Citation: Pedersen v Pedersen, 2025 MBCA 42
Date: 20250508
Docket: AF25-30-10177

IN THE COURT OF APPEAL OF MANITOBA

***B E T W E E N**:*

	)	***J. A. Pedersen***
JODEE ANN PEDERSEN	)	*on their own behalf*
	)	
(Petitioner) Applicant	)	***R. G. Waugh***
	)	*for the Respondent*
- and -	)	
	)	*Chambers motion heard*
MYRON JAMES PEDERSEN	)	***April 14, 2025***
	)	
(Respondent) Respondent	)	*Decision pronounced:*
	)	***May 8, 2025***

TURNER JA

[1] In this chambers proceeding, the petitioner applies for an extension of time to file a notice of appeal pursuant to rule 42 of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R [the *Rules*].

[2] The judgment the petitioner seeks to appeal was filed January 8, 2025 (see *Pedersen v Pedersen*, 2024 MBKB 83 [*Pedersen 2024*]). She did not file a notice of appeal within the required timeline of thirty days (see the *Rules*, r 11(1)(a)), which would have been February 7, 2025. On February 21, 2025, the petitioner filed a notice of motion seeking an extension of time (the application).

[3] The application was set to proceed before me on March 13, 2025 (the March hearing). Although the petitioner had ordered and received transcripts of the trial, she did not file any of that material in support of the

application. She also did not provide the trial judge's reasons for decision or the signed order.

[4] As I explained at the March hearing, there was no material before me to assess whether her grounds of appeal were arguable. As a result, I allowed an adjournment of the matter to April 14, 2025 to give the petitioner time to provide additional material. I imposed a deadline of April 7, 2025 at noon for the petitioner to provide her material to the Court.

[5] The petitioner did not file her material with the Court by the April 7 deadline. She provided the material to Canada Post on April 9, 2025 and the court registry received the material the following day. As detailed further below, no transcripts were included in the new material. Despite having missed the deadline, I reluctantly agreed that her material could be filed.

[6] For the following reasons, the petitioner's application for an extension of time to file a notice of appeal is denied.

Background

[7] The parties' common-law relationship spanned less than ten years and they have three children together. The parties have now been in family litigation for over ten years, which has resulted in countless court appearances and five reported decisions from the Court of King's Bench (see *Pedersen* 2024; *Pedersen v Pedersen*, 2022 MBQB 86; *Pedersen v Pedersen*, 2022 MBQB 6; *Pedersen v Pedersen*, 2019 MBQB 106 [*Pedersen 2019*]; *JAP v MJP*, 2018 MBQB 1).

[8] In *Pedersen 2024*, the trial judge had to resolve issues concerning the petitioner's contact with the parties' three children and determine the support obligations (both child and spousal) of the petitioner and the respondent, both past and ongoing.

[9] In short, the trial judge imputed income to each party, ordered the petitioner to pay child support to the respondent (who was granted exclusive parenting time with two of the children and majority parenting time with the third child) and terminated the respondent's obligation to pay common-law partner support.

[10] At the hearing of the application, the petitioner confirmed that she was only seeking to appeal the trial judge's decision regarding financial issues and was not seeking to appeal any decision made regarding parenting time with the three children.

Analysis

[11] Extensions of time are not granted automatically. There is a public interest in closure of litigation, perhaps particularly so in family litigation that has lasted more than ten years and was described by the trial judge in a previous decision as "a very high conflict trial, within a very high conflict proceeding between two litigants whose animosity towards each other [was] all-consuming, and undiminished" (*Pedersen 2019* at para 1).

[12] The criteria considered on an application for an extension of time to file include: (1) was there a continuous intention to appeal, (2) is there a reasonable explanation for the delay, (3) are there arguable grounds of appeal, and (4) will the other party suffer prejudice if an extension of time is granted

(see *Pimicikamak v Manitoba*, 2016 MBCA 106 at para 7; *Child and Family Services of Western Manitoba v G (S W R)*, 2014 MBCA 60 at para 13; *Klein v Martin*, 2011 MBCA 19 at paras 4-5). The onus is on the petitioner to satisfy me of these criteria.

[13] An additional, overarching factor is that, regardless of whether the four criteria are met, the Court may still grant or refuse an extension of time if it is right and just in all of the circumstances (see *Hunter v Hunter*, 2000 MBCA 134 at paras 6, 11).

Continuous Intention to Appeal and a Reasonable Explanation for the Delay

[14] The trial judge's reasons for decision were released to the petitioner and the respondent on May 31, 2024. For reasons that were not disclosed to me on the application, the final order was not completed until January 8, 2025.

[15] On January 9, 2025, the petitioner ordered transcripts of the trial proceedings on an expedited basis. The transcripts were delivered to her on January 17, 2025. The petitioner acknowledged that she had previously ordered and received some of the transcripts during the trial (which was held over several dates between January 30 and April 2, 2024) to assist her in preparing her cross-examination and her trial written submissions. It is not clear to me what transcripts she had prior to January 2025; however, ultimately, it does not matter for the purposes of a decision on this application.

[16] On January 18, 2025, the petitioner booked a trip to Varadero, Cuba. She remained there until sometime after January 25, 2025. At the hearing of the application, the petitioner explained that she wanted to take the transcripts

and materials that were filed at trial somewhere with no distractions so that she could focus on the preparation of an appeal.

[17] While the petitioner was away, a waterline burst on the main floor of her house. As a result, in her affidavit, she affirmed that she had to spend a considerable amount of time working with a cleaning crew and her insurance adjuster.

[18] While the petitioner may have subjectively had a continuous intention to appeal, I do not believe that she has a reasonable explanation for the delay.

[19] Following approximately eight days of trial, the trial judge provided a comprehensive twenty-eight-page written decision on May 31, 2024 (see *Pedersen 2024*). The decision outlines the issues that had to be determined at the trial, the positions of the parties, and the trial judge's findings of fact, his analysis and his clear reasons for his decision. From the date of the release of the decision, the petitioner had a great deal of information from which she could at least begin to decide whether to file an appeal. She has provided no explanation why she did not order the transcripts that she did not already have shortly after the release of the written decision. Had she ordered the transcripts in a timely manner after the release of the decision, she could have had a clear plan for whether she intended to appeal and any potential grounds of appeal well before the time limit for filing an appeal.

[20] Even if I found that it was reasonable for the petitioner to wait to order the outstanding transcripts after the final order was completed (which I do not in the circumstances), she does not have a reasonable explanation for the delay between receiving the transcripts on January 17, 2025 and the

February 7, 2025 deadline to file her appeal. The petitioner represented herself throughout the trial; therefore, she was present for all the proceedings, had all the materials that had been filed at trial, had at least some of the trial transcripts and had the trial judge's written decision. While I understand that she may have wanted to review all the transcripts before finalizing her grounds of appeal, she had a substantial amount of material in advance and she had approximately three weeks to review the additional transcripts before the appeal filing deadline.

Transcripts for the Court

[21] A comment regarding the timing of ordering transcripts for the Court is pertinent here, although it is more relevant to my analysis of whether the petitioner has shown that there is arguable merit to her appeal.

[22] At the March hearing, I made it clear to the petitioner that she had to satisfy me that there were arguable grounds for her appeal and that she would need to present examples of where the trial judge erred. To do so, I suggested that transcripts of the trial proceedings may be helpful to advancing her position. I allowed an adjournment of the application to April 14, 2025 to allow the petitioner time to perfect her material.

[23] The petitioner did not place her order for court copies of the transcripts until Tuesday, March 18, 2025. She requested that they be prepared on "[r]egular" service (which is noted on the request form to be twenty-one business days)[1]. A cost estimate was provided to the petitioner on Thursday, March 20, 2025, with an email that indicated the petitioner must

[1] Even if the petitioner had completed the order for transcripts on March 18, 2025, they would not have been ready in time for her April 7, 2025 filing deadline using the regular service.

confirm she wanted to proceed with the order before it would be processed. The petitioner did not reply until Monday, March 24, 2025, when she indicated that she wanted to proceed with the order. She was then provided with an estimated completion date of April 24, 2025.

[24] The petitioner's continued delay in ordering transcripts, even when told that they may be an important part of her application for an extension of time, seems to be a recurring problem and adds to the unreasonableness of the delay in this case.

Conclusion

[25] While perhaps the petitioner subjectively had a continuous intention to appeal, she has not established that she has a reasonable excuse for the delay in filing her notice of appeal. As such, her application for an extension of time to file a notice of appeal is denied.

Arguable Grounds of Appeal

[26] If I am incorrect in my assessment of the reasonableness of the delay, I will consider whether the petitioner has demonstrated that she has arguable grounds of appeal.

[27] On the application, my role is not to consider the full merits of the case but, rather, to conduct a preliminary examination of the proposed grounds of appeal while remaining mindful of the applicable standard of review (see *Boryskiewich v Stuart*, 2014 MBCA 77 at para 9).

[28] While the threshold test for arguable grounds is low, the petitioner must at least demonstrate that the points to be argued have a reasonable chance

of success. In *Mann v Mitchell*, 2019 MBCA 44, Monnin JA described a reasonable chance of success as "one which survives a preliminary examination under the applicable standard of review and has the potential to succeed and to change the result of the hearing below" (at para 3).

[29] It is difficult to assess whether there are arguable grounds of appeal when the petitioner has not provided the Court with transcripts of the trial. I am left to assess the merits based on the trial judge's written decision and the often bare assertions of the petitioner that the trial judge erred.

[30] In her materials on the application, the petitioner included a proposed notice of appeal. It includes twelve grounds of appeal. I would categorize them into four areas: (1) that the trial judge erred in his assessment of spousal support issues (including issues of imputed income to both parties), (2) that he erred in his assessment of child support issues, (3) that he erred in ordering double costs against the petitioner, and (4) that he erred in decisions on various procedural decisions.

Spousal and Child Support Issues

[31] An appellate court "should not overturn support orders unless the reasons disclose an error in principle, a significant misapprehension of the evidence, or unless the award is clearly wrong" (*Hickey v Hickey*, 1999 CanLII 691 at para 11 (SCC)). In addition, a family law order is entitled to "considerable deference" (*ibid* at para 10) and is to be reviewed only for "material error" (*ibid* at para 12).

[32] In his decision, the trial judge clearly set out the positions advanced by each party. He considered the petitioner's argument that the respondent

withheld financial disclosure, diverted and concealed income, and misled the trial judge. He addressed the frailties in the evidence presented by both parties (including his concerns regarding the credibility and reliability of each). He observed: "My efforts are directed at arriving at a point that fairly reflects all available total annual income, and doing the best I am able to do given the uneven and sometimes frustrating state of the evidence I received (see: ***Waters v. Waters***, 1986 CanLII 5051 (MB CA))" (*Pedersen 2024* at para 55).

[33] From the material before me on the application, the trial judge's reasons do not disclose an error in principle, a significant misapprehension of the evidence or that the award is clearly wrong.

Double Costs Award

[34] In *Nash v Nash*, 2019 MBCA 31 at para 42, Pfuetzner JA wrote:

> Appellate courts will very rarely intervene in costs awards. A judge's decision on costs has been described as "quintessentially discretionary" (*Nolan v Kerry (Canada) Inc*, 2009 SCC 39 at para 126), and as being generally "insulated from appellate review" (*Little Sisters Book and Art Emporium v Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2 at para 49). However, a costs award can be set aside on appellate review "if it is based on an error in principle or is plainly wrong" (*ibid*; see also *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9 at para 27; and *232 Kennedy Street Ltd v King Insurance Brokers (2002) Ltd*, 2009 MBCA 22 at para 14).

[35] After hearing from the parties on costs, the trial judge ordered the petitioner to pay the respondent double costs pursuant to MB, *King's Bench Rules*, Man Reg 553/88, r 49.10 [the *KB Rules*].

[36] The respondent sent the petitioner an offer to settle on January 23, 2024 (seven days prior to the commencement of the trial), which the petitioner did not accept. Pursuant to rule 49.10 of the *KB Rules*, the respondent was clearly entitled to tariff costs at a doubling of costs payable commencing the date the formal offer to settle was served.

[37] There is no merit to the petitioner's allegation of an error on the award of costs to the respondent.

Procedural Issues

[38] The petitioner's proposed grounds of appeal include other issues that I describe as procedural, including, in her words:

> - By allowing the respondent to hire his (now ninth) lawyer midway during (the continuance portion of) [the] trial, contrary to the rules;
>
> - By allowing the respondent to call a "child amicus" witness whom he unilaterally hired to testify on the children's behalf without any prior knowledge of the petitioner that she subsequently objected to;
>
> - By instructing the petitioner to submit her supplemental written closings and proof of financial disclosure requests made to the respondent to [the trial judge] c/o room 226 at 408 York Avenue, Wpg, MB and not to the registry at 100C. Moreover, on January 8, 2025, refusing to allow the petitioner leave to submit said supplemental written closings and (unanswered) financial disclosure requests made to the respondent, to the registry at 100C (as is needed for evidence in the appeal)[.]
>
> [emphasis in original]

[39] Given that I have no transcripts before me, I have no ability to assess these grounds in the context of how these decisions were made and on what basis. As such, the petitioner has not discharged her onus to satisfy me that these grounds for appeal have any merit.

Will the Other Party Suffer Prejudice if an Extension of Time Is Granted?

[40] It is clear from the many reported decisions in the Court of King's Bench and from the materials before me on the application that both parties have been living through this highly conflictual litigation for over a decade. I can easily conclude that the respondent will suffer a prejudice, both financially and emotionally, if an extension of time is granted and the petitioner's appeal is allowed to proceed. I believe that the petitioner will suffer negative repercussions as well. The matter has been through several lengthy trials and it is time for there to be closure to this litigation.

Conclusion

[41] For the foregoing reasons, it is right and just in all the circumstances that the petitioner's application for an extension of time to file a notice of appeal be denied.

[42] The respondent is entitled to tariff costs.

Turner JA