Citation: Turenne v Turenne, 2025 MBCA 23
Date: 20250306
Docket: AF24-30-10089

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Madam Justice Diana M. Cameron
Madam Justice Karen I. Simonsen

B E T W E E N*:*

	)	***S. L. Turenne***
	)	*on their own behalf*
SUZANNE LORRAINE TURENNE	)	
	)	***J. L. Turner*** *and*
(Petitioner) Appellant	)	***S. Barros***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
CLAUDE LUC JEAN TURENNE	)	*Decision pronounced:*
	)	***February 24, 2025***
(Respondent) Respondent	)	
	)	*Written reasons:*
	)	***March 6, 2025***

RIVOALEN CJM (for the Court):

Introduction

[1] The petitioner (the mother) appealed the variation order pronounced on February 14, 2024, in which the trial judge granted, *inter alia*, the respondent (the father) exclusive parenting time with the parties' oldest child (now 16) and shared parenting time with the parties' two youngest children (now 13 and 14). In addition, the trial judge granted the father sole responsibility to make final medical, mental health and therapeutic decisions

affecting the three children if the parties were unable to agree. The trial judge also imputed the parties' incomes for child support purposes.

[2] The mother appealed only those parts of the trial judge's decision that relate to parenting time and final decision-making authority with respect to the two youngest children, imputation of income to the father and an award of costs against her. She also moved for the admission of further evidence.

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

Background

[4] In early September 2023, the trial judge heard four compressed days of oral evidence and cross-examinations. As part of the trial record, he also considered multiple voluminous affidavits filed by both parties, two expert reports, one voice of the children report and heard testimony from the parties, their spouses, the experts and other witnesses. The mother and the father were both represented by legal counsel throughout the trial.

[5] The trial judge granted an interim variation order at the end of the trial, fixing a shared parenting schedule of two-two-five-five so that the two youngest children could start school. The oldest child remained in the exclusive care of the father. Several months thereafter, the trial judge pronounced the variation order and provided his oral reasons. He noted that, having made the interim disposition of a two-two-five-five parenting schedule with respect to the two youngest children, the pronouncement of the variation order was "purposely pushed back until after Christmas to see how [the parties] did and in the early part of January scheduling related to counsel's

availability and the court's availability has brought [the parties] here today on the 14th of February."

[6] The variation order under appeal was signed on May 9, 2024.

[7] On June 10, 2024, the mother filed her notice of appeal. The day after, she filed a notice of motion to vary the variation order in the Court of King's Bench. In support of the notice of motion to vary, she filed an affidavit (in two volumes) and a financial statement, all affirmed on June 11, 2024 (the June 2024 affidavit). Thereafter, her requests for emergent hearings in the Court of King's Bench were denied and she was directed to proceed with a triage hearing before a Court of King's Bench judge.

[8] The mother is now self-represented. She argues that the trial judge erred by failing to be guided by the best interests of the children and, more particularly, by ignoring evidence of the two oldest children's suicide attempts and the father's history of coercive control and family violence. She also contends that the trial judge was biased against her.

[9] The mother's factum rehashes the acrimonious history between the parties, raises the two oldest children's serious mental health issues and suicide attempts and, in several instances, she criticizes the trial judge "sham[ing]" her during the trial. In one paragraph of her factum, she writes that "[t]he children have been crying for help from the Courts for years, [the trial judge] threw out their Voices, which proved to be detrimental to these children's lives, and could have ended in death by suicide."

[10] The mother is essentially asking this Court to re-weigh the evidence and find that she should have exclusive parenting time with the two youngest

children, as well as the sole responsibility to make their final medical, mental health and therapeutic decisions.

[11] The mother also moved for an order that we allow the June 2024 affidavit as further evidence on the appeal. Most of that affidavit relates to events occurring after the trial.

[12] Unfortunately, these parties have already been before this Court on a contempt proceeding (see *Turenne v Turenne*, 2024 MBCA 18).

Standard of Review

[13] When considering the decisions of trial judges presiding over family law cases involving custody (now parenting orders), it is important to be reminded of the narrow focus of appellate review. The standard of review of a parenting order from a trial judge is clear. An appellate court should not disturb the trial judgment in the absence of a material error, a serious misapprehension of the evidence or an error of law (see *Van de Perre v Edwards*, 2001 SCC 60 at paras 11-16, citing with approval *Hickey v Hickey*, 1999 CanLII 691 at paras 10, 12 (SCC) [*Hickey*]). Because of its fact-based and discretionary nature, trial judges must be given considerable deference by appellate courts when such decisions are reviewed.

[14] This highly deferential standard has been followed by this Court in *Sawatzky v Sawatzky*, 2018 MBCA 102 and *Delichte v Rogers*, 2012 MBCA 105 at para 5 (Steel JA was considering the appeal of a variation order of the motion judge regarding duration and frequency of one parent's periods of care and control).

Analysis

[15] One of the trial judge's principal determinations was what parenting arrangements would be in the best interests of the two youngest children, having regard to all of the evidence and considering the factors enumerated in section 16(3) of the *Divorce Act*, RSC 1985, c 3 (2nd Supp).

[16] The trial judge took into consideration the separation agreement reached in 2019 between the parties with the assistance of legal counsel for both parties. The separation agreement provided that the parties would have shared care and control of the two youngest children. This shared parenting arrangement was reflected in the final order pronounced with the consent of the parties under the *Divorce Act*.

[17] The trial judge reviewed the history of the litigation that brought the parties to trial.

[18] The trial judge then noted the comments of one of the experts who prepared a report and was cross-examined. The expert wrote that the oldest child commented that the mother was continuously speaking negatively about the father and made her feel guilty. The oldest child hesitated to attend counselling with the mother because she felt that the mother would not listen and would talk. The expert wrote of the mother's alienating behaviours that put the three children at risk.

[19] The expert described how the mother became very immersed in the legal process and was not prepared to discuss or vary her behaviour that could improve her relationship with her oldest child.

[20] The trial judge found a letter authored by a therapist, who also testified at the trial, "quite persuasive". The therapist was engaged in working with the oldest child. The therapist wrote of the mother:

> Never before have I met a parent so intent on being right or better, that they actually prioritize that over the child's self-identified safety needs. Sabotage the child's therapy and protested a safety plan, nor have I met a parent who was so overtly hostile to a non-mandated support person whose intent on keeping their child alive and facilitating healthy reunification.

[21] The therapist wrote of the father: "[The father] has respected my boundaries and not tried to triangulate me or subvert the therapy process . . . he has prioritized [the oldest child's] needs while putting his ego and anger on the back burner."

[22] The therapist went on to write that the oldest child has identified the mother's negative messages about the father as the main source of her distress leading to a suicide attempt.

[23] In his reasons, the trial judge also canvassed a number of the mother's own communications and found that they indicated that "[her] alienating factors [were] still obvious at the commencement of the trial."

[24] The trial judge put no weight on a voice of the children report in which the two youngest children expressed their desire to live full-time with the mother and spend little, if any, time with the father. The lawyer who prepared the report made it clear at the outset that his report had a very narrow focus; that is, he was to convey as accurately as possible the position of the children regarding where they wished to spend their time as between the

parents' homes. It was not to provide what, in his view, would be in the best interests of the two youngest children.

[25] It was within the trial judge's authority to put little weight on that report, having found that "[i]t's a voice, not a choice." The trial judge concluded that the voice is persuasive to the Court but, "when that voice is not impartial, but rather unduly influenced by one parent against the other, it is assessed very little weight".

[26] With respect to which parent should have final decision-making authority regarding the children, there was some disagreement between the experts. The trial judge addressed this and concluded that the father should have final decision-making authority for all three children. In particular, with respect to the two youngest children, the trial judge stated that he came to this conclusion because "[the mother] has shown a failure to successfully search and deal with and [has] create[d] problematic issues with counsellors involved".

[27] Having regard to the high level of appellate deference owed to the trial judge, the serious findings made by the trial judge of the mother's troubling conduct and lack of insight, the arguments advanced by the mother and the mother's attempt to re-litigate the facts as she saw them were not persuasive. We see no error in the manner in which the trial judge exercised his discretion and we see no basis to reverse any of the trial judge's findings regarding parenting time or final decision-making authority for the two youngest children.

[28] Likewise, in our view, there is no basis for appellate intervention with regard to the trial judge's determination as to the father's imputed

income. That decision is entitled to deference absent an error in principle, a significant misapprehension of the evidence or an award that is clearly wrong (see *Horch v Horch*, 2017 MBCA 97 at para 50; *Hickey* at para 11), none of which were demonstrated here.

[29] Furthermore, we see nothing amounting to actual bias on the part of the trial judge or a reasonable apprehension of bias as explained in *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at paras 20-26.

[30] On the mother's motion for further evidence, she was not able to persuade us that most of the evidence of events occurring before the trial could not have been introduced at trial. The evidence of events occurring after the trial is most appropriately considered by a trial or motion judge so that they can be satisfied that there has been a change of circumstances of the child(ren) since the making of the variation order pursuant to section 17(5) of the *Divorce Act* (see *Metis Child, Family and Community Services v CPR*, 2023 MBCA 82 at para 10; *Barendregt v Grebliunas*, 2022 SCC 22 at paras 73-80). In any event, the evidence the mother was seeking to admit did not meet the test set out in *Palmer v R*, 1979 CanLII 8 (SCC). The motion was dismissed.

[31] Finally, the mother's arguments with respect to costs were solely based on the errors she alleged were made by the trial judge. Given that we have concluded that he did not err, we are not persuaded that his order of costs resulted from an error in principle or was plainly wrong (see *Johnson v Mayer*, 2016 MBCA 41 at paras 21-22).

Conclusion

[32] For these reasons, the appeal was dismissed with costs.

Rivoalen CJM

Cameron JA

Simonsen JA