
CANADA / JUDGMENT

F.K.L. v. D.M.A.T

2020 BCSC 1296

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Supreme Court of British Columbia

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2020 BCSC 1296 F.K.L. v. D.M.A.T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

F.K.L. v. D.M.A.T.,

2020 BCSC 1296

Date: 20200901

Docket: E88897

Registry: Nanaimo

Between:

F.K.L.

Claimant

And

D.M.A.T.

Respondent

Before: The Honourable Mr. Justice Gomery

Reasons for Judgment

The Claimant, appearing in person:

F.K.L.

Counsel for the Respondent:

M. Norton

Place and Dates of Trial:

Nanaimo, B.C.

August 17-21, 2020

Place and Date of Judgment:

Nanaimo, B.C.

September 1, 2020

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Introduction

- [1] Ms. L and Mr. T are the parents of A, who just turned five years old. By all accounts, A is a happy child who loves and is well-loved by both her parents. A family justice counsellor retained to prepare a report in this case comments that "[A] was described by her parents as a wonderful, amazing and adventurous child who is active and exceptionally healthy". They gave evidence to the same effect.
- [2] The parents were never married and they cohabited for less than three years before Ms. L left the home they had shared together in Trail, British Columbia. Since October 2017, Ms. L has lived with her father in her childhood home in Gold River, on Vancouver Island. Gold River is a village of approximately 1,200 people. Since November 2018, Mr. T has lived in Victoria, the provincial capital, and a major urban centre. To get from Victoria to Gold River by car takes about five hours.
- [3] Since February 2019, Ms. L and Mr. T have shared parenting of A. Pursuant to contested interim orders, A has lived with her mother in Gold River for 11 or 12 days at a time, followed by 8 or 9 days with her father in Victoria. A has thrived under this arrangement.

- [4] It is now time for A to begin kindergarten. The issue is where she is to live and go to school. Ms. L asks me to order that A will live with her and her grandfather and attend school in Gold River. Mr. T asks me to order that A live with him and attend school in Victoria. While the interim shared parenting arrangement has served A well, given the distance between Gold River and Victoria, it can no longer be sustained. The two households are too far apart. Even regular weekend visits will be a burden on A and her parents.
- [5] There are also issues concerning the determination of past and future child support, and Ms. L claims spousal support from Mr. T. The parties have resolved the division of property and debt, with the exception of a dispute concerning the ownership of a pet dog.

Background

- [6] Ms. L and Mr. T met in 2013 when he was a guest at a fishing resort in Nootka Sound at which she worked. Ms. L was 24 years old. Having grown up in Gold River, she was working at the resort for six months and travelling overseas for the rest of the year. Mr. T was 28 years old. He was living in Trail and working for Imperial Oil as an instrumentation technician and electrician at the Kearl Lake project in Alberta's oil sands. They became friends and the friendship turned into a romance when Mr. T returned to the resort in 2014.
- [7] After the end of her employment at the resort in the summer of 2014, Ms. L moved in with Mr. T at his house in Trail. They began cohabitation in October 2014. Ms. L gave birth to A in July 2015.
- [8] The parties did not really know one another very well and their relationship became an unhappy one. Ms. L moved out of the house to an apartment in Rossland in May 2017, taking A with her. The parties attended counselling together and attempted to salvage the relationship, but their attempts were ultimately unsuccessful.
- [9] In October 2017, Ms. L moved with A to Ms. L's childhood home in Gold River, where they lived with her father, M.L. Despite the move, Mr. T was still not convinced, at first, that the rupture was permanent. Ms. L found employment in Gold River, first as a lifeguard at the community pool, and later also as a paramedic.
- [10] Mr. T's work schedule required him to work for 10 days at a time at a camp at Kearl Lake in Northern Alberta, followed by 10 days off. Taking into account travel time to and from the camp, he had about 8 days free. He spent some of this time visiting Gold River to spend time with A. The parties agree that he was spending 7 to 8 days per month with her.
- [11] Mr. T wanted more time with A. In June 2018, when he was sure that he was not going to reconcile with Ms. L, he commenced a proceeding in the Provincial Court seeking an order that Ms. L return with A to Trail or the environs. Ms. L responded on July 11, 2018, by commencing this action seeking an order, among others, that A have her primary residence with her. Mr. T counterclaimed seeking an order that would require Ms. L to reside with A within 75 km of Trail so that he could have parenting time 8 days out of every 20.

- [12] As I will address below, the court does not have the power to order Ms. L to reside in any particular place, and in any event, Mr. T's personal circumstances have changed and he no longer seeks an order that she return to Trail.
- [13] In November 2018, Mr. T obtained a one year leave of absence from Imperial Oil and moved to Victoria, where he took up other employment. He remained a resident of Victoria when his leave of absence ended and he returned to work at Kearn Lake. He took a further leave of absence in 2020, after the start of the Covid-19 pandemic, and is presently looking for alternate employment in Victoria.
- [14] The relationship between Ms. L and Mr. T deteriorated further with the commencement and progression of the legal proceedings and a series of conflicts in connection with parenting transitions. Ms. L accused Mr. T of physical, emotional, and financial abuse. Both parties called the police on occasion and Mr. T was once arrested in A's presence. No charges were laid. Ms. L repeatedly sought intervention by the Ministry of Child and Family Development ("MCFD") on the basis that A was in need of protection from Mr. T. MCFD declined to intervene.
- [15] In January and early February 2019, Ms. L would not permit Mr. T parenting time other than a day visit in Gold River during which she insisted that he must not leave the village. This dispute came to a head in court. At a Judicial Case Conference on February 19, 2019, Justice Bernard ordered that Mr. T have parenting time from February 19 until February 21. On a contested application on February 22, 2019, Master Vos ordered that Mr. T have parenting time for 9 days out of every 21, with transitions to take place at locations mid-way between Victoria and Gold River.
- [16] This schedule was adjusted by an order of Justice Baird on February 10, 2020, to accommodate Mr. T's return to work at Kearn Lake. The adjusted schedule provides for Mr. T to have parenting time for 8 days out of every 20. Both Master Vos and Baird J.'s order are interim in nature and, anticipating this trial, the adjusted schedule under Baird J.'s order ends at the end of August 2020.
- [17] The shared parenting schedule established under the orders described above has been followed, except for a gap in the period from May 7 to June 20, 2019, resulting from an incident during a parenting transition on May 10, 2019, and a subsequent police investigation of an allegation of assault against Mr. T, and a further gap in April and May 2020 resulting from the Covid-19 outbreak. I will address these interruptions below.
- [18] Mr. T made support payments and gave Ms. L the use of a credit card that he paid for in the early months of the separation. Commencing in April 2018, following a demand made by Ms. L through counsel, he began making monthly child support payments of \$1,700. His payments were much reduced and varied in amount from October 2018 after that, and he made no payments at all from March through August 2019.

- [19] On October 31, 2019, Master Dick ordered Mr. T to pay child support of \$500 per month and spousal support of \$1,500 per month, and he made those payments. This was an interim support order.
- [20] On February 10, 2020, Master Dick's support order was varied by consent before Baird J. to monthly child support payments of \$991 and spousal support payments of \$2,005. This was still an interim order. Mr. T made monthly payments of only \$1,000 rather than the amounts required under this order.

Parenting Issues

Legal Framework

- [21] The law governing parenting disputes is found in Part 4 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [22] It is common ground that the parties are both guardians of A pursuant to s. 39(1) of the FLA. Neither seeks an order pursuant to s. 39(2) divesting the other of guardianship. Each seeks an order pursuant to s. 45(1)(a) and (b) respecting the allocation of parenting responsibilities and parenting time.
- [23] Section 37(1) sets out the general principle that, in making an order under Part 4, the court is to consider only the best interests of the child. Section 37(2) provides a list of considerations that must be taken into account in determining the best interests of the child. In its entirety, s. 37 provides:

Best interests of child

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

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

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

[24] Ms. L alleges that subsections 37(2)(g) and (h) are engaged by acts of family violence on the part of Mr. T. Family violence is defined in s. 1 of the FLA and the definition includes the following:

"family violence" includes

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence;

[25] Section 38 provides:

Assessing family violence

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[26] The FLA makes special provision for cases in which it is proposed to change the location of a child's residence. There are two different sets of rules governing these applications. The first is found in s. 46 and the second in Division 6 of Part 4 (ss. 65 to 71): the first applies where there is no outstanding written agreement or order respecting parenting arrangements; and the second applies where there is such an agreement or order. The relevant time to determine which of these schemes applies is the time when the application is made, not when it is decided; *S.J.F. v. R.M.N.*, 2013 BCSC 1812 at paras. 54-60; *K.W. v. L.H.*, 2018 BCCA 204 [K.W.] at paras. 83 and 92. An application to which s. 46 applies is not converted to an application under Division 6 by an interim order made in the course of the proceedings.

[27] In this case, there was no written agreement or order in place when Mr. T sought a relocation order. The scheme that potentially applies, if the other requirements of the statute are satisfied, is that under s. 46, not Division 6, notwithstanding the interim orders later made by Master Vos and Baird J.

[28] Section 46 provides:

Changes to child's residence if no agreement or order

46 (1) This section applies if all of the following circumstances exist:

- (a) no written agreement or order respecting parenting arrangements applies in respect of a child;
 - (b) an application is made for an order described in section 45 (1) (a) or (b) [orders respecting parenting arrangements];
 - (c) the child's guardian plans to change the location of that child's residence and the change can reasonably be expected to have a significant impact on that child's relationship with another guardian.
- (2) To determine the parenting arrangements that would be in the best interests of the child in the circumstances set out in subsection (1) of this section, the court
- (a) must consider, in addition to the factors set out in section 37 (2) [best interests of child], the reasons for the change in the location of the child's residence, and
 - (b) must not consider whether the guardian who is planning to move would do so without the child.

[29] In my opinion, s. 46 applies in this case. The requirements of subsection (1) are satisfied because: (a) there was no written agreement or order in place when the claim and counterclaim were filed; (b) both parties are seeking orders respecting the allocation of parenting responsibilities and parenting time under s. 45(1)(a) and (b); and (c) both guardians wish to change the location of A's residence. At present, A resides both in Gold River with her mother about 60% of the time, and in Victoria with her father about 40% of the time. Whatever order I make will change this because it is necessary that A's residence no longer be divided between two places so far apart while she is in school.

[30] I have considered whether A should be considered as residing part of the time in each of Gold River and Victoria, for the purpose of the application of s. 46, when this has only occurred as a result of the interim orders I have described. The alternative would be to ignore a status quo that has been in place for 18 months, or 30% of A's life to date. That would not be consistent with the child-centred approach required under s. 46 of the FLA; *Wong v. Rooney*, 2016 BCSC 1166 at para. 27 (a case disapproved in *K.W.* at para. 92, but not on this point); *D.I.R.A. v. S.K.C.*, 2018 BCSC 1472 at paras. 86-92; *A.K.S. v. A.L.E.S.*, 2019 BCSC 419 at para. 39. In my view, legitimate expectations arising from interim orders are important in such circumstances; *K.W.* at para. 93. A's expectations have undoubtedly been shaped by the current arrangements, interim though they have been, and it may well be that five-year-old A barely remembers what came before the present shared parenting arrangement.

[31] To summarize, in deciding what order to make in this case, I must determine what parenting order is in A's best interests, protecting, to the greatest extent possible, her physical, psychological and emotional safety, security and well-being. I must consider the various considerations listed in s. 37(2) of the FLA. Pursuant to s. 37(4), I must only take conduct into account only if it substantially affects a consideration set out in subsection (2),

and only to the extent that it affects that consideration. Pursuant to s. 46(2)(a), I must consider the reasons for the change in the child's residence proposed by each parent. Pursuant to the policy established by s. 46(2)(b), I must not consider whether either parent might be driven to relocate in the event of an unfavourable decision; K.W. at para. 105.

[32] While the FLA authorizes me to decide where A will reside, it does not empower me to dictate to the parents where they will reside. As Justice Goepel observed, giving judgment for the Court in K.W. at para. 106:

[106] A further complicating factor is that a court cannot dictate where a party must reside. While a court may prohibit a parent from relocating a child, or make a custody order that indirectly limits a parent's mobility, "a court cannot indenture an individual to a community": Falvai at para. 40; McIntosh v. Kaulbach, 2014 BCCA 299 at para. 16.

[33] In addition to deciding where and with which parent A will reside, I must address the parties' parenting responsibilities. S. 40(2) of the FLA provides that, unless an agreement or order allocates parental responsibilities differently, each child's guardian - in this case, each parent - may exercise all parental responsibilities in consultation with the child's other guardians, unless consultation would be unreasonable or inappropriate in the circumstances. It is not to be presumed that parental responsibilities should be allocated equally among guardians, or that decisions among guardians should be made separately or together; there is no presumption that any particular arrangement is in the best interests of the child; s. 40(4).

The Positions of the Parents

[34] Ms. L maintains that it is more in A's best interests that she go to school and reside in Gold River than that she go to school and reside in Victoria. She submits that A is more closely connected with the school she would attend in Gold River because she has attended preschool in the same building; that A has a particularly strong and beneficial bond with her grandfather, whom she sees and shares meals with daily; and that her living arrangement with her mother and grandfather is more stable than the arrangements Mr. T has been able to put in place.

[35] Ms. L acknowledges that communication between the parties concerning parenting has been confrontational and argumentative. She blames this on what she describes as a history of abuse by Mr. T that has left her with "a bit of an emotional block". Ms. L asks me to order that each parent will be responsible for day-to-day decision-making while the child is in their care, but that she have the final responsibility for major parenting decisions. She says this is consistent with what has occurred until now.

[36] Mr. T maintains that it is more in A's best interests that she reside with him in Victoria. He acknowledges that both communities have much to offer a child and that both parties are loving parents who can take care of A's needs. Noting the limits on consideration of conduct in a parenting dispute, he submits that this is a case in which conduct is relevant because,

he says, Ms. L has allowed her disdain for and dislike of Mr. T to override her ability to make good parenting decisions. He provides a substantial account of what he says is problematic parenting conduct on Ms. L's part. In effect, he submits that Ms. L's animus towards Mr. T prevents her from parenting A in a manner that will permit her to know her father well, and that the converse is not true of Mr. T.

- [37] Concerning the allocation of parenting responsibilities, Mr. T seeks an order that they be shared equally. To address continuing conflict and avoid applications to court, he proposes the appointment of a parenting coordinator pursuant to s. 15 of the FLA.

Analysis

- [38] This case concerns A, not the relationship between her parents. However, to address the issues raised in argument - Ms. L's allegations of abuse and whether they constitute family violence, and Mr. T's complaint of problematic parenting grounded in Ms. L's animus towards him - it is necessary to address the allegations of abuse during the relationship and the parents' dealings together since A's birth.

The Allegations of Abuse

- [39] Ms. L's allegations of abuse during the relationship are mostly general in nature. She relies heavily on a text and an email containing admissions and apologies offered by Mr. T in May and November 2017, while he was attempting to negotiate a reconciliation. It is not clear from the text and the email what Mr. T was admitting he had done.
- [40] As to physical abuse, in the email Mr. T states, "for the altercations , it never once crossed my mind that I was intentionally being physically abusive. That said, what happened did happen." Mr. T testified that this was in reference to an incident on a holiday together in Costa Rica. Ms. L was hitting him and he restrained her in a bear hug until she calmed down. Ms. L offered a different account of this incident to the family justice counsellor, Mr. Grootendorst, who prepared a report pursuant to s. 211 of the FLA, but she did not address it in her testimony. Mr. T forcefully denies that he ever hit, slapped, punched or kicked Ms. L, or caused her physical harm. The only sworn evidence to the contrary from Ms. L concerns a much later incident on May 10, 2019. I accept Mr. T's evidence that he never intentionally physically harmed Ms. L during the relationship and will address the incident of May 10, 2019, below.
- [41] As to emotional, verbal and financial abuse by Mr. T during their relationship, these allegations are again general in nature. It is not clear to me what Ms. L means by "financial abuse". She says that Mr. T was jealous and controlling, and demeaning to her when they quarrelled. He acknowledges that he was jealous, insecure, and mean to her. Sadly, none of this is uncommon in a deteriorating intimate relationship. Ms. L does not argue that it rose to the level of family violence as defined in the FLA and I have no reason to think that it did.

- [42] I do not doubt Ms. L's subjective understanding that she was subject to abuse. In argument, she said that her relationship with Mr. T left her emotionally scarred and that she felt contempt for him. This is the backdrop for subsequent confrontations I will address.

The Allegations of Problematic Parenting

- [43] On August 26, 2018, the parties met to transfer A to Mr. T for parenting time and the encounter led Ms. L to call the police. The parties disagree only as to some of the details of what occurred. The parties had driven to the meeting place and had an argument outside after A had been moved into Mr. T's vehicle. Ms. L asked where he would be going with A. He declined to answer and responded by asking what she would be doing while A was with him. She declined to answer. Ms. L was driving a vehicle that was insured under Mr. T's name. He was upset that she had not taken responsibility for the insurance and threatened to remove either her licence plate or her insurance decal, pulling out a Swiss Army tool to do so. She says that it was the small blade of a knife, and he says that it was a screwdriver. He moved towards the car and then changed his mind and left. Ms. L tracked down the Airbnb unit he was renting and called the police for a wellness check on A.
- [44] In cross-examination, Ms. L said that she called the police "because he came up and put a knife in my face". Under further cross-examination, she said, "he was in front of me, so it was in front of my face". She said that her desire for a wellness check on her daughter was also a component in her decision to call the police. I do not accept that Ms. L felt threatened by Mr. T, or that she called the police because she felt threatened. I find that she called the police because she was angry and to make a point to Mr. T that he was not free to do as he wished.
- [45] At the end of December 2018, Mr. T took A to visit his family in Trail. His return flight on December 29 was cancelled due to bad weather and he and A caught a flight to Victoria on December 30. Ms. L drove to Victoria that day to pick up A. Ms. L was upset with the late return and decided that she would no longer permit Mr. T access to A for parenting time outside Gold River. Mr. T agreed to come to Gold River for parenting time on January 11, 2019. It was agreed that he would meet A in a coffee shop.
- [46] The visit went badly. Mr. T was not well received in the coffee shop. He says that he was glared at and the person at the counter would not recognize him to take his order. He indicated his intention to leave with A and someone called the police to prevent him from leaving the village with his daughter. The police came and the visit ended. Fortunately, A had been taken into a back room by the time the police arrived. Mr. T had less than 30 minutes with A.
- [47] Mr. T says that Ms. L called the police. Ms. L says that it was not she who called the police; she told her father, M.L., what was going on and he made the call. M.L. denies that he did and says that he does not know who called the police. I am sure that whoever called the police had reason to believe they were doing as Ms. L wished.

- [48] Ms. L justifies her insistence that Mr. T not leave Gold River with A on the ground that he had proven himself unreliable in returning her on time on December 29, and on unidentified other occasions as well. Her insistence was unreasonable and not in A's best interests. What were they to do together during the day in January, in a small village where Mr. T could only be known through the reports of Ms. L and M.L., neither of whom has a good opinion of Mr. T?
- [49] On February 22, 2019, Master Vos ordered the shared parenting arrangement I have described. The order provided that A's transition from Ms. L's care to Mr. T's care would take place at a market in Coombes. Ms. L found these transitions difficult. On May 10, 2019, a confrontation during a transition led to a further, much more serious, police complaint that Mr. T had assaulted A and assaulted Ms. L with a weapon, namely his vehicle.
- [50] It is common ground that the confrontation began with an argument between Mr. T and Ms. L about financial issues. On Ms. L's account, A then refused to go with Mr. T to his car, and he carried her there, screaming and protesting. Though she could not see A in her car seat, she saw his hand go up and down towards A and she heard a particularly emphatic scream from A immediately afterwards. She ran to the car to help her daughter, but Mr. T had locked the door beside A. She called the police and stood in front of the car to stop Mr. T from leaving while she read his license number to the police dispatcher. He was inching towards her and, when she moved to the side, he gunned the engine and ran over her foot while leaving.
- [51] On Mr. T's account, Ms. L involved A in the argument and told her that it was up to her whether or not she went with her father. A initially said she wanted to stay with her mother, and then was persuaded by her father to walk with him. A started to fuss as they got to his car and he had to put her in her backseat car seat while she was fussing. He did not strike A. While he was strapping her in, Ms. L knocked him down from behind. Then she ran around to the side and tried to remove A while he was driving away. He is certain that his car did not contact Ms. L's foot while he was driving away.
- [52] Hospital records and a photograph of Ms. L's boot with a tire track on it persuade me that Mr. T did drive across Ms. L's foot. Fortunately, she was not seriously injured. She suffered bruising, was on crutches for a time, and ran a marathon a month later.
- [53] I do not wholly accept either party's evidence concerning this encounter. Both gave evidence that is somewhat at odds with contemporaneous statements. Ms. L stated at the hospital that day that her foot was run over while she was trying to remove A from a car that was in motion. This is not at all consistent with her evidence in chief, but she came close to admitting it in cross-examination. Mr. T's account has Ms. L running towards a bystander immediately after her foot would have been run over, which is implausible.
- [54] I accept Mr. T's evidence that he did not strike A. I also accept his evidence that Ms. L told A that she could choose to stay with her, or go with her father. The child should not have been given that choice. Having been given it, it is not surprising that she was upset when her

choice was not honoured, and that explains her tantrum as her father put her into the car seat. I find that Ms. L was upset by A's screaming and ran over to the car intending to remove A from her car seat. Ms. L's foot was run over while she was at the rear door, and Mr. T was not aware of it at the time. In short, Ms. L's injury was an accident. Neither A nor Ms. L was assaulted.

- [55] When Ms. L called the police, she told them that Mr. T had assaulted A and herself. Under cross-examination, she insisted that she only told them what she had seen, and it was the police who said it was an assault. Ms. L was taking refuge in semantics. Clearly, she was seeking police intervention on the ground that a serious wrong had been committed by Mr. T, who was then driving away with A. The police reacted in the only way they could. They stopped, arrested and handcuffed Mr. T, in A's presence, and drove A to be with her mother at the hospital.
- [56] I do not think Ms. L deliberately and in cold blood subjected Mr. T to a false accusation. Rather, I think she was carried away by her emotional reaction to her child's upset screams and the pain she herself suffered when her foot was run over. Nevertheless, the entire incident began with her attempt to have her child take sides, and the denouement was that A saw her father taken away in handcuffs.
- [57] Mr. T was charged and released on condition that he have no contact with A or Ms. L. On June 6, 2019, he was told that the charges were dropped. His next parenting time was on June 21. Ms. L left that transition to M.L., who testifies that A's initial reaction to seeing her father again was that she looked terrified. Mr. T describes her merely as "stand-offish", which I find is an understatement. However, I accept his evidence that A's reaction to him disappeared once she was in the car singing songs with him. As I have already noted, A continued to demonstrate an initial reluctance to go with Mr. T for a time during subsequent transitions, but that no longer occurs. I think it likely that A's initial fearfulness in her father's presence was due to the experience of seeing her father arrested and possibly also to what her mother and grandfather subsequently said about the incident in her presence.
- [58] On June 27, 2019, Ms. L applied for and obtained, without notice to Mr. T, a protection order preventing him from communicating with Ms. L, directly or indirectly, except by text or email to arrange parenting exchanges pursuant to the order of Master Vos. In obtaining the order, Ms. L referred the court only to her affidavits, and not to affidavits filed by Mr. T in which he contested her version of events. She felt that it was not her job to present his side of the story. Ms. L was mistaken and her conduct was improper. She was apparently not aware of the burden the law imposes on an applicant seeking an order without notice to the opposing party. The protection order expired on August 12, 2019.
- [59] On August 23, 2019, A transitioned to Mr. T's household and he noticed that she had the remains of a black eye that was perhaps a week old. He asked her about it and she said something to the effect that "Darcy" did it. On August 26, Mr. T sent Ms. L a text message inquiring about the black eye. It read as follows:

Can you please explain why I picked up [A] with a black eye? She was saying someone named Darcy did it? Who is apparently daddy's age.

Please explain to me why it looks like she was struck in the face by someone in Gold River.

If you wish to not communicate about anything with me (property exchanges or [A's] best interests etc) then in this case I will take the next appropriate legal steps to find who this person is and why [A] has said that he hit her in the face. (I have her saying this on video.)

If I don't hear back from you in the next few days, next steps will be taken for [A's] safety when in your or dad's care.

[60] I observe that, while the message is aggressively worded, it is a request for information rather than an accusation. Mr. T is asking how A came to have a black eye and observing that "it looks like" she was struck in the face by someone in Gold River.

[61] Ms. L interpreted the text message as an accusation and did not reply to it. Instead, she spoke with A by FaceTime and asked her about the black eye. A told her that she had hit her head. Ms. L next called the police and the MCFD. Mr. T and A were called in for questioning by the police on suspicion that Mr. T had given A the black eye. They were interviewed separately and allowed to go home. Both parties now understand that A got the black eye when the dog bumped her and she fell into a table at Ms. L's home.

[62] Ms. L's calls to the police and the MCFD were a defensive response to a perceived accusation. In cross-examining Mr. T, she suggested that his text message was the reason for the police involvement. This was unreasonable. There was never a basis for any suspicion that Mr. T had hit A. Mr. T should not have been obliged to submit to police questioning, in his daughter's presence.

[63] To state the obvious, on receipt of Mr. T's text message, Ms. L should have replied and provided to Mr. T the information he was requesting, so far as it was available to her. This is what cooperative parenting requires.

[64] On October 1, 2019, Mr. T accidentally placed a FaceTime call to Ms. L. It was a "pocket dial". Ms. L did not respond. She did not know why the call had been placed. Sometime later, she applied to have Mr. T held in contempt of a provision of a conduct order made by Master Dick that "the parties shall communicate by text or email for nonemergency matters in regards to the Child". In cross-examination, she testified that she wanted to be very clear as to what the boundaries were.

[65] The contempt application was unjustified. It is an example of an unduly rigid and heavy-handed approach on the part of Ms. L.

[66] In April 2020, Mr. T had returned to work at Kearn Lake when the facility there suffered a Covid-19 outbreak. Mr. T was not himself infected, but he was required to self-isolate and could not have parenting time as scheduled. Ms. L negotiated an arrangement to give him make-up time but required, as a term of the arrangement, that he obtain his employer's

written consent to an intended leave of absence by June 20, 2020. When the consent was obtained and provided to her on June 21, she rejected it as too late, and for the further reason that the email communication from the employer was unsigned. This is a further instance of unreasonable inflexibility on the part of Ms. L.

- [67] To summarize, there is substance to Mr. T's complaint that Ms. L has allowed her disdain for and dislike of Mr. T to override her ability to make good parenting decisions. In her own words, Ms. L feels contempt for Mr. T. She views herself as the primary parent and Mr. T as secondary. Prior to Master Vos' order, she set and enforced arbitrary boundaries, such as her requirement in February 2019, that Mr. T not leave Gold River during his parenting time. Since the implementation of shared parenting by court order, she has adopted a rigid and heavy-handed approach. She has repeatedly called the police for reasons that do not withstand scrutiny. A has not been well served by her mother's attitude and tactics towards her father.
- [68] Ms. L has some insight into her conduct. She recognizes that there have been failures of communication and that she and Mr. T need to cooperate. She thinks that may be possible with the conclusion of this litigation. Ms. L is inclined to attribute these failures to Mr. T's abuse and her own emotional block where he is concerned. Importantly, she told me in argument that, despite her own feelings towards Mr. T, she does not want A to have a negative relationship with him, because she would like all of A's relationships to be positive. The challenge for Ms. L is to put this good intention into effect.

The Statutory Considerations under ss. 37(2) and 46(2)(a)

- [69] I turn to the considerations listed in s. 37(2) of the FLA as bearing on A's best interests, followed by consideration of the reasons for relocation advanced by each parent, as required by s. 46(2)(a).
- (a) The child's health and emotional well-being
- [70] A is physically and emotionally healthy. She is active, energetic, and displays impressive stamina for a child of her age. At the age of 3, she completed a challenging 44 km hike with her mother and her grandfather. Outdoor recreation in Gold River and throughout British Columbia is an important part of Ms. L's lifestyle and this suits A well. Mr. T also favours an active lifestyle, but not to the same extent.
- [71] A is adaptable and makes friends easily. She is comfortable at her home in the community of Gold River, which already offers her an unusual degree of independence compared to the lifestyle of a child of her age living in a city. She has made friends there attending a pre-school program. She is comfortable at her home in Victoria, where she has made friends through her father's connections with other parents.
- (b) The child's views, unless it would be inappropriate to consider them

- [72] In giving evidence, M.L. urged me to attend to A's feelings, thoughts, impressions and experiences. I agree that it is important to be conscious of the sentiments of even a young child. However, the views of a five year old child about parenting arrangements usually carry very little weight; such was the case with the six year old child in K.W. at para. 113. Such a child lacks sufficient experience of the world to be able to understand how things might be different, judgment, and the emotional resources to be able to choose among her parent's competing desires and proposals.
- [73] Each of her parents has shown A the school where she would attend kindergarten, in Gold River or Victoria. She has told each of them that she is looking forward to going there. A is not yet able to understand that she cannot go to both schools.
- (c) The nature and strength of the relationships between the child and significant persons in the child's life
- [74] A is securely bonded with both her parents. Neither party contests the findings of Mr. Grootendorst. He observed A with Mr. T at a park in Victoria and states that she "appeared to have a close and affectionate bond with her father and interacted lovingly with him throughout the visit. He observed that A "also demonstrated having a close bond with her mother" during a visit to a park in Gold River, and with her grandfather, M.L., later in the visit. Evidence to much the same effect was given by other independent witnesses.
- [75] At her home in Gold River, A lives in a household comprised of herself, her mother and M.L. A's grandmother died many years ago. M.L. plays an active role in A's care. In his evidence, M.L. described his bonds with Ms. L and A as the closest he has on the face of the planet. He said that he is "totally invested" in A. I am sure that his depth of feeling is felt and shared by A.
- [76] M.L. has a poor opinion of Mr. T. This was apparent when he gave evidence, and I worry that it may be apparent to A.
- [77] At her home in Victoria, A frequently spends time with and shares an affectionate relationship with her paternal grandmother, who lives in Victoria. Mr. T has extensive family connections in the Kootenays who visit him and A from time to time. I infer that these visits, and holidays with her father in the Kootenays, give her a sense of herself as a member of an extended family through her father. In argument, Ms. L acknowledged the importance of these connections for A and pledged to help her maintain them.
- (d) The history of the child's care
- [78] While she was a baby, A lived in Trail with both her parents. Her mother did more of the parenting, though her father pitched in when he was home from Kearsy Lake. This ended in May 2017, when her mother moved with A to Rossland. A was not yet two years old.

- [79] The move to Rossland confirmed Ms. L's role as the primary parent. The parents continued to spend time together with A at least until October 2017, when Ms. L and A moved to Gold River. Mr. T says, and Ms. L denies, that they continued to socialize together as a family after that until February or March of 2018. For present purposes, I do not think anything turns on whether familial interactions continued after October 2017.
- [80] From October 2017 until March 2019, when the shared parenting arrangement under Master Vos' order went into effect, A's home was in Gold River and her primary parent was her mother. Since then, A has had a home in Gold River with her mother, and a home in Victoria with her father.
- [81] The intention of the court orders has been that A would spend approximately 60% of her time with her mother, and 40% of her time with her father. In fact, her parenting with her father has been interrupted twice for the reasons I have reviewed: first, in May and June 2019, while he was being investigated in connection with a criminal complaint initiated by Ms. L; and second, for a five-week period in April and May 2020, resulting from the Covid-19 outbreak at Kearn Lake, where Mr. T had returned to work. These interruptions have disrupted and diminished A's parenting time with her father, but have not altered the substance of the shared parenting arrangement.
- (e) The child's need for stability, given the child's age and stage of development
- [82] A is at an age where her family is still the centre of her world. Eventually, her schooling will contribute to a broadening of her horizons, but that is still years away. Both parents are able to offer A a stable home life.
- [83] A is more deeply involved in the community in Gold River than in Victoria, and she would probably feel more of a sense of dislocation being removed from Gold River, than from Victoria.
- (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
- [84] Both parents are competent and loving. Both have exercised their parental responsibilities appropriately while A has been in their care. Both have made appropriate arrangements to shelter, nourish and occupy A. In short, both are capable parents.
- [85] L.G. is a friend of both parents who was called as a witness by Mr. T. She lives in Victoria. Her five-year-old daughter is a close friend of A. L.G. and her daughter have been with both parties during their parenting time with A. She describes A as "a super lucky girl because both her parents are super loving".

- [86] One of the challenging responsibilities of a separated parent is to make room for and facilitate the child's relationship with the other parent. Although she recognizes this responsibility, Ms. L has not done well at this. As I have reviewed in some detail, she regards herself as the primary and Mr. T as the secondary parent. At times, she has unreasonably denied him parenting time. She has also exposed A to disputes with Mr. T from which the child should have been protected.
- [87] Mr. T does not exhibit any animus towards Ms. L that would interfere with his ability to make good parenting decisions.
- (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
- [88] As I have already indicated, this is not a case involving family violence on the part of Mr. T.
- [89] Counsel for Mr. T, Mr. Norton, submits that Ms. L's conduct in pursuing false and baseless allegations against Mr. T amounts to family violence on her part. I disagree. While Ms. L's calls to the police were ill-advised, they did not amount to psychological or emotional abuse of Mr. T, nor did they satisfy any other component of the statutory definition of family violence.
- (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
- [90] Cooperation between the parents has been a problem, and I expect that it will continue to be a problem. Clear rules will help, but both parents must recognize the importance of reasonable flexibility in the application of those rules.
- (j) any civil or criminal proceeding relevant to the child's safety, security or well-being
- [91] There are no civil or criminal proceedings relevant to A's safety, security or well-being.

The reasons for the change in the child's residence proposed by each parent

- [92] The overriding reason for the change that must now occur is neutral: it is time for A to start school and that limits the parenting options available. Both parents understandably want to protect and secure their own relationship with A in the face of this looming change.

Assessment and Conclusion

- [93] At her age, the kind of bond A shares with her parents and M.L. is nourished by frequent, close, personal contact, and interaction. The unfortunate reality of this case is that her relationships with her father or her mother and M.L. will be impaired to at least some degree when the shared parenting arrangement ends. The shared parenting arrangement has served A well and it is a shame that it cannot be sustained.
- [94] To be clear, if the parents lived a reasonable distance apart, consistent with shared parenting within commuting distance of an appropriate school, I would order that.
- [95] Instead, this case presents a difficult choice between two loving households. Both parents are capable and will secure A's physical, psychological and emotional safety, security, and well-being. Choosing between them is a matter of degree, and in either case, the risk to her relationship with the absent parent is palpable.
- [96] In my opinion, the weight of the considerations I have reviewed favour having A live and attend school in Gold River. I place particular weight on the breadth and depth of A's connection to the community in Gold River. It is where she has lived the longest, and the place she knows the best. There she is a member of a household containing both her mother and her grandfather. She has attended preschool in the building where she will attend kindergarten. It is not only that she has friends among her peers, she knows the children in the grades above her, and the teachers.
- [97] Gold River offers A almost everything she needs at this stage of her life. Whether life in the village with her mother and grandfather will continue to meet her needs when she is much older is a question that cannot be answered at this time.
- [98] What Gold River does not offer A is the opportunity to be parented by her father in a shared parenting arrangement. A needs her relationship with her father, just as she needs her relationship with her mother. Terms can be imposed to protect her relationship with her father, to the extent possible.
- [99] Ms. L's history of problematic conduct is what makes the decision in this case a difficult one. That conduct has been directed at Mr. T, but A has felt some of the repercussions. It is important that there are no signs that Ms. L's conduct to date has alienated A from her father. If that were to occur, a different decision might be called for. As matters stand, my concerns with Ms. L's conduct do not lead me to conclude that A must reside with her father for the preservation of both parenting relationships.
- [100] I conclude that the parenting arrangement that will best serve A's interests and needs is for her to reside with her mother in Gold River while school is in session. Mr. T should have substantial parenting time on weekends and during school holidays.

- [101] It should not be up to Ms. L to decide when Mr. T will have parenting time. His working situation is presently in flux. I direct that he will have parenting time on long weekends and one additional weekend each month, while school is in session. When school is not in session, Mr. T should have two-thirds of the parenting time. I provide further details of this order later in these reasons.
- [102] Parenting responsibilities as defined in s. 41 of the FLA should be equally shared. I do not accept Ms. L's proposal that she be given the power to make major decisions. The proposal reflects Ms. L's view of herself as the primary parent, and I do not think that view is appropriate. The better view is that Ms. L and Mr. T are co-parents, with Ms. L having the greater share of parenting time while A is in school. The solution to the lack of communication that has been a feature of this case to date is more communication, not to put Ms. L in the driver's seat.
- [103] The evidence does not disclose any instance of consultation by Ms. L with Mr. T concerning a parenting proposal. For example, Ms. L does not appear to have provided to Mr. T with information concerning possible recreational programs before enrolling A. So far as the evidence reveals, it is not that the parties have been unable to agree, it is that they have not even engaged in discussion. This must change.
- [104] When consultation occurs, there will probably sometimes be disagreement. As proposed by Mr. T, I direct the appointment of a parenting coordinator pursuant to s. 15 of the FLA. I will address details of the appointment at the conclusion of these reasons.
- [105] On September 5, 2019, Master Dick made a conduct order addressing the parties' dealings with one another and with A. On the evidence before me, that order was amply justified and, for the avoidance of any uncertainty, I will reiterate paragraphs 5, 6 and 7 of Master Dick's order.

Child Support

- [106] The parties agree that child support is payable by Mr. T pursuant to the Federal Child Support Guidelines [Guidelines]; FLA, ss. 147 and 150. They disagree as to the extent to which an order for support should be retrospective and the incomes of the parties for the purpose of determining the support payable under the Guidelines.

The Retrospectivity Issue

- [107] Ms. L seeks an order that Mr. T's obligation to pay support pursuant to the Guidelines commencing as of May 2017, when she left Mr. T's house in Trail to live in Rossland. Mr. T submits that his obligation to pay support pursuant to the Guidelines began in April 2018, when Ms. L first made demand through her counsel.

[108] The governing authority is *D.B.S. v. S.R.G.*, 2006 SCC 37, at paras. 131-135. Absent blameworthy conduct on the part of the paying party, the general rule is that a retroactive award, where justified, will be made effective at the date that effective demand was made.

[109] There is no reason in this case to depart from the general rule. Mr. T recognized his moral obligation to pay support when Ms. L moved out. He gave her the use of a credit card and made some cash support payments to her. It appears that neither he nor Ms. L were aware of the Guidelines or considered their possible application before April 2018. At that time, Mr. T began making regular monthly payments consistent with the Guidelines, as he understood them.

[110] I hold that Mr. T's obligation to pay support pursuant to the Guidelines commenced in April 2018.

The Parties' Incomes

[111] There is no dispute as to the parties' actual incomes since April 2018. The issue is whether additional income should be imputed to Mr. T during the times he could have been working at Kearn Lake but was not.

[112] Pursuant to s. 16(1) of the Guidelines, the starting point for the determination of the parties' incomes is the amount found at line 150 of their income tax returns. The parties' incomes for the past three years as recorded at line 150 of their income tax assessments are as follows:

Year

Ms. L

Mr. T

2017

10,804

207,114

2018

14,865

151,612

2019

31,817

84,959

- [113] Mr. T's income dropped dramatically in 2019 because he was no longer working at Kearl Lake. He testified that he took a leave of absence from Kearl Lake in November 2018, and moved to Victoria in order to have more parenting time with A.
- [114] While final 2020 income figures are not yet available, the parties agree that support should be determined on the basis of Ms. L's 2019 income. Mr. T proposes that he have imputed to him in 2020 an income of \$90,000. Ms. L says it should be the much larger amount he could earn working at Kearl Lake.
- [115] Mr. T returned to Kearl Lake in late 2019 and early in 2020, because he was subject to interim orders to pay child support based on an income of \$151,611. I do not have evidence as to how much he actually earned in this period. It does not appear to me that he was in Kearl Lake for very long, and he was subsequently off work for a time due to the Covid-19 pandemic.
- [116] Section 19(1) provides for imputation of income. Subsection (a) deals with the case of a payor who is intentionally under-employed or unemployed, with an exception for under-employment or employment required by the needs of the child, or by the reasonable education or health needs of the payor. It provides:
- 19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- [117] In *Shapiro v. Shapiro*, 2016 BCSC 211 at para. 176, Justice Adair summarized the approach taken in the cases that have considered this issue. She stated:
- [176] The basic principles concerning imputing income to a parent, where it appears that the parent is underemployed, are well-known, and include the following:
- (a) there is a duty to seek employment where a parent is healthy and there is no reason why the parent cannot work;
 - (b) when imputing income on the basis of intentional unemployment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work and other obligations;
 - (c) a desire simply to stay home with a child is not sufficient to invoke the exception in s. 19(1) (a) of the Guidelines. A parent who chooses to work less than full-time must justify that choice by evidence of the needs of the children;

(d) bad faith is not required, and a parent is intentionally under-employed if the parent chooses to earn less than he or she is capable of earning.

[118] I accept Mr. T's evidence that he took lower-paying employment in Victoria in late 2018 to facilitate his parenting of A. In my view, this was a reasonable choice that was justified by A's needs in the circumstances. The move facilitated establishment of the shared parenting relationship from which A benefitted. A's physical needs were secured and putting her relationship with her father on a sounder footing was more important to her well-being than the additional child support that would have been payable by her father. Mr. T's move to Victoria was justified by A's needs, and he should not be considered as intentionally under-employed in the circumstances.

[119] Accordingly, I find that Mr. T's Guidelines income was his line 150 income in 2019 and \$90,000 in 2020.

Conclusions Concerning Child Support payable by Mr. T

[120] Under the Guidelines, the child support payable by Mr. T based on my findings changed when shared parenting began in February 2019. It will change again with this judgment and the end of shared parenting. I must also consider whether Mr. T should continue to have an imputed income of \$90,000 going forward.

[121] I find that a set-off approach is a fair way to determine the child support payable by Mr. T during the period of shared custody, having regard to the considerations listed in s. 9 of the Guidelines. Accordingly, child support was payable from April 2018 through August 2020 as follows (using the 2019 income figures to calculate support payable in 2020):

- a) April to December 2018: \$1,369 per month;
- b) January to February 2019: \$813 per month;
- c) March to December 2019: \$515 per month;
- d) January to August 2020: \$515 per month.

[122] Totalling these amounts, the child support payable by Mr. T from August 2018 through August 2020 inclusive was \$23,217. Over this period, Mr. T paid child support, voluntarily and pursuant to various interim orders, totalling \$18,511. He is \$4,706 in arrears.

Child Support going Forward

[123] Going forward, Mr. T intends to remain in Victoria, where he can expect to earn approximately \$90,000 per year. If he were to return to work at Kearl Lake, he could earn \$150,000 to \$200,000. He testified and I accept that he does not intend to return to Kearl Lake. With the end of the shared parenting arrangement, will he be intentionally under-employed?

- [124] Traditionally, the work schedule at Kearl Lake has involved 10 days at the facility, followed by 10 days off. The employer pays for flights to and from either Edmonton or Calgary. It is common for employees to live elsewhere in Canada, flying or driving to Edmonton or Calgary at their own expense. Employees would spend at least a day getting to and from Kearl Lake, so that they would usually have 8 days at home between shifts.
- [125] With the Covid-19 pandemic, the facility is currently working shifts of 16 days on and off. In 2021, this is expected to change to 14 days on and off. For employees who live far from Edmonton or Calgary, the travel is presently burdensome. Ms. Lambert, who lives in Kelowna and works at Kearl Lake, testified that she is driving from Kelowna to Calgary, presumably to avoid the risk of infection associated with an additional flight.
- [126] While at the facility, employees work 12 hours day, not including time spent commuting between the camp and the worksite. During the pandemic, employees are not permitted to eat in the dining hall at camp and must take meals in their rooms.
- [127] As I have noted, Mr. T missed parenting time in the spring of 2020 because he was required to self-isolate following a Covid-19 outbreak at the Kearl Lake facility.
- [128] In my opinion, Mr. T will not be intentionally under-employed if he chooses not to return to the Kearl Lake facility at this time. It is not unreasonable for him to choose to continue to live in Victoria, where he has an apartment. Driving between Victoria and Calgary for each rotation is not reasonable, and, like Ms. Lambert, Mr. T is justified in wishing to avoid the health risks associated with commercial air travel while the Covid-19 pandemic continues. Having regard to health orders made at the time of the outbreak in April 2020, that there is probably also some elevated risk of becoming infected at the work camp itself, by comparison to employment on Vancouver Island.
- [129] A healthy individual might choose to run these risks, but I do not think it is unreasonable for Mr. T to choose to avoid them. I do not think his duty to seek employment and pay child support requires him to run these risks to obtain the higher wages paid at Kearl Lake.
- [130] I conclude that Mr. T should have imputed to him an annual income of \$90,000 going forward. Under the Guidelines, with the end of shared parenting, he must pay child support of \$860 per month. The child support payable by him should be subject to annual review, or earlier in the event of a material change of circumstance. Mr. T should be required to notify Ms. L immediately in the event of a change in his employment status and to provide to her details of his current pay.

Spousal Support

- [131] Ms. L claims spousal support from Mr. T. So far as the evidence discloses, she first advanced this claim in her notice of family claim filed on July 11, 2018.

[132] The considerations bearing on the retrospectivity of a spousal support award parallel those in respect of a child support award, except that lack of notice that a claim will be brought weighs even more heavily in this context; *Kerr v. Baranow*, 2011 SCC 10 at paras. 207-208. In this case, an award of spousal support should not pre-date the notice given in July 2018.

[133] The parties were spouses as defined in the FLA. The following provisions of the FLA set out the law governing Ms. L's claim for spousal support:

Duty to provide support for entitled spouse

160 If, after considering the objectives set out in section 161 [objectives of spousal support], a spouse is entitled to spousal support, the other spouse has a duty to provide support for the spouse in accordance with section 162 [determining spousal support].

Objectives of spousal support

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

Determining spousal support

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[134] The cases distinguish support ordered on "compensatory" and "non-compensatory" grounds; *Chutter v. Chutter*, 2008 BCCA 507 at paras. 47-61. Compensatory support is ordered to compensate a spouse for economic disadvantage incurred in consequence of the relationship, or economic advantage conferred on the other spouse. Non-compensatory support is ordered on the basis of the respective needs and means of the spouses.

- [135] In my view, the circumstances of this case do not support an award of support on a non-compensatory basis. This was a short term relationship during which Mr. T acted as the breadwinner. Ms. L was living a peripatetic existence beforehand; she refers to herself in this period as a "gypsy traveller". Moving in with Mr. T gave her access to a higher standard of living for the short duration of the relationship. She has been able to support herself, with financial assistance from her father, since then.
- [136] I turn to consideration of economic disadvantage resulting from the relationship. In my judgment, Ms. L has not suffered vocational setbacks in consequence of her relationship with Mr. T. She now works at a community pool where she was recently promoted to head lifeguard, and also works part-time as a paramedic. These are occupations to which she is well suited and that she plainly enjoys.
- [137] Ms. L has not suffered financial hardship in consequence of the breakdown of the relationship. Within a short time, she was economically self-sufficient and is presently improving herself. She is taking courses to upgrade her qualifications as a paramedic. She anticipates that her income in the coming year will increase to \$40,000 or \$45,000.
- [138] Until February 2019, Ms. L was the primary parent with the responsibilities that entails. I think that role may have delayed her pursuit of the career goals she is now pursuing. This would have had some financial consequences for her. Those consequences were no longer being felt by the time of trial when A was about to begin school and Ms. L had obtained full time employment and settled on her path forward.
- [139] In my view, Ms. L is entitled to a modest, time-limited award of spousal support to compensate her in this regard. I award her \$500 per month for the period from August 2018 through August 2020 (25 months). This is substantially less than the range suggested by the Spousal Support Advisory Guidelines for the five months of this period in 2018, and slightly more than the mid-point of the range for the remaining 20 months in 2019 and 2020. Over the entire period, the award totals \$12,500, falling below the mid-point and well within the range.
- [140] Mr. T is entitled to a credit of \$8,500 for spousal support paid pursuant to interim orders. The net amount owing by Mr. T is \$4,000.

Ownership of the Pet Dog

- [141] While spouses may be deeply attached to a pet, in law the pet is personal property of one or the other or both spouses; *Thompson v. Thompson*, 2005 BCSC 1604 at para. 4; *Brown v. Larochelle*, 2017 BCPC 115 at paras. 11-14. Deciding which spouse will have the pet on termination of a spousal relationship is a problem of division of assets. The court has no jurisdiction to approach the matter as a problem of "custody" (much less "parenting").

- [142] In this case, the pet is Kona, a six year old dog brought into the relationship by Mr. T. Kona passed back and forth between the parties several times following the separation, and has been in Ms. L's possession since August 2018. Mr. T hoped for an arrangement under which Kona would accompany A back and forth between the households, but Ms. L was not agreeable. There is no evidence that Mr. T gifted Kona to Ms. L.
- [143] Part 5 of the FLA addresses the division of property on the termination of a spousal relationship. Kona is the only remaining contested property.
- [144] Pursuant to s. 85(1)(a) of the FLA, Kona is "excluded property", that is, property that belonged to Mr. T at the beginning of the relationship and that continues to belong to him. If Kona increased in value during the relationship, the increase in value would belong to both parties, but there is no evidence of that.
- [145] Pursuant to s. 97 of the FLA I declare that Mr. T owns Kona and order Ms. L to deliver Kona to Mr. T.

Disposition

[146] For these reasons, I order as follows:

- a) Ms. L and Mr. T are the guardians of A.
- b) Each of Ms. L and Mr. T may exercise all parental responsibilities, as set out in s. 41 of the FLA, with respect to A in consultation with the other guardian, unless consultation would be inappropriate or unreasonable in the circumstances, provided that the parent having care of A at a particular time, as provided in this order, may make day-to-day decisions and have day-to-day care, supervision and control of A without consultation.
- c) Within 30 days of this order, the parties will agree on the identity and retainer of a parenting coordinator to assist in the implementation of this order, the resolution of any disagreements concerning the exercise of parental responsibilities, as provided in this order, and such other matters as the parties may agree in writing.
- d) The reasonable costs of the parenting coordinator will be shared equally by the parties. If one party refuses to pay his or her share, the other party may pay it and claim it from the party who refused to pay.
- e) If the parties have not agreed on the identity of a parenting coordinator within 30 days of this order, either party may apply to court to determine who will be appointed as parenting coordinator and on what contractual basis.
- f) A will reside with Ms. L in Gold River while school is in session.
- g) While school is in session, A will have parenting time with Mr. T as follows:

- i. Every long weekend, including long weekends attributable to Pro-D days, from the evening preceding the long weekend until the last afternoon of the long weekend;
- ii. In addition, one weekend per month to be chosen by Mr. T, from the Friday evening to the Sunday afternoon;
- iii. Provided that Mr. T will notify Ms. L of the weekends chosen by him for parenting time by text or email, at least 7 days in advance.
- h) When school is not in session, A will have two-thirds of her parenting time with Mr. T, and one-third of her parenting time with Ms. L (in both cases rounded to the nearest whole day), on dates to be chosen by Mr. T and notified to Ms. L by email at least 30 days in advance.
- i) The parenting schedule provided by this order may be varied by written agreement between the parties expressed by text, email, or otherwise in writing.
- j) Unless the parties agree otherwise, transitions of A from Ms. L's care to Mr. T's care shall be at the Coombs Market (Old Country Market) in Coombs, between 6:30 pm and 7:00 pm, and transitions of A from Mr. T's care to Ms. L's care shall be at the Petro Canada station in Buckley Bay between 3:00 pm and 3:30 pm.
- k) The parties shall: (a) put the best interests of A before their own interests; (b) encourage A to have a good relationship with the other parent and speak to A about the other parent and any partner of the other parent in a positive and respectful manner; and (c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of A.
- l) The parties will not: (a) question A about the other parent or time spent with the other parent beyond simple conversational questions; (b) discuss with A any inappropriate adult, court or legal matters; or (c) blame, criticize or disparage the other parent to A.
- m) The parties will encourage their respective families to refrain from any negative comments about the other parent and his or her extended family, and from discussion in front of A concerning family issues or litigation.
- n) Mr. T was liable to pay Ms. L child support as follows:
 - i. April to December 2018: \$1,369 per month;
 - ii. January to February 2019: \$813 per month;
 - iii. March to December 2019: \$515 per month;
 - iv. January to August 2020: \$515 per month.
- o) Mr. T is in arrears of the payment of child support for the period from April 2018 through August 2020 in the amount of \$4,706.

- p) Effective September 1, 2020, Mr. T is liable to pay Ms. L child support of \$860 per month until further order of the court;
- q) Mr. T's obligation to pay child support is subject to annual review, or earlier in the event of a material change of circumstance.
- r) The parties will exchange income tax assessments annually upon receipt of a notice of assessment.
- s) Mr. T will notify Ms. L immediately in the event of a change in his employment status and to provide to her details of his current pay.
- t) Mr. T was liable to pay Ms. L spousal support of \$500 per month for the period from August 2018 through August 2020 and no further.
- u) Mr. T is in arrears of his obligation to pay spousal support to Ms. L in the amount of \$4,000.
- v) Mr. T owns the dog, "Kona". Ms. L will deliver Kona to Mr. T.

[147] Unless there are matters pertaining to costs to be brought to my attention, I would dispose of costs as follows. Ms. L has achieved substantial success at this trial, but not at several of the interlocutory applications, and she obtained a protection order improperly as I have indicated. I would award her costs of the trial, the Judicial Case Conference before Bernard J. on February 19, 2019, and the application before Master Dick on October 31, 2019, excluding all other applications. I would award Mr. T costs of the applications before Master Vos on February 22, 2019 and Baird J. on February 10, 2020, to be set off against the costs payable by Mr. T to Ms. L.

"Gomery J."

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