

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Marc M. Monnin
Madam Justice Jennifer A. Pfuetzner
Madam Justice Anne M. E. Turner

BETWEEN:

<i>Y. B. also known as J. Y. B.</i>)	<i>D. Chornopyski</i>
)	<i>for the Appellant</i>
<i>(Petitioner/Applicant) Respondent</i>)	
)	<i>Y. B.</i>
<i>- and -</i>)	<i>on their own behalf</i>
)	
<i>D. B.</i>)	<i>Appeal heard and</i>
)	<i>Decision pronounced:</i>
<i>(Respondent) Appellant</i>)	<i>October 28, 2024</i>

MONNIN JA (for the Court):

[1] We are all of the view that the appeal should be allowed in part.

[2] We agree with the appellant’s argument that the application to set aside the judicial justice of the peace’s protection order (the JJP order) should have been the subject of a form of hearing in accordance with section 11(1) of *The Domestic Violence and Stalking Act*, CCSM c D93 [the *Act*], as he did not consent to the JJP order being set aside. The application judge confirmed that, rather than grant an adjournment to the appellant or “have the trial proceed”, he would set aside the JJP order and impose mutually reviewable interim protection orders so as to consolidate the effect of the JJP order and the appellant’s release conditions from a pending criminal proceeding.

[3] Due to the flawed procedure before the application judge, we set aside the part of the October 31, 2023 order dealing with the JJP order, which means that the JJP order given to the appellant remains in place (and subject to an application to set aside by the respondent).

[4] However, although there was no formal motion made by the respondent for a protection order, the informal nature of the proceedings and the evidence before the application judge allowed him the discretion to grant a protection order. We believe he made no error of law or jurisdiction in granting a reviewable interim order to the respondent, and therefore we have no jurisdiction to intervene pursuant to section 25(1) of the *Act*. If the appellant wishes to set that order aside, his recourse is with the Family Division of the Court of King's Bench.

[5] There will be no costs to either party.

Monnin JA

Pfuetzner JA

Turner JA
