

COURT OF APPEAL OF
NEW BRUNSWICK



COUR D'APPEL DU
NOUVEAU-BRUNSWICK

6-21-CA

B E T W E E N :

E N T R E :

S.R.F.

S.R.F.

INTENDED APPELLANT

APPELANT ÉVENTUEL

- and -

- et -

J.M.F.

J.M.F.

INTENDED RESPONDENT

INTIMÉE ÉVENTUELLE

Motion heard by teleconference:
The Honourable Justice LeBlond

Motion entendue par téléconférence :
l'honorable juge LeBlond

Date of hearing:
February 26, 2021

Date de l'audience :
le 26 février 2021

Date of decision:
February 26, 2021

Date de la décision :
le 26 février 2021

Counsel at hearing:

Avocats à l'audience :

For the Intended Appellant:
Howard T. Myatt

Pour l'appelant éventuel :
Howard T. Myatt

J.M.F. on her own behalf

J.M.F. en son propre nom

DECISION
(Orally)

[1] The intended appellant, S.R.F., seeks leave to appeal a decision of a judge of the Court of Queen's Bench, Family Division, relating to an interim motion to deal, amongst others, with the issue of undue hardship claimed by the Intended Appellant, pursuant to s. 10(2)(a) of the *Federal Child Support Guidelines*, SOR 97-175 and, secondly, the issue of the calculation of child support payments on a prospective and retroactive basis together with the payment terms. The motion was heard November 15, 2019, and the decision was released January 26, 2021.

[2] The two issues the Intended Appellant raises in his Notice of Motion for leave to appeal are:

1. that the motion judge used his grossed up annual income, for the purpose of calculating the child support payments, in the s. 10 analysis of undue hardship instead of using his actual annual income; and
2. that the motion judge failed to do any calculation of child support payments, leaving that up to the parties to determine, and then ordered payment of whatever the amounts might be without consideration for the Intended Appellant's current ability to pay, contrary to our Court's decision in *P.M.B. v. M.L.B.*, 2010 NBCA 5, 353 N.B.R. (2d) 323.

[3] Having heard counsel for the Intended Appellant and the Intended Respondent, on her own behalf, in accordance with Rule 62.03(4)(b) of the *Rules of Court*, I doubt the correctness of the motion judge's decision with respect to both issues and, on that basis, I grant the motion for leave to appeal.

[4] Pursuant to Rule 62.03(5)(b), with the approval of the Chief Justice, the hearing of the appeal is expedited to a date which will be set by the Chief Justice and communicated to the parties by the Registrar.

[5] Considering the nature and effect of this decision, I direct, in accordance with s. 24(2) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, that it be published in the first instance in English and, thereafter, at the earliest possible time in French.