

Date: 20011127
Docket: CA 173494

NOVA SCOTIA COURT OF APPEAL
[Cite as: MacKay v. Bucher, 2001 NSCA 171]

Bateman, Saunders and Oland, J.J.A.

BETWEEN:

SHAWNA KATHLEEN MacKAY

Appellant

- and -

CHRISTIAN WERNER BUCHER

Respondent

REASONS FOR JUDGMENT

Counsel: Deborah E. Gillis for the appellant
Milton J. Veniot, Q.C. for the respondent

Appeal Heard: November 27, 2001

Judgment Delivered: November 27, 2001

THE COURT: Appeal dismissed per oral reasons for judgment of Bateman,
J.A.; Saunders and Oland, J.J.A. concurring.

BATEMAN, J.A.: (Orally)

- [1] This is an appeal of an award of solicitor-client costs.
- [2] The appellant, Shawna MacKay, mother of an 11 year old, applied in British Columbia to vary a consent order for lump sum child support seeking an order for ongoing periodic payments. The lump sum order was made in Nova Scotia pursuant to the **Family Maintenance Act**, R.S.N.S. 1989, c. 160 at the time of the child's birth. Ms. MacKay and the respondent Christian Werner Bucher, the child's father, were not married nor did they live together. Ms. MacKay succeeded in the first instance in that the order was provisionally varied by the British Columbia Provincial Court to comply with the *Child Support Guidelines*. A judge of the Nova Scotia Family Court declined to confirm the provisional order in respect of the "table" amount of maintenance, holding that the mother was not entitled to basic child support, there being no change in circumstances. The Nova Scotia court remitted the matter to British Columbia for further evidence on the entitlement to special expenses. On Ms. MacKay's appeal, this Court reversed the denial of child support, finding that the judge erred in requiring a material change in circumstances in addition to the implementation of the Provincial Child Support Guidelines. The child support was varied to conform with basic Table amount. The judge's remittal to British Columbia for further evidence on special expenses was confirmed. (See **MacKay v. Bucher**, [2001] N.S.J. No. 326 (Q.L.)(N.S.C.A.))
- [3] At a subsequent hearing of Mr. Bucher's application for costs, the judge awarded solicitor-client costs in his favour to the extent of 75% of his actual legal fees. The order was made after the hearing of the appeal on the merits but before this Court's decision was announced.
- [4] An award of costs by a trial judge is an exercise of discretion subject to a deferential standard of review. Absent the application of wrong principles of law or a manifestly unjust result, this Court will not interfere with the trial judge's award. (**Conrad (Guardian Ad Litem of) v. Snair et al** (1996), 150 N.S.R. (2d) 214; N.S.J. No. 164 (Q.L.) (N.S.C.A.)).
- [5] In ordering solicitor client costs the judge found that Ms. MacKay swore a false affidavit misrepresenting, among other things, the quality of the legal advice which she had received at the time of entering into the lump sum agreement. That finding of fact is supported by the record.
- [6] Ms. MacKay was represented by counsel at the costs hearing. She provided no explanation for the statements in her affidavit. The judge accepted that her false evidence on the various issues drew the respondent into disproving

- the allegations. In this regard Mr. Bucher incurred substantial additional expense. The judge accepted that this was a reasonable course of action.
- [7] It appears, from a reading of the decision, that the costs award was driven by the appellant's misconduct which the judge characterized as a rare and exceptional circumstance meriting that award.
- [8] In these unusual circumstances we are not persuaded that the decision of the trial judge reflects error nor was there a manifestly unjust result.
- [9] Accordingly, the appeal is dismissed. The respondent shall have costs in the amount of \$750 inclusive of disbursements.

Bateman, J.A.

Concurred in:

Saunders, J.A.

Oland, J.A.