

**Court of King's Bench of Alberta**

Citation: Goodwin v Goodwin, 2022 ABKB 695



Date:  
Docket: 4812010057  
Registry: Wetaskiwin

Between:

**Richard Goodwin**

Plaintiff

- and -

**Diane Goodwin**

Defendant

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**Costs Endorsement  
of the  
Honourable Justice M. Kraus**

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**Introduction**

[1] A written decision was rendered in this matter on July 29, 2022, Goodwin v Goodwin, 2022 ABQB 520. In that decision, I granted the Plaintiff's applications to validate service of the Statement of Claim upon Ms. Goodwin and to allow the Estate of Richard Goodwin to continue the Division of Matrimonial Property proceeding against Ms. Goodwin (the applications are collectively referred to herein as the "Application").

[2] The decision stated that if the parties cannot agree upon costs, either party may contact me within 60 days. The parties were unable to agree to costs and both counsel wrote to me.

### **Position of the Parties**

[3] Ms. Handfield wrote to the Court on September 26, 2022, on behalf of the Estate of Richard Goodwin. The Estate argues that it was successful in its Application, that the parties carried on with the litigation as if the Statement of Claim had been properly served, and that Ms. Goodwin could have consented to the Estate's Application.

[4] Ms. Handfield states that the Estate has incurred legal expenses of approximately \$7,440 and submits that the Estate should receive a costs award of 50% of its legal expenses, or \$3,720, as per the Court of Appeal decision in *McAllister v Calgary (City)*, 2021 ABCA 25 (para 51).

[5] Ms. Weir Andreassen wrote to the Court on October 6, 2022, on behalf of Ms. Goodwin. Ms. Goodwin argues that *McAllister* does not apply to this matter because there is no novel point in this application, the litigation in this action is connected to 3 other live actions; the Estate's own errors with respect to service of the Statement of Claim caused the problems; Ms. Handfield did not prepare a draft Order within 10 days in accordance with Rule 9.2; Ms. Handfield imposed unreasonable deadlines upon Ms. Goodwin; the Estate is in breach of an Order in a related action to pay \$30,000 to Ms. Goodwin; Ms. Goodwin is elderly, in poor health, and resides in a senior's home; and that it would be unfair in all the circumstances for Ms. Goodwin to pay costs of this Application.

[6] Ms. Weir Andreassen states that no costs should be ordered or that costs be in the cause. In the alternative, if costs are ordered, the costs should be for a regular family law chambers application under Schedule C, Column 1, Item 7(1) in the sum of \$675 and that payment be stayed until the merits of the action are resolved.

### **Analysis**

[7] Rule 10.29 governs the awarding costs at an interlocutory application. The Rule states that, subject to the Court's general discretion under Rule 10.31, a successful party is entitled to a costs award against an unsuccessful party to be paid forthwith notwithstanding a final determination.

[8] This interlocutory Application is independent and separate from the trial in this matter and the trial will not change the results of this Application. In my view, therefore, it is appropriate to award costs in any event of the cause. The question becomes what quantum of costs to award and when the costs are payable.

[9] Rule 10.31 allows for consideration of factors in making a costs award, including the factors set out in Rule 10.33. An assessment of the reasonableness of the legal cost under Rule 10.2 is also relevant.

[10] *McAllister* states that there are a number of options or tools that may be used to achieve the outcome of reasonable and proper costs under Rule 10.31(1)(a) (para 29) and that, as a general principle, a 40-50% level of indemnification is reasonable (paras 41, 42, and 51). That is the basis of the Estate's claim for 50% of its legal expenses, or \$3,720.

[11] The Estate urges me to apply *McAllister* to this Application. In that case, the action was prosecuted from Statement of Claim to Judgment at trial in protracted litigation involving arguably novel liability (*McAllister* at para 3). In contrast, however, in this Application,

validation of service and continuation of the action by the Estate was decided, the Application was not complex or protracted, and there was nothing novel about the Application.

[12] I agree with the Estate that it was successful in its Application, that the parties carried on with the litigation as if the Statement of Claim had been properly served, and that Ms. Goodwin could have consented to the Estate's Application.

[13] However, I also agree with Ms. Goodwin that the Estate's own errors in the conduct of this litigation caused the problems with respect to service of the Statement of Claim. Although the blameworthiness of the Estate for the underlying problems with service does not explain why Ms. Goodwin did not consent to the Application, the Estate is responsible for the underlying problems with service, and I must take this into consideration when exercising my discretion with respect to costs.

[14] Further, I note the comments of counsel for Ms. Goodwin that Ms. Goodwin was provided one day notice to file a Statement of Defence or risk being noted in default. If so, this will create unnecessary extra steps to amend pleadings at a later date when the Order in this Application is finalized. This is a factor I may consider when awarding costs.

[15] This Application was initially heard in regular Family Law Chambers. However, after more than 20 minutes of argument in regular Family Law Chambers, at the request of counsel, the Court directed that Briefs be filed. Briefs were provided to the Court on April 6, 2022, by Ms. Goodwin and April 22, 2022, by the Estate. In essence, this Application required the same steps as a Family Law Special Chambers application but in a reverse sequence with the Briefs being filed after and not before the Application was argued.

[16] McAllister states that Schedule C is merely one of a number of options or tools that may be used to achieve the outcome of reasonable and proper costs. Unlike indemnification based upon a percentage of assessed costs, Schedule C compensates for steps taken in the litigation (para 55). Schedule C provides a convenient and transparent foundation for judicial determination of costs that is particularly useful and efficient in high volume interlocutory matters such as chambers applications (para 59).

[17] In my view, in all the circumstances of this Application, it is appropriate to award costs under Schedule C, column 1, item 8(1), being where a Brief is required or allowed by the Court. The amount is \$1,350.

[18] Schedule C has columns depending upon the monetary amount of the claim. The monetary amount of the claim was not argued, and no Bill of Costs was presented to the Court. It appears that there is a reasonable amount of real estate in question in this matter, but it is not clear to me what monetary amount is being claimed by the Estate. In the circumstances, that is why I order the Schedule C costs to be paid under column 1.

[19] With respect to the timing of payment of the costs, I am not persuaded by Ms. Goodwin's arguments that there is any reason why costs should not be awarded payable forthwith. No explanation was provided why payment of \$30,000 has not been enforced or cannot be enforced by Ms. Goodwin against the Estate in the related action and, in any event, the \$30,000 payment has not been ordered in this action so there is no breach of on Order in this action.

[20] It is not clear if Ms. Goodwin is arguing impecuniosity as a result of not receiving the \$30,000 as ordered in the related action but, if so, impecuniosity is irrelevant to liability for costs (see *Anderson v Canada Safeway Limited*, 2005 ABCA 6 at para 3).

[21] In the circumstances, I am not persuaded that the costs in this Application should be stayed or postponed until trial or the conclusion of this matter.

**Conclusion**

[22] The Plaintiff is granted costs under Schedule C, column 1, item 12 in the sum of \$1,350 plus reasonable disbursements and GST, payable forthwith, plus \$300 for the costs submissions, also payable forthwith.

Heard by written submissions received on the 26<sup>th</sup> day of September, 2022 and the 6<sup>th</sup> day of October, 2022.

**Dated** at the City of Wetaskiwin, Alberta this 20<sup>th</sup> day of October, 2022.

A handwritten signature in black ink that reads "Mike Kraus". The signature is written in a cursive style and is positioned above a horizontal line.

M. Kraus  
J.C.K.B.A.

**Appearances:**

Lisa Handfield  
Lisa Handfield Professional Corporation  
for the Plaintiff

Andreassen Borth  
Margaret Weir Andreassen  
for the Defendant