

## COURT OF APPEAL

CANADA  
PROVINCE OF QUEBEC  
MONTREAL SEAT

No.: 500-09-031214-240  
(500-64-000125-240)

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### MINUTES OF HEARING

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**WARNING:** Disclosure and circulation prohibited: The *Code of Civil Procedure* (“C.C.P.”) provides that, except as authorized by the court, no person shall disclose or circulate any information that would allow a party or a child whose interests are at stake in a proceeding in a matter regarding authorization for care to be identified (art. 16 C.C.P.).

DATE: December 27, 2024

THE HONOURABLE ÉRIC HARDY, J.A.

APPLICANT	COUNSEL
<b>N. G.</b>	ABSENT AND UNREPRESENTED
RESPONDENT	COUNSEL
<b>MCGILL UNIVERSITY HEALTH CENTER</b>	Mtre DENISA VOICULESCU Mtre STÉPHANIE RAINVILLE ( <i>Monette Barakett</i> ) Absent
IMPLEADED PARTY	COUNSEL

<b>NA. G.</b>	ABSENT AND UNREPRESENTED
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DESCRIPTION: **Appellant application for a stay of execution of a judgment pending appeal to the Supreme Court of Canada** (Section 65.1(2) *Supreme Court Act* and art. 522.1 *C.C.P.*).

Clerk at the hearing: Mélanie Camiré	Courtroom: RC-18
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HEARING

Continuation of the hearing held on December 23, 2024. The parties were excused from appearing in Court.

**BY THE JUDGE:** Judgment – see page 3.

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Mélanie Camiré, Clerk at the hearing

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ENGLISH TRANSLATION OF THE JUDGMENT OF HARDY, J.A.

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[1] Relying on art. 390 of the *Code of Civil Procedure* and s. 65.1 of the *Supreme Court Act*,<sup>1</sup> the appellant seeks a stay of execution of the judgment (the “Judgment”) rendered by the Court on December 19, 2024, in the case at bar.

[2] In the Judgment, the Court dismissed the appeal from a Superior Court judgment that authorizes the respondent to implement a care plan for the appellant’s brother, who is the impleaded party in the present case (the “Patient”). The care plan provides for the withdrawal of active life-sustaining treatment the Patient was receiving up to then and its replacement with palliative comfort care to be administered until his death. The Superior Court concluded that the Patient is incapable of consenting, and that the appellant’s refusal of the proposed care plan is unreasonable and unjustified whereas the treatment contemplated in the plan is necessary in order to allow the Patient to live out the remainder of his life with dignity and to reduce his suffering.<sup>2</sup>

[3] In her application for a stay of execution of the Judgment, the appellant states her intention to apply to the Supreme Court for leave to appeal from the Judgment. Yesterday, she sent the Court a copy of an application for leave to appeal to the Supreme Court that she had just sent to it by email.

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[4] The background to the present case is set out in detail in the Judgment. Suffice it to note that the Patient is 77 years old,<sup>3</sup> that in 2007 he gave the appellant a protection mandate in the event of incapacity,<sup>4</sup> and that this past May he suffered a seven-minute cardiac arrest that caused him to sustain anoxic brain damage.<sup>5</sup> Since then, he has not regained consciousness and his condition has only worsened.<sup>6</sup> He is now in a state described as a “persistent vegetative state”.<sup>7</sup> In addition to the neurological aftereffects

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<sup>1</sup> R.S.C. 1985, c. S-26.

<sup>2</sup> Judgment, para. 21.

<sup>3</sup> *Id.*, para. 2.

<sup>4</sup> *Id.*, para. 3.

<sup>5</sup> *Id.*, para. 11.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Id.*, para. 40.

from which he suffers, the rest of his physical condition is more than fragile, such that the care he is receiving is not only futile, but also contrary to his best interests.<sup>8</sup> In short, his state of health is irreversible and his death inevitable.<sup>9</sup>

\* \* \*

[5] The following are the statutory provisions on which the appellant's application is based:

***Code of Civil Procedure***

**390.** A decision of the Court of Appeal is enforceable immediately and bears interest from the date it is rendered, unless it specifies otherwise. Its execution, as regards both the principal and any legal costs, is carried out by the court of first instance.

However, the Court of Appeal or one of its judges, on an application, may order execution stayed, on appropriate conditions, if the party shows that it intends to bring an application for leave to appeal to the Supreme Court of Canada.

***Supreme Court Act***

**65.1 (1)** The Court, the court appealed from or a judge of either of those courts may, on the request of the party who has served and filed a notice of application for leave to appeal, order that proceedings be stayed with respect to the judgment from which leave to appeal is being sought, on the terms deemed appropriate.

**(2)** The court appealed from or a judge of that court may exercise the power conferred by subsection (1) before the serving and filing of the notice of

**390.** L'arrêt est exécutoire immédiatement et il porte intérêt à compter de sa date, sauf mention contraire. Il est mis à exécution, tant pour le principal que pour, le cas échéant, les frais de justice, par le tribunal de première instance.

Cependant, la Cour d'appel ou l'un de ses juges peut, sur demande, ordonner, aux conditions appropriées, d'en suspendre l'exécution, si la partie démontre son intention de présenter une demande d'autorisation d'appel à la Cour suprême du Canada.

**65.1 (1)** La Cour, la juridiction inférieure ou un de leurs juges peut, à la demande de la partie qui a signifié et déposé l'avis de la demande d'autorisation d'appel, ordonner, aux conditions jugées appropriées, le sursis d'exécution du jugement objet de la demande.

**(2)** La juridiction inférieure ou un de ses juges, convaincu que la partie qui demande le sursis a l'intention de demander l'autorisation d'appel et

<sup>8</sup> *Id.*, paras. 43-45.

<sup>9</sup> *Id.*, paras. 39-40.

application for leave to appeal if satisfied that the party seeking the stay intends to apply for leave to appeal and that delay would result in a miscarriage of justice.

**(3)** The Court, the court appealed from or a judge of either of those courts may modify, vary or vacate a stay order made under this section.

que le délai entraînerait un déni de justice, peut exercer le pouvoir prévu au paragraphe (1) avant la signification et le dépôt de l'avis de demande d'autorisation d'appel.

**(3)** La Cour, la juridiction inférieure ou un de leurs juges peut modifier ou annuler le sursis ordonné en vertu du présent article.

[6] As the Court wrote in *Immeubles HTH inc. c. Plaza Chevrolet Hummer Cadillac inc.*, these provisions must be interpreted broadly:<sup>10</sup>

[5] Aux termes de l'article 65.1 de la *Loi sur la Cour suprême du Canada* et de l'article 390 *C.p.c.*, interprétés largement afin de « maintenir les parties dans une situation qui, dans la mesure du possible, ne sera pas cause de préjudice en attendant le règlement du différend par la Cour suprême » et de permettre à celle-ci de « rendre une décision qui ne sera pas dénuée de sens et d'efficacité », et prenant en compte les articles 25 et 49 *C.p.c.*, il y a lieu de faire droit aux requêtes en suspension d'exécution.

[References omitted]

[7] It should also be noted that the party seeking a stay of execution of a judgment must show that the conditions for obtaining a stay have been met.<sup>11</sup> As Bélanger, J.A. pointed out in *SNC-Lavalin inc. (Terratech inc. et SNC-Lavalin Environnement inc.) c. Deguise*, three conditions must be satisfied:

[34] Les critères pour l'octroi d'une suspension d'exécution sont connus et il appartient à celui qui la requiert de démontrer qu'il rencontre trois conditions : 1) l'appel projeté doit soulever l'existence d'une question sérieuse à juger, détermination qui, sauf circonstances exceptionnelles, ne peut découler que d'un examen préliminaire du fond de l'affaire; 2) l'exécution de l'arrêt de la Cour d'appel est susceptible de causer un préjudice sérieux et irréparable, auquel un jugement favorable de la Cour suprême ne pourra remédier; et 3) la prépondérance des inconvénients, compte tenu de l'intérêt public dans certaines circonstances, favorise le maintien du *statu quo* jusqu'à ce que la Cour suprême se soit

<sup>10</sup> 2018 QCCA 1482.

<sup>11</sup> *SNC-Lavalin inc. (Terratech inc. et SNC-Lavalin Environnement inc.) c. Deguise*, 2020 QCCA 921, para. 31 (Bélanger, J.A.).

prononcée sur la demande d'autorisation ou, le cas échéant, l'appel. Ces critères sont cumulatifs<sup>12</sup>.

[References omitted]

\* \* \*

[8] The appellant contends that her brother's health is improving day by day, that he feels no pain or suffering and that he has always expressed the desire to live until he can no longer communicate. She argues that these facts, combined with his right to life as enshrined in the *Canadian Charter of Rights and Freedoms*,<sup>13</sup> are such that a stay of execution of the Judgment should be ordered until the Supreme Court rules on her application for leave to appeal. Otherwise, any appeal she might be authorized to bring would become moot.

[9] The respondent opposes the application for a stay.

[10] It points out that the Patient's interests constitute the cornerstone of every decision regarding him.<sup>14</sup> The uncontradicted evidence shows that the Patient's death is inevitable and that the care plan endorsed by the Superior Court is essential to shorten his suffering and allow him to live out the remainder of his life with dignity.

\* \* \*

[11] The respondent is right. The Patient's interests are at the heart of the decision I must render.

[12] The evidence that the trial judge heard convinced him that the care the Patient is receiving is futile and is only prolonging his agony.<sup>15</sup> One need only read paragraphs 42 to 45 of the Judgment to be convinced of this. In the trial judge's opinion, the only care that should now be provided to the Patient is palliative comfort care.

[13] As the appellant did not show that the trial judgment contains a reviewable error, her appeal was dismissed.

[14] Despite the compassion I feel for the appellant's grief, I am of the view that the application must be dismissed.

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<sup>12</sup> *Id.*, para. 34. See also: *Procureur général du Québec c. Kanyinda*, 2024 QCCA 346, para. 8 (Weitzman, J.A.); *Lafond c. Elnemr*, 2023 QCCA 1135, para. 10 (Hogue, J.A.); *L.A. c. Bourgeois*, 2023 QCCA 416, para. 17 (Bich, J.A.).

<sup>13</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

<sup>14</sup> Judgment, paras. 30-33; art. 12 of the *Civil Code of Québec*.

<sup>15</sup> *Id.*, paras. 21 and 42-45.

***Denial of justice***

[15] First, I do not believe that dismissing her application would, in the words of s. 65.1(2) of the *Supreme Court Act*, result in a “miscarriage of justice”. Indeed, the opposite is true. Continuing futile treatments and prolonging the Patient’s agony would be unfair to him.

***Serious issue***

[16] Admittedly, the proposed appeal raises a serious issue in light of its purpose, but with a caveat. It is unlikely that the factual findings on which the trial judgment and the Judgment are based can be overturned, especially since the underlying medical evidence is uncontradicted.

***Serious or irreparable harm***

[17] Prolonging life-sustaining treatment will only prolong the Patient’s agony, whereas palliative comfort care will have the opposite effect, in addition to allowing the Patient to die with dignity. Therefore, execution of the Judgment is not likely to cause him serious and irreparable harm.

***Balance of convenience***

[18] Here, too, this criterion weighs in favour of dismissing the application.

[19] Granting it would not benefit the Patient in any way, whereas dismissing it will allow him to die with dignity.

[20] I therefore conclude that the application cannot succeed.

**FOR THESE REASONS, THE UNDERSIGNED:**

[21] **DISMISSES** the application for a stay of execution of the judgment rendered by this Court in the present file on December 19, 2024, without legal costs given the nature of the matter.

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ÉRIC HARDY, J.A.