

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Greenwood v. Greenwood*, 2017 NSSC 373

Date: 20171124

Docket: *Halifax*, No. 1201-59846

Registry: Halifax

Between:

Gregory Patrick Greenwood

Applicant

v.

Sherry Lynn Atkins (Greenwood)

Respondent

ENDORSEMENT

Judge: The Honourable Justice Cindy G. Cormier

Heard: February 16, 2016 in Halifax, Nova Scotia

November 24, 2017

Gregory Patrick Greenwood and Sherry Lynn Atkins (Greenwood) Court File No. 1201-59846 (40600)

Hearing held February 16, 2016

Decision rendered March 22, 2016

Costs submissions due April 22, 2016. Costs submissions received on behalf of Sherry Lynn Atkins on May 10, 2016. No response received from Mr. Greenwood.

Request for lump sum costs, based 011 a trial of three-hours duration, total legal fees of \$3,040.88, \$9.25 for disbursements and tax of \$457.53 for a total of \$3,507.66. Total lump sum costs requested at 70% of her costs: \$2,455.37. No arguments were received from Mr. Greenwood.

Decision

Mr. Greenwood shall pay 66% of Ms. Atkins costs in an amount of \$2,314.62 - \$1000.00 = \$1,314.62 (as Mr. Greenwood was forced to bring the application to deal with the issue of ongoing child care costs he was ordered to pay). Mr.

Greenwood must pay Ms. Atkins \$1,314.62 on or before May 10, 2018.

Reasons:

[1] The parties were granted a divorce in October 2005. Mr. Greenwood was found to have an annual income of \$34,763.00 and ordered to pay a monthly child support and a monthly amount for lunch time and after school childcare expenses.

[2] In July 2008 Mr. Greenwood was found to have an annual income of \$58,095.00 and ordered to pay a monthly child support amount of \$1,078.00 and to pay for lunch time and after school childcare costs.

[3] In March 2010 Mr. Greenwood's application to vary child support was dismissed due his failing to file financial disclosure and an Affidavit as required per Organizational Pre-Trial Conference Memorandum dated January 7, 2010.

[4] Mr. Greenwood filed a Notice of Variation Application on September 3, 2014 seeking to vary the table amount of child support and special expenses, and

seeking relief from arrears. A settlement conference was scheduled and Mr. Greenwood did not appear as he indicated he was confused about the date. Both parties were initially representing themselves. The court noted that both parties failed to file the necessary documents and to provide copies to the other party, delaying matters. A Conference Memorandum dated June 6, 2015 was provided to the parties to assist them in their preparation for trial.

[5] The matter was scheduled for trial and heard on February 16, 2016 with an oral decision given on March 22, 2016.

[6] Mr. Greenwood did not file sufficient financial information to allow the court to assess his request to pay support based on an income of \$25,000.00. Mr. Greenwood argued he should not have to pay any further special expenses for lunch time or after school child care. Ms. Atkins acknowledged the children no longer required child care.

[7] Ms. Atkins took the position that Mr. Greenwood's income should be imputed at \$48,095.00.

[8] The Court imputed Mr. Greenwood's income to \$60,000.00 effective October 2015. The Court did not forgive arrears of the table amount of child support. The Court did forgive arrears for special expenses Mr. Greenwood had

been ordered to pay for lunch time and after school child care given the ages of the children at that time of trial.

[9] The hearing required three hours.

[10] The most significant issue at the hearing was ongoing child support and special expenses. Adjustment of arrears of child support and special expenses.

[11] Ms. Atkins was partly successful. Mr. Greenwood was also partly successful.

[12] *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.

[13] I may consider a party's ability to pay costs in making a costs award. In *M.Q.C. v. P.L.T.*, 2005 NSFC 27, 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]." Ms. Atkins retained counsel in this matter while Mr. Greenwood represented himself .

[14] This matter took much longer than it should have due to Ms. Atkins (initially), and Mr. Greenwood's failure to file the necessary financial documentation on time and Mr. Greenwood's failure to attend a settlement conference which had been scheduled.

[15] *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.”

[16] Ms. Atkins requested costs and did file argument. There was a delay in waiting to determine if Mr. Greenwood would be filing any response. Ultimately the issue of the costs decision then became delayed but having been brought to my attention again it requires resolution.

[17] Pursuant to *Civil Procedure Rule 77.02(2)* I have a general discretion to award costs to do justice between the parties.

[18] Having regard to the conduct of both parties, the duration of the hearing and the mixed success, I order Mr. Greenwood to pay Sherry Atkins costs of \$1,314.62 by May 10, 2018. This amount is inclusive of all disbursements.

Cindy G. Cormier, J.S.C.(F.D.)