

CANADA / JUDGMENT

J.R.A. v. L.C.D.

2023 BCSC 541

COURT

Supreme Court of British Columbia

DECIDED

19 April 2023

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2023 BCSC 541 J.R.A. v. L.C.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.R.A. v. L.C.D.,

2023 BCSC 541

Date: 20230419

Docket: E119053

Registry: Kelowna

Between:

J.R.A.

Claimant

And

L.C.D.

Respondent

Before: The Honourable Mr. Justice G.P. Weatherill

Reasons for Judgment

Counsel for the Claimant:

W.T. Clarke

Counsel for the Respondent:

J.A. Fitzel

Place and Date of Trial/Hearing:

Kelowna, B.C.

March 28-29, 2023

Place and Date of Judgment:

Kelowna, B.C.

April 19, 2023

INTRODUCTION

- [1] The respondent mother seeks an interim order allowing her to relocate with the parties' three children from Kelowna, BC, to Vancouver, BC (the "Application"). The Application is brought on two bases: i) the move is in the best interests of the children; and ii) the claimant father has committed family violence against her and the children in the past, and she is fearful he will do so again in the future.
- [2] The Application was originally brought before Justice Wilson on July 12, 2022, who declined to allow the relocation without notice to the claimant. He ordered that the Application could be reset for July 25, 2022, provided the materials were served on the claimant by July 14, 2022 (the "Wilson Order"). Unbeknownst to the claimant or the Court, the respondent secretly relocated to Vancouver with the children shortly after the Wilson Order with the Application still outstanding (the "Relocation").
- [3] The Application materials were served on the claimant as ordered, but the matter was not heard on July 25, 2022. It was adjourned by consent to August 26, 2022, then to October 17, 2022, then to February 21, 2023 and finally to March 28, 2023. The claimant had no knowledge of the Relocation until shortly before the matter was set to be heard on February 21, 2023. He strenuously opposes the Application and denies the allegations of family violence.
- [4] The respondent brings the Application pursuant to the relatively new relocation provisions of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA] or, in the alternative, pursuant to the Family Law Act, S.B.C. 2011, c. 25 [FLA]. She seeks the following orders:
- a) that she be permitted to relocate from Kelowna to Vancouver with the parties' children, pursuant to s. 16.91(1)(a) of the DA or alternatively s. 69 of the FLA;
 - b) that the notice requirements of ss. 16.9(1) and (2) of the DA do not apply to her, pursuant to s. 16.9(3);
 - c) that the claimant be required to complete the following before exercising any parenting time or making any further court applications for parenting time or parental decision-making, pursuant to s. 227 of the FLA:

- i. a minimum of 15 hours of co-parenting and anger management counselling sessions with a registered psychologist, to be paid for by the claimant, pursuant to s. 224 of the FLA;
 - ii. an affidavit confirming his attendance at the above counselling sessions, including dates, times, and name of counsellor, together with a letter from the counsellor confirming same;
 - iii. an affidavit confirming that he has found a parenting supervisor in Vancouver and that he has completed the intake process including a letter confirming same from the parenting supervisor; and
 - iv. the payment of \$5,000 into court as security prior to making any parenting applications or exercising any parenting time (the "Security").
- d) that the Security may be applied towards the cost of one or more Hear the Child reports, as ordered by Master Schwartz on November 30, 2020;
 - e) that any parenting time to be exercised by the claimant be supervised by a professional parenting supervisor paid for by the claimant, pursuant to s. 16.1(8) of the DA or s. 45(3) of the FLA;
 - f) that any and all communications between the parties be conducted by means of the Our Family Wizard application, occurring only on the first Wednesday of each month between 12 p.m. and 6 p.m., and only for the purpose of arranging parenting time, the cost of which will be split equally by the parties, pursuant to s. 225 of the FLA;
 - g) that the requirement for the respondent to obtain the claimant's consent to apply for passports for the children be dispensed with, pursuant to s. 220 of the FLA;
 - h) that this file be transferred from the Kelowna Registry to the registry closest to the children's place of residence in the Lower Mainland, pursuant to R. 22-2(13) of the Supreme Court Family Rules; and
 - i) costs of the Application.
- [5] The claimant strenuously opposes all orders sought by the respondent, save that the parties communicate only via Our Family Wizard.
- [6] As mentioned, the claimant denies any family violence or improper behaviour on his part, in particular in the last eight years. He maintains that the respondent is falsely accusing him of family violence, alienating the Children from him and deliberately taking steps to deny him parenting time. He says that the respondent is misusing the court system by lying and dredging up their troubled history from over eight years ago to support the Relocation.

BACKGROUND

- [7] The claimant is currently aged 43 and the respondent aged 33. They began cohabiting in early 2009 in Alberta, were married on July 5, 2009, separated on May 11, 2012, and were divorced by order of the Court of Queen's Bench (as it then was) in Red Deer, Alberta, on September 24, 2013 (the "Divorce Order" in the "Alberta Action").
- [8] The respondent has one child from a prior relationship: K.D., born in November 2006. The parties have two children together: J.A., born in December 2009; and M.A., born in March 2011 (the "Children").
- [9] The respondent says that she separated from the claimant as a result of family violence. The Divorce Order provided, amongst other things, that the Children were to reside primarily with the respondent and that she would have responsibility for their day-to-day care and control. The claimant would have supervised parenting. The Divorce Order also required the claimant to pay child support of \$2,457 per month and s. 7 expenses commencing December 1, 2012.
- [10] Shortly after the Divorce Order, the respondent moved to Kelowna and filed the Divorce Order with the Supreme Court of British Columbia.
- [11] The claimant soon followed. It is apparent that the claimant was unhappy with the respondent's decision to separate and became obsessed with having her return to him. This obsession led him to commit criminal offences. He broke and entered the home of the respondent's mother in Kelowna with intent to commit an indictable offence, for which he was found guilty and received a 70-day sentence of incarceration followed by two years' probation. He was also convicted for breaching bail conditions.
- [12] The parties were involved in other court proceedings in British Columbia, including proceedings to enforce the Divorce Order and child apprehension proceedings commenced by the Ministry of Children and Family Development ("MCFD").
- [13] In 2013, following various allegations of misconduct by the parties against each other, the MCFD apprehended the Children. The Children were held in care until they were returned to the respondent in April 2017. The MCFD apprehended the Children from the respondent for a second time in June 2017, and they were not returned to her until October 2017, under a supervision order. The Children have been residing primarily with the respondent since that time.
- [14] The claimant commenced this action on April 10, 2018, seeking various relief respecting the Children. Since then, the parties have been before the Court on October 23, 2018; December 11, 2019; November 30, 2020; April 21, 2021; May 2, 2022 and June 13, 2022.

- [15] As described above, the Application was filed by the respondent on June 15, 2022, and initially heard by Justice Wilson on July 12, 2022. Since then, the Application has been set down for: July 25, 2022; August 25, 2022; October 17, 2022; February 21, 2023; and finally, March 28-29, 2023.
- [16] The claimant says that he did not learn of the Alberta Action or the Divorce Order until he attended the Judicial Case Conference on October 23, 2018 (the "JCC"). He maintains that he was never served with any of the documents related to the Alberta Action and that he was blindsided by the Divorce Order, which was granted based on his resultant non-attendance. His explanation is that the affidavit of service filed in the Alberta Action suggesting he was served was false. He maintains that the respondent accessed his email address and password, pretended that she was him, and fraudulently confirmed service of the court documents. He says he did not know about the Divorce Order that required him to pay spousal and child support until the JCC. In his affidavit filed on September 15, 2020, he stated:
6. An action was commenced in Red Deer, Alberta, by [L.C.D.]. I had no knowledge of the action nor notice of any applications or proceedings. Unbeknownst to me, [L.C.D.] obtained an order for child support on 30 November 2012, (herein after referred to as "November 2012 Order"). . . .
 7. [L.C.D.] subsequently obtained an order for Divorce and corollary relief on 23 September 2013, (herein after referred to as "September 2013 Order"), again, this was without notice to me. . . .
 8. I had no notice of the November 2012 Order or the September 2013 Order until I was served with them on 14 March 2018. In fact, I am unsure as to how [L.C.D.] was able to obtain the November 2012 Order as we were still in a relationship and living in Estevan, Saskatchewan until 23 August 2013.
- [17] In April 2018, the claimant filed this proceeding essentially seeking parenting time with the Children. The respondent filed a pro forma response on September 6, 2018, generally opposing parenting time. An amended fulsome response and counterclaim were not filed until September 6, 2022, again generally opposing parenting time.
- [18] The order made at the JCC granted the claimant supervised parenting and he enjoyed six supervised two-hour visits with the Children in November and December 2018. According to reports prepared by Ms. Iris Wagner, the parenting supervisor, the visits with the Children went extremely well (the "Wagner Reports").
- [19] The respondent terminated the claimant's parenting in mid-January 2019, shortly after receiving the Wagner Reports, and sought a new parenting supervisor. Since then, the claimant and his counsel have made numerous attempts to re-institute parenting time, which have all been unsuccessful.

[20] The Relocation has resulted in the respondent and Children residing in an undisclosed location in the Vancouver area. The Children commenced school in September 2022, and are due to complete the school year at the end of June 2023. The respondent is working remotely for a college, upgrading her education online and helping low-income people navigate the legal system as a poverty law advocate.

[21] The claimant continues to live and work in Kelowna.

PAST COURT ORDERS

[22] The highlights of the past orders in this proceeding that are relevant to the Application are as follows:

- a) October 23, 2018 - Master Vos at the JCC - the parties were both declared guardians of the Children under s. 39(1) of the FLA; the claimant granted parenting time at least two hours per week to be supervised by Ms. Wagner or her delegate for a period of six visits, the cost to be borne by the claimant; the claimant was permitted to contact the Children's counsellor and participate in their counselling sessions as recommended by the counsellor; the claimant was not to consume or be under the influence of alcohol, cannabis or any controlled substance eight hours prior to or during his parenting visits; and, of significant importance, "[n]either party shall relocate the children from Central Okanagan area without written consent of the other party or further court Order";
- b) November 30, 2020 - Master Schwartz - the claimant was ordered to have supervised parenting time with the Children for two hours per week for 12 weeks, with dates, times and parenting supervisor to be agreed upon in advance and in writing by the parties; concurrent with the supervised parenting time, the Children and parties were ordered to take part in counselling to work towards parenting arrangements; after eight weeks of supervised parenting, the Children were to take part in a Hear the Child report to assess their needs and views of parenting arrangements, to better cater to their best interests; and the parties had liberty to apply if they could not agree on a supervisor;
- c) April 21, 2021 - Master Schwartz - the parenting supervisor was ordered to be Katherine Archibald or Michael Ritzmann of Crown Life Consulting;
- d) May 2, 2022 - Justice Hardwick - the claimant was ordered to pay interim without prejudice child support of \$1,543 per month; and the matter was adjourned to June 13, 2022;
- e) June 13, 2022 - Justice G.P. Weatherill - consent order for child support payable by the claimant ordered to be \$1,543 per month, with child support arrears of \$55,944 to be paid at \$350 per month; and a lump sum for arrears of spousal support of \$18,000 was ordered to be paid;

- f) July 12, 2022 - Justice Wilson - the Application was first heard without notice to the claimant; the notice requirements of s. 16.9(1) of the DA were abridged pursuant to s. 16.9(3) of the DA; the Application materials filed on July 7, 2022 were to constitute notice under s. 16.9(2) of the DA; and the Application was to be set for July 25, 2022, provided the claimant was served by July 14, 2022;
 - g) July 12, 2022 - Justice Wilson - a without notice protection order was issued pursuant to s. 183(3)(a) of the FLA; the claimant is to have no contact or communication directly or indirectly with the respondent or the Children; and the claimant is not to attend any place where they reside, work, or happen to be (the "Protection Order");
 - h) July 25, 2022 - Justice Mayer - the respondent's relocation application was to be set for the week of August 22, 2022;
 - i) August 24, 2022 - Justice Walkem - the Application was adjourned after two hours because of lack of time; and the Application was reset for two days during the week of October 17, 2022;
 - j) October, 17, 2022 - the week prior, the parties were advised by Supreme Court Scheduling that the Application would not get on the list because it could not be accommodated; the parties reset the Application for the week of February 17, 2023; and
 - k) February 17, 2023 - the Application was once again bumped because of lack of court time; it was reset for the week of March 27, 2023.
- [23] There has been no communication between the parties since the Protection Order was made.

THE LAW

- [24] The Application is brought under the relatively new relocation provisions of the DA. Section 16.9 sets notice requirements for the relocation of children, as well as conditions in which the court may modify or waive those requirements:

Notice

16.9 (1) A person who has parenting time or decision-making responsibility in respect of a child of the marriage and who intends to undertake a relocation shall notify, at least 60 days before the expected date of the proposed relocation and in the form prescribed by the regulations, any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child of their intention.

Contents of notice

- (2) The notice must set out
 - (a) the expected date of the relocation;

- (b) the address of the new place of residence and contact information of the person or child, as the case may be;
- (c) a proposal as to how parenting time, decision-making responsibility or contact, as the case may be, could be exercised; and
- (d) any other information prescribed by the regulations.

Exception

- (3) Despite subsections (1) and (2), the court may, on application, provide that the requirements in those subsections, or in the regulations made for the purposes of those subsections, do not apply or may modify them, including where there is a risk of family violence.

[25] Section 16.91 of the DA sets out the conditions in which a relocation is considered to be authorized:

Relocation authorized

16.91 (1) A person who has given notice under section 16.9 and who intends to relocate a child may do so as of the date referred to in the notice if

- (a) the relocation is authorized by a court; or
- (b) the following conditions are satisfied:
 - (i) the person with parenting time or decision-making responsibility in respect of the child who has received a notice under subsection 16.9(1) does not object to the relocation within 30 days after the day on which the notice is received, by setting out their objection in
 - (A) a form prescribed by the regulations, or
 - (B) an application made under subsection 16.1(1) or paragraph 17(1)(b), and
 - (ii) there is no order prohibiting the relocation.

[26] In deciding whether to authorize a child's relocation, the court must not consider whether the person intending to relocate the child would do so without the child: DA, s. 16.92.

[27] The burden of proof in a relocation application varies, as set out in ss. 16.93 and 16.94 of the DA, the relevant portions of which provide as follows:

Burden of proof - person who objects to relocation

16.93 (2) If the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spends the vast majority of their time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child.

Burden of proof - other cases

- (3) In any other case, the parties to the proceeding have the burden of proving whether the relocation is in the best interests of the child.

Power of court - interim order

16.94 A court may decide not to apply subsections 16.93(1) and (2) if the order referred to in those subsections is an interim order.

[28] The crucial question is whether relocation is in the best interests of the child, having regard to the child's physical, emotional and psychological safety, security and well-being: *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 152. The DA does not have the threshold requirements of "good faith" and "reasonable and workable proposal" required by the FLA.

[29] In determining the best interests of the children in a relocation application, ss. 16(3) and 16.92(1) of the DA mandate the Court to consider all factors related to their circumstances, namely:

16 (3) . . . (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;

- (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
- (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
- (d) the history of care of the child;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- (g) any plans for the child's care;
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- (j) any family violence and its impact on, among other things,
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and

(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and

(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

...

16.92 (1) ... (a) the reasons for the relocation;

(b) the impact of the relocation on the child;

(c) the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons;

(d) whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement;

(e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;

(f) the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and

(g) whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

[30] Respecting family violence, s. 16(4) of the DA requires the court to consider:

16 (4) ... (a) the nature, seriousness and frequency of the family violence and when it occurred;

(b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;

(c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;

(d) the physical, emotional and psychological harm or risk of harm to the child;

(e) any compromise to the safety of the child or other family member;

(f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;

- (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
 - (h) any other relevant factor.
- [31] A party's past conduct is not to be considered unless it is relevant to the exercise of their parenting time, decision-making responsibility or contact with the children: DA, s. 16(5).
- [32] Section 16.93 of the DA provides that, in cases where the children spend the vast majority of their time in the care of the relocating parent but that parent has not substantially complied with court orders, the burden of proving whether the relocation is in the children's best interests lies with both parties.

DISCUSSION

- [33] The voluminous affidavits filed by the parties are in conflict. Each side has chosen to sling mud at the other. It is evident that the Court cannot determine the true facts without a trial. I am concerned that both parties have embellished the facts in their favour, have been less than frank with the Court, and, in a couple of instances, have been downright untruthful.
- [34] The respondent makes allegations of family violence and financial abuse. She says she has a deep fear of the claimant that began when they cohabited. The claimant vehemently denies these allegations. Both parties allege that the other side has disregarded the implementation of previous parenting orders. The parties cannot agree on the proper implementation of the parenting and counselling orders that have been made. They point fingers at each other as to who is responsible for frustrating the process.
- [35] The respondent says she wants to relocate to the Vancouver area because it offers: i) better employment opportunities for her to support herself and the Children; ii) the opportunity to further her education; iii) better schooling opportunities for the Children; iv) closer proximity to a support system of family and friends for the Children; and v) freedom from living in the Central Okanagan, where she feels that she is constantly looking over her shoulder for the claimant.
- [36] In determining whether to grant the Application, I must consider whether relocating the Children to the Vancouver area is in their best interests, having regard to the factors contained in ss. 16(3) and 16.92(1) of the DA.
- [37] The factors in favour of allowing the Application are that:
- a) The Relocation occurred some eight months ago;
 - b) The Children are attending school somewhere in the Vancouver area and are doing well there, according to the respondent;
 - c) The Children have made friends there and have family support in the area; and

d) The respondent is working and attending school in the Vancouver area.

[38] The factors that militate against allowing the application include that:

- a) The Relocation was made in secret, contrary to a court order and while the Application was still before the Court;
- b) It is apparent that the respondent had secretly planned the Relocation for quite some time before filing the Application, during which time the parties were engaged in negotiations to settle issues respecting arrears of child and spousal support;
- c) The Children resided and attended school in the Kelowna area from 2013 until the Relocation;
- d) The Children were functioning well in Kelowna;
- e) The claimant's parenting time with the Children was progressing well until the respondent unilaterally terminated his contact;
- f) The claimant has not engaged in any family violence since well before the Judicial Case Conference in 2018; and
- g) It is apparent that the Children enjoy being with their father and want to have parenting time with him.

[39] The material persuades me that the respondent's allegations of family violence against the claimant at best relate to historical events that occurred either while the parties were cohabiting in Alberta or around the time when she moved to Kelowna ten years ago. It is evident that until at least 2017, both parties were struggling with substance abuse or other issues that resulted in the MCFD becoming involved and apprehending the Children for four years.

[40] I am not persuaded that the claimant has committed any family violence since well before the JCC on October 23, 2018. I am also not persuaded that there is a risk of family violence in the future if the Children are returned to the Central Okanagan area. Further, I am persuaded that the respondent has not been in substantial compliance with past parenting orders and has deliberately frustrated those orders related to the claimant's parenting time.

[41] The claimant's evidence that he has been clean, sober and of good behaviour since 2015 is persuasive. It is evident that during the supervised visits in November and December 2018, the Children were delighted to see him and had a good time with him. I place much weight on the Wagner Reports that confirm the visits went extremely well, contrary to what the respondent suggests. For reasons known only to her, she terminated the claimant's parenting time in January 2019, based on what I consider to be meritless arguments regarding the wording of the parenting orders. The claimant's lack of parenting time with the Children since 2018 was orchestrated by the respondent, who has attempted to frustrate the intent of the court orders issued in the past.

DECISION

- [42] Having considered the material before me, the submissions of counsel, the factors set out in ss. 16(3) and 16.92(1) of the DA, and noting that this is an interim application pending trial, I conclude that the Application must be dismissed. The Relocation is not in the Children's best interests because:
- a) The Relocation was not done in good faith. The respondent had decided to relocate with the Children well in advance of filing the Application. She was going to relocate regardless of the outcome of the Application.
 - b) The respondent completed the Relocation knowing that the claimant would vigorously oppose it in court.
 - c) The Relocation takes the Children away from Kelowna, where they have lived and attended school since 2013 and where the claimant resides. I am persuaded that the claimant loves the Children and the Children love him. The principle of maximum contact between the Children and their parents supports their continued residency in the Central Okanagan area.
 - d) The respondent has shown that she has no intention of supporting a relationship between the Children and the claimant.
 - e) The Children have a network of friends and family members in the Central Okanagan area.
 - f) Although the Children are currently attending school in the Lower Mainland and will be finishing the current school year at the end of June 2023, most of their prior schooling occurred in the Central Okanagan area.
 - g) Although the respondent says she is currently working in a full-time job and attending school, she is doing both remotely from home. She gave no reason why she could not continue to work in the same job or attend the same upgrading courses remotely from Kelowna.

ORDERS

- [43] In the result, I make the following orders:
- a) I dismiss the Application to approve the Relocation.
 - b) The respondent may not relocate the Children from the Central Okanagan area without a further court order.

- c) The Children must be returned to the Central Okanagan area by no later than July 15, 2023. Should the respondent return to the Central Okanagan area with the Children, the Children's primary residence will be with her. Should she decide not to return with the Children, the Children's primary residence in the Central Okanagan area will be as determined by further order of this Court.
 - d) The claimant's in-person parenting time with the Children will recommence within one week of the Children's return to the Central Okanagan area. Such parenting will be supervised by a professional parenting supervisor paid for by the claimant and will be for two hours per day, twice per week for three weeks, and thereafter as agreed upon by the parties in writing or, failing agreement, as approved by the parenting supervisor, who shall have authority to increase parenting time.
 - e) Should the parties be unable to agree on a parenting supervisor, they have liberty to apply to the Court.
 - f) The current order for a Hear the Child report will remain in place.
 - g) Upon the Children's return to the Central Okanagan area, the respondent will provide the claimant with the Children's address as well as any future addresses.
 - h) Pursuant to ss. 222, 225 and 227 of the FLA, neither party will directly or indirectly communicate with or contact the other party except for the purpose of arranging the claimant's parenting time. In any event, any and all such communications will be restricted to the use of Our Family Wizard, the cost of which will be split equally between the parties.
 - i) As soon as possible from the date of this order, the claimant will enroll in and commence co-parenting counselling sessions with a registered psychologist paid for by him.
 - j) The respondent's application to dispense with the need for the claimant's consent for her to apply for the Children's passports is dismissed.
 - k) The respondent's application to transfer this proceeding from the Kelowna Registry to the court registry in the Lower Mainland closest to the Children's current residence is dismissed.
- [44] In making these orders, I recognize that a further relocation from Vancouver to the Central Okanagan area will cause some disruption to the Children and will require a period of adjustment. However, I have concluded that, on balance, it is in the Children's best interests for them to return to the Central Okanagan area once their school year is complete, and for them to begin reconnecting and developing a relationship with the claimant.

COSTS

[45] The claimant was the successful party and is entitled to Scale B costs of the Application.

"G.P. Weatherill J."

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