IN THE SUPREME COURT OF BELIZE, A.D. 2022
(APPELLATE JURISDICTION)

APPEAL FROM THE INFERIOR COURT – BELIZE MAGISTRATE COURT

AND

IN THE MATTER OF SECTIONS 112 of the Supreme Court of Judicature Act, Revised Edition 2011

AND

IN THE MATTER OF Rule 3 Ord. LXXIII of the Inferior Courts (Appeals) Rules

INFERIOR APPEAL NO. 5 OF 2022

BETWEEN	**JASMINE HARTIN**	**APPLICANT/RESPONDENT**
	AND	
	ANDREW ASHCROFT	**RESPONDENT/COMPLAINANT**

BEFORE The Honourable Madam Justice Geneviève Chabot

Date of Hearing: June 23th, 2022

Appearances

Darlene M. Vernon, Counsel for the Applicant/Respondent

Robertha Magnus Usher, Appearing conditionally on behalf of the Respondent/Complainant

RULING ON APPLICATION FOR INTERIM STAY OF EXECUTION OF DECISION

1. The Applicant, Jasmine Hartin, appeals from a decision of the Honourable Magistrate Dale Cayetano (the "Magistrate") rendered on May 25th, 2022 in the Belize Family Court. In his

decision, the Magistrate granted sole custody of the parties' two children to the Respondent. An Urgent Application for Stay of Execution was filed along with the Notice of Appeal on May 25th, 2022. The Application is accompanied by the 1st Affidavit of Jasmine Hartin dated May 25th, 2022. Two further Affidavits were filed by Ms. Hartin in support of the Application for Stay of Execution on May 30th, 2022 (the "2nd Affidavit" and "3rd Affidavit").

2. This Court received the Application and Notice of Appeal on Friday, May 27th, 2022. A hearing of the Application was scheduled for Tuesday, May 31st, 2022. The Respondent was served at the law offices of Robertha Magnus Usher and Associates, who represented the Respondent before the Magistrate's Court, on May 27th, 2022.

3. At the hearing on May 31st, 2022, the Court informed the Applicant of the requirement under section 112 of the *Supreme Court of Judicature Act*[1] that she must first apply for the stay of execution to the inferior court who made the decision under appeal. The Applicant indicated that she had applied to the Belize Family Court for a stay of execution on May 26th, 2022, the day after the decision had been rendered.

4. Given the short timeframe between the filing of the Notice of Application and the hearing, Mrs. Magnus Usher informed the Court that she had not yet been retained to act in this matter and had no instructions from the Respondent.

5. It was agreed that the Court would reconvene on June 23rd, 2022 to allow time for the Belize Family Court to deal with the Application for Stay of Execution and for Mrs. Magnus Usher to obtain instructions. Both parties were granted leave to file further Affidavits to inform the Court of what had transpired at the Belize Family Court level with respect to the stay of execution. The Applicant filed a 4th Affidavit on June 16th, 2022.

6. On June 21st, 2022, the Court received a letter from Mrs. Magnus Usher requesting an adjournment of the June 23rd, 2022 hearing. In her letter, Mrs. Magus Usher indicated that she had not been retained by the Respondent to act in this matter. She also indicated that the Respondent had not been served with the Notice of Appeal and that she had only been served with the filed copies of the Applicant's 2nd, 3rd, and 4th Affidavits on that day.

7. At the June 23rd, 2022 hearing, the Court decided to adjourn the hearing of the Application for Stay of Execution to allow Mrs. Magnus Usher time to seek instructions from the Respondent and respond to the Affidavits filed by the Applicant. The Court also instructed the parties that it would hear arguments on the issue of service at the next hearing. Both

[1] Cap. 91, Revised Edition 2020.

parties were granted leave to file Affidavits and submissions on the issue of service and on the Application for Stay of Execution in advance of the next hearing.

8. Because the Application for Stay of Execution was filed with the Supreme Court as an "Urgent" Application, the Court sought submissions from both counsel as to whether an Interim Stay of Execution should be granted. Two issues arose from these submissions. The first issue is whether this Court has the jurisdiction to grant an Interim Stay of Execution. If this Court has jurisdiction, the second issue is whether the Court should exercise its discretion and issue an Interim Stay of Execution in the circumstances.

Jurisdiction

9. Section 112 of the *Supreme Court of Judicature Act* governs the stay of execution of a decision made by an inferior court pending an appeal of the decision before this Court. Section 112 provides as follows:

> **112**.-(1) Where any person has filed an appeal to the Court against a decision of an inferior court, the appeal shall not by itself result in the suspension of the decision under appeal, but the appellant may, within the time prescribed for filing such appeal, apply to the inferior court which made the decision under appeal, for stay of execution of any judgment appealed from, whether civil or criminal, pending the determination of such appeal.
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> (2) Before hearing the application for stay made pursuant to sub-section (1), the inferior court shall give its reasons for the decision under appeal and shall supply copies thereof to both the appellant and the respondent, such reasons to be given no later than seven days from the date of the application for stay of execution.
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> (3) If the application for stay is refused by the inferior court, or the inferior court fails to give its reasons for the decision under appeal within the time specified in sub-section (2), the appellant may apply to the Court for appropriate relief.

10. The proper process is therefore to first apply to the inferior court which made the decision under appeal to issue a stay of execution of the decision. This Court may consider an application for stay of execution only if the inferior court failed to give its reasons for the decision under appeal within 7 days from the date of the application for stay of execution, or if the application for stay is refused by the inferior court.

11. The parties dispute whether an application has been made to the Belize Family Court to stay the execution of the May 25th, 2022 decision of the Magistrate. The Applicant attached to her 2nd Affidavit documents filed with the Belize Family Court on May 26th, 2022. The first document (Exhibit JH8) is the Notice of Appeal that had been filed with

this Court on May 25th, 2022. Exhibit JH8 also shows a receipt stamped by the Belize Family Court confirming payment of the "Cost of appeal" of $3.00 BZD.

12. The second document (Exhibit JH9) is a document entitled "Urgent Application for Stay of Execution of Decision". The document header is identical to the document header in this appeal before the Supreme Court. The document header shows that the document is presented "In the Supreme Court of Belize" in an "Appeal from the Inferior Court – Belize Magistrate Court", "In the Matter of Section 112 of the Supreme Court of Judicature Act" and "In the Matter of Rule 3 Ord. LXXIII of the Inferior Courts (Appeals) Rules". The document does not show any file number (presumably because the Supreme Court Registry had not yet given a file number to this appeal when the document was filed with the Belize Family Court), but the document indicates that the intended file number is the file number of the Inferior Appeal, not the file number in the Belize Family Court. There is an annotation on the left side of the document with the date "26/5/2022". The Court is unable to identify the signature.

13. The Applicant contends that the *Supreme Court (Inferior Courts Appeals) Rules*, 2021, do not prescribe a specific form for an application for stay of execution. The documents exhibited at JH8 and JH9 were filed with the Belize Family Court and constitute a proper application for stay of execution in the Belize Family Court. Since the Magistrate has not dealt with the application, or provided reasons for his decision within 7 days, this Court can now take jurisdiction and order a stay of execution under section 112 of the *Supreme Court of Judicature Act*.

14. Mrs. Magnus Usher argues, on behalf of the Respondent, that there is nothing in any of the Applicant's Affidavits showing that the Applicant has in fact applied to the inferior court for a stay of execution. The Applicant did not apply orally to the Magistrate for a stay of execution of the May 25th, 2022 decision at the conclusion of the trial. The Affidavits indicate that the Applicant *served* the Belize Family Court with the documents in Exhibits JH8 and JH9, but not that the Applicant *applied* for a stay by filing a Notice of Application in the inferior court. Relying on the Court of Appeal's decision in *Attorney General of Belize et al v Jeffrey J Prosser*[2], Mrs. Magnus Usher contends that this Court does not have the jurisdiction to consider this Application because a stay of execution has not first been applied for in the court below.

15. This Court finds that the Applicant has not complied with the requirements in section 112 of the *Supreme Court of Judicature Act*. There is no evidence that the Applicant applied *to the inferior court* for a stay of execution of the May 25th, 2022 decision. The document marked as Exhibit JH9 does not constitute an application in the Belize Family Court. While the document is addressed, among other recipients, to the Magistrate who made the

[2] Civil Appeal No. 7 of 2006 (*Prosser*).

decision for which the stay is sought, the document is presented as a document in an Inferior Appeal in the Supreme Court of Belize. The document makes no reference to the file number in the Belize Family Court. The document states that the Applicant applies "to the Court" for a stay of execution, but does not specify the Court she is applying to. While the documents have been stamped by a clerk of the Belize Family Court, the stamp merely provides evidence that the documents were received by the clerk. There is therefore no evidence before this Court to show that the Magistrate was properly seized of an application for stay of execution.

16. Section 112 of the *Supreme Court of Judicature Act* confers no discretion on this Court to consider an application for stay of execution before the conditions precedent enumerated at subsection 112(2) have been fulfilled. This conclusion is supported by the Court of Appeal's decision in *Prosser*, which held, with regard to a provision equivalent to section 112 in the *Court of Appeal Act*, that...

> ... it is, and rightly so, a condition for (a) the existence of the jurisdiction of this Court (not to mention its single judge) to hear, determine and make orders on an application for a stay of execution and (b) the existence of the like jurisdiction of this Court on an application for a stay of proceedings that a judge of the court below should have previously heard and refused such an application.[3]

17. As a result, this Court does not, at present, have the jurisdiction to grant an Interim Stay of Execution. It is therefore unnecessary to consider the second issue.

IT IS HEREBY ORDERED

(1) The Application for an Interim Stay of Execution of the decision of the Honourable Magistrate Dale Cayetano rendered on May 25th, 2022 is denied.

Dated June 29th, 2022

Geneviève Chabot
Justice of the Supreme Court

[3] *Prosser, supra* at para. 18.