
CANADA / JUDGMENT

D.J.F. v. J.L.F.

2004 BCSC 1800

COURT

Supreme Court of British Columbia

DECIDED

19 October 2004

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IN THE SUPREME COURT OF BRITISH COLUMBIA

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Citation:

D.J.F. v. J.L.F.,

2004 BCSC 1800

Date: 20041019

Docket: 04-15363

Registry: Williams Lake

Between:

D.J.F.

Plaintiff

And:

J.L.F.

Defendant

Before: The Honourable Mr. Justice Groberman

Oral Reasons for Judgment

October 19, 2004

Counsel for the Plaintiff

C. Sauter

Appearing on her own behalf:

J.L.F.

Date and Place of Trial:

August 23-27 and October 4-5, 2004

Williams Lake, B.C.

- [1] THE COURT (via teleconference): This is an action for divorce. The major issue is the custody of the parties' four daughters: T.J.F., born [], 1989; K.J.K.F., born [], 1991; N.K.F., born [], 1992; and A.K.F., born [], 1996.
- [2] Mr. and Mrs. J.L.F. both come from conservative Christian families. The couple met at the C. [] College in Regina, Saskatchewan in 1988, then went together to Simon Fraser University beginning in September 1988. In November of that year, Mrs. J.L.F. learned that she was pregnant with the couple's first child. They married on February 4th, 1989 in Saskatchewan.
- [3] After the marriage, Mr. D.J.F. completed his education degree while Mrs. J.L.F. stayed home with the children, taking a few courses when she could. Mr. D.J.F. graduated in December 1992. At that time, Mrs. J.L.F. had completed the equivalent of one-and-a-half to two years towards a degree. At present, she would require approximately two years of full-time study to qualify as a teacher.
- [4] After Mr. D.J.F. completed his degree, the couple moved, with their two children, to Revelstoke, where Mr. D.J.F.'s parents lived. He worked as a substitute teacher from January until June of 1993, then got a job with an international school in Hong Kong beginning in September 1993. By that time, Mr. and Mrs. J.L.F. had three children. The family moved to Hong Kong for two years, returning to Revelstoke in July 1995.
- [5] Early in the 1995/1996 school year, Mr. D.J.F. obtained a half-time job teaching math at the M.1. The family found a house in M.2. In order to make the down payment, Mr. D.J.F. borrowed \$20,000 from each of his grandmother and great aunt. The loans were on an interest-free basis and no particular time for repayment was specified.
- [6] In February 1996, Mr. D.J.F. obtained somewhat greater hours by working at P.[] Secondary School in M.1, but the position lasted only until June of that year. For the next school year, he obtained work at the N.[.] Elementary School in the N.[.]. When the school year began, Mrs. J.L.F. was in the last trimester of her pregnancy with A.K.F.. Mr. and Mrs. J.L.F. decided that the family would remain in M.1 until A.K.F. was born, with Mr. D.J.F. living in the teacherage at the school during the week and coming home on weekends. After A.K.F.'s birth, the family moved into a trailer on the school grounds and rented out their house in M.1. At the time, T.J.F. was in Grade 2 and K.J.K.F. was in kindergarten. At the end of the school year, the family moved back to M.2.

- [7] Mr. D.J.F. secured employment at the M.1 but the position did not begin until January 1998. From September to December of 1997, he again taught at N.[.] Elementary School, living in the teacherage and coming home to the family on weekends.
- [8] From January 1998 until September 2003, Mr. D.J.F. taught at M.1 and then at P.[] Secondary School in M.1. As I will indicate, he took a leave of absence from September 2003 to late January of this year, then worked from January to June at P.[] Secondary School. His teaching position was declared surplus of the School Board's requirement at the end of the 2003/2004 school year.
- [9] For the most part, the marriage was a traditional one. By choice, Mrs. J.L.F. stayed at home with the children while Mr. D.J.F. worked outside the home as a teacher. He appears, at least in more recent years, to have pressed her to earn an income outside the home.
- [10] For a short period of time, Mrs. J.L.F. operated an unsuccessful children's clothing retailing operation from her home. In February 1999, she began to run a home-based daycare. That continued for two and a half years, with six families bringing their children to Mrs. J.L.F. for daycare. There were, however, regulatory difficulties - a total of seven children are allowed in a daycare and Mrs. J.L.F. had four of her own. Ultimately, in September 2001, she closed the daycare but continued to look after one child, K.E.'s daughter C., who is 1½ years younger than A.K.F..
- [11] I accept the fact that Mrs. J.L.F. was the primary caregiver for the children prior to separation, especially until they reached school age. I am also satisfied that she volunteered frequently in the school and for other child-centred activities such as reading groups. This is not to say that Mr. D.J.F. was uninvolved with the children. He was generally home from work between 3:30 and five o'clock. He spent considerable time with the children in the evenings and weekends, including reading to them, assisting them with homework and attending at various sporting and other events. These activities were decreased somewhat from 2000 to 2002 when Mr. D.J.F. completed his Master's degree by distance learning. The completion of this degree was evidently a major undertaking and Mr. D.J.F. clearly withdrew, to some degree, from family responsibilities during this period.
- [12] Beginning about December 2002, I find that Mrs. J.L.F. spent less time at home in the evenings and became more remote from both Mr. D.J.F. and the children. To some extent, this might be explained by the fact that the children were getting older. I do not think, however, that that is the entire explanation. It appears clear, on the evidence, that from at least November 2002 K.E. was attracted to Mrs. J.L.F.. Although they deny that they had a sexual relationship prior to going to Mexico together in January of 2003, I am satisfied that, at the very least, their friendship developed in late 2002 to the point where Mrs. J.L.F. became distracted from her traditional role within the family. I acknowledge, as well, that Mrs. J.L.F. had not previously been in a homosexual relationship. Given her conservative religious upbringing, which Mr. and Mrs. J.L.F. had adopted, as well, for their own daughters, her attraction to Ms. K.E. must have been disconcerting to her.

- [13] By Christmas 2002, Mrs. J.L.F. appeared to family members to be more distant and distracted. At that time, she told Mr. D.J.F. that she was going to Mexico with Ms. K.E. in January. This apparently caused considerable friction between Mr. and Mrs. J.L.F.. Nonetheless, Mrs. J.L.F. did go to Mexico. The evidence is not clear whether the trip was for one week or two, but nothing turns on the exact length.
- [14] Over the course of the next half year, Mrs. J.L.F. was away from home more and more often. She mused about going to work in a Mexican orphanage for an extended period, though nothing came of that ambition. She commenced having an affair with Ms. K.E. early in 2003. She was often away from home in the evenings. On about July 12, 2003, she told Mr. D.J.F. she was having an affair with Ms. K.E..
- [15] The revelation was shocking to him. Aside from being vexed by the fact that his wife was having an affair, Mr. D.J.F. had to deal with the fact that the affair was a homosexual one, something which was deeply contrary to his spiritual values.
- [16] Mr. and Mrs. J.L.F. sought counsel from the ministers of the church that they were then attending - St. Timothy's Anglican Church in M.1. The ministers were a husband and wife, and they counselled Mr. and Mrs. J.L.F. both together and separately. In the end, the F.s decided that they would follow the advice of their spiritual advisors and go off separately for a few days to consider their situation. The children were left with Mr. D.J.F.'s parents. To avoid confusion, and without meaning any disrespect, I will refer to the parents as R.F. and H.F.. R.F. and H.F. had moved to Kamloops from Revelstoke in the spring of 2003. They had always been very close to the family, visiting frequently and often assisting Mr. and Mrs. J.L.F. in their endeavours.
- [17] A great deal of the evidence in this trial has focused on the period between July 14th, 2003 and October of that year. I will not go through all of that evidence. What it indicates is that during that period Mrs. J.L.F. was having a great deal of difficulty deciding what she wished to do in terms of her marriage and her relationship with Ms. K.E.. During that period she left her home and had very little contact with her family and friends. I accept evidence that she called the children infrequently over this time and gave little indication of her plans.
- [18] C.L., a long-time friend of Mrs. J.L.F., who gave evidence on behalf of Mr. D.J.F., described the period as one in which "J.L.F. took a break from parenting." I think that is an apt description. Apparently, Mrs. J.L.F. was overwhelmed by her personal situation and simply left her role in the family while she sorted it out. Uncharitably, this might be described as abandoning her family, but I do not think that such a description is entirely appropriate. It is apparent that Mrs. J.L.F. had confidence in Mr. D.J.F.'s parenting ability, as well as in the assistance that R.F. and H.F. provided. Her contact with the children was limited, but not non-existent. She again returned to the family home in the third week of August, in time to do some pre-school shopping for the girls.

- [19] As I have indicated, I do not intend to recite all of the evidence of what occurred in July and August 2003, but instead will give my findings. The plan for each of Mr. and Mrs. J.L.F. was to spend time alone to consider the situation, but that unravelled almost immediately. Mrs. J.L.F. left no contact information with anyone and said she was going to camp in Marble Canyon and then head for the Coast. It may be that she did camp at Marble Canyon, but it is clear that the suggestion that she was going to the Coast was simply a lie. She had planned to rendezvous with Ms. K.E. in Kamloops, and spend the night with her before proceeding into the United States to visit a friend.
- [20] Mrs. J.L.F. abandoned her van in a Save-On Foods parking lot in Kamloops. She says she wanted to leave it there so that the family could use it. I reject that explanation. I find that her intent was to make it as difficult as possible for anyone to find her. I do wish to say, though, that while I reject Mrs. J.L.F.'s explanation of this occurrence I did find her generally to be a credible witness.
- [21] Unfortunately, R.F. and H.F. and the F. children came across the van in the parking lot and became very concerned as to what might have happened to Mrs. J.L.F.. They contacted Mrs. J.L.F.'s parents and they also became concerned. Mr. D.J.F. ended his time away from the family and returned to be with the children. After approximately two days, Mrs. J.L.F. did call her own parents and fears as to what might have become of her were quelled. Mrs. J.L.F. did, in fact, stay in Penticton for one night - that is where Ms. K.E. had moved for the summer - and then she proceeded on her own into the United States, camping and visiting a friend, before returning to Ms. K.E.'s camper in Penticton.
- [22] Later in July, Mrs. J.L.F. flew to Calgary for a planned weekend with C.L.. Mr. D.J.F. felt that this was an opportunity to try to reconcile with Mrs. J.L.F. and he also went to Calgary, as did Mrs. J.L.F.'s father. Not surprisingly, the situation was not what Mrs. J.L.F. had in mind. She had expected a quiet weekend with an old friend, discussing her life crisis. Instead, she felt harassed and left Calgary after two days of the planned four to five-day stay. She went to live with Ms. K.E. in Penticton for the interim.
- [23] Mrs. J.L.F. was not easily contacted in that time. The campground where she was staying had a telephone, but only at the office. She did not call the children often, apparently because she did not want to have to speak to Mr. D.J.F. or his parents. Beyond telling the children that she would be back before school started, she provided little information.
- [24] She did attend at Kamloops briefly on August 4 in connection with the renewing of the insurance on the van. I am satisfied that she spent a few hours with the children at that time, but it is evident that if she had had a desire to do so, she could have spent much more time with them. I am satisfied that at that period she deliberately withdrew from the family, including the children. Indeed, she agreed that the primary purpose of the visit was to deal with insurance and she is not sure whether she would have gone to see the children but for the need to deal with the renewal.

- [25] During the period that Mrs. J.L.F. was away, Mr. D.J.F. proved himself to be a very good parent to the girls. He was not working, as it was summer holidays, and he had plenty of time for them. I am satisfied that he took good care of them.
- [26] Mrs. J.L.F. returned to the family home on August 19, slightly over a month after she left. While the evidence is not completely clear, I take this period to have been an attempt to reconcile, or at least to see if reconciliation was possible. Mrs. J.L.F. was at the home during the day, and sometimes slept at the home, although not in the same room as Mr. D.J.F.. I accept that she spent several nights away from home, either in a tent or at the home of L.D., a friend. Mr. D.J.F. slept away from the matrimonial home on one or two nights when Mrs. J.L.F. remained in the home.
- [27] Mr. D.J.F. decided in late August that he needed time off work to deal with the stress of the family situation and convinced a doctor to provide him a letter recommending that he take time off. He did not finally decide to do so, however, until the second week of September. Once he made that decision, Mrs. J.L.F. decided to once again leave the family home. She went to Penticton for a week, staying in Ms. K.E.'s camper, and then went to visit family in Abbotsford before going to Calgary to visit family and C.L. over the Thanksgiving weekend.
- [28] The weekend with Ms. C.L. was obviously a difficult one, as Mrs. J.L.F. determined that she would finally make a decision as to what she was going to do. Before she left Calgary, she decided to return to Mr. D.J.F. and the children, but by the time she drove back to M.1 she had changed her mind again and decided to leave Mr. D.J.F. for good and move in with Ms. K.E..
- [29] While Mr. D.J.F. did not deny Mrs. J.L.F. access to the children, he did for a period of time insist that she visit the children in his home. He said that he was concerned she might run off with the children, but I think it is more likely that he hoped he could convince Mrs. J.L.F. to return to him.
- [30] The daily ritual involved her coming to his home after school and staying until dinner. She often returned after dinner and stayed until the children's bedtime. The routine was a very stressful one on Mr. and Mrs. J.L.F.. It appears that he constantly wanted to talk to her to convince her to return, whereas she had made a painful and final determination to leave him and did not want to rehash the matter with him.
- [31] By mid-November the stress convinced Mr. D.J.F. that he should abandon his objections to access taking place outside of his home. He consented to allowing the children to be with Mrs. J.L.F. on Tuesdays and Thursdays from the end of school until bedtime, and on alternate weekends. Mrs. J.L.F. also saw the children at school activities. She coached K.J.K.F. and N.K.F.'s volleyball and saw them on Mondays and Wednesdays. She also sat in A.K.F.'s class at noon every day.

- [32] The period was obviously a difficult one for the parties. I accept that on a number of occasions Mr. D.J.F. expressed to the children his view that Mrs. J.L.F.'s living with Ms. K.E. was sinful, but that they ought to forgive her. I doubt very much that, even if I were to accept that this was well-meaning, these lectures had any positive value.
- [33] Mr. D.J.F. also occasionally called Mrs. J.L.F. derogatory names in front of the children. I accept, as well, that Ms. K.E. and Mr. D.J.F. have engaged in extraordinarily immature behaviour involving hand gestures and obscenities as forms of communicating their displeasure with one another.
- [34] There appear to have been a number of minor disputes during this period surrounding access, none of which has any bearing on my decision. One incident, however, ought to be mentioned. In December 2003, Ms. K.E. smashed three windows in the basement of Mr. D.J.F.'s home. Her explanation, which I find patently ridiculous, is that she wanted to allow Mrs. J.L.F. access to the house to get some scrapbooks that she needed. It is evident that Ms. K.E. was drunk at the time and exercised very poor judgment, to say the least.
- [35] By March of 2004, T.J.F. expressed a desire for her parents to embark on a joint custody regime and this was arranged. The girls spent alternate weeks, together, with each parent. At this stage, Mr. D.J.F. began to pay child support, which was agreed to, at one half of the guideline amount. Given Ms. J.L.F.'s limited income at Save-On, no consideration of that income was apparently applied. The summer of 2001 was also split 50:50, though the periods with each parent were longer. This arrangement appears to have worked fairly well.
- [36] One further incident deserves mention. At one of T.J.F.'s band concerts there was a physical altercation between Mr. D.J.F. and Ms. K.E.. The evidence surrounding the incident is not without contradiction. It appears that the incident commenced with Mr. D.J.F. gesturing rudely to Ms. K.E. during the performance, and then Ms. K.E. yelling obscenities at him later on. At that point, as best as I can determine, he began to taunt her and she threw several punches at him while he spit at her. Needless to say, the spectacle must have been highly embarrassing for the children and for all present. It does not speak well of either Mr. D.J.F.'s or Ms. K.E.'s abilities to control their tempers for the benefit of the children or, indeed, for the benefit of their own reputations.
- [37] While, as I have indicated, the joint custody arrangement appears to have worked relatively well, communications between Mr. and Mrs. J.L.F. were poor. In June, when Mr. D.J.F. began to consider a move away from the Cariboo, he did not directly advise Mrs. J.L.F.. Each party blames the other for lack of communication of this event. I conclude that there was an element of game-playing on both sides.

- [38] In any event, a move was inevitable. Reductions in enrolment in School District 27, together with larger class sizes, resulted in Mr. D.J.F. being given notice that his position was declared surplus of the District's needs on May 25, 2004. For all intents and purposes, this was a layoff notice. I accept that there was no realistic possibility of continued employment within the school district unless Mr. D.J.F. chose to work very few hours or was prepared to work in a very remote location.
- [39] Mr. D.J.F. applied for work as a teacher in Kamloops, Prince George, Quesnel, Merritt, Salmon Arm and other places in British Columbia and Alberta, without success. In August, he resolved to move to Calgary on the basis that the school board there was hiring teachers and on the basis that a small English-as-a-second-language school was prepared to offer him a job, though at a salary of only \$33,000 per year.
- [40] The move to Calgary occurred in mid-August, just days before this trial was set to begin. At the outset of this trial, the parties presented their situation as one in which a decision of the court was needed prior to commencement of the school year. They were not, however, even with the court sitting extended hours, able to complete the evidence in time for that to occur.
- [41] In early September, I made an interim order leaving the children in M.2 with Mrs. J.L.F. pending the conclusion of the trial. In my view, a move to Calgary on an interim basis would have been overly disruptive when the final determination of custody could not be predicted. I further had concerns about the wisdom and stability of Mr. D.J.F.'s move to Calgary. He did not seem to have a job offer in that city that was sufficiently lucrative to justify a move there.
- [42] Following my interim order, Mr. D.J.F. was offered employment with Edwards Jones, a financial advising firm, in Calgary. He reconsidered his decision to move to Calgary, however, and was able to secure a similar position with Edwards Jones in Kamloops. He has taken that position and has now entered into an agreement to purchase a house in Kamloops.
- [43] From the standpoint of access to the children by the non-custodial parent, this is very positive. Kamloops is much closer to M.2 than is Calgary.
- [44] Since early September, all four girls have resided with Mrs. J.L.F. and they have attended school in M.1. They have continued with their recreational activities and appear to be fairing well.
- [45] As I remarked a number of times during trial, I am concerned with the minimal evidence that was presented in this case regarding the children's interests, personalities, aspirations and preferences. Much of the evidence in this case concerned various wrongs or perceived wrongs each parent visited upon the family and various perceived weaknesses in the characters of each spouse. While I acknowledge that such evidence is common in custody cases and that it can be useful, it tells only a small part of the story. Indeed, such evidence may be of limited value in a case like the present one, where each parent appears to

acknowledge, as they should, that the other is, for all his or her faults, a perfectly adequate and loving parent and caregiver.

- [46] To be clear, I do not overlook the fact that Mr. D.J.F. appears to have some difficulties with his temper and with compromising. These difficulties, however, do not appear to be so severe as to make him less than a perfectly fit parent. I also recognize that Mrs. J.L.F., in her time of personal crisis, came very close to abandoning her children. Again, however, I do not see this as representative of her normal value system and I am satisfied that she is a perfectly fit parent.
- [47] No independent evidence of the children's views is before this court. I have been told that the children do not want to be placed in the position of having to decide where they will go, thus offending one or the other parent. I can well appreciate that that might be their position. Evidence deriving from the children, however, might have been very useful, without expressly indicating a preference for being with one parent or another. Their particular talents and interests and a detail of their relationship with each parent, and indeed their relationships with one another, would have been invaluable to the court. This is particularly true with the older girls, who are teenagers. From a practical standpoint, they can determine with whom they will reside and what access will take place. It is best if the court has some insight into what matters to the particular child before making a custody order.
- [48] I do have evidence about the children, though it is second-hand and is filtered through the lenses of observers who are less than impartial. Some of the children's strengths and talents have been remarked upon by a sufficient cross-section of witnesses that I believe the evidence to be reliable. For example, there is evidence that T.J.F. is a talented musician and that she sees the option of moving to a larger city than M.1 as an opportunity. K.J.K.F., I am told, is shy than the other girls and more independent. She does not seem particularly adverse to the idea of a move from her current home, but faces the potential move with some trepidation. N.K.F. is very interested in sports. She is strong-willed and speaks her mind. She seems to have suffered some setbacks in school over the past year, even getting suspended at one stage. I accept that at times she has been adamant that she does not want to leave M.2, but I do not take that position to be a final considered one. A.K.F. is by far the youngest child. She is least aware of the details of what is happening or will happen. From what I have heard, she appears more interested in "traditional little girl activities", such as ballet, than in sports like soccer.
- [49] I do not pretend that these brief observations go very far in defining the girls, nor do I suggest that a more detailed picture of each daughter cannot be teased from the evidence. I have considered all of the evidence before me carefully in coming to my conclusion.
- [50] Both Mrs. J.L.F. and Mr. D.J.F. are fully adequate parents and the children would be adequately cared for in either of their homes. I do, however, have significant concerns with both of them.

- [51] With respect to Mrs. J.L.F., my greatest concern is the stability of her relationship with her new partner, K.E.. Although I commented during the trial that I wished to know as much as possible about their future plans, and especially their plans for the children, little evidence of assistance to me has emerged. I do understand that the two would like to purchase the matrimonial home and have secured almost enough financing to do so. I would comment that this plan may not be wholly realistic. It seems to be optimistic in terms of expenditures and leave minimal income to deal with contingencies. Hence, the long-term plans of the couple is vague. This is not surprising given the circumstances. They have lived together for a year and this represents Mrs. J.L.F.'s only homosexual relationship.
- [52] There are a number of concerns that I have with Ms. K.E. as an authority figure for the children. I found her to be an unsatisfactory witness, generally minimizing her involvement in matters, providing transparent rationalizations for inappropriate conduct. More troubling, however, was her inability to articulate details of the children's relationships with her and her place within the household. Beyond repeating a number of times that relations were "good", she was unable to say much. I am concerned about the stability of the relationship between Ms. K.E. and Mrs. J.L.F., as I have said, as well, because they come across as very different people in terms of intelligence capacities and interests. I do not suggest that their relationship cannot work in the long run. I very much hope that it does, but I cannot escape the fact that there are serious risks in assuming that this relationship will be a stable place for the children to be raised.
- [53] I am concerned about Ms. K.E.'s personal history. The evidence demonstrates to me that she has not treated her daughter C. as a particular priority in her life. She would frequently socialize after work instead of picking C. up at the appointed time at Mrs. J.L.F.'s daycare. There is evidence that she drank excessively during C.'s early years and drove with C. while impaired. It also appears that she used illegal drugs during C.'s early years.
- [54] I am also worried about Ms. K.E.'s apparent makeover in the last year or so. She says that she began seeing a counsellor to help her with alcohol problems in September 2003, yet clearly had instances of excessive drinking after that. She does not indicate what the nature of the counselling is or whether the counsellor is professional. Most discouraging, however, is her claim that she has changed because Mrs. J.L.F. does not drink. In a relatively new relationship it is difficult to place much stock in the idea that a change made for the new love interest is indeed a long-term shift rather than a short-term experiment that might be discontinued with a cooling of the relationship.
- [55] Perhaps my biggest concern is the capability of this relationship to withstand the pressures of a household consisting of two adults, three teenaged girls and two younger girls. Mrs. J.L.F. and Ms. K.E. have not really handled the situation on an ongoing basis and I frankly doubt whether, particularly given Ms. K.E.'s work hours, they will be able to manage it well.

- [56] The same concern exists with respect to Mr. D.J.F.. While it is true that he has looked after his four daughters single-handedly for a period of several months, this did not coincide to any great degree with times when he was working full-time. I also have considerable concern that he has underestimated the challenges facing him in establishing himself in the financial consulting industry in Kamloops. While he states that his hours will be long but flexible, he seems to de-emphasise the long and overemphasize the flexible. I do not overlook the fact that R.F. and H.F. live in Kamloops and will, no doubt, be available to assist him, as necessary.
- [57] The instability that Mr. D.J.F. faces is underlined by the situation that emerged at this trial. For the first five days, he was in court touting the benefits of a precipitous move to Calgary. For the last two days, he was asking that I note his flexibility in his decision to move, instead, to Kamloops.
- [58] I wish to make it clear that I do not fault either Mr. D.J.F. or Mrs. J.L.F. for the choices they have made. They may well turn out to be inspired ones. My concern, however, is solely with the best interests of the children and I must consider the risks as well as the benefits in placing them with one parent rather than the other.
- [59] As I have indicated, one of my major concerns is the number of children involved in this case. The parties have four daughters of their own, and Ms. K.E. also has a daughter who lives with her half-time. I have serious concerns that the number of children will place a severe strain on either Mr. D.J.F. or Mrs. J.L.F. if I award custody of all of the children to one of them.
- [60] The alternative, splitting up the children, is rarely considered, and with good reason. A divorce breaks a couple's relationship. If not only the couple but the children are also split, it is arguably the entire family that is broken. The relationships between the girls may be as important to their wellbeing as their relationships with their parents.
- [61] I have concluded that, absent considerations of the relationships between the girls themselves, a split-custody arrangement would be justified. I have concluded that T.J.F. would be best off with her father in Kamloops. I believe she recognizes, as I do, that there will be greater opportunities in Kamloops for her. She also appears to have a positive attitude towards leaving M.2. Her strong interest in music will be much better fostered by her father than her mother.
- [62] A number of witnesses who testified on Mr. D.J.F.'s behalf commented that they thought that Mrs. J.L.F. was extremely effective as a mother to the girls during their preschool years, but she appeared less interested in fulfilling that role as they got older. I accept that Mrs. J.L.F. is particularly skilled at dealing with younger children. I also accept that she is probably less adept at dealing with the girls as they move into their teenage years. I doubt very much that this, as some witnesses put it, is a result of a lack of interest or a desire to relate to the older children as a peer rather than a parent. It may simply be that Mrs. J.L.F.'s aversion to controversy and confrontation has made her less effective as a parent of teenage daughters

than it made her with younger children. Even that conclusion, however, must be tempered with the proviso that children, like adults, are individuals and what is effective parenting for one may not be for another.

- [63] That said, I have no doubt that Mrs. J.L.F. is particularly skilled in the care of younger children. In many ways, she is the ideal person to care for A.K.F., the youngest daughter. A.K.F. is considerably younger than the other girls and appears to relate well to her mother. Mrs. J.L.F. has been particularly active in the elementary school. In her evidence, Mrs. J.L.F. frequently spoke of A.K.F. and I am satisfied that she recognizes her as a unique person. In contrast, and without meaning to put a pejorative spin on matters, I was left with the impression by Mr. D.J.F. that A.K.F. is a bit of an afterthought, a person who may be interesting in the future but is not yet there.
- [64] While it is not an overwhelming factor, I also note that A.K.F. has a close relationship with C., Ms. K.E.'s daughter, and having A.K.F. living with Mrs. J.L.F. is likely to foster what appears to be a healthy relationship.
- [65] Even without considering the relationships between the sisters, K.J.K.F. and N.K.F. are more difficult to place with one parent or the other. K.J.K.F. appears to me to be shyer, but equally less averse to a move into a new city. Like T.J.F., she appears to possess considerable musical talent that perhaps would benefit from more encouragement than Mrs. J.L.F. is able to give her.
- [66] N.K.F. also appears to have some musical talents, but her greatest talents appear to lie in sport. Still, the underlying characteristic that comes through in all of the descriptions of her is her strong will and plain speaking. I do not see Mr. D.J.F. as being the ideal custodial parent for such a child. His own strong convictions and self assurance are likely to lead to serious power struggles with N.K.F. as she continues through her teen years. In my mind, Mrs. J.L.F.'s non-confrontational and more gentle corrective style is more likely to meet with success with N.K.F..
- [67] I also accept that N.K.F., at times, has expressed genuine aversion to leaving M.2. While that is not a decisive factor, in my mind it is an element to be considered. As well, N.K.F., more than the other girls, appears to have suffered from behavioural problems in the past year. While it might be arguable, I am not convinced that removing her from familiar surroundings would do anything but aggravate that situation.
- [68] So, to summarize, if I did not have concerns about the effects upon the children of being separated from one another, I would place T.J.F. and K.J.K.F. with Mr. D.J.F. in Kamloops and N.K.F. and A.K.F. with Mrs. J.L.F. in M.2. In my view, the factors in favour of placing T.J.F. with her father are overwhelming, as are the factors in favour of placing A.K.F. with her mother. Matters are somewhat more closely balanced with K.J.K.F. and N.K.F., but for the reasons I have set out, I consider that K.J.K.F. would be better off with Mr. D.J.F. in Kamloops and N.K.F. better off with Mrs. J.L.F. in M.2.

- [69] Looked at in isolation, the best interests of each child would be best served with one particular parent. The matter cannot, however, be looked at in isolation. The girls relate to each other as well as to their parents, and extreme caution must be exercised for fear of harming the bonds between the children.
- [70] While split-custody arrangements will rarely be in the best interests of children, I am satisfied that in this case split custody is the best possible custody arrangement. Firstly, Kamloops and M.2 are close enough together that the girls should be able to see each other frequently, perhaps three weekends a month or more. Aside from A.K.F., the children are at an age where they are gaining greater independence and probably do not need to be with each other daily in order to maintain close sisterly bonds. I am also satisfied that the burden on either parent of having all four children most of the time would be great. While they might be able to cope, I think that each will be a better parent with fewer children in his or her primary care.
- [71] There are other benefits to a split-custody arrangement. In my view, the drive to ensure that the sisters are together frequently would greatly facilitate access arrangements which have sometimes been a sticking point in the past.
- [72] While I do not want to dwell on it, I have also mentioned the instability about Mr. and Mrs. J.L.F.'s lives right now. Having two "custodial" parents, in my view, would be conducive to more flexible parenting arrangements in the future, in the event that circumstances change.
- [73] It is not without hesitation that I am making the order that I am making. I have been particularly concerned about splitting up the three older children, who are close in age, by placing N.K.F. in a different residence than T.J.F. and K.J.K.F.. I am satisfied, however, for the reasons that I have given, that N.K.F. will be better off in M.2.
- [74] In the result, I am ordering that the parties have joint guardianship of the four children, that T.J.F. and K.J.K.F. have their primary residence with Mr. D.J.F., and that N.K.F. and A.K.F. have their primary residence with Mrs. J.L.F.. The parties wish custody to follow primary residence and I agree that this is appropriate in the circumstances. Mr. D.J.F. will have custody of T.J.F. and K.J.K.F. while Mrs. J.L.F. will have custody of N.K.F. and A.K.F..
- [75] In terms of the transition between the current interim arrangement and the more permanent arrangement, I will hear submissions as to when the two older girls should move to Kamloops.
- [76] I am satisfied that the parties have lived separate and apart for more than a year; in my view, they separated no later than July 21st, 2003, with a brief attempt at reconciliation thereafter. In any event, they have now, indisputably, lived separate and apart for one year since the date of Mrs. J.L.F.'s final decision to make her departure permanent on the Thanksgiving weekend in 2003.

- [77] There being no bar to granting the divorce, I am ordering that the parties are divorced on the usual terms; that is, the order will be effective 31 days from today's date.
- [78] Child support will be in accordance with the guidelines. The parties agree that Mr. D.J.F.'s income, for guideline purposes, is \$70,000 per year, while Mrs. J.L.F.'s is \$10,900. With the setoff, Mr. D.J.F. will pay \$796 per month to Mrs. J.L.F. for child support. That amount will be payable monthly. In terms of what day of the month, I will deal with that after hearing some submissions.
- [79] The family assets have largely been divided, other than the matrimonial home in which the parties appear to have limited equity. I am prepared to allow Mrs. J.L.F. until November 1 to purchase the house. The purchase price will be \$135,000. To the extent that any amount of that is left over after removal of charges and payment of transfer expenses, it will be divided equally between Mr. and Mrs. J.L.F..
- [80] Failing a purchase by Mrs. J.L.F., the property will be put up for sale. Subject to submissions, I will order that the parties have joint conduct of sale. After commissions and other expenses, there is likely to be a small shortfall between the amount that will be received for the property and the amount necessary to discharge the mortgage and pay expenses, and as between the parties that amount will be divided 50:50.
- [81] Mrs. J.L.F. holds \$7,550 in RSPs while Mr. D.J.F. holds \$480 in RSPs. He also has a pension entitlement from teaching. All the assets will be divided 50/50, the pension entitlement in accordance with the legislation. I leave the precise mechanism of the division to the parties and they have liberty to apply to me if further orders are necessary.
- [82] There are significant debts that the parties now have. A bank line of credit stands at approximately \$9,350.
- [83] In addition, Mr. D.J.F. owes \$23,000 to his grandmother's estate and \$20,000 to his great aunt, although there is no indication that these amounts will be paid any time soon. The loans are interest free. Indeed, it is probably the case that they are not recoverable at law, given the time that has elapsed and the fact that they are probably, in law, demand loans. Nonetheless, I accept that they must, at least as a matter of honour, be paid and they will eventually be paid. The value of the loans must be heavily discounted, however, to reflect the present value of an interest-free obligation that may not be paid for up to two decades or more.
- [84] Finally, Mr. D.J.F. owes his parents \$11,000. Of this amount, \$7,000 was used to pay a debt to CCRA, that was effectively a family liability. The other \$4,000 has been described as being for miscellaneous expenses that are unspecified and I am unable to conclude whether that amount was used for family purposes or not.
- [85] I am well aware that the fallout of a traditional marriage is that Mr. D.J.F. has emerged from the breakup with significantly higher earning potential than that of Mrs. J.L.F. and she will need to obtain further training if she wishes to realize her own earning potential. Unfortunately, she does not have any particular plans to retrain at present, and seems

content, for the immediate future, to work part-time at Save-On Foods. Nonetheless, I am satisfied that my order ought to encourage her to obtain training and not leave her in a deep financial hole from which escape will be unlikely. In the circumstances, I am directing that as between the parties, all of the debts will be payable by Mr. D.J.F.. This will go some way towards addressing the financial imbalance between the parties.

- [86] I understand that Ms. K.E. and Mrs. J.L.F. currently share household expenses. It is common ground that Ms. K.E. makes about \$35,000 per year. This leaves Mrs. J.L.F. in the position where it will remain very difficult for her to realize her potential without some economic support. To date, she has received \$500 per month for spousal support and she seeks a continuation of that amount for a period of two years, to be reviewed at that time.
- [87] I think, given that Mr. D.J.F. will be taking over the family debt, that a continuation of support payments of \$500 per month is too generous. I do not agree, however, with Mr. D.J.F.'s position that spousal support payments should cease. I am ordering that spousal support payments from November 2004 be \$400 per month. That amount will be reviewable, on application, by either party after two years; that is to say, October 2006. By that time, Mrs. J.L.F. should be in a position of greater self sufficiency.
- [88] That leaves a few matters to be tied up, particularly in terms of an access regime, the precise dates of the month on which child and spousal support will be paid, and what mechanism will be in place for changing from the current interim custody arrangements to the permanent arrangements that I have ordered. So I will hear submissions on those matters.
- [89] I have assumed, from what I have heard, that there are no further issues with assets that I have not dealt with. For example, as I understand it, the van is of extremely limited value and it is agreed that Mrs. J.L.F. will have the van, but if there is anything I have missed I will also hear from you on that.
- [90] Are the parties prepared to make submissions at this point, or is the current circumstance an awkward one?

[Discussion between the Parties and the Court]

- [91] I have in mind frequent access where the four of them can get together on a very frequent basis. I do not know whether their preferences or the parents' preferences will also be to have times where they are not all in the same place and that is something that you should consider. What I am going to suggest is that we take a few days, but have some opportunity, hopefully before the beginning of November, to deal with these matters. I do not see this new custody regime as something that can be or should be instantaneously put in place. There has to be a transition plan for school.

[Discussion between the Parties and the Court]

[92] I do not know what the communications are like now between the parties, but it would be preferable, obviously, if they were able to reach arrangements that were mutually acceptable on some of these things. I am not, in any sense, suggesting that any order that I make would be a consent order, but without giving up any rights of appeal or the like, I would like to be able to make orders that are practical for the parties. So if there is an opportunity for discussion to work specifics out around the order that I have made, that would be helpful.

[Discussion between the Parties and the Court]

[93] We will adjourn, then, to next Tuesday, that will be the 26th, at 4:15 p.m.

"H.M. Groberman, J."

The Honourable Mr. Justice H.M. Groberman

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