

CANADA / JUDGMENT

K.H.D. v. O.O.M.

2022 BCSC 1525

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1525 K.H.D. v. O.O.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.H.D. v. O.O.M.,

2022 BCSC 1525

Date: 20220830

Docket: E210970

Registry: Vancouver

Between:

K.H.D.

Claimant

And

O.O.M.

Respondent

Before: Master Bilawich

Reasons for Judgment

Counsel for the Claimant:

N. Nasser

G. Dyer (A/S)

Counsel for the Respondent:

P. Boles

Place and Date of Hearing:

Vancouver, B.C.

July 12-13 and 15, 2022

August 17, 2022

Place and Date of Judgment:

Vancouver, B.C.

August 30, 2022

Introduction

- [1] This is a high-conflict family dispute which involves allegations of family violence.
- [2] By application filed June 29, 2022, the respondent applies for an interim order permitting her to relocate the parties' two children, ages 7 and 5 years, from Surrey, BC to Celebration, Florida, USA. In particular, she seeks the following:
- a) The order of Master Elwood made September 15, 2021 be varied with respect to parenting time and to allow for the respondent to relocate the children to reside with her in Florida, USA as of July 25, 2022;
 - b) The respondent be allowed to travel with the children for that purpose;
 - c) The claimant forthwith provide the respondent with any and all identity, passport, citizenship, residency and other immigration and travel documentation in his possession and control relating to the children or to the respondent;
 - d) The claimant forthwith on demand by the respondent provide the respondent through counsel any and all documents for signature which are necessary for travel, residency and citizenship;
 - e) The day-to-day parenting responsibilities for the children be undertaken by the respondent without input of the claimant, pursuant to s. 41 of the Family Law Act;
- [3] The claimant opposes relocation of the children. He says the respondent seeks what is effectively a final order and says it is not appropriate to decide this issue on an interim application based on conflicting affidavit evidence. In the alternative, he says relocation is not in the children's best interests because it would dramatically reduce his parenting time with them. He presently has the children every Friday after school to Monday morning.

- [4] The claimant previously filed an application for an order that neither of the parties remove the children from the Metro Vancouver Regional District without written agreement or court order, or alternatively, an order prohibiting the respondent from relocating the children. He also seeks equal parenting time with the children.
- [5] The respondent opposes all relief sought by the claimant.
- [6] On April 29, 2022, Master Vos granted a without prejudice consent order prohibiting both parties from removing the children from BC without written agreement or court order, until the relocation issue has been determined by the court.

Background

- [7] The claimant is 35 years of age. He is about 6'3" tall and 240 pounds. The respondent says he has dual USA-Egyptian citizenship and is also a permanent resident of Canada. The claimant denies having Egyptian citizenship.
- [8] The respondent is 29 years of age. She is about 5'3" tall and 125 pounds. She says she has dual USA-UK citizenship and is also a permanent resident of Canada.
- [9] The parties both observe the Muslim faith. The respondent converted while in her late teens, before she met the claimant.
- [10] The parties met in or around September 2012. At the time, the respondent was 19 years of age and the claimant was 26 years. The respondent was pursuing her undergraduate studies in Germany. Her parents resided in New Jersey at the time. The claimant, also a resident of New Jersey, was divorced with an infant son from his first marriage and was working as a teacher.
- [11] The parties began living together in New Jersey on or about April 1, 2013. They married on June 1, 2013. They have two children:
 - a) S.M.D. ("S."), born [date redacted] (age 7); and
 - b) E.B.D. ("E."), born [date redacted] (age 5).
- [12] In late July 2017, the parties moved to BC.
- [13] The respondent has since obtained a Masters degree in Psychology. She is employed as a school psychologist and is earning about \$99,000 per annum. She is in the second year of a five-year PhD program in Clinical Psychology, with a concentration in Neuropsychology. She is taking this program through Fielding Graduate University in California. She is able to take the first four years of the program remotely. The fifth year will involve a work practicum.
- [14] The claimant, until recently, worked as a teacher in the same school district as the respondent and had some side ventures. While so employed, he was earning about \$94,000 per annum. As of about September 2021, he was suspended without pay pending resolution of criminal charges arising from alleged incidents of family violence allegedly committed

against the respondent, including two charges of assault and one of sexual assault. The charges were issued in June 2021. At the time of hearing before me, no trial date had yet been scheduled.

- [15] Prior to this suspension, in June 2020, the claimant had been subject to professional discipline and a board-initiated transfer to a new school due to a substantiated sexual harassment complaint made by a female colleague.
- [16] Post-suspension, the claimant says he has been earning income through private tutoring and consulting work, which he expects to generate about \$12,000 per year. In a more recent affidavit, he says he has also been generating income through food delivery, but does not elaborate on what this involves or how much he earns from it.
- [17] The parties disagree regarding the date of separation. The respondent says it was April 1, 2020, when she informed the claimant that she wished to separate. The parties continued living under the same roof for a further 13 months thereafter. The claimant says the parties separated on January 3, 2021. The parties agree the respondent left the family home on May 3, 2021.

Mental Health Issues

- [18] Both parties allege the other struggles with mental health issues, however, there is a notable absence of expert evidence and relevant medical records before the court.
- [19] The claimant admits that in 2015 he was diagnosed with anxiety and says he has attention deficit hyperactivity disorder ("ADHD"). He says one of the symptoms of the latter condition is a lack of impulse control, which he says negatively affected his relationship with the respondent. His impulses were unchecked during their relationship and he became addicted to online pornography and sexting. He is not specific about what this involved. He does acknowledge having had an extramarital affair in about May 2018.
- [20] He says by May 2020, he became aware he needed to address his mental health so he started receiving cognitive behavioral therapy. He claims this has helped him control his impulses and overcome his addiction. He does not indicate who his therapist(s) are, what the course of treatment he undertook, nor has he produced any records relating to his diagnosis and treatment.
- [21] The claimant admits that in or about April 2021, he was diagnosed with bipolar disorder, for which he began taking medication and availing himself of other supports. He says it took some time to find an effective balance of medications. He acknowledges that during the breakdown of the parties' relationship, he alluded to self-harm. The respondent says he threatened suicide. The claimant now says that between medications and therapy, he is regulated and in control. Again, he has not produced expert evidence or treatment records to support this.

- [22] The claimant also suggests in his evidence that his unidentified treatment professional(s) have informed him that he has symptoms that are consistent with post-traumatic stress disorder ("PTSD"). This is unattributed hearsay, again with no supporting medical documentation.
- [23] The claimant alleges that the respondent suffers from borderline personality disorder ("BPD") and that this gave rise to various negative behaviours on her part during the relationship. He suggests that at one point in his evidence that he was concerned she might be off her "meds", which caused him to request a wellness check by police. In framing some of his comments in this way, he appears to imply she was taking medication for BPD related issues. He also alleges she occasionally engaged in self-harm.
- [24] The respondent denies having BPD, but acknowledges that while she was in her undergraduate program, she came to mistakenly believe that stress-related symptoms she was experiencing were consistent with what he was then learning about BPD. After completing her studies, she realized it was just normal stress. She says the only medication she took during their relationship was an anti-depressant, which was originally prescribed to address post-partum depression. She continued taking this for several years, but eventually stopped.
- [25] There is no medical evidence regarding alleged BPD issues. The claimant offered his own commentary about BPD which strays inappropriately into the field of expert evidence and as such is not admissible.
- [26] Master Elwood commented on the parties making mental health-related allegations without supporting evidence on an earlier application in this matter, at *K.H.D. v. O.O.M.*, 2021 BCSC 1808 at paras. 45-47:

45 Ms. M. makes a number of allegations in her affidavits about Mr. D.'s mental health. Mr. D. denies many of these allegations, and advances a number of his own allegations about Ms. M.'s mental health, which Ms. M. denies.

46 I find conflicting and unsupported allegations of mental health issues unhelpful on these kinds of applications. Competing evidence of conditions like depression, anxiety and suicidal ideation can be unnecessarily provocative and stigmatizing. People with mental health challenges such as these can be excellent parents, provided they receive appropriate treatment.

47 Generally speaking, disputed issues around the mental health and ability of a parent should be advanced by way of proper expert evidence and decided at a trial. The exception is "mental health problems associated with a risk of family violence" (s. 184(1)(e)) of the FLA. The evidence in this case does not rise to that exceptional level.

Respondent's Version of Pre-Litigation Events

- [27] The respondent says she has been the children's primary caregiver since their birth. Before she left the family home, she was dropping them off every morning at daycare and school, preparing most of their meals, picking them up Mondays, Wednesdays and Fridays. The claimant picked them up Tuesdays and Thursdays. She says she was primarily responsible for their care on weekends and after school/daycare. She says she was primarily responsible for most aspects of their care.
- [28] The respondent alleges that throughout the relationship and since separation, the claimant was highly controlling. This includes:
- a) Strictly controlling how she dressed, including insisting she wear a hijab at various times, insisting that he approve her choice of clothing when she left the home, exercising a veto over clothing she purchased for herself, if it did not comport with his notion of modesty;
 - b) Excluding her from any control of or information about family finances. She says he did not allow her access to financial statements, insisted she use accounts he could access and control, that he would get explosively angry when she asked questions about their finances, that he insisted she use only certain credit cards he provided and that he closely monitored all of her spending;
 - c) Controlling who she was allowed to interact with and not allowing her to have visitors in their home. She alleges he separated her from her family by discouraging contact between her and her parents, forbade her from having contact with any men, except as necessary for her work. He monitored her cell phone records and would call numbers he did not recognize to question friends and colleagues about how they knew her and what they had spoken to her about. He monitored her social media accounts and contacts and insisted she not interact with men in particular;
 - d) Monitoring and controlling her movements, including requiring that she get his permission before going anywhere other than taking the children to daycare/ school or going to work, monitoring how long she was away and demanding she return home if she was away longer than he considered appropriate. She says that after they separated, he installed cameras in every room in the family home except bathrooms and motion activated cameras at the front door and garage to monitor her movements. Shortly after she moved out of the family home in May 2021, she discovered that a tracking feature had been activated on her cellular phone and believes he had been monitoring her movements with it. She also alleges he interrogated her several times each week about where she had gone and who she had interacted with.

- [29] The respondent alleges the claimant continuously abused her and the children, including physically, verbally, psychologically and financially. She says the claimant struck her in the face on two occasions before they moved to BC. After moving to BC, he continued to physically abuse her, including by pushing her to the floor and looming over her or backing her into a corner while verbally berating her, often with the children present or in the vicinity.
- [30] After they separated but while still living under the same roof, she says the claimant sexually assaulted her on one occasion.
- [31] The respondent alleges the claimant drove erratically and dangerously on numerous occasions when he was angry with her. This included slamming on the brakes with her and the children in the vehicle or driving at speeds well in excess of the posted limit in an effort to alarm them.
- [32] She alleges the claimant often humiliated her when he was angry, by spitting on her and calling her insulting names, including "worthless slut", "retard", "idiot" and "whore", sometimes in the presence of the children. She says he insulted her education and her profession.
- [33] She alleges the claimant has threatened suicide or self-harm, including texting her pictures of himself with a large kitchen knife in his lap. One picture shows the knife tip towards his abdomen. She alleges he has threatened to financially drain her through the courts if she left him and to tell people at her workplace that she is crazy and get her fired. She also alleges he has threatened to take the children to Egypt, which he denies.
- [34] The respondent alleges the claimant has an explosive and unpredictable temper and would regularly get angry and scream at her, often in the presence of the children. She says he was inflexible with the children and would yell at them if they did not do whatever he was asking them to do.
- [35] Shortly before she moved out of the family home, the claimant made a point of letting her know he was considering applying for a firearms license. She objected to him bringing a firearm into the home and objected to him having a licence to acquire one. He initially told her he had not carried through with the application, but later left his new firearms license lying out where she could see it. She considered this to be a threat and a form of intimidation.
- [36] The respondent describes the claimant as disinterested in parenting young children. After she left the family home, she complains that he was inappropriately using using S. as a source of emotional support.
- [37] She complains the respondent cheated on her with one of the few friends she had made while they were living in Abbotsford. The friend was a single mother who had a daughter who went to school with S. She says she discovered the claimant had intimate relations with her friend in the basement of their home while she and the children sleeping upstairs. Upon

her discovering this, the claimant suggested this woman become his second wife, which the respondent rejected. Afterwards, the friendship ended and S. was no longer able to play with the woman's daughter.

[38] This is not an exhaustive summary of the respondent's allegations regarding the claimant.

Claimant's Version of Pre-Litigation Events

[39] The claimant offers a much different version of the parties' relationship:

- a) He denies that he was controlling of how the respondent clothed herself. He says she dressed however she wished throughout the relationship. She wore a hijab at times because she wanted to. He denies vetoing clothing purchases;
 - b) He denies restricting the respondent's access to information about family finances. He says they each had their own accounts into which their respective pay was automatically deposited and each was set up to pay certain family expenses. He denies controlling her use of credit cards or inappropriately monitoring her spending. He alleges that a consequence of her alleged BPD was a tendency to make impulsive decisions involving spending, many of which he supported. Examples offered included her suggestion that they move from New Jersey to BC, housing decisions and a decision to get certain cosmetic surgical procedures done and to tattoo his name on her body;
 - c) He denies he was controlling regarding who the respondent interacted with. He suggests any disconnect with her own family was a function of the respondent and her mother having longstanding challenges in their relationship. He denies he forbade her from having contact with others. He denies monitoring her cell phone records and social media accounts;
 - d) He denies he monitored or controlled her movements and says she went where she wished, when she wished, subject to them both fulfilling their common parenting responsibilities. He installed cameras in the children's rooms in the family home but denies installing them in other rooms, such as the respondent's bedroom. He denies he activated a tracking feature on the respondent's cell phone. He notes they did purchase a family phone plan because it was more economical. He denies interrogating the respondent about her movements and contacts.
- [40] The claimant denies allegations that he abused the respondent or the children. He acknowledges the parties occasionally had verbal altercations in which both said inappropriate things to the other. He describes any physical contact as minor and denies ever striking her, pushing her to the ground or backing her into a corner. He denies he sexually assaulted her and says any sexual contact they had was consensual and prior to separation. He tendered texts which he says support his contention that she initiated sexual intimacy with him during the period after she claims they separated.

- [41] The claimant attributes much of the personal turmoil that took place in the relationship to the period before he started receiving counselling and effective treatment for his mental health issues. He says he is now properly regulated.
- [42] The claimant alleges the respondent expressed remorse to him about having had children as early as she did and describes her as emotionally withdrawn from the children. He tendered a text she sent him at one point with a link to an article, "Parents Who Regret Having Children Are Anonymously Sharing What It's Like, And It's Taboo But Important" and a note highlighting one of the comments. He suggests she told him she identified with that person's story.
- [43] The claimant says he was the parent who spent more quality time with the children and that even when the respondent was home, she often withdrew. This became more of an issue after she embarked on her PhD program. It required her to spend time on her studies, which was time away from the children. He says the children became unhappy and were expressing concern about whether the respondent still loved them.
- [44] The claimant denies ever threatening to take the children to Egypt. He downplays his threats of self-harm and suggests they arose when the parties were separating and before his treatment regimen took hold. He admits he obtained a firearms license and says this was because he wanted to start going to a gun range as a new hobby. He says he is content to give up the license given that it is a source of concern for the respondent.
- [45] As noted, he admits having cheated on the respondent during their marriage but appears to attribute this to his unchecked impulsive behaviour stage. He denies this happened on a second occasion as alleged by the respondent. He says the respondent told him in a text exchange that she had cheated on him as well. For her part, the respondent acknowledges she sent the text but says she did so out of anger and denies she had actually cheated.

Respondent's Departure From Family Home / Start of Family Action

- [46] The respondent's new partner says that on April 8, 2021, he received a telephone call from the claimant inquiring in an aggressive tone regarding the respondent's whereabouts. The partner replied that he did not know where she was and asked why the claimant was interrogating him. The claimant told him it was an emergency. Half an hour later, the claimant called again and told him to stay away from the respondent and to not get involved with married women, amongst other comments. The claimant denies making the calls and says he was not aware of the respondent's partner until he received his affidavit.
- [47] On April 20, 2021, the parties filed a joint notice of family claim. It provided that the parties were seeking a divorce, shared parenting of the children, with the children to spend Monday to Friday with the respondent and Friday evening to Monday morning with the claimant, provided that both parties were living within one hour of each other. If either party moved outside that radius, new parenting arrangements would be made. It also provided that the claimant would pay the respondent child support of \$1,400 per month, starting in the first

month either party moved out of the family home. Neither party sought spousal support from the other. They also sought an equal division of family property and debt.

- [48] On or about May 3, 2021, the respondent left the family home. She says the triggering event was the claimant not allowing her to take the children to a public park unless he was present because he insisted they appear to be a family. She initially left the children with the claimant and went to stay with a friend. The same day, the claimant withdrew \$2,000 from her bank account, depleting it. She believes he did this so she could not afford to retain legal counsel.
- [49] The respondent says on May 7, 2021, the claimant called her and said if she tried to leave him he would be take the children to Egypt and that he had gone through this with his son from his first marriage and would not let the court separate him from their children. That same day, the respondent arranged to have the RCMP to do a wellness check on the children. She had initially wanted them to help her pick them up from the family home but was told she would have to obtain an order through family court first.
- [50] On May 13, 2021, the respondent filed a notice of withdrawal from joint family case, a response to family claim, a counterclaim and a without notice application for a protection order. Master Taylor granted a protection order restraining the claimant from communicating with the respondent, except in writing so as to arrange supervised parenting time with the children, in specified court proceedings or through counsel, an order restraining him from communicating with the children except during supervised parenting time, restraining him from attending at the respondent's home, place of work, the children's school and daycare, restraining him from following the respondent, possessing weapons or firearms. The order included a police officer enforcement clause.
- [51] Also around May 13, 2021, the respondent's parents, who had moved from New Jersey to Celebration, Florida, travelled to Surrey to help the respondent with the children. They have remained in BC ever since. The respondent's father apparently retired early so he would be available to assist.
- [52] On May 14, 2021, the respondent applied for, and Master Vos granted, a without notice order amending certain terms in Master Taylor's protection order. Later that day, RCMP officers attended at the family home to remove the children and bring them to the respondent.
- [53] On May 20, 2021, the claimant filed an application to amend the protection order to allow communication between the parties regarding the children and equal parenting time, on an alternating weekly basis.
- [54] As a temporary measure, the parties agreed to the claimant having limited professionally supervised parenting time with the children.
- [55] On May 24, 2021, the respondent's partner received a series of text messages from someone identifying themselves as "Christine" and claiming to be the respondent's friend from Abbotsford. The texter inquired whether the partner was dating the respondent and how

things were between them. She said she was aware the respondent had been separated for some time and asked how she was adjusting. The partner replied that the respondent did not know a "Christine" and asked how she had obtained his number. Christine's response included:

I see what she is doing [unhappy face]. Anyway best of luck. Be careful of her STI (that's what made the last marriage bad, since her ex didn't have one), her anti-psychotic meds, and the affairs she was involve in that she told me about. I have known her for years. Feel free to text me.

- [56] Christine goes on to provide other personal information about the respondent, including mentioning that she had played cricket and had a tattoo of the claimant's name.
- [57] The partner called Christine's number while the respondent was present and listening in. The respondent says the person who answered sounded to her like the claimant speaking in a high-pitched voice, attempting to sound female. The claimant denies having any involvement with the texts or the phone call. Claimant's counsel appeared to suggest these may have been staged by the respondent.
- [58] On June 3, 2021, Master Elwood, as he then was, presided over the claimant's application to vary the amended protection order and shared parenting time. At the conclusion of the hearing, he reserved his decision.
- [59] On June 25, 2021, the RCMP arrested the claimant and he was charged with two counts of assault and one count of sexual assault involving the respondent. The charges relate to incidents which pre-date her departure from the family home. The claimant was released on an undertaking to appear. The terms of the undertaking initially prevented him from continuing supervised parenting time with the children. The claimant denies all of the charges against him. There was also evidence indicating there have been a series of defence-initiated adjournments of the criminal matter proceedings since then. No trial date had yet been set at the time of the hearing before me.
- [60] The respondent says that since June 2021 she has been under the care of her family physician and a therapist for PTSD arising from her relationship with the claimant. There was minimal medical evidence supporting the diagnosis, including a one-line letter from her GP. A late delivered expert report which did not comply with expert report requirements under the SCFR was tendered, but the claimant objected to it and I did not allow the report in evidence.
- [61] On or about July 7, 2021, the partner's employer received a notice on its website from someone identifying themselves as "Hamad Rajab" with phone number (222) 222-2222, leaving a message stating the respondent's partner was part of an open investigation of child abuse, and stating "I thought your company would value its image on working with alleged child abusers. RCMP has an open file into the matter as well as MCFD." The claimant denies posting the message.

- [62] On July 9, 2021, Master Cameron granted a consent order for production of Abbotsford Police and Surrey RCMP records.
- [63] On July 19, 2021, the claimant filed an amended notice of family claim. Amongst other relief, he seeks the majority of the parenting time with the children, with the respondent's parenting time to be determined in accordance with their best interests. He also seeks sole decision-making authority.
- [64] Also on July 19, 2021, RCMP Cst. LaPointe sent a letter to the claimant advising he was investigating a complaint that the claimant was harassing the respondent's partner and causing him to fear for his safety. The constable instructed the claimant to stop all attempts to communicate directly or indirectly with the respondent's partner, failing which he could be arrested for criminal harassment.
- [65] On July 30, 2021, Ms. Boles filed a notice of change of lawyer for the respondent. Also that day, both parties applied to Master Elwood to re-open the hearing of the claimant's application to vary the protection order so that new evidence could be adduced. The claimant also applied for an order pursuant to section 211 of the Family Law Act ("FLA") that a parenting report to be prepared.
- [66] On September 15, 2021, Master Elwood issued reasons for judgment, indexed as K.H.D. v. O.O.M., 2021 BCSC 1808. He ordered that the protection order remain in place with respect to the respondent, her residence and place of employment. He removed the children from the scope of the protection order. He granted the claimant have interim weekend parenting time with the children. He adjourned generally the application for a s. 211 report.
- [67] At paras. 48-52 of his reasons, he said the following regarding family violence:
- 48 More importantly, Ms. M. alleges family violence by Mr. D., including a sexual assault in 2020 and recent physical and verbal assaults. Mr. D. disputes the full extent of the family violence alleged by Ms. M.; he specifically denies sexually assaulting her.
- 49 It is not necessary for me to resolve the conflicts in the evidence to find that family violence occurred in this case. The evidence establishes that the relationship was marred by a pattern of conduct by Mr. D. aimed at exerting control over Ms. M. For the purposes of this application, I am satisfied that Ms. M. has shown a history of family violence by Mr. D., manifested in angry outbursts, passive aggression and, occasionally, physical violence. This pattern continued and appears to have escalated following the parties' discussion of separating. There is evidence of recent acts of aggression by Mr. D. toward Ms. M., both physical and emotional.
- 50 Ms. M.'s graphic description of the alleged sexual assault in September 2020 is consistent with a pattern of control and coercion in the relationship. Mr. D. is, of course, presumed innocent of the criminal charges against him. However, I find his claim that the encounter was consensual because the parties had not yet separated fundamentally unacceptable.

51 I accept Mr. D.'s evidence that he is addressing the conduct that he acknowledges made the relationship unhealthy. However, I am concerned the likelihood of further family violence following Ms. M.'s decision to terminate the relationship has not adequately diminished. I am unable to conclude with sufficient confidence that need to protect Ms. M. has passed. Mr. D. has shown himself to be capable of various forms of family violence against Ms. M. in the past. There remains an unacceptable risk of family violence against her in the future.

52 The evidence that the children are at risk of family violence is much less compelling. For the reasons discussed below, I will not make an order for equal parenting time by Mr. D.'s equal parenting time is not in the best interests of the children at this time. However, I am not convinced that a protection order is required to protect the children. Nor am I convinced that Mr. D's parenting time with the children must be supervised.

[68] Since September 25, 2021, the claimant has had unsupervised parenting time with the children. The current schedule, in place since October 2021, is Fridays at 5:00 p.m. until Mondays at 8:15 a.m., every weekend. That order was made without prejudice to the right of either party to seek variation without having to show a material change in circumstances. Exchanges have been taking place at a designated restaurant in Surrey, with the respondent's parents facilitating all exchanges on her behalf.

[69] On October 25, 2021, Justice Edelmann pronounced a consent order imposing a section 91 FLA restraining order on the claimant, for the claimant to file a F8 Financial Statement, document production, retroactive child support payable by the claimant to the respondent, ongoing without prejudice child support, sale of the family home and production of non-party records.

[70] On December 3, 2021, the family home was sold, generating net sale proceeds of \$207,924.28. This is currently held in trust by respondent's counsel.

[71] Around this time, the claimant learned S. had been seeing a counsellor, Ms. de Jong. On December 30, 2021, the claimant filed a second application for a s. 211 report and for production of Ms. de Jong's counselling records relating to S. and the respondent.

[72] On January 17, 2022, Master Muir dismissed the claimant's application for both the section 211 FLA report and production of Ms. de Jong's counselling records. The learned Master found S. had a right to confidentiality regarding communications with her counsellor.

Events Since Notice of Relocation

[73] On March 23, 2022, respondent's counsel wrote to claimant's counsel, advising of the respondent's intention to relocate the children to Florida, USA as of July 25, 2022. Counsel's letter included a proposed schedule of parenting time which includes 1 week of winter (December) break, 1 week of spring break, June 1 to June 30 and twice weekly video calls on Monday and Thursday. If the claimant is in Florida during the months of September to May, 2 weekends per month (Friday afternoon to Sunday afternoon). Drop off would occur at a

Starbucks in Orlando, Florida and pick-up at the restaurant in Surrey, B.C. The respondent's parents would continue to facilitate exchanges and video calls. Flights must be direct and the children would not fly unaccompanied until E. reaches age 12.

- [74] On April 14, 2022, the claimant filed an application for orders that the respondent not remove the children from the Metro Vancouver Regional District absent consent or court order and alternatively prohibiting the respondent from relocating with the children and interim equal parenting time. His application was returnable April 29, 2022.
- [75] Also on April 14, 2022, the respondent was visited by RMCP Cst. Mayer, who advised the claimant had made a complaint to police that the respondent's partner had kissed the children on the cheek and had made S. comb his hair. The claimant suggested the partner was "grooming" of the children and claims S. had request his help to address this. The officer left following a brief discussion with the partner, reportedly commenting that it was clear what was happening and the claimant needed to start acting like an adult.
- [76] On April 29, 2022, the parties consented to an order of Master Vos that, on a without prejudice basis, neither party would remove the children from BC without written agreement of both parties or as permitted by court order until the issue of relocation has been determined by the court.
- [77] On May 1, 2022, the respondent received a telephone call from RCMP Cst. Hersi. The children were with the claimant at the time. Cst. Hersi advised her that the claimant was "emotionally escalating" on the phone and asked if the respondent would be available to pick the children up in the event they were not able to de-escalate the situation with the claimant. Two hours later the RCMP called the respondent again to advise that the situation had been de-escalated.
- [78] On May 6, 2021, the claimant sent an email to S.'s counsellor, Ms. de Jong demanding that she stop counselling S., based on Ms. de Jong's refusal to talk to the claimant or allow him any input to the counselling process. He warned that if she failed to comply with his demand by May 13, 2022, he would make a complaint to the Canadian Counselling and Psychotherapy Association ("CCPA").
- [79] On May 13, 2022, the protection order expired automatically. There are still restrictions imposed on the claimant's ability to interact with the respondent in the pending criminal proceeding.
- [80] On May 17, 2022, the respondent received a telephone call from a social worker with MCFD requesting she bring the children in to be interviewed, based on an unspecified complaint by the claimant. The children were brought in and interviewed by MCFD personnel, one of whom told the respondent afterwards that there was nothing there. They did not tell the respondent what the claimant's specific complaint was.

- [81] On May 18, 2022, the claimant sent a further email to Ms. de Jong advising that as she continued to alienate him as a parent and refused to respond to him, he would now file an ethics complaint with the CCPA, which he pointed out would be public.
- [82] Ms. de Jong later wrote to the claimant advising that, after speaking to the RCMP, she was formally requesting that he stop contacting her in any form, written or otherwise.
- [83] On May 31, 2022, the claimant attended S.'s school to take part in a field trip with her. He did not discuss this with the respondent before he did so. The respondent argues this was a breach of the claimant's release conditions in the criminal proceedings.
- [84] On June 1, 2022, a RCMP constable attended at the respondent's home, advising the claimant had requested a wellness check. In his evidence, the claimant said he had done so because he was not certain whether the respondent was "off her meds". He did not offer a legitimate reason for having done so. The respondent testified that E. had a negative reaction to the police attending their home yet again.
- [85] On June 14, 2022, Ms. de Jong sent the respondent a photo of a complaint form the claimant had sent to the CCPA about her. The claimant emailed this to Ms. de Jong, presumably to show he had followed through with his threat to make a professional complaint. Oddly, claimant's counsel objected to the form based on it being difficult to read. Considering that the claimant filled out the complaint, he presumably knows what he wrote. He failed to produce his own copy.
- [86] On June 29, 2022, the respondent filed her application to relocate with the children to Celebration, Florida and her application response to the claimant's application of April 14, 2022.
- [87] On July 7, 2022, the respondent filed his application response to the respondent's application of June 29, 2022.
- [88] Both applications were heard July 12-13 and 15 (half day). At the request of respondent's counsel, the hearing was re-convened on August 17, 2022, based on newly uncovered evidence indicating the claimant had breached the s. 91 restraining order by selling a vehicle and had failed to disclose this prior to the hearing. Counsel argues that had she been aware of the breach earlier, she would have raised it at the hearing, as an indication of the claimant's ungovernability and lack of respect for court orders.
- [89] No trial date has been scheduled in this action. Respondent's counsel said that requests to set a trial date were ignored by claimant's counsel. Shortly before the hearing, claimant's counsel did propose that trial be scheduled for mid-March 2023 for 5 days. During submissions, I suggested 5 days would not be adequate based on what I was hearing and that 10 days was more realistic. There were no available dates for a 10-day trial at the time of the hearing. Neither party has conducted an examination for discovery of the other yet, and document discovery does not appear to be well-advanced.

Respondent's Position

- [90] The respondent says the claimant's controlling and volatile conduct while the parties were living under the same roof and his "scorched earth" approach to attacking everyone around and supporting the respondent and the children is having a profoundly negative impact on every facet of the respondent's and the children's lives, including home, work, school, health and wellness, social, financial, and family.
- [91] The respondent says the claimant has continued to demonstrate by his actions that he is a controlling bully is intent on attacking and trying to push away anyone in her and the children's orbit who he perceives as supporting them.
- [92] The respondent wishes to go "home" to the USA, and in particular to Celebration where she and the children will be surrounded and supported by her parents and the rest of her small but close extended family. Florida represents a safer, more secure, stable and much more supportive environment for her and the children. This will help them all transition from the trauma they have experienced during the relationship and ongoing since separation.
- [93] It is the respondent's intention to secure a job as a school psychologist and focus on completing her PhD program to help enhance her professional and financial security and independence. She will also have the opportunity to pursue private contract work in Florida; an option not available in BC. She will have the continuing support of her parents, who have already demonstrated the extent of their commitment through their temporary relocation to BC. She intends to eventually purchase her own home in the area near her parents' home. With housing costs and the cost of living being substantially lower in Florida, her goal will be much easier to achieve there than in BC. For the time being, the claimant cannot be relied on to provide substantial ongoing financial support for the children, in view of his estimated income is about \$12,000 per annum.
- [94] She notes that the children have already moved several times within BC, including two residences in Abbotsford, the family home in Surrey and since the sale of the family home, current rental accommodation in Surrey. They will be well-able to adjust to one further relocation.
- [95] The respondent says Celebration has ample opportunities for activities and sports. Their proposed school is a highly rated small neighbourhood school. They currently attend Tai Kwon Do twice a week, and S. attends Girl Guides once per week. These can both continue in Celebration. They can take swimming lessons at one of six public pools in town. There is recreational soccer, food truck / movie nights and multiple summer camp options. Walt Disney World is a short distance away and offers multiple educational programs for local children. S.'s counselling sessions with Ms. de Jong can continue remotely, providing continuity for an important support.

- [96] There is a trauma unit rated hospital in Celebration and multiple family doctors and pediatricians within a 2-mile radius. The respondent put herself on a waiting list for a PTSD service dog back in August 2021. That training will take place in central Florida.
- [97] The respondent argues the children deserve a mother who is well, and she and the children need this opportunity to recover from the trauma arising from the relationship and its breakdown. The respondent and children will have greater extended family support and stability in which to heal. The current uncertainty about her parent's ability to remain in BC would be rendered moot.
- [98] The respondent believes that if given the opportunity the respondent would kill her. Under no circumstances does she envisage a scenario under which she could ever be in a position to effectively co-parent the children with the claimant. She seeks interim primary decision-making responsibility for the children.

Claimant's Position

- [99] The claimant has taken issue with many of the respondent's allegations and says it is not appropriate to decide relocation on an interim application. He says that is in the children's best interests to continue to have weekly parenting time with him. He actually seeks an increase in his parenting time to shared, week-on, week-off parenting.
- [100] When pressed during submissions about his recent complaints against the respondent's partner, Ms. de Jong and the multiple other police and MCFD complaints, he does not deny those but argues they were justified. For the police complaint against the partner, he says S. asked him to help her. For the threats made to Ms. de Jong and eventual professional complaint, he feels his actions were warranted because Ms. de Jong refused to respond to his requests for information and input into S.'s counselling. He is concerned that Ms. de Jong is preferring the respondent's version of their relationship and is alienating S. from him. He did not provide an convincing explanation for other police and MCFD complaints.
- [101] The claimant challenges some of the respondent's evidence regarding opportunities available for her and the children in Celebration. He suggests the respondent's relationship with her parents is poor and they may not actually support her and the children to the extent the respondent suggests. He argues the parents have not confirmed in their affidavits that they would support her in Florida. I pause to say that this criticism falls flat considering the exceptional level of ongoing support the parents have demonstrated. The respondent's mother was present throughout the hearing.

[102] The claimant argues that the respondent and children have never lived in Florida, only visited. Her parents moved there from New Jersey after they married. He takes issue with the respondent's description of employment opportunities, cost of living comparison. He argues there is no urgency to this relocation taking place now, as opposed to after a trial on the merits. The respondent has a good job and can continue taking her PhD program remotely.

Law and Analysis

[103] The respondent's application references the relocation provisions in both the Divorce Act ["DA"] (section 16.9 et seq) and the FLA (the change of residence provisions in section 46 or alternatively relocation provisions in Part 4, Division 6). Also relevant to the analysis are the sections in each act which address the best interests of the child: section 16 of the DA and section 37 of the FLA.

Divorce Act

[104] Section 16.9(1) of the DA requires that a person who has parenting time or decision-making authority in respect of a child who intends to undertake relocation must give notice in the prescribed form at least 60 days before the date of the proposed relocation. There is no dispute in this case that the respondent gave the claimant an appropriate amount of notice of intended relocation.

[105] Section 16 of the DA is as follows:

Best interests of child

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

Primary consideration

(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Factors to be considered

- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
- (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.

Factors relating to family violence

- (4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
 - (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.

Past conduct

- (5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

Parenting time consistent with best interests of child

- (6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

Parenting order and contact order

- (7) In this section, a parenting order includes an interim parenting order and a variation order in respect of a parenting order, and a contact order includes an interim contact order and a variation order in respect of a contact order.

[106] Section 16.92 (1) of the DA sets out factors the court shall consider to determine the best interests of the children.

Best interests of child -- additional factors to be considered

16.92 (1) In deciding whether to authorize a relocation of a child of the marriage, the court shall, in order to determine what is in the best interests of the child, take into consideration, in addition to the factors referred to in section 16,

- (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.

[107] Subsection (2) identifies a factor that is not to be considered, namely:

Factor not to be considered

- (2) In deciding whether to authorize a relocation of the child, the court shall not consider, if the child's relocation was prohibited, whether the person who intends to relocate the child would relocate without the child or not relocate.

[108] Section 16.93 addresses the burden of proof. Sub-section (1) deals with children who spend substantially equal time in the care of each part, which does not apply here. Sub-section (2) deals with cases where children spend the vast majority of their parenting time in the case of the relocating party. Sub-section (3) deals with any other case:

Burden of proof -- person who objects to relocation

- (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.

Family Law Act

[109] Section 46 of the FLA address changes to a child's residence if there is no agreement or order:

Changes to child's residence if no agreement or order

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

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

[110] Part 4, Division 6 deals with relocation. Section 66 requires that the relocating guardian must give 60 days notice of the proposed relocation to the other guardians and other persons having contact with the child. Section 68 provides that the relocating guardian who has given notice in accordance with section 66 can do so unless another guardian files an application for an order to prohibit the relocation within 30 days of being served with the notice.

[111] Section 69 of the FLA is as follows:

Orders respecting relocation

69 (1) In this section, "relocating guardian" means a guardian who plans to relocate a child.

- (2) On application by a guardian, a court may make an order permitting or prohibiting the relocation of a child by the relocating guardian.
- (3) Despite section 37 (1) [best interests of child], the court, in making an order under this section, must consider, in addition to the factors set out in section 37 (2), the factors set out in subsection (4) (a) of this section.
- (4) If an application is made under this section and the relocating guardian and another guardian do not have substantially equal parenting time with the child,
 - (a) the relocating guardian must satisfy the court that
 - (i) the proposed relocation is made in good faith, and
 - (ii) the relocating guardian 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, and

- (b) on the court being satisfied of the factors referred to in paragraph (a), the relocation must be considered to be in the best interests of the child unless another guardian satisfies the court otherwise.
 - (5) If an application is made under this section and the relocating guardian and another guardian have substantially equal parenting time with the child, the relocating guardian must satisfy the court
 - (a) of the factors described in subsection (4) (a), and
 - (b) that the relocation is in the best interests of the child.
 - (6) 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.
 - (7) In determining whether to make an order under this section, the court must not consider whether a guardian would still relocate if the child's relocation were not permitted.
- [112] As noted, s. 37 of the FLA is also considered in the analysis. I will not reproduce that section here.

Recent Supreme Court Guidance

[113] In *Barendregt v. Grebliunas*, 2022 SCC 22, the Supreme Court of Canada provided guidance regarding applications to change a child's residence. Topics addressed included the following, at para. 116:

116 Five considerations that bear upon the best-interests-of-the-child analysis arise in this case:

(i) the application of *Gordon* to shared parenting arrangements and the so-called "great respect principle"; (ii) a moving parent's reasons for relocation; (iii) the "maximum contact principle"; (iv) a moving parent's testimony about how the outcome of the application will influence their decision to relocate; and (v) the impact of family violence. I address each in turn, looking at their evolution in the case law since *Gordon* and their reflection in amendments to the Divorce Act.

[114] Under parent's reasons for relocation, the majority noted that there will often be a connection between the expected benefits of the move for the child and the relocating parent's reasons for wanting to relocate. At paras. 129-130:

128 Indeed, isolating the custodial parent's reasons for the move from the broad, individualized inquiry of the child's best interests has frequently proven impractical. There will often be a connection between the expected benefits of the move for the child and the relocating parent's reasons for proposing the move in the first place. Relocation for financial reasons, for instance, will clearly carry implications for a child's material welfare. Considering the parent's reasons for moving can be relevant, and even necessary, to assess the merits of a relocation application.

129 That said, the court should avoid casting judgment on a parent's reasons for moving. A moving parent need not prove the move is justified. And a lack of a compelling reason for the move, in and of itself, should not count against a parent, unless it reflects adversely on a parent's ability to meet the needs of the child: *Ligate v. Richardson* (1997), 34 O.R. (3d) 423 (C.A.), at p. 434.

130 Ultimately, the moving parent's reasons for relocating must not deflect from the focus of relocation applications -- they must be considered only to the extent they are relevant to the best interests of the child.

[115] Under maximum contact principle, the court commented that to the extent this has been interpreted as implying as much contact with both parents as possible will necessarily be in the best interests of the child, this is an overreach. At paras. 134-135:

134 Although Gordon placed emphasis on the "maximum contact principle", it was clear that the best interests of the child are the sole consideration in relocation cases, and "if other factors show that it would not be in the child's best interests, the court can and should restrict contact": Gordon, at para. 24; see also para. 49. But in the years since Gordon, some courts have interpreted what is known as the "maximum contact principle" as effectively creating a presumption in favour of shared parenting arrangements, equal parenting time, or regular access: *Folahan v. Folahan*, 2013 ONCS 2966, at para. 14 (CanLII); *Slade v. Slade*, 2002 YKSC 40, at para. 10 (CanLII); see also F. Kelly, "Enforcing a Parent/ Child Relationship At All Cost? Supervised Access Orders in the Canadian Courts" (2011), 49 Osgoode Hall L.J. 277, at pp. 278 and 296-98. Indeed, the term "maximum contact principle" seems to imply that as much contact with both parents as possible will necessarily be in the best interests of the child.

135 These interpretations overreach. It is worth repeating that what is known as the maximum contact principle is only significant to the extent that it is in the child's best interests; it must not be used to detract from this inquiry. It is notable that the amended Divorce Act recasts the "maximum contact principle" as "[p]arenting time consistent with best interests of child": s. 16(6). This shift in language is more neutral and affirms the child-centric nature of the inquiry. Indeed, going forward, the "maximum contact principle" is better referred to as the "parenting time factor".

[116] With regard to family violence considerations, at paras. 142-147:

142 Since Gordon, courts have increasingly recognized that any family violence or abuse may affect a child's welfare and should be considered in relocation decisions: see *Prokopchuk v. Borowski*, 2010 ONSC 3833, 88 R.F.L. (6th) 140; *Lawless v. Lawless*, 2003 ABQB 800, at para. 12

(CanLII); *Cameron v. Cameron*, 2003 MBQB 149, 41 R.F.L. (5th) 30; *Abbott-Ewen v. Ewen*, 2010 ONSC 2121, 86 R.F.L. (6th) 428; *N.D.L. v. M.S.L.*, 2010 NSSC 68, 289 N.S.R. (2d) 8, at paras. 22-23 and 35; *E.S.M. v. J.B.B.*, 2012 NSCA 80, 319 N.S.R. (2d) 232, at paras. 55-57. Courts have been significantly more likely to allow relocation applications where there was a finding of abuse: Department of Justice, *A Study of Post-Separation/Divorce Parental Relocation* (2014), at ch. 3.3.4.

143 The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives: Department of Justice, *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at p. 12. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it: S. Artz et al., "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014), 5 I.J.C.Y.F.S. 493, at p. 497.

144 Domestic violence allegations are notoriously difficult to prove: P. G. Jaffe, C. V. Crooks and N. Bala, "A Framework for Addressing Allegations of Domestic Violence in Child Custody Disputes" (2009), 6 J. Child Custody 169, at p. 175; A. M. Bailey, "Prioritizing Child Safety as the Prime Best-Interest Factor" (2013), 47 Fam. L.Q. 35, at pp. 44-45. As the interveners West Coast LEAF Association and Rise Women's Legal Centre point out, family violence often takes place behind closed doors and may lack corroborating evidence: see S. B. Boyd and R. Lindy, "Violence Against Women and the B.C. Family Law Act: Early Jurisprudence" (2016), 35 C.F.L.Q. 101, at p. 115. Thus, proof of even one incident may raise safety concerns for the victim or may overlap with and enhance the significance of other factors, such as the need for limited contact or support.

145 The prospect that such findings could be unnecessarily relitigated on appeal will only deter abuse survivors from coming forward. And as it stands, the evidence shows that most family violence goes unreported: L. C. Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases* (2nd ed. 2020), 2017 CanLIIDocs 2 (online), at ch. 4.5.2.

146 The recent amendments to the Divorce Act recognize that findings of family violence are a critical consideration in the best interests analysis: s. 16(3)(j) and (4). The Divorce Act broadly defines family violence in s. 2(1) to include any violent or threatening conduct, ranging from physical abuse to psychological and financial abuse. Courts must consider family violence and its impact on the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child.

147 Because family violence may be a reason for the relocation and given the grave implications that any form of family violence poses for the positive development of children, this is an important factor in mobility cases.

[117] The majority addressed the importance of the relocating parent's need for emotional support, at paras. 169-173:

169 The mother's need for emotional support was a relevant consideration in the best interests analysis. The mother followed the father to Kelowna, but her family remained in Telkwa. A move that can improve a parent's emotional and psychological state can enrich a parent's ability to cultivate a healthy, supportive, and positive environment for their child. Courts have frequently recognized that a child's best interests are furthered by a well-functioning and happy parent: *Burns v. Burns*, 2000 NSCA 1, 183 D.L.R. (4th) 66, at pp. 81-82; *L. (S.S.) v. W. (J.W.)*, 2010 BCCA 55, 316 D.L.R. (4th) 464, at para. 33; *Bjornson*, at para. 30; *Orring v. Orring*, 2006 BCCA 523, 276 D.L.R. (4th) 211, at para. 57.

170 It is also simplistic to suggest that emotional support for the mother was the only benefit that weighed in favour of relocation. The trial judge described, in great detail, how the continuing animosity between the parents would impact the children should they stay in Kelowna. He also noted that the move would provide the mother with the benefit of housing support, childcare, better employment, and opportunities to advance her education: paras. 1, 44 and 46-47.

171 These considerations all have direct or indirect bearing on the best-interests-of-the-child assessment. Relocation that provides a parent with more education, employment opportunities, and economic stability can contribute to a child's wellbeing: *Larose v. Larose*, 2002 BCCA 366, 1 B.C.L.R. (4th) 262, at paras. 6 and 19; *H.S. v. C.S.*, 2006 SKCA 45, 279 Sask. R. 55, at para. 26; see also *E. El Fateh*, "A Presumption for the Best?" (2009), 25 Can J. Fam. L. 73, at pp. 80-83.

172 Similarly, the additional support of family and community at the new location can enhance the parent's ability to care for the children: *D.A.F. v. S.M.O.*, 2004 ABCA 261, 354 A.R. 387, at para. 17. Extended family, for example, can provide additional support to children while their parents begin to navigate the new terrain of post-separation life: *Harnett v. Clements*, 2019 NLCA 53, 30 R.F.L. (8th) 49, at paras. 22 and 42; *C.M. v. R.L.*, 2013 NSFC 29, at para. 139 (CanLII).

173 It is often difficult to disentangle the interests of a parent from the interests of a child. Indeed, "the reality that the nurture of children is inextricably intertwined with the well-being of the nurturing parent" is far from novel: *Pelech v. Pelech*, [1987] 1 S.C.R. 801, at p. 845; see also *Willick*, at pp. 724-25, per L'Heureux-Dubé J. A child's welfare is often advanced in tandem with improvements in the parent's financial, social, and emotional circumstances. The trial judge found this to be the case here.

[118] The fact that the parents have an acrimonious relationship was also addressed, at paras. 183-186:

183 First, although counsel for the mother did not advance the father's animus as a factor that supported relocation, the state of the parties' relationship was obviously relevant. And as the interveners West Coast LEAF Association and Rise Women's Legal Centre point out, it is important to be aware of the social and legal barriers to women disclosing family violence in family law proceedings.

184 Second, the parties' acrimonious relationship was far from a relic of the distant past. Again, the acrimony surfaced during the trial itself. And abusive dynamics often do not end with separation -- in fact, the opposite is often true: Jaffe, Crooks and Bala, at p. 171; Neilson, at ch. 4.5.1, 7.2.2 and 7.2.6. Trial judges have the advantage of observing the dynamic between the parties first-hand; any resulting assessment of their ability to work together in the future must attract deference.

185 Third, the fact that there was no evidence of any event involving the children, or taking place in the children's presence, could not be determinative. Not only can indirect exposure to conflict have implications for the children's welfare, the trial judge found there was a significant risk that conflict between the parties would spill over and directly impact the children. He was entitled to make that finding on the evidence before him.

186 Fourth, the record discloses no indication that the trial judge forgot, ignored, or misconceived the evidence showing improvements in the parties' relationship. An omission in the reasons, in and of itself, does not mean that the appellate court is permitted to review the evidence heard at trial. And in any event, cooperating, staying, or reconciling with a party does not necessarily indicate that an incident of abuse or violence was not serious: see D. Martinson and M. Jackson, "Family Violence and Evolving Judicial Roles: Judges as Equality Guardians in Family Law Cases" (2017), 30 Can. J. Fam. L. 11, at p. 34. In the end, what mattered was the trial judge's conclusion that it was unlikely that the parents could work cooperatively to promote the children's best interests in a shared parenting structure in the near future: para. 42.

Interim Relocation

[119] The claimant raises as an issue that relocation should not be decided on an interim application where there is conflicting affidavit evidence and evidentiary gaps in the court record.

[120] In *Nolie v. Reece*, 2016 BCSC 2201, Justice Fleming considered a respondent's interim application to relocate two children, ages 6 and 4 years, from Campbell River to Massett, BC. At paras. 25-28, she stated as follows:

25 There is a great deal of conflict in the evidence before me that relates to the factors that bear on the analysis of the children's best interest and each party has suggested the other is not credible. There are also significant gaps in the evidence regarding the children. I have little sense of Cecil and Morgan Lee as individuals, or their daily lives. Who are their friends? How did Cecil enjoy kindergarten? What activities are they involved in? What are each child's needs and strengths and personality? How have the children responded to weekly weekend visits with Mr. Nolie since August 8th, 2016?

26 I appreciate the parties have not had a great deal of time to prepare some of their materials. Understandably perhaps, the evidence focuses to a large extent on the proposed move and Ms. Reece's plan, its benefits from her perspective, and its weaknesses from Mr. Nolie's.

27 Relocation is, as Master Scarth said in *D.R.K v. S.G.G.*, 2013 BCSC 2107, one of the most serious decisions the court is asked to make. It can have a lifelong impact on a child and his or her relationship with a non-moving parent. When granted at the interim stage, it can be tantamount to a final order.

28 The authorities indicate that courts are reluctant to consider relocation applications at the interim stage particularly where the move would significantly reduce the non-moving parent's time with the child.

[121] While it did not involve an interim application for relocation, the court of appeal's decision in *Hellberg v. Netherclift*, 2017 BCCA 363 is instructive. It addresses the importance of the court having a fully rounded evidentiary record when addressing a child's best interests. That case involved an appeal from a summary trial decision where the chambers judge had allowed the respondent to relocate the parties' child from BC to the United Kingdom so she could pursue more lucrative employment. At the initial hearing, the parties had agreed the matter was suitable for disposition by summary trial. They lacked the financial resources necessary for a traditional trial and desired a prompt resolution. At para. 72, the court of appeal commented on the importance of a fully-rounded analysis of the child's best interests:

72 The importance of considering the best interests of the child "in the round" can be traced to this Court's judgment in *Hejzlar v. Mitchell-Hejzlar*, 2011 BCCA 230 per Saunders J.A. at para. 46. Although the expression was used in a particular context in *Hejzlar*, it is one of general application and simply means that consideration of the child's best interests requires a fully-rounded analysis that takes into account all relevant factors.

Analysis

Relocation as an interim application

[122] A preliminary issue is whether it is appropriate to decide the respondent's relocation application on an interim application, as opposed to requiring that this be addressed at trial. While there is considerable conflicting affidavit evidence and some gaps in the available evidence, there is also substantial uncontested evidence indicating a pattern of recent questionable actions on the claimant's part. In my view these qualify as harassment which can be fairly characterized as a form of ongoing family violence. This appears to be having an adverse impact on the well-being of the children and is contrary to their best interests. In these circumstances, I consider it to be appropriate to address relocation on an interim basis, relying on the available uncontested evidence.

DA versus FLA

[123] The next issue is whether the DA or FLA should be applied in this application. The respondent's application indicates under "legal basis" that both the DA and FLA are relied on. The claimant took the position that the DA governs, on the basis of paramountcy. The respondent did not seriously resist this.

[124] Both parties rely on the DA and FLA in the parenting arrangements section of their respective initiating pleadings. I conclude that it is appropriate in the circumstances to decide this issue based on the relocation provisions in the DA.

DA - Best Interests of the Child Factors

[125] Section 16(3) of the DA sets out eleven factors the court is to consider in assessing a child's best interests.

The children's needs given their age and stage of development, such as their need for stability - s. 16(3)(a)

[126] Stability is clearly an important consideration when assessing the best interests of the children. The respondent says stability will be best achieved by allowing her to relocate to the children to an environment where they will all have the benefit of ongoing personal, material and emotional support from her parents, siblings and other extended family. Her parents have demonstrated their commitment to supporting her and the children through her father's decision to retire early and their relocation to the Surrey since May 2021. The parents are not permanent residents of Canada and it is not clear how long they can remain in BC to continue providing support.

[127] The respondent's parents have offered her, the children and the partner free use of their home in Celebration, as well on their ongoing personal assistance with the children. They have agreed to accompany the children when travelling for parenting time exchanges with the claimant, should relocation be authorized. The respondent has identified a highly-ranked public school near her parent's home for the children and opportunities to continue pursuing their current activities and interests. The children are both at an age where they can reasonably be expected to adjust to a new school. E. would be starting in a new school in any event.

[128] I am satisfied that the children will also clearly benefit from a cessation of the recent troublingly frequent exposure they have had to interactions with representatives of the police and MCFD, instigated by the claimant. This is not a negative comment about the officials involved. They are obliged to investigate when they receive a complaint. The problem is serial unmeritorious complaints made by the claimant.

[129] Police were initially involved at the respondent's instigation in May 2021 in conjunction with a wellness check and implementation of the protection order. That was unavoidable in view of the serious nature of the family violence allegations in this case. Since then,

however, the claimant has intentionally involved police and MCFD representatives on several occasions and particularly in the period after the respondent gave notice of her intention to relocate the children. There is evidence that the children have been reacting negatively to this. The respondent noted that E. refused to come see the police when they were last at her home, which was uncharacteristic for him. I consider these incidents to be a significant source of unnecessary emotional upset and instability for the children.

[130] I agree that ongoing positive parenting time with both parties would contribute to a stable environment for the children. I recognize that allowing relocation will inevitably have a substantial negative impact on the claimant's parenting time with the children. This is a significant factor but it cannot overwhelm the broader analysis.

[131] While having a healthy relationship with both parents is important, stability for the children will be best promoted through establishment of a safe, secure and supportive home environment for the respondent and the children, in close proximity to extended family; in this case in Celebration.

Nature and strength of the children's relationship with each parent, siblings, grandparents and others who play an important role in their life - s. 16(3)(b)

[132] The children have positive, loving relationships with both parents. The respondent has had the children a greater proportion of the time since she left the family home. She currently has them from Monday mornings to Friday afternoons, while the claimant has them from Friday afternoons to Monday mornings. This arrangement is without prejudice to the right of either party to apply for a variation without having to show a change of circumstances.

[133] The children have enjoyed a close, loving relationship with the respondent's parents since they relocated to BC in May 2021. They do not appear to have recently had significant contact with their paternal grandparents or other extended family since they moved to BC.

[134] Allowing relocation would allow the children to maintain develop strong relationships with the respondent and her parents. It would allow them to establish more frequent contact with extended family members, many of whom live within reasonable proximity of Celebration. It would unavoidably cause a significant reduction in their level of contact with the claimant, which is a significant negative factor.

Willingness to support the development and maintenance of the children's relationship with the other parent - s. 16(3)(c)

[135] The respondent has made it clear that in view of her allegations of prolonged family violence against the claimant, she wants no direct contact or conflict whatsoever with the claimant. She says this is necessary so she can heal and begin to feel safe. All contacts regarding the children have been through counsel and through her parents acting as intermediary during pickups and drop-offs.

- [136] Despite this, the respondent has put forward a proposal which appears to be a good faith effort to maintain the claimant's relationship with the children if relocation is permitted. This includes one week of winter (December) break, one week of spring break, a month during the summer, twice weekly video calls and additional time in the event the claimant is in Florida during the balance of the year. This would also involve the respondent bearing half of the associated travel costs and her parents accompanying the children on drop-off flights.
- [137] The claimant correctly notes this is a major reduction from his current weekly parenting time. He did not propose any alternate arrangement in the event relocation was allowed.
- [138] I do not have persuasive evidence indicating that claimant would be as willing to support the development and maintenance of the children's relationship with the respondent. His recent attacks on Ms. de Jong, his "grooming" complaint against the respondent's partner and the other recent complaints to police and MCFD suggest he has a high level of animus towards the respondent and those around her and the children. He is making poor decisions which in the circumstances constitute harassment of the respondent and her partner. He appears to lack insight into how exposing the children to multiple unnecessary contacts with police and MCFD is disruptive and potentially harmful to them. In the circumstances, there is reason to doubt the claimant's willingness to support the children's relationship with the respondent.

History of care of the children - s. 16(3)(d)

- [139] The respondent appears to have had a more significant role as caregiver for the children prior to the date of separation. Up to the point where the respondent moved out of the family home, the evidence indicates the parties were, to some extent, sharing child care responsibilities, with the respondent picking up the children after daycare / school 3 days and the claimant 2 days per week. Both parties were working full time jobs. After the respondent moved out of the family home, the respondent again became the primary caregiver. Since Master Elwood's parenting time order, the respondent has had the majority of parenting time.
- [140] There have been no significant negative concerns raised regarding the respondent's care for the children. There have been no particular negative issues raised regarding the claimant's care of the children per se. As noted, serious questions have been raised regarding his judgment on matters which affect the children, including his efforts to intimidate Ms. de Jong into stopping counselling S. and his frivolous reports to police and MCFD which have subjected the children to unnecessary interviews.
- [141] There was also evidence of a recent police incident in which his behaviour escalated while he had the children in his care. I did not have a detailed account of that incident from the police or claimant's perspective, but it is generally concerning if they were witness to it.

Children's views and preferences giving due weight to the child's age and maturity, unless they cannot be ascertained - s. 16(3)(e)

[142] The children are not old enough that their views is of significant assistance for purposes of this application. I suspect they are too young for a "views of the child" report and the application for a s. 211 report was dismissed.

Children's cultural, linguistic, religious and spiritual upbringing and heritage - s. 16(3)(f)

[143] Both parties have been creating opportunities for the children to learn about and experience their cultural and linguistic heritage and learn about the Muslim faith. I accept that the respondent will continue doing so should relocation be allowed.

Any plans for the children's care - s. 16(3)(g)

[144] The respondent says if she is permitted to relocate the children, they will reside at her parents' home in Celebration. They will both be attending Celebration K-8 School, which is ranked #2 of all traditional K-8 and middle schools in the state of Florida, and is an A rated, 5-Star school as determined by the Florida Department of Education. The children would also have the opportunity to participate in a variety of arts, athletics and extra-curricular programs. This includes continuing activities they are currently involved in here.

[145] Celebration is close to a trauma unit rated hospital and has several family doctors and pediatricians practising there. The respondent's parents will continue to make themselves available to help with the children.

Ability and willingness of each person to care for and meet the needs of the children - s. 16(3)(h)

[146] Both parties have expressed a willingness to care for and meet the needs of the children.

[147] I do not have detailed evidence regarding the claimant's current accommodations for the children since the family home was sold in or about November 2021. There is a general concern that since his suspension from his employment as a teacher in September 2021, his income has decreased dramatically. It is not clear how he is covering his and the children's expenses. Respondent's counsel says that the fund she has been using to pay his child support obligation, currently set at \$500 per month, has been exhausted. Adequacy of financial disclosure is an ongoing issue in this matter.

[148] The claimant has raised an issue about the respondent forgoing her current employment in favour of potential employment in Florida. Her current income is about \$99,000 per annum. She has tendered evidence indicating that there are a large number of job openings in her field in and around Celebration, albeit the average income of those positions appears to be lower than what she currently earns. She suggests this is mitigated by the fact that the cost of living in Florida is considerably lower. She will also not have to pay rent while staying in her parent's home, and she will have the opportunity to pursue private contract

work on the side to supplement her income, which is not an option in BC.

- [149] While there is an element of the respondent's current employment being "a bird in hand", I am satisfied that the respondent will have numerous opportunities for comparable employment in her field in Florida, her living expenses will be substantially lower and as such that she will be financially able to meet the needs of the children should relocation be permitted. I do not consider that having good employment in place in BC versus temporary uncertainty in Florida, standing alone, is adequate reason to refuse relocation.

Ability and willingness to communicate and cooperate, in particular with one another, on matters affecting the children - s. 16(3)(i)

- [150] There is every indication in this case that the parties are not likely to be able to effectively communicate directly and cooperate with one another on matters affecting the children. The respondent has not communicated directly with the claimant regarding children's issues since she left the family home. She has made allegations of serious family violence during the relationship and after since the parties separated.
- [151] The claimant denies the allegations and suggests he does wish to actively co-parent with the respondent and work cooperatively on issues affecting the children. It is difficult to reconcile those assertions with the highly confrontational approach he has taken to dealing with the respondent and those around her and the children, particularly in recent months.
- [152] This dynamic may possibly begin to change after the pending criminal charges have been resolved on their merits.
- Any family violence and its impact on ability and (i) willingness to care for and meet the needs of the children and (ii) appropriateness of making an order that would require persons who engaged in family violence to care for and meet the needs of the children - s. 16(3)(j)
- [153] This is a significant consideration in the present case. As noted, the respondent has made serious allegations of family violence, which the claimant has denied. Some of the allegations have resulted in criminal charges, which the claimant is defending.
- [154] Master Elwood found that, even taking into consideration that many of the family violence allegations are disputed, there was still adequate evidence of family violence to warrant continuation of the protection order as it related to the respondent. He did say that this concern did not extend to the children. The protection order has since expired, but in the criminal action the claimant continues to be subject to conditions which limit his interactions with the respondent.
- [155] As previously noted, the claimant's pattern in recent months of attacking persons around the respondent and the children is concerning. This includes the inappropriate threats made to Ms. de Jong and the complaint made to the CCPA. The claimant attempted to intimidate her into discontinuing counselling services which by appear to have been helping S. address issues arising from the breakdown of her parents' relationship. I

consider this constitutes harassment and qualifies as family violence, based on the impact the claimant intended it have on an important health and well-being support for S. If the claimant was unhappy with the choice of counsellor, he had the option of applying to court to change this.

- [156] I also consider the repeated frivolous complaints to police and MCFD regarding the partner kissing the children and the others constitute harassment. This may have been intended by the claimant to target the respondent and her partner, but it has also negatively affected the children through repeated unnecessary exposure to police and MCFD interviews. The case authorities also indicate that children can reasonably be expected to be indirectly affected by family violence directed towards a parent.
- [157] To the extent that the claimant has been unable or unwilling to moderate his behaviour, I consider this to be an ongoing form of family violence has negatively affected the wellbeing of the children. It needs to stop.
- [158] Section 16(4) of the DA sets out additional factors when considering the impact of any family violence under sub-paragraph (3)(g). This includes (a) the nature, seriousness and frequency of the family violence and when it occurred. Even if I take the disputed family violence issues out of the analysis, the recent harassment has repeated several times over the past several months. Item (b) is whether there is a pattern of coercive and controlling behaviour in relation to a family member. In this case, there is controlling behaviour directed towards the respondent which also adversely affects the children. Item (c) is whether the family violence is directed towards the child or whether the child is directly or indirectly exposed to it. As indicated, the harassment in this case has direct and indirect effects on the children. Item (d) is physical, emotional and psychological harm or risk of harm to the child. In this case, I am satisfied there is a risk of harm to both children, should this pattern of harassment continue. I am also satisfied that under item (f), whether the family violence causes the child or other family member to fear for their own safety or for that of another person, that the ongoing harassment can reasonably be expected to have a negative emotional and psychological impact on the respondent and the children. Under item (g), steps taken by person engaging in family violence to prevent further family violence from occurring, claimant's counsel suggested the claimant had heard the court's concerns expressed during argument, but it is not clear whether this will lead to a change in his behaviour.

Any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the children - s. 16(3)(k)

- [159] There are no other relevant pending civil proceedings. The criminal proceedings do not appear to directly involve the children's safety, security and well-being.

DA - Additional factors under s. 16.92(1)

- (a) Reasons for the relocation

- [160] The respondent wishes to relocate because neither she nor the children are Canadian citizens. She has no family residing in BC. Her parents have relocated temporarily since May 2021 to support her and the children. They too are not Canadian citizens and it is not clear how long they can remain in BC. She does not have significant ties to BC and her closest relatives live at least 3,000 miles away.
- [161] The respondent says that due to the claimant's controlling behaviour during their marriage, neither she nor the children were able to form social support networks or friendships. The respondent says she was able to make one friend at while they were living in Abbotsford, but that ended due to extra-marital affair.
- [162] A significant reason for the relocation is the respondent's desire to get some distance from the claimant so she can avoid or reduce ongoing harassment from him and have an opportunity to recover from the family violence she says she experienced during their relationship. She alleges she is suffering from PTSD from their relationship, albeit there is little objective medical support for this on this application. She has tendered a one-line letter dated 8/6/2021 from her family doctor, asserting "[The respondent] has a diagnosis of PTSD and is currently attending my clinic for this." No further explanation or details are provided. The respondent tendered a report shortly before the hearing, but I concluded that it was not admissible for purposes of this application
- [163] The claimant also claims that he has PTSD from their relationship, but he has offered no admissible medical evidence to support this or his various other medical-related claims.
- [164] As noted, I have found that the claimant has been harassing the respondent and those around her and the children on an ongoing basis. The claimant suggested he has been pursuing cognitive therapy and taking medication which is successfully regulating his various mental health and impulse control issues, however, a substantial number of the concerning incidents have occurred since he claims to become properly regulated.
- [165] The respondent says that relocating to Florida will allow her to have substantial emotional, physical and material support from her parents and extended family on an ongoing basis. Her parents have provided an exceptional level of support for the respondent and the children. While they have been providing support here in BC, their presence here is temporary.
- [166] The parties have had, and post-separation continue to have, a highly acrimonious relationship. This has spilled over and indirectly affected the children. In my view, it is reasonable for the respondent to want to relocate to where she will have additional, permanent family support and some distance from the claimant. At this point there is no apparent end date to criminal and family proceedings in BC. No trial date has been set in the criminal matter. A trial is unlikely to occur in the family action before the criminal issues have been resolved. Trial dates for a 10 day trial will of necessity be further off. This suggests it will be a considerable time before the contested issues between the parties can possibly be resolved at trial. In the interim, the status quo is not in the children's best

interests.

- [167] The respondent argued that the claimant has sworn an affidavit in support of his application to restrain her from removing the children from BC which actually supports her argument that she has no connections to BC. In his affidavit sworn April 5, 2022 and filed April 14, 2022, he testifies that:
21. [The respondent] does not have any significant ties to British Columbia. Her family lives in the USA. We recently sold the family residence and [the respondent] does not own any other real property in British Columbia. [The respondent] is obtaining her PhD at Fielding Graduate University. The PhD program [the respondent] is in is designed for students to attend remotely, which means [the respondent] can obtain her PhD from anywhere.
 22. [The respondent's] parents can provide [the respondent] with the financial resources to relocate with the Children on short notice. During my relationship with [the respondent] there were many times in which her parents paid for our family to stay at Disney World and Orlando. In addition, [the respondent] and I were gifted \$30,000 USD from her parents prior to her entry to Canada. The funds were required by Immigration Canada in order for us to meet permanent residence requirements.
 23. [The respondent's] parents live in Celebration, Florida. They own a single-family residence, which has enough room for [the respondent] and the Children to live in. [The respondent's] parents came to British Columbia in or around May 13, 2021, when the protection order was granted. [The respondent's] parents are not Canadian citizens nor are they permanent residents. [The respondent's] parents have been helping [the respondent] with the Children. I believe she relies on the help from her parents and I do not know how long they can remain in Canada given their lack of Canadian citizenship.
- [168] I accept that the respondent has established she has a reasonable basis for wanting to relocate to Celebration, Florida.
- (b) Impact of the relocation on the children
- [169] Relocation of the children to Celebration will substantially reduce the children's parenting time with the claimant. S. will have to change schools, but she is at an age where this is something to which she can be expected to adjust. E. would be starting in a new school in any event, so the change would not be as significant for him. The children would be able to continue in their current extra-curricular activities of tae-kwon-do and girl guides, and would have many other activities available. The would continue to benefit from the support of the respondent's parents and have greater access to the respondent's extended family.

- [170] As noted in Barendregt, relocation that can improve a parent's emotional and psychological state can enrich their ability to cultivate a healthy, supportive, and positive environment for their children; children's best interests are furthered by a well-functioning and happy parent. I am persuaded that the respondent will have an improved healthy, supportive and positive environment in Florida and this in turn will translate into increased stability and a better environment for the children.
- (c) 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
- [171] As noted, under the current parenting arrangement the respondent has the children from Monday morning until Friday afternoon. The claimant has them from Friday afternoon until Monday morning. Each of the parties testifies they are actively engaged with the children and their activities during their respective parenting time.
- [172] If the court is inclined to allow the relocation, this will have an adverse effect on the amount of parenting time the claimant has with the children and his level of involvement in their lives.
- (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
- [173] I am satisfied that the respondent has complied with the relocation notice requirements in the DA.
- (e) Existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;
- [174] On April 29, 2022, Master Vos granted a without prejudice consent order which prohibited either party from removing the children from BC without the written agreement of both parties or as permitted by court order until the issue of relocation has been determined by the court. There are no other orders or agreements which address this issue.
- (f) 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
- [175] I have previously summarized the respondent's proposal to vary the claimant's exercise of parenting time and decision-making responsibility.

- [176] I am satisfied that the proposed post-relocation parenting time schedule appears to be a reasonable proposal to maintain parenting time between the claimant and the children, in all the circumstances. The claimant did not offer specific comments or suggest modifications to the schedule in his application response.
- (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.
- [177] Respondent's counsel argues that the claimant is in breach of his obligations to provide financial disclosure of assets, debts and his post-suspension income.
- [178] On August 17, 2022, the respondent asked to reopen the hearing to allow her to tender evidence showing the claimant had breached a s. 91 FLA order restraining the claimant from disposing of property in which the respondent might have an interest and had failed to disclose this to counsel for the respondent until early August 2022. At issue was a vehicle that the claimant sold without the respondent's consent. The claimant says he was concerned that a creditor was on the verge of re-possessing the vehicle, so he took steps to sell it and apply the sale proceeds to reduce family debt.
- [179] Respondent's counsel points to correspondence between counsel in which she agreed that a different should be sold. She did not authorize the sale of the relevant vehicle and suggest that the claimant's breach of the restraining order shows his disregard for court orders and ungovernability.
- [180] This issue was brought before me without the respondent making a formal application to reopen the hearing. While I agree it appears the claimant did act unilaterally and without consent or leave of the court to sell the vehicle, there is no indication the sale was improvident or that he used the sale proceeds for anything other than reducing family debt. While intentionally breaching the restraining order is a serious concern, I am not inclined to interpret this as an indication the claimant is ungovernable generally.
- [181] The respondent also raised concerns about the claimant's honouring of his child support obligations. There is currently an order in place that he pay the respondent child support of \$500 per month. Up to the date of this hearing, payments were being withdrawn from the claimant's share of proceeds from an investment account belonging jointly to the parties. Counsel suggested the fund was exhausted and expressed doubt as to the claimant's ability and willingness to make voluntary payments going forward. On the evidence before me, there was no clear indication that the claimant was in arrears on child support obligations and as such I do not consider this concern has been made out.

Conclusion - Interim Relocation

[182] Taking all of the foregoing factors into consideration, I conclude it is in the children's best interests to allow the respondent to relocate them to Celebration, Florida.

Amendment to Interim Parenting Order

[183] As a result of the interim relocation of the children, it is necessary to vary the order of Master Elwood made September 15, 2021 with respect to interim parenting time.

[184] I also order that the order of Master Vos made April 29, 2022 be should be varied to allow the respondent to remove the children from BC for the purposes of this relocation.

[185] I grant the interim parenting time order proposed in the respondent's relocation notice of March 23, 2022. This includes the following parenting time for the claimant with the children:

- a) One week of winter (December) break, namely from Friday at 5 PM Eastern Time to Saturday at 5 PM Pacific Time;
- b) One week of spring break (Friday at 5 PM Eastern time to Saturday at 5 PM Pacific Time);
- c) One calendar month during the children's summer break;
- d) Twice-weekly video calls on Mondays and Thursdays from 4 PM Eastern Time to 5 PM Eastern Time, or such other time as the parties may agree;
- e) In the event the claimant is in Florida during the months of September through May, two weekends per month from Friday at 5 PM Eastern time to Sunday at 5 PM Eastern time, with one weeks prior notice to be provided;
- f) Drop-off to occur at the beginning of all parenting time at the Starbucks outside the A-Side Terminal of the Orlando International Airport. Pickup of the children at the end of parenting time shall be at the parking lot of the restaurant in Surrey BC that the parties are currently using as an exchange location. The parties are at liberty to agree in writing to other locations;
- g) The respondent's parents will continue to facilitate all parenting exchanges and video calls;
- h) Where available, the children must fly direct and shall not be unaccompanied until E. reaches the age of 12 years; and
- i) The claimant shall book all flights and pay all costs associated with picking the children up at the beginning of parenting time. The respondent will book all flights and pay all costs associated with picking the children up at the end of parenting time.

Interim Decision-Making Authority

- [186] The respondent seeks an order that she be granted sole responsibility for day-to-day parenting of the children, without the need for input from the claimant.
- [187] The interim parenting order I have made contemplates that the children will be having substantial periods of parenting time with both parties at various times. In my view, it is appropriate that the parent exercising parenting time share information from time to time about significant issues affecting the children with each other and ideally allow the other parent to provide input, but with the respondent having final decision-making authority in the event the parties are unable to agree.
- [188] I make an interim order that the claimant and the respondent share decision making responsibilities and parental responsibilities for the children, pursuant to the Joyce Model, as follows:
- a) Each party will have the obligation to advise the other party of any matters of a significant nature affecting the children;
 - b) Each party will have the obligation to discuss with the other party any significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
 - c) The parties will have the obligation to discuss significant decisions with each other (via email only) and the obligation to try and reach agreement on those decisions; and
 - d) In the event that the parties cannot reach agreement on a significant decision despite their best efforts, the respondent will be entitled to make those decisions and the claimant will have the right to apply for directions on any decision he considers contrary to the best interests of the children.
- [189] In view of the pending family violence-related issues outstanding between the parties, all communications regarding the children will occur either via the parties' respective legal counsel or in writing only, with both parties using a co-parenting communication platform such as "OurFamilyWizard" or "Coparently" or such other similar service to which the parties may agree. Communications will be strictly limited to children-related issues and parties are required to maintain respectful language and tone in all communications.
- [190] In the event the claimant fails to limit himself to communications relating to the children, or engages in abusive language towards the respondent in those communications, the respondent is at liberty to re-apply for sole decision-making responsibility.

Children's Documents

[191] The claimant is ordered to immediately deliver to counsel for the respondent all identity, passport, citizenship and other immigration and travel documentation in his possession or control relating to the children. If the claimant is holding any such categories of documents belonging to the respondent, he will promptly deliver those to counsel for the respondent as well.

[192] In the event the claimant's signature is necessary for any purposes related to travel, residency and citizenship necessary to relocate the children to celebration Florida, the claimant will cooperate with all reasonable requests promptly after demand. If there is any dispute in this regard, either party has liberty to apply.

Claimant's Application

[193] It follows from the foregoing that I dismiss the claimant's application in its entirety.

Costs

[194] The respondent is entitled to costs of this application from the claimant. These are not payable forthwith.

"Master Bilawich"

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