

CANADA / JUDGMENT

Anderson v. Palmer

2025 BCSC 2699

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2699 Anderson v. Palmer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Anderson v. Palmer,

2025 BCSC 2699

Date: 20251030

Docket: E33719

Registry: Cranbrook

Between:

Ashely Rose Anderson

Petitioner

And

Benjamin Gregory Michael Palmer and the Provincial Court of British Columbia

Respondents

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

A.N. Etheridge

Place and Date of Trial/Hearing:

Cranbrook, B.C.

October 30, 2025

Place and Date of Judgment:

Cranbrook, B.C.

October 30, 2025

- [1] THE COURT: This is a petition seeking to set aside or quash an order of Provincial Court Judge Underwood that was made at a Family Management Conference (the "FMC") on May 5, 2025. Because that was an interim order, there is no statutory right to appeal, which explains why a petition has been filed.
- [2] For the reasons I will now explain, I am granting the order sought.
- [3] The interim order granted by the Provincial Court at the May 5, 2025, FMC (the "FMC Order") had the following terms:
- a) Commencing May 17, 2025, Mr. Palmer shall have parenting time with B. on Mondays and Saturday from 11:00 a.m. to 3:00 p.m. Whenever possible, the parties will exchange the child at the Oson Crossing Rest Area located in Hosmer, BC. If that does not work, Mr. Palmer will pick up and drop off B. in Elkford, BC.
 - b) Mr. Palmer's parenting time will be supervised by one of the following individuals:
 - i. Amy Baher;
 - ii. Vivian Palmer;
 - iii. Cody Vanghel.
 - c) One of the named supervisors must be present for the transportation of B. for Mr. Palmer's parenting time.
 - d) Mr. Palmer shall have reasonable electronic (Facetime) parenting time with B. as arranged between the parties.
 - e) Either party may apply to have a further family management conference scheduled.

I. FACTS

- [4] The parties had a brief relationship, lasting only about 14 months. They have a child together (B.). The child is currently about three and a half years old.

A. Ms. Anderson's Evidence

- [5] On March 15, 2022, the respondent Benjamin Palmer assaulted the petitioner, Ashley Anderson. It was a very serious incident of family violence. He pleaded guilty. The following are some comments made by the Provincial Court in the reasons for sentence (R. v. Palmer, June 6, 2023, Reasons on Sentence, Fernie Registry 35220; 36078-2-K):

The aggravating factors here are many, as the Crown has already outlined. Mr. Palmer has a prior criminal record, a related record, a domestic record. He has this - violence in this incident is extreme for simple assault, being kicks to the head and back, preventing the victim from leaving, and throwing her keys away, making threats to damage her vehicle if she tried to leave, and then when neighbours intervene, that does not deter him either and he breaks the window of the neighbour who is trying to help. This is a prolonged, out of control attack. I appreciate this all happened while were you intoxicated, Mr. Palmer, but that just explains the behaviour, it does not excuse it.

- [6] I also include Ms. Anderson's description of that assault contained in her Affidavit filed July 8, 2025 ("Affidavit #1") at paras. 8-11:
8. The assault occurred at about 6:00 a.m. I was sleeping in the trailer owned by Mr. Palmer's mother. Mr. Palmer woke me up to assault me. He punched holes in the door, wrecked a lot of his mother's stuff and threw stuff around while he was beating me. [B.] was in the room and could have easily been hurt - he did get a small scratch on his forehead during the chaos.
 9. I tried to escape, which was an impossible decision to make, because Mr. Palmer's mother, Vivian Palmer, had taken [B.] out of the room where I was sleeping, so that Mr. Palmer could continue to assault me. I saw it was an impossible decision because I felt if I didn't escape, I would end up dead, but I did not want to leave [B.] in the trailer with Mr. Palmer and his mother.
 10. I was eventually able to get [B.] from Vivian Palmer and get outside. Mr. Palmer followed and grabbed [B.] out of my arms and took him back inside to Vivian Palmer. I did not want to get into a "tug of war" with the respondent over [B.], because that would have been unsafe for [B.], and so I made the difficult choice to leave without him.
 11. As I was trying to flee, Mr. Palmer threw my keys in a snowy field, pour gas on my vehicle and threatened to light it on fire - this was the vehicle I used to transport [B.] around. Outside, Mr. Palmer continued his assault; he restricted my breathing by covering my nose and mouth and also shoved snow in my mouth. He said he was going to kill me. He kicked me in the head, back and stomach (I'd had a C-section giving birth to [B.]). I tried to leave on foot, but he chased me down, at which point an independent third party became involved and saved me by driving me away from the area, but not before Mr. Palmer kicked in the passenger side window of the rescuer's vehicle.

- [7] At para. 12 of Affidavit #1, Ms. Anderson reproduced the facts that were admitted at Mr. Palmer's sentencing hearing. I add that she has deposed in affidavits that he assaulted her on other occasions, but this had been the most serious incident.
- [8] I will paraphrase facts from paras. 15-19 of Affidavit #1. What is important about those paragraphs is how Ms. Anderson describes in very clear terms the impact the assault had on her. It left her confused. She felt she was not strong enough to get Mr. Palmer out of her life. She needed the assistance of support workers and counselling in order to understand the danger that he presented to her. Although she has been able to move on, she stated that she remains scared of Mr. Palmer.
- [9] Everything she mentions in those paragraphs are, unfortunately, common and well-known impacts of violence in the context of an intimate partner relationship.
- [10] In Affidavit #1, she also outlined Mr. Palmer's criminal background, which I will not review.
- [11] Regarding Mr. Palmer's guilty plea to the assault described above, originally, he was sentenced to house arrest, but he ended up serving time in jail because of other criminal activity and his non-compliance with the conditions of his house arrest. Ms. Anderson is at a knowledge disadvantage about those events, because Mr. Palmer has not provided any information, but she has been able to find out some details from publicly available sources. Among other things, Mr. Palmer has faced numerous criminal charges, including a previous K-file, which means it involved intimate partner violence.
- [12] Ms. Anderson deposed that Mr. Palmer uses drugs and alcohol around his mother, Ms. Palmer, which underlies a concern that Ms. Anderson has, and that she raised at the May 5 FMC, about allowing Ms. Palmer to be the supervisor during Mr. Palmer's parenting time.
- [13] She also has concerns that the FMC Order essentially requires Ms. Anderson to be alone with Mr. Palmer and his mother during the exchange of B. She deposed at para. 42 of Affidavit #1 that she feels "very unsafe meeting the respondent and his mother on the side of the highway and being responsible to ensure that he is sober". The latter comment about his sobriety is discussed below (paras. 61-64).
- [14] At para. 36 of Affidavit #1, she described why, in her view, Mr. Palmer knows almost nothing about the child's needs. She added that Mr. Palmer will not listen to what she tells him about those needs. She pointed out that he had exercised some parenting time but then could not continue because he was incarcerated. She also described an incident when Mr. Palmer took B. and did not even bother to change the child's diaper, which is consistent with her description that he does not know how to meet the child's needs.
- [15] Prior to the May 5 FMC, Mr. Palmer had last seen the child in July 2024; however, apparently, he did not even remember that occasion since he stated the last parenting time he had was in May 2024.

B. Background to the May 5 FMC

[16] The procedural background to the May 5 FMC is important.

1. Judge Doerksen's Order

[17] There was an FMC held on March 11, 2024, before Judge Doerksen, and an order was made in the absence of Mr. Palmer (the "Doerksen Order"). He was incarcerated at that time and could not attend.

[18] Among other things, the Doerksen Order stated that Mr. Palmer could have parenting time, but it would be subject to Ms. Anderson's discretion as to the location, nature, length, and conditions of parenting time. The Doerksen Order also imposed a term that Mr. Palmer abstain from drugs or alcohol. Lastly, there was a term that Mr. Palmer could apply to amend or vary the order, but only after he filed his financial statement.

2. Mr. Palmer's Application

[19] Mr. Palmer filed an application on October 24, 2024, for a case management order seeking to change, suspend or cancel the Doerksen Order because it was made in his absence. He then tried to set a date for the FMC, but that was refused because Mr. Palmer had not yet filed his financial statement, contrary to the Doerksen Order.

[20] Mr. Palmer filed what he believed to be financial statements in February and April 2025. Ms. Anderson's position is that those were inadequate and incomplete. In any event, the FMC was eventually set for May 5, 2025, after the filing of Mr. Palmer's April financial statement.

[21] In his application for a case management order, Mr. Palmer sought a number of substantive orders, but he agreed that there should be a review of the parenting schedule every eight weeks. Although he also stated the review would be for the purpose of increasing his parenting time, it is material that he acknowledged there would no increase without the Provincial Court reviewing the schedule.

[22] He also sought telephone and electronic communication with B., even though he was in custody at the time he made that application. He stated in his application that he has historically had a "good relationship with the child" and asserted that it is in that child's best interests that there be a relationship with him. However, he did not file an affidavit or any other evidence.

[23] In response to his application (filed in October 2024), Ms. Anderson filed a response and supporting affidavit dated November 5, 2024, referring to the assault to which Mr. Palmer pleaded guilty and deposing that he physically abused her many other times.

[24] At para. 6 of the November 5, 2024 affidavit, she specifically responded to the following assertion made by Mr. Palmer in his application that Ms. Anderson has historically "dictated when Mr. Palmer can have parenting time, impairing his ability to develop a more involved relationship with the child despite not being able to advise of any concerns with Mr. Palmer's parenting time".

- [25] Ms. Anderson described how that is an unreasonable and unfair characterization of her behaviour, which is clear on the record. Mr. Palmer has had criminal convictions, most notably his violent attack on her. She also described his exercise of parenting time in July 2024, and how he was not able to look after basic needs of the child.
- [26] It is important to review what happened at the May 5 FMC, but I find it convenient to do so together with my analysis.

II. ANALYSIS

- [27] The transcript of the May 5 FMC was filed, and I read it. For the reasons described below, I do not think any parenting orders should have been granted at that time, so it is unclear why they were. One might come to the conclusion that the Provincial Court judge was confused as to what was supposed to happen at the FMC. Regrettably, my conclusions go further. As I will explain, I find there was a breach of procedural fairness.
- [28] I also find there was a reasonable apprehension of bias when one reads the transcript in light of:
- a) Ms. Anderson's evidence (I must assume that her November 5, 2025, affidavit was in the Provincial Court file);
 - b) the lack of evidence from Mr. Palmer; and,
 - c) his lawyer's expectation that the application was not going to be decided that day.

A. Breach of Procedural Fairness

- [29] Mr. Palmer's counsel addressed the lack of evidence from him. He explicitly stated that "[his] understanding this was a family management conference, not the hearing of [the] application" (Transcript, Page 10, Lines 38-39) and a short time later, that "[he] expect[s] that coming into the family management conference that this would be an opportunity for the parties to talk, basically make offers to each other, see if this was a situation, they could come to some sort of arrangement", which is why he "didn't come in with the intention that [he] was going to make submissions or to lead evidence in respect of [the] application" (Transcript, Page 11, Lines 33-40).
- [30] If Mr. Palmer's lawyer was not expecting to have to make submissions on his application to vary or change the Doerksen Order, neither was Ms. Anderson. To then have orders made without either party being prepared to make submissions relating to them, and which Ms. Anderson opposed, was a breach of procedural fairness.

B. Failure to Assess Impact of Family Violence

[31] Even if it had been Mr. Palmer's intention to have the orders sought in his application granted at the May 5 FMC, any order regarding parenting time would have to be assessed within the context of a case where there had been a serious incident of family violence, an incident to which Mr. Palmer pleaded guilty.

1. The Court Must Consider Family Violence

[32] As pointed out in the *K.M.N. v. S.Z.M.*, 2024 BCCA 70, a court that fails to take into account family violence makes a reversible error. That is clear not only from that case, but also guidance from the Supreme Court of Canada and sections of the Family Law Act, S.B.C. 2011, c. 25 [FLA].

[33] In *K.M.N.*, the Court of Appeal stated:

[126] In *Ahluwalia*, the Ontario Court of Appeal acknowledged there will be cases in which claims of family violence are shown to have been made for strategic reasons (at para. 120). I take no issue with that proposition. However, whether that has happened in a given case requires that the judge assess the credibility and reliability of the assertion as part of a thorough fact-finding process. To approach allegations of family violence on the assumption (explicit or implied) that these allegations are routinely made for tactical reasons, is impermissible and will give rise to reversible error.

[34] Ms. Anderson says that if one looks at the transcript, unfortunately, one could come to the view that such assumptions played a part in the orders granted (this is discussed below at paras. 60-65).

[35] One of the reasons Mr. Palmer's counsel did not bring evidence was his acknowledgement that, because of the family violence, there would need to be a thorough canvassing of evidence to establish what he submitted were steps Mr. Palmer had taken to address the family violence. Mr. Palmer's counsel specifically stat[ed], "this wouldn't be the right forum" because it was only a chance for the parties to talk and try and reach an agreement.

[36] Ms. Anderson's lawyer made submissions reviewing much of the history that I have outlined and the effect of the family violence. In Affidavit #1, Ms. Anderson described how Mr. Palmer typically does not listen to things that she says to him, so she is scared to say no to him. Despite all of that, Ms. Anderson submits that she has made efforts to re-establish the parenting relationship between Mr. Palmer and the child. I find the evidence on the record supports her assertion. However, the evidence also makes clear that Mr. Palmer did not exercise initial opportunities for parenting time because of his continued criminality. It is not unreasonable to say that criminality was likely fuelled by his substance addiction issues.

[37] Ms. Anderson also submits that the presence of Mr. Palmer's mother at the incident is another example of failure to consider family violence. Ms. Anderson objected to Ms. Palmer being a supervisor. Counsel for Ms. Anderson points out that Ms. Palmer did not call for assistance, or in any way try to stop Mr. Palmer's assault of Ms. Anderson. I make no conclusions about the mother's motivation not to call assistance. It might be that she, too, was scared of her son.

[38] Ms. Anderson's counsel also described why the pickup point was logistically difficult for her in terms of her having a full-time job as an Amazon driver, which was contained in Affidavit #1. With regard to the location of the exchange, the relevant point is that Ms. Palmer's inaction in the face of a very serious incident of family violence demonstrates the veracity and reasonability of Ms. Anderson's concern on two points:

- a) Ms. Palmer supervising Mr. Palmer's parenting time, and
- b) Ms. Palmer being present with Mr. Palmer, and possibly no one else, when Ms. Anderson would have to exchange B. at a rest area on the side of a highway.

[39] In my view, no consideration was given to Ms. Anderson's concerns, and that was an error.

2. Lack of Evidence from Mr. Palmer

[40] The Doerksen Order was made in the absence of Mr. Palmer. Section 54 of the Provincial Court Family Rules, B.C. Reg. 120/2020, states that a judge can make an order in the absence of a party at a family management conference. If that party later wants to change, cancel or suspend that order, the party must file an application for a case management order, which Mr. Palmer did. However, the party must file supporting evidence (s. 54(2)(b)). That was not done in this case, and as outlined above, Mr. Palmer's lawyer explained his client filed no evidence because it was not expected that any orders would be made at the May 5 FMC.

[41] Mr. Palmer's counsel acknowledged there would need to be evidence about the family violence given submissions made by Ms. Anderson. As we know, parenting orders were granted anyway, and, in my view, that was a fatal error, especially the cancellation of the part of the Doerksen Order which stated Mr. Palmer's parenting time would be at the discretion of Ms. Anderson.

[42] I note that even if evidence had been filed by Mr. Palmer, s. 54(3) sets out other requirements about an application to change, cancel or suspend an order that was made in the absence of a party. It states:

54(3) A judge may change, suspend or cancel an order made in the absence of a party if the judge determines that

- (a) the absent party applied in accordance with subrule (2) within a reasonable time for the change, suspension or cancellation of the order, and
- (b) either of the following apply:

- (i) the absent party did not receive notice of the application or family management conference;
- (ii) there is a good reason to change, suspend or cancel the order.

[43] I pause to note that it is not clear to me that Mr. Palmer's application was made in a reasonable time, but there was no consideration of that. It is not clear to me that his incarceration provides a justification for his absence, but leaving that aside, he must also meet one of two conditions in s. 54(3)(b).

[44] Ms. Anderson brought up s. 54(3)(b) at the May 5 FMC, saying there could be no good reason to vary the Doerksen Order because Mr. Palmer filed no evidence in support of his application. Mr. Palmer's lawyer did not think he would need to make submissions about varying the Doerksen Order because the May 5 FMC was an opportunity for the parties to talk. The Provincial Court judge went on to pursue and then grant orders about parenting.

[45] At one point, the judge makes a comment that it was important to order parenting time to reestablish the relationship between Mr. Palmer and B. Whether that was true at that time could not be a conclusion drawn without a careful assessment of family violence as mandated by ss. 37-38 of the FLA and the case law. The judge conducted no assessment of that, and I repeat, there could be no assessment given the absence of evidence from Mr. Palmer. It is undisputed fact that Mr. Palmer pleaded guilty to a serious incident of family violence. This was raised by counsel, but it appeared the judge did not pay attention.

[46] I will refer to some other comments made by the judge that that caused this Court some concern. At page 14, lines 4-8, the court stated:

I heard from your counsel your concern about his mother which appear to be based more on what happened during the assault. Has there been any issues since then with respect to his mother?

[47] My concern with that comment is that it fails to grapple with the impact of Mr. Palmer's mother's inaction on Ms. Anderson and on the child during a serious incident of family violence.

[48] It was pointed out that during submissions at the May 5 FMC, counsel for Mr. Palmer stated that Ms. Palmer taking the child away from the fray was laudable, and a good thing.

[49] As described in absolutely heartbreaking terms, Ms. Anderson deposed how she was in an impossible position about what to do. She did not want to leave without her child, but Mr. Palmer's mother would not give the child to her. She did not want to engage in a tug of war. This is an extremely awful situation for her, and she felt her life was in danger.

[50] Ms. Anderson expressed her concern in Affidavit #1 (at para. 31):

My lawyer set out my objections to Mr. Palmer's mother supervising the parenting time. She was present for the March 15, 2022, assault. She did nothing to stop the assault. She did not call the police. She did not do or say anything to try and get Mr. Palmer to stop assaulting me. And in fact after the assault, she said something to the effect that I must have done something to deserve it.

[51] The question arises as to why Mr. Palmer's mother did not leave with the child as well. Therefore, it is not simply a question of what happened during the assault, but Mr. Palmer's mother's ability to put the interests of the child above that of her own son. That is a question that is raised, and it required analysis because of the clear guidance about family violence, but in my view, there was no consideration given to that concern.

[52] I will not go into the details, but there was some discussion by the Provincial Court judge about why supervisors suggested by Ms. Anderson--her own father and a friend--were rejected. In an ordinary case, not agreeing to those as supervisors might not raise a concern, but in the context of this case, it is relevant.

[53] The judge said (page 16, lines. 13-16):

I do think we need to get some parenting time scheduled, and I think it's better if it is scheduled days and times for Mr. Palmer.

I want to minimize the negotiations that have to take place after this. So I would prefer to specify days and times, but it's up to you.

it's up to you, sir. It's you reconnecting with your son and I appreciate he's young, so it's hard to go long period of time, but, again, twice a week I think is reasonable.

[54] The judge addressed sharing the driving responsibilities for a person, who at that time, did not have a driver's license.

[55] Those comments and findings made by the judge, without grappling with (i) the history of family violence; (ii) the fact that Mr. Palmer did not indicate and had no evidence about steps he had taken to address the family violence; and (iii) the notable lapses in Mr. Palmer actually exercising parenting time and looking after the basic needs of the child. One is left to wonder why it was necessary to make sure there was parenting time with the father in these very specific circumstances.

[56] Next, the judge dealt with where the parenting exchange would take place and ordered it to occur at a rest stop on the side of the highway. I have already referred to that issue and the concerns it raised for Ms. Anderson, which I find valid and reasonable.

[57] The judge then stated that since this was an interim order, parties could schedule a "more fulsome" hearing on the issues. That may indicate a belief that because this was an interim order, there did not need to be a full examination of the factual disputes or issues.

- [58] I find that to be a legal error because of the failure to address family violence, which is a mandatory consideration under ss. 37-38 of the FLA. Even an interim order should not be granted without the judge assessing the risks of family violence, especially in a case where there is no dispute that it occurred and exact details are given as to its serious nature.
- [59] I also find that the judge did not turn her mind to whether there was any good reason to reverse the term of the Doerksen Order that the parenting time shall be at the discretion of the mother.

C. Perception of Bias

- [60] Ms. Anderson points to comments made by the Provincial Court judge that she submits support her position that the May 5 FMC and FMC Order raised a perception of bias. In particular, she relies on what was said in K.M.N. about the reliance on myths and stereotypes (at paras. 109-127).
- [61] I find the following comments concerning. After identifying the place where the exchange would take place, there is a passage in the transcript at page 18, where the judge raises an issue that was not brought up by Mr. Palmer's counsel. The judge stated:

And that, Mr. Palmer, is because if [Ms. Anderson] has any suspicions that you are in fact under the influence of alcohol or drugs, she can - she can pull that visit. Okay? And then, you know, you can go to the hospital and get a blood test right away to prove that you weren't in fact impaired or intoxicated.

[Emphasis added.]

- [62] The judge continued, addressing Ms. Anderson:

If he arrives to pick up the child and you're concerned that he is under alcohol or impairment [sic], you don't have to hand over the child, but you want to make sure that you're confident that he is under some influence and he knows what he has to do to prove you wrong if you withhold the child.

[Emphasis added.]

- [63] I referred above at para. 13 of this decision to Ms. Anderson's concern for being held responsible for Mr. Palmer's sobriety. She was referring to the above remarks of the judge.
- [64] It is difficult to understand why those comments were made. It is also difficult to understand why the judge raised the suggestion that Ms. Anderson had or would lie about Mr. Palmer's being under the influence of drugs or alcohol.
- [65] The test for reasonable apprehension of bias is set out in Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General), 2015 SCC 25 at para. 20:

[20] The test for a reasonable apprehension of bias is undisputed and was first articulated by this Court as follows:

what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly. [Citation omitted.]

[66] Also relevant, are the following comments from the Court of Appeal in K.M.N.:

[84] In my view, there is also merit to the mother's submission that in determining the parenting issues, the judge did not adequately protect against the potential for myths or stereotypes about intimate partner violence to influence his reasoning process, including a belief that women commonly raise allegations of violence post-separation and in the context of family law litigation for the specific purpose of gaining an upper hand.

[85] I am satisfied the judge's erroneous approach to family violence irreparably tainted his assessment of the best interests of the child and ultimately, the mother's case as a whole. Consequently, a new trial is necessary, other than with respect to the granting of a divorce.

[67] In my respectful view, these comments apply to this case. I find the passages I have quoted from transcript raise a reasonable apprehension of bias, and the possibility that the judge improperly incorporated myths and stereotypes into her reasoning. I am not finding that the judge was in fact biased or in fact motivated by myths and stereotypes. My conclusion is based on viewing the matter as a whole.

D. Conclusions

[68] I conclude the FMC Order must be set aside because of legal error in failing to assess the impacts of family violence, and a breach of procedural fairness. I also find the May 5 FMC raises a reasonable apprehension of bias because of an implied reliance on myths and stereotypes. All are reversible errors.

[69] There were other grounds raised by Ms. Anderson in support of the orders she seeks, but I do not need to address those.

III. ALTERNATIVE CONCLUSIONS

[70] Apart and independent from my reasoning above, any order made by the Provincial Court about parenting time must be in the best interests of the child. Ms. Anderson has brought forward evidence as to what has happened since the FMC Order was granted in her affidavit filed August 20, 2025 (Affidavit #2).

[71] I exercise this Court's inherent jurisdiction, its *parens patriae* jurisdiction, and my duty to ensure any order made is in the best interests of the child and admit that evidence.

[72] I have no doubt based on that evidence that the FMC Order should be set aside based solely on the best interests of the child, regardless my preceding conclusions or analysis.

[73] Mr. Palmer was incarcerated for most of June 2025. I thank counsel today for producing clear and explicit evidence that Mr. Palmer was served pursuant to court order with this petition and that he actually responded that it was received. I find there can be no issue raised that he was not aware of this petition being brought, but he filed no response or affidavit. Counsel was candid to point out this hearing was originally set to be heard in Rossland, but because of the vagrancies of the assize system, it was moved by the court last minute to Cranbrook. Since Mr. Palmer filed no response or affidavit, that change does not raise a concern.

[74] In Affidavit #2, Ms. Anderson refers to the circumstances of Mr. Palmer's arrest on June 6, 2025.

[75] I extract remarks of Judge Ferbey in the decision on bail (R. v. Palmer, June 26, 2025, Oral Reasons on Judicial Interim Release):

So [Mr.] Palmer is before me on information 37998j-1. It is a six count Information alleging a number of firearm and weapon related charges arising from an incident in the Elk Valley area on June 6, 2025. Mr. Palmer is before the court with the record, the accuracy of which he has admitted to his counsel for the purpose of bail. It includes a conviction for assault of a police officer under s. 270(1)(b), a prior conviction for assault causing bodily harm, three prior convictions of assault. He has also been subject to an 810 and it appears there are five occasions in which he is found to have breached other court orders, one of which was a more recent breach of conditional sentence order. It looks like that was last year. Crown alleges that the charges that he is facing today have arisen in the context of two orders at least, or perhaps three, that prohibited Mr. Palmer from possessing weapons and firearms on the day in question.

I agree with the Crown's characterization of the alleged conduct of Mr. Palmer on the day in question here. There has not been an explanation offered today for his bizarre behaviour that included walking to traffic and on and off the highway, at a rest area, as I say, in the Elk Valley area

[76] I pause to note that is the area where the FMC Order currently says the parties are supposed to exchange the child.

[77] The judge continued:

pulling out a handgun, waving it around, moving erratically, appearing to argue with someone who was not there. One witness thought at first that maybe Mr. Palmer was under the influence of drugs, but then maybe thought that he was suicidal. Ultimately when police arrested Mr. Palmer he was found without the firearm, but had a number of .22 rounds on his person. Within about a hundred metres distance from the location of Mr. Palmer's arrest, with the assistance of a police dog, police were able to find a .22 calibre pistol that had certain characteristics including the serial number filed off that had given rise to distinct charges. A shoe was found next the

firearm and Mr. Palmer was found only wearing one shoe.

[78] Ms. Anderson argues that submissions made on behalf of Mr. Palmer to the judge at that bail hearing included inaccuracies. Specifically, it was submitted that Mr. Palmer has a child and child support obligations. Counsel referred to the child being two years old and said that Mr. Palmer had a great relationship with his son. Those submissions were made in support of the position that Mr. Palmer should be able to abide by his curfew and still see his child if he is paying child support.

[79] Those statements are not accurate. The child was not two at that time. Mr. Palmer does not pay child support. He has not always had a job, which was before the Provincial Court at the May 5 FMC. Ms. Anderson's position is that Mr. Palmer must have asked his lawyer on the criminal matter to make representations to the court that are not true.

[80] Therefore, even if I am wrong in my conclusions about the FMC Order having to be set aside because of legal error, breach of procedural fairness and perception of bias, I conclude it must be set aside in light of these recent facts. It is not in the best interests of the child, at this time, to have any contact with Mr. Palmer. Until Mr. Palmer can prove to this Court or the Provincial Court that he is stable and no longer suffering in the grip of his addiction to drugs and alcohol, I am issuing an order that he shall have no contact with Ms. Anderson or the child until further court order.

[81] To be clear, that means that even if Ms. Anderson were to agree that Mr. Palmer could see the child or contact her, that cannot happen without a court order. I make that order because she is fearful of saying no to him, and for very good reason. Therefore, the burden should not be on Ms. Anderson to agree or disagree with any request from him for parenting time. Even if she were to agree, these parties must get a court order to allow him to have any contact with her or the child.

IV. REMITTING BACK TO THE PROVINCIAL COURT

[82] Ms. Anderson has asked that this matter to be remitted back to the Provincial Court so that any further proceedings can take place in that court and do not have to be brought in this Court. I grant that order.

[83] Also, I reluctantly grant the order that this matter not go back before the same judge who presided at the May 5 FMC. I want to be clear that I am doing that on the basis of the Ms. Anderson's evidence about how she felt about the FMC. Those feelings are not unreasonable in the context of what happened in this case, especially what I found to be a failure to assess family violence.

[84] In Affidavit #1, Ms. Anderson deposed how she felt during and after the May 5 FMC. She explained that she felt that she could not counter things that were said to her by the judge and that she had to go along with what was suggested at the time, because she was confused about why they were even considering an exchange of the child that would take place on the side of the highway.

[85] She described how after the May 5 FMC concluded, she came to realize the danger the location of the pickup presented to her (para. 27):

It did not occur to me at the FMC how this puts me and [B.] at risk, having to meet Mr. Palmer in an isolated location. Nor did I think I could argue the point of it not being close to ½ [between their residences]. I think it [did not] occur to me at the time because I was stunned with how the FMC went in that the Court appeared entirely unconcerned with the Respondent's violence towards me, nor the [B.'s] safety in his care.

[86] I also repeat that she described how Mr. Palmer typically does not listen to things that she says to him, so she is scared to say no to him.

[87] Given my analysis and conclusions, Ms. Anderson feels she was treated unfairly by a presider who did not pay sufficient attention to family violence. That sentiment in the context of the whole proceeding is not unreasonable. I find it appropriate in the unique circumstances of this particular case, simply to give Ms. Anderson the comfort that she will not be in front of the same judge. This should not be seen as my commenting in any way about that judge; it is simply as a result of the circumstances in front of me.

[SUBMISSIONS ABOUT PROVINCIAL COURT JURISDICTION]

[88] After discussions with counsel, I wanted to ensure that I am not making anything more procedurally complicated for these parties. I want to add clarity in the event Mr. Palmer is in a position to seek to exercise parenting time, as to how he would seek that order. The judge on May 5 FMC stated that the parties could set down another hearing to argue more fully the orders sought in Mr. Palmer's October 24, 2024, application. Given everything I have said, I do not think that would be appropriate.

[89] Therefore, I am exercising this Court's inherent jurisdiction and its supervisory jurisdiction of the Provincial Court to dismiss his application.

[90] So, for a greater clarity, in addition to setting aside the FMC Order, I am dismissing his application for case management orders that was filed on October 24, 2024. I do so for all the reasons I gave in my judgment.

[91] I grant an order that Mr. Palmer can have no contact with Ms. Anderson or the child without court order.

- [92] I explicitly confirm that the matter, as a whole, is returned to Provincial Court. Therefore, the order that I have granted about no contact can be varied by either party by setting down an Application About a Family Law Matter in the Provincial Court. That is also the mechanism by which either party could apply to vary parenting time.
- [93] What I have done is a bit unorthodox, so if there are any concerns or problems that come up about filing an application with the Provincial Court, Ms. Anderson has leave to come back before me to get directions by completing the online "Request to Appear" form. She does not have to give Mr. Palmer notice of that because it would be a continuation of today's hearing, and he did not file a response.

"Sharma J."

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