
CANADA / JUDGMENT

Bailey v. Bailey

2018 BCSC 1419

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Supreme Court of British Columbia

DECIDED

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2018 BCSC 1419 Bailey v. Bailey

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bailey v. Bailey,

2018 BCSC 1419

Date: 20180822

Docket: E13759

Registry: Chilliwack

Between:

Cory Michael Bailey

Claimant

And

Monica Bailey

Respondent

Corrected Judgment: The front page of the judgment was corrected on August 24, 2018

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

Counsel for Claimant:

T. Wolf

Counsel for Respondent:

A. Lessing

Place and Date of Trial:

Chilliwack, B.C.

July 30 - August 3, 2018

Place and Date of Judgment:

Chilliwack, B.C.

August 22, 2018

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I. Introduction

[1] This is a family law case where the parties are seeking a divorce as well as numerous orders relating to parenting time, child support, location of the children, spousal support, and division of assets.

- [2] The parties determined that there was insufficient time on the dates scheduled for trial to complete all matters in this litigation, and chose to split the trial. The days of trial which these Reasons relate to were focused on custody, guardianship, parenting and relocation. The parties are not seeking to have any other matters determined at this time. If the parties are unable to resolve the remaining issues between them, they will schedule a continuation of the trial to complete all outstanding matters.

II. Background

- [3] Cory and Monica Bailey began living together in May 2006, they were married on April 6, 2011 and separated in August or September 2016. They have two children: Braden born in 2008 and Isabella born in 2011.
- [4] Mr. Bailey is presently a gas plant operator, working for Canadian Natural Resources Ltd. ("CNRL"). He runs and maintains process plants in northern BC. His work requires him to be in the north 16 days of the month, and he comes to the Lower Mainland where Ms. Bailey and his children live for the remainder of each month. Taking into account two travel days, Mr. Bailey is in the Lower Mainland 13 days out of every month.
- [5] Ms. Bailey was a stay-at-home mother when their children were very young. She has held various part-time jobs since her children were born, but none of these have resulted in full-time work. She is qualified as a licensed practical nurse ("LPN"), and is hoping to take additional training to qualify as a registered nurse ("RN").

III. Issues

- [6] The main issues in contention before me were whether Ms. Bailey would be permitted to move the children from the Lower Mainland, where they are currently living, to the Okanagan, and to establish appropriate parenting time for each parent.
- [7] There are a number of parenting arrangement orders which are not in dispute.

A. Parenting arrangements which are not in dispute

- [8] In his trial brief, Mr. Bailey has set out the orders sought pursuant to the Family Law Act and the Divorce Act. These are set out in numbered paragraphs from 1 through 14. I do not intend to set out word for word each of the paragraphs set out in the claimant's trial brief. However, I understand that the orders which I have briefly summarized below are not contested by Ms. Bailey:
- a) paragraph 1 - joint custody and guardianship of the children with the right to equal access;
 - b) paragraph 2 - jointly sharing in the exercise of parenting responsibilities as set forth in the Family Law Act, s. 41;
 - c) paragraph 4 - special days;

- d) paragraph 6 - non-interference with either parent's communication with the children;
 - e) paragraphs 7 & 8 - consultation and consent regarding enrolling children in activities;
 - f) paragraph 9 - responsibility for transporting children to activities;
 - g) paragraph 10 - making up of parenting time;
 - h) paragraph 11- responsibilities in the event of emergency healthcare; and
 - i) paragraph 12, 13, 14 - travel through Canada and the United States
- [9] The main paragraph in dispute is paragraph 3, which relates to the parenting time and the residence of the children. Paragraph 5 is not contentious, but is incidentally affected by the outcome of any decision regarding the residence of the children.

IV. Is it in the best interests of the children to allow them to move to Lake Country in the Okanagan

- [10] The issue of parenting time for both parents is inextricably bound up with the considerations relating to whether the best interests of the children would be met in the proposed relocation.
- [11] At the time of trial, Mr. Bailey had parenting time with his children approximately seven days out of every month. He is seeking to move to a schedule where he will have the children 50% of the time.
- [12] Ms. Bailey is seeking an order permitting her to move the children to Lake Country in the Okanagan. Her proposal for ordinary access by Mr. Bailey is that for two weekends of each month. Mr. Bailey will pick up the children on Friday evening in Merritt, and then return them to Merritt to be picked up by Ms. Bailey on Sunday evening. Ms. Bailey proposes sharing holidays and special days on a close to equal time basis.

A. Applicable law

- [13] There is no written agreement or Order in place between the parties as to parenting arrangements or the location of the children.
- [14] Counsel for Ms. Bailey urged me to apply Division 6 of Part 4 of the Family Law Act in determining whether an order for relocation should be made. Division 6 deals with relocation, and sets out a test which the relocating guardian must meet when seeking to relocate the children. In particular, counsel for Ms. Bailey urged me to find that, in accordance with section 69(4), if I was satisfied that the claimant had made the proposed relocation in good faith, and had made reasonable and workable arrangements to preserve the relationship between the children and the claimant, that I was obliged to find the relocation was in the best interests of the children.

- [15] Mr. Bailey says that Division 6 is not applicable. I agree with counsel for Mr. Bailey. As stated by the BC Court of Appeal in *K. W. v. L. H.*, 2018 BCCA 2004, para 78:

In short, Division 2 applies to relocation applications when there is no order or agreement in place and Division 6 governs when there is. Division 6 assumes that an existing agreement or order respecting parenting arrangement has been made in the best interests of the child and in those circumstances, deference should be given to that preestablished arrangement. When there is no order or agreement, there is no rationale for the same deference

- [16] As submitted by Mr. Bailey, the parenting arrangements at issue in this part of the trial are governed by Division 2 of Part 4. Section 46 is the applicable section of the Family Law Act, which provides that where a guardian plans to change the location of a child's residence and that change can reasonably be expected to have a significant impact on the child's relationship with the other guardian, the court must consider the best interests of the child and the reasons for the change in the location of the child's residence.

B. Arrangements prior to separation

- [17] For most of the childrens' lives they have lived in Abbotsford BC. In January 2009, when Braden was a baby, the family moved from Saskatchewan to Fort St. John, where Mr. Bailey obtained work in the oil and gas industry to support the family. Initially Mr. Bailey was working one week on and one week off. After about 1 ½ years his schedule changed, requiring him to commit to spending significant amounts of time at a work camp in the north. Mr. Bailey's new schedule required him to work 16 days at the work camp, with 13 days at home, and 2 days each month for travel.
- [18] Because Mr. Bailey's new schedule required him to be in camp for extended periods, the parties decided to move to Abbotsford, close to where both of their extended families were located. This provided Ms. Bailey with some additional support while her husband was away in the north.
- [19] Ms. Bailey assumed a more traditional role as homemaker, and was primarily responsible for the care and health of the children, including making doctor appointments, scheduling activities, etc. It is clear that Ms. Bailey has been a devoted and dedicated parent, involved in all aspects of the children's lives. She is very close to both children, and has been throughout their lives.
- [20] In 2014 Ms. Bailey became qualified as a LPN. However, Ms. Bailey did not work on a full-time basis. She obtained shiftwork as it became available and fitted in with her child care responsibilities.
- [21] The children are enrolled in a private Catholic school in Abbotsford, which is the same school that Ms. Bailey's family attended. Both parents agree that this is an excellent school and that the children are thriving in it.

[22] When Mr. Bailey was not required to be at the work camp, he was in Abbotsford. He was an active participant in his children's lives. He communicated with them by telephone and electronically while he was in the north. He has been a devoted father to his children throughout their lives. Mr. Bailey testified that while his wife attended her LPN program in 2013 - 2014, he provided the primary caregiving for the children when he was in the Lower Mainland.

C. Current arrangements

[23] Currently, Ms. Bailey has the children for the majority of the time, essentially three out of the four weeks in a month. She continues to organize their activities and health care.

[24] Since January 2018, Ms. Bailey and the children have been living in a home which is owned by Ms. Bailey's parents.

[25] Ms. Bailey has worked on a part-time, casual, basis with two organizations in the Abbotsford area since before the separation. Her hourly rates are \$26.35 an hour with Bayshore Health, and \$27.20 an hour at Fraser Health. Ms. Bailey testified that she currently takes approximately 75 to 80% of the shifts that are made available to her. She is not able to take all the available shifts because priorities with the children interfere with taking every shift available to her. As a result of her limited shifts since separation, Ms. Bailey has worked between 11-15% of a full time work load.

[26] After separation, Mr. Bailey has continued to work for CNRL on the same schedule as before separation, and he spends the same amount of time in the Lower Mainland as he did when the parties were together. While time with the children was erratic immediately following separation, in the last year, the parties have operated under a schedule whereby Mr. Bailey picks up the children after school on a Friday, keeps them for seven days, and they return to their mother, after school the following Friday.

[27] While the children are with Mr. Bailey, he is responsible for their needs, including taking them to school and their activities. Mr. Bailey testified that he has attended a number of parent-teacher conferences for his children. He also testified that he has not attended dentist and doctor visits, but understood that those were generally scheduled when he was not in the Lower Mainland. He testified that if those appointments were scheduled for the times he had the children, he would take them to those appointments.

[28] His mother has assisted him with the children, as has his current partner with whom he lives. Ms. Bailey was critical of the fact that Mr. Bailey relied on the assistance of these family members in the care of the children. However, I draw no adverse inference from their involvement. I find that involving other family members in the care of children is a normal and healthy behaviour for a single parent managing schedules. Indeed, Ms. Bailey has relied extensively on her family in the care of the children.

- [29] Mr. Bailey continues to communicate with his children by telephone and electronic means while he is in the north. Both parents testified to experiencing some difficulties with communication, including people's phones being blocked at various times, phone calls not being returned, and speakerphones being used inappropriately to prevent one parent from having a private conversation with the children. Clearly communication between the parents needs to improve.
- [30] Mr. Bailey provides spousal and child support to Ms. Bailey in the monthly amounts of \$1,478 for child support and \$1,350 for spousal support. In addition, Mr. Bailey pays 80% of section 7 special and extraordinary expenses for the children. These payments were ordered in December 2016. Initially Mr. Bailey's compliance was not perfect, but by the spring of 2017 the situation was resolved, and payments were being made as ordered. His annual income in 2017 was reported on his tax return to be approximately \$73,000.

D. The children

- [31] In or around 2010, Ms. Bailey became concerned that Braden was suffering from some medical problems. She was concerned about unusual behaviors and worried that he may suffer from problems such as Attention Deficit Hyperactivity Disorder ("ADHD") or Obsessive Compulsive Disorder ("OCD").
- [32] Mr. Bailey disagreed that the problems experienced by Braden were as serious as Ms. Bailey felt them to be. There was a period of time where the parties disagreed about Braden attending medical professionals and counselling to deal with his problems. Ultimately, while Mr. Bailey did not agree that the problems were such that medical and intervention was required, Mr. Bailey did agree that Ms. Bailey could address her concerns by taking Braden to medical professionals.
- [33] In 2015 Braden's pediatrician dealing with mental capacity issues, Dr. Anquist, diagnosed Braden with Tourette's and ADHD. In 2017 Dr. Anquist referred Braden to the ADHD clinic at BC Children's Hospital for a reassessment of his medications, as noted in the clinical report from that visit which was presented in evidence.
- [34] Ms. Bailey testified that in June 2017 Braden attended the ADHD clinic at BC Children's Hospital. The clinical report from that visit was presented in evidence, and that report notes a diagnosis for ADHD and separation anxiety, and further notes that Braden's medical history includes a diagnosis for Tourette's syndrome. Under the care of his pediatrician Dr. Anquist, Braden has received prescriptions for various medications to assist in the treatment of his ADHD. Both parents have been responsible for administering these medications while Braden is in their care.
- [35] While Ms. Bailey testified that Braden also suffers from OCD, the clinical report from the ADHD clinic at BC Children's Hospital noted that Obsessive-Compulsive Disorder was ruled out. I was not provided with any medical opinion confirming that Braden suffers from OCD.

- [36] Ms. Bailey testified that there is a wait time of seven months to get an appointment at the BC Children's Hospital ADHD clinic. However, I was not provided with any medical opinion which stated that seven months between appointments was inappropriate or inadequate for Braden's treatment. There was no medical opinion offered to confirm a recommended treatment program for Braden, other than the program in which he is currently participating.
- [37] Currently, Braden visits his pediatrician every 2 to 3 months to confirm his medication prescription. Ms. Bailey stated in evidence that Braden needed more therapy and more one-on-one time with medical professionals. However, I was provided with no medical evidence to confirm this view of Ms. Bailey.
- [38] After Mr. Bailey left the family home in September 2016, Isabella started to display some anxious behaviours. The school noted that Isabella was becoming fidgety and chewing on her collar and cuffs. It does not appear that Isabella has received any diagnosis for anxiety.
- [39] Ms. Bailey has raised concerns that Isabella may have some signs of Tourette's. Mr. Bailey testified that Isabella had a facial tic for a while but that has now passed, and that she sometimes talks out loud. He said that he had not been told by Ms. Bailey that she had been taking Isabella to any specialists.
- [40] Mr. Bailey has agreed to proceed with the decisions made by Ms. Bailey, even though at times he does not personally agree with some of the decisions she made. He testified that he trusts Ms. Bailey to make decisions on his behalf when it comes to the health and welfare of the children. He has contributed financially to all health care related expenses for the children.
- [41] Dr. Susan Goldsmith is a registered psychologist who has been working with the two children, and testified at trial. She meets with the children once a month to address, primarily, their anxiety issues.
- [42] Dr. Goldsmith confirmed that the children loved both of their parents very much, and that they valued the time they spent with each of their parents. Dr. Goldsmith noted that both children exhibited some levels of anxiety which she said is largely to do with separation and is quite normal. They have wondered to her whether the situation with their parents being split from each other is normal and how it will all end up.
- [43] Dr. Goldsmith did not confirm that Isabella had high levels of anxiety. She noted that Isabella can be distracted, chats in class, and is sometimes off task at school, but overall has settled in well. She noted that both children are lovely, expressive, engaged, and very positive. She noted that Braden is worried about changing schools. She noted that both children like to spend time with their mother and their father. To the extent the children had anything negative to say about their father's new partner, it related to the fact that they wanted more attention from their father, and did not like having to share him with his new partner.

- [44] The children are involved in various activities. Braden plays in the Atom 4 Hockey League in the Lower Mainland. This requires practices on the weekends and after school. Both children are also involved in gymnastics.

E. The extended family

- [45] Both Mr. and Ms. Bailey testified that they place very strong importance on family values and the relationships with their extended families.
- [46] Ms. Bailey has a very close relationship with her parents, and her extended family and this extended family has had a significant role in the children's lives both before and after separation.
- [47] Ms. Bailey testified that her mother and Braden had an extremely close emotional relationship. She described how Braden would FaceTime with her mother on a frequent basis. She says that Braden relies on Dorothy Grant for emotional support, and that Dorothy Grant is Braden's "rock". Dorothy Grant testified that she has a very close relationship with her grandchildren, and in particular Braden. She says that Braden will often call her when he is upset, and they will talk through whatever is upsetting him.
- [48] When Ms. Bailey took her LPN training in 2013 and 2014, Dorothy Grant looked after the children for up to 14 hours a day as Ms. Bailey had to commute to Vancouver Community College for her program.
- [49] Dorothy Grant has provided childcare for Braden and Isabella throughout their lives whenever Ms. Bailey is working or unavailable.
- [50] When the family moved to the Lower Mainland Mr. Bailey's mother, Donna Bailey was living in the Lower Mainland. She moved to Saskatchewan for a period of time but, then moved back to Abbotsford in early 2016 when she was diagnosed with cancer. She came to the Lower Mainland because of the local cancer clinic and to have the support of Mr. Bailey.
- [51] When Donna Bailey moved to the Lower Mainland, she moved into the basement of the parties' family home. Donna Bailey developed a close relationship with the children, and often provided childcare. When Mr. and Ms. Bailey were together, Donna Bailey saw her grandchildren every day. Since the separation, she has seen her grandchildren primarily when they are in Mr. Bailey's care, although she has provided childcare for Ms. Bailey from time to time. As a result, the children have had had easy access to their parents and their grandparents for most of their lives.
- [52] Mr. Bailey's father lives in Chilliwack, which is fairly close to the family's home in Abbotsford. The children have a good relationship with their grandfather, although they do not see him as often given that Mr. Bailey has limited time with the children when he is in the Lower Mainland. Mr. Bailey's father also has been diagnosed with terminal lung cancer and it is difficult for him to travel into Abbotsford to see the children.

F. Proposals of both parents**Monica Bailey**

- [53] In November 2017 Ms. Bailey's parents, Dorothy and Darrell Grant, purchased a 12 acre lot in Lake Country. They hope to subdivide the property into four lots, so that each of their three daughters can have a lot for their families, and Dorothy and Darrell Grant can have a lot for themselves. Their hope is that this property will provide a rural family compound, where the four families can live together.
- [54] Ms. Bailey wants to move to this property with the children. She says it will provide a quiet life for the children with access to farm animals and the outdoors. Dorothy and Darrell Grant, who have played a large role in the children's lives, will be able to continue such involvement. The children have been to visit the property and Ms. Bailey testified that they love it.
- [55] Dorothy Grant testified that while they hope to subdivide the property, this has not yet happened. She also testified that they hoped to put a 2000 square-foot prefab home on Ms. Bailey's lot, which will be large enough for the children and Ms. Bailey to all have their own bedrooms. This home will be constructed by her parents and Ms. Bailey will rent from them at \$1300 a month. Ms. Bailey hopes that she will be able to buy the home from her parents at some point. However, that home has not been built yet. There is a small house on the property now which Ms. Bailey indicated she would move into with the children. This house has only one bedroom.
- [56] Ms. Bailey indicated that one of the reasons she wants to move to Lake Country is that her sister will both be living on the property with her. Her sister Tammy Grant testified and confirmed that she does hope to move onto the property in Lake Country. However, she does not anticipate this will happen for at least five years.
- [57] The purchase of the Lake Country property is central to Ms. Bailey's desire to relocate the children. While Ms. Bailey has described a number of benefits to her and the children in moving to Lake Country, which I have considered below, I am satisfied that but for her parents buying the Lake Country property, Ms. Bailey would not be seeking to relocate the children.
- [58] Ms. Bailey testified that after completing her LPN qualifications, she planned to bridge to a RN program. A RN qualification is a higher skill set than an LPN and also provides a better income.

- [59] Ms. Bailey has determined that there is a program at the UBC Okanagan campus and says that she can register next year if she applies this year. Ms. Bailey is in the process of upgrading her qualifications in biology and chemistry to allow her to register for the bridging program at UBC Okanagan. She says that once she is qualified as an RN, she will be in a position to earn substantially more money as the wage for an RN is double that of an LPN.
- [60] There are also programs in the Lower Mainland that allow LPNs to bridge to the RN program. There is a program available in Chilliwack, a community very close to Abbotsford. Ms. Bailey says that there is a two-year wait to get into the Chilliwack program. The program is also available in Vancouver. Ms. Bailey did not testify as to any waitlist in the Vancouver program.
- [61] Ms. Bailey has two job offers on a part-time casual basis in the Okanagan. Bayshore Health has agreed that she can transfer to the Okanagan if she relocates. She has also been accepted by another organization which is offering her \$20 an hour for work in the Okanagan. I find it unlikely that Ms. Bailey would receive substantially more hours with these organizations over what she is able to obtain in the Lower Mainland. In her testimony Ms. Bailey was unable to commit to taking on a full time position at this stage in her children's lives. When asked repeatedly if she could take on full time work, she answered that she would be prepared to work more hours provided they did not interfere with her responsibilities to the children. She did not agree that she would be in a position to take on a full time 40 hour work week.
- [62] Ms. Bailey has registered the children at a school 10 minutes from the Lake Country property. She testified that it is a well sought after school which is difficult to get into. However, both parents are very satisfied with the children's current school, and Dr. Goldsmith testified that both children are happy in their school.
- [63] Ms. Bailey has arranged for a referral to a pediatrician in Vernon for Braden. Ms. Bailey also described two clinics in Kelowna which she believes would be of assistance to Braden. One is an ADHD clinic, and the other is a clinic which looks at children with co-morbidities, i.e. children who have been diagnosed with a selection of issues on the autism spectrum such as OCD, anxiety, Tourette's, and ADHD. While these clinics are likely very good, as noted above, I heard no evidence from any medical professional confirming that the treatment options for Braden in the Lower Mainland were inadequate or not meeting his needs.
- [64] Ms. Bailey testified that living on her parents' acreage, once a modular home has been built for her, she would pay \$1300 a month in rent. She says this is substantially better than the rental market in Abbotsford, which is \$1600-\$2000 a month.
- [65] If Ms. Bailey and the children moved to Lake Country, Dorothy Grant will continue to provide daycare for the children. Ms. Bailey testified that it is her preference that childcare be provided by family members.

- [66] Ms. Bailey's proposal for Mr. Bailey's access to the children if she moves to Lake Country with the children is the following:
- a) while Mr. Bailey continues on his current schedule with CNRL, Mr. Bailey will have access to the children two weekends a month, picking up the children in Merritt around 5 PM, and returning them to Merritt to be met by their mother around 6 PM;
 - b) if those weekends are long weekends the extra weekend days would be available to Mr. Bailey;
 - c) if Mr. Bailey does move to the Lower Mainland on a full-time basis, Ms. Bailey would increase the access weekends to three per month;
 - d) anytime Mr. Bailey is in the Okanagan, Ms. Bailey will provide liberal access to the children;
 - e) in the summer the children will be with Mr. Bailey for the full two weeks that he is home;
 - f) access during Christmas holidays would be liberal, with the actual Christmas days alternating between the parents each year; and
 - g) if the roads were unsafe, in particular in the winter, her parents would pay the costs for the children to be flown from Kelowna to Abbotsford, and she would notionally contribute \$200 towards the cost of flights.
- [67] Braden's ability to continue playing hockey was raised as a concern. Ms. Bailey stated that if Mr. Bailey moves full-time to the Lower Mainland, Braden could be enrolled in hockey in the Lower Mainland and would be able to play on the weekend, days on the three weekends per month, when he is with his father, and that she would come to Abbotsford on the fourth weekend so that he could continue to play hockey.

Cory Bailey

- [68] While his current work schedule continues, Mr. Bailey seeks to have the children with him 9 out of the 13 days he is in the Lower Mainland. Mr. Bailey is seeking work in the Lower Mainland, and when he is able to achieve this goal he seeks to have the children with him 50% of the time.
- [69] Mr. Bailey is seeking to have the children for a further two days during his time in the Lower Mainland, namely Monday and Tuesday of the week after he drops the children back with their mother. Mr. Bailey is seeking to not have the children for the second weekend he is in the Lower Mainland because he has responsibilities caring for his parents, both of whom have been diagnosed with cancer, and because he requires some time in the Lower Mainland to take care of other appointments and obligations which he is unable to deal with when he is in the north.

- [70] Mr. Bailey has worked in the oil and gas industry for 12 to 13 years. He testified that there are no opportunities for him in the oil and gas industry in the Kelowna area. Moving to the Kelowna area is not realistic for him as a result.
- [71] In addition, Mr. Bailey has been in a new relationship for one and half years. His new partner has twin boys who are approximately the same age as Braden and an older boy who is 15 years old. Mr. Bailey's new partner's family all lives in the Lower Mainland, and the father of her children also lives in White Rock. It is unrealistic that Mr. Bailey's new partner would be in a position to move to the Okanagan. In the last month Mr. Bailey moved in with his new partner at her leased home in Surrey.
- [72] Vancouver is the hub for the oil and gas industry in the province. Mr. Bailey is seeking to relocate his work to the Lower Mainland. He has recently applied for jobs with Kinder Morgan and Fortis BC. Mr. Bailey is in the process of finishing his Class 4 Certification, which he expects to complete by the fall of this year.
- [73] Mr. Bailey testified that he first looked into jobs in the Lower Mainland in 2016, but that was the year both his parents were diagnosed with cancer and he separated from his wife; he found it was too difficult at that time to also deal with finding a new job and upgrading his qualifications. Mr. Bailey agreed that the salary in the Lower Mainland would be less than what he was earning in his current position. However, he also testified that his expenses will be greatly reduced in that he will not be required to travel twice a month, and pay other expenses associated with living in the north. He testified that he expected his net income to be similar to his current income if he were to obtain either of the jobs he is currently applying for.
- [74] When Mr. Bailey has succeeded in obtaining employment in the Lower Mainland, he is looking to have a 50% parenting time arrangement with Ms. Bailey. He testified that Donna Bailey is planning to move closer to his new home. Donna Bailey and his new partner are available to assist with childcare. In addition, his new partner has a nanny that she uses on a regular schedule who would also be available to assist with Braden and Isabella. Mr. Bailey agreed that he would have to pay for any increased childcare costs arising from the fact Dorothy Grant may no longer be available to provide childcare.
- [75] Mr. Bailey is concerned about the impact on his relationship with the children if Ms. Bailey is allowed to move them to Lake Country. Mr. Bailey testified that on Ms. Bailey's schedule he would not get the children back to the Lower Mainland before 8 PM on the two Fridays, which is their bedtime. He testified that in winter the Coquihalla Highway is one of the worst highways in the province, and it is very dangerous. To return the children to Merritt to be picked up by their mother, they would have to leave about 2 PM on Sunday. This would leave Mr. Bailey with only the one full day, Saturday, to spend with his children.

- [76] Mr. Bailey disagreed that the proposal for Braden's hockey was realistic, as practices are during the week, and games are often on Sundays. Braden cannot realistically participate in a hockey program if he is only available on Saturdays.
- [77] Mr. Bailey presented evidence of rental listings in the Abbotsford area demonstrating that there was a reasonable number of three-bedroom homes available for \$1700 or less per month. Mr. Bailey also presented evidence of many LPN postings in the Lower Mainland which are available to Ms. Bailey.

V. Decision

- [78] There is no question that the children are well loved by both of their parents. I saw no evidence to suggest that the children have anything less than a loving relationship with both of their parents, and that both of their parents were devoted to them. While there is friction between Mr. and Ms. Bailey, both parents acknowledged the other's significant role in their children's lives
- [79] Similarly, the two grandmothers testified and showed me that they were both very loving grandparents with important roles in their grandchildren's lives. Both parents agreed that it was important to maintain good relationships between the children and their grandparents.
- [80] There are many advantages for the children in the Okanagan. However, I am not satisfied that it is in their best interests to allow the relocation. I find that the disruption in their relationship with their father will be severe and this outweighs the other benefits to them arising from the Lake Country residence.
- [81] I am not satisfied that Ms. Bailey's work will be materially different in the Okanagan than in the Lower Mainland. If anything, the hourly rate for her work in the Okanagan is less than in Abbotsford. Ms. Bailey can enter into a bridging program to obtain her RN certificate at schools in the Lower Mainland - this is not an option available to her only in the Okanagan. While she said there was a two year waitlist in Chilliwack, she did not testify to waitlists at other locations in the Lower Mainland, and cannot enter the Okanagan program until 2019 in any event.
- [82] I am not satisfied that the health care Braden and Isabella are receiving in the Lower Mainland is inadequate. They appear to be progressing very well, and have a very positive relationship with their current psychologist.
- [83] The school the children are attending in Abbotsford is excellent, and I am not satisfied the school in the Okanagan will be any better than what they have now.
- [84] At present the Lake Country property is not subdivided, and there is only a small one bedroom house available for Ms. Bailey and the children to live in. The plans for the Grant family compound are aspirational, and not yet realized.

- [85] If Ms. Bailey's parents move to Lake Country as they plan, they will not have the same kind of in person access to their grandchildren that they have now. However, they can visit the children in the Lower Mainland as often as they like, and Ms. Bailey can take the children to Lake Country as often as she likes, during the times she has the children. They can go on weekends and holidays and enjoy the rural lifestyle afforded by the property. Mrs. Grant and Ms. Bailey testified about the strong relationship between Mrs. Grant and Braden. They both testified that many of their conversations happen over FaceTime or the telephone and, as such, will not be interrupted by the distance between them.
- [86] I find that in all of the circumstances of this case, it is in the children's best interests to have as close to equal time with their father as with their mother. While Ms. Bailey's proposal will not negatively affect the children's relationship with her, I find that their relationship with their father will be negatively impacted. I find that the children will benefit from the different parenting styles of each parent, and benefit from spending the maximum time they can with each parent.
- [87] To require these two young children to spend their Friday night and Sunday afternoon travelling in a car for 5-6 hours each way, with only one full day with their father on the Saturday in between these two long trips, every two weeks, will not allow them to fully benefit from his parenting.
- [88] I do not accept that the potential benefits to Ms. Bailey in moving to Lake Country are sufficient to justify a fundamental disruption in the relationship between the children and their father. This is particularly so where I am not satisfied that her access to schooling and work is materially better in the Okanagan than it is in the Lower Mainland. While her housing costs, if and when the house is built for her, may be less than in the Lower Mainland, I am not satisfied that the cost is significantly less, and this cannot justify a move away from the children's father.
- [89] In terms of the children's involvement in their activities and medical relationships, I find that the children will benefit from the stability of maintaining ongoing therapeutic relationships, continuing in their existing school which has been a positive experience for both of them, and maintaining their current activities.
- [90] I am satisfied that Mr. Bailey will achieve his goal of moving to the Lower Mainland so that he can have a larger role in his children's lives. Until he achieves that goal, I find that it is the best interests of the children to maximize their time with their father when he is in the Lower Mainland. Once he gets a job in the Lower Mainland, both parents will share parenting time on an equal basis.
- [91] In the result, I make the orders set out in paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the Claimant's trial brief.

[92] I order that Braden and Isabella will remain in the Lower Mainland, and will reside with their parents on the following schedule while Mr. Bailey continues with his current work schedule:

- a) On the first Friday of the first week Mr. Bailey is in the Lower Mainland on his current work schedule, Mr. Bailey will pick the children up from school at the end of their school day, and the children will reside with him until he drops them at school the following Friday morning. Mr. Bailey will be responsible for the children until the end of the school day, should something arise during the day.
- b) Ms. Bailey will pick the children up from school Friday afternoon and will have the children until 5pm the following Sunday, at which point the children will be picked up by Mr. Bailey, and will stay with him Sunday and Monday night, and be taken to school by Mr. Bailey on Tuesday morning. Mr. Bailey will remain responsible for the children until the end of the school day Tuesday.
- c) Ms. Bailey will pick the children up from school in the afternoon on Tuesday.

[93] When Mr. Bailey begins work full time in the Lower Mainland, the schedule set out above will be altered to allow for increased time on a gradual basis until the children are with each parent equal time. In these Reasons I will not determine how that time will be allocated as I expect the parents can work out a schedule that suits them. If they are not able to work out a reasonable schedule which allocates time on an equal basis, they have liberty to apply to me for further orders.

[94] I make no order for costs at this time, as the trial is anticipated to continue on the remaining issues. If the parties settle the outstanding issues and wish to speak to costs, they may contact the Registry to schedule a further hearing.

"Baker J."

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