

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN

MEGGAN MACKENZIE-LUXON

Petitioner

- and -

RICHARD MACKENZIE-LUXON

Respondent

MEMORANDUM OF JUDGMENT

[1] The Petitioner seeks costs on a solicitor-client basis for applications she brought relating to the sale of the family home.

**BACKGROUND**

[2] This action was started with a Petition for Divorce issued on October 4, 2011. In addition to a divorce judgment, the Petitioner sought equal division of family property, including the parties' home, which was owned jointly.

[3] The parties engaged in negotiations respecting the disposition of the home. This was done through their counsel. Although both parties imply in their evidence that the other, or the other's counsel, created delay in replying to correspondence and moving the issue forward, there does not appear to have been any inordinate delay, nor dilatory conduct on behalf of either solicitor.

[4] The parties were in agreement that the home should be sold, but they were unable to reach an agreement on the price. The Petitioner had received an

appraisal that suggested the value of the property was \$215,000.00. The Respondent wanted it listed for \$260,000.00.

[5] The Petitioner brought a motion on October 17, 2013 in which she asked the Court to grant an order severing the divorce action from the property issue; allowing her to list the home for sale through a realtor or by private sale for \$215,000.00; to accept any offer of \$200,000.00 or greater and to sell the property without the need for the Respondent's consent. She also sought direction on the manner in which the proceeds would be disbursed. Finally, she sought solicitor and client costs.

[6] Charbonneau, J., heard the motion and granted an order which, *inter alia*, severed the divorce from the property action and allowed the Petitioner to sell the home, either privately or through a realtor, for \$215,000.00. The other relief requested was adjourned to October 24, 2013.

[7] The matter came before me on October 24, 2013 and I granted an order allowing the Petitioner to accept any offer of \$200,000.00 or more without obtaining the Respondent's consent. She was also ordered to provide the Respondent or his lawyer with copies of the documents related to the transaction. The application for solicitor-and-client costs was adjourned without a date.<sup>1</sup>

[8] The Petitioner accepted an offer for \$210,000.00 on January 31, 2014, with a closing date of February 28, 2014.

[9] On February 6, 2014 the Petitioner brought an application to have the sale approved in accordance with the terms of the offer and for relief that would permit the transfer to the buyers to take place. She also sought direction respecting disbursement of the proceeds. Finally, she brought back her motion for solicitor-and-client costs.

[10] Through his counsel, the Respondent consented to the home being sold for the price offered, but he asked that the request for direction respecting disbursement of proceeds and costs be adjourned for approximately a month.

[11] Save for the matter of solicitor-and-client costs, all of the relief requested by the Petitioner was granted by Schuler, J. This was adjourned to March 6, 2014.

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<sup>1</sup> Although the Clerk's notes reflect that this order was made, it appears that no formal order was entered.

[12] The Petitioner argued her motion for solicitor-and-client costs on March 6, 2014; however, the Respondent, for reasons unknown, had not filed any affidavit material by that time and asked for adjournment of one week to do so.

[13] The Respondent filed an affidavit respecting costs on March 11, 2014. The Petitioner provided a reply affidavit the next day.

[14] The Respondent made argument and the Petitioner replied to it, on March 13, 2014, following which I reserved my decision.

## **ANALYSIS**

[15] The general rule in civil matters is that the successful party is entitled to costs on a party-and-party basis. The items or litigation steps for which party-and-party costs can be awarded, as well as the amount of each, are set out in a tariff found at Schedule “A” of the *Rules of the Supreme Court of the Northwest Territories*.

[16] Typically, party-and-party costs do not provide a complete indemnity to the successful party for the entire cost of a suit or an application, as the case may be. In the context of party-and-party costs, the Court is limited to awarding costs for items listed in the tariff. This necessarily excludes the amounts a litigant may pay to a lawyer for consultations, for example, or other solicitor-and-client costs.

[17] The Petitioner prevailed in the applications relating to the sale of the home. Thus, she is entitled to party-and-party costs for the appearances and steps related to these matters. She argues, however, that she should be granted solicitor-and-client costs.

[18] The Court has discretion to award solicitor-and-client costs, but will only do so in appropriate circumstances. Such an award is usually intended as a punitive measure. Thus, the Court must be satisfied that the circumstances justify them.

[19] In *Young v. Young*, [1993] 4 SCR 3, McLaughlin, J., as she was then, set out the principles that apply in considering such an order (at 134):

. . . Solicitor-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties. Accordingly, the fact that an application has little merit is no basis for awarding solicitor-client costs; nor is the fact that part of the cost of the litigation may have been paid for by others . . .

[20] The threshold described in *Young* has not been met in this case.

[21] The Respondent took a position different from that of the Petitioner and ultimately, the issues between the two parties were determined by a judge. Certainly, things would in all likelihood have moved along faster had the parties been able to agree, but that did not happen, so the Petitioner brought the motions necessary to move things along. While this created a risk for the Respondent that the Petitioner would succeed and he would have party-and-party costs awarded against him, it was not “reprehensible, scandalous or outrageous” conduct on the Respondent’s part. The Respondent was entitled to disagree with the Petitioner and either was entitled to ask the Court to decide the issue. There is no basis upon which an order for solicitor-and-client costs against the Respondent can be justified.

[22] The Petitioner shall have party-and-party costs of the motions and appearances relating to the sale of the home of October 17 and October 24, 2013 and February 6, 2014.

[23] The appearance on March 11, 2014 was made necessary by the Respondent’s request for an adjournment on March 6, 2014 and so the Petitioner shall have the costs of the of the March 6, 2014 appearance as well.

K. Shaner  
JSC

Dated this 7<sup>th</sup> day of April 2014.

Solicitor for the Petitioner: Elaine Keenan-Bengts  
Solicitor for the Respondent: D. Jane Olson

**S-1-DV 2011 104145**

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