

IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR

Citation: *Sheppard v. Rees*, 2026 NLCA 33
Date: October 2, 2026
Docket Number: 202601H0052

BETWEEN:

BLAIR PAUL SHEPPARD

APPLICANT/APPELLANT

AND:

TIFFANY JAYNE REES

RESPONDENT

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

Court Appealed From:	Supreme Court of Newfoundland and Labrador, Family Division 202402F0738
Application Heard:	September 23, 2026
Judgment Rendered:	October 2, 2026
Reasons for Judgment by:	G.L.C. Noel J.A.
Counsel for the Applicant/Appellant:	Self-Represented
Counsel for the Respondent:	Julia Fitzpatrick

Authorities Cited:

CASES CITED: *RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; *Canada (Royal Canadian Mounted Police) v. Rees*, 2005 NLCA 4; *P.O. v. S.F.*, 2025 NLCA 34; *S.P. v. H.B.*, 2024 NLCA 34; *Nolan v. O'Connor*, 2026 NLCA 27; *S.P. v. H.B.*, 2025 NLCA 20; *Henley v. Henley*, 2021 NLCA 46; *Pelley v. Pelley*, 2003 NLCA 6, leave to appeal to SCC refused, 29883 (4 March 2004); *Young v. Young*, [1993] 4 S.C.R. 3.

RULES CONSIDERED: *Court of Appeal Civil Rules, 2025*, NLR 44/25, rules 42(2), 37, Appendix, 52(1).

OTHER: *Spousal Support Advisory Guidelines* (July 2008).

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

OVERVIEW

[1] A judge of the Supreme Court of Newfoundland and Labrador (Family Division) ordered Blair Paul Sheppard to pay interim partner support in the amount of $1,224.00 per month to Tiffany Jayne Rees, beginning on July 1, 2026 (the "Interim Order"). Mr. Sheppard is appealing the Interim Order. He has applied under rule 42(2) of the *Court of Appeal Civil Rules, 2025*, NLR 44/25, for a stay, or partial stay, of the enforcement of the Interim Order pending disposition of his appeal (the "Stay Application").

[2] Ms. Rees opposes the Stay Application on the basis that Mr. Sheppard has failed to satisfy the legal test for a stay. She is seeking solicitor-client costs on the application.

[3] Mr. Sheppard also applies under rule 37 of the *Court of Appeal Civil Rules, 2025*, for the Court to consider additional evidence that was not before the applications judge (the "Application for Additional Evidence").

[4] For the reasons that follow, Mr. Sheppard has failed to establish the test for staying the Interim Order. The Stay Application is denied with Column 3 costs payable to Ms. Rees. Mr. Sheppard's Application for Additional Evidence will be for the panel hearing the appeal to consider and decide.

ISSUE

[5] The issue on the Stay Application is whether the Court should grant a stay, or partial stay, of the Interim Order pending determination of the appeal.

BACKGROUND

[6] The procedural background explains the context of how the applications judge arrived at imputing Mr. Sheppard's income.

[7] On October 29, 2024, Ms. Rees filed in the Supreme Court an Originating Application for determination of issues related to partner support and division of property.

[8] The Supreme Court issued a procedural order, dated October 17, 2025, regarding the property jointly owned by the parties (the "Property"), including directions regarding the appraisal of the Property.

[9] On May 13, 2026, Ms. Rees filed an interim application seeking an order for interim partner support in the form of a monthly payment of $1,735.00 under the *Spousal Support Advisory Guidelines* (July 2008), based on an imputed income for Mr. Sheppard of $193,000.00 (the "Interim Application"). The Interim Application also requested an order allowing for the immediate sale of the Property with net proceeds to be shared equally between the parties.

[10] Mr. Sheppard and Ms. Rees both filed affidavits in relation to the Interim Application.

[11] On June 10, 2026, upon hearing from the parties, the applications judge directed both parties to file affidavits addressing the imputation of income for partner support purposes.

[12] On June 24, 2026, the Interim Application continued before the applications judge. Both parties were represented by experienced family law practitioners. The applications judge addressed the requested supplementary affidavits filed by the parties concerning the imputation of income for the purposes of an interim partner support order.

THE APPLICATIONS JUDGE'S DECISION

[13] The applications judge, after hearing submissions from counsel, ultimately imputed Mr. Sheppard's income at $133,681.00, and Ms. Rees's income at $28,750.00. The applications judge ordered partner support at the high range in the monthly amount of $1,224.00.

[14] The applications judge explained that the court was endeavoring to use the most accurate and current income information available for both parties (Transcript, 24 June 2026, at pp. 2, 6 ("Transcript")). Mr. Sheppard's projected 2026 income was used because the Revenue Canada 2025 notice of assessment was not in evidence (Transcript, at p. 15). The applications judge stated that the amount of $150,000.00 in expenses that Mr. Sheppard was claiming in staffing on his business income of $366,000.00 was "disproportionate" and "not believable". The applications judge acknowledged she could be wrong, but the adjustment could be made at a settlement conference or trial after all final disclosure was made (Transcript, at pp. 24-27). For Ms. Rees, the applications judge averaged the last two years of income for 2023 and 2024 (Transcript, at p. 39).

[15] The applications judge concluded that the high-end range of the DivorceMate calculation was appropriate to order because Ms. Rees alleged that she "has been incurring a significant amount" of joint debt, and the lack of interim evidence to suggest otherwise (Transcript, at pp. 39-40).

LAW

[16] Whether a stay of an order pending appeal should be granted is governed by a three-part test established by the Supreme Court of Canada (*RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at pp. 334, 337-343). This Court, and any judge hearing a stay application, is bound to follow the factors to be considered, and the way they are to be applied (*Canada (Royal Canadian Mounted Police) v. Rees*, 2005 NLCA 4, at para. 42). The Court has applied the test in the context of appeals of interim support orders in the recent cases of *P.O. v. S.F.*, 2025 NLCA 34, and *S.P. v. H.B.*, 2024 NLCA 34 ("*S.P. 2024*").

[17] The test requires that Mr. Sheppard establish that:

1. There is a serious issue to be determined on appeal;

2. He would suffer irreparable harm if no stay order was granted; and

3. The balance of inconvenience, as between the parties, favours imposing a stay of the Interim Order.

ANALYSIS

1. Serious issue under appeal

[18] Whether Mr. Sheppard can establish a serious issue to be determined on his appeal is a low threshold. A prolonged examination of the merits is neither necessary nor desirable. The preliminary assessment of the merits is limited to considering whether the appeal is frivolous or vexatious (*RJR — MacDonald Inc.*, at pp. 337-338; and *P.O. v. S.F.*, at para. 10).

[19] A frivolous appeal "has no substance" in the sense that it is "without arguable merit". A vexatious appeal "is one that is brought for an improper purpose such as to harass, annoy, or embarrass a party and not for the legitimate purpose of seeking the vindication of legal rights" (*Nolan v. O'Connor*, 2026 NLCA 27, at paras. 20, 22).

[20] Mr. Sheppard argues the applications judge erred in the assessment of the income foundation used to impute his income for the purpose of quantifying the interim support amount. He submits the applications judge failed to consider necessary expenses in arriving at his income earnings and accordingly, improperly imputed a much higher income than he is generating from his insurance business.

[21] The relief Mr. Sheppard seeks in his Notice of Appeal is that the "matter be remitted for redetermination on a complete and accurate income record" (Appeal Book, Tab 1, at p. 7).

[22] Ms. Rees argues that the appeal is both frivolous and vexatious. She submits Mr. Sheppard's reliance on unadmitted additional evidence raises frivolity concerns. The appeal is vexatious she submits because this Court is not the appropriate venue for Mr. Sheppard to seek reassessment of the completeness and accuracy of the interim record in the court below. Ms. Rees complains that unnecessary time and costs are being incurred by her having to focus on Mr. Sheppard's improper appeal.

[23] This Court has repeatedly warned that an appeal of an interim support order is an inefficient use of judicial resources, and that any disparities between the interim and final order can be corrected retroactively without an appeal (*P.O. v. S.F.*, at para. 31, citing *S.P. v. H.B.*, 2025 NLCA 20, at paras. 13-14 ("*S.P. 2025*")). The applications judge was entirely cognizant that the income records lacked completeness, and she recognized any inaccuracies in her assessment of the income could later be rectified on final resolution.

[24] Appellate review of an interim order involves a highly deferential and stringent standard. Judges have discretion to decide an interim application based on affidavits and oral arguments of the parties. Where financial information has not been provided as required, a judge may impute income in the amount that the judge considers appropriate. This Court will not lightly interfere with the discretionary order of a judge made on an interim order in respect of a partner support order; factual findings or credibility findings will not be overturned unless the applications judge is shown to have made a palpable and overriding error (*S.P. 2024*, at para. 14; and *S.P. 2025*, at paras. 9-12). To be successful on appeal, Mr. Sheppard will have to address these considerations.

[25] Even if Mr. Sheppard's appeal is unlikely to succeed, I am nevertheless satisfied that his appeal is neither frivolous nor vexatious and meets the low threshold of a serious issue to be tried.

[26] I must proceed to consider the second and third prongs of the test.

2. Irreparable harm

[27] Mr. Sheppard argues he would suffer irreparable harm if no stay, or partial stay, order was granted.

[28] Mr. Sheppard submits that he has laid off staff and his ability to generate business revenue is deteriorating. In his submissions he states his "business is gone".

[29] In determining whether irreparable harm exists, the Court considers the nature of the alleged harm rather than its magnitude. It is harm which either cannot be quantified in monetary terms; or in the circumstances of this case, harm which cannot be cured later by the recipient party of the payments reimbursing the paying party (*RJR — MacDonald Inc.*, at p. 341).

[30] Ms. Rees submits that the reasoning of K.J. O'Brien J.A. in *S.P. 2024* applies, and that Mr. Sheppard has not demonstrated any alleged harm. Any overpayment of interim support can be accounted for in a final order, if this Court ultimately holds that Mr. Sheppard has overpaid support, including set-off from future payments ordered or repayment by Ms. Rees directly to Mr. Sheppard (*S.P. 2024*, at para. 19; and *P.O. v. S.F.*, at para. 19). Even before a final order, there are avenues available to Mr. Sheppard, including seeking a variation of the Interim Order in the court below if he can demonstrate a material change in circumstances (*S.P. 2024*, at para. 23; and *P.O. v. S.F.*, at para. 21).

[31] The parties are also on the Settlement Conference List in the Supreme Court and awaiting notification of a date for the Settlement Conference. Judges of the Supreme Court are skilled and experienced in assisting the parties achieve final resolution of the remaining matters in dispute.

[32] Mr. Sheppard's supporting affidavit and financial records (Exhibits F1-F4) fail to demonstrate irreparable harm. On the contrary, they reveal he is still working and earning income from his business.

[33] In the absence of evidence of irreparable harm to Mr. Sheppard, Ms. Rees is entitled to enforcement of the Interim Order pending disposition of the appeal.

3. The balance of inconvenience

[34] The balance of inconvenience, as between the parties, also favours denying a stay of the Interim Order.

[35] In assessing the balance of inconvenience, I must determine which of the parties would suffer the greater harm from the granting or refusal of the stay of enforcement (*RJR — MacDonald Inc.*, at pp. 342-343). It is only the "*potential for harm"* to the parties that I need to consider, and not whether actual harm will result from granting or refusing the stay (*Canada (Royal Canadian Mounted Police)*, at para. 61; and *P.O. v. S.F.*, at para. 24).

[36] Ms. Rees argues that the potential harm she may suffer if the stay is granted outweighs the potential harm to Mr. Sheppard if the stay is refused.

[37] Ms. Rees submits that the applications judge accepted, and Mr. Sheppard did not contest in the court below, that the parties began living together on May 1, 2017,

and separated on or about May 5, 2024. Ms. Rees argues that not receiving any form of partner support since separation until July 2026, despite a strong entitlement claim on compensatory and non-compensatory grounds as set out in her Interim Application, has left her at significant detriment after the role she adopted during the parties' relationship.

[38] Further, as set out in Ms. Rees's Interim Application, she has serviced matrimonial debt, including joint and individual debts incurred in relation to family expenses, Mr. Sheppard's business expenses, and home renovations, to which Mr. Sheppard has not fully contributed. The applications judge, when dealing with Mr. Sheppard's desire to stay in the matrimonial home, noted Ms. Rees's concerns about wanting the sale of the home to happen in short order to get access to her equity for servicing the alleged joint debt (Transcript, at pp. 53-54).

[39] If a stay is granted, Ms. Rees will be placed in an increasingly financially vulnerable position, particularly given her reduced access to credit arising from her continued servicing of these debts. I am satisfied this constitutes potential harm that weighs against granting a stay pending determination of the appeal.

[40] With regards to the potential harm to Mr. Sheppard, he has not produced evidence to satisfy me that he is unable to pay the amount of interim partner support ordered, or that he would suffer unduly if required to do so pending determination of the appeal. Such evidence is required to satisfy this prong of the test (*S.P. 2024*, at para. 29).

[41] Based on the foregoing analysis, Mr. Sheppard has therefore failed to establish the criteria for the granting of a stay of the Interim Order.

COSTS

[42] Ms. Rees has been successful in contesting Mr. Sheppard's Stay Application. Solicitor-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties. Accordingly, the fact that an application has little merit is no basis for awarding solicitor-client costs (*Henley v. Henley*, 2021 NLCA 46, at para. 36, citing *Pelley v. Pelley*, 2003 NLCA 6, at para. 40, leave to appeal to SCC refused, 29883 (4 March 2004), and *Young v. Young*, [1993] 4 S.C.R. 3, at p. 283).

[43] Mr. Sheppard's conduct does not rise to the level that would warrant solicitor-client costs.

[44] Ms. Rees is awarded Column 3 costs under the Scale of Costs (*Court of Appeal Civil Rules, 2025*, at Appendix). In the absence of agreement between the parties, Ms. Rees shall have her costs taxed.

CONDUCT OF THE APPEAL

[45] Mr. Sheppard has responsibility as the appellant to take the next steps in perfecting his appeal. He has filed a complete transcript of the proceedings under appeal and an Appeal Book. He acknowledges the Appeal Book does not contain all the evidence that was before the applications judge.

[46] At the close of the hearing, I addressed and set filing dates with the parties. Mr. Sheppard requested until October 30, 2026, to file the Supplementary Appeal Book and his Factum for the appeal, and I order accordingly.

[47] Ms. Rees shall have until November 30, 2026, to file her Factum (including the response to Mr. Sheppard's Application for Additional Evidence) and a further Supplementary Appeal Book, if upon review of Mr. Sheppard's Appeal Book and Supplementary Appeal Book, there are documents otherwise required for filing pursuant to rule 52(1).

[48] Mr. Sheppard may choose not to pursue his appeal further and instead focus on resolving matters in the court below. If he decides to proceed with the interim appeal, and once the remaining filings are completed, he or Ms. Rees may file a Form 20 Request to set the appeal hearing date.

DISPOSITION

[49] Mr. Sheppard's Stay Application is dismissed with Column 3 costs awarded to Ms. Rees.

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G.L.C. Noel J.A.