

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Christopher J. Mainella
Madam Justice Janice L. leMaistre
Madam Justice Karen I. Simonsen

BETWEEN:

AJAY KUMAR PANDEY)	A. Pandey
)	<i>on her own behalf</i>
)	<i>(via videoconference)</i>
<i>(Petitioner) Respondent/ Appellant</i>)	
)	A. K. Pandey
<i>- and -</i>)	<i>on his own behalf</i>
)	<i>(via videoconference)</i>
ANITA PANDEY)	
)	<i>Appeal heard and</i>
<i>(Respondent) Appellant/ Respondent</i>)	<i>Decision pronounced:</i>
)	January 6, 2021

COVID-19 NOTICE: As a result of the COVID-19 pandemic and pursuant to r 37.2 of the MB, *Court of Appeal Rules*, MR 555/88R, this appeal was heard remotely by videoconference.

MAINELLA JA (for the Court):

[1] There are two family law appeals before us. The respondent (Ms. Pandey) appeals an order equalizing family property and dividing jointly owned property (the property order). She seeks to introduce further evidence on her appeal. The petitioner (Mr. Pandey) appeals an order regarding retroactive payment of child support by Ms. Pandey and an award of spousal support to her (the support order). Both parties seek to introduce further evidence on that appeal.

[2] The background to Ms. Pandey's appeal is that, during a pre-hearing meeting, the parties (both self-represented), with the assistance of a judge, appeared to settle their property dispute by consent. The judge pronounced the property order, which included a requirement that Mr. Pandey make an equalization payment of \$49,000, which he subsequently paid.

[3] The property order was not filed within 30 days of pronouncement, as is the expected practice. As time went on, Ms. Pandey raised the concern that the amount of the equalization payment was too low because of calculation errors in the family property accounting. Several months after pronouncement, there was an appointment to settle the property order. In dismissing her objection to the amount of the equalization payment, the judge said that his ability to amend, rectify or rescind the property order was "extremely narrow" without a formal motion with supporting affidavit evidence. He ultimately signed the property order that included in its recitals that the parties had "consented on the record to the content of this order". Ms. Pandey did not approve of the order as to form and content.

[4] In our view, the judge erred in signing the property order when it is clear from the record that Ms. Pandey had withdrawn her consent because of her articulated concern that there was a mistake as to the calculation of the equalization payment and had given notice to that effect (see *Ridout v Ridout*, 2004 MBCA 91 at paras 9, 24). We make no comment as to the merits of her complaint that she is owed a larger equalization payment than what she has already received. The proper course here was for the judge to either roll up his sleeves and see if the settlement could be rescued, or set the matter down for a contested hearing as to whether the settlement should be enforced. Given

our decision, Ms. Pandey’s motion to introduce further evidence is moot and need not be decided.

[5] In terms of Mr. Pandey’s appeal, we have not been satisfied that it is in the interests of justice to admit further evidence from either Ms. or Mr. Pandey as to each other’s income (see *Palmer v The Queen*, [1980] 1 SCR 759 at 775). Both motions are dismissed.

[6] At the trial, before a different judge, on the issues of child and spousal support, Mr. Pandey was represented by counsel. We have not been persuaded that the judge’s support order was based on an error in principle, a significant misapprehension of the evidence or is clearly wrong (see *Horch v Horch*, 2017 MBCA 97 at para 50). Her reasons confirm that she carefully exercised her discretion in light of the relevant principles and the facts.

[7] In the result, Ms. Pandey’s appeal is allowed and the property order is set aside. The property issues are referred back to the Court of Queen’s Bench (Family Division) for case management. Mr. Pandey’s appeal is dismissed. Costs in favour of Ms. Pandey are set in the amount of \$1,000, all inclusive.

“Mainella JA”

“leMaistre JA”

“Simonsen JA”
