

CANADA / JUDGMENT

Johnson v. Johnson

2026 ONCA 189

COURT

Court of Appeal for Ontario

DECIDED

12 March 2026

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Johnson v. Johnson Collection Decisions of the Court of Appeal Date 2026-03-12 Neutral citation 2026 ONCA 189 Docket numbers COA-25-CV-1198 Judges Madsen, Lene Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Johnson v. Johnson, 2026 ONCA 189 DATE: 20260312 DOCKET: COA-25-CV-1198 Madsen J.A. (Case Management Judge) BETWEEN Erin Kathryn Johnson Applicant (Respondent) and Bradley William Johnson Respondent (Appellant) Bradley William Johnson, acting in person Stella Hines, appearing as agent for Ms. Johnson Gabriel Latner, appearing as amicus curiae Heard: March 10, 2026 by video conference REASONS FOR DECISION

- [1] Further to the endorsement of Favreau J.A., dated January 27, 2026, I held a case management meeting on March 10, 2026.
- [2] In his materials filed for the appearance, the appellant, Mr. Johnson sought the following relief: scheduling of a stay motion in relation to child support payments; interim parenting orders including reunification therapy; and procedural directions regarding the perfection deadline of his appeal, the required transcripts, and appealing the costs order.
- [3] In her materials, Ms. Johnson sought directions on the release of funds currently being held in trust; and security for appeal costs in the amount of \$15,000. She opposed any extension of time for the perfection of the appeal.
- [4] I advised the parties that the central issue for consideration at this time is the issue of production of transcripts for the appeal. Both parties made oral submissions supplementing their written materials on this issue.
- [5] I further advised the parties that the balance of the issues raised for this appearance can be addressed as and when it is clear that the appeal is proceeding.
- [6] Mr. Johnson filed his notice of appeal on September 22, 2025. He then took only preliminary steps towards ordering the transcripts but did not follow through. On September 22, 2025, he submitted to the court a Form 61C certifying that in his opinion, “The oral evidence of: All witnesses and parties who testified at trial, including the oral motions, objections, submissions of the parties and counsel, and all judicial rulings and comments made on the record” is required for the appeal. On October 15, 2025, he filed a certificate/proof of

ordering the transcript for appeal, which explicitly states that, “The party ordering transcripts undertakes, upon being advised of transcript completion, to pay the prescribed fee.”

- [7] At the case management meeting, Mr. Johnson advised that the transcripts are likely to cost \$12,000 and that Legal Aid Ontario has declined to cover the cost. He therefore has not paid for the transcripts and intends to cancel the order.
- [8] Mr. Johnson thus sought permission to perfect his appeal without filing transcripts. He proposed perfecting his appeal by providing his notice of appeal, the issued and entered order and reasons, relevant prior endorsements and orders, documentary exhibits, and a “compendium of key extracts”. He also suggested that the panel hearing the appeal could be provided with audio extracts from the trial as necessary. He further proposed that if Ms. Johnson wants the transcripts to respond to his appeal, she could order them herself. By email to the court following the case management appearance – and notwithstanding that this is his appeal – he further submitted that if transcripts are required, Ms. Johnson should specify: which days, which witnesses, which portion or segment, and which ground of appeal the oral evidence is said to relate to.
- [9] Ms. Hines, acting for Ms. Johnson, argued that given the volume of oral evidence at trial, the hearing of this appeal requires transcripts. She emphasized that the trial court heard extensive evidence from both parties, the Office of the Children’s Lawyer, Mr. Johnson’s mother, and at least one additional witness.
- [10] Under r. 61.05(5) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, the appellant shall, within 30 days after filing the notice of appeal, file proof that they have ordered the transcript of oral evidence that the parties have not agreed to omit, subject to any direction under r. 61.09(4).
- [11] A judge may, where it is necessary to do so in the interest of justice, give special directions and vary the rules governing the appeal book and compendium, the exhibit book, the transcript of evidence and the appellant’s factum: r. 61.09(4).
- [12] Whether it will be in the interests of justice to dispense with the requirement to file transcripts depends on the nature of the appeal. For example, in *McDowell v. Barker*, [2011] O.J. No. 5035 (C.A.), Watt J.A. refused to grant relief from the requirement to file a transcript of the evidence on the basis of impecuniosity because the grounds of appeal related to the trial judge’s findings of fact. The transcripts were therefore necessary to assess the merits of the appeal. The court came to similar conclusions in *Girao v. Cunningham*, 2017 ONCA 811, at paras. 3-4, and *Khorramrooz v. Baradar*, 2026 ONCA 24, at paras. 5-8.
- [13] The hearing of this appeal requires that transcripts of all the oral evidence and all oral rulings made during the trial be filed. It is not in the interests of justice to vary this requirement in this case. This was a lengthy family law trial with numerous witnesses and extensive oral evidence. Mr. Johnson alleges that the trial judge made a range of errors: the

misapplication of the best interests framework; erroneous treatment of the children's views and preferences; misapprehension of evidence, including with respect to "parenting conduct, status quo and the viability of parenting arrangements"; mistreatment of material evidence; a lack of procedural fairness; and "[f]inancial/ costs errors including immediate decisions, trust handling, costs". Trial judges are owed significant deference by this court on appeals from highly fact-specific family law determinations: *Van de Perre v. Edwards*, [2001] 2 S.C.R. 1014, at para. 11. Whether the trial judge made the various errors alleged in Mr. Johnson's notice of appeal simply cannot be assessed without a review of the transcripts of all the oral evidence and rulings from the trial.

- [14] The notice of appeal was filed on September 26, 2025 — almost six months ago. Mr. Johnson has indicated that he will not complete the ordering or filing of transcripts. It cannot be said that he has filed "proof" of ordering the transcripts when he now states that he pressed pause on the order and does not intend to tell the transcriptionist to proceed.
- [15] In these circumstances, Ms. Johnson is likely in a position to bring a motion under r. 61.13(1) (a) to seek the dismissal of this appeal for delay.
- [16] Out of an abundance of caution, however, Mr. Johnson shall have until March 20, 2026 to file proof with the Registrar of the Court of Appeal that:
- a. he has directed the transcriptionist to proceed with the preparation of the transcripts of all oral evidence and oral rulings for the appeal;
 - b. that the transcriptionist has agreed to proceed; and
 - c. he has paid half of the estimated total transcription fee.
- [17] In the event that Mr. Johnson does not comply with paragraph 16 in its entirety, Ms. Johnson may bring a motion to dismiss the appeal for delay under r. 61.13(1)(a).
- [18] In the event that Mr. Johnson does comply with paragraph 16, the timelines set out in r. 61.09(1)(b) will apply with respect to the perfection of the appeal. That is, the appeal must be perfected within 60 days of his receipt of the transcribed evidence. In that event, the court will contact the parties to schedule a further case management meeting, at which time motions may be scheduled to address the balance of the issues raised in the parties' materials for this appearance, as appropriate. I note that where relief sought was already dismissed, it is inappropriate to bring a motion for the same relief. "L. Madsen J.A."

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