

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Mr. Justice Marc M. Monnin  
Mr. Justice William J. Burnett  
Madam Justice Jennifer A. Pfuetzner

***BETWEEN:***

<b><i>KIRRA AMBER LEE NOBLE</i></b>	)	<b><i>R. G. Waugh</i></b>
	)	<i>for the Appellant</i>
( <i>Petitioner</i> ) <i>Appellant</i>	)	
	)	<b><i>A. C. Correia</i></b>
- <i>and</i> -	)	<i>on his own behalf</i>
	)	
<b><i>ANTONIO COSTA CORREIA</i></b>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
( <i>Respondent</i> ) <i>Respondent</i>	)	<b><i>January 17, 2020</i></b>

**BURNETT JA** (for the Court):

[1] The petitioner appeals a final order awarding joint custody of the parties' two children and an award of costs.

[2] It is well-established that this Court will not disturb the decision of a lower court with respect to custody 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; *Delichte v Rogers*, 2011 MBCA 50 at para 18; and *Sawatzky v Sawatzky*, 2018 MBCA 102 at paras 12-15).

[3] We are not persuaded that the trial judge made any such error or that he seriously misapprehended the evidence.

[4] It is also well-established that a discretionary decision as to costs will not be interfered with lightly and will only be set aside on appeal if the

court below has made an error in principle or if the costs award is plainly wrong (see *Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6 at para 247; *Ducharme v Borden*, 2014 MBCA 5 at paras 23-24; and *Hudson Bay Mining & Smelting Co, Limited v Dumas et al*, 2014 MBCA 6 at para 93).

[5] We are satisfied that the trial judge erred when he considered a proposed parenting plan in a case management information statement as an offer to settle. In our view, the plan is clearly not an offer to settle, but even if it was so construed, Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88, r 70.24(53) would operate to preclude reference to it unless it was included in a case conference memorandum. Moreover, it would appear that the trial judge awarded costs against the petitioner, without explanation, for various interim proceedings where she was either successful or the matter was resolved at a case conference. In these circumstances, the trial judge's award for costs cannot stand.

[6] Having carefully considered the petitioner's submissions and the relevant factors, we are of the view that the respondent should receive costs in the sum of \$20,000, inclusive of disbursements and taxes. Such costs shall be offset against the child support arrears in the manner proposed by the trial judge.

[7] Given the parties' divided success, we are not prepared to award costs for this appeal.

Burnett JA

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Monnin JA

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Pfuetzner JA

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