

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Mr. Justice Christopher J. Mainella
Madam Justice Lori T. Spivak

BETWEEN:

<i>BRENDA ANNE SHINOFF</i>)	<i>S. N. Rosenbaum</i>
)	<i>for the Appellant</i>
<i>(Plaintiff) Appellant</i>)	
)	<i>T. J. Bjornson and</i>
<i>- and -</i>)	<i>L. D. Y. Cupples</i>
)	<i>for the Respondents</i>
<i>THE PROVINCE OF MANITOBA and</i>)	
<i>THE DIRECTOR OF CHILD AND</i>)	<i>Appeal heard and</i>
<i>FAMILY SERVICES</i>)	<i>Decision pronounced:</i>
)	<i>August 30, 2021</i>
<i>(Defendants) Respondents</i>)	

On appeal from 2021 MBQB 31

CAMERON JA (for the Court):

[1] The plaintiff appeals the decision of the motion judge granting summary judgment dismissing her statement of claim alleging the defendants to be vicariously liable to her for trespass to the person, assault and battery, as well as her claim asserting the defendants to be directly liable for negligence, breach of statutory/non-delegable duty and breach of fiduciary duty.

[2] All of the causes of action allegedly arose while the plaintiff was residing in foster or receiving homes between 1966 and 1969. She asserts that, at one of the homes, her foster mother physically abused her.

[3] We are of the view that the motion judge correctly identified and applied the Supreme Court of Canada decision in *KLB v British Columbia*, 2003 SCC 51, in dismissing the plaintiff's claim that the defendants were vicariously liable for the acts of the foster mother. See *KLB* at paras 18-27, and especially the emphasis placed on the role of foster parents and the nature of their relationship with the government at paras 24-26.

[4] Similarly, the motion judge correctly found that, consistent with the reasons provided in *KLB*, the defendants were not liable for breach of a statutory/non-delegable duty, as the relevant legislation at the time (*The Child Welfare Act*, SM 1953 (2nd Sess), c 7, s 1 (the *CWA*)) did not contain a duty to ensure that foster children were not "harmed by abuse or negligence of foster parents" (at para 24).

[5] After considering the actual requirements of the *CWA*, the motion judge found that the plaintiff had not produced any evidence to support her assertion that those requirements were breached. We are not convinced that the motion judge made a palpable and overriding error in this regard.

[6] Regarding the claims of negligence and breach of fiduciary duty, the motion judge considered the evidence before her and found that the plaintiff had not met the evidential burden of showing that there was a genuine issue for trial. The plaintiff has not convinced us that the motion judge made a palpable and overriding error in finding that she provided no evidence that the defendants knew or ought to have known that any of the foster or receiving homes in which she was placed were inappropriate, that the defendants breached any standard of care when placing her, that they betrayed her trust

or were disloyal (see para 22; see also *Dakota Ojibway Child and Family Services et al v MBH*, 2019 MBCA 91 at para 36).

[7] The motion judge applied sections 2(1)(k), 2(1)(n), 7(1)(a), 7(2) and 7(5) of *The Limitation of Actions Act*, CCSM c L150 (the *LAA*) in finding that the claims of negligence, breach of fiduciary duty and breach of statutory/non-delegable duty were statute-barred.

[8] Regarding the above, the motion judge held that section 2.1(2)(b)(ii) of the *LAA* did not apply to her claims of negligence, breach of statutory/non-delegable duty and breach of fiduciary duty. That provision provides that there is no limitation for an action for assault where, at the time of the assault, the person commencing the action “was financially, emotionally, physically or otherwise dependent on the person or one of the persons alleged to have committed the assault.” As we have held that the motion judge did not err in finding that the plaintiff had not established a genuine case for trial for her claims of negligence, breach of statutory/non-delegable duty and breach of fiduciary duty, we need not determine, and the defendants conceded that we need not decide, whether these causes of action are subject to section 2.1(2)(b)(ii) in this appeal. We leave that legal question for another day.

[9] For these reasons, the appeal is dismissed with costs.

Cameron JA

Mainella JA

Spivak JA
