

CANADA / JUDGMENT

Havelette v. Morrison

2024 BCSC 319

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 319 Havelette v. Morrison

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Havelette v. Morrison,

2024 BCSC 319

Date: 20240226

Docket: E59512

Registry: New Westminster

Between:

Keven Havelette

Claimant

And

Barbara Nicole Morrison

Respondent

Before: The Honourable Justice A. Ross

Reasons for Judgment

The Claimant, appearing in person:

K. Havelette

Counsel for the Respondent:

Q. Chen

K. Marshall, Articled Student

Place and Date of Trial/Hearing:

Abbotsford, BC.

January 22-26 and 29, 2024

Place and Date of Judgment:

New Westminster, BC.

February 26, 2024

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Introduction

- [1] On this family law trial, the respondent seeks an order permitting her to relocate to Liverpool, UK, with her son, Ethan. She also seeks an order changing Ethan's last name. She wishes to hyphenate the name to add her last name. The claimant, who is the Ethan's father, opposes both the relocation and the name change.
- [2] As discussed below, the parties were not married. Hence, these reasons address the relocation provisions of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The parties have an interim parenting agreement that provides for division of parenting time with the respondent having 60 percent and the claimant having 40 percent. As a result of that agreement, the provisions of Part 6 of the FLA apply. I explore those provisions below. As explained below, the respondent bears the onus of establishing that the relocation would be in the child's best interests.

- [3] I note that the order of proceeding in this trial was adjusted from the usual. Although Mr. Havelette is the claimant in the action, Dr. Morrison's application to relocate dominated the trial. Hence, her case proceeded first.
- [4] For the reasons set out below, I dismiss the respondent's application to relocate with the child and her application to change the child's name.

Issues

- [5] I address below the following issues:
- a) Should the proposed relocation be granted?
 - i. Is the proposed relocation made in good faith? (s. 69(4)(a) and s. 69(6))
 - ii. Has the respondent proposed a reasonable and workable arrangement? (s. 69(4)(a)(ii))
 - iii. Is the relocation in the best interests of the child? (s. 69(5)(a)-(b))
 - b) Should the change of name be ordered?

The Parties and Other Significant People

- [6] Ethan, the subject of this trial, was born November 20, 2018. He is five years old. He attends kindergarten in Langley. He is, by all accounts, a well-adjusted and happy kindergartener. He has a strong bond with both his parents.
- [7] Ethan's parents are the claimant, Mr. Havelette, and the respondent, Dr. Morrison. For context, at the time of Ethan's birth, his parents had been in a relationship for approximately 10 months. The relationship ended when Ethan was 14 months old. The entire relationship was less than 24 months. Since the end of that relationship, each party has moved on to a new relationship.
- [8] The claimant is 35 years old. He was born in Switzerland. He holds Swiss, French, and Canadian citizenship. Prior to moving to Canada, he trained as a wine-maker in his home country. He first came to Canada in 2010. He shuttled back and forth to Switzerland over the next seven years. He then came to Canada in January 2018 on a six-month tourist visa. He met the respondent on a ski trip to Whistler in February, and they quickly began a serious relationship. Soon after, the respondent became pregnant. He applied for a work permit in 2018. Then, with the impending birth of Ethan, he applied for permanent resident status on the basis of his relationship with the respondent. When the parties' relationship ended in January 2020, he had to pursue other immigration avenues. He ultimately obtained permanent residence status in 2021 and citizenship in 2023.
- [9] The claimant is now married to Janelle, who is originally from Australia and is now a Canadian citizen. They have an 18-month-old son, and they are expecting a daughter in May 2024. They reside in a rented townhome in Langley that is close to Ethan's current school.

- [10] The respondent is 41 years old. She has been in formal post-secondary education since 2000. She holds a B.Sc., Masters, and Ph.D. all from the University of British Columbia ("UBC"). She completed her Ph.D. in 2021 at the Department of Experimental Medicine, Faculty of Medicine, UBC. She is a research scientist. Her field of research is the cardiac health of masters athletes. As discussed below, her area of research is sufficiently narrow that her career prospects in this province are limited.
- [11] Since 2021, the respondent has worked as a post-doctorate fellow in the Department of Kinesiology, Trinity Western University. She has also worked on a part-time basis as a Clinical Exercise Physiologist in the department of Cardiology, BC Children's Hospital. She has been unemployed for stretches, including a large part of 2023.
- [12] The respondent is engaged to marry Dr. David Oxoborough. He is 46 years old. He is a professor at the Liverpool John Moores University ("LJMU"). He also has a clinical practice on a fee-for-service basis. He has three children from his former marriage, aged 21, 17, and 14. He owns a five-bedroom home in the suburban Village of Hooton, a short drive or train ride to Liverpool.
- [13] As discussed below, the respondent's plan is to relocate to the Liverpool area and live with Dr. Oxoborough.

Factual Background and Chronology

- [14] The chronology of the relationship of the parties is as follows:
- a) February 2018: The two met on a ski trip to Whistler and began dating.
 - b) End of March 2018: The respondent became pregnant.
 - c) June 26, 2018: The parties began cohabiting in downtown Vancouver.
 - d) November 20, 2018: Ethan was born.
 - e) The respondent says that she was the primary caregiver for Ethan in the first three months and over the first year (to November 2019). She returned to work in May 2020, but took Ethan to her job and arranged childcare. The claimant notes that he arranged his work schedule to provide as much parenting as possible.
 - f) January, 6, 2020: The respondent travelled to Liverpool for a three-month internship. She took Ethan, who was then 14 months old.
 - g) January 25, 2020: The respondent texted the claimant and ended their relationship. (I infer from the evidence that the relationship was on rocky ground before her departure for the UK.)
 - h) The claimant commenced this proceeding in March 2020 before the respondent's return. He obtained an ex parte order declaring himself as a guardian of Ethan.

- i) March 2020: The Covid-19 pandemic gripped the world.
- j) March 16, 2020: The respondent returned from the UK with Ethan. The respondent self-isolated with Ethan for 14 days. Ethan was not sick upon arrival, but became sick soon thereafter. He was not tested to determine whether he had Covid-19, but the parties worked on the assumption that he did. As discussed below, the claimant complained about Ethan's quarantine and raised it as an issue in the trial.
- k) April 7, 2020: The parties agreed to a consent order providing that, on an interim basis, neither party would remove Ethan from BC subject to a further order of the court or written agreement between the parties (the "Interim Non-Removal Order"). The evidence establishes that, at that time, each party was concerned about the prospect of the other party leaving with Ethan.
- l) March 30-October 27, 2020: The parties were in negotiations toward a parenting agreement.
- m) October 27, 2020: The parties filed with this Court a parenting agreement which addressed many issues, including relocation (the "October 2020 Parenting Agreement"). That agreement recognized that the Interim Non-Removal Order would continue "such that Ethan may not be removed from B.C. without written agreement of both parties or a Court Order." I discuss the terms of that agreement below.
- n) The claimant began dating Janelle in the summer of 2020, and they moved in together in the fall of 2020. As noted, they have an 18-month-old son. When the claimant has parenting time, the two boys are together.
- o) Since her initial internship in 2020, the respondent and Dr. Oxoborough have seen each other on approximately 15 occasions. At first, due to the pandemic, travel was not permitted. Since October 2021, they have visited either in BC or the UK or San Francisco. They became engaged in 2023. During some of the visits, Ethan met Dr. Oxoborough's three children. Dr. Oxoborough testified that his children formed a good bond with Ethan.
- p) In late August 2022, the respondent delivered notice of her intention to relocate as required under the FLA. She also delivered a proposed agreement on the terms of her move. That notice became the subject of this trial.

Credibility, Reliability and Disputes between the Parties

- [15] Neither party argues that credibility or reliability are significantly in issue. However, to the extent that either party argued that there were credibility issues, I did not perceive them to exist. To the contrary, I felt that all witnesses provided credible evidence.
- [16] I pause to note that I was particularly impressed with the evidence of both Dr. Oxoborough and Janelle Havelette, each of whom struck me as a caring and loving parent and partner.

- [17] Although credibility was not an issue, there are some nuances to the narrative of each side. In general:
- a) the respondent paints the claimant as unreasonable and rigid;
 - b) the claimant paints the respondent as controlling and unnecessarily confrontational; and
 - c) neither side acknowledges being a contributing factor to any of the issues.
- [18] I will set out below the specific issues that were raised by the parties at trial. Each side attempted to diminish the other's parenting abilities by reference to the disputes discussed below.
- [19] For the context of my forthcoming discussion, it is important to understand that the issue of relocation has been on the table from the very beginning. In 2020, there was a mutual fear that the other party would depart with Ethan. The respondent indicated her intention to move to the UK soon after her return to BC in March 2020. The claimant feared that the respondent would decamp to Liverpool. The respondent, in turn, feared the claimant may relocate with Ethan, given his French and Swiss citizenship.
- [20] In that vein, I infer that, following the end of their relationship, the prospect of relocation loomed over all of the communications between the parties. Each party realized that they would eventually end up in this trial and face the prospect of losing primary care of Ethan. The respondent was unwilling to cede ground that would jeopardize her ultimate application. The claimant proceeded under the same weight.
- [21] It is not unusual for ex-partners to have testy communications. In this case, those issues evolved against the backdrop of the probable relocation application. It is not surprising that emotions were heightened, and positions were hardened. In short, the stakes were, and are, very high. As a result, I read the written communications within that context.
- [22] Further, I find that each side has been looking out for the best interests of Ethan, as each party perceives those interests. I discuss below the claimant's allegations of "family violence" (as that term is described in the FLA). To be clear, all such allegations arise from the exchange of emails and texts about Ethan's future.
- [23] I find it convenient to place some further context here. Four years have passed since the end of the parties' relationship. Ethan has grown from a baby to a kindergartener. It is not surprising that the communications between the parties has evolved during that span.
- [24] For example, when the respondent ended the relationship in January 2020, the claimant, reasonably, felt that his life had collapsed. He faced the loss of his romantic relationship, his son, and his opportunity to immigrate to Canada. At that time the plan was for the respondent to sponsor his immigration application on a spousal basis. In that context, it is not surprising that emotions would run high during the first months. To their credit, the parties negotiated the October 2020 Parenting Agreement within six months of the respondent's return from the UK.

- [25] The parties directed me to the disputes that I discuss below. I infer the examples addressed at trial constitute the best (or worst) examples of the unreasonableness of the other party.
- [26] With that context in mind, I set out below the communication issues raised by each party. Again, I infer that each side wished me to look unfavourably upon the position taken by the other party.

Return to Vancouver from the UK in March 2020

- [27] First, the claimant alleges that, upon the respondent's return from the UK in March 2020, she improperly withheld Ethan. She did not let the claimant see Ethan for a further 21 days. The claimant says that the respondent used a self-imposed isolation that was not required by the government. As a result, he says that in a time when many aspects of his life had collapsed, his isolation from his son was unnecessarily extended from 68 days (while the respondent was in England) to 89 days.
- [28] The claimant says that there was no government mandated quarantine at the time of the respondent's return to Vancouver. In support of that position, he points to a government of Canada requirement that was imposed on March 20, 2020, four days after the respondent returned.
- [29] I addressed this issue with the claimant during the trial. I noted that the Covid-19 situation in March 2020 was extremely concerning and very fluid. I am deemed to know the laws of the province. I noted that the province published a formal notice under the Public Health Act, S.B.C. 2008, c. 28, on March 17, 2020, which required any person who travelled outside Canada and returned after March 12, 2020, to remain at their home, or a similar place, and avoid contact with others. The respondent returned with Ethan on March 16, 2020. There was substantial instruction from the province requiring returnees to self-isolate upon her return.
- [30] Although Ethan was not sick upon his return, he soon became very ill. He was not tested for Covid-19, but the parties assumed that he had it.
- [31] In my opinion, the respondent did nothing wrong upon her return to BC. She was acting reasonably and pursuant to the instructions of the provincial authorities. This episode says more about the claimant than the respondent. I consider his criticism of the respondent to be unwarranted. However, given the state of his life at that time, I also understand that the claimant was desperate to see his young son.

FaceTime Calls during the Claimant's Parenting Time

- [32] The respondent complains about the claimant's ongoing refusal to allow Ethan to have phone calls with her during the claimant's parenting days.

- [33] The October 2020 Parenting Agreement provides that each party will use "try their best" to facilitate a call between Ethan and the other party. The respondent says that the claimant refuses to follow this part of the agreement. She argues that this is an indication of the claimant being unable, or unwilling, to comply with parenting agreements. I return to this topic below.
- [34] The claimant does not deny the respondent's allegations. He puts forward various reasons for the lack of calls from Ethan to his mother:
- The calls would come during his parenting time, which is limited to 40 percent. He has long sought to have equal (50/50) parenting time, but the respondent has refused. He feels that he should be entitled to the full value of his 40 percent.
 - His home is busy, and, with two young boys, there are many activities on the go. He does not want to interrupt those activities to the benefit of the respondent.
 - Ethan would often become sad after phoning his mother (presumably because he missed her).
 - Given the current parenting schedule, Ethan is rarely away from his mother more than two nights in a row. Hence, the respondent is seeking a call with Ethan virtually every day, despite having had time with him within 24 hours.
- [35] In cross-examination, an exchange of texts was put to the claimant. In that exchange, he wrote that he does not facilitate the video calls with Ethan because he does not want to. In questioning, he agreed that that was his position.
- [36] I accept that this evidence suggests that, on some issues, the claimant tends to ignore the agreement between the parties. However, I also accept that, in large part, over the past three years, both parties have adhered to both the spirit and the letter of their agreements.

Covid-19 Vaccine

- [37] The respondent points to the claimant's refusal to consent to Ethan being vaccinated against Covid-19. She submits that this was a position that was not in Ethan's best interests.
- [38] The claimant does not dispute that he took this position. He explains that, by the time the vaccine was recommended for children of Ethan's age, Ethan had already had Covid-19 on two occasions. The first, presumed, infection was upon his return from the UK in March 2020. The second, confirmed, case happened later.
- [39] The claimant testified that his position took three things into account:
- Covid-19 posed a minimal risk to young children;
 - Ethan had been exposed to two variants of the disease; and
 - the long-term effects of the vaccine were unknown.

- [40] Factoring in those considerations, he felt that Ethan faced more risk from getting the vaccine than from not getting it.
- [41] To be clear, I do not accept that a person's "feelings" about the Covid-19 vaccine should outweigh public health orders or the research of a variety of nations. Further, at a different stage of the pandemic, I might well have considered this position to disqualify the claimant from parenting decisions. However, the provincial state of emergency regarding Covid-19 ended on June 30, 2021. As of the date of trial, the disease poses only a minor risk to otherwise healthy children. I discuss the vaccination issue later in these reasons.

Consent Forms for Kindergarten

- [42] The respondent also raises an issue regarding the claimant's response to one of the first communications from Ethan's kindergarten. For context, the October 2020 Parenting Agreement provides that issues relating to Ethan's educational needs require the "mutual consent of both parents".
- [43] In August/September 2023, before the start of kindergarten, the school emailed a consent form to both parents and requested a response as soon as possible. The consent form related to three separate issues. The respondent forwarded her thoughts to the claimant and requested his opinion. She waited five days. When she had not heard from the claimant, she replied to the school's email indicating her consent on all three issues. She then advised the claimant of what she had done.
- [44] The claimant, within a day, emailed the respondent indicating that he had phoned the principal of the school to withdraw his consent on one of the three issues. He also sent an angry email to the respondent indicating that she had overstepped her authority by providing her individual consent.
- [45] I note that the claimant did not respond to the school for five days, but immediately responded to the respondent once she provided her consent. That sequence and timing suggests that the claimant was spoiling for a dispute with the respondent.
- [46] I set out above my inference that the nerves of the parties have been frayed. I further infer that those feelings were heightened at the beginning of Ethan's schooling. That timing overlapped with the parties' preparation for this trial. I again infer that the claimant saw any move by the respondent as a possible incursion into his parenting and decision-making authority.

Allegation of "Family Violence"

- [47] The claimant raises an allegation of family violence. To be clear, the violence he alleges relates to the impact that the separation and litigation have had on him.

- [48] During his testimony, the claimant explained that his concept of "family violence" comprises the respondent's demands (or requests) regarding parenting issues and her threats to have those matters (including relocation) resolved in court. Those threats caused the claimant to suffer anxiety and some degree of depression. Again, I infer that it was the underlying prospect of Ethan's relocation that was the source of those emotional reactions. I heard no expert medical evidence.
- [49] I addressed the other disputes between the parties above. Apart from those disputes, I was not directed to any evidence that would form the basis to support an allegation that the respondent's communications, verbal or written, were in any way threatening.
- [50] In my opinion, there is no evidence of "family violence" as that term is broadly defined in the FLA.

Summary of Issues relating to Credibility, Reliability and Disputes Between the Parents

- [51] In summary, I accept that each side has complaints about the other. I further accept that the claimant has taken some steps that are worthy of criticism. I note, in particular, the refusal to consent to the Covid-19 vaccination. However, given the stretch of time that has elapsed since the end of their relationship, the high-stakes nature of the relocation proceeding and the relatively benign nature of the disputes I have canvassed, it is my opinion that none of the complaints rises to the point of affecting my decision regarding the best interests of the child. I consider both of the parties to be competent parents. I have no reason to doubt that the parties will abide by any order of this court and look out for Ethan's best interests.

The Proposed Relocation

Legal Analysis

- [52] As noted at the outset, this application for relocation is made under the provisions of the FLA. Those provisions are somewhat circular and can be confusing. To simplify my discussion, I will briefly set out the areas that are not in dispute:
- a) Neither party submits that the opposing party is an unfit parent.
 - b) Section 66 requires that proper notice be provided of the plan to relocate. The sufficiency of notice is not in dispute.
 - c) The October 2020 Parenting Agreement provides for parenting time shared on a 60/40 ratio. The parties agree that that the 60/40 ratio constitutes "substantially equal" parenting time for the purpose of the FLA. (See *D.T.S. v. S.P.M.*, 2022 BCSC 547 at para. 36).

- d) As discussed in detail below, the main focus of the analysis is determined by whether the relocation is in the best interests of the child. The FLA shifts the onus of establishing those best interests depending on whether the parents have "substantially equal parenting time" or not (s. 69(5)-(6)).
- e) In this case, the onus lies with the respondent (relocating party) to establish that the relocation is in the best interests of the child because parenting time is "substantially equal".
- f) Further, pursuant to s. 69(7) of the FLA, I am not considering whether the respondent will relocate to the UK if the child's relocation is not permitted. In other words, the question before me is whether Ethan should be permitted to relocate to the UK with his mother, or not. I must assume that the respondent will relocate regardless of the decision.

[53] With those issues in mind, I proceed to address the following questions:

- a) Is the proposed relocation made in good faith? (s. 69(4)(a) and s. 69(6))
- b) Has the respondent proposed a reasonable and workable arrangement? (s. 69(4)(a)(ii))
- c) Is the relocation in the best interests of the child? (s. 69(5)(a)-(b))

Good Faith

[54] The respondent bears the onus of establishing that the proposed relocation is planned in good faith: FLA, s. 69(4)(a)(i).

[55] The term "good faith" is modified by s. 69(6) which provides:

For the purposes of determining if the proposed relocation is made in good faith, the court must consider all relevant factors, including the following:

- (a) the reasons for the proposed relocation;
- (b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;
- (c) whether notice was given under section 66 [notice of relocation];
- (d) any restrictions on relocation contained in a written agreement or an order.

Reasons for the Proposed Relocation

[56] I am satisfied that the respondent has legitimate reasons for wanting to move to the UK:

- a) She has a serious relationship in Liverpool. She is engaged to be married to Dr. Oxoborough.
- b) She also has good career opportunities in the Liverpool area. Based on the evidence, I am satisfied that she has greater career opportunities in England than those available in Lower Mainland. The evidence established that the respondent's area of research falls more into the mainstream of research and clinical practice in Europe. In Canada, more of the research

and clinical practice is performed by medical doctors as opposed to Ph.Ds. Hence, the respondent's career opportunities in BC are limited. I am satisfied that there are more, and better, positions available to the respondent in the Liverpool area.

Impact on the General Quality of Life

- [57] Section 69(6)(b) of the FLA requires me to consider "whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities."
- [58] In my opinion, there is substantial overlap between the issues raised by s. 69(6)(b) and the subsequent consideration of the "best interests of the child" under s. 37. My analysis of the child's best interests is set out later in these reasons. Put another way, I cannot consider whether the move will "enhance" Ethan's quality of life without considering whether the move is in his best interests.
- [59] For that reason, I first address the issues relating to the impact of the move on the respondent, as distinct from Ethan. I delay the majority of the discussion of whether the move will enhance Ethan's life and discuss that issue together with his best interests.
- [60] Dealing with the impact on the respondent, I am satisfied that the move to Liverpool will enhance her quality of life. From a financial perspective, the respondent is confident that she will be able to obtain employment in a university research environment within a relatively short period after arrival in the UK (after sorting any visa issues). Being in a university environment will also enhance her educational opportunities. I am satisfied that she has the prospect of obtaining a research position in Liverpool.
- [61] I am further satisfied that she has applied for a number of positions locally and that she has only been able to secure her current casual position at BC Children's Hospital. I further note that, despite her qualifications, the respondent spent most of last year receiving Employment Insurance benefits.
- [62] Regarding the place of her residence, the respondent is currently living in a basement suite in Langley. She chose that location to be close to Ethan's kindergarten. (I infer that she chose the kindergarten, then moved into the catchment.) When she moves to the UK, she will reside with Dr. Oxoborough in his house in Hooton. I accept that her living situation will be improved by that move.
- [63] I am also satisfied that the respondent's emotional well-being will benefit from moving to be with her fiancé.
- [64] With those matters addressed, I am satisfied that the respondent has met this aspect of the test as it relates to her own personal well-being.
- [65] As to the benefits to Ethan, as a prelude to my consideration of his best interests:

- a) It is probable that the combined income of Dr. Oxoborough and the respondent will represent a higher household income than the respondent has achieved to date. To this extent, the financial circumstances of the household in which Ethan resides would be enhanced.
 - b) I heard evidence that there are excellent schools in the area of Hooton. I accept that evidence. However, I am not convinced that they will be "better" than his current school. Ethan is currently enrolled in French-immersion at James Kennedy Elementary. The respondent conceded that she chose that school after performing the same type of school-related research that she performed to find the good schools around Hooton. On that basis, I am unable to find that Ethan's educational prospects will be enhanced by relocating to the UK.
 - c) As to a consideration of his emotional well-being, any move to the UK will significantly distance Ethan from his father and his father's family including his step-mother, half-brother and soon-to-be half-sister. If I consider the strict wording of the subsection, I am unable to reach the conclusion that such a move would "enhance" his emotional well-being.
- [66] With that said, I do not base my decision solely on the question of whether the move will enhance Ethan's emotional well-being. As I suggested above, I have combined the discussion regarding "good faith" (above) with an overall view of Ethan's best interests (below).

Proper Notice

- [67] As noted above, there is no issue regarding notice.

Restrictions on Relocation Contained in a Written Agreement

- [68] The final aspect of "good faith" is found in s. 69(6)(d) of the FLA; whether there is any restriction in a written agreement.
- [69] As noted above, the issue of relocation with Ethan is considered in the October 2020 Parenting Agreement. The agreement recognizes that the Non-Removal Order of April 7, 2020 remains in place. That order requires either consent from the other parent or an order of the court.
- [70] I also note that the October 2020 Parenting Agreement requires that Ethan will:
- a) "remain immersed in the francophone culture (including language, history, entertainment etc.) while in the care of his father and father's family"; and
 - b) in the English-Canadian culture and language while with his mother.
- [71] I address this issue in more detail below. The respondent's proposal addresses this issue in part. The claimant submits that moving Ethan to Liverpool would diminish his knowledge of his francophone heritage.

[72] Given that the respondent has properly applied to this court for an order allowing relocation, I do not consider the prior agreements and orders to influence my decision.

Summary on "Good Faith"

[73] In summary, I find that the respondent has established that she has valid reasons for the relocation. The relocation will enhance her quality of life. I discuss the other elements, including the combined issues of Ethan's best interests and the enhancement of Ethan's quality of life below.

Reasonable and Workable Arrangements

[74] Pursuant to s. 69(5)(a) and s. 69 (4)(a)(ii) of the FLA, the relocating party must satisfy me that she has:

proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life.

[75] The respondent's proposal is as follows:

- a) Ethan would live with the respondent and her new partner in Hooton.
- b) The parties would both be guardians. There would be shared decision-making, but in the event of a disagreement, the respondent would have final say. If the claimant disagreed, he could seek an order of the court.
- c) Ethan would attend school in, or nearby, Hooton.
- d) The respondent would arrange to use Ethan's school breaks in England to make trips to the Lower Mainland. There are six significant breaks in the English school year. The respondent proposes that the claimant would be entitled to choose four of those breaks and provide notice by January of each year. Those breaks include:
 - i. Autumn break: End of October, 11 days;
 - ii. Christmas break: Late December, approximately 19 days;
 - iii. February break: 11 days;
 - iv. Spring break: April, approximately 14 days;
 - v. Summer break: approximately six weeks.
- e) The claimant would facilitate Ethan's travel to Vancouver for those periods. She is also willing to contribute up to \$10,000 per year toward travel costs. Those costs would be for Ethan and the respondent to travel from the UK to Vancouver.

- f) During the summer break, Ethan would be in BC for a total of six weeks. She proposes that Ethan would spend one week with her (and her family) and the other five weeks with the claimant.
- g) During other shorter visits, the respondent's family would have at least one day with Ethan.
- h) Winter Break (and thus Christmas) would alternate between the parties.
- i) In addition, she would facilitate video calls to the claimant twice per week. She would also make provision for video calls in the event of medical or other appointments.
- j) In addition, the respondent would facilitate a French tutor for Ethan in the UK to assist in preserving his French heritage.

[76] Although the FLA contains no requirement for the non-relocating parent to provide corresponding arrangements, the claimant did in this case.

[77] The claimant's proposal was as follows:

- a) The parties would continue to share guardianship and decision-making.
- b) Ethan's primary residence would be with the claimant.
- c) The respondent could visit the Lower Mainland from the UK whenever she chooses and she would be entitled to 50/50 parenting time during those visits.
- d) In addition, the respondent would be entitled to:
 - i. 30 days with Ethan during the summer vacation;
 - ii. Time during the Christmas Break, on the following basis:
 - (1) to be split with one week with each parent;
 - (2) alternating years, Ethan would be with one parent for Christmas Day.
 - iii. The two-week spring break would be divided, one week to each parent.
 - iv. Ethan would have generous FaceTime or phone time with his mother, twice per week (30 minutes) or more if Ethan requested.
 - v. The claimant would arrange for Ethan to be in contact with the respondent's family (Ethan's grandparents), including in-person visits up to once per month.
 - vi. Ethan would be referred for counselling for a period of two years (24 visits). The respondent would pay 100 percent of the cost of those appointments. The choice of counsellor would be a joint decision.
 - vii. Special and Extraordinary expenses under s. 7 of FLA would be divided 50/50.
 - viii. The respondent would pay 100 percent of the cost of travel.

ix. In addition, the claimant would be open to review these items with the respondent.

[78] I have considered the two plans along with a consideration of whether either plan is "workable". I discuss my analysis at the end of my discussion of the best interests of the child.

Best Interests of the Child

[79] The next and overriding step in this process is my consideration of the best interests of the child. In this section, I compare Ethan's proposed life in England to his anticipated life in Langley. To be clear, his life in Liverpool would be with his mother but without his father. His life in Langley would be with his father but without his mother. In other words, no part of my comparison involves a situation where Ethan lives in an area where his parents co-parent him. He will be substantially without one parent.

[80] Pursuant to s. 69(5)(b) of the FLA, the onus is on the respondent to satisfy me that the relocation is in Ethan's best interests. Those considerations are described in s. 37 of the FLA and include the "child's needs and circumstances" including the items listed in s. 37(a)-(j). I discuss each of those considerations below, in order, followed by an umbrella consideration of all the elements together.

The Child's Health and Emotional Well-Being

[81] On the evidence, Ethan is a healthy and well-adjusted boy. He loves his mother and his father. Each party is a good parent.

[82] The respondent submits that the following factors favour Liverpool:

- a) She will have good career prospects which will mean that she can financially provide for Ethan's needs.
- b) She will be with her fiancé, Dr. Oxoborough, so her own emotional well-being will benefit. This will have a knock-on effect for Ethan.
- c) She has sourced good schools in the area of Hooton. If necessary, she and Dr. Oxoborough would place Ethan in a private school.
- d) Ethan would be enrolled in the National Health System in the UK. In addition, Dr. Oxoborough would enrol him on his private medical insurance.

[83] In response, the claimant notes the following:

- a) Ethan has a family here in Langley. He loves his step-mother and half- brother.
- b) In the claimant's home, Ethan will be raised with children of similar age.
- c) Ethan is already established in Langley with a school and a group of friends.

- d) Both the claimant and Janelle are gainfully employed, and to a large extent, they work from home. They are able to provide seamless childcare for their children.
 - e) Ethan is covered under the Medical Services Plan.
- [84] In addition to the items set out above, the respondent makes a specific submission regarding Ethan's health. As noted above, the claimant refused to consent to Ethan receiving the Covid-19 vaccination. At trial, he testified that he felt that the potential for long-term harm outweighed the benefits. During the debate between the parties, the respondent offered to have a third-party discuss that issue. She suggested that Ethan's family doctor could fill that role. The claimant refused. He explained that he felt that the doctor would put forward the political requirements. He also noted that Ethan had (probably) had Covid-19 in March 2020 upon his return from England and had a later confirmed case.
- [85] This trial came on in early 2024. As of that date, the Covid-19 pandemic had significantly waned. However, the dispute regarding Ethan's vaccination arose during a time when the authorities and the medical profession recommended vaccination. As I stated above, in my opinion, a person's feelings about the vaccine cannot override the medical advice of doctors.
- [86] On the medical issue, I am satisfied that the circumstances slightly favour the respondent. However, on the overall issue of Ethan's living conditions, I am unable to find that Hooton is better than Langley or vice versa. Ethan is currently enrolled in a French immersion school. The evidence establishes that schools in England do not introduce French classes until the upper grades. Given the claimant's French heritage, I consider the French immersion schooling to be better for Ethan.
- [87] I expect that, if the respondent obtains employment in Liverpool, her combined household income will exceed the claimant's combined household income. However, while that is one factor to be considered, the income and assets of a party cannot be determinative. While I consider the respondent's financial prospects to be better than the claimants, I am satisfied that the claimant is committed to providing for Ethan financially.

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

- [88] Neither party sought to have Ethan's views considered. At his age of five years old, it would be inappropriate to do so.

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

- [89] Ethan has strong loving bonds with both parents. That is not in dispute.
- [90] In Liverpool, Ethan would, of course, have his mother. I am also satisfied that Ethan has formed a strong relationship with Dr. Oxoborough. As noted above, Ethan met Dr. Oxoborough's three children, aged 21, 17, and 14, and they formed a good bond.
- [91] There are no other relationships in the UK.

- [92] In BC, Ethan, of course, has his father. He has also formed close bonds with his step-mother Janelle and his younger half-brother, who is 18 months old. As mentioned, a baby girl is due in May.
- [93] In addition, the respondent's parents (Ethan's grandparents) live in the Lower Mainland. They have a strong relationship with Ethan. In my opinion, this aspect favours Ethan living in BC. Living in the Lower Mainland, Ethan would be able to maintain a close connection with his grandparents.
- [94] More importantly, the household in which he will be raised will be one with children of similar age. He will be the older brother to two half-siblings who are within six years of his age. In my opinion, that circumstance will be more beneficial to Ethan than the circumstance where he is living with Dr. Oxoborough's children, who are significantly older.
- [95] In my opinion, this element favours remaining in BC.

The History of the Child's Care

- [96] After Ethan's birth, the respondent took three months off work on a maternity leave. She then worked part time during the next three-month period. She returned to work on a full-time basis when Ethan was six months old. During that six-month period, she took Ethan to work and arranged child-care at her workplace.
- [97] As noted, the respondent left for Liverpool in January 2020 for an internship. Ethan was just over 13 months old. The relationship ended during the time she was away. Upon her return, she quarantined with Ethan because of the pandemic.
- [98] Immediately following her return, the claimant commenced seeking parenting time. An informal 60/40 split was arranged and then formalized in the October 2020 Parenting Agreement. The claimant has had 40 percent of parenting time since the summer of 2020. The evidence establishes that the claimant has consistently requested a 50/50 split of parenting time.
- [99] Hence, although the respondent has always had more parenting time, since October 2020, the parenting time has been "substantially equal".

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

- [100] Both sides submit that they will provide stability for Ethan's future:
- a) The respondent has researched primary and secondary schools in the area around her new partner's home. Dr. Oxoborough's career is established in the Liverpool area and is unlikely to change. The evidence establishes that the respondent will have good career prospects in the surrounding area.

- b) The claimant is married. He and his wife have one, soon-to-be two, children. They are both employed. They rent a townhome in Langley. They chose that home and neighborhood because it was close to the school in which Ethan was enrolled for kindergarten. They have no plans to move Ethan out of that school.

[101] From a wider angle, I believe it is important to look further down the road of Ethan's childhood and teen years. At present, Ethan is in kindergarten with limited outside interests. He is completely dependent upon his parents. That situation will change as he ages. He will join clubs and teams. He will want to fully participate in those activities. At some point in his teens, he will start having some say in his schedule. If Ethan moves to Liverpool, then the majority of his school breaks will be spent travelling to Vancouver. I consider that longer-term view to be detrimental to Ethan's need for stability.

[102] I am satisfied that both parents will provide a stable environment for Ethan in the future. However, this element favours the claimant, because staying with the father will mean that Ethan's life is not disrupted to move him to the UK. Longer-term, Ethan's life will be more stable in the Lower Mainland, because he will not be travelling four times per year.

The Ability of Each Person Who is a Guardian or Seeks Parental Responsibilities, Parenting Time or Contact with the Child, to Exercise the Person's Responsibilities

[103] On this issue, there is a difference between the respondent's situation and that of the claimant.

[104] The respondent is moving to England. She has not lined up employment. She hopes, and expects to obtain work in a university setting. She testified that universities are usually accommodating regarding parental responsibilities. Further, if she finds work in the research field, the daily time requirements would be flexible. She testified that researchers' schedules are more flexible than those of lecturers who would be required to be on a fixed schedule. At this point, however, the respondent's work situation is certainly not set. At best, I can find that it is probable that she will be able to be available for Ethan's needs, or make appropriate arrangements.

[105] In contrast, the claimant has steady employment, and he works 100 percent from home. His wife Janelle works 40 percent from home.

[106] On this issue, in my opinion, the claimant has established that he and Janelle will be able to exercise their parental responsibilities. They have arranged their work lives to the benefit of their children.

[107] I note that Ethan is beginning his school years. Most of his weekdays will be spent at school. Every family has to deal with childcare situations on the days when the child is not in school, but a parent is working. Those days can occur due to "Pro-D" days at school or sickness for the child. The evidence establishes that the claimant's family would be able to handle those days without any issue. Because the respondent's circumstances are unknown, in my opinion, this element slightly favours the claimant.

The Impact of Family Violence

[108] Pursuant to s. 37(2)(g)-(h) of the FLA, I am to consider 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 maybe impaired in their ability to care for the child and meet the child's needs.

[109] As noted above, the claimant raised an allegation of family violence.

[110] I find that there is no element of family violence in this case. Still further, I find that the actions that the claimant alleged to constitute violence were not directed toward the child and do not indicate an impairment in either party's ability to meet Ethan'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

[111] I note at this point the respondent's complaint regarding the claimant's refusal to make provision for FaceTime calls. In addition, she raises the issue of Covid-19 vaccination and the school consent forms. The respondent submits that those concerns indicate that the claimant is not sufficiently capable of cooperating with the respondent on Ethan's upbringing.

[112] While I accept that those concerns are valid, I again place them in context. The refusal to facilitate FaceTime calls arose in the context of the shared parenting arrangement where the respondent was away from Ethan for two days at a time, at most. The vaccination dispute arose in the context of Ethan having contracted Covid-19 on two occasions.

[113] This aspect slightly favours the respondent. Having said that, I have confidence that both parties would abide by orders of this court.

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

[114] There are no proceedings that are relevant to these issues.

Conclusion on the Proposed Relocation

[115] First, I will address the points that, in my opinion, favour relocation:

- a) If the respondent finds employment in a university setting in the Liverpool area, then her combined income, with Dr. Oxoborough, will be higher than the claimant's combined family income.
 - b) Ethan will be raised in an environment wherein at least one of the adults (and probably both) are employed in a university setting. In my opinion, there would be a benefit to a child in that environment.
 - c) Further, I accept that the respondent is a person who favours Covid-19 vaccines for children. I note, however, that wherever Ethan resides, the decision-making on those issues will continue to be mutual.
- [116] In my opinion, the benefits of living in Liverpool are outweighed by the following factors which will be true if Ethan stays in Langley:
- a) He will be raised by his father and step-mother along with two half-siblings of similar age. In my opinion that will be better for Ethan than the connections he has made with his older step-siblings in Hooton.
 - b) He will remain in environment he knows, including his school.
 - c) He will be closer to his maternal grandparents.
- [117] I accept that the claimant and Janelle may have a lower income than the projected income of the respondent and Dr. Oxoborough. However, while that is a factor, it cannot be a deciding factor.
- [118] Again, looking further down the road, if Ethan moves to Liverpool, then the majority of his school breaks will be spent travelling to Vancouver. I have significant concerns about the viability (or "workability") of a schedule that sees Ethan flying to Vancouver four times per year. As he ages, frequent trips to BC would prevent him from full participation in extra-curriculars. In the shorter term, Ethan's opportunities to have a "well-rounded" childhood would be stunted. In the longer term, I am concerned that he will resent his trips because they will interfere with his activities.
- [119] On the other hand, if Ethan is in Langley, and his mother travels to see him, then Ethan will be able to fully participate in all activities and his mother will be able to watch him pursue those activities.
- [120] In my opinion, taking all of the potential aspects of Ethan's two proposed lives, Ethan's best interests are better met by Ethan remaining in the Lower Mainland. In coming to this decision, I am considering that the respondent has the onus of establishing that the move to Liverpool would be in Ethan's best interests. In my opinion, that onus has not been met. As set out above, in my opinion, the considerations under s. 37 favour the claimant.

[121] I also return to the consideration of whether the respondent's proposed move was "in good faith". Section 69(6) of the FLA requires a consideration of whether the relocation is likely to enhance the general quality of life of the child. In my opinion, the respondent has failed to meet that evidentiary threshold. Apart from a (potential) higher combined income in the UK and the university environment, I am unable to find that Ethan's life will be enhanced by such a move. Any such move would remove him from his father and family in the Lower Mainland. In my opinion, such a move will not enhance the general quality of his life.

[122] Based upon my analysis of the elements listed above, in my opinion, the balance tips in favour of the claimant.

[123] On the basis of that analysis, the respondent's application for relocation is dismissed.

Name Change

[124] The second form of relief sought by the respondent is a change of Ethan's last name from Havelette, to "Havelette-Morrison".

[125] I must dismiss this request from the respondent on procedural grounds. I use the word "request" because the name change is not an item of relief sought in the pleadings. It was not a matter raised at the Trial Management Conference. I find that proper notice was not provided for this relief.

Parenting Arrangements

[126] It follows from my decision above that the respondent's proposal for parenting time is not applicable.

[127] Obviously, the parties will have to come to agreements regarding parenting time with Ethan based upon my decision. The respondent has not had the opportunity to address this scenario. It is my hope that the parties will be able to come to agreement on the remaining issues now that the relocation issue is decided. I set out below my interim direction (i.e., not an order) regarding the proposals, but I grant the respondent leave to apply for an order on these issues should she not be satisfied with these terms, and the parties are unable to reach agreement:

- a) The parties would continue share guardianship and decision making.
- b) Ethan's primary residence would be with the claimant.
- c) The respondent could visit the Lower Mainland from Liverpool whenever she chooses. During the first 90 days of any such visits in a calendar year, the respondent would be entitled to 70/30 parenting time. After the respondent has been in BC for a total of 90 days, parenting time would be divided 50/50.

- d) The respondent would be entitled to take Ethan to the UK for a period of not longer than 30 days in any year. Two years cannot be combined over New Years. The 30 days can be taken in one block or more than one trip, but Ethan will not travel to the UK more than two times in a year.
 - e) In exercising the time described in c) and d) above, the respondent would be entitled to:
 - i. 30 days with Ethan during the summer vacation;
 - ii. Time during the Christmas Break, on the following basis:
 - (1) to be split with one week with each parent;
 - (2) alternating years, Ethan would be with one parent for Christmas Day.
 - iii. The two-week spring break would be divided, one week to each parent.
 - iv. Ethan would have generous FaceTime or phone time with his mother, twice per week (30 minutes) or more if Ethan requested.
 - v. The claimant would make arrangements for Ethan to be in contact with the respondent's family (Ethan's grandparents), including in-person visits at least 12 times per year.
 - vi. The respondent would pay 100 percent of the cost of travel for herself and Ethan.
 - vii. In addition, the claimant would be open to review these items with the respondent.
- [128] There was no claim made for special and extraordinary expenses under s. 7 of FLA. I make no order in that regard, but note the parents' responsibility.
- [129] I leave the choice of counselling to the parents. I heard no evidence that it would be required.

Summary and Conclusion

- [130] On the basis of the facts and law, and my analysis as described above, I dismiss the respondent's application to relocate with Ethan. I also dismiss her application to change Ethan's name.
- [131] I have made directions regarding the parenting arrangements. As noted, I grant the respondent leave to seek orders amending those directions if the parties are not able to reach agreement on those terms.
- [132] In the ordinary course, the claimant, having been successful, would be entitled to his costs. In my opinion, the fairest result in this case is for each party to bear their own costs.

"A. Ross J."

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