IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

CIV-2013-488-000269
[2014] NZHC 2468

UNDER	the Declaratory Judgments Act 2908 and Part 18 of the High Court Rules
BETWEEN	KELLY SUZANNE HAYES and ANDREW NATHANIEL HAYES as the Executors and Trustees of the Estate of MARLENE RUTH KEEYS Plaintiffs
AND	DOUGLAS FREDERICK PARLANE Defendant

Hearing: 8 October 2014
[On the Papers]

Counsel: J G Ross for the Plaintiffs
A M Swan for the Defendant (granted leave to withdraw)

Judgment: 8 October 2014

JUDGMENT OF A P DUFFY J
[Re Costs]

This judgment was delivered by Justice Duffy
on 8 October 2014 at 11.30 am, pursuant to
r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Counsel: J G Ross, Whangarei
A M Swan, Auckland

Copies To: SwanLaw (G P Swanepoel), Whangarei
Titirangi Law Centre (R D Ganda), Auckland

[1] The plaintiffs seek costs in relation to the judgment I issued on 11 June 2014 directing that the defendant's affidavits in this proceeding not be read: see *Hayes v Parlane* [2014] NZHC 1306.

[2] The plaintiffs seek as a cost item the "giving notice of interlocutory application re objection to late filing of affidavits". The defendant opposes this item on the ground that the plaintiffs never filed an interlocutory application. The defendant contends the plaintiffs are, therefore, not entitled to claim for an interlocutory application as a costs item. In this regard, the defendant is correct. The position on 11 June 2014 was that the defendant had filed his affidavits well out of time. He was the one who needed to make an interlocutory application for leave to file late affidavits. He did not do so in the proper manner. His attempt to make an oral application for leave was contrary to r 7.41 of the High Court Rules and, in any event, the application was dismissed on the merits. At the hearing, the plaintiffs raised their concerns about the evidential impropriety and indicated to the Court that they opposed the defendant being granted leave to file his affidavit evidence late. Given those circumstances, I do not consider they are entitled to seek as a cost item the giving of notice of an interlocutory application. As the defendant did not make an application in the proper way, the plaintiffs were not put to the trouble of preparing and filing a notice of application. Accordingly, they cannot claim costs for that item.

[3] The plaintiffs seek time of 1.5 days for the preparation of written submissions. The defendant objects to that amount of time, saying that half a day would be appropriate, given the simple nature of the submissions. I do not consider the written submissions of the plaintiffs were simple. The plaintiffs put forward a well prepared and well argued case outlining the need for the Court to enforce compliance with timetable orders. I consider that the quality of the plaintiffs' submissions was such that 1.5 days is a proper reflection of the work involved.

[4] Regarding the appearance at the hearing of the defended application on 3 June 2014, the plaintiffs seek one day. The defendant opposes this on the grounds that the application was completed by approximately 12.00 pm and, therefore, the plaintiffs should only be awarded costs on a half day basis. I accept the defendant's

argument here. It accurately reflects what occurred. Accordingly, I am satisfied that the plaintiffs are only entitled to costs for appearance at the hearing of a defended application at a rate of half a day.

[5] Accordingly, that brings the total time spent on this matter for the purpose of assessing a costs award on this matter to two days, which at category 2B comes to $1,990 per day; which comes to a total sum of $3,980. Accordingly, I award the plaintiffs costs in the sum of $3,980. No disbursements are sought.

Duffy J