

SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)
Rowlings v. Rowlings, 2020 NSSC 82
ENDORSEMENT

February 28, 2020

Robert Rowlings v. Danielle Rowlings
2018; Prothonotary No. 1201-71522; SFH-D 112391

- Bryen E. Mooney for Robert Rowlings (submissions on January 16, 2020)
- Danielle Rowlings, self-represented (submissions on February 13, 2020)

Robert Rowlings requests costs of \$32,776.35 inclusive of disbursements, following a 3-day divorce and corollary relief proceeding.

Decision:

1. Danielle Rowlings shall pay Robert Rowlings \$10,725, comprised of costs of \$9,750 based on Tariff A, and a \$975 contribution to his disbursements. Payment must be made by August 31, 2020.

Reasons:

2. Over a three-day divorce and corollary relief application, Robert Rowlings and Danielle Rowlings litigated five issues:
 - a. Whether their daughter should be in a primary care or shared parenting arrangement
 - b. Whether Ms. Rowlings should have sole decision-making responsibility or if the parties should share decision-making responsibility
 - c. How much child support, if any, Robert Rowlings should pay
 - d. The value of a car
 - e. Whether Mr. Rowlings should be required to designate his interest in Ms. Rowlings' pension in favour of the couple's child after his death
3. I ordered shared parenting and joint decision-making responsibility. Mr. Rowlings sought this relief and Ms. Rowlings opposed it. I ordered him to pay \$100 per month in child support: he asked to pay none. I ordered Ms. Rowlings to pay him \$1,500 for his interest in a car and determined that Mr. Rowlings wasn't required to designate his interest in Ms. Rowlings' pension in favour of the couple's child after his death. Overall, Mr. Rowlings was the successful party.
4. The most significant issues at the hearing related to parenting time and decision-making responsibility. This was the focus of most evidence and argument. While the parties agreed upon many details of their parenting

arrangement, they were unable to resolve the significant issue of parenting time and decision-making responsibility.

5. 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.
6. A party seeking costs files an affidavit outlining their costs. Typically, this attaches either time entry records or bills which show the time spent and work performed by each person who worked on the case.
7. Costs are to provide a substantial contribution to the successful party’s reasonable fees: *Armoyan*, 2013 NSCA 136, at paragraph 16. So, the affidavit must provide information that enables me to assess the reasonableness of the fees.
8. Ms. Mooney’s affidavit attaches 3 exhibits: her firm’s “legal fee summary”, an accounting summary for disbursements, and a “transaction summary” outlining time entries for the time frame of February 8, 2018 to December 31, 2019.
9. Ms. Mooney’s firm’s legal fee summary is 52 lines long. Each line is divided into 11 columns, headed: Matter ID (Mr. Rowlings’ file number); Date, Closing Date, Stmn No, Type, Total, Balance, Fees, Hard Co [costs, I assume], Soft Costs, and Interest.
10. I surmise that the legal fee summary reflects 24 accounts rendered to Mr. Rowlings between August 29, 2017 and December 31, 2019. Each account total is broken down to reflect fees, hard costs and soft costs. There is no explanation of what the hard or soft costs are. This shows me the amounts Mr. Rowlings was billed. It doesn’t show the time spent or work performed by each person who worked on the case.
11. The transaction summary outlining time entry statements (exhibit 3) is 4 pages long, with 142 rows of entries. Each entry reflects the date made, the initials of the person who worked, the amount of time spent, an hourly rate and a calculation of an amount – time spent multiplied by hourly rate. There is no description of any work done. Without a description of the work done I cannot assess the fees’ reasonableness: *Brown v. Walters*, 2020 NSSC 56 at paragraph 11, point 4.

12. Since I cannot assess the reasonableness of the fees Mr. Rowling paid, I must determine costs on another basis.
13. In both *Collins v. Speight* 1993 CanLII 4668 (NS SC), and in *Wyatt v. Franklin* 1993 CanLII 4580 (NS SC), Justice Goodfellow concluded that the amount involved in two and one-half day trials was \$45,000. Justice Goodfellow described both as not complex. Later, in *Toronto Dominion Bank v. Lienaux*, 1997 CanLII 15017 (NS SC), Justice Goodfellow suggested a general rule for cases where a substantial non-monetary issue was involved. He said that he treated each day or part day of the trial as equivalent to \$15,000 for the purpose of determining the “amount involved”.
14. In 2007, Justice Lynch reviewed this general rule in *Jachimowicz*, 2007 NSSC 303 (CanLII), at paragraph 26. There, the parenting trial took approximately thirteen days: six days of evidence from the initial trial, five days of review evidence and numerous other appearances which added approximately two more days. She adjusted the daily equivalent amount from \$15,000 to \$20,000 “to reflect the increased costs of litigation.”
15. Applying Tariff A, I consider the amount involved in this trial to be \$66,000. The basic scale for a trial of this length is \$9,750.
16. I may consider a party’s ability to pay costs in making a costs award. In *M.C.Q. [sic M.Q.C.] v. P.L.T.*, 2005 NSFC 27 (CanLII), Judge Dyer reminded me that some litigants may “consciously drag out court cases at little or no actual cost to themselves (because of public or third party funding) but at a large expense to others who must “pay their own way”.” If this happens, he said, “Fairness may dictate that the successful party’s recovery of costs not be thwarted by later pleas of inability to pay. [See *A.E.M. v. R.G.L.*, 2004 BCSC 65 (CanLII)].”
17. Ms. Rowlings says I should exercise my discretion and not award costs because costs would have an adverse impact on the emotional or material well-being of the couple’s child: *Connelly*, 2005 NSSC 203.
18. Ms. Rowlings has gone through a consumer proposal. Her debts are reduced as a result. Her annual income is almost \$61,000. Her household is comprised of herself and 1 child on a half-time basis.
19. Mr. Rowlings’ annual income is approximately \$69,000. His household is comprised of himself and his partner (2 adults), 1 child on a full-time basis and 1 child on a half-time basis.

20. The Rowlings' daughter is in a shared parenting arrangement. Both parties have costs for her in the home. If there is no contribution to Mr. Rowling's legal costs, there may be adverse consequences for the child in his home.
21. Civil Procedure Rule 77.04 allows a party to seek protection from a costs order. Ms. Rowlings did not seek this protection before the hearing, though Mr. Rowlings was explicit that he would claim costs if he was successful. Had she sought this protection before the hearing, it might have influenced how Mr. Rowlings chose to proceed.
22. The parties provided me with numerous settlement letters. None meets the requirements of Rule 10 as a formal offer to settle: for example, Rule 10.05(5). Together the settlement letters show the parties tried to settle their case but were unable to do so. As they approached trial, some areas of common ground disappeared.
23. 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."
24. In the absence of evidence that allows me to assess the reasonableness of Mr. Rowlings' legal fees, I exercise my discretion and order Ms. Rowlings to pay Mr. Rowlings costs of \$10,725, comprised of costs of \$9,750 based on Tariff A and a \$975 contribution to his disbursements. Payment must be made by August 31, 2020.

Direction:

25. I have prepared the order which I enclose.

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