

# In the Court of Appeal of Alberta

**Citation:** Uttl v Rensonnet, 2017 ABCA 191

**Date:** 20170616  
**Docket:** 1701-0145-AC  
**Registry:** Calgary

**Between:**

**Anne Rensonnet**

Respondent  
(Plaintiff)

- and -

**Jan Uttl**

Appellant  
(Defendant)

**The Court:**

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**The Honourable Madam Justice Frederica Schutz  
The Honourable Madam Justice Michelle Crighton  
The Honourable Madam Justice Jo'Anne Strekaf**

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## **Memorandum of Judgment**

Appeal from the Decision by  
The Honourable Madam Justice G. Marriot  
Dated the 3rd day of May, 2017  
(2016 ABQB 95; Docket: FL01 17010)

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## Memorandum of Judgment

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### The Court:

#### I. Introduction

[1] There is a protracted litigation history in this matter that culminated in a 10 day trial in November and December 2015, following which comprehensive reasons for judgment were delivered on February 18, 2016: 2016 ABQB 95. The appellant's appeal of that decision was dismissed by this court on June 23, 2016: 2016 ABCA 196. The respondent's application to extend time to appeal the trial decision was dismissed by this court on September 23, 2016: 2016 ABCA 285. The parties continue to be unable to agree to the meaning of specific terms in the judgment roll issued on June 24, 2016.

[2] The appellant had brought an application on April 24, 2017 to set a date for a one hour family law chambers hearing, which was dismissed with costs. The order has not been appealed.

[3] The respondent then brought an application on May 3, 2017 for clarification or interpretation of the phrases "full Spring break" and "remainder of the Christmas break" in the judgment roll and a ruling on an agreement in March 2016 to switch the Spring and Easter breaks. The appellant had brought a cross-application to vary the parenting schedule, modify the wording of the judgment roll and determine the percentage of parenting time allocated to each parent by the trial judge. Both parties sought costs and an abridgment of time for service. It is those cross-applications that give rise to this appeal.

#### II. Chambers Decision Below

[4] The parties appeared before the chambers judge self-represented on the regular list on May 3, 2017.

[5] The chambers judge provided clarification in respect to two aspects of the judgment roll: the meaning of the phrase "full Spring break", and the meaning of the phrase "remainder of the Christmas break".

[6] In addition, the chambers judge found that there had not been any change in circumstances sufficient to warrant a variation of the judgment roll.

#### III. Appellant's Position on Appeal

[7] The appellant raised a number of discrete grounds of appeal in respect of the chambers judge's decision below.

[8] In our view, it is not necessary to address the various grounds of appeal because one ground, in particular, has lead us to the conclusion that we must consider the cross-applications

afresh. That is, although the chambers judge did ask the parties whether she was familiar to either of them, and each of the parties replied that they did not believe so, subsequent to the hearing it came to light that the chambers judge had been retained by one of the parties prior to her appointment to the Court of Queen's Bench.

[9] Accordingly, in the interest of fairness to both of the parties, we have concluded that it is in their best interests, and more particularly in the best interests of their children, that we deal with the two cross-applications, but without regard to the chambers judge's reasons or decision below.

#### **IV. Analysis**

[10] The history of the litigation between the parties reveals a high conflict situation that was resolved in large measure, but not entirely, by the trial decision and judgment roll.

[11] In our view, having regard to the complete reasons for judgment and the wording of the judgment roll, we find that the phrase "full Spring break" encompasses the weekends both preceding and subsequent to the school closure dates. Accordingly, the parent who is to have the children for the "full Spring break" shall have the children from the end of school on the last day of regular school programming preceding the Spring break scheduled by the school until the children return to school on the first morning of the recommencement of regular school programming.

[12] Similarly, the parent who is to have the children "for the remainder of the Christmas Break" shall have the children from January 1 at 3:00 pm until the children return to school on the first day of regular school programming after Christmas.

[13] This interpretation recognizes that the provisions in the judgment roll which deal with school breaks are more specific and take precedence over the usual weekend provisions in the event of a conflict. As the judgment roll provides for the parents to alternate parenting during school breaks in odd and even years, both will receive the same treatment for their parenting time.

[14] With respect to which parent should have the children for Spring break or Easter break during odd and even years, we see no reason to modify the provisions contained in the judgment roll for 2018 and subsequent years.

[15] With respect to the appellant's application to vary the judgment roll based upon the mother's denial of access during instances in January and March 2017, those instances arose out of the disputed interpretations of the judgment roll, which have now been resolved. The other issues raise matters that were similar to those addressed by the trial judge and do not constitute a material change in circumstances that would justify varying the judgment roll.

[16] In particular, the respondent seeks to have the court reconsider whether a shared custody child support order pursuant to section 9 of the Federal Child Support Guidelines should have been

granted. This issue has already been determined by this court and we are not prepared to revisit same: 2016 ABCA 196 at paras 47 – 50.

[17] In the circumstances of this appeal, we find that it would be appropriate that each party bear their own costs.

Appeal heard on June 12, 2017

Memorandum filed at Calgary, Alberta  
this 16<sup>th</sup> day of June, 2017

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Schutz J.A.

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Authorized to sign for: Crighton J.A.

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Strekaf J.A.

**Appearances:**

Respondent A. Rensonnet in Person

Appellant J. Utfl in Person