

Supreme Court of Nova Scotia (Family Division)
Citation: *Munroe-Unsworth v. Unsworth*, 2021 NSSC 319

ENDORSEMENT

Jillian Munroe-Unsworth v. David “Paul” Unsworth
November 16, 2021

SFSNPSA - 117402

- **Linda Tippett-Leary, Counsel for Jillian Munroe-Unsworth**
- **Candee McCarthy, counsel for David “Paul” Unsworth**

FACTS:

1. The parties are the parents of three dependent children. They range in age from 8 to 15 years of age. The family previously lived in Halifax Regional Municipality but moved to Cape Breton when Mr. Unsworth took a new position in 2017. Ms. Munroe-Unsworth moved back to H.R.M. after initially relocating, and a custody battle ensued.
2. There have been numerous court appearances, as well as a number of orders issued by the court. I made a decision on September 3, 2021 granting primary care and final decision making to Mr. Unsworth. I granted Ms. Munroe-Unsworth regular parenting time plus extended holiday, summer, and special occasion time.
3. Ms. Munroe-Unsworth is not required to pay child support, but she is required to pay a share of extraordinary expenses. I granted a very detailed parenting order with respect to issues of communication, information sharing, and related issues because of the high conflict on this file.
4. Both parties have made submissions on costs. Mr. Unsworth says that:
 - This proceeding was about primary care and a parenting schedule. Mr. Unsworth was granted primary care and decision making responsibility;
 - He attempted to settle by making a settlement offer on April 29, 2021;
 - Ms. Munroe-Unsworth was found to lack credibility;
 - He incurred unnecessary expenses having to respond to interim variation applications;
 - He incurred unnecessary expenses in filing *ex parte* emergency motions for the return of the child(ren); and
 - A plea from Ms. Munroe-Unsworth that she cannot afford such an award should be rejected, as it can be secured through the division of assets, particularly the \$50,000.00 T.F.S.A. held in her name.

5. Ms. Munroe-Unsworth counters those submissions with the argument that:
 - Costs are always in the discretion of the court;
 - This case is not akin to **Armoyan** or others where *mal fides* was demonstrated;
 - The court found that both parties were evasive at times and stated that “there is no one version of the facts that I completely accept”, thus it was not only Ms. Munroe-Unsworth whose credibility was problematic;
 - Costs are not meant to punish an unsuccessful party;
 - Ms. Munroe-Unsworth’s case was not without merit;
 - Ms. Munroe-Unsworth cannot afford to pay a large costs award;
 - The T.F.S.A. (which Mr. Unsworth seeks to have paid into trust to secure the costs award) has been depleted and now only contains @\$19,000.00;
 - A large costs award would impact her ability to exercise parenting time;
 - The offer to settle does not reflect the court’s decision. That offer was premised on supervised parenting time, pending completion of an addictions’ assessment and mental health counselling. I granted Ms. Munroe-Unsworth unsupervised parenting time;
 - She did not fail to make appropriate disclosure; and
 - She did not conduct the proceeding in such a way as to delay or protract it.

6. Costs awards in family cases (even parenting disputes) are no longer the exception, but the norm. In deciding to pursue a hearing, parties must consider the merits of their case, they must comply with the *Civil Procedure Rules* regarding disclosure, and they must prepare their case so as to make efficient use of the court time allotted to their file.

7. I exercise my discretion in awarding costs to Mr. Unsworth for the following reasons:
 - He was the more successful party;
 - The hearing took 4.5 days;
 - He conceded the issue of child support, recognizing that if he was granted primary care, Ms. Munroe-Unsworth is not in a position to pay;
 - The record reveals that disclosure issues were discussed at several pre-hearing conferences, but when the matter came before the court, there were still outstanding requests for information made by Mr. Unsworth; and
 - There were several adjournments and delays attributable to Ms. Munroe-Unsworth.

8. Mr. Unsworth relies on *Civil Procedure Rule 77* and the following decisions: **Viehbeck v. Pook**, 2012 NSSC 113, **Lubin v. Lubin**, 2012 NSSC 31, **Cameron v. Cameron**, 2014 NSSC 325, **Armoyan v. Armoyan**, 2013 NSCA 136, **Guillena v. Guillena**, 2003 NSSF 6, **Godin v. Godin**, 2014 NSSC 46, **Gomez v. Ahrens**, 2015, NSSC 3, and **Littlejohn v. Ryckman**, 2020 NSSC 79, in support of his claim.

9. I’ve considered the fact that Mr. Unsworth had to respond to variation applications dealing with interim court orders. Those applications are largely attributable to Ms. Munroe-

Unsworth’s uncertainty with respect to her future housing and employment, which is not surprising in the circumstances. Before the parties separated, Mr. Unsworth was the primary income earner. Ms. Munroe-Unsworth must now re-establish herself, which is not without its challenges. It’s not a reason in this case to award increased costs.

10. I have also considered the fact that Mr. Unsworth was forced to file an *ex parte* motion in January, 2021. Costs were not addressed, because the matter was resolved by agreement before a hearing.

11. The amount of fees Mr. Unsworth incurred to September 24, 2021, was \$26,112.49, including disbursements and tax. That does not include any accounts rendered by his former counsel, which he estimates in the range of \$1,000.00-\$5,000.00. He provided no invoices to support those estimates.

12. He calculates the following percentages:

Total Legal Fees	\$26,112.49	\$27,112.49	\$28,112.49	\$29,112.49	\$30,112.49	\$31,112.49
Award of \$21,250.00	81.38%	78.38%	75.59%	72.99%	70.57%	68.30%
Award of \$22,250.00	85.21%	82.07%	79.15%	76.43%	73.89%	71.51%
Award of \$23,250.00	89%	86%	83%	80%	77%	75%

13. Mr. Unsworth claims costs of \$23,500.00 in total. In the alternative, he seeks a lump sum of \$19,127.12, based on his offer of April 29, 2021 and the Court of Appeal decision in **Armoyan**. However, that offer was not sufficiently similar to the outcome of this proceeding to form the basis of such a calculation.

14. Ms. Munroe-Unsworth asks that the court limit costs to less than \$5,000.00.

15. As this was primarily a parenting case, there’s no amount involved. It’s therefore necessary to use the “rule of thumb” in calculating the amount involved for purposes of the Tariffs. At \$2,000.00 per day over 4.5 days, that equates to \$9,000.00.

16. The basic scale is appropriate where this case was not complicated. That equates to costs of \$4,000.00. I must add \$2,000.00 per day for each day of the hearing, which adds an extra \$9,000.00. That brings costs to a total of \$13,000.00. To that, I will add \$500.00 to compensate Mr. Unsworth for the *ex parte* motion he was forced to file in January, 2021.

17. A costs awards should represent a substantial contribution towards a party’s reasonable expenses in presenting or defending a claim, without amounting to full indemnity. I am

satisfied that an award of \$13,500.00 meets that goal, without punishing Ms. Munroe-Unsworth or limiting her ability to exercise parenting time with the children.

18. I therefore direct that Ms. Munroe-Unsworth pay costs (inclusive of disbursements and taxes) of \$13,500.00 to Mr. Unsworth.

19. Costs will be paid as a debt owing to Mr. Unsworth in the division of matrimonial assets. I am not directing that the balance of the T.F.S.A. be paid into trust to secure those costs, as requested by Mr. Unsworth. There are other assets available to address the debt when the division of assets is effected, either by court order or agreement of the parties.

MacLeod-Archer, J.