
CANADA / JUDGMENT

C.J.B. v. A.R.B.

2018 BCSC 2256

COURT

Supreme Court of British Columbia

DECIDED

18 December 2018

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2018 BCSC 2256 C.J.B. v. A.R.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.J.B. v. A.R.B.,

2018 BCSC 2256

Date: 20181218

Docket: 22558

Registry: Fort St. John

Between:

C.J.B.

Claimant

And

A.R.B.

Respondent

Before: Master R.W. McDiarmid

Reasons for Judgment on Costs

Appearing on her own behalf:

C.J.B.

Counsel for the Respondent:

N. Bauder

Place and Date of Hearing:

Dawson Creek, B.C.

September 20 & October 17, 2018

Place and Date of Judgment:

Fort St. John, B.C.

December 18, 2018

- [1] By Reasons for Judgment issued September 21, 2017, Madam Justice Gray made a comprehensive order dealing with property division, parenting, spousal support and child support, following a ten-day trial in Fort St. John cited at C.R.B. v. A.R.B., 2017 BCSC 1682. At the conclusion of her reasons, she ordered that if the parties wished to make submissions concerning costs, they should apply in ordinary chambers for a hearing before any judge of the court. This was because Gray J. had retired and was unable to hear further submissions.
- [2] Costs submissions came on for hearing before Mr. Justice Affleck on January 22, 2018. He reviewed the Reasons for Judgment of Gray J., heard submissions and issued Reasons for Judgment on Costs on March 23, 2018 cited at C.J.B. v. A.R.B., 2018 BCSC 479.
- [3] The concluding two paragraphs, 34-35 of his reasons, are as follows:
- [34] The husband seeks an award of costs for the entire proceeding. My review of the proceeding persuades me that the husband's pre-trial approach to various matters particularly document production and providing adequate evidence of his income caused the wife to incur needless legal costs.
- [35] My order is that the husband is entitled to an award of party and party costs for the trial only on scale B. The disbursement for Mr. Halsey-Brandt will be shared equally by the parties. With that exception the wife is entitled to an award of costs for all pre-trial matters.
- [4] On August 1, 2018, the respondent took out an Appointment appointing September 20, 2018 as the time and place for the assessment of the respondent's Bill of Costs. I attended that hearing by telephone.
- [5] I was concerned because no Order had been entered, although the Reasons for Judgment of Affleck J. were clear.
- [6] On October 17, 2018, the Order of Affleck J. was entered, encompassing the terms of his Reasons for Judgment.
- [7] As can be seen, he ordered costs on Scale B. There is, of course, no Scale B in the Schedule which is part of Appendix B to the Supreme Court Family Rules [Family Rules]. I am assuming that he intended that the costs be assessed as if the family law case involved ordinary difficulty. Section 1(2) of Appendix B sets out that if the difficulty involved in a family law case has not been determined, costs must be assessed as if the family law case

involved ordinary difficulty and subsection (4) of Appendix B requires me to assess costs in accordance with the Schedule on the basis that the difficulty involved has not been determined and thus is ordinary difficulty.

- [8] At the initial hearing, it was apparent that there were some issues that required further evidence and submissions. Accordingly, I adjourned the matter, gave directions and concluded the hearing on October 17, 2018 in Dawson Creek, with me attending by videoconference.
- [9] The evidence before me consists of the following:
- a) Fourth affidavit of the respondent made July 31, 2018, filed August 1, 2018;
 - b) Affidavit of claimant made September 10, 2018, filed September 3, 2018, appending her Bill of Costs;
 - c) Affidavit of Ashley Lineham, office assistant for counsel for the respondent, made September 17, 2018, filed September 18, 2018;
 - d) Further affidavit of Ms. Lineham made October 15, 2018, filed October 16, 2018; and
 - e) Affidavit of Nathan Bauder, counsel for the respondent, made and filed November 2, 2018.
- [10] I have also reviewed written submissions prepared by Mr. Bauder and supplemental submissions following issuance by me with respect to a Memorandum to seek clarification on one disbursement.

CLAIMANT'S BILL OF COSTS

- [11] The claimant is entitled to an award of costs for all pre-trial matters.
- [12] The claimant has claimed \$3,000.00 under tariff item 1, \$2,000.00 under tariff item 2 and \$2,000.00 under tariff item 3. All of those are allowed as claimed.
- [13] She has claimed for three half-day attendances at contested applications under tariff item 4. In order to meet the criteria for entitlement to tariff item 4, it is necessary to show both preparation for and attendance at a contested application. Counsel for the claimant prepared two Notices of Application which were filed December 1, 2015, both returnable December 14, 2015. One of the applications sought a fine or committal to jail for contempt for breaching the Judicial Case Conference ("JCC") Orders respecting payment of child support. The other Notice of Applications sought extensive document disclosure. On December 8, 2015, respondent's counsel filed Application Responses on behalf of the respondent.
- [14] With respect to the document disclosure and child support, some orders were consented to, others opposed and one order there was no position taken. The Application Response to the Notice of Application seeking contempt and a fine was opposed. Matters appear to have come on for hearing in front Mr. Justice Saunders. No formal Order has been entered; the

Terms of Order sheet from the clerk's notes set out that the status quo is to be maintained and costs are dismissed with the claimant having liberty to re-apply following any accounting analysis.

- [15] Counsel on behalf of the claimant filed a further Notice of Application on December 16, 2015, seeking, amongst other things, retention of a joint expert relating to Federal Child Support Guidelines income of the respondent and evaluation of the shares of the respondent's company, reimbursement of s. 7 expenses and adjournment of the trial pending expert reports. That Notice of Application resulted in a Consent Order. Accordingly, there was no attendance at the application.
- [16] There was, therefore, only one half-day attendance at a contested application. The claimant is entitled to \$1,000.00 costs under tariff item 4.
- [17] There was a Trial Management Conference ("TMC") conducted before Mr. Justice McEwan on September 13, 2016. Both parties had prepared Trial Briefs in preparation for that TMC. At the TMC, McEwan J. adjourned the trial.
- [18] There was a further TMC on November 24, 2016 before Master Harper. Accordingly, the claimant is entitled to \$1,000.00 under tariff item 6 for preparation for and attendance at two TMCs.
- [19] The parties attended a JCC before Mr. Justice Verhoeven on May 5, 2015. The claimant is entitled to \$1,000.00 as claimed under tariff item 5 for that matter.
- [20] Item 9 is for process relating to execution on or enforcement of an Order. The claimant is not entitled to this item at this time, but may claim this item as costs if execution on or enforcement of the Order by court application takes place. That is not something that I can deal with at this time.
- [21] I determine that the claimant is entitled to tariff item costs totalling \$10,000.00.
- [22] Rule 16-1(6) states that a registrar must allow an additional amount to compensate for tax paid by the party for legal services.
- [23] Although the claimant was representing herself at trial, she was represented by counsel to and including the TMC held before Master Harper on November 24, 2016. From the accounts attached to Mr. Bauder's first affidavit, the claimant has been charged approximately \$7,200.00 in GST and PST. She is thus entitled to taxes on all the tariff items in the amount of \$1,120.00. The total cost and tax is assessed at \$11,120.00.
- [24] The claimant is claiming \$15,331.01 as disbursements, including taxes. Mr. Bauder attached to his affidavit copies of the accounts and internal print-outs from the claimant's lawyer.
- [25] The claimant's lawyer utilizes an approach to disbursements which makes it difficult to assess some disbursements, in particular photocopies.

- [26] I have reviewed the accounts which Mr. Bauder has attached to his first affidavit deposing that he has received them from the claimant. They attach accounts dated September 3, 2014, April 28, 2015, May 14, 2015, June 16, 2015, August 14, 2015, September 17, 2015, December 2, 2015, February 19, 2016, April 12, 2016, April 15, 2016, March 8, 2016 and January 13, 2017. A trust statement is also attached, showing that the claimant paid her former counsel \$94,286.63. From my review of the accounts, approximately \$61,000.00 in legal fees was billed to the claimant, plus taxes, for a total of just in excess of \$73,000.00 for legal fees and applicable taxes, all of which was paid by the claimant.
- [27] On those accounts, \$2,862.55 was billed as a taxable disbursement with the heading "Office Sundry - 5% Disbursement charge". Those office sundry billings total \$2,862.55 and presumably include postage, which I ruled in past decisions is an overhead item not assessable as a disbursement, and photocopies.
- [28] In addition, the accounts show a scanning and copying charge of \$500.00, a payment of \$101.71 for photocopies for RCMP records and another charge of \$125.00 for photocopies.
- [29] The respondent has claimed 2,350 copies for trial purposes, plus additional disbursements for 10,960 letter-size copies.
- [30] Employing the "rough justice" approach taken by registrars in assessing photocopies, noting Administrative Notice 5, the Photocopy and Fax Charges Guideline, and being satisfied that claimant's counsel has billed for \$726.71 in photocopying charges paid by counsel, I allow \$1,500.00 for photocopies for pre-trial matters, inclusive of the photocopy charges billed additional to the "office sundry" charge. The claim for postage is denied. I allow a transcript charge of \$596.75. I allow the court reporter examination for discovery charges of \$2,270.85. I allow \$150.00 for the process server. I determine a reasonable amount to allow for claimant's counsel's travel to be \$150.00. I allow courier charges as billed in the amount of \$71.62. I allow the disbursement for the DivorceMate charge of \$100.00; this is sometimes overhead, but in this case access to DivorceMate software has been proven to be incurred with the charge to the client and is allowed. Lastly, on my review of the accounts I note that a total of \$710.00 in non-taxable disbursements has been incurred for various filing charges and B.C. Online charges, and those are allowed at \$710.00.
- [31] The claimant has claimed mileage for herself. I have no information as to whether that was to attend court applications, recognizing that in the northern reaches of Cariboo Judicial District is common for matters to be heard interchangeably between Dawson Creek and Fort St. John, which are approximately 75 kilometres apart. However, that mileage, though I accept that it was driven by the claimant, is not an actual disbursement and is not allowed.

- [32] The claimant has claimed \$1,653.75 to complete a rebuttal report. She has attached emails to her affidavit showing that there was initially a discussion about whether that report would be prepared, and then a billing for preparation of the report in the amount claimed on March 17, 2017. That is obviously pre-trial and, accordingly, the disbursement is allowed as claimed. It would appear that it includes tax.
- [33] The claimant has claimed \$118.89 for binders and dividers for pre-trial matter, plus taxes. It would appear that some of the charges she has itemized are for pre-trial and some for trial. I allow \$60.00, plus tax, for pre-trial binders and dividers.

RESPONDENT'S BILL OF COSTS

- [34] Respondent's counsel has made able submissions with respect to disbursements. However, it is important to re-visit paras. 34-35 of Mr. Justice Affleck's decision. He determined that the husband's pre-trial approach to matters respecting the respondent's income caused the wife to incur needless legal costs and then awarded the respondent costs for the trial only. He determined that the claimant was entitled to costs for all pre-trial matters.
- [35] The respondent has claimed some pre-trial costs and also make a claim under tariff item 9, neither of which he is entitled to. He is entitled to \$25,000.00 as costs of trial.
- [36] As noted earlier, neither party has claimed taxes on the tariff items but I must allow an additional amount, which is 12% or \$3,000.00. The tariff items plus taxes total \$28,000.00.
- [37] As noted in my reasons disallowing postage to the claimant, I also disallow postage to the respondent.
- [38] 2,350 copies for trial seems reasonable to me, but charged at \$.25 per copy. I allow \$587.50 under that heading.
- [39] In addition, the respondent has claimed \$1,000.00 for binders, dividers and office supplies related to documents for trial. Attached to his office assistant's affidavit are two invoices from Tiger Office Plus. One is for \$431.96 and the other for \$509.56. Both include taxes. One invoice is for 6,428 letter-size copies at \$.06 per page, plus taxes. That is the invoice for \$431.96; nothing else is invoiced. The other is for 4,532 letter-size copies, also at \$.06 per page for \$271.92 in charges in addition to the binders and tabs.
- [40] While this might appear excessive, this was obviously a case requiring substantial photocopying. I allow the claim for binders, dividers and office supplies as claimed at \$941.52.
- [41] The Notice of Trial fee was incurred substantially in advance of the trial. The Order and Reasons for Judgment make it clear that the respondent is entitled to party party costs for the trial only, and the claimant is entitled to costs for all pre-trial matters. The claim for the Notice of Trial fee is disallowed.

- [42] The evidence of Ms. Lineham in her first affidavit confirms payment of \$941.52 for tabs, copying of documentation for trial at \$.06 per page, and binders. Approximately 13,000 pages were copied for trial which, given the issues here, is reasonable and the cost of copying is obviously substantially less than what is set out in Administrative Notice 5. Accordingly, the binders, dividers and office supplies claimed is allowed at \$941.52, inclusive of taxes.
- [43] By Memorandum sent to the parties, I sought clarification respecting Dr. Elterman's accounts. Mr. Bauder has submitted in response as follows:
1. The Respondent, Alan Richard Brett paid the full costs of the Dr. Elterman reports upfront. No payments were shared. Proof of payment and related documents are contained the 4th Affidavit of Alan Richard Brett, sworn July 31, 2018, Exhibit "A", pages 3-6.
 2. Correspondence between counsel for the parties discussed the Dr. Elterman's fees in the 2nd Affidavit of Ashley Lineham sworn October 15, 2018, pages 3-9, which confirm the section 211 report was a joint report. Although payment was not specifically referred to in those pages, we submit the nature of a joint expert and a consent for a joint report infers joint responsibilities for fees. The Respondent offered to pay the upfront cost and expected to be reimbursed for one half from the Claimant. There is nothing contained in the correspondence contained in the affidavit material concerning either report whereby the claimant disagreed with the necessity of the reports, nor stated that the respondent would bear full cost of the report.
- Page 30 of the affidavit has counsel for the Claimant speaking of both parties retaining Dr. Elterman.
- Page 34-35 is the joint retainer letter signed by both parties counsel.
- Page 36-37 is the joint retainer letter for the supplemental report signed by both counsel.
- Pages 42-43 speak to the supplemental report cost being paid upfront by the respondent with sharing the expense at the conclusion of trial or settlement (Page 39-40).
3. Both reports were consented to as joint retainers by the parties and as such both parties are equally responsible for their cost. In this case, the respondent is entitled to a reimbursement of the one half share owed by the claimant.
- [44] I agree that the provisions in the Family Rules and in particular Rule 11-3 in conjunction with the correspondence from Ms. Katerberg, who was then counsel for the claimant, imply that it is at least arguable that the respondent could argue that the costs be shared. However, Dr. Elterman did not testify at trial. His report was a pre-trial matter. The claim for half of Dr. Elterman's report as a disbursement is not allowed.

- [45] The mileage for the respondent is not a disbursement. I did not allow mileage for the claimant when she chose to attend certain applications. Similarly, there is no mileage for the respondent. However, the mileage for counsel claimed at \$.30 per kilometre for the 158 kilometre round-trip from counsel's office in Dawson Creek to the trial in Fort St. John is reasonable and it is allowed as claimed at \$450.00.
- [46] The respondent initially claimed fees for the Notice of Trial in the amount of \$600.00; those are obviously pre-trial disbursements incurred and are disallowed.
- [47] Both parties have claimed one-half of the Halsey-Brandt report; I have removed it from both parties' Bills of Costs.
- [48] The respondent was claiming hearing fees in the amount of \$3,500.00; he has confirmed that he is not making that claim.
- [49] The claimant and respondent shared the cost of a property appraisal; the respondent is claiming half the cost of that property appraisal report in the amount of \$488.25. That is an obvious pre-trial expense. The parties appeared to agree to share that cost. The claimant has not claimed it. The respondent is not entitled to make that claim.
- [50] One significant item of contention is accountant fees.
- [51] The respondent initially claimed \$13,492.50 in accountant fees and has provided detailed evidence with respect to those accounts. He has also provided a transcript of the testimony of the accountant before Madam Justice Gray.
- [52] The claimant says that a substantial portion of what is being claimed here are accounting fees which would have been paid in any event.
- [53] In Ms. Lineham's second affidavit, she attaches an email from the claimant to Mr. Bauder dated October 1, 2018 requesting appropriate details with respect to the disbursements in issue, including in particular the disbursements claimed for Laura Twast. Laura Twast is a certified professional accountant/chartered accountant with Friesen Bain Chartered Professional Accountants in Grand Prairie, Alberta.
- [54] In his fourth affidavit, the respondent deposes in paragraphs 2 and 3:
2. I have reviewed the Bill of Costs and Appointment filed in this matter. I confirm that the disbursements set out in Part E of the Bill of Costs were paid in full.
 3. Now shown to me and marked as Exhibit A to this my affidavit are copies of invoices that were required for the Trial of this matter and paid in full.

- [55] Those invoices total \$13,492.50; the amount claimed on the Bill of Costs. During the hearings, counsel for the respondent confirmed that he was not seeking reimbursement for some of those invoices. He was seeking reimbursement for invoices totalling \$8,176.88. He conceded that the remaining invoices totalling approximately \$5,300.00 were not for trial preparation.
- [56] In his written submissions, counsel for the respondent relies on two cases: *Van de Mortal v. Flagg*, 2006 BCSC 689, a decision of Registrar Bouck, as she then was, and *Fraser v. Fraser*, Vancouver Registry A820929, a decision of His Honour Judge Cowan, sitting as a local judge of the Supreme Court.
- [57] Dealing with the latter case first, *Cowan L.J.S.C.*, in para. 5, writes:
- [5] As to the fee payable to Donald Martin, the solicitor who testified, I am of the opinion that his evidence was essential to the proper resolution of the issues between the parties. He is entitled to receive his usual hourly rate - to be established to the satisfaction of the registrar - for time spent in preparation and in testifying at trial.
- [58] In *Van de Mortal*, District Registrar Bouck, in para. 16, sets out Schedule 3 to Appendix C of the Rules of Court then in effect. The present Schedule C to Appendix C to the Supreme Court Family Rules has not changed apart from some minor changes in wording.
- [59] Paragraphs 16-23 of Registrar Bouck's decision are as follows:
- [16] Schedule 3 to Appendix "C" of the Rules of Court sets out the fees payable to witnesses to prepare for and attend trial. It provides as follows:

Schedule 3

[en. B.C. Reg. 55/93, s. 44.]

Fees Payable to Witnesses

In all cases in which a witness is required to attend an examination, hearing or trial, the following daily witness fees and fees for travel, meals and preparation are payable, and shall, unless otherwise ordered, be tendered in advance by the party requiring the attendance of the witness:

Daily witness fee

1 For any witness, other than a party or a present officer, director or partner of a party to a proceeding, for each day or part of a day, a daily witness fee of \$20. A witness who is a party or a present officer, director or partner of a party to the proceeding is not entitled to a daily witness fee.

Travel

2 For any witness, where the examination, hearing or trial is held at a place

- (a) within 200 km by road (including any ferry route within the Provincial road system) of where the witness resides, 30[cents] per km each way by road between his or her residence and the place of examination, hearing or trial; but no travel allowance will be made if the distance by road between that residence and the place of examination, hearing or trial is less than 8 km. This allowance includes ferry fares and road tolls, or
- (b) more than 200 km from where the witness resides, the minimum return air fare by scheduled airline plus 30[cents] per km each way from his or her residence to the departure airport and from the arrival airport to the place of examination, hearing or trial.

Allowances

3 For any witness, a reasonable allowance for meal expenses made necessary by the witness' attendance, and where the witness resides elsewhere than the place of examination, hearing or trial and is required to remain overnight, a reasonable allowance for overnight accommodation.

Preparation

4 For any witness other than a party or a present officer, director or partner of a party to a proceeding, a reasonable sum shall be allowed for the time employed and expenses incurred by the witness in preparing to give evidence, when that preparation is necessary.

- [17] Although it may cause some consternation to a professional person, the fact is that as a "non-expert" witness, he or she could be subpoenaed to attend court just as any other witness.
- [18] The leading authority on the issue of what might constitute a reasonable fee for preparation is *Northland Properties Ltd. v. Equitable Trust Company* (1992), 71 B.C.L.R. (2d) 124 @ pp. 128 to 30 (S.C.). There, the court found as follows:

... any witness who needs to prepare in order to testify is entitled to a "reasonable sum" for doing so, provided he or she is not a party or a present officer, director or partner of a party.

... It is not the prerogative of a litigant to determine whether preparation by a witness for the opposing party is necessary.

- [19] The court stated that in fixing fees for preparation, account should be taken of three factors:
 - (a) whether the witness was a mere bystander, in which case his or her moral claim for compensation should be higher than that of a witness whose involvement was "voluntary";
 - (b) whether the witness has already been paid for the services which are the subject matter of his or her testimony;
 - (c) whether the required preparation involves skills or training for which the witness is compensated in his or her regular employment. The ordinary earnings of a witness have little relation to the proper amount to be paid. A witness's own periodic income is not the norm for payment for preparation.

- [20] The decision refers to the earlier case of *Fraser v. Fraser*(1983), 45 B.C.L.R. 21 at page 22 which allowed the claim of a lawyer for "his usual hourly rate -- to be established to the satisfaction of the [assessing officer] for time spent in preparation and in testifying at trial" as an ordinary, but essential, witness. There is no record of the amount allowed by the assessing officer, but I note that the court specifically directed the witness's entitlement to his hourly rate; that is not the case here.
- [21] Where a professional is called upon to testify as to observations only, he or she may be allowed remuneration for preparation yet restricted to the \$20 witness fee for attending trial to testify: *United Contractors Ltd. v. the Queen* (14 January 1994) New Westminster Registry, C891753 (B.C.S.C.). Such a witness is treated differently than experts whose attendance at trial is specifically governed by Rule 40A of the Rules of Court.
- [22] Thus, in assessing the reasonableness of the witnesses' charges, I must distinguish between the amount charged for preparing to testify and the amount charged for attending to give that testimony.
- [23] In determining the reasonableness of the charge, it is often helpful to have evidence directly from the witness. However, in the absence of such evidence, the registrar is entitled to rely on his or her experience in similar situations and, of course, on the evidence of counsel: *Vincent v. Foster* [1993] B.C.J. No. 455 varying in part [1992] B.C.J. No. 2494.
- [60] All of the accounts rendered by Friesen Bain, apart from invoice 10886, were rendered before the end of 2016. They are thus not costs for the trial only. They are pre-trial matters. I note Affleck J.'s comment that the husband's pre-trial approach to various matters, particularly document production and providing adequate evidence of his income caused the wife to incur needless legal costs. Invoice 10886 includes a \$400.00 charge for data entry services for update of general ledger transactions to February 28, 2017. That is a charge that the respondent would have had to incur no matter what.
- [61] Exhibit E to Ms. Lineham's affidavit filed October 16, 2018 consists of an email from Laura Twast to Mr. Bauder dated October 11, 2018. That email states:
- I am attaching a summary of the breakdown for the invoices identified. The summary provides dates, number of hours, rate charged, and description of services
- [62] The summary for invoice 10886 starts with the following "#10886 - June 28, 2017 (sic)". This is odd and obviously incorrect since exhibit page 9 to the fourth affidavit of the respondent filed August 1, 2018 shows the invoice as dated 2017/03/15 and shows that it was paid on 2017/05/08, which I assume means May 8, 2017. All of the entries on the attachment to exhibit E are dated between 22/09/2016 and a cut-off entry of 03/03/2017.
- [63] The breakdown confirms an hourly rate of \$150.00 per hour. She testified on March 14, 2017, so 14 days after the last entry on the invoice. The invoice was rendered the next day.

- [64] The total time set out in exhibit E is 23.25 hours. There appears to be no bill for preparation for or attendance at trial relating to anything done after March 3, 2017.
- [65] Justice Affleck's reasons did more than make the Order he set out in para. 35. He explained the rationale which, in part, dealt with the respondent's pre-trial approach to providing adequate evidence of his income which caused the claimant to incur needless legal costs. Not only are all of the accounts rendered by Ms. Twast/Friesen Bain pre-trial, but they relate to the exact issue discussed by Affleck J. in para. 34 of his reasons. They are disallowed.
- [66] However, Ms. Twast is entitled to a daily witness fee and travel from Grand Prairie. The round-trip from Grand Prairie to Fort St. John is approximately 400 kilometres. She is also allowed a reasonable allowance for meal expenses and a daily witness fee of \$20.00 (see Schedule 3 to Appendix C). I allow \$200.00, inclusive of taxes, for the attendance of Ms. Twast at trial.

SUMMARY

- [67] The claimant is allowed \$10,000.00 costs, plus taxes of \$1,120.00, totalling \$11,120.00 for costs and tax. She is allowed taxable disbursements for photocopies and other office disbursements in the amount of \$1,500.00, the transcript charge of \$596.75, mileage for her counsel of \$150.00, courier charge of \$71.62, process server charge of \$150.00, DivorceMate charge of \$100.00, and binders for pre-trial matters of \$60.00. Those expenses total \$4,899.22. Tax on that amounts to \$244.96. Non-taxable disbursements are \$710.00. The rebuttal disbursement included tax. Those total \$2,363.75. Adding the disbursements and taxes up, the total is \$7,507.93. Costs, disbursements and taxes assessable in accordance with Justice Affleck's decision amount to \$18,627.93.
- [68] The respondent is entitled to \$25,000.00 costs, plus \$3,000.00 taxes on the costs and disbursements. The total disbursements are allowed at \$587.50 for photocopies, \$450.00 mileage for counsel, for a total of \$1,037.50, and 5% added to those two items, \$51.88, together with \$941.52 for binders, dividers etc., including taxes, and \$200.00 witness fee. The total disbursements, inclusive of taxes, are \$2,320.90. The total costs, inclusive of taxes and disbursements, are \$30,230.90.
- [69] Off-setting the claimant's costs against the respondent's results in the claimant owing the respondent \$11,962.97 for costs.
- [70] If the parties are unable to agree on how this is to be paid, directions should be sought by Notice of Application. I am not seized of any such application.

"Master R.W. McDiarmid"

MASTER McDIARMID

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Prepared on 29 October 2026 · Esheria