In the Court of Appeal of Alberta

Citation: Skarsgard v Ellert, 2026 ABCA 374

Date: 20261123
Docket: 2601-0048AC
Registry: Calgary

Between:

Karen Mary Skarsgard

Appellant

- and -

Benjamin Harold Ellert

Respondent

The Court:

The Honourable Justice Jolaine Antonio
The Honourable Justice Bernette Ho
The Honourable Justice Alice Woolley

Memorandum of Judgment
Delivered from the Bench

Appeal from the Order by
The Honourable Justice S.A. Moore
Dated the 21st day of January, 2026
Filed on the 22nd day of January, 2026
(Docket: 4806 018829)

Memorandum of Judgment
Delivered from the Bench

The Court:

[1] The appellant Karen Skarsgard appeals a decision indefinitely suspending her spousal support following her purported failure to comply with court ordered disclosure to the respondent Benjamin Ellert.

[2] In 2024 it came to the respondent's attention that $69,809.08 had been transferred out of a Registered Education Savings Plan held for the benefit of the parties' 30-year old daughter, who has a permanent and significant disability. In an affidavit filed June 5, 2025, the appellant explained the funds were rolled over to a Registered Disability Savings Plan also held for the daughter. Bank statements provided by the appellant corroborated this explanation in part, showing a contribution of $45,209.08 to the RDSP. The appellant also explained that the amount contributed was $24,600.00 less than the amount transferred out of the RESP because grants associated with the RESP had to be repaid to the government. The bank statements disclosed by the appellant showed that, while only $45,209.08 was contributed to the RDSP, two new grants in the total amount of $15,000 were subsequently obtained. The appellant also explained that the parties' daughter had no plans to pursue education, that the daughter's disability made it difficult to find a suitable educational program, and that some of the actions taken with respect to the RDSP were necessary to maintain the daughter's government support in Saskatchewan, where she and the appellant now reside.

[3] The respondent asked the court to direct that "full documentation" be "provided indicating exactly how much money was moved" from the RESP to the RDSP. On August 20, 2025, a judge ordered the appellant to "provide all requested disclosure" related to the RESP and RDSP "just to close a loop for" the respondent.

[4] On August 21, 2025, counsel for the respondent asked then-counsel for the appellant to provide "all the statements confirming the amount of money transferred" to the RDSP account. He also said, "[i]f your client has explanations for the funds transferred, I would ask that those also be provided as well". On November 28, 2025, counsel for the appellant responded, "All of the documents my clients have in their possession and that they have access to were included in our affidavit" and offered to send them again. Counsel for the appellant additionally reiterated that "government grants and awards were taken back by the government in the amount of $24,600". He said he "did search for documents from the government that would demonstrate that they took back the $24,600, however, as far as I am aware, the government does not record or disclose that information". The respondent did not make any further request for documents from the appellant.

[5] Nonetheless, on December 18, 2025, the respondent filed a further application seeking, in part, to suspend his obligation to pay the appellant spousal support "pending full receipt of

disclosure". In his supporting affidavit, he noted the appellant's explanation that the difference in the amounts in the RDSP account arose from the removal of RESP related government grants, but said he had "substantial concerns as to whether this is or is not the case". He did not indicate the nature of those concerns. He did not identify the documents he had requested that the appellant had refused to provide.

[6] The respondent also raised concerns with respect to tax obligations allegedly triggered by the removal of the funds from the RESP.

[7] The appellant's counsel withdrew prior to the January 21, 2026 hearing of the December application. No additional materials were filed by the appellant, who requested an adjournment because of the withdrawal of her counsel, which she told the chambers judge had occurred two days prior to the hearing. Counsel for the respondent said his client was amenable to an adjournment but argued a suspension of the respondent's spousal support obligation was required to "create some kind of requirement for Ms. Skarsgard" to provide the required disclosure.

[8] The adjournment was granted. Instead of returning the matter to the list in 30 days, as requested by the appellant, the chambers judge adjourned the matter *sine die* and directed that it proceed through the court's new Family Focused Protocol. In the meantime, on an "Interim Without Prejudice Basis", the chambers judge suspended all spousal support payable by the respondent. In brief reasons, the chambers judge said:

> There is some difficulty that the Court has to explain to you, [agent for the appellant]. And the difficulty is the fact that we have a new family law procedure that is unfolding throughout the province, starting February 1st. So it's impossible for this Court to adjourn it for 30 days past some point in time where a lawyer may or may not be appointed.
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> …
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> What I just read through submissions is that there were materials to be filed. I have no idea why they weren't filed. And in an effort to try to move this matter forward, I am going to [sus]pend both the arrears and ongoing spousal support on an interim without prejudice basis.
>
> The matter will then be adjourned *sine die*, and it will have to go into the new family focus protocol.
>
> [emphasis added]

[9] The chambers judge erred.

[10] Section 17 of the *Divorce Act*, RSC 1985, c 3 requires the court to "satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred" before varying a spousal support order: *Divorce Act*, s 17(4.1). There was no basis in the record for ordering a suspension here. The respondent may ultimately attempt to vary spousal support based on a material change of circumstances: *Divorce Act*, s 17(4.1); *LMP v LS,* 2011 SCC 64 at paras 22, 29, 32, 36, 42, 44. However, there was no basis in the evidence and information before the chambers judge on which to find that the appellant defied the disclosure requirements of the August court order or that she had misappropriated funds.

[11] Even if a wilful failure to provide court ordered disclosure could justify suspension of spousal support, no such failure is apparent here. The appellant provided an explanation in her affidavit and attached supporting documents. Her counsel reiterated the information available to her had been provided and that he had inquired but had been unable to obtain documentation from the government confirming the return of the grants.

[12] We also share the appellant's concerns with suspending the payment of spousal support without giving her the opportunity to make any submissions on whether that relief ought to have been granted.

[13] Moreover, suspending spousal support, and adjourning the matter *sine die*, was an inappropriate response to concerns arising from gaps in the record, and the scheduling difficulties arising from a change in the court's family law procedures. Despite the chambers judge's direction for the parties to "proceed through the Family Focused Protocol", the respondent has taken no steps to advance the matter. In effect, he has obtained the benefit of an indefinite suspension of his spousal support obligations.

[14] Spousal support takes into consideration the condition, means, needs and other circumstances of each spouse with a view to recognizing economic advantage or disadvantage, apportioning financial consequences arising from the care of any child of the marriage, relieving economic hardship, and promoting economic self-sufficiency: *Divorce Act*, ss 15.2(4), 15.2(6). Gaps in the court record and challenges in scheduling do not justify an order that fails to consider the condition, means, needs and circumstances of the appellant, especially when it is not evident how such an order serves to "move [the] matter forward".

[15] The appeal is allowed, and the appellant's entitlement to spousal support, both arrears and ongoing, is restored. To the extent the respondent wishes to proceed with his December 2025

application, he is free to do so within the Family Focused Protocol or such other manner as the Court of King's Bench may direct.

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

Appeal heard on November 10, 2026

Memorandum filed at Calgary, Alberta
this 23rd day of November, 2026

Antonio J.A.

Ho J.A.

Woolley J.A.

Appearances:

Appellant K. Skarsgard

V.B.F. Andrucson
as agent for the Appellant

A. Muhammad
for the Respondent