

C.A. No. _____ of 2006

IN THE COURT OF APPEAL FOR SASKATCHEWAN

BETWEEN:

_____ and _____

APPELLANTS
(THIRD PARTY RESPONDENTS)

AND:

RESPONDENT (PETITIONER)

AND:

RESPONDENT (RESPONDENT)

NOTICE OF APPEAL

TAKE NOTICE THAT:

1. _____ and _____, the above named Appellants, hereby appeal to the Court of Appeal from: the Fiat / Order of the Honourable Madam Justice J.A. Ryan - Froslic granted October 25, 2006.

2. THAT the portion of the Judgment being appealed is:

The orders in:

[para. numbers have been added to Fiat]

para. 8 that supervised access occur through Family Justice Services in Saskatoon Saturday mornings at 10:00 a.m. commencing this Saturday, October 28, 2006, that the third parties, Ms. _____ and Mr. _____ shall be responsible for transporting the child to Saskatoon for such visits. (And accomp. paras. 9 to 15)

para. 16 that a pre - trial settlement conference not proceed And that a pre - trial Management Conference occur immediately following these proceedings. (And accomp. para. 18)

And including the findings in:

para. 6 re: sufficient to establish that Order not been implemented

para. 7 re: unfairness or bias

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3. THAT the source of the Appellants' right to appeal and the Court's jurisdiction to entertain the appeal is:

sections 7(2)(a), 8(2)(ii) and (iii), 10 and 21 of *The Court of Appeal Act, 2000*, S.S. 2000, c. C - 42.1, and

Rule 101 of *The Queen's Bench Act, 1998*, S.S. 1998, c. Q - 1.01.

4. THAT the appeal is taken upon the following grounds:

- a) The learned Chambers Judge erred in law by not recognizing that it is the duty of Court to satisfy itself that the Petitioner [REDACTED] had established a material change in circumstances necessary to vary the prior interim order of the Court.
- b) The learned Chambers Judge erred in law in that there was not a material change in circumstances such that the October 4, 2006 Order of the Honourable Mr. Justice R.S. Smith should be vacated or varied. There was no grounds to find a material change in circumstances, and to vary the October 4, 2006 Order.
- c) The learned Chambers Judge did not have the authority, absent material change in circumstances, to vary the October 4, 2006 Order of the Honourable Mr. Justice R.S. Smith concerning supervised access (para. 4) and the Pre Trial Conference (para. 3)
- d) The learned Chambers Judge erred in law in not holding that the Petitioner [REDACTED]'s application was but a veiled attempt to re - hear the matter already heard three weeks earlier on October 4, 2006 before Mr. Justice R.S. Smith, and to vary the Order so granted by His Lordship, without establishing the requisite material change in circumstances.
- e) The learned Chambers Judge erred in law in not holding that the Petitioner [REDACTED] had short served the Third Party Respondents, in providing only three clear days' notice on a Motion that included requested relief of a substantive nature, including varying the supervised access provision of the October 4, 2006 Order and a request for principal residence / care and control of the child.
- f) The learned Chambers Judge erred in law in not requiring the Petitioner [REDACTED] before proceeding any further in the matter, to fulfill and complete his obligations under the September 14, 2006 Order of Madam Justice A.R. Rothery, para. 4, that the Petitioner shall serve and file a Notice of Third Party Claim on the third parties, [REDACTED] and [REDACTED] and on the Respondent, [REDACTED] pursuant to *Queen's Bench Rule 107A*.

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- g) The learned Chambers Judge erred in law in vacating and varying the October 4, 2006 Order of the Honourable Mr. Justice R.S. Smith to dispose of the Pre Trial Conference ordered by His Lordship and set for November 13, 2006. Such was not part of the relief requested by either party, and was beyond the bounds of the Learned Chambers Judge's discretion, and contrary to the express order of the Court on October 4, 2006.
- h) The learned Chambers Judge erred in not dismissing the Motion of the Petitioner [REDACTED], and with costs to the Third Party Respondents (now Appellants).
- i) The learned Chambers Judge erred in not granting the Motion of the Third Party Respondents to strike, and with costs in favor of the Third Party Respondents.
- j) The learned Chambers Judge erred in not providing instructions to the parties to the action concerning conduct to the Pre Trial Conference and the supervised access and to the Trial of the matter, especially concerning the Petitioner distributing court documents and privileged, without prejudice correspondence between counsel to the media, as established in the materials of the Third Party Respondents (Appellants).
- k) The learned Chambers Judge erred in not sanctioning or reprimanding the Petitioner, and with costs in favor of the Third Party Respondents, as requested by the Third Party Respondents, for his inappropriate disclosures, and for revealing the identities of the parties and of the infant.
- l) The learned Chambers Judge erred in finding that the Third Party Respondents had delayed and obstructed the commencement of supervised access.
- m) The learned Chambers Judge erred in finding that the Children's Haven (Prince Albert) was somehow unfair or biased and / or the Third Party Respondent had some undue or improper or authoritative control over the Haven and / or the Haven had become incapable of supervising the access as ordered by the Court on October 4, 2006.
- n) The learned Chambers Judge erred in not requiring the Petitioner [REDACTED] to do more than simply allege improper or undue influence by the Third Party Respondent [REDACTED] over the Children's Haven. The Judge erred in finding any such improper influence in the evidence.

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- o) The learned Chambers Judge failed to properly review and apply the evidence relative to the establishment of delay and / or obstruction on the part of the Third Party Respondents and relative to the finding of the Children's Haven being incapable of supervising the access ordered by the Court.
- p) The October 25, 2006 Fiat / Order of the Honourable Madam Justice J.A. Ryan - Froslic is contrary to the evidence and to law.
- q) Such further and other grounds as Counsel may advise and this Honourable Court may allow.

5. THAT the Appellant requests the following relief:

- a) That this Honourable Court allow the appeal and set aside the October 25, 2006 Order of the Honourable Madam Justice J.A. Ryan - Froslic, or at least concerning paras. 8 (varying the supervised access provision ordered) and 16 (dispensing with the ordered Pre Trial Conference) and accompanying paragraphs as identified above, and the impugned findings as identified above, incl. paras. 6 and 7.
- b) That this Honourable Court allow the costs of this appeal to the Appellant.

6. THAT the Appellant's address for service is:

Arnot Heffernan Blenner-Hassett
Barristers, Solicitors and Mediators
1250 1st Avenue East
Prince Albert, Saskatchewan, S6V 2A8
Telephone: (306) 953 - 4777
Facsimile: (306) 953 - 4774
Lawyer in Charge: Dale N. Blenner-Hassett

A copy of the October 4, 2006 Order of the Honourable Mr. Justice R.S. Smith is filed and served with this Notice, as well as the (paragraph numbering added) October 25, 2006 Fiat of the Honourable Madam Justice J.A. Ryan - Froslic.


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7. THAT the Appellant requests that this appeal be heard in Saskatoon, Saskatchewan.


Dated at the City of Prince Albert, Saskatchewan this 27th day of October, 2006.

Arnot Heffernan Blenner-Hassett
Barristers, Solicitors & Mediators

Per: 

For the Appellants / Third Party Respondents


TO: The Respondent 
c / o Roe & Company
Barristers & Solicitors
313 - 220 3rd Avenue South
Saskatoon, Sask. S7K 1M1
Telephone: (306) 244 - 9865
Facsimile: (306) 934 - 6827
Lawyer in charge of file: Mark R. Vanstone

TO: The Respondent 
c / o Curtis Law Office
2505 William Avenue
Saskatoon, Sask. S7J 2B1
Telephone: (306) 652 - 4303
Facsimile: (306) 244 - 2599

AND TO: The Court of Appeal for Saskatchewan
By Fax (306) 787 - 0505

This Notice of Appeal was prepared and delivered by:

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