

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Mr. Justice Marc M. Monnin  
Madam Justice Jennifer A. Pfuetzner  
Mr. Justice James G. Edmond

***BETWEEN:***

<b><i>DORIS ANNE SMITH</i></b>	)	
	)	
(Petitioner) Respondent	)	<b><i>W. S. Gange</i></b>
	)	<i>for the Appellant</i>
- and -	)	
	)	<b><i>C. B. Paul</i></b>
<b><i>DARIN TODD SMITH</i></b>	)	<i>for the Respondent</i>
	)	
(Respondent)	)	<i>Appeal heard:</i>
	)	<b><i>December 8, 2023</i></b>
- and -	)	
	)	<i>Judgment Delivered:</i>
<b><i>MARCIA L. KNIGHT</i></b>	)	<b><i>January 22, 2024</i></b>
	)	
Appellant	)	

On appeal from *Smith v Smith*, 2022 MBKB 242 [*Smith*]

**PFUETZNER AND EDMOND JJA**

[1] The motion judge awarded costs of \$10,000 against the appellant, a lawyer (Ms. Knight), personally (the award). The basis of the award was Ms. Knight's unjustified failure to release settlement funds owed by the respondent to the petitioner under a final agreement reached by them in their divorce proceedings.

[2] Ms. Knight appeals the award pursuant to section 90(2) of *The Court of King's Bench Act*, CCSM c C280.

[3] Ms. Knight represented the respondent in the divorce proceedings. The parties agreed on all of the terms of a final settlement at a settlement meeting held June 9, 2022—including a term that the respondent pay \$40,000 to the petitioner “once he has obtained financing.”

[4] Ms. Knight received the settlement funds from the respondent's financial institution but did not release them for a period of 40 days, without explanation, despite counsel for the petitioner's repeated requests for the funds. In the meantime, Ms. Knight and counsel for the petitioner attempted to finalize a formal separation agreement and a final order. Each blamed the other for delays and lack of cooperation.

[5] Costs awards have been described as “quintessentially discretionary” (*Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6 at para 247; see also *Dundas v Schafer*, 2014 MBCA 92 at para 70) and are not lightly interfered with by this Court. A costs award will not be set aside unless the judge has made an error in principle or the award is plainly wrong (see *Johnson v Mayer*, 2016 MBCA 41 at paras 21-22).

[6] Personal costs awards against a lawyer are authorized by r 57.07(1) of the *Court of King's Bench Rules*, Man Reg 553/88. However, as noted by the motion judge, such awards are “out of the ordinary” and should only be made “in compelling circumstances” (*Smith* at para 17). See also *Young v Young*, [1993] 4 SCR 3, which directs that “courts must be extremely cautious in awarding costs personally against a lawyer” (at 136).

[7] Ultimately, the motion judge found that the award was justified because Ms. Knight had a “duty not to stand in the way of [the respondent] carrying out his obligations under the settlement” (*Smith* at para 31) and her actions constituted “a failure to fulfill her duty to the Court and to realize her duty to aid in promoting in her own sphere the cause of justice” (*ibid* at para 32). Moreover, the motion judge found that Ms. Knight’s conduct resulted in “additional expense without cause and wasted costs by undue delay” (*ibid* at para 45).

[8] Counsel for Ms. Knight strenuously argues that the motion judge failed to consider the proper legal test and specifically that she failed to exercise extreme caution in awarding costs personally against Ms. Knight. However, we are satisfied the motion judge considered the correct legal test in exercising her discretion to award costs against Ms. Knight personally.

[9] As we have explained, this is a discretionary decision which is reviewed on appeal according to a highly deferential standard and the statements made by this Court in *Perth Services Ltd v Quinton*, 2009 MBCA 81 at para 28 are apt:

The standard for intervention in a discretionary decision is very high. It is not enough that the appellate judges think the trial (or motions) judge simply reached a wrong result; there rarely is, in truly discretionary matters, a “right” or “wrong” result. It is not enough that the appellate judges would have decided differently; they are to respect, and not replicate, the unique role of trial judges. Assuming there have been no reversible errors on fact or law, the appellate judges are not to usurp the trial judge’s role in discretionary matters, barring a decision so “clearly wrong” as to yield a truly unjust result.

[10] The bottom line is we have not been persuaded that the motion judge made an error in principle or that the award is plainly wrong.

[11] We are compelled to make a final comment, which should be self-evident but is clearly not. All counsel must take the steps necessary to expedite the implementation of settlements, including acting reasonably and setting aside personal differences, so that proceedings of this nature are avoided.

[12] We would dismiss the appeal with costs.

\_\_\_\_\_  
Pfuetzner JA

\_\_\_\_\_  
Edmond JA

I agree: \_\_\_\_\_  
Monnin JA