

SUPREME COURT OF YUKON

Citation: *Jones v. Duval*, 2020 YKSC 46

Date: 20201215
S.C. No. 18-A0016
Registry: Whitehorse

BETWEEN

CATHERINE MELISSA JONES

PETITIONER

AND

ODILE JEANNE DUVAL

RESPONDENT

Before Mr. Justice Paul S. Rouleau

Appearances:

André W.L. Roothman
Odile Jeanne Duval

Counsel for the petitioner
Appearing on her own behalf

REASONS FOR JUDGMENT (Assessment of Costs)

A. OVERVIEW

[1] These proceedings commenced on May 7, 2018, when the petitioner sought an order pursuant to s. 34 of the *Judicature Act*, R.S.Y. 2002, c. 128, forcing the sale of the property co-owned with the respondent as joint tenants. In the reasons for judgment of my colleague Campbell J., dated July 23, 2018, the petitioner obtained an order to have the property sold: *Jones v. Duval*, 2018 YKSC 33, at paras. 30 - 37. Following the sale, the proceeds of sale were paid into court.

[2] On March 19, 2020, I released reasons for judgment outlining the distribution of the proceeds of sale held in court: *Jones v. Duval*, 2020 YKSC 10,

at paras. 23 - 36 (“*Jones 2020*”). Respecting the general rule under rule 60(9) of the *Rules of Court*, O.I.C. 2009/65, costs “follow the event”. As these proceedings involved an order for the sale of property sought by the petitioner, which was successful, I awarded costs to the petitioner on a party and party basis: *Jones 2020*, at para. 46.

[3] Throughout these proceedings, counsel represented the petitioner, whereas the respondent acted on her own behalf. The petitioner prepared a bill of costs to which the respondent contested. Therefore, an assessment of costs was scheduled and heard before me on October 26, 2020, by videoconference. The following is my assessment of the petitioner’s bill of costs.

B. THE ASSESSMENT OF COSTS

[4] In assessing the petitioner’s bill of costs, I am mindful that I am to allow party and party costs under Appendix B of the *Rules of Court* “that were proper or reasonably necessary to conduct the proceeding”: *Rules of Court*, rule 60(2). First, I will determine the scale of costs under which the costs will be assessed. Second, I will assess the variable units claimed by the petitioner. Third, I will assess the fixed units claimed by the petitioner. Fourth, I will evaluate the disbursements claimed by the petitioner.

(1) Scale of Costs

[5] In assessing party and party costs, there are three potential scales available: scale A is reserved for matters of “less than ordinary difficulty”; scale B is used for matters of “ordinary difficulty”; and scale C is reserved for matters of

“more than ordinary difficulty”: *Rules of Court*, Appendix B, s. 2(b). In determining which of the scales is applicable in the present matter, I may take into account the complexity of the legal and factual issues, among other considerations: *Rules of Court*, Appendix B, s. 2(c). Lastly, in determining the scale of costs, I may order that an Item be assessed under a different scale: *Rules of Court*, Appendix B, s. 2(a).

[6] The petitioner claimed his units under scale B, as this was a matter of “ordinary difficulty”. I agree that these proceedings are of ordinary difficulty. However, a number of the matters requiring a brief hearing that the petitioner classified as constituting hearings under Item 19 were, as I will explain, properly interlocutory, and ought to have been claimed under Item 17. These dealt with simple matters such as the service of documents and adjournments. They were simple matters of “less than ordinary difficulty”. They were likely only required because the respondent is a self-represented litigant and had to have the procedure explained to her. I have concluded that, for the units allowed under Items 16 and 17, an assessment under scale A, which values each unit at \$60, is appropriate. The rest of the units I have allowed to be assessed under scale B, which values each unit at \$110.

(2) Variable Units

[7] In the petitioner’s bill of costs, many of the units claimed are variable units, which provide for a minimum and a maximum number of units. These include Items 1A, 1B, 1C, 3, 22, and 26.1. According to s. 3(b) of Appendix B, “[w]here

maximum and minimum numbers of units are provided for in an Item in the Tariff”, I have “the discretion to allow a number within that range of units.” In assessing the range of units, the minimum number is for matters where “little time should ordinarily have been spent”, whereas the maximum number is for matters where “a great deal of time should ordinarily have been spent”: *Rules of Court*, Appendix B, s. 3(c).

[8] The petitioner has claimed the maximum number of units for each Item. As these proceedings dealt with the simple and straightforward court ordered sale of a property and the subsequent distribution of the proceeds of sale, it would be inappropriate to allow the petitioner to claim the maximum number of units. Therefore, I will allow units in the middle or lower end of the range for each Item claimed by the petitioner.

(a) Items 1A, 1B, and 1C

[9] For Items 1A, 1B, and 1C, the petitioner claimed the maximum number of available units. First, for correspondence, conferences, and instructions before the commencement of the proceedings, the petitioner claimed the maximum of 10 units. Second, for correspondence, conferences, and instructions after the commencement of the proceedings, the petitioner claimed the maximum of 30 units. Third, for correspondence, conferences, and instructions after the hearings to enforce a final order, the petitioner claimed the maximum of 10 units.

[10] During oral submissions, the petitioner argued that the maximum number of units was warranted, since there were a significant number of documents,

conferences, and meetings related to numerous filed affidavits. While I accept that more correspondence may have been required after the proceeding was launched because the respondent was self-represented and because the parties had to deal with the orders pertaining to the sale of the property and the distribution of the proceeds of sale, therefore warranting more than the lower end of the range for Items 1B and 1C, this cannot justify the maximum number of units, as the proceedings remained simple and straightforward.

[11] Therefore, I will allow 3 units under Item 1A, 15 units under Item 1B, and 5 units under Item 1C.

(b) Item 3

[12] For Item 3, which provides units for all process for commencing and prosecuting a proceeding that is not provided elsewhere in the Tariff, the petitioner claimed the maximum number of 10 units. During oral submissions, the petitioner attempted to justify this number by presenting a voluminous binder containing various pleadings and filed documents.

[13] While I accept that many documents were filed, this on its own does not render the matter overly complex. As previously indicated, these pleadings dealt with the simple and ordinary sale of a property and the subsequent distribution of the proceeds of sale. Therefore, I will allow 3 units for Item 3.

(c) Item 22

[14] Item 22 allows units to be claimed for the preparation of counsel for attendance at a pre-trial, settlement conference, judicial case conference, or mini

trial. On October 30, 2019, a case management conference occurred before Campbell J. Questions pertaining to costs were addressed and the parties set a date for the hearing of the application for the distribution of the proceeds of sale and the issue of costs.

[15] The petitioner claimed the maximum number of 3 units for Item 22. I will allow the minimum of 1 unit for Item 22, as this case management conference was simple and dealt mostly with minor administrative matters pertaining to scheduling.

(d) Item 26.1

[16] Lastly, the petitioner claimed the maximum number of 5 units under Item 26.1 for the preparation of an outline under rule 48 of the *Rules of Court*. This rule addresses setting down applications for hearing. Again, as these proceedings dealt with the simple issue of selling a property and distributing the proceeds, I will allow the minimum number of 1 unit for Item 26.1.

(3) Fixed Units

[17] Furthermore, the petitioner claimed various fixed units under Items 18, 19, and 23. Those are *per diem* rates. However, if the time spent during the claimed day was not more than two and a half hours, the petitioner is only allowed half the number of units for that day: *Rules of Court*, Appendix B, s. 4(a).

[18] In the petitioner's bill of costs, seven full days are claimed for the preparation and subsequent hearing of the proceedings under Items 18 and 19. Yet, only three of these claimed days were true hearings of the proceedings: July

11 and 12, 2018, before Campbell J.; and March 4, 2020, before myself. The rest of the claimed days were all interlocutory measures, dealing with adjournments and administrative issues, or were applications for which provisions are not made elsewhere in the Tariff. Therefore, these four remaining claimed days should be allowed under Items 16 and 17 of the Tariff, which deal with interlocutory applications and all other applications that cannot be allowed under Items 18 and 19.

[19] As stated above, all units allowed under Items 16 and 17 will be assessed under scale A. All units under Items 18 and 19 will be assessed under scale B.

(a) Items 16 and 17

[20] Under Items 16 and 17, for matters that are opposed, the number of units allowed to be claimed for each full day is 3 and 5, respectively. Therefore, for any days where the time spent was not more than two and a half hours, the petitioner is allowed 1.5 units under Item 16 and 2.5 units under Item 17 for each day.

(i) June 12, 2018

[21] On June 12, 2018, the court addressed interlocutory issues including issues pertaining to the service of documents and translation. As this matter concluded in a little over an hour, the petitioner is allowed 1.5 units under Item 16 and 2.5 units under Item 17 for this date.

(ii) January 24, 2019

[22] On January 24, 2019, the court heard a subsequent application addressing instructions to facilitate the sale of the property. This matter concluded in under

an hour. The petitioner is therefore allowed 1.5 units under Item 16 and 2.5 units under Item 17 for this date.

(iii) May 13, 2019

[23] On May 13, 2019, the court dealt with an adjournment. As this matter concluded in a little over an hour, the petitioner is allowed 1.5 units under Item 16 and 2.5 units under Item 17 for this date.

(iv) May 17, 2019

[24] On May 17, 2019, the court heard the adjourned application addressing numerous issues, including an offer and finalizing the sale of the property. This matter concluded in a little over an hour. The petitioner is therefore allowed 1.5 units under Item 16 and 2.5 units under Item 17 for this date.

[25] In total, the petitioner is allowed 6 units under Item 16 and 10 units under Item 17.

(b) Items 18 and 19

[26] Under Items 18 and 19, for matters that are opposed, the number of units allowed to be claimed for each full day is 5 and 10, respectively. Therefore, for any days where the time spent was not more than two and a half hours, the petitioner is allowed 2.5 units under Item 18 and 5 units under Item 19 for each day.

(i) July 11, 2018

[27] On July 11, 2018, Campbell J. heard the proceedings concerning the sale of the property. As this matter lasted a full day, the petitioner is allowed 5 units under Item 18 and 10 units under Item 19.

(ii) July 12, 2018

[28] On July 12, 2018, Campbell J. delivered her decision concerning the sale of the property orally. This matter concluded in under an hour. The petitioner is therefore allowed 2.5 units under Item 18 and 5 units under Item 19.

(iii) March 4, 2020

[29] On March 4, 2020, I heard the proceedings regarding the distribution of the proceeds of sale held in court and the issue of special costs. As this matter lasted a full day, the petitioner is allowed 5 units under Item 18 and 10 units under Item 19.

[30] In total, the petitioner is allowed 12.5 units under Item 18 and 25 units under Item 19.

(c) Item 23

[31] Under Item 23, the petitioner is allowed to claim 10 units for each full day that required attendance at a pre-trial, settlement conference, judicial case conference, or mini trial. Therefore, for any days where the time spent was not more than two and a half hours, the petitioner is allowed 5 units under Item 23.

[32] As previously stated, the petitioner attended a case management conference before Campbell J. on October 30, 2019. This matter concluded in an hour. As such, the petitioner is allowed 5 units under Item 23.

(4) Disbursements

[33] Under rule 60(4) of the *Rules of Court*, a “reasonable amount” for the “expenses and disbursements [that] have been necessarily or properly incurred in the conduct of the proceeding” is allowable.

[34] In disbursements, the petitioner claims \$233 in court filing fees, \$105 in fees to the sheriff of the Yukon, and \$75 in photocopying fees. However, the petitioner has made an error in calculating the photocopying fees. Since the petitioner is claiming an amount for 240 photocopies valued at \$0.30 each, the petitioner should therefore claim \$72 in photocopying fees.

[35] I see no issue in allowing these reasonable amounts for the petitioner’s disbursements. The petitioner is therefore allowed a total of \$410 for the disbursements.

(5) Allowed Bill of Costs

[36] The following is the petitioner’s bill of costs against the respondent, as I have allowed it:

ITEM	DESCRIPTION	UNITS CLAIMED	UNITS ALLOWED
1A	Correspondence, conferences, instructions, investigations or negotiations by a party until the commencement of the proceeding, for which provision is not made elsewhere in this tariff.	10	3
1B	Correspondence, conferences, instructions, investigations or negotiations by a party after the commencement of the proceeding to the completion of the trial or hearing, for which provision is not made elsewhere in this tariff.	30	15
1C	Correspondence, conferences, instructions, investigations or negotiations by a party after the trial or hearing to enforce any final order obtained in that trial or hearing, for which provision is not made elsewhere in this tariff.	10	5
3	All process, for which provision is not made elsewhere in this tariff, for commencing and prosecuting a proceeding.	10	3
16	Preparation for an application or other matter referred to in Item 17, for each day of hearing where hearing commenced (b) where opposed.	0	6
17	Interlocutory application or other application for which provision is not made elsewhere in this tariff, for each day (b) where opposed.	0	10
18	Preparation for an application or other matter referred to in Item 19, for each day of hearing (b) if opposed.	35	12.5
19	Hearing of proceeding including originating application, special case, proceeding on a point of law, interpleader or any other analogous proceeding, and applications for judgment under Rules 18, 19 and 31 (6), for each day (b) if opposed.	70	25
22	Preparation for attendance referred to in Item 23, for each day of attendance.	3	1
23	Attendance at a pre-trial, settlement conference, judicial case conference or mini-trial, for each day.	10	5
26.1	Preparation of an outline under Rule 48.	5	1
	Total number of units	183	86.5
	Units under scale A	0	16
	Total multiplied by unit value (\$60)	0	\$960

	Units under scale B	183	70.5	
		Total multiplied by unit value (\$110)	\$20,130	\$7,755
	Subtotal	\$20,130	\$8,715	
	G.S.T. at 5%	\$1,006.50	\$435.75	
	Total	\$21,136.50	\$9,150.75	
	Disbursements	\$413	\$410	
	TOTAL COSTS	\$21,549.50	\$9,560.75	

C. DISPOSITION

[37] The petitioner is allowed costs in the amount of \$9,560.75.

ROULEAU J.