

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Connolly v. Connolly, 2005 NSSC 203

Date: 20050714

Docket: 1201-56590
(SFH D 014028)

Registry: Halifax

Between:

Tammie Mary Connolly

Petitioner

v.

Shawn Owen Connolly

Respondent

Judge:

The Honourable Justice Deborah Gass

Heard:

June 23 and June 24, 2005 in Halifax, Nova Scotia

Written Decision

re Costs:

July 14, 2005

Counsel:

Daniel Walker, for the Petitioner

[1] This is an application for costs following an divorce trial which was heard on June 23 and 24, 2005. The decision was rendered June 24, 2005, and the petitioner was substantially successful in the result.

[2] The solicitor for the petitioner sought costs and the parties were given an opportunity to make representations in writing. Those representations have been received and considered.

[3] Costs are in the discretion of the court and may be awarded to the successful party. In this instance, Ms. Connolly was substantially successful in her application.

[4] Mr. Connolly argues that an award of costs would cause him considerable financial hardship and impair his ability to exercise access to his children and meet his child support obligation.

[5] The court did order arrears of child support, and gave Mr. Connolly time to pay those arrears.

[6] In this instance the children's access with their father will take place primarily in the Province of Newfoundland and Labrador or the father will be required to travel to Nova Scotia to exercise his access.

[7] These are factors for the court to take into consideration in determining whether or not to award costs, and if costs are to be awarded, an appropriate amount.

[8] The petitioner is seeking costs in the amount of \$3,000.00.

[9] I am satisfied that an award of costs is appropriate in this situation in that the petitioner was substantially successful in her claims. However, I am mindful of the fact that the respondent will have significant access costs, and he already has an order to pay substantial arrears. Any order of costs should not have an adverse impact on the children's emotional or material well being. Access with their father is important for their emotional well being and the child support obligations are critical to their material well being.

[10] Considering the circumstances of the matter, and balancing the fact that two full days of trial were required with the respondent's position that he represented himself because he could no longer afford to pay legal expenses, I will order costs at a substantially reduced amount. Mr. Connolly will contribute \$500.00 towards Ms. Connolly's costs and he shall have one year to pay. It should be noted for the respondent that the question of costs was pled in the Petition for Divorce and therefore forms part of the relief that has been sought throughout the proceedings.

J.