

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *S.D. v. J.H.*, 2019 NSSC 267

Date: 2019-09-13

Docket: SFH-MCA 66775

Registry: Halifax

Between:

S.D.

Applicant

v.

J.H.

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Elizabeth Jollimore

Summary: Successful father entitled to costs of \$4,000.00 on severed application to prohibit child's removal to British Columbia. Ultimate costs and date for payment will be fixed after father's entire variation application determined.

Key words: Family, Costs

Legislation: *Nova Scotia Civil Procedure Rules, Rules 77.02(1), 77.03(3), 77.04*

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(FAMILY DIVISION)**

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ENDORSEMENT

September 13, 2019

S.D. v. J.H.

2010 SFH-MCA 66775

Noel Fellows for Mr. H, submissions filed September 3, 2019

Hannah Rubenstein for Ms. D, submissions filed September 5, 2019

Request for costs of \$4,000.00 inclusive of disbursements.

Decision: J.H. is entitled to costs of \$4,000.00 on this portion of his application. Ultimate costs and the date for payment will be fixed after the remainder of Mr. H's variation application has been determined.

Reasons

1. Mr. H was successful in his application for an order prohibiting Ms. D from removing 11-year old D from Nova Scotia.
2. The hearing required a half-day. Three witnesses were cross-examined on previously filed affidavits. My oral decision required the parties to return to court for approximately one hour the following day.
3. Civil Procedure Rule 77.03(3) says that "Costs of a proceeding follow the result." Costs are in my discretion. A decision not to award costs must be principled.
4. Mr. H incurred fees of \$7,170.00 (based on almost 24 hours' work at an hourly rate of \$300.00) and disbursements of approximately \$260.00. Additionally, there is HST of almost \$1,100.00 due on

the legal fees. His total expense is approximately \$8,500.00.

5. Mr. H says that Ms. D was steadfast in her decision to oppose his request for an order prohibiting D's move to British Columbia though the "factors supporting the prohibition of the relocation request heavily outweighed those permitting it; and, it was clear that it was in D's best interests to remain in Nova Scotia."
6. Ms. D says she should not be required to pay costs because this is a custody case dealing with a child's best interests. She says that her position was reasonable, and an award of costs will "put [her] into financial hardship."
7. All parenting cases engage consideration of a child's best interests. Best interests are the sole determinant of parenting.
8. Ms. D says her position was reasonable and motivated by D's best interests. I found that her plan was aspirational, a hope that another new start would resolve D's difficulties, without evidence to support the hope. Ms. D's plan would have a significant impact on D's parenting and contact time with her father and her extended paternal family. Parenting and contact time would be challenged by distance and time zones.
9. There was no evidence of school or community supports in Surrey that could meet D's needs.
10. Ms. D's hopes were genuine, but her position was not reasonable.
11. I may consider a party's ability to pay in awarding costs against them.

12. Ms. D seeks to be protected from an order for costs, saying that it would put her into financial hardship.
13. Civil Procedure Rule 77.04 allows a party to seek protection from a costs order. Ms. D did not seek this protection.
14. The only evidence about Ms. D's financial position was that she had been able to earn \$30,000.00 annually at some point. I do not know her current circumstances, in terms of her income or expenses so there is no evidence on which I can conclude that a costs award would "put her into financial hardship".
15. Equally, I have no proof of Mr. H's income or of the impact of the cost of this litigation on him. I cannot assume he is better able to afford litigation.
16. There were no complicating factors in the hearing. Each party filed pre-hearing submissions which reduced the time needed for the hearing. The parties participated in a pre-trial conference to fix deadlines for the hearing.
17. Civil Procedure Rule 77.02(1) says I may make any order about costs that I am satisfied will do justice between the parties.
18. Considering the issue litigated, Ms. D's position, Mr. H's success, the conduct and duration of the hearing, I find an award of costs of \$4,000.00 is appropriate.
19. In addition to seeking an order prohibiting D's relocation, Mr. H also wants to vary the current parenting arrangement so D will be in shared parenting arrangement. This part of his variation application was severed, so the relocation issue could be resolved before the school year began.

20. Mr. H is entitled to costs of \$4,000.00 on this portion of his application. Ultimate costs and the date for payment will be fixed after the remainder of Mr. H's variation application has been determined.

Elizabeth Jollimore, JSC(FD)

Halifax, Nova Scotia