

CANADA / JUDGMENT

A.T. v. M.E.V.

2025 BCSC 279

COURT

Supreme Court of British Columbia

DECIDED

21 February 2025

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2025 BCSC 279 A.T. v. M.E.V.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.T. v. M.E.V.,

2025 BCSC 279

Date: 20250221

Docket: E221618

Registry: Vancouver

Between:

A.T.

Claimant

And

M.E.V.

Respondent

Before: The Honourable Mr. Justice Branch

Reasons for Judgment

The Claimant, appearing on her own behalf:

A.T.

Counsel for the Respondent:

P. Walden

Counsel for the Children:

Z. Jenab

Place and Date of Hearing:

Vancouver, B.C.

December 4-6, 2024

Place and Date of Judgment:

Vancouver, B.C.

February 21, 2025

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I. INTRODUCTION

[1] The claimant seeks a long list of orders in this high-conflict family law matter. Most notably, the claimant seeks an order that her children be returned to the Lower Mainland from Winnipeg, where they have moved with the respondent.

II. BACKGROUND

[2] The parties began living together in a marriage-like relationship in 1998.

[3] There are two children of the relationship, namely:

- a) R1, who is 18 years old; and
- b) R2, who is 14 years old.

[4] In August 2015, the claimant was diagnosed with cancer, which appears to have been a trigger for the development of a great deal of stress within the family unit.

[5] There is evidence of the claimant becoming violent with her children. It is alleged that in or about February 2022, the claimant slapped R2 in the face, which she still claims was merely defensive. There were other allegations of violence. The Ministry of Children and Family Development investigated and imposed a safety plan.

[6] The parties' separation date is at issue. The respondent says that the separation occurred as early as April 2017, while the claimant says that the separation only began in 2021.

- [7] It does appear that the parties' relationship began to deteriorate in 2017. In 2018, the parties entered into a nesting arrangement that allowed the parties and the children to remain in the family residence in Richmond, BC (the "Home"), notwithstanding the ongoing marital discord. The nesting approach eventually failed however, when the claimant locked the respondent and the children out of the Home in 2022. The respondent and the children began to live elsewhere. The respondent sent the claimant weekly updates on the children's activities.
- [8] Litigation followed. Indeed, this is the parties' second family proceeding. The first notice of family claim was filed in April 2018. At a judicial case conference on June 17, 2022, Associate Judge Robertson noted that the parties had previously filed a consent dismissal order in the first proceeding in November 2020. Given this, Associate Judge Robertson ordered that the claimant file a new notice of family claim, while also making an interim order regarding the claimant's parenting time (the "Robertson Order"). In accordance with the Robertson Order, the claimant commenced this second action on June 24, 2022.
- [9] The children visited the respondent's family in Winnipeg for an extended period in 2022. R1 was there for about a month. R2 stayed for several months.
- [10] Associate Judge Hughes made an order dated July 8, 2022 (the "Hughes Order"), that included the following direction with respect to the parties' ability to relocate:

Neither party will remove the children or either child from the province of B.C. without the prior written consent of the other party or court order. Such consent shall not be unreasonably withheld.

- [11] The Hughes Order also provided that there would be reunification counselling between R2 and the claimant using the services of the counsellor, Alyson Jones. Finally, the Hughes Order requested that Dr. Ellie Bolgar prepare a section 211 report (the "211 Report").
- [12] On September 15, 2022, Associate Judge Bilawich made an order on consent that the respondent pay interim spousal support of \$1,000 per month to the claimant (the "Bilawich Order").
- [13] Little progress has been made in the efforts to improve the claimant's relationship with the children through reunification counselling. In April 2023, Salley-Ann Ross from Alyson Jones' office released a progress report. Between September 2022 and April 2023, the family attended a significant number of individual counselling sessions but only five joint sessions. These joint sessions did not go well. For example, in December 2022, the claimant was scheduled to have a session with R1 and R2, but the respondent was late in arriving with the children, and as a result, the session was only 10 minutes long. Ms. Ross' report states baldly: "There is no progress in this process after seven months". Her report details a number of challenges arising through the process and reviews the parties' conduct. From this report, it appears that blame for the failure of the reunification efforts can be spread quite evenly across all parties.

- [14] In June 2023, the claimant brought an application seeking to have the prior order for reunification counselling enforced and alleging that the respondent had been unable to "make or commit to the majority of appointments". On July 12, 2023, Justice Francis ordered that the family follow the recommendations of Alyson Jones with respect to the timing and structure of any further counselling sessions (the "Francis Order").
- [15] On April 28, 2023, Dr. Bolgar finally submitted the 211 Report. Her key findings and recommendations were as follows:
- a) The claimant was diagnosed with depression in 2018. She suffered at least three mental breakdowns. She was once admitted to the hospital for 15 days. Dr. Bolgar spoke to the claimant's treating physician, Dr. Alan Bates, who advised that his diagnostic impression as of March 30, 2023, was that the claimant was suffering from "unspecified bipolar or related disorder." He advised that he had prescribed mood stability medication, but acknowledged that the claimant was unlikely to take the medication.
 - b) Dr. Bolgar's own personality assessment testing yielded the following conclusion: "[The claimant's] diagnostic possibilities indicate unspecified somatic symptoms and related disorder as well as unspecified personality disorder with schizotypal features". Further, Dr. Bolgar found that "as long as [the claimant] has uncontrolled manic episodes with self-focused tendencies her disorganized thought process poses continuous risk of harm to the children's emotional well being."
 - c) Dr. Bolgar noted that the respondent reported a history of physical violence by the claimant. Dr. Bolgar stated that the claimant "deflected questions about these occurrences and stated that she was provoked by [the respondent], and they were equally hurting each other". Dr. Bolgar noted that there were also concerns regarding abuse of R1 and R2 by the claimant. Audio recordings (the authenticity of which is called into question by the claimant) suggested verbal and emotional abuse of R2. Dr. Bolgar stated that she was "concerned about [the claimant's] relatively low threshold for anger and tendency to express anger or disapproval of the children's behaviour in loud, impulsive denigrating and intimidating ways. It is the writer's conclusion that her behavior is related to mental health related violence as described above."
 - d) In terms of the need for supervision of the claimant's parenting time, Dr. Bolgar stated: "unless her bipolar thoughts are managed by medication recommended by Dr. Bates, she can't be unsupervised with the children." She concluded that "Considering the ages of [the children] there is no real risk for their physical safety to them from their mother and emotionally they appear as outspoken. [R1] needs to maintain his relationship with his mother, and [R2] needs to repair his relationship with his mother."

- e) Dr. Bolgar acknowledged that "[the claimant] can be an exceptional advocate for her children. She is assertive, relentless and creative with resources. However, on a relationship level, she struggles with attachment intimacy, lacks genuine empathy for the children's emotional needs and struggles to place the needs of the children primary. She tends to place her own needs and desires primary or [it is possible] that at times she may be so overwhelmed that she is unable to accurately perceive their needs."
- f) Turning to Dr. Bolgar's consideration of the respondent's parenting capacity, after analyzing the respondent's MMPI-2 test results, Dr. Bolgar concluded that he "may be volatile and prone to hostile angry or argumentative behaviour".
- g) Dr. Bolgar stated that "It appears that [the respondent] has an enmeshed relationship with [R2] and his anxious feelings are being transferred to the child his denigration of [the claimant], his gatekeeping and preventing repair in the mother and child relationship has caused similar harm to the children". She noted that there were "unhealthy alignments between the children and their father."
- h) Turning to the children, Dr. Bolgar highlighted two significant factors that prevented the children from having a healthy relationship with the claimant. First, "[the claimant's] lack of insight into her behavior with the children, her argumentative nature, emotional impulsivity, her tenancy to manipulate them, and her lack of empathy regarding the impact of those on the children". Second, "[the respondent's] gatekeeping behavior, his tendency to parent unilaterally, interference with counselling, inappropriate sharing of information and influencing the children's perspectives about their mother".
- i) Although the children expressed their views that they preferred to have little to do with the claimant, it was Dr. Bolgar's opinion that "these children are unable to reliably identify and express views which represent their own feelings, needs and balanced view of factors at both homes."
- j) Dr. Bolgar concluded that "[the respondent's] approach to the children is significantly more effective than that of [the claimant] "
- k) Dr. Bolgar opined that "The children need to spend time with their mother although the writer is not recommending overnight visits until their perception of her improve". She also recommended that any parenting time be supervised.
- l) Dr. Bolgar suggested that the respondent exercise primary parenting responsibilities under s. 41(b) [where the child should reside] and (c) [with whom the child will live and associate] of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Dr. Bolgar also suggested that the respondent make decisions regarding the children's medical needs and activities, but should keep the claimant informed. She proposed that the parties jointly exercise the remaining responsibilities under s. 41 of the FLA, but that "If conflict continues to exist, the children should be protected, and [the respondent] should be responsible for all parental responsibilities". Dr Bolgar also concluded that "Co-parenting at this point is not possible"

and that it was "the writer's opinion that the extraordinary needs of the children, and involvement in resources recommended take precedence over reunification and co-parenting".

- m) Dr. Bolgar recommended that in "consideration of [R2's] resistance and anxiety around therapy" reunification counselling should be terminated in favor of weekly individual therapy. Dr. Bolgar concluded that R2 was "deeply traumatized and impacted by his mother's aggressive behavior and violence" and also that "[the respondent]'s anxiety and overprotectiveness has caused this child to have a phobic reaction towards his mother".
 - n) Dr. Bolgar noted that the respondent was hoping to move the children to Winnipeg and that both children expressed support for the move. Dr. Bolgar stated that "the children appear to enjoy close relationship[s] with [the respondent's] extended family" and that both children expressed that they were not close with the claimant's family. Dr. Bolgar recommended that the children continue to spend time in the summer in Winnipeg with the respondent's family, but also that the children's relationship with the claimant's extended family be nurtured. Dr. Bolgar noted that the children were "in need of stability within the home and community", that R1 had good support from his sports team and girlfriend, and that R2 had friends in school. Dr. Bolgar concluded that, "Given the children's need for stability and consideration of their mother's condition, a major move to another province even though with the support of the respondent's family at this time is likely not in their best interest". Dr. Bolgar was concerned that R1's preference to move to Winnipeg appeared to be influenced "by his father's needs rather than his own thought and careful consideration of the loss that move would involve".
- [16] On March 31, 2023, the respondent's former lawyer purported to deliver to the claimant a Notice of Relocation pursuant to the Divorce Act, R.S.C. 1985, c. 3 [DA], advising that the respondent proposed to move with the children to Winnipeg as soon as practicable (the "Relocation Notice"). The claimant replied with an email indicating that she disagreed with the relocation. She did not provide a formal Objection to Relocation: Notice of Relocation Regulations, SOR/2020-249, s. 5.
- [17] On July 12, 2023, the respondent brought an application to vary the Hughes Order such that the respondent would "no longer [be] restrained from travelling with the Children" and would be permitted "to relocate the residence of the Children to Winnipeg, Manitoba on or by September 1, 2023". The respondent subsequently adjourned the application by requisition on July 25, 2023.
- [18] The current governing order in relation to parenting time is that of Justice Fitzpatrick made on July 18, 2023, which provides for supervised time with the claimant twice a week for three hours during the work week, and an additional four hours on the weekend.
- [19] There have been ongoing disputes about the return of the respondent and children's personal property. On July 23, 2023, Justice Francis ordered that the respondent could attend the residence for the purposes of cataloging the personal property remaining in the home

and that he would provide the claimant with a list of the items he wished to be retrieved (the "Francis Order #2"). The respondent alleges that when he attended the Home, the claimant interfered with the process. Since then, the children have requested the return of their property in the Home, but the parties have been unable to agree on how that should occur and who should pay for any shipping.

- [20] The Francis Order #2 also allowed the respondent the right to travel with the children to Manitoba, but only for the summer. The children visited Winnipeg for a month in August 2023.
- [21] In September 2023, the claimant brought an application seeking to have the respondent held in contempt for failing to cooperate with the reunification counselling. In her October 10, 2023 reasons, Justice Duncan noted that some of the lack of progress appeared to stem from the respondent's late arrival for counselling sessions and R2's unwillingness to participate: *A.T. v. M.E.V.* (10 October 2023), Vancouver E221618 (B.C.S.C.) at para. 11 (the "Duncan Reasons").
- [22] The Duncan Reasons also note that the respondent had advised the Court at that time that he would be advancing an application for appointment of counsel for R1 and R2 in advance of the pending relocation application: para. 22.
- [23] The Duncan Reasons included orders that:
- a) put a temporary halt on parenting time with R2;
 - b) reactivated the reunification counselling program for a period of eight weeks; and
 - c) upon completion of the eight weeks, provided that the prior parenting schedule would be reactivated.
- [24] On November 9, 2023, the claimant brought an application seeking, among other things, "an order [to] pause the respondent for 1 year to apply to the courts to seek counsel for the children for an application for relocation". This application was heard by Justice MacDonald who stated that, "In my view, the application for relocation should not proceed prior to the parties attending mediation with the JML pro bono mediation program, which I ordered on November 24, 2023": *A.T. v. M.E.V.*, 2023 BCSC 2200 (unreported) at para. 23 (the "MacDonald Reasons"). The parties' application materials are unclear as to whether this mediation occurred.
- [25] Pursuant to an order issued by Associate Judge Bilawich on December 22, 2023, the children have been represented by their own counsel
- [26] The latest reunification counselling effort concluded in December 2023 and was deemed unsuccessful by the counsellors, who stated:

At this point we do not recommend any further reunification sessions due to a variety of concerns...

The team does not feel it would be helpful to continue to facilitate these reunification sessions with the current state of this case. There are concerns that further sessions at this point could embed the issues deeper.

[27] On April 30, 2024, the claimant wrote a letter to the children's lawyer advising that she was prepared to allow a move to Winnipeg, but only under certain conditions, including that:

- a) the children provide letters explaining their position on the points of tension between them;
- b) she receive information about their schooling;
- c) the children be with her for five days before their departure;
- d) she be provided access to the family dog; and
- e) the parties sort out the delivery of the remaining personal property.

[28] Both children wrote responsive letters to the claimant, responding to the claimant's questions regarding the tension points, and left open the possibility of more regular communication in the future. But neither wanted to spend the requested five days with her.

[29] On July 11, 2024, the respondent and the children moved to Winnipeg. The respondent purported to rely upon the notice regime in the DA. Specifically, his position was that since he had given notice which was not formally objected to, he was allowed to move with the children.

[30] The respondent's purported reliance on the DA is difficult to square with the legal nature of their relationship. It does not appear that the parties were ever married, negating the availability of the DA regime. In terms of the present status, there is a tentative trial date: 15 days commencing June 9, 2025.

[31] As R1 is now 18, the age of majority in Manitoba (The Age of Majority Act, C.C.S.M. c. A7, s. 1), the respondent has ceased including details about R1 in his weekly updates provided to the claimant.

[32] Through their counsel, the children at the hearing advised the Court that:

- a) They wish to remain in Winnipeg, as things have generally been going well for them there.
- b) Virtually all of their interactions with the claimant since separation have been tense and unproductive.
- c) R1 has not seen the claimant for about a year. R2 has not seen the claimant for about 2 years. R2 says that "this last court mandated visit was awful and he does not wish to have any other visits with his mother".
- d) R1 advises that "any interactions he has had with [the claimant] for the past several years have only harmed his health, school, and athletic career".

- e) R2 says that "his mother cause[d] his stress and pain, and continues to do so".
- f) R1 has chosen to stop texting with the claimant.
- g) The children do not want further parenting time with the claimant, except at their own discretion.
- h) They are opposed to any further reunification counselling. R2 states that "he spent a great [deal] of time in the reunification counselling, but nothing with regards to his mother was changing or improving."
- i) They have no interest in discussing the claimant's will with her. R2 "feels that his mother is unnecessarily imposing on him the weight of discussing her will and personal items to be left to him".
- j) The children want all decision-making authority to rest with the respondent. Given his age, R1 prefers that any decisions be made in consultation with him.

III. ANALYSIS

[33] I address each of the claimant's requested orders, although I have adjusted and clarified the language of several of them in order to ensure that they conform with legally available remedies.

1. An order to obtain the current address of the Respondent and the children

[34] The respondent agreed to provide this information, and I so order.

2. An order to vary the Hughes Order, such that should the respondent move the children without written consent, any order preventing the move would become police-enforceable and other potential remedies could be sought

[35] After discussion with the counsel at the hearing, it was agreed that, in light of the unambiguous wording of the Hughes Order preventing relocation, it should have been the respondent applying to amend the Hughes Order to approve the children's move to Winnipeg retroactively.

[36] As noted above, rather than lose the opportunity to address the relocation issue at the first available opportunity, the parties agreed that the respondent's response could be treated as his application to approve the relocation, and the claimant's application opposing relocation could be treated as her response. Given the importance of dealing with this issue promptly, I agreed to exercise my inherent jurisdiction to treat this as an application by the respondent to amend the Hughes Order. The filed application and application response put the question of relocation squarely in issue and provide enough evidence to decide the issue, at least on an interim basis.

- [37] The respondent does not contest that he breached the Hughes Order but suggests that he honestly believed he was entitled to move based on the lack of a formal objection from the claimant. As previously mentioned, this position is difficult to square with the fact that the respondent brought (and then adjourned) an application to modify the Hughes Order. Why go through this step if he was of the view that he could proceed by simply giving notice? Further, the submission is also arguably at odds with the Relocation Notice that the respondent's previous lawyer delivered to the claimant. Part D of the Relocation Notice ("Proposal to change parenting arrangements") indicated that: "The children will reside primarily with the respondent in Winnipeg. He intends to move there with the children as soon as he is permitted to do so" [emphasis added]. Further, Part E of the Relocation Notice indicates that if no objection is made in 30 days, relocation can only proceed "if there is no current court order saying the move cannot happen". But here, there was such an order. As such, the ball was clearly in the respondent's court to bring (or schedule) the necessary application.
- [38] The respondent's submissions on relocation were based on the DA. Again, this appears to have been misguided given that the parties were never married: *K.W. v. L.H.*, 2018 BCCA 204 at para. 98. I find that the relocation question should properly be addressed under the FLA.
- [39] That said, although relocation is addressed somewhat differently under the FLA and DA, there is little substantive difference between the two tests, especially on an interim application: *Den Duyf v. Den Duyf*, 2024 BCSC 2151 at para. 72. Under either set of legislative provisions, the Court's determination of whether a parent may relocate will largely be driven by what is in the child's best interests.
- [40] Any fresh order I make today on the question of relocation must be interim, as the factual and legal issues are complicated, and the evidentiary record is not yet fully developed as it will be at trial: *Den Duyf* at paras. 63-64.
- [41] The principles governing interim relocation were reviewed in *Den Duyf*. The Court stated:
- [65] For many of the same reasons the courts approach final relocation orders carefully on a summary trial basis, they are also reluctant to allow a relocation on an interim application. An interim order that has the effect of significantly reducing the non-moving parent's time with the child can be tantamount to a final order, with a lasting impact on the child's relationship with both parents: *Nolie v. Reece*, 2016 BCSC 2201 at para. 27.
- [66] That being said, relocation orders may be granted on an interim basis in appropriate cases: *P.D.B. v. L.D.A.*, 2021 BCSC 1984 at para. 46.
- [74] On an interim application, the fundamental question is whether it is in the child's best interests to allow the relocation on an interim basis pending a full trial. If the child's best interests are evenly balanced on the interim application, the relocation issue is better left to trial.

- [42] Under the FLA, relocation is addressed differently depending on whether there is a previous order or agreement in place. Division 6 applies if "a written agreement or an order respecting parenting arrangements or contact with the child applies to the child": s. 65(2)(b). Division 2 applies if there is no agreement or order in place: s. 46(1)(a).
- [43] In this case, there are interim orders in place addressing parenting arrangements. First, there is the June 2022 Robertson Order regarding parenting time. Second, the July 2022 Hughes Order prohibited the removal of the children from BC without prior consent from the other party or court order. Third, the July 2023 Fitzpatrick Order sets out a schedule for the claimant's supervised visits with the children.
- [44] The fact that these earlier orders were made on an interim basis adds an additional layer of complexity. In K.W., the Court of Appeal addressed conflicting lines of authority regarding whether to apply Division 2 or Division 6 to the relocation analysis when there is an interim order in place. Given the existence of an interim order, the trial judge applied Division 6 to the relocation analysis. The Court of Appeal held that this was an error and that Division 2 should have been applied instead: paras. 91-92.
- [45] The situation here is distinguishable from the situation in K.W. in that the Robertson and Hughes Orders had been in place for over a year by the time the respondent brought his relocation application on July 12, 2023. As the Court of Appeal acknowledged in K.W., an interim order made in advance of a claim or notice of intention to relocate raises different policy considerations. Such an order "may create legitimate expectations about existing arrangements, particularly if the order has remained in effect for an extended period of time": para. 93.
- [46] This is a situation where the interim orders, made in advance of the relocation application, did create legitimate expectations about existing arrangements. Therefore, the analysis should proceed under Division 6 of the FLA. However, and in any event, given my findings below regarding the best interests of the child, the result would have been the same under either Division, largely because the respondent does not qualify for the favourable burden treatment available under Division 6 as a result of his misconduct.
- [47] The relevant provisions of Division 6 of the FLA are as follows:
- 65 (1) In this Division, "relocation" means a change in the location of the residence of a child or child's guardian that can reasonably be expected to have a significant impact on the child's relationship with
- (a) a guardian, or
 - (b) one or more other persons having a significant role in the child's life.

Notice of relocation

66 (1) Subject to subsection (2), a child's guardian who plans to relocate themselves or a child, or both, must give to all other guardians and persons having contact with the child at least 60 days' written notice of

- (a) the date of the relocation, and
- (b) the name of the proposed location.

Resolving issues arising from relocation

67 (1) If notice is required under section 66 [notice of relocation], after the notice is given and before the date of the relocation, the child's guardians and the persons having contact with the child must use their best efforts to cooperate with one another for the purpose of resolving any issues relating to the proposed relocation.

Child may be relocated unless guardian objects

68 If a child's guardian gives notice under section 66 [notice of relocation] that the guardian plans to relocate the child, the relocation may occur on or after the date set out in the notice unless another guardian of the child, within 30 days after receiving the notice, files an application for an order to prohibit the relocation.

Orders respecting relocation

69 (1) In this section, "relocating guardian" means a guardian who plans to relocate a child.

- (2) On application by a guardian, a court may make an order permitting or prohibiting the relocation of a child by the relocating guardian.
- (3) Despite section 37(1) [best interests of child], the court, in making an order under this section, must consider, in addition to the factors set out in section 37(2), the factors set out in subsection (4) (a) of this section.
- (4) If an application is made under this section and the relocating guardian and another guardian do not have substantially equal parenting time with the child,
 - (a) the relocating guardian must satisfy the court that
 - (i) the proposed relocation is made in good faith, and
 - (ii) the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life, and
 - (b) on the court being satisfied of the factors referred to in paragraph (a), the relocation must be considered to be in the best interests of the child unless another guardian satisfies the court otherwise.

- (5) If an application is made under this section and the relocating guardian and another guardian have substantially equal parenting time with the child, the relocating guardian must satisfy the court
 - (a) of the factors described in subsection (4) (a), and
 - (b) that the relocation is in the best interests of the child.
- (6) For the purposes of determining if the proposed relocation is made in good faith, the court must consider all relevant factors, including the following:
 - (a) the reasons for the proposed relocation;
 - (b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;
 - (c) whether notice was given under section 66 [notice of relocation];
 - (d) any restrictions on relocation contained in a written agreement or an order.
- (7) In determining whether to make an order under this section, the court must not consider whether a guardian would still relocate if the child's relocation were not permitted.

If relocation permitted

70 (1) If the court makes an order under section 69 [orders respecting relocation] that permits a child's relocation, the court may make any of the following orders:

- (a) subject to subsection (2) of this section, if the order made under section 69 affects an agreement or order that allocates parenting arrangements between the relocating guardian and another guardian, an order under section 45 [orders respecting parenting arrangements] or 47 [changing, suspending or terminating orders respecting parenting arrangements], as applicable;
- (b) any order necessary to ensure that the relocating guardian complies with the terms of the order permitting relocation, including an order to do one or more of the following:
 - (i) give security in any form the court directs;
 - (ii) transfer specific property to a trustee named by the court.
- (2) In making an order under subsection (1), the court must seek to preserve, to a reasonable extent, parenting arrangements under the original agreement or order.

[48] Therefore, in applying the test under Division 6, I must determine:

- a) whether this is a relocation pursuant to s. 65(1);
- b) whether the respondent triggered the notice provisions of ss. 66-68;

- c) whether the respondent should be allowed to relocate under s. 69; and
 - d) if relocation is allowed, whether any orders should be made under s. 70.
- [49] Under s. 65, a relocation only occurs when the change in the child's residence "can reasonably be expected to have a significant impact on the child's relationship" with a guardian or another person having a significant role in the child's life. Whether a change to the child's residence has a "significant impact" is determined on a case-by-case basis and includes both the geographical distance of the move and the parenting arrangements in place: *Nelson v. Harris*, 2022 BCSC 1916 at paras. 34-40.
- [50] I find that this qualifies as a relocation. The geographic distance is significant and will impact the claimant's ability to exercise her supervised parenting time. This can reasonably be expected to have a significant impact on the children's relationship with the claimant.
- [51] The respondent argues that he was entitled to relocate with the children given that he sent the Relocation Notice to the claimant on March 31, 2023, and she failed to contest the relocation with a formal objection or application. Although the respondent's Relocation Notice and submissions on this point were under the DA, the FLA contains a similar notice framework at ss. 66-68. The FLA requires that the written notice specify "the date of the relocation": s. 66(1)(a). Purported notice that fails to specify the date of relocation is deficient and cannot be used to justify the relocation: *Vanrootselaar v. Jacobs*, 2015 BCSC 2544 at paras. 2-6. In this case, the Notice of Relocation stated that the expected date of relocation was "TBD/as soon as possible". Since this purported notice fails to specify "the date of relocation" as required, the respondent cannot rely on it to help support the relocation under s. 68.
- [52] Given that the respondent is not entitled to rely on the notice framework, the question remains whether the relocation should nonetheless be allowed under s. 69. Given that the parties do not have substantially equal parenting time with the children, the next step is to consider whether the respondent can satisfy the court that (1) the proposed relocation is made in good faith, and (2) the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the claimant. If the respondent succeeds on these points, there is a presumption that the move is in the best interests of the children: FLA, s. 69(4). If the respondent fails to establish either criterion, he does not benefit from the presumption and must establish that the relocation is in the best interests of the children: *R.P. v. G.U.*, 2022 BCCA 255 at paras. 49-51.
- [53] In *D.T.S. v. S.P.M.*, 2022 BCSC 547, Justice Francis stated the following regarding determining good faith:
- [45] Section 69(6) prescribes the factors that the court must consider in determining good faith:
- (a) the reasons for the proposed relocation;

- (b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;
- (c) whether notice was given under section 66 [notice of relocation];
- (d) any restrictions on relocation contained in a written agreement or an order.

[46] In *L.J.R. v. S.W.R.*, 2013 BCSC 1344 [L.J.R.], Justice Betton noted:

[71] Good faith is a subjectively held state of mind. Yet, some of the above characteristics are undoubtedly objective. I find that to the extent a factor listed in s. 69(6) is objective, a positive or negative finding suggests an inference that the relocating guardian either possessed or did not possess the required subjective good faith.

[54] Applying these factors, I find that the respondent has failed to establish that the relocation was made in good faith. In particular, the respondent failed to provide compliant notice under s. 66, and he moved in violation of an order prohibiting the removal of the children from BC.

[55] Further, I find that his decision to relocate before bringing his July 2023 relocation application forward for hearing was not made in good faith. Although he now relies on his March 2023 Relocation Notice, since providing that notice, he filed the July 2023 relocation application and appeared in front of both Justice Duncan and Justice MacDonald. It appears from their reasons that both were under the impression that he was planning to argue his pending application before moving: Duncan Reasons at para. 22; MacDonald Reasons at para. 23. Furthermore, in his affidavit of November 7, 2024, the respondent states that in July 2023, he and his former lawyer "planned to obtain a court order for relocation on the same terms as provided in the Notice of Relocation". The respondent has not provided an adequate explanation for why he subsequently changed course.

[56] This situation bears similarities to *D.T.S.*, where Justice Francis stated:

[55] I agree with the Father that, because the Mother moved to Kelowna before she gave notice of the Second Relocation Proceeding, she did not give 60 day's written notice of her relocation as she was required to do under s. 66. Further, her move to Kelowna was in direct contravention of the First Relocation Decision. This is no small matter as, by taking S to Kelowna in advance of obtaining an order permitting the move, the Mother created an uneven playing field. By the time of the Second Relocation Proceeding, the Mother had established a new status quo whereby S had already built a life in Kelowna, thereby increasing her chances of demonstrating that the relocation was in the best interests of S.

- [56] L.J.R. bears some similarities to this case. As in this case, by the time the matter came before the Court, "relocation ha[d] essentially already occurred." Justice Betton observed that "parties seeking to relocate cannot gain advantage by carrying out the relocation in advance of any prospective court approval" (para. 73). The fact that the relocating parent had done so was "a significant factor weighing against a finding of good faith" (para. 73).
- [63] This Court will not countenance unilateral action on a part of a relocating parent. The proper process for bringing a relocation application must be followed: L.J.R. at para. 73(d); Vanrootselaar v. Jacobs, 2015 BCSC 2544, at para. 7. The Mother's actions were not in good faith.
- [57] Given that the respondent has failed to establish that the relocation was made in good faith, he cannot take advantage of the presumption, and therefore he carries the burden of establishing that relocation is in the best interests of R1 and R2.
- [58] In assessing whether this burden has been met, I have considered the statutory factors at s. 37. I find that interim relocation to Winnipeg is in the best interests of the children, notwithstanding the respondent's conduct, for the following reasons:
- a) Both children advise through their counsel that things have been going well for them in Winnipeg. I find that their health and emotional well-being will be best served by remaining in Winnipeg pending trial as opposed to being returned in BC.
 - b) Both children have expressed a strong desire to remain in Winnipeg. R1 is 18 and the R2 is 14. At these ages, their views carry substantial weight even if they are not determinative. In K.M.H v. P.S.W., 2018 BCSC 1318, Justice Skolrood, as he then was, noted that the weight accorded to a child's views depended "upon their age and level of maturity. Some cases have recognized that at a certain age, children vote with their feet, in the sense that they are acknowledged as having the capacity to make choices about preferred parenting arrangements": para. 40. Ultimately, Justice Skolrood determined that C.W., who had just turned 14, was "too young to be permitted to dictate solely the terms on which she will or will not see her father", but he acknowledged that her views were "an important factor": paras. 42-43. The consistency of a child's view over time is also a relevant factor: T.L.M. v D.J.M, 2023 BCSC 2059 at para. 81. Particular weight has to be given to R1's views since he has already reached the age of majority in his new home jurisdiction and is just months from reaching that same status under BC law. In relation to R2, his views (while not determinative) are an important factor, particularly given that they have remained consistent over time.
 - c) The children will have access to substantial family support in Winnipeg. On the other hand, according to the 211 Report, the children are not close to the claimant's extended family.
 - d) Although Dr. Bolgar recommended against relocation, the children have now been in Winnipeg for 6 months. At this point, any order moving the children back to BC will disrupt the stability sought more broadly by Dr. Bolgar.

- e) It must be noted that, with relocation, the children will lose the opportunity for regular access to parenting time with the claimant. However, this factor carries less weight given that, sadly, their interactions with the claimant over the past few years have been so limited and so negative that it is difficult to say that they will be losing much in the way of guidance and support.
- f) My impression of the claimant, both in court and through the evidence provided in the reports and documents, is that she is far more focused on her own situation and her own perceived rights than the children's best interests. Perhaps this is understandable given her health situation, but my focus must be on the best interests of the children.

I note that the children's letters to the claimant acknowledge some possibility of increased interaction going forward. I am hopeful that some distance between the parties may allow their relationship to heal. My order on relocation should therefore be read in conjunction with my order below in relation to parenting time, where I have sought to impose terms to encourage, but not force, ongoing contact.

- f) The evidence, including the 211 Report, suggests that the claimant has mental health challenges that would benefit from attention, yet she remains in a state of denial. She denies any diagnosis and denies any need for medication. This concerns me in terms of her ability to focus on the children's best interests. It would be best for the children if their mother was taking all reasonable steps to improve her mental health.
- g) I acknowledge that there is authority for the proposition that when one parent has unilaterally removed a child from the jurisdiction, without consent of the other parent, that child should generally be returned to their habitual residence: *Gill v. Kaur*, 2023 BCSC 178 at para. 17. Unilateral removal of a child to a different province has been found to amount to child abduction: *Roman-Manarovici v. Manarovici*, 2022 BCSC 1159 at para. 11. Such conduct is presumptively contrary to the child's best interests: *Y.Q. v. J.D.*, 2022 BCSC 2189 at paras. 68-70.

In the unique circumstances of this case however, although the respondent did breach a court order in relocating the children, I am reluctant to place the weight of that failure on the children's shoulders. As Justice Forth stated in *Gill*, each wrongful removal case is unique, turning on their particular facts. Furthermore, an allegation of child abduction is undercut where a party is aware of the intended removal ahead of time: at para. 19. Here, the claimant was aware of the pending move to Winnipeg and was agreeable if certain conditions were met, some of which subsequently were met. While there may be a presumption that returning the children to BC pending trial is in their best interests given the wrongful removal, I find that, for the reasons outlined above, any presumption has been overcome.

- [59] That all said, I do have residual concerns about the respondent's parenting approach and behaviour as outlined in the 211 Report. However, I am hopeful that the orders imposed below, including the fine, will assist in regulating such behaviour. On balance, as matters stand, I have more confidence in the respondent's ability to stay focused on the children's

best interests rather than on his own grievances. This, coupled with the other factors supporting the conclusion that the child should remain in Winnipeg, support the orders I make above and below.

- [60] In conclusion, I grant an interim order amending paragraph 10 of the Hughes Order to allow relocation to Winnipeg pending trial under s. 69(2) of the FLA.
- [61] Given that I have allowed relocation, I am permitted to make corollary orders under s. 70.
- [62] The respondent's unilateral move, in breach of a court order, allowed him to establish a new status quo for the children, which in turn inevitably influenced the best interests of the child analysis. While I have found that it is in the best interests of the children to remain in Winnipeg, the respondent's conduct must still be addressed.
- [63] Section 230 of the FLA allows this Court to impose a penalty for the purposes of enforcing an order. The availability of s. 230 was discussed by Justice Wolfe in *K.C.W.G. v K.M.C.*, 2024 BCSC 1966:
- [78] Several sections of the FLA permit the Court to impose fines or make other orders to address non-compliance with court orders. For example, s. 228 outlines available remedies when a party fails to comply with a conduct order made under Division 5 of the FLA. The remedies include a fine not exceeding \$5,000. Section 230 of the FLA addresses enforcement generally. Orders under s. 230 may only be made if no other provision applies for enforcing an order (s. 230(1)). As under s. 228, s. 230(2)(b)(iii) also permits the Court to make an order requiring a party to pay a fine not exceeding \$5,000. The Court may also make an order requiring a party to pay an amount not exceeding \$5,000 to or for the benefit of another party, or a spouse or child impacted by the breach (FLA s. 230(2)(b)(ii)).
- [79] To establish a breach of a court order, the applicant must show: (1) the order was clear and unequivocal about what should or should not be done; (2) the party alleged to have breached the order had actual notice of the order; and (3) the breach was intentional: *T.A.O. v. D.J.M.*, 2021 BCSC 1724, at para. 48.
- [80] A breach must be established on a balance of probabilities: *T.A.O.* at para. 49. Whether there has been a breach is an objective determination for the Court, but a party's subjective intentions can inform the remedy: *C.A.L. v. D.E.L.*, 2018 BCSC 772, at para. 44. The Court may impose a fine or other sanction in situations where the Court considers it necessary to signal that there are consequences to non-compliance: *C.A.L.* at para. 48.
- [64] I address the breach of the Hughes Order by way of the imposition of a penalty pursuant to s. 230(2)(b)(ii) of the FLA. I conclude that: (1) the order prohibiting removal of the children from BC was clear and unequivocal; (2) the respondent had notice of the order; and (3) the respondent's breach was intentional. The respondent's assertion that he believed he was allowed to relocate was unconvincing. I find that the breach was serious and that it is necessary to signal that there are consequences for non-compliance with court orders. I order that the respondent pay the claimant \$5,000 within 30 days of this order.

3. An order to compel the respondent to include the claimant in all major decisions, such as switching schools, participating in online schooling, and engaging in extra tutoring.

[65] As matters stand, the claimant still maintains her usual rights as a parent and guardian to be involved in decisions regarding the children. As such, she does not require an order to assert or affirm her existing rights. Admittedly, the situation on the ground does not appear to conform with this position. However, I believe the ball is properly in the respondent's court to apply to adjust the parental responsibility regime, which application has not yet been brought. The respondent risks further sanctions should he fail to respect the claimant's existing parental responsibilities without court order.

4. An order to remove the supervision requirement from the claimant's parenting time

[66] There is insufficient evidence to justify the removal of the supervision requirement from the claimant's parenting time. No professional has recommended that such a change occur. Indeed Dr. Bolgar recommended that supervision remain in place unless the claimant was taking proper medication. The claimant made it clear during the hearing that she is not taking any medication and does not believe that any medication is necessary. She argues that Dr. Bates acknowledged that he could have made a mistake when he diagnosed her with bipolar disorder and recommended medication. This is a gross oversimplification of his opinion. Dr. Bates' clinic notes, signed December 2022, state only that "[the claimant] is correct that my diagnostic impression could be incorrect or that another psychiatrist might provide a different opinion. My opinion is that there is a bipolar component of [the claimant]'s challenges with mood based on the fact that I have seen her go through both long depressive episodes and also briefer times when she is thought disordered and somewhat grandiose with a lot of mental energy. In addition, she has had times of responding well to mood stabilizing medications."

[67] The claimant's approach and tone in court clearly suggest that there is residual hostility or bitterness that I worry could further tarnish her relationship with the children unless a supervisor monitors any in-person interactions. Hopefully, this situation will someday change, as I appreciate that this is a serious restriction on a more natural parental relationship. But there is not enough evidence today to justify a change.

5. An order enforcing the existing order for parenting time.

[68] Given that:

- a) I have blessed the relocation; and
- b) The children have expressed a clear desire to avoid any further enforced time with the claimant;

the parenting time regime must inevitably change. I would amend and replace paragraphs 2-3 of the Fitzpatrick Order with the following:

The respondent will make best efforts to encourage the children to organize twice-per-week video calls with the claimant. The children's participation will be at their sole discretion however.

The respondent will make best efforts to organize visits for the children to British Columbia four times per year for a period of at least three days each, the purpose of which will be to facilitate the claimant having in-person supervised parenting time. The respondent will bear the travel and hotel costs of any such visits. The decision whether to have these visits will be at the children's sole discretion however.

The respondent will make best efforts to encourage the children to agree to in-person supervised parenting time in Winnipeg with the claimant should the claimant provide at least seven days' notice of her intention to travel to Winnipeg. The children's participation in such visits in Winnipeg will be at their sole discretion however.

6. An order that the respondent provide weekly information on the children, including but not limited to the following:

[69] For R1:

- His current school and courses;
- The respondent's best explanation for why R1 is behind the usual graduation schedule;
- The dates that R1 has been in Calgary to pursue his sports training, and what arrangements have been made to continue his schooling during those trips;
- True copies of his report cards.

[70] For R2:

- His current school and courses;
- The sports in which he is registered;
- His practice and game schedule, including opponents;
- True copies of his report cards.

[71] As noted above, the respondent has been providing weekly updates to the claimant since 2022. It appears that this has been helpful in terms of addressing the difficult situation created by the breakdown in the claimant's relationship with the children. I agree that certain reporting should continue. Some clarification on the topics to be covered would be helpful, and could reduce the potential for further tension or hostilities, which should accrue to the benefit of the family generally.

[72] The responsibility to provide updates is also justified by the respondent's decision to move the children to Winnipeg without court approval.

[73] As such, I am prepared to make the requested order with certain modifications:

- a) There will be no order requiring a reporting regarding R1 given that he deserves the right to decide for himself what information is communicated to the claimant given his age and legal status.
- b) There is no need for the claimant to have the requested level of detail regarding R2's sports schedule.

[74] The order will therefore go as follows:

The respondent will provide the claimant with weekly information on R2, including but not limited to the following:

- i. His current school and courses;
 - ii. The sports in which he is registered;
 - iii. True copies of his report cards.
7. An order for further reunification counselling.

[75] Unfortunately, I cannot justify making such an order at this time. Several attempts have already been made. Without necessarily attributing blame, such counselling has not worked - repeatedly. The most recent counsellors suggested that there was no further purpose unless something changed within the family dynamic. I see no evidence that anything has changed that would justify another effort. Perhaps there will be a change in the future, but there is little basis for optimism at this stage. However, there is at least one conduct order I will make to try to keep this door open:

The respondent will make best efforts to encourage the children to agree to reunification counselling. The respondent will advise the claimant if and when the children communicate a willingness to renew reunification counselling. If the claimant and the children agree that further reunification counselling efforts should occur, they may arrange same without the necessity of a further court order.

8. An order that the respondent pick up the remaining items of the respondent and the children that are at the claimant's residence, which pick up shall be at the respondent's cost.

[76] I am prepared to grant this order, but I will clarify certain terms to minimize the potential for further misunderstandings:

- a) Within seven days, the respondent will provide a list of the items owned by the respondent and the children that they wish returned.
- b) If the claimant disputes that any of these items requested are the respondent's or the children's, she will advise the respondent of such items within 2 days of receiving the respondent's list. Any residual dispute shall be resolved by Justice Branch at a mutually agreed hearing at 9:00 am via MS Teams.

- c) Upon the resolution of any dispute, the respondent will arrange for pick up at the respondent's cost after making best efforts to agree to a mutually agreed pick-up time. Any dispute shall be resolved by Justice Branch at a mutually agreed hearing at 9:00 am via MS Teams.
- [77] I have imposed the shipping cost on the respondent given that his unsanctioned move to Winnipeg has likely dramatically increased such costs.
9. An order to enforce the existing spousal order.
- [78] The claimant withdrew this application given that enforcement is more properly pursued through the Family Maintenance Enforcement Program or through a formal contempt application. The support order has already been issued. There is little purpose in issuing an order that simply says that the respondent must comply with an earlier order.
10. An order to determine the date of separation.
- [79] The claimant agreed to adjourn this request when it became clear that it would require more time than was available to address all of the factual issues that go into the determination of a separation date.
11. An order to release funds held in trust at the Virgin Law Group on a 50/50 basis, after the claimant has first been credited for any outstanding spousal support owing from the respondent.
- [80] The respondent opposed the release of the funds held by this firm arising from the sale of the parties' home. As an example of the problematic relations between the parties, in 2023 it was the respondent who wanted these funds released, and the claimant who was opposing.
- [81] However, such inconsistency is not a basis for granting the order. I do not believe that the claimant has done enough to justify a pre-trial interim distribution of family assets. There is insufficient evidence that she does not have the resources necessary to fund the litigation on her own, as required pursuant to s. 89 of the FLA. Indeed, initially the claimant was not even suggesting that the released funds be used for legal expenses. Section 89 of the FLA allows a court to order an interim distribution of family property only if it would not be harmful to the interests of a spouse and is necessary to fund, among other things, a proceeding under the FLA. An order under s. 89 is "extraordinary in nature and must be assessed carefully": McKenny v. McKenny, 2015 BCSC 1345 at para. 57. A court can only make a s. 89 order if: (1) the applicant is economically disadvantaged in relation to the litigation; (2) the applicant can demonstrate a prima facie case that it would not be harmful to distribute the property, and that distribution is necessary for a purpose listed in s. 89; (3) it is in the interests of justice to grant the order sought: Etemadi v. Maali, 2021 BCCA 298 at paras. 51-54 (dissenting reasons of Justice Butler, analysis adopted by the majority at para. 113).
12. An order for the respondent to produce the latest summary of the respondent's RRSPs.

[82] The parties consented to a slightly modified order from that requested:

The parties will exchange fresh F8 financial statements within the next 60 days, which statements will include information on the parties' RRSPs.

13. An order for the children to have a meeting with the claimant and their lawyer to discuss the claimant's will.

[83] I do not see any purpose in compelling the claimant to have such a conversation with her children. She has testamentary capacity, including the power to change her will at any time, so there is no possibility of reaching a final agreement with them regarding the distribution of her estate. Further, no professional has recommended that such a conversation take place. Finally, the children have expressed their views that they do not want to participate in such a conversation.

14. An order that the respondent provide pertinent information about the children.

[84] This application was repetitive of #6 above.

15. An order for proof of life of the family dog

[85] We were able to resolve this issue during the hearing by having the respondent set up a FaceTime call between the claimant and the dog during a lunch break.

16. An order to halt the use of the 211 Report until further authentication can be done on the 16 audio files submitted by the respondent and reviewed by Dr. Bolgar

[86] I find no basis upon which to restrict the use of the 211 Report at this time. The question of the authenticity of the audio files relied upon by Dr. Bolgar is best resolved at a trial, as the allegation of electronic forgery is serious and will require a careful review of the evidence.

17. Vexatious Litigant Order

[87] The respondent suggested that the Court could and should, of its own motion, make an order restricting or controlling the claimant's filing of additional applications. A court can make an order under s. 221 of the FLA prohibiting a party from making further applications without leave if it is satisfied that the party has made an application that is trivial, is conducting a proceeding in a manner that is a misuse of the court process, or is otherwise frustrating or misusing the court process. While the test to make this order is less stringent than for declaring someone a vexatious litigant, it is still "a drastic measure to be used with caution and must not impinge on the best interests of the children": *K.S.P. v J.T.P.*, 2023 BCSC 1188 at paras. 693-694.

[88] I do not believe that the claimant has yet crossed the line that would justify such a draconian order. Indeed, even on the present application, she was successful in obtaining multiple orders in her favour, some on consent.

IV. CONCLUSION

[89] My substantive orders are detailed above.

[90] In terms of costs, I would note that:

- a) several items in the application were resolved on consent;
- b) as for the contested items, there was mixed success.

Unless either party takes steps to set down a one-hour hearing at 9:00 am via MS Teams before me to address the issue of costs within 30 days of this judgment, I would order that each party bear their own costs.

"The Honourable Mr. Justice Branch"

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