

SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)

Citation: *Ahmed v. Naseem*, 2016 NSSC 366

ENDORSEMENT

Mohammad Ishtiaq Ahmed v. Iram Naseem

2012; 1206-006433

May 4, 2016

- Duncan H. MacEachern for Mohammad Ahmed
- Diana M. Musgrave for Iram Naseem

Each party requests costs following a trial which was heard over eight days. At issue was the validity of the parties' marriage and claims for a divorce or a declaration of nullity, a property division, parenting, child and spousal support.

Decision:

Mohammad Ahmed shall pay Iram Naseem costs of \$70,000.00 forthwith. If this has not been paid by June 30, 2016, these costs may set off against the lump sum spousal maintenance award of \$152,366.00 owed by Dr. Naseem to Mr. Ahmed.

Reasons:

1. Mr. Ahmed sought a divorce, a property division, shared parenting, child and spousal support. Dr. Naseem argued the parties' marriage was void and that Mr. Ahmed had not entered into it in good faith, so there could be no divorce and no property division. She was successful on these points. The child had not been adopted by parties. Mr. Ahmed, as a guardian, could seek a shared parenting order under the *Maintenance and Custody Act*, but he had not seen the child (now seven) in almost four years. His applications for parenting and child maintenance were dismissed. Mr. Ahmed was awarded spousal maintenance because he left employment in Qatar to move to Sydney where he was unable to find remunerative employment.
2. The hearing was conducted over eight days. It involved six witnesses, of whom two were experts who appeared by video link.
3. The vast majority of the hearing was dedicated to evidence about the parties' marriage, which was the most significant issue as it determined the availability of a property division. In this, I found Mr. Ahmed was not a credible witness. Mr. Ahmed's claim for shared parenting was without merit. His claim for spousal maintenance consumed no more than one-half day of the hearing time.
4. Dr. Naseem made a formal Offer to Settle on May 14, 2015, almost one year before the hearing began. The Offer allowed that Mr. Ahmed could retain his bank accounts, with a value of less than \$211,000.00. The Offer gave him nothing toward the claims he made.

5. At the conclusion of the hearing, Mr. Ahmed was permitted to retain his bank accounts and was awarded a further \$152,366.00.
6. In the context of Civil Procedure Rule 10.09(1), Dr. Naseem did not achieve a favourable judgment following the hearing.
7. I am to award costs which I am satisfied “will do justice between the parties”: Civil Procedure Rule 77.02(1).
8. Rule 77.08 permits me to award lump sum costs instead of tariff costs. For five reasons, I find it is more appropriate to awarding lump sum costs will do more to do justice between the parties than to award costs calculated on the tariffs.
9. First, the significant issues were non-monetary issues. The most significant issue related to the status of the parties’ marriage. The determination of this issue was dispositive of Mr. Ahmed’s claim for a property division. The second most significant issue was Mr. Ahmed’s parenting claim. The tariffs are premised on monetary claims.
10. Second, when dealing with non-monetary issues, the typical approach is to treat each day of the hearing as contributing \$20,000.00 to the “amount involved”, which is the basis for applying the Tariffs: *Jachimowicz*, 2007 NSSC 303 at paragraph 26. Considering the complexity of the issues surrounding the validity of the marriage and the need for expert testimony, I find that an “amount involved” calculated with reference to the length of the trial generates a costs award, on the Tariff, which is too low.
11. Third, attempting to calculate the amount involved having regard to the financial matters is not possible, given the difficulties of valuing the assets and the spousal maintenance award. For example, the home has disposition costs, while RRSPs and retained earnings in Dr. Naseem’s company are subject to income taxes. Mr. Ahmed’s claim for periodic spousal support is subject both to income tax and a present value discount.
12. Fourth, success was mixed and Mr. Ahmed did achieve a result that was superior, one regard, to Dr. Naseem’s formal Offer to Settle.
13. Fifth, Mr. Ahmed’s failure to disclose documents and his disclosure of new documents mid-trial is conduct to be censured.
14. Considering Dr. Naseem’s success, I award her lump sum costs of \$70,000.00. This amount is inclusive of all disbursements.
15. If Mr. Ahmed has not paid the costs award by June 30, 2016, it may be set off against the lump sum spousal maintenance amount owed to him by Dr. Naseem.
16. Dr. Naseem’s counsel shall prepare the order arising from the proceeding, including these terms as to costs.

Elizabeth Jollimore, J.S.C.(F.D.)