better than the husband's offer. The court, however, found that the husband was relatively successful in his claim.

[12] Under those circumstances Justice Williams awarded the husband costs of \$12,000.00 and \$2,250.00 towards disbursements with the comment that the wife's difficult circumstances prevented him from awarding a higher amount of costs.

[13] In this case there was little difference in the offers of settlement of both parties with the exception of the husband's anticipated severance allowance classification as a matrimonial asset and spousal support. The wife claimed spousal support of \$500.00 monthly. The husband offered no spousal support.

[14] The court found that the husband's anticipated severance allowance is a matrimonial asset subject to division and awarded spousal support of \$400.00 monthly.

[15] Strictly speaking the offer was less favourable than the court's award since the amount of spousal support ordered was less than the amount contained in the offer. However, since the husband refused to agree to pay any spousal support, it is more probable than not that the husband would have also refused a firm offer to accept \$400.00 monthly spousal support.

[16] The parties in this case were able to substantially agree on all other issues. There was no dispute over custody, access, child support and the amount of additional child care expenses. I cannot say that either party or his or her counsel acted unreasonably or unnecessarily extended counsels' time spent on the action.

[17] I accept Ms. Green's argument that the issue of severance pay as a matrimonial asset had not been completely settled by the courts and that should be favourably considered to her client's benefit.

[18] In the court's view the issues in dispute were clear cut and not extensive and under the other circumstances referred to in determining quantum I would find the amount involved to be less than \$25,000.00.

[19] In regard to the wife's offer of settlement, in all probability it would not have been accepted even if it contained an offer to accept \$400.00 monthly in spousal support.

[20] It is relevant to note Mr. O'Hara's response to the court's question as to the amount of his fees incurred following the date of the offer's delivery. Mr. O'Hara says that his fee would have been between \$4,000.00 and \$5,000.00 had the offer been accepted and that his fee would now be approximately \$12,000.00. He did allow, however, that even if the offer had been accepted additional costs would have been incurred to finalize the matter beyond the \$4 - 5,000.00 bill at the time of the offer.

[21] After considering all of the circumstances as outlined and considering that the wife's offer of settlement was refused and the wife obtained substantially the amount of her offer, I would award costs to the wife with the "amount involved"

under \$25,000.00. I would use Scale 3 in arriving at the amount of \$5,000.00 which the court will award together with reasonable disbursements.

J.