

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *M.R.K. v. M.F.W.*, 2021 NSSC 18

Date: 20210119
Docket: 104468
Registry: Sydney

Between:

M.R.K.

Applicant

v.

M.F.W.

Respondent

Judge: The Honourable Justice MacLeod-Archer
Heard: November 25 & 26, 2020, in Sydney, Nova Scotia
Written Release: January 19, 2021
Counsel: Darlene MacRury for the Applicant
Robyn Fougere for the Respondent

By the Court:

[1] This is a decision on costs arising from a two day hearing. The issue was parenting. A decision was granted, placing the parties' child in the primary care of her mother, with specified access to the father.

[2] The father, M.R.K., sought an order placing the child in his joint or shared custody. Alternatively, he sought specified parenting time, as well as holiday and vacation time.

[3] The mother, M.F.W., sought primary care of the child, with supervised access for M.R.K.

[4] In my decision, I granted M.F.W. primary care, but I did not order supervised parenting time. I granted a schedule of specified parenting time for M.R.K.

[5] Both parties made written submissions on costs. The latest hearing was the culmination of a number of *ex parte* and interim motions, mostly filed by M.R.K. It was the second contested hearing.

[6] M.R.K. argues that, although the court did not grant the relief he sought, I should take into account M.F.W.'s denial of access, her calls to police and child welfare, her unproven allegations against him, and her social media posts about those allegations. He says that to award her costs would be to reward her unreasonable behaviours. He also claims that, on each occasion that he filed a motion to request or enforce parenting time, he was granted it, so there was no misuse of court time or resource.

[7] He concludes by asking the court to award him costs of "at least \$10,000.00 to bring home to [M.F.W.] the importance of her acknowledgement of [M.R.K.'s] parenting rights...".

[8] In turn, M.F.W. argues that she should be awarded costs. She argues that M.R.K. was not successful in seeking primary care or shared parenting, and that he has misused court time by filing multiple, unnecessary motions since 2018. Some examples she cites include:

1. M.R.K. acknowledged that he filed a motion to enforce video contact with the child, when he was having regular video chats with the child without interruption.
2. M.R.K. stated that M.F.W. changed her mind after agreeing to his brother acting as access supervisor, when she'd never agreed to that arrangement.
3. He filed a motion to enforce parenting time even though he knew child welfare was investigating a referral, and had directed M.F.W. not to allow access.
4. He filed a motion seeking M.F.W.'s address, which wasn't necessary for him to exercise parenting time.

[9] It's an understatement to say that these parties have a history of conflictual parenting. The child has unfortunately been caught in the middle. She has missed parenting time amid child welfare and police investigations, and she's experienced the hostility between her parents first-hand. Extended family on both sides have been caught up in the conflict.

[10] Neither party was wholly successful in this hearing. Both have suggested in their submissions that they incurred significant legal costs. I have no doubt that's true, as both have been represented by counsel throughout. However, neither provided me with a detailed printout of their legal costs or disbursements, so I have no way of gauging whether the costs award I intend to make reflects a "substantial contribution" to either's "reasonable expenses".

[11] *Civil Procedure Rule 77* provides me with discretion in awarding costs. It lays out a number of factors which I've considered. In exercising my discretion, I must aim to do justice between the parties.

[12] I am satisfied that costs should be awarded to M.F.W. as the successful litigant. Although I didn't award supervised parenting, her position was more closely aligned with my decision than that of M.R.K.

[13] There is no amount involved for purposes of the Tariffs. Instead, I'll resort to the "rule of thumb" of \$20,000.00 per day of trial in determining the amount involved.

[14] Based on a two day trial, the amount involved is \$40,000.00. Under Tariff “A”, scale 2, costs payable amount to \$4,000.00 plus \$2,000.00 per day of trial, for a total of \$8,000.00.

[15] However, there was some mixed success and M.F.W. has fanned the conflict at times. I therefore exercise my discretion in reducing costs payable to her by 25 per cent. M.R.K. must pay M.F.W. costs of \$6,000.00, inclusive of disbursements and HST. Costs are payable through the Maintenance Enforcement Program.

MacLeod-Archer, J.