

**NOVA SCOTIA COURT OF APPEAL**  
**Citation:** *Blinn v. Boudreau*, 2015 NSCA 78

**Date:** 20150805  
**Docket:** CA 441088  
**Registry:** Halifax

**Between:**

Jean-Michel Blinn

Appellant

v.

Jacqueline Marie Boudreau

Respondent

**Judge:** The Honourable Justice Peter M. S. Bryson

**Motion Heard:** July 30, 2015, in Halifax, Nova Scotia in Chambers

**Written Decision:** August 5, 2015

**Held:** Motion dismissed.

**Counsel:** Jean-Michel Blinn, Appellant in Person  
Jacqueline Marie Boudreau, Respondent in Person, not  
appearing

**Decision:**

[1] Jean-Michel Blinn has applied to extend time to file a Notice of Appeal respecting four Family Court orders. They are:

- (a) An Order of The Honourable Judge John D. Comeau issued August 4, 2011 at Annapolis Royal, following a decision on July 19, 2011 at Annapolis Royal implementing a June 28, 2010 Statement of Agreement between the parties;
- (b) A Consent Variation Order of The Honourable Judge John D. Comeau issued December 7, 2012, following a decision rendered at Comeauville on December 6, 2012 varying a July 19, 2011 order respecting custody and access to the two children of the parties purporting to implement an agreement that Ms. Boudreau would have sole custody and primary care of the children.
- (c) An Order of The Honourable Judge John D. Comeau issued at Digby on December 5, 2013 respecting a hearing at Digby on October 22, 2013 adjusting custody and primary care in favour of Ms. Boudreau with reasonable access for Mr. Blinn and requiring psychological counselling for Mr. Blinn as well as dealing with child support and child arrears issues;
- (d) An Order of The Honourable Judge Michelle Christenson issued at Yarmouth on September 29, 2014 with respect to a matter heard at Digby on September 16, 2014 requiring psychological counselling for Mr. Blinn.

[2] The orders issued December 15, 2013 and September 29, 2014 were consented to by counsel for both parties.

[3] In his proposed Notice of Appeal, Mr. Blinn describes the following grounds of appeal:

- 1. Fraudulent signatures on authoritative documents;
- 2. No consent to the terms and clauses on documents;

3. Orders are being used for negative, counterproductive purposes, to allow Parental Alienation to continue.

[4] The relief Mr. Blinn seeks is that "... the court should allow the appeal and that the judgment appealed from be reversed and to allow proper authorization to be issued".

[5] Although Ms. Boudreau was served with notice of Mr. Blinn's motion, neither she nor anyone on her behalf appeared in chambers.

[6] Mr. Blinn explained that he wanted to appeal the orders, firstly because he did not approve of them or authorize his lawyers to approve of them, and second because he wished to have access to his children and that he was being denied access by his former partner, Ms. Boudreau.

[7] Mr. Blinn also explained that he only became aware of these orders when he fired his lawyer and went through his lawyer's file from which he extracted the copies of the orders. That happened in January or February of this year. Mr. Blinn then started a Supreme Court action to overturn the orders, but was advised that he could not bring a new action but had to appeal the orders. His original motion to do so was filed with the Court on July 6<sup>th</sup>.

[8] This Court has authority to extend time to file the appeal in accordance with Rule 90.37(12)(h).

[9] The usual three-part test when exercising discretion to extend time is described by Justice Bateman in *Bellefontaine v. Schneiderman*, 2006 NSCA 96:

[3] A three-part test is generally applied by this Court on an application to extend the time for filing a notice of appeal, requiring that the applicant demonstrate (**Jollymore Estate Re** (2001), 196 N.S.R. (2d) 177 (C.A. in Chambers) at para. 22):

- (1) the applicant had a *bona fide* intention to appeal when the right to appeal existed;
- (2) the applicant had a reasonable excuse for the delay in not having launched the appeal within the prescribed time; and
- (3) there are compelling or exceptional circumstances present which would warrant an extension of time, not the least of which being that there is a strong case for error at trial and real grounds justifying appellate interference.

[10] The three-part test described in *Schneiderman* is not exhaustive. A residuary discretion does remain in the court to extend time where it would be just to do so:

[5] Although courts most commonly allude to the three-part test in *Jollymore, supra*, the ultimate question is whether justice requires that an extension be granted: *Farrell v. Casavant*, 2010 NSCA 71, at para. 17 and *Cummings v. Nova Scotia (Community Services)*, 2011 NSCA 2, at para. 19. Accordingly, the three-part *Jollymore* test is an appropriate guide for the exercise of the court's discretion but it is not an exhaustive description of that discretion.

[*Brooks v. Soto*, 2013 NSCA 7]

### ***Bona fide Intention to Appeal:***

[11] This is the first issue that Mr. Blinn's motion must address. In his submissions and affidavit, he accuses his lawyers of concealing the contested orders from him. He said that he first formed an intention to appeal on March 1, 2015 but was diverted by his first attempt to address these orders in the Supreme Court. In April he was directed to appeal the orders to in the Court of Appeal. Mr. Blinn is clearly sincere in wanting to appeal. But his intention to appeal was formed too late.

### ***Excuse for Delay:***

[12] Mr. Blinn says he delayed appealing these orders because he did not know about them. When he did find out about them, he took steps in the Supreme Court which were ineffective and so he brought matters forward in the Court of Appeal. Even so, there has been a substantial delay of some months between the Supreme Court proceeding which Mr. Blinn says was in April and the July filing of the motion in this Court.

[13] I accept that Mr. Blinn is concerned about the welfare of his children. His anxiety on their behalf and his unfamiliarity with the court process, as well as his good faith intention to appeal, should relieve him from the vigorous application of the *Rules* as far as time is concerned. However, that does not decide the motion.

### ***Exceptional Circumstances:***

[14] This is the most difficult criterion for Mr. Blinn to satisfy.

[15] All the orders that Mr. Blinn wishes to appeal appear proper on their face. Two of them are consented to (not merely as to form), by his lawyers. Although

Mr. Blinn says he didn't give authority to his lawyers to sign these orders, the court and the parties are entitled to rely upon the authority of counsel in such circumstances, (see discussion in *Deveau v. Fawson Estate*, 2013 NSCA 54, paras. 75-83).

[16] Moreover, there seems little point to setting aside these orders which from Mr. Blinn's point of view are largely "water under the bridge". For example, it appears that Ms. Boudreau has had primary care of the children since 2011, and has had sole custody since 2012, apparently with Mr. Blinn's agreement according to Judge Comeau's December 7, 2012 order. The August 4, 2011 order appears to implement an agreement between the parties although Mr. Blinn now denies that agreement. Similarly, the December 7, 2012 order purports to implement a "conciliated agreement". The September 29, 2014 order provides for psychological counselling of Mr. Blinn which he admits he has undergone. So, the import of that order is now spent. That would also be true with respect to the counselling requirements in the December 5, 2013 order.

[17] I explained to Mr. Blinn that the remedy he is seeking – access to his children – is something which is fundamentally a matter for the Family Court whose orders may be varied in appropriate circumstances. In other words, appealing those earlier orders, even if it were permitted, would not accomplish what Mr. Blinn wants.

[18] I am satisfied that it is not in the interests of justice to grant Mr. Blinn an extension to file his purposed Notice of Appeal. Mr. Blinn's motion is dismissed.

[19] However, I would like to conclude by complimenting Mr. Blinn for his respectful and clearly well intended submissions and the candour with which he responded to questions from the Court.

Bryson, J.A.