

In the Court of Appeal of Alberta

Citation: AH v DM, 2026 ABCA 305

Date: 20260928
Docket: 2503-0139AC
Registry: Edmonton

Between:

AH

Appellant

- and -

DM

Respondent

The Court:

**The Honourable Justice Bernette Ho
The Honourable Justice Jane Fagnan
The Honourable Justice Karan M. Shaner**

Memorandum of Judgment

Appeal from the Order of
The Honourable Justice G.R. Fraser
Dated the 23rd day of June, 2025
Filed on the 24th day of April, 2026
(2025 ABKB 377, Docket: 4803-180017)

Memorandum of Judgment

The Court:

Introduction

[1] This is an appeal from an order varying parenting and child support from the terms of the consent divorce judgment filed in 2022. The trial judge ordered the parties to share parenting time equally, with a week-on-week-off schedule. He also directed the respondent to pay \$650 per month for s 9 child support.

[2] The appellant (the mother) contends the trial judge: misapprehended both her position and that of the respondent (the father) with respect to parenting time; demonstrated bias against the mother and a parenting expert (the expert) who testified; and failed to consider the children's views.

[3] We dismiss the appeal for the following reasons.

Background

[4] The parties were married in 2008 and share four children. They stopped cohabiting in 2017. A consent divorce judgment including corollary relief was granted in 2022. The divorce judgment granted the father parenting time with the children four to six days in a two-week cycle. On the first week, he had them from Wednesday at 3:30 pm until Sunday at 4:30 pm. On the second week he had them from Tuesday at 3:30 pm until Sunday at 4:30 pm. His parenting time was extended by one day if the Monday following his parenting time was a school or statutory holiday. The mother had the children in her care for the remaining time. During school holidays and summer break, the children spent equal time with each parent. The divorce judgment contained a clause permitting the father to seek review of the parenting arrangements.

[5] On October 24, 2024, the father filed an application to vary parenting. In his written materials, he sought equal parenting time, on a week-on-week-off basis, with no change to the arrangements for school holidays and summer break. The mother filed a cross-application on November 22, 2024, in which she sought, among other things, imputation of the father's income and retroactive child support. She also sought to reduce the father's parenting time to Thursday after school until Sunday at 4:30 pm every other weekend, including during the summer break. In the alternative, she asked that the parenting time remain the same. The applications were determined at a summary trial, with the evidence presented mostly through affidavits and supplemented with in-court testimony. In submissions to the trial judge, the mother's trial counsel

indicated the mother wished to reduce the father's parenting time only in the summer months by having it remain the same as the September to June schedule.

[6] The trial judge noted the father described some difficulties and frustrations with the arrangements as they existed at the time, but nevertheless "testified in a credible and reliable manner" and showed "little animosity" towards the appellant. In contrast, he identified reliability and credibility issues arising from the mother's evidence. He noted she "sometimes had difficulty answering the question" and that "[i]nstead of answering what seemed to be a clear and direct question, she would instead provide an unrelated answer". He concluded one of the mother's affidavits appeared to be entirely hearsay, based on what the children had told her, and it also described events pre-dating the divorce judgment. He found the mother displayed fear and animosity towards the father, which skewed her perception of the events. Importantly, the trial judge found the mother had provided some false evidence in her affidavits, which he went on to describe, and he concluded she did this to try and improve her position while negatively affecting the father's.

[7] The parties agreed on an expert who authored two "voice of the children" reports pursuant to Family Law Practice Note 7 (PN7). Each party was allowed to cross-examine the expert on her reports at the summary trial. The trial judge largely rejected the expert's evidence. He found she was unprepared, as she had not reviewed her notes relating to one of the reports before testifying and had not brought the notes to court with her. He found her answers were often unhelpful and she did not directly answer questions asked of her. He also noted that 12 times during her short time on the witness stand, she stated "I do not know" or something similar in response to questions he expected a parenting expert who conducted an evaluation should have been able to answer.

[8] The trial judge questioned the expert's impartiality. He noted specifically that the expert commented in one of her reports that the father seemed to "embrace rural Alberta culture" and identify "with gender-based roles and stereotypes", among other things. He remarked the expert seemed to have applied unequal scrutiny with respect to the motivation behind gifts from the paternal versus maternal grandparents, characterizing a gift from the former as a "bribe" without explaining why a gift from the latter was not. The trial judge went on to point out other issues in the expert's reports and evidence, concluding he was able to place little weight on the expert's opinions (*AH v DM*, 2025 ABKB 377 at para 29):

... [The expert] appears to favour [the mother], over [the father]. She accepts versions of events without providing the other side a reasonable opportunity to respond. She accepts statements without seeking to clarify or inquire the basis for the statement. She appears to have a negative view of rural Albertans. I find that her reports express a bias towards [the father]. This bias is completely inappropriate for an expert. Due to her lack of preparation and her bias, I am able to place little weight on [her] opinions.

[9] The trial judge found the children had strong bonds with each parent, having spent significant time with both. He noted differences between the two households but found this did

not detract from either party's parenting. The trial judge acknowledged there was some history of family violence, but no evidence of recent family violence and the parties still managed to communicate well and to manage a fairly complicated parenting schedule.

[10] The children's views were expressed in the expert's two reports. The trial judge considered them, although he pointed out that considering the children's views did not equate to allowing them to dictate what the parenting arrangement should be. He noted that in the expert's first report, she said each child expressed differing views of their preferred parenting arrangements; however, in her second report, which she prepared some months later, she said the children's views were aligned, with all of them wanting the parenting schedule to remain the same. The trial judge found the expert provided no insight into why the children's views had changed and accordingly, he could place little weight on the information about the children's views set out in the second report.

[11] The trial judge found there was insufficient evidence to justify granting the mother's application to reduce the father's parenting time. Conversely, he found the evidence demonstrated it would be in the children's best interests to grant the father equal, shared parenting, noting the current arrangements were essentially a shared parenting regime. He ordered that parenting switch to a week-on-week-off rotation with certain exceptions for holidays, school breaks, and special occasions.

Grounds of Appeal

[12] The mother advances three grounds of appeal. First, she alleges the trial judge misapprehended the relief she sought in her application regarding parenting time. She argues she merely sought to maintain the *status quo* in response to the father's application to vary parenting time and she did not wish to reduce his parenting time. Relatedly, the mother argues that the trial judge misunderstood the father's position regarding the allocation of parenting time.

[13] Second, the mother alleges the trial judge was biased against her and the expert.

[14] Lastly, the mother alleges the trial judge erred by failing to take the children's views into account.

Standards of Review

[15] A trial judge's decision on parenting arrangements is a fact-driven exercise and is entitled to deference. Barring palpable and overriding error, a material error in the appreciation of the facts, or an extricable error of law, appellate courts should not interfere with a trial judge's decision. ***Barendregt v Grebliunas***, 2022 SCC 22 at paras 100-104.

[16] With respect to the ground of appeal alleging bias, the starting point is that judges are presumed to act impartially and with judicial integrity. An appellant alleging a reasonable apprehension of bias must demonstrate that a reasonable and fully informed person, viewing the

matter realistically and practically, and having thought the matter through, would conclude that the judge was not fair and impartial. The test is a stringent one. *Eccles v Eccles*, 2025 ABCA 418 at para 33; *FIC Real Estate Fund Ltd v Phoenix Land Ventures Ltd*, 2020 ABCA 325 at para 36; *CZ v RB*, 2019 ABCA 445 at paras 13, 36 [*CZ*].

Discussion

The trial judge did not misapprehend the parties' positions

[17] This ground of appeal is contradicted by the record. It is clear from the mother's application documents and the submissions of her trial counsel that she was seeking to reduce the father's parenting time, including during the summer months.

[18] The appellant also asserts the trial judge misunderstood what the father was seeking in his application for increased parenting time. The trial judge stated the father was seeking parenting time on an 8/6 rotation (although as noted, the father's written application sought parenting time on an "equal" basis). The trial judge ordered equal shared parenting. If there was any misapprehension of the father's position, it is immaterial and, in any event, the trial judge found the children's best interests would be served through an equal parenting arrangement. On this record, it was open to the trial judge to draw that conclusion.

There was no reasonable apprehension of bias

[19] The mother argues the trial judge demonstrated bias towards both her and the expert. With respect to the allegations of bias against the mother herself, she relies largely on the trial judge's comments about her credibility. With respect to the expert, the mother says the trial judge's misgivings were unwarranted, because both parties had consented to the expert's qualifications. She also points to the comments the trial judge made citing concerns another judge expressed about the same expert in *SK v DG*, 2022 ABQB 425 as indicating bias.

[20] We find nothing in the record to support a finding of a reasonable apprehension of bias against either the mother or the expert. Turning first to the alleged bias against the mother, the trial judge found she provided untrue evidence in her affidavits. In one affidavit, she deposed she was unable to withdraw funds from a registered savings plan to assist her in financing litigation, then later said the opposite in her reply affidavit. In another affidavit she said she had decided to return to school before the father brought his application but, when questioned, she admitted this was untrue. The trial judge also found the mother made an untrue statement about being able to access funds from a line of credit, something later disproved by bank statements she was compelled to produce to comply with an undertaking. Adverse findings on credibility will not substantiate claims of bias if they are available based on the evidence. *CZ* at paras 36-40. The trial judge's findings are rooted in the evidence and support the trial judge's adverse conclusions on the mother's credibility. The mother has not demonstrated a reasonable apprehension of bias against her.

[21] The trial judge's concerns about the reliability and impartiality of the expert's evidence also stem from the record. For example, and as noted, the expert commented in one of her reports on the father's "cultural identity" as a rural Albertan, noting he may adhere to gender stereotypes, own multiple firearms, engage in the social use of alcohol, sometimes use profanity, and believe it is normal for teenage boys to get in trouble at school. When she was asked about these observations at trial, the expert was unable to answer them, nor could she recall asking the respondent about the conclusions she drew. It was reasonable for the trial judge to expect she would be able to answer those questions at trial, given they arose from reports she prepared for the court, and based on her inability to do so, it was open to him to question the reliability and impartiality of her evidence.

[22] The mother appears to suggest the trial judge erred in largely rejecting the expert's evidence given the parties themselves had agreed to her qualifications as a parenting expert. While parties may agree to the qualifications of an expert witness in advance, whether a witness is properly qualified to provide certain opinions and the weight to be assigned to that evidence is a question squarely within the purview of the trial judge. *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23. The decision to accept or reject expert evidence is entitled to significant deference, and appellate intervention will not be warranted absent palpable and overriding error. *Baker Estate v Poucette*, 2017 ABCA 344 at para 12; *Alberta v ENMAX Energy Corporation*, 2018 ABCA 147 at para 67. Further, it is not the role of an appellate court to second-guess the weight that is assigned to the expert evidence that is accepted. *Nelson (City) v Mowatt*, 2017 SCC 8 at para 38.

[23] Finally, the mother argued the trial judge was inconsistent in how he treated the expert's evidence, stating at one point he was able to place "little" weight on her opinions, then, that he was unable to place "any" weight on her findings, and then further stating, he could place "little" weight on her updated report. Given the overall context, this is a distinction without a difference. It is clear the trial judge found the expert's opinions unreliable and partial and accordingly, he assigned minimal weight to them.

The trial judge considered the children's views and their best interests

[24] The mother argues the parenting order is not in the best interests of the children. She says the children did not want any "major changes" to the parenting arrangement, and, despite this information being before the trial judge, the trial judge ignored the wishes of the children, ordering parenting time be shared equally.

[25] What is in a child's best interests is a factual determination. Further, while a child's wishes are important, they are but one factor to consider amongst many. The trial judge based his conclusions about what parenting arrangement would serve the children's best interests on a number of factors, including each parent's ability to navigate shared parenting, their respective relationships with the children, and the children's wishes. As noted, he had concerns, based on inconsistencies between the expert's two reports, about the legitimacy of the children's wishes as

expressed in the second report. This limited the weight he felt he could assign to that evidence. His decision on this point discloses no palpable and overriding error.

Disposition

[26] The appeal is dismissed.

Appeal heard on September 1, 2026

Memorandum filed at Edmonton, Alberta
this 28th day of September, 2026

Ho J.A.

Fagnan J.A.

Shaner J.A.

Appearances:

T. Mallett
for the Appellant

M. Revering
for the Respondent