

Q.B.  
262

of A.D. 1991  
J.C.S.C.

IN THE COURT OF QUEEN'S BENCH  
JUDICIAL CENTRE OF SWIFT CURRENT

BETWEEN:

[M.J.P.]

PETITIONER

- and -

[P.A.P.]

RESPONDENT

J. KROCZYNSKI

- for the petitioner

J. WIEBE

- for the respondent

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JUDGMENT

DICKSON J.

DATE: DECEMBER 13, 1994

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The petitioner ([M.]) seeks custody of her 4 year old son, [G.]. She also wants the respondent's ([A.]) access to the boy limited to telephone calls and letters because she believes personal contact threatens the boy's safety. Her belief is based primarily upon what she calls her recovered memory of satanic cult rituals at which both she and the boy were sexually abused by [A.] and others. Since she experienced this memory recall, in September of 1992, she and [G.] have been living with her parents in Saskatchewan. [A.] has been permitted only supervised access.

[A.] has flatly denied her accusations. However, in an attempt to defuse a highly charged emotional situation, he has consented to her demand that he have only supervised access. He is convinced that [M.] suffers from some psychological or psychotic disorder that threatens [G.]'s well-being if he remains in her care. He asks that immediate custody be vested in him. He does not wish to isolate the boy from his mother, but he asks that [M.]'s access be confined to

his home in Alberta until he is convinced that she no longer presents a threat to the boy.

[M.] and [A.] met in 1983, while both were attending Medicine Hat College. She was 18, he was 26. Eight months later they were engaged, much to the distress of [M.]'s mother. Despite [A.]'s conflict with her mother and what [M.] now calls her uncertainty about his self-centred and controlling personality, they were married in 1986. They eventually settled in [Location], where both were employed and where [G.] was born in May of 1990. [M.] says she was put off by some of [A.]'s behaviour, but she regarded her marriage as no worse or better than others.

When [A.] went hunting for a few days in September of 1992 she and [G.] went to stay with her parents while he was away. At this time, she says, she was totally committed to the marriage and had no thought of leaving it. While in her parent's home, she says the faces of her husband, his deceased uncle and two of [A.]'s work mates kept going through her mind. She was possessed by a feeling of dread but she didn't know why. She had earlier experienced such a feeling when she noticed on the calendar that a full moon was approaching. The following day, still feeling strange, shaky and apprehensive, she says she experienced the first of what she calls several separate episodes of memory recall while she was in a wakeful state. The first was a fragmentary memory of [A.] driving her to a strange farm house. Somehow, she identifies the time as the spring of 1992. She was helped to the house because she couldn't walk unaided. She felt numb and she lapsed into periods of unconsciousness which she attributed to being drugged. Once inside, two people undressed her and laid her on a table, which she later called an altar. She was aware of a symbol on the wall and many people in the room wearing robes. She recognized [A.]'s brother, his uncle, who is now deceased, his parents, who at the time resided in Manitoba, and several of [A.]'s workmates, some of whom lived in Calgary and Pincher Creek, Alberta. She heard someone say, "It is time". A woman wearing a hood and seeming to be surrounded by a fiery aura resembling a devil's head, was the only person she didn't recognize. This woman, apparently in charge, approached her carrying a "fancy knife" and said "for you Satan". [A.] and his brother held her legs apart while this woman cut one inch into her vagina. The blood from the cut was drained into a cup from which each person in the room drank. A shimmering blue triangle floated between her legs, entered her vagina and stimulated her sexually. Then each of the nine men there raped her. As she was lapsing into unconsciousness, she heard a child cry. The next thing she remembered was being driven home in a car.

She told her entire family about her recalled memories. At first they tried to persuade her that such terrible events didn't happen but when she could not be persuaded they agreed to take the boy to a doctor the following day to see if there were any visible signs of abuse. No visible marks were found. [M.] says she realized that she could not return to her husband so she consulted a lawyer,

who, a few days later, issued a petition claiming custody and support. Her mother arranged for [M.] to see Dr. Gerald Farthing, a registered psychologist practicing in Saskatoon, whose testimony at the trial will be referred to later.

A few nights later, [M.] says she experienced two more episodes of memory recall in which she saw a white, smokey figure emerge from the keys of the piano in their [Location] home. She saw a wolf and a huge rat on the floor and a snake in the air. Again the shimmering blue triangle was present and again many of the same people were there. Again she heard the phrase "for you Satan". She says that [A.] then forced his penis into [G.]'s mouth and ejaculated. He then raped her on the kitchen floor.

The second episode consisted of her being taken into a familiar house in a neighbouring town that was formerly occupied by friends. Somehow, she remembers the date as September 10, 1992. She says [A.] raped her in the back yard on an altar made from a tractor tire and a sheet of plywood. Again, many of the same people were there and again, the shimmering blue triangle was present. She had several subsequent episodes of memory recall which she describes as fragmentary. One involved [A.] and his brother dragging around a wooded area a figure wrapped in a blanket, which she presumed was a human body. Another was a vision of her naked sister and her mother in an exhilarated state. Both have told [M.] that they do not recall such an event taking place. Another recalled memory was of a similar satanic cult ceremony in which she was again cut in the vagina, this time by a woman who had once been [G.]'s baby sitter.

[A.] says he was devastated by her accusations. He thought she might be suffering a momentary aberration of mind and he backed off his effort to talk to her and see the child. He accepted her demand that his access be supervised by his parents simply to mollify her fear and set about gathering professional assessments of his own psychological state in the hope that she would be persuaded that he was no threat to the boy. When he realized his efforts were unsuccessful, he began to press for unsupervised access. [M.] then responded with the allegation that [A.]'s mother had sexually abused [G.] during the last supervised visit by putting his penis in her mouth. [M.] demanded that any future visits be supervised by members of her own family.

[M.] presented no physical evidence that she and the boy have been sexually abused. She offered no independent evidence that even remotely suggests that [A.] is involved with a satanic cult. Her evidence consists only of her own assertion that wildly improbable events took place. I am expected to believe that her husband committed acts of monstrous depravity just because she says he did. That I cannot do. I find it nothing short of preposterous that I am expected to do so. Facts are not proved by simple assertion.

[M.]'s counsel argues that [G.]'s behaviour supports her assertions. Several of her parent's neighbours and friends, who must be regarded as independent witnesses, reported conduct that can be regarded as nothing other than temper tantrums. Some said they had never seen anything like it, but at the same time they describe [G.] as pleasant, polite, friendly, clever and bright. Only [M.] and her mother describe any behaviour that might have a sexual connotation. They both say he has an unusual propensity to fondle his own genitals, which they perceive as masturbation. They are concerned about him continually stripping off his clothes and running about naked, squealing and grunting like an animal while holding his penis. They are alarmed about his frequent penile erections. His grandmother reported him thrusting his pelvis against her leg while they were showering together. On one occasion he purposely soiled his pants. They say most of this behaviour takes place immediately after a visit with his father. Upon his return, they see him as withdrawn, sometimes in a trance-like state. Yet they say he is physically aggressive with them and with his toys; that he cries hysterically when taken to the bathroom, often complaining of a sore bum. His behaviour arouses in them a suspicion (more precisely a conviction) that he has been sexually abused by his father. Their suspicion has prompted them, on five different occasions, one being at 2:00 a.m., to take the boy to a doctor to have his genitals and his anus examined for signs of trauma. No visible signs were ever found. On two other occasions, [M.] delivered samples of his urine to a doctor because she suspected he had been drugged. Again, all tests were negative. [G.] has been subjected to incessant questioning by social workers, by Christian counsellors and by police officers. He has been forced to endure prayer sessions to exorcise the demons that his mother believes possess him. There is little wonder that he behaves as he does.

I cannot infer from such behaviour that [G.] has been sexually abused by his father. Instead, I see a terribly troubled young boy, traumatized by the collapse of his home, by the continuing conflict between his parents and by the all too frequent examination of his genitalia, which, I have no doubt, were preceded by the persistent and suggestive questioning of his mother. Her belief that [A.] did these terrible things has caused her to search for affirmation in [G.]'s behaviour and she readily finds it despite being confronted with evidence to the contrary.

I do not believe [A.] presents any threat to [G.]'s well-being. [M.]'s accusations and the collapse of his home have devastated him. He readily admits that the experience has convinced him that he was unresponsive to [M.]'s needs. He describes himself as being emotionally hard of hearing and he has taken action to remedy that defect in his personality.

He readily submitted to psychological assessment and investigation of his parental capacity. He came across to Dr. Farthing, whose psychological assessment of [A.] was entered as Exhibit D-1, as "one who identifies very

strongly with traditional masculine roles and (one who) maybe compulsive and inflexible about such roles.... He displayed a mild tendency to become hostile and angry but is unable to express these feelings directly. He also showed a slight tendency to be demanding and dependant and to have an inordinate need for affection. These qualities in the extreme may put other people off and may cause difficulties in a marital relationship especially if they are construed as being manipulative". His performance on the intelligence scale indicated "efficient functioning in at least the superior range and maybe even the very superior range of intelligence...." His personality profile "contains no indication of neurotic tendencies or of strange and unusual experiences...he thinks clearly and rationally...and maintains contact with reality and has no psychotic processes....None of the indices of psychopathology indicated a cause for concern...nothing indicates that he would be anything other than a good father to his child".

Carol Ramage, a social worker who lives in [Location], was commissioned by the court to assess [A.]'s capacity to parent [G.]. Her report was filed as Exhibit C-2. She sees [A.] as an insightful and sensitive individual who is closely connected to what he regards as a caring extended family. He maintains a comfortable well-kept 3 bedroom home in a nice neighbourhood. Ms. Ramage found nothing to suggest that [A.] would have any limitations in providing a stable, committed home environment for [G.]. However, I consider Ms. Ramage's report of limited value because she had no opportunity to observe interaction between [A.] and [G.].

Several of [A.]'s friends and workmates were called as witnesses, primarily for the purpose of denying [M.]'s accusation that they had raped her and had participated in satanic cult activities, but also for the secondary purpose of reporting their observations of [A.]'s interaction with [M.] and [G.]. These are people who have known [A.] for a long time and who associated frequently with him when his family was intact. Without exception, each witness saw nothing that even suggested that [A.] was abusive to [M.] or [G.] or that he had any involvement with satanic cults, pornography or homosexual relationships. Most thought of him as strong-willed and out-spoken; some as a little overbearing; the female witnesses felt he was a little less attentive to the marriage than he should have been, but all spoke of him as a loving and caring father. Again, without exception, they thought [M.] a loving and caring mother and believed that she and [A.] had a normal relationship. They cannot account for [M.]'s accusations, which they describe as ludicrous, false and crazy. They are offended and amazed at her involving them.

Naturally, such bizarre accusations bring into question [M.]'s state of mind. Dr. R. Menzies, a psychiatrist who practices in Saskatoon, was commissioned by the court to assess [M.]. His report was entered as Exhibit C-3. He interviewed her in his office about 3 weeks before the trial. Most of the recalled events that [M.] reported to Dr. Menzies are consistent with her testimony in court, but she

did not tell him about the para-normal events such as the fireball with eyes, the smokey head of Satan, the shimmering blue triangle, the rat, the wolf or the snake. In Dr. Menzies' opinion, [M.] suffers no personality disorder or significant personality problems. He says her allegations of ritual sexual abuse may be considered delusional but there are other explanations. One is that she is making them up. He is inclined to reject this explanation because it would have been simpler and perhaps more credible if she restricted any fabrication to the common complaint in custody battles that her husband had sexually abused her child. Another explanation suggested by Dr. Menzies is that [A.] and the other accused actually committed these acts. However, he states, appropriately, that it is beyond the scope of his assessment to determine that. The remaining possibility is that [M.] is suffering a psychotic illness characterized by delusional thinking. He says he cannot determine if she is deluded because his conclusion would be based on the premise that her beliefs are false. He then adds that if she is delusional, it does not necessarily mean that she is incapable of raising her child. It would depend how much her behaviour was affected by these "delusions". There is no reason, he says, why individuals with delusions, which are not intrusive, and do not affect the child's care, cannot raise children quite successfully.

I must say, I do not find Dr. Menzies report very helpful. It is most inconclusive, even guarded. But perhaps that is all I can expect of a responsible clinician who was given no greater opportunity to form an opinion than a one-shot interview lasting only a few hours. Perhaps Dr. Menzies is wisely leaving the finding of fact and drawing of conclusion to adjudicators.

I cannot attribute the same wise choice to Dr. Costigan, a psychiatrist practicing in Red Deer who was called to testify on [M.]'s behalf. Dr. Costigan says he has worked for 12 years with persons claiming to be abused by cult members in a ritualistic fashion. He interviewed [M.] for 90 minutes one week before the trial. She did report to him some of the para-normal events she recalled, seeing the fireball and the head of the devil. Dr. Costigan allowed that one possible explanation is that [M.] was hallucinating due to drugs or mind dysfunction. But he could find no evidence of a psychotic condition that would induce hallucinations. Therefore, he rejects that explanation. He has never heard of people hallucinating trauma. He says it is more likely that she was having impaired recall of events actually experienced when she was drugged. Even though [M.] reported to him that before she experienced memory recall she had dreams of [A.] and his workmates assaulting her, he is convinced that she was actually raped. When asked why he thought she was recalling actual events rather than vivid dreams he replied that dreams are not recalled in such detail.

I will confine my reaction to Dr. Costigan's testimony to saying only that I share neither his conclusion nor his method of reaching it.

Dr. Farthing was, like Dr. Menzies, unwilling to express any definitive conclusion about [M.]'s state of mind. I quite understand his reluctance. He was placed in a difficult position by a court order compelling the production of the notes he made while interviewing [M.] and by being subpoenaed to testify at the trial. Dr. Farthing had to deal with professional ethics. [M.] and her mother were his patients and he was obviously uncomfortable at being compelled to reveal confidential information, particularly his assessment of their psychological state. His testimony was very guarded. He continually emphasized the need for a psychologist to keep an open mind.

He first met [M.] prior to her marriage. Her mother, upset with [M.]'s decision to marry [A.], had asked Dr. Farthing to determine if there was anything wrong with her psychological functioning. He found nothing wrong. He next saw her a few days after she experienced her first memory recall. She was trembling, distraught and tearful and it was quite evident to him that she was under severe stress and trauma. He recognized that his primary task was to calm her. When she showed some improvement, she described to him the events she recalled. [M.] did express to him some doubt about the reality of her recovered memory and she talked about the possibility that it had been a dream. There was some talk about reconciliation but [M.] was quite unsure about it. They discussed the value of Dr. Farthing talking to [A.] and [M.] gave him permission to do so. Dr. Farthing took some psychological tests but the validity scale showed the results to be unreliable. Some personality functioning difficulties, such as depression and hysteria, were indicated but Dr. Farthing says he maintained an open mind and avoided a quick diagnosis of pathology. He could not detect any evidence of psychosis and was not prepared to draw any conclusion other than she was suffering situational distress rather than a chronic deep seated personality disorder.

Dr. Larry Shepel, another well respected psychologist, was called by [M.]'s counsel to express his opinion of her psychological state. His report was entered as Exhibit P-1. He met with [M.] for 5 hours, about 3 months before the trial. He took many of the tests that Dr. Farthing took and the validity indicators showed the results to be reliable. He found no indication of a psychological disorder. Her thought patterns were logical and consistent and revealed no verifiable distortion of present reality. Her intellectual functioning is above average. However, he says the absence of present psychological pathology does not preclude the possibility that past situational stressors could have resulted in delusional or illusory thought content. Nevertheless, he warns her concerns should not be outrightly dismissed as "crazy delusions". He is convinced that "her recall of ritual abuse events represent (for her) actual occurrences" even though she acknowledged having nightmares and bizarre dreams in which she was raped. Whatever the outcome of the trial, he suggests that [M.] will require "therapeutic assistance to deal with these perceptions and or experiences".

Brenda Thompson, a social worker employed by the Department of Social Services in Swift Current, was directed by the court to investigate [G.]'s situation in an attempt to determine if he is in need of protection. Her report is filed as Exhibit C-1. She interviewed [G.] and both parents. She is satisfied [G.] is not at risk while in his father's care. The boy appeared happy to be in his father's company and showed no sign of fear or apprehension. He is outwardly friendly with other children and has no difficulty initiating contact with them. He willingly discussed leisure time activities with Ms. Thompson but was quite uncomfortable about discussing family circumstances. He became fidgety when asked specific questions about his relationship with his parents and avoided eye contact, which is a common response for children who have difficulty accepting and coping with is parent's separation.

Ms. Thompson has no protection concerns about [M.]'s care of [G.]. She regards [M.] as an excellent home maker and parent who is adequately able to meet the boy's day to day needs. She provides a clean and organized environment and has developed a decent routine. She stimulates the boys curiosity and is patient with him. But Ms. Thompson does have concerns about [M.]'s state of mind. She consulted Dr. Farthing who told her he was concerned about [M.]'s emotional state and thought that psychiatric intervention may be necessary. Ms. Thompson expresses concern, which she called personal concern rather than protection concern, about [M.]'s habit of sleeping with and breast-feeding a boy who is almost 4 years old. [M.] says she discontinued that practice when Ms. Thompson told her she thought it inappropriate. Ms. Thompson is also concerned about [M.]'s refusal to have [G.] immunized and about her dependence upon herbal medicines and her homoeopathic approach to maintaining good health. However, she concedes that this approach is an acceptable personal decision and not a protection concern. Ms. Thompson's primary concern is [M.]'s unshakeable conviction that her son has been sexually abused by his father despite there being no evidence to support such a conclusion. [M.] made it quite clear to Ms. Thompson that she will continue to regard [A.] as a threat to [G.] no matter what the court may decide and will continue her effort to protect [G.] from him. Ms. Thompson believes that [M.]'s unwarranted fear of [A.] associating with the boy and [M.] subjecting [G.] to continual physical examinations and interviews by the police have caused him undue stress. In her opinion, [G.] is trying to please both parents but he feels there are expectations placed upon him to support his mother's view. She wants the court to be concerned about the impact on [G.] of [M.]'s preposterous and unsubstantiated allegations.

Were it not for [M.]'s preposterous and unsubstantiated allegations, there would be no contest. It would have been quite clear that [G.] should remain in his mother's care. She offers the boy a well managed, comfortable home in which he would enjoy the full-time care of a capable parent and a loving extended family. [A.] can't offer that. He would be forced to hire a nanny to care for the boy while he is at work. Although [A.]'s parents intend to move to

[Location] to assist him rearing the child, illness limits their participation, perhaps even eliminates their help. If given over to his father's care, [G.] will spend most of his time with a surrogate parent who will undoubtedly change from time to time. But [M.]'s accusations bring into question her state of mind and how it impacts upon the boy. What are [G.]'s prospects if left in the care of a parent with such a tenuous grasp on reality?

It is obvious that something is wrong with her receptors. Many ordinary experiences have an underlying sinister meaning to her, experiences that a well adjusted, emotionally stable person would not regard as threatening or even remarkable. She saw fit to report to the court that [G.]'s favourite colour had changed from green to black; that [G.] had asked if a friend's birthday cake and candles would be white and black. She reported her observations in isolation, unaccompanied by any conclusion she drew from them, but with the obvious intent that I should infer from such information that [G.] had been exposed to satanic cult activity. She seems to have an inordinate fascination with satanism, having read seven books on the subject, which no doubt contain a detailed description of ceremonies similar to those she describes. She also demonstrates an alarming tendency to draw unwarranted conclusions from remarkable remote and unrelated data. A grey discolouration of her teeth led to the immediate conclusion that she had been drugged. Her conviction that [G.] has been sexually abused is based primarily upon her observations that he has frequent erections and frequently fondles his own penis, that a mucous discharge was in his stools, that he frequently removed his own pants, that he asked her not to press so hard when she wiped his bum. She reads sexual overtones into the most innocent and ordinary behaviour of [G.], such as straddling his toy cars. She testified that she suspected [A.] was homosexual because he began spending more time with a male workmate whom she was convinced he despised and because his excessive flatulence in the morning indicated poor sphincter tone.

And yet, none of the psychologists or psychiatrists who examined her were able to say that she suffers from a psychological or psychotic disorder. It is not for me, a layman, to reject such qualified opinions and come up with my own unqualified diagnosis. It is not essential to determine whether [M.] is suffering delusions and actually believes these things happened or whether she has fabricated a monstrous lie which she is naive enough to believe will be accepted. My concern is not why she behaves as she does but instead I must determine the impact of that behaviour on [G.] and what is to be done about it.

[G.]'s grandmother says that something must be done. She describes [G.] as "a mess" and says that his behaviour has become steadily worse. Some days, she says, "we don't know if we can cope". She attributes the boy's desperate condition solely to his father's behaviour. She is convinced that the events recalled by her daughter actually happened. She even believes Dr.

Farthing is involved in a conspiracy to cover-up child sexual abuse. Her proposal for resolution of this terrible situation is to deny [A.] any contact with [G.].

I don't think that contact with his father is causing [G.] to behave as he does. His behaviour is no doubt caused by the unceasing conflict between his parents. I am concerned that if left in his mother's care her unalterable determination to protect him from his father will not only continue that conflict but will escalate it. Her unrelenting search for evidence of abuse will subject him to repeated physical examinations that have already focused his attention unduly on his genitalia. He is at risk for developing or further entrenching phobic symptoms and inappropriate sexual behaviour. He must be rescued from such a fate by being placed in his father's care.

I am quite aware that being removed from his mother's care will be a wrenching, even terrifying experience for [G.]. But the short-term pain it will cause him will be far less damaging than the long term, perhaps irreversible injury that he will almost certainly suffer if left in his mother's care. The transfer to his father's care should take place immediately, at least as soon as practicable.

The issue of spousal and child support must be addressed. [A.] was ordered to pay [M.] \$1,000.00 per month for her own support and \$500.00 per month for [G.]. [M.] has not been employed during the two years since the separation and is completely dependent upon the support paid by [A.]. She says he is approximately \$15,000.00 in arrears, a figure that he does not dispute. [A.] says he made a conscious decision to stop paying support so he could finance a court action to rescue his son from a dangerous situation. I am asked by his counsel to award him solicitor-client costs that may be set off against his arrears. He contends that [M.]'s preposterous accusations forced [A.] to prosecute an enormously expensive law suit that has brought him to the brink of financial ruin. He pleads that any attempt to enforce payment of arrears will now jeopardize the economic survival of both [A.] and [G.]. I quite agree that any attempt to collect the arrears will affect [A.]'s ability to provide [G.]'s needs. But I think awarding costs to avoid that result would be a misuse of the court's power. An award of costs serves a specific purpose and should not be used for a collateral purpose.

[A.]'s obligation to support [G.] is terminated forthwith. However, he must continue to support [M.] until she has had an opportunity to become partially or completely self-sufficient. Under the circumstances, she cannot be expected to have done that over the past two years. Now that she no longer has the responsibility of [G.]'s care, she will be expected to strive toward that end.

I am willing only to suspend enforcement of the arrears for so long as [A.] is [G.]'s provider. Of course [M.] must share the economic burden of [G.]'s care. She is not now employed and has no present cash-flow with which to make periodic payments. However, counsel for [A.] argues, her share of the burden

could be set off against the accumulated arrears. I think that is a fair expectation, now that I have suspended enforcement of the arrears.

The question of costs must be addressed as a matter of law and practice. The practice in this jurisdiction has been to make no order for costs in matrimonial disputes unless there has been some unreasonable conduct by one of the parties. [M.]'s unreasonable accusations have forced [A.] to participate in a two week trial. He sincerely believed that the safety of his son was at stake and he was compelled to respond. As I have previously said, [M.]'s expectation that her own incredible assertions would be sufficient evidence to justify such an expensive trial is nothing short of preposterous. That is unreasonable conduct that justifies an award of costs. The plea that she truly believed such fantastic events had actually happened doesn't make it less unreasonable. [A.] is entitled to recover his party and party costs and his disbursements to be taxed.

In summary, there will be an order that:

1) [A.] will have custody of [G.], with reasonable access to [M.] which will include one weekend each month in a place of her choosing, commencing in the month of January, 1995 from Friday afternoon to Monday morning, provided that such time shall not interfere with school or pre-school routines. All other access shall be exercised in the City of [Location], Alberta and [G.] shall be returned to [A.]'s home each evening. [M.] is prohibited from subjecting [G.] to physical examinations for the purpose of obtaining evidence of sexual abuse.

2) [A.]'s obligation to pay child support under the interim order of October 19, 1992 is terminated forthwith. Enforcement of arrears under that order is suspended for so long as [A.] has custody of [G.].

3) [M.] will pay [A.] \$500.00 per month for the support of [G.], commencing January 1, 1995.

4) [A.] will pay [M.] \$1,000.00 per month for her own support, commencing January 1, 1995.

5) [A.] shall recover his costs and disbursements on a party and party basis, to be taxed.

\_\_\_\_\_ J.