



Lloyd Hanna

APPELLANT

- and -

Nancy Beckman

RESPONDENT

David A. Couture for the Appellant
James J. Vogel, QC for the Respondent

**Taxation before Melanie Baldwin, QC
Registrar, Court of Appeal for Saskatchewan
April 8, 2019**

Background

[1] The notice of appeal was filed on April 4, 2017. Also on April 4, 2017 the appellant indicated that he intended to bring an application to impose a stay and asked for a special chambers date for this purpose. On April 5, 2017 I advised counsel for both parties that a special chambers date would not be set. On April 6, 2017 the appellant served and filed an application to impose a stay with supporting material. The application was returnable on April 12, 2017. On April 10, 2017, counsel advised that the application was adjourned *sine die* by consent.

[2] On October 3, 2018, I forwarded a Notice to Show Cause to the parties under Rule 46(2) of *The Court of Appeal Rules*. On October 17, 2018, the show cause hearing was set for December 11, 2018 and a hearing notice to that effect was sent to counsel for the parties. Also on October 17, 2018 the appellant served and filed an application to show cause. On December 7, 2018, the appellant abandoned the appeal.

[3] Pursuant to Rule 45 of *The Court of Appeal Rules*, when the appellant filed the notice of abandonment, the respondent became entitled to her taxable costs. The respondent took out an appointment for taxation of costs returnable on April 8, 2019 supported by a proposed bill of costs. On April 8, 2019 I heard submissions from counsel for both parties by telephone. This fiat is my decision on the taxation.

Proposed Bill of Costs

[4] The respondent filed a proposed bill of costs which lists the following fees under column 3 of the Court of Appeal Tariff of Costs:

| | | |
|---|--|--------|
| 3 | Fee to Respondent on receipt of Notice of Appeal | \$ 150 |
| 4 | Simple Motion (Stay of Execution) | \$ 500 |

| | | |
|----|------------------------------|--------|
| 4 | Simple motion (Show Cause) | \$ 500 |
| 12 | Correspondence | \$ 300 |
| 13 | Preparation of Bill of Costs | \$ 200 |

The fees claimed total \$1650.

Issues

[5] The appellant takes issue with the column of the Tariff used by the respondent in the proposed bill of costs and with the two fee amounts claimed under item 4 of the Tariff.

Argument

Appropriate Column

[6] The respondent's proposed bill of costs is based on column 3 of the Tariff. The respondent argues that the dispute between the parties relates to child support for a child in university. The respondent characterizes this as a serious matter and says that the amount of child support at issue would exceed \$100,000. Finally, the respondent argues that column 3 is the appropriate column of the Tariff to apply to family law proceedings.

[7] The appellant takes the position that column 3 is no longer the default column for family law proceedings. The appellant's view is that the costs should be taxed under column 2 which is to be used for appeals involving non-monetary relief as the amount at issue on the appeal cannot be quantified.

Item 4 Claims

[8] The respondent claims the item 4 simple motion amount for the two applications filed by the appellant – the application to impose a stay and the show cause application. The respondent argues that, although neither application was ultimately heard, they are lengthy applications that each required the respondent and her counsel to spend time reviewing, discussing and considering a response. The respondent takes the position that the two motions could likely have been characterized as complex motions based on their length. The respondent argues that a party should not be permitted to serve a motion and then subsequently decide not to proceed with it without being liable for costs to compensate the respondent for the work done that resulted from the service of the motion.

[9] The appellant notes that neither motion proceeded to hearing before the appeal was abandoned. The appellant takes the position that the Tariff prescribes a specific fee amount for receiving a notice of appeal (item 3) and that it is counterintuitive that a party would be able to claim more for receiving a motion than for receiving a notice of appeal. The appellant argues that, if any amount is awarded for the two motions, it should be closer to item 3 than item 4.

Analysis

Appropriate Column

[10] While it might have previously been the practice of the Court to use column 3 for appeals in family law proceedings, it does not appear that this has been the practice since the Tariff was updated in 2006. The current practice is to assess costs for all civil appeals, whether they involve family law or not, in the same way.

[11] My usual manner of determining the appropriate column under which Tariff fee items should be assessed has been to look at the amount of money involved in the appeal. I determine the amount involved in the appeal by reviewing the notice of appeal and appellant factum (if there is one) to see what relief is claimed. This was also the approach followed by Richards, J.A. (as he then was) in *Farmers of North America Incorporated v Bushell*, 2013 SKCA 65.

[12] In its notice of appeal, the appellant asked the Court to set aside the lower court's decision (which dismissed the appellant's application to stay the respondent's enforcement) and to stay the respondent's enforcement proceedings. No appellant factum was filed before the appeal was abandoned. In my view, the relief sought in the appeal is non-monetary. Pursuant to Rule 54(1)(b) of *The Court of Appeal Rules*, column 2 applies to the taxation of costs where non-monetary relief is involved. I will therefore tax the appellant's costs on column 2.

Item 4 Claims

[13] This type of claim does not arise frequently in taxation proceedings. Having said this, I have located two relatively recent decisions that are analogous, although not directly on point.

[14] In my December 18, 2012 decision in *Resch v Dufour*, CACV2324 (unreported), I allowed the full Tariff fee item claimed by respondent counsel for an application to lift the stay which was not heard before the appeal was abandoned by the appellant. I noted that, in that case, respondent counsel had drafted, served and filed a motion, affidavit, memorandum of law and draft order and "had done all of the work that she needed to do" in order to argue the application which became unnecessary when the appellant abandoned the appeal two days before the return date for the application.

[15] In my October 5, 2018 decision in *Melnick v Tapp*, CACV3262 (unreported), an application to quash, memorandum of law and proposed appeal book had been served and filed but not scheduled for hearing when the appellant abandoned the appeal. In that case, I found that the application to quash was a complex application but I did not characterize it as opposed because the appellant had not responded to the application before abandoning the appeal. I allowed the full Tariff fee item for an unopposed complex application in that case.

[16] In my view, these two cases stand for the principle that, where a party has drafted, served and filed complete application materials, that party is entitled to claim fee item costs for the application even if it was not heard before the other party abandoned the appeal. In this appeal, the respondent did not serve or file material on either application before the appellant abandoned the appeal. As such, I do not think that the full fee item 4 amount is warranted for either application.

[17] I am not convinced, however, that the respondent is not entitled to claim some amount under fee item 4 for each of the applications. For both applications, the material served and filed was relatively lengthy and it was within days of the scheduled return date for each application when it became clear that the hearing would not proceed as scheduled. While no material was filed by the respondent, I accept respondent counsel's contention that time was spent by the respondent and by counsel reviewing and discussing the appellant's material and considering a potential response. Any prorated amount that I choose is somewhat arbitrary, but I think that an item 4 claim of \$150 for each application is appropriate under the circumstances of this appeal.

Decision

[18] The fees are therefore taxed and allowed as follows:

| | | |
|----|--|--------|
| 3 | Fee to Respondent on receipt of Notice of Appeal | \$ 125 |
| 4 | Simple Motion (Stay of Execution) | \$ 150 |
| 4 | Simple motion (Show Cause) | \$ 150 |
| 12 | Correspondence | \$ 200 |
| 13 | Preparation of Bill of Costs | \$ 150 |

The total fees allowed are \$775.

[19] The proposed bill of costs is therefore taxed and allowed at **\$775**. The respondent may wish, for enforcement purposes, to prepare and file a certificate of taxation of costs in Form 11d in this amount for issuance.

DATED at Regina, Saskatchewan, this 8th day of April, 2019.



REGISTRAR – COURT OF APPEAL