
CANADA / JUDGMENT

Hellberg v. Netherclift

2018 BCSC 357

COURT

Supreme Court of British Columbia

DECIDED

8 March 2018

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2018 BCSC 357 Hellberg v. Netherclift

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hellberg v. Netherclift,

2018 BCSC 357

Date: 20180308

Docket: E19167

Registry: Nelson

Between:

Lucy Hellberg

Claimant

And

Simon Netherclift

Respondent

Before: The Honourable Mr. Justice McEwan

Reasons for Judgment

Counsel for the Claimant:

A. Perello

Counsel for the Respondent:

C.F. King

Place and Date of Trial/Hearing:

Nelson, B.C.

December 11-14, 2017

Place and Date of Judgment:

Nelson, B.C.

March 8, 2018

- [1] This is the trial of a matter that has already been before the court on the basis of a summary trial. Both parties had agreed it was suitable for disposition on that basis, and Mr. Justice Punnett proceeded accordingly. He rendered judgment on May 4, 2017. The result was unsatisfactory to the respondent and he appealed.
- [2] There is not a great deal of utility in starting again. In *Hellberg v. Netherclift*, 2017 BCCA 363, the Court of Appeal had this to say:
- [30] In reasons for judgment released on May 4, 2017 (indexed as 2017 BCSC 738) ("RFJ"), the judge made no assumption about whether Ms. Hellberg would stay in British Columbia if the relocation application was dismissed, and no assumption about whether Mr. Netherclift would return to the UK if the application was granted. He considered that the only two options were that the child would reside in Nelson with Mr. Netherclift or in the UK with Ms. Hellberg. Neither party suggested on appeal that the judge erred by framing the alternatives in this way.
- [31] In granting Ms. Hellberg's application, the judge made these factual findings on the record before him:
- The child has a close relationship with Ms. Hellberg and Mr. Netherclift, both of whom are good parents capable of attending to his needs [RFJ at para. 31];
 - The child is happy and secure with both parents [RFJ at para. 51];
 - The "ideal situation" for the child would be a continuation of a shared parenting arrangement [RFJ at para. 49];
 - It is unlikely that Ms. Hellberg's employment opportunities will improve in Nelson [RFJ at para. 35];
 - Ms. Hellberg's lack of success in finding employment as a teacher in Nelson "arises from her only being qualified to teach art, which I accept limits the positions available" [RFJ at para. 13];
 - Due to her qualifications and work experience, Ms. Hellberg has better employment and financial prospects in the UK than in British Columbia [RFJ at para. 39];

- Ms. Hellberg's shared living arrangement in Nelson is not in the child's best interests [RFJ at para. 56];
 - Ms. Hellberg has no confirmed employment in the UK. Where she might end up living and working, what her working hours will be, and what childcare will be necessary in the UK were unknown at the time of the trial [RFJ at para. 38];
 - The income earned by both parties in Nelson has been modest and is likely to remain so. Mr. Netherclift appears wedded to the type of work he enjoys and has not considered more remunerative and secure employment alternatives that might be available to him [RFJ at para. 43];
 - Ms. Hellberg's probable earnings in the UK would equal the combined incomes of the parties in British Columbia [RFJ at para. 52];
 - There was no evidence, and no assertion by Mr. Netherclift, that Ms. Hellberg's motivation for moving to the UK was improper [RFJ at para. 48];
 - Ms. Hellberg and the child would have the support of her parents and extended family in the UK [RFJ at para. 39];
 - If the child moves to the UK with his mother, he will benefit from stability because he will reside with the parent who is likely to have more secure and remunerative employment and his mother will be able to secure a residence for herself and the child [RFJ at para. 57];
 - Ms. Hellberg's enhanced earning opportunities in the UK improve the prospect of her obtaining a residence for herself and the child without having to share accommodations with someone else [RFJ at para. 52];
 - While permitting the relocation would disrupt the child's time with his father, the disruption is outweighed, given the child's age, by the benefits that would arise from an order permitting Ms. Hellberg to relocate with him to the UK [RFJ at para. 55]; and
 - It was in the child's best interests that he be permitted to live with Ms. Hellberg in the UK, rather than with Mr. Netherclift in Nelson [RFJ at paras. 51, 58].
- [3] Mr. Netherclift applied to reopen. He relied on new evidence. The evidence (as summarized by the Court of Appeal) was as follows:
- [39] The new evidence relied on by Mr. Netherclift to justify an order reopening the trial included the following:
- Ms. Hellberg obtained a temporary, part-time position teaching art at a high school near Nelson. Ms. Hellberg was hired to fill the position of a permanent employee who was away on sick leave. Her employment commenced on May 8, 2017, and was scheduled to end on June 30, 2017. She estimated that her gross earnings from this position would total about \$3,920;

- In addition, since filing her second affidavit in support of the summary trial application in December 2016, Ms. Hellberg obtained some teacher on-call work. Between January 1, 2017, and May 23, 2017, she earned about \$2,500 working as a teacher on-call;
- The Province of British Columbia had committed to funding additional teaching positions to reduce class sizes. In May 2017, the Superintendent of the Kootenay Lake School District ("KLSD") advised a local media outlet that 18 job postings would be issued to fill the equivalent of 11.14 full-time teaching positions. In June 2017, KLSD announced that it had 80 job openings for teaching positions. The announcement of these additional teaching positions followed the Supreme Court of Canada's judgment in *British Columbia Teachers' Federation v. British Columbia*, 2016 SCC 49, [2016] 2 S.C.R. 407;
- In May 2017, Mr. Netherclift was offered a full-time, permanent job with the Kootenay Career Development Society. Mr. Netherclift deposed in support of his application to reopen the trial that his annual income was now \$54,400 per year; and
- Two acquaintances of Mr. Netherclift, both of whom teach in the Nelson area, filed affidavits attesting to the fact that they have had no difficulty obtaining teacher on-call work, including work that is outside one of the affiant's subject areas.

[4] The Court of Appeal summarized the dismissal of the application to reopen as follows:

[43] In dismissing the application to reopen the trial, the judge made these critical findings of fact:

- The evidence that KLSD had 80 job openings for teaching positions did not make clear whether these were new positions or postings made as part of the teachers' collective agreement, which allows existing teachers to apply for other positions [RFJ #2 at para. 10(d)];
- Ms. Hellberg is not, in any event, qualified in British Columbia to take on either a full-time or permanent teaching position [RFJ #2 at paras. 10(b), 10(d), 11, 12];
- The new evidence did not change the fact that Ms. Hellberg's prospects for securing full-time, better-paid employment were more promising in the UK than in Nelson given her education, accreditation and experience [RFJ #2 at para. 13];
- Mr. Netherclift did not establish that a miscarriage of justice would likely occur without a rehearing or that the new evidence would have changed the result of the trial [RFJ #2 at para. 16]; and
- Financial considerations were, in any event, not the only factors relied on by the judge in the assessment of the best interests of the child at trial. As noted earlier, the judge had also emphasized the support of extended family that the child would have in the UK [RFJ #2 at para. 16].

- [5] The Court of Appeal found that central to the judge's determination of the issue (whether the new evidence would have changed the result) was his understanding that Ms. Hellberg was not qualified to take on either a full-time or permanent teaching position in British Columbia. It summarized what the judge said:
- [59] The judge concluded that this new evidence did not warrant reopening the trial because it would not have changed the result. Central to the judge's determination of this issue was his understanding that Ms. Hellberg was not qualified to take on either a full-time or permanent teaching position in British Columbia. For ease of reference, the judge said:
- "[Ms. Hellberg] is not qualified in BC to take on a full-time teacher position" [RFJ #2 at para. 10(d)];
 - "[Ms. Hellberg] remains, as I understand it, unqualified to take a permanent teaching position" [RFJ #2 at para. 11];
 - "[Ms. Hellberg] is still faced with part-time work, is not qualified for full-time teaching positions, and her economic prospects overall [in Nelson] are not significantly different" [RFJ #2 at para. 12]; and
 - "I determined that the likelihood of [Ms. Hellberg] securing full-time, much better paid employment was greater [in the UK] than in Nelson, given her education, accreditation, and experience in the United Kingdom. I am not convinced that has changed" [RFJ #2 at para. 13].
- [6] The state of the evidence on this and a number of other critical points was said to be incomplete and unclear.
- [7] The Court of Appeal observed that:
- [63] Ms. Hellberg's application to relocate the child to the UK was granted because the trial judge determined that: (1) it was unlikely Ms. Hellberg's employment opportunities in Nelson would improve; (2) a move to the UK would provide greater financial stability for the child than is available to him in Nelson given that Ms. Hellberg's probable earnings in the UK would equal the combined income of the parties in Nelson; (3) the income of both parties in Nelson was limited and would likely remain so; (4) Ms. Hellberg's shared living arrangement in Nelson, driven by her financial circumstances, was not in the best interests of the child; and (5) the child would have the support of his extended family in the UK.
- [64] The evidence tendered by Mr. Netherclift on the reopening application addressed, directly or indirectly, four of the five considerations the judge relied on in granting Ms. Hellberg joint custody and guardianship with the right to relocate the child to the UK. The evidence was both cogent and material. In our view, the primary consideration informing the judge's assessment of the child's best interests turned on the financial circumstances of the parties.
- [65] The evidence tendered by Mr. Netherclift on the reopening application was capable of establishing that Ms. Hellberg's employment opportunities in the Nelson area had improved. The evidence established that Mr. Netherclift's income had significantly increased and

would no longer remain fixed at a low level. This increase in income could potentially result in an increase in Mr. Netherclift's child and spousal support obligations and ameliorate, to some extent, Ms. Hellberg's financial burdens. In addition, the evidence established that it was no longer the case that Ms. Hellberg's income-earning potential in the UK would equal the combined incomes of the parties in Nelson. In short, the evidence sought to be tendered on the reopening application suggested that most of the critical assumptions on which the trial judgment rests were shown by subsequent events to be incorrect.

- [66] The judge's determination that Mr. Netherclift had not met the test set out in *Moradkhan v. Mofidi* and that it was not in the interests of justice to reopen the trial is rooted in his mistaken conclusion that Ms. Hellberg was ineligible for full-time temporary or permanent teaching positions. This misapprehension of the evidence went to the very core of the judge's analysis of the central issue in the case.
- [71] In our view, the judge's misapprehension of the evidence on this point alone justified the order allowing the appeal and setting aside both orders made in the trial court.
- [8] The case has come around to me. I have heard three days of evidence on the matter of where the child Seth should reside.
- [9] Lucy Hellberg's evidence was almost exactly the same as she gave at trial. Seth is a four-year old boy whose time is divided 50-50 with his father, Mr. Netherclift. She presently lives with Cheryl Grant and her husband. Cheryl Grant worked with Ms. Hellberg. They are quite fond of her and offer her rent free, and access to a car. She is a wonderful mother. Ms. Grant is lining up a job for the summer overseas. She said she hadn't thought much about Ms. Hellberg's status in light of that ambition but she said she would not be out on the street.
- [10] Marice Van Koughnett was called to testify about the prospects for teachers in the neighbouring school district which includes Trail and Rossland. She is the administrator of human resources. She testified to the lack of positions for people with primarily art in their profiles. She said it would be helpful for Ms. Hellberg to take another course, to expand the range of teaching.
- [11] Although Ms. Van Koughnett was as encouraging as she could be about teaching, she was not able to say that there would be work for Ms. Hellberg.
- [12] The other person who was called was Deanna Holitzki. She is the director of human resources at School District No. 8. She was a good witness. Again she was encouraging about the prospects, but Counsel led her through the last seven possibilities of positions. Ms Hellberg was not considered for any of them except a .56 position teaching art at Mount Sentinel for two months. The pay for this position was about \$23,000 a year. This was all she could expect in that position if she had it all year. As it was, she made about \$3,900. When the position was reposted it was part of something more, that Ms. Hellberg did not qualify for.

- [13] A Brent Firkser was called. He testified that he has a degree in geography but that he feels competent to teach math and woodworking. Despite his broader experience and his time in the district (9 years), Mr. Firkser has never achieved more than half-time over those years. This was partly because his own plans have prevented it but he was not a witness who could tell the court anything about Ms. Hellberg's prospects for work in the district.
- [14] Both parties' parents testified. Ivor Hellberg testified for Ms. Hellberg and Richard Netherclift testified for Mr. Netherclift. Ivor Hellberg testified to his military service and his living in Devon. He presented photographs of the accommodation he could offer Ms. Hellberg at his home in Devon. It is a self-contained apartment, and appears to be in a beautiful place. It is very near the beach. Mr. Hellberg was glowing in his description of the benefits the area offered in terms of recreation and education. He is retired from his position as a regimental colonel and seems to have had a colorful life, in that regard, with service in the Falkland War, among other things. He maintains his connections in the Marines and in the mountaineering community, and lectures on cruise ships up to Norway and Iceland, speaking on historical topics, and particularly on the Vikings.
- [15] He is acquainted with the Netherclifts and considers that they have a positive relationship. His evidence was that of a loving and concerned parent. Mr. Hellberg also testified to very good contacts with a man who ran the Hayes Employment Agency and he felt certain that he could give Mr. Netherclift helpful references and guidance on his outdoor recreation jobs and where he could find work. Mr. Hellberg testified that he and his wife were available to lend support in child care, or in any other way that is possible.
- [16] Richard Netherclift testified. He is retired. He is an impressive witness, who appears to be comfortably well off.
- [17] He testified that Seth is well taken care of in Nelson. They see him by Skype.
- [18] Mr. Netherclift is happy in Nelson. Mr. Netherclift Sr. underwrote his business. Since 2012 he has put about \$70,000 into Mr. Netherclift Jr's account. This is part of an estate plan, and nothing is expected to be repaid. He has supported him through the court process. He gave his son the funds to buy the house. He did say at one point in time that if the relationship fell apart and his son owed Ms. Hellberg some money he would pay for it. They talked about the problem of money in the relationship and the fact that Ms. Hellberg could not contribute, while he only had a seasonal job.
- [19] Ms. Hellberg maintained her efforts to gain employment since the summary trial. The witness, Ms. Van Koughnett was as optimistic as she could be but it was clear that a person of Ms. Hellberg's qualifications would never get full-time work. Of the seven positions she sought she got two months, which paid her for .56 of a job. There was another at Mount Sentinel. She did not get that.

- [20] It is clear that Ms. Hellberg will have difficulty obtaining anything like full-time employment with her qualifications, particularly in a small town in British Columbia. Her prospects in the United Kingdom ("the UK") are much better. I am satisfied that she has a far better chance at a job that pays her £45,000 in the UK than she does here, and that there is a likelihood that she will obtain full-time employment in the UK in very short order.
- [21] The overall impression left by her evidence is that she has tried to obtain a job but that even though the job market has opened up in the secondary schools as a result of a Supreme Court of Canada judgment in 2016, her prospects are bleak. She has only an arts degree and no other specialty and, despite the optimism of Ms. Van Koughnett and Ms. Holitzki there is not much that can be done in the short term. Ms. Van Koughnett explained that there was very little call for an art teacher, and that Ms. Hellberg would not have been called very often, without a second subject. She said it is possible to write down a number of subjects you felt qualified to teach but said she paid very little attention to such things.
- [22] Ms. Holitzki said the same sort of thing. She was a little more encouraging until she was asked about the last six or seven times Ms. Hellberg applied. The only thing she was able to get was the .56 two-month contract. All the others were jobs she did not have a chance at obtaining. The fact that she does not have a job severely limits her prospects for the future with Seth. Through the kindness of a friend she is able to provide for Seth. This is supplemented by some assistance from Mr. Netherclift. This is not a very reliable source and Mr. Netherclift had brought on an application to reduce the amount of child support. He abandoned this application, but it is obvious that it is not a certain thing. Ms. Helberg is able to create the illusion of a good life for Seth for now, but it will not last long. He will start school soon and it is certain that his expenses will rise as will awareness of his situation. Ms. Helberg will not be able to provide for Seth in Nelson, in any way like the way she will be able to in England. If there is a time for him to change, it is now. He will do better with a change when school starts in the fall.
- [23] Mr. Netherclift, on the other hand, had some problems with the truth.
- [24] He was asked what his income was and had a great deal of trouble explaining it. This was due in part to his failure to produce the documents that would show what he earned. He repeatedly said he had produced all the documents his lawyer had requested. This was an attempt to deflect attention by placing the blame elsewhere. The truth is that he had not done so, and the upshot of it was that he does not exactly know what he makes. The apparent amount of money he could make is around \$32,000, but it seems he does not make that much and probably makes around \$28,000 per year.
- [25] This seems, in part to be a lifestyle choice. He takes as much time off as he can to be with Seth. He has never made \$54,400 or anything like it. He claims he was "projecting" at trial. This does not make sense, or get the court any closer to knowing what Mr. Netherclift actually makes. It is an important part of this narrative, and his reluctance to answer, leaving the court to make a reasonable guess as to his income, is a matter of real concern.

He flatly stated before the Court of Appeal that he made \$54,400, but, it was not true. He lives in a modest little home. His income earning potential is compromised further by the amount of attention he wishes to devote to Seth. This is ultimately not in Seth's best interests. He has reached an age where things are going to start to happen and he requires a plan for his future. It is clearly not in Seth's best interests to live in the margins. He is happy and well adjusted to life in the Kootenays, but that is a circumstance of his upbringing to date. It is important to observe that his mother has had an equal hand in this. Despite the hurdles that he will come to face in the future, his mother has a plan for him that will involve him in many activities that he cannot pursue in Nelson.

- [26] The other area of untruthfulness was in his evidence about Sage Laboucan. In an apparent effort to portray Miss Laboucan as a steady relationship that dated back to March of 2016, he told the court this, and it was not true. The relationship dated back to March of 2017. Immediately prior to that Miss Laboucan was engaged in a relationship with a Mr. Keating (February 2017!) and she did not form a bond with Mr. Netherclift until March of 2017. Mr. Netherclift did not make a very good show of this. He insisted that the relationship dated back to March of 2016, on a non-exclusive basis on her part, but that it was primarily a text or email message relationship in the early going. He swears he did not introduce Seth to her until the fall of 2016. This is somewhat hard to credit given the amount of time he spends with Seth, and it is likely untrue. Ms. Laboucan is also a participant in the Stanley Cup Riots of 2011 although it took the police more than one year to catch up with her. When she was convicted she had a curfew and a suspended sentence. This was about two years ago at a time when she was engaged to Mr. Keating.
- [27] Sage Laboucan is 28 years old. She is 15 years or so younger than Mr. Netherclift.
- [28] There were a few other witnesses who testified to Mr. Netherclift's position and his relationship with his son. There is no question that Mr. Netherclift loves his son. The problem is that he has reached middle age and still has not really flourished in his positions.
- [29] It asks a great deal of Ms. Hellberg, whose relationship with her son is as good, to ask her to stay in Nelson, where she has only a slight chance of employment, and to share his life of poverty with her.
- [30] Ms. Hellberg's contention that she had superior employment prospects in the UK have been made out. So have the prospects of her having an extensive support network in the UK that she can rely on. Mr. Netherclift does not offer a comparable situation. He has "friends" who, like him, live in relatively marginal circumstances. Ms. Hellberg has made serious efforts to secure a full-time teaching position in Canada, to no avail. The problem is that while she is qualified to teach art in the UK she has much greater prospects of full-time employment there.
- [31] The thrust of the evidence on appeal is that Mr. Netherclift could show that both on call and permanent full-time teaching positions were available to Ms. Hellberg. This was not correct. Both witnesses who appeared on this subject were not nearly as encouraging as they were

expected to be. Ms. Van Koughnett testified that while Ms. Hellberg qualified to teach art and might have been able to get a little bit of work in another subject, she was unlikely to be called to do it because her only real training was in art. Ms. Holitzki said that prospects for employment - given Ms. Hellberg's qualifications - were not that good. This was seriously underscored when Ms. Hellberg was cross-examined on the last seven jobs available to her, only one of which came to pass, and she did not even get a call with respect to the others. The trial judge did not misapprehend this point, although obviously he was handicapped by the fact that the parties had agreed to a summary trial.

- [32] The second basis in which the evidence was said to be misapprehended was that, as I have already noted, Mr. Netherclift's income had increased to \$54,400. At trial before me, Mr. Netherclift appeared to assume that his saying so would make it so. The evidence is unsatisfactory on this point. It appears that Mr. Netherclift made no more than \$32,000, and that the amount is probably less. The employer who was called indicated that they make allowance for work-life balance and that Mr. Netherclift made his money based on less than 35 hours per week.
- [33] The evidence did not establish that Mr. Netherclift's income had significantly increased. In fact it was the opposite, and he has shown no progress.
- [34] In addition, Ms. Hellberg's income earning potential in the UK would still equal or exceed the combined incomes of the parties in Nelson.
- [35] The best interests of the child must be considered "in the round". Ms. Hellberg's application if granted would uproot this five-year old child and relocate him half a world away. That underscores a presumption that the father is not mobile, which is, on all of the evidence, untrue. Mr. Netherclift may prefer to live in Nelson but he is not a citizen of Canada and can return when he wants to. Mr. Netherclift's father has expressed a willingness to assist Mr. Netherclift in establishing himself in the UK. So does Mr. Hellberg who has contacts in the mountaineering community and is certainly a resource in this regard.
- [36] One other thing that must not be forgotten is that this child is five. The easy part of parenting is done, but in the next few years he is going to face challenges that will require more of him than he has faced so far. It is crucial that that is considered in the equation as well.
- [37] Section 16 of the Divorce Act provides in material part, as follows:

Order for custody

16 (1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.

Factors

- (8) In making an order under this section the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

Maximum contact

- (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[38] The factors to consider derived from *Gordon v. Goertz*, [1996] 2 S.C.R. 27, are as follows:

- (a) the existing custody arrangement and relationship between the child and the custodial parents;
- (b) the existing access arrangement and the relationship between the child and the access parent;
- (c) the desirability of maximizing contact between the child and both parents;
- (d) the views of the child;
- (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
- (f) disruption to the child of a change in custody;
- (g) disruption to the child consequent on removal from family, schools, and the community [the child] has come to know.

[39] Of these, in the context of the facts in this case, the most significant is the parent's reason for moving in the exceptional case where it is relevant to the child's best interests.

[40] The child's best interests clearly favour his relocation to England. Having heard the witnesses, I am satisfied that the arrangements that can be made for young Seth are much better for him there than here. Here he cannot live in a house of his own. He resides with his mother at the patience of friends, in a situation she does not contribute to. It is coming to an end this spring. Mr. Netherclift can barely support himself. He lives in crude accommodations that may be adequate but is hardly optimal and his relationship with Ms. Laboucan is a question mark. It may be that they will form a bond that is lasting but the indications of that are not well developed.

[41] This child is five years old. He may not know it yet but his prospects as he ages are better with his mother than with his father. Seth has the advantage of loving grandparents on both sides of the family. He will have the opportunity to bond with those on his mother's side and

with those on this father's side if she is allowed to relocate. While she has the disadvantage in Canada of a case where her prospects for employment are improbable, it is clear that she can live in a house that in England is ideally set up for her and Seth and that she has every reason to believe that she will work at a full-time rate as soon as possible. If that does not come to pass immediately, she will have the safety net of a loving community of relatives who can help her on her way.

- [42] The job prospects in the Kootenays are illusory. They will not come to pass in the short term. That is the clear effect of the evidence. Mr. Netherclift's effort to establish a rate of income without producing any documents in support, and to substantially mislead the Court of Appeal and this Court are seriously damaging to his case.
- [43] I therefore find that the appropriate order is that Ms. Hellberg shall be the custodial parent of Seth, and that both shall be guardians of his person and his estate. I furthermore direct that Seth shall, on an "in the round" consideration of his prospects, be in the care of his mother, Lucy Hellberg. I am satisfied that his prospects are far better with her and with her relatives in England than they are here, particularly as time goes by.

Orders

- [44] There is a last item which the parties do not dwell upon, that which is the division of family assets. The evidence is that the home has gone up a little in value to \$127,000. That leaves about \$20,000 in the property. Ms. Helberg is entitled to half of that or $\$20,000 \div 2 = \$10,000$. Mr. Netherclift will pay Ms. Helberg \$10,000 in settlement of the property.
- [45] The claimant is permitted to relocate permanently to the UK with their child, born July 21, 2013. She shall be the sole custodian.
- [46] The claimant and the respondent shall have joint guardianship of their son with the child's primary residence with the claimant.
- [47] The claimant Lucy Hellberg and the respondent Simon Netherclift will exercise guardianship of their son as follows:
- (a) In the event of the death of a guardian, the surviving guardian will be the only guardian of the child;
 - (b) Each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the child;
 - (c) Each guardian will have the obligation to discuss with the other guardian any significant decisions that have to be made concerning the child, including significant decisions about the child's health (except emergency decisions), education, religious instruction and general welfare;

- (d) The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
 - (e) In the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the guardian with the majority of parenting time with the child will be entitled to make those decisions and the other guardian will have the right to apply for directions on any decision the guardian considers contrary to the best interests of the child; and
 - (f) Each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.
- [48] In the event the respondent becomes a resident of the UK in a location within a reasonable distance from the claimant's residence, the parties shall share day-to-day care of their son on an equivalent basis.
- [49] Until such time as the respondent may relocate to the UK, if the parties are not otherwise able to agree on access for the respondent and to the extent reasonably practicable, the respondent will be entitled to communicate with the child each day via Skype or telephone.
- [50] In addition, the respondent will have access to the child for one month during the summers at a place of his choosing. The child will be accompanied to such place by the claimant and will be returned to her home in the UK by the respondent. The respondent will also have access to the child in the UK at any other time he chooses to visit there.
- [51] Both the claimant and the respondent will provide the other with a list of all of the following information for the period when the child is in their care:
- (a) The name and contact information of any third party providing care for the child who is not a family member;
 - (b) The name and contact information of the child's doctor, dentist or any other health care provider;
 - (c) Information on any organized activity the child is enrolled in and the name and contact information of the person supervising such activity;
 - (d) The name, location and contact information of any school the child attends, together with any email list enrollment information that a parent can join for the purpose of obtaining information directly from the school;
 - (e) The residential address where the child is residing together with a list of the persons residing with the child at that residence;
 - (f) Both the claimant and the respondent will regularly exchange photographs of the child taken while the child is in that parent's care.

- (g) Neither the claimant nor the respondent will say anything negative about the other to the child or countenance others doing so;
- (h) Both the claimant and the respondent will encourage, support and reasonably facilitate the relationships the child has with his paternal and maternal grandparents;
- (i) Each of the claimant and the respondent will use his or her best efforts to provide to the other, in a timely way, the signatures, authorizations or consents reasonably required for the child's passport(s), travel and/or residency card(s); and
- (j) Each of the claimant and the respondent has liberty to travel with the child to any location away from the child's regular residence during their parenting time with the child and will provide the other with the dates and locations of the travel, together with contact information for the child while traveling.

[52] It appears that the grounds for a divorce have been made out. This may be done by desk order.

[53] The claimant is entitled to costs.

"McEwan, J."

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