

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Barbara M. Hamilton
Madam Justice Holly C. Beard
Madam Justice Karen I. Simonsen

BETWEEN:

	)	<i>L. I. Z. Pinsky and</i>
	)	<i>A. Nordal-Budinsky</i>
<i>DESMOND WILLIAM DOYLE</i>	)	<i>for the Appellant</i>
)	
	)	<i>E. S. Goszer and</i>
(<i>Petitioner</i>) Appellant	)	<i>N. Kaushal</i>
	)	<i>for the Respondent</i>
- and -)	
	)	<i>Appeal heard and</i>
<i>LISA MICHELLE SUCHE</i>	)	<i>Decision pronounced:</i>
	)	<i>June 3, 2019</i>
)	
(<i>Respondent</i>) Respondent	)	<i>Written reasons:</i>
	)	<i>June 7, 2019</i>

BEARD JA (for the Court):

Issues

[1] This is an appeal by the petitioner (the husband) from an order dealing with evidence and procedure in an interlocutory proceeding (the appeal judge’s order). That order was made by a Court of Queen’s Bench judge (the appeal judge) in the context of an appeal from a Master’s order under Manitoba, *Court of Queen’s Bench Rules*, Man Reg 553/88, r 62.01. The Master’s order deals with the disclosure of financial information by the husband under the *Child Support Guidelines Regulation*, Man Reg 58/98 (the Master’s order).

[2] This Court dismissed the appeal at the hearing with brief reasons to follow. These are those reasons.

[3] The husband raised two grounds of appeal:

(i) that the Master exceeded his jurisdiction in making the disclosure order and went beyond the level of disclosure that is required; and

(ii) that the appeal judge, by making the interlocutory order at issue, breached the *Queen's Bench Rules* and denied the husband procedural fairness.

Background

[4] The parties are separated and the husband petitioned for a divorce from the respondent (the wife). The parties have been unable to resolve spousal and child support issues (among others) and financial disclosure related thereto.

[5] The wife obtained an order without notice from the Master, wherein the Master ordered that the husband provide certain specific financial disclosure. The husband appealed part of the Master's order to the appeal judge under r 62.01. The parties were not in agreement as to how the appeal should proceed. When the appeal and a motion filed by the husband came before the appeal judge, she adjourned the proceedings and ordered, contrary to the husband's primary position, that further affidavits could be filed by both parties. She set a scheduling date a few days later and anticipated that the

further documentation would be filed and the appeal would be argued within 30 days of the adjournment.

[6] At the scheduling appearance, the husband stated that he would be appealing the appeal judge's rulings to this Court, so the appeal did not proceed any further. That was 20 months ago.

The First Ground of Appeal—the Master's Order

[7] The first ground of appeal challenges the jurisdictional validity of the Master's order. It fails because the appeal of the Master's order has not yet been determined by the appeal judge, so there is no decision for this Court to review.

The Second Ground of Appeal

[8] The second ground of appeal relates to the adjournment, and the appeal judge's order dealing with the evidence to be admitted and the procedure to be followed for the appeal. As already noted, there has, as yet, been no substantive ruling made on the appeal.

[9] This Court has consistently expressed its view regarding the deference owed to discretionary interim and interlocutory orders, and the inadvisability of appeals from those orders during the course of the proceedings. I note but two of the many decisions.

[10] In *Gale v Gale*, 2008 MBCA 134, this Court was dealing with interlocutory orders related to financial disclosure. Steel JA stated (at paras 58, 60):

. . . Great deference must be shown on these discretionary interim orders and appellate intervention will be rare.

This court has expressed its opinion on the appeal of interim orders on occasions too numerous to count. See, for example, *Rock v. Rock*, 2004 MBCA 84 . . . and *Chevalier v. Chevalier*, 2007 MBCA 131 . . . In short, for the most part, this court does not believe these types of appeals are advantageous to the eventual resolution of the dispute.

[11] More recently, Burnett JA again expressed this Court's view of appeals of interlocutory procedural and evidentiary rulings in *Pimicikamak et al v Manitoba et al*, 2016 MBCA 106 (at para 11):

. . . Generally speaking, except in exceptional circumstances, appeals of procedural or evidentiary rulings made during the course of civil proceedings should be addressed in the appeal from the final determination and should not be undertaken on a piecemeal basis by way of interlocutory appeals.

(See also *Winnipeg Condominium Corporation No 30 v SAE/SIMS & Associates Engineers Ltd, et al*, 2004 MBCA 173; and *Canada (Attorney General) v Courchene*, 2010 MBCA 6.)

[12] The husband argued that his appeal raised important issues regarding the interpretation of the *Queen's Bench Rules*. We are of the view that they do not rise to the level of exceptional circumstances, such that interlocutory appellate intervention, which should be rare, is warranted.

Decision

[13] In our view, the appeal was ill-advised and, at best, premature, resulting in nothing more than additional cost and delay in the hearing of the appeal in front of the appeal judge and, therefore, in getting this matter ready

for trial. Therefore, the appeal was dismissed at the hearing and costs were ordered against the husband under the tariff, to be payable forthwith and in any event of the cause.

Beard JA

Hamilton JA

Simonsen JA
