



Review Orders: Temporary or Final. That is the Question

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What constitutes a temporary order in family law? This is not a question family law lawyers have to normally have to think about or have to consider. However, as more and more family law litigants raise the spectre of parental alienation when dealing with the issue of custody and access Judges are going to turn to the judicial remedy of “review orders” to try and resolve these issues. Review orders came to the attention of the bar and the judiciary with the release in 2011 of the decision by Harper J in the case of *F.(A.M.) v. W.(J.R.)* 2011 ONSC 1868. In that case Harper J outlined the process of when and in what circumstances a review order should be used, but what he did not do was define whether a review order was a temporary or final order.[1]

Following on the heels of Harper J’s decision are the decisions of *Perino v. Perino*, 2012 ONSC 328, which was a case in which the court ordered continuing case management because of the issue of parental alienation and referred the matter to another judge for the purposes of case management, and Howden J’s decision in *S. v. N.*, 2013 ONSC 556. In *S. v. N.* Howden J was placed in a strikingly similar position to Harper and opted to try and resolve the issues placed before him by opting to follow the process outlined by Harper J in *F.(A.M.) v. W.(J.R.)*. In opting to do so Howden J left for another court to decide whether a review order is a temporary or final order, which is precisely what the Ontario Court of Appeal (OCA) did in *N.S. v. C.N.*, 2013 ONCA 452. In a unanimous decision the OCA stated that a review order “by its very terms does not finally resolve the issues between the parties...”[2] In that short concise statement the OCA confirmed that a review order is a temporary order in accordance with the definition of the meaning of a “temporary order” found in the *Family Law Rules*[3].

Two lessons can therefore be gleaned from the OCA’s decision in *N.S. v. C.N.* The first lesson is that should you ever find yourself faced with representing a litigant at trial involving the issue of parental alienation you should consider taking the position that at the conclusion of the trial the judge should order a review period as the court did in the decisions referred to in this article. The second lesson is that should you be approached by a litigant who wants to appeal a review order the proper route of appeal according to the OCA[4] is the Divisional Court in Ontario.

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[1] Harper J struck on the notion of ordering a review after the conclusion of the trial because he came to the conclusion at paragraph 187 of his judgment that “I am left with a most difficult search to achieve justice in this case. I find that the confines of the present legislation (*Children’s Law Reform Act* and *Child and Family Services Act* respectively) structure that limits my options also limit my ability to craft a workable solution for these children.

[2] *Supra* at paragraph 1

[3] The *Family Law Rules, O.Reg. 114/99, s.2-Schedule B* define a “Temporary Order” to mean an order that says it is effective only for a limited period of time, and includes an interim order.

[4] See paragraph 2 of the OCA decision

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