

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Gail Elizabeth Robertson, Applicant

AND:

Gordon Bruce Woolley, Respondent

BEFORE: Woollcombe J.

COUNSEL: Shawn Philbert, Counsel for the Applicant

Nida Hussain, Counsel for the Respondent

COSTS ENDORSEMENT

[1] On December 23, 2015, I dismissed the respondent's motion to correct what was said to be a calculation error in respect of an interim spousal support order made in an endorsement on July 24, 2015.

[2] I indicated that if the parties could not agree as to costs, they would be permitted to make written submissions. They have done so and I have reviewed those submissions.

[3] The applicant, Ms. Robertson, seeks costs for the motion of \$9,943.44 on a full recovery basis. It is Mr. Woolley's position that each party should bear its own costs.

[4] In my view, Ms. Robertson was successful on the motion and some costs should be awarded to her.

[5] I have considered Ms. Robertson's position that she should be awarded costs on a full recovery basis, in accordance with Rule 24(8) of the *Family Law Rules*, on the basis that the respondent has acted in bad faith. She argues that

the respondent unilaterally decided not to comply with a court order, failed to pay spousal support that she is entitled to, unilaterally reduced his spousal support payments from \$340.00 to \$49.00 a month between August and December, 2015, and effectively attempted to re-litigate the July motion.

[6] Ms. Robertson further submits that she behaved reasonably and the respondent did not, that the fees and hours charged by her lawyer were reasonable and that while the matter was neither complex nor difficult, the issues on the motion were very important to her.

[7] Mr. Woolley's position is that the motion was not an attempt by him to re-litigate the issue of spousal support, but rather that he sought clarification/correction as to the amount of spousal support. Mr. Woolley says that my calculation continues to be wrong and that Ms. Robertson should not be awarded costs for a motion that she "erroneously won". He says that he acted in good faith and that Ms. Robertson provided her responding materials late.

[8] Mr. Woolley also says that Ms. Robertson's fees are "grossly disproportionate" to the issues, that time was spent by counsel excessive, and that Mr. Woolley's legal fees have been escalated by Ms. Robertson's unreasonable actions.

[9] I am not prepared to conclude that the respondent has acted in bad faith. I accept Mr. Woolley's position that he sought clarification of what was said to be a calculation error and do not conclude that Mr. Woolley's motion was an attempt to re-litigate issues that I had already decided.

[10] I accept that Ms. Robertson made an offer to settle (in which the respondent's motion would be dismissed) on December 8 and is, therefore entitled to full recovery costs from December 8 onwards. The applicant's bill of costs does not break down in any detail which costs were incurred prior to the

offer to settle and which were incurred after, though it appears that most of the costs were incurred prior to the offer to settle as by that point the materials had been prepared and most of the preparation work done..

[11] I accept Mr. Woolley's position that the costs sought for counsel for the applicant are high for this motion. This was a very straight-forward motion. I do not think it was reasonable for Ms. Robertson's counsel to spend 13.8 hours on the motion, particularly when a law clerk had spent 19 hours. Accordingly, I am going to reduce the costs to reflect a more reasonable amount of time.

[12] Taking into account the factors set out Rule 24(11) of the *Family Law Rules*, as well as in Rule 18(14), I have determined that the respondent should pay to the applicant costs of \$4,000.00 for the motion.



Judge

Date: March 31, 2016