In the Court of Appeal of Alberta

Citation: Earl v Peter, 2026 ABCA 234

Date: 20260706
Docket: 2603-0061AC
Registry: Edmonton

Between:

Teresa Lynn Earl

Respondent

- and -

Matthew Warren Peter

Applicant

Reasons for Decision of
The Honourable Justice Kevin Feehan

Application for Permission to Restore an Appeal

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I. Overview

[1] Matthew Peter applies to restore an appeal to the record pursuant to *Alberta Rules of Court*, Alta Reg 124/2010, rr 14.47 and 14.65(1). His appeal was struck under r 14.64(a) for failure to file an appeal record within one month from the date on which the notice of appeal was filed, contrary to r 14.16(3)(a).

[2] For the reasons below the application is allowed.

II. Background

[3] Mr Peter and Ms Earl began cohabiting on September 1, 2012, were married on September 13, 2015, and ceased cohabiting on November 27, 2019. There are two children of the marriage born in 2016 and 2018.

[4] On February 5, 2026, Ms Earl's claim for divorce, parenting, decision-making authority, imputation of Mr Peter's income, and award of a retroactive and ongoing child support, was heard at a one-day streamlined trial.

[5] On February 19, 2026, the trial judge released an endorsement in which Ms Earl was wholly successful. On March 18, 2026, Mr Peter advised the case management officer and counsel for Ms Earl that he intended to appeal. On March 19, 2026, counsel for Ms Earl indicated that she would accept service of the notice of appeal on behalf of her client. On March 20, 2026, Mr Peter filed a notice of appeal together with a copy of the endorsement of the trial judge and copies of earlier orders of June 1, 2023, an interim without prejudice order addressing parenting, financial disclosure, imputation of income, and ss 3 and 7 child support, and the November 19, 2024 streamlined trial order. On that day, he also ordered trial transcripts through transcript management services.

[6] On March 21, 2026, the Court of Appeal Registry sent an e-mail to Mr Peter advising that a Civil Appeal Commencement Letter had been uploaded into the Court of Appeal Management System. It advised him to log into his account, or if he did not have one, to register for one. It specifically noted that the commencement letter contained important information, such as deadlines, hearing dates, or administrative directions, and indicated that it was his responsibility to retrieve and review that document.

[7] The March 21, 2026, commencement letter downloaded into the management system specifically indicated that this appeal had been classified as a fast-track appeal under r 14.14, and

the deadlines applicable to fast-track appeals would apply. Those deadlines are set out in r 14.16(3)(a) and provide that an appeal record and transcripts were to be prepared promptly and filed "no later than one month from the date on which the notice of appeal was filed".

[8] Mr Peter advises that he was not registered on the management system, did not create an account until April 22, 2026, and was unaware of the contents of the commencement letter.

[9] On March 27, 2026, Mr Peter served Ms Earl with his notice of appeal and then filed an affidavit of service.

[10] Because Mr Peter had not opened a management system account and had not reviewed the commencement letter, he concedes that he missed the filing deadline for transcripts and an appeal record on April 20, 2026.

[11] On April 21, 2026, the Registrar of the Court of Appeal filed a struck certificate-late appeal record indicating that Mr Peter's appeal had been struck and it could only be restored by written consent of the parties or order of a single appeal judge. It provided that if he wished to apply to restore his appeal, he was to "apply as quickly as is reasonably possible. Failure to act diligently will hurt your position".

[12] On April 22, 2026, the case management officer communicated further with Mr Peter, confirming that the original e-mail had been sent to him on March 21, 2026, he had been advised to review the commencement letter from a management system account, and that if he did not have an account, then he was required to register for one. The case management officer advised that if he wished to restore the appeal, he was to follow the instructions set out in the struck certificate. On April 22, 2026, Mr Peter advised the case management officer and counsel for Ms Earl that he wished to apply to restore the appeal.

[13] On April 23, 2026, Mr Peter received notification that the streamlined trial transcript was available for download.

[14] On April 24, 2026, Mr Peter asked counsel for Ms Earl to consent to an application to restore his appeal, but that consent was not forthcoming.

[15] Mr Peter filed this application to restore appeal on May 5, 2026, and filed the trial transcripts on June 15, 2026.

III. Test for Restoration of an Appeal

[16] The applicable rules are rr 14.47 and 14.65:

Application to restore an appeal

> 14.47 An application to restore an appeal that has been struck ...
> (a) must be filed and served as soon as reasonably possible, and
> (b) must be returnable no later than
> ...
> (ii) for a fast track appeal, 3 months after having been struck ....
>
> …
>
> **Restoring appeals**
>
> 14.65(1) An appeal … that has been struck … may be restored
> (a) … by order of a single appeal judge on application under rule 14.47 ….

[17] The test for restoring an appeal is discretionary and engages the following considerations:

(a) arguable merit to the appeal;
(b) an explanation for the defect or delay which caused the appeal to be taken off the list;
(c) reasonable promptness in moving to cure the defect and have the appeal restored to the list;
(d) intention in time to proceed with the appeal; and
(e) lack of prejudice to the respondents, including the length of delay.

Li v Morgan, 2020 ABCA 186, para 6; ***Prairie West Homes Inc v Baraka Homes Ltd***, 2023 ABCA 256, paras 9, 10; ***JE v KE***, 2025 ABCA 298, para 8; ***Okuns v Alberta Labour Relations Board***, 2025 ABCA 327, paras 13, 14.

[18] None of these factors are determinative. Failure by the applicant to meet one of them is not fatal, because all the factors are weighed to determine whether, overall, it is in the interests of justice to permit the appeal to proceed: ***Li***, para 6; ***Prochazka v Alberta (Maintenance Enforcement Program)***, 2014 ABCA 448, para 4. A restoration order may not be in the interests of justice even if all five factors are met: ***Warren v Warren***, 2019 ABCA 20, para 15, 82 Alta LR (6th) 213; ***Prairie West***, para 10; ***Okuns***, para 15; ***Abbasi v Khan***, 2026 ABCA 139, paras 11-13.

[19] Some cases slightly revise these factors where the applicant has filed a notice of appeal and seeks the court's indulgence to cure a post-appeal deficiency: ***Warren***, paras 32, 38:

> Slightly different considerations apply when the moving party has filed a notice of appeal and seeks the court’s indulgence to cure a post-appeal deficiency.
>
> …

> [C]onsideration must be given to the following criteria:
>
> 1. Is there any reason to conclude that the applicant, at any time after filing the notice of appeal, did not intend to prosecute the appeal? A statement from the applicant that he or she has always intended to prosecute the appeal would, in most cases, be probative. If the court has reason to doubt the applicant's commitment to the appeal, there is no reason to restore it.
>
> 2. Has the applicant provided an explanation for the deficiency that prompted the Registrar to strike the appeal? If so, is the explanation consistent with an intention on the part of the appellant to advance the appeal?
>
> 3. Has the applicant moved with sufficient expedition to cure the defect, taking into account the nature of the defect?
>
> 4. Are there arguable grounds in support of an appeal? Is the likelihood of success high enough to conclude that it is not a frivolous appeal? It makes no sense to breathe life into an appeal that is almost certain to fail. An appeal that is almost certain to fail should be laid to rest without any more private and public resources devoted to it.
>
> 5. Will the restoration of the appeal cause the respondent any prejudice? If so, is it appropriate to require the respondent to endure this prejudice?

i. *Arguable Merit*

[20] Mr Peter says his appeal has arguable merit. He says the decision by the trial judge that Ms Earl had been primary caregiver prior to June 2023, and that he was unwilling or unable to co-parent effectively, was not supported by the evidence at trial. Nor was the conclusion that he had spoken negatively about Ms Earl in front of the children and failed to support the relationship with Ms Earl. He disputes the finding that he refused to facilitate extracurricular activities and was unwilling to cooperate as a parent. He says the imputation of income was incorrect because it characterized certain deposits as income without proper consideration of expenses incurred in his various businesses, and his financial disclosure. He says the finding of the trial judge was inconsistent with the evidence regarding his assets, liabilities, and property transactions, that she relied on irrelevant or improper considerations, and misapprehended key evidence.

[21] Ms Earl says the appeal has little prospect of success and Mr Peter is simply attempting to relitigate the matter. She relies on the endorsement of the trial judge, says that decision is entitled to deference, and the trial judge was entitled to make findings based on the evidence before her, considering the respective credibility of the clients, and make a judgment accordingly.

[22] The first factor, arguable merit, is a low bar; all the applicant must establish is that the appeal is not hopeless or frivolous: ***Murphy v Haworth***, 2016 ABCA 219, para 23, 2 CPC (8th) 201; ***The Owners: Condominium Plan No 982 6403 v CPI Crown Properties International Corporation***, 2018 ABCA 232, para 16, 76 Alta LR (6th) 318. The onus is on the applicant to show the appeal is not bound to fail: ***932282 Alberta Ltd v Royal Bank of Canada***, 2019 ABCA 252, paras 18, 19, 93 Alta LR (6th) 1; ***Abbasi***, para 17.

[23] The onus is on Mr Peter to show some arguable merit to this appeal. The threshold for this criterion is low. It is not possible to determine that the appeal is either hopeless or frivolous, and bound to fail. Mr Peter meets this criterion.

ii. *Explanation for the Delay*

[24] Mr Peter's explanation for the delay is that because he did not have a management system account, he did not open or review the commencement letter of March 21, 2026 until after he had missed the filing date indicated in that letter. It is clear that he did not pay attention to the e-mail of March 21, requiring that he open a management system account and reference the commencement letter. He did communicate to counsel for Ms Earl on March 27, 2026, indicating that he was aware of his obligation to create an account, although he did not do so until April 22, 2026.

[25] Ms Earl responds that Mr Peter was responsible to inform himself of the steps required to file his appeal record and transcript, and "[h]e has failed to do so".

[26] Mr Peter's failure to obtain a management system account, review the commencement letter, and meet the filing deadline for his appeal record and transcripts, is not excusable. It is the duty of all participants in litigation to take necessary steps to progress matters according to the timelines set out in the *Rules of Court*. This failure on the part of Mr Peter weighs against his application to restore his appeal to the record. That is to be weighed against the clear intention to proceed, discussed below, during this period of time.

iii. *Reasonable Promptness*

[27] Once Mr Peter received the struck certificate notice on April 21, 2026, he proceeded relatively quickly.

[28] On April 22, 2026, he communicated with the case management officer, explaining that he had not opened a management system account until that day and had been unaware of the timelines for the filing of his appeal record and transcripts. He advised that he intended to restore the appeal and would act promptly to do so.

[29] He received the trial transcripts on April 23, 2026, that he had ordered earlier, although he did not file it until June 15, 2026.

[30] On April 24, 2026, he asked opposing counsel to consent to restore the appeal to the record.

[31] On April 28, 2026, he emailed counsel for Ms Earl a draft application and affidavit, and he was advised by opposing counsel that she needed until April 30 to review that documentation.

[32] This application was filed on May 5, 2026, with an affidavit in support of that application.

[33] Under the circumstances, Mr Peter began to act promptly after his appeal was struck, took reasonable steps to attempt to determine why the appeal had been struck, to receive consent to restore the appeal, and to prepare and file this application to restore the appeal with an affidavit in support.

iv. *Intention in Time to Proceed*

[34] The above chronology clearly sets out an intention to proceed with an appeal during the time before it was struck. As indicated, he filed a notice of appeal and ordered transcripts on March 20, 2026, and served his notice of appeal on March 27, 2026.

[35] Ms Earl says Mr Peter has an established pattern of missing deadlines, disregarding court orders, and has engaged in litigation misconduct as set out in the trial judge's endorsement and a later costs endorsement of April 2, 2026.

[36] Considered holistically, it appears Mr Peter had an unwavering intention to prosecute his appeal during the period for filing his appeal record and transcripts.

v. *Prejudice*

[37] Mr Peter says there is no evidence Ms Earl will suffer any prejudice by grant of this application that cannot be addressed through costs or case management directions.

[38] Ms Earl responds that delay in itself is prejudicial to her. Mr Peter has a history of disregarding court orders, delaying matters, and she has lived “in a state of uncertainty as it relates to parenting and child support” for several years. She says this impacts her ability to make decisions for the children, including on health matters, extra-curricular activities, travel, and any matters with a financial impact.

[39] However, there has been no stay requested or granted of the order of February 19, 2026. The children will continue to reside primarily with Ms Earl. Mr Peter will have specified parenting time every second weekend from Friday afternoon to Monday morning, and every Wednesday after school. Ms Earl will have sole-decision making authority as set out in the parenting order on record. Mr Peter’s income will continue to be imputed at $86,428 going forward. Ms Earl is entitled to retroactive s 3 child support of $31,337 for December 2019 to May 2023, and from June 2023 to February 2026 of $44,275.

[40] Those provisions remain in place pending conclusion of the appeal.

[41] As a result, there is no prejudice to Ms Earl, in maintenance of this *status quo*, and any additional costs she incurs can be subject to a costs order on appeal.

vi. *Conclusion on the Factors*

[42] As indicated, none of the above factors are determinative. Failure to meet one of them is not fatal, and all factors are weighed to determine whether, overall, it is in the interests of justice to permit the appeal to proceed. Under the circumstances, balancing all the above factors, it is in the interest of justice that Mr Peter's appeal be restored to the record.

[43] Mr Peter shall have 15 days after the filing of these reasons to file with the Court the appeal record. Failure to meet that deadline will result in this matter being deemed to be struck from the record once again: *Rules of Court*, r 14.65(2).

IV. Conclusion

[44] This application is allowed. Mr Peter’s appeal is restored to the record.

[45] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Application heard on June 18, 2026

Reasons filed at Edmonton, Alberta
this 6th day of July, 2026

Feehan J.A.

Appearances:

C. Spafford
for the Respondent

Applicant, M. Peter