

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Shelley Elisabeth Kathleen Pett, Applicant

AND:

Kevin Gregory Pett, Respondent

BEFORE: Kiteley J.

COUNSEL: *Shmuel Z. Stern* for the Applicant

James S. Marks for the Respondent

HEARD: June 16, 2015

ENDORSEMENT AS TO COSTS

[1] This endorsement relates to costs of the motions brought by Mr. Pett (endorsement dated February 23, 2015 which I will refer to as the access order and April 20, 2015 which I will refer to as the restraining order) and of the motions brought by Ms. Pett which were largely resolved on consent except as to costs.

[2] On behalf of Mr. Pett, Mr. Marks asks for costs of \$4,000 arising out of the access order motion and he asks for costs of \$20,000 arising out of the restraining order motion.

[3] On behalf of Ms. Pett, Mr. Stern asks for costs of \$1500 arising out of the motion heard in February and he concedes that Ms. Pett should pay costs of \$8500 for the second motion. That would leave her making a net payment of \$7000.

[4] With respect to Ms. Pett's motion which was adjourned to be heard on June 16, Mr. Stern did not ask for costs. However, Mr. Marks asks for costs to be paid by Ms. Pett in the amount of \$2500.

[5] It demonstrates how strongly the parties feel about these issues that it took counsel more than one hour to make submissions. I do not propose to review those submissions in details.

[6] As the endorsement as to access indicates, Mr. Pett was successful in respect of unsupervised access. Ms. Pett achieved some success with respect to the conditions upon which the matrimonial home would be sold. Relatively speaking, Mr. Pett was more successful and should recover costs.

[7] As the restraining order endorsement indicates, Mr. Pett was successful on important legal issues. He is entitled to costs. Indeed, Mr. Stern wisely conceded costs. The question is only the amount.

[8] Mr. Marks has provided a costs outline and a detailed list of services rendered. I agree with Mr. Stern that some of the entries were unrelated to the motions. However, I agree with Mr. Marks that the necessity of providing detailed evidence in the motions he brought meant that preparation was labour intensive. The work resulted in a positive outcome. I agree with Mr. Marks that Mr. Pett ought to recover approximately 50% of his actual costs of the access order motion, ie. \$4000. I also agree with Mr. Marks that Mr. Pett ought to recover considerably more than 50% of his actual costs of the restraining order motion. His costs outline reflects a total account for services rendered in the amount of \$22,469. I agree with MR. Stern that \$20,000 is too much; but \$8500 is not reasonable. I fix his costs of that motion at \$17,500 on the basis of success and reasonable expectations of the parties.

[9] As for the costs of Ms. Pett's motion dealing with adjustments to child support, s. 7 expenses and other related accounting issues, that motion should not have been necessary. From my perspective, each party was so caught up in the conflict as it had ensued since September that neither could fully resolve what were relatively straitforward issues. Neither should recover costs.

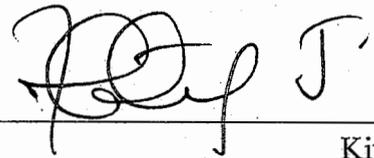
ORDER TO GO AS FOLLOWS:

[10] With respect to Mr. Pett's access order motion, Ms. Pett shall pay Mr. Pett costs in the amount of \$4000 including fees, disbursements and HST.

[11] With respect to Mr. Pett's restraining order motion, Ms. Pett shall pay Mr. Pett costs in the amount of \$17,500 including fees, disbursements and HST.

[12] With respect to Ms. Pett's motion, neither shall pay costs.

[13] Ms. Pett shall pay the costs referred to above out of her share of the proceeds of sale of the matrimonial home unless the parties agree to another arrangements.



Kiteley J.

Date: June 19, 2015