



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *A.P. v. H.O.*, 2026 NLCA 25

Date: July 6, 2026

Docket Number: 202501H0077

BETWEEN:

A.P.

APPELLANT

AND:

H.O.

RESPONDENT

Coram: D.M. Boone C.J.N.L., F.P. O'Brien and G.L.C. Noel JJ.A

Court Appealed From: Supreme Court of Newfoundland and Labrador,
Family Division, 202302F0671

Appeal Heard: May 25, 2026

Judgment Rendered: July 6, 2026

Reasons for Judgment by: G.L.C. Noel J.A.

Concurred in by: D.M. Boone C.J.N.L. and F.P. O'Brien J.A.

Counsel for the Appellant: Self-Represented

Counsel for the Respondent: Anna Morgan

Authorities Cited:

CASES CITED: *T.H. v J.H.*, 2025 NLCA 41, leave to appeal to SCC refused, 42189 (2 July 2026); *S.P. v. H.B.*, 2025 NLCA 20; *B.J.T. v. J.D.*, 2022 SCC 24, [2022] 1 S.C.R. 668; *P.(D.) v. S.(C.)*, [1993] 4 S.C.R. 141; *E.K. v R.K.*, 2022 NLCA 62; *Young v. Young*, [1993] 4 S.C.R. 3; *A.B. v. C.D.*, 2020 BCCA 11; *N. v. F.*, 2020 ONSC 7789, aff'd 2020 ONCA 614, aff'd 2022 SCC 51.

STATUTES CONSIDERED: *Canadian Charter of Rights and Freedoms*, sections 15, 7, 2(d), 24(1).

RULES CONSIDERED: *Supreme Court Family Rules*, being Part IV of the *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, rule F19.

G.L.C. Noel J.A.:

OVERVIEW

[1] A.P. is the father of a young child. He is appealing the decision of a justice of the Supreme Court of Newfoundland and Labrador, Family Division, denying him permission to file an application for variation of an interim parenting order. H.O., the mother of the child, opposes the appeal.

[2] The father argues that the judge misapplied Rule F19 of the *Supreme Court Family Rules*, being Part IV of the *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, by finding no compelling change of circumstances, misapprehending the evidence, violating his rights under the *Canadian Charter of Rights and Freedoms*, and applying inconsistent judicial logic.

[3] The mother submits that there was no error of law and that the father is attempting to re-try issues that were correctly adjudicated by justices of the Supreme Court.

[4] For the reasons that follow, I would dismiss the appeal and order the father to pay Column 3 costs on the appeal to the mother.

BACKGROUND

[5] The procedural history provides important context for disposing of the appeal.

[6] The father filed an Originating Application regarding parenting, together with an Interim Application for access, in October 2023, six months after the child was born. Since that time, the parties have been involved in high conflict litigation over parenting of the child. There have been various interim applications, emergency interim applications, and applications to vary interim orders.

[7] On November 29, 2023, a judge of the Supreme Court granted an interim order regarding parenting of the child. The interim order provided that the mother would be the primary caregiver of the child and that the father would have daytime access for three hours per day three times per week as well as specified video access on certain other days.

[8] On September 11, 2024, upon the father's application, the same judge of the Supreme Court made a further interim order increasing the father's access to seven hours per day three times per week (the "Interim Order"). That Order also stipulated where and how transfers were to happen given the circumstances of the parties. The child lived with the mother, who did not have a driver's license to transport the child to facilitate the transfers.

[9] In a decision dated August 1, 2025, a different judge of the Supreme Court denied the father permission to proceed with an application to vary the Interim Order. In brief reasons filed as an endorsement, the judge indicated that it was the fourth time the father had sought to vary an interim order regarding parenting.

[10] On October 1, 2025, another judge of the Supreme Court, whose decision is the subject of this appeal, denied the father permission to proceed with a further application to vary the Interim Order (the "Application"). The Application was based on alleged new facts that, the father submitted, were not previously before the court, including the father's statements that he no longer owned a vehicle and was relying on public transportation. The judge found that the issue of "transportation difficulties" was previously considered by the judge who denied the father permission to proceed with a similar application on August 1, 2025.

ISSUE

[11] The issue on appeal is whether the judge, in her decision of October 1, 2025, denying permission to bring the Application to vary the Interim Order, misapplied Rule F19 of the *Supreme Court Family Rules* by:

- (i) finding no compelling change of circumstances,
- (ii) misapprehending evidence,
- (iii) violating the father's *Charter* rights, or
- (iv) applying inconsistent judicial logic.

STANDARD OF REVIEW

[12] Judges have considerable discretion regarding interim applications for parenting. This Court should not interfere with interim orders unless the reasons disclose an error in principle, a significant misapprehension of the evidence, or the order is clearly wrong (*T.H. v J.H.*, 2025 NLCA 41, at para. 24, leave to appeal to SCC refused, 42189 (2 July 2026)).

[13] Interim parenting orders are intended to cover a short period of time and to provide a temporary solution until trial, or until such time as the parties can resolve the parenting dispute by agreement. Judges of the Supreme Court frequently assist the parties to resolve parenting disputes through mediation and settlement conferences. Failing a negotiated parenting resolution, parties have the option to proceed to trial where there is the opportunity for a full investigation of the facts. The judge presiding at trial will render judgment based on the trial evidence and will not be bound by interim orders previously granted (*T.H.*, at para. 25).

[14] This is why appeals from interim orders may be an inefficient use of judicial resources, and why the parties should, in the best interests of the child, take all appropriate steps to move the matter along to a settlement or final disposition (*S.P. v. H.B.*, 2025 NLCA 20, at para. 13; *T.H.*, at paras. 26-27).

[15] The judge at first instance is “in the best position to assess evidence pertaining to the best interests of the child” (*B.J.T. v. J.D.*, 2022 SCC 24, [2022] 1 S.C.R. 668, at para. 55, citing *P.(D.) v. S.(C.)*, [1993] 4 S.C.R. 141, at 192). Therefore, as an

appellate court, this Court must afford a high level of deference to a judge's decision to deny permission to bring an application to vary an interim parenting order.

ANALYSIS

Did the judge misapply Rule F19 of *Supreme Court Family Rules*?

[16] The judge did not misapply Rule F19.

(i) No compelling change of circumstances

[17] For permission to be granted to proceed with an application to vary an interim order, the court must be convinced that a compelling change of circumstances has occurred. The granting of permission engages a three-stage test outlined in Rule F19.02(3):

(3) A judge may grant permission to proceed with an application to vary an interim order where:

(a) there has been a compelling change of circumstances since the date the interim order was made;

(b) there is an urgent or immediate need to hear the application as irreparable harm will likely occur before the matter can proceed to a final hearing; and

(c) either

(i) the party has taken steps to advance the matter to a hearing or otherwise resolve the issues in dispute, or

(ii) there is a valid reason why the matter has not advanced to a hearing or final resolution.

[18] In this case, the change presented by the father did not pass the first stage of the test. The Interim Order issued on September 11, 2024, provided that transfers would happen just outside the mother's home. The court determined on multiple assessments that the father's lack of a vehicle did not amount to a compelling change of circumstances justifying an amendment to the Interim Order.

[19] The father relies on this Court's decision in *E.K. v R.K.*, 2022 NLCA 62. He argues that permission should be granted where the applicant presents evidence of new circumstances that could, if proven, affect the best interests of the child.

[20] In *E.K.*, this Court stated at paragraph 19:

In the context of a request for permission under rule F19.02(3), a *compelling* change of circumstances should be one that is powerful enough to demand the attention of the parties and judge. If it is, then the application to vary can proceed, and the judge can decide whether the change is a *material* one that justifies variation in the Interim Order.

[21] The judge noted in her October 1, 2025 decision that the father's transportation concerns were previously addressed by the court in the decision of August 1, 2025. At that time, the father's transportation issue was not found to be a compelling change of circumstances. The judge, in the October 1, 2025 decision, stated:

The fact that [the father] does not have a car was an issue before [the judge] when she considered the previous application, though the transportation difficulties then were thought to be temporary. Regardless, the transportation issue was previously considered by [the judge] in relation to [the father's] request for leave to proceed with an Application to vary an Interim Order.

[22] The judge determined there was no compelling change of circumstances, and this Court owes deference to the judge's determination in that regard, in the absence of a reviewable error.

(ii) No misapprehension of evidence

[23] The father submits that the judge ignored key contradictory evidence and mischaracterized his new evidence. The mother disputes this and submits that the judge properly assessed the evidence in its entirety.

[24] The judge did not ignore, misapprehend, or mischaracterize the evidence. The judge reviewed the evidence presented, in the context of the evidence already before the court, and found no compelling change of circumstances warranting a modification to the Interim Order.

(iii) No violation of the father's *Charter* rights

[25] The father alleges violations of sections 15, 7, 2(d), and 24(1) of the *Charter*.

[26] The father's *Charter* arguments are without any legal foundation. The *Charter* does not apply to a private parenting dispute (*P.(D.)*, at 181; *Young v. Young*, [1993] 4 S.C.R. 3, at 90-92; *A.B. v. C.D.*, 2020 BCCA 11, at para. 203; *N. v. F.*, 2020 ONSC 7789, at para. 425, aff'd 2020 ONCA 614, aff'd 2022 SCC 51). Further, the circumstances of this case did not require the judge to consider whether the father's underlying *Charter* values were engaged.

[27] Although the *Charter* has no application in this case, I will canvass each of the father's *Charter* arguments.

[28] He argues that his s. 15 equality rights were breached because of "unequal standards". He alleges "as a disabled and medically vulnerable parent", he "bore disproportionate burdens" (Appellant's Factum, at para. 32). The judge considered the medical letter from the father's treating physician and disagreed that it was more comprehensive than the letter which was previously provided and considered by the court. The judge concluded, "In my view, the content is virtually the same, though worded differently and is slightly longer."

[29] The father submits that his s. 7 security of the person rights were breached because the denial of permission to proceed with an application "forced" him "to choose between life-preserving treatment and seeing his son" (Appellant's Factum, at para. 35).

[30] It is clear from the Supreme Court decisions of both August 1, 2025 and October 1, 2025 that the court considered the parties' circumstances, including the father's ongoing medical treatment, in the assessment of the claimed change of circumstances.

[31] The father also alleges that his s. 2(d) freedom of association rights were breached because "the access conditions unjustifiably interfered with [his] ability to maintain a meaningful relationship with his son" (Appellant's Factum, at para. 36).

[32] The access conditions have been the same since the September 11, 2024 Interim Order. There is nothing in the decision of October 1, 2025 that prevents the

father from exercising his parenting time with the child. It is for the father to determine how to exercise his parenting rights considering his circumstances.

[33] The father seeks the enforcement of his *Charter* rights and relief from alleged breaches, pursuant to s. 24(1) of the *Charter*. He claims that, given his uncertain medical prognosis, “delayed relief risks irreparable harm to the parent-child relationship” (Appellant’s Factum, at para. 37). The mother submits that seeking a remedy through reliance on the *Charter* is inappropriate. I would agree with the mother.

(iv) No inconsistent judicial logic

[34] Finally, the judge’s reasoning did not demonstrate “inconsistent judicial logic”, as the father argues.

[35] He submits that the mother’s claims about his health were accepted “as compelling reasons to restrict him”, but that when he later relied on “medical letters from the doctors, vehicle repossession, and worsened conditions”, these same issues were deemed “not compelling” (Appellant’s Factum, at paras. 38-39).

[36] In the present circumstances, this Court owes deference to the Supreme Court judge who has considered the totality of the circumstances and determined, through the lens of the best interests of the child, to deny permission to bring the Application to vary the Interim Order.

COSTS

[37] Costs are in the discretion of the Court.

[38] The mother has private counsel and has succeeded in having the appeal dismissed. I would order the father to pay Column 3 costs on the appeal to the mother.

DISPOSITION

[39] I would dismiss the appeal and order the father to pay Column 3 costs on the appeal to the mother.

G.L.C. Noel J.A.

I Concur: _____

D.M. Boone C.J.N.L.

I Concur: _____

F.P. O'Brien J.A.