
CANADA / JUDGMENT

A.B. v. C.D.

2014 BCSC 1081

COURT

Supreme Court of British Columbia

DECIDED

16 June 2014

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2014 BCSC 1081 A.B. v. C.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.B. v. C.D.,

2014 BCSC 1081

Date: 20140616

Docket: E112148

Registry: Vancouver

Between:

A.B.

Claimant

And

C.D. and E.F.

Respondents

Notice: Pseudonyms have been used to protect the identities of the parties.

Before: The Honourable Mr. Justice Kelleher

Reasons for Judgment

Counsel for the claimant:

J.K. Broadhurst

Counsel for the respondents:

R.M. Shore

Place and Dates of Trial:

Vancouver, B.C.

March 24-28; 31;

April 1-4;

May 21-23, 2014

Place and Date of Judgment:

Vancouver, B.C.

June 16, 2014

Introduction

- [1] These are matrimonial proceedings. The claimant A.B. and the respondent C.D. are former husband and wife, respectively. At issue are parenting arrangements, child support and spousal support. A central issue with respect to parenting arrangements is the claimant's wish to relocate from Vancouver to Victoria.
- [2] The claimant and respondent are 47 and 45 years old, respectively. They began cohabiting in early 2002, and were married in August 2005. They separated some 4½ years later, in January 2010. There are two children of the marriage: X., who is 18 (born in July 1995); and Y., who is 8 (born in October 2005).
- [3] The respondent E.F. is the biological father of X. He was added as a party by order of Master Scarth dated December 14, 2011. The claimant no longer seeks relief against E.F. He is therefore struck as a respondent and the style of cause is amended accordingly.
- [4] The parties' relationship has been stormy and litigious. There have been countless interlocutory proceedings in the three years since the Notice of Family Claim was filed on July 14, 2011.
- [5] The parties were divorced by order dated May 29, 2013. To their credit, they have settled the division of property.
- [6] This decision chronicles the particulars of many incidents in the parties' relationship. That is not because this court necessarily finds them to be of legal significance. Rather, it is because one or both of the parties have put the evidence before the court to support an argument being made.

Background

The Parties

- [7] Growing up, A.B. attended a private school on Vancouver Island. He was then a student at the University of Victoria.
- [8] The respondent was born in Winnipeg and was raised by her paternal grandparents. They had emigrated from Poland.
- [9] The respondent finished high school and then did some post-secondary work. She moved to British Columbia in 1990. She met E.F. in 1994 and became pregnant with X. They separated in May 1997, when X. was almost 2.
- [10] In September 1997, she began working for a forest industry company in Vancouver. She worked in human resources and administration positions.

History of the Relationship

- [11] The parties met in approximately 2000, when A.B. was studying at the University of Victoria. His program included a co-op term. In that regard, he was assigned to the company where the respondent worked.
- [12] They began living together in 2002. X. lived with them as well. He was 7 years old at the time.
- [13] Upon graduating, A.B. began working for the federal government as a systems analyst. In 2003, the respondent's position at the forest industry company came to an end. She began working at the City of Vancouver in 2004.
- [14] The parties decided to have a family. Y. was born in October 2005.
- [15] A.B. had a strong desire to move to Victoria. His father and two sisters live there. C.D. was resistant to the idea. A.B. assured her that they would thrive: his father had a large home on acreage and his sisters would help C.D. in caring for Y. He told her they could expect financial support from his father for the purpose of purchasing a home.
- [16] In early 2006, A.B. was offered a job to work with a former colleague at a security company in Victoria. He and the respondent made a joint decision to relocate to Victoria. A.B. was strongly in favour of the move; C.D. relented because it was very important to him.
- [17] The job began in February 2006. C.D. stayed in Vancouver so she would not interrupt X.'s school year. She did not move to Victoria until after June of that year.
- [18] A.B., for his part, worked four 10-hour days per week so he could spend long weekends in Vancouver with the family. In May 2006, he began to work from Vancouver so he could spend more time at home.
- [19] The family made the move to Victoria in the summer of 2006. They rented an apartment.
- [20] At the time, the claimant's two sisters had three children between them, all within a couple years of X.
- [21] The relationship between the respondent and the claimant's family quickly became difficult.

- [22] A.B. told C.D. that his sisters were willing to help out with Y. and provide her with a bit of a break. C.D. felt there was a commitment to schedule Y. with A.B.'s sisters every week. She became very upset when she learned that it was not a fixed offer of scheduled time every week, but rather more general and less structured assistance.
- [23] C.D. was angry that A.B. was not "on her side" in the dispute. She felt betrayed. She demanded apologies from all concerned.
- [24] There were dark clouds on the horizon. Y. was a difficult baby. Although he was healthy, he cried, loudly and often. There were also financial stressors. Tension quickly developed within the relationship.
- [25] In September 2006, the claimant began keeping a journal. He did not share that fact (or the journal, of course) with the respondent.
- [26] On September 21, C.D. called A.B. at the office and asked that he come home. She said Y. would not stop crying. He went home and found Y. crying. The respondent had been drinking. He saw that she had made cuts on her wrist. C.D. testified that she made these superficial cuts to her wrist as a form of relief.
- [27] One week later, on September 28, A.B. again came home to find C.D. had been drinking and was angry. She complained about one of his sisters. She then threw a plate at him (according to him), or smashed a plate on the floor (according to her). He decided he needed to withdraw with Y. He called 911. The police attended and interviewed them both. The police decided to take C.D. to Royal Jubilee Hospital for a psychiatric evaluation. They brought her home at 3:00 a.m.
- [28] The claimant testified that during this period, the respondent was frequently intoxicated. C.D. agreed that she was "self-medicating" with alcohol at the time.
- [29] C.D. was clearly unhappy in Victoria. Less than 6 months later, in December 2006, A.B. and C.D. decided to return to Vancouver. He left his job and obtained a new position with the federal government.
- [30] There was an incident in January 2007 in their Victoria home. The claimant and respondent were facing each other. Between them was the fence that kept the baby safe. They were arguing. The respondent slapped the claimant in the face. He reacted by grabbing her shirt with both hands and pulling and pushing her. This caused her to fall to the floor. She bruised her ribs on the fencing.
- [31] Clearly, she had no right to slap the claimant in the face. For his part, he should have withdrawn, but he reacted in a violent manner instead.
- [32] The family moved back to Vancouver in early 2007. They found accommodation on Comox Street in Vancouver's West End.

- [33] An example of C.D.'s disaffection with A.B.'s family occurred in October 2007. Y. received a gift of a book from one of A.B.'s sisters. C.D. tore up the book in front of Y. Similarly, a gift to the respondent from A.B.'s parents was returned unopened.
- [34] In December 2009, an incident occurred in which A.B. lost his temper. One evening, X. was "acting out". A.B. took away his video game console for disciplinary reasons. After A.B. retrieved it, X. took it back without permission. He went into his room and slammed the door. A.B. was angry: he struck X.'s door with a hammer, making a hole in the door.
- [35] A.B. apologized. He told C.D. and X. that that he should not have done that. In his evidence, he characterized his behaviour as inappropriate.
- [36] The parties separated in January 2010. C.D. stayed in the Comox Street home; A.B. found accommodation two blocks away.
- [37] When they first separated, they agreed that the boys would spend 50% of their time with each parent. According to C.D., this worked well. They worked collaboratively. She said they "became friends again". They were able to be flexible in arrangements, covering for each other when necessary.
- [38] The claimant paid the respondent's rent each month, as well as approximately \$500 in monthly support.
- [39] In September 2010, Y. began attending school. He was enrolled in Kindergarten at a public elementary school in the West End.
- [40] In November 2010, A.B. began seeing G.H. They had dated for a short time 20 years earlier. They reconnected in 1998, but had not kept in touch. A.B. contacted her in the fall of 2010.
- [41] G.H. is a veterinarian. She operates a business that provides treatment to hyper-thyroid cats with radioactive iodine. The business operates in an emergency pet clinic in Kitsilano.
- [42] G.H. testified that she has had the business since 1999 and is looking for a buyer. She is exploring new career paths, such as preparing healthy food, operating a bed and breakfast or working as a personal trainer. She testified that there was plenty of work doing locums for veterinarians.
- [43] Y. mentioned to his mother that he had met G.H. The respondent concluded, correctly, that G.H. and the claimant had begun a relationship.
- [44] This was difficult for the respondent to accept. That is illustrated by the voicemail she left him on May 1, 2011:

Hey [A.B.]. We're just in transit here and chatting. And I don't want to make any assumption, but I keep hearing about [G.H.]. So, you know what, I just want to let you know that if you could keep [G.H.] on the low-down a little bit more, that would be appreciated. And just wanted to go over some little rules around that.

And so - anyway, um, I guess I am making an assumption that [G.H.] is your girlfriend. And if she's not, then whatever, disregard it. But I think I'm pretty intuitive and it all makes sense.

Anyway, so if [G.H.] wants to play in my sandbox there's going to be some rules. And you and I, we're going to have to talk about those rules. And it's all cool, I'm going to be fair. But you know what? I felt like - that was a little bit of sand thrown in my eye right now. And you wouldn't want me to feel like I could stick a shovel up someone's ass now, do you? I don't think so, [A.B.]. You want to be on my good side and you want to keep it balanced.

So don't throw sand in my eye honey, that's all I'm saying. Okay. You have a happy Easter with your little Easter bunny, and I will do likewise. Bye-bye.

- [45] In June 2011, C.D. wished to meet G.H. The claimant thought it would be a good idea, because the children were going to be learning that he and G.H. were in a relationship.
- [46] They arranged a meeting at a Starbucks for June 4, 2011. A.B.'s hope was that C.D. would be comfortable with the children spending time with G.H. and himself.
- [47] The meeting began with the respondent standing and hugging G.H. when she came in with A.B. The respondent told them that she wasn't pleased to learn of their relationship from Y. G.H. said she was not introduced to Y. as anything but a friend of A.B.
- [48] In the end, the meeting did not have the desired result. C.D. stated another meeting would be required before she would be comfortable with G.H. spending time with her children.
- [49] C.D. was distraught. She felt it was disrespectful of them to permit her to learn of their relationship from Y. She wanted them to apologize. She also observed them holding hands and found this offensive.
- [50] I am sure it was a very awkward meeting for all three of them. But there was no reason for anyone to apologize. Y., who was 5½ years old at the time, had simply reported meeting G.H. It was the respondent who concluded they were in a relationship. Y. did not know that. Nothing G.H. and A.B. did was disrespectful.
- [51] The claimant issued the Notice of Family Claim on July 14, 2011. The respondent read it and saw that the claimant was seeking sole custody of Y. She described her feelings as "shocked, threatened and fearful". She testified that she considered the Notice of Family Claim to be "an act of war".
- [52] After the proceedings began, A.B. began paying \$780 per month to C.D. for child and spousal support. There was no order in place at the time.
- [53] A Judicial Case Conference took place on September 9, 2011. The parties agreed to the children spending equal time with each of them on a 3-4-4-3 schedule. They also agreed that Dr. Mary Korpach would prepare an expert report pursuant to s. 15 of the Family Relations Act, R.S.B.C. 1996, c. 128.

- [54] A further Judicial Case Conference was held on October 13, 2011. The arrangements were changed to a schedule of 2-2-3-2-2-3.
- [55] On March 29, 2012, Mr. Justice Butler ordered that further RRSP accounts be produced. The respondent was also ordered to produce further documents about her action in Provincial Court against E.F. as well as an accounting of any payments received from him.
- [56] On April 13, 2012, Mr. Justice Butler ordered child support at \$622 per month and \$125 in spousal support. He ordered that expenses under s. 7 of the Federal Child Support Guidelines, SOR/97-175 [Guidelines], be split on a 70/30 basis, with the bulk payable by the claimant.
- [57] C.D. described an incident at her home in April 2012. It occurred on Sunday, April 15. Y. kept interrupting her when she was on the telephone. She was under considerable stress at the time. She overreacted to his interruptions by slapping him in the face and on his bum.
- [58] C.D. testified that she instantly felt remorseful.
- [59] The respondent was scheduled to take Y. to school on Monday morning. She decided to keep him home from school. She said this was because of her guilt: she wanted him to have a fun, quality day with her on the Monday. She dropped him off at daycare at the end of the day.
- [60] A.B. picked up Y. from daycare. Y. told him, he testified, that his mother had hit him on the face and slapped him on the bum 10 or 20 times.
- [61] Tuesday morning, A.B. dropped Y. off at daycare. One of the staff pointed out a red mark on Y.'s forehead.
- [62] A couple days later, A.B. spoke to the Ministry of Children and Family Development about the incident. This led to the Ministry interviewing Y. and meeting with C.D. At the Ministry's suggestion, she took Y. to a physician to ensure that he was not injured. He was not.
- [63] A.B. decided to seek an order suspending access. On Monday, April 23, Master McDiarmid made a "without notice" order, suspending access pending a hearing on May 1. On May 1, Master Tokarek restored the respondent's access.
- [64] In May 2012, C.D. met with Dr. Korpach for the purposes of the s. 15 report. She learned at this time of the diary A.B. had been keeping. She said she was in utter shock because of the allegations: she felt accused of drug abuse, child abuse, being suicidal and failing to take Y. to school. C.D. testified that she bought a bottle of wine to manage the pain.

The Section 15 Expert Witness in Family Matters Report

[65] Dr. Korpach published her report on June 12, 2012. It is 69 pages long, excluding her curriculum vitae. In the report, she described her interviews and observations concerning the parties and their interactions with the children. As well, she outlined the results of her interviews with other corollary witnesses, and then made recommendations about access and parenting arrangements.

C.D.

[66] Dr. Korpach provided a description of her interactions with C.D. Under the heading "Additional data", Dr. Korpach wrote:

[C.D.] provided over one hundred emails and several voice mails of a substantive nature.

Telephone messages were characterized by variable speech, emotional indicators, inappropriate laughter, and dramatically variable volume and rate. At times, it sounded as though she was crying, pleading, demanding, and/or matter of fact. Her statements were often dramatic, characterized by loud sighs, rapid speech, loud and sharp demands, and/or slow, barely audible speech. Content included statements indicating she was overly stressed, had difficulty coping with receiving emails and getting a job, demanded professionals make special accommodations for her, confusion and difficulty organizing her thoughts, irrelevant information, persistent bids for the writer to provide her with a letter for legal proceedings although was clearly told this was not appropriate for the writer's role, blaming [A.B.]'s lawyer, inappropriate boundaries with the writer and other professionals, drawing erroneous conclusions from little data, involving the children inappropriately in the current proceedings, apparently manipulative statements blaming the writer and others for traumatizing her, apparently manipulative and controlling statements about records release and how it will affect this report. Her speech pattern at times appeared regressive and her thoughts disordered.

Some of the emails submitted also contained a dramatic, demanding, demeaning, at times threatening, and erratic quality to them. There are distortions and perceptual errors contained throughout the emails, particularly during times of multiple daily emails. Emails from [C.D. to the writer] on May 24 and 25 appeared particularly bizarre, inappropriate, and lacking in judgment.

[67] Dr. Korpach's report also included the results of psychological tests she administered to both C.D. and A.B.

[68] The Minnesota Multiphasic Personality Inventory-2 (MMPI-2) was described by Dr. Korpach as:

the most widely used test in custodial litigation settings. It was designed to assess a number of the major patterns of personality and psychological disorders. It provides objective scores and profiles based on well-documented norms, and interpretations of the test are made by comparing individual profiles with similar profiles developed through large scale validation studies. Interpretations are useful in generating hypotheses regarding personality traits and interpersonal functioning.

[69] Dr. Korpach outlined the results of this personality test for C.D.:

Her clinical profile on this measure suggests a severe psychological disorder. Results indicated concerns with personality decompensation, social withdrawal, disordered affect, and erratic, possibly assaultive behavior. Her responses indicated she appears confused, preoccupied with abstract ideas, and feels that others are against her. She may demonstrate inappropriate affect and hostile, irritable behavior. Her profile is similar to that of individuals who have been found to sometimes behave in unpredictable and aggressive ways. Her clinical profile reflects chronic maladjustment, although results also appeared to represent an intensification of problems at the time of testing. Regardless, with this type of profile, a concerning degree of personality decompensation, disorganization, and thought disorder are likely to persist after the immediate crisis ends.

Her profile on the MMPI-2 suggested that she may feel somewhat estranged and alienated from others. She tends to be suspicious of the actions of others and may tend to blame them for her negative frame of mind. She may view the world as a threatening place, and sees herself as having been unjustly blamed for others' problems. Individuals with similar profiles tend to be rather high strung, and believe that they feel things more intensely than do others. As a result, she tends to feel lonely and misunderstood at times.

Interpersonally, she is likely to manifest disturbed interpersonal relationships as she may be unable to develop genuine deep and loving relationships, due to difficulty trusting others. There are substantial concerns about paranoia with this profile, as well as concerns with drug and alcohol use. Individuals with similar profiles have difficulties with long-term adjustment.

The MMPI-2 profile indicated endorsement of a number of extreme and bizarre thoughts, suggesting the presence of delusions. It is important to note that profiles similar to hers occur in less than 1% of a sample of custody and access litigants. Directly relevant to custodial concerns, this profile is concerning as family relationships are likely to be affected by her moody and irritable behavior. She may have a tendency to withdraw from activities and display bouts of emotional apathy. She may display confusion, delusions of persecution and/or grandeur, feelings of unreality, and preoccupation with abstract or obscure matters to the exclusion of more practical aspects of life, such as tending to children's needs. Her proneness toward experiencing unusual thoughts might make it difficult for her to think clearly or to work effectively at resolving family problems.

[70] Dr. Korpach also administered the Personality Assessment Inventory (PAI) to the respondent. She described this test as:

a comprehensive personality inventory that assesses a broad range of personality symptoms and behavioural problems. It includes validity indicators, and provides diagnostic possibilities in accordance with the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders). [C.D.] completed this and remaining measures during the final interview on May 10, after the alleged incident of hitting [Y.].

[71] Dr. Korpach said this about the results of the PAI test with respect to C.D.:

On this occasion, results on the PAI indicated she responded consistently to the content of test items, although her pattern of responses suggested she tended to portray herself of being relatively free of common shortcomings to which most individuals will admit. Considering her apparent tendency to repress undesirable characteristics, the following should be viewed with caution.

Despite her defensiveness, her clinical profile indicated areas of difficulty including traumatic stress, stress in the environment, suspiciousness, alcohol abuse or dependence, drug abuse or dependence, history of antisocial behavior, physical signs of depression, and compulsiveness or rigidity. However, her profile indicated no marked elevations that would indicate the presence of clinical psychopathology. There were moderate elevations that may reflect sources of difficulty, but may also be related to stressors. For example, she indicated that she may experience a mild degree, maladaptive behaviors aimed at controlling anxiety. She indicated that drug use may be a source of problem in her life and that she may use drugs to manage stress.

On the PAI, she self-reported a generally stable self-concept. She indicated she is a normally confident and optimistic person and that she is reasonably self-satisfied. Her interpersonal style seems best characterized by a strong need for affiliation and positive regard from others. This may result in rather uninhibited social behavior that is seen by others as attention seeking and dramatic. Her needs in this area may be so strong that the quality of social interactions may be relatively unimportant compared to their quantity. While her behaviors may be intended as friendly, others might view them as somewhat overbearing. She reports adequate social supports. She also reports no difficulties with anger management and no distressing thoughts related to suicidal ideation.

The PAI offers diagnostic possibilities where relevant. For [C.D.] these included an Adjustment Disorder, and a Personality Disorder, Not Otherwise Specified.

[72] Dr. Korpach reported that due to the findings on the MMPI-2 and other information suggesting C.D. may have had psychiatric difficulties in the past, Dr. Korpach also administered the Millon Clinical Multiaxial Inventory-III (MCMI-III). She said that this is a measure more often used in clinical settings which directly assesses personality and psychopathology and considers diagnostic possibilities. She reported the results of the MCMI-III in relation to C.D.:

[C.D.] completed this measure on May 10, 2012. Results indicated she approached this measure with a significant tendency toward presenting herself in a most favorable light. Nonetheless, clinically she endorsed items which indicated difficulties in several areas. Her profile indicated that, while some of the difficulties described below may arise in response to external stressors, they are likely to reflect a more enduring and pervasive aspect of her basic personality makeup, suggesting a Personality Disorder.

First, she described a number of features that are characteristic of a delusional/paranoid disorder such as ideas of reference, feelings of grandiosity, and irrational jealousy. She may feel either betrayed or humiliated, is unwilling to accept the viewpoints of others, and as a result, weaves her suspicions into a network of invalid beliefs. It is suggested that she is characteristically self-centered and uncharitable, and at these times may become increasingly isolated and withdrawn as well as quarrelsome and quick tempered. A number of responses suggest that she may be experiencing a Generalized Anxiety Disorder, as well, and may manifest physical symptoms in response to stress. She may dramatize her distress to gain attention.

This profile suggests that she exhibits an inflated sense of self-worth and air of imperturbability. She may present with a superficially charming style, persistently seek attention and stimulation, and demonstrate rather seductive, immature, exhibitionistic, and self dramatizing behavior. Interpersonal relationships may be at times self-serving, shallow, and frivolous. She tends to dismiss the criticisms of others, is capable of feigning an air of confidence, and may be skilled in cleverly deceiving others. She tends to project blame onto others, and is likely to resent anything that can be construed as personally demeaning. At times, she exhibits self righteous anger as a means of fending off her detractors.

She is likely to manifest substantial anxiety over being exposed. Any rebuffs to her self esteem may result in unpredictable behavior such as anger, depression, moodiness, and social withdrawal. Similar profiles have been associated with extended periods of addictions, sexual excesses, or other forms of irresponsible behavior. Of note is that she may not have been fully self disclosing on this measure, and certain disorders may not have been identified.

The MCMI-III clinical profile offered several diagnostic possibilities for [C.D.]. These included a Generalized Anxiety Disorder, a Delusional Disorder, and a Narcissistic Personality Disorder with Histrionic traits.

- [73] Dr. Korpach then described three other tests with respect to C.D. The Parenting Stress Inventory in relation to Y. indicated stress only in the area of dealing with A.B. Dr. Korpach opined that this seemed at odds with historic stress the respondent described with Y., as well as her recent resort to physical discipline.
- [74] The Child Abuse Potential Inventory indicated a valid profile for the respondent, and did not raise any items of concern.

[75] The Child Behavior Checklist in relation to Y. indicated that the respondent was most concerned about his playing video games. The respondent also indicated that she thought Y. teased his brother too much and was aware of custody issues between herself and the claimant. She noted Y.'s strengths as outgoing, playful, kind, loving, healthy, strong and a good eater. There were no items of concern to Dr. Korpach on this measure.

A.B.

[76] The same psychological tests were administered to A.B. Dr. Korpach described the results as follows:

[A.B.] completed the MMPI-2, on March 23, 2012. His approach to this measure suggested defensiveness and reluctance to disclose much about his personal adjustment. Individuals with similar validity profiles may be viewed as relatively unsightful, although it is not uncommon for custody and access litigants to present as being defensive on this measure.

Clinically, the profile was within normal limits suggesting that he reported no serious psychological problems. He indicates no unmanageable psychological conflicts or stressors at this time, and his personal adjustment appears to be adequate.

Interpersonally, he indicated an average interest in being with others. He appears to meet and talk to others with relative ease. His responses suggest that he usually tries to project a positive attitude about life and usually enters new relationships with an open and accepting attitude. There are no mental health considerations and no diagnosis is provided.

[A.B.] also completed the PAI as described above. On this measure, his validity profile indicated that he tended to portray himself as being relatively free of common shortcomings and somewhat reluctant to recognize faults or problems in himself. This degree of defensiveness is not uncommon among custodial litigants. However, the clinical profile may underrepresent the extent of any significant findings.

[A.B.] also completed the MCMI-III which was also described above. On this measure, he demonstrated a tendency toward avoiding self-disclosure, although not significantly so, but suggesting defensiveness which is characteristic of individuals participating in custody and access disputes. His clinical profile was considered to be valid. As indicated under the psychological testing section for [C.D.], adjustments were made to scoring and interpretation to account for the custody and access setting.

[A.B.] also completed the Parenting Stress Inventory, described above. On this measure, he obtained a mildly defensive profile. The only area of substantial parenting stress was related to his relationship with [C.D.].

[A.B.] also completed the Child Abuse Potential Inventory. On this measure he obtained a valid profile, and all scores were within normal limits.

Finally, [A.B.] completed the Child Behavior Checklist with regard to [Y.]. He perceives that [Y.] gets along with others and his behaviour is better than average. He stated [Y.] only had difficulties at school during a time when his mother was concerned with [A.B.]'s new relationship. At that time he reported [Y.] was destructive to another child's art work and hit a child. He indicated he is concerned that [Y.] will develop unhealthy behavior as a result of his mother's erratic, bullying, and unstable behavior. He described [Y.]'s strengths are that he is very social, and empathic, smart, and has a good sense of humor. [A.B.] indicated no behavioral difficulties with [Y.].

Recommendations

[77] The last part of Dr. Korpach's report is entitled "Summary, Opinions, and Recommendations". This part of the report includes the following opinions in relation to Y.:

It was my observation that [Y.] and [X.] maintain a generally good relationship, but are not overly close or dependent on one another.

[Y.] presented to the interviews as an energetic child who was generally able to attend to the interviews. He appears to be doing well in school, meeting or exceeding expectations academically. He appears to be a cognitively bright child who will likely require stimulation and exposure to a number of learning resources to prevent his boredom.

During the interviews, it was apparent that [Y.] vacillated between diplomatic presentation of views and his own desires for consistency, stability and a child focussed environment. He generally presented that he loves and appreciates time with both parents. However, he feels safer, less emotionally burdened, less anxious, and freer to attend to developmental tasks such as developing self-regulation abilities when with his father. It was apparent that [Y.] enjoys his mother's affection, and feels that he is important to his mother's well being. This, however, is a burdensome role for a young child, who must be free to attend to a variety of age-appropriate developmental tasks, without having to emotionally care take their parent in order for appropriate development to occur.

Observed with each parent, [Y.] appeared more relaxed and demonstrated a greater capacity for self-regulation of his behaviours at his father's home. He appears securely attached with his father, while the attachment with his mother appears more anxious or disorganized. The quality of attachment is one of the most important predictors of well-being with children. A secure attachment is able to buffer children through periods of trauma, including parental transgressions.

[Emphasis added.]

[78] She said this regarding X.:

[X.] presented during the interviews as a reserved, emotionally burdened youth. He presents as relatively quiet, with few needs of his own. While he appears depressed, and his general lack of motivation and initiative in life might support this, [X.] denies these feelings directly. At this point, he appears to be functioning relatively poorly in school, and has few constructive interests

other than soccer. He admits to being emotionally stressed and burdened, and this appears to stem primarily from his mother's stress and apparent tendency to provide [X.] with inappropriate and sometimes distorted information pertaining to adult matters.

It is my observation that [X.] tends to be an "internalizer" of his stress, meaning that he is less likely to act out and more likely to develop symptoms of depression, anxiety, and worry. It is my opinion that a substantial source of his ongoing stress comes from having to manage his mother's erratic emotions and behaviors, as well as serving as her confidant and emotional caretaker. It also appears that [X.] is burdened by feelings of loss and abandonment associated first with his biological father, and second with fears of losing [A.B.]. It is my opinion that the sharing of inappropriate information with [X.] has exacerbated his worries, and contributed to his sense of depression and anxiety.

[79] Dr. Korpach noted that both parents have a number of strengths, and appear to genuinely love their children and enjoy spending time with them. She described their home environments as adequate and said that both parents appear to provide the children with adequate nutrition.

[80] Dr. Korpach's comments about A.B. include the following:

[A.B.] initially presented to the interviews as relatively quiet, direct, and responsive to questions. His affect during the interviews was consistent and varied appropriately with content. His thoughts were logical and there was no evidence of disordered thought process or content. He presented as supportive of a joint residential and coparenting structure, but with fears and concerns based on particularly [Y.]'s needs.

Psychological testing indicated a tendency toward defensive responding which is not uncommon among custody litigants. There were no diagnostic indicators presented on testing.

[A.B.] appears to be in a stable and long-term relationship with [G.H.]. It was my assessment that [G.H.] has a generally positive influence on [A.B.]'s parenting and ability to ensure the best interests of the children. She appears to maintain a positive relationship with the children, and to contribute positively to [A.B.]'s parenting.

[A.B.] was noted to demonstrate child-responsive parenting and an authoritative parenting style. This style of parenting has been found to promote the children's well-being, their social skills, their ability to regulate emotions, and to promote the children's self-confidence and sense of mastery with tasks. He demonstrates a good capacity for a secure attachment, and appears to have good stress coping skills.

It was my impression that [A.B.] manifests good judgment and insight, and has participated openly in counseling since the separation toward the goal of managing and resolving any issues pertaining to [C.D.]. It was also my impression that he has a good ability to place his own needs secondary to those of the children and to consider their needs primary. His judgment includes an ability to respond in a protective manner to the children when needed, while promoting the children's relationship with [C.D.] at other times. It is my opinion that he has a substantially

greater capacity to promote the children's relationship with their mother than vice versa.

[Emphasis added.]

[81] Dr. Korpach reached these conclusions with respect to C.D.:

[C.D.] initially presented as poised, verbally adept, and assertive. . As interviews progressed, her affect appeared labile, sometimes at content inappropriate times, and was characterized by distressed sobbing, tearful helplessness and grief, agitated and demanding demeanour, and playful, interpersonally provocative statements and sarcasm.

At times she appeared well organized and on topic, while at others she appeared disorganized in both the content and process of her thoughts. Her communication style vacillated among evasive and defensive, overly impressionistic and general and obsessive, driven, and compulsive, for example sending 20 emails in a day. The latter pattern appeared to occur particularly in response to her own internally generated anxiety and stress, promoted by her tendency to misperceive and distort details. [A.B.] describes a similar pattern in that when he does not go along with her demands, she tends to "bully until she gets her way."

Psychological testing indicated concerns regarding moody, erratic, and irritable behavior. Bouts of stress/confusion and disorganization, tendency to personalize relatively benign remarks or information, and preoccupation with abstract or obscure matters to the exclusion of more practical aspects of life, make it difficult for her to adequately perceive and attend to the children's needs. Her proneness toward distorted perceptions and misinterpretations may make it difficult for her to think clearly or to work effectively at resolving family problems.

It is my opinion that [C.D.] likely manifests an Anxiety Disorder and a Personality Disorder, consisting of Borderline, Narcissistic, and Histrionic traits. Specifically, features of her Personality Disorder include:

Narcissistic: require excessive admiration; has a sense of entitlement; is interpersonally exploitive; lacks true empathy;

Histrionic: interactions with others is often characterized by inappropriate sexually seductive or provocative behaviour, is uncomfortable in situations where she is not the center of attention; displays rapidly shifting and shallow expressions of emotions; uses physical appearance to draw attention to self; shows self-dramatization and exaggerated expression of emotion;

Borderline: impulsivity in areas that are potentially self-damaging such as substance abuse; emotional instability/reactivity of mood; inappropriate anger or difficulty controlling anger; transient, stress related paranoid ideation or delusions; frantic efforts to avoid real or imagined abandonment; history of self-destructive behaviors; tendency to idealize or devalue relationships.

These features appear to have a substantial impact on her ability to consistently attend to the children's needs, her judgment, her decision making, her ability to place the children's needs primary, and on her ability to parent consistently. Consistent with my observation and the information available from the children and collaterals, her approach to the children and parenting in general appears to be inconsistent. At times she is overly permissive and indulgent, while at other times she tends to be harsh and punitive or preoccupied and distant.

Her threshold for stress appears to be low, so even with minor stress, she is likely to vacillate in her responses, promoting insecurity, anxiety, and dysregulation in the children. Both children appear preoccupied with her emotional well-being and have taken on the role of emotionally caretaking her. She tends to seek out need gratification from the children. The children, in my observation have become hypervigilant to her moods and needs, and respond by nurturing her (eg., through hugging), being overly compliant, escaping ([X.] leaves, [Y.] plays video games), or becoming distressed and overly emotionally burdened.

[Emphasis added.]

[82] Dr. Korpach was of the view that X. should have substantial input into his own living arrangement:

I would recommend that [X.] be permitted to have substantial input into his own living arrangement, except to the extent that it interferes with his own or [Y.]'s well-being.

[83] Her comments with respect to Y. include the following:

It is my opinion that [A.B.] has a substantially greater capacity to provide effective parenting, an ongoing positive relationship with secure attachment, authoritative parenting style, warmth and emotional support, and appropriate, age relevant expectations to [Y.]. It is my opinion that [C.D.], by virtue of patterns, behaviors, and characteristics associated with her personality disorder and anxiety disorder is impaired in these areas, and that these negatively affect [Y.].

With regard to conflict, it appears this case is developing into a high conflict case, which is likely to have long-term negative effects on [Y.] if it continues. Research, particularly by the author Joan Kelly has emphasized that approximately 10% of custody cases are "high conflict" and that individuals with Personality Disorders are overrepresented in these cases. It is my opinion that this is the case with [C.D.]. Consequently, [Y.]'s best interests would be served by developing a residential arrangement and decision-making structure that minimizes the conflict, allows the effective parent default decision-making to promote the child's safety and well-being, but promotes a relationship with the less effective parent in ways which are protective and contained.

It is my opinion that [C.D.]'s characteristic manner of communicating with others and responding to her self-generated anxiety contraindicates a coparenting model in which compromise, ongoing communication, and child centered decision-making can occur. Instead, in this situation coparenting and joint decision making is unlikely to promote the child's best interest, due to the inevitable conflict and stress brought on by [C.D.]'s communication patterns, her tendency to involve the children either directly or indirectly in her stress, her age-inappropriate expectations

of the children, her difficulty placing the children's needs above her own, her poor judgment and insight during times of emotional stimulation, and the resulting drain on financial and psychological resources which would otherwise have gone to the children.

Considering the above, I would recommend [Y.] reside primarily with [A.B.], and that [A.B.] be granted default decision-making regarding [Y.] under the Joyce model.

[Emphasis added.]

[84] At the end of her report, Dr. Korpach made some specific recommendations that she stated were to promote Y.'s best psychological interests and to enhance the respondent's ability to provide for this in the future:

1. [Y.] reside primarily with his father and have access with his mother as follows:

A. Alternating weekends from Friday after school or following after school care through Sunday evening at 5 p.m.

B. Every Wednesday evening from after school or following after school care until 8:00 p.m.

C. Alternating Wednesday overnights through Thursday morning when school begins, providing [C.D.] ensures [Y.] is consistently on time to school.

Provided [C.D.] completes the recommendations below, access could be expanded. Should concerns arise about [C.D.]'s functioning, restrictions on access should be considered, until she has stabilized.

2. Telephone communication between the child and non-residential parent is usually recommended. At times, this may be in [Y.]'s best interest. However, when [C.D.] is stressed, her communication can quickly deteriorate, becomes self-serving, and is unlikely to promote [Y.]'s well-being. Consequently, I would recommend some telephone contact occur, but that it be monitored by [A.B.] or [G.H.].

3. The following services are recommended to assist [C.D.] in developing her capacity to attend to [Y.]'s needs and interests:

A. long term, intensive psychotherapy targeting her personality disorder, emotional and behavioural dysregulation, grief and loss issues, anxiety, tendency to misperceive and distort information, and capacity for genuine empathy. I would recommend that her potential therapist be provided with a copy of this report, as well as the St. Paul's discharge summary.

B. Participation and completion of the Ministry's recommended parenting program, the family preservation program. I would recommend the MCFD/family preservation worker be provided with a copy of this report.

C. Medication consultation to regulate her medications and assist with mood dysregulation. Dr. Stancheva may consider a re-referral to a psychiatrist for this purpose. However, I would recommend the psychiatrist be provided with a copy of the St. Paul's hospital discharge summary and a copy of this report.

Given the nature of personality disorders, it is unlikely that there will be substantial and stable symptom reduction for at least a year or more. Typically, for therapy with individuals similar to [C.D.] to be effective, several years of weekly psychotherapy is recommended.

4. I would recommend [Y.] commence play therapy to help him resolve inappropriate feelings of guilt and responsibility surrounding "misbehaving" as well as any repercussions from his statements during the separation process for this assessment. I would recommend a therapist who is able to primarily work with [Y.], but can provide suggestions to both parents to enhance [Y.]'s well-being. Therapists within a close proximity of [A.B.] and [C.D.] who specialize in this area include Dr. Marcelle Blancato and Karin Schwartz.

I would recommend that any changes to access be considered with the import of [Y.]'s therapist, and am aware that Dr. Blancato particularly has skills and experience in this area.

5. I would recommend [A.B.] consider enrolling [Y.] in extracurricular activities. It will be important that [C.D.] take [Y.] to his activities, and that, where she is unable to do so, should contact [A.B.] to take him.

[85] The respondent received the s. 15 report in early June 2012. She said the report was overwhelming and that she was in disbelief.

Subsequent Developments

[86] On October 16, 2012, Master Scarth increased access to provide for Y. to be with the respondent every second Saturday from noon until Sunday at noon. By then, A.B. had moved into G.H.'s home in East Vancouver near Fraser Street. Master Scarth ordered that the move was permitted, provided that Y. remained in the same elementary school in the West End.

[87] On March 28, 2013, Master Muir ordered interim joint guardianship with an express obligation to discuss issues. She ordered \$300 in child support for X., and interim spousal support of \$125. The respondent was to have access after school until 8:30 p.m. on Wednesdays, and from noon on Saturday to noon on Sunday every second weekend.

[88] The trial was scheduled to begin in April 2013. However, the respondent was unable to obtain legal representation, and the trial was adjourned to the dates we have used.

[89] On May 29, 2013, Mr. Justice Myers made the divorce order.

[90] In June 2013, Mr. Justice Grauer ordered that Y. could attend a public school in East Vancouver starting in September.

- [91] In September 2013, the parties agreed that Y. would spend every second weekend from Friday to Sunday with the respondent, instead of noon to noon Saturday to Sunday.
- [92] In the summer of 2013, X. was living with A.B. He was planning to attend Langara. He worked at a restaurant during the months of June and July. At the beginning of August, he told A.B. that he had decided to put off school until January 2014.
- [93] A.B. testified that he fully agreed with this decision. It was an opportunity for X. to work and learn to handle money. He told X., however, that if he went that route, rent would be \$350 per month or, if he did chores around the house, \$300.
- [94] A.B. testified he intended to return the money to X. in January when he started school. According to A.B., X. said the arrangement was fine. X. later told him that his mother disagreed with charging him rent. He announced that he was moving into C.D.'s home.
- [95] X. has lived there since September 2013. A.B. testified that they see each other every two to three weeks. X. is not in school.
- [96] In October 2013, Y. turned 8. His birthday fell on a Monday, a day he was scheduled to be with his father.
- [97] A couple weeks earlier, the respondent asked to spend some time with Y. on his birthday. The claimant advised her that Y. had plans after school, but she could pick him up from daycare at 5:30 and have him until 8:30 p.m. The respondent testified that she considered this offer to be "insensitive".
- [98] C.D. decided to greet Y. in the morning. She went to his daycare. When he was not there, she went to his school and waited for him there. That resulted in a confrontation with G.H., who dropped off Y. that morning. As it turned out, G.H. planned to take Y. and two friends to Granville Island after school. The friends were then unavailable. G.H. took Y. alone to Granville Island.
- [99] In the end, C.D. said that she did not see Y. that evening. She was "too distraught" by the events of the day.
- [100] C.D. felt insulted by the way she was treated on Y.'s birthday. There is no justification for this. Y. was not scheduled to see her that day. A.B. made a sensible decision to allow her to see him in the evening, starting at 5:30 p.m. That having been arranged, it was inappropriate for the respondent to attend at Y.'s daycare and school that day.
- [101] There was no reason for C.D. to cancel her evening with Y. This is but one an example of her putting her needs above those of Y.
- [102] In January 2014, the parties agreed that on alternate Wednesdays, Y. would stay overnight with his mother.

Other Evidence

- [103] I have reproduced few of the many, many emails and text messages that the respondent has sent to A.B., G.H. and others over the years. They are often aggressive, offensive and inappropriate. As noted in her report, Dr. Korpach described certain of these emails as "bizarre" and "lacking in judgment". No useful purpose would be served by reproducing any more of them here.
- [104] Two long-time friends of the respondent testified. Ms. C. has known the respondent almost 20 years. Her son is a friend of X. She recalls C.D., before Y.'s birth, as a caring parent and good role model.
- [105] According to Ms. C., C.D. was "a completely different person" after Y. was born. She was "constantly exhausted" and did not receive the understanding and support she needed. She said in the more recent past, C.D. was distraught by the separation. She struggled financially.
- [106] Ms. C.'s evidence is that the respondent never had a drinking problem, and, apart from the isolated incident when she slapped Y., was never violent.
- [107] Ms. A. has known C.D. since her son was in daycare with X. when they were five. She described the respondent as friendly, outgoing, generous and kind. She is very conscientious as a parent. C.D. was "amazingly supportive" when Ms. A. was undergoing cancer treatment. Ms. A. learned that the relationship between the claimant and respondent was not good. She had heard of the claimant injuring her.
- [108] Ms. A. sees C.D. as a generous parent who is always available to her children.
- [109] Ms. A.'s view is that C.D. gave up her career to accede to A.B.'s desire to have a child and live in Victoria. She is now lacking in money. Her career has been affected. Ms. A. admires C.D. for never saying anything negative to Y. about his father.
- [110] The picture these witnesses paint is startlingly different from the impression one receives from reading Dr. Korpach's s. 15 report detailed above. It differs as well from one's impression from hearing C.D. testify. But that is not surprising. Ms. C. and Ms. A. are C.D.'s friends. She has been a good friend to them as well. Their role is not to sit in judgment of her.
- [111] Dr. Korpach, on the other hand, is the court's expert witness. She must be judgmental; it is her duty. Her task is to interview both parents, administer tests, observe them as parents, speak to corollary persons and draw conclusions about the best interests of the child: *Wu v. Sun*, 2006 BCSC 1891.
- [112] It has now come to light that C.D. did receive some child support from E.F. This was through the efforts of the Family Maintenance Enforcement Program ("FMEP").

[113] C.D. received just over \$20,000 from E.F. in child support for X. She failed to disclose this for a long period of time. A.B. received no credit for this; although, for a majority of the time, X. was living half-time with him. For a portion of the time, X. was even living full-time with him.

[114] E.F. currently owes the respondent arrears of \$82,374.

[115] Y. attended Kindergarten, Grade 1 and Grade 2 in the West End, and Grade 3 in East Vancouver. He has done well in school. In Grades 1, 2 and 3, his report cards indicated that he met or exceeded expectations in every category. The summary in his most recent report card provides as follows:

[Y.] has adjusted well into the routines and challenges of joining a new learning community. He consistently follows directions well, and is considerate of others. He is always polite, friendly, and helpful in the classroom. [Y.] continues to do well with his math and completes timed addition/subtraction drills quickly and accurately. He has done very well with our multiplication unit, and is always looking forward to new challenges and opportunities. [Y.] is a big help in the classroom, often volunteering to help with various tasks. We continue to encourage [Y.] to slow down at times and re-read or re-check his work. He is often so focussed on finishing a task, he overlooks the importance and meaning behind it. [Y.] enjoyed participating in a gymnastics unit this term, and sets an example for persevering during school-wide runs. He maintains a highly organized work environment, and has taken the initiative to complete a variety of extra homework activities! We are meeting the Ministry of Education's requirement of 30 minutes of daily physical activity and ask for your support at home.

[116] Y. is about to finish Grade 3. He is in a small school of 80 students, and had little resistance to the move from the school in the West End. His father described him as active: he participates in swimming, will be in baseball soon and enjoys biking.

Discussion and Analysis

Custody and the Proposed Move to Victoria

[117] The claimant and G.H. wish to relocate to Victoria. This is based, no doubt, on A.B.'s longstanding wish to live in that community. His father and sisters live there. He originally persuaded the respondent to move there. They returned to Vancouver only because she was unhappy in Victoria.

[118] There are no career reasons for the move. Indeed, A.B. intends to keep his job in Vancouver and perform it from Victoria. G.H. still has her business in Vancouver; although, as outlined above, she aspires to other things and wishes to sell the business.

[119] The move to Victoria is not a new idea. In 2012, when Dr. Korpach was preparing the s. 15 report, A.B. told her that it was a long-term plan, for when Y. was in university.

- [120] The plan is to live at A.B.'s father's home. Y. has been accepted at A.B.'s alma mater. As noted above, this is a private school. A.B. cannot afford the substantial tuition. However, he testified that his father has offered to pay the first year's tuition. He is hopeful that Y. will be eligible for partial scholarships in the future.
- [121] The proposal is that Y. will spend every second weekend in Vancouver with the respondent. Wednesday access would no longer be practical, of course. To make up for this, the claimant proposed that several long weekends be spent with the respondent.
- [122] Trial and appellate courts frequently struggle with the difficult forces at play when both parents live in the same city and one parent wishes to move.
- [123] A number of recent decisions are instructive. The following principles emerge.
- [124] When both federal and provincial legislation are pleaded, the mobility order should be made under the Divorce Act, R.S.C. 1985, c. 3 (2d Supp.), and not under the Family Law Act, S.B.C. 2011, c. 25, or the Family Relations Act: *Hansen v. Mantei-Hansen*, 2013 BCSC 876 at para. 96, citing *Hejzlar v. Mitchell-Hejzlar*, 2011 BCCA 230 at paras. 18-21. Sections 16-17 of the Divorce Act address custody orders as well as the variation, rescission and suspension of such orders.
- [125] The best interests of the child are the foremost and overall consideration: *Hejzlar* at para. 28; *Nunweiler v. Nunweiler*, 2000 BCCA 300 at para. 28. The focus is not on the interests and rights of the parents: *Gordon v. Goertz*, [1996] 2 S.C.R. 27 at para. 49. In cases like this, courts are called upon to make an "educated prediction" as to the best interests of the children, based not only on evidence of their old life, but also evidence of what the parents believe will transpire in their new life: *S.S.L. v. J.W.W.*, 2010 BCCA 55 at para. 29.
- [126] The first task is to determine which parent is to have primary residence: *S.S.L.* at para. 24.
- [127] There is a human tendency for the trial judge to prefer the status quo. It preserves the relationship between the child and the non-moving parent. But to approach the issue with a preference for the existing residences of the parties is to err in principle: *Hejzlar* at para. 46.
- [128] Custodial parents, like other Canadians, have the right to relocate. Courts are not arbiters of the reasonableness of every decision a custodial parent makes. In *MacPhail v. Karasek*, 2006 ABCA 238, the Alberta Court of Appeal made this pithy observation:
- [44] [I]t is not an option to conclude a child's best interests are served by both parties living in the same place any more than it is an option to consider that it is in the child's best interest that their parents remain together.
- [129] With these principles in mind, I turn to the evidence.

- [130] A.B. has long wanted to live in Victoria. I am not able to conclude on the evidence that the purpose of the move is to thwart the respondent's access. Indeed, the proposed move allows for access that is almost as much as the status quo.
- [131] The evidence clearly establishes that primary residence should be with the claimant. The evidence as a whole points to the conclusion that A.B. is the more effective parent. The respondent's behaviours over the years and especially since separation all indicate to me that Y.'s best interests are served by residing primarily with the claimant.
- [132] My conclusions are consistent with and reinforced by those of Dr. Korpach.
- [133] C.D. argues that Dr. Korpach's report is not helpful because it is two years old.
- [134] The s. 15 report was prepared in 2012, before A.B. decided to move to Victoria. It is silent, therefore, on the proposed move that is before me.
- [135] However, Dr. Korpach's observations and insight remain highly relevant today. She was cross-examined by counsel for the respondent and did not resile from any conclusion she reached in her report.
- [136] She testified that in her history of preparing "hundreds" of s. 15 reports, she had never seen the level of psychopathology she observed in C.D. She said that C.D.'s unpredictable emotions caused the children to be "walking on egg shells", waiting for her mood to change. On cross-examination, she said that A.B. does not show any pattern of the coercive and controlling behaviours exhibited by C.D.
- [137] The respondent tendered a one-page letter written on her behalf from Dr. Truong, psychiatrist, dated August 25, 2011. The letter stated that C.D. is capable of parenting her children, and has no psychiatric or physical impairments that would limit this capacity.
- [138] However, it is noteworthy that no other more recent or rebuttal report has been produced by the respondent in response to Dr. Korpach's report. It is significant as well that C.D. has not taken any of the steps recommended by Dr. Korpach, such as long-term intensive psychotherapy targeting her personality issues, as diagnosed by Dr. Korpach.
- [139] I conclude that Y. should be in the sole custody of A.B. Further, based on the principles discussed above, A.B.'s move to Victoria may proceed.
- [140] In reaching this conclusion, I rely on the factors for determining the best interests of the child as set out by the Supreme Court of Canada in *Gordon v. Goertz* at para. 49.
- (a) the existing custody arrangement and relationship between the child and custodial parent

[141] Y. lives primarily with A.B. It is clear from Dr. Korpach's report that his remaining in the primary care of A.B. is important to Y.'s well-being. Dr. Korpach recognized that the respondent's behaviour negatively affects Y. Further, the conduct of the respondent on Y's 8th birthday is but one example demonstrating C.D.'s tendency to put her needs first. This factor favours sole custody for A.B. and allowing the proposed relocation to Victoria.

(b) the existing access arrangement and the relationship between the child and the access parent

[142] C.D. will continue to have access at the same or slightly lower level than at present. This is consistent with the conclusions in Dr. Korpach's report. Further, the respondent has yet to complete any of the recommendations in relation to developing her capacity to attend to Y.'s needs and interests as outlined in the report.

(c) the desirability of maximizing contact between the child and both parents

[143] This factor is not absolute: it must be consistent with the child's best interests: *Young v. Young*, [1993] 4 S.C.R. 3 at 117-18; *Hejzlar* at para. 24; *Nunweiler* at para. 24. This factor has little effect here.

(d) the views of the child

[144] Y. is 8 years old. This is not a significant factor. It is clear that Y. loves and enjoys spending time with both his parents.

(e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child

[145] As stated above, this is not a move that is designed to thwart C.D.'s access. A.B. has always expressed an interest in relocating to Victoria, and even did so for a period of time with the respondent. There is no improper motive for the proposed relocation: *Mai v. Schumann*, 2013 BCCA 365 at para. 36.

(f) disruption to the child of a change in custody

[146] I recognize that the move will be disruptive to Y.'s geographical status quo. However, it is clear from his most recent report card that he copes well with a change in schools. I acknowledge that there have been changes already, but this relocation should provide him with a measure of stability.

(g) disruption to the child consequent on removal from family, schools, and the community he has come to know

[147] Y. has connections to Victoria. He has cousins he knows well. There is a significant support network in place in Victoria. Further, the evidence shows that he has given little resistance to changing schools in the past.

[148] In all the circumstances, old and new, the move to Victoria is in the best interests of Y. In my view, the relocation is sensible and it is approved.

Child Support

[149] The respondent's Guidelines income is \$29,000. The income of the claimant is \$65,000. The claimant is ordered to pay child support for X., based on his Guidelines income. This obligation will end when X. ceases to be a child of the marriage. He will turn 19 this July. Whether he will attend school or not is unknown at this time. He has lived with the respondent since the end of 2013, and will likely continue to do so.

[150] C.D. is ordered to pay child support for Y. based on her Guidelines income.

[151] Section 7 expenses will be shared on a 69/31 basis. These expenses will not include tuition at the private school on Vancouver Island. The parties' incomes do not indicate that private school is feasible. Moreover, Y. has done well in the public schools he has attended in the past. A change to the private school sector is not dictated by his circumstances.

[152] The parties will exchange income tax returns each year by the end of May, and child support will be adjusted accordingly.

Spousal Support

[153] The claimant concedes that there is an entitlement to spousal support based on the principles in the Spousal Support Advisory Guidelines and the Divorce Act. However, he argues that in light of what has already been paid, no further spousal support is necessary.

[154] The parties have been separated since January 2010. Based on an eight year relationship, the Spousal Support Advisory Guidelines suggest four to eight years of support. However, the claimant submits the following relevant considerations in support of his position:

- (a) He paid child and spousal support exceeding the Guidelines amounts immediately after separation, i.e. by initially paying her monthly rent, etc.; and
- (b) The respondent has received over \$20,000 in child support from E.F., which she did not disclose for some time.

[155] Six years of spousal support are appropriate in the circumstances. Based on the parties' respective incomes and the principles outlined in the Spousal Support Advisory Guidelines, support will be \$230 per month until January 2016.

Amount Owed by E.F.

[156] The respondent is directed to inform the claimant immediately whenever she receives a payment from FMEP or E.F. in respect of arrears of child support.

Cost of the Section 15 Report

- [157] The claimant bore the initial cost of the s. 15 report, with liberty to seek a contribution from the respondent. The final cost of the report was \$16,906. In addition, Dr. Korpach's attendance in court was a further \$4,000, for which C.D. has not contributed any amount.
- [158] I agree with the claimant that the report was necessary in this matter. That is abundantly clear in the circumstances.
- [159] C.D. will be responsible for a \$5,000 contribution towards the cost of the s. 15 report and Dr. Korpach's attendance in court.

Conclusion

[160] The arrangements can be summarized as follows:

1. A.B. is permitted to relocate to Victoria with Y.
2. A.B. will have sole custody and the parties will have joint guardianship of Y. based on the Joyce model.
3. C.D.'s regular access will be as follows:
 - (a) Every second weekend from 8:00 p.m. on Friday to 5:00 p.m. on Sunday;
 - (b) Skype calls on every Tuesday and Thursday at 7:30 p.m., as well as a Skype call on Sundays during the weekends she does not have Y. at 7:30 p.m. The Skype calls will not be monitored;
 - (c) In the event access falls on a long weekend, she will have Y. from 8:00 p.m. on Thursday or until 5:00 p.m. on Monday, depending on the day of the holiday;
 - (d) She shall have the following long weekends every year:
 - i. Family Day;
 - ii. Victoria Day;
 - iii. Thanksgiving;
 - iv. Remembrance Day (if it falls on a Friday or a Monday); and
 - v. the four-day Easter weekend.

In the event access does not fall on these long weekends, she will have access for the long weekend and then the regular schedule will be reset so that she does not have access the following weekend;

- (e) The Christmas and Spring Break periods will be shared equally, with the exact days to be agreed upon by the parties. Every second year, Y. will spend December 24, 25 and 26 with C.D.;

- (f) A.B. will be responsible for getting Y. to Vancouver for access, and C.D. will be responsible for facilitating Y.'s return to Victoria; and
- (g) Summer access will be in blocks: two continuous weeks in each of July and August, to be agreed upon by the parties.
- 4. Child support will be paid in accordance with the Guidelines.
- 5. Spousal support will be paid by A.B. until December 15, 2015, in the amount of \$230 per month.
- 6. Section 7 expenses shall be paid on a 69/31 basis. C.D.'s proportionate share for the last year of s. 7 expenses is \$1,347. That may be deducted from spousal support on the basis of \$100 per month.
- 7. C.D. is directed to contribute \$5,000 towards the cost of Dr. Korpach's s. 15 report and attendance in court.

[161] Costs may be spoken to.

Kelleher J.

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