NOVA SCOTIA COURT OF APPEAL
Citation: *GS v. AB*, 2024 NSCA 6

Date: 20240109
Docket: CA 529417
Registry: Halifax

Between:

GS

Appellant

v.

AB

Respondent

Judge:	Derrick, J.A.
Motion Heard:	January 4, 2024, in Halifax, Nova Scotia in Chambers
Written Decision:	January 9, 2024
Held:	Motion dismissed without costs
Counsel:	GS, appellant in person AB, respondent, not appearing

Decision:

Introduction

[1] GS discovered on December 14, 2023 he was out of time to file an appeal from a decision of Justice Theresa Forgeron of the Nova Scotia Supreme Court, Family Division rendered on July 18, 2023.[1] Amongst other issues, the decision dealt with parenting of GS' daughter, GaS. It is the parenting decision that GS wishes to appeal.

[2] GS learned he was too late to file when he brought his Notice of Appeal to the courthouse in December 2023 and it was not accepted. The actual deadline for the filing of GS' Notice of Appeal was September 21, 2023—25 clear business days from August 16, 2023, the date of the judge's Order.[2]

[3] GS was almost three months late. He explains he went to file his Notice of Appeal in December because he believed he had six months from the judge's decision to do so.

[4] Having been advised that he had missed the deadline for filing a Notice of Appeal, GS filed a motion in this Court seeking an extension of time so he can proceed with an appeal. As Chambers judge, pursuant to *Civil Procedure Rule* 90.37(12)(h), I have the discretion to extend the applicable time limit to permit the filing of a late Notice of Appeal. I explained to GS that discretion is structured by legal principles. I must consider and balance various factors in determining his application.

[5] Having weighed the relevant factors, I am dismissing GS' application. The following are my reasons.

Legal Principles

[6] The factors to be considered in the exercise of discretion to grant an extension of time to file a Notice of Appeal are well-established: the applicant must have had a *bona fide*, that is, genuine, intention to appeal within the period when the right to appeal existed; they must provide a reasonable excuse for why no appeal was filed; the question of prejudice to the opposing party must be

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[1] *G.S. v. A.B.*, 2023 NSSC 228. [Decision]
[2] *Civil Procedure Rule* 90.13.

addressed; and the merits of the proposed appeal assessed. Even if these criteria are not met, "compelling or exceptional circumstances", such as "a strong case for error at trial" can warrant an extension of time being granted.[3] "Ultimately, the discretion must be exercised according to what the interests of justice require".[4]

[7] The interests of justice are not served by a proposed appeal that lacks merit being afforded an extension of time:

> [45] ...the ultimate question is whether or not the interests of justice require the extension of time to be granted. It cannot be in the interests of justice to extend time in order for a prospective appellant to pursue an appeal that has no merit...[5]

[8] Satisfying the meritorious appeal criterion, or in other words, showing there is an arguable issue for appeal requires GS to advance "realistic grounds which, if established, **appear of sufficient substance to be capable of convincing a panel of the court to allow the appeal**".[6] (emphasis added)

[9] Before I apply the legal principles to the facts of GS' application, I will discuss the issue of AB not being present at the Chambers hearing. "Prejudice to the opposing party" is a relevant factor I must consider on an application for extending the time to file a late Notice of Appeal.[7]

[10] At the Chambers hearing, GS advised me he had served AB with his motion documents, including his affidavit. He said he did so by email which he indicated was the method of communication he and AB use. Despite a diligent effort of scrolling through the emails on his phone, he was unable to locate the email he said he had sent. I considered not proceeding with his application and requiring him to return with a sworn affidavit of service, although I could not be certain the sent email would be found. It seemed to me adjourning the matter would unnecessarily protract it for little gain. Instead, I had GS confirm, under solemn affirmation, that he had emailed his filings for the Chambers motion to AB. I saw this as no different from him returning with a sworn affidavit.

[11] Furthermore, I was more concerned with the other factors I outlined above: did GS have a genuine intention to appeal during the appeal period? Does he have

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[3] *Bellefontaine v. Schneiderman*, 2006 NSCA 96 at paras. 3 & 4.
[4] *R. v. R.E.M.*, 2011 NSCA 8 at para. 39. (*R.E.M.*); *Brooks v. Soto*, 2013 NSCA 7 at para. 5.
[5] *R.E.M.*
[6] *R.E.M.*, at para. 50, per Beveridge, J.A., citing *MacCulloch v. McInnes, Cooper & Robertson*, 2000 NSCA 92, at para. 4.
[7] *Daye v. Savoie*, 2022 NSCA 27 at para. 35.

a reasonable excuse for not filing his Notice of Appeal on time? And, is he advancing grounds of appeal of "sufficient substance to be capable of convincing a panel of the Court to allow the appeal"? These questions will be the focus of my reasons.

Facts

[12] The judge commenced her decision with an explanation of the issues before her:

> [1] GS wants to be a loving and protective father to his 10-year-old daughter, GaS. He believes that he cannot fulfill that role unless his daughter is in his care 50% of the time. Under the current court order, the daughter lives in the primary care of the mother, AB, while the father is scheduled to have liberal, specified parenting time. The daughter, however, does not attend parenting time with the father.
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> [2] Further, under the current order, the father must pay the table amount of child support to the mother. The father has not complied, and child support arrears have accumulated. As a result, the Maintenance Enforcement Program is garnishing his wages.
>
> [3] In response to these circumstances, the father applied for three forms of relief. First, he wants a shared parenting arrangement. Second, the father does not want to pay the table amount of child support to the mother, even if the mother has primary care. He also wants support arrears forgiven. Third, the father seeks compensatory parenting time.[8]

[13] GS' applications were dismissed in an Order dated August 16, 2023.

[14] The facts underlying GS' late filing are quite simple. He explains them in his affidavit. He says he understood the judge to have told him he had six months from the date of her decision in which to appeal. He sets out his reasons for not filing his Notice of Appeal in time:

> 4. I was told by Judge Forgeron that I have 6 months to appeal the decision from the date it was made (July 18, 2023).
>
> 5. I did not misunderstand. I heard the judge clearly. I heard the judge correctly when she said I had 6 months to appeal. I took notes.[9]

[8] Decision.
[9] GS did not produce his notes but I find that to be immaterial. Nothing turns on my not having his notes.

> 6. If I did not believe I had 6 months to appeal I would have submitted the appeal before the deadline.
> 7. I honestly thought I was within the deadline based off what the judge said.
> 8. I was given incorrect information by Judge Forgeron.
> 9. I do not believe this is my fault because I believed the Judge would know best and I was following what I heard.

[15] GS' affidavit did not indicate when the judge told him about the deadline for filing an appeal. How he came to think he had six months is relevant to the issue of whether he has a reasonable excuse for not filing in time.

[16] GS was very helpful in answering my questions about when a discussion about the appeal period may have occurred. Our exchange equipped me with clues for finding the relevant discussion in the audio recordings for the hearing before the judge. I told GS I would search for the information I needed to address the reasonable excuse issue.

[17] As we tried to piece the scenario together, GS was able to recall that what he heard about a six month time limit occurred when he was asking the judge about two "albums" he wanted considered as evidence and then returned to him. He remembered asking her when he would get the albums back. He says she told him in this context that he would have six months to appeal.

Bona Fide Intention to Appeal and Reasonable Excuse

[18] Equipped with GS' recollection, I was able to conduct a fruitful search of the audio recordings of the proceedings before the judge. What I found has satisfied me that GS both had a genuine intention to appeal within the appeal period and a reasonable excuse for not doing so. I will set out the factual context and explain.

[19] The hearing of in the court below occurred over five days—March 6, 15 and 16, April 26 and 27, and May 3, 2023. Witnesses testified and there was closing argument. Both GS and AB were unrepresented.

[20] On April 27, GS wanted to provide the judge with scrapbooks he and his daughter had worked on together. He said the scrapbooks were evidence that his daughter was happy when she was with him. The judge explained that for her to consider the scrapbooks, they would have to be entered as exhibits. Understandably, the scrapbooks were treasured by GS and he wanted to know, if

he handed them over as evidence, when he would be able to get them back. There was an exchange that I am reproducing below:

> **GS**: "Are you able to take pictures of this? Take these, Make pictures of the book, I don't want them taken out of the books that me and [GaS] made together but I want to display them and there is dates on them. I just want to show…"
>
> **The judge**: "Is there any, is there, for what purpose?"
>
> **GS**: "Because I wanted to show that [GaS] is happy when she is with me, all these times, like these are scrapbooks that we made together so I just think that it is important to show that [Gas] has always been happy with me, ever since, and in some of these pictures she is only 5 years old, is when she first"
>
> **The judge**: "See anything, uh, [GS], anything that I consider, so when there is a document that you want me to consider for the purposes of fact finding, those documents have to be entered as an exhibit."
>
> **GS**: "Am I allowed to show that they are my final submission?"
>
> **The judge**: "No, not if you want me to consider it. Ah,"
>
> **GS**: "Are you able to consider anything in those books?"
>
> **The judge**: "I am allowed to it as long as they are entered as an exhibit."
>
> **GS**: "Okay, can I enter it"
>
> **The judge**: "In six months time, if there is no appeal, I can return exhibits to the party.
>
> **GS**: "There might be, if I am not treated [inaudible] here"
>
> **The judge**: "No, but even if there is an appeal, if there is an appeal, then the exhibits would stay and after the appeal was over, and I am not sure of the period for the Court of Appeal, but after the appeal is over, then you would be able to get the originals back or you could just make copies of them."
>
> **GS**: "Yeah. You're mentioning an appeal today, like you are not going to be fair to me."
>
> **The judge**: "No, you want your exhibits so the rule is six months after, the courts are allowed to return exhibits after a period of six months."
>
> **GS**: "So I can give this to you for six months and, uh, I just don't want it tore up."
>
> **The judge**: "But, if there is an appeal, then that period is extended during the course of the appeal."
>
> **GS**: "Okay, I am, I am going to hand these over to you then but I don't want the pictures taken out and copied or anything, I just want you guys just to have them, to look at."

> **The judge**: "So how about this, you give them to the Sheriff, and I will look at them first"
>
> **GS**: "Okay."
>
> **The judge**: "And then we can have them entered as an exhibit."
>
> **GS**: "Okay"
>
> **The judge**: "And then we can give them back once it is complete…. Let me have a look at them first. And I am looking at them first so I can have an idea of what you are going to be asking and I can receive it."

[21] I listened to the audio recording of the above exchange. It happened at approximately 15:16 to 15:18 hours on April 27, 2023.

[22] The retention of exhibits issue received some further attention by the judge after a short recess. I listened to this exchange as well. At 15:39, the judge returned to the courtroom and had the following exchange with GS:[10]

> **The judge**: "Thank you. So, I just wanted to clarify something. Because we are often not requested to return exhibits, I just went through the Rule, which I will review with you, so it's 84.04, and it says, "the Prothonotary may, unless a judge orders otherwise, return an exhibit to a party on whose motion the exhibit was entered or who filed an exhibit, an affidavit to which the exhibit was attached no sooner than six months after the day that one of the following occurs: the expiry without an appeal having been started at the time of the appeal to the Nova Scotia Court of Appeal from the Order that finally determines all issues in the proceeding; expiry without an application having been made for leave to appeal; dismissal by the Supreme Court of Canada of an application for leave to appeal; final determination by the Supreme Court of Canada… aah, and it says that a judge may order that an exhibit be turned over to a person temporarily or permanently."
>
> **The judge**: "So basically the situation is, these pictures will be put into the record and we will have to retain them until the expiration of the appeal period. So, it is six months after the expiration of the appeal period, that they will be maintained here."
>
> **GS**: "Okay, I thought six"
>
> **The judge**: "Once that period, six months after the appeals have all been exhausted, then we can send those pictures and photographs back to you, so I just want you to be aware".
>
> Someone in background: "I was wrong, 60 days is not correct."

[10] The discussion captured in this excerpt from the proceedings occurred between 15:39:57 and 15:42:15 on April 27, 2023.

> **GS**: "Okay, no worries."
>
> **The judge**: "So, yeah, yeah, I had said I thought it was six months, we are not often asked to return, I am not personally asked to return the exhibits, but I always thought it was six months and it is, so, ah, that is why people often make photocopies so that they keep the originals."
>
> **GS**: "Yeah, I wish I had of, it was just artwork that we did together, that"
>
> **The judge**: "I am not suggesting one way or the other, I just want you to be aware, that once they are in, I have to follow the rules of court with respect to release of, these are very personal pictures."
>
> **GS**: "Yes."
>
> **The judge**: "Of your life with your daughter and they are meaningful, and I want you to be aware that the time frame is outlined in the rules and I have to follow that."
>
> **GS**: "I understand."
>
> **The judge**: "Okay."

[23] The exchanges between the judge and GS on the afternoon of April 27 satisfy me that: (1) GS had a genuine intention of appealing if the judge's decision went against him, and (2) it was reasonable for him to have taken from the discussion that he had six months in which to appeal. GS' genuine intention to appeal is evidenced by his own words in the first exchange. And I find he understood the judge's explanation about the time limit for retaining the scrapbook exhibits as an explanation for how long he would have to launch an appeal.

[24] Having listened to the audio recording it is apparent to me that the judge was trying to be helpful to GS and give him accurate information about when he could expect to get his scrapbooks back. GS is not legally trained. I find it is understandable that he took from what the judge was telling him that he had six months in which to appeal her decision if he was dissatisfied with it. At that point, the proceedings were ongoing and the judge had made no decision. But it obviously lodged in GS' mind that when she did, he would have six months to bring an appeal. The misunderstanding was nobody's fault—not the judge's and not GS'.

[25] I do not find there to be any significance in the judge having said, during the first exchange, that she was not sure "of the period for the Court of Appeal". I can understand how that isolated comment would have sailed over GS' head.

[26] The judge was not telling GS he had six months to appeal; she was talking about when the exhibits could be returned to him. But I am satisfied it was reasonable for GS, a lay person, to have thought she was telling him he had six months in which to bring an appeal.

Does the Proposed Notice of Appeal Raise An Arguable Issue?

[27] I emphasized to GS that I would be deciding his application by assessing the factors that govern the exercise of my discretion. That requires me to consider whether the proposed appeal has merit. A late Notice of Appeal that does not advance grounds capable of convincing a panel of the Court to allow the appeal cannot qualify for an extension of time. This is the case even where a reasonable excuse exists for not filing in time.

[28] As I will explain, I have reviewed GS' Notice of Appeal and the judge's decision and concluded there is nothing that could result in his appeal being successful.

[29] The judge observed these parties have "an extensive litigation history" with over 20 court orders since 2016 "to determine numerous parenting, support, and production matters".[11] She had assumed carriage of the latest proceeding in February 2023. She provided a chronology of events from December 2020 when GS applied to vary the parenting and maintenance provisions of a court order issued in August 2020.

[30] The judge summarized the positions of the parties on the issue of shared parenting:

> [32] In summary, the father was adamant that the daughter be placed in his care 50% of the time. The father argued that a shared parenting arrangement was necessary to ensure that the daughter's best interests were met, and to minimize the harmful influences facing the daughter while in the mother's care. The father also repeatedly confirmed that he would never stop in his pursuit of justice. He stated that he has an endless amount of energy and that it was his right to make as many applications as he wants over the next ten years to achieve his goal.
>
> …
>
> [33] …the mother asked that the father's application for shared parenting be dismissed. She wants to maintain her primary care status. The mother denied the

[11] Decision, at para. 7.

> father's allegations that she is incapable of meeting the daughter's needs. On the contrary, she said, the daughter is, in fact, flourishing in her care…[12]

[31] The judge found there had been a material change in circumstances since the August 2020 order, noting that GaS no longer participated in parenting time with GS. She described the relationship between father and daughter as "seriously compromised".

[32] In summary, GS' Notice of Appeal advances the following "errors" in the judge's conduct of the case and her decision, some of which overlap or restate the same issue. I have interspersed comments amongst the bulleted grounds:

- Unfair hearing.
- Application of the law "in the wrong way".
- Racist treatment by the family court system. Inherent bias against men, particularly Black fathers.

[33] GS raised the racist treatment issue in his affidavit and his submissions to me. As the judge's decision indicates, he raised these issues in the court below:

> [4] In advancing his position, the father frequently said that he had not been treated fairly by the courts. The father attributed past negative outcomes to systemic racism within the justice system - specifically, unconscious bias against black Nova Scotian males.[13]

- Bias in favour of AB.
- Failure to decide that GaS's best interests are to have an equal relationship with both parents.

[34] On the issue of shared parenting, the judge concluded:

> [106] The father's request for shared parenting and additional overnights on Wednesdays is denied. The daughter has flourished in the mother's primary care, and the evidence does not suggest that she would flourish in her father's care 50% of the time. The evidence is to the contrary. It is in the daughter's best interests to continue in the mother's primary care.

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[12] Decision.
[13] Decision.

> …
>
> [107] It is in the daughter's best interests to eliminate the father's Sunday overnight parenting time. The father's need to control negatively impacts his ability to prioritize and meet the daughter's needs. The daughter should be in the mother's care during the school week, so that the daughter does not experience upset while at school.[14]

- Failure to acknowledge "the systemic racism by the family court system" perpetrated by the judge "throughout the trial and her decision".
- Lack of objectivity by the judge and dismissal of all of [GS'] arguments.
- A "clearly punitive" decision damaging to GaS and GS' relationship with her.
- Failure to address "the multitude of court violations by AB over the past 7 years".
- "Dismissive and disrespectful" treatment.

[35] The judge described her management of the hearing:

> [26] During the hearing, I rendered evidentiary rulings, which the father often found difficult to accept, such as the prohibition against leading opinion, irrelevant, and hearsay evidence. During such times, the father often communicated his displeasure with my rulings by dysregulating. To provide the father time to collect himself, brief adjournments were frequently ordered, which in turn extended the time required to finish the trial.

- Delay of the proceedings due to the retirement of a judge.

[36] GS' Notice of Appeal includes a section entitled "History of Failure by the Family Court 2021-2022".

[37] The Notice then lists, by page reference to the judge's decision, examples in support of the grounds of claimed error. GS says the judge's reasons:

- Distorted his arguments which are "warped by her racist subjective perspective".

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[14] Decision.

- Ignored evidence he advanced of an inappropriate gesture by GaS, indicating evidence of abuse.

[38] The judge addressed the gesture and AB's care of GaS:

> [74] The mother meets the daughter's emotional and psychological needs in an exemplary way, although the 2022 Christmas photo with hand gesture, despite its context, was not appropriate. The mother ensures that the daughter is supported at home and at school. She also arranged for individual counselling. The mother acts protectively.[15]

- Failed "to apply relevant case law correctly" in relation to the issue of material change in circumstances.

[39] GS does not indicate how the judge failed to correctly apply the law.

- Failed to apply relevant case law.

[40] GS states this several times. He does not indicate any contrary case law.

- Unfairly accepted AB's position and rejected GS' claims.

[41] The judge found:

> [67] The father's estranged relationship with the daughter arises primarily due to the father's beliefs and conduct. The father has a rigid need to control and has not adjusted his parenting style to conform with the daughter's developmental stage. In addition, the father often dysregulates when his authority is challenged, becoming angry and verbally belittling anyone, including the daughter, who disagrees with his narrative. The daughter is justifiably afraid when the father dysregulates, and when he is unable to prioritize her needs. Further, the father does little to mask his hatred of the mother and the men who are important in her life. The daughter likely experiences internal conflict when the father speaks derogatorily about the mother, the paternal grandfather, and the mother's boyfriend.
>
> [68] Contrary to what the father alleges, the mother is not the cause of the father's deteriorating relationship with the daughter. The mother did not engage in alienating conduct. The mother has acted protectively of the daughter. The mother correctly notes that, in the circumstances of this case, she cannot force the daughter to go with the father. The mother sought counselling for the daughter

[15] Decision.

> and is committed to seeking a therapeutic solution. The mother wants the daughter to have a healthy relationship with the father.

- Showed bias in favour of AB through "tone and choice of words".

- Made racist unfair findings, including concluding that GS showed emotional dysregulation and a volatile temper.

[42] The judge found evidence of inappropriate conduct and language on the part of GS, including:

> [42] The father's unapologetic use of derogatory, abusive, and misogynistic slurs in communications with the mother was confirmed in the exhibits and during his testimony. The father's unwillingness or inability to communicate politely and respectfully is a distinct departure from the provisions of the last court order. Further, the father maintained before the court that his word choices are appropriate in the circumstances, and he made no commitment to change his approach going forward.[16]

[43] The judge found GS was responsible for the strained relationship with his daughter:

> [45] The father blames the mother for the state of his failed relationship with the daughter. He states that the mother engaged in alienating conduct, intent on destroying his daughter's love for him. He states that the mother is controlling the daughter and is negatively influencing her decisions. The mother denies the allegations and points to the father's parenting and communication deficits to explain the strained father-daughter relationship.
>
> [46] I accept the mother's position and reject the father's claims. Where there is a dispute in the evidence, I accept the mother's evidence and reject the father's evidence. I find that the father is primarily responsible for his deteriorating relationship with the daughter for four reasons - his need to control; his dysregulation and volatile temper; his failure to prioritize the daughter's needs; and his hatred of the mother. I will now explain my conclusions.[17]
>
> [citations omitted]

- Failure to give effect to GS' "right to a speedy trial" and delay in rendering the decision.

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[16] Decision.
[17] The judge discussed each of her four reasons and the evidence she relied on at paragraphs 47-68.

[44] GS does not refer to any authority in support of his assertion that he had the "right to a speedy trial".

- Reversed "7 years of Family Court progress" by denying GS' request for shared parenting.

[45] As I indicated earlier, the judge found there had been a material change in circumstances since the last court order in August 2020.[18]

- Failure by the court to send the judge's decision to GS' correct email address.

[46] GS seeks "a new trial or hearing as a result of the irregular process, multitude of errors and racism" by the judge.

[47] Assessing GS' grounds of appeal to determine if any of them could convince a panel on appeal to allow the appeal requires me to consider the standard of review that applies in an appeal from a decision on parenting. It is a firmly established standard. As this Court held in *Weagle v. Kendall*:

> [21] There is no controversy regarding the well-settled standard of review in relation to parenting matters. This Court must show deference, as the hearing judge is in the best position to determine the question(s) put before it: *Van de Perre v. Edwards*, 2001 SCC 60 at paras. 11-12. Appellate review is "narrow" (*Horbas v. Horbas*, 2020 MBCA 34 at para. 15), reflecting the highly fact-driven nature of the decision and the discretion exercised by a judge in reaching it (*Barendregt* at para. 152). Unless the judge has made "an error in principle, has significantly misapprehended the evidence or unless the decision is clearly wrong", this Court is not entitled to interfere: *D.A.M. v. C.J.B.*, 2017 NSCA 91 at para. 28. See also *Reid v. Faubert*, 2019 NSCA 42 at para. 16 and *LeBlanc v. LeBlanc*, 2023 NSCA 36 at para. 2.
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> [22] An assertion of misapprehension of evidence attracts a similar deferential scope of review (*Novak v. Novak*, 2020 NSCA 26 at para. 7).[19]

[48] GS' grounds of appeal would be subject to a narrow, deferential standard of review on appeal that recognizes the highly fact-driven and discretionary nature of the judge's decision. This Court is not entitled to interfere with a parenting decision in the absence of an established error in principle or significant

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[18] Decision, at para. 40.
[19] 2023 NSCA 47. (The *Barendregt* reference is to *Barendregt v. Grebliunas*, 2022 SCC 22.)

misapprehension of the evidence by the judge or a clearly wrong determination. Courts of appeal are expected to be reluctant to interfere with the exercise of a trial judge's discretion.[20]

[49] The Supreme Court of Canada in *Barendregt* has instructed appellate courts to apply these principles in the context of an appeal from a parenting decision:

> [101] The trial judge is the fact finder and has the benefit of the intangible impact of conducting the trial: *R. v. G.F.*, 2021 SCC 20, at para. 81. After hearing from the parties directly, weighing the evidence, and making factual determinations, the trial court is best positioned to determine the best parenting arrangement.
>
> [102] An appellate court's role, as noted, is instead generally one of error correction; it is not to retry a case. Permitting appellate courts to become venues for dissatisfied parties to relitigate issues already resolved at trial erodes the public's confidence in the judicial process and the rule of law. The proper functioning of our judicial system requires each level of court to remain moored to its respective role in the administration of justice.
>
> [103] Therefore, an appellate court may only intervene where there is a material error, a serious misapprehension of the evidence, or an error in law.
>
> [citations omitted]

[50] Dissatisfaction with the judge's decision does not provide a basis for it to be reviewed on appeal. And the judge's decision in this case was not wrong because GS says it is. Nor is it wrong because he rejects it.

[51] I will further note there is no presumption in law in favour of shared parenting.[21] The lodestar in parenting disputes is always the best interests of the child. The judge's decision in this case shows she recognized and applied this principle.

[52] GS is deeply unhappy with the judge's decision of July 18, 2023. His proposed appeal seeks to have the judge's conduct, reasoning and findings microscopically re-examined.

[53] But an appeal is not a re-trial. It is not a commission of inquiry.

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[20] *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 100.

[21] *Barendregt v. Grebliunas*, 2022 SCC 22.

[54] A decision on parenting involves the application of law to factual findings. The judge was required to decide the issues before her. She had to sort through conflicting evidence and submissions and determine what she accepted.

[55] The judge's lengthy reasons—157 paragraphs—exhaustively reviewed the evidence and submissions of the parties. The weighing of evidence is for the trial judge, not the Court of Appeal, and great deference is shown on appeal to a trial judge's findings. The judge based her conclusions on factual findings she anchored in the evidence. She applied the appropriate law.

[56] GS' proposed appeal is an attack on the judge's factual findings and exercise of discretion. He also advances unsubstantiated accusations against the judge, providing no evidence to support allegations that she subjected him to discriminatory, racist treatment. He provides no basis for his claims she was biased against him, misapplied the law, or ignored evidence. Her reasons indicate she carefully considered and weighed the evidence before her and reached reasonable, sustainable conclusions about the parties and GaS's best interests.

[57] I find GS' Notice of Appeal does not advance any grounds that would be capable of convincing a panel of this Court to allow the appeal. This factor is not satisfied by GS putting forward issues he wants to argue. He would not be entitled to a new hearing on the basis of delay. There are no compelling or exceptional circumstances that would warrant an extension of time such as a strong case for error at trial and real grounds justifying appellate intervention. GS' appeal would fail when subjected to the appellate standard of review I reviewed earlier.

Disposition

[58] I have considered and weighed the factors that apply in an application for an extension of time to file a late Notice of Appeal. I have concluded it would not be appropriate to grant an extension of time in this case. The interests of justice are not served by an appeal that has no merit.

Conclusion

[59] GS' application to extend time for filing the Notice of Appeal is dismissed without costs.