

SUPREME COURT OF NOVA SCOTIA

Citation: *Savoie v. Daye*, 2022 NSSC 382

Date: 20221229

Docket: *SFH1201*, No. 71812

Registry: Halifax

Between:

Alain Savoie

Applicant

v.

Stephanie Daye

Respondent

ENDORSEMENT ON COSTS

Judge:

The Honourable Justice Cindy G. Cormier

Written

Applicant – June 30, 2022

Submissions:

Respondent – July 4, 2022; July 11, 2022; August 26, 2022

Counsel:

Hannah Rubenstein, for the Applicant

Stephanie Daye, self-represented Respondent

By the Court:

1 Background

- Conferences were held on March 10, 2021 (11:00 – 11:31 by telephone); on March 23, 2021 (14:32 – 14:37 by telephone)- Ms. Daye did not participate); and on August 16, 2021 (12:02 – 12:15 by telephone);
- Pre-trials were held on September 27, 2021 (9:50 – 10:33 by telephone), and on November 1, 2021 (13:31- 14:08 by telephone); and;
- A trial was held on November 29, 2021, (10:01 – 15:05 in person).which included a motion to strike.
- Mr. Savoie argued that the amount of time was (1) day of trial and six (6) pre-trial conferences amounting to three (3) hours or 1.5 days. (including a conference held before another judge on December 7, 2020). I am not considering the conference held before another judge.
- The conferences took just over two and a half hours (2.5 hours) and the trial took less than a day.
- Ms. Daye has stated she did not receive the endorsement when it was sent to the parties on May 30, 2022. The endorsement was sent to the email address Ms. Daye had provided to the court.

- I received cost submissions from Mr. Savoie on June 30, 2022.
- I received two submissions from Ms. Daye on July 4, 2022 at 9:28 and at 9:44. I received other submissions on July 11, 2022; and on August 26, 2022.

Mr. Savoie requested costs based on Tariff A, increased to scale 3 due to his claim that Ms. Daye behaved in an “unreasonable” and in a “vexatious” manner throughout the litigation.

He asked me to award him \$7,500.00 in costs based on court time of one day and a half (1.5 days), with an additional \$2000 per day, therefore \$3000.00 for a day and a half, following a trial dealing with division of property.

Total costs requested were: \$10,500.00 to be paid within 60 days. Total legal fees billed for the relevant period were reported as \$11,635.00 inclusive of fees, taxes and disbursements.

2 Decision

Having regard to both of the parties’ behaviours, the complexity of the issues, and the time involved, I find it is appropriate to use Tariff A, (allocating \$20,000 to the 1 day + involved), and to use scale 3, for litigation involving more than a day but less than a day and a half.

I order Ms. Daye to pay Mr. Savoie costs of \$3,499.83 within 60 days of receipt of this decision which will be emailed to Ms. Daye's usual email address. This amount is inclusive of all disbursements.

3 Reasons

[1] Mr. Savoie filed a Petition for Divorce on April 1, 2019. The parties participated in their first conference with their first trial judge on September 12, 2019. They agreed to participate in judicial settlement discussions.

[2] The parties met with their settlement conference judge on several dates including: March 4, 2020; June 25, 2020; July 16, 2020; and November 12, 2020. They confirmed agreement on many issues, including: spousal support; property division table re: assets and debts; and the equalization payment.

[3] There were two outstanding issues the parties agreed could be dealt with discreetly without impacting the agreements reached. The two outstanding issues included: possible undisclosed bank accounts and whether there were matrimonial funds contained in Chimeara's bank accounts.

[4] A second pre-trial was held before the first trial judge on December 7, 2020. The parties discussed the issue of the financing required by Ms. Daye to take over

the title of the Albro Lake Road property. They reached an agreement on the record with respect to a timeline.

[5] A Partial Consent Corollary Relief Order was issued by another judge on January 19, 2021.

[6] On January 20, 2021, Mr. Savoie requested the initial trial judge issue a Consent Order (Financing of 17 and 17A Albro Lake Road), per the agreement reached on the record on December 7, 2020. A Consent Order (Financing of 17 and 17 Albro Lake Road) was issued by the initial trial judge on January 22, 2021.

[7] Ms. Daye claimed she had not understood the agreement entered into on December 7, 2020. The parties were advised on January 22, 2021 that the initial trial judge was conflicted on the file. The matter was reassigned to me. I advised the parties that if they wished to challenge any previous agreements reached on the record, that I could not overturn another judge's decision or order.

[8] The initial timeline for Ms. Daye to secure financing (correspondence January 12 and 14, 2021) for the Albro Lake property, was extended until March 1, 2021. The financing conditions included a condition that Ms. Daye must provide confirmation from her employer that she was receiving a salary of at least \$20,143.00 per annum.

[9] On the closing date for the Albro Lake Road property, Ms. Daye requested a further extension to meet the conditions necessary for her to secure financing. She did not provide a timeline. Mr. Savoie understood Ms. Daye was no longer employed. He argued he should transfer to Ms. Daye \$67,177.75 in lieu of transferring title of the property as stipulated in the Partial Corollary Relief Order.

[10] I was advised that Ms. Daye had not met the conditions precedent to secure financing to purchase the Albro Lake Road property. I directed Ms. Daye and Mr. Savoie to file any evidence related to whether Ms. Daye had met the extended timeline. The parties were directed to file their evidence prior to March 17, 2021.

[11] Absent evidence supporting a conclusion that Ms. Daye had met the deadline, I indicated I would grant an order for Mr. Savoie to transfer to Ms. Daye her share of the equity: \$67,177.75 in lieu of title to the property, as outlined in the Partial Corollary Relief Order. I understand Ms. Daye's share was transferred to her in November of 2021.

[12] I was advised that Ms. Daye failed to sign a quick claim deed for the matrimonial home located at 8 Carlson Court for which she received an equalization payment of \$113,057.82 on August 17, 2020. Mr. Savoie needed a signed quick claim deed in advance of the mortgage commitment date of April 1,

2021. I directed Ms. Daye to sign the quick claim deed by March 17, 2021 or absent her signature I would grant an order extinguishing her interest in the matrimonial home.

[13] In response to Ms. Daye's concerns about disclosure, I directed Ms. Daye to file a motion for disclosure for Mr. Savoie's business records. Although Mr. Savoie argued that Ms. Daye had waived her right to any corporate assets, I indicated I was prepared to consider any motion dealing with "whether there were matrimonial funds contained in Chimeara's bank accounts", as that was one of the issues left outstanding. .

[14] On March 23, 2021 Ms. Daye did not appear, and she had not filed a motion in support of her request for disclosure of corporate assets or bank accounts. Ms. Daye had not signed the quit claim deed as directed. I granted an order transferring title of the matrimonial home to Mr. Savoie and extinguishing Ms. Daye's interest in said home.

[15] On August 16, 2021, Ms. Daye appeared and advised the Court she would be calling 11 witnesses at a trial. She confirmed she would be able to file an affidavit for each witness by September 20, 2021.

[16] On September 27, 2021, I provided further direction to Ms. Daye regarding

her affidavit. Specifying that her affidavit should include facts related to each document Ms. Daye wished to reference, explaining the relevance of each document. Ms. Daye was provided with additional time to revise her affidavit.

[17] On November 1, 2021, Mr. Savoie's legal counsel advised Ms. Daye they would be filing a motion to strike certain portions of Ms. Daye's affidavit and to exclude other documents Ms. Daye intended to file at trial. At trial on November 29, 2021, Ms. Daye agreed to Mr. Savoie's requests to strike certain portions of her affidavits.

[18] Mr. Savoie argued that in 2021, after the judicial settlement conferences in 2020, he incurred additional legal fees due to Ms. Daye's conduct. The court time involved in resolving the outstanding issues following the settlement conferences was slightly more than a day but not quite a day and a half.

[19] Mr. Savoie argued that the most significant issues at the hearing were the two outstanding property issues. However, there were three issues determined at the trial:

- (a) contents of the parties' personal bank accounts at separation;
- (b) whether there was evidence of any matrimonial money in the Chimeara bank accounts; and

- (c) a request to change the terms of the Benecaid Health Trust, per paragraph 5 of the Partial Corollary Relief Order issued January 19, 2021.

Personal Bank Accounts at Separation:

[20] Ms. Daye never did file evidence of her bank account balance at separation. I accepted Mr. Savoie's proposal with respect to the bank accounts, finding the balances were similar and I "called it even" as suggested by Mr. Savoie.

Matrimonial Money in Chimeara Bank Accounts:

[21] Mr. Savoie argued that based on paragraphs 6(d) and (e) of the parties' Partial Consent Corollary Relief Order, he retained full ownership (and assets) of Chimeara Productions Ltd. And 8629714 Canada Inc, and Ms. Daye had waived all claims to any ownership (including all assets) of these corporations. I found in favour of Mr. Savoie.

[22] Although I invited Ms. Daye to file a motion in advance of trial explaining her request for any disclosure from Mr. Savoie related to Chimeara's bank accounts, she did not file a motion.

[23] Mr. Savoie was successful with respect to the two outstanding property issues identified by the Partial Corollary Relief Order issued in January 2021.

[24] However, in addition, Mr. Savoie did request an order varying the terms of the Benecaid Health Trust. The agreement regarding the Benecaid Health Trust had not been identified as an outstanding issue according to the Partial Corollary Relief Order. It was a final Order. I declined to vary the terms. Ms. Daye was successful with respect to the Benecaid Health Trust.

[25] In her submissions filed on July 4, 2022 and continued on July 11, 2022 Ms. Daye stated in part that she had “clawed” herself “out of the mess he has made and actually make a living and actually live independently. Even have my own business again.” ...

[26] She went on to say:

Do you want it all back? Will that make you happier? I have about \$120,000 left after I paid all of my bills from the move, putting my stuff in storage and getting a car so I could get to work. Will that be enough? Will that be a “WIN” for you? I’ll even throw in some of my own savings from just before the separation. \$125,000. Will that work?... I’ll even throw in the \$350 a month in spousal support. Cancel all the money that came from you, that has the stamp of “THIS BELONGS TO AL SAVOIE” on it...

[27] Ms. Daye also stated:

I employed two lawyers who decided to LIE in private meetings and then use up the retainers with USELESS EMAIL JAMMING. Not to mention the FRAUD

imposed with signing a Letter of Agreement... That was an orchestration that relied on the collusion of 5 lawyers and two judges.

...

The DOJ's intentions from the start was to discuss behind doors how best to screw me out of what's rightfully mine. It's been suggested that "someone has it in for you"...and I WAS up against an entire cabal.. A system of liars and vampires... What lawyer actually says to their client "just sue the DOJ" as a form of "immediate" defence?

...

Any judge, looking at the facts of the case would know that I barely had funds to begin with and this is just another cash grab because her client must have revealed how much was in the Benecaid account...

...and the judge would set a nominal amount of 1\$ for her costs.

If anyone has a right to legal costs, it's me...

Anything over \$1 is blood money.. And I hope you choke on it.

And I am so glad that divorce paperwork is public knowledge because I think society needs to pull the damn plug on lying divorce lawyers who serve their businesses and their reputations and actually SUPPORT coercive control measures by insisting on getting paid thousands while further impoverishing women.

...

If your greed stipulates that you have to take a fifty year old LAST remaining savings, then so be it. It's obviously quite evident, as I've said before, that the lawyers in this case clearly need to be paid and I need to be penniless and homeless.

[28] In her submissions dated August 26, 2022, Ms. Daye expressed concern about not receiving the endorsement on May 30, 2022, suggesting that when Mr. Savoie's lawyer forwarded the endorsement to her that I was allowing his lawyer to speak for me. She suggested she was misled by the Court.

[29] As noted above, according to file records, the endorsement was sent to Ms. Daye on May 30, 2022 at 4:18 pm, and in any case she was aware of my decision by August 26, 2022.

[30] 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.

[31] In *Nurse v. Holden*, 2020 NSSC 110, Ms. Nurse argued that each party should bear their own costs for reasons which included some of the following arguments:

- a. Success was mixed. Ms. Nurse succeeded in vacating the prohibitions against Craig Layton. Ms. Nurse was partially successful in the parenting schedule that was adopted, together with some of the child support issues.
- b. Ms. Nurse provided a settlement offer in which she conceded primary care to Mr. Holden. Mr. Holden refused this offer and did not attempt to negotiate thereafter.
- c. Ms. Nurse incurred her own legal fees and disbursements in the amount of \$49,334.93. If Ms. Nurse’s settlement proposal had been accepted, she would have saved \$14,717.00 in legal fees.
- d. Ms. Nurse is of limited financial means. This is a consideration in family proceedings: *Cameron v. Cameron*, 2006 NSCA 76.
- e. The hearing was lengthened because the parties’ direct evidence was presented *viva voce* and not by affidavits. This was required in large part because of the significant amount of opinion, hearsay, and argument contained in Mr. Holden’s lengthy affidavit filed on February 19, 2019.
- f. It is inappropriate to base costs on court proceedings which were previously concluded.

...

[32] In this case, success was mixed and both parties contributed to confusion related to the litigation. However, Ms. Daye's behaviour included several instances when she failed to follow the court's directions:

- (a) Ms. Daye failed to file evidence regarding the contents of her bank accounts at separation.
- (b) Mr. Savoie also initially failed to disclose all of his bank accounts at separation. However, I have no additional evidence regarding any other bank accounts held by Mr. Savoie.
- (c) I have accepted Mr. Savoie's explanation regarding his oversight with respect to disclosure of several bank accounts; but I have also found that his oversights contributed to Ms. Daye's distrust of him and of the litigation process.
- (d) Mr. Savoie was successful in that I "called it even" with respect to the parties' bank accounts, as he had suggested, but I found the ongoing litigation on that issue was partly due to his failure to disclose to Ms. Daye in the first place;
- (e) Regarding whether there was any matrimonial money in the Chimeara bank account, Mr. Savoie was successful; and

- (f) Regarding the requested change to the terms of the Benecaid Health Trust, per paragraph 5 of the Partial Corollary Relief Order issued January 19, 2021, Ms. Daye was successful.

[33] In *Nurse v. Holden*, 2020 NSSC 110, the Honourable Justice Theresa Forgeron stated in part:

Law on Costs

[6] Rule 77 governs awards of costs in matters before the Supreme Court of Nova Scotia. In **Armoyan v. Armoyan**, 2013 NSCA 136, Fichaud, J.A., reviewed the principles to be applied when determining costs. The following relevant points stem from that decision:

The court's overall mandate is to "do justice between the parties": para. 10.

Unless otherwise ordered, party and party costs are quantified according to the Tariffs. The court has discretion to raise or lower the Tariffs applying listed factors, which include unaccepted written settlement offers and the conduct of the parties insofar as it affects the speed or expense of the proceeding: paras. 12 and 13.

- The Rule permits the court to award lump sum costs and depart from the Tariffs in specified circumstances. Tariffs are the norm and there must be a reason to consider a lump sum: paras. 14 and 15.
- The basic principle is that a cost award should afford a substantial contribution to the party's reasonable fees and expenses which means not a complete indemnity, but rather more than 50 and less than 100% of a lawyer's reasonable bill for services: para. 16.
- The Tariffs deliver the benefit of predictability by limiting the use of subjective discretion. This works well in a conventional case whose circumstances conform generally to the parameters assumed by the Tariffs. Some cases, however, bear no resemblance to the Tariffs' assumptions. For example, a proceeding begun nominally as a chambers motion may assume trial functions; a case may have no "amount involved"; **efforts may be substantially lessened by the efficiencies of capable counsel, or handicapped by obstructionism**; the amount claimed may vary widely from the amount awarded; the case may assume a complexity with a corresponding work load that is far disproportionate

to the court time by which costs are assessed under the tariffs; there may be rejected settlement offers, formal or informal, that would have saved everyone significant expense: paras. 17 and 18. (my emphasis)

- When subjectivity exceeds a critical level, the Tariffs may be more distracting than useful. In such a situation, it is more realistic to circumvent the Tariffs and channel that discretion directly to the calculation of a lump sum. A principled calculation should turn on the objective criteria that are accepted by the Rules or case law: para. 18.

[34] Mr. Savoie requested costs based on Tariff A as increased by scale 3 due to his claim that Ms. Daye's behaviour during the proceeding was "unreasonable and vexatious."

[35] Ms. Daye's behaviours after settlement did complicate the proceeding unnecessarily, including but not limited to the following behaviours: her failure to sign the quick claim deed as directed by me; her failure to acknowledge she had not met the prerequisites for financing another property or file evidence to support her claim that she had met the prerequisites; her failure to file a motion for disclosure as directed; her failure to attend a scheduled court conference; and her failure to follow directions regarding the preparation of her affidavit.

[36] Ms. Daye did agree to Mr. Savoie's requests to strike certain portions of her affidavit, unfortunately Ms. Daye did so after Mr. Savoie's legal counsel went to considerable lengths to identify the issues and file the motion to strike.

[37] Given Ms. Daye's behaviours during litigation I am prepared to assign scale 3.

[38] Mr. Savoie asked me to award \$7,500.00 in costs based on court time of one day and a half (1.5 days), with an additional \$2000 per day of trial for an amount of \$3,000 for a day and a half), following a trial dealing with division of property.

[39] I find that including hearing time, conference time, and pre-trial time, the time involved is just slightly over one day, and I note that all conferences and pre-trials were by telephone.

[40] Using the rule of thumb approach, I am prepared to allocate \$20,000.00 to the 1 day but less than a day and a half that I have calculated using Tarriff A at scale 3 for \$5000.00 + \$2000.00 for one day of trial only, totalling \$7,000.00.

[41] I have found there were mixed results and that Mr. Savoie's failure to disclose certain information also contributed to the complexity of the matter and to Ms. Daye's distrust. Mr. Savoie was successful with respect to two issues and Ms. Daye was successful with another.

[42] Dividing $\$7000 / 3 = \$2,333.22$, Ms. Daye's share of costs, divided equally, would be $\$2,333.22 \times 2 = \$4,666.66$. However, considering Mr. Savoie's contribution to the confusion surrounding one of the issues, the disclosure of the

parties' personal bank accounts at separation, I am splitting the costs related to that issue between the parties, $\$2,333.22 / 2 = \$1,166.61$.

[43] Ms. Daye is responsible for costs of \$2,333.22 (for the Chimeara issue) and \$1,166.61 (for the personal banking issue) = **\$3,499.83**.

[44] I may consider a party's ability to pay costs in making a costs award. In *M.C.Q. [sic M.Q.C.] v. P.L.T.*, 2005 NSFC 27 (CanLII), Judge Dyer reminded me that some litigants may "consciously drag out court cases at little or no actual cost to themselves (because of public or third party funding) but at a large expense to others who must 'pay their own way.'" If this happens, he said, "Fairness may dictate that the successful party's recovery of costs not be thwarted by later pleas of inability to pay. [See *A.E.M. v. R.G.L.*, 2004 BCSC 65 (CanLII)]."

[45] Given Ms. Daye's representations about her finances and given the two equalization payments made by Mr. Savoie to Ms. Daye, I find Ms. Daye can pay the costs I have awarded to Mr. Savoie.

[46] 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."

[47] Pursuant to Civil Procedure Rule 77.02(2) I have a general discretion to award costs so as to do justice between the parties.

[48] Having regard to both parties' behaviours, the complexity of the issues, and the time involved, I find it is appropriate to use Tarriff A, allocating \$20,000 to the 1 day + involved, based on scale 3. I order Ms. Daye to pay Mr. Savoie costs of \$3,499.83 within 60 days of receipt of this decision which will be emailed to Ms. Daye's usual email address. This amount is inclusive of all disbursements.

Cormier, J.