

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Green v. Green*, 2022 NSSC 247

Date: 2022-08-26

Docket: SFH No. 1201-071597

Registry: Halifax

Between:

Kelsey Green

Applicant

v.

Heidi Green

Respondent

Judge: The Honourable Justice Theresa Forgeron

Last Submissions: June 17 and 28, 2022, in Halifax, Nova Scotia

Written Decision: August 26, 2022

Counsel: Kelsey Green, Applicant, self-represented
Heidi Green, Respondent, self-represented

By the Court:

Introduction

[1] In this judgement, I will provide my costs ruling arising from decisions which I granted on various motions and applications heard since the parties' divorce hearing. For her part, Heidi Green seeks costs of \$16,315. In contrast, Kelsey Green states that only a nominal costs award should be granted.

Issue

[2] What is the appropriate costs award?

Background

[3] The parties have a lengthy litigation history which focused primarily on the parenting of their three children. The parties' six day divorce trial culminated with a 38-page decision being issued on February 16, 2021, as reported as *KG v HG*, 2021 NSSC 43 and a \$40,882.29 costs award being granted on April 29, 2021 by decision reported as *KG v HG*, 2021 NSSC 142. During the divorce trial, the parties were represented by counsel.

[4] Mr. Green's attempts at appeal were unsuccessful: *Green v Green*, 2021 NSCA 15 and *Green v Green*, [2021] SCCA No 454 (File No: 39991).

[5] The divorce decision and Corollary Relief Order established the parenting plan that was in the children's best interests. Primary care and decision-making were granted to Ms. Green. Mr. Green's parenting time was subject to restrictions. In an attempt to repair the estranged relationship between Mr. Green and the children, the parties and the children were ordered to participate in focused therapy. The therapy was to be completed within six months, with a review hearing to re-examine the parenting plan being scheduled for September 2021. This date was rescheduled twice because of motions soon filed by Mr. Green. The review hearing was finally heard on May 30, 31, and June 2, 2022.

[6] After the divorce hearing, I decided several motions filed by Mr. Green as follows:

- Mr. Green filed a motion for recusal, transfer, and a new trial which was heard on December 6, 2021 and January 31, 2022. His motion was

denied by decision dated February 1, 2022, reported as *Green v Green*, 2022 NSSC 30.

- Mr. Green applied for state-funded counsel. This motion, originally scheduled for February 24, 2022, was adjourned because Mr. Green did not file his financial information as directed. Mr. Green's second adjournment request was denied, by decision reported as *Green v Green*, 2022 NSSC 105. Mr. Green still did not file the ordered financial disclosure and did not appear to argue his position. The hearing proceeded in his absence. His motion was denied by decision dated April 13, 2022, reported as *Green v Green*, 2022 NSSC 106.
- Mr. Green's request to have the reports of Dr. Steven Miller and Dr. Jennifer Harman entered as expert evidence was denied by decision reported as *Green v Green*, 2022 NSSC 120.
- Mr. Green's request to adjourn the May 30, 31, and June 2, 2022 review and variation hearing was denied by decision dated May 5, 2022, reported as *Green v Green*, 2022 NSSC 126.

[7] On May 30, 31, and June 2, 2022, the review hearing and Ms. Green's application to vary were heard. Mr. Green advised that he would not be proceeding with his variation application. Mr. Green did not testify. Evidence was received from Ms. Green and two therapists. Mr. Green cross-examined the therapists but not Ms. Green. Further, Mr. Green did not call the witnesses that he previously indicated that he would. Oral and written submissions were provided by both parties. The hearing did not consume as much trial time as scheduled because of Mr. Green's last minute change in his trial strategy.

[8] On June 10, 2022, I rendered my decision on the review and variation applications, reported as *Green v Green*, 2022 NSSC 164. In that decision, I found as follows:

- Ms. Green and the children successfully completed the court-ordered therapeutic counselling.
- Mr. Green did not successfully complete the court-ordered therapeutic counselling.

- It was in the best interests of the children to vary the parenting plan set out in the CRO in five respects. First, Mr. Green's consent and authorization were not required for the children to obtain or renew their passports or to travel internationally. Second, Ms. Green was no longer required to provide Mr. Green with updates about the children. Third, Ms. Green and the children were no longer required to attend therapeutic counselling. Fourth, Mr. Green's parenting time was subject to further restrictions. Fifth, leave is required before the court will consider any future application or motion filed by Mr. Green.

Analysis

[9] What is the appropriate costs award?

Position of Ms. Green

[10] Ms. Green seeks total costs of \$16,315 based on \$1,500 for the recusal motion; \$1,500 for the state-funded counsel motion; \$2,500 for the evidentiary ruling issue; and \$10,815 for the balance of the post-divorce litigation for reasons which include the following:

- She was the successful party on all motions and applications. Mr. Green was completely unsuccessful.
- She incurred \$815 in out-of-pocket expenses to arrange for the therapists' attendance for cross-examination.
- She expended over 50 hours of her personal time preparing for the case. She had to take days off from work to attend court, which meant double planning because Ms. Green also had to prepare for the substitute teacher's coverage.
- She and the children have experienced significant stress. The children were exposed to repeated visits from child protection workers and police because of Mr. Green's misguided agenda.
- The May 2022 hearing was originally scheduled as a 30-minute conference in September 2021. It morphed into an unnecessary, one-year odyssey because of Mr. Green's inappropriate litigation conduct. Mr.

Green flooded the court with copious copies of irrelevant documents and refused to file those which were relevant and necessary.

- Mr. Green dragged her through unnecessary court processes for which he was not prepared. Much court time was wasted as was her personal time preparing. Mr. Green did not even attend the court hearing to determine his motion for state-funded counsel. Further, on the eve of trial, Mr. Green decided to withdraw his variation application and to not call witnesses.
- Mr. Green made repeated attempts to thwart the judicial process. His motions and applications were not made in good faith. Instead, he doubled down on his own agenda, without considering the needs of the court, his children, or Ms. Green.
- Mr. Green did not make any efforts to fulfill the counselling provisions of the CRO.
- Mr. Green's applications and motions were devoid of any merit.

Position of Mr. Green

[11] In contrast, Mr. Green states that a nominal costs award is appropriate for reasons which include the following:

- He offered to resolve the outstanding issues through family mediation but Ms. Green refused. Courts should be cautious with costs awards as they can increase acrimony between the parties: *Godfrey-Smith v Godfrey-Smith* (1997), 165 NSR (2d) 245 (TD).
- Past costs awards negatively impacted his financial security. He cannot afford another costs award. In contrast, Ms. Green was not negatively impacted. She has an expensive home and vehicle.
- He took legal action to protect his children's best interests and to ensure that they have a positive and loving relationship with him. Ms. Green has alienated the children against him. Ms. Green acted in a coercive and controlling fashion. As a father, he has an innate duty to care for his children. A costs award should not create a burden as a father's parenting

time is important to the children's emotional well-being: *Connolly v. Connolly*, 2005 NSSC 203.

- He is not a lawyer and was not capable or competent in representing himself. He has a disability. His constitutional and human rights were not respected. The court refused to adjourn the hearing so he could retain legal counsel of his choosing. The court did not provide the accommodations that he requested.
- His disability causes him to be disorganized, scattered, and to write at length in an effort to be heard. The court must take his disability into account when assessing costs.
- His trauma was exacerbated by Ms. Green's grab for power, her presentation of false and misleading evidence, and her failure to follow court orders. False and misleading statements impact costs awards: **MacKay v. Bucher**, 2001 NSCA 171.
- Ms. Green is afforded personal, paid leave from work to attend to personal matters, such as court proceedings.
- Ms. Green should not be rewarded financially for her drive to continue the conflict and her refusal to present the court with a true picture of what is taking place in the children's lives. Costs will only ensure the continuation of Ms. Green's inappropriate conduct.
- Ms. Green fabricated the passport application issue in an attempt to increase friction, conflict, and challenges. Ms. Green wants power and control.

Decision

[12] In reaching my decision, I applied Rule 77 and the costs principles set out in *Armoyan v Armoyan*, 2013 NSCA 136. In addition, I note that costs can be awarded as a caution for advancing claims that have little chance of success: *Qu v. Calvesbert*, 2020 NSSC 115. Further, I must also adjust costs if the successful party is self-represented because costs for self-represented litigants are not calculated in the same manner as costs for parties who are represented. As noted in *Garnier v. Garnier*, 2021 NSSC 173, I can award costs to self-represented litigants who incur legal fees for unbundled legal services and for work that would

ordinarily have been performed by a lawyer. I cannot, however, calculate costs in the same manner as a court would assess a damage award.

[13] I have determined that a lump sum costs award of \$10,000, inclusive of disbursements, will do justice between the parties for the following reasons:

- A lump sum is necessary because I cannot calculate an amount involved as the applications and motions concerned non-financial issues.
- The parenting issues were important to the parties and the children.
- Ms. Green was entirely successful.
- Mr. Green was entirely unsuccessful. Mr. Green litigated matters that had no chance of success because Mr. Green did not accept my divorce decision and CRO. For example, he asked me to appoint state-funded counsel without filing financial disclosure and then failed to appear to argue his position. He also asked me to vacate the divorce decision and CRO and to order a new trial in the general division. I have no jurisdiction to do so. Mr. Green also asked to relitigate issues previously decided by filing copious amounts of materials, all because he disagreed with the outcome of the divorce proceeding.
- The matter was made unnecessarily complex and lengthy because of Mr. Green's poor litigation conduct. Mr. Green filed motions and a variation application which were devoid of merit. For example, Mr. Green, an engineer earning at least \$125,000 per annum, would not qualify for state-funded counsel. Further, a trial court has no jurisdiction to vacate a divorce decision, order a new trial, or relitigate issues previously decided.
- Mr. Green sought to delay and prolong the proceeding. He requested adjournments and failed to file relevant materials in a timely manner. For example, Mr. Green refused to file financial disclosure to support his application for state-funded counsel. He also focused on filing copious materials and submissions about matters previously decided and thus no longer relevant – such as his proposed expert reports. Mr. Green's failures arose because he refused to accept the divorce decision, not because of any mental health disorder.

- Contrary to what I ordered in the divorce decision and CRO, Mr. Green did not successfully complete the court-ordered therapy. Instead, he replaced the court's therapeutic objectives with his own. As a result, the relationship between Mr. Green and his children deteriorated. Mr. Green is solely responsible for the consequences of his decision. Ms. Green bears no responsibility. Despite my findings, Mr. Green continues to fixate on false allegations of alienation and coercive and controlling violence.
- Ms. Green expended much time painstakingly responding to Mr. Green's motions and application. In addition, substantial judicial resources were needlessly expended on Mr. Green's attempts to vacate the divorce decision and CRO.
- In contrast, Ms. Green's litigation conduct was appropriate. She responded in a timely and concise manner. Ms. Green filed relevant materials. She was punctual. Ms. Green successfully completed the court-ordered therapy. Ms. Green's variation application was appropriate and reflective of the children's best interests.
- Since the divorce was finalized, Ms. Green attended court proceedings before me on September 27, 2021; December 6, 2021; January 19, 2022; March 31, 2022; April 20, 2022; May 30, 2022; May 31, 2022; and June 1, 2022.
- Costs cannot be awarded for damages for pain and suffering.

Conclusion

[14] Mr. Green must pay costs to Ms. Green in the amount of \$10,000 by September 28, 2022. The court will draft the order.

Forgeron, J.