

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

**Citation:** J.E.W. v. W.E.D., 2019 NSSC 276

**Date:** 09-13-2019

**Docket:** 112105

**Registry:** Halifax

**Between:**

**J.E.W.**

**Applicant**

**v.**

**W.E.D.**

**Respondent**

**Costs Endorsement**

**Date**

September 13, 2019.

**Background**

[1] Following a contested application, the court rejected the mother's request to relocate the children's permanent residence to Calgary. The court held that it was in the children's best interests to live in HRM in a joint and shared parenting arrangement. The children were placed in the father's care 6/14 days during the regular schedule, and for an equal amount of time during holidays, vacations and special occasions. Two decisions outline my reasons and are reported at *J.E.W. v. W.E.D.*, 2019 NSSC 141 and *J.E.W. v. W.E.D.*, 2019 NSSC 199.

[2] The father now seeks costs. His submissions were filed on July 30, 2019. The mother's submissions were filed on August 7, 2019.

**What is the appropriate cost award?**

***Position of Parties***

[3] The father seeks costs of \$12,500 as a substantial contribution to his legal fees. He states that he was the successful party and that there is no meritorious reason to deny him costs. He states that there are four aggravating factors. First, the mother acted in bad faith when she did not provide sufficient notice of the intended move and when she attempted to minimize his parental role. Second, the mother did not negotiate in good faith. Third, the father had to retain a lawyer which was expensive. Fourth, the matter was complex and important.

[4] The mother states that each party should bear their own costs. The mother states that there is a judicial trend to decline an award of costs in mobility cases where the parties acted reasonably.

The mother relies upon **SN v. IF**, 2009 NSSC 23; **Langmead v. Langmead**, 2010 NSSC 481; **Laughlin v. Coughlin**, 2011 NSSC 204; and **Snelgrove v. Butler**, 2011 NLTD(F) 6.

[5] The mother states that she acted reasonably. First, she notes that the father always worked in Alberta, so it was reasonable for both parties to relocate there. Second, the father was unsuccessful in his hunt for a job in HRM until just before the hearing. Third, the mother was always the primary care provider. Fourth, at the time of the application, the father was living in Cape Breton. Fifth, the mother had a plan to ensure contact between the father and the children.

[6] In response to the father's allegations, the mother states as follows:

- That she did inform him of the move through a family member.
- That she was prepared to negotiate. The father was the one who cancelled the settlement conference. She did not.
- There was nothing particularly complex about the hearing.
- That she incurred legal fees of \$24,622.50, of which \$19,690.50 is associated with the mobility hearing.

### ***Decision on Costs***

[7] Rule 77 governs awards of costs. I apply the law as stated in **Armoyan v. Armoyan**, 2013 NSCA 136. I have reviewed the cases submitted by both counsel.

[8] I direct the mother to pay costs to the father of \$4,000. This payment will do justice between the parties for the following reasons:

- The father was almost entirely successful in that the relocation application was refused, and a joint and shared parenting arrangement implemented. The regular schedule was not, however, an equal sharing of time as argued by the father. I assign the father's success rate at 80%.
- The mobility case trend outlined by the mother is not applicable because the mother did not act reasonably throughout. In particular, I found that the "mother minimized the father's involvement with the children, and in some respects overstated her own". I found that the father "was not a disinterested and passive father who neglected his parenting responsibilities" as the mother alleged. I found that "the father was actively engaged and substantially involved with his children": para 37 of **J.E.W. v. W.E.D.**, 2019 NSSC 141. The mother's false allegations about the father fueled the parenting dispute and made settlement prospects difficult.
- The father, not the mother, cancelled the settlement conference.
- The notice application was heard before Justice MacKeigan and not me. Costs respecting that appearance should be made to Justice MacKeigan.

- My award of costs relates solely to the issues that were litigated before me.
- This matter was heard in one day on March 20, 2019, together with another appearance of about one hour on April 25, 2019 for the oral decision. After the oral decision, the parties filed written submissions on the parenting plan they were seeking in lieu of another court appearance.
- There was no amount involved.
- The file was processed in a manner similar to a lengthy, contested chambers motion.
- Tariff C indicates a range of \$2,000 per day and \$250 - \$500 for an hour appearance. I equate \$2,500 as the range considering the additional filing.
- Tariff C (4) provides the court with the discretionary authority to increase this amount by applying a multiple of two, three or four based on the matter's complexity, the matter's importance to the parties; and the amount of effort involved in the hearing's preparation and conduct.
- The matter was not overly complex, although there were interpretation issues surrounding new legislation. The false allegations about the father's parenting also consumed unnecessary time and attention.
- The issues were of great importance to the parties and their children.
- The parties presented their cases in an organized and efficient fashion.
- In the circumstances, I apply a multiplier of two to determine costs that are just and appropriate which equates to \$5,000. 80% of \$5,000 equals an award of \$4,000.

[9] Costs are payable in 30 days.

Forgeron, J.