# COURT OF APPEAL FOR ONTARIO

CITATION: A. v. B., 2025 ONCA 358[1,2]
DATE: 20250507

Zarnett, Monahan and Madsen JJ.A.

BETWEEN

A.

Applicant

(Respondent/Moving Party)

and

B.

Respondent

(Appellant/Responding Party)

Julie Hannaford, Melanie Battaglia and Angela Pagano, for the Moving Party

Harold Niman, Stephanie Garbe and Ella Benedetti, for the Responding Party

Heard *in camera*: April 25, 2025

**By the Court:**

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[1] As set out at para. 32, this file is subject to a sealing order, publication ban prohibiting the publishing or making public information that has the effect of identifying the parties or the child, and requirement for the initialization of the style of cause, the parties and the child, in effect until further court order. This decision is published for precedential purposes with identifying information removed.

[2] The court has been advised that proceedings are pending the Divisional Court and that on April 30, a single judge of the Divisional Court directed that a "sealing order and publication ban should continue on a temporary without prejudice basis, until the motion for a stay can be determined on its merits."

[1] These reasons pertain to a motion to quash an appeal.

[2] The appeal arose in the context of an ongoing family law dispute being litigated in the Superior Court of Justice. The father sought to appeal to this court from an order of a Superior Court motion judge, declining to seal or otherwise restrict public access to the record or decisions in the Superior Court proceeding.

[3] At the conclusion of argument the panel quashed the appeal, with reasons to follow. These are the reasons.

**Brief Background**

[4] The father and the mother are parents of a young child. In October 2024, the mother commenced an Application in the Superior Court seeking permission to relocate with the child, an order for child support, and restrictions on public access to the court file to protect the child from the litigation. In his Answer, the father opposed the substantive relief but also sought an order that public access to the file should be restricted to protect the child.

[5] Before the father filed his Answer, the mother sought and obtained a sealing order and publication ban on an *ex parte* basis. That relief was granted on a temporary without prejudice basis. However, the mother later withdrew her request for that relief. In response, the father brought his own motion seeking comparable relief.

[6] Although the mother's position changed, in each of their initial motion materials, the parties emphasized the potential emotional harm to the child were the child to become aware of the court proceedings, and should the proceedings attract public attention. The mother, in particular, emphasized the child's privacy and dignity interests in protecting the court file from the public. In changing her position, she asserted that the child had become aware of the litigation and that the father wanted the sealing order not to protect the child's privacy but to shield himself from public scrutiny.

[7] The primary relief sought on the father's motion was:

> a. a sealing order precluding members of the public from accessing the contents of this court file, pursuant to ss. 70(1) and 70(2) of the *Children's Law Reform Act*, R.S.O. 1990, c. C. 12 (the "CLRA"), and s. 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43;
> b. a publication ban pursuant to s. 70(1)(b) of the CRLA; and
> c. an order initializing the style of cause in the proceeding.

[8] The father's motion also sought alternative relief, namely a partial sealing order, and if necessary, a redaction order to restrict the identification of the parties in this proceeding.

[9] The motion judge denied the father's request. The motion judge did not explicitly consider or dismiss the request for alternative relief such as a partial sealing order or redaction of particularly private child-related information.

[10] The motion judge noted that both parties gave evidence that the child had started to show signs of distress, angst, and anger since late 2024. The parties disagreed as to the cause. The motion judge stated that, “the Court must be satisfied that there is sufficient, compelling evidence to conclude that there is a serious risk of harm to [the child] which goes well beyond the typical impact of parental separation upon children of a marriage/relationship.” Ultimately, the motion judge concluded that, “there is nothing in the record before this Court that approaches the types of concerns (parentage applications, sexual abuse, kidnapping, etc.) wisely guarded against in the jurisprudence relied upon by the [father].”

[11] The motion judge stayed publication of the endorsement for seven days to permit the father to pursue appellate remedies should he choose to. The issued and entered order was marked “temporary”. On April 14, 2025, a single judge of this court granted a further limited stay of the motion judge’s order and a temporary sealing, non-publication and anonymization order until the hearing of this motion to quash, and if the appeal was not quashed, the hearing of the appeal itself.

**Arguments on the Motion to Quash**

[12] The mother moved to quash the appeal on the basis that the motion judge’s order is interlocutory such that the appeal lies to the Divisional Court, with leave, pursuant to s. 19(1)(b) of the *Courts of Justice Act*. She argued that the order under appeal is interlocutory because the real matters in dispute between the parties –

namely, the relocation request, related parenting relief, and support claims – have not been determined. She argued that the request for a sealing order or other privacy measure is collateral to the parenting issues before the court.

[13] The father asserts that the order dismissing his requests for any restriction on public access to the file is final. He relies on this court's decision in *M.S.K. v. T.L.T.* (2003), 168 O.A.C. 73 (C.A.). In that case, this court heard an appeal from the Superior Court motion judge's decision dismissing the request to seal the entire court file to protect the privacy interests and wellbeing of the child. This court granted the sealing order, emphasizing that sealing the entire court file was in the child's best interests.

[14] The father also submits that the order in question finally disposes of a claim for privacy protection for the child in the Application and Answer. Referring to the *United Nations Convention on the Rights of the Child*, Can. T.S. 1992 No. 3, and Canadian laws that protect children's privacy interests, the father argues that the order finally disposes of the substantive and distinct right to privacy of the child, who is not a party to the proceeding, and threatens the child's wellbeing.

[15] In the alternative, the father submits that if the order is interlocutory, this court should reconstitute itself as the Divisional Court, grant leave to appeal, and hear the appeal. The mother asserts that this would be inappropriate. She simply

seeks an order that the appeal be quashed and that the father proceed to seek leave at the Divisional Court in the normal course.

**Interlocutory and Final Orders**

[16] Section 6(1) of the *Courts of Justice Act* provides that appeals from final orders of the Superior Court lie to this court, while s. 19(1)(b) provides that appeals of interlocutory orders lie, with leave, to the Divisional Court.

[17] In *Paulpillai Estate v. Yusuf*, 2020 ONCA 655, at para. 16, leave to appeal refused, [2021] S.C.C.A. No. 373, Jamal J.A. (as he then was) articulated the main principles for determining whether an order is final or interlocutory:

> 1. An appeal lies from the court's order, not from the reasons given for making the order.
>
> 2. An interlocutory order "does not determine the real matter in dispute between the parties – the very subject matter of the litigation – or any substantive right. Even though the order determines the question raised by the motion, it is interlocutory if these substantive matters remain undecided."
>
> 3. In determining whether an order is final or interlocutory, "one must examine the terms of the order, the motion judge's reasons for the order, the nature of the proceedings giving rise to the order, and other contextual factors that may inform the nature of the order."
>
> 4. The question of access to appellate review "must be decided on the basis of the legal nature of the order and not on a case by case basis depending on the application of the order to the facts of a particular case." In other words, the characterization of the order depends upon its legal nature, not its practical effect. [Citations omitted.]

[18] An order is interlocutory if the merits of the case remain to be determined: *Hendrickson v. Kallio*, [1932] O.R. 675 (C.A.), at p. 678; *Sun Life Assurance Co. v. York Ridge Developments Ltd.* (1998), 116 O.A.C. 103 (C.A.), at para 13. Conversely, final orders determine "the very subject matter of the litigation – or any substantive right to relief" (*Drywall Acoustic Lathing Insulation Local 675 Pension Fund v. SNC-Lavalin Group Inc.,* 2020 ONCA 375, at para. 16); address the "substantive merits" (*Sun Life*, at para. 13); or finally dispose of an issue raised by the defence depriving the defendant of a right that could be determinative of the entire action (*Ball v. Donais* (1993), 13 O.R. (3d) 322 (C.A.), at p. 324).

[19] This court has held that "sealing orders are normally interlocutory as concerns the parties to the litigation": *P1 v. XYZ School*, 2021 ONCA 901, 160 O.R. (3d) 445, at para. 23. Similarly, an order refusing to grant a sealing order at the request of a party is treated as interlocutory: *Paulpillai Estate,* at para. 38. Thus, in *Aquino v. Aquino*, 2022 ONCA 541, where a sealing order had been obtained without notice to the media but was then set aside, this court quashed an appeal by a party from the setting aside of the sealing order, stating, "[t]he order setting aside the sealing order does not determine the subject matter in the dispute in the litigation. The privacy rights asserted by Mr. Aquino are collateral to the main action": at para. 11. Similarly, in *S.E.C. v. M.P.*, 2022 ONCA 905, this court confirmed that orders granting or refusing sealing orders (as they pertain to the

parties) are interlocutory, distinguishing the sealing order in that case because it was part of a final disposition of a proceeding: at para. 2.

[20] The situation is different when a sealing order is granted and a media organization, who opposed it being granted but is otherwise a stranger to the litigation, seeks to appeal. That is because when a non-party's substantive rights are finally determined, an order may be considered final as against them, even if considered interlocutory as against the parties: *XYZ School*, at para. 23. In *XYZ School*, the order under appeal determined the constitutional rights of the media and was therefore final in relation to the media, but not as it concerned the parties. At para. 19 of that case, Benotto J.A. set out the following guiding principles:

> 1) A final order must deal with substantive rights.
>
> 2) All orders directed to non-parties are not necessarily final.
>
> 3) To be final, an order directed to non-parties must determine non-parties' substantive rights.

[21] In keeping with the principles set out in *Paulpillai*, it is the legal nature of the order, not its practical effect, which drives the analysis. In *J.M. v. B.S.,* 2024 ONCA 727, this court recognized that even where the effects of an order may be irreversible, the order may nevertheless be interlocutory. In that case, the mother argued that an order requiring the child to be vaccinated was final on the basis that it could not be undone. This court disagreed, stating at para. 11: "[m]any interim or

interlocutory decisions give parties the ability to do things that cannot be undone, but this does not make the order final."

**Application to this Case**

[22] The mother's application in the Superior Court is about parenting, relocation, and child support issues. Those issues remain to be determined. While undeniably important to the parties and the child, the issue of restrictions on public access is clearly collateral to the substantive issues in dispute.

[23] This court's decision in *M.S.K. v. T.L.T.*, on which the father heavily relies, did not explicitly address jurisdiction and has never been cited by this court on the jurisdictional issue.

[24] Although the father argued that the claim for restrictions on public access as claimed in his Answer have been determined once and for all by the motion judge's order, such that the issue could never be raised again in the proceedings, we are unable to accept that submission. The father's motion for a sealing order was brought in the form of a request for a temporary order, not for example, as a summary judgment request, and the motion judge described the order made as "Temporary".

[25] The father argues that in rejecting the request for a sealing order, the motion judge determined the child's substantive right to privacy in a manner akin to the determination of the media's constitutionally protected interest in *XYZ School*. We

reject this argument. The sealing order in *XYZ School* denied the Toronto Star access and the ability to publish about the case in the face of the freedom of the press protected by s. 2(b) of the *Charter*. The Toronto Star was not a party to the action but was a party to the motion resulting in the sealing order, and, importantly, the Toronto Star brought the appeal. In this case, the child is not seeking to appeal the refusal to grant the sealing order—the father (a party) is. Further, in *H. (M.E.) v. Williams*, 2012 ONCA 35, 108 O.R. (3d) 321, also cited by the father, media organizations were intervenors bringing the appeal. The circumstances of the child in this case are not analogous.

[26] The relevant issue on this motion is about the appropriate appeal route and therefore which court has authority, under the *Courts of Justice Act,* to address the important privacy interests raised by a challenge to the motion judge's order. Undoubtedly, children's privacy interests can necessitate the application of special safeguards, which include the right to have their privacy respected "at all stages of the proceedings": *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)*, 2018 ONCA 559, at paras. 73-75, leave to appeal refused, [2018] S.C.C.A. No. 360. To state that such interests are "collateral," in the language of the caselaw about routes of appeal, in no way implies that those interests are not centrally important to the child or that the motion judge's manner of dealing with them is undeserving of careful review, in an appeal brought in the proper forum.

[27] We would add the following: in virtually any family law case where there are parenting issues before the court, interlocutory orders may have significant and long-lasting effects on children. Issues related to parenting schedules, interim relocation, and medical decision-making for example, may all have lasting implications. The same may be the case with certain support or property-related decisions. However, as seen above, in assessing whether an order is final or interlocutory for the purpose of appeal routes, “effects” are at the wrong end of the telescope. This court’s decision in *Paulpillai* instructs that it is the legal nature of the order and its relationship to the substantive issues in dispute that must guide the analysis.

[28] The order sought to be appealed is interlocutory and any appeal lies to the Divisional Court with leave.

**Reconstitution as the Divisional Court**

[29] We decline to reconstitute as the Divisional Court to consider leave and, if granted, hear the appeal. No compelling reason, beyond the convenience of the parties, was advanced.

**Conclusion**

[30] The motion to quash is granted.

[31] The father’s counsel advised that his leave to appeal motion to the Divisional Court was ready to proceed.

[32] To facilitate an orderly transition, we directed that the interim confidentiality restrictions at para. 33(4) of the order of the single judge of this court (referred to in para. 11 above) remain in effect pending further order of this court. The parties were directed to apply, in writing, for directions regarding the continued confidentiality of this court's file promptly upon any disposition in the Divisional Court that bears on the appropriateness of those restrictions continuing. After inviting submissions from the parties, this court ordered the publication of this decision for precedential purposes, having removed any information that has the effect of identifying the parties or the child and continuing the prohibition on publishing or making public information that has the effect of identifying the parties or the child.

[33] Costs are payable to the mother in the amount of $17,500 for the motion to quash, inclusive of the costs reserved to this panel on the single judge motion.

Released: May 7, 2025 "B.Z."

"B. Zarnett J.A."
"P.J. Monahan J.A."
"L. Madsen J.A."