

Date: 20010824
Docket: CA 173294

NOVA SCOTIA COURT OF APPEAL
[Cite as: Sock v. Liu, 2001 NSCA 118]

BETWEEN:

PATRICIA LYNN SOCK

Appellant

- and -

CHRISTOPHER ALLAN THOMAS LIU

Respondent

DECISION

Counsel: Appellant in person

Application Heard: August 23, 2001

Decision Delivered: August 24, 2001

BEFORE THE HONOURABLE JUSTICE CROMWELL IN CHAMBERS

CROMWELL, J.A.: (in chambers)

- [1] Ms. Sock has filed a notice of appeal from a decision of Hall, J. of the Supreme Court of Nova Scotia (Family Division) concerning interim access released on August 1st, 2001. The formal order has not yet been issued, but a copy of the judge's signed decision has been filed.
- [2] Ms. Sock applied to me in chambers to set the appeal down for hearing, to make an order authorizing substituted service upon the respondent and for a stay of Justice Hall's order pending the hearing of the appeal.
- [3] It will be helpful to set out some of the background facts before turning to the applications made by Ms. Sock.
- [4] The respondent on this appeal, Mr. Liu, was the applicant before Justice Hall on an application to vary the terms of an interim access order respecting the parties' child, "C.J.", who was born on May 1st, 1999. According to Justice Hall's reasons, the parties separated in October of 1999 and "C.J." remained with Ms. Sock at her home in Halifax. Mr. Liu resides in Wilmot, Nova Scotia. An interim consent order for access was put in place pending a full custody hearing which is now scheduled to begin on December 4th, 2001. That interim order provided that Ms. Sock would have primary custody and day-to-day care of C.J. and that the respondent would have eight visits with the child for one and a half hours every second Monday commencing August 14th, 2000, such visits to be supervised by Veith House. Mr. Liu's application before Justice Hall was to vary the access specified in the interim consent order.
- [5] A hearing was held before Justice Hall on May 30th, 2001. At the conclusion of that hearing, Justice Hall informed the parties that it was his view that steps should be taken to bring about unsupervised access in the short term prior to the December custody hearing but that, for the present, access would be supervised. He then received written submissions from both parties, who were represented by counsel before him. Justice Hall then held a telephone conference with counsel for the parties. It appeared that the parties initially agreed to supervised access every Saturday at Veith House for a period of one and a half hours extending to mid-September of 2001. However, a number of practical issues about transportation and costs had to be addressed and then the Saturday time slot at Veith House was no longer available.
- [6] Counsel for Mr. Liu, on the hearing before Justice Hall, then advised the judge that another access supervisor had been found. After hearing further from counsel, Justice Hall ordered that supervised access was to take place at such place as the supervisor approves of every Saturday (or as otherwise

arranged) for a period of one and a half to two hours commencing forthwith. Justice Hall further ordered that the supervised access was to continue until Saturday, September 15th following which Mr. Liu may exercise unsupervised access every Saturday from 9 a.m. to 12 noon. Justice Hall further ordered that beginning the first week in November Mr. Liu may have overnight access from Saturday at 9 a.m. to Sunday at 3 p.m. Justice Hall further specified that the access as set out in his decision:

“... shall not advance to the next stage without further approval of a judge of this Court if serious concerns are raised by the access supervisor or by Ms. Sock as to the effect such change in access would have on the welfare of the child.”

[7] I understand this to mean, for example, that the access will not progress from supervised to unsupervised without a further order of the Supreme Court (Family Division) if serious concerns are raised by either Ms. Sock or the access supervisor.

[8] Justice Hall made strong findings with respect to what, in his view, was in the child’s best interest in these circumstances. He said at para. 7 of his reasons:

In view of the serious deterioration of the parent-child relationship between C.J. and Mr. Liu and his isolation from the child, which is at least in part self-inflicted, I am convinced that a variation of the current order is desirable in the best interests of the child. ...

[9] At para. 15 he stated:

Although I am not insensitive to the concerns raised by Ms. McNeil [counsel for Ms. Sock], in my view, there is a more pressing concern to be dealt with. That is, the further estrangement of the child from his father resulting from the lengthy delay between the hearing, May 30, 2001, and the finalization of access arrangements. In my opinion, it is essential that an appropriate access regime be put in place without further delay.

[10] Ms. Sock has filed an affidavit and a number of other documents in support of her applications. In her oral presentation to me in chambers, she expressed in strong terms her concern about the physical and psychological welfare of “C.J.” and the adverse affects which she fears will result unless Justice Hall’s order is stayed pending the hearing of this appeal. Nothing would be served by my setting out in detail all of her oral submissions to me in chambers or the material which she filed in support of the stay

application. I have reviewed the material filed and considered those oral submissions very carefully.

- [11] With respect to the application for an order for substituted service, I am persuaded that personal service is impracticable in all of the circumstances of this case. I will, therefore, order that service of the notice of appeal and other relevant documents to which I will refer later in my reasons be served on the respondent Christopher Allan Thomas Liu by ordinary mail addressed to him at 99 Ruggles Road, Wilmot, Nova Scotia, B0P 1W0 and, for information, upon his solicitor in the proceedings before Justice Hall, Peter J. Katsihtis at Moore & Associates, 1475 Hollis St., PO Box 3068 South, Halifax, NS B3J 3G6.
- [12] With respect to the application to set the appeal down for hearing, I do not think it wise to set dates for the appeal now given that the respondent has not been served with notice of the appeal. I, therefore, will adjourn the application to set dates for the hearing of the appeal and the filing of the appropriate material to chambers on Thursday, September 6th, 2001, at 10:00 a.m. I further order that the notice of appeal, and a notice of application to set dates for the appeal (which will be heard in chambers on September 6th, 2001) along with a copy of the order which I will be issuing today be served on the respondent and on his previous solicitor by ordinary mail. This material is to be mailed no later than 4:00 p.m. on Tuesday, August 28th, 2001. Ms. Sock must file an affidavit showing that those documents have been mailed in accordance with this order.
- [13] With respect to the requested stay of Justice Hall's order, it is clearly inappropriate to issue a stay at this time. The respondent has as yet received no notice of this application. A stay of an order pending appeal will only be granted in highly unusual and compelling circumstances if notice of the stay application has not been given to the other side. Justice Hall's order was made after a hearing at which both sides were represented by counsel. The application before me by Ms. Sock, in effect, asks me to suspend his order on the basis of my review of the written materials and after having heard from one side only.
- [14] I have carefully considered Ms. Sock's submissions that the child will be at risk unless the order of Justice Hall is stayed. I am not at all persuaded that this is the case. Justice Hall's decision provides for supervised access in the presence of an access supervisor who supervises access visits for the Children's Aid Society of Halifax. Justice Hall found this individual's qualifications to be "quite impressive". In my opinion, no basis has been

shown for staying the aspect of Justice Hall's decision dealing with supervised access.

- [15] With respect to the progression to unsupervised access, Justice Hall's decision specifically provides for a review of the change to unsupervised access by a judge of the Supreme Court, Family Division if problems arise. There is, therefore, a full opportunity for that matter to be placed before a judge of the Supreme Court, Family Division if the unsupervised access arrangements are thought by either Ms. Sock or the access supervisor to adversely affect the child's welfare. That, in my opinion, is a much more practical and appropriate place for reconsideration of whether unsupervised access is in the best interests of this child.
- [16] The application for the stay is, therefore, dismissed.
- [17] I will issue an order setting out my decisions.

Cromwell, J.A