

SUPREME COURT OF NOVA SCOTIA
Citation: Doncaster v. Field, 2013 NSSC 213

Date: 20130704
Docket: Tru: 1207-003679
Registry: TRUJC

Between:

Ralph Ivan Doncaster

Petitioner/Respondent

-and-

Jennifer Lynn Field

Respondent/Applicant

Judge: Justice Cindy A. Bourgeois

**Written
Submissions:** May 23, 2013 (Deborah Bird)
May 24, 2013 (Jennifer Lynn Field)
June 24, 2013 (Ralph Doncaster)

**Written
Decision:** July 4, 2013

Counsel: Mr. Ralph Doncaster, on his own behalf
Ms. Janet Stevenson, on behalf of Jennifer Field
Roderick (Rory) H. Rogers, Q.C. on behalf of Deborah Bird

By the Court:

INTRODUCTION

[1] Ralph Ivan Doncaster ("Mr. Doncaster") is a petitioner in a divorce proceeding with his spouse Jennifer Field (Ms. Field"). In the context of that proceeding, this Court undertook an interim hearing relating to custody and access issues. After hearing evidence and submissions over 5 days, the Court addressed the parties on December 19, 2012 and reserved decision. A written decision was released on March 7, 2012 (reported as 2013 NSSC 85).

[2] Mr. Doncaster filed a Notice of Motion on March 25, 2012 seeking "an order directing Ms. Bird to comply with a decision of the Honourable Justice Cindy A. Bourgeois in this proceeding by presenting my letters to Max, Mia, Grace and Kate Doncaster". In the motion, he relied upon Civil Procedure Rule 80. Both Ms. Bird (the children's therapist) and Ms. Field responded to the motion, which was ultimately dismissed, with written reasons being reported at 2013 NSSC 149. Both now seek costs.

POSITION OF THE RESPONDENTS

[3] Ms. Field submits that this Court should strongly consider an award of solicitor and client costs, given the extreme nature of the litigation between Mr. Doncaster and herself to date. She asserts that this is an extraordinary instance, and that Mr. Doncaster's conduct falls within those category of cases involving "reprehensible, scandalous or outrageous" behaviour attracting an award of solicitor client costs. She claims a total of \$3736.47 as her actual costs of responding to the motion. In the alternative, Ms. Field submits a lump sum award of \$2500.00 is appropriate.

[4] Ms. Bird also seeks cost arising from the dismissal of the motion. Although in the discretion of the Court, it is submitted that Tariff C of the Nova Scotia Civil Procedure Rules provide a starting point for a consideration of costs in this instance. It is submitted that the Tariff would provide for a range of costs for a matter in excess of one hour between \$750 and \$1000. It is submitted however, that there are several factors which justify an increase from the tariff range including that although it was an interlocutory motion, it effectively terminated any proceeding against Ms. Bird, and that the issues raised were much broader

than simply whether enforcement of an order was appropriate. Ms. Bird seeks costs of \$1500.00.

[5] Mr. Doncaster submits that he should not be ordered to pay costs due to being impecunious. He further argues that "because the question of when an order or decision is effective has not previously been decided by a Nova Scotia court" the area is novel and should not attract costs. He further asserts that costs should not be awarded because he was advised at a case management conference that he could bring a motion if the order in question was not being followed.

DETERMINATION

[6] The awarding of costs is governed by Civil Procedure Rule 77. Rule 77.02 provides that a presiding judge has the discretion to determine an award of costs that "will do justice between the parties".

[7] Rule 77.04 permits a party to make a motion for an order that they should be relieved of a cost award due to their inability to pay. Although Mr. Doncaster has made no such formal motion, I have considered his arguments in that regard.

Although it would appear that Mr. Doncaster may have received demands from Revenue Canada in terms of outstanding taxes, it is not clear whether such claims have been finally determined. It is further not established that Mr. Doncaster either has inadequate assets, or a lack of potential employment income to prevent him from being subject to a potential cost award.

[8] I cannot accept Mr. Doncaster's argument that the issues before the court involved novel points of law. A review of the court's decision reveals that authority from the Nova Scotia Court of Appeal was determinative of the major issue, namely when a court becomes *functus*.

[9] I also disagree that Mr. Doncaster should be relieved from costs due to his argument that he was following a process directed by the Court. Mr. Doncaster's application was not dismissed because he chose the wrong procedure in which to assert his concerns surrounding Ms. Bird's failure to provide letters to the children, but rather due to his failure to provide an adequate evidentiary foundation in support thereof.

[10] I agree with the Respondents that the starting point for an assessment of costs is Tariff C. This matter was in excess of 1 hour. I also agree that the issues in question were significantly broader than just whether Ms. Bird should be compelled to provide letters to the Doncaster children. This justifies an increase beyond the tariff, but the situation does not, in my view, justify an award of solicitor and client costs.

[11] In the circumstances, I award costs of \$1200.00 to the Respondent Bird, and \$1500.00 to the Respondent Field, both payable forthwith.

J.