

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Boone v Boone*, 2014 NSSC 271

Date: 2014-07-16

Docket: No. SFSNMCA-083755

Registry: Sydney

Between:

Blair Boone

Applicant

v.

Helen Boone

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Submissions: June 30, 2014 from Helen Boone
July 4, 2014 from Blair Boone

Counsel: Theresa M. O'Leary for Helen Boone
Darlene MacRury for Blair Boone

By the Court:

Introduction

[1] I've rendered my decision in Ms. Boone's motion to permit relocation of Danielle and Michael from New Waterford to Sydney River, which is reported as *Boone v Boone*, 2014 NSSC 227. Ms. Boone also claimed costs.

The proceeding

[2] Ms. Boone sought an order allowing her to relocate the children from New Waterford, where they'd lived since their parents separated, to Sydney River. The motion came on for hearing very quickly. Both parties filed affidavits and were cross-examined on them. Mr. Boone had an additional witness testify in support of his position. The entire hearing was completed in three hours, with thanks to the focus and efficiency of counsel.

[3] Unless I order otherwise, costs should follow the result in a proceeding, according to Civil Procedure Rule 77.03(3). Ms. Boone was the successful party.

Ms. Boone's argument

[4] Ms. Boone incurred costs, inclusive of disbursements and HST of \$5,209.78. She says there is no principled reason to deny her costs which represent a substantial contribution toward her reasonable expenses. Specifically, Ms. Boone refers me to Civil Procedure Rule 77.07(2)(g), arguing that this is an appropriate circumstance for me to add an amount to the tariff costs; the entire proceeding, she says, was required because Mr. Boone unreasonably withheld his consent to her relocation of the children from New Waterford to Sydney River, a distance of 15-25 minutes' travel. Ms. Boone says that nothing will change, in terms of the parents' custodial status or the children's access with their father and that this was known to Mr. Boone when he withheld his consent to the relocation.

[5] Ms. Boone has not identified a specific amount of costs she's seeking, but has left that to my discretion.

Mr. Boone's argument

[6] Mr. Boone notes that Ms. Boone's motion was an interim one and the main application has yet to be scheduled. He says that the evidence in the application

will show that his opposition to the motion was motivated by the children's best interests as he provides "better care for them in the environment in which they had grown up, school, church, sports etc, rather than have them [sic] relocate to the Sydney River area".

[7] Mr. Boone also argues that there is a principled reason to depart from the general rule of awarding costs to the successful party: an award of costs, he says, will impede his ability to provide for the children on an ongoing basis. He says that he has custody of a child from a previous relationship for whom he is the sole caregiver.

[8] As I noted in my decision, Mr. Boone has given his wife approximately \$830.00 toward the children's support in the twenty-two months since they separated. He said that he'd provided school clothing and school supplies, given the children gifts for their birthdays, at Christmas and for grading and that he gave them money directly for their needs. He did not tell me how much he has spent in this fashion. Based on his tax returns, his monthly child support obligation since 2012 was in excess of \$600.00: he didn't suggest that the money he spent on the children or gave to them was equivalent to the amount of child support he should have paid.

Analysis

[9] A parent without custody is obliged to pay support for his or her children. This is a fundamental principle of child support. It is anticipated that, in addition to paying child support, there will be costs associated with access. If those costs are significant, an undue hardship claim may be advanced. Mr. Boone has not made such a claim or hinted that one might be made.

[10] At minimum, the income which would generate a monthly child support payment of \$600.00 for two children is in excess of \$42,000.00.

[11] I reject Mr. Boone's argument that an order for costs would impede his ability to provide for Danielle and Michael. At this point, he is not meeting his financial obligation to the children, and he cannot use the obligation he is not meeting as a shield to protect himself from a claim for costs.

[12] I acknowledge that the motion I heard was an interim one and that Ms. Boone's success on this motion might look different in the context of the matter overall. I would prefer not to deal with costs in a piecemeal fashion,

however, this application has made very little progress. Twenty months have passed since the application was started, and no hearing date has been set. I am unlikely to be the hearing judge. It will be more difficult for a different hearing judge to assess the costs that should follow from this motion, so I will do so.

Applying the Tariff

[13] The proceeding was an interim motion. The Tariffs don't use the language of motions and applications. Here, I apply Tariff C which applies to applications in Chambers. I am treating the interim motion as the equivalent of a Chambers application under *Nova Scotia Civil Procedure Rules (1972)*.

[14] There is no amount involved.

[15] The motion was heard in three hours: more than a half-day, but less than one day. Less experienced or less capable counsel may have required greater time to conclude the hearing. The range of costs for a hearing of this duration is between \$1,000.00 and \$2,000.00.

[16] The parties filed extensive affidavits and briefs.

[17] Rule 77.07(1) says that I may add an amount to, or subtract an amount from tariff costs and Rule 77.07(2) offers examples of factors that may be relevant in deciding whether to do this. The factors include, as Ms. Boone notes, the unreasonable withholding of consent.

[18] I accept Ms. Boone's argument that costs should be increased to reflect Mr. Boone's unreasonable withholding of consent. I order him to pay costs of \$3,000.00 forthwith.

[19] Ms. Boone's counsel shall prepare the order granting the application and making this provision for costs.

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

Halifax, Nova Scotia