

In the Court of Appeal of Alberta

Citation: EK v RO, 2026 ABCA 293

Date: 20260910

Docket: 2601-0208AC

Registry: Calgary

Between:

EK

Applicant/ Cross-Respondent

- and -

RO

Respondent/ Cross-Applicant

**Reasons for Decision of
The Honourable Justice Jolaine Antonio**

Application for Stay Pending Appeal
Application for Security for Costs

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Introduction

[1] The applicant, EK, applies for a stay of enforcement pending her appeal of a parenting reversal order (the Order). She asks that the three children who are the focus of the Order be returned to her primary care until the appeal is decided.

[2] The cross-applicant, and respondent on appeal, RO, opposes EK's stay application and applies for an order that EK post security for costs for the appeal.

Background

[3] EK and RO were married in 2014. They separated in March 2020 and were divorced in 2021. There are three children of the marriage. From July 2020 until the date of the Order, EK had primary care of all three children and RO had varying amounts of parenting time. EK has been financially reliant on child and spousal support paid by RO.

[4] In November 2025 and May 2026, a trial was held to determine issues including parenting time, decision-making authority, and child and spousal support. EK and RO have a high-conflict co-parenting relationship, which is evident from the lengthy history of court applications. The trial was infused with allegations of family violence and wilful disobedience of court orders.

[5] The trial judge found EK's conduct had undermined the relationship between RO and the children, and it was not in the best interests of the children that she remain the primary parent. He found continued exposure to EK's influence would result in the children becoming completely estranged from RO "with little realistic prospect of reconciliation." He stopped short of finding that EK's conduct amounted to parental alienation.

[6] In the Order, among other remedies, the trial judge reversed the existing parenting arrangement, transferring primary care and sole decision-making authority to RO. RO was ordered to enroll the children in counselling and to pursue Practice Note 7 therapeutic intervention. EK is not permitted to join in that intervention until she has completed six continuous months of individual counselling.

[7] The trial judge prohibited EK from having any contact with the children for three months. Both parents were ordered to subscribe to OurFamilyWizard, to provide a platform through which RO must provide updates about the children and EK can view them during the no-contact period. That period will expire in October, and either parent may then apply to the trial judge "to discuss next steps."

[8] The appeal is scheduled to be heard in February 2027.

Stay of enforcement

[9] To obtain a stay of enforcement, an applicant must satisfy the Court that a stay would be just and equitable in the circumstances: *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 25. This decision is informed by the following inquiries:

- (i) whether there is a serious issue to be determined on appeal;
- (ii) whether the children will suffer irreparable harm if the stay is granted or denied; and
- (iii) whether the balance of convenience favours granting the stay, with reference to the best interests of the children rather than the litigant parents.

Spiess v Spiess, 2025 ABCA 3 at para 8 [*Spiess*]; *LES v NBM*, 2026 ABCA 46 at paras 8-10 [*LES*]; *HDO v MDF*, 2025 ABCA 367 at para 21; *Ekeberg v Swan*, 2021 ABCA 296 at para 12 [*Ekeberg*].

[10] In applying this test, I must bear in mind the paramount importance of the best interests of the children: *Spiess* at para 8; *LES* at paras 9-10. The second and third inquiries are linked and should be considered together: *Spiess* at para 9; *Kalmbach v Kalmbach*, 2024 ABCA 281 at para 16. Whether the children will suffer irreparable harm from granting or denying the stay will be “practically determinative of the balance of convenience”: *VMP v DBP*, 2006 ABCA 224 at para 9; *Spiess* at para 9.

(a) Serious issue to be tried

[11] At this stage, I need only be satisfied the applicant has raised issues on appeal that are arguable and not vexatious or frivolous: *Denis v Sauvageau*, 2022 ABCA 166 at para 18; *Spiess* at para 11; *CMB v AMB*, 2022 ABCA 391 at paras 15, 21.

[12] RO concedes the appeal engages the best interests of the children and the low threshold for merit has been met. I agree.

(b) Irreparable harm and balance of convenience

[13] In stay applications generally, whether harm is “irreparable” is a matter of its nature, not necessarily its magnitude: *Stokes v Heck*, 2023 ABCA 39 at para 8. Irreparable harm to the children’s best interests requires more than “mere disruption” to their lives: *Chow v Richert*, 2026 ABCA 79 at para 14, citing *Ekeberg* at para 12. The applicant must show evidence of “special circumstances that demonstrate potential harm to the child, or some harm that is ‘real and significant’ and is more than a transitory disturbance”: *Lloyd-Martinez v Martinez*, 2021 ABCA 13 at para 15.

[14] EK submits the children will suffer irreparable harm if the stay is not granted. She says the Order disrupts their schooling, activities, religious and spiritual development, and community ties. She impugns RO's parenting abilities and attests that the children are fearful of living with their father and have suffered injuries in his care.

[15] RO submits EK has not provided evidence that real and significant harm will result from continuing to enforce the Order. He acknowledges the change in parenting has caused disruption, but submits that continuing with the current parenting arrangement will not give rise to irreparable harm. He observes that many of EK's allegations against him were also raised at trial and were not accepted as factual.

[16] RO deposes that, as of August 26, 2026, EK had not viewed any of the weekly updates RO had uploaded to OurFamilyWizard. Given EK's failure to obtain current information through the mechanism set out in the trial judgment, RO queries the authenticity of EK's belief that the children are experiencing irreparable harm.

[17] RO further argues that staying the Order is not in the best interests of the children, since it would mean uprooting them again to return them to EK's primary care and introducing instability pending appeal. RO says that this consideration is "particularly compelling" given EK's history of non-compliance with parenting orders and tendency to resort to self-help measures. He further argues that a stay would deprive the children of the benefits the trial judge intended.

[18] Where there is no truly desirable alternative, the balance of convenience favours choosing the least undesirable alternative, with emphasis on the children's interests: *LES* at para 10, citing *DA v HK*, 2014 ABCA 361 at para 29.

[19] Unlike many family law appeals that come before this Court, the Order under appeal results from a trial, not an application. RO and EK each testified for days. I am cognizant of the trial judge's advantage in hearing and assessing the live evidence, and, of course, I am aware that his findings of fact will be reviewed on a deferential standard.

[20] I am also aware that the parties may soon return to the trial court to discuss next steps. I am reluctant to impose an order that could interfere with that process.

[21] My decision turns on my consideration of irreparable harm and the best interests of the children. On the materials before me, I am not satisfied that remaining in their father's care will irreparably harm the children. The disruption of the parenting reversal has already happened. It will not be lessened by occasioning a similar disruption a second time.

[22] The children have already experienced high conflict and external interventions for a significant fraction of their lives. That is a regrettable truth. Based on the facts known to me, adding another significant upheaval pending appeal would not serve the children's best interests.

[23] The application for a stay of proceedings is denied.

Security for costs

[24] Ordering security for costs is discretionary: *Bains v Adam*, 2025 ABCA 235 at para 9 [*Bains*]. The Court must determine whether such an order is just and reasonable in the circumstances, taking into account:

- (i) the likelihood that the applicant will be able to enforce an order or judgment against assets in Alberta;
- (ii) the ability of the respondent to the application to pay a costs award;
- (iii) the merits of the action in which the application is filed;
- (iv) whether granting the application would unduly prejudice the respondent's ability to continue the action; and
- (v) any other matter the Court considers appropriate.

Alberta Rules of Court, Alta Reg 124/2010, r 4.22; *Bains* at para 9.

[25] The applicant bears the onus, on a balance of probabilities, to show that security for costs should be ordered because it is just and equitable, or because the respondent will be unable to pay any costs order that may be awarded: *Carrigan v Withers*, 2026 ABCA 58 at para 26; *Spiess* at para 20.

[26] RO seeks security for costs in the amount of \$5,062.50 plus GST.

[27] RO argues that that EK is impecunious and currently has no exigible assets or income apart from the \$1,000 per month that RO pays in spousal support. He submits ordering security for costs would not unduly prejudice EK's ability to proceed with the appeal, since she has previously received financial assistance from family and through online fundraising campaigns and could do so again. RO also submits that EK's history of non-compliance with parenting orders suggests she is unlikely to voluntarily comply with a costs order if her appeal is dismissed.

[28] EK argues that non-compliance with parenting orders should not be taken as evidence that she is unlikely to comply with court-ordered financial obligations. She submits that a requirement to post security for costs would prejudice her ability to pursue her appeal.

[29] While I am satisfied that EK lacks assets and has some history of non-compliance with court orders, I am not satisfied that I should exercise my discretion in these circumstances to order EK to post security for costs. As RO conceded in respect of EK's stay application, the appeal engages the best interests of the children. I accept his point that deferential standards of review

will apply to many of the issues EK raises. Nonetheless, in my judgment, it is just and equitable to allow the appeal to proceed without financial impediment. In these circumstances, ascertaining the children's best interests outweighs the potential loss of costs of the appeal.

[30] The application for security for costs is denied.

Costs of these applications

[31] Each party has been unsuccessful on his or her own application. In the circumstances, no costs shall be awarded for either application.

Applications heard on September 3, 2026

Reasons filed at Calgary, Alberta
this 10th day of September, 2026

Antonio J.A.

Appearances:

F. Gordon
for the Applicant/ Cross-Respondent

D.J. Wilson
for the Respondent/ Cross-Applicant