

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *TM v. CV*, 2021 NSSC 148

Date: 2021-05-11

Docket: SFH No. 1201-071808

Registry: Halifax

Between:

TM

Petitioner

v.

CV

Respondent

Judge: The Honourable Justice Theresa M. Forgeron

Heard: November 27, 2020, in Halifax, Nova Scotia

Written Submissions: March 24; April 7, 12, 28 and 30, 2021

Decision: May 11, 2021

Counsel: Peter Crowther, counsel for the Petitioner, TM
Meaghan Johnston, counsel for the Respondent, CV

By the Court:

Introduction

[1] This decision will resolve two issues arising from the release of my earlier divorce decision of *TM v. CV*, 2021 NSSC 82. The first issue concerns the amount of costs payable. Each party claims success and each seeks costs from the other. The wife, TM, seeks costs of \$5,000, while the husband, CV, seeks costs of \$6,643.25.

[2] The second issue concerns the form of the Corollary Relief Order. The wife seeks to incorporate my comments respecting orders from other courts, while the husband is opposed to their inclusion.

Issue

[3] To decide these issues, I will answer the following three questions:

- Who was the successful party?
- What is the appropriate costs award?
- What is the appropriate form of the order?

Background

[4] The parties are separated spouses involved in a high conflict, acrimonious divorce with concurrent proceedings in the Provincial Court. The divorce trial was originally scheduled for three days and was eventually reduced to a half day after the parties advised that they settled all but four discrete issues. The trial was held on November 27, 2020 with closing submissions being filed on December 8 and 9, 2020 and further submissions being filed on December 15, 2020 and February 9 and 10, 2021.

[5] My decision was released on March 9, 2021. Following the decision's release, the wife filed costs submissions on March 24 and April 7, 2021. The husband filed his submissions on March 24 and April 12, 2021.

[6] Further, counsel were unable to resolve the form of the CRO. The wife's position and draft CRO were filed on April 28, 2021 while the husband's position and draft CRO were filed on April 30, 2021.

Analysis

[7] Who is the successful party?

Position of the Wife

[8] The wife states that she was the more successful party in respect of the four litigated issues involving communication, transportation, medical insurance, and mortgage penalty. In respect of the communication issue, the wife states that she was the successful party because the decision states that the CRO did not vary any other court order and that the parties were to communicate through the parenting app she suggested.

[9] The second contested issue related to transportation. The wife states that she was the successful party because she proposed that the husband would be responsible for transporting the children after his parenting time was concluded. This is what the court ultimately ordered.

[10] The third contested issue involved the cost of medical insurance. The wife claims success. She states that the husband initially did not agree to include the children on his medical plan. Then he suggested that his s.7 contributions be reduced by the approximate \$60 monthly cost of coverage. The wife sought no contribution to the cost of her coverage. The decision ordered that the cost of both plans be prorated and paid as section 7 expenses. The wife states that her settlement offer was more advantageous to the husband and should have been accepted. She therefore claims success.

[11] The wife acknowledges mixed success on the issue of the mortgage penalty.

[12] In summary, the wife states that a costs order in her favour should be granted because she succeeded on all but one of the litigated issues and that issue resolved with mixed success.

Position of the Husband

[13] The husband views my decision in a different light. The husband states that he was the successful party given the court's decision on the communication and transportation issues which issues consumed more time and effort than the other two issues.

[14] The husband states that he was entirely successful on the communication issue because the court adopted his position. The court ordered the parties to

communicate in a respectful and child-focused manner about the children via a parenting app. Further, the court rejected the wife's position that she would unilaterally use the parenting app while the husband would be compelled to retain a lawyer to communicate with the wife.

[15] In addition, the husband notes that his position on the transportation issue was also accepted by the court. The wife wanted the husband to hire a professional service to transport the children when parenting exchanges did not occur at the school. The court rejected the wife's position. The court held that a professional transport service was not required.

[16] The husband states that there was mixed success on the remaining issues. Given these circumstances, the husband claims greater success.

Decision

[17] I find that the husband was the more successful party because the husband's position was accepted on two of the four issues. In contrast, the wife achieved success on only one issue. There was mixed success on the fourth issue. My conclusion is drawn from the following findings:

- The wife asked me to find that the husband consistently abused her. I did not so find. Rather, I stated as follows at para 26:

[26] I am unable to conclude whether the husband was violent with the wife other than in 2016 when he experienced a mental health crisis for which he was hospitalized for three weeks. I am not satisfied on a balance of probabilities that other violence occurred. I do not know what occurred.

- The wife asked me to compel the husband to retain a lawyer to communicate with her about the children. In rejecting the wife's proposal and adopting the husband's position, I held at paras 28 and 29 as follows:

[28] A reasonable communication plan must be ordered. I find that it is not reasonable to require the husband to retain a lawyer to communicate with the wife. Not only is such a requirement costly, but it would prevent communication during times when the husband's lawyer was not available, such as when she was in court, assisting other clients, ill, on vacation, or attending to her own life.

[29] The Parenting App is the reasonable solution. I therefore order that the parties communicate in a respectful and child-focused manner about the children via a Parenting App as coordinated through counsel. Obviously, nothing in my decision impacts any other order that has or may issue through the Provincial Court or any other court of competent jurisdiction.

- The wife asked me to compel the husband to hire a professional transport service to transport the children at the conclusion of his parenting time when the exchange would not occur at school. I denied her request at para 35 of my decision.
- The wife was more successful on the medical insurance issue. I ordered each party to “list the children on their respective medical plans” and for these costs to be prorated between the parties. My decision was more in keeping with the wife’s position than to the husband’s position.
- There was mixed success over the mortgage penalty fee as I ordered this fee to be equally divided.

[18] In addition, the wife is incorrect in claiming victory by the following statement found at para 29 of my decision: “..., nothing in my decision impacts any other order that has or may issue through the Provincial Court or any other court of competent jurisdiction;” or at para 35 of my decision: “..., nothing in my order impacts any other order that has or may issue through the Provincial Court or any other court of competent jurisdiction.” At no time did the husband suggest that I had jurisdiction to vary Provincial Court orders. This issue was never litigated.

[19] In summary, although the wife had some success on one issue, the husband was more successful because his position was adopted on two of the contested issues. The fourth issue met with mixed success.

[20] **What is the appropriate costs award?**

Position of the Parties

[21] In addition to claiming success, each party asked me to consider reasonableness and settlement offers when assessing costs. Each claimed that they acted reasonably while the other did not. Each claimed that their settlement offers should result in an increased award of costs. For example, the wife stated as follows:

- She had to address communication and transportation issues given the Provincial Court prohibitions. The father’s October 9th settlement proposal was silent on these issues.
- On October 13, she suggested that the parties communicate through the Talking Parents App. The husband refused. Rather, the husband offered options which were completely unacceptable. The first was for the order to remain silent on the issue. The second was for the mother to consent to a

variation of the Provincial Court no-contact conditions. The third was communication by post.

- From her perspective, communication clauses were essential because of the outstanding intimate partner violence issues and in recognition of the parties' ongoing need to communicate about their children.
- The husband's proposal on the transportation issue was also problematic. The husband inappropriately asked her to vary the criminal conditions so that he could drop off the children at her residence. Then the husband suggested that he drop off the children 50 meters from her residence to comply with the criminal conditions. Ultimately, the court ordered what the wife proposed on October 13, 2020.
- It is not the wife's fault that the husband is subject to no contact conditions. The wife should not be responsible for communication or transportation expenses which arise because of the husband's criminal conduct.
- The wife's position on communication and transportation was essential. To now order costs against the wife would be contrary to public policy. Courts must protect victims of intimate partner violence and other crimes. A costs award has the potential to deter victims from seeking safe ways to communicate with ex-partners.

[22] In contrast, the husband held that his position was more reasonable and relied on the following factors:

- It was not reasonable for the wife to request that he pay for a lawyer to communicate with her about the children. Nor was it reasonable for the wife to request that he pay for a professional service to transport the children during non-school parenting exchanges.
- The series of settlement proposal sent by the husband to the wife between October 9 to November 12 confirm that the hearing on the issues of communication, transportation, and medical insurance premiums was not required given the husband's settlement offers and the court's decision. In the end, the husband was willing to pay for the children's health coverage, a professional transportation service if needed, and the husband acknowledged his obligation to follow the Provincial Court restrictions. The wife should have accepted the husband's offers.

[23] The husband seeks costs on a solicitor client basis in the amount of \$6,643.55, inclusive of fees, GST, and disbursements incurred after October 20, 2020. He notes that he also incurred significant legal fees prior to October 20.

Decision

[24] Rule 77 provides me with the authority to award costs. I reviewed the parties' submissions and case authorities, including *Armoyan v. Armoyan*, 2013 NSCA 136. I order the wife to pay costs of \$3,000 to the husband for the following reasons:

- Such an award will do justice between the parties.
- The father was the more successful party for reasons previously discussed. The father, however, was not entirely successful.
- The trial took about a half day. Most of the issues were resolved before the trial.
- The litigated issues were not complicated.
- Legal fees increased not because of the complexity of the issues but because of the animosity and distrust between the parties.
- I did not accept the wife's position on intimate partner violence.
- Both parties attempted to resolve the issues and through their efforts reduced a three day trial to a half day trial.

[25] Costs are payable within 45 days by the wife to the husband.

[26] **What is the appropriate form of the order?**

[27] The CRO is to reflect the wording of the decision. Clauses 5, 6, and 7 of the wife's draft should be replaced with the following:

- The parties will communicate in writing in a respectful and child-focused manner about the children through the Talking Parents communication application. Nothing in this order impacts any other order that has or may issue through the Provincial Court or any other court of competent jurisdiction.

[28] Clauses 10, 12 and 13 of the wife's draft will be replaced with the following from paras 34 and 35 of my decision:

- Neither party is required to use a professional transportation service for parenting exchanges.
- Each party must acquire their own booster seats for the children in keeping with provincial transportation laws.
- Nothing in this order impacts any other order that has or may issue through the Provincial Court or any other court of competent jurisdiction.

Conclusion

[29] Costs of \$3,000 are payable by the wife to the husband within 45 days and the CRO will include this costs decision. Further, the CRO is to be revised based on the directions outlined in this decision.

Forgeron, J.