

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division**

2015 CLE/gen/01822

BETWEEN

**VERNICE NOTTAGE
First Plaintiff**

and

**VERNON THURSTON
Second Plaintiff**

and

**JAYNAE THURSTON
(a child who proceeds by her father and litigation friend, Vernon Thurston)
Third Plaintiff**

and

**RAYNAE THURSTON
(a child who proceeds by her father and litigation friend, Vernon Thurston)
Fourth Plaintiff**

AND

**MARCIA EVERLYN HINSEY
Defendant**

Before: Deputy Registrar *EDMUND TURNER*

Appearances: Mr. Ashley Williams for the Plaintiffs
Mrs. Cheryl T. Whymys for the Defendant

Hearing Date: 18th June 2019

J U D G M E N T

Deputy Registrar TURNER:

Brief Facts

1. On 16th November 2016, the Defendant made a payment into court of some \$33,919.00 regarding the above-captioned matter. In May of 2019 the said matter was assessed and the sum of \$6,709.00 was awarded to Raynae Thurston and the sum of \$2,805.61 was awarded to Vernice Nottage. As a result of the above, counsel for the Defense sought to recover her legal costs from the date of payment into court

considering the fact that the amount paid into court was greater than the amount awarded for assessment.

2. **Payment into Court 'breakdown'**

Considering the total sum of \$33,919.00 paid in to court by the Defendant, separate sums were paid into court in respect of each of the four Plaintiffs in satisfaction of each of the causes of action in respect of which each claimed. Please see below the sum that Raynae and Vernice Thurston were awarded before interest compared to the amount paid into court, i.e.:

	<u>Amount Awarded</u>	<u>Paid into Court</u>
a. Raynae Thurston	\$6,709.00	\$7,000.00
b. Vernice Nottage	\$2,805.61	\$4,380.00

3. As can be seen above, both sums awarded were less than the sums paid into court in satisfaction of the causes of action in respect of which the respective Plaintiffs claimed.

4. Considering the closeness of the amount awarded re assessment compared to the payments made, counsel for the ought to have accepted the same. By refusing to accept the same, valuable judicial time was wasted as well as the matter prolonged unnecessarily. As a result, the Defendant ought to be entitled to recover her legal costs from the date of payment into court regarding these two claimants.

Whether leave required for payment into court

5. Counsel for the Plaintiff asserts that the payment into court relevant to Raynae Thurston is in valid as the same was made without the leave of the Court as Raynae Thurston is a minor. Counsel for the Defendant in turn refers to **O. 70 rule 8 of RSC** which mandates court approval for acceptance of money paid into Court on behalf of a person under a disability. According to Counsel for the Defense, this authority does not stipulate or require Court approval to be obtained by the Defendant to simply make an *offer on terms*. Hence, it is not until the Plaintiff seeks to accept the offer, that Court approval is required. I agree wholeheartedly with the position being postulated by

Counsel for the Defendant, i.e. it is not until the Plaintiff seeks to accept the offer that court approval is required.

6. Regarding the vehicle involved in the accident, i.e. Mrs. Nottage's vehicle, there is no dispute regarding the figure of **\$2,805.61**. The fact that Mr. Thurston was in the accident, the storage receipt is in his name, the sum of \$1,400.00 was awarded to him. In addition, the fact that Mrs. Nottage was not involved in the accident in question resulted in awards instead being made to Mr. Thurston.

Discretion as to Costs

7. In making reference to the 1978 White Book, in particular paragraph 22/5/3 of the Rules of Supreme Court, it is seen under the heading' *Discretion as to costs,*' that, i.e.:

' the Court has a complete discretion as to costs...the Court shall...take into account any payment of money into Court and the amount of such payment. The discretion must be exercised judicially, so that a defendant who pays money into Court which exceeds the sum awarded to the Plaintiff is the successfully party, and as such is entitled to be paid his costs as from the date of the payment in.'

8. Towards this end, I exercise my discretion regarding the same, and as such the Defendant is entitled to recover her legal costs from the date of payment into court, i.e. 16th November 2016, regarding Raynae Thurston and Vernice Nottage.

9. The costs of the said application is awarded to Counsel for the Defence.

Edmund Von Turner
Deputy Registrar
18th June 2019