

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** *Mastin v. Mastin*, 2020 NSSC 245

**Date:** 2020-09-23  
**Docket:** 1213-000720  
**Registry:** Kentville

**Between:**

Mark Mastin

Applicant

v.

Lorna Mastin

Respondent

**Judge:** The Honourable Justice John A. Keith

**Final Written  
Submissions:** May 7, 2020

**Counsel:** Jennifer Young, counsel for the Applicant  
Lorna Mastin, self-represented Respondent

**By the Court:**

[1] I adopt the background as included in my August 22, 2019 decision on the substantive issues regarding child support (2019 NSSC 248).

[2] This is my decision on costs.

[3] Mr. Mastin was largely successful in his application. That said, the issues and support calculations were somewhat convoluted due to the underlying facts which included:

- 1) three of the four children of the marriage were enrolled in post-secondary programmes, but each had different living arrangements;
- 2) the eldest child lives more or less independently;
- 3) another child lived part of the year with Ms. Mastin;
- 4) a third child lived part of the year with Mr. Mastin; and
- 5) Ms. Mastin had been insisting upon payment of child support under an existing Corollary Relief Order for significant periods of time when three of her children were in university and not living with her at all.

**Submissions**

[4] On August 26, 2019, Mr. Mastin filed his submissions on costs. He sought:

- 1) solicitor and client costs in the amount of \$30,000.00;
- 2) alternatively, costs in the range of \$13,813.00 (the higher end of Tariff A) - \$27,626.00 (the higher end of Tariff C)

[5] During the process of finalizing the terms of the Order, I was initially advised that the parties had reached an agreement on costs.

[6] By email dated September 12, 2019 Mr. Mastin's legal counsel (Jennifer Young) confirmed her client's understanding. She wrote:

My client informed me this morning and he and Ms. Mastin have reached an agreement with respect to costs. Ms. Mastin will pay Mr. Mastin the sum of

\$12,000. This will be paid in a \$4,000 lump sum and the rest will be paid off in \$300 installments each month for 27 months and the last month's payment will be \$200.

[7] By email dated September 17, 2019, my Judicial Assistant requested Ms. Mastin's position on the cost agreement. No response was received.

[8] On April 24, 2020 and in the absence of a response from Ms. Mastin, I prepared and delivered a draft form of Order which included a paragraph reflecting the agreement on costs summarized above.

[9] Ms. Young, on behalf of Mr. Mastin, objected to my proposed form of Order on the basis that any agreement was conditional upon Ms. Mastin honouring the payment schedule described above and, for example, immediately making the initial \$4,000.00 lump sum payment. Ms. Young asked that I reconsider her initial submissions on costs dated August 26, 2019, summarized above.

[10] By email dated April 24, 2020, Ms. Mastin responded and said that she and Mr. Mastin "... came to an agreement regarding Mr. Mastin's expenses incurred." She said they agreed that she would pay \$12,000.00 towards Mr. Mastin's costs. She did not reference any particular payment schedule as part of that agreement. She went on to say:

On October 26, 2019 and on October 31, 2019 I emailed Mr. Mastin to initiate payments for these expenses and arrears child support for Ashleigh. I offered a lump sum of \$5000 immediately and had requested that a second lump sum of \$5000 could be paid on January 01, 2020. I also offered either \$300/month or \$150 biweekly, whichever was his preference. I did request that the second lump sum be deferred to a different taxation year. Mr. Mastin responded that these funds had to be received through MEP, that they were not the amounts set out by the order, and that we couldn't vary from the order. Costs were not discussed in the order but had been agreed between Mr. Mastin and me.

[11] By letter dated April 29, 2020, Ms. Mastin provided further submissions on costs. She repeated that there was an agreement on costs; and that she attempted to initiate payments on October 26 and 31, 2019 by offering to make a \$5,000.00 lump sum payment immediately with a further \$5,000.00 lump sum payment on or after January 3, 2020. She later confirmed that any balance would be paid at a rate of \$300.00 per month. However, Ms. Mastin went on to contend that any payments made by her would be part of a global resolution which included both the amounts owing under my decision and costs. Ms. Mastin further contended that the total amount owing to Mr. Mastin should be reduced by a further

\$2,816.16 because circumstances had changed. In particular, after I released my decision, Ms. Mastin stated that one of the children who was living with Mr. Mastin returned to live with Ms. Mastin.

[12] A string of emails between Mr. Mastin and Ms. Mastin during the period October 26 - 31, 2019 was attached to Ms. Mastin's submissions. By way of summary:

- 1) Ms. Mastin offered to pay \$5,000.00 immediately and another \$5,000.00 on or before January 3, 2020. She explained that she now had to finance the purchase of a vehicle for one of their children and that the associated insurance costs were very high,
- 2) Mr. Mastin confirmed an agreement on Ms. Mastin paying legal costs in the amount of \$12,000.00 under the payment schedule described above (\$4,000.00 immediately followed by the balance over 27 months at a rate of \$300.00/month with the final month's payment being \$200.00);
- 3) Ms. Mastin responded by agreeing to transfer \$5,000.00 immediately and stating: "I don't care what you consider it payment for." She continued that the total owing to Mr. Mastin is \$23,000.00 "so let's get started"
- 4) In the final email, Mr. Mastin agreed to accept payment of \$5,000.00 immediately and a further \$5,000.00 in January, 2020 on the understanding that these payments would be in respect of the cost award only. The balance owing for costs would then be paid at \$300.00 per month. Mr. Mastin said that any additional amounts owing in respect of child support would be paid through MEP in accordance with my earlier decision (2019 NSSC 248).

[13] By rebuttal submissions dated May 7, 2020, and among other things, Ms. Young maintained that any alleged agreement regarding costs was separate and distinct from the amounts which Ms. Mastin was ordered to pay under my decision. Finally, Ms. Young observed that while Ms. Mastin alleged she made an agreement on costs, no payments have been received by Mr. Mastin with respect to costs or anything else.

[14] On this point, Ms. Young also attached an email from Mr. Mastin to Ms. Mastin dated November 1, 2019 confirming his position and reminding Ms. Mastin that the Court is awaiting her confirmation of the agreement on costs. At that time, Mr. Mastin asked that Ms. Mastin write to the Court immediately. She notes that Ms. Mastin did not write the Court to confirm the agreement, as requested, and states that Ms. Mastin's actions not only reveal the lack of an agreement but suggest bad faith on the part of Ms. Mastin.

### **Decision on Costs**

[15] I do not find that the parties reached an agreement on costs. Payment terms were clearly important; and the parties failed to reach agreement on that essential term. Ms. Mastin ultimately sought to ensure that any payments made were in respect of the total amounts owing – and was unwilling to pay anything at all until there was an agreement on the total amounts owing. Mr. Mastin disagrees. He insists that any agreement on costs (including payment terms) was limited to that issue alone.

[16] In short and in my view, the parties themselves could not agree on the essential terms. There was no meeting of the minds. On this, I am also troubled by the fact Ms. Mastin alleges that the parties had an agreement and yet, as of today's date, she has yet to make any payments owing to Mr. Mastin – particularly given her statement in the October, 2019 email that she did not care whether Mr. Mastin attributed payments received to costs or to those amounts owing under my original decision. Regardless, I do not find that the parties reached an enforceable agreement on costs.

[17] That said, as indicated, Mr. Mastin was largely successful. Costs should follow the event. In this case, that means Mr. Mastin is entitled to costs.

[18] Solicitor and client costs are not appropriate in the circumstances. Solicitor and client costs are generally awarded only where there has been reprehensible, scandalous, or outrageous conduct on the part of one of the parties. (*Young v. Young*, [1993] S.C.J. No. 112 (S.C.C.)). These types of awards are rare and exceptional. (*Brown v. Metropolitan Authority*, 1996 NSCA 91)

[19] Ms. Mastin's conduct in this proceeding was not so exceptionally egregious as to warrant solicitor and client costs. Moreover, the Courts should be cautious in awarding solicitor and client costs in family proceedings where parents are locked in a good faith dispute over the best interests of the children and appropriate

financial arrangements for the children. Put slightly differently, parents should not be punished for pursuing their child's best interest in good faith.

[20] Mr. Mastin is entitled to costs on a party and party basis.

[21] In most cases, costs are best determined by reference to the applicable Tariff. I have considered the range of costs available under the Tariff. In my view, this matter is closer to an award under Scale 2. The legal issues were not especially complex although the factual context and the actual application of the law surrounding child support was complicated.

[22] Ms. Mastin's post-hearing conduct is also concerning and a factor in the assessment of costs. She clearly made arrangements to pay at least a portion of the amounts owing under my decision and/or towards Mr. Mastin's costs. Yet, she elected to withhold these funds; choosing, instead, to incur the costs and delay associated with further Court proceedings.

[23] Having regard to all the circumstances, I am of the firm view that payment of \$15,100.00 in costs is appropriate in the circumstances. This cost award shall be paid as follows:

- 1) \$10,000.00 forthwith, Ms. Mastin has previously indicated that she has the funds available; and
- 2) \$300.00/month on the first day of every month for sixteen (16) consecutive months beginning October 1, 2020 and concluding February 1, 2022.

[24] Any further amounts owing in respect of my earlier decision (2019 NSSC 248) shall be made through MEP.

[25] Finally, I wish to briefly address Ms. Mastin's new allegations regarding the child who was living with Mr. Mastin but has now returned to live with Ms. Mastin. I am aware that this child is over the age of majority in Nova Scotia. However, beyond that, I have no admissible evidence before me regarding the circumstances surrounding this child's return. In any event, I cannot make any determinations on this issue based solely on Ms. Mastin's submissions. I trust that my earlier decision will provide the parties with at least some guidance as to how they might approach this issue and avoid continued litigation. If not, a new application will be necessary.

Keith, J.