

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Doncaster v. Field, 2013 NSSC 152

**Date:** 2013-05-13

**Docket:** Tru 1207-003679 (079303)

**Registry:** Truro

**Between:**

Ralph Ivan Doncaster

Petitioner/Applicant

v.

Jennifer Lynn Field

Respondent

**DECISION ON COSTS**

**Judge:** The Honourable Justice Cindy A. Bourgeois

**Heard:** Via written submissions

**Counsel:** Ralph Doncaster, Applicant, on his own behalf  
Janet Stevenson, on behalf of the Respondent

**By the Court:**

[1] Ralph Ivan Doncaster and Jennifer Lynn Field are spouses who have been involved in an acrimonious and difficult separation. Their four children have not been spared the consequences of the resulting battles.

[2] Mr. Doncaster is the petitioner in the divorce proceeding. In the spring of 2012 the parties were before the Supreme Court relating to interim custody and access arrangements in relation to the children. On March 5, 2012, Justice J.E. Scanlan rendered an interim decision whereby the children of the marriage were placed in the sole care and custody of Ms. Field, pending further order of the Court, and after psychological and parental capacity assessments were undertaken in relation to Mr. Doncaster.

[3] Over the course of five days, this Court heard evidence, the purpose of which was to determine what changes, if any, were warranted in relation to Scanlan, J.'s earlier decision. On March 7, 2013, this Court released a written decision whereby it was ordered that Ms. Field would remain the sole custodial parent of the children; Mr. Doncaster was to commence cognitive behavioural therapy and he could, thereafter, initiate contact with the children via written letter,

provided that their therapist felt the contents were appropriate and consistent with their best interests.

[4] Ms. Field is seeking costs arising from the outcome of that decision. I will note at this juncture that this Court has, as a result of a motion brought by Mr. Doncaster, recently modified its decision as it relates to the access via correspondence, but re-affirmed it in all other aspects. This decision will not address any cost consequences arising from the outcome of that recent motion.

### **Position of the Parties**

[5] Ms. Field is seeking party and party costs, payable forthwith against Mr. Doncaster. She asserts that in reaching an appropriate quantum, the Court should consider not only the five days involved in the hearing, but also that costs arising from the March 5, 2012 matter with Scanlan, J. had not been considered, nor were costs arising from a motion brought by Mr. Doncaster before Coady, J. on October 29, 2012 which was dismissed.

[6] It is asserted that Mr. Doncaster unreasonably prolonged the hearing by attempting to re-litigate issues that had been before Scanlan, J. and calling a number of witnesses who were not relevant to the matters before the Court.

[7] Ms. Field, through her counsel, relies on a number of provisions contained in Civil Procedure Rule 77, and submits that Tariff A should apply to the determination of costs in these circumstances. She claims costs of \$16,250.00 plus disbursements of \$495.00, for a total of \$16,745.60, payable forthwith. She asserts her actual costs are “in excess of” \$30,000.00”.

[8] Mr. Doncaster asserts that Ms. Field did not provide her submissions on costs in the time frame as directed by the Court. He writes “if you are inclined to accept the Respondent’s submissions despite failure to serve them in accordance with your deadline, then I request the opportunity to respond”. Mr. Doncaster then proceeds to outline his reasons why costs should not be ordered against him, and if the Court if so inclined to do so, why it should be in a nominal amount.

[9] Mr. Doncaster asserts that it was due to Ms. Field’s “exaggerations and lies” about the danger he poses to the children that Scanlan, J. ordered the psychological and parental capacity assessments. He asserts that I determined an assessment to be “favourable” to him, and there was no finding of “substantial or immediate risk of physical harm to the children”. As Ms. Field has done nothing to encourage a meaningful relationship between the children and their father, Mr. Doncaster asserts “if anyone should have to pay costs, it is the Respondent”.

[10] Mr. Doncaster submits that he has no ability to pay a costs award, and that such may in fact risk his ability to pursue regaining access with his children.

#### DETERMINATION

[11] On a preliminary matter, it would appear that the Court directed that cost submissions be filed with the court on or before March 28, 2013 by Ms. Field, after which Mr. Doncaster was given time to reply. Ms. Stevenson's submissions are dated March 28, 2013 and it appears they were faxed to the Truro prothonotary office on the same date. It would appear the submissions were filed, as directed. Mr. Doncaster did not request additional time to reply in light of receiving the submissions several days later. Such a request would be the appropriate response, in the event he felt he had an insufficient time to prepare his submissions (which he did not argue), rather than asking this Court to disregard Ms. Field's submissions.

[12] Mr. Doncaster has strongly held views. Some however, are not borne out in the factual findings made by this Court, and previously by Scanlan, J. A review of this Court's written decision released March 7, 2013 will disclose the factual findings made, the conclusions reached and the disposition made in light thereof.

[13] I have considered the various provisions contained in Civil Procedure Rule 77 relating to costs. I have further found helpful the principles enunciated by

MacDonald, J. in **Fermin v. Yang**, 2009 NSSC 222 relating to costs in family matters. Justice MacDonald writes:

[3] Several principles emerge from the Rules and the case law:

1. Costs are in the discretion of the Court.
2. A successful party is generally entitled to a cost award.
3. A decision not to award costs must be for a “very good reason” and be based on principle.
4. Deference to the best interests of a child, misconduct, oppressive and vexatious conduct, misuse of the court’s time, unnecessarily increasing costs to a party, and failure to disclose information may justify a decision not to award costs to an otherwise successful party or to reduce a cost award.
5. The amount of a party and party cost award should “represent a substantial contribution towards the parties’ reasonable expenses in presenting or defending the proceeding, but should not amount to a complete indemnity”.
6. The ability of a party to pay a cost award is a factor that can be considered, but as noted by Judge Dyer in *M.C.Q. v. P.L.T* 2005 NSFC 27 (CanLii), 2005 NSFC 27:  
Courts are also mindful that some litigants may consciously drag out court cases at little or no actual cost to themselves (because of public or third-party funding) but at a large expense to others who must “pay their own way”. In such cases, fairness may dictate that the successful party’s recovery of costs not be thwarted by later pleas of inability to pay. [See *Muir v. Ligon*, 2004 BCSC 65 (CanLii), 2004 BCSC 65].
7. The tariff of costs and fees is the first guide used by the Court in determining the appropriate quantum of the cost award.
- 8 In the first analysis the “amount involved” required for the application of the tariffs and for the general consideration of quantum is the dollar amount awarded to the successful party at trial. If the trial did not involve a money amount other factors apply.

The nature of matrimonial proceedings may complicate and preclude the determination of the “amount involved”.

9. When determining the “amount involved” proves difficult or impossible the court may use a “rule of thumb” by equating each day of trial to an amount of \$20,000 in order to determine the “amount involved”.

10. If the award determined by the tariff does not represent a substantial contribution towards the parties’ reasonable expenses “it is preferable not to increase artificially the “amount involved”, but rather, to award a lump sum”. However, departure from the tariff should be infrequent.

11. In determining what are “reasonable expenses”, the fees billed to a successful party may be considered but this is only one factor among many to be reviewed.

12. When offers to settle have been exchanged, consider the provisions of the civil procedure rules in relation to offers and also examine the reasonableness of the offer compared to the parties’ position at trial and the ultimate decision of the court.

[14] Ms. Field is the successful party, and is entitled to a meaningful award of costs. Mr. Doncaster is a self-represented litigant, as is his right. However, in my view, the proceeding was significantly and unnecessarily extended by his advancing of evidence on matters which had been previously before the court.

[15] I agree that Tariff A is appropriate to consider given in particular the length of this matter. That being said, Ms. Field could have argued that the “amount involved” was \$100,000.00 based upon the “rule of thumb” noted above. This would have generated base costs of \$12,250 under Scale 2, and an additional \$2000 for each day of hearing. The resulting \$22,250 in total would still be

significantly less than the actual fees incurred. She claims \$16,745.60, inclusive of disbursements.

[16] Given the matters before the court, the costs claimed by Ms. Field are reasonable and appropriate. I do not accept that Mr. Doncaster should be immune from costs due to his stated impecuniosity. Firstly, I am not satisfied that he does not have the ability or resources to pay costs, and further, given the “vortex of litigation” resulting directly or indirectly from these parties’ marital breakdown, an immunity from costs would be contrary to the interests of justice.

[17] I am concerned however, that requiring Mr. Doncaster to pay the entire costs on a forthwith basis, may materially impact on his ability to participate in the cognitive behavioural therapy ordered by this Court. As such, Mr. Doncaster is ordered to pay costs in the amount of \$8000.00 forthwith to Ms. Field, with a further award of \$8745.60 being payable at the conclusion of the divorce proceedings.

Bourgeois, J.