

In the Court of Appeal of Alberta

Citation: KH v CH, 2026 ABCA 333

Date: 20261020
Docket: 2603-0027AC
Registry: Edmonton

Between:

KH

Respondent

- and -

CH

Appellant

The Court:

**The Honourable Justice Jolaine Antonio
The Honourable Justice Tamara Friesen
The Honourable Justice Karan M. Shaner**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice E.C. Lew
Dated the 6th day of January, 2026
Filed on the 16th day of January, 2026
(Docket: 4803 199441)

Memorandum of Judgment

The Court:

[1] This is an appeal of an urgent family law chambers judge's decision dismissing the mother's application for an urgent parenting order.

[2] The parties were married in 2011 and separated in December 2022. There is one child of the marriage, who is 16 years old. Counsel for the child, appointed in March 2023, has taken an instructional advocacy role on behalf of the child.

[3] No formal court order setting out a parenting regime has ever been issued. The child has resided with her father since March 30, 2023, and has had little contact with the mother since then. Counsel for the child has consistently communicated to the parents and the court that the child does not wish to have unsupervised parenting time with the mother.

[4] An order for reunification therapy was made in April 2024. The arising therapeutical intervention concluded in December 2024, and various recommendations were then communicated to the parents and the court. The recommendations do not make any suggestions with respect to a parenting regime moving forward; rather, the parents are encouraged to improve their behaviour towards one another and the child, and the father is urged to "actively support the relationship between [the child] and her mother" including encouraging [the child] to spend time with her. No court order was issued following issuance of the therapeutic intervention and recommendations.

[5] In June 2025, the mother filed an application seeking parenting time twice a week for at least three hours. The application was heard in chambers on July 2, 2025. Counsel for the child advised that the child's position remained unchanged. The mother's application was dismissed with a direction that the father "review the [mother's] most recent psychiatric assessment and ... communicate its finding to the child of the marriage."

[6] The genesis of the present appeal is the mother's most recent application filed on December 23, 2025, which sought immediate and urgent placement of the child in her care based on an allegation that the father had not complied with "the reunification court order" conditions. The mother attempted to have the application heard the same day, without notice. During the December 23 appearance, the judge sitting in urgent chambers asked the appellant why she had not sought a formal parenting order over the last three years. He queried the urgency of the application and directed it be adjourned to January 6, 2026, with notice provided to the respondent.

[7] All parties appeared on January 6, 2026, including Counsel for the child. The chambers judge noted the July 2025 application, which had sought a much less extreme form of relief, had been dismissed. He found the mother's evidence did not establish that any material change in

circumstances had arisen since that time, nor did it establish that the respondent had failed to comply with any court orders. He acknowledged the strained relationship between the mother and the child, observing that the court-ordered therapeutic process previously engaged to repair the relationship had been unsuccessful and the child's position had not changed. In dismissing the application, he further observed that morning chambers was not the proper forum to pursue radical parenting changes: *HG v RG*, 2017 ABCA 89 at para 9; *LDM v WFT*, 2017 ABCA 106 at para 7; *Loomis v Loomis*, 2017 ABQB 129 at paras 5-8.

[8] The appellant mother argues the chambers judge committed several errors, primarily in relation to what she characterizes as his failure to review all the available evidence. She says this resulted in the chambers judge failing to prioritize the child's best interests. She also argues that he made a palpable and overriding error in failing to consider the appellant's affidavit.

[9] The appellant has not demonstrated that the chambers judge failed to review or consider the evidence before him, or that he failed to consider the relevant legal principles when making his decision. She simply disagrees with that decision. The chambers judge had, as evidence before him, the prior existing orders provided, the application, the appellant's affidavit in support (which included references to the child attending at a court appearance in November of 2025 but did not have exhibits attached), the new medical documentation, and the Practice Note 7 reunification recommendations. The chambers judge did not need to state explicitly that he considered these documents and how they impacted on the child's best interests in rendering his decision; it is obvious from his reasoning that he did so. Trial judges are presumed to know the law and are entitled to be taken at their word: *R v O'Brien*, 2011 SCC 29 at paras 17-18; *Bodnaruk v Vince*, 2024 ABCA 30 at para 26. The appellant has not demonstrated the chambers judge committed any error of law or palpable and overriding error of fact in rendering his decision, which was centered on his finding that there had been no material change in circumstances since the July hearing: *Barendregt v Grebliunas*, 2022 SCC 22 at para 104 [*Barendregt*].

[10] The appellant also argues she did not receive a procedurally fair hearing because she did not have an opportunity to review a letter provided by Counsel for the child to the chambers judge. The letter the appellant refers to was previously prepared for the July 2025 application and presented to the court at that time. As Counsel for the child explained during the January 6, 2026 hearing, the letter outlined his meetings with the child, and the child's wishes as expressed in those meetings. While both parents were entitled to review the letter with their counsel prior to the July application, neither party was permitted to have a copy of the letter, pursuant to the related trust conditions. The consent procedural order filed May 13, 2025, bears this out, as it directs that in preparation for the June 2025 hearing:

Counsel for the Child shall provide an unfiled letter to this Court on or before June 2, 2025. This letter shall also be provided to Counsel for the Plaintiff and Counsel for the Defendant who shall not provide their clients with a copy of it in any form. Either party may review the letter in counsel's office, while under supervision and

they shall not have a cell phone or other electronic device in their possession while viewing the letter.

Despite all of this, during the January 6, 2026, hearing, the appellant indicated that while the letter had been summarized for her previously, she had not actually seen it and was unfamiliar with its contents.

[11] Litigants are entitled to fair hearings, not perfect ones, and what constitutes a fair hearing will always depend on the context in which it occurs: *Nitschmann v Nitschmann*, 2025 ABCA 95 at para 10; *JM v EM*, 2022 ABCA 49 at para 29; *Ruby v Canada (Solicitor General)*, 2002 SCC 75 at para 39. Here, the chambers judge denied the appellant's application on the basis that there had been no material change in circumstances since the June 2025 application. The timing of the letter's creation -- pre-dating June 2025 -- was more pertinent than its contents. In these circumstances, the procedures followed below did not give rise to unfairness. Appellate intervention is not warranted.

[12] As her third ground of appeal, the appellant argues the chambers judge's conduct gives rise to a reasonable apprehension of bias against her. This ground of appeal has not been made out. Judges are presumed to be impartial, and this is a difficult presumption to displace, for good reason: *Cojocar v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 at para 22. A reasonable apprehension of bias does not arise simply because the decision-maker agrees with the opposing party and prefers their evidence. There is nothing in the record here that suggests the chambers judge prejudged this matter, or arbitrarily preferred the father's evidence or position, or otherwise treated the appellant unfairly: *Eccles v Eccles*, 2025 ABCA 418; *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at paras 20-22.

[13] Finally, the appellant has sought to file fresh evidence on her appeal. The test for adducing fresh evidence on appeal as set out in *Palmer v The Queen*, 1979 CanLII 8 (SCC), is well settled: see *Barendregt* at para 3. However, where the fresh evidence application amounts to what is "in substance a disguised application to vary" an appellate court is not required to go through the steps in the *Palmer* test and may simply dismiss the application on that basis. As the Supreme Court explained in *Barendregt* at paras 78:

It is essential that variation procedures and appeals remain distinct in the family law context: holding otherwise would unfairly require the opposing party to defend the original order — absent a material error — in the wrong forum, with appellate judges effectively performing the work assigned to first instance judges in variation procedures. This would displace the corrective function of appellate courts and allow litigants to circumvent Parliament's variation scheme.

[14] We view the fresh evidence application in this case as an attempt to obtain a variation of the existing parenting regime through the appeal process and dismiss it on that basis: *Roth v Scott*, 2024 ABCA 122 at para 8. We note that almost all the evidence sought to be admitted was either

previously available to the appellant, or not capable of impacting the result, and would therefore not meet the *Palmer* test in any event.

[15] The appeal and the application for fresh evidence are both dismissed. Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

[16] The appellant also asked this Court to direct correction of certain errors in her previously submitted materials. No order will issue with respect to that request. We simply note that the corrections sought were appropriate and are now reflected in the court record via the appellant's oral submissions.

Appeal heard on October 5, 2026

Memorandum filed at Edmonton, Alberta
this 20th day of October, 2026

Antonio J.A.

Friesen J.A.

Shaner J.A.

Appearances:

E.C. O'Connor
for the Respondent

Appellant CH