

In the Court of Appeal of Alberta

Citation: Owen v Flank, 2026 ABCA 334

Date: 20261021
Docket: 2503-0196AC
Registry: Edmonton

Between:

Howard Douglas Owen

Respondent
(Plaintiff)

- and -

Mallory Dawn Flank

Appellant
(Defendant)

The Court:

**The Honourable Justice William T. de Wit
The Honourable Justice April Grosse
The Honourable Justice Alice Woolley**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice K.H. Oviatt
Dated the 3rd day of September, 2025
Filed on the 17th day of September, 2025
(Docket: 4803 185058)

Memorandum of Judgment

The Court:

[1] The appellant Mallory Flank appeals a decision ordering her to return to Alberta the two children of her marriage to the respondent Howard Owen.

[2] The appellant submits the order ought not to have been granted because she and the children had not in fact relocated to Ontario, remaining ordinarily resident in Alberta, and because she did not have the financial or physical capacity to return them to Alberta in the time directed. She raises additional issues related to procedural fairness and an alleged infringement of her constitutional rights. The appellant also seeks to introduce new evidence to establish the temporary nature of her stay in Ontario, her health limits, the psychological welfare of the children, and the children's ongoing educational activities.

[3] The appeal is dismissed, and the application to introduce new evidence denied.

[4] Section 16.9 of the *Divorce Act*, RSC 1985, c 3, requires a person with parenting time or decision-making responsibility who intends to undertake a relocation to provide 60 days notice to any other person with parenting time or decision-making responsibility. Section 16.91 further provides that relocation of a child is permitted if there is no objection after notice, or if authorized by a court. Section 2(1) defines relocation as a “change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility – or who has a pending application for a parenting order – that is likely to have a significant impact on the child's relationship with (a) a person who has parenting time, decision-making responsibility or an application for a parenting order in respect of that child pending...”.

[5] While in September 2025 the appellant maintained before the chambers judge that her “visit” to Ontario was temporary, she also attested to the fact that she had been in Ontario since April 2025, a period of nearly five months. She did not identify any timeline or plan to return either in her affidavit or through counsel at the hearing. The parties disagree about what the governing parenting regime was at the relevant time, but it is clear that the children's extended stay in Ontario impacted the respondent's ability to exercise his parenting time and that further court direction on parenting was pending. The parties had been in active conflict over parenting since at least October 2024 when, following the appellant obtaining an emergency protection order against the respondent (which was not confirmed), the children moved from the respondent's primary care to the appellant's. Despite being ordered to return the children to the respondent in December 2024, the children remained - and remain - with the appellant in Ontario.

[6] Based on the terms of the *Divorce Act*, and the evidence before her, the chambers judge made no reviewable error in finding that the appellant had relocated the children and had done so without authority, and in directing that the children be returned to Alberta.

[7] As the chambers judge made clear in her comments to counsel during the hearing, the concern with the appellant's conduct relates not only to the best interests of the children, but also to her failure to respect and comply with the law. A party's unwillingness to respect and comply with legislative and judicial direction exacerbates the already significant difficulties inherent in resolving family conflicts through the judicial system. It suggests that parent lacks the "willingness to support the development and maintenance of the child's relationship" with the other parent, which is relevant to assessing the child's best interests: *Divorce Act*, s 16(3)(c); see also, 16.92(1)(d). The best interests of the child underpins the direction of the *Divorce Act* that notice and an opportunity to object precede relocation, and properly guides a court's determination of the appropriate relief when such notice and authorization has not been obtained: *Csorba v Csorba*, 2017 ABCA 190 at paras 12-14.

[8] The appellant argues she could not comply with a direction to return the children to Alberta within seven days because of issues related to her health and finances. Those issues were raised with and considered by the chambers judge. The chambers judge was also advised of the respondent's willingness to pay the costs of returning the children, and of other practical alternatives for their return. The appellant has identified no reviewable error in the chambers judge's decision in that regard.

[9] The procedural and constitutional issues raised by the appellant are without merit. She was represented by counsel, her affidavit evidence was received despite it being unfiled and, through counsel, she made extensive submissions before the chambers judge. Neither section 7 nor section 15 of the *Charter* is engaged in the circumstances.

[10] The appellant's new evidence application is denied. The evidence she seeks to adduce was available at the time of the hearing before the chambers judge. The factual propositions it supports were attested to in the affidavit that was considered by the chambers judge. Additional evidence on those points would not have affected the result, given the appellant's acknowledgment she had been in Ontario for nearly five months and her failure to comply with her obligations under the

Divorce Act and the applicable court orders: *Palmer v The Queen*, [1980] 1 SCR 759; *Barendregt v Grebliunas*, 2022 SCC 22 at paras 3, 29.

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

Appeal heard on October 5, 2026

Memorandum filed at Edmonton, Alberta
this 21st day of October, 2026

de Wit J.A.

Grosse J.A.

Woolley J.A.

Appearances:

Respondent H. Owen

Appellant M. Flank