

# SUPREME COURT OF YUKON

Citation: *SLH v AWH*,  
2026 YKSC 39

Date: 20260520  
S.C. No.: 18-D5076  
Registry: Whitehorse

BETWEEN

S.L.H.

PLAINTIFF

AND

A.W.H.

DEFENDANT

Before Justice K. Wenckebach

Counsel for the Plaintiff

Shaunagh Stikeman

Appearing on their own behalf

A.W.H.

## REASONS FOR DECISION

### Overview

[1] The defendant in this divorce proceeding, A.W.H., has brought an application to lift an interim, interim stay I ordered on June 18, 2025. The Order stayed was a child support order for the three children of the marriage: M.H., born [redacted], and [redacted] B.H. and A.H., born [redacted] (collectively, the “Children”). In the Order, I retroactively decreased the amount of child support A.W.H. owes to the plaintiff, S.L.H. (whose last name is now [redacted]) to \$184 per month. As a result of the retroactive decrease, there was an overpayment of child support to S.L.H. A.W.H. estimates the overpayment is about \$35,000.

[2] I stayed the Order at a Case Management Conference. At the CMC, S.L.H. stated she was appealing the child support decision. She therefore sought a stay from me until her application at the Yukon Court of Appeal could be heard. The application was tentatively set to be heard on July 15, 2025. I granted an interim, interim stay to preserve S.L.H.'s rights.

[3] Afterwards, however, S.L.H. did not seek a stay before the Court of Appeal, and my Order has been in force for almost a year. Since the stay was granted, A.W.H. has not paid child support, and S.L.H. has not paid any of the overpayment. S.L.H.'s appeal of the child support decision is scheduled to be heard on June 25, 2026.

[4] A.W.H. submits that the stay was not properly ordered because his procedural rights were infringed, and there was no evidentiary basis upon which to grant the order. He also submits that the basis upon which the order was granted was not fulfilled. It should, therefore, now be lifted. He furthermore argues he would suffer irreparable harm if the stay is not lifted. A.W.H. seeks that no repayment schedule be ordered.

Alternatively, he seeks that S.L.H. provide a lump sum payment of \$10,000, or that a stringent repayment schedule be put in place. He also seeks that S.L.H. be charged 22% per year on the overpayment from the date the order of repayment is executed. At the hearing, A.W.H. also raised the issue of enforcement but did not pursue it.

[5] S.L.H. submits that because there is an order in place, A.W.H. must show a material change in circumstances to have the stay lifted. She argues that as he has not done so, the stay should remain in place. Alternatively, S.L.H. submits that her circumstances meet the test for a stay.

[6] Both parties have provided evidence that they are facing challenging financial circumstances. My decision seeks to be fair to the parties while protecting the Children's

interests as much as possible, but I recognize it will do little to ease the parties' burdens.

[7] Although A.W.H. argues that the stay was not properly ordered, I do not need to consider that issue. Rather, I conclude: S.L.H. has the burden of proving that the stay should continue; S.L.H. has not proven that the stay should be left in place; S.L.H. should pay \$500 per month to repay the overpayment, with the child support A.W.H. owes to be used as set-off on the overpayment; and interest shall not be imposed on the overpayment.

### **Analysis**

#### *(a) S.L.H. has the Burden of Proving that the Stay Should Continue*

[8] S.L.H. argues that, because there is an order in place, A.W.H. must show a material change of circumstances to have the stay lifted. I disagree.

[9] I granted the stay in the midst of a one-hour CMC, in which other topics were also discussed. There was no application before me, no evidence, and very little argument. I did not make a decision on the merits.

[10] There was also no confusion about the intent of my Order. S.L.H. explained her request was a stop-gap measure until the application could be heard at the Court of Appeal. In ordering the stay, I also stated that I was making the order because there would soon be a full hearing on the merits. I furthermore stated that if there was a longer delay, the matter should come back to me.

[11] This is the first time S.L.H.'s request will be heard on the merits. She therefore has the burden of proof.

[12] This also raises a further issue. It was clear that the stay imposed at the CMC was a temporary measure until S.L.H.'s stay pending appeal application could be heard

by the Court of Appeal. S.L.H.'s counsel, however, did not pursue the stay application at the Court of Appeal. The stay application was scheduled for July 15, 2025. It did not proceed on that date because A.W.H. was on vacation. That was out of counsel's control. However, counsel did not take steps to set the hearing down at a later date. Indeed, counsel wrote to the Court of Appeal Registry, stating that because I had granted an order "essentially staying the execution of the [child support] order pending the appeal", counsel was abandoning the application for stay before the Court of Appeal.

[13] Counsel's message to the Court of Appeal was incorrect. My order stayed the child support order only pending the hearing of the application for a stay before the Court of Appeal. Moreover, because I noted at the CMC that if there was a longer delay before the application could be heard at the Court of Appeal, the matter should be brought back before me, it was also evident that I did not want the interim, interim stay in place for a long period of time. It is concerning that counsel did not follow through on intentions stated on the record. It is also concerning that she fundamentally misunderstood the intent of my Order.

(b) *S.L.H. has not proven that the stay should be left in place*

[14] To be entitled to a stay, S.L.H. must prove:

- (a) There is a serious question to be tried;
- (b) She would suffer irreparable harm if the stay were not granted; and
- (c) The balance of convenience favours granting the stay.

S.L.H. must meet all three parts of the test for a stay to be ordered.

[15] The threshold for establishing there is a serious question to be tried is low. I accept here that S.L.H. has met the first part of the test.

[16] S.L.H. has not, however, shown that she would suffer irreparable harm if the stay were not granted. Irreparable harm is harm that cannot be compensated through a monetary award. In this case, as well, the repayment may affect S.L.H.'s ability to care for the Children. Their interests must also be taken into account.

[17] During the hearing, there was discussion about how the Children's needs are to be considered. S.L.H.'s counsel submitted that I must consider the Children's best interests in my analysis. Best interests of the child, however, is not the sole principle guiding decisions about child support or retroactive child support. Rather, "fairness and flexibility, balanced with consistency and efficiency, all in the child's best interests" (*Michel v Graydon*, [2020] 2 SCR 763 at para. 52) are the principles that animate decision-making about child support. In assessing retroactive changes to child support, this means considering whether an award will cause hardship to the child or children.

[18] S.L.H. states that she has difficulty financially supporting the Children even without having to repay the overpayment. The focus of her evidence is on the Children's participation in extra-curricular activities. She states the Children have only been able to take part in soccer, gymnastics and other activities because her extended family has paid for them. She also states that her partner has helped by paying the majority of the utilities, as well as helping financially with the Children's activities. S.L.H. earned \$105,564 in 2024. She attests that maintaining the Children on her own is difficult, and she has significant debts.

[19] The difficulties S.L.H. cites do not rise to the level of irreparable harm. I do not fault S.L.H. for wanting to provide the best for the Children. Extra-curricular activities can be an important benefit for children. It may also be hard on the Children if they cannot take part in the extra-curricular activities in the same way they did in the past.

[20] Irreparable harm is, however, more than that. It would arise, for instance, if requiring repayment would mean that S.L.H. would struggle to meet the Children's basic needs of food, shelter and clothing. S.L.H.'s materials show that repayment will be difficult. I conclude, however, that it would not cause irreparable harm.

[21] Because S.L.H. has not established irreparable harm, I need not consider the question of balance of convenience.

(c) *S.L.H. should pay \$500 per month to repay the overpayment, with the child support owed used to set-off the overpayment*

[22] A.W.H. seeks either that no payment schedule be set, that S.L.H. pay at least a lump sum of \$10,000 towards the overpayment, or that a stringent repayment schedule be set. It seems to me that setting no repayment schedule will simply lead to more litigation. I also conclude that requiring S.L.H. to pay \$10,000 in a lump sum amount would not balance the parties' competing interests or fairly consider the impact on the Children.

[23] S.L.H. earned \$105,864 in 2024. She states she pays \$4,000 per month for her mortgage. S.L.H. also owns a rental property. S.L.H. states that she owes over \$30,000 on her credit card, \$26,000 in outstanding legal fees, and \$12,000 in taxes. Out of these debts, I will consider only the tax debt, because it is related to her income. I will not consider the credit card debt, because S.L.H. has not explained how much of that debt is related to the needs of the Children. I will furthermore not consider the outstanding legal fees; this debt is also not directly related to fulfilling the Children's needs.

[24] S.L.H. earns a very comfortable income. However, she is also financially supporting the parties' three Children with minimal assistance from A.W.H. S.L.H. lives with a common-law spouse, but his income is not used in assessing S.L.H.'s income for

the purposes of raising her children. S.L.H. also has a rental property which is income generating. She has provided evidence that she cannot re-finance it to obtain liquidity from it. Selling the property may give her more access to cash, but it would also deprive her of a source of income. I accept that S.L.H. will not be able to pay \$10,000 in a lump sum to A.W.H. without it affecting the Children.

[25] A.W.H. notes that he, too, is suffering financially. He is on a very limited income, and also has significant debt. Like S.L.H., he states that his credit card debt is high. A.W.H. has multiple credit cards and a line of credit. He states he owes approximately \$46,000 on the cumulative debt. He incurred this debt, he states, in part to pay child support. He therefore seeks that S.L.H. provide a lump sum payment to help pay down his credit card bill. A.W.H. states that if he does not receive a lump sum payment from S.L.H., he is at risk of losing his house. He argues that this, too, would have a negative impact on the Children.

[26] While A.W.H. states that his credit card debt comes from the child support he paid, he does not state how much is due to his payment of child support. He also previously gave evidence that his mother and sister paid the child support for him. It is, therefore, impossible to determine the extent to which the debts are as a result of the overpayment of child support.

[27] A.W.H. estimates the overpayment is about \$35,000. A payment of \$500, plus use of child support as set-off, would pay for the overpayment in about 4 years. Balancing S.L.H.'s income, the fact she is primarily supporting the parties' three children, and A.W.H.'s need to be repaid, a repayment schedule of \$500 per month is reasonable. S.L.H. shall pay \$500 to A.W.H. on the first of each month, and A.W.H.'s

child support payments shall be set-off against the overpayment, until the overpayment is repaid.

*(d) No interest shall be imposed on the overpayment*

[28] A.W.H. seeks that S.L.H. pay interest at the rate of 22% per year from the date the order is made, to compensate him for the carrying cost of his debt since the stay was ordered.

[29] I will not impose interest on the overpayment. A.W.H. has not explained where I get the authority to order this rate of interest. Moreover, he has not satisfied me that his credit card debt is directly attributable to his overpayments of child support.

### **Conclusion**

[30] The interim, interim stay on the child support Order is vacated. S.L.H. shall pay to A.W.H. \$500 per month, commencing June 1, 2026, and payable on the first of every month thereafter, for the overpayment arising from the retroactive change to child support. The child support owing by A.W.H. to S.L.H. shall be used to set-off the overpayment. S.L.H.'s payments and the set-off for child support shall continue until the overpayment is paid in full.

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WENCKEBACH J.