

CANADA / JUDGMENT

A.D.J. v. C.E.J.

2020 BCSC 1478

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1478 A.D.J. v. C.E.J.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.D.J. v. C.E.J.,

2020 BCSC 1478

Date: 20201005

Docket: E18362

Registry: Smithers

Between:

A.D.J.

Claimant

And:

C.E.J.

Respondent

Before: The Honourable Mr. Justice G.C. Weatherill

Reasons for Judgment

Counsel for the Claimant:

B.E. Haberstock

Counsel for the Respondent:

J.P. Lewis

Place and Dates of Hearing:

Smithers, B.C.

September 22 and 23, 2020

Place and Date of Judgment:

Smithers, B.C.

October 5, 2020

Introduction

- [1] The claimant seeks an order pursuant to s. 16 of the Divorce Act , R.S.C. 1985, c. 3 (2nd Supp.) that she be permitted to relocate from Stewart, BC to Edmonton, AB with the parties' three children and that, thereafter, the Children's primary residence be with her.
- [2] In the alternative, and in the event that she is not permitted to relocate with the Children to Edmonton, the claimant seeks an order pursuant to s. 15.2(2) of the Divorce Act that the respondent pay her ongoing monthly spousal support commencing September 1, 2020 in an amount within the appropriate range of the Spousal Support Advisory Guidelines [Guidelines].
- [3] No orders as to child support or division of family property/debt are sought at this time.
- [4] In addition, the parties each seek a divorce. At the outset of the hearing and on the basis of the affidavit evidence before me, I granted the parties' application for a divorce, effective 31 days after September 22, 2020.
- [5] The parties are in agreement that the claimant's application is suitable for determination by way of summary trial.

Background

- [6] Stewart is a small community of approximately 400 people located in the northwest corner of BC, close to the Alaskan border. It is an approximate three-hour-drive from Terrace to the south.
- [7] The respondent was born and raised in Stewart and has spent most of his life living there.
- [8] The claimant was born and raised in Grand Prairie, AB. She became a Red Seal certified hairstylist and worked as such in Grande Prairie.
- [9] The claimant's grandparents lived in Stewart. She often visited them there. In 2007, she decided to move to Stewart for "the season". Upon being questioned by the court as to the reason for the move, she responded that she "wanted to try something new". When she arrived, she worked at various jobs including bartending. She did not carry on with her vocation as a hairstylist. It was during this time that she met the respondent. They began

living together in a marriage-like relationship in January 2008, and were married on October 16, 2010.

- [10] The parties now have three children: twins L. and J., aged 9, and H., aged 5 (collectively, the "Children").
- [11] The parties have lived continuously in Stewart since 2008. They purchased a home there in which they have raised the Children. It has four bedrooms and two bathrooms. It has large front and back yards. Behind the house is a grassy field that connects to the Children's friend's backyard. The mortgage payments are approximately \$712 per month, including taxes and insurance.
- [12] The respondent is a heavy equipment operator employed by Soucie Construction Ltd. in Stewart, where he has worked for 17 years. He has job security and seniority in his position. His 2019 income was approximately \$92,000.
- [13] As noted, the claimant is a Red Seal certified hairstylist but, as the primary caregiver to the Children, she generally works only on Saturdays from a well-appointed hair salon located in basement of the parties' home. She is the only hairstylist in Stewart. The claimant also earns a modest income selling "Fancy Mom" cupcakes and cakes. The claimant's income for 2019, including the Canada Child Benefit ("CCB"), was approximately \$36,000.
- [14] The parties separated on February 15, 2019. Since then, the twins have been receiving regular counselling to help them cope with their parent's separation, albeit for only 15 minutes every second week.
- [15] After the parties' separation, the claimant remained in the matrimonial home. The respondent moved to a rental accommodation approximately 200 meters away. He pays rent of \$1,000 per month.
- [16] It is conceded in this case that both of the parties are good parents and want the best for the Children. By agreement, the parties now share parenting time on a two-week rotating schedule, with the respondent having parenting time as follows:
- a) first week: from 4:30 p.m. on Fridays until 8 a.m. on Mondays; and
 - b) second week: from 4:30 p.m. on Fridays until 8 a.m. on Tuesdays.
- This parenting schedule suits the parties' respective work schedules.
- [17] The Children are free to visit either parent during the other's parenting time and go back and forth between the two homes. It is conceded that the parties co-parent well and generally attempt to accommodate each other's schedules.

- [18] The twins have attended school at Bear Valley School in Stewart and are currently enrolled in Grade 4. H. is attending full-time kindergarten at the same school. The school has an enrollment of approximately 60 students from kindergarten to Grade 12. The twins are in a split-grade class of students covering Grades 4 and 5, with some classes overlapping with Grades 3 or 6.
- [19] Although L. has struggled in school with reading and writing, it was recently determined that her struggles are not severe and she does not meet the threshold of having a learning disability. She is receiving individualized support at the school.
- [20] Because of its small size, Bear Valley School does not offer many, if any, extracurricular activities such as organized team sports for students. J. plays hockey at the local arena but the community participation in the sport is low given the number of children in the town. The respondent is J.'s hockey coach.
- [21] Although Stewart offers few organized sporting activities for children, the Children enjoy spending time outdoors and experiencing nature. They are free to ride their bicycles and play without worrying about their safety. They have ready access to lakes for kayaking, trails for walking and rivers for fishing. In the winter, they enjoy snowshoeing, tobogganing and skating.
- [22] Due to an injury he sustained in June 2020, the respondent was off work for two months. During that time he received approximately \$2,000 per month in Employment Insurance benefits. His estimated income for 2020 is \$81,000.
- [23] Since the parties' separation, the respondent has been paying child support to the claimant. Initially he paid \$1,000 per month. Commencing January 2020, he paid \$1,845 per month, which was reduced to \$851 in June 2020 due to him being off work. As of September 1, 2020, he is paying \$1,015 per month.
- [24] Also effective September 1, 2020, the respondent has been paying spousal support to the claimant in the amount of \$348 per month. The claimant is not seeking any orders regarding retroactive support.
- [25] There has yet to be a court order made in this proceeding (other than the divorce order I granted at the outset of this hearing). The parties have agreed to parenting times and support payments.
- [26] The claimant would like to become self-supporting and claims to have looked for full-time work in Stewart, but that the only jobs she has seen posted are for casual and/or on-call positions. She says that she is not able to apply for any of these jobs because of the lack of family support or daycare facilities in Stewart. The respondent's evidence is that he has had no difficulty finding daycare for the Children in Stewart during his parenting time.
- [27] The claimant wishes to move to Edmonton because she believes she will have a much better opportunity to become self-sufficient there.

- [28] The claimant submits that her mother, with whom the Children have a close relationship, currently works and lives in Edmonton. She will be able to provide immediate family support and free daycare for the Children on weekdays after 4 p.m. and on weekends.
- [29] The claimant submits that she has located a two-bedroom plus den apartment for rent in the same building her mother lives for \$1,500 per month including utilities. She says that she has "guaranteed" employment with a catering company in Edmonton which will allow her flexible hours while the Children get settled there. However, the claimant has not provided any evidence regarding what her wage would be or how many hours she would be able to work.
- [30] The claimant proposes that the Children would attend a school which is only a five-minute drive from the Edmonton apartment. The school currently has an enrollment of 391 students and, according to the claimant, offers many extra-curricular activities and clubs. She submits that Edmonton will also provide the Children with the opportunity to develop new interests. The claimant believes that the relatively small size of the school will provide an easier transition for the Children than would be the case if they were enrolled in a larger school. Although kindergarten for H. with this school will only be one-half day, the claimant deposes that there are daycare facilities available for the afternoons to fill the time gaps before her mother returns home from work.
- [31] The claimant maintains that she will have better access to employment and greater opportunity to advance her career as a hairstylist in Edmonton. Once the Children are settled, she plans to "rent a chair" at a local hair salon and work full time as a hairstylist.
- [32] The claimant proposes that, if she is permitted to move to Edmonton with the Children, the respondent will have six guaranteed visits with them per year, namely:
- Thanksgivings (in Edmonton);
 - one week at Christmas (in Stewart);
 - two weeks during Spring Break (in Stewart);
 - a long-weekend in May (in Edmonton);
 - two weeks at the beginning of the summers (in Stewart); and
 - two weeks at the end of the summers (in Stewart).
- [33] She submits that, when in Edmonton, the respondent could stay in a spare bedroom in her mother's apartment or he could stay in her apartment and she would move out. She says that she would be flexible with the respondent's parenting time as reasonably necessary.

Analysis

1. Appropriateness of a Summary Trial in a Relocation Case

- [34] Although the parties agree that this claimant's application is suitable for summary trial under Rule 11-3 of the Supreme Court Family Rules, this Court has been cautious when asked to determine relocation applications in that fashion in the absence of agreed facts or cross-examination on the affidavits: P.A.L. v. L.A.L. 2015 BCSC 2369; S.L.B. v. M.D.R.B., 2015 BCSC 478.
- [35] In general, whether such applications are appropriate for determination by summary trial turns on the nature and quality of the affidavit evidence.
- [36] In this case, the nature and quality of the evidence is very good. There are few, if any, discrepancies in the evidence on material matters.
- [37] I have no hesitation agreeing with counsel that a summary trial determination of this application is appropriate.

2. Proposed Relocation

- [38] The starting point of the analysis in this case is ss. 16(8) to (10) of the Divorce Act, which stipulate that:

Custody Orders

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Factors

- (8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
- (9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.

Maximum contact

- (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[Emphasis added.]

- [39] The leading authority in Canada regarding a relocation of children under the Divorce Act is *Gordon v. Goertz*, [1996] 2 S.C.R. 27, a case involving a mother who had been granted "permanent custody" of a child who wished to relocate with the child to Australia. The Supreme Court of Canada summarized the law at para. 49 of the decision:

[49] The law can be summarized as follows:

1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
6. The focus is on the best interests of the child, not the interests and rights of the parents.
7. More particularly the judge should consider, inter alia:
 - a) the existing custody arrangement and relationship between the child and the custodial parent;
 - b) the existing access arrangement and the relationship between the child and the access parent;
 - c) the desirability of maximizing contact between the child and both parents;
 - d) the views of the child;
 - 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;
 - f) disruption to the child of a change in custody;
 - g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.

[40] The Supreme Court of Canada concluded at para. 50:

[50] In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all of the circumstances, old as well as new?

[Emphasis added.]

- [41] In *T.K. v. R.J.H.A.*, 2015 BCCA 8, the British Columbia Court of Appeal considered the application of the law as set out in *Gordon* in circumstances where, as here, there is no pre-existing custody order. That case involved a mother who wished to relocate with her ten- and eight-year-old children to Toronto from Victoria, where they had been born and raised. Although there was no pre-existing custody order, the parties had de facto joint custody. The Court of Appeal upheld the trial judge's decision that it was in the best interests of the children that they remain in Victoria.
- [42] The Court of Appeal held that the "child-centered" test from *Gordon* continues to govern such cases, however the factors listed at para. 49(7) must be modified to deal with initial applications for custody and residency:
- [47] The test in *Gordon v. Goertz* has been adopted in a modified manner to mobility issues that arise in the context of an initial application for custody and principal residency under the Divorce Act. See *Nunweiler v. Nunweiler*, 2000 BCCA 300, *Falvai v. Falvai*, 2008 BCCA 503, S.S.L., and *Hejzlar v. Mitchell-Hejzlar*, 2011 BCCA 230. The first stage of the test which requires a material change of circumstances is, of course, redundant in an initial application. The focus therefore immediately turns to the factors listed in para. 49(7). Those factors must be modified to the extent that there is no pre-existing order that has established a "custodial parent" and an "access parent". With these "adjustments", the child-centered test from *Gordon v. Goertz* continues to govern an initial application for custody and residency under the Divorce Act that involves a mobility issue. In *Nunweiler*, Madam Justice Saunders explained:
- [28] The significance of the reasoning in *Gordon v. Goertz* in an initial determination of custody is, I consider, three-fold. First, the decision directs the court to consider the motive for a parent's relocation only in the context of assessing the parent's ability to meet the needs of the child. This, in my view, is as relevant a direction on an initial custody hearing as on a variation hearing. Second, the decision confirms the significance of the instruction, found in s. 16(10), to consider the willingness of a parent to facilitate contact, but notes that this consideration is subordinate to over-all consideration of the best interests of the child. Third, and more broadly, it approaches the issue of relocation of residence from a perspective of respect for a parent's decision to live and work where he or she chooses, barring an improper motive. [Emphasis of D. Smith J.A.]
- [48] Similarly in *Falvai*, the Court discussed the modification of the test from *Gordon v. Goertz* for initial custody applications involving a mobility issue by adopting a "blended" analysis that includes a consideration of the mobility issue as part of, not separate from, the determination of the custody issue. In *Falvai* the trial judge was found to be in error in first deciding the custody issue in favour of the mother, and thereafter determining the mobility issue by refusing her request to relocate with the child:

[25] This analysis [in para. 28 of Nunweiler] does not create a "two-step" analysis as was undertaken by the trial judge. Nor does it change the conventional approach to determining custody on an initial application, which requires a balancing of all relevant factors, including a parent's proposed move with the child to a new community, in deciding what is in the child's best interests. Rather, in the context of an initial application, Nunweiler applied a "blended" analysis considering some of the factors identified in Gordon.

[43] The Court of Appeal went on to state:

[52] However, in the context of an initial custody and relocation application there has been no previous determination that one or the other parent is best able to meet the needs of the children. Accordingly, the modification of the test in *Gordon v. Goertz*, in my view, needs to include a modification of para. 49(7)(e). In an initial application, it seems to me that the reasons for a parent's proposed move are relevant to the issue of whether the proposed move will meet the needs of the children or affect (positively or negatively) on that parent's ability to meet the children's needs. As the children's best interests is the "only issue" in the blended analysis, all relevant circumstances that relate to the children's needs and each parent's ability to satisfy those needs must be considered.

...

[54] In summary, there may be many legitimate and worthy personal reasons for a parent wanting to relocate or a parent wanting to remain in the children's existing community, that are entitled to be respected. However, those reasons may also be relevant to the question of whether the proposed move meets the children's needs and/or the parent's ability to provide for those needs and therefore may be a necessary consideration with the other relevant evidence to determining the custodial arrangement that is in the best interests of the children.

[Emphasis added.]

[44] In this case, there is no initial or existing custody or parenting order. The parties share parenting of the Children by agreement. Accordingly the first stage of the Gordon test, which requires a material change of circumstances, is redundant. The analysis moves directly to the second stage of the test.

[45] Our Court of Appeal in *T.K.* considered its earlier decision in *Stav v. Stav*, 2012 BCCA 154, in which Justice Prowse had recognized the relevance of the reasons why a parent wished to relocate and then went on to state:

[57] This reasoning, in my respectful view, is consistent with *Gordon v. Goertz* and the jurisprudence on the modification that must be made in the application of *Gordon v. Goertz* to initial applications for custody and residency. An inquiry into the custodial arrangement that is in the best interests of the children must consider "all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them" (para. 49(2)). While the reasons for a parent's proposed move, absent an improper motive, must be

treated with respect, they will likely be relevant to determining what custodial arrangement is in the best interests of the children.

[46] There is no requirement that the party seeking to move demonstrate the current situation is unsatisfactory. The test is forward-looking and enquires as to what circumstances are best for the child: *Hellberg v. Netherclift*, 2018 BCCA 404 at para. 69. When relocation provides a child's parents with increased emotional and family support, the court may find that the move will enhance the overall quality of the child's life as well: *K.W. v. L.H.*, 2018 BCCA 204 at para. 135.

[47] In *Hellberg*, our Court of Appeal recently addressed what is meant by "the best interests of the child":

[68] The best interests of the child is a positive right to the best present and future arrangements, which is something more than simply being free from harm. The oft-cited comments of L'Heureux-Dubé, J. in *Young v. Young*, [1993] 4 S.C.R. 3 at 84, while in a dissenting judgment, make the point:

The best interests of the child is not simply the right to be free of demonstrable harm. It is the positive right to the best possible arrangements in the circumstances of the parties. This could not be more clearly indicated than in the report on Family Law, *supra*, as the Law Reform Commission of Canada begins its recommendations on children and the dissolution of marriage with the following words at p. 63:

1. Children should have two fundamental rights when their parents' marriage ends:
 - (a) the right to social and psychological support by having the most suitable arrangements possible in the circumstances made for their custody, care and upbringing; and
 - (b) the right to economic support.

[Emphasis of Griffin J.A.]

[48] In *One v. One*, 2000 BCSC 1584, this Court reviewed the case law in British Columbia after *Gordon* (as it was at that time) and summarized the factors to be considered in determining the best interests of the children under s. 16 of the Divorce Act as follows (at para. 24):

- a) the parenting capabilities of and the children's relationship with parents and new partners;
- b) the employment security and prospects of each parent and, where appropriate, his or her new partners;
- c) the access to and support of extended family;
- d) the difficulty of exercising the proposed access and quality of the proposed access if the move is allowed;
- e) the effect on the children's academic situation;

- f) the psychological and emotional well-being of the children;
- g) the disruption of the children's existing social and community support and routines;
- h) the desirability of the proposed new family unit for the children;
- i) the relative parenting capabilities of each parent and the respective ability to discharge his or her parenting responsibilities;
- j) the children's relationship with both parents;
- k) the separation of siblings; and
- l) the retraining or educational opportunities for the moving parent.

[49] I turn now to an assessment of the relevant factors.

a) Parenting Capabilities

[50] The parties concede that they are both capable parents, and that they co-parent well with the best interests of the Children in mind.

[51] In Stewart, the Children have regular and frequent access to both parents. In Edmonton, they will not.

b) Employment Security and Prospects

[52] I find the primary reason behind the claimant's desire to move is the belief that her career as a hairstylist is hindered in Stewart and will be advanced in Edmonton, where she is confident she will become self-supporting and will be able to thrive in her chosen career. The claimant submits that she requires the support of her mother in order to do so. She has provided evidence of various online advertisements indicating there are job opportunities for hairstylists in Edmonton paying in the range of \$15 to \$35 per hour. However, there is no evidence that the claimant has approached any of these prospective employers. There is no evidence as to how many hours per week she would be able to work or what she expects she will be paid.

[53] The claimant submits that the respondent could readily obtain employment as a heavy equipment operator in Edmonton. The evidence is to the contrary. According to a document entitled "Alberta's Short-Term Employment Forecast 2019-2021" published in October 2019 by the Ministry of Labour and Immigration of Alberta, heavy equipment operators are and will be in low demand in Alberta. Other jobs that the claimant submits the respondent could apply for in Edmonton are those he is either unqualified for (e.g., long-haul driving), would result in him earning substantially less income, and/or would mean he would be away from home in a camp for weeks at a time. The evidence also indicates that job prospects in Edmonton are currently among the lowest in Canada and the unemployment rate is among the highest in the country.

- [54] I agree with respondent's counsel that the claimant's plan for employment in Edmonton is vague, uncertain, and lacks detail as to how and when her goal of self-sufficiency will be achieved.
- [55] The claimant's desire to advance her career is commendable. However, I am not satisfied that the claimant will be unable to do so in Stewart. She is the only hairstylist in the town. She is also the only trained nail technician. The evidence demonstrates that the claimant is almost fully booked with appointments on Saturdays, the only day that she takes appointments, and has had to turn down appointments. The evidence suggests that there is demand for hairstyling in Stewart that the claimant is not meeting.
- [56] I agree with respondent's counsel that the claimant has not taken meaningful steps to develop her hairdressing business in Stewart. She does not promote her services. She could easily do so by creating a website for her business or advertise on social media or in some other way. Now that all of the Children are in school full time, there is no reason (and none was suggested) why the claimant cannot take appointments during school hours.
- [57] Moreover, there are other job opportunities available in Stewart that the claimant could accept if she was motivated to work in a field other than as a hairstylist. I am satisfied on the evidence that daycare is available for the Children in Stewart as and when necessary.

c) Access to and Support of Extended Family

- [58] The Children would have access to and the support of the claimant's mother if they were relocated to Edmonton. I understand, as well, that the claimant's brother has recently moved to Edmonton from the Lower Mainland of BC. There is, at best, scant evidence regarding the role of the claimant's brother would play in the Children's lives.
- [59] Based upon the evidence before me, I am persuaded that the claimant's motivation to move to Edmonton is less about fostering a relationship between the Children and their grandmother and more about having family support available for free daycare so as to enable her to enhance her career.
- [60] The respondent's parents reside in the Lower Mainland where travel to both Stewart and Edmonton is easily available.

d) Quality of the Proposed Access

- [61] The claimant's proposed relocation to Edmonton would result in the Children having substantially less time with their father. The claimant concedes that it will be difficult for the Children to be far away from him.
- [62] Relocating the Children to Edmonton will put a significant time and financial burden on the respondent for each of the six annual visits the claimant proposes he would have with them. Stewart and Edmonton are approximately 1500 kilometers apart by road. It is a 16-hour drive requiring an overnight stay midway (likely in Prince George). There are no direct flights between the two communities. The respondent would have to contend with a three-hour

drive from Stewart to Terrace, waiting at the Terrace airport for one of the few flights to Vancouver, connecting to a flight from Vancouver to Edmonton, having to rent a car, and finding accommodation for himself and the Children, all before his parenting time would even begin.

- [63] I note two of the six visits as proposed by the claimant would be on three-day weekends, leaving the respondent with at most two days with the Children before he would have to undergo the rigours of his return travel to Stewart. The balance of the six proposed visits would likely mean that the Children would return with the respondent to Stewart, an equally onerous and tiring task involving significant expenses.
- [64] I do not accept as reasonable or practical that the respondent be required to stay in the claimant's mother's spare bedroom or in the claimant's two-bedroom apartment with the Children while in Edmonton for his parenting time.
- [65] In total, the claimant is proposing that the respondent have seven weeks of holiday parenting time. He does not have seven weeks vacation from work each year. Summers are the respondent's employer's busiest time and it would be very difficult for him to take vacation during the summers.

e) Effect on the Children's Academic Situation

- [66] The claimant's position is that, because the school in Stewart is small, it is inadequate for the Children's needs and they will be disadvantaged in their education. She submits that the Children will have access to improved academic and extracurricular opportunities in Edmonton. She submits that they are young and will adapt well to a school that offers greater resources than are available in Stewart.
- [67] The mere fact that the school and student enrollment in Stewart is relatively small does not mean the Children will be disadvantaged in the quality of their education relative to Edmonton schools. There is no evidence comparing the two education systems from which this Court can make a determination that one is better than the other. There is no evidence regarding the quality of education the Children will receive in Edmonton beyond the claimant's speculation.
- [68] There is, however, evidence in the form of a letter dated August 12, 2020 from Terri Scott, the twins' teacher, who has taught at the Stewart school for 30 years. In the letter, Ms. Scott says that although the school has split-grade classrooms, they are able to group students according to skill level and need, regardless of grade. Ms. Scott also writes that students who are experiencing learning difficulties (as in L.'s case, with reading and writing) are provided an individualized program that incorporates classroom adaptations, close monitoring, and staff support through Educational Assistants, and a Learning Assistance Teacher. She writes that their small school ensures "that students are not lost in the crowd" and that "individualization is our speciality". Ms. Scott's letter concludes:

Although our school is small, we offer students a full academic education, enrichment experiences, and a caring and supportive staff

[69] I find that the Children's school in Stewart will provide an adequate education for them and that they will not be disadvantaged by their schooling there.

f) Disruption of the Children's Existing Social and Community Support and Routines

[70] The claimant concedes that the Children are rooted in the Stewart community and have many friends there, but submits they are young and will easily adjust to a new life in Edmonton where they will make new friends. I have no doubt that they will do so. Nine- and five-year-old children are generally resilient.

[71] However, many of the activities currently enjoyed by the Children in Stewart will not be easily available for them in Edmonton, including exploring the tidal flats and wilderness riverbeds, freely riding bicycles through the community, kayaking on the lake, and ATVing.

g) The Children's Relationship with Both Parents

[72] The claimant concedes that, currently, the Children have close to equal time with both parents and that relocating them to Edmonton will result in them seeing their father "less frequently".

[73] The claimant submits that, given the increased economic stability and family support she will have in Edmonton, together with her willingness to do everything in her power to foster a close and positive relationship between the Children and their father, relocating to Edmonton is in the best interests of the Children.

[74] In the end, the question is whether, given the claimant's assertion of better career opportunities and family support for her, the Children's overall quality of life will be enhanced by relocating to Edmonton.

[75] In my view, the answer is no. I find that there is no financial advantage to the claimant moving to Edmonton. Indeed, I find there is a distinct financial disadvantage to her doing so, given the uncertainty of her employment and the significant increase in expenses. The parties' cumulative finances will undoubtedly decline. While the claimant's proposed move may potentially allow her to become self-sufficient, I am not persuaded that she will be unable to become self-sufficient in Stewart. Relocating to Edmonton will not meet the needs of the Children to have a full and loving relationship with their father. It will result in a complete change in lifestyle for them. There is no evidence suggesting the Children will thrive in Edmonton to a greater degree than they are plainly thriving in Stewart. The Children have a very close and loving relationship with each of their parents who are both involved in their lives. The existing arrangement is one of co-parenting and shared parenting. The Children's needs are being met. They live in a large home with ample room for fun and frolic, as compared to a small apartment in Edmonton. In Stewart, they have maximum contact with each parent. They have many friends who live near by. They have

access to the outdoors. The arrangements for their custody, care, upbringing and economic support currently in place, in Stewart, are suitable and appropriate.

[76] Section 16(10) of the Divorce Act provides that the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child.

3. Determination on Proposed Relocation

[77] I have weighed the conceded importance of the Children having continued full contact with their father in the community in which they were born, have been raised, and to which they have become accustomed, against the importance to the claimant of her desire to advance her career as a hairstylist in Edmonton. I find that in the circumstances of this case, it is in the Children's best interest that they continue to live in Stewart and not relocate to Edmonton.

4. 2. Spousal Support

[78] Section 15.2(4) of the Divorce Act sets out the criteria to be considered by the court when making an order for interim or final support:

15.2(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[79] The objectives of an order for spousal support are set out in s. 15.2(6):

15.2(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

a) Compensatory spousal support

- [80] Entitlement to spousal support may be found on a compensatory basis where one spouse has foregone career opportunities to assume greater household and child-rearing responsibilities, or one spouse has increased income earning capacity as a result of the roles assumed by the spouses during the marriage: *Moge v. Moge*, [1992] 3 S.C.R. 813.
- [81] The compensatory basis for spousal support recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities, often result in a lower earning potential and fewer future prospects of financial success. In addition to acknowledging these economic disadvantages, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts: *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-51. The main goal of compensatory spousal support is to provide for an equitable sharing of the economic consequences of the marriage: *Moge*, at 858-66.

b) Non-compensatory spousal support

- [82] Entitlement to spousal support may also be found on a non-compensatory basis where it can be shown that a spouse will be limited to part-time employment due to some external factor: *Chutter* at paras. 96-97. Non-compensatory support entitlement focuses on the needs of the recipient spouse relative to the respective incomes of the spouses.
- [83] The claimant submits that she has a strong claim for both compensatory and non-compensatory spousal support on the basis that she was a stay-at-home parent since the twins were born in 2011. She submits that in so doing, she sacrificed the opportunity to grow her career as a hairstylist and enabled the respondent to build up his seniority with his employer. The claimant submits that her compensatory spousal support should be at the higher end of the range in both amount and duration.
- [84] The claimant moved to Stewart before she met the respondent in order to "try something new". Although she ultimately became a "stay at home mother" after the twins were born, there is no evidence that she "gave up" a career. Indeed, after the birth of the parties' third child, H., the claimant continued her career (the very one she now wants to pursue in Edmonton), albeit only one day per week.
- [85] I find that this is not a case for an award of spousal support at the high end of the range.
- [86] The respondent concedes that the claimant is entitled to mid-range spousal support. The question to be determined is the quantum of support.
- [87] The respondent concedes that his 2019 Line 150 income (now Line 15000) of \$92,061 should be used for the calculation of his spousal support obligation even though his 2020 income will be less because he was unable to work for two months.

- [88] The respondent submits, however, that the claimant's income should be imputed to be \$30,000 for the following reasons:
- a) the claimant has conceded that her 2019 Line 150 income, as assessed, is incorrect because she it does not include the income she received as a hairdresser;
 - b) the claimant is the only hairstylist in Stewart;
 - c) the claimant's records indicate that she earns approximately \$1,200 to \$1,300 per month working only Saturdays;
 - d) the Children are all now in school full-time and there is no reason why she would not to be able to increase her hairstylist appointments substantially beyond the current one day; and
 - e) there are other jobs available in Stewart that the claimant could perform such that she is not limited to working as a hairstylist.
- [89] In my view, with the Children now in school full-time, the claimant ought to be readily able to increase her annual income as a hairstylist substantially beyond the current approximately \$10,000--I estimate by at least 2.5 times-- to \$25,000.
- [90] In addition, despite the parties' co-parenting arrangement, the plaintiff receives 100% of the CCB of \$1,541 per month (\$18,492 per year). The DivorceMate calculations for the claimant's and respondent's respective Guideline incomes of \$30,000 and \$92,000, indicate that, for the mid-range spousal support, the CCB should be allocated 65.6% to the claimant and 34.4% to the respondent. On that basis, the claimant should be receiving \$1,011 per month (\$1,541 x 65.6%) (\$12,132 per year) for CCB or \$530 per month (\$1,541 - \$1,011) (\$6,360 per year) should be going to the respondent.
- [91] After having considered the foregoing, I find that it is appropriate to impute a Guideline income of \$30,000 to the claimant.
- [92] The mid-range DivorceMate calculation based upon the claimant and the respondent's respective Guideline incomes of \$30,000 and \$92,000 indicate that the respondent is obliged to pay to the claimant \$608 per month in spousal support. There will be an order to that effect. Such monthly spousal support payments will commence on October 1, 2020.
- [93] The respondent's monthly spousal support obligation will be adjusted each year on the first day of July each year, commencing July 1, 2021, based upon the parties' respective Guideline incomes for the previous taxation year. The parties will exchange their income tax returns by the 31st day of May each year as well as their notice of assessments within seven days of receipt from the Canada Revenue Agency.
- [94] Spousal support will be reviewed upon the earlier of the parties moving away from Stewart or five years from the date of these Reasons for Judgment.

Conclusion

[95] I am making the following orders:

- 1) The claimant's application for an order that she be permitted to relocate with the Children to Edmonton is dismissed.
- 2) The claimant's application for an order that the respondent pay spousal support to her is allowed. The respondent will pay spousal support to the claimant in the amount of \$608 per month, commencing October 1, 2020.
- 3) The respondent's monthly spousal support obligation will be adjusted each year on the first day of July each year commencing July 1, 2021, based upon the parties' respective Guideline incomes for the previous taxation year. The parties will exchange their income tax returns by the 31st day of May each year as well as their notice of assessments within seven days of receipt from the Canada Revenue Agency.
- 4) Spousal support will be reviewed upon the earlier of the parties moving away from Stewart or five years from the date of these Reasons for Judgment.

costs

[96] As there has been divided success, I am inclined to make an order that each party bear their own costs. However, counsel are at liberty to apply for an order as to costs if they so wish.

"G.C. Weatherill J."

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