

COURT OF APPEAL OF
NEW BRUNSWICK



COUR D'APPEL DU
NOUVEAU-BRUNSWICK

104-17-CA

<u>R.L.</u>		<u>R.L.</u>	
	APPELLANT		APPELANTE
- and -		-et-	
<u>J.L.</u>		<u>J.L.</u>	
	RESPONDENT		INTIMÉE

Motion heard by:
The Honourable Justice Quigg

Motion entendue par :
l'honorable juge Quigg

Date of hearing:
October 13, 2017

Date de l'audience :
le 13 octobre 2017

Date of decision:
October 17, 2017

Date de la décision :
le 17 octobre 2017

Counsel at hearing:

Avocats à l'audience :

For the appellant:
Michael R. Young

Pour l'appelante :
Michael R. Young

For the respondent:
Hélène L. Beaulieu, Q.C. and Martine D. Cormier

Pour l'intimée :
Hélène L. Beaulieu, c.r. et Martine D. Cormier

DECISION

[1] The appellant R.L. is the biological parent of twins who are presently 11 years of age. R.L. and the respondent J.L. commenced cohabitating in May 2007. R.L. and J.L. separated in September 2013.

[2] On January 6, 2015, J.L. filed a Notice of Application seeking custody of the children, as well as Notice of Motion for interim custody. The application took 20 days to be heard over a period in excess of one and a half years. On August 4, 2017, a year after the last written submission were filed, a judge of the Court of Queen's Bench delivered an oral decision awarding sole custody of the children to J.L., with many conditions and restrictions respecting access by the children to R.L. On August 10, 2017, the judge filed a 250 page written decision.

[3] R.L. is appealing this decision. She moved for a stay of execution which would in effect restore a previous interim order.

[4] In a *Losier v. Bullen*, (2005), 284 N.B.R. (2d) 318, [2005] N.B.J. No. 68 (QL), Richard J.A. sets out the test to be met in these situations:

A three-prong test applies to motions under Rule 62.26 of the Rules of Court : see *Moncton (City) v. Steldon Enterprises Ltd. et al.*, [2000] N.B.R. (2d) (Supp.) No. 3 (C.A.) and *C.D. v. A.B.*, [2004] N.B.J. No. 443 (C.A.) (QL). First, the applicant must establish the existence of a serious issue to be determined on appeal. Secondly, in child custody matters, as in this case, the applicant must establish that there is a risk that the child will suffer irreparable harm if the stay is not granted: see *C.D. v. A.B.* Once the applicant has met the burden of the first two parts of the test, the judge hearing the motion must determine which of the two parties will suffer the greater harm, if the stay is granted or denied. [para. 2]

See also *P.R.H. v. M.E.L.*, [2009] N.B.J. No. 7 (QL).

[5] I find that R.L. has discharged all of the elements of the above test.

[6] Since R.L. has satisfied the burden of proof in this case, I grant the order that she seeks, and stay the execution of the trial judge's decision. Custody and access shall be as detailed in the interim consent order dated May 6, 2015. Custody and access for the Christmas/New Year period 2017-2018 shall be as provided in the Interim Order dated December 22, 2015, substituting the years 2017 for 2015 and 2018 where 2016 is indicated. This custody and access schedule shall be in force until further order of the Court. Costs are to be determined on the appeal.

[7] Considering that it is in the best interests of the children that the question of their custody be resolved as soon as possible, and that further delay may result in an injustice or hardship, I would invoke s. 24(2) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, and direct that this decision be published in one official language and, thereafter, at the earliest possible time, in the other official language.