

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Freda M. Steel
Mr. Justice Christopher J. Mainella
Madam Justice Jennifer A. Pfuetzner

BETWEEN:

<i>CHILD AND FAMILY SERVICES OF WESTERN MANITOBA</i>)	
)	
)	
	)	<i>J. L. Wyman</i>
	)	<i>for the Appellant</i>
<i>- and -</i>)	
)	
<i>C. L. C. and L. G. S.</i>	)	<i>K. L. Webb</i>
	)	<i>for the Respondent C. L. C.</i>
)	
)	
<i>- and -</i>	)	<i>A. J. Synyshyn</i>
	)	<i>for the Respondent L. G. S.</i>
<i>K. G. B. R.</i>)	
)	
)	
	)	<i>(Respondent)</i>
	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
<i>- and -</i>	)	<i>September 11, 2017</i>
)	
<i>N. D. S.</i>)	
)	
)	
	)	<i>(Guardianship Applicant)</i>

NOTICE OF RESTRICTION ON PUBLICATION: No press, radio or television report shall disclose the name or any information likely to identify any person involved in the proceedings as a party or a witness (see section 75(2) of *The Child and Family Services Act*, CCSM c C80).

STEEL JA (for the Court):

[1] This is an appeal of the petitioner (the agency) from the supervision order of the trial judge. The finding of the trial judge that the child was in need of protection was not being appealed, but the agency argued that the remedy chosen by the trial judge, that being an order of supervision for one year, was not the appropriate remedy.

[2] The appeal was discontinued on the date set for hearing. However, the respondent mother and father asked for costs of the appeal.

[3] Rule 37(1) of the Manitoba, *Court of Appeal Rules*, Man Reg 555/88R states that while an appellant may discontinue an appeal by giving the respondent a notice of discontinuance, the respondent is entitled to the costs of the appeal.

[4] This is true in most circumstances, however, the agency in this case is a child protection agency. Cost awards in child protection proceedings should be awarded only in exceptional circumstances of improper or overbearing action on the part of the agency, regardless of the ultimate result of the litigation. The goal of the agency is the protection of the child and they should not be deflected from their duty by fear of a costs award. See *BW v Child and Family All Nations Coordinated Response Network*, 2009 MBCA 95; and *Director of Child and Family Services v AC et al*, 2008 MBCA 18.

[5] In some cases of problematic procedure or irregularity, the standard may be lower. See *Children's Aid Society of Hamilton v KL and TM*, 2014

ONSC 3679 at para 14. But, I leave that decision for another day because I do not find such action on the part of the agency in this case.

[6] In this case, the finding that the child was in need of protection was unchallenged. However, the Court ordered that the child be returned to the mother under an order of supervision after a controlled period of transition. The child was returned to the mother approximately five weeks before the hearing of the appeal. The agency took some time to determine whether to continue with the appeal or whether the situation with the mother had stabilized, and it was in the best interests of the child to discontinue the appeal.

[7] While some may argue that the agency could have confirmed matters earlier so that the appeal could have been discontinued without preparation by counsel and court appearance, the conduct is not so exceptional as to warrant an award of costs.

[8] The appeal is discontinued. The request for costs is dismissed.

Steel JA

Mainella JA

Pfuetzner JA