

2016 CarswellOnt 18201
Ontario Superior Court of Justice

Crooks v. Crooks

2016 CarswellOnt 18201, [2016] W.D.F.L. 6496, [2016] W.D.F.L. 6500, 273 A.C.W.S. (3d) 114

Sheanna Crooks, Applicant Courtney Crooks, Respondent

Donahue J.

Judgment: June 14, 2016
Docket: Brampton DC-16-0025-00ML

Proceedings: allowing leave to appeal *Crooks v. Crooks* (2016), 2016 ONSC 1113, 2016 CarswellOnt 2157, Fitzpatrick J. (Ont. S.C.J.)

Counsel: M. Sirivar, for Applicant
S. Philbert, for Respondent

Subject: Civil Practice and Procedure; Family

APPLICATION by husband in matrimonial litigation for leave to appeal judgment reported at *Crooks v. Crooks* (2016), 2016 ONSC 1113, 2016 CarswellOnt 2157 (Ont. S.C.J.), making costs order in favour of wife.

Donahue J.:

- 1 Leave to appeal costs order.
- 2 Mr. Crooks seeks leave to appeal Fitzpatrick J's cost order following the parties consent orders on all other issues.
- 3 On written submissions Fitzpatrick J had great challenges to sort out the respective winners & losers.
- 4 In conclusion he found custody and access to be the most significant dispute.
- 5 In that regard he found it unreasonable for Mr. Crooks to not have accepted the fundamental framework proposed in Ms. Crooks series of offers to settle from May 2014.
- 6 I note that leave to appeal costs orders is given sparingly & only on strong grounds where the Justice erred in the facts or exercised discretion on wrong principles.
- 7 See *Johanns v Fulford*, Aston J.
- 8 Here I am satisfied that the facts may well have been in error. Mr. Crooks has shown that for custody & access he made a *severable* offer in April 2014 for joint custody, shared residency and week on week access which is how the case resolved. In response, Ms. Crooks' offers at times were not severable from other issues (of which Mr. Crooks settled on ultimately more favourably) and were for weekend access.
- 9 The early April 2014 severable order of Mr. Crooks mirrored the OCL recommendations.
- 10 I am satisfied that the Justice in suggesting that Mr. Crooks did not accept the "Fundamental framework that the parties ultimately settled upon" and so should pay some costs to Ms. Crooks was based on incorrect facts.

11 Leave to appeal cost is granted.

12 Costs

13 Mr. Crooks seeks substantial indemnity costs basis of \$8,838.45.

14 The focused argument was successful & I find that \$3,000.00 is an appropriate cost amount on a partial indemnity for the issues here. I fix costs at \$3,000 to be considered on the hearing by Divisional Court.

Application granted.

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