

V.L. v. D.L., 2002 ABCA 43

Date: 20020409 Docket: 99-18280

**IN THE COURT OF APPEAL OF ALBERTA**

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THE COURT:

THE HONOURABLE MADAM JUSTICE McFADYEN

THE HONOURABLE MR. JUSTICE O'LEARY

THE HONOURABLE MADAM JUSTICE RUSSELL

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**BETWEEN:**

V. L. Appellant

*(Petitioner)*

- and -

D. L. Respondent

*(Respondent)*

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SUPPLEMENTARY MEMORANDUM OF JUDGMENT REGARDING COSTS

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**COUNSEL:**

B. E. MAHONEY, Q.C. *For the Appellant (Petitioner)*

G. J. CLARK *For the Respondent (Respondent)*

**THE COURT:**

[1] On October 2, 2001, in a unanimous judgment, we dismissed the appellant's appeal from an order for joint custody. The appellant now asks this court to deny the respondent his costs of the appeal despite his success. She argues that costs are not appropriate due to the significant legal issues addressed by the court in its reasons for judgment, allegations of misconduct on the part of the respondent in failing or refusing to comply with previous court orders as well as the decision of this Court, undue hardship to herself and lack of wrongdoing on her part.

[2] According to Rule 601(3) the court has discretion to award costs against a successful party. But in the absence of such an order, the general practice is that the successful party is entitled to costs of the proceeding. Part H of The Consolidated Practice Directions of The Court of Appeal of Alberta (as amended to March 2001) provide that "no specific direction about costs will be made except when the Court hearing an appeal is of the view that the case shall be an exception to that general practice."

[3] In our view, no exception should be made in this case. Although this Court did deliver comprehensive reasons concerning joint custody and the historical distinction between custody and guardianship, those issues were raised by the Court, not by respondent. Secondly, the allegations of misconduct do not pertain to the conduct of the litigation, and in any event are unsubstantiated. Thirdly, even assuming without deciding that undue hardship warrants an exception to the general practice, there is no evidence before us that a cost award will create a hardship to the appellant. Finally, lack of wrongdoing on the part of the unsuccessful appellant is irrelevant to the entitlement of the respondent to the usual costs.

[4] Accordingly, costs will follow the event.

JUDGMENT DATED at CALGARY, Alberta, this 9th day of APRIL, 2002

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as authorized by: McFADYEN, J.A.

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as authorized by: O'LEARY, J.A.

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RUSSELL, J.A.