

CANADA / JUDGMENT

D.F.M. v. J.K.A.

2023 BCSC 613

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 613 D.F.M. v. J.K.A.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.F.M. v. J.K.A.,

2023 BCSC 613

Date: 20230417

Docket: E1956203

Registry: Prince George

Between:

D.F.M. also known as D.A.

Claimant

And

J.K.A.

Respondent

Before: The Honourable Justice Chan

Reasons for Judgment

Counsel for the Claimant:

M. Verdun-Jones

The Respondent, appearing in person:

J.K.A.

Place and Date of Trial/Hearing:

Prince George, B.C.

March 9, 2023

Place and Date of Judgment:

Prince George, B.C.

April 17, 2023

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Introduction

[1] This is an application brought by the claimant mother D.F.M. also known as D. A. ("Ms. F-M") pursuant to s. 47 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], to vary a final order granted on February 7, 2020 (the "Final Order") with respect to parenting time and parenting responsibilities for two children of the marriage. The Final Order had been granted on consent of both parties. Since then, the parties have had difficulties with the location of where the parenting time is to occur, the length of that parenting time, the logistics of transportation and the manner in which the children spend their time while in their father's care. Ms. F-M argues that the difficulties have negatively impacted the children, such that there has been a material change in circumstances and the best interests of the children are no longer being met. The father, J.K.A. ("Mr. A"), argues all the issues that have arisen were in contemplation of the parties at the time of the Final Order, such that there has been no material change in circumstances justifying a variation.

Background of the Parties' Relationship

- [2] Both parties have filed numerous affidavits in this proceeding since February 2020. Mr. A has filed 16 affidavits and Ms. F-M has filed seven affidavits. These affidavits were filed in relation to this application and earlier applications by Mr. A to enforce the parenting arrangement. I have reviewed them all. I take the following summary of their relationship from these affidavits. Where there is a conflict in the affidavits on a relevant matter, I will address those conflicts.
- [3] Ms. F-M was born in Ghana and immigrated to Canada with her family in 1994 when she was 11 years old. The parties first met in 2007. In 2009, they started dating. At that time, Ms. F-M lived in Ontario with her family. Following their marriage in 2013, the claimant moved to Prince George to live with Mr. A, where he works as an engineer. Ms. F-M deposed that the relationship was tumultuous, and that she moved out for a month in 2013 after Mr. A punched and hit her. Ms. F-M refused to provide any statement to the police after the incident.

- [4] The parties have two children: a daughter, N.A., born in 2015 and a son, J.A., born in 2017. A major conflict between the parties concerning the children was Mr. A's use of corporal punishment. Mr. A was of the view that spanking could be an appropriate means of discipline and correcting behaviour, and any force he used on the children was very minor.
- [5] The parties separated in 2019 and divorced in 2020. Ms. F-M and the children moved to Edmonton, Alberta, in December 2019. They later relocated to Sudbury, Ontario. The purpose of the moves was to allow Ms. F-M to pursue better career opportunities. The terms of the Final Order with respect to parenting arrangements are as follows:
- The parties have joint custody of the children;
 - The parties are both guardians and shall share equally all parental responsibilities;
 - Ms. F-M is not to relocate with the children from Sudbury without further court order or written agreement between the parties;
 - The children's principal residence is with Ms. F-M;
 - Mr. A shall have parenting time each summer, from the day after the last day of school in June until August 15; two weeks during spring break; Christmas breaks during even-numbered years; and reasonable parenting time whenever Mr. A is within 50 km of the children's residence with at least two weeks notice to Ms. F-M;
 - Ms. F-M has parenting time at all other times;
 - Mr. A is to be responsible for 60% of all transportation costs and Ms. F-M is responsible for 40% of all transportation costs;
 - The parties shall use their best efforts to arrange for the most economical method of transportation;
 - The parties shall jointly select the adult chaperone to accompany the children;
 - If Mr. A misses any parenting time due to the parties not being able to agree on the selection of the adult chaperone, Mr. A is to have makeup parenting time;
 - The parties shall have liberal and generous telephone and electronic access at all times when the children are in the care of the other party; and
 - If either party intends to bring the children to a location more than 100 km from their residence for more than a day, that party shall provide to the other party in advance and in writing the location, contact information and the dates the children will be away from their residence.

- [6] Since the date of the Final Order, the parties have had disagreements on how to implement Mr. A's parenting time. After the first visit with Mr. A in March 2020, Ms. F-M deposed that she had concerns about Mr. A's parenting abilities. Ms. F-M has been reluctant in agreeing to the children making further visits to Mr. A. This has resulted in court applications by Mr. A to enforce this parenting time.

The Evidence from the Affidavits

- [7] Ms. F-M's affidavits covered many subject areas. The affidavits contain evidence of Mr. A's neglect of the children while they were in his care, the distress of the children being separated from their mother, and the fear and difficulties of the children readjusting after they return from their visits. I will focus on the history of the parenting time and the major concerns that have arisen from the children's visits with Mr. A.

March 2020

- [8] In March 2020, Ms. F-M and the children were residing in Edmonton. Mr. A. picked up the children on March 15, 2020. Mr. A was with a friend, and they drove the children to the friend's house in Edmonton to spend the night. The next day, Mr. A drove the children to Prince George.
- [9] Ms. F-M deposed that this was Mr. A's first time caring for the children overnight by himself. The children were aged five and three at the time. Ms. F-M deposed that the children were excited when Mr. A picked them up. However, Ms. F-M deposed that the children's excitement disappeared after a couple of days. Ms. F-M deposed that she learned that Mr. A had not taken time off work, contrary to what he had told her, and was instead working from home. That meant the children were bored and not well cared for. Ms. F-M deposed that both her and her mother spent a lot of hours talking to the children on video calls, entertaining them with games, books, songs, and jokes. Ms. F-M deposed that both children expressed to her that they wished to come home, and were crying uncontrollably on some of these calls. After Ms. F-M called Mr. A to discuss why N.A. was crying, Mr. A said N.A. was just spoiled, and that the reason for the crying was spending too much time on the phone with Ms. F-M. After that, Mr. A told the children that they could not talk to Ms. F-M for more than five minutes.
- [10] The children returned to Edmonton on March 28, 2020. Ms. F-M deposed that the children told her almost everyday that they did not wish to go back to visit Mr. A.

Summer 2020

- [11] Ms. F-M deposed that it required 44 emails to schedule this summer parenting time. There were disagreements about the date of the pickup, who would be travelling with the children and the costs of the transportation. Ms. F-M and the children had relocated from Edmonton to Ontario. The parties agreed that Mr. A would pick up the children on June 28, 2020 from Toronto, where Ms. F-M was staying with her sister.
- [12] While Ms. F-M was in Toronto, she contacted Mr. A on June 26, 2020, asking when he planned to fly to Prince George with the children. Mr. A responded that the flights were booked for June 30, 2020 from Ottawa. Being concerned about the high number of COVID-19 cases, Ms. F-M suggested that she brings the children to meet Mr. A at the Ottawa airport on June 30, 2020 and that Mr. A can have two days tacked on to the end of his parenting time. Mr. A did not agree with this proposal, and showed up at the residence of Ms. F-M's sister in Toronto on June 28, 2020. Ms. F-M deposed that both her and her sister spoke to Mr. A at length to ask him to wait until June 30, 2020. Ms. F-M's sister contacted Mr. A on June 29, 2020 and asked if he could delay his flights. Mr. A agreed to postpone the children's pickup to after July 5, 2020. Ms. F-M then advised him that since he had changed the date of the pickup, she was no longer willing to allow the children to go to Prince George with him.
- [13] On July 2, 2020 Mr. A brought an application in B.C. Supreme Court to enforce the order for parenting time. According to the affidavits he filed in relation to that application, Mr. A never had flights booked for the children on June 30, 2020. The flights were booked for July 7, 2020. Mr. A explained in his affidavit that he had no confidence that Ms. F-M would let the children go with him. That was the reason why he told Ms. F-M that he had tickets for the children to fly to Prince George on June 30, 2020, when in fact the tickets were booked for July 7, 2020. Mr. A believed he needed the extra week in case there were problems.
- [14] An order was granted by the Court on July 6, 2020, allowing Mr. A to pickup the children on July 7, 2020 from Sudbury and to return them to Sudbury on August 22, 2020.
- [15] Ms. F-M deposed that the children were very upset the night before Mr. A picked them up on July 7, 2020. The children were driven by Mr. A to Ottawa, and left by flight for Prince George on July 9, 2020. Ms. F-M did not call the children for a week, so they could spend time with Mr. A. When she called on July 14, 2020, she deposed that the children were crying and upset. She decided to call daily after that point. On July 15, 2020, J.A. was crying for 13 minutes during a phone call. Mr. A did not come to check on J.A. and Ms. F-M heard Mr. A in the background asking for his phone back. Ms. F-M called the Ministry of Children and Family Development.
- [16] The children returned on August 22, 2020. Ms. F-M deposed that the children had nails that had not been cut, rashes over their bodies and appeared malnourished. N.A. advised her mother that her hair had not been washed during the six weeks. N.A.'s hair was usually braided into cornrows, which had to be unbraided before the hair can be washed. Ms. F-M deposed that the children expressed that J.A. had been spanked by his father. Ms. F-M

contacted Sudbury's Children's Aid Society, and in turn the Ministry of Children and Family Development was contacted. A representative spoke with Mr. A and advised of the Ministry's concerns.

- [17] Ms. F-M deposed that the children told her about 30 times that they did not wish to visit their father again. The children advised that they mostly watched television and movies. They went camping with their father and his friends but were cold and uncomfortable.

Christmas 2020

- [18] Mr. A did not get his parenting time with the children. Ms. F-M did not respond to Mr. A's emails trying to arrange the pickup of the children. Mr. A filed an application with the Court on December 22, 2020; however, it appears this application was not heard until February 8, 2021. Mr. A was awarded compensatory parenting time for Christmas 2021.

Summer 2021

- [19] The arrangements for this parenting time did not go smoothly. Mr. A filed an application on May 21, 2021 seeking a police enforcement order, among other orders. This application came on for hearing on June 14, 2021, at which time the Court ordered that Mr. A have his parenting time from the last day of school until August 15, 2021, that Mr. A be responsible for transporting the children from and back to Sudbury, and that Mr. A refrain from using corporal punishment for any reason while the children are in his care.
- [20] As Ms. F-M continued to ignore Mr. A's correspondence with respect to arranging the children's pickup, Mr. A filed another application on June 24, 2021, seeking police enforcement. On June 29, 2021, the Court granted an order that the police arrest the children and take them to Mr. A.
- [21] On June 30, 2021, Mr. A arrived at Ms. F-M's residence in Sudbury with the police enforcement order. Ms. F-M would not allow the children to leave with their father. Mr. A sought assistance from the Greater Sudbury Police Service. The police advised Mr. A that an order from an Ontario court was required.
- [22] Mr. A filed an application with the Superior Court of Justice in Ontario. An order was granted on July 9, 2021 backing the police enforcement order in Ontario, allowing the police to arrest the children and bring them to Mr. A so he can exercise his parenting time. The Court also ordered the police enforcement order to be in effect for the Christmas 2021 parenting time.
- [23] Mr. A picked up the children on July 17, 2021 at Sudbury. Mr. A drove them to stay at one of his friend's homes in Toronto for a few days before flying to Prince George. Ms. F-M deposed that during her phone calls with the children that summer, the children were sad, crying and expressed that they wanted to come home. The children were returned to Sudbury on August 15, 2021. Ms. F-M noticed N.A.'s hair had not been washed for six weeks, the children

had skin rashes and their nails had not been cut. Ms. F-M deposed that the children told her many times after they returned that they did not wish to go to their father's house, and that's what they pray for during their nightly prayers.

Christmas 2021

- [24] Mr. A. picked up the children on December 22, 2021 at Sudbury. Mr. A. drove the children to a friend's house in Ottawa, staying in Ottawa the entire Christmas break. On December 19, 2021, Ms. F-M sent an email to Mr. A. advising of the children's allergies. During a phone call on Christmas day, N.A. advised her mother that she had a severe allergic reaction to coconut cookies. N.A. said she vomited, her lips swelled, her eyes grew puffy, her skin was itchy and she was sleepy.
- [25] The children returned to Sudbury on January 3, 2021, one day later than originally planned. Ms. F-M sought advice from her family doctor about N.A.'s severe allergic reaction. Both children were prescribed EpiPens.
- [26] The children advised their mother that they slept in a room in the basement without a window. The children expressed that their father was usually working or sleeping, and they would be cared for by someone else in the home, and sometimes no one watched them. At one point, J.A. was crying and his father told him that if he didn't stop crying, he would never see his mother again. J.A. then stopped crying. One time when J.A. hit his head on a drawer, one of the other children helped J.A., as his father did not assist.

Summer 2022

- [27] On June 22, 2022, Mr. A. obtained a court order for police enforcement of the parenting arrangement. The children were picked up by Mr. A on June 29, 2022 from Sudbury and taken to Prince George.
- [28] Ms. F-M became concerned when Mr. A did not answer her phone call on a day that had been pre-arranged. On July 11, 2022, Ms. F-M called the local RCMP to do a wellness check. The police located Mr. A at his home at approximately 8:43 p.m., after not finding him there earlier in the day. The children were with Mr. A.
- [29] The children returned to Sudbury by car from Toronto on August 15, 2022 at 8:00 a.m. This likely meant that they started their journey at 4:00 a.m. due to the driving distance. The children had spent a few nights in Toronto at a friend's house, after their flight from Prince George. Ms. F-M took the children to the family doctor, who documented their injuries. The injuries included J.A.'s thumb, N.A.'s toe, and N.A. had bruising and swelling on her leg. N.A.'s hair had not been washed for six weeks and it was smelly and itchy.

Christmas 2022

- [30] Mr. A did not get his parenting time with the children.

- [31] Ms. F-M filed a court application on October 14, 2022, seeking to vary the Final Order with respect to the parenting arrangement.
- [32] Mr. A filed a court application on November 9, 2022, seeking a police enforcement order among other relief.
- [33] Both of these applications, as well as an additional short leave application filed by Mr. A on February 27, 2023, are the subject of this hearing.
- [34] On December 15, 2022, the Court granted Mr. A video access to the children during the Christmas break.

Counselling for the Children

- [35] Ms. F-M was concerned about her own and the children's mental health, and contacted a counsellor in the summer of 2021. Ms. F-M deposed that she attended some counselling sessions, and arranged counselling for both of her children. While initially Mr. A would not provide his consent for N.A. to attend counselling, Mr. A did provide his consent after contact with the counsellor. N.A. attended her first counselling session on September 16, 2021.
- [36] A report dated August 29, 2022 from her counsellor was attached to Ms. F-M's affidavit. The counsellor noted that N.A. shared that she had been a victim of verbal abuse from her father, that she is often worried her father will yell at her or her brother, and that she feels frightened by her father's anger. N.A. advised the counsellor that three times during a visit with her father, she was rushed out of the home to attend activities without brushing her teeth. The counsellor then wrote:

During our last session, [N.A.] expressed her feelings about not wanting to visit her father for the summer break. [N.A.] did cry and asked this worker to not let her go. This worker reminded [N.A.] that she must follow mom and dad's written decisions on visits and time with each parent.

- [37] Ms. F-M deposed that she had concerns about her son, J.A., as he was self-harming and saying negative things about himself. Ms. F-M tried to arrange counselling sessions for J.A., but Mr. A. did not agree. Ms. F-M sought assistance from her family doctor. J.A. was assessed on September 28, 2022 by Dr. Nsirim, who recommended that J.A. undergo trauma assessment and therapy.

Substance Abuse

- [38] Ms. F-M deposed that throughout the marriage, there were many times when Mr. A was intoxicated from heavy alcohol consumption. She deposed that Mr. A also uses marijuana. She deposed that there were incidents during the marriage where Mr. A was passed out at home on the floor, and the children were walking over and around him. Ms. F-M deposed that since their divorce, the children have advised her that Mr. A is often taking naps during the day while the children are in his care. She deposed that from her experience, Mr. A

would only nap due to passing out from alcohol consumption.

Use of Corporal Punishment

- [39] Ms. F-M deposed that Mr. A "has been using physical abuse disguised as corporal punishment on [the] children since [their] son was almost 1 year and [their] daughter was around 2 years old". The parties have disagreed on the use of corporal punishment. Ms. F-M deposed that a condition to not use corporal punishment was in the interim parenting order granted in 2019. It was incorporated as a term in the June 2021 court order enforcing the summer parenting time.
- [40] There were no more documented incidents of corporal punishment since the summer of 2021 in Ms. F-M's affidavits.

Response of Mr. A in his Affidavits

- [41] In his affidavits, Mr. A did not respond to all the detailed allegations in Ms. F-M's affidavits. Mr. A deposed that the children "are happy in [his] presence during parenting time. [They] engage in [their] own traditions and participate in community events with other families". Mr. A deposed that in the summer of 2022, "in addition to the typical activities and traditions [they] often engage in, this time they enjoyed visiting construction site of [their] new home. They will often ride their bicycle on site, play with construction materials, build with concrete, etc. All their activities on site were carried out in a safe manner with no injuries other than typical wear and tear".
- [42] With respect to the health of the children while in his care, Mr. A deposed the children were diagnosed with eczema before the parties separated. He deposed "the doctor's have never prescribed medication and always advise that it shall get better as they age". With respect to N.A.'s severe allergic reaction to coconut while in his care, Mr. A deposed that he provided her with over-the-counter allergy medication, which stopped the allergic reaction. He deposed that she continued to enjoy time in his care "with no health issues".
- [43] With respect to concerns about the long travel times from Sudbury to Prince George, Mr. A deposed that those concerns can be alleviated if Ms. F-M agrees to participate in transporting the children on one leg of the trip, rather than relying on Mr. A to do all of the travelling. Mr. A has had to layover at friends' homes in Ontario to minimize the distance the children have to travel in a day. Mr. A deposed that the Final Order contemplated the need to travel with the children, and no restrictions were put in place other than the travel being the most economical.
- [44] Mr. A deposed that many of the problems stem from Ms. F-M not complying with the Final Order. Mr. A notes that he has had to seek court orders to enforce his parenting time, including police assistance orders. Ms. F-M has not paid for her share of the transportation costs to date.

Can the Application Be Determined on Affidavit Evidence?

- [45] This is an application to vary a Final Order that was issued on consent of both parties. Both parties have filed numerous affidavits, both in this application and earlier applications by Mr. A to enforce his parenting time. Both parties rely on all the affidavits.
- [46] Neither party has sought to cross-examine on the affidavits.
- [47] I note that a court can decide such applications to vary final orders based on affidavit evidence: see *Fox v. Fox*, 2018 BCCA 359 at paras. 28-32. In *Fox v. Fox*, the father appealed the Court's order varying a final order, arguing it ought not to have been decided on affidavit evidence. The Court of Appeal rejected that argument:
- [31] Regardless, there are three obvious problems with the Father's argument:
- a) both parties proceeded on the application without any suggestion that either party should be cross-examined on their affidavits;
 - b) the issue before the judge was a narrow one. It would have been costly and disproportionate to require cross-examination on affidavits, thereby impeding access to justice; and,
 - c) the material evidence before the judge was, for the most part, not in conflict. There were no material credibility differences. Rather, the Father characterized the evidence differently than the Mother.
- [48] In this case, while there are conflicts in some aspects of the evidence, the material evidence with respect to the best interests of the children is ascertainable. Both parties have proceeded on the affidavits and have not suggested that it is inappropriate for the Court to do so.

The Legislative Framework

- [49] Sections 37 and 47 of FLA state:

Best interests of child

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;

- (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

Changing, suspending or terminating orders respecting parenting arrangements

47 On application, a court may change, suspend or terminate an order respecting parenting arrangements if satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person.

[50] The threshold requirement to vary a parenting order pursuant to s. 47 of the FLA is a material change in circumstances. If such a material change in circumstances is found, then the next step is to consider the best interests of the children. This was set out in *Williamson v. Williamson*, 2016 BCCA 87:

[32] The first step in the analysis set out in *Gordon v. Goertz*, [1996] 2 S.C.R. 27, 1996 CanLII 191] is to "determine whether there has been a material change in circumstances since the making of the prior order": *Boychuck v. Singleton*, 2008 BCCA 355] at para. 14. The Court in *Gordon* explained what is necessary to establish a material change in circumstances:

- [11] The requirement of a material change in the situation of the child means that an application to vary custody cannot serve as an indirect route of appeal from the original custody order. The court cannot retry the case, substituting its discretion for that of the original judge; it must assume the correctness of the decision and consider only the change in circumstances since the order was issued....
- [12] What suffices to establish a material change in the circumstances of the child? Change alone is not enough; the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way. The question is whether the previous order might have been different had the circumstances now existing prevailed earlier. Moreover, the change should represent a distinct departure from what the court could reasonably have anticipated in making the previous order.
- [Emphasis in original.]
- [33] At para. 13, the Court summarized what the applicant must establish before proceeding on the merits of the application:
- [13] It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.
- [34] Absent a material change in the needs or circumstances of the child, the inquiry can go no further. It is only after this threshold is met that the judge on the new application can embark on a fresh inquiry into the best interest of the children.

Has There Been a Material Change in Circumstances?

- [51] Ms. F-M argues there has been a material change in circumstances which justifies varying the parenting arrangement. She argues the current arrangement where the children are in Prince George for an extended time period is not working, as the children suffer from separation from her. She points to N.A.'s need for counselling, J.A.'s self-harm behaviours, the stress of upcoming visits and fear of being separated from their primary caregiver as evidence that the current arrangement is not in the best interests of the children. Ms. F-M argues that Mr. A ought to exercise his parenting time in Sudbury, where his sister resides with the children's cousin. Ms. F-M deposed that the husband's sister is willing and able to offer accommodations to Mr. A while he is in Sudbury, including the use of a vehicle. They live a ten-minute drive away from her residence. Both Ms. F-M and her children have a close relationship with Mr. A's sister and her child, their cousin and mother.

- [52] Mr. A argues that travel was contemplated at the time the Final Order was made. As such, he argues, there has been no change in circumstances which justify varying the Final Order. He argues that if Ms. F-M takes responsibility for some of the travel, that will alleviate some of the logistics involved in transporting the children from Sudbury to Prince George.
- [53] In my view, there has been a change in circumstances of the children that materially affects them, which was not foreseen at the time of the Final Order. The evidence from Ms. F-M is that the children are negatively impacted when they return from a visit to their father. The children have continually expressed to their mother that they do not want to be separated from her for such a long period of time. Putting aside the issue of whether Mr. A is negligent in his parental duties, which the Court does not have to decide, the evidence is that the children are stressed at the thought of having to leave their mother for an extended period. That evidence is found in the counsellor's report of August 2022. The counsellor noted that N.A. was pleading with her not to have to travel to visit her father. The family doctor noted that J.A. requires trauma counselling. Ms. F-M has noted changes in the children's behaviour when they return after a visit, such as being clingy to her, becoming angry, being withdrawn at school, having bad dreams and acting out aggressively. Mr. A did not dispute or respond to the evidence of these negative behaviours after visits with him.
- [54] In my view, it was not foreseen at the time the Final Order was made that the children will have such difficulty adjusting to travel and being apart from their mother. I consider these negative impacts on the children as a material change in circumstances.

The Best Interests of the Children

- [55] In my view, the best interests of the children demand a change in the current parenting arrangement. The children deserve to spend time with their father in an environment which minimizes stress for them.

Location of the Parenting Time

- [56] I find the best option is for Mr. A to exercise his parenting time in Sudbury in his sister's residence. While I acknowledge that this may not be the best option for Mr. A, that is not the guiding principle. The children are very young, ages eight and six, and the evidence is their mother has been their primary caregiver since birth. The two weeks at spring break, Christmas, and six weeks in the summer are too long for them to be apart from their mother. The children have become so stressed and fearful of upcoming visits with their father that they are not able to truly enjoy spending time with him.

- [57] If the father exercises his parenting time in Sudbury, this will provide an opportunity for the children to see him without the fear of a long period of separation from their mother. The children will be in a familiar environment and know that their mother is close by. They will be spending time with their father at the home of their cousin and aunt, Mr. A's sister. The evidence is that the children are close to the cousin and aunt, and the cousin is similar in age.
- [58] This will also alleviate the logistical difficulties of the transport from Sudbury to Prince George, which usually requires three flights to travel one direction. There are no direct flights from Sudbury to Prince George. It is much too stressful on young children to travel such long distances requiring multiple flights and long car rides.
- [59] The Final Order did not state a location where the father can exercise his parenting time. The only guiding principle in the Final Order was that the exercise of parenting time should be done in the most economical way. The father coming to Sudbury is the most economical, as there would be no costs for the children's flights. The father has accommodations while in Sudbury at his sister's residence.
- [60] It is the Court's hope that setting the location of the visits to Sudbury will assist both parties in facilitating access. This will provide more stability to the children, as they know they will spend time with their father in a familiar environment, without the long drives, layovers at friends' homes and multiple flights. Young children need routine and structure.

Length of Parenting Time

- [61] Ms. F-M seeks to share the weeks in spring break and Christmas, and to reduce Mr. A's summer parenting time from six weeks to two weeks.
- [62] In my view, it is in the best interests of the children to spend as much quality time as possible with their father.
- [63] Mr. A should have the entire spring break annually.
- [64] Currently, Christmas holidays are shared between even and odd years. In my view, with the parenting time occurring in Sudbury, the parties shall each have one week of the Christmas break. Starting with odd years, Mr. A shall have the first week of the school Christmas break and Ms. F-M shall have the second week. This will alternate on even years, with Ms. F-M having the first week and Mr. A having the second week.
- [65] With respect to the summer parenting time, in my view, it would be in the best interests of the children to spend the summer equally with both parents. Mr. A shall have the month of July and Ms. F-M shall have August.

- [66] All of Mr. A's parenting time shall be exercised in Sudbury at the residence of Mr. A's sister. While in Sudbury, Mr. A shall have the children everyday from 10:00 a.m. to 7:00 p.m., seven days a week. Ms. F-M shall drop off the children at the residence of Mr. A's sister and pick them up at 7:00 p.m. every night. There would be no overnight visits with Mr. A at his sister's residence, unless the parties agree.
- [67] The parties shall both share in the travel expenses, with Mr. A contributing 60% and Ms. F-M contributing 40%. The transportation costs should be less than \$4,000 annually.
- [68] It is the Court's hope that Mr. A will use all of his available vacation time or ability to work remotely to exercise his parenting visits. I note that Mr. A has in the past spent Christmas break in Ottawa. Therefore, he is able to be away from Prince George for at least two weeks at a time.

Supervised Visits

- [69] Ms. F-M also seeks an order that Mr. A shall have parenting time with the children on a supervised basis until he has completed a parenting assessment and found to be able to care for the children.
- [70] Ms. F-M cites no case authority in support of her request. Supervised access was discussed by Justice Weatherill in *J.J.T. v. J.A.S.*, 2015 BCSC 628:
- [45] The principles of supervised access were discussed by Griffin J. in *F.K. v. M.K.*, 2010 BCSC 563, citing *V.S.J. v. L.J.G.*, 2004 CanLII 17126 (ON SC), [2004] O.T.C. 460 (S.C.J.) at para. 137:
- ...It is possible through a supervision order to do the following: protect children from risk of harm; continue or promote the parent/child relationship; direct the access parent to engage in programming, counselling or treatment to deal with issues relevant to parenting; create a bridge between no relationship and a normal parenting relationship; and, avoid or reduce the conflict between parents and thus, the impact upon children.
- [46] At para. 143 of *V.S.J.*, the court stated that when terminating or restricting access, it is necessary for the court to weigh and balance numerous factors in the context of the child's best interests including:
1. The maximum contact principle;
 2. The right of a child to know and have a relationship with each parent;
 3. A limitation of a consideration of parental conduct to that conduct which impacts on the child;
 4. The risk of harm: emotional, physical and sexual;
 5. The nature of the relationship between the parents and its impact on the child;
 6. The nature of the relationship and attachment between the access parent and the child; and,

7. The commitment of the access parent to the child.

[47] Supervised access generally requires evidence of exceptional circumstances as it is just one step away from a complete termination of the parent-child relationship: F.K. at para. 147 and V.S.J. at para. 1.

[48] Though the above cases were decided under the former Family Relations Act, R.S.B.C. 1996, c. 128, the case of Q.B. v. W.I.M., 2014 BCSC 219 makes it clear that the same principles apply in the context of the FLA, which has a new focus on the issue of family violence and a mandate to protect the child emotionally and psychologically (at para. 49).

[71] In this case, I do not find on the evidence that supervised access is required, as the Court has ordered the parenting time to be exercised in Sudbury at the residence of Mr. A's sister. Mr. A's sister will likely be present for most of his parenting time. It is hoped that the parties may be able to do some activities together with the children and the sister's family. There is no evidence of any exceptional circumstances which require supervised access. There is no evidence that Mr. A has used corporal punishment since the court order in June 2021 prohibiting use of it. Mr. A has deposed that he has completed the Parenting After Separation course. In my view, to impose supervised access would unduly hinder Mr. A's relationship with his children.

Decision-Making Power

[72] As the parent who resides with the children for most of the year, I find it is in the best interests of the children for Ms. F-M to have the sole and final decision-making ability for all parenting responsibilities pursuant to s. 41 of the FLA.

[73] Ms. F-M has been their primary caregiver since birth, and she is the parent physically present during the school year. She is the parent who is most involved in the day-to-day decisions that affect the children.

Adding the Mother's Last Name

[74] Ms. F-M shall have the ability to add her last name to the children's last name.

Alcohol, Anger Management, Counselling and Parenting Classes

[75] Mr. A shall not consume any alcohol prior to his scheduled parenting time or during his parenting time.

[76] Mr. A shall use best efforts to take anger management, counselling and parenting classes.

Communication with the Other Parent

[77] The children can communicate with the other parent while in the other parent's care at their discretion.

Corporal Punishment and Best Interests of the Children

- [78] Mr. A shall not use corporal punishment on the children and/or put them in timeouts for lengthy periods of time.
- [79] The parties shall put the best interests of the children before their own interests, encourage the children to have a good relationship with the other parent, speak to the children about the other parent in a positive and respectful manner, make a real effort to maintain polite and respectful communications with each other, and refrain from any negative or hostile criticism, communication or argument in front of the children.

Disclosure of Financial Statements

- [80] The parties shall provide their Form 8 Financial Statements with all necessary attachments within 30 days of receipt of this ruling.

Mr. A's November 9, 2022 and February 27, 2023 Applications

- [81] These two applications are similar. Mr. A seeks police assistance to exercise his parenting time for Christmas 2022 and spring break 2023. These are dismissed as they are now moot.
- [82] Mr. A also seeks a penalty of \$5,000 against Ms. F-M, for denying him access to his parenting time. In my view, a financial penalty is not justified. Ms. F-M's evidence through her affidavits and her counsel's submissions is that she was genuinely trying to bring an application to vary the Final Order in circumstances where she was concerned about the best interests of the children.
- [83] Mr. A seeks costs of \$3,500 for each of his applications. In my view, success has been divided on these three applications, and each party shall bear their own costs. Ms. F-M was successful in her main application to vary the parenting arrangement; however, she does bear some responsibility for the delay in getting that application heard. Mr. A is entitled to parenting time and that was the focus of his November 2022 and February 2023 applications; however, the greater factual context shows that there was a genuine concern on the part of Ms. F-M that it was not in the children's best interests to continue with visits to Prince George.
- [84] Mr. A seeks a temporary order to suspend the child support payments until Ms. F-M reimburses him for transportation costs and other court awarded costs. In my view, in these circumstances, it is not in the best interests of the children to temporarily suspend the child support payments.
- [85] All orders sought by Mr. A in these two applications are dismissed.

Conclusion

- [86] Paragraphs 7, 10, 11, and 12 of the Final Order are to be replaced with the following:
1. All parenting time of Mr. A shall be exercised in Sudbury at the residence of Mr. A's sister.

2. The parties shall both share in the travel expenses, with Mr. A contributing 60% and Ms. F-M contributing 40%. The transportation costs should be less than \$4,000 annually.
 3. Mr. A should have the entire spring break annually.
 4. The parties shall each have one week of the Christmas break. Starting with odd years, Mr. A shall have the first week of the school Christmas break and Ms. F-M shall have the second week. This will alternate on even years, with Ms. F-M having the first week and Mr. A having the second week.
 5. With respect to the summer parenting time, Mr. A shall have the month of July and Ms. F-M shall have August.
 6. While in Sudbury, Mr. A shall have the children everyday from 10:00 a.m. to 7:00 p.m., seven days a week. Ms. F-M shall drop off the children at the residence of Mr. A's sister and pick them up at 7:00 p.m. every night. There would be no overnight visits with Mr. A at the residence of his sister, unless the parties agree.
 7. Ms. F-M is to have the sole and final decision-making ability for all parenting responsibilities pursuant to s. 41 of the FLA.
 8. Ms. F-M shall have the ability to add her last name to the children's last name.
 9. Mr. A shall not consume any alcohol prior to his scheduled parenting time or during his parenting time.
 10. Mr. A shall use his best efforts to take anger management, counselling and parenting classes.
 11. The children can communicate with the other parent while in the other parent's care at their discretion.
 12. Mr. A shall not use corporal punishment on the children and/or put them in timeouts for lengthy periods of time.
 13. The parties shall put the best interests of the children before their own interests, encourage the children to have a good relationship with the other parent, speak to the children about the other parent in a positive and respectful manner, make a real effort to maintain polite and respectful communications with each other, and refrain from any negative or hostile criticism, communication or argument in front of the children.
 14. The parties shall provide their Form 8 Financial Statements with all necessary attachments within 30 days of receipt of this ruling.
- [87] The applications for child support and s. 7 expenses listed in paragraphs p and q of Ms. F-M's Notice of Application dated October 14, 2022 are adjourned generally.
- [88] All other orders sought by Ms. F-M in her application dated October 14, 2022 are dismissed.

[89] All orders sought by Mr. A in his applications dated November 9, 2022 and February 27, 2023 are dismissed.

[90] Each party is to bear their own costs for these three applications dated October 14, 2022, November 9, 2022, and February 27, 2023.

"Chan J."

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