

CANADA / JUDGMENT

F.A.P. v. L.F.T.

2023 BCSC 1073

COURT

Supreme Court of British Columbia

DECIDED

22 June 2023

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2023 BCSC 1073 F.A.P. v. L.F.T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

F.A.P. v. L.F.T.,

2023 BCSC 1073

Date: 20230622

Docket: E17159

Registry: Chilliwack

Between:

F.A.P.

Claimant

And

L.F.T.

Respondent

Before: The Honourable Justice A. Ross

Reasons for Judgment

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S. de Wit

Place and Date of Trial/Hearing:

Chilliwack, B.C.

November 21-25 and 28-30, 2022

December 1-2, 2022

June 7, 2023

Place and Date of Judgment:

Chilliwack, B.C.

June 22, 2023

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- [1] The claimant and the respondent dated for less than three years and lived together for less than two years. Their relationship produced a wonderful little girl, S.P. The majority of this family law trial addressed issues relating to S.P.'s living situation. To be clear, it is inherent in my reasons below that both parties love S.P. very much and they are both devoted to her well-being. Both parties are excellent parents. Paradoxically, their love for S.P. has resulted in a toxic relationship between the parties. That toxicity has led to vindictive steps being taken.
- [2] The main issue at trial relates to the claimant seeking an order that S.P. reside in Chilliwack and that the parties share parenting responsibilities equally. On the other side, the respondent seeks an order that would allow her to relocate with S.P. to reside in Victoria. She puts forward a plan which would see S.P. travel to Chilliwack twice per month plus other substantial time.
- [3] The respondent also claims for child support and spousal support (both retroactive and ongoing). There are other parenting issues between the parties, including the necessity of a parenting coordinator. In addition, the parties purchased a home together. There is general agreement on the treatment of that property.
- [4] The primary issues for me to decide are:
- a) First, two issues that must be considered together:
 - i. Should the respondent be permitted to relocate S.P.'s residence from Chilliwack to Victoria?
 - ii. Should S.P. reside primarily with the respondent or the claimant?

- b) Division of family home (based upon property and contractual principles).
 - c) What is the appropriate amount of child support (retroactive and prospective)?
 - d) Is the respondent entitled to spousal support and, if so, in what amount?
 - e) Is a parenting coordinator required?
- [5] To their credit, the parties have been able to reach agreement on some issues including:
- a) There is general agreement that guardianship and parenting responsibilities should be shared, although the terms of any such arrangement are significantly in issue.
 - b) The sale of the house they co-purchased.
 - c) There is agreement in principle about the need for a parenting coordinator.
- [6] I note at the outset of these reasons that I have initialized the names of the parties and witnesses to protect S.P.'s privacy.
- [7] I also note that relocation cases pose very difficult choices for the court. As I discuss below, the legislative framework plays a large part in determining the outcome. That framework assumes that one parent will move and that there will be a distancing between the child and one of the parents. Within that paradigm, my role is to determine which of the parents should suffer that distancing.
- [8] Finally, I note that the evidence establishes that the respondent has taken steps that I find to be very concerning. She moved her and S.P.'s residence from Chilliwack to Victoria in breach of a residency order. She also undertook certain actions against the claimant's interests that I find to be vindictive. Despite those very concerning actions by the respondent, I have decided that it is in S.P.'s best interests to relocate to Victoria with her mother. I describe my reasoning below.

Background Facts

- [9] The claimant, F.A.P., is a specialist doctor who works in the Fraser Valley and lives in Chilliwack. He is 42 years old. He attended medical school and completed his residency and fellowship in Ontario. He accepted a position at a Fraser Valley hospital, arriving in 2015. In 2018, his sister, D.P., a nurse practitioner, moved to Chilliwack. His mother moved to Chilliwack the next year and now lives with D.P. D.P. has a son born in 2019. The claimant's mother, sister, and nephew live in the house next door to the claimant.
- [10] As of the date of these reasons, the claimant is single. He was involved in a long-term relationship at the time of trial. However, based upon an admission adduced at the re-opening of the trial in June 2023, I understand that relationship has ended.

- [11] The respondent is 43 years old. She spent her teen years in Prince George before moving with her family to Victoria at age 18. She obtained a Bachelor of Science degree from University of Victoria ("UVIC") in 2002. She later pursued an accelerated nursing program at the University of Calgary, graduating in 2007. In order to gain experience, she worked as a critical care and cardiac nurse in Calgary from 2007 to 2010. She then moved back to the West Coast in 2010, working at Vancouver General Hospital in a critical care role until 2013. There is no evidence of her work record in the period from 2013 to late 2016. She was unemployed and living with her parents when the parties started dating. As I discuss below, the respondent's submissions stress her reliance on her family for emotional and parenting support. Her parents and one sister live in Victoria. Another sister lives in Nanaimo. There is no evidence that the respondent has moved on to a subsequent relationship.
- [12] The parties' relationship began with a first date in November 2016. The parties describe the early stages of the relationship in different terms. The claimant describes the early stages as "casual" and "on-and-off". The respondent says that they were both in their late 30s and looking for a serious relationship. She says that they became serious very quickly. I do not need to resolve that discrepancy. Both parties agree that, whatever the depth of their initial involvement, the relationship was tumultuous.
- [13] The relationship took a significant turn in August 2017 when the respondent learned that she was pregnant. That event caused a reckoning regarding their future. The respondent says that at this point the claimant began a pattern of domineering and controlling conduct. The claimant denies that allegation and says that it was the respondent who was controlling.
- [14] Despite their differences, the respondent moved in with the claimant in his home in Chilliwack in early January 2018. In April 2018 the parties purchased (and finished) a new home together on Tyee Lane in Chilliwack (the "Tyee House"). They each put \$100,000 toward the purchase of the Tyee House. That house is part of the assets being divided.
- [15] S.P. was born March 7, 2018. She has had significant health issues which are relevant to my decision. Within three months she was diagnosed with a benign growth on her tailbone. She underwent surgery in August 2018 to remove that mass.
- [16] In November 2018 the respondent applied for admission to the joint Masters of Nursing and Nurse Practitioner program at UVIC. Her goal was to become qualified as a nurse practitioner because it provided a higher earning potential and more flexibility than nursing.
- [17] I understand that the existence of the mass on S.P.'s spine raised a concern for the possibility of cancer. As a result, S.P. went through a battery of tests in early March 2019. Those tests proved positive for cancer. S.P. was diagnosed with cancer in her lower back. The parents were later advised that the cancer had metastasized to her lungs.

- [18] S.P. went through six rounds of chemotherapy at B.C. Children's Hospital between March and August 2019. She also underwent a further spinal surgery in June 2019. I understand that she was declared cancer free as of August 2020. Each round of chemotherapy required hospitalization for ten to 15 days. The respondent was in attendance with S.P. for the entirety of those stays.
- [19] The respondent alleges that the claimant prioritized his work over being with S.P. during her treatments. She relies on text messages as evidence of his absences. The claimant says that he was in attendance for the majority of the treatments but acknowledges that he continued to work because he was the breadwinner for the family. He had to re-arrange his call schedule in the first weeks and rely upon the generosity of his call partners. I do not need to decide the frequency of his attendances. It is clear that the respondent was providing primary parenting during this period.
- [20] The already-tumultuous relationship could not withstand the further stress. The claimant announced that he was ending the relationship, and he moved to the basement of the Tyee House, on April 28, 2019. He moved out of the Tyee House in September 2019. The parties do not agree on the applicable date of separation, although it is clearly one of those two dates. The respondent acknowledges that the claimant announced his intention to end the relationship in April 2019. However, she says that they continued in a marriage-like relationship, on and off, until he moved out in September.
- [21] It is obvious that the combined stress of S.P.'s cancer plus the end of the relationship was extremely taxing on both parties, but especially on the respondent.
- [22] Following the end of S.P.'s treatments, the respondent gained entry into the UVIC Nurse Practitioner program in late 2019. Because of her parenting responsibilities, she took three years to complete the program. She qualified as a nurse practitioner in September 2022. She is currently employed on a half-time basis at a primary care clinic in Victoria.

Events Relevant to, and Within, These Court Proceedings

- [23] As noted, the claimant announced his separation from the respondent on April 28, 2019, which was during S.P.'s chemotherapy treatment. He physically departed from the family home in September 2019. The respondent says that the separation did not occur until the September date. She says that the couple continued in a marriage-like relationship, on and off, until the claimant's final departure in September. I accept the respondent's position, and I have used that date in my assessment below.
- [24] After separation, there was no written agreement regarding parenting arrangements. In the first months after separation, by oral agreement, the respondent had primary parenting responsibilities, and the claimant would visit with S.P. most evenings at the Tyee House.
- [25] This proceeding was commenced May 25, 2020.

- [26] By letter dated August 17, 2020, the respondent's counsel gave notice of her intention to relocate to Victoria pursuant to ss. 65-66 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. As of that date, there was no written agreement or order respecting parenting arrangements. I return to this circumstance below when discussing the applicable relocation provisions of the FLA.
- [27] On October 26, 2020, Justice Walkem granted a consent order barring either party from changing S.P.'s residence pending the trial. That order was made without prejudice to the ultimate determination concerning the relocation of S.P. (the "2020 Residence Order").
- [28] On February 4, 2021, Justice Walkem made a further order relating to parenting time (the "February 2021 Parenting Order"). That order:
- a) granted the claimant parenting time from Friday at 4:00 p.m. to Sunday at 7:00 pm, and each Tuesday from 4:00 p.m. to 7:00 pm, on a "two weeks on/one week off" basis; and
 - b) in order to facilitate the exchanges, the respondent was to drop S.P. at the claimant's residence, and the claimant was to drop S.P. at the respondent's residence.
- [29] On October 18, 2021, Justice Walkem granted the claimant additional parenting time over Christmas of 2021 (the "October 2021 Parenting Order"). Other relief was granted that is not relevant.
- [30] On November 1, 2021, the respondent obtained several items of relief, by consent, that do not relate to parenting time.
- [31] On June 14, 2022, Justice Caldwell varied the February 2021 Parenting Order such that:
- a) the claimant's parenting time with S.P. on Tuesdays was cancelled and replaced by parenting time by FaceTime or Skype;
 - b) during the first week of the cycle, the claimant (or agent) would pick up S.P. at the Schwartz Bay Ferry Terminal (Thursday at 12:30 p.m.) and drop S.P. with the respondent at a defined grocery store in Chilliwack (Sunday at 7:00 p.m.);
 - c) during the second week of the cycle, the claimant (or agent) would pick up S.P. from the Tsawwassen Ferry terminal following the 1:00 p.m. sailing from Victoria, and drop S.P. with the respondent (or agent) at the same grocery store in Chilliwack (Sunday at 7:00 pm.);
 - d) there were specific instructions regarding the steps to be taken, and the movement of vehicles, at the grocery store exchanges. Windows were to be rolled up. No communication was to occur;
- (Each party alleges that the other has breached this term. I deal with those allegations below.)
- e) the claimant was also granted parenting time one week per month in July, August, September, and October 2022;

- f) there were other items of relief sought, granted, or dismissed that are not relevant.
- [32] I deal below with the apparent inconsistency created by this June 2022 order. Given that the 2020 Residence Order barred either party from changing S.P.'s place of residence (from Chilliwack), one might find it curious that Caldwell J. provided for exchanges at ferry terminals.

Credibility and Reliability

- [33] The chronology set out above is largely undisputed as between the parties. There are, however, credibility issues that thread through the matters in dispute. I address some of the more general issues in this section. Where appropriate, I have also addressed the credibility issues under individual headings. On some of those issues, my findings relate, not to the actions that were taken, but to the motivation behind the actions.
- [34] At the outset, I note that many of the evidentiary disputes between the parties can be explained by the opposing perceptions and the inevitable re-writing of history after a breakup. My finding in that regard is in line with Dr. Elterman's which I discuss below.
- [35] One of the "perspective" disputes relates to whether the claimant engaged in coercive and domineering behaviour toward the respondent. As noted, the claimant denies any such behaviour and says that, in fact, it was the respondent who conducted herself in a controlling manner. On the nature of their inter-relationship, the respondent told Dr. Elterman that the claimant was demeaning and disrespectful toward her. I discuss below the respondent's allegation that the claimant's actions constitute family violence with the definition of that term in the FLA.
- [36] There are also areas where there are irreconcilable differences between the evidence of the two parties. Primarily, it is the respondent who challenges parts of the claimant's testimony. One example arises from the claimant's evidence, presumably in an affidavit or at Discovery, that he does not work on the days when he has parenting responsibilities with S.P. He re-stated that position in his testimony at trial. However, it is clear that the respondent knew that this would be his testimony.
- [37] Pursuant to a pretrial court order, the respondent obtained the claimant's Medical Service Plan ("MSP") billing records and compared the dates and the fee billing items to the dates when the claimant had S.P. in his care. She created many months of calendars upon which she entered the data of the MSP billing fee items, showed his on-call days and cross-referenced that data to the days that he had S.P. The stated purpose of these charts and this testimony was to demonstrate that the claimant was not telling the truth about working on the days when he was parenting S.P. Further, she attempted to prove that he works more days than he claims. In support of his submission that he is capable of parenting S.P., the respondent attempted to minimize his work schedule. I address that issue below.

- [38] In her testimony, the respondent pointed to the example of Christmas Eve and Christmas Day of 2021. She alleges that the claimant was working, despite the fact that he applied for and obtained an order that he would have S.P. from noon on December 24 until noon on December 25.
- [39] The trouble with this line of documentary evidence (from the respondent) is that it is, by definition, expert evidence. It requires the interpretation of raw data (the MSP billing records). The problems with this evidence are as follows:
- a) I have no evidence on her qualifications to interpolate the data.
 - b) She is clearly not an independent witness providing evidence for the benefit of the court.
 - c) The respondent claims (really "opines") that a person billing MSP is legally required to record the date the service was provided. I received no submission on that legal opinion.
 - d) The respondent then transposed the MSP data onto the calendar showing the dates when he had S.P.
- [40] The claimant, in anticipation of this evidence from the respondent, indicated that he often does work in the morning (before S.P. arrives into his care) and dictates reports after she goes to sleep.
- [41] I am unable to determine whether the respondent's statements about billing regulations and practices are accurate. I am further unable to determine whether her notations on the calendar are correct. However, I do find that:
- a) if the calendars created by the respondent are correct, then on the majority of the days that S.P. is with him, the claimant does not record any work;
 - b) based on the information in the calendar, there are days when the claimant is exchanging S.P. into, or out of, his care. On those occasions, there are days where he has MSP recorded billings. However, there is no evidence that those billings occurred while S.P. was actually in his care.
- [42] There is a further aspect to this evidence. It is, ultimately, irrelevant. I note that the respondent acknowledges that she conducted several practicums for her nurse practitioner certification program, on days when her parents looked after S.P. It is evident that she did not contact the claimant to determine his availability during those periods. Hence, at worst, the respondent's charts and calendars, if accepted, would place the two parents on similar footing.
- [43] I deal with the remaining credibility issues by discussing the evidence of each party and witness. I supplement that analysis with assessment of the differing versions of events when addressing specific issue headings below.

[44] I note, for context, that I am assessing credibility in light of my "perspective" comments above. Seemingly innocent events that occurred during the relationship are now viewed with new, but jaundiced, eye. Further, I accept that each party is focussed upon the main goal of maintaining their relationship with S.P. Those strong emotions can lead to a person's perspective being somewhat skewed away from the objective facts.

The Claimant

[45] I find that the claimant was generally a good witness. With one exception, I have no concern that he set out to shade his evidence or mislead the court.

[46] The one area of concern relates to the claimant's work schedule, which was a significant focus of the respondent's case. In my opinion, during cross-examination the claimant attempted to minimize his work schedule and the number of hours that he works. I infer that he did that in an attempt to establish that he would be able to achieve a shared parenting arrangement. I discuss that issue in more detail below under the heading "Double Bind Issue".

[47] The respondent put much effort at trial toward establishing that the claimant had significantly more work-related entanglements than he described in his testimony or to Dr. Elterman (discussed below). In the end, I am satisfied that the claimant:

- a) works in a group of four specialists who divide the call schedule equally (1-in-4 or 7-in-28);
- b) has surgical operating time most Mondays;
- c) is a hard worker who, given the opportunity to do so, would work more hours; and
- d) in the period before trial, arranged his office and clinic hours based on the (then) current parenting schedule.

[48] However, I also find that the claimant's work schedule, like that of any specialist surgeon, is significantly heavy and unpredictable.

[49] In respect of the other issues in the trial, I accept the claimant's evidence. In particular:

- a) I note the relatively refreshing point that there was no suggestion that he was hiding earnings;
- b) as discussed below, the respondent alleges that during an event in 2022, the claimant's conduct constituted family violence. That event involves comments made by the claimant. I note that the claimant did not deny the comments that the respondent asserts. Instead, he provided context for his comments. To be clear, there was no allegation in the respondent's testimony of physical or sexual violence.

[50] For the reasons set out above, and discussed in more detail below, I find that the claimant was, overall, a good witness and I can accept his testimony as being truthful.

The Respondent

- [51] For the reasons set out below, I have significant concerns about portions of the respondent's testimony, especially her testimony (which was really a submission) about why she is not in breach of Justice Walkem's 2020 Residence Order.
- [52] First, however, to put my later assessment in context, I do accept the respondent's testimony relating to why she did not make attachments to the community in Chilliwack:
- a) She moved to Chilliwack when she was seven months pregnant in January 2018.
 - b) S.P. was born in March 2018.
 - c) During the first year in Chilliwack, her only acquaintances were the friends and partners of the claimant's work colleagues.
 - d) Following S.P.'s birth, she became pregnant, but miscarried, on two occasions. These events took an emotional toll.
 - e) S.P. got sick in early 2019, and they spent March to August at Children's Hospital in Vancouver.
 - f) The claimant made it clear that he intended to end the relationship in April 2019. At that point, she lost contact with all his friends.
 - g) In September 2019, the claimant moved out of the family home.
 - h) In November 2019, the respondent started her nurse practitioner program. In the meantime, S.P. needed a lot of care. The respondent worked on her courses between S.P.'s bedtime and midnight every night.
 - i) The Covid pandemic struck in March 2020, further isolating the respondent.
- [53] I accept all of that evidence from the respondent.
- [54] A significant focus of the claimant's submission focussed on his allegation that the respondent relocated to Victoria with S.P. in breach of the 2020 Residence Order which barred either party from changing S.P.'s residence pending the trial.
- [55] The claimant says that the evidence is clear that respondent is in breach of that order. He says:
- a) The respondent and S.P. live with the respondent's parents in Victoria.
 - b) S.P. is registered three days per week in an outdoor daycare program in Victoria.
 - c) The respondent has consistently aligned S.P. with medical professionals in Victoria to the exclusion of treaters in the Fraser Valley.

- d) Every exchange of S.P. (for the claimant's parenting time) now involves S.P. being brought from Victoria, or being returned to Victoria.
- [56] In response, the respondent (as well as her parents) say that she is not in breach the 2020 Residence Order as she understands it. The respondent testified that she understood that the order meant that:
- a) she could not sell the Tyee House;
 - b) she needed to maintain a residence in Chilliwack;
 - c) she needed to make sure that the claimant continued to have his parenting time with S.P.
- [57] The respondent says that she has complied with those objects. She testified that she did not understand that the 2020 Residence Order prevented her from spending time visiting Victoria. She notes that she and S.P. have always spent significant periods in Victoria.
- [58] The respondent does acknowledge that, as time has gone on, she has spent more and more time in Victoria. She testified that she does not know the "legal definition" of relocation, but her time in Victoria has progressed and she now spends the majority of the time over there. However, she says she has diligently performed the necessary travel to Chilliwack with S.P., and she has maintained the Tyee House. She also notes that the claimant moved houses (within Chilliwack) after the 2020 Residence Order, and she asserts that this act may be in breach of the order.
- [59] She explains her actions over time as follows:
- a) In 2019, she opted to do her nurse practitioner training at UVIC because it was available on-line. To the extent that she would need to be in Victoria to attend classes, she could stay with her parents.
 - b) When faced with choosing practicums in her training, she submitted her requests, and the university assigned her to practicums in Victoria. She says that she did not have a choice in the location of those assignments.
 - c) Given that she was undertaking practicums, the best person to provide care for S.P. was the respondent's mother (S.P.'s grandmother). There would be no other way to obtain qualified childcare for S.P. The respondent's mother is a retired neo-natal nurse.
- [60] In short, I do not accept any of the respondent's evidence on the issue of her residence. The evidence is overwhelming that, faced with the 2020 Residence Order, the respondent took active steps to relocate herself and S.P. to Victoria. She did so without making an application to vary the existing order. I do not accept her testimony that she felt she was in compliance with the spirit of the order. That testimony was completely unconvincing.
- [61] I draw the (rather obvious) inferences that the respondent:
- a) had no interest in living in Chilliwack;

- b) wanted to be closer to her parents, and her support network;
- c) thus, opted for practicums in the Victoria area and did not pursue any opportunities that may have existed closer to Chilliwack;
- d) sought the necessary childcare from her mother, rather than asking the claimant about his availability;
- e) having taken those steps, it made sense (to the respondent) to make appointments with healthcare providers in Victoria.

[62] The fact that the respondent moved S.P. to Victoria was made more obvious when the respondent applied for, and obtained, a variation of the parenting order on June 14, 2022. The June 2022 order provides for the exchanges of S.P. to occur at the ferry terminals. The need for that order begs the obvious question: If S.P. resides in Chilliwack, why are the parties arranging her exchanges at Schwartz Bay and Tsawwassen?

[63] I note that the respondent further explains that she believes that she could not pursue work (or her own medical care) in Chilliwack because the claimant has "poisoned the well" in the small medical community. She believes that the entire medical community is prejudiced against her because the claimant told them about her mental health issue.

[64] Again, I do not accept that fear as fact established on the evidence. I accept that the respondent may foster a fear of the unknown. However, I am unable to find that it was an objectively reasonable fear. She may have had a subjective concern, but it was not objectively reasonable. On the treatment issue, the respondent's position regarding her fear is akin to stating that she could not access healthcare in Chilliwack because the treating professionals might know of her medical condition. In short, that is not an objectively reasonable concern.

[65] In answer to questions about the availability of nurse practitioner jobs in the Fraser Valley, the respondent consistently stated that there were more opportunities in Victoria. That answer, in my opinion, misses the point of job opportunities. An applicant does not need many jobs to be available. The applicant only needs one (acceptable) job to be available.

[66] I accept that the respondent has been able to obtain a suitable part-time position with an accommodating family practice in Victoria. Her acquisition of that position does not mean that there are no other suitable positions. It does not provide an excuse for her de facto relocation to Victoria.

[67] The claimant notes, and I accept, that when he applied for the 2020 Residence Order the respondent swore affidavits in opposition to the application, but ultimately consented to it. In those affidavits, the respondent set out her reasons supporting her proposed move. The reasons she set out in those affidavits mirror her testimony at trial as to why she needs to "spend significant amounts of time" in Victoria.

- [68] Finally, I note that, in her final submissions, counsel for the respondent acknowledges that, in hindsight, an application to vary the 2020 Residence Order may have been appropriate.
- [69] Again, the obvious inference is that the respondent wanted to be in Victoria. She took a number of steps to establish a support network for herself and S.P. Perhaps in her mind, this has all been done in S.P.'s best interests. However, her "perspective" on that issue has, quite obviously, skewed her concept of the objective fact that she has moved to Victoria in breach of Justice Walkem's 2020 Residence Order. Again, in short, I do not accept her evidence on this issue.
- [70] It goes without saying that obedience of court orders is necessary for the proper administration of justice. In this case, I find that the respondent was in breach of the 2020 Residence Order. Further, at trial, she invented a scenario that became the basis of an argument that she had been in compliance with the 2020 Residence Order. At the same time, she created a living circumstance that meant that she could not comply with that order.
- [71] The respondent's evidence on this issue causes me concern.
- [72] The claimant also notes that, in the months before trial, the respondent reported him to four separate authorities: the Ministry of Family and Child Development, the Fraser Health Authority, the College of Physicians and Surgeons, and the police. He says that these actions on her part were vindictive and an attempt to cause him to lose his position within Fraser Health and his hospital. He submits that the inference is that she was hoping that he would have to move further away and this would assist her campaign for relocation with S.P.
- [73] The claimant testified that, in 2022, he had been contacted or investigated by three separate agencies at the instance of the respondent. After the close of the evidence at trial, he learned of a fourth complaint: the respondent had reported him to the College of Physicians and Surgeons in the month before trial. She had not disclosed that fact in the trial. As a result, the trial was re-opened on June 7, 2023, to address that issue.
- [74] I set out here the nature of the investigations, followed by my finding on the respondent's stated, and actual, motives.
- [75] Within the six months before trial (in 2022), the claimant was contacted by police and interviewed after the respondent made allegations that he had been physically and sexually violent during their relationship. I understand that the investigation has not proceeded further. However, I accept that the claimant was shaken by the mere existence of the investigation.
- [76] The respondent's testimony was that she was being interviewed by the police on another matter and the conversation strayed to her relationship with the claimant. She says she told the police the truth and the police made the decision to investigate further. In this respect, her testimony suggested that she had no part in the decision to investigate the claimant.
- [77] On this point, the claimant notes:

- a) When interviewed by Dr. Elterman in May or June 2021, the respondent told Dr. Elterman that "there was no domestic violence".
 - b) When interviewed by a social worker in August 2021, the respondent alleged the claimant had been emotionally, verbally, and financially abusive toward her. She made no mention of physical or sexual abuse.
 - c) As of July 2022, the respondent had sworn several affidavits in this proceeding. None of those affidavits alleged physical or sexual abuse.
- [78] I am not in a position to make a finding on the underlying allegation, either on a balance of probabilities or otherwise. I can say, however, that it would be difficult for any party to establish the truth of the allegations made by the respondent (to the police) in light of multiple prior statements to the contrary. In particular, I note that Dr. Elterman was interviewing the respondent for the s. 211 report where those allegations would have been, to say the least, relevant.
- [79] In the second incident, the respondent reported the claimant to the Ministry of Family and Child Development regarding his parenting of S.P. I understand that he was interviewed by the Ministry, but no further steps are contemplated. The respondent, again, denied any part in instigating that investigation. She just contacted the ministry, and, when they asked questions, she answered. She was not aware that those answers would lead to an investigation. In short, I do not accept the respondent's evidence on this subject to be truthful.
- [80] In the third incident, the respondent reported the claimant to the Fraser Health Authority ("FHA"). She raised the concern that the claimant may have improperly accessed both her and S.P.'s health records. In her testimony, the respondent said that she did this because she had "a longstanding concern about her health information being shared." She said that she requested an "audit" to determine whether the claimant was improperly accessing her health records.
- [81] However, the documentary evidence suggests a slightly different background. The letter from FHA to the respondent indicates that on August 29, 2022, the respondent reported "potential inappropriate access to [her] and [her] daughter's" health records. She did not request an audit, although that is the type of investigation that was undertaken by FHA.
- [82] I understand that FHA has undertaken an investigation and that the claimant faces a hearing. I further understand that one possible outcome of that hearing is that he could lose his hospital privileges. I wish to make it clear that I am not making any findings about that complaint.
- [83] In my opinion, the fact that the respondent included the allegation that the claimant may have accessed their daughter's records belies her stated concern about any inappropriate sharing of her own health information. On that point, in cross-examination, counsel put to the respondent text messages that she (the respondent) sent to the claimant asking him to

access their daughter's test results. The texts make it clear that, at least on that occasion, the respondent requested the claimant to access their daughter's health records. I infer from that evidence that (in part) the respondent complained to Fraser Health about the claimant's actions in circumstances where she was well-aware that she had asked him to undertake those actions.

- [84] On that basis, I do not accept the respondent's explanation that she was concerned about the claimant improperly accessing or sharing her medical records.
- [85] Finally, the respondent reported the claimant to the College of Physicians and Surgeons ("CPSBC") on November 7, 2022. This trial commenced November 21, 2022.
- [86] The claimant became aware of the CPSBC complaint after the close of the trial. He applied to re-open the trial, and I granted that application. Additional evidence was heard on June 7, 2023.
- [87] As with the respondent's other complaints, the CPSBC investigation has not been determined on its merits. I make no finding relating to the evidence that may be adduced in that complaint process. In my ruling allowing the re-opening, I indicated that it is not the substance of the complaint that is in issue. The relevant matters are:
- a) the reasons behind making the complaint;
 - b) the gathering of the evidence upon which the complaint was based;
 - c) the timing of the complaint; and
 - d) the failure to disclose any of that evidence during the family litigation.
- [88] The respondent testified that she filed the complaint in November 2022 for several reasons:
- a) She had recently received the results of the FHA investigation into the claimant's access of medical records. She testified that she spoke to someone at FHA who recommended that she file a complaint with CPSBC.
 - b) She was in the process of signing her papers as a nurse practitioner and that act brought home her duty to report concerning actions on the part of other practitioners.
 - c) She was motivated by a desire to cause the claimant to discontinue practices that, she alleges, jeopardize patients.
- [89] The respondent testified that she did not provide notice of the CPSBC complaint before or at trial because:
- a) she is unaware of what will come of it;
 - b) this Court would take it as an unsubstantiated allegation;

- c) her other complaints (e.g., to FHA) have been deflected, minimized and used against her; and
- d) there is no impact on S.P.

[90] The documents that form the basis of the CPSBC complaint were adduced in evidence. They include:

- a) photos surreptitiously taken by the respondent in 2018 and 2019 (when the parties were in a marriage-like relationship; and
- b) an audio recording from September 4, 2019.

[91] In my opinion, each of the respondent's purported reasons was exposed as false during cross-examination:

- a) First, in relation to the information that she received from FHA regarding the claimant accessing certain medical records, as noted above, the text messages disclosed at trial indicated that she had asked the claimant to take those actions. Hence, she always knew what FHA's audit would show.
- b) Second, she admitted that ethical obligations of nurses are the same as nurse practitioners. They both share the same ethical obligation to report concerning or unethical behaviour. The respondent has been a nurse since 2007. She could not explain her reason for the CPSBC complaint being triggered in 2022. Apart from the FHA report, she had gathered no new information since 2019.
- c) Third, if she was motivated by a desire to cause the claimant to discontinue certain practices, then there is no explanation for why she waited approximately four years before filing her complaint with CPSBC.

[92] I further find the nature of the respondent's actions in obtaining the information to be extremely concerning. For example:

- a) By her testimony, in either 2018 or 2019, she rifled through the claimant's bag and took photos of objects. At trial, she was unable to articulate her reason for these actions, apart from a concern about patient safety and a nebulous possible complaint in the future. However, I find the inference is clear: She was assembling (or creating) a trail of evidence that she might be able to use against the claimant in future, should their relationship terminate.
- b) In September 2019, the respondent attempted to "set-up" the claimant. She turned on her phone to record a conversation. Then, in the fashion of a bad TV crime-drama where a character has turned "state's evidence" and wears a "wire", the respondent asked the claimant a deliberately accusatory question in the hope that his answer would be incriminatory.

- [93] In *C.C. v. S.P.R.*, 2022 BCSC 1057, Justice Gibb-Carsley, relying on a long line of cases, noted that the practice of recording family conversations for use in litigation is "odious". He wrote:
- [40] The practice of secretly recording a party for use in a family law proceeding should be discouraged. The practice is odious because it erodes trust and potential future cooperation between the parties and runs contrary to the fundamental objectives of family law, especially that of reducing conflict between the parties and maintaining and encouraging family relationships.
- [94] In my opinion, this specific example exceeds the description of "odious". It falls outside of the concept of "recording family conversations" and falls into the category of a "set-up" for ulterior motives. The set-up had nothing to do with the family relationship or parenting dynamic.
- [95] I further infer that if the respondent had any true concerns about her professional ethical obligations, or about patient safety, then those concerns would have been evident to her, at the latest, in 2018 or 2019 when she says she surreptitiously obtained this evidence.
- [96] Put shortly, I give no weight to the respondent's testimony regarding:
- a) her reasons for making the CPSBC complaint;
 - b) her surreptitious collection of (allegedly) damaging evidence against the claimant;
 - c) the timing of the complaint; and
 - d) the failure to disclose any of that evidence during the family litigation.
- [97] I infer that she filed the CPSBC complaint in an effort to harm the claimant. Further, I infer that she hoped that the harm to the claimant might assist in her application to relocate with S.P. I further find that the respondent's testimony about her reasons for filing the CPSBC complaint were not truthful. Like the other complaints, her testimony has created a narrative wherein she was simply following the recommendation of an official (the police, the Ministry, and the FHA) to file yet another complaint.
- [98] As I noted above, there are issues in this trial that require me to make findings about the motives for certain actions that were taken. I find that the inference is clear that there was a strategy:
- a) The respondent thought that she might be able to get the claimant in trouble with the police, the FHA, the Ministry, or CPSBC.
 - b) She reported her suspicion (or knowledge) of the claimant's activities respecting the health authority's records.
 - c) She also reported something to the police and the Ministry. She made a detailed report to CPSBC.

- d) Her motive for these reports was to harm the claimant. If any of the subsequent investigations should bear fruit (i.e., if the claimant suffered some harm), then he might lose his privileges or position within the FHA or his licence to practice medicine.
 - e) If those things occurred, then the claimant might be forced to move to another health authority, province, or country.
 - f) If that happened, it would remove an impediment to her relocating to Victoria with S.P.
- [99] Having considered each of these incidents individually, my finding on the respondent's motives for reporting to these agencies is strengthened when I consider them collectively. In other words, the fact that the respondent made these four separate reports, in my opinion, strongly suggests that the claimant's submission regarding her motives is accurate. The reports were both strategic and vindictive.
- [100] Again, I find that the respondent's testimony regarding her reasons behind each report are not credible.

Collateral Witnesses

The Claimant's Collateral Witnesses

- [101] The claimant called his sister, his (then) girlfriend, a friend, and a co-worker with knowledge of the opportunities for nurse practitioners in the Fraser Valley. The first three witnesses indicated that the claimant was a good father. The fourth had no knowledge on the issue.
- [102] D.P. is the claimant's sister. She is 43 years old. As noted, she has a son, born in 2019 and lives in the house next door to the claimant. I found D.P. to be a particularly insightful witness. It is evident that she supports her brother's position. It is also evident that she has negative feelings toward the respondent. In fact, she made those feelings clear in an email to her brother at an early stage in the couple's relationship. Despite those negative feelings, she acknowledges that the respondent is a good mother and an important person in S.P.'s life. I find D.P.'s evidence to be fair and balanced. I have no concerns about her credibility.
- [103] D.P. testified about three general areas: the relationship between the parties and their daughter, the nature of the exchanges, and her own work as a nurse practitioner.
- [104] D.P. testified about the close bond between the claimant and S.P. I accept her evidence on that issue. It is also clear on the evidence that S.P. and her cousin (D.P.'s son) are very close. The proximity of S.P.'s cousin, aunt, and grandmother residing next door to the claimant presents an attractive living situation.
- [105] Although D.P. testified about the times when she has exchanged S.P. with the respondent or her family, I do not consider those exchanges to be expositive of any issues in this trial.

[106] Further, I accept D.P.'s general evidence that there is a need for nurse practitioners in the Fraser Valley. However, D.P.'s specific knowledge is limited to "in-hospital" positions. The respondent has been clear that she does not wish to work in a hospital setting.

[107] The claimant also called his (then) girlfriend, to testify. She is employed in Ontario but was spending significant time in Chilliwack while working remotely. She was involved in exchanges of S.P. with the respondent and her family. When the trial re-opened in June 2023, an admission was made that the relationship had ended.

[108] The claimant also called a witness with knowledge of the nurse practitioner situation in the Fraser Valley. I accept the general propositions:

- a) There are many positions available for nurse practitioners in the Fraser Valley, both in hospitals and in clinics.
- b) The full-time annual salary of a nurse practitioner is in the range of \$120,000.

The Respondent's Collateral Witnesses

[109] The respondent called her parents (whom I refer to as Mr. and Mrs. T.) and her sister to testify. The testimony of Mr. and Mrs. T. did not contradict the testimony of the respondent. I stop short of finding that their evidence "corroborated" the respondent's testimony. I say that because it became evident during their testimony that the respondent had prepared them for the trial. In one telling exchange, when Mrs. T. was asked (in direct) her estimation of the amount of time that the claimant had spent with S.P. during her months at Children's Hospital, Mrs. T. testified that it was about 20 percent of the time. Upon further questioning by the court, she readily acknowledged that she obtained that percentage from a document prepared by the respondent. Hence, Mrs. T.'s testimony on this point did not corroborate the respondent, so much as it repeated the respondent's evidence.

[110] Similarly, both of the respondent's parents described behaviour of the claimant at exchanges of S.P. Both of their descriptions of events echoed the respondent's description, including testimony about the claimant glaring at them in an intimidating fashion and following them for a short distance upon leaving the parking lot. I place little weight on their testimony regarding the activities of the claimant.

[111] As I discuss below, both of the respondent's parents indicated that the respondent and S.P. are welcome to live in their home as long as they want, at no charge. I accept that evidence.

[112] I also accept the testimony of the respondents' parents and her sister on the issue of her parenting ability. I accept that she is a good parent.

[113] The respondent also called her treating psychiatrist and a treating psychologist. The psychologist's evidence was taken within a voir dire. I address its admissibility below under the heading "Expert Evidence".

- [114] The psychiatrist testified as an experiential witness, having treated the respondent for several years. She also provided a brief (11-line) letter indicating the respondent's mental health diagnoses, and the diagnoses that had not been made. I understand this letter was obtained by the respondent to counter allegations from the claimant that the respondent had other mental health diagnoses which the respondent was hiding.
- [115] For the purposes of this assessment, I accept the testimony of the respondent's treating psychiatrist regarding the respondent's psychiatric diagnoses. I proceed on the basis that the respondent has been diagnosed with a Major Depressive Disorder, Generalized Anxiety Disorder, and Acute Stress Disorder. I further proceed on the basis that none of these disorders limit her ability to be a good parent to S.P.

The Expert Evidence

Dr. Elterman

- [116] As is common in this type of dispute, by order of the court, the parties jointly retained a clinical psychologist, Dr. Elterman, to prepare a report under s. 211 of the FLA. I note the regularity of his retainer, in part, because Dr. Elterman testified that he has written approximately 4,000 reports for the courts.
- [117] The claimant accepts Dr. Elterman's opinion and relies upon it as a basis for his position regarding relocation. The respondent does not accept Dr. Elterman's opinion.
- [118] Dr. Elterman interviewed the parties from February to May, 2021. His report is dated June 10, 2021. Of note, his report was prepared when S.P. was three years old. At the commencement of trial, she was four and a half years old. As of the date of these reasons, she is five years old. I place no great weight on S.P.'s aging since the report. As set out below, Dr. Elterman's report is forward-looking.
- [119] In summary, Dr. Elterman found that S.P. is closely attached to both parents and that both parties put significant importance on being her parents. He interviewed several collateral references, each of whom supported the party proffering them.
- [120] In his conclusion, Dr. Elterman opined that S.P.'s best interests would be served by both parents residing in Chilliwack. He wrote:

My recommendation in this case is for [LT] not to relocate with S.P. to Victoria. When I consider strictly the question of what [LT] would prefer versus what is in the child's best interest I don't see how removing S.P. at this age can avoid diminishing the attachment that she has with Dr. F.A.P.. S.P. only turned 3 in March and her sense of time is very different from that of an older child. Children develop relationships with their parents through "attachment enhancing behaviour" which includes putting the child to bed, being there in the morning, giving them a bath, providing them with meals and comforting them when they are in distress. It is these behaviours which build and maintain attachments. When one reduces the opportunities for such behaviours, this also has an impact on the child's attachment and the relevance that the parent has in their

day-to-day lives.

[121] The most important of those recommendations, for the purpose of this trial, is, of course, his recommendation against relocation. To Dr. Elterman, all other issues flow from that opinion. Dr. Elterman's opinion was that, if relocation occurs, it will harm the child's attachment to the distant parent.

[122] Dr. Elterman also addresses the respondent's submission that her mental health will be better if she is near her support network in Victoria. Dr. Elterman notes (at page 28):

When one considers a relocation case the first issue is the child's needs at this particular age. Also, the cost and benefit of staying in Chilliwack versus the cost and benefit of the child relocating to Victoria. The other distinction that I think is important to make is whether it is in the child's best interest or the parent's best interest for a relocation to ahead. Parents will sometimes argue that "if I am happy then my child will be happy". While I have no doubt that the equanimity of the parent influences the child, there are other factors to be taken into account.

[123] Dr. Elterman provides the following opinion on the child's best interests over the next few years:

Also once S.P. has birthday parties, friends, family gatherings or sports including things like swimming lessons, there will be increasing reasons why such parenting time should be missed. If one puts importance on the child having a meaningful relationship with both parents, then it would not be my recommendation to remove S.P. geographically to a point where the contact between father and daughter becomes more tedious.

[124] Dr. Elterman also points out that, in the past, he has experienced the relocating parent promising, but failing, to deliver the child to the other parent. The respondent submits, and I accept, that Dr. Elterman's experience on prior cases is not evidence in this trial. She points to her record of delivering S.P. for all parenting times since the orders. She submits her conduct should be the evidence of future compliance. In response, the claimant notes that the delivery of S.P. for parenting time is only noteworthy because of the effort required by reason of the respondent's move to Victoria in breach of the 2020 Residence Order.

[125] I note that when Dr. Elterman asked the respondent about her proposed parenting plan (should she move with S.P. to Victoria), she advised that she had "not thought about it a lot." That statement sits in stark contrast to her testimony at trial where she put forward her version of a workable division of parenting time.

[126] Although it was a joint retainer, the respondent's counsel exercised her right to cross-examine Dr. Elterman about the foundation of his report.

- [127] In cross-examination, Dr. Elterman confirmed that, without independent corroboration, there were some factual disputes that he could not resolve. He noted that this kind of factual dispute occurs in many cases. Further, in this case the dispute came down to a matter of perspective. He found that there were factual disputes in areas that were either irrelevant or not decisive.
- [128] As discussed above, the respondent bases part of her argument on the claimant having an uncertain work schedule. Dr. Elterman's report proceeds on the understanding that the claimant works three days per week, takes one week off per month, and is on-call one week per month. I accept that this description under-estimates the claimant's total work commitment. I find that Dr. Elterman underestimated the total number of days or hours the claimant works. However, I do not find that to be a decisive factor in relation to Dr. Elterman's opinion.
- [129] I also note Dr. Elterman's concession, in cross-examination, that the availability (or lack of availability) of a parent is fundamental to any parenting arrangement.
- [130] Dr. Elterman's other recommendations are, in short:
- a) there should be joint guardianship;
 - b) if parties at an impasse, then a parenting coordinator should be appointed.
- Dr. Snell
- [131] The respondent's treating psychologist, Dr. Snell, provided a letter dated August 23, 2022.
- [132] The claimant objects to the admissibility of Dr. Snell's reports and evidence. As a result, I heard the entirety of Dr. Snell's evidence (the document and her testimony) within a voir dire. Counsel made their submissions regarding admissibility and weight in their final submissions.
- [133] On the basis set out below, I find that Dr. Snell's testimony and her "report" are not admissible.
- [134] First, I note that the respondent tendered Dr. Snell's letter for the following limited purposes:
- a) Given the respondent's considerable ties to Victoria, and the lack of such ties in Chilliwack, Dr. Snell supports the respondent moving to Victoria.
 - b) Given the stress caused by interactions with the claimant, Dr. Snell supports the utilization of a parent co-ordinator.
- [135] In her testimony, Dr. Snell was clear that the document she wrote, dated August 23, 2022, was a "letter of support" provided to her patient. She was clear that she did not intend her letter to be considered a "report". Dr. Snell was clear that the document cannot be considered as an expert opinion prepared by an assessor. Dr. Snell has prepared s. 211

reports for the court. The "assessor" role is undertaken by individuals who are experts in the drafting of s. 211 reports. Dr. Snell's professional relationship with the respondent precludes Dr. Snell from providing a report of that nature.

[136] The claimant submits that, in addition to the concerns in the preceding paragraph, Dr. Snell's letter does not conform with the formalities of an expert report:

- a) It does not include a statement indicating Dr. Snell's duty to the court (although a statement to that effect was elicited during her direct examination on qualifications).
- b) The letter was requested directly by the respondent. There is no instruction letter.
- c) There is no list of assumptions or facts upon which any opinion is based.

[137] Further, to the extent that she was supposed to be providing rebuttal evidence, Dr. Snell did not read Dr. Elterman's report. Her only understanding of that report came from the respondent, who informed Dr. Snell that Dr. Elterman's opinion opposed the respondent's relocation. Dr. Snell did not intend her letter to "rebut" Dr. Elterman's s. 211 report. As noted above, it is a letter of support.

[138] In my opinion, there is no basis to admit Dr. Snell's letter or testimony into evidence. I come to that conclusion for the following reasons:

- a) It is not an "expert report" as that term is understood by our courts. While Dr. Snell is clearly an expert, her purpose for writing the report was to support her patient. That purpose, in and of itself, makes the letter inadmissible. Any report must be prepared in an unbiased manner, and the purpose must be for the benefit of the court.
- b) The subject matter of the letter is, in my opinion, irrelevant. By definition, Dr. Snell's letter and testimony do not address S.P.'s best interests. Dr. Snell is only capable of addressing the respondent's best interests.
- c) The admissibility of an expert opinion falls within well-defined rules of evidence. There is no special exception for treating professionals to provide recommendations in order to assist their patients. (In stating this, I do not mean to suggest that treating professionals cannot provide admissible expert evidence. Treating professionals often offer the most comprehensive understanding of the litigant's circumstances. However, any such opinion evidence must be properly curated to ensure that the court can adjudge the underlying facts and assumptions, the duty of the treater to the court, and the basis for the opinion provided.)
- d) There is no instruction letter, and there are no clinical records. Although Dr. Snell's letter indicates that her opinion is based upon information provided by the respondent, there is no way for opposing counsel to cross-examine on the veracity of the information provided by the respondent. This is not a case where a family doctor had provided an opinion and can be cross-examined on her or his clinical records with a view to undermining the factual underpinnings of the opinion. There is no opportunity for opposing counsel to seek out, in

the clinical records, the existence of other information provided by the respondent, and (potentially) ignored by the expert.

- e) It follows from the paragraph above that Dr. Snell's report is really a repetition of the respondent's wish list. She wants to live in Victoria with S.P. and have a parent coordinator appointed. Dr. Snell supports those wishes as being good for the respondent.
- f) Further, to the extent that Dr. Snell opined (in her testimony) that the respondent's general mood appears to have improved since she has ceased having face-to-face interactions with the claimant, that opinion was not included in her letter.

[139] On that basis, I find the letter of Dr. Snell, backed by her testimony, to be inadmissible, even for the limited purpose of providing the opinion that the respondent's mental health would be better in Victoria.

Summary of Expert Evidence

[140] Having excluded Dr. Snell's testimony, I am left with Dr. Elterman's opinion. As discussed below, I find Dr. Elterman's opinion helpful to an extent. However, I find that it does not address the factual situation that I am required to decide: whether S.P.'s best interests are served by living in Chilliwack with her father or in Victoria with her mother. Put another way, I am sure that Dr. Elterman is correct in his opinion that S.P. would be best served by a co-parenting arrangement. However, based on the legislation, that is not the issue before me.

Legal Analysis - Relocation and Primary Parenting

[141] Before addressing the various evidentiary considerations in my legal analysis, it is important to set out the process I have undertaken.

[142] I address below the following topics:

- a) Applicable Parts and Provisions of the FLA
- b) The "Double Bind" Issue
- c) Conduct of the Parties (and Impact on S.P.)
- d) Best Interests of the Child
- e) Reasons for Proposed Relocation
- f) Conclusions on Parenting Arrangements and Relocation

[143] I have put the two issues of primary parenting and relocation together for the reasons set out below. It is fundamental to my decision that the decision on parenting be decided alongside the application for relocation.

Applicable Parts and Provisions of the FLA

- [144] There is no dispute between the parties on the applicable sections and divisions of the FLA. At the time the respondent gave notice to the claimant of her intention to relocate (August 17, 2020), there was neither a written agreement nor an order in place regarding parenting arrangements. Hence, I am applying Part IV, Division 2 (Parenting Arrangements) of the FLA. The relevant sections are ss. 39 - 49 and, in particular, s. 46. On that basis I make no presumption that the current circumstance is in the child's best interests.
- [145] Where relocation is involved and the court is called upon to make an initial parenting order, the proper analysis requires a balancing of relevant factors, using a circular and blended approach. Neither the parenting nor the relocation issue can be decided first (or even second). The issues must be decided together. As set out by the Court of Appeal in *K.W. v. L.H.*, 2018 BCCA 204 at para.110:
- [110] In my opinion, a similar blended analysis is required under the FLA when an initial application to determine parenting arrangements is combined with a plan to relocate the child within the meaning s. 46(1)(c). On such applications the court must balance in the round all relevant factors, including the proposed move to a new community, in deciding what parenting arrangements are in the child's best interests. I have undertaken this circular analysis.
- [146] Of course, my only considerations relate to the best interests of the child (s. 37(1)-(2)(a)-(j)):
- 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.

[147] There are allegations of family violence from both sides. I discuss the nature of those allegations below. Section 38 of the FLA deals with the proper consideration of family violence.

[148] In addition to the considerations above, s. 46(2)(b) of the FLA provides that, to determine the parenting arrangements that would be in the best interests of the child, the court must not consider whether the guardian who is planning to move would, or would not, do so without the child. This is known as the "double bind" issue.

[149] As discussed below, I find that the "double bind" issue has a significant impact on my consideration of the best interests of the child. Further, that issue is independent of the other considerations. It provides a paradigm within which I am to consider the other elements. For that reason, I have addressed it first, followed by the other considerations. To be clear, I am keeping all considerations on the table to be decided together.

The "Double Bind" Issue

[150] As noted above, s. 46(2)(b) of the FLA precludes the court from considering whether the guardian who is planning to move would do so without the child.

[151] The reasoning behind the "double bind" question is set out in several cases. The danger to be avoided is that the court would default to the status quo without a proper examination of the child's best interests. As a starting point, the legislation recognizes that the court does not have the authority to require a party to live in a certain community. As set out in *Duggan v. White*, 2019 BCCA 200:

[20] In my view, the language of s. 46(2) ("must not consider whether the guardian who is planning to move would do so without the child") is intended to simplify the analysis and avoid, at least in respect to the applicant, consideration of what hypothetical circumstances a party may feel pressured to advance. By use of the words "whether" and "would", the legislature has signalled that the court must not consider the hypothetical of the relocating parent moving apart from the child, as we know the court lacks authority to require a parent to remain in a community. Thus, by the means of s. 46(2), the court is directed to the application presented to the court, for comparison with the respondent's responsive plans as presented to the court.

[Emphasis added.]

[152] I explain the implications of s. 46(2)(b) below. By necessity, these considerations have an impact on the parenting scenarios suggested by the parties. I find it helpful to set out those parenting scenarios here, and apply the double bind analysis to each party's position.

The Claimant's Position

[153] The claimant submits that the S.P.'s best interests lie in S.P. residing in Chilliwack and the parties entering into a shared parenting arrangement. He relies upon the opinion of Dr. Elterman that moving S.P. to Victoria will diminish the attachment that S.P. has to him. He will simply not be able to be as involved in her life.

[154] The claimant further submits the travelling back and forth on the ferry twice per month is not a long-term plan that will work for either of the parties or S.P. The claimant submits that it will involve too many hours of travel and it will only serve to reduce the time spent with his daughter.

[155] The claimant further submits that as time passes, the travel will become tedious for S.P. As she gets older and becomes involved in activities, school commitments, and friends' birthdays, she will not want to come to Chilliwack on the weekends. Obviously, the location of her kindergarten, and then her elementary school, will determine S.P.'s childhood friendships.

[156] The claimant also raises the concern that any long-distance parenting arrangement will require a level of cooperation and understanding that simply does not exist between the parties. In support of this argument, the claimant refers back to the respondent reporting him to four separate authorities in the months before trial.

[157] The claimant further raises the respondent's breach of the relocation order and says that this her acts are indicative of what will happen in future.

[158] While the claimant recognizes that he that S.P. has formed good bonds with her grandparents in Victoria, he submits that it is more important that she should have significant time with her father rather than her grandparents. He submits that the respondent's family can continue to be very involved in S.P.'s life even if she is living in Chilliwack.

[159] With respect to his own work schedule, the claimant submits that it is flexible and he can make choices regarding the amount that he works to accommodate his parenting responsibilities. He notes that the respondent places a negative connotation on his decision to put S.P. in a pre-school program on certain Fridays. He says, and I accept, that his motivation in enrolling her for this program was to have her socialize with other children. He notes that the respondent has enrolled S.P. in a similar program in Victoria.

[160] On that basis, the claimant submits that S.P. should remain in Chilliwack and that there should be a shared parenting arrangement on a "week on-week off" basis with special arrangements made for summer holidays and Christmas.

[161] As noted above, I will consider the potential parenting arrangements below, in a blended, "in the round" manner.

The Respondent's Position

[162] On the double bind issue, the respondent submits that the court must not assume that the respondent will remain in Chilliwack if she is not permitted to relocate with S.P. to Victoria. The FLA precludes me from considering that scenario. Hence, the respondent submits that I am required to make my decision within the following paradigm:

- a) I cannot assume that the respondent will stay in Chilliwack if I order that S.P. live in Chilliwack.
- b) My decision must proceed on the assumption that the respondent will move to Victoria, regardless of my decision on S.P.'s residence.
- c) The question to be addressed is: Whether it is in S.P.'s best interests to reside primarily in Victoria with her mother, or primarily in Chilliwack with her father?

[163] On this basis, the respondent says that when the court is addressing this issue, there can be no assumption regarding her ultimate residence. Despite her obvious devotion to S.P., I am not to assume that the respondent would choose to live in Chilliwack.

[164] The respondent further submits that claimant, as a single man, and a busy specialist doctor, does not have the capacity to be S.P.'s primary parent.

Application of the Double Bind Question

[165] I accept the respondent's characterization of the question for me to address on relocation. I must consider whether S.P.'s interests are better served by:

- a) living in Victoria primarily with the respondent; or
- b) living in Chilliwack primarily with the claimant.

[166] I set out my analysis of that question below. However, I pause at this point to note that Dr. Elterman's report does not address the paradigm demanded by the FLA. The legislation does not provide for the paradigm that Dr. Elterman proposes. His opinion was that the best interests of S.P. would involve seeing both of her parents while living in Chilliwack. I do not disagree with that opinion. However, it is clear that the court does not have the authority to require the respondent to live in Chilliwack. Instead, s. 46(2)(b) of the FLA requires me to consider the issues in this trial without reference to the double bind issue. Hence, I find that Dr. Elterman has provided a valid and admissible (and probably correct) opinion, but on a version of the question that I am not allowed to consider.

[167] Dr. Elterman is very clear that his recommendation "is for [the respondent] not to relocate with S.P. to Victoria." As noted, I have no authority to tell the respondent where to live. In my analysis below, I proceed on the basis that she is moving to Victoria. That being the case, the question for me is whether S.P. is better off living in Victoria primarily with her mother, or in Chilliwack with her father. On either scenario, there will be dislocation from one parent. Dr. Elterman's report recommends against a situation that will create that dislocation. However, that is the reality that cannot be avoided on the facts and assumptions of this case.

[168] This analysis leads to my further finding: S.P. is going to be riding the ferry to visit one parent or the other. Absent plane travel, ferry travel cannot be avoided.

[169] I also return here to the claimant's ultimate position: If a shared parenting arrangement is ordered, he would adjust his work schedule to accommodate it.

[170] However, as I have already found, the scenarios available in this trial do not provide for shared parenting in Chilliwack. There is no prospect of a week-on/week-off parenting arrangement. If I do not grant relocation to the respondent, then the claimant will become the primary parent, and the respondent will have generous parenting time. Hence, the question is whether the claimant could be the primary parent.

[171] Again, I return to this question below in pursuing the circular assessment of the situation.

"Conduct" of the Parties

[172] I have titled this section "Conduct of the Parties" because each party alleges that the other has misconducted himself or herself in a manner that is relevant to the parenting issues. In response, each party defends his or her own conduct as appropriate, or at least understandable.

[173] I note that in my discussion below, I have reviewed the allegations of each party, and then determined whether, and to what extent, that conduct is relevant. I have followed this path because I am compelled to proceed in this manner as required by s. 37(4) of the FLA:

37(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.

[174] Section 37(2) sets out the list of considerations in respect of the child's best interests.

[175] As a result, I address the allegations regarding the conduct of the parties below. I then make my findings. Finally, I determine whether the conduct is relevant to S.P.'s best interests. Put another way, I am not able to dismiss an allegation as being irrelevant to S.P.'s best interests without assessing the veracity of the allegation and the impact of the conduct.

The Claimant's Allegations Against Respondent

[176] The claimant's allegations fall into the following categories:

- a) The respondent is in breach of an order of the court.
- b) The respondent has improperly aligned S.P. with healthcare providers in Victoria in an attempt to strengthen her case for relocation.
- c) The respondent took steps outside of this litigation in an attempt to improperly influence the outcome of this litigation.

[177] I will deal with each of these allegations in order.

The Respondent is in Breach of an Order of the Court

[178] Above, under the heading of "Credibility", I set out my assessment of whether the respondent was in breach of the 2020 Residence Order. I found that the respondent was in breach of that order, and I did not accept her testimony which attempted to construct a narrative to explain her decisions and actions.

[179] The next question is whether the breach of the 2020 Residence Order is relevant to any of the factors set out in s. 37(2) relating to S.P.'s best interests. In my opinion, the respondent's actions are relevant. The respondent's conduct had a clear impact on S.P. because the move to Victoria required S.P. to spend less time with her father, and more time riding ferries.

[180] Further, in short, it would be very unusual for a party's breach of a court order to be found to be "irrelevant". The underpinning of all family law disputes (and all litigation) is the understanding that the parties will obey the orders of the court. The respondent's breach of the 2020 Residence Order is a significant concern to me.

The Respondent has Improperly Aligned S.P. with Healthcare Providers in Victoria in an Attempt to Strengthen Her Case for Relocation

[181] The respondent alleges that, in the course of breaching the 2020 Residence Order, the respondent has improperly aligned S.P. with healthcare providers in Victoria in an attempt to strengthen her case for relocation.

[182] The respondent does not dispute that S.P. has been seen by several health care providers in Victoria. She says that she chose each of S.P.'s treaters based upon their availability and sub-specialty. She says that there were no equivalent or available specialists in Chilliwack. She says that her choice of a new pediatrician, hearing program, dental surgeon, and speech pathologist were all made on the basis that what was best for S.P.

[183] I am unable to find that the respondent's motive for accessing healthcare in Victoria was improper within the context of her improper conduct in taking the child to Victoria. I admit that my logic for that statement takes some analysis. What I mean is: I accept that moving to Victoria was wrong. However, having done that, the respondent had a parental obligation to ensure S.P. had good medical care. With few exceptions, the respondent has always been

responsible for booking and attending S.P.'s medical appointments. Within the construct of the respondent living in Victoria, it would not make sense for her to book appointments in the Fraser Valley.

[184] I further find that these steps by the respondent did not have any negative effect on S.P. or her care.

The Respondent Took Steps Outside of This Litigation in An Attempt to Improperly Influence the Outcome of This Litigation

[185] Under the heading "Credibility", I set out the steps that the respondent took to attempt to damage the claimant's career, or to garner some negative evidence against him. I will not revisit those findings here. I note, again, that none of those complaints have been finally resolved. It is possible that one or more of them have merit. I am not deciding those issues. I am only considering four points:

- a) the reasons behind making the complaints;
- b) the gathering of the evidence upon which the complaint was based;
- c) the timing of the complaint; and
- d) the failure to disclose any of that evidence during the family litigation.

[186] Having made the findings above, I now must consider whether they are relevant to the considerations of S.P.'s best interests.

[187] I find that they are relevant:

- a) If the claimant should lose his position within Fraser Health or his licence to practice medicine, it would impact his income earning ability. The claimant's ability to pay child support is clearly in S.P.'s best interests.
- b) Any disruption in his current practice would require him to move further away (i.e., further than Chilliwack to Victoria) to set up another practice. As set out below, with any relocation, there will be dislocation from one parent. If the claimant is forced to work further away from the respondent, the dislocation from one parent will be increased.
- c) Further dislocation of S.P. from her father is not in S.P.'s interests. It solely serves the respondent's interests.

[188] I accept the claimant's submission that the respondent's actions were undertaken with the goal of starting a chain of events that would have had a negative effect on the father's relationship with the daughter. It is my understanding that all of those efforts have failed, except in respect of the mother's move to Victoria.

[189] The claimant frames the respondent's actions as "family violence" that impacts the child. I do not consider the respondent's actions to constitute violence, but I do consider her actions to be very concerning.

The Respondent's Allegations Against the Claimant

[190] The respondent alleges that there has been family violence that impacts S.P.'s safety, security, or well-being.

[191] The respondent raises the following issues with the claimant's conduct:

- a) She believes that he tracked her movements.
- b) She alleges that his actions constitute family violence.

Tracking

[192] I will deal quickly with the respondent's belief that the claimant was tracking her.

[193] First, the respondent says she was driving a BMW vehicle that was leased by the claimant. She says she was informed by a service technician that a tracking function had been activated on the vehicle. I am unable to make any finding on whether the tracking function was activated. The statement of the service technician is hearsay and cannot be admitted for their truth. The claimant denies any knowledge of such tracking. Hence, there is no evidence of the BMW tracking.

[194] Second, the respondent says that she received notice on her iPhone that an Apple Air Tag was "found moving with" her while she and S.P. were at the ferry terminal in July 2022. The claimant denies placing any Air Tag on S.P. or on the respondent's vehicle.

[195] The respondent looked for the Air Tag but found nothing. She also sought assistance from Apple. She learned that she could cause the Air Tag to make a sound (to identify its location) with her iPhone. She followed the instructions on her phone, but no sound was heard. Further, the respondent had the ability to "Keep receiving notifications from the Tracking Notifications app." There is no evidence that any further notification was received.

[196] Hence, apart from the one notification at the ferry terminal, while surrounded by vehicles, there is no evidence that an Air Tag was placed on S.P. or on her vehicle. There is certainly no evidence that the claimant placed an Air Tag.

[197] On the evidence before me, I am unable to find that there has been any tracking.

Alleged Family Violence

[198] The respondent submits that she has been the subject of family violence as that term is defined in s. 1 the FLA and recent caselaw. Family violence can include "derogatory and demeaning comments" (K.W. at para. 122) directed at the former partner, especially when in a child's presence.

- [199] As noted above, the respondent told Dr. Elterman that there had not been any violence in the relationship, but that the claimant was demeaning and disrespectful in his comments.
- [200] The respondent's position is that the claimant has subjected her to family violence in two ways.
- [201] First, she says that the claimant has shared personal information about her mental health history. In response, the claimant acknowledges that, within his group of friends, he sought support during the breakdown of the relationship. During those conversations, he disclosed his understanding of the respondent's mental health history.
- [202] I find that these conversations do not constitute family violence. Sharing information about the respondent, in the context of a breakup, does not fit within the definition of "family violence" contained in s. 1 of the FLA. These conversations were not in S.P.'s presence. I see no possibility that such conversations could have any impact on S.P.
- [203] Second, the respondent submits that the claimant engaged in the following comments, while in S.P.'s presence. The sub-paragraphs below describe one event:
- a) At a meeting to exchange S.P., the claimant, while holding S.P.'s hand, stated words to the effect of: Wow, Wow, Wow. It is worse than I thought it was. She's totally crazy.
 - b) While doing this, he was making a circular motion with his index finger around his right ear.
 - c) At the same exchange, the claimant asked, "Are you taking your psychiatric medicine? You're acting totally crazy right now."
 - d) The respondent testified that S.P. later told her that the claimant had advised S.P. that mommy had a sick brain.
 - e) In response, the claimant testified to a different version of this story. He says that when S.P. arrived in his presence during the above-noted exchange, she apologized and said words to the effect that her mother had a sick brain.
- [204] Again, I note that all these allegations arise from the same incident, which occurred on February 15, 2022, during the pandemic. I am advised that during that period there had been an increase in Covid cases. Given S.P.'s health history, Covid was a significant concern. While their accounts of that event differ to some extent, there is general agreement that:
- a) the respondent arrived for the exchange with S.P. at a designated grocery store parking lot;
 - b) the claimant was wearing a surgical mask (which was unusual);
 - c) the respondent, fearing that the claimant may have, or have been exposed to, Covid demanded answers on that subject from the claimant;
 - d) she was not satisfied with his answers;

- e) the claimant demanded that the respondent deliver S.P.;
- f) the respondent claims that she felt threatened and retreated to the grocery store. She called the police;
- g) the police attended. I understand that they advised the respondent that she was required to deliver the child to the claimant.

[205] The statements made by the claimant immediately followed the delivery of the child in those circumstances.

[206] I pause to note an unrelated piece of evidence that, in my opinion, has an impact on this allegation. In her list of documents, the respondent disclosed 12 recordings that she made of the claimant (plus two of S.P.). These recordings were disclosed (just before trial), but not tendered in evidence by the respondent. This list of recordings does not include the recording that the respondent made in September 2019 and sent to CPSBC as part of her complaint in November 2022.

[207] It appears that the recordings disclosed by the respondent were made surreptitiously between September 2018 and February 2022. In her testimony, the respondent indicated that she started recording the exchanges because she felt threatened or intimidated. That answer does not explain why she was recording their conversations in 2018 and 2019 when they lived in the same house. I noted above that prior cases refer to this practice as "odious".

[208] The only inferences I can draw from the respondent's disclosure of the 12 recordings are that:

- a) the respondent made many more than 12 recordings of the claimant between 2018 and 2022. However, only the 12 disclosed recordings assisted the respondent's case. I infer that the other recordings were not considered prejudicial to the complainant's case, so they were not produced;
- b) the 12 recordings that were produced constitute the most prejudicial evidence that the respondent accumulated between 2018 and 2022.

[209] On that basis, I infer that the respondent only produced the helpful recordings. I further infer that the incident in February 2022 at the grocery store constituted the only example of the claimant making negative comments about the respondent in the presence of the child.

[210] The claimant acknowledges that his comments in the February 2022 incident were unfortunate, but says that they were understandable, given the respondent's unreasonable position, including calling of the police and refusal to exchange the child.

[211] The question then, is whether the claimant's conduct, via his comments, constitute family violence, and if so, the proper treatment of them.

- [1212] In K.W. (supra) where family violence was found, the Court of Appeal outlined the extent of the father's comments involving the child:
- [122] Similarly in this case the Father's derogatory and demeaning comments directed to the Mother often in N's presence clearly amount to family violence.
- [123] the trial judge's specific findings that the Father verbally abused the Mother in the presence of N, encouraged N to throw the Mother's clothing out of the house, and encouraged N to urinate on the Mother's bed. The judge found as a fact that the Father deliberately enlisted N's participation in an act of degradation directed at the Mother. The evidence appears uncontroverted that much of the child's aggressive behaviour is now directed towards the Mother. Given the judge's factual findings, the Mother's subjective experience of family violence was objectively grounded in the evidence.
- [213] Hence, in K.W. the father recruited the child in acts against the mother. That is significantly more serious than the isolated incident in this case.
- [214] The K.W. decision cites with approval the decisions in K.R. v. J.D., 2017 BCSC 182 and D.N.L. v. C.N.S., 2013 BCSC 809 regarding the definition of family violence.
- [215] In K.R. Justice Jenkins specifically noted the respondent's "anger issues" and the clear impact those issues had on the child. In D.N.L., Justice Pearlman found that, when angry, the father made ill-considered comments to the child regarding her mother being in therapy, manipulating the child, or being responsible for the failure of her parents to communicate with each other.
- [216] I point these decisions out because the relevance of the conduct must focus on the impact on the child. I further note the provisions of s. 38 of the FLA dealing with the proper consideration of family violence.
- [217] In this case, I find that the one incident in February 2022 was of mild to moderate severity. The reference to the respondent's mental health in the presence of the child was inappropriate. The incident was in February 2022, which was relatively recent. However, it was an isolated incident, and it is not evidence of a pattern of coercive or physically violent behaviour. Although the child was present, it was not directed at the child. There is no evidence of any harm to the child. Section 37(2) sets out the proper treatment of any conduct that constitutes family violence:
- 37(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:
- (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;

[218] In that regard, I do not find that this isolated incident affects my decision regarding parenting. There is no basis to find that the claimant's comments affected the child's safety, security, or well-being. There is no basis to find that the claimant's ability to meet the child's needs are impaired.

[219] I note that the respondent further submits that consideration of the alleged family violence in isolation will underplay its relevance. Any future arrangement will require cooperation between the parties. Hence, even if family violence is not found, or is not a factor, the court must consider the future arrangements and the prospect of S.P. being exposed to conflict in the future.

[220] However, I noted above, at para. 13, that the respondent alleged a pattern of domineering and controlling conduct. I find no basis in the evidence for that allegation. Having addressed the related issues, I now turn to the best interests of the child.

Best Interests of the Child

[221] Again, pursuant to s. 37(1) of the FLA, in making an order respecting guardianship, parenting arrangements, or contact with a child, the parties and the court must consider the best interests of the child only. Section 37(2) of the FLA sets out the considerations.

[222] I address each of the s. 37(2) enumerated issues below.

The Child's Health and Emotional well-being

[223] I have discussed above the findings of Dr. Elterman. He reports a strong bond with both parents. There is no evidence in his report indicating that the toxic nature of the parental relationship has had an effect on the child. Further, he indicates that both parties are good parents.

[224] I noted above that Dr. Elterman's opinion exists within a paradigm that is not before me. His opinion is that the child would be best served by living in Chilliwack in a shared parenting arrangement. The "double bind" question precludes that scenario.

The Child's Views, unless It would be Inappropriate to Consider Them

[225] Given S.P.'s age, I consider it too early to consider her view.

The Nature and Strength of the Relationships between the Child and Significant Persons in the Child's Life

[226] S.P. has strong bonds with both parents. She also has strong bonds with her maternal grandparents and her paternal grandmother. In addition, she is close to her cousins, especially her young cousin in Chilliwack and the others who live in Victoria.

The History of the Child's Care

[227] I consider this an important element.

- [228] S.P. has primarily been in her mother's care since birth. That is not to say that the claimant has not been involved. He has been. However, I find that the respondent has been the primary caregiver since S.P.'s birth.
- [229] As noted above, S.P. required spinal surgery in the months after her birth. At one year old, she was diagnosed with cancer requiring long periods of treatment between March and August 2019. During these periods the respondent was clearly the primary parent and spent many nights at Children's Hospital. The claimant was in attendance for a significant portion of that treatment, but he continued to practice medicine in the Fraser Valley. He simply could not be as present as the respondent.
- [230] The relationship took a downturn in April 2019 (when the claimant indicated that he was terminating it) and ultimately ended in September 2019. Following the end of the relationship, the respondent continued to live in the Tyee House with S.P. The claimant would visit on many evenings after work. During this period, the respondent continued to have primary parenting responsibilities.
- [231] The informal agreement continued through to the time that the respondent indicated that she intended to relocate with S.P. to Victoria. That notice was provided in August 2020.
- [232] The claimant submits that, to the extent the respondent has had more parenting time, that situation was a result of the respondent moving to Victoria in breach of the 2020 Residence Order. He says that the move to Victoria practically limited his parenting time. While I accept that we are forced to look back on a "past hypothetical" (i.e., how much parenting time the claimant would have had if the respondent had not moved to Victoria), I am unable to accept the submission that the parenting time would have been equal but for the move to Victoria.
- [233] The first order regarding parenting time was made on February 24, 2021, which provided that, commencing mid-March 2021, during two out of three weeks, the claimant would have S.P. for approximately two days (plus one evening) "on a two weeks on/one week off basis, from Friday at 4:00 p.m. to Sunday at 7:00 p.m. and each Tuesday from 4:00 p.m. to 7:00 p.m."
- [234] Under that February 24, 2021 order, all exchanges were made in Chilliwack.
- [235] Hence, until June 2022, all parties continued to live in Chilliwack, and the respondent had primary parenting responsibilities.
- [236] As of June 14, 2022, Justice Caldwell ordered that the claimant would have parenting time two out of every three weeks, in essence, from mid-day Thursday to Sunday evening. I note that S.P. was not in school during this period. This is the order that required certain exchanges to be made at ferry terminals.
- [237] Hence, it was not until June 2022 that the respondent's residence in Victoria became an issue affecting the claimant's parenting time.

[238] It is evident from this history, and these orders, that the respondent has had primary parenting responsibilities and the claimant has had regular parenting time.

The Child's Need for Stability, Given the Child's Age and Stage of Development

[239] All children need stability. Happily, S.P. is, by all accounts, a wonderful little girl who loves both parents. She will start kindergarten in September 2023. The requirements of school will provide some level of stability. She will need to be in one place most week-days.

[240] The paradigm within which I am assessing this case involves S.P. either living in Victoria with her mother, or in Chilliwack with her father. Either scenario will require significant time in one location.

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

[241] I also consider this to be an important element.

[242] I point out at the start of this analysis that neither party is involved in a subsequent relationship. There is no subsequent family that S.P. would be joining in either household. Each party remains single.

[243] It is evident to me that the respondent has arranged her life in such a fashion that she is able to devote significant time to parenting S.P. For example, the respondent:

- a) lives with her parents, rent free;
- b) has S.P.'s grandparents available for childcare if needed;
- c) has obtained a position as a half-time nurse practitioner.

[244] In my opinion, the claimant is not in a position to provide primary parenting responsibilities. As noted above, he is a specialist physician with a busy, and relatively unpredictable, practice. He testified about the efforts he has made to lessen his workload to be available for S.P. However, those efforts would not enable him to deliver S.P. to school or pick her up on a regular basis.

[245] I accept that the claimant's mother and sister live next door. They would be supports for the claimant. However, in my opinion, they do not provide sufficient support such that he would be able to meet the demands of being the primary parent.

[246] I note, as a final point, that the claimant proposes that both parties should live in Chilliwack and share custody on a week-on/ week-off basis. In my opinion, the claimant could carry out that level of parenting. However, he does not have the time or capacity to be the primary parent.

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; and 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

[247] As described above, on the evidence, I have no significant concerns regarding family violence and the ability of the parents to meet the child's needs.

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

[248] Based upon the evidence, I have no concern for any risk to the safety or security of the child, the parties, or other family members.

[249] It is obvious that the prospect of S.P. living in Victoria and having generous parenting time with her father will require significant cooperation between the parties. However, the same would be true if she was living in Chilliwack and having generous parenting time with her mother. Both future scenarios will require significant ferry travel for S.P. and one parent or proxy.

[250] Hence, although the claimant submits that the respondent is incapable of cooperation, I do not accept that that submission favours one position over the other.

Any Civil or Criminal Proceeding relevant to the Child's Safety, Security or Well-Being

[251] I have discussed above the various complaints made by the respondent. In my opinion, none of those complaints are relevant to S.P.'s safety or security. Of course, any negative finding against the claimant could affect S.P.'s well-being. However, that result is not in evidence before me.

Reasons for the Proposed Relocation

[252] Section 46(2) requires me to consider both the best interests of the child, and the reasons for the respondent's change of location. As set out above, I accept the respondent's evidence on the issues relating to her wish to move to Victoria. I set out above her reasons for not forming a significant attachment to Chilliwack. The reasons for her (wishing to) move to Victoria are:

- a) She has lived in Victoria most of her life.
- b) Her parents and other family are there.
- c) Her family are her primary support network.
- d) She has (now) organized a good half-time job in Victoria.

[253] I find that her reasons are sound. Put another way, there is no evidence to suggest that the motive for the move is to put distance between the claimant and S.P.

Conclusions on Parenting Arrangements and Relocation

[254] I return at this point to the "in the round" consideration of parenting arrangements and relocation. Based upon my discussion above, I consider the main findings that I have made are:

- a) The respondent has had primary parenting responsibilities since S.P.'s birth.
- b) In my opinion, as between the two parties, the respondent is in a better position to provide primary parenting responsibilities.
 - i. She works half time. She has arranged her schedule around S.P.
 - ii. The claimant has made efforts to reduce his schedule, but he is clearly not a "half-time" specialist.
- c) The respondent has good reasons for wishing to relocate to Victoria.
- d) I am required to assume that the respondent will move to Victoria. There is no evidence that the claimant would also relocate. Hence, any order regarding relocation in this trial will have the effect of causing distance between S.P. and one parent. The only question is: which one?

[255] While those are the findings that push me toward allowing relocation to Victoria, there are significant factors pulling in the opposite direction. I have set out above my findings regarding the very concerning actions of the respondent, including her breach of a prior order and her vindictive reporting of the claimant to various authorities. I wish to be clear that I have taken her conduct into consideration. I do not condone that conduct. Her conduct raises a significant concern that she may take steps in the future to distance the claimant from S.P.

[256] Despite the respondent's actions, I find that the most important factors outweigh my concerns. I find the facts of the present case to be similar to those considered by the Court of Appeal in *Falvai v. Falvai*, 2008 BCCA 503. In that case, like this one, the mother had been in breach of parenting orders. Justice D. Smith addressed the trial judge's decision to allow the mother to relocate, but not the child:

[38] While appellate courts must be cautious in weighing into a trial judge's exercise of discretion in determining the best interests of a child, in the circumstances of this case, I find that the restriction imposed on the appellant's custody of the child is not supportable by the legal principles reviewed above. The appellant has been the primary caregiver of the child since his birth. She wishes to return to the community from which she came before her marriage and where she will have emotional, psychological, social and economic support. Her reasons for moving are not improper but relate to her personal needs.

- [39] The trial judge in this case was faced with a difficult decision. In my view, it was incumbent on him to determine whether the interests of the child would be best fulfilled by remaining with his mother as his primary caregiver in her new location with more limited access to his father, or by residing with his father in his childhood home with more limited access to his mother. It was not open to him, in my view, to determine that it was in the child's best interest to be in the sole custody of his mother, while restraining the mother from relocating with the child.
- [257] With those comments in mind, I again return to the balancing "in the round" of all relevant factors in deciding what parenting arrangements are in the child's best interests. In that respect:
- a) the respondent is moving to Victoria. She has valid reasons for that move;
 - b) the combined question is whether S.P.'s best interests lie in living with her mother in Victoria, or with her father in Chilliwack. In each scenario, the other parent would have generous parenting time, but significant ferry travel would be required.
- [258] When I balance all of the factors I am of the opinion that S.P.'s best interests lie in residing primarily with the respondent. I have already found that the respondent's reasons for moving to Victoria are valid. It follows that the respondent is permitted to relocate with S.P. to Victoria.

Guardianship

- [259] Guardianship was not addressed in any detail at the trial. However, the parties are in general agreement, and it is my opinion, that it is in S.P.'s best interests that the parties both remain joint guardians of S.P. In that regard, I impose the following (relatively) standard terms, but grant the parties liberty to apply to amend, should these provisions not be practical:
- a) In the event of the death of a guardian, the surviving guardian will be the only guardian of S.P.
 - b) Each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting S.P.
 - c) Each guardian will have the obligation to discuss with the other any significant decisions that have to be made concerning S.P. including significant decisions about the S.P.'s health (except emergency decisions), education, religious instruction and general welfare.
 - d) The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions.

- e) Each guardian will have the right to obtain information concerning S.P. directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third-party care givers.

[260] Given that I have allowed the relocation to Victoria, it will make sense, going forward for the respondent to be primarily responsible for arranging S.P.'s medical appointments. She is required to keep the claimant apprised.

Parenting Time

[261] It follows from my decision above, that provisions will have to be made for the claimant to have parenting time with S.P. Those provisions will have to include travel from Victoria to Chilliwack.

[262] As noted above, the claimant's submission proposed a shared parenting situation in Chilliwack, with one-week on and one-week off. Because I have decided in favour of relocation, that submission is not applicable.

[263] Although not addressed in her submission, the respondent, in testimony, suggested that the claimant could have time with S.P. two long weekends per month. She testified that, in general, during the school year, elementary school students get two long-weekends per month. I have no corroboration of that information.

[264] As noted, S.P. will be commencing kindergarten in September 2023. Hence, her schedule will be dictated, to some extent, by her schooling. However, for the first year of this order, I consider time with her father to be more important than her full-time attendance in kindergarten. Put another way, I do not believe that S.P. missing one day of kindergarten in a month will jeopardize her career earning potential. It is my hope that the same schedule will continue in the early elementary years. I order that this schedule continue at least until S.P. turns 11 and it can be revisited at that time.

[265] In my opinion, in the context of allowing the respondent to relocate, and the importance of maintaining a close connection between S.P. and her father, the following schedule is reasonable during the first year:

- a) During the months of September-November, and January-June (excluding Spring Break), the claimant is entitled to have parenting time with S.P. in Chilliwack:
 - i. On two long weekends per month, such that S.P. will travel on the 9:00 a.m. ferry from Schwartz Bay to Tsawwassen on the Friday morning and return on the 7:00 p.m. ferry on Sunday evening.
 - ii. The idea behind this schedule is that the claimant will have alternating long weekends with S.P.
 - iii. The regular exchanges of S.P. will occur at the Tsawwassen Ferry Terminal.

- iv. The respondent will be responsible for getting S.P. to the Tsawwassen Ferry Terminal. The claimant will be responsible for picking S.P. up at the Terminal.
- b) During December, the claimant is entitled to one three-day weekend, plus the time at School Winter Break.
 - c) During Winter Break, S.P.'s time will be divided evenly between the claimant and respondent on a schedule to be agreed upon. Unless the parties otherwise agree, during the first year, Christmas Eve and Christmas Day will be spent with the claimant. Boxing Day will be spent with the respondent, with the exchange occurring at Schwartz Bay Ferry Terminal (the claimant and S.P. having taken the 9:00 am ferry from Tsawwassen).
 - d) During Spring Break, S.P.'s time will be divided evenly. In the first year, the claimant will have the first week (or half the break). The respondent will have the second week (or half the break).
 - e) During Summer Break for both 2023 and 2024, the claimant is entitled to choose either July or August and have S.P. in Chilliwack for 31 consecutive days.
 - f) During any period of time S.P. is with one parent, the other parent is entitled to FaceTime or other remote contact every other day.
- [266] My reason for setting the regular exchanges at the Tsawwassen Ferry Terminal is that, in my opinion, having made the decision to relocate to Victoria, it is the respondent's responsibility and onus to undertake the travel required to facilitate the claimant's parenting time. I have noted when the exceptions apply.
- [267] There may be tweaks that are required to this schedule. I encourage the parties to reach agreement on any minor remaining issues.
- [268] I now turn to the financial issues.

Property Division Issues

- [269] The parties did not marry and did not live together for a period of two years. Pursuant to the FLA, they are considered spouses because of they had a child together. Section 3(1) states:
- 3(1) A person is a spouse for the purposes of this Act if the person
- (a) is married to another person, or
 - (b) has lived with another person in a marriage-like relationship, and
 - (i) has done so for a continuous period of at least 2 years, or
 - (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.

- [270] Hence, there is no right to property division under the FLA. That fact both simplifies and complicates matters.
- [271] The respondent makes three claims related to property. The first two are resolved by the claimant agreeing to pay the respondent the amounts she seeks. The nature of those claims is as follows:
- a) During the relationship, she traded her 2010 Subaru Impreza, (then) valued at \$5,000, to purchase a truck. Hence, she lost the value of that vehicle. However, she commenced driving the claimant's leased BMW. She drove that vehicle until that lease ended in 2020. She seeks payment of the equivalent \$5,000 she traded away.
 - b) The respondent requested that the claimant invest \$10,000 on her behalf in a crypto-currency account. He did so, in his own name. She believes that the investment has lost money. She says that she asked the claimant to divest the funds and repay her at an earlier date when the value was higher. She seeks the full \$10,000.
- [272] As noted, the claimant agrees to pay the two amounts, totalling \$15,000, to the respondent. I make that award.
- [273] The more involved issue relates to real estate. As noted above, in April 2018, the parties purchased and finished the Tyee House in Chilliwack. Each party invested \$100,000 on the down payment. The claimant has been paying the mortgage on the home since April 2018. The claimant clearly has a claim against her interest in the Tyee House.
- [274] The respondent submits that, while the claimant has been able to accumulate assets since September 2019, she has not. In my opinion, the accumulation of assets is not relevant to my considerations. To be clear, the respondent's claim to a share of the Tyee House is a property claim, not an FLA claim.
- [275] At the re-opening of the trial on June 7, 2023, I was informed that the parties had reached an agreement to co-list the Tyee House. I expect that they have taken that step prior to the release of these reasons. If not, I make that order.
- [276] The parties agree that, from the date of purchase, the claimant paid all of the mortgage payments on the Tyee House until May 2023.
- [277] Neither party has been residing in the Tyee House. The claimant agrees that the Tyee House should be sold and the net proceeds divided equally. He has been paying the mortgage, insurance, taxes, and utilities on the home since separation. That amount is approximately \$4,500 per month. As discussed below, he submits that half of that amount would be attributable to the claimant and half to the respondent.

[278] In late April 2023, the original mortgage on the Tyee House came due. In late March 2023, the bank contacted the claimant and attempted to contact the respondent. For a reason that is unclear, the respondent was not aware of the renewal date for the mortgage on April 27, 2023. By reason of the respondent not signing a renewal form, the mortgage auto-renewed to a six-month "Open" mortgage at 9.15%. This renewal resulted in an increase in mortgage payments of approximately \$2,200 per month.

[279] The claimant blamed the respondent for this high renewal rate. As a result, he decreased the monthly amount he paid to the respondent (discussed below) by the equivalent amount.

[280] In my opinion, the following is a fair resolution regarding the Tyee House:

- a) When the Tyee House is sold, the net sale proceeds will be divided equally between the parties.
- b) When accounting for the payments toward the expenses of the Tyee House (including but not limited to mortgage, utilities, insurance), the payments made by the claimant will be attributed half to the claimant and half to the respondent.
- c) The amounts attributed to the respondent will be deducted from any retroactive support payments (spousal) discussed below.
- d) The claimant should pay the full amount of the increased mortgage amount commencing April 27, 2023, but is entitled to the credit for those payments in calculating the net sale proceeds.

Issues Relating to Support (Child and Spousal)

[281] The respondent claims for both child and spousal support.

[282] The issues that arise are:

- a) What are the respective incomes of the parties?
- b) What is the appropriate child support amount?
- c) With respect to spousal support:
 - i. Is the respondent entitled?
 - ii. If so, in what amount and for what duration?

[283] My assessment below proceeds on the evidence that the claimant:

- a) terminated the relationship and left the family home in September 2019;
- b) paid a lump-sum support amount of \$10,000 in September 2020;
- c) has made monthly payments of \$3,000 since September 2020;

- d) also paid approximately \$2,250 per month toward the expenses of the Tyee House to the credit of the respondent.

Income for Support Purposes

[284] In order to calculate support obligations, I must calculate incomes.

[285] The claimant's income is complex, I address it below.

[286] Regarding the respondent's earnings, I find:

- a) She had primary parenting obligations from S.P.'s birth. Those responsibilities expanded when S.P. was receiving chemotherapy in 2019.
- b) At the date of separation, in September 2019, the respondent continued to have primary parenting obligations.
- c) In late 2019, the respondent commenced schooling to upgrade her qualifications from nurse to nurse practitioner. She continued to have primary parenting responsibilities. Given these obligations, she could not work. She (reasonably) had zero income from September 2019 to September 2022.
- d) In September 2022, she commenced employment as a nurse practitioner. She is able to work approximately two and a half days per week and earn in the area of \$75,000 per year. She continued in that capacity at trial.
- e) S.P. will commence kindergarten in September 2023. The respondent concedes that it would be reasonable to attribute or impute the full-time earnings of a nurse practitioner to her at that time. The evidence supports a yearly salary of \$120,000, as of September 2023.
- f) Those earnings exceed her theoretical pre-relationship earnings.

[287] The claimant's income is more complex because he operates his practice through two corporations.

[288] The respondent says that his income should be higher than the "Line 150 Income" that he declares on his income tax returns. The claimant agrees with that proposition, but the parties do not agree on the proper amounts to add back from the corporate income.

[289] The claimant submits that a reasonable approach to calculating his overall income would be to calculate his "Line 150 Income" plus his operating company's profit before amortization and (his own) salary for the fiscal year ending March 31.

[290] In answer to the claimant's position, the respondent submits that two adjustments should be made to the claimant's figures:

- a) She says that amortization is a non-monetary deduction and should be eliminated from consideration.

- b) The claimant's holding company owns his office. The operating company pays monthly rent in the amount of \$3,150 to the holding company. The respondent submits that using half of that amount would result in a fair deduction. (The respondent notes that the claimant has the onus to establish that the rent deduction is reasonable.)

[291] The respondent submits that (an average of) \$20,000 should be added back in to the claimant's annual income. On the claimant's calculation, approximately \$10,000 would be added back.

Year

The Respondent's Submission on Annual Income

The Claimant's Submission on Annual Income

2018

\$392,851

\$373,951

2019

\$395,851

\$377,066

2020

\$434,904

\$416,059

2021

\$270,904

\$245,103

2022

\$245,433

\$226,533

[292] The difference between the parties' positions is fairly consistent.

[293] I find:

- a) The respondent's position that half of the rent payment should be added back from the operating company to the holding company is excessive. I accept the claimant's position that \$3,150 could be considered to be a fair rent. However, I would allow some deduction for the funds that will eventually flow back to the claimant from this rent transaction.

- b) Similarly, although amortization is a non-monetary deduction on a financial statement, it is not a fabricated deduction. It accounts for the necessity of replacing capital assets over time.

[294] Taking those two factors into account, I find that the mid-point between the positions of the parties results in a fair assessment of the claimant's actual disposable income. I find that the appropriate income calculation for support purposes is:

- a) 2018 \$383,000
- b) 2019 \$386,000
- c) 2020 \$425,000
- d) 2021 \$258,000
- e) 2022 \$236,000

Child Support

[295] There is no existing order (nor agreement) regarding child support.

[296] I note that the respondent makes her claim for child support commencing April 28, 2019. However, as noted above, I accepted her testimony that the relationship did not end until September 2019. Further, the evidence is clear that the claimant did not leave the home until September 2019. There is no evidence of any childcare costs being incurred (and not paid by the claimant) during that five-month period. For that reason, I find that the entitlement to child support commences in September, 2019.

[297] The respondent seeks child support based upon her assessment of the claimant's income, set out above. She puts forward a claim for retroactive child support (pursuant to the Federal Child Support Guidelines (S.O.R. /97-175)), in the following amounts. Each year's obligation is based upon the prior year's income. I have reduced 2019 to reflect the start-date in September:

- a) 2019: \$3,250 per month x 4 =

\$ 13,000

- b) 2020: \$3,274 per month x 12 =

\$ 39,288

- c) 2021: \$3,575 x 12 =

\$ 42,900

- d) 2022: \$2,486 x 10 =

\$ 24,860

Total:

\$120,048

[298] As noted, I have arrived at a slightly lower annual income for the claimant. Based upon that lower annual income, I find that the calculation is as follows (based upon the claimant's income in the prior year):

a) 2019: \$3,173 per month x 4 =

\$ 12,692

b) 2020: \$3,197 per month x 12 =

\$ 38,364

c) 2021: \$3,500 x 12 =

\$ 42,000

d) 2022: \$2,250 x 10 =

\$ 22,500

Total:

\$115,556

[299] From this amount must be deducted the amounts that the claimant has paid:

a) \$10,000 in September 2020;

b) \$3,000 per month for the period October 2020 - October 2022.

[300] Hence, as of the date of commencement of trial (November 2022), the claimant's payments in respect of child support totalled \$85,000. The difference between the two figures is \$30,556.

[301] The claimant points to the fact that he made voluntary payments of \$3,000 per month and the respondent made no interim application to crystallize the child support obligation. On that basis he submits there should be no award of retroactive child support.

[302] I do not accept the claimant's submission on this point. The child support is for the benefit of S.P. The fact that the respondent did not apply for a higher amount should not prejudice S.P.'s claim. The claimant was always aware that the amount he was paying was voluntary and that his actual obligation would be in issue in the trial.

[303] On the basis of my analysis above, I find that the claimant is responsible to pay retroactive child support to the date of the commencement of trial in the amount of \$30,556.

Following the Commencement of Trial

[304] The period after the commencement of trial is somewhat complicated. As noted above, the claimant sought (and I granted) an order allowing him to reopen his case in January 2023. Through no fault of counsel or the parties, the re-opened trial did not proceed until June 2023.

[305] Based upon my calculations above:

- a) The December 2022 child support payment would be \$2,250;
- b) Starting January 2023 child support was \$2,027 per month.

[306] The claimant continued to pay \$3,000 per month toward child support during the interim period, until late April when the mortgage on the Tyee House came due. The claimant blamed the respondent for the failure to renew at a better rate. The respondent says that the claimant is, at least partly, responsible for failing to advise her of the upcoming renewal until it was too late.

[307] Regardless, I understand that the increase in the monthly mortgage expense on the Tyee House was in the range of \$2,200. I also understand that the claimant unilaterally reduced the child support payment by that amount, commencing in either April or May 2023.

[308] I indicated above that the increased mortgage payments should be shared equally:

- a) the claimant should be given credit for payments of \$3,000 per month for the period from the start of the trial until he ceased paying that amount to the respondent;
- b) the claimant's obligation to pay child support in 2023 is \$2,027 per month.

[309] Based on my analysis above:

- a) the claimant owes retroactive child support of \$30,556 to the date of the commencement of trial (November 21, 2022); and
- b) the parties can make the appropriate accounting for payments from December 2022 to the date of release of these reasons.

[310] It follows from my reasons on relocation that there will be no shared parenting arrangement. Hence, I order that the claimant make ongoing child support payments of \$2,027 (which figure is based upon the claimant's 2022 income of \$236,000).

[311] There was evidence that the claimant's 2022 income was lowered by a decision to purchase an inventory of medical devices. It is anticipated that his income will increase in 2023. Hence, the claimant's child support obligation can be reviewed annually, commencing in July 2024, based upon the income tax filings of the claimant and his companies, and upon the same considerations I have outlined above. Although the review will occur after July each year, the varied obligation to pay child support (higher or lower) will commence on January 1 of each year.

Spousal Support

[312] The respondent claims retroactive and prospective spousal support. She relies on s. 161 of the FLA. She submits that she is entitled to support both on compensatory and non-compensatory grounds.

[313] For context, the respondent seeks:

- a) Retroactive support on the basis of the "High" range of the Spousal Support Advisory Guidelines [SSAG] based upon the income she attributes to the claimant (see above). As noted, I have slightly decreased that calculation.
- b) Retroactive spousal support of approximately \$150,000 (lump sum). If necessary, she would accept this amount being paid out of the sale proceeds from the Tyee House.
- c) Future support payments of approximately \$5,000 per month for a period of four years (approximately \$240,000).
- d) Alternatively, the respondent proposes that a lump-sum amount in the range of \$300,000 for combination past and future support. (I explain this figure below.)

[314] In response, the claimant submits that:

- a) given the brief nature of the relationship, both the amount and duration of spousal support should be calculated at the low end of the range;
- b) the respondent was a nurse before the relationship and she is now a nurse practitioner with higher earning capacity. She has suffered no financial loss and her prospects have improved, rather than decreased; and
- c) S.P. will enter kindergarten in September 2023. Hence, spousal support should, at the latest, end at that point in time.

[315] In answer to the respondent's claim for compensatory support, the claimant further submits that if the court compares the respondent's financial situation in 2017 (pre-relationship) and 2021 (based upon her Form F8), the only difference is the \$100,000 that she invested in the Tyee House (which has increased in value). Later financial statements indicate that she has borrowed money to fund this litigation.

[316] The claimant also notes that he has been paying \$4,500 per month on the Tyee House. Half of that amount (\$2,250 per month) has been paid by the claimant on behalf of the respondent. Those payments have satisfied the mortgage, taxes, utilities, and insurance.

[317] In answer to the claimant's submissions, the respondent submits that he misses the objectives of spousal support. The respondent has been tasked with primary parenting responsibilities for S.P. Those obligations will continue. Conversely, the claimant has continued with a flourishing career.

- [318] Awarding support on a compensatory basis recognizes that one party in the relationship made sacrifices by assuming primary childcare obligations which thus resulted in lower earning potential and fewer future prospects: *Chutter v. Chutter*, 2008 BCCA 507.
- [319] The respondent submits that her support should be at the high end of the SSAG because:
- a) she has a strong claim for compensatory support;
 - b) there is no division of property;
 - c) she has gone into debt to attend school, which is ultimately to the claimant's benefit, because she has higher earning capacity; and
 - d) the claimant has significant resources upon which he can draw to pay the support.
- [320] The respondent's claim for non-compensatory support is grounded in the "social obligation" model. The parties in the relationship are seen as inter-dependent. Upon dissolution, the primary burden of meeting the needs of the disadvantaged spouse fall on the former partner. This support aims to narrow the gap between the needs and means of the spouses upon separation: *Chutter* at para. 54.
- [321] The respondent says that the claimant has enjoyed a flourishing career both during and after the relationship. Meanwhile, she gave up her career for the relationship and due to the demands of parenting. On that basis, the respondent submits that she is entitled to spousal support at the high end of the SSAG range, in part, because the claimant has continued to increase his net worth and accumulate property.
- [322] As noted above, the unique feature of this case is that the respondent has a property claim in relation to the Tyee House, but no claim to a division of assets. The respondent points to Part 9 of the SSAG which indicates that when there is an absence of property to be divided, this fact might suggest an award at the higher end of the range. This situation is to be contrasted with the case where the recipient receives a large amount of property, and the low end of the range might be appropriate.
- [323] On this issue, in the circumstances of this case, I find the claimant's ability to increase his net worth to be irrelevant to the respondent's claim for spousal support. In my opinion, Part 9 of the SSAG merely states that the overall picture, and overall fairness, of the support and division of assets must be considered together. However, in this case, the parties' rights are set out in the FLA which provides that, in these circumstances, the respondent is not entitled to a claim in respect of the growth in the claimant's assets. Hence, the FLA does not anticipate both a property and a support claim. The respondent's financial claims are founded in the FLA. In my opinion, the fact that one type of claim (division of property) is excluded under the FLA cannot constitute the basis for another type of claim to be increased.

[324] Further, as noted, the respondent does have a property claim for her interest in the Tyee House. She will achieve a gain on the increase in the value of that home. In my opinion, the existence of that property claim argues against the concept that the respondent has "lost out" on a division of assets under the FLA.

[325] I find that in this case, the fairness of the spousal support must be considered on its own (not considering any other financial claim).

[326] Further, I accept the submission of the claimant that:

- a) there is no evidence of the respondent having any earnings before the beginning of the relationship;
- b) once the couple started dating, the respondent commenced working in Vancouver as a nurse;
- c) the respondent stopped working when S.P. was born;
- d) the relationship ended in September 2019;
- e) the respondent then took the opportunity to further her education and qualify as a nurse practitioner, with higher earning capacity;
- f) the respondent commenced working in September 2022;
- g) when S.P. commences kindergarten in September 2023, there is nothing stopping the respondent from working on a full-time basis;
- h) the respondent specifically moved to Victoria to be closer to her support network, including her parents. The evidence indicates that her parents will assist with S.P.'s care.

[327] In my opinion, these factors indicate that the respondent is entitled to spousal support at the "Mid" level of the SSAG.

Duration

[328] The respondent submits that the applicable range of support payments is between 4 and 17 years. She seeks an order for payment of spousal support for seven and a half years.

[329] As noted above, the claimant submits that, at the latest, support payments should end in September 2023.

[330] I base the duration of spousal support on two tests: length of the marriage and age of the child:

- a) For the purpose of the FLA, the relationship ran from January 2018 to September 2019, a period of 20 months.
- b) S.P. was born in March 2018. She will commence kindergarten in September 2023.

- [331] In my opinion, the appropriate end-date for spousal support is commensurate with the month when S.P. commences kindergarten. As discussed above, the respondent is currently working approximately half time. That is reasonable given her parenting obligations. Once S.P. commences kindergarten, the respondent should be able to pursue full-time work.
- [332] As noted, the respondent's capacity to earn income now exceeds her capacity when she entered the relationship. Further, the respondent lives with her parents in Victoria. She pays no rent. That situation will continue. Based upon the short duration of the relationship, and the respondent's living circumstances, I see no basis to continue the spousal support payments past the date when the respondent is able to work on a full-time basis.

Retroactive Spousal Support

- [333] As noted above, the respondent seeks retroactive spousal support of approximately \$150,000 (lump sum). The calculation of that figure is set out below. If necessary, she would accept this amount being paid out of the sale proceeds from the Tyee House. (She puts forward the alternative lump sum of \$300,000 for past and future spousal support.)
- [334] Returning to the respondent's claim for a lump-sum retroactive spousal support, the respondent calculates her gross entitlement:
- a) for the period between:
 - i. May 2019 and September 2022 on the basis she had no income;
 - ii. October and November 2022 on the basis that she was working;
 - b) using the SSAG "High" support calculation;
 - c) based upon her calculation of the claimant's earnings (above);
 - d) at \$257,452 (approximately \$6,436 per month);
- [335] The respondent concedes that the claimant would be entitled to credit for amounts paid toward the Tyee House. She calculates that figure at \$92,180.
- [336] Based upon those figures, the respondent arrives at a net retroactive support lump-sum payment of \$150,000.
- [337] Regarding the assessment of the respondent's gross entitlement, I have noted my findings above indicating that:
- a) the separation occurred in September 2019 (not April);
 - b) the respondent commenced employment in September 2022;
 - c) the trial commenced in late November 2022;

- d) hence, the retroactive period is 39 months;
- e) of those 39 months, the respondent was employed for three months;
- f) the SSAG "Mid" support calculations should be applied;
- g) the claimant's income was slightly less than the respondent asserts.

[338] Based upon those adjustments, I assess the gross retroactive spousal support (September 2019 through November 2022) at \$210,000.

[339] As noted above, I have accepted the claimant's position that half of the amounts that he paid toward the mortgage, taxes, insurance, and utilities of the Tyee House should be credited toward spousal support. I accept the claimant's evidence that those amounts were approximately \$2,250 per month and that they commenced September 2019 to the date of trial (late November 2022) for a period of 39 months. That figure is \$87,750.

[340] The claimant also seeks credit for payments on a leased vehicle operated primarily by the respondent. However, the evidence was unclear whether those payments were made by the claimant or one of his companies. If a company paid the lease, then it has been deducted from the income available to the claimant (and hence from the spousal support calculations.

[341] Hence, for the period up to the commencement of trial, the respondent is entitled to retroactive spousal support in the amount of \$122,250 (\$210,000-\$87,750). That amount can be paid out from the sale of the Tyee House, if the parties agree.

Current and Future Spousal Support

[342] I now address the period following the commencement of trial, which was essentially the beginning of December, 2022.

[343] As noted above, the claimant's income for 2022 was in the range of \$236,000. I have found that the respondent is entitled to spousal support until September 2023 when S.P. begins kindergarten.

[344] During this period, the respondent will be earning an annual income of \$75,000.

[345] I find it most efficient to award this amount as a lump sum representing ten months of support at \$3,400 per month. Hence, the total award for current and future spousal support is \$34,000.

[346] As noted above, the claimant continued to make the payments on the Tyee House through April 2023. He is entitled to deduct five months at \$2,250 (\$11,250) for a net payment, before other calculations, of \$22,750. Further, the claimant made payments of \$3,000 per month, which exceeds the amount I have awarded for child support during 2023.

[347] The parties will need to prepare an accounting for the period after January 2023.

Parenting Coordinator

[348] In theory, both parties are in favour of the appointment of a parenting coordinator.

[349] It is my impression, perhaps naïve, that the majority of the difficulties that have arisen between the parties, including the respondent's vindictive actions, have their origin in the uncertainty caused by, and the strategies underlying, this litigation. It is my hope that once the parties have the certainty of these reasons, they will be able to settle into a routine that does not require a parent coordinator.

[350] My fear is that one party would default to communicating through the parenting coordinator, thus increasing costs for the other party.

[351] On that basis, I will leave the decision of whether to engage a parenting coordinator to the parties. However, I will order that if the parties decide to engage a coordinator, the cost should be split evenly between the parties, despite the discrepancy in their incomes.

Summary, Conclusion, and Final Word

[352] In summary, I find:

- a) The respondent is entitled to relocate with S.P. to Victoria, and S.P. will attend school in Victoria. The respondent will have primary parenting responsibilities.
- b) The claimant will have generous parenting time, as described above, with the respondent bearing the majority of the obligation for transporting S.P. to see her father.
- c) The claimant will pay the respondent \$15,000 in respect of the Subaru and the investment account.
- d) The Tyee House will be sold with the net proceeds divided between the parties.
- e) The claimant is responsible to pay:
 - i. retroactive child support of \$30,556; and
 - ii. ongoing child support (since November 2022) of \$2,027 per month.
- f) The claimant is responsible to pay:
 - i. retroactive spousal support of \$122,250; lump-sum current and future spousal support of \$22,750 (in addition to factoring in mortgage payments following May 2023 and unattributed amounts paid monthly at \$3,000 in 2023).

- [353] In closing, I would be remiss if I did not comment upon the nature of the relationship between these parties. From my discussion above, it should be evident that I have found that both parties are good parents who love S.P. very much. Despite that finding, I have expressed my significant concerns about the respondent's actions. She has breached a court order and moved with S.P. to Victoria. She has reported the claimant to four different authorities. In my opinion, she took the latter steps vindictively and strategically.
- [354] Based upon the evidence before me, I concluded that the respondent was a good mother to S.P. I wish to make it clear that, following separation, part of being a good parent requires fostering a positive relationship with the ex-partner. It will be incumbent upon both parties, but especially the respondent, to pursue that goal.
- [355] For these reasons, I will remain seized of this proceeding for a further two years. If there is evidence that either party is taking steps to undermine the other party's career or relationship with S.P., then the current parenting order (location and primary parenting) may be reviewed.
- [356] I would like to thank both sets of counsel for their thorough and helpful exploration of the issues and submissions.
- [357] Absent the existence of an offer of which I am not aware, I make no order as to costs. The parties have had mixed success.

"A. Ross J."

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Prepared on 27 October 2026 · Esheria