Court of Appeal for Saskatchewan
Docket: CACV3837 **Date: 2023-03-08**

Sharon Dawn Granquist	Appellant (Petitioner)
and	
Dolan Matthew Lemond	Respondent (Respondent)

Before: Amy Groothuis, Registrar (on February 7, 2023)

Fiat

I. Introduction

[1] On May 21, 2021, Sharon Granquist [appellant] filed a notice of appeal of a judgment that disposed of an application seeking both retroactive and ongoing child support. A primary consideration before the Queen's Bench Chambers judge hearing the application was the proper interpretation of an interspousal agreement [Agreement] the parties had entered into following the breakdown of their marriage.

[2] The appeal was heard on January 21, 2022 and by way of a decision dated August 10, 2022, this Court dismissed the appellant's appeal. Writing for the Court, Richards C.J.S. ordered that Dolan Lemond [respondent] was entitled to his costs in the usual way.

[3] On November 28, 2022, a formal judgment was issued, and this was followed by an appointment for taxation of costs returnable before me on February 7, 2023, which was supported by a proposed bill of costs and an affidavit of disbursements.

II. Proposed Bill of Costs

[4] The respondent claims the following fees under Column II of the Court of Appeal Tariff of Costs [Tariff]:

3.	Fee to Respondent on receipt of Notice of Appeal	$ 125.00
8.	Preparation of Factum	$2,000.00

9.	All Other Preparation of Hearing	$ 750.00
10.	Appearance to Present Argument	$ 200.00
11.	Preparing Formal Judgment	$ 200.00
12.	Correspondence	$ 200.00
13.	Preparation of Bill of Costs	$ 150.00
14.	Taxation of Bill of Costs	TBD
16.	All necessary disbursements	$ 15.98

[5] The proposed fees total $3,625.00. With the disbursements added, the total amount claimed is $3,640.98, recognizing the outstanding addition of an amount for the taxation of costs hearing.

III. Issues

[6] One issue arises in this assessment of costs: the proper column used to tax the costs. Counsel for the appellant submits the costs are properly taxed on Column I, and counsel for the respondent submits the costs are properly taxed on Column II. Ultimately, the question is whether the relief sought by the appellant is properly characterized as "non-monetary relief".

[7] Counsel for the appellant confirmed that each Tariff item on the proposed bill of costs is properly claimed, and the only question is which Column to use in taxing the Tariff amounts.

IV. Analysis

[8] The Registrar's authority to assess costs is narrowly circumscribed by *The Court of Appeal Rules* [Rules] and the Tariff. Rule 54 provides:

> 54(1) Unless otherwise ordered:
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> (a) the costs of an appeal or application shall be taxed as between party and party by the registrar in accordance with the fees set out in the appropriate column of the "TARIFF OF COSTS IN THE COURT OF APPEAL" which is attached as Schedule 1 to these Rules; and
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> (b) Column 2 of Schedule 1 applies to the taxation of costs where non-monetary relief is involved.

[9] Both parties referred to past taxation decisions and agreed that the decision *Lloyd Hanna v Nancy Beckman*, CACV3053, April 8, 2019 (Baldwin) governs the approach when determining

whether non-monetary relief is involved. There, Registrar Baldwin (as she then was) described the approach to ascertaining the appropriate column to use:

> [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.
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> [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.

[10] This same approach was utilized in *Attorney General of Canada v Merchant Law Group LLP*, CACV2860, March 27, 2019 (Baldwin). The respondent points to this taxation decision as authority for determining the appropriate column by examining the relief sought in the notice of appeal, not the amount involved in proceedings in the court below. A simple example illustrates this point: a statement of claim may seek damages of $100,000, but if the claim is struck on the basis of a limitation period defence, the issue on appeal will be whether the judgment correctly determined the action had been commenced outside the relevant limitation period. In that example, the value of the damages sought is irrelevant, and the relief sought in this Court is clearly non-monetary.

[11] Applying these principles to the present matter is not as straightforward. The respondent centres his argument on the Agreement and the manner of its interpretation; any other relief flows from that initial determination. Counsel argued that the issue of retroactive and ongoing child support only arises once the Agreement is interpreted. Put another way, the crux of the issue is the question of how to interpret the Agreement, with any and all other relief flowing from that decision. If the Agreement was interpreted to hold that retroactive and ongoing child support was payable, then the parties would have to return to the lower court to figure out those amounts. As I understand the respondent's position, the relief sought must be seen as non-monetary because the question before the Court was how to properly interpret the Agreement.

[12] Conversely, the appellant argues that the application before the Chambers judge exclusively dealt with the payment of retroactive and ongoing child support: this was the relief sought in the lower court *and* on appeal. Counsel made the point that if the respondent's position was accepted, then every appeal could conceivably be considered to be seeking non-monetary relief.

[13] It is useful at this juncture to review the precise grounds of appeal and relief sought by the appellant, as outlined in the notice of appeal. The appeal was taken on the following grounds:

(a) The Learned Chambers Judge's determination that there is no change in circumstance warranting a change in child support as determined by the interspousal agreement dated April 25, 2016;

(b) The Learned Chambers Judge's dismissal of the retroactive and ongoing child support application; and

(c) The Learned Chambers Judge's refusal to order costs.

[14] The notice of appeal also sets out the appellant's request for the following relief:

(a) An Order for child support in accordance with ss. 3 and 7 of the *Federal Child Support Guidelines* retroactive to September 2020; and

(b) Costs in this court and below.

[15] Finally, I turn to the appellant's factum, which framed the issues before the Court in this manner:

(a) Did the Honourable Chambers Judge err in law by dismissing the Respondent's ongoing and retroactive child support obligations?

(b) Did the Honourable Chambers Judge err in fact and law by interpreting the Interspousal Agreement as a waiver of child support in exchange for unequal division of property?

[16] In *Smith v Smith*, CACV1516, November 12, 2008 (Schwann) [*Smith*], Registrar Schwann (as she then was) grappled with a similar question in determining if the relief sought was non-monetary. In that taxation decision, the Registrar stated:

> The wording of the Notice of Appeal is a fairly strong indicator of whether the nature of the *relief sought* is monetary or non-monetary. Based strictly on the wording of the relief portion of this Notice of Appeal, it is clear that the appellant was looking not just for a declaration as to jurisdiction but also for the corresponding monetary relief associated with a successful outcome on the threshold issue. In other words, the appellant's appeal envisioned more than a mere declaration of jurisdictional powers of the Director; it also sought the corresponding monetary relief flowing from the interpretation and powers the appellant thought were conferred on the Director.
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> Having said all that, it is equally fair to say that the decision of this Court expressed by Wilkinson J.A. turned on the jurisdiction of the Director under *The Enforcement of Maintenance Orders Act, 1997*. Furthermore, the respondent's position having prevailed on appeal, the Court was not required nor did it rule on the monetary aspects of the case such as the request to discharge arrears. However, the mere fact that the appeal turned on a question of jurisdiction does not mean the relief sought by the appellant wasn't monetary in nature; in fact if the appellant had been able to advance past the threshold jurisdictional issue, she would have urged this Court to make an order with a direct monetary bearing in her favour. The rule in section 54(1)(b) is not worded so as to limit it's [sic] application to situations

> where an appeal turns on a non-monetary point nor where non-monetary relief is the only form of relief sought.
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> [italics in original]

[17] I find the above passages persuasive and equally applicable to the situation before me. Here, the threshold issue concerns the proper interpretation of the Agreement; however, at its core the appellant was seeking the payment of child support, which is clearly stated in the relief portion of the notice of appeal. This is monetary relief. Indeed, in *Smith* the Registrar concluded that "the fact this Court's decision turned on and ended at a jurisdictional point does not take away from the fact that portions of the appeal entailed monetary relief", and she held that the costs were appropriately taxed pursuant to Column I.

[18] Here, I also find instructive the manner in which Richards C.J.S., writing for the Court, expressed the issue under appeal:

> [1] When their marriage broke down, Sharon Granquist and Dolan Lemond entered an agreement [Agreement] with respect to a variety of matters including child support obligations. They were subsequently divorced.
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> [2] The Agreement provided, broadly speaking, that Ms. Granquist would have sole custody of their child and that Mr. Lemond would not pay child support in view of the fact that he had waived his right to a property division equalization payment. Four years later, Ms. Granquist applied for child support as per the *Federal Child Support Guidelines*, SOR/97-175. A Queen's Bench Chambers judge dismissed her application on the basis that there had been no material change in circumstances. Ms. Granquist now appeals from that decision.
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> ...
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> [16] In my view, the best and proper interpretation of the Agreement is the one that tracks its terms: (a) Ms. Granquist has sole custody of the child but no child support of any kind is payable "at this time" (article 4.1); (b) Mr. Lemond waives his right to any equalization payment from Ms. Granquist "at this time" (article 10.1); and (c) if Ms. Granquist seeks child support, regardless of when that might be, the $56,772 amount of the equalization payment will be set off against such amounts as Mr. Lemond is required to pay on a go forward basis (articles 4.2 and 10.2). Put in simple terms, the $56,772 is not a prepayment of child support. It is something that can be set off against child support should such support ever become payable.
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> [underlining added]

[19] While I find the respondent's argument that the threshold issue concerns the Agreement's interpretation interesting, in the end I am persuaded that in this instance the relief sought was monetary. At its core, and as demonstrated by the reasoning outlined in paragraph 16 of the Court's decision, whether and to what extent child support was payable was the primary question under appeal. It is clear to me that the appellant was seeking monetary relief, in the nature of retroactive and ongoing child support.

[20] In reaching the conclusion that this appeal does not involve non-monetary relief, I refer again to the *relief sought* in the notice of appeal, namely, "an Order for child support in accordance with ss. 3 and 7 of the *Federal Child Support Guidelines* retroactive to September 2020". As a result, and recognizing the amount of money at issue, the respondent's costs must be taxed pursuant to Column I.

[21] As a result, I will tax the respondent's cost on Column I of the Tariff:

3.	Fee to Respondent on receipt of Notice of Appeal	$ 100.00
8.	Preparation of Factum	$1,000.00
9.	All Other Preparation of Hearing	$ 500.00
10.	Appearance to Present Argument	$ 300.00
11.	Preparing Formal Judgment	$ 100.00
12.	Correspondence	$ 100.00
13.	Preparation of Bill of Costs	$ 100.00
14.	Taxation of Bill of Costs	$ 50.00
16.	All necessary disbursements	$ 15.98
		$ 2,250.00

[22] The proposed bill of costs is therefore taxed and allowed at $2,250.00. Properly added to this amount is disbursements in the amount of $15.98, and the court filing fee of $20.00 to take out the appointment for taxation of costs, bringing the total taxed amount to $2,285.98.

[23] For enforcement purposes, Mr. Lemond may wish to prepare and file a certificate of taxation of costs in Form 11d in the amount of $2,285.98 for issuance. I thank counsel for their helpful submissions.

Amy Thorstad

Counsel: Beau Atkins for Sharon Dawn Granquist
Mark Persick for Dolan Matthew Lemond