

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

**Citation:** C. D. M. Z. v. R. E. H.- Z., 2013 NSSC 347

**Date:** 20131028

**Docket:** 1201-066542, SFHD-083189

**Registry:** Halifax

**Between:**

C. D. M. Z

Petitioner

v.

R. E. H.- Z.

Respondent

**Judge:**

The Honourable Justice Beryl A. MacDonald

**Written Submissions:**

August 12, 2013 from the counsel for the Petitioner

August 26, 2013 from the counsel for the Respondent

**Counsel:**

Michelle Rogers, counsel for the Petitioner

Nicole A. Figueira, counsel for the Respondent

**By the Court:**

[1] On July 26, 2013 I provided a written decision in this matter. It is reported as *C. D. M. Z v. R. E. H.- Z.* 2013 NSSC 242. I invited the parties to provide written submissions if either requested a costs award. Both counsel have now provided those written submissions.

[2] In coming to this decision I have considered the principles I described in *Gagnon v Gagnon* 2012 NSSC 137.

[3] The Father was the successful party on an interim and final basis in respect to primary care of the parties' child, and child support. He had provided the Mother with an offer to settle these parenting issues as early as February 18, 2013. That offer was more generous than the arrangement I ordered after the trial.

[4] During the trial the Mother raised several allegations that I decided were unproven. These required a response from the Father and lengthened the proceeding. Some of these allegations she knew or should have known were without merit.

[5] Early in the proceeding the Mother would not agree to consolidate the Maintenance and Custody Act proceeding, that she had previously initiated, with the Father's Divorce proceeding. As a result he was forced to bring a Motion to Consolidate. That motion was granted.

[6] The Father was, justifiably, concerned about the Mother's mental health and this prompted him to request a custody/access assessment with a psychological assessment of the Mother. I did not grant this request although I did order the preparation of a "Children's Preference Assessment" . The Father's concern's about the Mother's mental health were known and I accepted the Mother's submissions that she would produce a report from her treating psychiatrist. Under the circumstances I decided there was an alternate means to assess the "clinical issues". Although the Father was not successful in the specifics of his motion, his motion did ensure that evidence about the Mother's mental health would be before the court.

[7] The Father's interim motion for exclusive possession of the matrimonial home was successful.

[8] The Father had made numerous offers to settle the division of matrimonial assets and debt. His early offers were substantially similar to the agreement about the division of some of the assets and debts about which I was informed on the first day of the trial. However, the Father had been forced to obtain appraisals because the Mother failed to do so. She had an inflated concept about the value of the household contents and personal possessions. In her Statement of Property she valued the household contents, exclusive of the guitars and cd/record collection, at \$14,450.00. She considered the cd/record collection to be worth in excess of \$5,000.00. When appraisals were completed she wanted speciality appraisals because she did not accept the values placed upon the guitars and the cd/record collection. She essentially put the Father to additional unnecessary cost to attempt to resolve these issues. ( I say unnecessary because her efforts did not result in a substantial monetary award in her favor in respect to household contents and possessions.) The Father refused to go to further expense to value the cd/record collection. Finding a person to conduct this “speciality appraisal” was also a concern. I ordered the collection was to be physically divided between the parties with each having an alternating choice beginning with the Mother until the entire collection was divided.

[9] The Mother suggests she could have noting valued because the Father was in exclusive possession of the matrimonial home. However, the parties did agree that the household contents were to be valued and an appraiser was chosen for that purpose. The Mother was to attend during the appraisal and she was to bring two cameras in her possession for appraisal. She arrived late. The appraiser had completed the work and had left. She never did get the cameras appraised. She was dissatisfied with the household contents appraisal. Her unrealistic opinion about the value of the household contents and personal possessions contributed to delay and expense.

[10] Although I urged her on numerous occasions, the Mother did not engage a professional to provide information about the present day value of her pension. The Father was prepared to rely on what she had provided, a statement from her previous employer. As a result his offers were based upon that information.

[11] While it is true that the Father's offers did not quantify the division of personal property as I did in my decision, this resulted from the Mother's failure to co-operate and her failure to realistically evaluate the worth of the household

contents and personal possessions as against the totality of the expense of litigation. I made no finding that the original appraisals were inadequate. I chose to have the cd/record collection divided between the parties because I believed this was a more attractive solution than it was to give the entire collection to one party and money to the other.

[12] The Mother argues that costs should not be awarded because to do so would cause her financial hardship. The Mother's income in 2012, for the purpose of the Child Wishes Assessment, was agreed to be \$54,528.00. The severance package continued that income for 2013. As I said in my decision the Mother was offered :

[43]...career counseling services that she has not yet accessed nor has she submitted any resumes to other potential employers. She suggests she is not looking for alternate employment because her present package prevents her from working in her area of expertise for a full year. I do not accept that this should prevent her from making necessary inquiries about potential alternate employment to determine whether there may be employers prepared to set her start date at the end of the non-competition period. Nor is she prevented

from working with a career counselor to identify potential new employment opportunities.

Under these circumstances I do not accept her plea of financial hardship.

[13] The Father is the successful party and is entitled to a cost award. I have been informed that his legal and disbursement fees total \$29,000.00. Using the “rule of thumb approach” the basic scale in Tariff A would provide \$4,000.00. An additional \$2,000.00 per day would be added for the 2 days of the trial for a total of \$6,000.00. This does not provide a substantial contribution towards his legal expense. After considering the Mother’s failures to pursue settlement opportunities, to accept the more favorable parenting proposal offered early in the proceeding, her failure to immediately agree to a consolidation of proceedings, and the other events mentioned in this decision that prolonged the proceeding and the trial, I award the Father costs in the amount of \$13,000.00.

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Beryl MacDonald, J.S.C.