

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Harris v. Harris*, 2009 NSCA 77

**Date:** 20090707

**Docket:** CA 312179

**Registry:** Halifax

**Between:**

Victor Garnet Harris

Appellant

v.

Paulette Louise Harris

Respondent

**Judge:**

The Honourable Chief Justice Michael MacDonald

**Motion Heard:**

July 2, 2009, in Chambers

**Held:**

Motion for an extension time to file notice of appeal denied.

**Counsel:**

Victor Garnet Harris, appellant self-represented  
Paulette Louise Harris, respondent not appearing

**Decision:**

[1] Mr. Harris' application to vary child support was stayed pending his posting of \$10,000. as security for costs. As a self-represented litigant, he now wishes to appeal this order but is well out of time. He therefore seeks an extension. For the reasons that follow, I deny this request.

**BACKGROUND**

[2] The parties have been involved in a long-standing dispute over Mr. Harris' obligation to support their son. Mr. Harris' most recent motion to terminate this obligation came before Chief Justice Kennedy back in October of 2007. Upon Ms. Harris' motion, the Chief Justice issued this order staying the matter:

UPON this matter having come before the Court on October 3<sup>rd</sup>, 2007 for an application by Victor Garnet Harris to terminate child support for William Joseph Harris and for costs of \$500.00;

AND UPON an application by Paulette Louise Harris to strike the pleadings, enter summary judgment and further an application to give security for costs;

AND UPON Victor Garnet Harris being present and representing himself;

AND UPON Paulette Louise Harris being present and representing herself;

IT IS ORDERED:

THAT Victor Garnet Harris shall pay \$10,000.00 to the Prothonotary of the Supreme Court as security for costs pursuant to s. 42.01(1) of the Civil Procedure Rules;

THAT this proceeding shall be stayed until the security for costs is provided, or until further order of this Court.

GRANTED at Windsor, Nova Scotia the 3<sup>rd</sup> day of October, 2007.

[3] Almost 20 months after the deadline, Mr. Harris filed a motion with this court seeking an extension of time to appeal this order. Essentially, he says that he has a good case on his motion to terminate, cannot pay the security and did not

know about his right to appeal until June of this year when he acted immediately. Here is what he said in his supporting affidavit:

1. On Oct. 5/07, I was scheduled for a court hearing in Windsor for termination of child support for my missing, over the age of majority son. He is now in his 23<sup>rd</sup> year.
2. Within 5 minutes into the hearing, Chief Justice Joseph Kennedy ordered me to pay a surety of costs within 30 days, for \$10,000 before he or any other judge would hear my case.
3. I am a retired pensioner, living on a fixed income, who has been paying extended support for 4 years, for an adult man whom I don't even know where he is.
4. I am being punished for being a parent and wishing to terminate child support
5. I was stunned by the order. I was in complete shock.
6. I didn't file an appeal as I didn't know I could. I have been self representing myself for many years. I questioned many people, including lawyers and they said the only solution was to pay the \$10,000 which is impossible.
7. I have previously been to Appeals court on this same matter, application to terminate child support for an adult and was denied.
8. I recently filed a statement of claim, for Charter violations.
9. Paulette Harris, the respondent, has refused to cooperate in any manner including disclosure of William Harris' whereabouts or agreeing to a consent order to terminate child support.
10. After discussing the matter with the Prothonotary, it appears that the only way to have another hearing to terminate child support is to file an Appeal, which means I must apply for an extension of time.

## ANALYSIS

[4] Mr. Harris must meet a three-part test in satisfying me that an extension would meet the interests of justice. For example, in **Sun v. Lu**, 2008 NSCA 77, 268 N.S.R. (2d) 1, the court explained:

¶ 6 This court's test for granting an extension historically involved three steps:

1. The appeal has sufficient merit, on the basis that it is arguable that the trial judge made a clear error in his perception and evaluation of the evidence;
2. There was a bona fide intention to appeal while the right to appeal existed;
3. A reasonable excuse for the delay in launching the appeal is advanced.

¶ 7 See: **Maritime Co-operative Services Ltd. v. Maritime Processing Co.** (1979), 32 N.S.R. (2d) 71 (NSSCAD) (in Chambers).

¶ 8 In recent years, however, we have viewed this three-pronged approach as more of a guide as opposed to a rigid test; the ultimate goal being a just result in the circumstances of each case. Saunders, J.A. in **Doug Bohner Trucking & Excavating Ltd. v. W. Eric Whebby Ltd.** (2007), 251 N.S.R. (2d) 138; 2007 NSCA 26 (in Chambers) explains:

15. The granting of an extension to file an appeal pursuant to **Civil Procedure Rule 62.31(7)(e)** is discretionary. The objective must always be to do justice between the parties. The test is simple: does justice require that the application succeed? In making that determination my assessment should be flexible and take into account all relevant circumstances.

**Jollymore v. Jollymore Estate**, [2001] N.S.J. No. 296, 2001 NSCA 116 (in Chambers); **Scotia Chevrolet Oldsmobile Ltd. v. Whynot**, (1970) 1 N.S.R. (2d) 1041 (N.S.S.C.A.D.) and **Tibbetts v. Tibbetts** (1992), 112 N.S.R. (2d) 173 (N.S.C.A.).

16. As I made clear in **Jollymore**, *supra*, the so-called three-part test may serve as a useful guide but it was never intended to be a fixed grid onto which all cases would be slotted to see if they made the grade.

[5] Applying this test to the situation I face, justice does not command the issuance of an extension at this late stage. I say this for the following reasons.

[6] Firstly, it is difficult to address the merits of a potential appeal. For example, the proposed notice of appeal is far from focused. Here are the proposed grounds:

1. Chief Justice Joseph Kennedy erred in law.
2. Chief Justice Joseph Kennedy denied the appellant the right to a hearing to terminate child support for William Harris, a missing, capable, adult man, age 22, pursuant to the Divorce Act, Sect. 17.1.
3. Chief Justice Joseph Kennedy denied the appellant the right to his Charter Rights as per Sect. 24 and 52 of the The Guaranteed Canadian Charter of Rights and Freedoms.
4. Paulette Harris DID NOT serve Victor Harris with an application to strike the pleadings, enter summary judgment and further an application to give security of costs.
5. This document was given to Chief Justice Joseph Kennedy in secret. It was kept secret.
6. The appellant was not provided with this document nor was he allowed to file a defence or even address a defence. Court was over in less than 5 minutes.
7. The order for surety of costs is abusive and unconstitutional.
8. Chief Justice Joseph Kennedy ordered the appellant to pay \$500 in costs which is punitive and unconstitutional. Costs are not usually ordered in a variation application.
9. The appellant has not committed any crime, nor been charged or convicted of any crime.
10. The order violates Sect. 7, 12, 15.1, 24.1, 28 and 52 of the The Guaranteed Canadian Charter of Rights and Freedoms.

11. The order violates **the Universal Declaration of Human Rights** Article 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 16.1, 16.3, 25.1, 28, 30.
12. The amount of surety is punitive and extreme. It is much more than alleged criminals are being charged to post bail.
13. The appellant did nothing to deserve this. He has a legal right to apply for and expect to be granted, termination of child support for a missing, capable man who is now in his 23<sup>rd</sup> year. His whereabouts are unknown. Paulette Harris has consistently refused to provide any information or agree to a consent order.
14. This order represents a continuous and unconstitutional attack on the appellant by the courts and Paulette Harris.
15. The order allows the child support fraud to continue. The appellant has been defrauded for 4 years now. This is in contravention of 380.1CC Fraud.
16. The order constitutes 346.1CC Extortion and contravenes the Criminal Code of Canada.
17. Child support should have been terminated four years ago, when William Harris reached the age of majority.

[7] However, even assuming that one of these grounds had some potential merit, an extension is still unwarranted. Let me elaborate.

[8] First of all, a delay of almost 20 months is simply too long in the circumstances.

[9] Secondly, although Mr. Harris affirms in his affidavit that he was unaware of his right to appeal, it must be noted that in this same affidavit, he acknowledges that he has "previously been to Appeals court on this same matter...".

[10] Thirdly, in considering whether justice requires an extension, Mr. Harris offers little to support his simple assertion that posting the security is "impossible". For example, I know nothing about his assets and liabilities.

[11] Finally, the following passages in Mr. Harris' affidavit (intimating that he has no recourse but to appeal) are not entirely accurate:

2. Within 5 minutes into the hearing, Chief Justice Joseph Kennedy ordered me to pay a surety of costs within 30 days, for \$10,000 before he or any other judge would hear my case.

...

10. After discussing the matter with the Prothonotary, it appears that the only way to have another hearing to terminate child support is to file an Appeal, which means I must apply for an extension of time.

[12] First of all, the order does not provide for a 30-day deadline to post the security. Secondly, it contemplates the potential of a "further order of [the Supreme Court of Nova Scotia]."

[13] For all these reasons, I deny the motion to extend the time for Mr. Harris to file an appeal.

MacDonald, C.J.N.S.