

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *A.P. v. Nova Scotia (Minister of Community Services)*,  
2023 NSCA 46

**Date:** 20230608

**Docket:** CA 524168

**Registry:** Halifax

**Between:**

A.P.

Appellant

v.

Minister of Community Services, C.B.,  
and A.P. and O.P. by their Guardian Ad Litem Beth Archibald

Respondents

**Judge:** Bourgeois, J.A.

**Motion Heard:** June 8, 2023, in Halifax, Nova Scotia in Chambers

**Written Decision:** June 28, 2023

**Held:** Motion for stay dismissed; Motion for judicial review  
dismissed

**Counsel:** A.P., the appellant, on his own behalf with the assistance of  
J.S.  
Sarah Lennerton and Shawn O’Hara, for the Minister of  
Community Services  
C.B., self-represented respondent, not appearing  
Susan Young and Jessica Simm, articled clerk, for the  
Guardian Ad Litem, Beth Archibald

**Restriction on publication:** Pursuant to s. 94(1) *Children and Family Services Act*, S.N.S. 1990, c. 5.

**Publishers of this case please take note** that s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

**SECTION 94(1) PROVIDES:**

Prohibition on publication

94 (1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

## **Decision:**

[1] The appellant, A.P., is the father of two children. They reside with their mother, C.B. These parents have been involved in litigation before the Supreme Court of Nova Scotia (Family Division). It appears to be highly contentious.

[2] The Minister of Community Services became involved with the family, and commenced a court application under the *Children and Family Services Act*. As a result of that application, the children are in the care and custody of their mother, C.B., subject to supervision. A protection hearing was held on March 13, 2023. The children were found to be in need of protective services and ordered to remain in the care and custody of C.B., subject to supervision. The Protection Order has not been appealed.

[3] A pre-trial conference was held with the parties and Justice Pamela MacKeigan on May 15, 2023, in anticipation of the disposition hearing required under the *CFSA*. Justice MacKeigan prepared a Conference Memorandum in relation to that appearance, which was issued May 25, 2023.

[4] On May 31, 2023, the appellant filed a Notice of Appeal (Child Protection) in which he challenges the “decision made on May 15, 2023”. He asks that it be set aside and requests that this Court “review the entire case and previous decisions on this file CFSA 128206”. The appellant sets out the following grounds of appeal:

1. The Judge made error in law by acting on this file as a conflict of interest.
2. The Judge made error in law by proceeding with the Children and Family Services Act proceeding after declaring herself as [in] a conflict of interest.
3. The Judge displays reasonable apprehension of bias by presiding over this case and denying my requests for accommodations.
4. The Judge violated my constitutional rights under the Canadian Charter of Rights and Freedoms and is preventing me from participating fairly and equally in this proceeding.
5. The Judge is misinterpreting the facts of this case.

[5] In the Notice of Appeal, the appellant sets out the following relief being sought:

The appellant says that the court should allow the appeal and that the judgment appealed from be rescinded and . . .

An order staying the execution and enforcement of any judgment appealed from until the completion of the appeal hearing; and,

Order the appointment of state-funded counsel to assist and represent me in this child protection appeal; and,

Remit to the trial Court for a full Judicial Review of the previous decisions made in this file CFSA 128206 and the lower Court divorce file . . .; and,

Allow for amendment of this notice of appeal to include the disposition findings on June 6<sup>th</sup>, 2023, if a stay of the proceeding is not heard prior to the disposition hearing.

[6] On June 1, 2023, the appellant filed a Notice of Motion in which he sought:

- A motion for a stay of the lower court decision under appeal;
- A motion for the appointment of state funded counsel; and
- A motion for judicial review of the lower court files under appeal.

[7] A motion for state funded counsel was scheduled during the June 8<sup>th</sup> chambers appearance. The appellant wanted to continue with the remaining motions notwithstanding being self-represented.

[8] At the conclusion of the chambers hearing, I advised the appellant his motions for a stay and judicial review were dismissed, with reasons to follow.

## **Analysis**

### *Motion for a stay*

[9] The appellant is asking to stay the continuation of the child protection proceeding until the appeal of the Conference Memorandum is determined. At the hearing, the appellant added that if the request for a stay is unsuccessful, he seeks permission to amend the Notice of Appeal to include a challenge to the outcome of

the disposition hearing. I will first address the request for a stay, and then the alternative remedy.

[10] The legal principles relevant to an appellant's request for a stay are well established. In *Mi'kmaw Family and Children's Services of Nova Scotia v. A.P.*, 2019 NSCA 39, Justice Van den Eynden wrote:

[17] The filing of a Notice of Appeal does not trigger a stay. Nor are stays a routine remedy. A stay is a discretionary remedy which *Civil Procedure Rule* 90.41(2) permits a single judge of this Court to grant.

[18] The principles that govern a stay, and which I applied, are well known. In *Purdy v. Fulton Insurance Agency Limited*, 1990 NSCA 23, Justice Hallett set out these principles: a stay may be granted if the applicant shows (i) an arguable issue for the appeal; (ii) that there would be irreparable harm if the stay were denied and that the balance of convenience favours the applicant; or (iii) there are exceptional circumstances. **However, the *Fulton* test is modified when the stay application involves the welfare of children as it does in this case. I must consider the best interests of the children involved in these protection proceedings and their interests prevail over those of the respondent parents on matters of irreparable harm and balance of convenience. Put another way, the interests of the respondent parents must yield to the best interests of the children.** The modification of the *Fulton* principles has been discussed in many cases of this Court including *D.M.F. v. Nova Scotia (Community Services)*, 2004 NSCA 113; *Reeves v. Reeves*, 2010 NSCA 6; *M.K v. Nova Scotia (Community Services)*, 2015 NSCA 69; and most recently in *Leyte v. Leyte*, 2019 NSCA 41.

(Emphasis added)

[11] In the present case, the appellant falters on the irreparable harm and balance of convenience factor. From the materials before me I know that the children have been found to be in need of protective services. That finding has not been appealed. Further, in the May 15th memorandum, Justice MacKeigan notes “the same issues continue to exist that existed when the children were found to be in need of protective service. . .” In considering the request to stay the child protection proceedings, I must place priority on the best interests of the children.

[12] If I granted the stay, I would be placing on hold the court proceeding overseeing these two children who are in need of protective services. There is simply insufficient evidence to satisfy me that such an outcome would be in their best interests. The potential risk in doing so is obvious, and I decline to exercise my discretion to grant a stay of the child protection proceeding.

[13] Further, I am not prepared to grant the alternative remedy sought by the appellant. The conclusion of the disposition hearing is unknown. I am not prepared to allow a future amendment to the current Notice of Appeal to include a challenge of an entirely different decision. Should the appellant take issue with the order arising from the disposition hearing, his avenue to challenge it is to file a separate Notice of Appeal.

*Motion for judicial review*

[14] In his affidavit, the appellant raises concerns with how judges of the Supreme Court of Nova Scotia (Family Division) have been dealing with the child protection and divorce files involving his family. He asks this Court to “conduct a full judicial review of the lower court files CFSA 128206 and 1201.... prior to the hearing of the appeal”.

[15] As a judge in chambers, I have no authority to grant the order being sought, and as such, I dismiss the motion. To my knowledge, there is no ability for a panel of this Court to grant the relief being sought by the appellant, and would encourage him to seek advice in that regard.

**Disposition**

[16] The motions as set out above are dismissed.

Bourgeois, J.A.