

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Wellman v. Moss, 2012 NSSC 127

Date: 20120328

Docket: SFHMCA075674

Registry: Halifax

Between:

Jarrold Wellman

Applicant

v.

Ellie Moss

Respondent

DECISION ON COSTS

Judge: The Honourable Justice Moira C. Legere Sers

Heard: September 16, 2011 in Halifax, Nova Scotia

Written Submissions: Judith Schoen, counsel for Jarrod Wellman on January 9, 2012
Ellie Moss, Self-represented on January 12, 2012

Counsel: Judith Schoen, counsel for Jarrod Wellman
Ellie Moss, Self-represented

By the Court:

[1] On May 30, 2011, Jarrod Wellman filed a motion for interim relief under the *Maintenance and Custody Act* seeking relief by way of custody, access and an order for paternity blood tests.

[2] Ms. Moss made application for interim relief on August 23, 2011, seeking child support.

[3] Jarrod Wellman sought to have a shared custody arrangement.

[4] Before the application, Jarrod Wellman had been having parenting time with his child.

[5] The mother unilaterally terminated the father's contact with the child. The mother removed the parties' son from the jurisdiction for a number of days and eventually allowed the father to see the child on a severely restricted basis.

[6] Access was only restored by after the commencement of the court application. A consent interim order resulted from the court application.

[7] Due to the need to bring the application immediately or risk long periods between contact with his son, the father was required to stay on shore and miss his usual employment cycle at sea (15 days on - 15 days off). His income was affected.

[8] The parties' agreement was confirmed by counsel's letter dated June 10, 2011. While the father did not agree to the many stipulations put forward, he acquiesced to abide by these stipulations in order to continue to see his son in the interim pending full hearing on the matter. One restriction was the denial of overnight visitation.

[9] Subsequent to the interim order, the mother again reduced the amount of contact.

[10] The father's counsel responded to a significant affidavit filed by the mother. After a hearing was held, the father had legal fees in excess of \$12,681.

[11] The Court made findings that the parties were to have joint custody of the child and that the father would have expanding access including overnight access to his son introduced on a gradual basis given the fact that the mother's actions had essentially interrupted the contact between the child and the father.

[12] The Court made findings that each parent was capable of parenting; were behaving immaturely and had historically engaged in problematic behaviour with alcohol and/or drugs.

[13] With respect to the child support, the father has been less than diligent in paying on a regular basis. This issue was addressed in the hearing as well.

[14] There were, therefore, legitimate issues that had to be resolved at a hearing given the parties were unable to resolve them themselves.

[15] The unilateral conduct of the mother with respect to prohibiting contact between the father increased the time required to prepare for the hearing and required his response to significant affidavits in order to address the allegations contained in the affidavit by the mother against the father.

[16] The mother's income in 2011 was \$32,000. The mother had her maternity leave in 2010 during which she earned \$12,444. In 2009 she earned \$33,000 and in 2008 \$47,000.

[17] The father shows incomes from EI, at times Workers' Compensation and employment income. His income for the 2011 year might reflect \$67,536; in 2010 his income was approximately \$42,000; and his 2009 income was \$79,340.

[18] Clearly the mother will be adversely affected by a costs award.

[19] Given there were two issues to be resolved at the hearing, parenting and child support, both parties contributed to the need to have a hearing in this matter by their behaviour.

[20] Regarding the mother's behaviour, the father was wholly successful.

[21] The father is asking for \$6,000 costs and contribution, given his success with respect to parenting.

[22] On the totality, given the issues that needed to be resolved, the mixed success and the conduct of the mother in consistently refusing appropriate contact between the child and the father, I award \$2,500 costs payable by the mother.

[23] Counsel for the father shall prepare the order.

Legere Sers, J.