
CANADA / JUDGMENT

K.U.B. v. L.L.M.

2014 BCSC 2006

COURT

Supreme Court of British Columbia

DECIDED

3 March 2014

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2014 BCSC 2006 K.U.B. v. L.L.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.U.B. v. L.L.M.,

2014 BCSC 2006

Date: 20140303

Docket: 12-2036

Registry: Victoria

Between:

K.U.B.

Claimant

And:

L.L.M.

Respondent

Before: The Honourable Madam Justice Power

Oral Reasons for Judgment

Counsel for the Claimant:

W. Murphy-Dyson

(L. LeBlanc appearing as Agent
for this decision)

Counsel for the Respondent:

R. Faber

Place and Dates of Trial:

Victoria, B.C.

February 11 - 14, 2014 and

February 17 - 21, 2014

Place and Date of Judgment:

Victoria, B.C.

March 3, 2014

INTRODUCTION

- [1] THE COURT: This trial concerns parenting time, guardianship terms, and child maintenance with respect to a 20-month-old child named M.G.M. There are also ancillary issues, foremost among which include that the claimant father has applied to change M.'s last name to a hyphenated one which includes his last name, so that the new last name would be B.-M.
- [2] The parties are not married and the original pleadings were filed pursuant to the Family Relations Act. Since then, in March 2013, the Family Law Act has come into force. It is clear that the Family Law Act applies, regardless of how this case was pled, and the parties are agreed on that.
- [3] This case is complicated by the fact that the claimant father, Mr. B., and the respondent mother, Ms. M., never lived together or cohabitated in any meaningful way. They had a dating relationship, a pregnancy resulted, and the dating relationship ended in February 2012, before M.'s birth in June 2012.
- [4] Having heard the evidence, I am satisfied that the respondent, Ms. M., would have liked to try to make the relationship work and have a long-term relationship with Mr. B. in Victoria, but that Mr. B. did not want such a relationship. He terminated the relationship in late January or early February, prior to the birth. It is clear from all of the evidence at trial that Ms. M. was initially hurt by Mr. B.'s decision not to try to have a relationship with her and to live together with her and their child.
- [5] As a result of the breakup, and considering all of the circumstances in her life, including the fact that she was going to be a single mother, Ms. M. decided to return to Vernon, where she was born and raised, in order to have the support of her parents and extended family prior to the birth. She made that decision when she was approximately eight months pregnant. M. was born in Vernon and has lived there with her mother, Ms. M., since her birth.

- [6] It is also clear from all of the evidence at trial that Mr. B. feels wronged by that decision and thinks that Ms. M. should have remained in Victoria to have the child and to raise it as a single parent, with his involvement as co-parent.
- [7] Although this case is not a mobility case, it has many similar aspects. That is so because the respondent, Ms. M., moved prior to the birth of the child and much was made at trial of her decision to do that. The thrust of the submission on Mr. B.'s behalf is that there has been a struggle since before the child was born for Mr. B. to have a full participatory involvement in M.'s life. It is argued that Ms. M. moved in order to thwart his involvement and his parenting rights in respect of the child.
- [8] Mr. B. is seeking a parenting schedule that provides him with eight parenting days in Victoria each month, followed by 10 days each month when M. reaches the age of four. Those days would be supplemented by time in Vernon with Mr. B., so that he would be parenting M. close to half-time.
- [9] In argument, Mr. B. sought a term in the final order that would allow the court to review the order made without a material change in circumstances. However, I am advised by the trial scheduler's office that this request was withdrawn after submissions were made.
- [10] It is submitted on behalf of Ms. M. that Ms. M.'s decisions since M.'s birth have been motivated by the best interests of M. To the extent that Ms. M. has limited parenting time with Mr. B., it was because M. was not developmentally ready for a plane ride to Victoria, for example, or for overnight visits. She says that is why she opposed various interim applications. There is no suggestion by Ms. M. that Mr. B. is not fit as a parent, and in fact Ms. M. desires that M. have a full relationship with her father, paternal grandparents and related family.
- [11] I wish to state at the outset that my primary consideration in making the decision that I will make in this case is the best interests of the child. Although the background to the current situation is of some relevance in understanding the context in which I must make this decision, the best interests of M. must be my only concern.
- [12] It follows, therefore, that many of the grievances that the parties have with each other will not be the focus in my decision. I state that at the outset, since there is much evidence led by the claimant and answered by Ms. M. about what transpired between the parties at the time of the breakdown of the relationship that is, in my view, not relevant or only marginally relevant to the decisions that I must make in this case.
- [13] Further, I must make the decision based on the situation as it currently exists, including the practical reality that the parties live in separate cities. It is my view in this case that it is in M.'s best interest to encourage maximum contact between Mr. B. and his child, but I also must keep in mind M.'s age and her developmental milestones, including the fact that she is still breastfeeding.

[14] I must make a decision that encourages the conflict between the parties to come to an end rather than continue. While the courts are available to parties to resolve conflicts if they cannot be resolved between themselves, the purpose of this trial is to make a final decision rather than an interim one. It is in the best interests of M. that there be some certainty in her young life so that the parties can go forward as parents and guardians, and build a rich relationship with the child, who is a remarkable child in terms of her development, especially given the conflict between her parents.

[15] As noted in *Young v. Young*, [1993] 4 S.C.R. 3, at para. 138:

As a practical matter, the unending litigation occasioned by disputes over parental authority exacts a financial cost that few custodial parents can bear. It is no secret that the vast majority of such parents are women.

-- and further --

The cost of ongoing litigation can only exacerbate this decline by diverting whatever scarce resources exist away from day-to-day needs of the remaining family.

[16] Over the course of this nine-day trial, I heard from Mr. B., his parents, and a number of his friends, all of whom reside in Victoria. These witnesses described some of the access visits that have occurred so far in Victoria and the visits to Vernon.

[17] In response, I heard from Ms. M., her parents, her grandmother and aunt, all of whom reside in Vernon. These witnesses described M.'s day-to-day life in Vernon, since all of them play a role in supporting Ms. M. as a single parent in Vernon.

[18] I also heard from Mr. B.'s employer and a business associate.

[19] It is clear to me that both parties love M. very much, and that both parties are supported by an exceptional group of people who will support them in their parenting role. M. is the only grandchild on both sides.

[20] Since there was no expert evidence called at this trial, I must make my decision on M.'s best interests based on the evidence of the parties and applying my own common sense to the evidence I have heard. I agree with Ms. M. when she stated in her evidence that, in her view, it is in M.'s best interests for her parents to be making those decisions, rather than putting these decisions in the court's hands.

[21] In a conflict as longstanding and entrenched as this one, each of the parties must recognize that they bear some responsibility for the conflict. In my view, each party has contributed to the ongoing conflict in this case.

- [22] Since parenting time is the most contentious issue, I wish to state at the outset that, having considered all of the evidence, I am of the view that the parenting schedule sought by the claimant is not appropriate for a child as young as M., and I will, at the conclusion of this judgment, be ordering a schedule much closer to Ms. M.'s proposal, with a few minor variations. My reasons are as follows.

BACKGROUND FACTS

- [23] Mr. B. is 39 years of age. He has a bachelor of commerce degree and has obtained the professional designation of chartered accountant. He is single, resides in Victoria, and has one sibling, a brother, S.. His parents and other friends and relations reside close by. He is currently employed, primarily for a Mr. Calveley, who provided evidence at trial. While he has some flexibility in his employment since his work is mostly self-directed, it is clear that his ties to Victoria are substantial. Although he at one point considered a move to Vernon, that is not something he could do at this time.
- [24] Mr. B. does have some flexibility with his hours, which he can use when he is caring for M. He can also call on his mother, who already has a close relationship with M. He can also call on friends and other relations.
- [25] Ms. M. is 33 years of age. She was born in Vernon, British Columbia, and lived in Vernon and Salmon Arm with her family until she graduated from high school. She left the Okanagan to attend university in Victoria, and obtained a degree in biology and biochemistry, and graduated from the University of Victoria in 2003. She has two siblings who left Vernon after high school and now reside in Vancouver.
- [26] While at university, Ms. M. returned home to Vernon for at least two summers. After graduation, Ms. M. started a women's painting company in Victoria, which she sold in 2005. She then left Victoria for extended travel in New Zealand and Hawaii. She returned to Victoria in 2006 and obtained an executive MBA. She did one semester by attending classes in Victoria and one semester via distance education, again in Vernon. After 2006, she did a variety of things, including living and teaching in China. She speaks Mandarin fluently.
- [27] Ms. M. returned to Victoria in March 2011 and she met Mr. B. in June 2011. Around the same time that the parties met, Ms. M. obtained employment at a not-for-profit organization called Cetus Research and Conservation Society in Victoria.
- [28] After they met, Ms. M. and Mr. B. had an on/off dating relationship in the summer and fall of 2011, which included a cycling trip to Vernon in July 2011. During that visit, Mr. B. met Ms. M.'s parents for the first time and stayed at their lakefront home on Kalamalka Lake. He acknowledged in his evidence that Ms. M.'s parents treated him with courtesy and respect on that visit and at all subsequent meetings.

- [29] I note that the same degree of courtesy has been extended by Mr. B.'s family to Ms. M., both before and after M.'s birth. One of the things that is unusual about this case is that, even though there has been significant conflict between the parties, the families have been exceptional in the support and courtesy they have offered each of the parties.
- [30] In the fall of 2011, the parties learned that Ms. M. was expecting a child. In his evidence, Mr. B. described learning of the pregnancy by stating, "It was a surprise to me, perhaps to Ms. M." He said that, notwithstanding the surprise, there is only one reaction to such news and that is a positive one.
- [31] Mr. B. described being told by Ms. M. that she had some medical issues that meant she was unable to have children. In her evidence, Ms. M. gave further detail about those medical issues, which included a diagnosis of endometriosis and ovarian cysts. The cysts continued to be a problem for Ms. M. and a factor throughout the pregnancy.
- [32] Although not directly relevant to the matters before me, it is clear from her evidence at trial that Ms. M. never contemplated being a single mother. Clearly the pregnancy was unplanned from her perspective as well. The evidence that she gave at trial on this point, including the shame that she felt on learning that she was going to be a single mother, was emotional, compelling, and sincere.
- [33] Shortly after learning of the pregnancy, Mr. B. broke off the relationship with Ms. M. in November of 2012. He described the relationship as one that was not on stable ground. He said in his evidence, "Our relationship was turbulent, our value systems very different," and that they had "a distorted focus on the unborn child."
- [34] There were many emails between the parties which were referenced in evidence. I am guided by the words of Mr. Justice Macaulay in *S.M.M. v. J.P.H.*, 2011 BCSC 1084, at paras. 181 to 183, and note that the emails in this case assist me in establishing the emotional condition of the author, but not the factual content.
- [35] Around November 2012, Ms. M. sent an email, Exhibit 1, Tab 2, which is clearly emotional and sets out the options that she is pursuing. That email was described in submissions as a veiled threat. I reject that characterization. In my view, that email is emotional and describes the options and resources that Ms. M. is researching and pursuing. The email starts:

I just got off the phone with one of those 24 hour emergency hotlines.

I think I'll probably take the day off work today and go to one of those unplanned pregnancy places. There is one on Caledonia that hopefully is open and they do all sorts of support and counseling there.

It continues:

or to see I how I can do this on my own -- what that might look like and what kind of support systems I have in certain places -- is something I feel like I need to decide immediately, based on how far along the pregnancy is.

She states further:

It is crazy to me, this sudden 180. Just this weekend you told me you loved me. You even said then that you thought we will make a great team.

And further:

I had been trying to show you one day at a time that I am trustworthy, respectable and loveable. But It seems to me that I'm failing at a lot of things right now, so I shouldn't be surprised that I am falling at that too.

- [36] It is my view that Ms. M.'s approach in exploring options is a responsible one, considering that the pregnancy was unplanned and Mr. B. did not want to pursue the relationship. I do not consider that approach to be a threat.
- [37] Subsequently the parties went to counselling. Mr. B. describes that there was an admission in counselling that the parties would not have gone forward in the relationship if the unborn child was not a factor. Shortly thereafter, the parties reconciled and continued dating. During this period, Ms. M. mostly stayed over at Mr. B.'s residence.
- [38] Mr. B. broke it off again on February 1, 2012. Again, a series of emotional emails were exchanged and this time the break was a final one.
- [39] During the next few months, there were a series of emotional decisions made by Ms. M. Ms. M. initially went about finding a place to live for her and her unborn child, and signed a residential tenancy agreement for an apartment in Victoria, with tenancy to start on March 15th. Just after signing that tenancy agreement, she learned that she lost her employment. She then went on a previously-planned trip to China for a month and returned in mid-March.
- [40] Ms. M. returned to Canada and initially moved into the apartment in Victoria. She was proceeding with her initial plan to have a home birth with a doula and a midwife, and was making her plans to live in Victoria. Although she was in touch with Mr. B.'s mother and father, Mr. B. himself was not in contact with her. At one point, Ms. M. expressed in an email that she wished Mr. B. would call her.
- [41] The parties exchanged emotional emails again about issues like a proposed parenting agreement (Exhibit 9). Ms. M. described her proposal during her evidence as "nutty", and in my view those communications simply illustrate the degree of emotional turmoil and distress that Ms. M. was experiencing, rather than demonstrating any attempt to deprive Mr. B. of parenting time.
- [42] Such turmoil is aptly illustrated in Ms. M.'s email dated April 19, 2012, as follows:

All I want is to be a good mom and I already feel like I'm failing, every day. Every time I wake up in the middle of the night, sick with stress, I know how the baby feels it. Every time I cry or worry or wish, it's not just hurting me. In fact, it's probably hurting this baby even more. And that's what it the hardest for me right now. I already can't provide for this child what I want to and I feel like I'll never be able to do it if I can't even get it right even now, which should be the easiest time. But you can't possibly understand. You're life hasn't changed, your life won't change. You don't carry a child with you everywhere you go. You're not a parent already. You don't take a year off work. You don't have to be stuck in a city where you have no family. You don't have to sell over half of the assets you've accumulated in your life to support this child. And you don't have to deal with someone for the rest of your life, who you just wish would disappear.

- [43] Ultimately in late March, Ms. M. began to consider returning to Vernon to have the child with her parents and other supports around her. Her father, in his evidence, described a conversation that he had with Ms. M. in early May, when he told her to just get home. He expressed that degree of urgency, since he was very concerned about Ms. M. and her emotional condition.
- [44] During this time, Mr. B. did not visit Ms. M., except on Mother's Day when he brought her some flowers and some gift certificates, representing \$500 for Shoppers Drug Mart and \$400 for a vitamin store on Broad Street. Although Ms. M. had asked for some financial help the month before the birth, the gift certificates reflect the total of the financial help that Mr. B. provided prior to the birth.
- [45] Ms. M. packed her belongings and returned home to Vernon on the long weekend in May, just over two weeks away from M.'s birth. Ms. M. described in her evidence phoning Mr. B. as she was on the steps of her apartment, just prior to leaving for the ferry to the Lower Mainland. Mr. B. in his evidence admitted having some difficulty recollecting the details of that conversation, but stated that the conversation took place the next day when Ms. M. was already in Vernon. I prefer Ms. M.'s recollection on this point, since her evidence was clear and specific. However, in my view, it matters little whether the phone call was made from Victoria or from Vernon.
- [46] Although much has been made in this case about Ms. M.'s decision to leave Victoria, I am of the view that any judge of this court, if asked, would have permitted her to do so, based on the evidence I have heard. Ms. M. had substantial emotional and family supports in Vernon compared to those in Victoria. While much was made in evidence about the number of months she had resided in Victoria and other locations after she left Vernon for university in Victoria, in my view all of Ms. M.'s emotional support, with the exception of some family friends named the MacLeans, lived in Vernon.

- [47] Ms. M. was unemployed, facing life as a single mother, and was due to deliver a baby in a high-risk pregnancy. All of the evidence satisfies me on how emotional this time was for her and that this negative emotion was affecting her and the baby. She decided to return to Vernon, where she could be surrounded by people who loved her. She also very sensibly, given the nature of the risk presented by the birth, decided to have M. in the same hospital she was born in. Such a decision was in the interests of both mother and unborn child.
- [48] Mr. B. was unable or unwilling to provide any of the emotional support that Ms. M. required. He was not prepared to provide financial support, except for the gift certificates.
- [49] Although much was made of a blog entry dated May 10th, I am of the view that Ms. M.'s evidence at trial and the evidence of her family is preferable to the perspective shown in that entry. In any event, the blog reflects some of her emotional angst when she writes:
- And the countdown is both with excitement and trepidation. I am spending my days now savoring every quiet morning of sleep-ins, every afternoon of wandering the city with my earphones full blast, and every lonely evening of eating a dinner for one. This is the end of an era, truly.
- [50] In my view, the blog simply represents Ms. M. presenting a positive perspective for her friends who might read the blog.
- [51] M. was born on June 7, 2012, at approximately 3:30 in the morning. Ms. M. had provided her mother a list of persons to call and Mr. B. was the first person on that list. Mrs. M. provided emotional testimony about calling Mr. B. and telling him about his beautiful baby girl.
- [52] Three days later, Mr. B. came to Vernon and first visited with his child. That was June 10, 2012. He went by himself on this visit; however, on subsequent visits he has visited with his mother, and in August of 2012 with his brother. During that first visit in June of 2012, he visited the child for a couple of hours each day. The time limitations were explained in evidence by Ms. M. as being necessitated by the demands of an infant, including sleeping and nursing.
- [53] Ms. M. described the early difficulties that she was experiencing breastfeeding M., although she did receive some assistance which has allowed her to breastfeed successfully. She continues to breastfeed M. and plans to do so until M. is two. She hopes that M. will wean naturally, but will start to actively wean her at two and a half if the natural weaning process does not occur.
- [54] During that June visit, there was discussion between Mr. B. and Ms. M. about the baby's name. The parties had previously exchanged emails on the topic. They finalized their discussions on the last day of that June visit. Ms. M. wanted the first name to be M. Mr. B. did not contest that name, and although he likes it very much now, it initially was not his first choice. Mr. B. wanted some family lineage and suggested G. as a middle name. Ms. M. similarly would not have chosen that name as her first choice, but acceded to Mr. B.'s wishes.

- [55] During their conversations, it is clear from both parties that Ms. M. was strong in her expressed desire for M. to bear her last name, that is M. Mr. B. wanted a hyphenated surname, B.-M. Ms. M. suggested B. as a middle name. Mr. B. testified that ultimately he signed the birth registration with M. as the last name because he had already filed, but not yet served, the notice of family claim in this action, and he made the difficult choice of signing the birth registration form since, he stated in evidence, that he was concerned that if he did not sign it, the birth would be registered without listing him as father. Ms. M. was unaware that any court action had been filed and she proceeded with the registration on the understanding that the parties had agreed on M.'s name.
- [56] Ms. M. did not receive service of the documents until late August 2012, when Mr. B. was up for a visit with his brother S. His brother effected the service at that time.
- [57] Unfortunately, the conflict between the parties did not resolve after M.'s birth and, in many respects, has been exacerbated. In August of 2012, Ms. M. filed for sole custody and guardianship in Vernon Provincial Court. Ultimately, two interim applications with respect to parenting time were dealt with in this court, since the parties could not agree. The initial one proceeded in front of Master Bouck in December of 2012, and a further one proceeded in front of Mr. Justice Bracken in September of 2013. The court in each case provided staged parenting time, including an initial visit in Victoria in December 2012, pursuant to the Master Bouck order, and overnight visits pursuant to Mr. Justice Bracken's order. As a result of these interim orders, parenting time with M. for Mr. B. has occurred in Vernon and in Victoria.
- [58] At the conclusion of her maternity leave, Ms. M. was successful in obtaining a position as a college professor at Okanagan College, Okanagan School of Business. That employment commenced in September of 2013. Her plan is to work part-time until M. is school age. She hopes to obtain a doctorate by distance education which she will fund with grants and student loans. She intends to teach a maximum four days per week, which will allow her to travel with M. for Victoria visits. She has family assistance from her parents, her aunt, and her grandmother when she is teaching, and M. is already being taken to community programs in Vernon such as swimming, gymnastics, and music as part of her socialization and development.
- [59] I am satisfied that Ms. M. has made all of her life decisions and her career decisions around M. and M.'s best interests. Her family supports in Vernon are exceptional and M.'s life is rich and varied.
- [60] Ultimately, even though the parties tried mediation, they still could not agree on parenting time and the ancillary issues. They are proposing different access schedules, with Mr. B. proposing a schedule that allows a greater degree of time in Victoria, and Ms. M. proposing shorter and more frequent visits on a two:one ratio; that is to say, two visits in Vernon to one in Victoria.

ANALYSIS - PARENTING TIME

- [61] With that general background, I now turn to the issues that I must decide.
- [62] Section 37 of the Family Law Act makes it clear that the court must consider only the best interests of M. That section outlines the needs and circumstances that I must consider. Section 41 of the Family Law Act defines parental responsibilities under the Act.
- [63] Guiding principles on how the court should approach a determination of what is in the best interests of a child pursuant to the Family Law Act specifically are set out in *K.L.G. v. D.J.T.*, 2013 BCSC 1684. While that case was primarily concerned with mobility, the court noted that ss. 37 and 40 effectively codify many of the principles set out in seminal cases such as *Nunweiler v. Nunweiler*, 2000 BCCA 300, and further that they are similar to s. 16(8) and 16(10) of the Divorce Act. In particular, the statute affirms that the only consideration is the best interests of the child, not the interests and rights of the parents; the principle that no particular parenting arrangement is presumed to be in the best interests of the child; and the principle that each case turns on its own unique circumstances.
- [64] In considering the evidence in this case, overall I found both Ms. M. and Mr. B. to be sincere and loving parents who want to develop a strong and loving bond with M. The conflict between them is particularly regrettable, since they are both highly-educated individuals who have much to offer M. Unfortunately, however, the conflict is so longstanding, the positions are entrenched.
- [65] Mr. B.'s case rests on his strong belief that Ms. M. has made the decisions that she has made in this case in order to deny him parenting time, rather than for any valid reason relating to M.'s best interests. I reject that characterization of Ms. M.'s motives. It is clear to me from all of the evidence that all of Ms. M.'s decisions around M. have been motivated by her view of M.'s best interests.
- [66] For example, Ms. M.'s decision to breastfeed, and to continue breastfeeding M. until she is two, is based on her strongly-held view as a mother and a scientist that breastfeeding is in M.'s best interest. Further, she has a considered and thoughtful plan to wean M., although her stated desire is to allow that to occur naturally. That is consistent with all of her beliefs, continually demonstrated throughout the parties' relationship, which prefer a natural approach. None of these views were developed by Ms. M. in order to deny Mr. B. parenting time, but are long-held views of Ms. M. that she expressed even prior to M.'s birth.
- [67] By way of another example, I reject the argument that Ms. M.'s request that M. not sit in a car seat too long was a deliberate fabrication to prevent Mr. B. from driving in a car with M. M. was examined by a chiropractor, and even though that opinion is not formally before me on the trial, I can conclude that a chiropractor, Dr. Mayne, who is a licensed medical practitioner in British Columbia, considered it appropriate to examine a baby as young as M. and expressed some concern as a result of the circumstances of her birth.

- [68] Overall, I found Ms. M. very credible in her evidence. The only point where she was perhaps not fully disclosive surrounded the issue of how much milk she had expressed for her parents to feed M. while they were caring for her during the first week of the trial. In that regard, I found her cautious in the manner she gave her evidence, rather than deliberately deceptive. I find that she was embarrassed by having obtained supplemental milk from another mother's supply. I do find her intent to keep M. away from the conflict of the trial was sincere. She has been consistent throughout in her desire to keep M. away from this conflict.
- [69] Unfortunately, if Ms. M. had been more disclosive about her reasons around access and her intent to provide access during the second week, the conflict might have been reduced. There are other examples of that occurring.
- [70] I am of the view, as well, that Ms. M. is of the view that M.'s relationships with her father, grandparents, and other family in Victoria are important. I conclude that her actions have not been intended to limit or prevent those relationships from developing. It is also clear that Ms. M. was, in her words, intimidated by the court actions being taken against her and was, in many of her actions, fighting for M. That action was most clearly demonstrated when she brought M. to the hospital, after being concerned that Mr. B. had administered drugs to M., stating in the hospital record that Mr. B. was a drug trafficker. She admitted being embarrassed by those actions during her testimony. Clearly Mr. B. has no history as a drug trafficker and that statement was an exaggeration in response to M. having been administered some Children's Advil.
- [71] I am of the view that all of the actions of Ms. M., although they show that she was overprotective at times, were based on sincerely-held beliefs. For example, Ms. M. genuinely believed that M. was not ready for overnight visits at the time she opposed the order of Mr. Justice Bracken. That view was shared by her parents, who assisted her in doing a trial attempt at an overnight, and M. was not in fact able to make it through the night during that attempt.
- [72] In this case, I considered appropriate the respondents arguments surrounding the considerations mandated under s. 37(1) of the Family Law Act:

That is that the parties live in different cities. Mr. B. has made no application for M. to live in Victoria after her birth, and he does not advance such an application at this time.

Ms. M. has been M.'s primary caregiver since her birth in Vernon.

As a result of Ms. M.'s parenting style and practices, M. is extremely bonded to her mother.

M. is only 20 months old and is still breastfeeding.

At this point, M. has spent no more than three consecutive nights away from her mother, although I believe it is now four as a result of the trial.

Ms. M. has structured her life and career around M.'s care and upbringing, and has a specific and well-thought-out plan in order to continue to do so.

Ms. M. has a strong support system in Vernon and no plans to relocate.

M. responds well to routine and stability.

[73] Mr. B. is, there is no question, a loving father. He is also a busy man with demanding responsibilities in his professional life.

[74] I am of the view that the schedule submitted by Ms. M. is more directly relevant to M.'s best interests and supports her development. Accordingly, with some minor modifications, I will be ordering that schedule. The order sought by Mr. B. increases travel costs and does not permit Ms. M. to be close by, in the event that M. needs her mother, as has occurred on some of the past visits. That kind of need will be a real consideration until M. is fully weaned, which may not start until M. is two and a half. Ms. M.'s proposed schedule is also considerate of other matters, like B. family holidays.

[75] Finally, it is my view that Mr. B.'s access schedule will be confusing for M., since it is not in her interest to have parallel lives. M.'s community or residence is Vernon, notwithstanding that she will have a rich family life in Victoria as well.

CHILD SUPPORT

[76] Turning now to the issue of child support, Mr. B. has voluntarily paid child support for M. since her birth. Initially he was paying \$750 per month, and that recently increased to \$950. There are two expert reports from Spence Valuations before the court. Based on the second report, Exhibit 7, Tab 2, Mr. B.'s Guideline income for 2013 is \$101,900. Although Mr. B. did not pay child support prospectively for 2013, and there is no claim for retroactive support, I am not persuaded that I should increase Mr. B.'s Guideline income based on Mr. Calveley's evidence or speculatively based on possible rental income. Since I will be largely acceding to the access schedule proposed by Ms. M., that will result in increased travel costs to Vernon when Mr. B. is exercising access there, and he may not be able to increase his income to the full contract amount with Mr. Calveley, in light of that schedule.

[77] Special expenses will be divided between the parties in proportion with their income.

[78] Travel costs will be defined as one roundtrip adult airfare, and when M. turns two, one roundtrip child's airfare. Although I have considered Ms. M.'s requests that these costs be divided in proportion with their income, I am also mindful that Mr. B. will be incurring significant travel expenses to travel to Vernon on the two:one schedule of Ms. M. Accordingly, those expenses as defined will be divided equally or 50/50.

- [79] I am going to order that Ms. M. provide her apartment townhouse for Mr. B.'s use during his access visits, as offered by her during the trial. Although this arrangement has not yet been tried, I am of the view that it was sincerely offered and such an order may assist in achieving the kind of stability for M. during access times that both parties desire.

CHANGE OF NAME

- [80] Finally, I turn to the application by Mr. B. to change M.'s name to M.G.B.-M. As noted in the background to this matter, both parties signed her birth registration and four witnesses have testified about this event: Mr. B., Ms. M., and Ms. M.'s parents. Mr. M. recalls seeing Mr. B. sign the document and that the exchange seemed cordial. Mrs. M.'s evidence is less clear because of the passage of time.
- [81] Although Mr. B. gave evidence that he signed the registration because he was concerned that if he did not, M.'s birth would be registered without listing him as the father, that evidence, viewed objectively, does not make any sense. All of the evidence, including ample email evidence, discussions with various witnesses, and the call from the hospital from Mrs. M. to Mr. B. when M. was born indicate that he was the birth father. There is no evidence to suggest that Mr. B. would not be registered as father. Further, since Mr. B. has not, throughout the course of the relationship, felt pressured to agree to other matters, such as living together, I do not accept that he felt pressured in the negotiations surrounding M.'s name.
- [82] Accordingly, since M.'s birth has been registered and Mr. B. has been registered as father, I am of the view that there is no need for a declaration of parentage under s. 4.1 of the Vital Statistics Act. Further, I am not persuaded that M.'s name should be changed to a hyphenated one. Ms. M. gave clear evidence about why she preferred a single surname and why she wanted the surname to be M. I am persuaded that M.'s name, as registered, belongs to her and that her parents ought not be able at will to bring on a contested application to change their child's surname when they have previously agreed about the matter.

CONCLUSION

- [83] In the result, my orders are as follows.
- [84] That M.'s name shall remain as agreed and registered in her birth registration, M.G.M.
- [85] That M.'s primary residence will be with the respondent, Ms. M., and will be in Vernon.
- [86] That Ms. M. and Mr. B. are each the joint guardians of M. I am going to define guardianship by reference to the Joyce Model, as modified for the Family Law Act. The guardians will exercise all parental responsibilities with respect to the child on the following terms:
1. in the event of the death of a guardian, the surviving guardian(s) will be the only guardian(s) of the child;

2. each guardian will have the obligation to advise the other guardian(s) of any matters of a significant nature affecting the child;
 3. each guardian will have the obligation to discuss with the other guardians any significant decisions that have to be made concerning the child, including significant decisions about the health (except emergency decisions), education, religious instruction, and general welfare.
 4. the guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
 5. in the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the guardian with the majority of parenting time with the child [in this case Ms. M.] will be entitled to make those decisions and the other guardian(s) will have the right to apply for directions on any decision the guardian(s) consider(s) contrary to the best interests of the child, under s. 49 of the Family Law Act; and,
 6. each guardian will have the right to obtain information concerning the child directly from the third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.
- [87] That Mr. B. shall have reasonable and generous specified parenting time with M. in Vernon and in Victoria, in accordance with the proposed parenting schedule marked as Exhibit 12 and referred to in evidence as the green and blue schedule, with the following changes: the March 22nd, 23rd, 24th visit will be in Victoria, and will be the 21st, 22nd, 23rd unless the parties agree on other dates. The proposed dates in June, July, and August of 2014 should include one additional day, for a total of five days each Victoria visit. The parties will have liberty to change dates and times by mutual agreement.
- [88] Now, I am going to include para. 10 in the order sought by the claimant, that is the order that the claimant and up to two others shall have exclusive use of the respondent's apartment townhouse in Vernon. It reads:
10. An order that the Claimant and up to two others shall have exclusive use of the Respondent's apartment/townhouse in Vernon and exclusive use of the Respondent's car during his parenting times in Vernon as offered by the Respondent, unless the Claimant advises the Respondent in advance that he does not require such exclusive use of either the apartment/townhouse or car on a particular parenting time in Vernon.
- [89] Para.13 of the orders sought by the claimant:
13. An order that travel itineraries shall be exchanged by the parties at least seven days in advance of such travel.
- [90] Para. 12 of the orders sought by the claimant:

12. An order that, for the Claimant's Vernon parenting time, the Claimant shall pay his own travel expenses.
- [91] Para. 14 of the orders sought by the claimant:
14. An order that the Respondent shall notify the Claimant any time if she plans to come to Vancouver Island and shall afford the Claimant some reasonable parenting time during such visits.
- [92] Para. 15 of the orders sought by the claimant:
15. An order that each party shall notify the other in advance of any plans to travel with the child outside of Vernon or Victoria, as the case may be, and shall provide itineraries and contact information.
- [93] Para. 16:
16. An order that Skype visits on Mondays, Wednesdays, and Fridays each week for at least 30 minutes between 5:30 and 6:30 p.m. shall continue unless otherwise agreed by the parties.
- [94] Para. 17:
17. An order that all of the provisions of this Order may be changed by agreement of the parties without the necessity of a further Court Order.
- [95] An order that the parenting time may be reviewed prior to M. starting school.
- [96] An order, and these are orders that were sought in the respondent's list of orders, that the parties shall attempt to resolve any differences in regard to parenting time in mediation prior to making a court application.
- [97] That Mr. B.'s Guideline income is \$101,900 and Ms. M.'s Guideline income is \$26,000.
- [98] That Mr. B. pay child support to Ms. M. in the amount of \$950 per month on the 1st of each month, commencing on January 1, 2014. I note that sum is slightly higher than the table amount, but reflects the voluntary amount that Mr. B. has been paying.
- [99] That the parties pay special and extraordinary expenses for M. in proportion to their income.
- [100] I have already indicated in respect of travel costs and how they will be defined.
- [101] Para. 12 of the respondent's suggested orders will be made. It is at page 23 of the submission and is the order with respect to financial disclosure:
12. That for so long as child support is payable by [K.B.] to [L.M.], each year, by no later than May 31 (except for with respect to the notice of assessment per sub-paragraph (b)), [K.B.] shall provide [L.M.], and [L.M.] shall provide to [K.B.], with a copy of all material he/she is required to disclose pursuant to the Child Support Guidelines and in particular:

- (a) a photocopy of the most recent personal and corporate income tax returns, with all tax information slips and schedules;
- (b) the notice of assessment, when received;
- (c) details of child tax benefits or other similar benefits received in the previous year and anticipated in the coming year, if known;
- (d) particulars of [M's] Special or Extraordinary Expenses anticipated for the coming year;
- (e) the most recent annual statement of earnings, including overtime;
- (f) for the three most recent taxation years, the complete financial statements of any corporation controlled by the party, including but not limited to its subsidiaries, and a statement showing a breakdown of all salaries, wages, management fees, or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation and every related corporation does not deal at arms length; and
- (g) any other information necessary to facilitate determination of child support obligations.

[102] Para. 14 of the respondent's suggested orders:

14. Ms. [M.] has no opposition to an order that she not change [M's] primary residence from Vernon, British Columbia without either the consent in writing of Mr. [B.] or an order of the court.

[103] This completes my judgment and orders, unless there are any questions.

[104] MS. FABER: My Lady, the only question I have was if you could tell me again the parenting time is to be -- were you quoting from para. 7 of my argument when you were talking about revisiting the parenting time, or was it something slightly different that you were saying?

[105] THE COURT: I referenced para. 7 of your argument in respect of the guiding principles, but that was a statement of the law.

[106] MS. FABER: I was -- para. 7 of the orders sought on page 22, was para. 7 your order?

[107] THE COURT: I am not giving the sole parenting responsibilities under 41(a) and (b).

[108] MS. FABER: No, I meant that the parenting time may be revisited when M. starts kindergarten?

[109] THE COURT: Yes, I did order that, but I do not --

[110] MS. FABER: All right.

[111] THE COURT: -- find it as para. 7.

[112] MS. FABER: Oh, I am sorry.

[113] THE COURT: But I did order that, that it may be reviewed --

[114] MS. FABER: All right.

[115] THE COURT: -- at the time that M. starts school.

[116] MS. FABER: All right. Thank you very much.

[117] MS. LEBLANC: Nothing, My Lady.

[118] THE COURT: All right. Well, thank you very much. I wish you all success going forward.

[119] MS. FABER: Thank you, My Lady.

[120] THE COURT: Thank you.

"J. A. Power, J."

The Honourable Madam Justice J. A. Power

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