

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Hein v. Hein*, 2019 NSSC 351

Date: 2019-11-26

Docket: 1201-056740 SFH-D 015001

Registry: Halifax

Between:

Palmyra Hein

Petitioner

v.

Stefan Hein

Respondent

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Judge: The Honourable Justice Elizabeth Jollimore

Submissions: Lucia Hein on October 24, 2019

Stefan Hein on November 18, 2019

Summary: Costs of \$8,750 awarded following 1-day child support variation application.

Key words: Costs

Legislation: Civil Procedure Rule 77.02(1), 77.03(3)

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SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)
***Hein v. Hein*, 2019 NSSC 351**
ENDORSEMENT

November 26, 2019

Palmyra Hein v. Stefan Hein
2002; 1201-056740 SFH-D 015001

- Palmyra Lucia, self-represented
- Stefan Hein, self-represented

Request for costs of \$8,750.00, following a day-long variation proceeding.

Decision:

Stefan Hein shall pay Palmyra Lucia costs of \$8,750.00

Reasons:

1. Palmyra Lucia applied to the court for retroactive and prospective child support, claiming a minimum of \$44,617.00 plus an additional amount as lump sum future child support for her two daughters with Stefan Hein. Stefan Hein opposed the request.
2. The hearing required one day.
3. The entire issue at the hearing was financial.
4. In total, Ms. Lucia was awarded \$45,279.72. This is less than she sought.
5. There is no evidence that Mr. Hein offered Ms. Lucia any amount, so her decision to proceed to a hearing was appropriate.
6. While self-represented at the hearing, Ms. Lucia retained counsel on an *ad hoc* basis to assist her. Counsel filed two briefs.
7. Considering Tariff A, the basic scale for a hearing where the amount involved is between \$40,000.00 and \$65,000.00 is \$7,250.00 with an additional \$2,000.00 for the full day trial.

8. The amount Ms. Lucia seeks is less than the Tariff amount.
9. 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.
10. Mr. Hein argues that he should not be required to pay costs because he suggested the parties deal with the claims through arbitration. Hiring an arbitrator would have added to the expense for each party.
11. Court orders were required to compel financial disclosure from Mr. Hein. An arbitrator may not have been able to compel this necessary disclosure. A preservation order was imposed on Mr. Hein’s share of his father’s estate. This required the court. Ms. Lucia’s decision to rely on the court process was appropriate.
12. The matter was complicated by the need for court orders to compel disclosure from Mr. Hein. The hearing was adjourned from the spring to the fall of 2019 because Mr. Hein failed to file financial disclosure when ordered to do so.
13. 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.”
14. Considering the tariff, and Mr. Hein’s late disclosure of tax returns and his affidavit, I order him to pay Ms. Lucia costs of \$8,750.00. This amount is inclusive of all disbursements.
15. Any funds currently held in trust for Stefan Hein from his share of Bruno Hein’s estate will be paid to Palmyra Lucia in satisfaction of this costs order immediately.
16. If the funds currently held in trust for Stefan Hein from his share of Bruno Hein’s estate are insufficient to satisfy this costs order in full, the outstanding shortfall must be paid immediately upon the estate’s receipt of funds from the sale of Bruno Hein’s real estate.

Direction:

17. I have prepared the order which I enclose.

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