

CANADA / JUDGMENT

Greschner v. Greschner

2025 BCSC 1849

COURT

Supreme Court of British Columbia

DECIDED

25 August 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1849 Greschner v. Greschner

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Greschner v. Greschner,

2025 BCSC 1849

Date: 20250825

Docket: E33564

Registry: Cranbrook

Between:

Breland Taylor Mae Greschner

Appellant

And

Benjamin Robert Greschner

Respondent

Before: The Honourable Madam Justice Sharma

On appeal from: Orders of the Provincial Court, dated September 11, 2024, and March 27, 2025 (Cranbrook 32365).

Oral Reasons for Judgment

Counsel for the Appellant:

A. Etheridge

The Respondent, appearing in person:

B. Greschner

Place and Date of Trial/Hearing:

Cranbrook, B.C.

August 25, 2025

Place and Date of Judgment:

Cranbrook, B.C.

August 25, 2025

This is the written version of judgment delivered orally on August 25, 2025. It has been edited to correct and improve grammar and style. In addition, I have added content for clarification. Such added content is identified by being within brackets and in italics. However, nothing substantive has been added or changed to the judgment.

- [1] THE COURT: This is an appeal from certain orders made by Judge Underwood of the Provincial Court. I am giving my reasons immediately because I have come to the unfortunate conclusion, after reviewing the materials and listening to the parties this morning, that there was a breach of procedural fairness that denied natural justice to the appellant (who is the claimant in this family law matter). Therefore, the appeal has to be granted.
- [2] In terms of parenting orders that follow from that, the parties have graciously agreed [to my offer] that we can discuss that by way of a judicial management conference after I deliver this judgment.
- [3] I accept and know that Judge Underwood was doing her best to be fair and efficient in dealing with a very difficult situation. I hope my judgment is not seen as a criticism. I know how difficult these types of matters are in Provincial Court, as they are in this Court. I will add that deciding parenting disputes when children are very young and there is a geographical distance between them is probably one of the hardest things any court has to address. You can have situations where both parents are acting reasonably and admirably, but they cannot come to an agreement, so they come to court. However, courts also deal with those same situations when people disagree and the communications between the parties have been very difficult, and this case falls into that category for a number of reasons.
- [4] I will give a very brief background.
- [5] The parties have two young children.

- [6] These parties first met in 2020, and they were married in October 2020. Shortly thereafter the appellant became pregnant. The parties' oldest child, a boy, was born in September 2021, and their youngest child, a girl, was born on April 4, 2023.
- [7] The respondent committed an assault of the appellant in September 2022, to which he pled guilty in February 2023. As I understand it, the parties attempted reconciliation for a period of time, but they did then separate.
- [8] Then, some interim parenting orders were granted that I am not going to review, but there was a concern about the appellant moving to Alberta from the parties' previous marital home in Kimberley, British Columbia. That was preceded by a period where she did not have stable housing for various reasons. So, the parties were subject of a number of court orders about parenting, which cumulated in a trial set to proceed in Provincial Court in June 2024.
- [9] However, instead of a trial, the parties came to an agreement. As I told the parties earlier today, it is far preferable that parties come to an agreement about parenting. The court always prefers that. I always explain to litigants that nobody loves their children more than the two parents. The court does not love your children. The court does not know your children. You come and make your best pitch to the court, and the court will make a decision, but you have no control over that decision other than what you present.
- [10] When you come to an agreement, you have control over that agreement, and that is why it is better. You are involved directly, and you make the decisions about what compromises to make and what arrangement you think, ultimately, will work going forward. An agreement by consent by parents on parenting, when there has been many disputes, is extremely important, and we encourage agreement to the greatest degree possible.
- [11] That is what happened in June 2024: these parties came to an agreement. An order encompassing that agreement was entered in Provincial Court on June 24, 2024 (the "Consent Order"), and it was made in lieu of trial. The Consent Order states it was before Judge Underwood because that was the judge who started the trial. The parties came to an agreement, not through a court-ordered settlement process, but rather through their own negotiations. That, to me, is an extremely important point because it means that the terms in the Consent Order were not court-imposed, and they were not after a trial. The terms represented what the parties agreed to. A parenting agreement reached between the parties should be treated with respect and deference by any court.
- [12] The respondent was given very specific parenting time with the children for the months of June and August 2024. The respondent was also given liberal and generous parenting time to be exercised in Coronation, Alberta, as agreed to by the parties. This is even though when together, the parties had resided in British Columbia. That follows from Term 3 of the Consent Order, which stated that the children would live primarily with the mother and the mother could relocate with the children to Coronation, Alberta, as of July 2, 2024. All other parenting time for the respondent would be what was either ordered and/or agreed to by the

parties.

[13] However, the respondent had no overnight parenting time with the youngest child. That is because the parents separated shortly after that child's birth and, naturally, the respondent needed time to build up that relationship, which was appropriate with a child that young. That term was no comment on the respondent, it was just appropriate that there be a more gradual introduction, for the bonding and establishment of that parenting relationship.

[14] I will read out clause 9 from the Consent Order:

The parties' counsel shall endeavour to set this matter on September 11, 2024, in Cranbrook, or as soon thereafter as possible, with a 30 minute time estimate, at which time there shall be a review of parenting time, the father's income for support purposes, and section 7 expenses.

[15] I was taken to some portions of that transcript from September 11, 2024 [and June 2024]. I have heard what both parties say was supposed to happen at the September 11, 2024 appearance. There is some disagreement about what happened and how things proceeded, especially whether that hearing met the expectation of a fair hearing.

[16] I have reviewed this matter carefully, including looking at the transcript. It is clear to me, based on the wording of the Consent Order and the exchange that the counsel had with the Provincial Court in June 2024, that the parties were to continue negotiating what the father's parenting time would be other than that what was stipulated in the Consent Order. In other words, other than the June and August parenting times, the parties were to have negotiations about any further parenting time for the respondent. Then on September 11, 2024, they would go back to Provincial Court and inform it of what agreement they had come to, or they would say, "We have not come to an agreement, and we need a hearing to address the issue."

[17] I can appreciate that the respondent's counsel at that time and then later --as is evident in the order that was issued on September 11, 2024--treated the September 11, 2024 appearance as if it was a "hearing" and an opportunity for the Provincial Court to make an interim decision about parenting pending a "review hearing". The Provincial Court made an interim order granting the respondent additional parenting time.

[18] With respect, that was a procedural error by the judge. Regardless of whether it would have been acceptable from a purely procedural point of view on September 11, 2024, to make interim orders pending the review hearing, the problem is that in making that interim order, the judge accepted affidavit evidence from one side and not the other. [The appellant did not receive legible copies of the respondent's three affidavits until the morning of the hearing and her position was that she had no opportunity to respond].

[19] I appreciate Judge Underwood had been the presiding judge when the Consent Order was entered, but she did not conduct a settlement conference. The judge had no basis, with the greatest of respect, to comment on any understanding that underlay the Consent Order which amounts to a going behind the parties' agreement. [This refers to comments made

about the parties' intentions in agreeing to the Consent Order made in the March 27, 2025 decision of the Provincial Court]. The Consent Order must be read strictly, and absent an agreement, there had to be a hearing before any further parenting time was granted to the respondent. [There is some confusion because term 9 of the Consent Order referred to a "review", but since the Consent Order was a final order without a trial or hearing taking place, the subsequent appearance should have been referred to as a hearing. I will use the phrase "review hearing".]

- [20] That is not what happened. Instead, the judge decided to grant the respondent some interim parenting time based on her best understanding of the situation. It may be that at the end of the day, if we were to rewind the clock and recreate that hearing, but instead have affidavits from both sides, or have both parties take the stand, maybe the same decision would have been made. But, the judge only had evidence from one side.
- [21] It is an essential and basic tenet of any court hearing that both sides are on an equal footing, and that was not the case because the court had evidence from one side and no evidence from the other side. Yes, there were lawyers there, and yes, lawyers represented their clients; the court can sometimes rely on representations of the lawyers, but not in relation to contested facts. It simply was not a fair hearing when one side had no fair opportunity to put evidence before the court.
- [22] The problem is that everything that happened after that was a snowballing of that basic unfairness, and that unfairness infected everything that came after.
- [23] On September 11, 2024, the parties had already secured a date for the review hearing to take place -- on October 2, 2024. Judge Underwood decided that she should be the one to hear the review, I believe, to try and be of assistance and make matters more efficient. That meant that the October 2, 2024 review hearing did not go ahead. The review hearing did not actually take place until January of the following year, which was quite a long delay.
- [24] That is unfortunate. It is not clear to me that that was done appropriately, but the Provincial Court is in control of its own process. It may be that it was appropriate for Judge Underwood to seize herself and then essentially vacate an existing date for the review hearing, but that probably should have been done after full argument and her giving reasons about that. As I said, I am sure Judge Underwood was aiming to be as efficient as she could with a rota that she is more familiar with and a schedule in that court that she is more familiar with. But the impact was to delay the hearing for some number of months.
- [25] She also made an order that the review of parenting would be only by affidavit evidence, which was problematic given the issues the appellant wanted to raise.
- [26] There was a hearing in January 2025, and Judge Underwood issued a decision in March 2025. Unfortunately, the procedural fairness error that I have already identified that occurred at the September 11, 2024 hearing was now compounded. That was evident in the March 27, 2025 decision. I will point out a few things that gave me concern.

[27] The biggest concern is the emphasis she placed on the respondent's preference to spend parenting time in Kimberley, British Columbia, and the judge noting that the focus of the review was the children's relationship with the respondent. The latter was very important, and the former may have been appropriately a guideline for deciding parenting, but any decision on parenting has to be bound by one test only, and that is the best interests of the children as set out in s. 37 of the Family Law Act, S.B.C. 2011, c. 25.

[28] At para. 47, Judge Underwood stated that that the appellant came to the September 11, 2024 hearing seeking to have witness testimony for the review hearing. The judge then stated (para. 47(b)):

This appeared to be an attempt to re-litigate the Trial of this matter which was resolved by the Consent Order. In particular, it appeared that since Ms. Greschner had been permitted to relocate the Children, she now wanted to start fresh with respect to what were appropriate parenting arrangements for Mr. Greschner []

[29] With respect, that is an unfair characterization of what happened. There was no trial, and to accede to the respondent's argument that the appellant had some ill intent to try to "re-litigate", having gotten the benefit of relocation, was unfair.

[30] Because it was a Consent Order, the Provincial Court should not have gone behind it to assume what the parties' intents were. I would say that the court was not in a position to do so even if the parties on both sides presented arguments about doing so, but as noted, the appellant was at a considerable disadvantage having no opportunity to present evidence. As I said, with respect, the court misapprehended what it ought to have done on the September 11, 2024 hearing, which is clear from the decision and remarks made by the Court that day. It should have been a scheduling appearance. That misapprehension then carried through to the March 2025 decision now before me.

[31] Stating his preference to exercise parenting time in Kimberley was a reasonable position for the respondent to take. However, the Consent Order stated that his parenting time was to be in Coronation, Alberta, with the exception of the two blocks of time in June and August. Any further parenting time was subject to agreement. So, allowing him to exercise parenting without a geographic restriction was a fundamental change to what the parties had agreed to. They were supposed to try and negotiate the respondent's further parenting time, but they did not come to an agreement. That is the context in which the appellant sought the order to have witness testimony at the review hearing because her position was that she wanted to bring forward evidence about family violence.

[32] Counsel for the respondent had things to say about family violence, claiming that there was some "mutuality [of violence] in a tumultuous relationship". Those issues, with the greatest of respect, cannot be resolved on affidavit evidence in this case, at that hearing, given the nature of what had happened.

- [33] These children are very young, and their mother was subjected to family violence while she was pregnant. The respondent pleaded guilty. I commend him for accepting responsibility, and I appreciate the statements he made today about that. It was important that he did so. But in the September and March decisions, the Provincial Court did not adequately take into account the continuing impact of the respondent's admitted family violence had, reasonably, on the appellant.
- [34] I also find the orders granted that allow for the respondent to exercise parenting time in a way that separates the children from each other, at a distance, to be concerning given that the children are so young.
- [35] All of those are significant decisions. I make no comment on whether the decisions themselves were wrong, but they could not be decided until there had been a full and fair hearing at which, in my respectful view, viva voce evidence was required.
- [36] Those are the reasons that I am allowing the appeal. In terms of what happens after that, I am going to hear from the parties, and if there is no agreement about how to proceed, I will have to make a decision based on their positions. I am hoping I can help them come to an agreement about how to go to the next stage. That ends my reasons for now.

[PROCEEDINGS NOT TRANSCRIBED FROM 12:21:51 P.M. TO 3:52:10 P.M.]

- [37] THE COURT: Earlier today, I allowed an appeal from a decision and orders made in the Provincial Court regarding parenting. I have already explained why I did that, so I am not going to revisit any of that.
- [38] What is left to consider is, what happens now? Because the decision that was successfully appealed was made in March but we are now in August, things are in flux. The respondent has exercised parenting time according to the March order that I now have set aside. That order provided for an increase in parenting time compared to the Consent Order, and other significant changes.
- [39] As I explained to the parties, one option was to simply go back to the Consent Order, but the result of that would be no parenting time for the respondent, unless I assigned it specifically, until a review hearing can take place. I have already said that review hearing should take place in November. I indicated that I was not in favour of that [hearing date to be so far in advance] because that would be dysregulating for the children.
- [40] I want to emphasize again a few things that I said to the parties earlier [during judicial management portion of today's hearing], which is that this is a very difficult decision for the Court. Deciding parenting time when parents are in two different locations is probably one of the hardest decisions this Court ever has make. I say that because I am sure you feel like this Court process has been tough and long; that is because you have one of the toughest issues. This is the system we have, and it is imperfect, but we try our very best.

- [41] You both already know that the only consideration I have is the best interests of the children. That is dictated by statutory terms under the Family Law Act, and I am required to take into account family violence, and I am required to take into account the impact of family violence on the family, and especially on the children.
- [42] I have also said to both of you that you are no longer in a relationship, but you are co-parents. What happened in the past will have to be spoken about more when you get to the full hearing. In fact, that is a requirement because there are serious allegations of family violence on which I am not making a decision today because that would not be appropriate.
- [43] However, we also have the respondent's admission by way of a guilty plea of committing serious family violence. That incident was serious, and it needs to be taken into account, which is part of the reason that the appeal was allowed. Given the nature of the other allegations [made by the appellant about other incidents of family violence], they have to be tested at a full hearing, and as I said, I am not satisfied that ought to have been done on affidavit evidence. That was part of the reason the appeal was allowed. It is also a large reason underlaying the order that I feel I have to make.
- [44] These are not comments that are binding, but this Court is well aware of the direction from the Supreme Court of Canada, the Court of Appeal, and from the legislature, to consider allegations of family violence extremely serious. In this case there was a serious incident.
- [45] However, there are other allegations of family violence. I appreciate that those are denied by the respondent, and those allegations have to be tested in court; we have to be very careful about how we approach such allegations at interim hearings. However, we do so in the context of what we acknowledge and know to be the gendered nature of most domestic violence. To be clear, I am not saying anything that has not been said by the Supreme Court of Canada or the Court of Appeal. We also know about patterns of abuse, and we know the impact it has on people and the ongoing trauma that can result from it. So, even where somebody rehabilitates themselves from perpetrating family violence, a person who has been impacted by it is not able to turn a switch off and all of a sudden be able to move forward, and we understand why.
- [46] It is unfortunate that, in this case, such a serious incident of family violence and such serious allegations, in my respectful view, were not properly taken into account when Judge Underwood made the orders that she did.
- [47] I am particularly concerned when I see in the decision acknowledgement that there was family violence that impacted the child M. (at paras. 90-91). This is what the decision says, the incident "would most certainly have impacted [the child M.]". She acknowledges that that there needs to be strict compliance with the conduct orders to allow the appellant to move forward in a manner to enable her to heal, and to focus on how best the children can develop and maintain a positive relationship with the respondent. That is a view which is consistent with the position that it was only the appellant having been the victim of family violence.

- [48] Again, at para. 119, the provincial court acknowledged that family violence took place -- that forms a basis for the conduct orders against the respondent -- and Judge Underwood accepted that there had been breaches of the conduct orders.
- [49] Having said those things, it is difficult to understand how the Provincial Court came up with the parenting orders that it did. In saying that, again, I am not making a comment on what the appropriate parenting order should be after a full hearing. The whole point is that this needs to be aired out, in my respectful view, with some viva voce evidence and not purely on affidavits.
- [50] That provides the foundation for the orders that I will be issuing. I wanted to explain the approach that I feel I am obliged to take given the very serious nature of the allegations in this case. I will address later on about moving forward to the Provincial Court for that review hearing. Both parties seem to agree that parenting, as well as the financial issues, should be heard together in the sense of by the same presider, but that is not something I should dictate to the Provincial Court. However, I direct the parties that they ought to pursue the parenting issues first because they are the most important.
- [51] I simply add the comment that you can pass along to the Judicial Case Manager that they try and find some time before November, if possible, because this is extremely important. These are very serious allegations, and in both cases - whether are found to have merit or not -- should have an impact on what kind of parenting orders there is going forward.
- [52] I will go through and indicate what I am setting aside and what I am replacing it with and why, by looking at the March 27, 2025 order:
- a) The court dismissed the application for the appointment of a parenting coordinator. I am not interfering with that, but the appellant has leave to reapply for that and the respondent has leave to apply as well. The reason I am not appointing it now is because the parties are not yet at a stage where I think it would be efficient for them. Parenting coordinators do cost money, but there is still a significant amount of work that has to be done to get [the parents in a position to benefit from a parenting coordinator] before they incur that expense. However, there is leave to reapply for that order.
 - b) Paragraph 2, subparagraphs (a) and (b) are spent, but anything that has not been spent is set aside. Specifically, paragraph 2(c) that gives the respondent parenting for seven days each month, commencing September is set aside, as are subparagraphs (d) and (e).
 - c) Paragraph 3 is set aside.
 - d) Paragraph 4 is set aside.
 - e) Paragraph 5 is set aside.
 - f) Paragraph 6 is set aside.

- g) I will address paragraph 7 when I set out how I think the parenting exchanges and what the parenting shall be.
 - h) With regard to telephone and electronic communication, I am going to make a very directed order, with the input from the parties, to make it easier to reduce, hopefully, the conflict between them about it.
 - i) Paragraph 9 remains in place.
 - j) Paragraph 10 remains in place.
 - k) Paragraph 11 has been superseded by a hearing that has now been set for November 17, 2025.
- [53] I find that the parenting time of the seven-day block is not in the children's best interests. They are too young, and the increase to seven days with the respondent has come too quickly given what I find was quite a volatile situation.
- [54] As I said already, despite portions of the Provincial Court's judgment recognizing the importance of the conduct orders by seemingly recognizing the family violence had occurred and its impact particularly on the appellant, the parenting time for the respondent did not adequately take that into account.
- [55] I am not making a decision about the [allegations] of family violence [additional to the incident to which the respondent pleaded guilty]. I am saying that, at this point in time, on a without prejudice, interim basis, until there is a full hearing, I am not prepared to accept, on the basis of the evidence in front of me, that these young children should be away for seven days at a time from where they live.
- [56] I appreciate that from the respondent's perspective, these children have two homes, and of course one of them is with their father. However, when we talk about homes and residence in the family law context, it is important to remember that these children live in Coronation, Alberta, with their mother. The Consent Order made that clear. I am not going to repeat the reasons why I allowed the appeal, but those reasons led us down a path to the respondent's increased parenting time.
- [57] I find that the proposal of the respondent exercising parenting time two weekends a month to be appropriate, and for it to be exercised with both children together. The children should not be separated at this young age. Two days allows for a shorter interval when they see their father; instead of once a month, it is going to be twice a month, but for a shorter period each time, which is more appropriate for children of this age. If they lived in the same community, they would not be doing a week on, three weeks off, or week off, week on if they had agreed to shared parenting. I acknowledge that this presents a hardship in the sense of the obligation it puts on the respondent for driving, but all I can say is that was what he agreed to in the Consent Order. Consenting to the appellant's relocation to Alberta meant that is where the children live. That is their residence. They will at some point have a home

with their father when he exercises parenting time, but the Consent Order was clear. I am not satisfied that the judge below had sufficient evidence related to the s. 37 considerations to make such a drastic change to the Consent Order for all the reasons I gave earlier.

- [58] The respondent's parenting time has to take place in either Stettler or Coronation, Alberta. I appreciate the appellant offering to go to Stettler for exchanges, and that is where the exchange should take place. I will hear from the parties about the exact time on Fridays and Sundays for those exchanges because I want that to be specified.
- [59] The children should be given the opportunity to have FaceTime contact twice a week with the respondent, and I will want input into that. Given that he drives often for his work, having a window between 4:00 p.m. and 6:00 p.m. worked well.
- [60] I would ask the respondent to be patient about those FaceTime calls. I would ask the appellant to be patient with those. I understand they have a difference of view about how they have gone so far. I have read and heard what the appellant says as to why there have been difficulties. I make no comment on that evidence.
- [61] All I can say is that even without a history of family violence, even without a high conflict dispute, it is likely that FaceTiming for a four-year-old, and especially for a two-year-old, are going to be tough because of the medium itself. But, the respondent should have opportunity, twice a week, to have that contact.
- [62] Also, there should be at least one FaceTime call a week with the paternal grandparent and great grandparents. Again, it is an opportunity. I will ask you all to be patient with the two-year-old and the four-year-old. I will set a time and place for that that after I get submissions.
- [63] So, the holiday schedule should be addressed when you are next in the Provincial Court. I do not understand there to be a huge difference between what was proposed by the parties. However, I find that the Consent Order regarding holiday times stands as of right now, but that can be addressed at the next hearing. I expect that judge will be addressing all parenting things going forward.
- [64] I will get a bit more information from you both about the FaceTime calls and the location of the exchanges.

[SUBMISSIONS NOT TRANSCRIBED FROM 4:10:36 P.M. TO 4:13:43 P.M.]

- [65] THE COURT: The appellant asked that I make a direction that Judge Underwood be recused from the file. I am not going to do that because there was no allegation of bias or her having a predisposition. That would be the only basis upon which I would purport to tell the Provincial Court who should be assigned to a case. I decline to make that order.

[SUBMISSIONS ON LOCATION AND TIMING OF EXCHANGES]

[66] THE COURT: The parties agree that the exchanges will take place at the rec centre in Stettler. Pickup time is 3:00 p.m. on the Friday, drop-off is Sunday at 3:00 p.m. at the same place.

[SUBMISSIONS ON TIMING OF FACETIME CALLS]

[67] The Court: The appellant will make best efforts to facilitate FaceTime with the father every Monday and Wednesday in the window from 4:00 to 6:00 p.m. The appellant will facilitate one FaceTime call with the paternal grandparent/paternal great-grandparents by communicating with the paternal grandparent at least once a week.

[68] The only other thing I should say is I have ordered that the hearing on parenting has to include viva voce evidence. Whether that is cross-examination on affidavits, or if the parties just taking the stand, is up to the presider, but I am not directing how that is done.

[FURTHER DISCUSSION ABOUT START OF ALTERNATING WEEKEND PARENTING TIME]

[69] THE COURT: The respondent will start his alternating weekend parenting time on September 12, 2025.

"Sharma J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/18/2025BCSC1849.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/greschner-v-greschner-2025>

Prepared on 23 October 2026 · Esheria