

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

Citation: *Wells v. King*, 2015 NSSC 403

**ENDORSEMENT**

**Terri-Lynne Wells v. Gerard Thomas King**  
**Prothonotary No. 1201-065830; SFH-D 078781**

**September 9, 2015**

- Damian J. Penny for Terri-Lynne Wells
- Robyn L. Elliott Q.C. for Gerard King

*Request for costs of \$15,000.00, based on a hearing of two days where Mr. King had made an offer that would have provided Ms. Wells with a result that was more beneficial to her than the result at trial.*

**Decision:**

Terri-Lynne Wells shall pay Gerard King costs of \$11,718.00 forthwith.

**Reasons:**

1. Mr. Wells was successful in his claims with regard to the date of separation, exclusion of his Ledcor pension, termination of spousal support and repayment of child support. He failed in his claim to have all of certain child support payments returned to him, but was successful in being reimbursed for certain overpayments of child support.
2. Mr. King made submissions on costs. Ms. Wells did not.
3. The divorce trial was heard over two days.
4. Prior to the trial there were issues relating to Ms. Wells' disclosure of health-care files which, she suggested, were relevant to her claim for spousal support. Obtaining this information entailed delays which put Mr. King to additional expense. Ultimately, the information was of use to Mr. King in defeating Ms. Wells' claim that the parties had not separated in 2005.
5. Pursuant to Civil Procedure Rule 77.02(2) I have a general discretion to award costs so as to do justice between the parties.
6. Mr. King's offer of July 9, 2015 may have left Ms. Wells in a better position than she occupies as a result of my decision. While Ms. Wells would have incurred some

income taxes through reclassification of child support payments, it's unclear what the additional resulting interest and penalties would have been. It is also unclear what "overpayment" of spousal support Ms. Wells should have made to Mr. King in response to his offer's term that "spousal support payments terminate **forthwith**".

7. The amount involved was \$37,299.00. Scale 2 of Tariff A provides basic costs of \$6,250.00. I find that Scale 3 is appropriate, having regard to my findings about Ms. Wells' credibility, her delay in finalizing the terms of the interim agreement relating to reclassifying child support, and the delay resulting from the incomplete disclosure of health care information. The Scale 3 amount is \$7,813.00.
8. The trial required two days. This is an additional factor to be included in calculating costs and \$2,000.00 is to be added for each day.
9. I order Terri-Lynne Wells to pay Gerard King costs of \$11,813.00 forthwith. This amount is inclusive of all disbursements.

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