

**CITATION:** Julie Bobbie v. Lee Bernard Newby, 2011 ONSC 6349  
**COURT FILE NO.:** FS-10-16858  
**DATE:** 20111026

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Julie Bobbie, Applicant

**AND:**

Lee Bernard Newby and Maureen Newby, Respondents

**BEFORE:** Mr. Justice Aston

**COUNSEL:** *Daphne Johnston*, for the Applicant

*Douglas J. Spiller*, for the Respondents

*Catherine Bellinger*, Office of the Children’s Lawyer for Madison Lee Newby

**HEARD:** August 18, 2011

**ENDORSEMENT RE COSTS**

[1] Though she moved to Welland in June, 2011, the mother did not technically breach the joint custody order because the summer schedule was maintained. Then self-represented, she brought her motion promptly upon moving and apparently expected it would be heard before the start of the next school year. The Office of the Children’s Lawyer offered strong support for the mother’s position right up until the eve of the motion that was heard August 18, 2011. The father continues to mischaracterize the mother’s actions as amounting to “absconding with” the child or contempt for the prior temporary joint custody order.

[2] The mother also misunderstood circumstances surrounding Maureen Newby’s sale of her home in Etobicoke. She believed that Maureen Newby was moving to Windsor. Had that been the case, it certainly would have amounted to a significant change in circumstances.

[3] I do not find that it was unreasonable to bring the motion in the first place, notwithstanding that Ms. Bobbie acted unilaterally in presenting a “*fait accompli*” and was less than forthright about her plan to move.

[4] Having said that, Ms. Bobbie ought to have reevaluated her position when the Office of the Children’s Lawyer confirmed that 13 year old Madison’s wishes had dramatically changed. At that point, Ms. Bobbie ought to have realized that her motion had little or no chance of success.

[5] In those circumstances, the father is entitled to costs for the hearing time on the motion on August 18<sup>th</sup> and a modest amount for preparation time, including the communications with the Office of the Children's Lawyer leading up to the fresh affidavit of August 16<sup>th</sup>. In addition, the father is entitled to a modest amount for costs for having to move to strike certain paragraphs in the mother's affidavit material.

[6] In his cost submissions, the father seeks to include as a factor Ms. Bobbie's failure to update her financial statement subsequent to August 18, 2011. That is an irrelevant consideration on the question of costs of the motion.

[7] The applicant shall pay to the respondent Lee Newby, costs fixed in the amount of \$2,500 all inclusive.

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Aston J.

**Date:** October 26, 2011