

FAMILY COURT OF NOVA SCOTIA

Citation: *Wile v. Wile*, 2014 NSFC 1

Date: 2014 01 09

Docket: FLBMCA No. 086681

Registry: Bridgewater

Between:

Katherine Mae Wile

Applicant

v.

Chad Wile

Respondent

Judge: The Honourable Judge William J. Dyer

Heard: October 24, 2013, in Bridgewater, Nova Scotia

Main Decision: November 25, 2013

Supplementary
Decision: January 9, 2014

Counsel: Tabitha Webber, for the Applicant
Chad Wile, Respondent, unrepresented

By the Court:

[1] I previously released a written decision [2013 NSFC 25] regarding the application by Katherine Wile (“the mother”) to deal with the parenting arrangements for her children, for [current] basic child maintenance, for retro-active maintenance, and for a contribution to specified expenses pursuant to section 7 of the *Child Maintenance Guidelines*.

[2] As will appear from the decision, the mother was largely successful in her application against Chad Wile (“the father”) - particularly on the question of retro-active child support. The final award was almost \$10,000.

[3] An order was taken out which captured the results but I reserved on the question of court costs pending submissions on behalf of the parties. Written submissions were received on behalf of the mother. Nothing was forthcoming from the father.

[4] By reference, I incorporate my analysis in the *M.V. v. S.V., 2009 NSFC 24*.

[5] I am mindful of *Family Court Rule 17* which authorizes awards of costs at the discretion of the court. And I recognize the court may refer to the *Civil Procedure Rules* and the *Costs and Fees Act* for guidance about the circumstances in which it might be appropriate to award costs and when deciding the amount.

[6] At page 8 of my main Decision I wrote as follows:

[38]...Without laboring the evidence, I find: that the father was put on timely notice of a pending child support claim to be effective as of the separation; that the father had independent legal advice for much of the time and knew (or ought to have known) his legal duty to support his children; that the mother was diligent in her pursuit of support by negotiations; that legal action was delayed only because of negotiations in aid of settlement; that the father had income (albeit modest) above the minimum CMG Table threshold for payment at all material times; that the father could have directed support from his income for the children’s benefit, or set money aside, but chose not to do so; that the children had ongoing financial needs which the mother met from her own resources while she pursued remedies; and that the father has not demonstrated by evidence an inability to respond to a retroactive award or that it would cause financial hardship to him. In brief, there was no lawful excuse for non-payment before; there is no lawful excuse now.

[39] In my opinion, the father should not be permitted to deliberately set up a scenario whereby he pays nothing, makes little or no financial disclosure, stalls the claims on behalf of the children - thereby accumulating significant arrears - and then paint himself as a victim and hold up the arrears amount as a shield. I do not accept his assertion that this very predictable outcome is unfair or unreasonable to him. This case is about his children and his legal responsibilities as a parent.

[7] I note that Ms. Webber, counsel for the mother, made three chambers' appearances on behalf of her client before the final hearing which consumed about a half day. Counsel also submitted a comprehensive pre-hearing brief and two post-hearing briefs.

[8] Invoking the *Costs and Fees Act* in tandem with the *Civil Procedure Rules*, it was submitted that an award of approximately \$1,750 in favour of the mother would be appropriate in the circumstances. It was submitted that such an award would not provide total indemnification of the mother's actual solicitor/client expenses - rather it would be a "significant contribution" to those costs.

[9] In the absence of any countervailing submissions that an award in the proposed sum would be inappropriate in principle, or cogent evidence that the father (ultimately) cannot meet the award from assets or income, I exercise my discretion and order that the father shall pay to the mother forthwith \$1,750 as court costs. Under section 2 (e) (viii) of the *Maintenance Enforcement Act*, I order that the award qualifies as a compensable expense for payment and collection under the Maintenance Enforcement Program ("MEP").

[10] Ms. Webber shall prepare an order which gives effect to this decision (including payment authorization through MEP).

Dyer, J.F.C.