

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: *Pike v. Pike (Johannesen)*, 2021 NSSC 257

Date: 20210824

Docket: 1217-001092

Registry: Port Hawkesbury

Between:

Jeremy Nathan Pike

Petitioner

and

Nicole Amy Pike (Johannesen)

Respondent

Judge: Associate Chief Justice Lawrence I. O’Neil

Heard: March 22 & 23, 2021

Counsel: Wayne MacMillan and Maggie Day, Counsel for Jeremy Pike
Nicole Pike (Johannesen), Self-Represented

By the Court:

Background to Litigation

[1] This is a costs decision following a trial and written decision. The decision is reported as 2021 NSSC 162.

[2] The parties are the parents of two (2) children. They married in August 2005, separated in December 2010 and divorced in 2021. A Corollary Relief Order ‘CRO’ issued in August 2021.

[3] The trial resolved the issue of ownership of several properties registered in the names of both parties. The parenting issue was less contentious and was concluded expeditiously.

[4] The Court found the parties had an equal ownership interest in each property.

Position of the Parties

- Mr. Pike

[5] Mr. Pike's actual legal costs were \$25,409.05. An assessment of costs is governed by R77.

[6] Mr. Pike suggests an amount involved approach using the basic scale of Tariff 'A' should be applied. He calculates the amount involved approach would result in costs of \$17,063 using the basic scale reflecting an 'amount involved' between \$200,000 and \$300,000 dollars. Assessing \$2,000 per day of trial will result in the costs being increased by an additional \$3,000 to which would be added an amount for disbursements of \$529.12 for a total of \$20,592.12.

[7] He argues that the total costs award in his favour, would therefore be \$20,592.12.

- Ms. Pike (Johannesen)

[8] Ms. Johannesen (Pike) says no costs award should be made.

[9] She says Mr. Pike's pursuit of resolution of the issues that ultimately required a hearing was inconsistent in as much as the issues he identified and his positions changed from time to time. She argues he prolonged the litigation as a result of his changing lawyers and his changing positions on the various issues placed before the Court. Ms. Johannesen says she was more successful on the parenting issues than Mr. Pike.

Conclusion

[10] Mr. Pike was the more successful party having achieved division of the subject properties on a 50:50 basis. In addition, the valuations accepted for the properties are closer to the ones advanced by Mr. Pike at the time of the hearing than those advanced by Ms. Johannesen.

[11] Ordering a lump sum payment as costs is not justified given the nature of the proceeding, the issues and the conduct of the proceeding. There is no reason to consider a lump sum.

[12] I am satisfied of the following.

[13] The time for this proceeding was one and one-half days.

[14] The amount involved is the maximum liability or benefit which was potentially achievable. I place the net amount at less than \$200,000 after adjusting the market value of the properties to reflect liabilities.

[15] This litigation was not complex.

[16] As observed by Warner, J. in *Gray Estate v. Gray*, 2020 NSSC 235 at paragraph 43, 44 and 46:

[43] Rule 77.02 gives the Court discretion to make any order of costs that will do justice between the parties. The discretion is not to be exercised arbitrarily, nor is it unlimited. It gives some flexibility in the application of the principles set out in the Rules and the case law.

[44] It starts with the general proposition that costs of a proceeding follow the result. The Rules provides for different awards based on the type of proceeding through six tariffs. Case law in Nova Scotia overlays the application of the formulae contained in the respective tariffs, with the overriding principle that a successful party should recover a substantial proportion but not all of its reasonable litigation costs.

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[46] Application of Tariff A involves two steps. First is the determination of the “amount involved”, and second is the determination of the appropriate scale to the “amount involved”. The rule reads:

- a) Where the main issue in a proceeding is a monetary claim, which is allowed in whole or in part, the “amount involved” is determined having regard to:
 - i. the amount allowed,
 - ii. the complexity of the proceeding, and
 - iii. the importance of the issues;
- b) where the main issue is a monetary claim which is dismissed, an amount determined having regard to
 - i. the amount of damages provisionally assessed by the court, if any,
 - ii. the amount claimed, if any,
 - iii. the complexity of the proceeding, and
 - iv. the importance of the issues;

[17] The Court is mindful of the need to order a substantial contribution to the lawyer’s bill for services involved.

[18] I find \$2,000/day for 1.5 days or \$3,000 should be added to an award reflecting the amount involved. The amount involved was less than \$125,000 but more than \$90,001. The basic scale recommends an award of costs in the amount of \$9,188. The Tariff ‘A’ award of costs inclusive of HST is therefore \$12,188. This is a substantial contribution to the costs of the successful party.

[19] Costs of \$12,188 plus disbursements of \$529.12 also inclusive of HST are to be payable by Ms. Johannesen at the rate of \$150 each month commencing October 1, 2021 until paid in full. The Court is influenced in ordering a modest payment plan for Ms. Johannesen by her having primary responsibility for the care of the parties’ children and her having limited means to meet this costs obligation.

ACJ