

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Bussey v. Bussey*, 2019 NSSC 379

Date: 20191126

Docket: 1217-000536

Registry: Port Hawkesbury

Between:

Charles David Bussey

Applicant

v.

Arlene Marie Bussey

Respondent

Judge:

The Honourable Justice Moira C. Legere Sers

Heard:

October 21, 2019, in Port Hawkesbury, NS

Counsel:

Wayne MacMillan for Charles David Bussey
Jeanne Sumbu for Arlene Marie Bussey

By the Court:

[1] On June 18th, 2019 at an in-court appearance the parties and their counsel asked to participate in and have their matter set down for a settlement conference.

[2] The Settlement Conference was scheduled to take place on October 21, 2019.

[3] The Applicant, Mr. Bussey, resides in Newfoundland. The court directed Mr. Bussey to file his brief 6 weeks in advance (the week of September 9th) and the Respondent 4 weeks in advance (the week of Sept 23rd). Neither party complied with filing deadlines as to date.

[4] Court Staff sent an email on Oct. 15, 2019 advising that their briefs had not been received and asked when they planned to file them.

[5] Ms. Bussey's counsel filed her brief on October 16, 2019.

[6] Mr. Bussey's counsel filed his brief on October 17, 2019.

[7] Both Counsel appeared on the date assigned as did Ms. Bussey.

[8] Mr. Bussey did not appear.

[9] Counsel was unable to contact Mr. Bussey to determine the reason for his failure to appear.

[10] At the conference while efforts were being made to locate Mr. Bussey, Ms. Bussey discovered that the phone number counsel had for his client was incorrect. Ms. Bussey provided him with Mr. Bussey's correct phone number.

[11] Despite that, no contact was established, and the Settlement Conference was concluded without further discussion. I advised I would consider costs.

[12] I gave Mr. Bussey's counsel time to ascertain what had prevented Mr. Bussey from attending given the distance from court.

[13] Mr. Bussey later advised his counsel that he did not know he had to appear and thought counsel could proceed on his own and settle without his involvement.

[14] Counsel advises now he wishes to reschedule and proceed to a settlement conference to resolve the issues between them.

[15] Once a request is made by counsel or the parties to schedule a settlement conference, the Associate Chief Justice assigns a Justice to travel to be available to preside. The resident Justice does not assign the case to herself usually, so as to preserve her ability to conduct the hearing if the settlement conference is not successful.

[16] Both parties chose to participate and asked for ½ day to be set aside to deal with this Settlement Conference.

[17] Having chosen a process that includes a settlement conference, once commitments are made, counsel **are not at liberty to cancel** without the Justice's consent unless the Justice determines it appropriate.

[18] Barring circumstances that make proceeding impractical or impossible, if cancellation occurs; particularly cancellation at such late date; the Justice would/could require an assessment of costs, given the lost preparation time, the lost court time and travel required to make this process available to litigants.

[19] To summarize Justice Dellapinna's comments in *Burgar v Assh*, 2017 NSSC 135:

Although a settlement conference is a voluntary process, once the parties agree to take part in a settlement conference they are bound by the Court's directions. If either party wishes to cancel the conference, they must make that request to the court and it is for the court to decide. If the court is prepared to cancel the settlement conference it is subject to the Court's discretion on costs.

Costs should be restricted to expenses incurred by the opposing party for work that would have no lasting value if the settlement conference does not proceed. Other factors that may weigh on the Courts decision on the amount of the costs are the timing of the cancellation relative to the parties filing deadlines and the date of the settlement conference, the reason for the cancellation and the reasonableness and the necessity of the work performed or the disbursement incurred by the opposing party. (Paragraphs 33-37) In the case cited \$250 costs were awarded.

[20] In the absence of any reasonable excuse this is a clear case to consider an award for costs

[21] The Settlement Conference in this case was cancelled after all party's counsel and the presiding Justice appeared at the date and time set. The Applicant's own counsel was surprised at the applicant's failure to appear. He clearly expected his client to appear.

[22] All preparations had been completed, a Justice was assigned, and present having travelled to the site. Ms. Bussey's counsel travelled to the court as well. Time was spent during the Settlement Conference trying to track down the Applicant, to no avail.

[23] This was unreasonable and costly.

[24] It should be noted that to avoid the necessity of Mr. Bussey's travelling to Nova Scotia for the Settlement Conference process, it is highly likely permission would have been granted had Mr. Bussey requested to appear by phone.

[25] To facilitate and support the settlement conference process, the court usually insists in such cases that the lawyer who is present with a client elsewhere has access to their client to ensure the client is fully informed, to give advice and take instructions while the conference is underway. Those accommodations are made frequently.

[26] Ms. Bussey's counsel seeks cost of \$3,114.45 which she indicates is 70% of her fee inclusive of HST and disbursements. There is no doubt her client was prejudiced.

Conclusion

[27] I have reviewed the account for services between the date of assignment of the Settlement Conference date and the date of appearance on October 21st, 2019.

[28] I have attempted to distinguish between those costs associated with a settlement conference that are lost costs and removed from the calculation those expenses related in the ordinary course to review and collection of financial information and preparations for discussions between counsel in the ordinary course as they may still be fruitful.

[29] As Justice Dellapinna indicated and I agree, costs should be restricted to expenses incurred by the opposing party for work that would have no lasting value if the settlement conference does not proceed.

[30] Those expenses I removed are not solely related to preparation for settlement conference but to the final resolution, whether or not a settlement conference takes place, at which time those costs remain in issue and can be addressed.

[31] In doing so, I am aware that counsel has already indicated his client is prepared to schedule another Settlement Conference. If this does not happen those

costs not covered in this costs award can certainly be addressed in the cause.

[32] I order costs of \$2,260 inclusive of travel to and from the court to set the matter down and to appear at the conference. These costs shall be paid forthwith.

[33] To avoid further costs of travel may I suggest they schedule a date by phone.

Legere Sers, J.