

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *MG v. CG*, 2024 NSSC 125

Date: 20240425

File No: 1206-7824

Between:

MG

Petitioner

v.

CG

Respondent

ENDORSEMENT

Judge: The Honourable Justice Pamela Marche

Counsel: Gordon Gear and John Stephensen, for the Petitioner, MG
Steve Jamael, for the Respondent, CG

By the Court:

Background and Overview:

[1] This cost endorsement should be read in conjunction with *MG v. CG*, 2024 NSSC 73. I offer a brief overview of that case to provide context to this cost decision.

[2] MG and CG were involved in a highly contested parenting dispute. They have two young adolescent children who resisted contact with their mother, MG. Their father, CG, said he encouraged and supported the children's relationship with their mother. He claimed the children had been traumatized while in their mother's care and, as a result, they should decide whether to have contact with her.

[3] CG was not successful in proving his claims. I found (1) there was no evidence to support the allegation the children were harmed while in MG's care, (2) there was no evidence to support the claim of a therapeutic basis for discretionary parenting, and (3) CG had demonstrated an unwillingness or inability to support the children's relationship with their mother, evidenced, in part, by his lack of compliance with interim parenting orders. I decided it was in the children's best interest to be placed in the primary care of MG. To order otherwise, I determined, would be to effectively end the children's relationship with their mother.

[4] A two-day hearing was held in January 2024. Prior to that, there were multiple court appearances and four interim parenting orders issued. Although the interim parenting orders were issued by agreement, which would normally be a factor in reducing costs, there was a substantial lack of compliance by CG with the terms of those orders. Even though CG agreed to the orders, he did not really follow them.

Position of the Parties

Position of MG

[5] MG seeks a lump sum cost award from CG. She argues the tariff amount, which she calculates at \$16,188 (\$12,188 plus \$4,000) is insufficient to do justice

between the parties. Instead, she seeks a substantial contribution to her legal bill, which amounted to \$84,483 (inclusive of HST and disbursements). Specifically, considering the complexity and importance of the issues, she is seeking a lump sum cost award of 90% of her legal costs. In the alternate, she seeks a lump sum cost award of 75% of her legal costs. She asks that costs be payable within 30 days and be enforced through the Maintenance Enforcement Program.

[6] In support of her position, MG argues:

- She was entirely successful in her parenting claim.
- She engaged appropriately in the court process and acted in good faith in efforts to use child-focused approaches to the parenting issues.
- CG's unreasonable conduct increased the cost of litigation. Although CG claimed to be supportive of the children's relationship with their mother, his actions did not reflect his stated intent. Despite CG's consent to interim parenting orders intended to permit and promote MG's parenting time, he failed to meaningfully comply with those orders.

Position of CG

[7] CG concedes MG is entitled to costs. In his brief submissions, he succinctly argues:

- Tariff C is applicable.
- Costs should be assessed at \$20,000, given the length of the hearing.
- There is no authority to support MG's request to have the cost award enforced through the Maintenance Enforcement Program

The Law

[8] Nova Scotia *Civil Procedure Rule 77* governs awards of costs in matters before the Supreme Court of Nova Scotia.

[9] Costs are in the discretion of the Court. A successful party is entitled to costs. A decision not to award costs must be principled and reasoned. *Gagnon v. Gagnon*, 2012 NSSC 137.

[10] The Nova Scotia Court of Appeal has confirmed the overall mandate of the Court when ordering costs is to "do justice between the parties." *Armoyan v. Armoyan*, 2013 NSCA 136.

[11] It is more appropriate to apply Tariff A than Tariff C in "trial-like hearings of matrimonial issues." *Armoyan v. Armoyan*, *supra*.

[12] To apply Tariff A, there must be a quantifiable monetary amount involved. Where there is a substantial non-monetary issue to be determined, like in this case which dealt primarily with parenting, costs are determined having regard to the complexity of the proceeding and the importance of the issues.

[13] A cost award should afford a substantial contribution to the parties' reasonable fees and expenses. This means more than 50% and less than 100% of a lawyer's reasonable bill for services. *Cameron v. Cameron*, 2014 NSSC 325.

[14] Tariff A costs related to substantial non-monetary issues are commonly assessed at a rate of \$20,000 per day. *Jachimowicz v. Jachimowicz*, 2007 NSSC 303.

[15] An award of costs can serve to promote the rational conduct of litigation. *Gale v. Hines*, 2017 NSSC 356.

[16] On the issue of unreasonable conduct in the litigation of parenting issues, Justice B. MacDonald, said in *Ibrahim v. Murphy*, 2017 NSSC 264 (para. 10):

The potential for an adverse cost award is a reality that is expected to encourage parents to be more objective about their child's needs. Parents are to separate their own needs from those of the child. Sometimes this may require a parent to recognize the child can be adequately parented by the other parent and that his or her preferred plan is not practical or desirable for the child.

Decision

[17] Tariff A, not Tariff C, is the applicable tariff. A lump sum cost award is appropriate in this case because the parenting issues cannot be assigned a dollar value.

[18] Using the daily rate general rule in *Jachimowicz, supra*, plus the additional \$4,000.00 for the two-day hearing, the lump sum cost award would be \$44,000.00. In my view, this cost award would fall short of doing justice between the parties.

[19] CG persisted in pursuing an unreasonable parenting position. He agreed that police and child protection investigations into allegations made by the children resulted in no criminal charges or protection concerns related to MG. He acknowledged MG posed no risk to her children. Yet he was unrelenting in his position that MG should have only supervised parenting time, at the discretion of the children. CG steadfastly maintained an unreasonable parenting position, not supported with evidence, and this increased costs.

[20] Furthermore, CG engaged in blameworthy conduct. Although he agreed to participate in efforts to rehabilitate and restore the children's relationship with their mother, he failed to do so. He did not comply with interim parenting orders that permitted and promoted MG's parenting time, even though he consented to those orders. CG did not do what he said he would, and this increased costs.

[21] I have considered *Civil Procedure Rule 77* and the related jurisprudence. The issue of child resistance was complex and of critical importance to the continuation of the children's relationship with their mother. CG's blameworthy and unreasonable conduct increased costs. CG's failure to comply with interim parenting orders attracts serious rebuke. Within this context, I use my discretion to order that CG pay MG \$76,035, representing 90% of her legal costs. This amount is inclusive of disbursements and must be paid by May 31, 2024.

[22] I understand the Director of the Maintenance Enforcement Program may enforce "legal fees or other expenses arising in relation to support or maintenance" as per s. 2(e)(vii) of the *Maintenance Enforcement Act*, 1994-95, c. 6, s.1. I do not believe this authority extends to enforcement of cost awards related only to parenting issues. There are, of course, other enforcement mechanisms available to MG, should the cost award remain unpaid after May 31, 2024.

Marche, J.