

SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)

Citation: *Napier v. Napier*, 2016 NSSC 372

ENDORSEMENT

Catherine Napier v. Andrew Napier

1201-068599; SFH-D 095623

October 31, 2016

- Angela Walker for Catherine Hope
- Andrew Napier on his own behalf

Request for costs of \$875.00 pursuant to Tariff F, where Mr. Napier discontinued his variation application.

Decision:

Andrew Napier shall pay Catherine Hope costs of \$850.00 immediately.

Reasons:

1. The parties were divorced on April 18, 2016.
2. Their Corollary Relief Order provided that there would “be no variation of child support due to a change in Andrew Napier’s income for two years, that is, until April of 2018 and, in any event, Andrew Napier cannot apply to vary the child support based on his income unless his annual income is less than \$80,000.00.”
3. Andrew Napier applied to vary his child support obligation on May 31, 2016.
4. The parties appeared in Court on July 19, 2016 when Andrew Napier stated his intention to discontinue his variation application.
5. Andrew Napier filed a Notice of Discontinuance on August 22, 2016.
6. Civil Procedure Rule 77.03(3) provides that “Costs of a proceeding follow the result”. Costs are in my discretion. A decision not to award costs must be principled.
7. Catherine Hope seeks costs of \$875.00 to compensate her for legal fees incurred to respond to Andrew Napier’s discontinued variation application.
8. Andrew Napier’s variation application was without merit, having regard to the specific terms of the parties’ Corollary Relief Order, which was consented to by

counsel for Andrew Napier, on Andrew Napier's behalf.

9. Catherine Hope filed her submissions seeking costs on September 15, 2016.
10. Andrew Napier filed submissions in response on October 14, 2016. In his submissions, he offers unsworn evidence of circumstances surrounding his variation application. He does not dispute that he applied to vary the Corollary Relief Order and discontinued his application within the following two months.
11. Civil Procedure Rule 77.02(1) states that I “may, at any time, make any order about costs as [I am] satisfied will do justice between the parties.”
12. Having regard to Tariff F, the terms of the Corollary Relief Order and the timing of Andrew Napier's variation application, I order Andrew Napier to pay Catherine Hope costs of \$850.00 immediately.
13. A costs order is attached.

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