

COURT OF APPEAL OF
NEW BRUNSWICK



COUR D'APPEL DU
NOUVEAU-BRUNSWICK

91-24-CA

B E T W E E N :

E N T R E :

PROVINCE OF NEW BRUNSWICK as
represented by the MINISTER OF SOCIAL
DEVELOPMENT

LA PROVINCE DU NOUVEAU-BRUNSWICK
représentée par la MINISTRE DU
DÉVELOPPEMENT SOCIAL

INTENDED APPELLANT

APPELANTE ÉVENTUELLE

- and -

- et -

C.M.M.

C.M.M.

INTENDED RESPONDENT

INTIMÉE ÉVENTUELLE

Province of New Brunswick as represented by the
Minister of Social Development v. C.M.M.,
2024 NBCA 110

La province du Nouveau-Brunswick
représentée par la Ministre du Développement
social c. C.M.M., 2024 NBCA 110

Motion heard by:
The Honourable Justice LeBlond

Motion entendue par :
l'honorable juge LeBlond

Date of hearing:
September 9, 2024

Date de l'audience :
le 9 septembre 2024

Date of decision:
September 11, 2024

Date de la décision :
le 11 septembre 2024

Counsel at hearing:

Avocats à l'audience :

For the Intended Appellant:
Sarah M.M. Fitzpatrick

Pour l'appelante éventuelle:
Sarah M.M. Fitzpatrick

For the Intended Respondent:
Venessa Comeau Gerrard

Pour l'intimée éventuelle :
Venessa Comeau Gerrard

DECISION

[1] The Minister of Social Development seeks leave to appeal an interlocutory decision of a judge of the Court of King's Bench relating to the adoption of a three year old boy (N.K.) who has been in the foster care of the intended respondent, C.M.M., since October 12, 2021, when he was four days old. N.K. was placed in C.M.M.'s care by the Minister following a guardianship order granted in the Minister's favour.

[2] In order to properly dispose of this motion, a brief review of the history of the case is required. In 2023, C.M.M. advised the Minister of her intention to apply to adopt N.K., but the Minister disagreed without going through the legislated adoption application process. C.M.M. sought judicial review of the Minister's decision. She also applied for interim relief to maintain the status quo pending the outcome of the judicial review. On April 26, 2023, a different judge of the Court of King's Bench issued an interim decision (see *C.M.M. v. Minister of Social Development*, 2023 NBKB 87, [2023] N.B.J. No. 145 (QL)), which included an interim injunction enjoining the Minister from taking any further steps in N.K.'s adoption process and leaving him in C.M.M.'s continuing care until a final determination was made of the judicial review application. The judge further ordered that the application be filed and served no later than May 5, 2023, and the hearing was scheduled for June 1 and 2, 2023.

[3] The Minister sought leave to appeal that interim decision asserting, in part, that the injunction order was contrary to the provisions of the *Proceedings Against the Crown Act*, R.S.N.B. 1973, c. P-18. Moreover, the Minister argued the decision resulted in a serious interference with her parental rights under the former provisions of the *Family Services Act*, S.N.B. 1980, c. F-2.2, and that it also placed the province's foster system in jeopardy if foster parents were permitted to assert rights which took precedence over those of the Minister.

[4] That motion for leave to appeal was heard by my colleague Green J.A. In a decision released on May 10, 2023 (see *Minister of Social Development v. C.M.M.*, 2023 NBKA 27, [2023] N.B.J. No. 110 (QL)), he dismissed the motion with costs of

\$1,500. While he acknowledged the legitimacy of the Minister's arguments, he was guided by the principle that in matters involving children, the best interests of the child must be paramount. He further recognized that the judge then seized with the case understood the urgency of proceeding as expeditiously as possible. Green J.A. was of the view the child's interests would be best served by having the judicial review heard and decided as quickly as possible and that conducting an appeal of an interlocutory decision would add unnecessary delay.

[5] The judicial review did not proceed. Instead, the parties consented to an order on June 12, 2023, wherein the Minister agreed to process C.M.M.'s application for N.K.'s adoption. The assessment of the merits of the application, conducted by an independent organization, was supportive of C.M.M.'s application. Nonetheless, on July 24, 2024, the Minister denied the same and advised of her intention to have N.K. adopted by a family in Nova Scotia who had already adopted children born of the same mother.

[6] Upon receipt of the decision, C.M.M. signaled her intention to the Minister to apply for judicial review. In order to do so, she requested full disclosure of the Minister's file. Counsel advised that process was completed approximately two weeks ago. In addition, as she had done in 2023, C.M.M. applied for and obtained another interlocutory injunction, in addition to other relief. The decision was issued orally by the judge on August 21, 2024, and in writing on August 27, 2024. The judge's disposition was as follows:

It is therefore the Order of this Court that:

- (a) Under Rule 40.05 of the Rules of Court and s. 33 of the *Judicature Act*, RSNB, c. J-2, an interlocutory injunction against the Respondent, the Minister of Social Development, is granted until a final determination is made on the judicial review application that the Applicant must file in accordance with this Order or until further of the Court, such interlocutory injunction being granted upon the following terms:

- i) The Minister of Social Development shall not remove the child (NK), born October 8, 2021, from his current foster home in order for the child to remain in the care of the Applicant;
 - ii) The Minister of Social Development shall not take any further step regarding any adoption process regarding the child NK; and
 - iii) the child NK may continue to have regular visits with his extended family, including the prospective adoptive applicants from Nova Scotia and his siblings;
- (b) No later than August 30, 2024, or any further date mutually agreed upon by the parties, the Respondent, the Minister of Social Development, shall serve the documents contained in Appendix B of its letter dated July 24, 2024, addressed to the Applicant;
 - (c) Upon receipt of the documentation disclosed by the Respondent, the Applicant shall file her Judicial Review Application as soon as possible, but no later than the time prescribed under the Rules of Court;
 - (d) The hearing of the judicial review application shall be within the next three and a half months, with two (2) days to be fixed by the court scheduler.

[7] The judge determined the circumstances of the case and the best interests of N.K. warranted granting the extraordinary remedy of an injunction against the Minister, citing caselaw in support.

[8] No issue was taken by the Minister with respect to the filing deadlines contained in the judge's decision. These deadlines confirm the judge was clearly alive to the urgency of having the judicial review application heard as quickly as possible. Counsel advised the hearing will take place as early as November 12, 2024, and no later than December 17, 2024.

[9] In the present motion for leave to appeal, the Minister raises essentially the same grounds as were raised in the motion heard by Green J.A. While the timeline between the hearing of this motion and the eventual hearing of the judicial review are a bit longer than the timeline in play with the 2023 motion for leave to appeal, they are of the same general order and nothing of significance turns on the slightly longer timeline before me. The significant factor is that the circumstances of the case and, most importantly, the best interests of N.K., have not changed since 2023. I am in complete agreement with the disposition made by Green J.A., in 2023 and dismiss the motion for leave to appeal for the same reasons he did. I would order costs payable by the Minister in the amount of \$2,500.

[10] With the approval of the Chief Justice, I invoke s. 24(2) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5 and this decision will issue first in the English language, and thereafter, at the earliest possible time, in the other official language.