

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Donelle v. Donelle*, 2021 NSSC 311

ENDORSEMENT

October 20, 2021

Scott Donelle v. Aleeah Donelle; No. 1201-071502

- On September 10, 2019 a conference was held before the Honourable Associate Chief Justice O’Neil;
- On June 9, 2020 a settlement conference was held before the Honourable J. Williams. An Interim Order arose from the settlement conference but it is unclear whether an Interim Order was filed with the Court following the settlement conference;
- On August 14, 2020 a pre-trial was held before me, issues were discussed such as witness lists, two days of trial were scheduled, and filing deadlines provided;
- On November 2, 2020 a further pre-trial was held at the request of the parties. The parties indicated they were not prepared to proceed with property matters. Mr. Donelle confirmed he would no longer be calling certain witnesses. The Court questioned the parties’ request to adjourn the issue of property and encouraged the parties to make best efforts to obtain the relevant documentation to prove the value of an RRSP and a vehicle or any other property at issue. The request for an adjournment on the issue of property was adjourned to see what information would be available at trial.
- Trial held on November 5, 2020:
 - Mr. Donelle sought sole custody. I ordered a joint custodial arrangement.
 - Mr. Donelle requested I grant an Order allowing him to relocate with the child. I found he had filed very little evidence to support a solid plan for relocation given the existing shared parenting arrangement. I also expressed concern about Mr. Donelle’s argument that virtual contact would suffice to maintain a seven-year -old child’s relationship with Ms. Donelle. I also found Mr. Donelle showed little

empathy for Ms. Donelle's financial circumstances given that he had failed to pay child support to her for the child.

- I directed a shared parenting arrangement continue if Mr. Donelle continued to reside locally and that Ms. Donelle have primary care locally if Mr. Donelle moved to Ontario. I adjourned the matter to March, 2021 as there was insufficient information for me to decide the issue of parenting arrangements for Mr. Donelle should he move to Ontario.
- Mr. Donelle asked the Court to impute income to Ms. Donelle despite his failure to fully disclose his own income.
 - Ms. Donelle agreed to the set off when calculating prospective and retroactive support, and to the income Mr. Donelle suggested he was earning.
 - The parties agreed to the calculations filed regarding prospective and retroactive child support.
 - Mr. Donelle agreed to continue medical and dental coverage for the child through his employer.
- The issue of the value of the car could not be determined at trial.
- The issue of Mr. Donelle's parenting time should he move, and the valuation of the car were adjourned to March 2021.
- I found the requirements to prove a divorce had been met.
- On March 8, 2021 a conference was held. The issue of the value of the car was no longer being contested and the parties advised me that Mr. Donelle did not intend to move and therefore the shared parenting arrangement would continue.
- The parties noted that the issue of costs was left to be resolved. Filing deadlines for submissions were provided.
- Mr. Donelle filed his submissions on costs on April 7, 2021 and Ms. Donelle filed her submissions on costs on April 12, 2021.
- Mr. Donelle argued no costs should be awarded or in the alternative only I should grant a nominal award of costs.

Ms. Donelle Requested costs of \$6000 under Tariff A, scale 2, \$4000 + \$2000 based on a hearing of 1 day duration.

Decision:

Mr. Donelle shall pay Ms. Donelle costs of \$6000 on or before December 1, 2021.

Reasons:

1. The parties shared care of their child. The biggest issue to be resolved was the request by Mr. Donelle to relocate to Ontario and the resulting custody and parenting arrangements flowing from that decision.
2. Mr. Donelle argued that it was in the child's best interests to move with him to Ontario as Ms. Donelle was neglecting the child. In support of his request for sole custody and to relocate to Ontario Mr. Donelle expressed various concerns about Ms. Donelle, including but not limited to: she seldom had enough food in the home, she had not replaced car seats following several collisions, and she had advertised in search of a roommate. I found his arguments showed a lack of empathy and awareness coming from a parent who should have been paying child support to Ms. Donelle. Mr. Donelle agreed to pay retroactive child support of \$10,867.64.
3. I found Mr. Donelle's plan to relocate with the child did not include sufficient information. In particular, the argument that virtual contact would be sufficient to maintain the seven-year-old child's bond with Ms. Donelle, was not persuasive.
4. The hearing required one day.
5. The most significant issue at the hearing was relocation.
6. Ms. Donelle was successful in preventing the child's relocation. Ms. Donelle was prepared to accept Mr. Donelle's representations regarding his income, she agreed to the set off amount of child support, and she agreed to be responsible for her student loan. Mr. Donelle kept the car and the debt related to the car. Ms. Donelle's concessions contributed

greatly to simplifying the issue of child support and to the agreements reached regarding child support and property division.

7. *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.
8. To apply Tariff A, I must know the amount involved in the case. According to Tariff A, where there’s a substantial non-monetary issue involved, the amount involved is determined having regard to the complexity of the proceeding and the importance of the issues.
9. In both *Collins v. Speight*, 1993 CanLII 4668 (NS SC), and in *Wyatt v. Franklin*, 1993 CanLII 4580 (NS SC), Justice Goodfellow concluded that the amount involved in two and one-half day trials was \$45,000.00. *Collins v. Speight* was a case involving a dispute over an entitlement to a right of way and *Wyatt v. Franklin* was a land dispute. Justice Goodfellow described both as not complex. Later, in *Toronto Dominion Bank v. Lienaux*, 1997 CanLII 15017 (NSSC), Justice Goodfellow suggested a general rule for cases where a substantial non-monetary issue was involved. He said that he treated each day or part day of the trial as equivalent to \$15,000.00 for the purpose of determining the “amount involved”.
10. In 2007, Justice Lynch reviewed this general rule in *Jachimowicz v. Jachimowicz*, 2007 NSSC 303, at paragraph 26. There, the parenting trial took approximately thirteen days: six days of evidence from the initial trial, five days of review evidence and numerous other appearances which added approximately two more days. She adjusted the daily equivalent amount from \$15,000.00 to \$20,000.00 “to reflect the increased costs of litigation.”
11. Mr. Donelle was also unprepared or undecided about what he was going to move to Ontario and the issue of his parenting time should he move needed to be adjourned to March 2021. Although both parties

contributed to the agreements reached, it was Mr. Donelle who persisted with his request to relocate and he did so without a viable plan.

12. *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.”
13. Pursuant to *Civil Procedure Rule 77.02(2)* I have a general discretion to award costs so as to do justice between the parties.
14. Having regard to tariff A, scale two, \$4000 + \$2000 for a day of trial and the other considerations noted above, I order Mr. Donelle to pay Ms. Donelle costs of \$6000 by December 1, 2021. This amount is inclusive of all disbursements.

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