

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Bumstead v. Bumstead*, 2015 NSSC 405

Date: 20151229

Docket: *Halifax*, No. 057825

Registry: Halifax

Between:

Susan (Bumstead) Enta

Applicant

v.

Scott Bumstead

Respondent

ENDORSEMENT

Judge: The Honourable Justice Cindy G. Cormier

Heard: November 16, 2015, in Halifax, Nova Scotia

December 29, 2015

Re: Susan (Bumstead) Enta v. Scott Bumstead SFH No. 057825, 2008 File

No.1201-62540

- September 8, 2015, 1 hour variation hearing scheduled, removed from docket and re- scheduled, no service. Amended notice to appear in court issued and served on the respondent on September 9, 2015.
- September 11, 2015 1 hour variation hearing scheduled, adjourned at the request of Mr. Bumstead's legal counsel, requesting time to prepare. Mr.

Bumstead also requested a copy of the child's school records. Ms. Enta later agreed to provide the records.

- Hearing October 2, 2015 variation hearing held for approximately two hours. Adjourned to allow the parties to make submissions and for an oral decision.
- Hearing November 16, 2015, submissions followed by oral decision.

Court time was approximately one hour and a half hours.

Request for costs of Tariff C, based on a variation hearing of approximately a half a day. Total costs requested: \$4,500.00 (based on legal fees of \$5000.00).

Decision:

Susan Enta shall pay Scott Bumstead costs of \$1,000.00 on or before July 1, 2016.

Background:

[1] The parties' marriage was dissolved by judgment which became effective July 12, 2008.

[2] In “late July” 2015, the party's child, Holly Elizabeth Bumstead, born [***], 1999 (16 years old), asked Ms. Enta, her mother if she could attend King's-Edgehill school.

[3] On August 20, 2015 Ms. Enta advised Mr. Bumstead, Holly's father about Holly's interest in transferring from the Halifax West High School “O2 program”

to King's-Edgehill school. Mr. Bumstead indicated he did not approve and would not consent to the school transfer.

[4] Holly applied to King's-Edgehill school and on August 27, 2015 she was accepted as a student. Holly was scheduled to start at King's-Edgehill school on September 9, 2015.

[5] Mr. Bumstead indicated to Ms. Enta that he would not agree to sign any forms requiring him to make a financial commitment to allow Holly to attend King's-Edgehill school.

[6] Mr. Bumstead expressed concern about Ms. Enta's ability to make the financial commitment to allow Holly to attend King's-Edgehill school. Mr. Bumstead indicated to Ms. Enta that he wanted a letter from King's-Edgehill school indicating he would not be liable for any costs associated with Holly attending King's-Edgehill school. Mr. Bumstead has maintained he does not have the financial ability to contribute to tuition or associated expenses for Holly to attend a private school.

[7] On September 4, 2015 Susan Enta filed a notice of variation application pursuant to s. 37 of the *Maintenance and Custody Act* (the application should have been filed pursuant to sec 17 of *the Divorce Act* and the error was recognized in the court's running file), asking the court to specify Ms. Enta has the authority to allow Holly to attend King's-Edgehill school, as per the corollary relief judgment SFH

No. 57825 No 1201-62540, granted June 11, 2008. Ms. Enta submitted that she believed she had final decision making authority with respect to Holly's school placement. In the alternative, Ms. Enta was asking the court to vary the corollary relief judgment SFH No. 57825 No 1201-62540, granted on June 11, 2008 to allow her to have decision making authority in relation to Holly attending King's-Edgehill school.

[8] Ms. Enta confirmed she was not asking Mr. Bumstead to contribute to tuition or associated expenses for Holly to attend King's-Edgehill school. Ms. Enta indicated she (or her extended family) had the financial means to pay for Holly's tuition and expenses for King's-Edgehill school. However, after the parties evidence was properly before the court Ms. Enta attempted to enter additional evidence and request Mr. Bumstead make a contribution toward Holly's expenses at King's Edgehill.

[9] The corollary relief judgement granted by J. Leslie J. Dellapinna on June 11, 2008 states in part:

Custody and Access

1. Scott Richard Bumstead and Susan Nicole Bumstead (Enta) shall have joint custody of the following child of the marriage:

Holly Elizabeth Bumstead, born [***], 1999

- (a) Susan Bumstead (Enta) shall **have primary care and control of Holly and shall be responsible for the day to day care and decision making when Holly is in her care.**
- (b) Susan Bumstead (Enta) shall keep Scott Bumstead informed of all major issues affecting the health, education, religion and general welfare of Holly and **shall be consulted on all such matters and shall have the right to have input into the decision making on maior issues.**
- (c) Scott Bumstead shall have access directly to information from doctors, other health care providers, child care providers and educational providers or other persons who are involved with Holly.
(my emphasis)
2. Scott Bumstead shall have access with Holly as detailed below:
- (d) Every second weekend with pick-up on Friday from school until Sunday at 6:30p.m.

[10] Mr. Bumstead's position at the hearing was that Holly should return to Halifax West High School and undergo a current math assessment and he would support any recommendations for Holly to receive additional assistance.

Settlement offer

[11] On September 10, 2015 Mr. Bumstead's legal counsel forwarded a “without prejudice - for settlement purposes only letter” to Ms. Enta indicating Mr. Bumstead would consent to Holly attending King's-Edgehill school on the following conditions:

1. That all current or future costs & fees associated with her attendance at King's-Edgehill will be your (Ms. Enta's) sole responsibility to pay.
2. That you (Ms. Enta) will solely sign any documentation required by King's-Edgehill that assigns liability for payment of any school fees.
3. Joint decision-making on major issues will continue as is already ordered in the existing Corollary Relief Order, Dated June 11, 2008.

Findings

[12] The corollary relief judgment granted in 2008, specifies Ms. Enta has **“primary care and control of Holly and shall be responsible for the day to day care and decision making when Holly is in her care”**, and that Mr. Bumstead **“shall be consulted on all such matters and shall have the right to have input into the decision making on maior issues.”**

[13] I found there were changes in Holly's circumstances, including the child ' s past and recent struggles with mathematics, the child's age and her request to attend King's-Edgehill school in an attempt to address her academic needs, and Ms. Enta's (and her extended family's) stated ability to pay for the child's tuition and expenses at King's-Edgehill school. I found it was in Holly's best interests to be permitted to continue at King's-Edgehill school.

[14] The court confirmed Holly would be permitted to attend King's-Edgehill school during the school week given Ms. Enta was able to cover all the costs associated with a private school education including tuition and related expenses, and given Holly's attendance would not interfere with Mr. Bumstead's access or require him to make a financial commitment to pay for Holly's tuition or any related expenses which I found he could not afford.

Reasons

[15] Ms. Enta rejected a formal settlement offer from the respondent which would have allowed Holly to attend King's-Edgehill school so long as Mr. Bumstead was not required to contribute to tuition or any related expenses. The offer also confirmed that in relation to any future decisions for Holly's benefit the corollary relief judgment would continue to provide guidance.

[16] The hearing required approximately one half day.

[17] The most significant issue at the hearing was the issue of whether Holly would be permitted to attend a private school and who would pay for tuition and any related expenses. The issue of ongoing joint decision making was also raised.

[18] Ms. Enta was successful in having the court confirm Holly could attend a private school if Ms. Enta was able to cover the cost of tuition and other related expenses.

[19] Mr. Bumstead was successful in having the court confirm he was not in a financial position to contribute to the tuition and expenses related to Holly attending a private school and that joint decision making in all other respects would continue as outlined in the corollary relief judgment granted June 11, 2008.

[20] *Civil Procedure Rule 77.03(3)* provides that “Costs of a proceeding follow the result”. Costs are in my discretion. A decision not to award costs must be principled.

[21] I may consider a party's ability to pay costs in making a costs award. In *M.Q.C. v. P.L.T.*, 2005 NSFC 27 , Judge Dyer reminded me that some litigants may “consciously drag out court cases at little or no actual cost to themselves (because of public or third party funding) but at a large expense to others who must

‘pay their own way’”. If this happens, he said, “Fairness may dictate that the successful party's recovery of costs not be thwarted by later pleas of inability to pay. [See *A.E.M. v. R.G.L.*, 2004 BCSC 65].”

[22] I find Ms. Enta asked the court for clarification regarding her authority to send Holly to a private school without Mr. Bumstead's express consent. However, Ms. Enta did so after Mr. Bumstead offered to settle the matter by agreeing to allow Holly to attend a private school if Ms. Enta was responsible for the costs. *Civil Procedure Rule 77.02(1)* states that I “may, at any time, make any order about costs as [I am] satisfied will do justice between the parties.”

[23] Ms. Enta and Mr. Bumstead did not claim costs in their pleadings. However, pursuant to *Civil Procedure Rule 77.02(2)* I have a general discretion to award costs so as to do justice between the parties.

[24] Having regard to tariff C, the duration of the hearing, the respondent's offer to settle, the financial circumstances of the parties and the child's best interests I order Ms. Enta to pay Mr. Bumstead costs of \$1000.00 by July 15, 2016.

Cindy G. Cormier, J.S.C.(F.D.)