Citation: Van Easton v Wur, 2020 MBCA 82 Date: 20200827
Docket: AF19-30-09287

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Chartier
Mr. Justice Christopher J. Mainella
Madam Justice Janice L. leMaistre

B E T W E E N :

	)	***No appearance***
	)	*for the Appellant*
TOVE BRIE-ANN VAN EASTON	)	
	)	***K. C. Misko***
(Petitioner) Respondent	)	*for the Respondent*
	)	
- and -	)	*Appeal heard and*
	)	*Decision pronounced:*
BRANDUR CURTIS WUR	)	***August 25, 2020***
	)	
(Respondent) Appellant	)	*Written reasons:*
	)	***August 27, 2020***

CHARTIER CJM (for the Court):

[1] On the morning of the hearing, minutes before it was set to begin, the respondent (the father) advised that he would not be attending. As a result, we proceeded on the basis of his written submission. After the submissions, we concluded that there were two contempt proceedings in play in the lower Court. The first one was a civil contempt proceeding initiated by the petitioner (the mother) for the father's out-of-court disobedience of a custody order. The second contempt proceeding was a criminal contempt in the face of the court arising from the father's interaction with the motion judge (the judge) that arose during the civil contempt hearing.

[2] From the material filed in our Court, we concluded that the father had only appealed the criminal contempt in the face of the court decision and the accompanying 30-day sentence. He did not appeal the decision finding him in civil contempt and the resulting suspension of his access under the custody order, until further order. We also concluded that the rules of natural justice had not been followed with respect to the finding of criminal contempt in the face of the court.

[3] As a result, we quashed the finding of criminal contempt in the face of the court, as well as the 30-day sentence, and stayed that proceeding, with reasons to follow. These are those reasons.

[4] Some background is necessary to provide the context for the judge's decision. The mother moved for an order of civil contempt against the father pursuant to *The Court of Queen's Bench Act*, CCSM c C280, and the Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88. She alleged that the father did not respect the Court's custody order concerning the time he was to have care and control of their child. She asserted that he violated the terms of the custody order 10 out of 12 times. The remedy sought by the mother with respect to the civil contempt motion was that the custody order be varied to require the father's time with their child to be supervised.

[5] When the matter came before the judge, the father was 11 days late in returning the child to the mother. Understandably, tensions were high and things quickly went off the rails. The father, who was not represented by counsel, refused to stand when asked to do so by the judge. He said that he needed the judge to answer some questions. After the father refused twice to

disclose where the child was, the judge "sentenced [him] to prison right now for contempt."

[6] The judge asked the father a third and fourth time to disclose the child's location but, again, he refused, insisting that he needed the judge to answer his questions. The judge replied, "This is not about you asking questions. You can make submissions." When told to come forward to the witness stand, the father refused to do so, saying he needed "a witness to witness what's happening." At that point, the judge told the father that he was considering sending him to prison. After a brief exchange, culminating with the father questioning whether the judge had "an oath of office", he was sentenced to 30 days' imprisonment for contempt.

[7] After seven days in custody, the father was released pending this appeal.

[8] That contempt powers should only be used in exceptional circumstances cannot be overstated (see *R v Bunn* (1994), 94 CCC (3d) 57 (Man CA)). This is even more so in family proceedings, where judges must protect not only the administration of justice, but also the best interests of the child (see *Salloum v Salloum*, 1994 CarswellAlta 577 (QB)). Moreover, when contempt proceedings are used, care must be taken to articulate exactly the nature of the contempt, as well as the "what" and the "why" of the decision. In the case at hand, it would not have been apparent to the unrepresented father, in a family law matter, that his conduct was putting him in jeopardy of imprisonment. The judge did not clearly advise him that he was facing a new contempt proceeding; namely, criminal contempt in the face of the court.

[9] It is clear from the record that, while the father was facing only one contempt proceeding when the hearing began (the mother's civil contempt motion), soon thereafter he was also contending with, because of his actions, criminal contempt in the face of the court. It is also clear to us that, in light of what transpired in Court, the judge had every right to cite the father for contempt in the face of the court. The problem is that the judge proceeded to sentence him to 30 days of imprisonment without following the usual steps required by natural justice (giving the father proper notice of the consequences by first citing him for contempt and then providing him with an opportunity to consult counsel). The father certainly had notice with respect to the civil contempt proceeding that he may be facing supervised visits with his child, but he never received notice that he was facing imprisonment.

[10] As a rule, when using a summary process to contend with a contempt in the face of the court situation, judges must follow the principles of natural justice. The judge did not do so in this case. In light of this, the appeal was granted. Similar to what the Supreme Court of Canada did in *R v K (B)*, [1995] 4 SCR 186, we quashed the finding of criminal contempt in the face of the court and the 30-day sentence. Moreover, given that the father has spent seven days in custody, we stayed the criminal contempt proceedings.

[11] The father did not appeal the judge's finding of civil contempt and his decision to suspend the father's periods of care and control of the child. Had he done so, we would have dismissed that ground. In our view, on the question of liability, the three-part test for civil contempt set out in *Carey v Laiken*, 2015 SCC 17, was easily met. Moreover, we saw no error in the decision to suspend the father's visitation rights, until further order.

[12] Given the results, we made no order as to costs.

"Chartier CJM"

"Mainella JA"

"leMaistre JA"