NOVA SCOTIA COURT OF APPEAL

Citation: *Brunt v. O'Brien*, 2025 NSCA 19

Date: 20250313
Docket: CA 534111
Registry: Halifax

Between:

Nathan Brunt

Appellant

v.

Sheila O'Brien

Respondent

Judge:	The Honourable Justice Elizabeth Van den Eynden
Appeal Heard:	January 22, 2025, in Halifax, Nova Scotia
Facts:	The case involves the distribution of proceeds from the sale of a matrimonial home following a divorce. The parties, previously married, could not agree on how to divide the proceeds. The appellant sought a greater share, claiming the trial judge made errors and demonstrated bias (paras 1-3).
Procedural History:	2023 NSSC 216: Justice Chiasson presided over the divorce and property division trial, determining the division of matrimonial property, including the home (para 8). 2024 NSSC 170: Justice Chiasson resolved the dispute over the sale proceeds, making adjustments in favor of the appellant but rejecting several claims (para 2).

Parties Submissions:	Appellant: Argued that the trial judge acted unreasonably, made errors, and demonstrated bias. Sought a greater share of the proceeds (para 3). Respondent: Defended the trial judge's decision, arguing that the appellant failed to establish any error warranting intervention (paras 5, 29-30).
Legal Issues:	Did the judge err in law and/or commit reviewable error in her fact finding? Did the judge demonstrate bias towards the appellant?
Disposition:	The appeal was dismissed with costs of $2,500 awarded to the respondent.
Reasons:	Per Van den Eynden J.A. (Wood C.J.N.S. and Scanlan J.A. concurring): The appellant failed to identify any error of law or demonstrate any error in the judge’s factual findings. The claims for storage fees, cleaning services, and a real estate commission were unsupported by evidence and were rightly rejected by the trial judge (paras 21-28). The appellant's claim regarding the Scotiabank Line of Credit was dismissed as the judge found that the required documentation was provided within the requisite time frame (paras 31-35). The allegation of bias was not substantiated. The appellant did not provide evidence of a reasonable apprehension of bias, and the presumption of judicial impartiality was not overcome (paras 38-41). The appeal was dismissed as the appellant did not establish any basis for appellate intervention (para 42).

NOVA SCOTIA COURT OF APPEAL

Citation: *Brunt v. O'Brien*, 2025 NSCA 19

Date: 20250313
Docket: CA 534111
Registry: Halifax

Between:

Nathan Brunt

Appellant

v.

Sheila O'Brien

Respondent

Judges:	Wood, C.J.N.S., Scanlan, Van den Eynden, JJ.A.
Appeal Heard:	January 22, 2025, in Halifax, Nova Scotia
Held:	Appeal dismissed with costs of $2,500.00, per reasons for judgment of Van den Eynden, J.A.; Wood, C.J.N.S., and Scanlan, J.A. concurring
Counsel:	Nathan Brunt, appellant in person Megan Johnston, for the respondent

Reasons for judgment:

Overview

[1] This appeal involves the discrete issue of the disposition of proceeds from the sale of the parties' matrimonial home following their earlier divorce trial. The parties could not agree on how the proceeds should be distributed. Justice C. Lou Ann Chiasson of the Nova Scotia Supreme Court (Family Division) was called upon to resolve the dispute.

[2] The parties put forth to the judge their respective competing positions as to how the proceeds should be divided. While the judge made some adjustments in favour of the appellant, she rejected several of the appellant's claims. The decision under appeal is reported as 2024 NSSC 170.

[3] The appellant says the judge acted unreasonably, made errors, and demonstrated bias. The appellant seeks a greater share of the proceeds from this Court.

[4] An appeal is not an opportunity for a party to relitigate unsuccessful arguments they advanced in the court below. The appellant bears the onus of establishing an error that warrants our intervention.

[5] The appellant did not identify any error of law made by the judge nor establish any error in the judge's factual findings, let alone a palpable and overriding one. There is no merit to the allegation the judge demonstrated bias towards the appellant.

[6] I would dismiss the appeal and order the appellant to pay costs to the respondent in the amount of $2,500. My reasons follow.

Background

[7] As noted, this appeal only pertains to the disposition of proceeds from the sale of the parties' matrimonial home. Justice Chiasson had earlier presided over the parties' divorce and property division trial. She explained in her decision now under appeal:

> [1] This matter relates to the disposition of proceeds from the sale of the matrimonial home. The parties are unable to agree on the adjustments to be made following the sale.

> [2] I rendered a decision addressing the issue of the matrimonial property, including the matrimonial home in July 2023. The home was eventually listed for sale and the closing date was January 2024. The amount of $320,430.57 (plus accrued interest) has been held in trust by counsel handling the real estate matter.
>
> [3] The parties were unable to agree on a disbursement of the balance of the funds in trust. This necessitated a hearing to address the issue. …

[8] In the judge's earlier decision (2023 NSSC 216), which was not appealed, she made determinations relevant to the disposition of sale proceeds. She explained:

> [5] In my decision of July 2023, I stated the following in relation to the home in the event of a sale to a third party:
>
>> 1) Upon the sale of the home, the net proceeds of sale shall be divided equally between them. Adjustments related to the division of other matrimonial assets and debts shall be made from the proceeds of sale (if the division of those assets/ debts has not already been done at the time of sale). Any amounts owing related to child support shall be deducted from the proceeds of sale owing to Nathan Brunt.
>>
>> 2) The net proceeds of sale, or the equity in the home owing to Sheila O'Brien (should Nathan Brunt keep the home), will be calculated in accordance with the principles laid out in Simmons v Simmons, 2001 NSSF 35. The mortgage owing as of the date of division/ transfer shall be equally divided. Both parties will have the benefit of the mortgage pay down. Nathan Brunt paid mortgage and Sheila O'Brien paid rent post separation.
>>
>> 3) As noted in the case of Crowe v Crowe 2012 NSJ 244, the value of the home and the value of the mortgage shall be calculated as of the date of division or sale."

[9] The matrimonial home was sold to a third party and in accordance with the judge's earlier decision, the mortgage as of the date of sale was equally attributed to both parties. Child support arrears owed by the appellant in the amount of $23,328.25 were deducted from the appellant's portion of the net equity.

[10] Further, prior to the contested hearing over the proceeds, the parties agreed they should each be dispersed the sum of $98,185.29. During the hearing, the

parties also agreed to some additional adjustments which were set out and reflected in the judge's decision (paras. 9 and 10) and the resulting order.

[11] As to the remaining funds in dispute, each party presented their respective positions to the judge. They also provided charts to the judge, which illustrated the specifics of their opposing calculations. All the details are set out in the judge's decision and I need not reference them here. However, I address the larger claims advanced by the appellant in my analysis.

[12] The judge accepted some financial claims advanced by each party and rejected others. She set out clear reasons for either allowing or disallowing the claims in her decision. After doing so, the judge summarized her determinations as follows:

> [38] The parties prepared 3 charts of credits/debits to the property division. I will summarize my findings and reference the conclusions by references to the three charts.
>
> [39] Pursuant to chart 1, Sheila O'Brien owes Nathan Brunt $10,761.89.
>
> [40] Pursuant to chart 2, Nathan Brunt owes Sheila O'Brien $444.74.
>
> [41] Pursuant to chart 3 Sheila O'Brien owes Nathan Brunt $6,943.12.
>
> [42] Totalling the three categories, Sheila O'Brien owes Nathan Brunt $17,705.01 and Nathan Brunt owes $444.74. The net differential of $17,260.27 is owed by Sheila O'Brien to Nathan Brunt.
>
> [43] The closing proceeds were $320,430.57. Child support arrears were paid prior to closing to satisfy a lien in the amount of $23,328.25. Nathan Brunt acknowledges this debt is to be solely borne by him. Had there been no lien, each party would have received 50% of $343,758.82 = $171,879.
>
> [44] Sheila O'Brien is entitled to receive $171,879 less amounts received and less the adjustments noted herein. From this amount, I deduct the amount of $98,185.29 already received, leaving a balance of $73,694.12 owing to her. From this amount a further deduction of $17,260.27 will be made in accordance with the adjustments noted herein. She will therefore receive a further $56,433.85. Nathan Brunt is entitled to the balance of $67,626.14. These figures do not include interest accrued on the proceeds of sale which should be shared between the parties.

[13] As will be evident later in these reasons, the judge rejected several of the appellant's claims because they lacked a sufficient evidentiary basis.

Issues and standard of review

[14] The Notice of Appeal sets out these grounds of appeal:

> (1) Unfair and unconscionable grounds
>
> (2) Unequal apportionment of debts and liabilities

[15] The appellant's factum sets out these grounds:

> 15. The questions on this appeal are:
>
> (a) do the discretionary decisions of the Honourable Justice Chiasson pass the "reasonableness" test?
>
> (b) is there a reasonable apprehension of bias apparent in the [Judge's] decision?

[16] However, elsewhere in the appellant's factum the alleged errors include claims the judge made palpable and overriding errors in her factual findings. For example:

> 18. The Trial Judge erred by:
>
> (a) Committing a palpable and overriding error of fact in admitting the evidence for the respondent's Scotiabank Line of Credit and assuming that the line of credit was in fact a matrimonial debt.
>
> …

[17] As to the standard of review, the appellant made reference to *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, which pertains to the standard of review engaged when courts are reviewing decisions from administrative decision makers. Such is not the case here; thus we do not employ the "reasonableness" test as set out by the appellant. I will set out the applicable standard of review after a reframing of the issues.

[18] I would frame the issues as follows:

(1) Did the judge err in law and/or commit reviewable error in her fact finding?

(2) Did the judge demonstrate bias towards the appellant?

[19] The standard of review we must apply to the appellant's complaints of error is well settled. As explained in *Laframboise v. Millington*, 2019 NSCA 43:

> [14] The standards of appellate review in cases such as this are so well-known as to hardly require elaboration. Questions of law are reviewed on a standard of

> correctness. When interpreting and applying the law the judge must be right. On questions of fact, or inferences based on accepted facts, or questions of mixed law and fact where the legal point is not readily extricable, a trial judge's factual findings will only be disturbed if they evince palpable and overriding error. "Palpable" means obvious. "Overriding" means dispositive; a mistake so serious as to have likely influenced the outcome. In appeals from a trial judge's exercise of discretion, deference is owed. We will only intervene if we are satisfied that in the exercise of that discretion the judge erred in law or the outcome is patently unjust. Unless an appellant can persuade us that the trial judge either erred in law, or erred in fact, or erred in the exercise of discretion in the ways I have just described, the appeal will fail. See generally, *Housen v. Nikolaisen*, 2002 SCC 33 at ¶8 *ff.*; *Gwynne-Timothy v. McPhee*, 2005 NSCA 80 at ¶31-34; *Laushway v. Messervey*, 2014 NSCA 7 at ¶27-29;

[20] The appellant's bias complaint does not attract a standard of review. Rather, the appellant bears the burden of establishing a reasonable apprehension of bias or actual bias. I will address this in more detail later.

Analysis

Did the judge err in law and/or commit reviewable error in her fact finding?

[21] The appellant did not identify any error of law made by the judge and none are apparent on the record. Nor has the appellant demonstrated any error in the judge's fact finding.

[22] Although this ground can be summarily dismissed, I will review the larger claims unsuccessfully advanced by the appellant which the appellant seeks to have rectified on appeal.

[23] First, the claim for storage fees for the contents of the matrimonial home. The parties' contents remained in the matrimonial home which the appellant had exclusive possession of following their separation. Ultimately the appellant retained ownership of the contents as is reflected in the Corollary Relief Order issued after the parties' divorce trial. However, the appellant nevertheless wanted the respondent to pay storage fees in excess of $13,000.

[24] The judge rejected this claim:

> [18] In relation to Nathan Brunt's request for adjustments, I find the following:
>
> …

> 3) Nathan Brunt is advancing a claim for the storage of matrimonial property of $13,130.59. Again, he provided no particulars related to that claim. The claim for storage of matrimonial property is disallowed.

Given the record before her, in particular the lack of supporting evidence, this disposition was clearly open to the judge.

[25] Next, the claim for the appellant’s services in cleaning and preparing the matrimonial home for sale to a third party in excess of $4,000. The judge rejected the claim but allowed for a dumpster fee which was part of the claim. She explained:

> [18] In relation to Nathan Brunt’s request for adjustments, I find the following:
>
> …
>
> 2) Nathan Brunt is seeking [$4,253.66] in relation to cleaning and preparing the house for sale. There are a number of exhibits appended to the affidavit of Nathan Brunt which have no references in the body of the Affidavit. The attached exhibits are clearly problematic where there is no reference to them in the affidavit.
>
> More problematic is the fact that there is no breakdown from him related to the expenses to clean/ prepare the house to ready for sale. The only invoice attached to his affidavit is the invoice related to a dumpster immediately prior to closing. The cost of the dumpster will be shared equally between the parties. Sheila O’Brien is responsible for $262.33. The balance of the claim by Nathan Brunt is disallowed.

[26] The sale of the matrimonial home was private—meaning the parties did not incur any real estate commission. Nevertheless, the appellant, who is not a real estate agent, pursued a commission.

[27] In disallowing this claim the judge reasoned:

> [32] Nathan Brunt is seeking to receive a fee for the facilitation of the matrimonial home. He is seeking $14,720. This claim is disallowed.
>
> [33] Nathan Brunt provided the information related to a private sale. It would be inappropriate to provide him with what would essentially amount to a real estate commission with no particulars as to the amount of time spent securing the sale of the home. There is scant evidence before the court related to Nathan Brunt’s time expended in securing the sale apart from emails forwarded to and from Robert Scanlan, a real estate agent.

[28] Again, an unassailable determination open to the judge on this record.

[29] On appeal, the appellant relies on cases where notional disposition costs were factored into the division of matrimonial property at trial.[1] However, as the respondent correctly points out in her factum, these cases are factually distinguishable:

> 40. With respect to the cases referred to by [the appellant] in support of a commission for real estate fees, these cases considered a buyout from one spouse in which real estate fees are typically deducted. In the case before the Court, the home was sold privately so there were no real estate fees. Both parties should share in the benefits of having no real estate fees.

[30] I agree with the respondent. These cases do not assist the appellant and there is no reason for this Court to disturb the judge's finding.

[31] Finally, I will address the appellant's complaint that:

> 18. The Trial Judge erred by:
>
> (a) Committing a palpable and overriding error of fact in admitting the evidence for the respondent's Scotiabank Line of Credit and assuming that the line of credit was in fact a matrimonial debt.

[32] The judge disposed of this claim as follows:

> [10] The debt over which there is disagreement in the first chart relates to the Scotiabank line of credit. The line of credit was in the amount of $11,960.20. Sheila O'Brien sought to divide this debt equally and Nathan Brunt objected at trial. I dealt with this debt in my decision which was incorporated into the CRO at paragraph 27.
>
> [11] I stated that Sheila O'Brien was to provide documentation to show the balance of the line of credit owing at the date of separation within 30 days of the decision. Once documentation has been provided, the amount was to be shared equally between the parties.
>
> [12] Sheila O'Brien asserts that she complied with this provision and that documentation was provided to Nathan Brunt within the 30 day time frame. Nathan Brunt denies receiving the documents. **I find as a fact that the documentation was provided to Nathan Brunt within the requisite time frame.**
>
> [13] **He had requested correspondence to be received via email. The documentation was forwarded by counsel for Sheila O'Brien to his email**

[1] *Koken v. Dokueva*, 2014 NSSC 209 at para. 68; *K.A.R. v. P.J.T.* 2018 NSSC 4 at para. 170.

> **address noted on the record.** As a result, the line of credit debt of $11,960.20 is to be shared equally.

[emphasis added]

[33] On appeal the appellant claims the required documentation was not sent to a "designated service email address". The appellant's factum provides:

> 20. … The respondent's counsel also could not confirm that they served or emailed Scotiabank Line of Credit documents to Nathan. No evidence of delivery was provided in Sheila's affidavit. Email evidence of delivery of the documents presented by Sheila's counsel during the hearing could not be verified **and was not delivered to Nathan's designated service email address.**

[emphasis added]

[34] The appellant contends the "designated service email" was dormant at the time the documentation was sent. However, a review of the record establishes this is not the case. In fact, when directed to specific aspects of the record by the panel during oral submissions, the appellant acknowledged the above submission was inaccurate. More specifically, the appellant agreed the evidentiary record contains confirmation that the "designated service email" was in fact active and in use by the appellant at the time respondent counsel sent the confirming Scotiabank documentation. The appellant did advise respondent counsel that the email would become "inactive"; however, that advice came well after the documentation was sent to the appellant.

[35] The judge's factual finding that the required documentation was provided to the appellant "within the requisite time frame" is solidly anchored in the record.

[36] It is obvious the appellant is dissatisfied with the judge's rejection of certain claims and views these aspects of her decision as unreasonable. It is worth repeating that an appeal is not an opportunity for a party to relitigate unsuccessful arguments they advanced in the court below.

[37] The appellant bears the onus of proving an error that warrants our intervention. None have been established. I would dismiss this ground of appeal.

Did the judge demonstrate bias towards the appellant?

[38] Although an allegation of bias was raised as an issue, the appellant did not elaborate on this in either written or oral submissions.

[39] As noted, the appellant must establish a reasonable apprehension of bias or actual bias. The burden is onerous.

[40] There is a strong presumption of judicial impartiality that must be overcome. We assess the bias allegation through the lens of whether a reasonable and informed person would think the judge's conduct demonstrated a pre-judgment of the issues and/or a bias such that the hearing was unfair. (See *R. v K.J.M.J.*, 2023 NSCA 84 at para. 55; *Wewaykum Indian Band v. Canada*, 2003 SCC 45 at para. 60).

[41] Having reviewed the record, I am satisfied there is no merit to the allegation. Nothing further need be said about this complaint. I would dismiss this ground.

Conclusion

[42] The appellant did not establish any basis for appellate intervention. I would dismiss the appeal with costs payable by the appellant to the respondent in the amount of $2,500 (inclusive of disbursements).

Van den Eynden, J.A.

Concurred in:

Wood, C.J.N.S.

Scanlan, J.A.