

G. (L.) v. B. (G.), [1995] 3 S.C.R. 367

L.G.

Applicant

v.

G.B.

Respondent

Indexed as: G. (L.) v. B. (G.)

File No.: 23629.

1994: March 7; 1994: March 23.

Present: Sopinka J.

application for an order for interim maintenance

Appeal -- Supreme Court of Canada -- Stay of execution -- Court granting leave to appeal from Court of Appeal's judgment reducing support payable to ex-wife -- Ex-wife applying for order for interim maintenance pending appeal -- Whether single judge has jurisdiction to deal with application -- If so, whether application should be granted -- Supreme Court Act, R.S.C., 1985, c. S-26, s. 65.1.

Cases Cited

Referred to: *Keable v. Attorney General of Canada*, [1978] 2 S.C.R. 135.

Statutes and Regulations Cited

Supreme Court Act, R.S.C., 1985, c. S-26, ss. 65, 65.1 [ad. 1990, c. 8, s. 40].

Rules of the Supreme Court of Canada, SOR/83-74, Rule 27.

APPLICATION for an order for interim maintenance pending appeal.

Application dismissed.

Simon Lahaie, for the applicant.

George Artinian, for the respondent.

The following is the order delivered by

1 SOPINKA J. -- The appellant (applicant) applies for an order under s. 65.1 of the *Supreme Court Act*, R.S.C., 1985, c. S-26, and Rule 27 for an order in the nature of interim maintenance pending appeal. Leave to appeal herein has been granted. The appeal is from the judgment of the Court of Appeal of Quebec (J.E. 93-880 (*sub nom. Droit de la famille--1783*)) which reduced support payments that were ordered by Kennedy J. of the Quebec Superior Court and which Benoit J. of the Quebec Superior Court refused to vary. It is the order of Benoit J. which was appealed to the Court of Appeal.

2 The application was made returnable before me as Rota Judge, but on return of the motion, counsel for the respondent questioned the jurisdiction of a

judge to deal with this application which he submitted should be dealt with by the Court.

3 I adjourned the application to permit the respondent to cross-examine on an affidavit filed by the applicant and invited written submissions on jurisdiction. After I had the benefit of written submissions and oral argument on the issue, I concluded that I have jurisdiction to deal with the matter.

4 The foundation of the application is s. 65.1 and Rule 27. Section 65.1 of the *Supreme Court Act* was enacted in order to enable a single judge to exercise the jurisdiction which previously was exercised by the Court with respect to stays of proceedings. This includes the powers in Rule 27. Accordingly, if jurisdiction exists to make the order requested under either s. 65.1 or Rule 27, a judge of the Court has the jurisdiction to make it.

5 With respect to the merits of the application, the applicant is requesting an order for maintenance on the same basis as provided in the judgment of Benoit J. which was varied by the Court of Appeal reducing the payments in favour of the applicant and eliminating the payment in favour of their son F. The latter had ceased to live with his mother and was living with his father at the relevant time.

6 An appeal to this Court does not result in a suspension of the judgment appealed from. Although execution of the judgment by a third party is stayed in the circumstances specified in s. 65 (see *Keable v. Attorney General of Canada*, [1978] 2 S.C.R. 135), a party seeking to suspend the operation of the judgment on

appeal in other circumstances must resort to s. 65.1 and Rule 27. This the applicant has done.

7 The applicant is in effect asking for an order for maintenance pending appeal which is equivalent to the maintenance which was ordered at trial and which Benoit J. refused to vary.

8 While an order for maintenance preceding appeal may be possible under s. 65.1 and Rule 27, it would be made in exceptional circumstances. Although orders for interim maintenance are commonplace pending trial, their necessity pending appeal is less obvious. After a court of first instance has already assessed the case, including the needs of the party claiming maintenance, there is less reason for the intervention of the appellate court before the appeal has been disposed of. *A fortiori*, when two courts, a court of first instance and a court of appeal, have passed upon the matter, it would require a very substantial change of circumstances before this Court would grant an order for interim maintenance pending appeal. No substantial change of circumstances was relied on here and I find none. Consequently, no order for interim maintenance pending appeal should be made here. The application is, therefore, dismissed with costs.

Application dismissed with costs.

Solicitors for the applicant: Alarie, Legault & Associés, Montreal.

Solicitors for the respondent: Martineau, Walker, Montreal.