

CITATION: Clarke v. Denyes, 2025 ONSC 2936
COURT FILE NO.: FS-19-8589
DATE: 20250516

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Harry James Clarke, Applicant

AND:

Melissa Joy Denyes, Respondent

BEFORE: Mathen J.

COUNSEL: *Julie Stanchieri/David Rappaport*, for the Applicant

Melissa Joy Denyes – Self-represented

HEARD: By written submissions

COSTS ENDORSEMENT

MATHEN, J.

[1] On March 17, 2025, I rendered a trial decision in this matter following a hearing that took place over several days in October and November of 2024. I dismissed the Respondent mother’s request to relocate with the two children of the relationship. I granted the Applicant father’s request for shared parenting and sole decision-making responsibility. I awarded table child support based on imputed income to both parties, resulting in set-off support payable to the Applicant. I denied the Respondent’s request for ongoing spousal support and post-separation adjustments. I granted some but not all of the Applicant’s requested post-separation adjustments.

[2] The parties cohabitated from 2012 to 2018. They have two children born in 2014 and 2016.

[3] The parties’ dispute has been acrimonious and protracted. Over the six years it took for this matter to reach trial there were several regular and at least one long motion. The parties were not able to agree on even minor things such as a Christmas schedule for 2024.

[4] It is rare for one party to shoulder all of the blame for a troubled relationship or legal proceeding. I do not find that to be the case here. However, I find that the Respondent, Melissa, does bear more responsibility for the sheer length of time it has taken the parties to get to trial.

[5] Throughout the trial, Melissa displayed a lack of insight into her own behaviour. She stubbornly opposed a shared parenting schedule even as she noted that caring for both children

was so taxing that she needed respite care. In my decision, I found that she engaged in gatekeeping to deprive the Applicant, James, of a fuller role in the children's lives.

[6] Melissa took a leave of absence from her job to focus on this trial and represent herself. She made some unwise decisions. For example, she filed multiple written motions even after the trial was set – which caused the Applicant more expense. As I noted in my trial decision, some of Melissa's motions were being assigned during the trial itself.

[7] While my decision did not entirely vindicate James' position, I granted most of his requested relief.

Party Positions

[8] James says he has incurred costs of \$651,670.25. Under the final trial order, he is owed prior costs of \$40,926.97 and over \$50,000 for section 7 expenses and post-separation adjustments.

[9] James says that Melissa acted “unreasonably, maliciously, and in bad faith throughout the course of litigation and refused to accept numerous Offers to Settle that would have been much more favourable to her position than the Final Order.”

[10] James' various offers included the following:

- a. April 9, 2021 (not severable): James pays Melissa \$1240 in monthly child support, updated annually; equally shared section 7 expenses; graduated parenting whether the children would reside primarily with Melissa; \$100,000 to Melissa for all property, support and costs claims; no relocation.
- b. November 17, 2022 (not severable): \$3,000 to Melissa in monthly fixed and non-variable child support; use of a parenting coordinator; no relocation.
- c. December 23, 2022 (severable as to parts): no relocation; 3-month trial of parenting coordinator; engage parenting coordinator; graduated parenting schedule with James having 40%; \$3,000 in monthly fixed and non-variable child support and equally shared section 7; trust in son's name for \$500,000; trust in daughter's name in \$100,000; \$50,000 to Melissa to resolve all financial claims.
- d. August 8, 2024 (withdrawn December 23, 2022 but not as to parenting): no relocation; decision-making responsibility to James save for religion to Melissa; Melissa to pay James \$1,307 in set-off child support but no retroactive support; no payment for property or other financial claims by either; Melissa to pay costs of \$39,000 with no interest.

[11] James asks that Melissa pay the sum of \$577,121.62 consisting of:

- a. \$115,531.80 representing partial indemnity costs, disbursements and HST up to December 23, 2022; and
- b. \$461,589.82 representing full indemnity costs, disbursements and HST from December 23, 2022, until the conclusion of trial on November 26, 2024.

[12] James points out that Melissa made two Offers to Settle on February 8, 2022, and October 18, 2024, which contained terms more favourable to her than her pleadings.

[13] Melissa seeks costs of \$120,000, based in part on:

- a. recognition of the Applicant's significant litigation misconduct, unnecessary delays, non-disclosure, and unreasonable procedural conduct;
- b. her achievement of "substantial success on the substantive issues, notwithstanding significant procedural and substantive challenges created by the Applicant's conduct"; and
- c. many alleged instances of that conduct.

The Law

[14] Modern costs results foster four purposes: 1) to indemnify successful litigants for the cost of litigation; 2) to encourage settlement; 3) to discourage and sanction inappropriate behavior by litigants; and 4) to ensure that cases are dealt with justly, in accordance with the primary objective of the *Family Law Rules* set out in Rule 2(2).

[15] Rule 24(5) of the Rules sets out factors that the court must examine when deciding whether a party has acted reasonably or unreasonably, including whether a party failed to accept an offer or comply with court orders.

[16] Under Rule 24(8), if a party has acted in bad faith, the court shall decide costs on a full recovery basis which shall be paid immediately.

Analysis

[17] James is owed costs. He was successful on most of the points that he argued at trial with a few exceptions:

- a. I imputed an income to him higher than what he suggested;
- b. I dismissed his claim for occupation rent; and
- c. I reduced some of his claimed section 7 expenses.

[18] Having said that, James was successful on the most critical trial issues: Melissa's relocation claim; parenting; and decision-making responsibility.

[19] Melissa's submission that she was "substantially successful" is puzzling. Melissa lost on almost every major point at trial.

[20] I am persuaded on a balance of probabilities that Melissa behaved unreasonably at various points in this litigation. I find that her insistence on relatively little parenting for James was unreasonable. Her request to impute an income to him of \$250,000, including for many years prior to trial, was unsupported by evidence. And her inability or refusal to accept recommendations regarding her son's special education placement occasioned both cost and delay.

[21] At the same time, I am not persuaded on a balance of probabilities that Melissa acted in bad faith. I find on a balance of probabilities that she was motivated by a desire to protect her children's best interests, which unfortunately included misguided views of what would best promote those interests.

[22] In deciding on a quantum for costs, I note that James' spouse testified that she advanced him \$475,000 to fund the litigation. While James sought to portray this as a loan, he did not produce any supporting documentation.

[23] I have reviewed James' bill of costs, which is extensive. I find that the work and the lawyers' fees are reasonable for what the litigation entailed. Nevertheless, the costs are very high.

[24] In the circumstances, I have decided that Melissa shall pay James costs of \$400,000. This does not include full indemnity for the costs incurred after December 22, 2023. Nevertheless, I find it to be a sum that represents a fair and proportionate result considering the difficult issues involved and the fact that James did not entirely prevail at trial.

ORDER

[25] The Respondent Melissa Joy Denyes shall pay to the Applicant Harry James Clarke costs in the amount of \$400,000 inclusive of disbursements and HST.

Mathen, J.

Date: May 16, 2025