

SUPREME COURT OF YUKON

Citation: *Roothman & Co. v. Humphrey*,
2019 YKSC 60

Date: 20191029
S.C. No.: 19-A0118
Registry: Whitehorse

BETWEEN:

ROOTHMAN & COMPANY

PLAINTIFF

AND

ADAM WAYNE HUMPHREY

DEFENDANT

Before Chief Justice R.S. Veale

Appearances:

André Roothman (by telephone)
Adam Humphrey

Counsel for the Plaintiff
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] VEALE C.J. (Oral): This is an application by Mr. Roothman for the recovery of fees for services rendered to Mr. Humphrey pursuant to an agreement in writing dated September 25, 2018, relating to a family law matter. The agreement provides for an hourly rate of \$400. Mr. Humphrey advised that the agreement itself is not in dispute. Mr. Humphrey has indicated that he knew Mr. Roothman, as he had sought legal advice from him on previous occasions.

[2] Mr. Roothman invoiced Mr. Humphrey on January 21, 2019, for detailed services related to the specific interim application for custody and access, as well as a determination of Mr. Humphrey's income for calculation of child support. The invoice

detailed various services totalling 48.8 hours for an amount of \$19,360 plus GST and disbursements for a total of \$20,710.24. The retainer of \$10,000 was deducted leaving a balance outstanding of \$10,710.24, the amount that Mr. Roothman seeks judgment on.

[3] At the hearing, I provided Mr. Humphrey with a copy of s. 73 of the *Legal Profession Act*, R.S.Y. 2002, c. 34, which states that all relevant factors can be taken into account and, specifically, reference can be made to:

...

- (b) the extent and character of the services rendered;
- (c) the labour exerted and the time spent;
- (d) the character and importance of the matter in respect of which the services were rendered;
- (e) the amount of money or the value of the property involved;
- (f) the skill and experience of the member rendering the service;
- (g) the reason the disbursement was incurred — although disbursements are not at issue;
- (h) the results achieved.

...

THE INTERIM APPLICATION

[4] This part relates to the actual interim application, which was heard on December 7, 2018.

[5] Mr. Humphrey's wife filed an application on August 27, 2018, and then an amended notice of application on November 19, 2018. The amendment indicated that a number of financial issues were to be determined, the primary issue being the determination of Mr. Humphrey's income for the purposes of establishing the required child support.

[6] The original application dated August 27, 2018, let to Mr. Humphrey's retainer agreement with Mr. Roothman dated September 25, 2018. The amended application, dated November 19, 2018, was heard by Justice Campbell on December 7, 2018, and Reasons for Judgment were filed on December 24, 2018.

[7] Up until the amendment of November 19, 2018, the focus on the application had been access and primary residence with respect to the children. After the filing of the amended notice of application, it became clear that there would not be adequate time on December 7, 2018, to hear all of the custody and access evidence as well as the financial disclosure issues and income determination for the purposes of paying child support for the three children.

[8] Counsel for Ms. Humphrey proposed that the custody order of Justice Mahoney dated September 20, 2018, would remain in place until the trial date. Justice Campbell agreed with this submission and the interim application proceeded to determine the interim child support and retroactive child support, as well as the special and extraordinary expenses.

[9] Justice Campbell stated that the main issue between the parties on December 7, 2018, was the determination of Mr. Humphrey's income and the child support that should be ordered. The determination of Mr. Humphrey's income was a complex matter because Mr. Humphrey had suffered an injury from a motor vehicle accident in 2009 and he had received a settlement in 2016. Mr. Humphrey ceased working in 2009 and remained unemployed at the date of the application on December 7, 2018. Thus, the Court was left with the difficult task of imputing income without actuarial evidence to assist.

[10] Mr. Roothman submitted the following, which was set out in Justice Campbell's Reasons for Judgment:

1. The loss of future income component of the settlement could be considered;
2. A significant component of the settlement constituted compensation for the remainder of Mr. Humphrey's career;
3. Actuarial evidence was necessary to determine the annual income of Mr. Humphrey and the application should be adjourned to hear that evidence; and
4. The Court, if it had to make a ruling, should be conservative in its estimate.

[11] On December 7, 2018, Justice Campbell ordered that Mr. Humphrey provide additional financial disclosure for a further hearing and, in the meantime, he was ordered to pay child support based on the imputed income of \$91,667.78, which she imputed from employment opportunities at the Yukon Workers' Compensation Health and Safety Board. She based this on Mr. Humphrey's ability to work on a part-time basis.

[12] It is worth noting that Justice Aston, after a five-day trial in July 2019, imputed Mr. Humphrey's annual income at \$91,000.

MR. HUMPHREY'S POSITION

[13] I will set out the general challenges that Mr. Humphrey made in his oral evidence and give my assessment on each challenge as we proceed.

1. Mr. Humphrey testified that Mr. Roothman was moving from Whitehorse to Kelowna during this period, implying that this made it difficult to communicate with Mr. Roothman.

I am of the view that this move was of no surprise and was contemplated by the parties when they entered into the retainer agreement. While it might have resulted in less face-to-face contact, it was clearly understood when the retainer agreement was signed on September 28, 2018.

2. Mr. Humphrey submitted that Mr. Roothman did not appear to have a plan or strategy for the imputed income issue.

I find, based on the judgment by Justice Campbell, that Mr. Roothman had a plan that was clear in his submission as recorded by Justice Campbell.

3. Mr. Humphrey specifically challenged the word “drafting” in the invoice between December 4 and December 8, 2018. This was based on the fact that Mr. Humphrey and his family had provided drafts, as I understand it, to Mr. Roothman for his review.

I say that the general role of counsel is not necessarily to draft from the beginning but may be involved in redrafting affidavits — not necessarily every affidavit, but certainly affidavits would be reviewed with

Mr. Humphrey. In my view, that did take place and the use of the terminology “drafting” is not out of place in the circumstances. Given the extensive affidavits filed by both parties after the amended notice of application filed by Ms. Humphrey's counsel on November 23, 2018, and

the extensive exhibits attached, I do not consider the hours invoiced to be in anyway unreasonable.

4. There were some difficulties and delays in getting documents to Mr. Roothman and in getting photocopies from Mr. Roothman, particularly the requirement that Mr. Humphrey obtain his own copies at a local printing company.

It is clear that it substantially reduces the cost of photocopying to the benefit of Mr. Humphrey. I do not view these items as significant.

5. A major concern of Mr. Humphrey was the quality of the service from Mr. Roothman. By that, I mean the quality of the result.

In my view, the quality of the service rendered can be judged as satisfactory at the very least, given the imputed income by Justice Campbell and the fact that it was virtually adopted or found again by Justice Aston in his calculation after receiving the required documentation.

6. Mr. Humphrey was also concerned that a great deal of time was spent by himself on the custody and access issue but the application on December 7, 2018, focused on his income and child support.

In my view, this is clearly the result of the amended notice of application being filed on November 19, 2018, by Ms. Humphrey's counsel, which changed the focus entirely, and was not the fault of Mr. Roothman.

Rather, Mr. Roothman devoted an extensive amount of time to respond to it and I would not fault that service.

CONCLUSION

[14] I conclude that while Mr. Humphrey may have preferred a different style or submission from Mr. Roothman, there is no basis to complain about the hours recorded or the results achieved. Mr. Roothman's submissions were recorded fully by the trial judge and the result was successful, certainly as measured by the ultimate outcome at the trial.

[15] I therefore grant judgment to Roothman & Company against Mr. Humphrey in the amount of \$10,710.24 and interest calculated at two percent per month commencing February 21, 2019.

[16] Any issues arising for you, Mr. Roothman?

[17] MR. ROOTHMAN: No, Your Honour. Should I prepare a judgment order in accordance?

[18] THE COURT: Yes. I take it, you have Mr. Humphrey's email so that you can forward it to him and then sign it under your own signature.

[19] MR. ROOTHMAN: Yes, I do have his email address and I will, once drafted, forward it to him and sign it and send it off.

[20] THE COURT: Mr. Humphrey, the purpose of that is just to allow you to ensure that he has put the right numbers in from what I have just said on the record.

[21] Thank you very much.

VEALE C.J.