|  |  |
| --- | --- |
| **Droit de la famille — 241524** | **2024 QCCA 1314** |

|  |  |  |
| --- | --- | --- |
| English translation of the judgment of the Court | |  |
| COURT OF APPEAL | | |
| CANADA | | |
| PROVINCE OF QUEBEC | | |
| REGISTRY OF | MONTREAL | |
|  | | |
| No.: 500-09-031146-244 | | |
| (500-12-332205-164) | | |
|  | | |
|  | | |
| MINUTES OF HEARING | | |
|  | | |

**WARNING: Disclosure and circulation prohibited: The *Code of Civil Procedure* (“*C.C.P*.”) provides that, except as authorized by the court, no person shall disclose or circulate any information that would allow a party or a child whose interests are at stake in a proceeding in a family matter to be identified (art. 16 *C.C.P*.).**

|  |  |
| --- | --- |
| DATE: October 4, 2024 |  |
|  |  |
| CORAM: THE HONOURABLE | MARIE-FRANCE BICH, J.A. |
|  | STÉPHANE SANSFAÇON, J.A. |
|  | BENOÎT MOORE, J.A. |

|  |  |
| --- | --- |
| APPELLANT |  |
| J. F. | ABSENT AND UNREPRESENTED |
| RESPONDENT | COUNSEL |
| S. FL. | Mtre MANUELA SANTOS  Absent |

|  |  |
| --- | --- |
| DESCRIPTION: | **Application to suspend the execution** (art. 660 *C.C.P*)  **Application for leave to appeal after the expiry of the time limit** (art. 363 *C.C.P*.)  **Application to dismiss the appeal** (art. 365 *C.C.P*.) |

|  |  |
| --- | --- |
| Clerk at the hearing: Élizabeth Lanthier | Courtroom: Pierre-Basile-Mignault |

|  |
| --- |
| HEARING |

|  |  |
| --- | --- |
| 9:31 | Commencement of the hearing.  Continuation of the hearing held on September 30, 2024. The parties were excused from appearing in Court.  **BY THE COURT**: Judgment – see page 3.  Conclusion of the hearing. |
|  |  |

|  |
| --- |
|  |
| Élizabeth Lanthier, Clerk at the hearing |

|  |
| --- |
| JUDGMENT |

**WARNING: Disclosure and circulation prohibited: The *Code of Civil Procedure* (“*C.C.P*.”) provides that, except as authorized by the court, no person shall disclose or circulate any information that would allow a party or a child whose interests are at stake in a proceeding in a family matter to be identified (art. 16 *C.C.P*.).**

1. In a judgment dated June 19, 2024 (the Honourable Justice Marc St-Pierre), the Superior Court modified the sharing of parenting time for the parties’ two children, authorized one of the children to be registered in a new school, attributed income to the appellant, condemned him to pay child support based on that attributed income and further condemned him to pay $1,767.24 as overdue special expenses. It also condemned him to pay $9,776.61 for serious breaches of procedure under art. 342 *C.C.P.*
2. In his notice of appeal, the appellant alleges that the judge erred: (1) in modifying the sharing of parenting time when there was no justification for doing so and even though the respondent had not requested it; (2) in attributing income of $67,077 to him, although he is currently unemployed and is trying to start up a business; (3) in taking into account a loan he received from his current wife; and (4) in finding that there were breaches of procedure under art. 342 *C.C.P.*
3. Although the appellant can appeal as of right on his first three grounds (subject to para. [8] hereinbelow), the fourth requires leave under art. 30 para. 2(6) *C.C.P.* The appellant has therefore seized this Court of an application for leave to appeal after the expiry of the time limit from the order made under art. 342 *C.C.P.* as well as an application to stay the provisional execution of the judgment. As for the respondent, she filed an application to dismiss the appeal.
4. With respect to the application for leave to appeal from the order made under art. 342 *C.C.P.*, the appellant submits that the case raises a question of principle – namely, what constitutes a breach of procedure – and he argues that seeking to have a subpoena quashed is a normal and legitimate procedure. The appellant’s argument is not convincing. The points he has raised pertain solely to the judge’s application of art. 342 *C.C.P.* to the circumstances of the case. The judge noted the appellant’s [translation] “obstinacy” in not providing the relevant financial information and in his multiple procedures to that end. This matter involves the trial judge’s exercise of his discretion, and there is nothing that warrants having it come before the Court.
5. In her application to dismiss, the respondent submits that the appeal is doomed to fail. She is correct.
6. With respect to the sharing of parenting time, the record indicates that this request was indeed before the judge and that he essentially followed the recommendations in the psychosocial report, except for Friday overnight stays by one of the children, given that child’s refusal to stay overnight. The appellant has not shown any error that would justify the Court’s intervention.
7. Regarding the child support and income attribution, these are also matters that involve the trial judge’s exercise of his discretion, which calls for a great deal of deference from this Court.[[1]](#footnote-1) In his notice of appeal, the appellant simply alleges that he does not earn the income attributed to him and reiterates the arguments the judge rejected. As he has failed to identify a palpable and overriding error in the assessment of the evidence and in the trial judge’s exercise of his discretion, the appeal on this point is doomed to fail.
8. Finally, although the respondent did not raise the following point, we would add that the appeal is tardy on the first three grounds. Indeed, the appeal in that regard pertains to corollary relief in connection with a divorce, and pursuant to s. 21(3) of the *Divorce Act*,*[[2]](#footnote-2)* such an appeal must be instituted within thirty days of the order and not, as art. 360 *C.C.P.* provides, within thirty days of the notice of judgment.[[3]](#footnote-3) In the matter at hand, the judgment was rendered on June 19, 2024, but the appeal was only instituted on August 5, 2024.
9. Given the outcome of these first two applications, the application to stay the provisional execution of the judgment is moot.

**FOR THESE REASONS, THE COURT:**

1. **DISMISSES** the application for leave to appeal after the expiry of the time limit;
2. **GRANTS** the respondent’s application to dismiss the appeal;
3. **DISMISSES** the appeal;
4. **DECLARES** that the application to stay the provisional execution of the judgment is moot;
5. **THE WHOLE** without legal costs, given the nature of the case.

|  |  |
| --- | --- |
|  | MARIE-FRANCE BICH, J.A. |

|  |  |
| --- | --- |
|  | STÉPHANE SANSFAÇON, J.A. |

|  |  |
| --- | --- |
|  | BENOÎT MOORE, J.A. |

1. *Droit de la famille — 211587*, 2021 QCCA 1273, para. 10; *Droit de la famille — 171068*, 2017 QCCA 814, para. 18; *Droit de la famille — 172619*, 2017 QCCA 1732, para. 23. [↑](#footnote-ref-1)
2. R.S.C. 1985, c. 3 (2nd Suppl.). [↑](#footnote-ref-2)
3. *Droit de la famille — 222215*, 2022 QCCA 1719, paras. 27 and 28. [↑](#footnote-ref-3)