

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** *O'Reilly v. Purgin*, 2022 NSSC 240

**Date:** 20220826

**Docket:** SFH-PSA 125580

**Registry:** Halifax

**Between:**

Tish O'Reilly

Applicant

v.

Aleksei Purgin

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Elizabeth Jollimore

**Written Submissions:** July 27 and 28, 2022, by Vanessa Kinnear  
August 9, 2022, by Terrance Sheppard, Q.C.

**Written Decision:** August 26, 2022

**Key words:** Costs

**Summary:** Mother was unsuccessful in her application to register child in school in her community. Costs request by father dismissed where parents reasonably disagreed about a genuine issue of the child's best interests.

**Legislation:** *Civil Procedure Rule 77*

<p style="text-align:center"><b><i>THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.</i></b></p>
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**IN THE SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**  
**Citation: *O'Reilly v. Purgin*, 2022 NSSC 240**  
**ENDORSEMENT**

August 26, 2022

Tish O'Reilly v. Aleksei Purgin  
SFH-PSA 125580

**Submissions:** Vanessa Kinnear for Aleksei Purgin on July 27 and 28, 2022  
Terrance Sheppard, Q.C. for Tish O'Reilly on August 9, 2022

**Decision:** Each party will bear their own costs.

1. I dismissed Tish O'Reilly's motion for an order that 5-year-old Lilly attend Prospect Road Elementary School in Prospect following a half-day hearing on July 21, 2022. There was an earlier half-hour conference.
2. As the successful party, Aleksei Purgin seeks costs. He asks for \$5,000.
3. Mr. Purgin says that as the successful party he is entitled to costs and that I can only exercise my discretion to deny him costs if there is a principled reason to do so.
4. One principled reason costs should be denied in custody cases is because a child's best interests are at issue and fear of a costs award might deter a parent from pursuing matters that are relevant to the child's best interests. Money should not overshadow the child's best interests.
5. In *Nemorin v. Foote*, 2009 NSSC 23, Justice Gass dismissed an application for costs on the principled reason that the child's best interests were in issue and the risk of a costs award could deter litigating this issue. *Nemorin* was a mobility case where there was a genuine issue to be tried, each parent had a reasonable position, and their motivation was in the child's best interests. Justice Gass said, at paragraph 6, that "[t]he question of reasonableness is significant in these matters" and she dismissed the claim for costs because, while Ms. Nemorin's claim failed, "her application, her reasons, and her conduct were genuine and, in balancing all of the factors, it was a decision that could have gone either way" [at paragraph 8].

6. There was a genuine issue. Lilly could have started school in September 2021, but the parties deferred this to allow her a year to adjust to their separation. Lilly must start school in September 2022 and the parties could not agree on the school she should attend. A court application was necessary. There was no compromise in position: one party would have to fail.
7. Neither party contests that Lilly's best interests were in issue in selecting the school she will attend.
8. Each party's position was reasonable. Mr. Purgin acknowledges that Ms. O'Reilly was not vexatious and did not misuse the court's time. She did not unnecessarily increase his costs or fail to disclose information.
9. It is unfortunate that the parties were unable to resolve the issue without the court's intervention. The court's involvement was essential.
10. I decline to award Mr. Purgin costs for the principled reason that parties should not be discouraged from ensuring a timely resolution to a reasonable disagreement over a child's best interests by the threat of costs.

**Directions:**

I have prepared the order dismissing Mr. Purgin's claim for costs which I enclose.

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**Elizabeth Jollimore, J.S.C.(F.D.)**