

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

**Citation:** *Murphy v. Murphy*, 2018 NSSC 88

**March 27, 2018**

**Krista Murphy and Paul Murphy**  
**SFH1201-063235**

- Hearing June 12, 2017.
- Oral decision October 5, 2017

*The Applicant requests costs based on Tariff A (less than \$25,000), \$5,000.00 for ½ day of trial and argues she was 2/3 successful and costs should be \$3,000.00, in the alternative the Applicant argues under Tariff F, considering the divided success, costs of not more than \$3,000.00 for the settled portion of the matter. Total costs requested: lump sum costs of \$3,000.00.*

*The respondent requests costs based on Tariff A, scale 3 (+25%), ½ day of trial “\$5,000.00 plus \$1000.00 for ½ day of trial for a total of \$6000.00. Suggesting he consented on one issue and his offer to settle on the other issue was greater than what was awarded by the court.*

**Decision:**

Paul Murphy shall pay costs of \$3,000.00 to Krista Murphy on or before October 24, 2018.

**Reasons:**

1. Parties were married in December 30, 2002. The parties have two children, a son born in January 2005 and a daughter born in September 2006. The parties were divorced on March 18, 2011.
2. Ms. Murphy had primary care of the children and Mr. Murphy had parenting time throughout the school year and half of the summer months and half of the holiday time.
3. Mr. Murphy agreed to pay child support and a share of child care costs for ten months of the year (except in July and August).
4. When the Consent Corollary Relief Order was granted by J. M. Clare MacLellan and then issued March 18, 2011, Mr. Murphy’s income was found to be \$44,195.41 (based on 2010 income. Ms. Murphy’s income was found to be \$83,256.00. (no 2010 income available on file for Ms. Murphy).

5. Mr. Murphy agreed to pay child support in the amount of \$636.00 per month for 10 months of the year. He argued that when the parties negotiated the terms of the consent order, Mr. Murphy's willingness to agree the children would be in Ms. Murphy's primary care during the school year, that he would not ask for any of her pension (as of 2008 pensionable service 10 years and 28 days), or for spousal support from Ms. Murphy were taken into account.
6. The Affidavit supporting an uncontested divorce, sworn by Ms. Murphy states  
  
"My income is \$83,256 and the Respondent's is \$44,195. The CRO provides for the Respondent to pay child support in accordance with the Federal Child Support Guidelines, except in the months of July and August when the children will alternate between households on a weekly basis and no child support will be paid".  
  
"with the exception of the summer months, the Agreement detailed in the (Consent) CRO is consistent with the Guidelines and on that basis I believe it is a reasonable arrangement for the children. Given that they will spend equal time with each parent in the summer, and the fact that my income is higher than the respondents, I also believe that the agreement reached for the summer will ensure that the children's needs are met"
7. Mr. Murphy agreed to pay child care costs of \$149 per month for several months, and then child care costs of \$115.00 per month starting September 1, 2011. Those costs were paid by Mr. Murphy to Ms. Murphy up to June 2016 despite child care costs ending after September 1, 2015.
8. Both parties were ordered to disclose documents proving their income on a yearly basis. Neither party complied.
9. Around October 2015, Ms. Murphy learned Mr. Murphy's income had increased substantially. Ms. Murphy learned about the increase after she requested and Mr. Murphy provided her with the financial disclosure necessary to renew their life insurance.
10. Ms. Murphy filed a Notice of Variation Application on June 14, 2016. She sought:

**Prospective child support:**

- a. Prospective child support pursuant to section 3 of the *Child Support Guidelines*. *Mr. Murphy agreed to an increase to the table amount according to his income but only 10 months of the year (10 months vs. year-round).*
- b. A (partial consent) interim order was issued September 6, 2016 and required Mr. Murphy to pay \$1,119.00 per month. Although ordered to do so, Mr. Murphy did

not consent to pay the increased child support in July and August 2016 or any other year on a go forward basis.

- c. Mr. Murphy argued there was no material change in circumstances / or that the parties' agreement for him to pay child support for only 10 months of the year was tied to property division or spousal support. This argument was not supported on the face of the Corollary Relief Order granted or any supporting documents.
- d. Ms. Murphy was successful with respect to the issue of prospective child support.
- e. Ms. Murphy did request and the parties have advised the court there is agreement to register with the recalculation program.

**Retroactive child support sought by Ms. Murphy:**

Ms. Murphy

- f. Ms. Murphy sought a retroactive award in the amount of \$12,364.
- g. Retroactive child support pursuant to section 3 of the *Child Support Guidelines*, retroactive to the date when Mr. Murphy's income increased. Mr. Murphy's income was found to be \$44,195.41(2010), and referenced as his income in the Corollary Relief Order granted in 2011, while Ms. Murphy's income was stated to be \$83,256.00.
- h. A review of Mr. Murphy's financial disclosure determined his income in 2011 was \$51,066.00, in 2012 it was \$53,356.00, in 2013 it was \$53,268.00, in 2014 it was \$73,376.00, in 2015 it was \$75,770.00, and in 2016 it was \$83,728.00. While Ms. Murphy's income had increased to approximately \$102,984.00. It is apparent from Mr. Murphy's disclosure that the parties' income disparity decreased substantially in 2014 and then again in 2016.

Mr. Murphy

- i. Mr. Murphy argued that despite the children no longer requiring child care after September 2015, and Ms. Murphy receiving notice of the increase in Mr. Murphy's income in or around October 2015, there was no suggestion or request by Ms. Murphy for a decrease or an increase in child support until he inquired about changing their parenting arrangement to 40% or more (from what he described as him caring for the children 38.4 or 36 % of the time).
- j. Mr. Murphy claimed that after he inquired about the parenting arrangement, Ms. Murphy filed a Notice for Review in June 2016. He also argued he had been contributing in other ways such as to the cost of hockey, lacrosse, dance, skating,

costs for tournaments (Ms. Murphy argued there was a lack of disclosure), and that he had an honestly held belief his obligations were being met. He argued that Ms. Murphy knew his income (or should have known his income) had increased given that she was aware of his changing employment situation.

- k. Mr. Murphy sought a retroactive adjustment for child care under section 7 – as child care ended **September 2015, and he had continued to pay for child care until June 2016 resulting in an overpayment of \$1,115.00.**
11. The hearing required a half day.
12. Ms. Murphy has advised the court that she suggested the parties bear their own costs but this offer was refused by Mr. Murphy. Ms. Murphy also raised several issues with respect to missed filing deadlines and incomplete disclosure on the part of Mr. Murphy (special expenses as one example).
13. Mr. Murphy argues that he made an offer to pay \$4000.00 (June 1, 2017) - \$5000.00 (June 5, 2017), in retroactive support. Ms. Murphy points out that Mr. Murphy's offer was conditional on him continuing to pay the table amount of child support 10 months of the year. Mr. Murphy argues that given the court's award regarding retroactive support was significantly lower than what Ms. Murphy was requesting, and lower than what he offered (conditionally), that he should be awarded costs of \$6000.00. Ms. Murphy argues that the timeline for making the offer must be considered when awarding costs (variation hearing heard June 12, 2017), and Ms. Murphy also argues that Mr. Murphy was not successful in having the court exclude payments in July and August and therefore did not obtain a "favourable judgement".
14. I find Ms. Murphy was substantially successful and should be awarded costs.
15. The most significant issue at the hearing was a variation of prospective child support. The court has little discretion in this area. The request for a retroactive increase in child support I consider as secondary to the issue of prospective child support. A retroactive increase in child support is subject to significant discretion. The court is expected to take a holistic approach to the question by examining overarching principles and the governing factors including any delay, any blameworthy conduct, the children's needs, and any resulting hardship to the payor (with priority given to the payor's ability to pay prospective child support).
16. Ms. Murphy was successful in having prospective child support ordered on a year-round basis, based on Mr. Murphy's current income. In addition, retroactive child support was ordered on a year-round basis as of the date of Ms. Murphy's application (effective /

formal notice) in June 2016, in the amount of \$2,688.00 to be paid to Ms. Murphy by Mr. Murphy by the end of April 2018.

17. 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.

18. 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.”

19. Costs were plead by Ms. Murphy.

20. Having regard to Tariff A and F, a half day hearing. I order Mr. Murphy to pay costs of \$3,000.00 to Ms. Murphy by October 24, 2018. This amount is inclusive of all disbursements.

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Cindy G. Cormier, J.S.C.(F.D.)