



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

**Citation:** *Stoodley v. Stoodley*, 2020 NLCA 10

**Date:** March 5, 2020

**Docket Number:** 202001H0004

**BETWEEN:**

KEITH STOODLEY

APPELLANT/APPLICANT

**AND:**

AMY DIANNE STOODLEY

RESPONDENT

**Coram:** Welsh J.A.

**Court Appealed From:** Supreme Court of Newfoundland and Labrador  
Family Division 201402F0784  
(2019 NLSC 165)

**Application Heard:** February 10, 2020

**Decision Rendered:** March 5, 2020

**Reasons for Decision by:** Welsh J.A.

**Counsel for the Appellant/Applicant:** Sandra M. Burke Q.C.

**Counsel for the Respondent:** Paul D. Dicks Q.C.

**Welsh J.A.:**

[1] This is an application by Keith Stoodley to stay the enforcement of an order for the payment of retroactive and continuing spousal support pending disposition of the appeal. At the February 10, 2020 hearing, a temporary stay was granted to give the parties an opportunity to pursue a possible agreement. The stay, which expired on February 25, 2020, was extended at the request of counsel until March 3, 2020. On March 4, 2020, counsel advised that agreement had not been reached. Counsel for Mr. Stoodley requested that I proceed to make a decision on the application for a stay. The appeal is set to be heard on June 17, 2020.

[2] Pursuant to an interim order, commencing April 1, 2018, Mr. Stoodley was ordered to pay to Ms. Stoodley monthly spousal support of \$24,000. He has been paying that amount but appeals the final order that increases the monthly spousal support payment and orders retroactive support. For purposes of this application, two components of the notice of appeal are relevant:

3. A.

(ii) That the decision of the Honourable Trial Judge that [Keith Stoodley] pay to [Dianne Stoodley] a lump sum of \$1,002,730 as retroactive spousal support from the date of separation to September 2019 be reversed;

(iii) That the decision of the Honourable Trial Judge that [Keith Stoodley] pay to [Dianne Stoodley] periodic spousal support payments of \$42,594 per month, commencing October 1, 2019, reducing to \$35,047 per month once the Judgment is satisfied and retroactive support is received, be reversed;

[3] In accordance with rule 42(2) of the *Court of Appeal Rules*, NLR 38/16, the Court may stay the enforcement of an order under appeal pending disposition of the appeal. The test to be applied is set out in *Vey v. Newfoundland and Labrador Pharmacy Board*, 2019 NLCA 72:

[4] In determining whether to grant an application for a stay pending an appeal, a three-pronged test is applied as discussed in *Weir's Construction Limited v. Warford Estate*, 2016 NLCA 65, 1 C.A.N.L.R. 282:

[17] The first prong of the test is whether there is a serious issue to be argued on appeal. This requires a preliminary, but not a detailed or extensive, investigation of the merits of the appeal to ascertain whether the appeal is frivolous or vexatious. ...

[18] The second prong of the test is whether the applicant for the stay will suffer irreparable harm if the stay is not granted. It is the nature of the harm, rather than its magnitude, that must be considered. ...

[19] The third prong of the test is an assessment of the balance of inconvenience. ...

[4] Ms. Stoodley concedes the first of these, that is, that there is an arguable basis for the appeal.

[5] In applying the second and third prongs of the test, it is convenient to deal separately with retroactive and continuing spousal support, subject to a special consideration. That is, pursuant to the order under appeal, the payment of \$42,594 per month spousal support is conditional insofar as the amount payable is adjusted down to \$35,047 per month when the judgment is satisfied and retroactive support is received. Because the \$42,594 payment is connected to the payment of retroactive support, it is appropriate to deal with those portions of the order together. In the result, I will limit consideration of continuing spousal support to the order for the payment to Ms. Stoodley of \$35,047 per month.

#### *Continuing Spousal Support*

[6] Regarding continuing spousal support, Mr. Stoodley submits that, should he be successful on the appeal, he would be unable to recoup the amounts paid in error. He has continued to pay the previously ordered \$24,000 per month, which he submits should be more than sufficient for Ms. Stoodley's needs.

[7] Ms. Stoodley, who does not work outside the home, submits that she has assets that would be sufficient to permit her to repay any overpayment with respect to continuing spousal support. The appeal is set to be heard in June and a decision can be expected within a reasonable time, with the result that, considered in context, any overpayment would not be significant. Further, Mr. Stoodley has not appealed the order for spousal support of \$24,000 per month. If necessary, any overpayment may be set off against those future payments.

[8] Based on these facts, I am satisfied that Mr. Stoodley will not suffer irreparable harm if the application to stay enforcement of the order for ongoing spousal support in the amount of \$35,047 is denied. For the same reasons, I am satisfied that the balance of inconvenience favours payment of spousal support at the increased rate. Failure to pay an increase would result in further

accumulation of arrears should the appeal fail. By contrast, if the appeal succeeds, the overpayment may be recovered.

[9] Accordingly, the application for a stay of enforcement of the order for spousal support in the amount of \$35,047 per month is denied.

*Retroactive Spousal Support*

[10] Retroactive support in the amount of \$1,002,730 has been ordered. Mr. Stoodley submits that a significant portion of his funds are held in shares, stocks and RRSPs, and that to require him to pay this lump sum amount would negatively impact his ability to deal with those assets. He submits that to require him to pay the amount ordered prior to disposition of the appeal may result in irreparable harm. In any event, he submits that the balance of inconvenience weighs in his favour, particularly given that the appeal will be heard in June and a decision could be expected within a reasonable time.

[11] Ms. Stoodley submits that, in the circumstances, a reasonable compromise would be to require Mr. Stoodley to provide security for the amount ordered. She is concerned that Mr. Stoodley, residing in the United Arab Emirates, may deal with his assets so as to make recovery of the amount ordered difficult. Further, she submits, proper financial disclosure has not been provided by Mr. Stoodley to lay the foundation for his submission.

[12] Given that the appeal will be heard in June with a decision expected within a reasonable time, and Ms. Stoodley's submission that security for payment of the amount ordered would be acceptable, I am satisfied that the balance of inconvenience weighs in favour of granting a conditional stay with respect to payment of the retroactive support. The condition is that, without delay, and in any event, no later than March 13, 2020, Mr. Stoodley shall obtain security acceptable to Ms. Stoodley for the amount ordered.

*Disposition*

[13] In the result:

- (1) The application for a stay of enforcement of the order for payment of spousal support in the amount of \$35,047 per month is denied. For certainty, the denial of a stay applies to enforcement of the payment of arrears from October 1, 2019.

(2) The application for a stay of enforcement of the order for payment of spousal support in the amount of \$42,594 per month is granted.

(3) The application for a stay of enforcement of the order for payment of the lump sum of \$1,002,730 as retroactive spousal support is granted, subject to Mr. Stoodley, without delay, and in any event, no later than March 13, 2020, obtaining security acceptable to Ms. Stoodley for the amount ordered. If necessary, counsel have leave to apply for further directions regarding this component of the order.

(4) In the circumstances, costs of the application shall be costs in the cause.

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B. G. Welsh J.A.