

CANADA / JUDGMENT

T.F.R. v. Y.T.

2025 BCCA 349

COURT

British Columbia Court of Appeal

DECIDED

14 October 2025

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2025 BCCA 349 T.F.R. v. Y.T.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

T.F.R. v. Y.T.,

2025 BCCA 349

Date: 20251014

Docket: CA51016

Between:

T.F.R.

Appellant

(Appellant)

And

Y.T.

Respondent

(Respondent)

Before:

The Honourable Justice Gomery

(In Chambers)

On appeal from: An order of the Supreme Court, dated September 26, 2025

(T.F.R. v. Y.T., Victoria Docket 2511819).

Counsel for the Appellant

(via videoconference):

A. Mujtabah

Counsel for the Respondent

(via videoconference):

R. Olorunjojon

Place and Date of Hearing:

Vancouver, British Columbia

September 29, 2025

Place and Date of Judgment with Written Reasons to follow:

Vancouver, British Columbia

September 29, 2025

Place and Date of Written Reasons:

Vancouver, British Columbia

October 14, 2025

Summary:

The appellant seeks a stay of orders of Silverman P.C.J. and LeBlanc J. The former permitted the respondent to travel with the parties' child to China within prescribed dates. The latter dismissed an appeal from the first order, aside from one minor variation. Held: Application dismissed. This Court's jurisdiction to stay an order made under the Family Law Act, to the extent that it exists, is limited to circumstances where (1) there was a previous application for a stay to the Court that made the order, which was refused, and (2) an obvious or egregious error warrants overriding that refusal. No such error was made out in the facts of this application.

The application also fails for want of a transcript or note of the reasons given in the court below, without which it is impossible to conclude that there is arguable merit to the appeal, and on the balance of convenience, because mother and child had left for China by the time the stay application was brought and no good purpose would be served by requiring the mother to cut the trip short.

Reasons for Judgment of the Honourable Justice Gomery:

Overview

- [1] The parties are the separated parents of a four-year-old child. The appellant is the father and the respondent is the mother. They share parenting. Unfortunately, relations between the parties have been acrimonious. An apparently simple application by the mother to be able to take the child with her to visit her parents in China gave rise to a protracted hearing before Silverman P.C.J. On August 21, 2025 he made an order permitting the mother to travel to China with the child from September 22 until October 17, 2025.
- [2] The father appealed Silverman P.C.J.'s order to the Supreme Court, where it was heard by LeBlanc J. on Friday, September 26, 2025. At the time, the mother was anticipated to depart, with the child, in the early morning hours on September 30. LeBlanc J. dismissed the appeal on September 26, with one minor variation to the terms of the order made by Silverman P.C.J.
- [3] Late on September 26, 2025, the father's counsel informed the mother's counsel that he had instructions to appeal LeBlanc J.'s order and seek a stay, and would be making that application in Court of Appeal chambers on Monday, September 29. Over the weekend, the mother changed her travel plans and left for China with the child.
- [4] The father persisted with his application, which came on for hearing before me on September 29. The mother's counsel attended, although she had not had a chance to review the father's materials. The father's application was framed as a request for an order staying both the orders of LeBlanc J. and Silverman P.C.J. Orally, counsel explained that, in light of the mother's departure, he was seeking an order that would require the mother to return to Canada within 5 days.
- [5] I dismissed the father's application with reasons to follow. These are my reasons. In brief, the father's application was misconceived for the following reasons:
 - a) This Court's jurisdiction to stay a parenting order made by the Provincial or Supreme Court is doubtful and, to the extent that it exists, it presupposes a previous application to the Court below that was refused and an obvious or egregious error that warrants overriding the decision to refuse a stay. No such error is made out.
 - b) I was asked to hear the application without a transcript of the oral reasons given by LeBlanc J. for dismissing the appeal, or counsel's note of the reasons given. In such circumstances, it is impossible to conclude that there are arguable grounds to determine that the judge erred, and that any interim relief would be justified.
 - c) Even if a stay could be justified in law, the application would fail because, in light of the mother's departure, no good purpose would be served by requiring her to return from China five days after her departure. It is not suggested that the mother breached a court order by leaving unexpectedly early. Judge Silverman's order permitted her to travel after September 23, 2025.

Background

- [6] The parties settled a preliminary parenting dispute by a consent order made in their Provincial Court proceeding on May 3, 2024. It provided for shared parenting time on a 2-2-3 split and provided:
6. Neither parent will remove the Child from the Greater Victoria area.
- [7] On January 14, 2025, the mother filed a notice of application seeking permission to travel with child to China in the fall. The application was heard by Silverman P.C.J. in stages on January 16, 22 and 23, February 14, March 25, and May 21. These were all part-days and counsel disagree as to how long the hearing lasted. The father's counsel says that the hearing time totalled one and a half days, and the mother's counsel says that it was two and one-half days. Both parents testified and were cross-examined.
- [8] On August 21, 2025, Silverman P.C.J. pronounced an order permitting the mother to travel as noted above. He gave brief oral reasons and advised that written reasons would follow. The order required the mother to provide an itinerary of her travel plans and contact details, and to pay into the court registry a \$5,000 deposit to be held as security by the court to ensure her return with the child after the trip.
- [9] The father's counsel advises that, when the order was pronounced, he rose and asked the judge to stay the order while the father pursued an appeal. The judge declined to stay the order, advising that it would not be in the best interests of the child.
- [10] On August 22, 2025, the father filed a notice of appeal to the British Columbia Supreme Court. The appeal was set for hearing on September 26.
- [11] On September 22, 2025, Silverman P.C.J. issued written reasons for judgment.
- [12] On September 26, 2025, LeBlanc J. heard the appeal over the course of a day and dismissed it in oral reasons. The father's counsel advises that, at the conclusion of the judge's reasons, he asked her to stay execution of her order pending an appeal. The judge advised that she did not have jurisdiction to issue a stay, and that the father would need to seek this relief from the Court of Appeal.

Issues

- [13] This application raises the following issues:
1. Has this Court jurisdiction to issue a stay?
 2. Assuming jurisdiction, are the materials adequate to support a claim for interim relief?
 3. Assuming jurisdiction and adequate materials, could a stay be justified in light of the mother's departure and the judge's findings?

Analysis

Jurisdiction to issue a stay

[14] In his written materials, the father describes the stay sought in two parts as follows:

A stay of execution of the order of the Hon. Justice LeBlanc, made on September 26th, 2025, dismissing the appeal of the Hon. Judge Silverman, pronounced on August 21, 2025.

A stay of execution of the order of the Hon. Judge Silverman, pronounced on August 21st, 2025, allowing [Y.T.] to travel with [the child], born on [date].

[15] The first part of the order sought would be legally ineffective. Staying LeBlanc J.'s order would accomplish nothing, because all that order did was to dismiss an appeal. It was the Provincial Court order that gave the mother permission to travel.

[16] Turning to the second part of the order sought, this Court's authority to stay the Provincial Court order is doubtful. The order was made pursuant to the Family Law Act, S.B.C. 2011, c. 25 [FLA] and s. 234 of the FLA limits the ability of an appellate court to stay orders made under the statute. Section 234 provides:

234 Despite any other enactment, if an order made under this Act is appealed, the order remains in effect until the determination of the appeal unless the court that made it orders otherwise.

[17] Several decisions have considered the possibility that, notwithstanding s. 234, this Court may possess "a sliver of jurisdiction" to stay an order made under the FLA in exceptional circumstances: *Bennett v. Bennett*, 2002 BCCA 580 (Chambers) at para. 12; *Stasiewski v. Stasiewski*, 2006 BCCA 53 (Chambers) at para. 11; *Kapoor v. Makkar*, 2020 BCCA 132 (Chambers) at paras. 52-60, reversed 2020 BCCA 223; *J.T.P. v. K.S.*, 2023 BCCA 303 (Chambers) at paras. 19-20. In *J.T.P.*, Hunter J.A. offered the following considered assessment of this line of authority at para. 20:

I conclude from this Court's judgment in *Kapoor* that either the residual jurisdiction referred to by Justice Donald and Justice Abrioux does not exist, or if it exists, the circumstances in which it may be exercised are very limited. At its highest, jurisdiction may exist where it is plain that the trial judge has committed an obvious or egregious error of law, such as making an order not authorized by the Family Law Act or without any consideration of a mandatory requirement of that Act.

[18] I agree with Hunter J.A. and would add the following. At the starting point of this line of cases, in *Bennett*, Donald J.A. hypothesizes the possibility of a sliver of jurisdiction in "a case in which this Court will have to act on an obviously wrong exercise of the Supreme Court's stay jurisdiction": at para. 12. Even if s. 234 does not wholly exclude appellate jurisdiction to stay an FLA order, it must at least be taken as requiring that a stay first be sought in the lower court.

[19] Accordingly, I propose that, if this Court ever has jurisdiction to stay an order made by a lower court under the FLA, it may only exercise its jurisdiction where:

- a) A stay has been sought and refused by the court that made the order; and
- b) It is plain that the judge committed an obvious or egregious error in refusing the stay.

[20] Applying this test, there is nothing in the materials to suggest that Silverman P.C.J. committed an obvious or egregious error in refusing a stay. As required by s. 37 of the FLA, he directed his attention on the best interests of the child. The father's case was that the mother should not be permitted to take the child to China for fear that they would not return. The judge considered the flight risk and was satisfied that the possibility that the mother would not return with the child was unrealistic. He found the mother to be a credible and reliable witness and accepted her evidence that she considers Canada her home, and that the child has only a Canadian passport. She had only travelled to China once since 2018. Her desire to travel to China with the child was motivated in part by a desire to visit her grandmother, who had raised her, and her father, both of whom were experiencing health issues. The judge found that the health issues of the mother's family members constituted a material change of circumstance justifying a variation of the term of the 2024 consent order preventing removal of the child from the Greater Victoria area.

[21] Relying in part on an affidavit from a couple's therapist commenting on the father's "persistent accusations" and suspicions of the mother, the judge stated:

I find that he has and continues to demonstrate irrationality and paranoia towards Ms. [T] and her wish to see her family with her child.

[22] I conclude that this Court is without jurisdiction to stay the Provincial Court order.

Adequacy of the father's materials on the stay application

[23] A stay application requires consideration of the three-part test set out in *R.J.R. MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 334, 337 and 340-42, 1994 CanLII 117, or the two-part test set out in *British Columbia (Attorney General) v. Wale* (1986), 9 B.C.L.R. (2d) 333 at 345-47 (C.A.), 1986 CanLII 171, there being little or no practical distinction between the two tests: *Coburn v. Nagra*, 2001 BCCA 607 at para. 7. Under either formulation, the first question for the court concerns the possible merits of the appeal. It is whether there is "a fair question to be tried" or, in other words, an arguable case on appeal. Where the order under appeal was discretionary, the appellant must present an arguable case that the judge erred in principle, the evidence does not support the order, the order will result in an injustice, or the judge's decision was clearly wrong: *Wale* at 344; *Ip v. Wilson*, 2019 BCCA 189 at para. 4.

- [24] The absence of any indication of the reasons given by the judge who made the order under appeal is a fatal defect to any application to stay that order, because it makes it impossible for a Justice of this Court to assess the merits of the underlying appeal.
- [25] In the case of a decision rendered orally where a stay must be sought at once or not at all, it may be impossible to obtain a transcript of the judge's reasons. In this circumstance, this court will consider counsel's note of the oral reasons given by the judge for the purpose of hearing the application. The best practice is for both counsel to attempt to agree on a note of what was said by the judge. On this application, the father tendered neither a transcript nor a note of LeBlanc J.'s reasons for dismissing the appeal.
- [26] In the absence of any indication of LeBlanc J.'s reasons, the father is not in a position to establish that an appeal is arguable. Even if this Court had jurisdiction to grant a stay, the application must be dismissed.

Other obstacles to granting a stay in the circumstances

- [27] A stay is injunctive relief requiring consideration of the balance of convenience. In this case, the balance of convenience at the time the application came on for hearing on September 29, 2025 manifestly favoured the mother.
- [28] Refusing a stay would allow mother and child to spend time with her relatives as the judge found is in the child's best interests.
- [29] Granting a stay would impose great inconvenience on mother and child for no good purpose. Requiring the mother to return within a few days would deprive her and the child of time with her grandmother and her father. Having just endured a long journey to China, they would be obliged to undertake the return trip without delay. If Silverman P.C.J.'s finding is sound, the mother will return with the child on or before October 17 in any event. If, contrary to the judge's finding, the mother does not intend to return as required by the judge's order, a further order from this Court is hardly likely to change her disposition.
- [30] That the balance of convenience favours the mother is another reason why the application must be dismissed.

Disposition

- [31] For these reasons, I dismissed the stay application.

"The Honourable Justice Gomery"

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