CITATION: S. v. A., 2022 ONSC 55
COURT FILE NO.: FS-16-0223
DATE: 2022 01 04

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: W.S., Applicant

- and -

P.I.A., Respondent

BEFORE: McGee J

COUNSEL: Gary Gottlieb and Ryan Aalto, for the Applicant

Gary S. Joseph and Alice Parama, for the Respondent

COSTS ENDORSEMENT

Summary

[1] This family law dispute has cost the parents in the range of 1.7 million dollars, an amount that well exceeds their personal savings and their equity in a jointly owned home.

[2] Their dispute has principally been a parenting dispute. Much less attention was paid to the financial issues arising from the end of the marriage. Those issues: child support, spousal support and equalization were resolved on the first day of Trial within Minutes of Settlement dated May 10, 2021. The Minutes provide that no costs are to be paid on the settled terms for retroactive and ongoing child support, spousal support, and equalization.

[3] The Trial heard over the following nine weeks was one of the longest parenting trials heard in the Superior Court. In the decision that followed, Mr. S was wholly successful.

[4] Mr. S was successful because on September 8, 2021 he received a final Order for sole decision making and a progressive parenting schedule that, after a 90-day reset of Ms. A's parenting time, would ultimately provide their young sons with a shared parenting schedule similar to what the parents had previously agreed would start in March of 2021.

[5] Those parenting terms were more favourable than the terms of Mr. S's April 18, 2021 Offer to Settle which provided that Ms. A would have sole decision making and based on her litigation position that she be permitted to relocate the boys' residence to Grey County, a parenting schedule for him to care for the boys three weekends a month, which would step up over time.

[6] Mr. S was also successful on his motion for a finding of contempt, heard concurrently with the Trial.

[7] Ms. A was not successful on any of her parenting claims, which evolved over the course of the Trial, starting on its first day when she withdrew her relocation claim. Her parenting actions after receipt of the 2018 Section 30 Assessment parenting recommendations revealed that she had never been content to have sole decision making for her sons and a regular parenting schedule; but rather, that her litigation goal was to remove Mr. S from her and the boys' life, primarily through their rejection of him.

[8] In the reasons dated September 8, 2021, I found that Ms. A acted in bad faith because she purported to support the boys having a full and healthy relationship with their father while she intentionally took steps to sever their sons'

affection, sense of safety and self while with their father. She caused the boys to suffer emotional harm.

[9] For the reasons that follow, I award the Applicant Father costs on the steps prior to Trial, the finding of contempt, the Trial and disbursements in the combined total of $599,655, plus HST of $77,955 for a total of $677,610. Costs may be set off against the settled terms for retroactive and ongoing net spousal support, and equalization.

The Amount of Costs Claimed

[10] The Bill of Costs submitted by Mr. S's litigation team is a summary of the whole of his invoiced dockets, divided into four categories which I set out below:

Fees of the Proceeding up to Trial	$318,940[1]
Contempt Motion Fees	$ 74,370
Trial Fees	$416,690[2]
Disbursements	$ 19,655
Total Costs	$829,655
Plus HST	$107,855
	$937,510

[11] The fees categories are made up of the total bills of five individuals: two counsels at $500 and $400 per hour respectively, a third and fourth counsel at $400 per hour each and a law clerk at $300 per hour. The total fees of the third and fourth lawyer, are each under $3,000 and are incurred for the same task: "review of file and court pleadings for Trial," a task that is also docketed within the

[1] 325,940 less $7,000 in costs previously granted to Mr. S. Because those Orders do not separate out the HST, I have treated the whole of the amount as a deduction to the fees of the proceeding claimed up to Trial.

[2] This amount was incorrectly transferred to the totals page in the Applicant's Bill of Costs as the amount claimed *inclusive* of HST.

first and second lawyer's accounts. I have removed the dockets for the third and fourth lawyer as duplicative within the category of Trial fees.

[12] I am also not prepared to grant a fees recovery for the time of the law clerk for receipt and review of all correspondence, letter and emails, preparation and drafting of pleadings which are administrative or duplicative. Neither will I consider fees for the law clerk's attendance at Trial[3] absent an explanation in the Costs submissions as to why the cost of a Law Clerk was required in addition to that of two counsels.

[13] The amount of costs that I will therefore consider in these reasons is:

Fees of the Proceeding up to Trial	$318,940[4]
Contempt Motion Fees	$ 74,370
Trial Fees	$371,450
Disbursements	$ 19,655
Total Costs	$784,415
Plus HST	$101,974
	$886,389

The Estimated Costs of the Whole of the Proceeding

[14] The financial costs of the whole of the proceeding, including the support and equalization terms is relevant to these reasons because Ms. A argues that she is of limited means and should pay a lesser amount of costs: no more than $50,000. The costs of the whole of the proceeding is also relevant because it places into context the extent of Ms. A's "win at all costs" approach to this litigation. Mr. S was

[3] Solely identified in the Bill of Costs under the category of Trial but described as also including attendances prior to Trial and for the reading of the judgment.

[4] 325,940 less $7,000 in costs previously granted to Mr. S. Because those Orders do not separate out the HST, I have treated the whole of the amount as a deduction to the fees of the proceeding claimed up to Trial.

not to be just removed as a competitor for the children's time and affection, he was to be expunged from the family.

[15] The father has calculated the entirety of his legal fees and disbursements, including the costs of the Trial, less the amount for costs already recovered, to be $884,250 inclusive of HST which I have adjusted to $886,389 as set out above. This amount does not include legal fees paid to his first counsel, or to his criminal law counsel.

[16] Ms. A has not provided me with a global amount of her fees, HST and disbursements spent on this litigation prior to Trial, but for the HST inclusive accounts from two prior counsels totaling $72,614 and $144,321 respectively, and her Trial counsel team's account for the period of March 2, 2021 to September 21, 2021 in the amount of $449,663.

[17] This brings the HST inclusive fees and disbursements presented to me in these cost submissions to a total of $1,552,987. The parents' legal fees and disbursements might have been even higher absent the savings in travel time and paper copies of documents afforded by the Trial's virtual format.

[18] The amount of $1,552,987 is inclusive of the concurrent contempt hearing, but exclusive of the costs of the parenting assessments, supervised access and other expenses previously agreed to be paid jointly. Neither does it include the amounts paid by Ms. A and her brother, P.A., for private investigators. Based on the evidence heard during the Trial, those additional expenses would increase the cost of this proceeding to an amount inclusive of HST that is in the range of 1.7 million dollars.

The Father is Entitled to an Award of Costs

[19] It is not disputed that Mr. S is entitled to an award of costs. At issue in these reasons is the scale of the recovery and a consideration of the factors in calculating the amount of costs.

The First Measure of Success: A Comparison of Offers to Settle

[20] Family law litigants are accountable for the positions they take in litigation. They have an obligation to assess their cases at the outset and to reassess as the case unfolds, see *M.B. v. A.F*. 2021 ONCJ 45.

[21] When a party receives a result as favourable or more favourable than a Rule 18(14) Offer to Settle, the Court shall award a full recovery of costs from the date of the Offer unless it decides otherwise.

RULE 18: OFFERS TO SETTLE

Costs consequences of failure to accept offer

(14) A party who makes an offer is, unless the court orders otherwise, entitled to costs to the date the offer was served and full recovery of costs from that date, if the following conditions are met:

1. If the offer relates to a motion, it is made at least one day before the motion date.

2. If the offer relates to a trial or the hearing of a step other than a motion, it is made at least seven days before the trial or hearing date.

3. The offer does not expire and is not withdrawn before the hearing starts.

4. The offer is not accepted.

5. The party who made the offer obtains an order that is as favourable as or more favourable than the offer. O. Reg. 114/99, r. 18 (14).

[22] When deciding whether there is reason not to order a full recovery, a Court can also consider whether a party has behaved reasonably, and specifically,

whether a party has reasonably attempted to resolve the dispute as the evidence evolved, including as it evolved over the course of the Trial.

RULE 24: COSTS

Setting costs amounts

(12) In setting the amount of costs, the court shall consider,

(a) the reasonableness and proportionality of each of the following factors as it relates to the importance and complexity of the issues:

(i) each party's behaviour,

(ii) the time spent by each party,

(iii) any written offers to settle, including offers that do not meet the requirements of rule 18,

(iv) any legal fees, including the number of lawyers and their rates,

(v) any expert witness fees, including the number of experts and their rates,

(vi) any other expenses properly paid or payable; and

(b) any other relevant matter. O. Reg. 298/18, s. 14.

The Father's Offers to Settle

[23] The father served three Offers immediately prior to and during Trial that demonstrated his constant reassessment of a potential resolution. Those Offers were dated April 18, 2021, June 17, 2021 and July 9, 2021. I have reviewed and charted those Offers as well as those made during the course of the proceeding, as they reference the parenting issues.

[24] Mr. S's Offer of April 18, 2021 met Ms. A's demand that she be given sole decision making responsibility on the condition that that he was kept informed regarding the boys' health and education. He proposed three weekends a month as parenting time and two weeks of summer access with a step-up plan for

increased summer access in 2021 and a further step-up in 2022. In every respect, Mr. S either met or exceeded this Offer to Settle.

[25] On June 17, 2021, the father served a further Offer to Settle following a mid-Trial settlement conference with Justice Shaw. This Offer proposed split decision making. He would have joint decision making authority over health and education and Ms. A would have decision making authority over culture, language, religion and extracurricular activities. Further incidents of split decision making, and a shared schedule were also proposed. This Offer also exceeded the result at Trial.

[26] On July 9, 2021, while the Court reserved judgment, Mr. S made his final Offer for summer parenting time pending the release of the trial decision. The Offer was ignored by Ms. A, and no access was allowed.

[27] I find that all of Mr. S's Offers reflected a child centered, ongoing assessment of the evidence that was reasonable and proportionate to the evidence, despite some of the evidence being quite shocking: such as the knife incident with the babysitter and the murderous pictures posted on the wall.

Ms. A's Offers to Settle

[28] Ms. A's March 15, 2021 Offer to Settle provided that the Trial would be adjourned, that Ms. A would move the children to Grey County and the father would have parenting time on alternate weekends and for two weeks in the summer with additional March break and shared holidays. Decision making would be shared, with Ms. A making final decisions.

[29] Ms. A revoked those terms four days later on March 19, 2021 with an Offer of that date which set out that she would have sole decision making, and that the father could have the boys three weekends a month for 12 weeks to improve his

relationship with them through therapy, at the conclusion of which parenting would reduce to alternate weekends and holiday time as earlier provided in the March 15th Offer.

[30] She made a further Offer on April 9, 2021. This Offer does not revoke the March 19, 2021 Offer but incorporates its parenting terms with non-severable additional parenting terms, support and equalization terms.

[31] Another Offer was made on May 3, 2021. The parenting and support terms were complex and remained non-severable from the financial terms. Ms. A continued to propose that she have sole decision making, with a new term at paragraph 6(h) that she was permitted to move at her discretion, to Grey County on set parenting terms.

[32] An examination of the May 3, 2021 Offer presents two curiosities. First, that Ms. A's starting litigation position at Trial did not include any terms for the father's parenting time, despite such terms being incorporated into her May 3, 2021 Offer to Settle (albeit conditional on acceptance of the financial terms;) and second, that a non-severable term was the ability to move the children to Grey County. Ms. A withdrew her relocation claim on the first day of Trial, and upon doing so, she could no longer obtain a result more favourable to her because the Order was no longer available to her.

[33] On June 10, 2021, Ms. A made another Offer to Settle. This Offer brought forward almost all of the prior terms for sole decision making, parenting time and the discretion to move the children to Grey County; but then adds at paragraph 15 a provision for the purchase of the father's half interest in the home.

[34] This is a further curiosity. The parties executed Minutes of Settlement on May 10, 2021 which provided that the jointly owned home would be sold. The sale created funds from which the father could pay the agreed amounts for an

equalization, retroactive child support and spousal support. The purchase term in the Offer was not severable, creating another term within her Offer which could not be achieved in the final Order because it was no longer available. (Nor could it have been available in any event, as a Court cannot order that one party sell his interest in a jointly owned property to the other owner.)

[35] Ms. A's final Offer is dated June 17, 2021. It also followed the mid-Trial settlement conference with Justice Shaw. This Offer continues the previous terms for Ms. A to have sole decision making but allows for medical decisions to be made jointly by the parents, and when there is no agreement, to be arbitrated. It sets out an extensive parenting time proposal, but importantly, it then adds a brand new section for a jointly retained therapist, parenting coordinator and counsellor for the children. All the parenting terms, including the continued use of experts, is bundled into Part A of the Offer which could be accepted separately from Part B, which repeats the terms for Ms. A's purchase of the father's interest in the home.

[36] Were Ms. A's parenting terms in Part A of her June 17, 2021 Offer reasonable in a manner that a full recovery of costs should not be granted, or only granted in part? I find that they were not. By this stage of the proceeding it was clear that Ms. A used family therapists as litigation allies, not as sources of learning and personal growth. As soon as a therapist challenged her approach, the therapist was rejected, usually with a corresponding complaint to his or her regulatory body. In my view, acceptance of Part A of the June 17, 2021 Offer would have continued the four-year pattern of conflict, a pattern that was only fully revealed at Trial.

[37] Moreover, Ms. A's post-trial conduct of denying any father-son contact speaks for itself.

[38] I find no basis to not grant a full recovery of Mr. S's costs from the date of his April 18, 2021 Offer to Settle and a partial recovery of his costs on the parenting dispute accrued prior to April 18, 2021.

The Purposes of a Costs Award

[39] Costs rules are designed to indemnify successful litigants; to encourage settlement; and to discourage and sanction inappropriate litigation behaviour by litigants. Rule 2(2) of the *Family Law Rules* adds a fourth purpose, to ensure that cases are dealt with justly, see *Mattina v. Mattina*, 2018 ONCA 867, p. 10.

[40] In high conflict parenting cases, the critical purpose of an award of costs is to curb litigation behaviour by providing a sanction for unreasonable litigation conduct. Unless costs are consistently and predictably awarded in accordance with the *Family Law Rules* there is no downside to saying one thing and doing another.

[41] At the start of the Trial, Ms. A's position was that she should be granted sole decision making responsibility and be permitted to move the boys to Grey County without any plan for the father's parenting time. She abandoned her claim to move the boys on the first day of Trial, but she continued to propose no parenting terms to the Court. Midway through the Trial, she proposed weekend parenting time; but she then frustrated any overnight time and ultimately, no father-son contact was fostered.

[42] In closing submissions, Ms. A's counsel assured the Court that despite the failed efforts to re-establish the father's parenting time during the Trial, his client would protect and promote the boys' relationship with their father if she were granted sole decision making. Counsel argued that the resist and refuse dynamics being observed were wholly the fault of the father and that only Ms. A could act in the children's best interests. He presented his client's proposed final draft Order that she have sole decision making and that the father have summer parenting

time and, during the school year, alternate weekends and mid-week contact in person or by Zoom, as well as defined holiday and special event parenting.

[43] In stark contrast to her litigation position, Ms. A then refused any parenting time while the decision was under reserve. This was entirely unreasonable litigation conduct. By the time that the decision was released, make-up time alone would have justified some period of primary care reversal.

A Further Consideration of Reasonableness in Parenting Disputes

[44] As explored above, the father was wholly successful at Trial because he achieved parenting terms more favourable than those in his April 18, 2021 Offer to Settle in every respect: decision making, a parenting plan and incidentals of parenting such as choice of school and name registration. As the successful litigant, he is presumptively entitled to an award of costs pursuant to Rule 24(1) of the *Family Law Rules*.

[45] But in my view, the analysis must go beyond a simple assessment of success.

[46] In parenting decisions, success alone is not a sufficient basis for an award of costs because the measure of success belongs to the child. It is the ***child's success*** that is the object of the proceeding. Orders for decision making, parenting plans and incidentals of parenting are formulated on the child's best interests, not a parent's best interests. In this manner, a parent may be successful – may even beat his or her Offer to Settle – yet not be awarded costs; or be granted a reduced amount of costs for any number of reasons, such as the prospect of a costs award further exacerbating mutual parental conflict, hobbling a primary care parent's ability to meet the child's financial needs or reflecting the court disapproval of an unreasonable course of litigation conduct.

[47] Here, Mr. S was not just successful on the terms of his Offer; he was found to be the parent who best demonstrated a willingness and an ability to foster the boys' post separation physical, emotional and psychological safety, security and well-being. Prior to, and during the Trial he took litigation positions consistent with an earlier parenting agreement and he offered further compromises.

[48] A successful litigant is a parent who respects a child's ongoing attachment to his or her other parent while uncoupling from that parent as a former partner.

Finding of Bad Faith

[49] Rule 24(8) of the *Family Law Rules* requires the Court to consider if a party has acted in bad faith, and if so, to assess costs on a full recovery basis. The essence of bad faith is that a party claims to be acting with one purpose, when in reality, they are motivated by another purpose, see *J.S. v. M.M.* 2016 ONSC 3072. Fabricated allegations of physical and sexual abuse of a child and depriving a child of a relationship with a parent is bad faith: *O. M. v. S. K* 2020 ONSC 4765.

[50] As earlier set out, it was never reasonable for Ms. A to continually sabotage the boys' relationship with their father in the face of multiple processes to assess, repair and transform the post separation parenting relationships; processes in which she had agreed to participate and for which she had expressed support.

[51] A finding of bad faith requires more than a pattern of sustained unreasonable litigation conduct. Bad faith is devious conduct designed to achieve an improper goal that causes harm to the other party or to the children. The party need not intend to cause the actual harm occasioned, provided that the party acted recklessly or in a manner that should have been known would cause harm without justification, see *S.(C.) v S.(M.),* 2007 CarswellOnt 3485 (S.C.J.)

[52] The evidence before me during this Trial was replete with actions of bad faith by Ms. A: a surreptitious baptism, a pattern of sabotaging Court Orders, a contemptuous breach of the Order of November 2, 2018, a series of false allegations of physical, sexual and emotional abuse to child protection agencies, and the deliberate and sustained frightening of the boys, particularly the oldest, so that they would reject their father and resist any contact.

[53] Throughout, Ms. A was represented by able counsel and repeatedly cautioned by the court – as was the father – that litigation conduct had consequences. She was ordered to pay prior costs awards for unreasonable litigation conduct in detailed reasons that set out the basis for an award of costs.

[54] Nonetheless, and buoyed by the financial assistance and litigation enthusiasm of her brothers, she took a “win-at-all-costs” approach to the litigation.

[55] Mr. S is granted a full recovery of his costs of the parenting dispute that arise from Ms. A’s actions of bad faith prior to April 18, 2021, inclusive of the costs for the finding of contempt.

The Amount of Costs

[56] A full recovery of costs is not necessarily a dollar for dollar recovery of everything spent during a course of litigation. Costs must be reasonable and proportionate, and within a range that an unsuccessful party should expect to pay. A realistic measurement of what an unsuccessful party should expect to pay in costs is what she has paid in costs to her own counsel team.

[57] Ms. A’s total Bill of Costs for the Trial, its preparation and aftermath is not far removed from that of Mr. S’s legal team. Her legal team consisted of four lawyers and two law clerks at hourly rates of $725, $606, $260, and $215 for the lawyers, and $230 and $135 (later increased to $215) for the clerks. Her final

account for fees of the Trial alone is $397,392 increased by minor disbursements and HST of $52,271 for a total of $449,663.

[58] Although the hourly rates and time spent by each member of the respective legal teams differ somewhat, the amount of $397,392 incurred by Ms. A is closely comparable to the $371,450 in fees for the Trial that I am prepared to consider within this costs decision.

[59] In setting the amount of costs, a Court must consider the factors in Rule 24(12):

a. The reasonableness and proportionality of each of the following factors as it relates to the importance and complexity of the issues:

i. Each party's behaviour;

ii. The time spent by each party;

iii. Any written offers to settle, including offers that do not meet the requirements of rule 18;

iv. Any legal fees, including the number of lawyers and their rates;

v. Any expert witness fees, including the number of experts and their rates;

vi. Any other expenses properly paid or payable; and

vii. Any other relevant matter.

[60] I have reviewed Mr. S's counsel team's hourly rates, the hours spent, including their time for legal research required for the many evidentiary rulings sought by Ms. A; and considered what steps were caused by unreasonable litigation conduct, such as Ms. A's decision to seek to reopen the Trial and call

additional evidence after Mr. S agreed to close his case without the benefit of reply evidence. That particular action calls for a full recovery of costs as it was not helpful to her case, prolonged the trial unnecessarily and added to the conflict.

[61] I assess costs of the Trial, including its preparation and aftermath in the rounded, full recovery amount of $370,000. Having made the earlier adjustments at paragraph 13 above, and given the considerations set out above, I can find no basis to do otherwise. I accept the need for Mr. S to have retained two Trial counsels and I only round down the figure from that claimed because some time was spent in mid-trial settlement conferences; but this time was not statistically significant given the length and complexity of this Trial which saw Ms. A employ a counsel team of four lawyers and a consulting lawyer.

[62] I assess costs for the finding of contempt in the full recovery amount of $70,000 on a total bill claimed of $74,370. Here I saw no duplication amongst counsel or any other basis pursuant to Rule 24(12) to reduce the costs claimed, but for a modest decrease to cover any potential duplication within the award of $370,000.

[63] I find that a full recovery of $70,000 is appropriate pursuant to Rule 24(8) because it was an act of bad faith to deliberately withhold the children from Christmas parenting time with their father through a false complaint to the CAS, and to then double down and continue to withhold the children after the false complaint was cleared by the CAS. This was done in the face of months of active judicial case management and representations by Ms. A that she wanted the boys to have a relationship with their father. It was a deliberate ploy to use a child protection agency to undercut the authority of the Court, and when that was not successful, to flagrantly breach the Order.

[64] I assess a partial recovery of costs and disbursements on the parenting issues prior to service of the April 18, 2021 Offer to Settle, including the withdrawal of the relocation claim on the first day of trial in the rounded amount of $140,000.

[65] Here, my reasons are discretionary as I was not provided with a breakdown of the fees incurred prior to the May 10, 2021 Minutes of Settlement for the parenting issues alone. While I can observe that this litigation was primarily a parenting dispute, some of the time at prior events must have addressed the financial issues for which no costs are payable.

[66] I must also deduct from the $318,940 the full recovery of the costs granted on the finding of contempt, while at the same time considering the full recovery that I grant on fees arising from other acts of bad faith, such as the surreptitious baptism of A and the false complaints to the CAS.

[67] In setting the amount of $140,000, I have reviewed the submissions set out at paragraph 37 and 38 of Ms. A's costs submissions as to events that should not draw an award of costs, and to the best of my ability matched them to those prior events. I have endeavored to avoid assessing an amount for an event for which no costs are appropriate, such as a Settlement Conference, while staying mindful that Rule 24(11) permits me to award costs for an earlier step in the proceeding when appropriate.

[68] I assess disbursements in the requested amount of $19,655. All were appropriate and necessary to the proceeding.

[69] The total amount of costs awarded is therefore:

Fees of the Proceeding up to Trial	$140,000
Contempt Motion Fees	$ 70,000
Trial Fees	$370,000
Disbursements	$ 19,655
Total Costs	$599,655
Plus HST	$ 77,955
	$677,610

[70] Costs of $677,610 are payable to Mr. S forthwith and may be set off against retroactive and ongoing net spousal support and the equalization payment. The balance shall be payable from Ms. A's one-half share of the net proceeds of sale of the home.

No Basis to Further Reduce the Award of Costs

[71] I will briefly address Ms. A's submission that her assessed costs be reduced to reflect her limited means. Context for this submission was earlier provided at paragraphs 14 to 18 above. I will not further address her other two proposals for a reduced award: her intention to act in the children's best interests, and Mr. S's abusive conduct, given my findings to the contrary.

[72] At no time did Ms. A conduct herself as a litigant of limited means on the parenting issues. To the contrary, her litigation decisions were funded on a "win at all costs" basis thanks to a personal injury settlement, her equity in her home and her brothers' determination to "do whatever it takes to keep their nephews safe."

[73] Hiring private investigators to report on court ordered access supervisors and arranging for a former counsel to monitor the whole of a nine-week trial are not marks of a client of limited means. Neither is it the action of a litigant of limited means to incur a three-day *voir dire* in an attempt to admit five-year-old

surreptitiously obtained recordings, or a lengthy motion to obtain the other spouse's personal counselling records while shielding production of one's own counselling records.

[74] Family law litigants are responsible not only for their litigation positions, but also for the financial consequences to both parties of funding those positions. A former spouse who engages in "win at all costs" litigation chooses to be as answerable for the resulting litigation fees to the other side as for one's own fees.

[75] Ms. A's litigation conduct, partially funded by her brothers resulted in recklessly disproportionate litigation costs to Mr. S. The case that Mr. S was required to meet exceeded any reasonable inquiry into the parenting plan that best met the children's interests. Instead, it was an exploration of the use of surreptitious recordings, assessment methodology, access supervision, access supervision note-taking and child protection: all in pursuit of a final Order that Ms. A and her brothers continue to exercise absolute control over Mr. S's parenting time.

[76] No further reduction in the amount of costs to be paid is ordered.

No Set Off Against Child Support at This Time

[77] As a final matter, I have considered Mr. S's request that these costs also be set off against child support. I decline to rule on the issue at this time, as I am not satisfied that I have a fulsome set of submissions on this point, or that it will prove necessary given the post separation increase in the equity of the jointly owned matrimonial home.

[78] Should the costs or portions of the costs ordered herein become unrecoverable by any other means, for example, Ms. A declares bankruptcy and the Trustee has insufficient funds from which to satisfy this Order, I may be spoken

to through my judicial assistant for a teleconference to schedule a hearing on the question of set off against retroactive or future child support.

Contempt Sentencing

[79] If the parties cannot agree on a disposition on my finding of contempt pursuant to Rule 31 of the *Family Law Rules*, a date may be set through the Trial Coordinator.

McGee J

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