

CANADA / JUDGMENT

McShane v. McShane

2020 BCSC 346

COURT

Supreme Court of British Columbia

DECIDED

11 March 2020

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2020 BCSC 346 McShane v. McShane IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: McShane v. McShane, 2020 BCSC 346 Date: 20200311 Docket: 55521 Registry: Kamloops Between: Erin Noelle McShane Claimant And Daniel Allen McShane Respondent Before: Master J.M. Keim Reasons for Judgment Counsel for the Claimant: D. Komori Appearing on his own behalf: D.A. McShane Place and Date of Hearing: Kamloops, B.C. February 27, 2020 Place and Date of Judgment: Kamloops, B.C. March 11, 2020

- [1] This is an assessment of costs following a hearing conducted in front of Justice Marchand. The parties had brought cross-applications dealing with a number of matters relating to their family law dispute.
- [2] Both parties were represented by counsel at the hearing on December 9, 2019, and returned on December 11, 2019, to receive Marchand J.'s decision and to provide submissions regarding costs.
- [3] On the bill of costs that was submitted by the claimant, the claimant has claimed for two half-day appearances under tariff item 4 for a total of \$2,000.00, and has claimed under tariff item 9 \$250.00 for all other process. In addition to the tariff items, the claimant has claimed \$83.72 for disbursements, which constitute photocopies at \$.25 per page and some outgoing and incoming faxes at \$.20 per page.
- [4] At the commencement of the hearing before me, counsel for the claimant advised that he is not seeking tariff item 9 any further and, therefore, the only tariff item that is being sought is tariff item 4 for the two appearances on December 9 and December 11, 2019.
- [5] The respondent, who appeared on his own behalf before me, does not take issue with the disbursements that are being claimed, but does take issue with tariff item 4. It is the respondent's position that since the parties returned on December 11 to receive the decision from Marchand J., and that the tariff does not specifically include an item for attendance to receive a decision, the claimant is not entitled to one of the two days that she is claiming under tariff item 4.

- [6] In support of his position, the respondent has directed this court to *Kellosalmi v. Watts*, 2018 BCSC 2249, where Master McDiarmid writes:
- [22] I must assess costs in accordance with the Schedule which is part of Appendix B. There is no tariff item for attending to hear a reserve decision. For reasons similar to the disallowance of costs for attending an assessment, there is no provision for what is sought.
- [7] The respondent submits that tariff item 4, which reads "Preparation for and attendance at each contested application" does not apply because Marchand J. reserved his decision to December 11, 2019 and the parties were required to attend for that purpose, rather than for a "contested application."
- [8] In response, the claimant states that as the parties were required to attend on December 11 to provide submissions for costs, as well as hear the decision, it is appropriate to include the attendance of December 11 under tariff item 4.
- [9] Rule 16-1 of the Supreme Court Family Rules, B.C. Reg. 169/2009 [Family Rules] sets out that if costs are payable to a party under the Family Rules or by order, these costs must be assessed in accordance with Appendix B absent consent or an order for special costs, neither of which are present in this case. On December 11, 2019, as part of the order made that day, Marchand J. ordered that the claimant is awarded costs as per Appendix B of the Family Rules of ordinary difficulty of this application.
- [10] It is clear that a party becomes entitled to tariff item 4 when there is both preparation and attendance at a contested application. The use of the word "and" indicates that both aspects must be present in order for tariff item 4 to apply.
- [11] During the hearing before me, claimant's counsel advised that at the December 11 attendance, Marchand J. gave his decision and then the parties were invited to make submissions regarding costs. Both counsel did so. Marchand J. incorporated an order for costs in the final order that was made.
- [12] The respondent was unable to recall specifically what was said at the hearing. I am content to accept the representations of claimant's counsel that the parties did indeed make costs submissions on December 11, 2019. I am, therefore, satisfied that there were still outstanding matters in contention and that the attendance on December 11, 2019 was more than a mere attendance to obtain a final decision. Therefore, I find that there was both preparation for and attendance pursuant to tariff item 4 for the December 11 appearance.
- [13] As a result, I award the following costs: · Tariff item 4 - 2 units at \$1,000.00 for a total of \$2,000.00 for costs, plus taxes in the amount of \$240.00 for a total costs and tax of \$2,240.00; · I allow the disbursements of 263 photocopies at \$.25 for \$65.75; · I do not allow the outgoing fax charge of \$2.98 as I do not have any evidence before me that there was any costs associated with sending the outgoing fax; · I allow the incoming faxes of 55 pages at \$.20 per page for a total of \$11.00.

- [14] Total disbursements and taxes are \$80.59, for a total costs and disbursements amount awarded of \$2,320.59.
- [15] The claimant should submit a certificate for the tariff item and allowed disbursements and taxes totalling \$2,320.59. "Master J.M. Keim" MASTER KEIM
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Prepared on 27 October 2026 · Esheria