
CANADA / JUDGMENT

Cizmic v. Cizmic

2018 BCSC 1721

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 1721 Cizmic v. Cizmic

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cizmic v. Cizmic,

2018 BCSC 1721

Date: 20180828

Docket: E11655

Registry: Campbell River

Between:

Joseph Anthony Cizmic

Claimant

And

Stefica Cizmic

Respondent

Before: The Honourable Mr. Justice Butler

(Appearance via teleconference)

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant

appearing by teleconference:

G. Currie

Counsel for the Respondent

appearing by teleconference:

J. Desilets

Place and Date of Hearing:

Nanaimo, B.C.

August 24, 2018

Place and Date of Judgment:

Nanaimo, B.C.

August 28, 2018

- [1] THE COURT: Now, this is my oral ruling on the application that I heard last Friday. As always when I make a ruling delivered orally, I reserve the right to amend the transcript, should that be ordered.
- [2] Stefica Cizmic brings this application to vary the parenting order made by Madam Justice Devlin on August 13, 2015 following a trial of this action (the "Devlin order"). The parties have three children: Manda, Maja, and Ivo. At the date of the trial, the children were 13, 10, and 9 years old, respectively. They are now 16, 14, and 12. The Devlin order dealt with numerous issues, but parenting was the most contentious. Ms. Cizmic, whom I will call the mother, sought to relocate with the children to Coquitlam where she was raised and has extensive family support. Joseph Cizmic, who I will call the father, wanted the children to remain in Campbell River where his extended family lives and where the children have resided for their whole lives. The mother made it clear to the court that she would move to Coquitlam even if the court dismissed her plan for relocation of the children.
- [3] Madam Justice Devlin decided the children should remain in Campbell River with their father in reasons indexed as Cizmic v. Cizmic, 2015 BCSC 1430. The Devlin order provided the mother would have parenting time with the children one weekend per month in Coquitlam and was at liberty to have a further weekend of parenting time each month in Campbell River. The mother brings this application to vary the Devlin order by changing Maja's primary residence to her home in Coquitlam. She does not seek any variation to the provisions relating to the other two children.
- [4] This application was brought following a series of applications that culminated in a master's order appointing Robert Colby to prepare a Views of the Child report pursuant to s. 211(1)(b). The order appointing Mr. Colby directed him to prepare:

a report regarding each of the children's views regarding the parenting arrangements, their respective maturity and reasoning behind these views, and whether each child appears to have been coerced or coached in reaching those views.

- [5] I heard the application on August 24, 2018. As the mother asks to have the varied parenting arrangement in place for September 1, 2018, I indicated to the parties that I would provide my ruling orally today, and this is my ruling. Given the limited time, my reasons will not be as extensive as they might otherwise be. I do not intend to set out the background information as it is well known to the parties and described in detail in the Devlin reasons. For the same reason, I will not set out the detailed procedural history that led to this application. Rather, I will summarize the Colby report, set out the arguments of the parties, and provide my ruling.

The Colby Report

- [6] Before summarizing the report, I need rule on the father's objection to Mr. Colby's report. He submits that the final segment of the report in which Mr. Colby offers recommendations on three issues should not be admitted in evidence and should be excised from the report. Mr. Colby does not make a recommendation as to whether Maja should be permitted to move, but recommends certain steps that should be taken in the event the court grants the mother's application for a change in Maja's primary residence. He recommends monitoring of Maja's emotional and psychological well-being, provision of counselling for the father as to how to structure his time with Maja, and reappraisal of Maja's ability to make the transition to Coquitlam after one school term. Counsel submitted that these recommendations should not be admitted in evidence because they go beyond the terms of his appointment.
- [7] I reject that argument. The report does not make any recommendation as to what order the court should make. It does report on the four matters specifically assigned to the author: the views of the children about parenting; their reasons for their views; their maturity; and whether the children were coerced or coached. Dr. Colby's recommendations about steps that should be taken if Maja moves to Coquitlam were not specifically sought by the terms of the order. He prefaces his final recommendations with the phrase, "The psychologist has a responsibility to present the following." I have no hesitation in endorsing his approach in offering those recommendations. His recommendations provide valuable information for the parties and for the court in the event that Maja's primary residence is varied.
- [8] Given that the recommendations do not touch directly on the issue to be decided on this application, I am of the view that they cannot be objectionable. However, if I am wrong in that conclusion, I would follow the recent decision of my brother Mr. Justice Verhoeven in *A.P. v. J.C.*, 2018 BCSC 1381. In that case, counsel objected to the inclusion of recommendations on relocation made by the author of the s. 211 report. The objection was very similar to that made here; that is, the court order and letter of instruction did not specifically seek the psychologist's recommendations. Justice Verhoeven admitted the entire

report in evidence and observed at para. 114, and I quote:

114 In my view, in making the recommendations set out in the report, Dr. Elterman did not go beyond the terms of the statute or of the order appointing him. The order does not address this issue. It was open to the parties to persuade Baird J. that a term so directing Dr. Elterman was appropriate. They did not. There may be cases in which the court would make such an order. In my view such a term would be unusual and contrary to the usual and widely accepted practice under s. 211.

[9] Justice Verhoeven concluded at para. 126 that it is usually appropriate for a s. 211 assessor to include recommendations about the issues before the court. He stated, and I quote:

126 In summary, I consider Dr. Elterman's opinions and recommendations admissible, and that the process has not been unfair or prejudicial to the father. It is open to me to agree or disagree with the recommendations as I may see fit. More broadly, in my view it is appropriate for a s. 211 assessor to include in the report the author's recommendations concerning the actual issues before the court, unless the court orders otherwise. If the parties wish to limit the assessor's authority in this way, they should address that through the terms of the court order.

[10] Applying that approach here, neither the master's order nor the statute placed a limit on the recommendations that Mr. Colby could make. It is of assistance to the court and the parties to receive the kind of professional advice offered in his report. I am not bound by his recommendations, but conclude they are admissible in evidence.

[11] Mr. Colby's report set out the views of all three children. Manda feels comfortable in Campbell River. She has a strong support community of friends and family and is actively involved in school and dance. She also has a boyfriend who is in the same grade. She wants the parenting situation to remain as it is, but wants to leave Campbell River when she graduates. She is anxious to be out of the tug-of-war that goes on between her parents.

[12] Ivo also wants to stay in Campbell River. He has a group of close friends and is very involved in soccer. He indicated that he has a good relationship with Manda, but not with Maja. He says she is unhappy and mostly stays in her room. Ivo says that Maja is more engaged when she is at her mother's home in Coquitlam. He completed one of the interviews by saying that Maja should go to live in Coquitlam because she would be happy there and she does not do anything in Campbell River.

[13] Maja wants to live with her mother in Coquitlam. She does not want to stay in Campbell River. She enjoys being with her mother and is able to confide in her. By contrast, she says that her father does not talk to her. She finds him grumpy and uncaring. Maja enjoys the activities she does with her mother such as kayaking and hiking. She says her father does not do anything with her. Maja has thought about how a move to Coquitlam would affect her relationship with her siblings. She would maintain FaceTime contact with them and get to see them twice a month. She believes that her best friend, Janae, would come to visit her in Coquitlam with her siblings. Mr. Colby describes Maja's view of her relationship with her

father as follows, and I quote:

Maja says her anxiety is not based on fear of her father and she believes that her Dad likes her and cares for her, and her anxiety is not based on a fear that anything bad will happen to her or has happened to her. She does not feel comfortable and she does not feel comfortable with her father, stating that as she said previously, he is mean to her as outlined in her letter, she is not comfortable and there is no communication between them.

[14] The letter referred to is a handwritten letter addressed, "Dear Judge" that Maja gave Mr. Colby during the second interview. The letter is appended to the report. In the letter, she set out the pros and cons of living in Coquitlam with her mother and in Campbell River with her father. In the letter, she says:

I can't even relax in my house with my dad always being grumpy and mad. I can't even sit on the couch without feeling anxious.

I remember about a year ago when I thought there was no chance of moving I just stayed in my bedroom and didn't want to leave I was so sad.

When I am in Coquitlam I feel like a hundred bricks have been lifted off my shoulders and I can just be myself and Happy.

[15] Mr. Colby concluded his report with a summary of his views about the children's views:

All three children were able to express themselves well verbally. They were communicative. They appeared comfortable in presenting information. When requested to elaborate upon information, they did so readily. They presented their reasoning behind their views, with Maja presenting pros and cons for her decision making. Maja was unable to elaborate extensively on why she felt that her father was mean and why she was uncomfortable with him. She presented that she had developed her belief system based on her direct experiences with her father. She feels she cannot communicate with him, while at the same time she has a good communication with her mother and that this is a bond and comfort for her.

The children do not present that they are presenting their opinions in relationship to pressures felt within the sibling group or by family members.

There is no indication that these children have been coached or coerced by either parent in presenting their views, or by each other.

These children stated they were presenting independent views, not influenced by their parents. Their views are based on what they feel is best in their lives.

Maja presented as a very quiet and withdrawn youngster, but she was quite assertive as she presented that she wished to move to Coquitlam, and that she would be able to handle the separation from her siblings, that she would have a positive relationship with her family and cousins in Coquitlam, and that it would present as a more positive relationship for her.

The child Maja is adamant in her desire to reside with her mother. She is accepting of separation from her siblings, believes that her involvement with her siblings will occur during weekend parenting time scheduling. Maja is presented by both parents as being isolated within the Campbell River community, not based on any experiences that she has had with peers or school. She presents her father not as being intrusive to her, but rather as being absent from her, and that she cannot communicate with him and feels that his communication with her is not supportive. At the same time, she feels her mother is highly supportive and she seeks out her mother in that regard.

Position of the Mother

[16] The mother says that Maja's strong views about wanting to live with her in Coquitlam contribute to a material change of circumstances that has occurred since the trial. She says the Colby report makes it clear that Maja has adamant views that are genuinely her own. She also says that Maja is mature and that the court should give considerable weight to her views. She is not happy in Campbell River and is withdrawn. Her father is not able to meet her needs. In these circumstances, the mother says the court can and should order a variation to the parenting plan established by the Devlin order.

Position of the Father

[17] The father says the mother has failed to establish a material change of circumstances. He said it was foreseeable that Maja or one of the other children would miss their mother as a result of her move to Coquitlam. The fact that Maja has come to feel that she wants to move is not, by itself, a sufficient basis for the court to conclude there has been a material change of circumstances. The father also says the mother is attempting to relitigate the same issues that were considered in depth by Madam Justice Devlin. In essence, he says she is seeking a variation when all of the relevant surrounding circumstances are still the same. The children still have the strong family support in Campbell River that was an important determining factor at trial. Maja still has the same close relationship with her friends and family. Her paternal grandmother is still an important person who is close by to provide the kind of support needed in the absence of her mother.

[18] Alternatively, if the court accepts that there has been a change of circumstances, the father says the court should conclude that it is in Maja's best interests to remain with her father in Campbell River. The court should give little weight to Maja's views. He says the reasons for the move articulated in the Colby report are not well thought out or persuasive. Indeed, he says, they are immature. Maja has failed to consider the consequences of the loss of her close family connections in Campbell River if she were to move to Coquitlam. Her views do not take into account all of the positive influences that have made her a straight A student in school. She fails to understand how hard it would be to change schools and that such a change could put her past success at risk. In essence, he says it is clear that her living situation in Campbell River is promoting her best interests and that the parenting

arrangements should not be changed because there is nothing that needs fixing. He also says that at some point in the future it may be appropriate to consider her wishes for a move, but that it is too early to do so.

- [19] The father also takes issue with two misstatements in the Colby report. Mr. Colby mistakenly reports that Maja's good friend was killed in an ATV accident. In fact, it was Manda's best friend who was killed. The father also denies that he told Mr. Colby that he was concerned that Maja was isolated and yet that comment is attributed to him in the report. He says these mistakes should cause the court to have concerns about the substance of the Colby report.

Analysis

- [20] These circumstances and arguments raise two primary issues: has there been a material change of circumstances and, if so, is it in the best interests of Maja to vary the Devlin order to provide that the primary residence of Maja will be with the mother in Coquitlam? For the following reasons, I would answer both of those questions in the affirmative. There has been a material change of circumstances and it is in Maja's best interests to order a variation to the Devlin order to change her primary residency to Coquitlam with the mother.

Issue 1: Has there been a material change of circumstances?

- [21] The Devlin order is a final order and so s. 17 of the Divorce Act, R.S.C. 1985, c. 3) governs the consideration of this application for a change in custody. Pursuant to s. 17(5), the court must be satisfied that there has been a material change in the "condition, means, needs or other circumstances of the child." The applicant bears the onus of establishing such a change. The decision in *Gordon v. Goertz*, [1996] 2 S.C.R. 27 remains the leading decision. It provides that the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way. A court should ask whether the previous order might have been different had the circumstances now existing prevailed earlier. The change must represent a distinct departure from what the court could have reasonably anticipated.
- [22] Subsequent decisions have amplified that last consideration to explain that the proper question is whether the changed circumstances were in the contemplation of the judge at the time the order was made.
- [23] A number of decisions have found that a child's newly formed views can amount to a material change of circumstances. In *Larden v. Larden*, 2016 BCSC 2664, at para. 20, Madam Justice Fisher, as she then was, set out the proper approach to this issue, and I quote:

20 As recognized by the Court of Appeal in *S.M.M. v. J.P.H.* a child's newly-formed views may constitute a material change of circumstances. This is the case where these views are clearly expressed subsequent to the original order by a child who is by then at an age, usually between 12 and 16, where courts give considerable significance to them. In my view, this is the case here. The fact that Daniel first raised this issue two years ago is immaterial, as it had not been raised or considered at the time of the original order in July 2013, and now that Daniel has reached the age

of 13, both his parents and this court must listen to him and consider his views.

- [24] Similarly, in *R.E.Q. v. G.J.K.*, 2016 BCSC 1498, Madam Justice Fleming found that the views of a mature teenager can amount to a change of circumstances even where one parent applied to permit a relocation that was dismissed a few years earlier at trial.
- [25] Of course, not every change in the views of a child will meet the threshold for a material change of circumstances. The court must examine all of the circumstances to determine whether there has been a material change in the condition, means, need, or other circumstances of a child. When I apply the law to the circumstances here, I conclude there has been a material change of circumstances. I arrive at this conclusion for two principal reasons. First, it is clear that at the trial of this action in 2015, the court carefully examined the views of the children. Madam Justice Devlin had the benefit of a Views of the Child report prepared by Bruce Muir. She found the report of assistance in coming to her decision on whether the children should relocate with the mother. Manda expressed a preference to remain in Campbell River because of her relationship with her paternal grandparents, family, friends, her school, and all of her extracurricular activities. The two younger children did not express a preference and Maja specifically said she would be "fine on the Mainland or in Campbell River." The mother argued at trial that the court should not consider Manda's views. Justice Devlin rejected that argument and stated:
- [58] The respondent suggests that the Court should give little consideration of Manda's views because she did not explicitly state why she wanted to remain in Campbell River or where she wanted to live. I am not prepared to dismiss Manda's views. Where a clear view can be expressed by the child it should be taken into account, having regard to all of the circumstances including the age and maturity of the child.
- [61] Clearly, Manda is the older and more mature child and at 12 years old she is the one capable of more fully comprehending the realities of the change in her living arrangement. For that reason, I give her opinion greater weight than that of her younger siblings.
- [26] It is evident from the trial decision that Maja's views have changed. The evidence before the court in the Colby report makes it clear that Maja now holds strong views about where and with which of her parents she would like to live. It is also evident that these views are not a recent change of heart. Maja has wanted to live primarily with her mother for the last two years and has expressed that view to her family. As Mr. Colby states, she is adamant about wanting to live with her mother in Coquitlam. While the father is critical of the Colby report, he concedes that Maja has expressed strong views about her desire to reside with the mother for some time.
- [27] His real argument is that her views should not be given weight and that question is properly considered under what I have described as the second issue. It is evident in the Colby report and the affidavit evidence that Maja's views are strongly held and are genuinely her own. The views stem from the father's inability to meet her need for psychological and emotional support. She feels distant or isolated from him. She is not able to talk with him at a difficult

time in her adolescence. As a result of that situation, she wants a change in her primary residence. That is a material change of circumstances from those that were in place at trial. The father's argument that it was foreseeable that Maja or one of the other children might miss their mother is irrelevant to consideration of whether there is a material change. The change is not that Maja is "missing her mother." The change arises from the fact that the father is not able to meet her needs. Her circumstances have changed in a way that was not in the contemplation of the court when the Devlin order was made.

Issue 2: Is it in the best interests of Maja to vary the Devlin order to provide that the primary residence of Maja will be with the mother in Coquitlam?

[28] This is the more difficult issue. There is no question that Maja holds very strong views. Mr. Colby fairly described those views as being adamant. The father suggests that the mother's affidavit overstates Maja's unhappiness with the current parenting arrangement. He also says that Mr. Colby's reporting of Maja's views does not fairly reflect the positive elements of her life in Campbell River. He said that if Maja does not appreciate those positive elements, her failure to do so must be evidence of her immaturity. He argues that it would be risky to change the parenting arrangements when she is a straight A student and has such strong family and community ties.

[29] I have concluded that Maja's views should be given considerable weight by examining three issues:

1. Is Maja withdrawn and unhappy in Campbell River as suggested in the Colby report;
2. Does Maja have a sufficient degree of maturity that her views should be given substantial weight; and
3. Does a move to Coquitlam create too great a risk to Maja's best interests?

Is Maja withdrawn and unhappy?

[30] I have no hesitation in accepting the characterization of Maja's views set out in the Colby report and the mother's affidavit. She is very unhappy with the current parenting arrangement and is determined to try living with her mother. Her desire to reside with her mother in Coquitlam started not long after the mother's move. The father and his extended family have done a tremendous job of building a positive family home in the absence of the mother.

[31] However, Maja does not get the emotional support that she needs from her father. That is clearly expressed in the Colby report and is evident from Maja's views expressed to her mother and other family members. Ivo's statements about Maja are very telling. She stays in her room, does not take part in outside activities, and wants to move to Coquitlam. Other evidence confirms that Maja is withdrawn and is not actively engaged in activities outside of her family. At the time of the trial, she was involved in dance, hip hop, and piano. She has given up those activities and her only involvement in extracurricular events is as a spectator

at her brother's soccer games and her sister's dance events.

- [32] The father emphasizes a close relationship that Maja has with her cousin, Nicole. However, Nicole has finished a nursing program and so must be eight or 10 years older. In other words, other than her close relationship with one friend, she is somewhat withdrawn and lonely.
- [33] The father suggests that Maja's reasons for her unhappiness are not well reasoned or persuasive. I do not accept that argument. As Mr. Colby stated, she does not feel comfortable with her father, feels that he is absent from her, and that she cannot communicate with him. It is likely difficult for a 14-year-old to explain such strong feelings other than state, as Mr. Colby indicates, that she has developed these views based on her ongoing experiences with her father.
- [34] The father's position on this application, that is, that he rejects and dismisses the strength of Maja's views, is suggestive of a lack of sensitivity to his daughter's emotional state.

Does Maja have a sufficient degree of maturity?

- [35] Mr. Colby expressed no reservations about Maja's degree of maturity or ability to communicate her views. He found the children's views to be independent of their parents' influence or that of other family members. He concluded they were not coerced or coached. He found that all three children expressed their views based on "what they feel is best in their lives."
- [36] The father argued that Maja's views should not be given weight because they are not reasonable. He says that by failing to consider the positive elements in her life which have not changed since the trial, her views must be immature. I would not accede to this argument. By all accounts, Maja is mature and thoughtful. The fact that she is an excellent student supports a finding that she has the maturity to consider what is in her best interests. The father's argument about her level of maturity is really nothing more than his assessment of the situation. He believes it is in her best interests to stay in Campbell River and is not able to accept a different view.

Does a move to Coquitlam create too great a risk to Maja's best interests?

- [37] The father says that the risks associated with a move to Coquitlam and the change in the parenting regime should be given more weight than her views. There is no question that a move to Coquitlam poses risks to Maja. She has never lived outside of Campbell River and has wide family support in that community. She may find that it is more difficult to adjust to a new school and city than she believes.

- [38] However, she also has strong family support in Coquitlam. She has grandparents, aunts and uncles, and numerous cousins. Just as the family in Campbell River allows her to learn about her Croatian heritage, the family in Coquitlam affords a similar opportunity. While she will suffer the loss of a closer relationship with her siblings and best friend, Maja has thought about how she will keep up those relationships.
- [39] The father suggests there is a possibility she will get involved with an unsavoury group of friends in Coquitlam and could end up getting into trouble with the law. That possibility exists in all communities. Nothing in Maja's past suggests that she has a substantial risk of this kind of difficulty. The father is also concerned that she will not be able to keep up her strong scholastic performance. Once again, I see no reason why she does not have a good chance of being able to continue to do well at school.
- [40] There is certainly a risk that she could continue to feel isolated in Coquitlam and remain withdrawn. That is something that the parents will have to monitor carefully. This is where the recommendations in Mr. Colby's report are useful. Her parents must observe her functioning to assure that she is maintaining her emotional and psychological well-being. Her situation should be reappraised after a period of time.
- [41] One of the concerns that played into the decision at trial was Justice Devlin's concern that the mother would not find full-time work and would not be able to set up a stable home in Coquitlam. I note that this risk is no longer present. The mother does have full-time work with benefits. She is living rent-free in her parents' home and is in a stable situation that was not certain in 2015.
- [42] In summary, while there are risks associated with such a move, if the parents monitor the situation with a goal of furthering Maja's best interests, those risks can be minimized.
- [43] In arriving at the conclusion that it is in Maja's best interests to order the variation to the Devlin order to provide that she will reside primarily with the mother, I have considered the relevant factors codified in s. 37 of the Family Law Act, S.B.C. 2011, c. 25. I will briefly summarize those factors that are of particular importance here.
- (a) The child's health and emotional well-being
- [44] This is a critical factor. Maja is experiencing difficulty in her current situation that has reached a level where she is suffering emotional distress. When she is in Coquitlam with her mother, she feels as if a weight is off of her shoulders. She sleeps better, is able to relax, and engages more easily in her daily activities. I agree with the mother's submission that the father has blinkers on when he considers Maja emotional well-being. He cannot accept Maja's feelings and views.
- (b) The child's views, unless it would be inappropriate to consider them

- [45] A child's views are not determinative. However, a court should give considerable weight to the views of an older child proportionate to their age and level of maturity, and for that, I refer to *S.M.M. v. J.P.H.*, 2016 BCCA 284.
- [46] I have already explained my conclusions on this issue. Maja's views are genuinely her own. She has a sufficient degree of maturity to make it appropriate to give those views considerable weight.
- [47] I should note that the father was critical of the error in the Colby report where he incorrectly stated that the girl killed in the ATV accident was Maja's friend. This appears twice in the report and, while it is an unfortunate error, I accept that it likely has no bearing on the substantive reporting of Maja's views or Mr. Colby's assessment of those views.
- [48] The father is also critical that Mr. Colby accepted Maja's letter that sets out her assessment of the pros and cons of the two possible living arrangements. The decision to accept the letter and use it in the report was Mr. Colby's based on his professional training and experience. I do not see anything untoward in his decision to append and refer to the letter in his report. Further, the letter appears genuinely to be Maja's thoughts and are consistent with the views she expressed to Mr. Colby and to her mother and others.
- [49] Finally, I accept the mother's submission that to give little weight to Maja's views would potentially damage her already fragile relationship with her father. Given Maja's age, maturity and the strength of her views, I conclude it is appropriate to give considerable weight to those views.
- (c) The nature and strength of the relationships between the child and significant persons in her life
- [50] I have already set out my views on this issue above. While a change of residence will negatively impact her relationship with her extended family in Campbell River, she will gain a stronger relationship with the extended family in Coquitlam. A change will also affect her relationship with her siblings. However, she has considered this issue and believes that they will be able to maintain a strong relationship through FaceTime and twice-monthly visits.
- [51] Of course, as siblings reach their later teenage years, their contact with one another often becomes less frequent and yet the relationships endure. However, the most important relationship at this stage of Maja's development is the relationship with her parents. As I have explained, the move to Coquitlam will be in her best interests, as her father as the primary parent is not able to meet her emotional needs. It is likely that her mother will be able to fill that void.
- [52] In summary, I conclude it is Maja's best interests to order a variation of the parenting arrangement established by the Devlin order. As of September 1, 2018, Maja's primary residence will be with her mother in Coquitlam.

- [53] I will not particularize other changes to the parenting schedule, in part because I understand the parties have been able to work out the details to facilitate the order of parenting time. However, just to clarify, the intent of this order is that Maja will have parenting time with her father in Campbell River every fourth weekend; Manda and Ivo will have parenting time with their mother in Coquitlam every fourth weekend; and those weekends should be staggered so the siblings will have two weekends per month when they are together.
- [54] I did not hear submissions about the exchanges, but again expect that the parties can work out the terms. If they cannot do so, they have liberty to apply to me to resolve any disputes.
- [55] I will, however, include a term in the order that provides that either parent may apply to review this order after May 31, 2019. I make this order in light of Mr. Colby's recommendation that there be a reassessment to make sure that the variation has been beneficial for Maja's emotional health and well-being. Mr. Colby suggested that this be done after one high school term. I do not think that is sufficient time and so I am ordering that a review can be brought towards the end of her first school year in Coquitlam.
- [56] While I am including the review term in the order, that does not remove the parents' obligation, and particularly the mother's obligation, to follow Mr. Colby's other recommendation. They should closely observe or monitor Maja's ability to function in the new setting to assure her emotional and psychological well-being. I would hope that the parents both take seriously the obligation to make sure that Maja is developing a sense of security and well-being. If that is done, there should be no need for a review. The parties should agree to continue the new parenting order if she is thriving and should agree to revert to the Devlin order if she is not.
- [57] Finally, I should make it clear that the review I have ordered is intended only to consider Maja's situation. I have made no order respecting Ivo. Mr. Colby reports that Ivo is considering a move to Coquitlam in September 2019. I have not considered that issue at all and will only say to both parents, they should listen carefully to their children's wishes and give those views appropriate weight when considering their best interests, and that concludes my reasons.
- [58] Now, as I have indicated, I have not set out other terms. I do hope the parties can work those out, but I will hear from the parties if need be.
- [59] MR. DESILETS: Thank you, My Lord. Could we speak briefly to the issue of costs?
- [60] THE COURT: Yes.
- [SUBMISSIONS RE COSTS]

[61] THE COURT: Well, I am of the view that costs should follow the event in the ordinary course, and I do that mainly because, given the strength of the Views of the Child report here, I am of the view that this is an application that could have been avoided and I think that the parties need to know that there is a consequence for not coming to reasonable conclusions when considering the best interests of their children, and so costs will follow the event.

[62] MR. DESILETS: Thank you, My Lord.

[63] THE COURT: Thank you. We are adjourned.

"BUTLER J."

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