

In the Court of Appeal of Alberta

Citation: Habib v Abbas, 2026 ABCA 335

Date: 20261022
Docket: 2503-0262AC
Registry: Edmonton

Between:

Suhair A Habib and Maytham Mubarak

Appellants

- and -

Kameela H Abbas

Respondent

The Court:

**The Honourable Justice April Grosse
The Honourable Justice Alice Woolley
The Honourable Justice Kevin Feth**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice S.L. Bercov
Dated and Filed on the 5th day of December, 2025
(Docket: 2503 20197)

Memorandum of Judgment

Overview

[1] Suhair Habib and her adult son, Maytham Mubarak, appeal a chambers decision refusing to renew a temporary without notice restraining order preventing her ex-husband's aunt, Kameela Abbas, from contacting them and Ms Habib's three minor children.

[2] For the reasons that follow, the appeal is dismissed.

Facts

[3] Ms Habib and Majib Mubarak were married for almost 20 years. Over the course of their marriage, Ms Habib had several disputes with Ms Abbas.

[4] In 2023, during a heated text message exchange, Ms Habib allegedly accused Ms Abbas and her daughter of inappropriate conduct. Ms Abbas' reply included the words "may God bury you," which Ms Habib considers a death threat. They have not communicated directly since then.

[5] Ms Habib asked her husband not to associate with Ms Abbas and her family, which he refused to do.

[6] Ms Habib filed for a divorce in early 2024. A court order in the divorce proceeding granted parenting time to Majib Mubarak with full decision-making responsibilities for the three minor children while with him. He has taken the children on visits to Ms Abbas and her family. Ms Habib objects to the visits.

[7] On August 28, 2025, the appellant Maytham Mubarak called Ms Abbas and asked about the 2023 text message. The call was surreptitiously recorded. Ms Abbas provided her recollection, in Arabic, about the alleged threat. According to Ms Habib, the words spoken to Maytham Mubarak translate to mean that Ms Abbas "would kill her" if Ms Habib was in Ms Abbas' presence. Ms Abbas disputes that translation, but Ms Habib points to the 2025 conversation about the 2023 text message as a second threat.

[8] Relying on these alleged threats, Ms Habib and Maytham Mubarak applied for and were granted a temporary without notice restraining order against Ms Abbas. The order restrained Ms Abbas from contacting the appellants and any of Ms Habib's minor children. The order was for an initial period of three weeks, pending further review.

[9] The order was twice renewed for short periods of time so that additional evidence could be filed by the parties. The temporary order and short renewals were based on Ms Habib's evidence alone.

[10] On December 5, 2025, the order was reviewed by a chambers judge and revoked. After reviewing all the evidence, including affidavit evidence from Ms Abbas, the chambers judge found no “objectively reasonable ... basis for believing there is a serious risk of harm to people or property”. The chambers judge told Ms Habib that if she wanted the children to stay away from Ms Abbas, she should seek an amendment to the parenting order.

Grounds of Appeal

[11] Ms Habib and Maytham Mubarak challenge the chambers decision on multiple grounds which are consolidated as follows:

- 1) The chambers judge misapplied the legal test for a restraining order, failed to consider material evidence (including the translation of the telephone call), misconstrued the previous restraining orders, and failed to consider child safety and vulnerability.
- 2) The chambers judge denied procedural fairness to the appellants by limiting their ability to present evidence and make submissions.
- 3) The chambers judge erred by proposing a mutual “no contact” order in lieu of a restraining order.

Standard of review

[12] The standard of review for questions of law is correctness. The standard for questions of fact, and mixed fact and law, is palpable and overriding error: *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 37, [2002] 1 SCR 84.

[13] Heightened deference is owed when reviewing restraining orders. A restraining order is a discretionary, equitable order. This Court may only intervene where there is an error in principle, a significant misapprehension of the evidence, or the order is clearly wrong: *Odowichuk v Bevans*, 2022 ABCA 395 at para 4.

[14] Procedural fairness is reviewed for whether the procedure chosen was fair given all the circumstances: *HRE v HS*, 2026 ABCA 54 at para 6; *Edmonton (City of) Library Board v Edmonton (City of)*, 2021 ABCA 355 at para 28.

Analysis

[15] The person seeking a common law restraining order has the burden of proving it is warranted. Such an order is an extraordinary remedy and should not be granted as a matter of routine, out of an abundance of caution, or to regulate minor interpersonal conflict. In determining whether to issue or extend a restraining order, a judge carefully balances protection of a vulnerable applicant against unreasonable interference with a respondent’s liberty. The risk of abusive

enforcement may also be considered. The safety concerns must be objectively reasonable: *TS v TMW*, 2022 ABCA 399 at para 4; *Schaerer v Scherer*, 2021 ABCA 104 at paras 18-21 [*Schaerer*].

[16] The Court must also prevent temporary without notice restraining orders from being used as a collateral attack on existing parenting orders in family proceedings.

a) The chambers judge did not err in applying the principles guiding her exercise of discretion

[17] The chambers judge correctly recognized the evidence needed to show an objectively reasonable basis for the appellants' safety concerns. She reviewed the evidence and found none.

[18] That finding is supported by the evidence. The record shows no animosity by Ms Abbas towards the children, and no reasonable risk to their safety. The alleged threats were not directed at them. The appellants point to an incident allegedly involving insensitive comments in the presence of a three-year-old child four years earlier, but those comments did not demonstrate either a significant or continuing risk of harm. The appellants' burden was to provide an evidentiary basis supporting an objectively reasonable risk: *Schaerer* at para 19. Mere suspicion or fear of risk is not enough: *ZL v ZZ*, 2025 ABKB 193 at para 34.

[19] Similarly, the record shows no threats or harmful acts directed at Maytham Mubarak. Further, he did not provide an affidavit and therefore gave no evidence asserting he had been harmed or that his physical or psychological safety had been compromised. It was open to the chambers judge to find he was not at a serious risk of harm.

[20] Ms Habib's concern for her own safety focuses on the comment made in 2023, and Ms Abbas' 2025 statement to Maytham Mubarak. Ms Habib also refers to various comments over the years, up to and including October 2023, which from her perspective were intended to intimidate, humiliate and emotionally harm her.

[21] The chambers judge was allowed to determine whether the words used, after considering the circumstances in which they were uttered, communicated a serious risk of physical or psychological harm. People frequently say things they do not literally mean. Context matters. The passage of time without acting on a comment might speak to whether harm was actually intended or whether the comment was an empty threat, an exaggeration, poorly phrased, or an expression of frustration.

[22] The chambers judge found the 2023 comment – “may God bury you” – was “not a threat”. She was entitled to make that finding based on the surrounding context, including the full conversation and the parties' relationship. No palpable and overriding error is demonstrated.

[23] Similarly, Ms Abbas' comment in 2025, which referred to the text message in 2023, even if translated in the manner suggested by Ms Habib, did not require the chambers judge to find a continuing risk of harm. Ms Abbas' evidence was that she is a senior citizen, "pose[s] no threat" to Ms Habib, lives hundreds of kilometres away in a different city, has kept her distance for a long time, has not communicated with Ms Habib since 2023, and has never threatened to kill or intimidate her. She denied the Arabic words meant or were intended to mean that she would kill Ms Habib. The translation includes a subsequent comment in which Ms Abbas said to Maytham Mubarak that she "controlled [her] temper" and merely insulted Ms Habib. On this record, the chambers judge was entitled to make the finding that no objectively reasonable risk of harm was presented.

[24] The balance of the comments attributed to Ms Abbas over many years, arising from ongoing family conflict, do not establish harassment or intimidation intended to cause significant psychological harm, nor a continuing risk of harm. To the contrary, Ms Abbas had discontinued all contact with Ms Habib for at least two years. The chambers judge's finding that the evidence established no reasonable risk of harm is supported by the record. The history of interpersonal conflict, while discomfiting to Ms Habib, did not require the chambers judge to exercise her discretion to renew the restraining order.

[25] The appellants contend the chambers judge erred in concluding the minor children could not be protected by a restraining order and the conflict should be addressed through family court proceedings. They emphasize the three previous restraining orders covering the children.

[26] The appellants mischaracterize the chambers judge's reasoning. The chambers judge did not conclude a restraining order could never be used to protect minor children. The context before her involved complaints that Ms Abbas was pressuring Ms Habib's ex-husband to see the children or that he was otherwise insisting the children have contact with Ms Abbas and her family. The chambers judge properly noted the parenting regime for the children had been determined by a parenting order under which Ms Habib's ex-husband was not restrained from taking the children to visit Ms Abbas and her family. Concerns about the children's willingness to make those visits, and the impact on them, were obviously contested by their father who was authorized to make those parenting decisions. He was not a party to the restraining order renewal application and the children's best interests had been determined by another judge resulting in the parenting order. The chambers judge therefore properly recognized the collateral attack on that order and the need for any dispute about the children's safety during their father's parenting time to be addressed in the divorce proceeding where the parenting order issued. She told the appellants that Ms Habib had to return to "family court" to "deal with a parenting application" because that "is something that needs to be dealt with with your ex-husband in Family Court." The chambers judge did not err in arriving at that conclusion.

[27] The appellants also suggest the previous temporary without notice restraining orders demonstrate the children needed protection. We disagree. Each of the previous orders was a

temporary restraining order pending further review on proper evidence. The appellants obtained those orders without the Court hearing from Ms Abbas and receiving the other side of the story. The first opportunity to fully canvass the evidence and arguments was before the chambers judge, who determined a restraining order was not warranted. No error is established.

b) The chambers judge afforded procedural fairness to the appellants

[28] Procedural fairness includes a fair opportunity to be heard. Litigants generally have the right to state their case and answer contrary arguments: *Nitschmann v Nitschmann*, 2025 ABCA 95 at para 10. The requirements of the duty of procedural fairness are context specific: *R v Nahanee*, 2022 SCC 37 at para 53, [2022] 3 SCR 3.

[29] The appellants allege the chambers judge unreasonably limited their ability to present relevant evidence and submissions, including evidence relating to the alleged threat and the protection of the children. We disagree.

[30] The previous temporary restraining orders provided directions about the affidavit evidence each party was permitted to file. Ms Habib had filed an initial affidavit, but Maytham Mubarak had not filed any evidence. Ms Abbas was permitted to file a response affidavit, and Ms Habib was allowed to file a reply affidavit. Both did. The directions also required Ms Habib to provide a translation of the audio recording, which she did. No other evidence was contemplated. The appellants did not ask to file or call additional evidence. We find no procedural error in the chambers judge's management of the evidentiary record.

[31] At the chambers hearing, each of the appellants spoke, although primarily Ms Habib. The chambers judge sought and received clarification about the descriptions of the alleged threats in the affidavits. Ms Habib addressed her safety concerns about the children, including that they were being used "as tools of revenge". The chambers judge advised Ms Habib to seek a variation to the parenting order if she wanted to limit Ms Abbas' interactions with the children and raised the possibility of a mutual "no contact" order between Ms Habib and Ms Abbas. Ms Habib objected to those proposals. She also denied the submission from Ms Abbas' lawyer that Ms Habib had been harassing Ms Abbas.

[32] Ms Habib repeatedly interrupted the chambers judge, who eventually cautioned her that the sheriff would be brought to the courtroom with the potential to remove her. Shortly afterwards, the chambers judge called for the sheriff. However, she did not ask that Ms Habib be removed, and she delivered her decision in the presence of both appellants.

[33] We are satisfied that Ms Habib was provided a reasonable opportunity to explain her position and respond to the arguments raised on behalf of Ms Abbas. The chambers judge had reviewed the evidence, so she was well-positioned to assess the safety risk, which was grounded in the evidence rather than the arguments. Judges have the authority to maintain order in their courtrooms and limit oral submissions: *Meads v Meads*, 2012 ABQB 571 at para 360, citing

Gillespie v Manitoba (Attorney General), 2000 CanLII 26952, 185 DLR (4th) 214 (MB CA) at para 21. Ms Habib was not denied procedural fairness.

[34] Maytham Mubarak states he was also denied a fair opportunity to be heard. However, he had filed no evidence. Consequently, a reasonably apprehended risk of physical or physiological harm was not before the chambers judge. Ms Habib's evidence did not identify any threat from Ms Abbas directed at him, nor any other harassing, intimidating or violent communications or conduct directed his way. Maytham Mubarak also had no authority to speak on behalf of the children, whose interests could only be represented by their parents. He did not ask the chambers judge for the opportunity to make submissions about a restraining order in his favour before she delivered her decision. No denial of procedural fairness is shown.

c) Raising the possibility of a “no contact” order does not demonstrate an error

[35] The chambers judge mentioned the possibility of a mutual “no contact” order between Ms Habib and Ms Abbas, by consent, which Ms Habib rejected. Such orders are sometimes raised at the initiative of a judge as a less-stigmatizing and less-intrusive alternative to a restraining order.

[36] The appellants complain that no harassment allegation was made against Ms Habib, so the chambers judge misapprehended the evidence and the safety risks. However, the appellants' understanding of the evidence is incorrect. Ms Abbas' affidavit expressly deposed to “harassment” by Ms Habib, including “spreading lies and rumours” which had caused Ms Abbas to “suffer mentally and psychologically for many years”.

[37] The chambers judge did not err by exploring this option. No misapprehension of the evidence is shown.

Conclusion

[38] The appeal is dismissed.

Costs

[39] The chambers judge did not order costs below, finding that costs are not usually granted in first instance restraining order applications for public policy reasons.

[40] In this Court, the default rule is that the successful party in an appeal is entitled to costs: Rule 14.88 of the *Alberta Rules of Court*, Alta Reg 124/2010. Ms Abbas asks for costs of this appeal in accordance with Schedule C, Column 1. The lump sum value is \$3,375.

[41] The appellants brought their concerns before the chambers judge who considered the evidence and ruled against them. The public policy objective of freely accessing the courts to address ongoing and significant risks of domestic harm was addressed by that hearing. The

chambers judge guided Ms Habib to pursue any remaining concerns about Ms Abbas in “family court” where the terms of the parenting order could be revisited. This appeal duplicates any efforts in that court. Instead of reducing family conflict, Ms Habib’s appeal perpetuates the divisions and emotional turmoil that have distressed this family for a long time.

[42] Maytham Mubarak had a minor role in this appeal and largely participated to support his mother. He should not be responsible for the costs.

[43] Ms Habib shall pay costs to Ms Abbas of \$3,375, inclusive of all disbursements and GST, payable forthwith.

[44] We encourage the parties to support the children by isolating them from the long history of conflict plaguing this family and by avoiding the acrimony that causes discomfort to everyone concerned.

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

Appeal heard on October 8, 2026

Memorandum filed at Edmonton, Alberta
this 22nd day of October, 2026

Grosse J.A.

Woolley J.A.

Feth J.A.

Appearances:

Appellant S.A. Habib

Appellant M. Mubarak

J.M. Roberts
for the Appellants (limited scope retainer)

R. Ahmed
M. Hattum
for the Respondent