



[2026] JMSC Civ 70

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU2024FD03055

**IN THE MATTER of the JUDICATURE
(SUPREME COURT) ACT**

AND

**IN THE MATTER of the MENTAL HEALTH
ACT**

AND

IN THE MATTER OF an application by **CN-M** for
the exercise of the jurisdiction by this
Honourable Court over the management of the
property and affairs of **RN**

BETWEEN	CN-M	APPLICANT
AND	J HB-N	INTERESTED PARTY

IN CHAMBERS

Mr. Ian Wilkinson, KC and Mr. Lenroy Stewart, instructed by Wilkinson Law, Attorneys-at-Law for the Applicant.

Mrs. Georgia Gibson-Henlin KC, Ms. Keisha Spence, Mr. Vasheney Headlam and Mr. Sonji Gordon, instructed by Henlin Gibson Henlin, Attorneys-at-Law for the Interested Party

HEARD ON: MAY 14, 2026

FAMILY LAW - LEGAL GUARDIANSHIP- MENTAL HEALTH ACT- PATIENT- VULNERABLE ADULT- DEATH OF PATIENT- CPR 37.6 AND 64.6- COST ORDER AFTER DISCONTINUANCE BY APPLICANT- DISCONTINUANCE AFTER DEATH OF SUBJECT OF APPLICATION- WHETHER COSTS PAYABLE TO INTERESTED PARTY OR SHOULD THERE BE NO ORDER AS TO COSTS.

REID, ICOLIN J.

THE CLAIM

[1] By Fixed Date Claim Form filed on 9th September 2024, the Applicant, CN-M, sought orders concerning the care, protection, residence, and management of the affairs of RN. The orders sought included the following:

1. *A Declaration that [RN] is a vulnerable adult;*
2. *Alternatively, a Declaration that [RN] is in need of care and protection, as he is not receiving the necessary care from those in charge of his welfare, particularly his wife [JHB-N];*
3. *An Order that [RN] is to reside with [CN-M], the Applicant/Claimant herein, at her residence in the parish of Saint Andrew;*
4. *An Order that [CN-M], Businesswoman and the daughter of the purported patient, is the legal guardian of [RN], with authority to do all such things as may be necessary or expedient to manage his affairs, including, but not limited to:*
 - a) *the continuance or institution of any legal proceedings on [RN's] behalf;*
 - b) *the payment of any debts incurred by, or on behalf of, [RN];*
 - c) *making decisions in relation to [RN's] health and well-being and hiring, and dismissing, staff in relation to caring for his needs;*
 - d) *fulfilling or terminating any contracts concluded by [RN]; and*

e) managing all the financial and other affairs of [RN] in his best interests.

- 5. That there be no Order as to costs;*
- 6. Liberty to apply; and*
- 7. Such further and/or other Declarations or Orders as this Honourable Court may deem just.*

[2] The Applicant also filed a Notice of Application for interim relief on September 9, 2024, seeking the following orders:

- 1. An interim declaration that [RN] is a vulnerable adult;*
- 2. Alternatively, an interim declaration that [RN] is in need of care and protection;*
- 3. An Order that [RN] is to reside with [CN-M] for twenty-eight (28) days at her residence in the Parish of Saint Andrew or until further Order of this Honourable Court;*
- 4. An Order committing [RN] into the temporary care and protection of [CN-M] for twenty-eight (28) days or until further Order of this Honourable Court;*
- 5. An injunction compelling [JHB-N] to permit the Applicant to enter the residence [of RN] in the Parish of Saint Andrew (hereafter referred to as "the said residence") in order to secure the person of [RN] in compliance with this Order;*
- 6. If [JHB-N] or her servants, agents or any other person shall fail to permit the Applicant to enter the said residence, or shall prevent the Applicant from entering the said residence, then the Applicant shall be at liberty to use reasonable methods to enter the said residence in order to carry out this Order.*
- 7. An Order that during the currency of this Order [CN-M] be authorised to:*
 - (i) continue or institute any legal proceedings on [RN's] behalf;*
 - (ii) pay any debts incurred by [RN];*
 - (iii) make decisions in relation to [RN's] health and well-being including the hiring of staff to care for his health and wellbeing;*
 - (iv) manage all the financial affairs of [RN], including but not limited to permitting her to liaise with his banks to provide for payment of his living and health expenses from his existing bank accounts.*
- 8. This application be fixed for an inter-partes hearing as soon as is reasonably practicable;*
- 9. There be liberty to apply;*

10. *There be such further or other relief as this Honourable Court deems just; and*
11. *The costs of this Application be costs in the Claim.*

[3] On the 19th September 2024, this Court made interim orders which, among other things, gave the Applicant access to RN's residence for the purpose of his care and protection, permitted the employment of caregivers where necessary, and prohibited the Interested Party, JHB-N, from interfering with that access. Several orders were made with the consent of both parties. They included the following:

1. *The Applicant is given full access to the residence of [RN], to be in charge of his daily care and protection, to include meal preparation and feeding;*
2. *[JHB-N] is prohibited from interfering with the Applicant's access to the residence, for the sole purpose of the care and protection of [RN];*
3. *The Applicant is given permission, where necessary, to employ caregivers to provide for the care and protection of [RN];*
4. *[JHB-N] is prohibited from the food preparation and feeding of [RN];*
5. *Orders 1–4 are to remain in effect for twenty-eight (28) days or until further Court Orders;*
6. *The Applicant is prohibited from preventing [JHB-N] from interacting with [RN];*
7. *[JHB-N] is joined as an Interested Party in these proceedings;*
8. *[JHB-N] is to file and serve further Affidavits in response to the Notice of Application and Affidavits in support;*
9. *The Applicant is to file and serve a full medical report in respect of [RN]. The report should be prepared by a Psychiatrist;*
10. *[JHB-N] is to file and serve a full medical report in respect of herself, which should detail her physical and mental health*
11. *The inter-partes hearing of the Notice of Application for Court Orders is scheduled for the 18th day of October, 2024, commencing at 10:00 a.m. for two (2) hours, or so soon thereafter as Counsel may be heard.*

[4] The Interested Party opposed the claim and filed affidavit evidence. She also filed a Notice of Application seeking to strike out several paragraphs in the several affidavits filed by and on behalf of the Applicant.

[5] It is regrettable that the Court was unable to hear and determine the claim on its merits. The matter was delayed by several adjournments granted to facilitate the filing of affidavits on behalf of the Claimant and the Interested Party, the filing of medical reports in relation to RN and JHB-N, and the referral of the parties to

mediation. Ultimately, there was no final determination of the claim because RN died on 13th February 2026. The Applicant subsequently discontinued the proceedings. The parties are not agreed on costs. The Interested Party seeks her costs of the proceedings while the Applicant contends that there should be no order as to costs.

ISSUE

- [6] The sole issue for determination is the appropriate order as to costs following the discontinuance of the claim by the Applicant consequent upon the death of RN, the person who was the subject of the proceedings.

THE INTERESTED PARTY'S SUBMISSIONS

- [7] Counsel for the Interested Party submitted that the Applicant instituted serious proceedings which made grave allegations against the Interested Party concerning her care of her husband. Counsel submitted that the Applicant sought orders which would have effectively removed the Interested Party from her role in the care and management of RN. The Interested Party was therefore required to retain counsel, file affidavits respond to an urgent application and incur substantial costs. It was further submitted that the Applicant filed a total of twenty-three affidavits and that the Interested Party was compelled to file an application to strike out material said to be hearsay, scandalous, oppressive, irrelevant, or otherwise inadmissible.
- [8] Counsel relied on CPR 64.6 and submitted that the general rule is that costs follow the event. It was argued that the claim having been withdrawn and no final relief having been granted to the Applicant, the Interested Party should be treated as the successful party. Reliance was placed on ***Gordon Stewart v Goblin Hill Hotels Limited, Mines Investment, Marvin Goodman, and Rosalee Goodman*** [2016] JMCC COMM 39.

- [9] Counsel submitted that there is no proper basis for departing from the general rule and that the Applicant should pay the Interested Party's costs, to be agreed or taxed.

THE APPLICANT'S SUBMISSIONS

- [10] Counsel for the Applicant submitted that no order for costs should be made in favour of the Interested Party. Reliance was placed on ***Conrod Morris v Troy Campbell [2021] JMCA Civ 30***. Counsel accepted that CPR 37.6 provides a default position that a claimant who discontinues is liable for the costs of the defendant against whom the claim is discontinued, unless the parties agree or the court orders otherwise. Counsel submitted that this was an appropriate case for the Court to order otherwise. It was argued that the Applicant did not discontinue the claim because she changed her mind in pursuing the relief or that she believed she had no case. Rather, the claim came to an end because RN, the subject of the proceedings, died. Reliance was placed on ***Pamela Hunt v Jennifer Daniel et al Claim No. CV2014-02496 delivered on January 10, 2018 (Trinidad and Tobago Supreme Court)***.
- [11] Counsel further submitted that the Applicant had obtained interim orders on the 19th September 2024 and therefore could not properly be treated as the unsuccessful party. It was submitted that the proceedings were brought in good faith and out of concern for RN's care, safety and well-being. Counsel also relied on medical evidence concerning RN's condition, including evidence of dementia and severe memory impairment, to submit that there was an objective basis for the proceedings.
- [12] The Applicant therefore submitted that the just order is that there be no order as to costs.

LAW

- [13] Rule 37.6(1) of the Civil Procedure Rules ("CPR") provides:

“Unless —

(a) the parties agree; or

(b) the court orders otherwise,

a claimant who discontinues is liable for the costs of the defendant against whom the claim is discontinued incurred on or before the date on which notice of discontinuance was served.”

[14] Rule 64.6(1) of the CPR provides that if the Court decides to make an order about costs, the general rule is that it must order the unsuccessful party to pay the costs of the successful party. CPR Rule 64.6(2) nevertheless preserves the Court’s discretion to make some other order, including an order that there be no order as to costs.

[15] Rule 64.6(3) requires the Court, in deciding who should be liable to pay costs, to have regard to all the circumstances. Rule 64.6(4) specifically directs the Court to have regard to:

- i. the conduct of the parties before and during the proceedings;*
- ii. whether a party has succeeded on particular issues;*
- iii. whether it was reasonable to pursue a particular allegation or issue;
and*
- iv. the manner in which the proceedings were pursued.*

[16] In ***Conrad Morris v Troy Campbell*** [2021] JMCA Civ 30 at paragraphs [43] and [44], the Court of Appeal explained the applicable principles governing discontinuance under CPR 37.6:

“[43] ... when the court is considering an application under rule 37.6(1), the starting point has to be the recognition that the default principle or presumption embodied in that rule is that the party who discontinues should ordinarily pay the defendant’s costs up to the date of discontinuance. From the authorities cited and discussed, certain other broad principles can also be discerned. These are that:

- (1) it is for the party discontinuing to justify some other order;*

(2) the party who is seeking to convince the court to depart from the presumption is required to provide cogent reasons for doing so;

(3) the court must consider if the reasons advanced, justify departing from the default principle;

(4) the court has to be persuaded that, in all the circumstances, it is fair and just to depart from 'the normal consequences of discontinuance' having regard to the overriding objective to deal with the case justly in accordance with rules 1.1(1) and 1.2 of the CPR;

(5) the presumption should only be displaced in limited or exceptional circumstances; and

(6) in the exercise of its discretion, in the context of discontinuance, the court is entitled to take into account the general factors set out in rule 64.6 of the CPR.

[44] Furthermore, to inform its decision to apply or depart from the standard rule or presumption, the court may consider:

- (i). whether it was reasonable for the claimant to have pursued the case against the defendant. That is, the court is to determine whether the claim was a serious one deserving of argument at trial and it could not be dealt with on a summary basis or struck out as having no real prospect of success. However, it was not the function of the court to attempt to decide whether the claim would succeed and neither was this fact, if it existed, relevant; and
- (ii). whether there had been a substantial or material change in the circumstances between the date when the proceedings commenced and the date when the notice of discontinuance was served."

[17] In **McLeod, Edwards and Hamilton v Ellis** [2025] JMSC Civ 109 at paragraphs [20] and [25], the Court similarly observed:

"[20] The Claimants, in advancing this claim against the Defendant have taken on the risk of litigation and further that the prima facie position is that where such a claim is abandoned, the starting point is that it would be unjust to allow the Defendant to bear the cost of the proceedings."

"[25] In approaching the matter in this manner, I bear in mind the caution issued in *Morris (Conrad)*. **The Court of Appeal reasoned that a Court should not lightly resile from the default position. In fact, McDonald Bishop JA (as she then was) indicated that it is for the Claimants to provide cogent reasons to justify a departure from the prima facie position that a person who discontinues should ordinarily**

pay the defendant's costs "the default position". Additionally, the ultimate consideration must be whether it is fair and just in the circumstances of the case to resile from this default position.

[18] In relation to the Court's general discretion under CPR 64.6, the Court of Appeal in **Capital & Credit Merchant Bank Ltd v Real Estate Board** [2013] JMCA Civ 48 at paragraph [8], stated:

"[8] The general rule is that, if the court decides to make an order about the costs of any proceedings, 'it must order the unsuccessful party to pay the costs of the successful party' (rule 64.6(1)). The court may however order a successful party to pay all or part of the costs of an unsuccessful party, or make no order as to costs (rule 64.6(2)). In deciding who should pay costs, the court must have regard to all the circumstances..."

ANALYSIS

[19] Applying those principles to the present case, the starting point is CPR 37.6(1), namely that a claimant who discontinues proceedings is ordinarily liable for the costs of the defendant incurred up to the date of discontinuance. The Applicant therefore bears the burden of satisfying the Court that there are cogent reasons justifying a departure from the ordinary consequences of cost following discontinuance.

[20] I accept counsel for the Interested Party's submission that these proceedings were serious in nature and contained grave allegations concerning JBB-N's care of her husband, RN. The proceedings required the Interested Party to retain counsel, file affidavit evidence, respond to interim applications, and participate in several hearings before the Court. I also accept that the case advanced by the Applicant was never finally adjudicated upon by the Court because the matter did not proceed to trial. It follows that no findings were made. The Court must also consider the circumstances which led to the discontinuance.

[21] I note counsel for the Interested Party's submission that "*Notwithstanding the gravity of the allegations and reliefs sought, the Applicant has withdrawn the claim following the death of RN. The withdrawal of the claim, in the absence of any determination on the merits, effectively brings the proceedings to an end without*

the Applicant having established her case. In the circumstances, the Interested Party submits that she is the successful party for the purposes of Part 64.6 of the CPR, as the claim against her has been discontinued and no relief has been granted to the Applicant.”

[22] Respectfully, I am unable to agree with that submission. This is not a case in which the Applicant discontinued because she accepted that the claim was untenable, bound to fail, or improperly brought. Nor is this a case where the Applicant abandoned proceedings after recognising that no relief could properly be obtained. Rather, the proceedings came to an end because the subject of the application, RN, died before the substantive issues raised in the claim could be determined. Following his death, the continuation of the proceedings would have served no useful purpose and would have unreasonably and unnecessarily consumed further judicial time and resources. This would have been unwise. In those circumstances, I do not accept that the discontinuance can fairly or properly be characterised as establishing that the Interested Party was the “successful party” within the meaning contemplated by CPR 64.6.

[23] In *Conrad Morris v Troy Campbell*, the Court of Appeal expressly recognised that, in deciding whether to depart from the ordinary rule on discontinuance, the Court may consider “*whether there had been a substantial or material change in the circumstances between the date when the proceedings commenced and the date when the notice of discontinuance was served.*” In my view, the death of RN falls squarely within that category. His death constituted a substantial or material change in circumstances occurring after the commencement of the proceedings and wholly out of the parties’ control.

[24] I also considered the Interested Party’s reliance on **Gordon Stewart v Goblin Hill Hotels Limited, Mies Investment Limited, Marvin Goodman and Rosalee Goodman** (*supra*) in support of the submission that CPR 64.6(1) reflects the longstanding position at common law that costs follow the event. While I accept that submission, I also accept the Applicant’s submission that the circumstances

of the present case may require the court to depart from the normal consequences of discontinuance. In **Gordon Stewart** (*supra*), the Court was able to determine the issues raised before it and identify the extent to which each party had succeeded or failed on the applications before the Court. The present case is therefore distinguishable because there has been no adjudication on the substantive merits of the case because the proceedings inevitably came to an end following the death of RN. Accordingly, while the general rule remains the starting point, I must still consider whether, in all the circumstances, it is fair and just to depart from that position.

[25] I consider significant the fact that the Applicant obtained several interim reliefs with the consent of the Interested Party on the 19th September 2024. Those interim orders included orders permitting the Applicant to have access to RN for the purposes of his care and protection and restricting interference with that access by the Interested Party. Those interim orders did not amount to a final determination of the issues before the Court and while they cannot properly be treated as conclusive findings in favour of the Applicant, they demonstrate that the Applicant's claim was not regarded at that stage as frivolous, hopeless, or without merit.

[26] In considering CPR 64.6(4), I have regard to the conduct of the parties before and during the proceedings; whether either party succeeded on particular issues; whether it was reasonable to pursue the allegations and issues raised; and the manner in which the proceedings were pursued. I accept the Applicant's submission that the proceedings were commenced because of concerns regarding RN's welfare and medical condition, which were supported by affidavit evidence and medical reports exhibited during the proceedings. The court obtained a medical report which confirmed the poor state of the mental and physical health of RN. I do not accept the Interested Party's submission that the withdrawal of the claim, without more, establishes that it was unreasonable for the Applicant to have pursued the claim in this matter. I however accept that the Interested Party was required to respond to serious allegations and incurred legal costs in doing so. The

court also obtained a medical report in respect of the Interested Party which revealed that she was in good physical and mental health.

- [27]** The Court considers that at the commencement of proceedings RN was in a deplorable physical condition. He was suffering from bed sores (as confirmed by photographs exhibited to affidavits) and he was mentally incompetent. I found that there were indeed serious issues to be tried as to whether he was getting proper medical care and whether his welfare was being attended to by the Interested Party. When I consider RN's condition I believe it was reasonable for the Applicant to have brought the claim. As to who would have been the successful party had the claim run the usual course to a final determination by the Court, I do not know. Cogent reasons were provided for the matter to proceed. In the handling of the case, I found that there were serious issues to be tried and so ordered a Social Enquiry Report to provide an independent view of the circumstances surrounding the care of RN.
- [28]** It is significant that interim orders were made by consent, some being favourable towards the Applicant and others towards the Interested Party. The interim orders did not amount to a final determination of the matter and cannot be treated as conclusive findings in favour of the applicant. However, they demonstrate that the case brought by the applicant could not be regarded at the commencement of proceedings, as frivolous, hopeless or without merit.
- [29]** I also take into account the nature of the proceedings. They concerned the welfare, care, protection and guardianship of an elderly individual, and in this case, the Applicant's father. A thorough analysis of the circumstances of the case brings me to the point where I do not consider it just to treat the Interested Party as having been the successful party merely because the proceedings were discontinued following RN's death. Nor do I consider it just to penalise the Applicant in costs where the proceedings became incapable of final determination because of circumstances wholly outside of her control.

[30] Having regard to all the circumstances, including the death of RN, the fact that the proceedings could no longer continue thereafter, the interim relief previously granted, the absence of any final determination of the matter, the nature of the proceedings, and the factors identified in CPR 64.6(4), I am satisfied that this is an appropriate case in which to depart from the ordinary consequence of cost which follows discontinuance under CPR 37.6(1).

[31] I therefore conclude that the just order is that there be no order as to costs.

ORDERS

1. There shall be no order as to costs.
2. The Interested Party is granted leave to appeal.
3. The Applicant's attorneys at law are to prepare, file and serve the order.