Citation: Matanga v Grant, 2025 MBCA 80
Date: 20250917
Docket: AF24-30-10082

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Holly C. Beard
Madam Justice Janice L. leMaistre
Madam Justice Lori T. Spivak

***B E T W E E N**:*

	)	***G. R. Champagne***
	)	*for the Appellant*
RUMBIDZAI ASHLEY MATANGA	)	
	)	***M. J. Stienstra***
(Petitioner) Respondent	)	*for the Respondent*
	)	
- and -	)	*Appeal heard and*
	)	*Decision pronounced:*
SAMUEL ANTHONY JOHN GRANT	)	***September 8, 2025***
	)	
(Respondent) Appellant	)	*Written reasons:*
	)	***September 17, 2025***

On appeal from *Matanga v Grant*, 2024 MBKB 48 [the *decision*]

SPIVAK JA (for the Court):

[1] The appellant (the father) appealed the final order of the trial judge pursuant to *The Family Law Act*, CCSM c F20, which dealt with parenting time, final decision-making and child support in respect of the respondent (the mother) and the father's only child (the child). The father also sought to introduce further evidence on his appeal.

[2] At the conclusion of the hearing, we dismissed the motion for further evidence and the appeal with reasons to follow. These are those reasons.

[3] The trial judge granted the majority of parenting time to the mother, with specific periods of parenting time to the father, and final decision-making to the mother subject to meaningful consultation with the father. For child support purposes, the trial judge imputed the father's annual income to be $31,000, based on the minimum wage for a full-time position, applied both retroactively to the date of separation and going forward.

[4] The father argues that the trial judge erred in limiting his parenting time to less than equal sharing, in granting the mother final decision-making authority and in imputing income to him. As further evidence, he seeks to admit his affidavit regarding an incident that took place after the trial wherein he says the child fell off a play structure and fractured his leg while in the mother's care.

[5] While there is some flexibility regarding the admission of further evidence on appeal involving the best interests of a child (see *AAO nka TLK v NOO*, 2022 MBCA 58 at para 6), the father has not met the required criteria in *Palmer v R*, 1979 CanLII 8 (SCC) for the evidence to be received. First, there are issues with the reliability of this proposed evidence and the inferences that can be drawn from it, given that the father did not witness the fall and the attached medical report is unsworn. Further, we are not persuaded that the incident bears on a decisive issue or could have affected the result at trial.

[6] The father seeks to call the new evidence to bolster his position that he should have majority parenting time and final decision-making authority due, in part, to a prior accident where the child was injured while in the mother's care. However, the trial judge found that to have been an innocent

accident that the father attempted to portray as being the mother's fault. Again, with the new evidence, there is no evidence to suggest that the mother was negligent or at fault regarding this new accident so as to call into question her parenting skills or decision-making authority. For this reason, we denied the motion to admit further evidence.

[7] Regarding the merits of the appeal, the deferential standard of review for family law orders is well-known. As explained in *Horch v Horch*, 2017 MBCA 97, family law orders are entitled to considerable deference on appeal "absent an error in principle, a significant misapprehension of the evidence, or where the award is clearly wrong" (at para 50). Here, the thrust of the father's submissions invites us to retry the evidence and substitute our own decision, which is not our role.

[8] We are not convinced that the trial judge made any errors regarding parenting time and decision-making authority that would justify our interference with the *decision*. The trial judge provided specific periods of parenting time to the father, which included alternate Wednesdays and weekends. The parties agreed at trial that the father would have additional parenting time on alternate weekly periods during the summer and time on the child's birthday and holidays.

[9] The father argues that this is a case where the age of the child necessitates that the parties have a 2-2-3 parenting schedule consistent with a prior arrangement that he had with the mother. The mother's position at trial was that the frequent moves under the alternating schedule were not in the child's best interests because it was too disruptive. On appeal, the mother

argues that the trial judge did not make any errors that would permit this Court to intervene.

[10] The trial judge reviewed the parties' prior parenting schedule, their earlier agreement and the mediation summary report. However, as was his prerogative, the trial judge considered and rejected the father's parenting plan as being contrary to the best interests of the child, given the parties' history of conflict and poor communication and the mother's principal parental role in the child's life. He also considered that the father justified his refusal to pay child support on the basis of the erroneous assertion that the mother withheld the child from him. This caused the trial judge to find that he lacked "confidence in [the father's] willingness or ability to consistently honour his broader parental obligations when they might happen to conflict with his preferences or emotions" (*decision* at para 47). While acknowledging that the child benefits from the father's love, it was open for the trial judge to order, based on the evidence, a parenting arrangement that he found would be less disruptive. As such, he also concluded, as was open to him, that final decision-making authority should reside with the mother, subject to meaningful consultation with the father.

[11] We are also satisfied that, in exercising his discretion to determine the quantum of child support and impute income to the father, the trial judge made no reviewable error. The trial judge considered the fact that the mother had been employed on a full-time basis while providing the majority of parenting to the child. He noted that the father had been working less than full time with a completely flexible work arrangement and provided no clear explanation for why his annual income was less than minimum wage in a full-

time position. His imputation of income to the father on this basis was reasonable.

[12] Nor do we find error in the trial judge's award of arrears of support (set at $5,355), as the father contends. The trial judge properly considered that the mother had more than sixty per cent of the parenting time from the date of separation until the trial date. The father was credited for his payment of the child's formula and the partial child support that he paid. In light of the father's failure to obtain full-time employment following the separation, the trial judge was entitled to impute income from that time and to set the arrears as he did.

[13] For these reasons, we dismissed the motion for further evidence and the appeal with costs in favour of the mother.

Spivak JA

Beard JA

leMaistre JA