

In the Court of Appeal of Alberta

Citation: Thomas v Davis, 2026 ABCA 241

Date: 20260717
Docket: 2601-0044AC
Registry: Calgary

Between:

Lana Jean Thomas also known as Lana Jean Davis

Respondent

- and -

Daniel Harry Davis

Appellant

The Court:

**The Honourable Justice Jane Fagnan
The Honourable Justice April Grosse
The Honourable Justice Kevin Feth**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice M.D. Slawinsky
Dated the 21st day of January, 2026
Filed on the 2nd day of February, 2026
(Docket: 4810 028391)

Memorandum of Judgment

The Court:

[1] This is an appeal of a denial of a chambers application to change the venue of this family matter from Red Deer to Grande Prairie. The appellant father and the respondent mother have both moved and now reside within the judicial centre of Grande Prairie.

[2] The parties separated in 2021, and the respondent filed for divorce in May 2022. The parties have five children and currently have a shared parenting arrangement. An arbitration award concerning parenting, support and property matters issued in April 2024, and a further award on interim parenting and child support issued in June 2025.

[3] While noting that both parties now “live in” the judicial centre of Grande Prairie, the chambers judge found that the self-represented appellant had a limited scope retainer with counsel in Calgary, and the respondent had counsel in Red Deer. She held that the first thing the appellant “need[ed] to do” was file the outstanding arbitration award, and until such time as that was done, the “request to move the file [was viewed] as a veiled attempt to make it more difficult for [the respondent] to have legal representation and make her change her counsel”.

[4] When asked during the hearing, the appellant father denied any such stall tactic or motivation for the transfer application, and both parties had filed affidavits stating that the other was the cause of delay in finalizing the divorce. The chambers judge did not refer to these materials in her decision, but appears to have accepted the respondent mother’s assertion that while she had relocated and was “not opposed” to the matter moving to “Grande Prairie once the Divorce is finalized”, she believed the appellant’s application to transfer the matter now was “a further attempt to exert control and delay the finalization of the outstanding issues under the Divorce Action.” No express factual foundation for the respondent’s belief appears in the evidence. The appellant’s otherwise uncontested evidence is that he considers travel to Red Deer to be a hardship because he lives 6 hours away.

[5] In her short oral reasons, the chambers judge did not refer to or consider Rules 3.3 or 3.5 of the *Alberta Rules of Court*, Alta Reg 124/2010 which govern the appropriate judicial centre and transferring an action. The relevant provisions are:

Determining the appropriate judicial centre

3.3(1) The appropriate judicial centre for the purpose of these rules is

- (a) the closest judicial centre, by road, to the Alberta residences or Alberta places of business of all the parties. . .

Transfer of action

3.5 The Court may order that an action be transferred from one judicial centre to another

- (a) if the Court is satisfied that it would be unreasonable for the action to be carried on in the judicial centre in which it is located, or
- (b) at the request of the parties.

[6] In *Odland v Odland*, 2017 ABCA 397 at para 8 [*Odland*], this Court confirmed that the purpose of Rule 3.3 is to “make a lawsuit ‘convenient and fair to all parties’: *Apache Canada Ltd v Johnson*, 2005 ABCA 71, 363 AR 100] at para 7”. In respect of an application to transfer an action under Rule 3.5(a), “reasonableness is determined on the balance of convenience”: *Odland* at para 20-21, citing *Regular v Regular*, 2016 ABQB 570 at para 7. This Court further held:

The following factors were considered under the balance of convenience in *Regular* at paragraph 9:

- a) the number of parties or witnesses in the current and proposed judicial centre;
- b) the nature of the issues in the lawsuit;
- c) the relationship between the parties in respect of the issues in the lawsuit (e.g. where relevant interactions between the parties relating to issues took place);
- d) the parties’ financial resources;
- e) the stage of proceedings;
- f) the convenience of location for pre-trial motions; and
- g) the location of relevant assets.

[7] The chambers judge did not consider these factors, many of which favoured transferring this matter to the judicial centre of Grande Prairie where both parties now reside. While she stated that the respondent had counsel in Red Deer, “the location of counsel is not a decisive factor” and generally “counsel will be expected to make themselves available in the proper judicial centre”: *Odland* at paragraph 22. The chambers judge granted permission for the appellant to restore his application to change the venue “once all required documentation as directed by the arbitration

awards have been completed and entered by the Court” but did not explain why keeping the matter in Red Deer until the completion of that step was convenient and fair to the parties or otherwise reasonable on a balance of convenience. Nothing in the record suggests the Awards will be enforced more quickly or conveniently in Red Deer. We agree with the appellant that the reasons and Order of the chambers judge denying the transfer result from a failure to consider relevant factors, a reviewable error.

[8] The mother has not filed any appeal materials and does not take a position on this appeal. Nonetheless, her counsel attended the appeal hearing to answer any questions of the Court. Counsel acknowledged on behalf of the mother that the judicial centre of Grande Prairie might now be the most appropriate venue. Circumstances have changed since the chambers judge’s decision. The respondent subsequently commenced a new action against the appellant in Red Deer to enforce the Awards and on June 15, 2026, another chambers judge directed that the new action be transferred to Grande Prairie. That action and any further steps that might occur in this matter may be related and might appropriately be heard together.

[9] In the circumstances, it is not in the interest of either party for us to direct the transfer application back to the Court of King’s Bench for a re-hearing. In our view, on the information now available, the balance of convenience favours this matter being transferred to Grande Prairie. Accordingly, the appeal is allowed, and the action is transferred to the judicial centre of Grande Prairie.

[10] We caution however, that appeals about accelerating a change of venue, before completing a step in the proceeding as directed by a chambers judge, should generally be avoided. In family proceedings in particular, the parties’ limited resources are generally better used for other priorities. The circumstances in this matter are the exception, not the rule.

[11] Lastly, the appellant confirmed before us that he would cooperate with the respondent’s counsel if the matter is transferred to Grande Prairie. To the extent authorized by the court below, he will be expected to accommodate requests by the respondent to allow her counsel to participate by video conference or telephone in that court.

[12] The appellant sought costs of this appeal. Self-represented litigants are generally not awarded costs because that would indemnify them for legal fees they did not incur. However, the Court retains discretion to award costs where a policy reason other than indemnification is demonstrated, such as encouraging settlement, preventing frivolous, vexatious or harassing litigation, or encouraging economy and efficiency during litigation: *Penn v St Stephen's College*, 2024 ABCA 222 at para 8. The appellant did not establish an exceptional and compelling reason to diverge from the general practice. The respondent did not oppose the appeal and her counsel made only a limited appearance to assist the Court with background information. The parties shall bear their own costs of this appeal.

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

Appeal heard on June 18, 2026

Memorandum filed at Calgary, Alberta
this 17th day of July, 2026

Fagnan J.A.

Grosse J.A.

Feth J.A.

Appearances:

S. D'onofrio
for the Respondent

Appellant D.H. Davis