

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Shearer v. Davies*, 2020 NSSC 147

Date: 20200424
Docket: SFH PSA 116051
Registry: Halifax

Between:

Timothy Shearer and Tina Shearer

Applicants

v.

William Davies and Laura Davies

Respondents

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Judge: The Honourable Justice Elizabeth Jollimore

Submissions: March 22, 2020 by Jane Lenehan

No submissions filed by or for the Shearers

Summary: Costs of \$3,000 following discontinued application for grandparent contact time and interaction.

Key words: Costs

Legislation: *Civil Procedure Rule* 9.06(1), Tariff F

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DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY
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SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)
***Shearer v. Davies*, 2020 NSSC 147**
ENDORSEMENT

April 24, 2020

**Timothy Shearer and Tina Shearer v. William Davies and Laura Davies
2019; SFH-PSA 116051**

- Jane Lenehan for William Davies and Laura Davies (submissions on March 23, 2020)
- No submissions filed by or on behalf of Timothy and Tina Shearer

Will and Laura Davies request costs of \$3,000 inclusive of disbursements, following the discontinuance of Timothy and Tina Shearer's application for grandparent contact time and interaction.

Decision:

1. Timothy and Tina Shearer will pay Will and Laura Davies costs of \$3,000 no later than June 30, 2020.

Reasons:

2. In October 2019, the Shearers applied for contact time and interaction with their grandchildren. They also filed a motion for interim relief.
3. As is the practice in the Family Division in Halifax, a conference was scheduled to canvass options for early resolution or, failing that, to organize the motion for hearing. Both parties filed pre-conference summaries.
4. Discussion at the conference resulted in scheduling the interim motion and tentatively scheduling a settlement conference.
5. The Davies filed their affidavit and pre-hearing brief and began arranging to appear by video at the motion.
6. Four days before the motion was to be heard, the Shearers asked the court to adjourn it without day. The Davies filed a response to this request and asked for costs. I declined to deal with costs then and said that it would

be dealt with at the conclusion of the hearing.

7. Time scheduled for the motion was used for another conference. The parties were given final hearing dates and scheduled for case management.
8. After this conference, the Davies filed a Response to the Application by the Shearers.
9. Four days before the case management meeting, the Shearers discontinued their application. This was done before the Davies filed any materials for the case management meeting.
10. The Davies filed submissions seeking costs on March 23, 2020. I directed that the Shearers file any responding submissions by April 17, 2020. This direction was given through their counsel, Ms. Connors. While Ms. Connors expected that the Shearers would be representing themselves, they had not filed (and have not yet filed) a Notice of intention to Act on One's Own.
11. The Davies ask for costs of \$3,000.
12. A party who files a notice of discontinuance must pay costs of the opposing party in an amount to be fixed under Rule 77: *Civil Procedure Rule* 9.06(1).
13. Tariff F deals with costs where a proceeding is discontinued. Costs are based on the amount involved. Where the amount involved is up to \$25,000 (the lowest amount in this Tariff), the amount of costs is not more than \$3,000 – the amount the Davies claim.
14. There have been two conferences. The Davies filed a Parenting Statement, a pre-conference summary, an affidavit and a detailed brief addressing the merits of the interim motion, and a brief responding to the request for an adjournment.
15. The Shearers have not filed any submissions in response to the Davies' request for costs. Ms. Connors had no instruction to make any

representations on costs on their behalf.

16. There was considerable work involved in preparing the Davies' materials, particularly their brief on grandparents' applications for time with their grandchildren. Costs of \$3,000 are a reasonable contribution to the costs they have incurred.

Direction:

17. I have prepared the order which I enclose.

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