

**NOTE: PURSUANT TO S 125 OF THE DOMESTIC VIOLENCE ACT 1995 AND S 139 OF THE CARE OF CHILDREN ACT 2004, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).**

**IN THE FAMILY COURT  
AT CHRISTCHURCH**

**FAM-2009-009-002890  
[2016] NZFC 1867**

IN THE MATTER OF      THE CARE OF CHILDREN ACT 2004

AND                              THE DOMESTIC VIOLENCE ACT 1995

BETWEEN                      WINSTON PAUL  
   Applicant

AND                              KAMRYN PAUL  
   Respondent

Hearing:                      3 March 2016

Appearances:                Applicant appears in Person  
   C Easton for the Respondent

Judgment:                    3 March 2016

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**ORAL JUDGMENT OF JUDGE N A WALSH**

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[1] Before the Court is Winston Paul's defended application for costs against Kamryn Paul in relation to, firstly, historic proceedings under the Care of Children Act 2004 and, secondly, historic proceedings under the Domestic Violence Act 1995.

[2] In preparing for this hearing I discovered that I was the hearing Judge in the Care of Children Act case in September 2010 where the clinical psychologist Dr Staite said, "This case troubles me more than any other case."

[3] However, after four days of evidence in September 2010, Mrs Paul changed her stance and, after an adjournment, the children's parents negotiated the terms of a consent memorandum and a final parenting order issued, which did not refer to the issue of costs.

[4] At that hearing Mr Paul was represented by Mr Roger Simes and Mrs Paul was represented by Mr Colin Eason, and he continues to represent Mrs Paul.

[5] My review of the files also discloses that on 8 April 2009, eight days after Mr and Mrs Paul separated, I granted Mrs Paul without notice application in my role as the duty Judge in Christchurch for a temporary protection order, occupation and ancillary furniture orders. Six weeks later Judge John Strettell, on 22 May 2009, heard the defended proceedings and Mrs Paul's application for a final protection order to be made against Mr Paul.

[6] Although Judge Strettell found that there were incidents of psychological abuse which did have an effect on Mrs Paul, it was Judge Strettell's opinion that the temporary protection order was no longer necessary and he said:

Having regard to the type of conduct, the limited nature of it, the lack of any conduct subsequent to the relationship break-up, there is no basis made out for the making of a final protection order.

[7] Mr Stephen Hembrow represented Mr Paul at the defended DVA hearing on 22 May 2009 and Mr Hembrow made no application for costs against Mrs Paul, and nor did Judge Strettell reserve the issue of costs.

[8] It is my inference, from Judge Strettell's decision, that he was of the opinion that it was fair and just that costs should lie where they fall given the background.

[9] On 22 January 2016 Judge Somerville permitted Mr Eason to file a notice of defence to Mr Paul's current applications. Mr Paul, in his affidavit in support, says that he incurred legal costs of \$6778 with respect to successfully defending the application for a protection order sought by Mrs Paul and a further \$14,826 with respect to the Care of Children Act proceedings which resulted in a negotiated settlement.

[10] Mr Paul concedes:

4. This application is in response to Kamryn's High Court application for bankruptcy for the sum of \$6610 for Family Court costs.

[11] I understand that the \$6610 costs relate to an award made against Mr Paul by Judge Emma Smith arising out of a family support Family Court decision. On 28 January 2016, Associate Judge Robert Osborne in the Christchurch High Court noted that Mr Paul was withdrawing his application to set aside the bankruptcy notice issued by Mrs Paul to enforce the costs that she was seeking.

[12] Associate Judge Osborne:

- (a) Dismissed Mr Paul's interlocutory application;
- (b) He extended the time for satisfying the bankruptcy notice to 10 working days, from 28 January 2016; and
- (c) He reserved the issue of costs and disbursements.

[13] Mr Eason then applied for security of costs in the Family Court and Mr Paul responded:

I do not intend to file a notice of defence, on a basis that I would incur cost if the application is successful. However, I intend to follow rule 42 which makes provision for me to be at the hearing and to make a statement.

[14] At today's hearing Mr Paul was invited to make further submissions and he filed a memorandum dated 3 May 2016 which Mr Eason had not previously received, but I arranged for a copy to be given Mr Eason and he has no further submissions to make about Mr Paul's memorandum.

[15] Judge Sommerville dealt with Mr Eason's application on 22 January 2016 permitting Mrs Paul to file a notice of defence, thus allowing the proceedings to continue, his defended proceedings. However, I infer that because of the voluminous Family Court files covering a range of the parties' issues including the Care of Children Act, the Domestic Violence Act, child support and relationship property, the earlier directions of Judge Geoffrey Ellis on 25 March 2015 and Judge Christopher Somerville on 15 June 2015 were overlooked by the registry.

[16] On 25 March 2015 Judge Ellis considered Mr Paul's application for costs on the DV matter. As Judge Ellis could find no evidence of actual legal costs being evident, Mr Paul then re-filed new information for the Court's consideration.

[17] On 15 June 2015 Judge Somerville considered Mr Paul application, in chambers, for costs on the DVA and COCA files and minuted as follows: **“Once the proceedings are determined, the Court has no power to award costs. The Court's role has ended. It is functus officio. Application struck out.”**

[18] I am therefore bound by Judge Sommerville's orders of 15 June 2015. I agree that Mr Paul has no jurisdiction to seek an award of costs on these historic matters. In any event, Mr Paul was represented by experienced senior Family Court counsel on both matters and no application for costs was advanced. Furthermore, as Mr and Mrs Paul came to a negotiated agreement on the COCA matter in September 2010 and I was the hearing Judge, I would have ordered, in the particular circumstances if the issue of costs had been raised, that costs would lie where they fall.

[19] In my view the Family Court registry was remiss in permitting Mr Paul's applications to be filed. Therefore, I dismiss Mr Paul's applications for costs.

[20] Mr Eason seeks security for costs but, in view of my decision today, that matter is now redundant. Of course, Mrs Paul is entitled to seek costs on having to engage Mr Eason's services to oppose Mr Paul's application. However, I am of the very clear view that, in the particular circumstances of this case, where Family Court litigation has been incessant for the last decade, I am compelled to exercise my discretion in ordering that costs should lie where they fall.

[21] Mr and Mrs Paul's children are aged almost 18, 16 and 14 years and their best welfare and interests deserve finality in light of their parents' ongoing conflict.

[22] On 22 August 2015, Judge Emma Smith declined Mr Paul's application for access to, "Audio recordings," of six judicial conferences in respect of proceedings other than the substantive child support matter.

[23] Therefore, for the abovementioned reasons including the children's best welfare and interests, I dismiss Mr Paul's application to access the audio tapes and transcripts of the hearing of 22 May 2009. I find that Mr Paul's current application to access the audio tapes and transcripts, given the lapse of time, is unwarranted and unnecessary.

[24] I direct the registrar to close the DVA and COCA files and no further applications are to be received without first being referred to a Family Court Judge.

N A Walsh  
Family Court Judge