

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation :** *Ibrahim v. Murphy*, 2017 NSSC 264

**Date:** 20171006

**Docket:** SFHMCA-102180

**Registry:** Halifax

**Between:**

Rany Samir Ibrahim

Applicant

v.

Anna Marie Murphy

Respondent

**Judge:**

The Honourable Justice Beryl A. MacDonald

**Written Submissions on  
costs:**

**Counsel:**

Rany Ibrahim with counsel, Stacey O'Neill

Anna Murphy, self-represented

**By the Court:**

**Background**

[1] On June 21, 2017 I delivered an oral decision in response to a Notice of Application filed by Mr. Ibrahim. He commenced that application primarily for two reasons, he wanted to become more involved in his son's life under a scheduled parenting plan and he did not want his son to move with Ms. Murphy to California. As the matter proceeded Mr. Ibrahim decided he would seek custody and primary care of his son.

[2] Early in the proceeding Mr. Ibrahim filed an Interim Motion to obtain some regularized contact with his son. Later he filed an Emergency Motion when Ms. Murphy unilaterally changed the child's school. His Motions were successful.

[3] Ms. Murphy brought a Motion to Admit evidence and for disclosure. Her motion was denied and costs of \$200.00 were awarded to Mr. Ibrahim but were to be set off against any costs he may owe Ms. Murphy because of a final determination of his Application.

[4] The final hearing consumed two full days and an appearance lasting 1½ hours when I provided the oral decision. There were conferences in between lasting 20 to 40 minutes. These provided instructions for the hearings.

[5] Initially Mr. Ibrahim would have been content for the child to remain in Ms. Murphy's primary care in their joint custody with a specific parenting time schedule. The child was not to reside outside of the Halifax Regional Municipality. As the matter progressed, given Ms. Murphy insistence that she have custody and be permitted to move, his position changed. Ms. Murphy remained uncompromising and she flooded the court and Mr. Ibrahim with inadmissible material attached to her affidavits, all of which his counsel would be forced to review to determine its relevance and admissibility. His legal account reflects the work that was required as a result.

[6] In this application Mr. Ibrahim was the successful party. Ms. Murphy was not permitted to move with the child to California. Mr. Ibrahim was granted custody, primary care and a detailed parenting schedule determining Ms. Murphy's parenting time.

[7] Principles about awarding costs that emerge from the civil procedure rules and the case law are:

- Costs are in the discretion of the court.

- A successful party is generally entitled to a cost award. To receive a cost award a party is not required to have received all the relief requested. Substantial success is sufficient.
- A decision not to award cost must be for a very good reason and be based on principle.
- Deference to the best interest of a child, impecuniosity of the parties, misconduct, oppressive and vexatious conduct, misuse of the court's time, unnecessarily increasing costs to a party, and failure to disclose information may justify decision not to award costs, or reduce a cost award to an otherwise successful party.
- While the ability of a party to pay a cost award is a factor that can be considered, as Judge Dwyer said in *M.C.Q. v. P.L.T.* 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.”

This comment can apply equally as well to self-represented litigants.

- The court may consider reasonable settlement offers exchanged between the parties.
- The amount of a party and party cost award should represent a substantial contribution towards the reasonable expenses of presenting or defending the proceeding, but should not amount to a complete indemnity. All reasonable interpretation of this language suggests an amount more than 50% and less than 100% of a lawyer's reasonable bill.

- The tariff of costs and fees is the first guide used by the court in determining the appropriate quantum of the cost award.
- 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 or preclude the determination of the amount involved.
- 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.
- If the award determined by the tariff does not represent a substantial contribution towards the reasonable expenses of the successful litigant “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.
- In determining what reasonable expenses are, the fees billed to a successful party may be considered but this is only one factor among many to be reviewed.

[8] Ms. Murphy pleads impecuniosity and quotes from decisions suggesting she should not be required to pay costs because this matter involved parenting. I do not consider either as a reason to deny Mr. Ibrahim costs.

[9] Ms. Murphy has chosen to place herself in a situation that has resulted in limited earning capacity. She needs to find remunerative employment and I

commented upon that in my decision. I imputed income to her. I do not find her to be impecunious.

[10] The potential for an adverse cost award is a reality that is expected to encourage parents to be more objective about their child's needs. Parents are to separate their own needs from those of the child. Sometimes this may require a parent to recognize the child can be adequately parented by the other parent and that his or her preferred plan is not practical or desirable for the child.

[11] It is always in the child's best interest for the child's parents not to engage in litigation. Anger, pride, a desire to win, jealousy, resentment, or dislike of the other parent may prevent a parent from objectively viewing the child's situation. Why should every parent in such circumstances, who cannot agree with the other parent about parenting issues, bring his or her issues in the court and expect to be relieved from an obligation to compensate the successful parent?

[12] In this case Ms. Murphy was unable to recognize that her plan for the child was not practical or desirable for the child. She was not open to reasonable requests from Mr. Ibrahim for parenting time. She refused to co-operate to permit a

change to the child's name increasing Mr. Ibrahim's legal costs. She must pay costs.

[13] I was asked to consider a lump sum award. Using the "rule of thumb" and the additional \$4,000.00 for the two-day hearing the basic scale for costs is \$10,250.00. This does not represent a substantial contribution towards Mr. Ibrahim's reasonable legal expenses. However, the financial circumstances of Ms. Murphy do justify consideration when determining the appropriate lump sum she must pay. She must pay \$19,800.00 and the previously ordered \$200.00 for a total of \$20,000.00.

[14] I was asked to break out the amount of this award required to establish child support. This was not a difficult issue upon which to make representations. I will not assign an amount to that portion of Mr. Ibrahim's claim

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Beryl A. MacDonald, J.