
CANADA / JUDGMENT

E.L.R. v. D.M.S.

2025 ONCA 802

COURT

Court of Appeal for Ontario

DECIDED

20 November 2025

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E.L.R. v. D.M.S.

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Docket numbers

COA-25-CV-0873, M56397

Judges

Roberts, Lois B.

Subject

Family

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: E.L.R. v. D.M.S., 2025 ONCA 802[1]

DATE: 20251120

DOCKET: M56397 (COA-25-CV-0873)

Roberts J.A. (Motion Judge)

BETWEEN

E.L.R.

Applicant (Respondent/Responding Party)

and

D.M.S.

Respondent (Appellant/Moving Party)

and

E.C.M. and E.W.C.

Respondents (Respondents/Responding Parties)

D.M.S., acting in person

Joan Cushon, for the responding party, E.L.R.

Raymond A. Goddard, for the responding parties, E.C.M. and E.W.C.

Mary Paterson, appearing as amicus curiae, Pro Bono Ontario

Heard: November 5, 2025

REASONS FOR DECISION

- [1] D.M.S. brings this motion for an extension of time to perfect his appeal from the May 16, 2025 order of McDermot J., refusing to set aside the striking of D.M.S.'s pleadings. His appeal arises in the context of the parties' acrimonious family law proceedings that commenced in 2018. E.L.R. is D.M.S.'s former spouse; E.C.M. and E.W.C. are her parents, who claim an interest in the matrimonial home.
- [2] The overarching consideration on this motion is whether it is in the interests of justice to grant the extension. Where, as here, the order affects children, the justice of the case is reflected in the best interests of the children: *Denomme v. McArthur*, 2013 ONCA 694, 36 R.F.L. (7th) 273, at para. 7; *Teitler v. Dale*, 2021 ONCA 577, at para. 7.
- [3] Informing the analysis on a motion to extend the time for the perfection of an appeal are the following well-known factors: 1) the continuation of the intent to appeal; 2) the length of and explanation for the delay; 3) any prejudice because of the delay, especially to the child of the marriage; and 4) the merits of the appeal: *Issasi v. Rosenzweig*, 2011 ONCA 112, 95 R.F.L. (6th) 45, at para. 4. As the moving party is seeking the court's indulgence, relevant to this analysis is the moving party's conduct, including whether the moving party is in breach of any court orders: *Jex v. Jiang*, 2021 ONCA 160, at para. 5; *Howard v. Martin*, 2014 ONCA 309, 42 R.F.L. (7th) 47, at paras. 53-54.

- [4] For the reasons that follow, I am not persuaded that it is in the interests of justice to grant the requested extension. Indeed, I am of the view that it would be contrary to the interests of justice, including the interests of the parties' child, to do so. In summary, D.M.S. seeks to pursue a plainly meritless appeal while being in clear and long-standing breach of numerous court orders. This causes great and continuing prejudice to the responding parties and the child of the marriage whom the parties describe as having special needs. It also undermines public confidence in the administration of justice.
- [5] I set out briefly the context in which this motion is brought. The myriad court orders detail the history of the proceedings, including, most importantly, the numerous instances of D.M.S.'s repeated failures to comply with court orders, notwithstanding many indulgences to do so. These failures culminated in the striking out of his pleadings and the uncontested trial that has yet to be heard.
- [6] On July 26, 2024, in detailed and thorough reasons, McDermot J. struck out D.M.S.'s pleadings because of his numerous breaches of past court orders, including his failure to provide significant disclosure of his financial circumstances, as well as his failure to satisfy several thousands of dollars in costs orders that were not under appeal. McDermot J. stayed the order for 60 days to permit D.M.S. to comply and to bring a motion to set aside the striking of his pleadings. On October 31, 2024, McDermot J. ordered the moving party to pay \$200,000 to E.L.R. and \$175,000 to E.C.M. and E.W.C. D.M.S. has not paid these costs orders.
- [7] D.M.S. did not appeal these orders within the prescribed deadline. He brought an unsuccessful motion to extend the time to appeal the July 26 and October 31, 2024 orders. On November 29, 2025, Huscroft J.A. dismissed D.M.S.'s motion and ordered D.M.S. to pay \$6,000 in costs to E.L.R. and \$4,000 in costs to E.C.M. and E.W.C. Relevant to the criteria to be considered on the present motion, Huscroft J.A. described why it was not in the interests of justice to allow the appeal to continue.

I am satisfied that there is prejudice to the responding parties. I am not satisfied that the appeal has any substantial merit. The moving party seeks to challenge the motion judge's credibility findings and numerous findings of fact. The findings are well supported in extensive reasons and are difficult to disturb on appeal.

The order is the product of acrimonious family law proceedings. The moving party has a significant history of delay and non-compliance with disclosure orders, and failure to pay costs. The motion judge found that the moving party was not a creditable witness and that his conduct throughout the litigation was egregious. The justice of the case does not require that the extension be granted.

- [8] D.M.S. has not paid the costs ordered by Huscroft J.A.

- [9] On May 16, 2025, McDermot J. dismissed D.M.S.'s motion to set aside the striking out of his pleadings. In a further set of very detailed and careful reasons, McDermot J. held that, while he had made some further disclosure, D.M.S.'s disclosure remained outstanding, and he remained non-compliant with court orders. D.M.S. had still not complied with any of the outstanding costs orders. That is still the case as of the date of this motion.
- [10] Although D.M.S. appealed the May 16, 2025 order by serving and filing a notice of appeal on June 13, 2025, he failed to pursue his appeal in a timely way. On July 21, 2025, the court office issued a notice of intention to dismiss D.M.S.'s appeal for failure to perfect, allowing him an indulgence to October 1, 2025 to do so. On August 18, 2025, he attempted to perfect the appeal by filing a record that the court office rejected as deficient. Among other deficiencies, the appellant's record failed to initialize the names of the parties and their child. This required a motion. On September 5, 2025, Trotter J.A. ordered that the names of the parties and their child be initialized. He awarded costs against D.M.S. in favour of E.L.R. in the amount of \$1,500 and \$1,500 to E.C.M. and E.W.C. D.M.S. did not seek to review Trotter J.A.'s order and has not paid the ordered costs. Although given a further indulgence to October 6, 2025, D.M.S. failed to correct the deficiencies in time and was obliged to bring this motion to extend the time to file the corrected record.
- [11] With this context in mind, I move to the application of the factors to be considered in a motion for extension of time to perfect an appeal.
- [12] I accept that D.M.S. maintained a continuing intention to appeal. However, the delay in his perfection of the appeal is inordinate and unexcused. Further, it appears to be a continuation of a pattern of conduct of delay and failure to abide by rules and court orders. D.M.S. is no stranger to court proceedings. Having appealed before, he was well aware of the filing and documentary requirements of this court. Moreover, there is no explanation for his delay in correcting the deficiencies noted by the court office, particularly in light of the fact that he was given a further extension to do so.
- [13] D.M.S.'s past and present conduct is relevant. He is seeking yet another indulgence. His difficulty is that he does not come to court with clean hands. Rather, notwithstanding the indulgences granted by McDermot J., the appellant is inexplicably still in breach of the same court orders that resulted in McDermot J. initially striking his pleadings and then not setting aside the striking of his pleadings. These include the costs orders not under appeal that D.M.S. admits he has failed to pay. D.M.S. has admittedly failed to satisfy two further costs orders of this court. These breaches are not trivial. Given D.M.S.'s conduct to date, I have little confidence that he will pursue his appeal in a timely manner and comply with court rules and orders.
- [14] The responding parties are clearly prejudiced by D.M.S.'s unjustified failure to comply with court orders. The lack of complete financial disclosure and failure to pay enormous costs orders seriously impair the responding parties' ability to pursue their claims in the family law proceedings. The responding parties have put forward evidence that D.M.S. is

dissipating and transferring his remaining assets to put them out of the responding parties' reach. His continued flouting of court orders, including of this court, undermines public confidence in the administration of justice.

- [15] Also relevant to these considerations is the merits of D.M.S.'s appeal. I am mindful that I do not ultimately determine the merits of D.M.S.'s appeal on this motion but must consider whether the appeal is so lacking in merit that the important right of appeal should be denied: *Issasi*, at para. 10. That is the case here.
- [16] D.M.S.'s primary grounds of appeal allege that McDermot J. committed "palpable and overriding errors" in his determination that D.M.S. had not complied with previous court disclosure orders. D.M.S. takes the position that his ongoing failure to comply is immaterial. There is no question that D.M.S. had not fully complied with the disclosure orders and McDermot J.'s conclusion that this failure was material is entitled to deference on appeal. McDermot J.'s conclusion must also be considered in light of his July 26, 2024 decision. McDermot J.'s findings of D.M.S.'s serious breaches remain undisturbed. Moreover, D.M.S. has not challenged McDermot J.'s finding in his May 16, 2025 decision that he has not complied with the outstanding costs orders. His appeal has no chance of success based on his admitted failure to pay the costs orders alone.
- [17] As has been often stated, there comes a time when enough is enough. That time has been reached here. For these reasons, I dismiss D.M.S.'s motion for an extension of time to perfect his appeal.
- [18] D.M.S.'s continuing breaches of court orders entitle the responding parties to their substantial indemnity costs of the motion and the appeal as follows: 1) \$10,000 to E.L.R.; and \$10,000 to E.C.M. and E.W.C., both inclusive of all amounts.
- [19] The court is grateful to Ms. Paterson for her helpful submissions.

"L.B. Roberts J.A."

- [1] The names of the parties and the parties' child have been initialized to comply with the initialization order of Trotter J.A. made on September 5, 2025, in which he ordered that the names of the parties, the parties' child, and members of the child's family were to be anonymized to protect the privacy and dignity of the child.

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