

CANADA / JUDGMENT

Burton v. Carter

2022 BCSC 2004

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 2004 Burton v. Carter

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Burton v. Carter,

2022 BCSC 2004

Date: 20221117

Docket: E23560

Registry: Dawson Creek

Between:

Danielle Nicole Burton

Claimant

And

Matthew Dylan Carter

Respondent

Before: The Honourable Justice Branch

Reasons for Judgment

Counsel for Claimant:

D. Wilson

Counsel for Respondent:

J.L.A. Kahan

Place and Date of Trial:

Dawson Creek, B.C.

October 11-14, 2022

Place and Date of Judgment:

Dawson Creek, B.C.

November 17, 2022

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I. INTRODUCTION

- [1] The key issue in this family law matter was a relocation request by the claimant. She asks that the children be allowed to move with her from Dawson Creek to Salmon Arm. She argues that her economic situation will be improved in Salmon Arm and that the schools and recreational opportunities are better.
- [2] I find that the children should remain primarily in Dawson Creek, in large measure because of their deep family roots in Dawson Creek.

II. BACKGROUND

- [3] The claimant, Danielle Burton, was born in Dawson Creek on October 9, 1988. She is 34 years old and is a dental assistant.
- [4] The respondent, Matthew Carter, was born on May 20, 1992 in Dawson Creek, and is 30 years old. He works in the energy industry.
- [5] The parties began dating in August 2013 and living in a marriage-like relationship in September or October 2013. At the time, they were living in Prince George while the claimant was receiving dental technician training. The respondent was off work on short term disability.
- [6] The parties decided to move back to Dawson Creek in February or March 2014 when they discovered that the claimant was pregnant. The claimant's father was able to find the respondent employment in Dawson Creek.
- [7] The parties' first child, J, was born on July 10, 2014. The family lived with the respondent's parents beginning in February 2015, as they were saving up to buy a house. Their second child, K, was born on April 4, 2017. The children are now 8 and 5 years old. They were married on August 12, 2017 in Dawson Creek.
- [8] The parties each have significant family connections in Dawson Creek including parents, siblings, aunts, uncles and cousins. Both parties are generally close with their extended family.
- [9] During the parties' relationship, the claimant generally served as primary caregiver for the children, with some general assistance from the respondent. She took care of most medical appointments. She did almost all school pickups.
- [10] The claimant was off work for a year after J's birth. Beginning in about July 2015, she went to work as a dental assistant for Dr. William Brooke three days per week.

- [11] The parties moved out of the respondent's parents' home in February 2017 when they bought their own home. The respondent's mother provided a great deal of child care assistance to the parties both before and after this move.
- [12] The claimant took a further maternity leave after K's birth in April 2017, and then returned to work. By the time of separation, she was continuing to work three days per week at Dr. Brooke's office, as well as one weekend per month at a dental surgical office. She says she was not able to get a fourth day at Dr. Brooke's office, which she found frustrating. She was being paid \$28 per hour by Dr. Brooke and \$30 per hour for her surgical work. She supplemented her dental assistant income with a food service job two or three nights per week. Her 2021 Income Tax return reports \$51,393.59 in Line 150 income, comprised of \$40,424.35 in T4 income, and \$8,330 in Employment Insurance benefits (which I expect may have been COVID-related, although this question was not put to her directly).
- [13] The parties' relationship began to break down in about 2019. The claimant makes allegations of violence against the respondent. However, the claimant did not suggest that there was any violence directed towards the children. Nor does not she seek to restrict the respondent's parenting time, or argue in favour of her proposed move, based expressly on a risk of family violence
- [14] The parties separated on October 14, 2019, when the claimant asked the respondent to move out of the family home. The respondent returned to live with his parents. In December 2019, the claimant decided to move into a basement suite elsewhere, and the respondent moved back into the family home. The home was sold in July 2021. The respondent then moved back in with his parents, where he has lived since.
- [15] After separation, the parties informally agreed to share parenting time as follows: 10 days with the claimant and 4 days with the respondent. This plan fit with the respondent's work schedule, which was 10 days on and 4 days off.
- [16] Both sets of grandparents were highly engaged in the children's care. As noted, at first the respondent's mother filled in most of the child care gaps created by the parties' respective work schedules. Starting in May 2020, the claimant transitioned this "gap filling" role over to the claimant's mother.
- [17] It is clear that the children are extremely close with both sets of grandparents, unsurprisingly given the extensive amount of time they have spent with all of them over the years.
- [18] The claimant met her current common law spouse, Mr. Yannick LeBlanc, in July 2020. Mr. LeBlanc is an RCMP officer. He was previously stationed in the Lower Mainland, but ran into difficulty as a result of an automobile accident on March 30, 2018 in which an elderly female was injured. Mr. LeBlanc pled guilty to driving without due care and attention and was sentenced to a fine of \$750 and a victim surcharge of \$113. According to the claimant, this event disrupted Mr. LeBlanc's plans to move into the Major Crimes Division in the Lower

Mainland, and so he began to look further afield. Mr. LeBlanc says he chose Dawson Creek because he had a friend in the city. He was stationed in Dawson Creek at the time that he met the claimant.

- [19] Mr. LeBlanc met the claimant's children for the first time in October or November 2020. Only three months later, in February 2021, the claimant moved with her children into Mr. LeBlanc's home. She and Mr. LeBlanc gave evidence that the children have bonded quickly with Mr. LeBlanc. He helps J with his French immersion homework given that Mr. LeBlanc is Quebecois. He also takes the children out for outdoor activities such as camping, bicycling, swimming and hunting.
- [20] In December 2021, the claimant was upset that the respondent's mother approached her in a grocery store with the children present, and pressed the claimant for a visit. The claimant stopped volunteering time with the children to the paternal grandparents at this point, but they have continued to see the children during the respondent's parenting time.
- [21] At about the same time, the claimant heard of a dental assistant opportunity in Salmon Arm. She had been in the Salmon Arm area when she was younger and enjoyed it. The opportunity to do more surgery in this office was also attractive. She started taking steps to relocate.
- [22] On March 3, 2022 the claimant filed a Notice of Family Claim ("NFC"). In the NFC the claimant stated, inter alia:

Proposed arrangements

1. The Claimant is seeking an order allowing her to relocate with the Children to an area where there are more opportunities for the Children in terms of healthful activities as well as educational opportunities. As well, the Claimant is seeking to relocate with the Children so that the Claimant may advance in her career and her income as the Dawson Creek region is in an economic decline.
2. Unless and until the Claimant obtains a relocation order for her and her Children, the [Respondent's] parenting time will remain as it is presently.
3. If/when the Claimant obtains a relocation order for her to move from Dawson Creek area with the Children, the Claimant is seeking orders that the Children may have parenting time with the Respondent via social media and videoconferencing weekly and that the Children may have time with the Respondent during vacation times as follows:
 - a. One week at Spring Break;
 - b. One week at Christmas time; and
 - c. Two weeks over Summer vacation

Or as otherwise agreed upon by the parties or as ordered by this Honourable Court.

[23] On or about March 11, 2022 the claimant provided written notice of her intention to relocate. The letter stated as follows:

When we move we will gladly provide you with our address, phone numbers as well as keeping you in the loop as far as school, and extra curricular activities go. You will be more than welcome to come visit the kids and we will ensure that visits happen through the year [i.e.]: 1 week at spring break, 2 weeks [at] [summer] holidays, 1 week at [Christmas] (rotating actual [Christmas] week as we have been doing) as well as regular scheduled phone/video conference calls.

[24] On April 4, 2022 the respondent provided his objection to relocation. The claimant claims that she did not see this document, but does not dispute that it was delivered to her counsel, and that she was made aware of the respondent's objection. Indeed, on May 16, 2022 the respondent stated as follows in an email to the claimant:

So sorry to tell you but they are not legally allowed to leave town.

[25] In this email discussions on May 16, 2022, the parties also agreed that the respondent would have parenting time from August 13 to August 27, 2022.

[26] In July 2022, the claimant moved to Salmon Arm with Mr. LeBlanc. This move was not supported by a court order, and did not have the respondent's approval. Salmon Arm is about an 11-hour drive south from Dawson Creek. The claimant asserts that she understood that she had done everything she needed to do to allow her to relocate. She did advise the respondent of her move after the fact.

[27] The claimant describes an idyllic summer in Salmon Arm. The claimant found work at the dental office for four days per week at \$30/hour. The claimant projects receiving employment income of \$46,800 this year in her latest Financial Statement. The new dentist performs more dental surgery than her prior employer. He allows employees to receive free dental services, unlike Dr. Brooke. They are living in a large house leased by the claimant and Mr. LeBlanc. It has a huge backyard. There is a supportive RCMP spousal community. The children enjoyed themselves at a summer day club. The claimant was able to begin the process of registering them at a French immersion school that offers elementary school trips to Quebec. The school showed a real interest in ensuring that the children were well placed. The claimant's parents visited and expressed an interest in moving to Salmon Arm as well, when the time is right. The family went boating at nearby beaches that were closer and cleaner than those in Dawson Creek. Pictures were introduced showing the children enjoying outdoor activities throughout the summer.

[28] I note, that the respondent raises a concern that two of the pictures show the children on Mr. LeBlanc's lap, and another shows J with no top on, in bed with Mr. LeBlanc. Mr. LeBlanc denies any improper contact.

[29] The children returned to Dawson Creek with the respondent on August 13, 2022, as previously agreed.

- [30] On a video taken by the respondent of J on August 20, 2022, he reported that Mr. LeBlanc had stuck a "pee pad" under his nose. The pad had black on it, and he understood that it was his mother's. He said that it was steaming. He seemed confused at how to treat Mr. LeBlanc as a result of this incident. J said he did not want to move, and expressed concerns about how Mr. LeBlanc was treating him. That said, while clearly very upset, he still called Mr. LeBlanc his friend.
- [31] Mr. LeBlanc strongly denied that he had pushed a menstrual pad under the child's nose. The claimant denied using menstrual pads, as she has an IUD. She said that their dog was still menstruating, so that it was possible there were pads around for that purpose. The claimant theorized that perhaps J was confusing an incident where Mr. LeBlanc placed the dog's poop bag under his nose to show him why his sister did not like it when J did the same to her.
- [32] J also reported in the video that Mr. LeBlanc had called him a "dickhead" which Mr. LeBlanc did not deny, but said he was triggered by the fact that J was misbehaving.
- [33] On August 25, 2022 there was a Judicial Case Conference ("JCC") at which Master Robertson provided that each could bring applications to determine residency on short leave. The respondent says she only realized at this time that her NFC could be interpreted as a commitment by her not to relocate the children without a court order.
- [34] As noted, the parties had earlier discussed that the children would be returned to the claimant on August 27, 2022. However, the respondent declined to allow their return to Salmon Arm. The respondent says that after taking advice and attending the JCC he realized that he had the right to keep them in Salmon Arm given that he had objected to the relocation, and the claimant left without a court order.
- [35] On August 29, 2022, the respondent brought an application seeking an order that interim residence of the children remain with him. A consent interim order was entered into on September 1, 2022 before Master Scarth providing that the claimant would have parenting time every two weeks on the following dates: September 9 to 12, 2022, September 23 to 26, 2022 and October 7 to 10, 2022. The respondent would have all other parenting time in Dawson Creek.
- [36] The children started back to school in Dawson Creek as of September 2022. The respondent is working reduced hours at present given his position's seasonal ebbs and flows. As such, he has generally been able to attend to all school pick ups and drop offs. His mother is available to assist whenever necessary, including over the winter months when the respondent works longer hours.
- [37] As noted, the children's maternal grandparents also live in Dawson Creek. They testified at trial that they may move to Salmon Arm someday, but there is no fixed schedule, as they need to remain so long as a maternal great-grandparent also resident in Dawson Creek remains alive.

- [38] In terms of health issues, J has asthma and allergies and K has a sinus problem, but they are both otherwise healthy. The respondent had set up a specialist appointment for K in September 2022, but he did not attend. The respondent says this was due to the failure of the claimant to provide the necessary information. J has had specialist appointments for his allergies in the past, and the claimant says she would prefer to be closer to the complex care available in Kelowna. Kelowna is about 1.5 hours south of Salmon Arm.
- [39] The claimant failed to exercise her parenting time from October 7 to 10, 2022. She did not advise the respondent of her intention not to come to Dawson Creek until he made inquiries of her on Thursday, October 6, 2022. She explained that she had to work on the Friday and come up for the trial starting on Monday. It was also her birthday weekend, and she had a party with friends.

III. ISSUES

- [40] The parties advised that they did not require any orders in relation to property. They also agreed that any child support determination should fall out naturally from the court's ruling on relocation and parenting time. As such, relocation was the only issue before the Court at trial.
- [41] As noted, the claimant wishes to relocate to Salmon Arm with her children, and proposes the following terms depending on the relocation decision:
- 1) If the court decides that the children should spend a majority of time with the claimant in Salmon Arm:
 - a. the respondent will have parenting time as follows:
 - i. One weekend each month in Dawson Creek;
 - ii. One weekend each month in Salmon Arm;
 - iii. Via Telephone or video calls each day or on some other regular schedule;
 - iv. All of spring break;
 - v. Half of winter break, with the parties alternating the half that contains Christmas;
 - vi. All of summer break, but for the two weeks preceding the start of school;
 - vii. At any other time if visiting Salmon Arm, at times to be agreed between the parties, if the respondent gives notice to the claimant of his visit;
 - viii. At any other time agreed between the parties in writing;
 - ix. The claimant will be responsible for transporting the children to Dawson Creek;
 - b. The respondent's parents will have regular contact during the claimant's parenting time by telephone or video call;

- 2) If the court decides that the children should spend a majority of time with the respondent in Dawson Creek:
- a. The claimant will have parenting time as follows:
 - i. One weekend each month in Dawson Creek;
 - ii. Via Telephone or video calls each day or on some other regular schedule;
 - iii. All of spring break;
 - iv. Half of winter break, with the parties alternating the half that contains Christmas;
 - v. All of summer break, but for the two weeks preceding the start of school;
 - vi. At any other time if visiting Dawson Creek, at times to be agreed between the parties, if the claimant gives notice to the respondent of his visit;
 - vii. At any other time agreed between the parties in writing;

[42] At trial, the claimant conceded that even if relocation was allowed, the children should remain in Dawson Creek until January 2023, so as to not disturb the children's first term.

[43] If the Court decides that the children should remain in the primary care of the respondent in Dawson Creek, the respondent proposes that:

- a) the claimant have parenting time as follows:
 - i. Every second weekend, with the claimant to pick up from school on Fridays and drop off at school on Mondays. If the day preceding or following the weekend is a statutory holiday or a professional development day, the parenting time will include that extra day. Parenting time to be exercised in Salmon Arm once per month unless otherwise agreed upon by the parties.
 - ii. The respondent suggests restricting the parenting time in Salmon Arm to once per month in order to reduce travel time for the children. His position is that this is an 11 to 12-hour drive (with breaks), and would be too difficult for the children to make every second weekend. The claimant has extended family in Dawson Creek and the children have successfully stayed with their maternal grandparents and the claimant in Dawson Creek in the past.
 - iii. The claimant and respondent will equally share the parenting time during spring break, summer break and winter school holidays.
 - iv. The respondent's position is that the children benefit from having as much equal parenting time as possible and so the children's extended holiday time spent equally with each parent is in the best interests of the children.

- v. The claimant and respondent will share parenting time on Christmas Eve/Christmas Day with the children to spend Christmas Day 2022 with the respondent (the children spent Christmas day with the claimant in 2021), and alternating each year thereafter. The exchange to take place on Christmas eve at 7:00 PM.
 - vi. Telephone and video calls as often as the claimant seeks.
 - vii. At any other time, as agreed between the parties, when the claimant is visiting in Dawson Creek.
 - viii. At any other time agreed between the parties in writing.
 - b) The respondent, Mr. Carter, shall have all other parenting time not specifically set out above.
- [44] If the Court decides that the children will be placed in the primary care of the respondent in Salmon Arm, the respondent accepts the claimant's parenting proposal.

IV. DISCUSSION AND ANALYSIS

A. Legal Framework

- [45] The parties agree that the Divorce Act, R.S.C., 1985, c. 3 provisions on mobility should govern over those in the Family Law Act, S.B.C. 2011, c. 25. The new Divorce Act relocation provisions which came into force on March 1, 2021 provide as follows:

Relocation

Notice

16.9 (1) A person who has parenting time or decision-making responsibility in respect of a child of the marriage and who intends to undertake a relocation shall notify, at least 60 days before the expected date of the proposed relocation and in the form prescribed by the regulations, any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child of their intention.

Content of notice

- (2) The notice must set out
 - (a) the expected date of the relocation;
 - (b) the address of the new place of residence and contact information of the person or child, as the case may be;
 - (c) a proposal as to how parenting time, decision-making responsibility or contact, as the case may be, could be exercised; and
 - (d) any other information prescribed by the regulations.

Exception

- (3) Despite subsections (1) and (2), the court may, on application, provide that the requirements in those subsections, or in the regulations made for the purposes of those subsections, do not apply or may modify them, including where there is a risk of family violence.

Application without notice

- (4) An application referred to in subsection (3) may be made without notice to any other party.

Relocation authorized

16.91 (1) A person who has given notice under section 16.9 and who intends to relocate a child may do so as of the date referred to in the notice if

- (a) the relocation is authorized by a court; or
- (b) the following conditions are satisfied:
 - (i) the person with parenting time or decision-making responsibility in respect of the child who has received a notice under subsection 16.9(1) does not object to the relocation within 30 days after the day on which the notice is received, by setting out their objection in
 - (A) a form prescribed by the regulations, or
 - (B) an application made under subsection 16.1(1) or paragraph 17(1)(b), and
 - (ii) there is no order prohibiting the relocation.

Content of form

- (2) The form must set out
- (a) a statement that the person objects to the proposed relocation;
 - (b) the reasons for the objection;
 - (c) the person's views on the proposal for the exercise of parenting time, decision-making responsibility or contact, as the case may be, that is set out in the notice referred to in subsection 16.9(1); and
 - (d) any other information prescribed by the regulations.

Best interests of child -- additional factors to be considered

16.92 (1) In deciding whether to authorize a relocation of a child of the marriage, the court shall, in order to determine what is in the best interests of the child, take into consideration, in addition to the factors referred to in section 16,

- (a) the reasons for the relocation;

- (b) the impact of the relocation on the child;
- (c) the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons;
- (d) whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement;
- (e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;
- (f) the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and
- (g) whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

Factor not to be considered

- (2) In deciding whether to authorize a relocation of the child, the court shall not consider, if the child's relocation was prohibited, whether the person who intends to relocate the child would relocate without the child or not relocate.

Burden of proof -- person who intends to relocate child

16.93 (1) If the parties to the proceeding substantially comply with an order, arbitral award, or agreement that provides that a child of the marriage spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child.

Burden of proof -- person who objects to relocation

- (2) If the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spends the vast majority of their time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child.

Burden of proof -- other cases

- (3) In any other case, the parties to the proceeding have the burden of proving whether the relocation is in the best interests of the child.
- [46] In terms of the burden of proof, given (1) the lack of an order or agreement, and (2) the fact that the claimant had approximately 70% of the parenting time, the parties agreed that this case comes under s.16.93(3). As such, both parties share the burden of establishing whether relocation is in the best interest of the child.
- [47] Given the inclusion of the best interest test within the Divorce Act's relocation assessment, it is also necessary to review s. 16's list of factors:

Best interests of child

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

Primary consideration

- (2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Factors to be considered

- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
 - (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
 - (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
 - (d) the history of care of the child;
 - (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
 - (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
 - (g) any plans for the child's care;

- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- (j) any family violence and its impact on, among other things,
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Factors relating to family violence

- (4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
 - (a) the nature, seriousness and frequency of the family violence and when it occurred;
 - (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
 - (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
 - (d) the physical, emotional and psychological harm or risk of harm to the child;
 - (e) any compromise to the safety of the child or other family member;
 - (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
 - (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
 - (h) any other relevant factor.

Past conduct

- (5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

Parenting time consistent with best interests of child

- (6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

Parenting order and contact order

- (7) In this section, a parenting order includes an interim parenting order and a variation order in respect of a parenting order, and a contact order includes an interim contact order and a variation order in respect of a contact order.

[48] The Supreme Court of Canada recently discussed these new provisions in *Barendregt v. Grebliunas*, 2022 SCC 22. This case addressed a mother's application to move her children from Kelowna, BC (where the family had lived prior to the parents' separation), to the mother's home community of Telkwa, BC. The trial court allowed the move, largely due to concerns about (1) the potential for continued abuse of the mother by the father should they remain in Kelowna, and (2) the state of the father's residence, which was not habitable. In addition, the precariousness of the parties' financial situation decreased the ability of the father to provide for the children in Kelowna. The Supreme Court affirmed the trial judge's decision. The decision largely turned on the question of the admission of new or fresh evidence on appeal, but the Court did also speak about the new relocation test:

[107] At the time *Gordon* was rendered, the Divorce Act and provincial family legislations did not contain any provisions pertaining to relocation. In 2019, Parliament amended the Divorce Act to provide a statutory regime that governs relocation applications. Several provinces have enacted similar statutory relocation regimes in recent years .

[108] Subject to some notable exceptions, the Divorce Act and these provincial statutes largely codified this Court's framework in *Gordon*. As I will explain, where they depart from *Gordon*, the changes reflect the collective judicial experience of applying the framework for over 25 years.

[110] This Court did not receive any submissions on the application of s. 35.3. As I will explain, however, the outcome would be the same regardless of whether this case were decided under the amended Divorce Act or the refined *Gordon* framework. The new relocation provisions in the Divorce Act largely mirror developments in the common law since *Gordon*. As a result, I leave the discussion of the transitional provision for another day. This case, however, provides an opportunity to bring the common law framework in line with the amended Divorce Act to assist judges in dealing with future mobility cases.

- (a) Determining Relocation Issues at First Instance and by Way of Variation Applications

[112] The approach to mobility issues when they are raised at first instance, as in this case, differs from the approach to such issues when they are raised by way of a variation application, as in *Gordon*. Without a pre-existing judicial determination, a parent's desire to relocate is simply part of the factual matrix in the assessment of what parenting arrangement is in the best interests of the child. Therefore, the first stage of *Gordon* -- which sets out the usual requirement for a variation order -- has no application.

[114] The history of parenting arrangements is always relevant to understanding a child's best interests.

(b) Determining a Child's Best Interests in Mobility Cases

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[116] Five considerations that bear upon the best-interests-of-the-child analysis arise in this case: (i) the application of *Gordon* to shared parenting arrangements and the so-called "great respect principle"; (ii) a moving parent's reasons for relocation; (iii) the "maximum contact principle"; (iv) a moving parent's testimony about how the outcome of the application will influence their decision to relocate; and (v) the impact of family violence.

[49] The parties in this case agreed that there was no order or agreement in place that would require that this application be treated as a variation application. Any earlier orders or arrangements were without prejudice.

[50] The court is to do a "blended analysis" in which the court considers the relocation application and the parenting arrangements together, rather than sequentially: *K.P. v. S.K.*, 2021 BCSC 1426 at para. 95.

[51] I apply the relevant factors below, starting with those specifically relevant to relocation, and then continuing on to the broader "best interests" factors. As the assessment continues, there is increasing overlap. As such, the analysis below should be viewed as cascading - if there has been an analysis of an issue as part of an earlier factor, it is not repeated.

B. Application of the Factors

(a) Reasons for Moving

i. Economic Benefits

[52] The claimant argues that her economic prospects will be improved in Salmon Arm, which improved situation may "conduce to the best interests of the child": *Karpodinis v. Kantas*, 2006 BCCA 272 at para. 27. In *Stav v. Stav*, 2012 BCCA 154, the court confirmed that a move justified by financial or emotional gains that ultimately inure to the benefit of a child is a relevant consideration:

[88] As noted in this passage, often the parent seeking to relocate will submit that doing so will enable him or her to obtain financial and/or family support that is unavailable in his or her present situation, and which will both directly and indirectly benefit the children. The other

parent will argue that whatever benefit there is to the relocating parent in those situations is more than offset by the detriment to the children of being removed from their community and, more importantly, from regular contact with the other parent. In my view, these are legitimate considerations which may assist a judge in determining to what extent the move will operate in the children's best interests. It is simply one more factor to weigh in the balance. The trial judge considered these factors in this case and, in my view, she was right to do so.

- [89] The question should not be whether the evidence of the reason for a proposed move is admissible, but how it relates to the children's best interests, if at all. Ulterior reasons for moving which are a thinly disguised attempt to thwart contact with the other parent are clearly relevant to whether a parent is acting in the children's best interests. Similarly, reasons for moving which benefit the person seeking to relocate can also be for the benefit of the children, but have to be weighed together with the other evidence to determine whether the move is in the children's best interests.
- [90] The fact that a move is in the best interests of the parent seeking to relocate does not necessarily mean that it will be in the children's best interests. It is more likely to be so if the person seeking to move is the custodial parent with a healthy relationship with the children, than if the person seeking to move is an access parent who has had limited contact or involvement with the children. These are but two scenarios along a broad spectrum.
- [53] Although improving economic prospects can support relocation, I find that the weight to be applied to this factor is marginal in the present case:
- a) The improvement in the wage rate from Dawson Creek to Salmon Arm is not particularly significant, from \$28/hour to \$30/hour:
 - b) In fact, the claimant's Line 150 income was higher in her last year in Dawson Creek (\$51,393.69) than the claimant projects it will be in 2022 (\$46,800) (although this may be a factor of 2021 including non-wage benefits, and of 2022 being an estimate);
 - c) The main change in the claimant's situation is that she has increased her work week from three days to four days, but there is little evidence that the claimant made a concerted effort to find a fourth day of work in Dawson Creek. She suggests that she had a good sense of the Dawson Creek labour market from her relationship with other dental assistants, but direct inquiries would have added greatly to the weight of this evidence. She asserted that a few specific dentists in Dawson Creek were not sufficiently moral or forward looking enough for her, but there is no evidence that her concerns applied to every dentist, and no evidence that she approached all dentists. Furthermore, she did not approach dentists in Fort St. John. Fort St. John would involve only a 56-minute commute, which she admits would allow the existing parenting schedule to remain in place. Unlike the proposed moving party in *Burseth v. Burseth*, 2017 BCSC 2076, but like the situation of the unsuccessful proposed moving party in *Campbell v. Campbell*, 2018 BCSC 330, I am unable to find that the claimant engaged in "sincere and diligent efforts to support herself and the children" in Dawson

Creek.

- d) The claimant suggested that she also relocated in order to secure additional dental surgery work. However (1) she was already doing two days of surgical work per month in Dawson Creek, and (2) she provided little detail of the extent of the increase in surgical work in Salmon Arm;
- e) As for the basic dental care available from her new employer, with employed parents, I expect that any such costs should largely be offset by the parents' health care plans;
- f) Lastly, and most importantly, the claimant did not provide any material evidence about how the children have been negatively affected by her current income level, or what improvements in the children's life would be achieved by a marginal increase in her income. There was no evidence that the claimant would be unable to meet the needs of the children in Dawson Creek: *Hellberg v. Netherclift*, 2017 BCCA 363 at paras. 82. As the court stated in *Hellberg*:

[87] Ms. Hellberg's circumstances were only relevant if they were having a deleterious impact on the child's well-being that would likely be ameliorated by the proposed move.

[54] At the end of the day, there is little reason to believe that the children's standard of living will be materially better in Salmon Arm over the long term: *One v. One*, 2000 BCSC 1584 at para. 26. This distinguishes the present case from those decisions in which financial needs or benefits for the moving party have figured prominently in granting a mobility right, such as *Burseth*.

ii. Improved Educational Opportunities

- [55] The claimant relies on the following in arguing that the educational opportunities will be better in Salmon Arm:
 - a) Although J's first two French immersion teachers in Dawson Creek were very good, his third teacher was not as strong, as she had been teaching English in Mexico prior to her appointment, and did not have a good French accent;
 - b) the school in which the children were registered in Salmon Arm was very attentive and interested in ensuring that the school would be a good fit;
 - c) the school in Salmon Arm organizes a trip to Quebec in elementary school, and not just in high school as in Dawson Creek; and
 - d) in Salmon Arm, the two children would have access to Mr. LeBlanc to assist them with their French homework.
- [56] Any weight associated with this reason is moderated by the fact that the children could also find themselves with weak teachers in Salmon Arm. Furthermore, the benefits she associates with schooling in Salmon Arm have not been put to the test.

iii. Improved Recreational Opportunities

[57] The claimant argues that Salmon Arm is preferable for recreational activities as:

- a) The children love beaches, and there are more and better ones in the Salmon Arm area;
- b) The weather is warmer in Salmon Arm than in Dawson Creek, which allows for more outdoor activities in the winter, as it is less likely to be so cold that the children cannot go outside.

[58] I do not find that this reason creates a material weight in favour of relocation. Outdoor recreational opportunities are not a significant element of the best interests test.

iv. Improved Health Care

[59] The claimant noted that it would be easier to access medical specialists from Salmon Arm given the proximity to Kelowna. However, I give this marginal weight given that the children are generally healthy, such that specialist visits should generally be few and far between.

[60] The claimant also suggests that there are environmental concerns in Dawson Creek. However, I did not receive any useful evidence supporting the legitimacy of these concerns other than from certain lay witnesses, and the Dawson Creek residents who testified did not report having suffered any adverse health conditions as a result of living in the city. Nor did I receive any information about the comparable level of environmental toxicity in Salmon Arm. I do not find that this is a legitimate basis for a move to Salmon Arm.

[61] On the question of the children's health, the claimant also alleged that the respondent was vaccine hesitant. However, the respondent made a commitment to follow government guidelines for the children on a going forward basis.

v. Respondent's Reasons to Stay

[62] Although I have only reviewed the reasons given by the claimant for the move to this point, as that is the focus of the statutory test, I appreciate that the burden on best interests test in this situation rests on both parties' shoulders. As the court stated in *B.M.W.G. v. J.W.G.*, 2022 BCSC 1346:

[113] The Divorce Act does not specify that the Court is to scrutinize the reasonableness of any parenting proposal made by the party opposing relocation but it is necessary to consider JG's proposal as part of the requirement for a blended analysis

[63] The respondent's primary reasons for proposing that the children remain in Dawson Creek are as follows:

- a) The children have always lived in Dawson Creek, save for their short unapproved summer departure to Salmon Arm;
- b) The children's available support is far wider and deeper in Dawson Creek.

[64] These reasons are effectively embedded within several of the other factors analyzed below. As discussed below, I do conclude that they carry a substantial weight.

iv. Conclusion on Reasons

[65] I find that the claimant's reasons for moving to Salmon are not particularly compelling, particularly when set against the weight of the reasons for remaining in Dawson Creek. I find that this factor favours the children remaining in Dawson Creek.

(b) The impact of relocation on the child

[66] I have no doubt that these two well-adjusted and intelligent children will flourish regardless of where they live. The evidence before me was that the children were "well-adjusted, happy, and fully integrated into and thriving in" Dawson Creek: Hellberg, para. 89.

[67] Relocation will allow the children to have primary residence with the parent who has been most involved in their upbringing, an important factor. However, this would be at the cost of the children losing substantial contact with their father, grandparents, aunts, uncles, cousins and friends, all left behind in Dawson Creek: One at paras. 27-28; A.J.D. v. E.A.E., 2013 BCSC 2160 at para. 45. The loss of easy access to a parent is a "very significant negative factor", although it should not overwhelm the analysis: B.M.W.G. at para. 121.

[68] I find that relocation will cause disruption to the children. As stated in T.K. v. R.J.H.A., 2015 BCCA 8:

[77] [The trial judge] ultimately concluded that the best interests of these children would be met by their continuing to live in the community where: (i) the children had roots and bonds of friendship and family; (ii) the father lived and had good employment with increased prospects and flexibility for the children; (iii) the mother had good employment opportunities; and (iv) the children were doing well and could receive satisfactory instruction on Chinese culture and language

[69] In B.M.W.G., the court recognized the importance of access to extended family:

[76] VWG has strong, loving, and important relationships with both her parents' extended families. It is in her best interest that all of these be nourished. On balance, though, I find her connections with BW's sisters and especially BW's mother to be particularly strong and the draw of having them close by and in her life on a weekly or even daily basis is very much in her best interests and a factor favouring relocation to Vancouver

[120] I am satisfied it is in VWG's best interests to be close to BW's family. VWG will draw considerable benefit from being close to MW, SW, and especially CW. All three testified and, as demonstrated by their evidence, VWG has a special bond with each that will strengthen to her benefit by living close to (or with) them. VWG will also benefit indirectly by living in proximity to BW's family through the support they will give BW as a single parent. I find these direct and indirect benefits will greatly enhance VWG's life and it is in her best interests to promote them.

See also Campbell, para 86; One, para. 24

- [70] The relocation will create a need for the children to frequently travel the long distance between Dawson Creek and Salmon Arm, which is another negative impact of relocation: B.M.W.G at para. 106; One, para. 24. I find that the impact of relocation to be sufficiently negative that this factor favours requiring the children to remain in Dawson Creek.
- (c) Amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons
- [71] As noted, relocation will increase the time with the children's mother at the cost of reduced time with their father. From separation up until the claimant's move to Salmon Arm, the children have been primarily resident with the claimant. Given that the mother has had a greater level of involvement in the children's life, this factor favours relocation.
- (d) Whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement;
- [72] I find that the claimant should not have relocated to Salmon Arm without a court order in light of:
- a) the claimant's asserted relief in her NFC, which contemplated a court order before any relocation;
 - b) the respondent's delivery of a notice of objection to the relocation prior to the move; and
 - c) the fact that the respondent alerted the claimant to the implications of an unauthorized move in his May 16, 2022 email.
- [73] The claimant admits that she should have not have done what she did, but claims a certain degree of innocence, in that she says she did not fully appreciate the effect of the NFC or the statutory notice regime. However, she was represented by counsel at the relevant time, and she was aware of the respondent's objection to relocation. I conclude, and claimant's counsel agreed, that her move to Salmon Arm was reckless, even if the claimant was not intentionally trying to violate the applicable regime. The claimant's failure to respect the notice requirement weighs against relocation, in that it creates a concern about the claimant's willingness to respect any governing legal regime.
- [74] There was some discussion at trial as to the nature of the notice provisions. The claimant argued that there are no express legal consequences of breaching of the notice provisions, and as such this factor should not weigh against the claimant. However:

- a) The notice provisions are mandatory, and a failure to respect the provisions may prevent the potentially relocating parent from changing the status quo of the child's residency before a court has the opportunity to consider whether relocation is in the child's best interests: B.M.W.G. at paras. 8, 28.
- b) The relevant point is that the notice provisions were breached by the claimant, not the legal consequences of such a breach.
- [75] The failure to respect the relocation regime is not determinative of the question, but it is a factor: B.M.W.G at para. 55. As such, I find that this factor favours remaining in Dawson Creek.
- (e) The existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside
- [76] There was no express order governing residency. All orders and informal arrangements were without prejudice.
- (f) The reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses
- [77] The parties' final proposals, although differing in certain minor ways, both provide the non-resident parent with about as much parenting time as could reasonably be provided without requiring excessive travel on the part of the children. Both parties also made reasonable steps to arrange for the children's education in their preferred location. The claimant found a good school in Salmon Arm, and had helpfully arranged an initial "meet and greet" session with school administrators. The respondent has returned the children to J's existing school. K is on the waiting list for French immersion. Both are ready and willing to encourage their children's French education.
- [78] Although the respondent was the less involved parent prior to separation, he appears ready to "step up" and has done a good job over the first major test of his parenting abilities throughout August and September: K.P. at paras. 99, 124.
- [79] Given that both parties work, the respondent's plan does have the advantage of being able to access both parties' parents to assist in any supplementary care required.
- [80] Given the broader support system available in Dawson Creek, I find that this factor favours remaining in Dawson Creek.
- (g) Whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance

- [81] I have already discussed the claimant's notice problem in the context of factor (d). It would be double counting to weigh this against the claimant a second time.
- [82] However, the claimant also failed to attend for her most recent parenting time before trial, and failed to reach out to advise the respondent of her intention not to come. I appreciate that the relevant weekend bumped up right against the trial, but it would have been simple enough to advise the respondent of her intention much further in advance.
- [83] Although a minor violation of a court order, this failure does create a further weight in favour of Dawson Creek.
- [84] The claimant sought to assert that the respondent's conduct in keeping the children with him after the agreed August date was a "black mark" on his side of this ledger. However, given that the claimant removed the children from Dawson Creek improperly, it does not lie in her mouth to complain about the respondent keeping them in Dawson Creek. Perhaps he should have been more transparent about his intentions, but this goes more to the generally problematic communication between the parties.
- [85] I move now to the factors set out in s. 16 of the Divorce Act.
- (h) Primary Consideration: child's physical, emotional and psychological safety, security and well-being
- [86] I accept that the children's physical, emotional and psychological safety, security and well-being will be adequately protected in either location. Neither party argued that this was a prominent factor in this case. This factor is neutral.
- (i) Child's needs, given the child's age and stage of development, such as the child's need for stability
- [87] This factor is largely repetitive of factor (b) above.
- (j) The nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life
- [88] The children appear to have a strong bond with both parents, although perhaps a somewhat stronger one with the claimant given her more intensive involvement in their care. But the factor also allows a consideration of the role of grandparents and others, which would be better facilitated in Dawson Creek. I find that the two elements largely balance, making this factor neutral.
- (k) Each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse
- [89] Both parties acknowledged that the other was a good parent. Both have been fairly rigid in terms of enforcing the strict terms of the interim orders and agreements, but that is not particularly surprising in the circumstances. The claimant's decision to go to Salmon Arm

without a court order is of some concern in terms of her willingness to support the children's relationship with the respondent. The claimant's decision to introduce the children to Mr. LeBlanc and then move in with him so quickly also creates some minor concern about the claimant's judgment (B.M.W.G. at para. 83), but it appears that the arrangement has largely worked out thus far. On the other side, the respondent's clear enmity for Mr. LeBlanc causes me some concern that the respondent might unduly interfere or restrict access to the claimant's household. In sum, neither party has been perfect in terms of supporting and protecting the children's relationship with the other and, as such, I find that this factor is neutral.

(l) The history of care of the child

[90] As noted above, the claimant has generally been the most "hands on" parent. However, the weight of this factor is mitigated by the fact that the parties leaned heavily on the grandparents for care, which care will not be available in Salmon Arm unless and until the claimant's parents move there. I find that net effect of this factor weighs (slightly) in favour of a move to Salmon Arm.

(m) The child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained

[91] In *D.J.S. v. J.M.D.*, 2014 BCSC 1143 at para. 39, Madam Justice Power noted that children, particularly those under 16, do not have a right to determine their living arrangements. The court makes that determination with reference to their best interests. There was no report proposing to outline the children's views.

[92] There was some limited hearsay evidence from certain witnesses reporting that the children have indicated a wish to stay in Dawson Creek. J also expressed concerns about moving in the video discussed above. However, I find that given hearsay concerns, the lack of a proper effort by a qualified person to extract the children's views, and their young age, I should not give this evidence any weight. This factor is thus neutral.

(n) Cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;

[93] Neither party relied on this factor as material to the application.

(o) Plans for the child's care

[94] This is largely duplicative of factor (f) above, and hence I do not double count it again here.

(p) Ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child

[95] This factor is largely repetitive of factors (b) and (i).

- (q) Ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child
- [96] Based on the emails submitted at trial, there have certainly been communication failings. However, I cannot find that one or the other party is more responsible for these problems. I find that this factor is neutral, and I hope the parties will ensure that they are always respectful in their going forward communications.
- (r) Family violence
- [97] I do not find that this is a material factor in this case.
- [98] The claimant did not lean on this factor to any material extent in final argument, although she did allege physical abuse during the marriage. This abuse was denied by the respondent, and there were few details provided by the claimant which would have assisted the respondent in responding more fully. The claimant's mother mentioned one incident of "arm squeezing" by the respondent, but I have no evidence that this had or is having any real impact on the children, even if I were to accept that it occurred in the face of the respondent's denial.
- [99] Although the respondent raises Mr. LeBlanc's conduct in (1) allegedly putting a "pee pad" under J's nose, (2) allowing the children to sit on his lap, (3) allowing the children to come into bed with them, was inappropriate, I give no weight to this argument. The respondent simply did not establish that any inappropriate conduct occurred on a balance of probabilities:
- a) J's report recorded on the video has some strange inconsistencies:
- i. No one was using "pee pads" in the claimant's home;
- ii. The claimant was not even using menstrual pads at the relevant time;
- iii. The description of the substance as "black" suggested any blood was dried, while his description of it "steaming" would suggest it was fresh.
- b) I do not find that the pictures reflect inappropriate sexual touching on their face, and Mr. LeBlanc strongly denied that such touching took place.
- [100] This factor is neutral.
- (s) Any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child
- [101] There is no such proceeding.
- (t) Parenting time consistent with best interest of child/maximum contact principle

- [102] Section 16(6) of the Divorce Act states that in allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child. Relocation will obviously make it more challenging to have the same degree of contact with both parents. As the court stated in *Kennedy v. Peters-Kennedy*, 2017 ONSC 7296:
- [90] The starting point in a custody and access determination is that both parents are equally entitled to custody of the child. This is set out in the CLRA at section 20. Under section 16(10) of the Divorce Act, this is implicit in the maximum contact rule, set out above: the child is to have as much contact with each spouse as is consistent with the best interests of the child.
- [91] Where, as here, both parents are capable and appropriate caregivers, parents are the priority caregivers for their children. This is so even where the proposed third parties who could provide care to a child are loving and devoted grandparents.
- [92] The law provides for maximum contact with spouses, not with grandparents. Thus in *Erb v. Fradette*, 1999 CarswellSask 57, for example, Justice McIntyre found that preferring grandparent care over parental care "tends to indicate an unwillingness to promote maximum contact."
- [103] The proposed move to Salmon Arm undercuts the maximum contact principle. I find that the factor weighs against a move, as the children's contact with the respondent will be substantially reduced.
- (u) Final "In the Round" Evaluation
- [104] As the Court of Appeal stated in *Hellberg*:
- [72] The importance of considering the best interests of the child "in the round" can be traced to this Court's judgment in *Hejzlar v. Mitchell-Hejzlar*, 2011 BCCA 230 per Saunders J.A. at para. 46. Although the expression was used in a particular context in *Hejzlar*, it is one of general application and simply means that consideration of the child's best interests requires a fully-rounded analysis that takes into account all relevant factors.
- See also *B.M.W.G.* at para. 34.
- [105] Although the new test does not call for a simple scoring of the factors, I begin by noting that of the 17 non-repetitive factors considered above, six favour the children remaining in Dawson Creek, only two favour relocation to Salmon Arm, and the rest are neutral.
- [106] In terms of guidance from the case law, I note the following:
- a) In *B.M.W.G.*, relocation was allowed to a city in which the relocating spouse already had tremendous family support. That is not the case here.

- b) In K.P., relocation was allowed to a city where the relocating spouse had both family support, and where the children were born. Neither factor exists here.
 - c) In Burseth, relocation was allowed where the court found that the relocating spouse would have a materially better economic situation in the new city. That is not the case here.
 - d) In K.W. v. L.H., 2018 BCCA 204, the court found that the move was likely to enhance the children's general quality of life. I am unable to make the same finding here, particularly given the marginal economic gains for the claimant.
 - e) In Duggan v. White, 2019 BCCA 200, the mother wanted to relocate to the Lower Mainland in order to allow her to complete her Simon Fraser University degree more quickly and efficiently. The court found that staying put would extend the time to complete her education, which would keep her in a "situation of comparative under-employment for a longer period of time" (para. 63). I do not make the same finding here.
 - f) In the recent decision Link v. Lenskyj, 2022 BCCA 341, the court allowed a move holding that it was open to the trial judge on the evidence before him to conclude that the relocating respondent exhibited more willingness to support the child's relationship with the appellant. I am unable to make the same finding here.
- [107] In considering the best interest issue more broadly, I am predominantly concerned that the claimant's focus in requesting the move is in her own interests rather than those of her children: A.J.D. at para. 43. I am also somewhat concerned about the claimant's willingness to respect court orders if she moves to Salmon Arm in light of what occurred this past summer.
- [108] Conversely, when approached exclusive from the perspective of the children, I find that they would benefit from, among other things:
- a) the stability associated with remaining in Dawson Creek; and
 - b) continued access in Dawson Creek to at least one parent, but also to the broad support system from the children's extended family and friends.
- [109] I conclude that it is in the children's best interests to remain in Dawson Creek. As I noted in Campbell:
- [94] I accept that this outcome may not be in the best interests of the claimant, but that is not the test. As the Court of Appeal cautioned in Hellberg:
- [89] Further, the judge erred in principle by effectively equating Ms. Hellberg's interests with the child's interests. Ms. Hellberg is clearly unhappy with her shared living arrangements in Nelson, but the only evidence before the judge was that the child is well-adjusted, happy, and fully integrated into and thriving in his community.

V. CONCLUSION

- [110] I find that the children should remain primarily in Dawson Creek. However, I am prepared to accept the parenting time terms proposed by the claimant under that scenario. She will be the parent bearing the brunt of the travel burden, and as such I find that it would be reasonable to accommodate her convenience as much as possible, while still respecting the children's best interests. Her proposal satisfies this goal.
- [111] Given the need to avoid placing a parent in a "double bind" problem pursuant to s.16.92(2) of the Divorce Act, I have not analyzed what arrangements would be in the children's best interests should the claimant decide not to move to Salmon Arm. However, I seize myself of any application the claimant may wish to bring relying on such a possible change in circumstances. I am hopeful that the parties would be able to arrive at a consent arrangement should that occur. It may well be that something more akin to a shared parenting arrangement would be appropriate in that circumstance, although I am not issuing a formal order on this point at this time since there was no formal argument on this point. I echo the comments of the court in K.P. in terms of the potential for a different outcome in that eventuality:
- [139] The best scenario for the children would be for S.K. to move back to Alberta where he would be close the children. In those circumstances, his parenting time should be substantially increased from what I set out below so that he could work at developing a deeper bond with the children and his own parenting skills.
- [140] However, as stated in K.W. v. L.H.:
- [133] In the circumstances of this case, the best solution would be for both parents to move to Nova Scotia. The Father, however, has been adamant that he will not move to Nova Scotia notwithstanding that a court may approve the relocation application. A court cannot order him to do so even though such a move might be in N's best interest.
- At this point, a move back to Alberta does not appear to be in S.K.'s contemplation.
- [Emphasis added.]
- [112] As noted above, the parties advised that they did not require any directions on child support, property, or any other residual issues, which they were confident could be resolved on their own upon the issuance of these reasons. That said, I am content to remain seized of any trial continuation required should the parties be unsuccessful in their discussions.
- [113] If the parties are unable to agree on the costs implications of this judgment, they may make written submissions to the Court on the following schedule:
- a. Claimant's Submission: 30 days from this judgment;
 - b. Respondent's Response: 30 days from receipt of the claimant's submission;

c. Claimant's Reply: 10 days from receipt of the respondent's response.

"The Honourable Mr. Justice Branch"

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