

CANADA / JUDGMENT

M.J.V. v. J.R.

2022 BCSC 1068

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Supreme Court of British Columbia

DECIDED

24 June 2022

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2022 BCSC 1068 M.J.V. v. J.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.J.V. v. J.R.,

2022 BCSC 1068

Date: 20220624

Docket: E42268

Registry: New Westminster

Between:

M.J.V.

Claimant

And

J.R.

Respondent

In Chambers

Before: The Honourable Mr. Justice Gomery

Reasons for Judgment

Counsel for the Claimant:

R.K. Dahia

Counsel for the Respondent:

A.S. Kerslake

Place and Date of Hearing:

New Westminster, B.C.

June 14, 2022

Place and Date of Judgment:

New Westminster, B.C.

June 24, 2022

Table of Contents

Introduction. 4

The parties and the children. 5

Genesis of the current parenting arrangement. 6

Legal framework. 7

Analysis. 9

Burden of proof 9

General factors to be considered under s. 16(3) in assessing the best interests of C.V. 12

The child's needs, given the child's age and stage of development, such as the child's need for stability. 12

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. 13

Each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse. 14

The history of care of the child. 14

The child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained. 15

Any plans for the child's care. 16

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. 17

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. 17

Additional factors specific to relocation applications. 17

- (a) The reasons for the relocation. 17
- (b) The impact of the relocation on the child. 17
- (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. 18
- (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 18
- (e) The existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside. 18
- (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. 19
- (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. 21

Assessment 21

Other orders. 23

Disposition. 24

Costs. 24

Introduction

- [1] Mr. V and Ms. R were married in 2007, had two children, and separated in 2011. Mr. V commenced this proceeding in 2012. Although the parties have sometimes disagreed concerning the parenting and support of their children, until now it has not been necessary for them to come to court. To their credit, they have been able to resolve their differences by consent orders and less formal agreements. Unfortunately, a parenting dispute has now arisen that they cannot resolve.
- [2] The older child is a boy, C.V., who was born in October 2007. The younger child is a girl, K.V., who was born in June 2009. The current parenting arrangement is that C.V. lives with his father in Coquitlam, British Columbia, and K.V. lives with her mother nearby in New Westminster. Each child spends every second weekend with the other parent.

- [3] The disagreement that has finally brought the parents to court has arisen because Mr. V wishes to move to Edmonton, Alberta, and to relocate C.V. with him. His reasons are essentially economic. Here, he lives in a rented apartment that is cramped for his household. In Edmonton, with the gift of a down payment from his parents, he would be able to purchase a substantial house, and he would have a greater disposable income. He maintains that the move would improve C.V.'s circumstances, and has adduced evidence that C.V. is enthusiastic for the move.
- [4] Mr. V's proposal includes a detailed plan for visits by C.V. to Vancouver and by K.V. to Edmonton, largely at his expense, and for ongoing communication and contact by electronic means.
- [5] Ms. R objects to the relocation. She submits that the move would have negative effects for C.V. that outweigh the benefits, suggesting that it would harm C.V.'s relationships with her, K.V., and his extended family here in British Columbia. She further submits that the relocation would put at risk C.V.'s education and health care, and his emotional health.
- [6] Mr. V requires court approval of the relocation pursuant to s. 16.91(1)(a) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). The fundamental question is whether the proposed relocation is in C.V.'s best interests, having regard to his physical, emotional and psychological safety, security, and well-being; *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 152.
- [7] The dispute comes before the Court on a summary trial pursuant to Supreme Court Family Rule 11-3. The parties agree that the issues are suitable for determination on a summary trial. I agree. There are no significant factual issues. I am able to find the facts necessary to resolve the issues and it is just that I resolve them on the record before me.
- [8] Mr. V seeks two orders in addition to approval of the proposed relocation: a divorce, and an order requiring mutual annual financial disclosure for the adjustment of child support. Those orders are unopposed and I address them at the conclusion of these reasons.
- [9] Mr. V and Ms. R are loving parents who want the best for both their children. They possess different strengths and different parenting styles. Their differing perspectives have contributed to bringing them to court on this occasion. It is therefore important to emphasize that neither is being unreasonable. Mr. V has good reasons to wish to move to Edmonton, and reasonably believes that the move is in C.V.'s best interests. Ms. R has good reasons to oppose the move and reasonably believes that it is not in C.V.'s best interest. It is also important to acknowledge the importance and implications of the decision for C.V., K.V., and their parents. It will affect the rest of their lives.

The parties and the children

- [10] Mr. V is employed by Telus as a technician. He is a member of a union and earns approximately \$80,000 net of union dues annually. He has applied to Telus to transfer his work location from Vancouver to Edmonton and Telus has agreed to the transfer, effective September 1, 2022.
- [11] Mr. V cohabits in a common law relationship with C.S. Ms. S is an early childhood educator who earns approximately \$52,000 annually. They share a house with Ms. S's son as members of a blended family that includes C.V. It is a rented two bedroom and den apartment in Coquitlam. Mr. V and Ms. S share the monthly rent of \$2,235 equally. They are making ends meet, but have no significant savings.
- [12] Ms. R is employed as an Applied Behaviour Analysis Support Worker. She occupies a three bedroom unit in a housing cooperative in New Westminister. She shares this accommodation with K.V.
- [13] C.V. is completing grade 9 at a school in New Westminister. C.V.'s interest, at least at this early stage, is eventually to apprentice as an electrician or in another building trade. Mr. V's proposal is to enroll C.V. in a high school in Edmonton. If C.V. does not relocate, he will continue to attend high school in New Westminister.
- [14] K.V., who is 19 months younger than her brother, is currently completing grade 7 at a different school.
- [15] C.V. has parenting time with his mother every second weekend from Friday evening to Sunday evening, and K.V. has parenting time with her father on the same basis on the alternating weekends. The effect is that C.V. and K.V. spend weekends together, one weekend at their father's apartment, and the next at their mother's co-op unit.

Genesis of the current parenting arrangement

- [16] Soon after their separation in 2011, the parties entered into a written agreement under which they shared custody and both children resided primarily with Ms. R. Mr. V had parenting time with both children every other week from Saturday mornings to Wednesday mornings.
- [17] In January 2013, the parties agreed to vary the parenting arrangement by a consent order at a Judicial Case Conference. The new arrangement was that the children continued to reside primarily with Ms. R and were in Mr. V's care on alternating weeks from Friday afternoons to Wednesday mornings.

- [18] Ms. R became concerned that K.V. was being bullied by Ms. S's son in Mr. V's house. She made a report to the Ministry of Children and Family Development, which investigated and closed its file. Ms. R remained concerned that K.V. should not be spending as much time at Mr. V's apartment. In the spring of 2021, Mr. V agreed to a modification under which K.V.'s visits would be limited to every second weekend. Ms. R is satisfied that K.V. is happier under the new arrangement.
- [19] C.V. began to express a desire to spend more time at his father's house. In late January 2022, Ms. R and Mr. V agreed that C.V. would live with Mr. V and limit his time with Ms. R to alternate weekends, as described above.

Legal framework

- [20] Sections 16 to 16.96 of the Divorce Act address the orders a court may make concerning parenting arrangements of the children of a marriage in the context of a divorce. Section 16 sets out the principles that govern all parenting orders, beginning with the requirement that the court shall take into consideration only the best interests of the child in question. Section 16(2) requires the court to give primary consideration to the child's physical, emotional and psychological safety, security and well-being. Section 16(3) lists factors that must all be considered in determining the best interests of the child.
- [21] I will address the section 16(3) factors in detail later in these reasons, except for three that have no application or are neutral in the circumstances of this application to approve a relocation: the child's cultural, linguistic, religious and spiritual upbringing and heritage (sub-s. (f)); family violence (sub-s. (j) and s. 16(4)); and any civil or criminal proceeding that is relevant to the safety, security and well-being of the child (sub-s. (k)).
- [22] The balance of section 16 lists further general principles. In determining the best interests of the child, past conduct is only to be taken into account if it is relevant to the exercise of parenting time, decision-making responsibility, or contact with the child under a contact order; s. 16(5). In allocating parenting time, the court must give effect to the principle that a child should have as much time with each parent as is consistent with the best interests of the child; s. 16(6). This is the "parenting time factor"; Barendregt at para. 135.
- [23] Sections 16.9 to 16.96 deal specifically with "relocations" of a child, which are defined in s. 1. The definition includes a change in the place of residence of a child that is likely to have a significant impact on the child's relationship with a person who has parenting time. It is common ground that this case involves a relocation.

- [24] Section 16.9 requires a party intending a relocation to give notice in a prescribed form. Mr. V gave notice as required. This Court application is required because Ms. R has formally objected to the relocation as provided in s. 16.91(1)(b). Section 16.92(1) lists factors that must be considered, in addition to the general considerations listed in s. 16(3), in determining whether a proposed relocation is in the best interests of the child. I will address those considerations in detail in these reasons.
- [25] Section 16.92(2) provides that, in deciding whether to authorize a relocation of the child, the court shall not consider, if the relocation is prohibited, whether the person who intends to relocate would or would not relocate without the child.
- [26] Section 16.93 addresses the burden of proof on a relocation application and is the subject of a disagreement that I will address below.
- [27] In *Barendregt*, the Supreme Court reviewed these statutory requirements and described them largely as a codification of jurisprudence since the Supreme Court established a common law framework for the consideration of relocation applications in *Gordon v. Goertz*, [1996] 2 S.C.R. 27. It described the inquiry that must be undertaken by the court as "highly fact-specific and discretionary"; para. 152.
- [28] Without resiling in any way from the fundamental proposition that the best interests of the child are paramount, *Barendregt* notes that the interests of child and nurturing parent are intertwined, so that a relocation that benefits a parent may well serve the child's best interests. Speaking for an eight-judge majority, *Karakatsanis J.* states:
- [171] Relocation that provides a parent with more education, employment opportunities, and economic stability can contribute to a child's wellbeing: [citations omitted]
- [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: [citations omitted]. A child's welfare is often advanced in tandem with improvements in the parent's financial, social, and emotional circumstances .

Analysis

Burden of proof

- [29] Section 16.93 allocates the burden of proof on a relocation application in three cases:
- a) The burden to establish that the proposed relocation is in the best interests of the child is on the proponent of the relocation "[if] the parties to the proceeding substantially comply with an order, arbitral award, or agreement that provides that a child of the marriage spend substantially equal time in the care of each party" (sub-s. (1));

- b) The burden to establish that the proposed relocation is not in the best interest of the child is on the opponent of the relocation "[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" (sub-s. (2)); and
- c) In any other case, the parties of the proceeding have the burden of proving whether the relocation is in the best interests of the child (sub-s. (3)). That is, both proponent and opponent have the burden of proving their respective assertions.

- [30] Subsections (1) and (2) share certain conditions for their application. There must be an order, arbitral award, or agreement allocating parenting time. There must have been substantial compliance with the allocation established by the order, arbitral award or agreement. If those conditions are met, then the question is whether the child is spending substantially equal time in the care of both parents, in which case the burden lies on the proponent of the relocation, or whether the child is spending the vast majority of their time with the proponent, in which case the burden lies on the opponent. There is a middle ground where the conditions are met and the child's time with both parents is not substantially equal but is not so unequally allocated that the child is spending the vast majority with the proponent. In that case, neither of subsections (1) nor (2) would apply and the application would be governed by subsection (3).
- [31] Mr. V argues that this case is governed by subsection (2) so that the burden lies on Ms. R to establish that the relocation is not in C.V.'s best interests. He says that the current parenting arrangement was established by agreement and it is one under which C.V. spends the vast majority of his time in his care. He submits that it makes no difference that the agreement was made informally and is not in writing, noting that, where the Divorce Act requires a written agreement, it states so expressly, contrasting s. 15.1(5) and 15.2(4), dealing with child support orders and spousal support orders respectively. He submits that it makes no difference that the agreement and current parenting arrangement were made recently, in late January 2022.
- [32] Ms. R submits that the arrangement under which C.V. and K.V. spend alternating weekends at each parent's house is fundamental to their agreement that C.V. will reside with Mr. V. Accordingly, she submits that it is an implied term of the agreement that Mr. V will reside with C.V. at a location that is close enough to Ms. R's residence for the weekend visits to take place, and Mr. V should not be able to rely on the agreement to establish a burden in his favour in the circumstances.
- [33] In my opinion, Mr. V is correct and s. 16.93(2) places the burden on Ms. R in this case. The conditions for the application of s. 16.93(2) are satisfied. The focus of attention under subsections (1) and (2) is on the substance of the parenting arrangement. It makes sense textually and would not serve the apparent legislative purpose to limit the application of both sections to cases involving written agreements; *Tariqu v. Khan*, 2022 ONSC 1167 at

paras. 71-74. Nor would it be sensible to limit application of subsections (1) and (2) only to agreements that have been in place for more than a few months.

- [34] The agreement in this case is one under which, apart from holidays, C.V. spends 12 nights out of every 14 in his father's care. In my view, this passes the "vast majority" threshold. In *Rinetti v. Kent*, 2022 ABQB 1 at para. 21, Justice R.J. Hall suggests that the "vast majority" connotes a threshold in the order of 80%. In this case, the percentage of time spent by C.V. with Mr. V is closer to 85%.
- [35] I agree with Ms. R that the visiting arrangements are fundamental to the agreement establishing this parenting arrangement. But even if the location of Mr. V's residence could be considered as a fundamental term, I do not think it makes a difference, because the agreement is not one that binds the court. The agreement is merely a matter to be taken into account under s. 16.92(1)(d) and (e). The allocation of the burden of proof under s. 16.93(2) is unaffected by the terms of an agreement. The terms are a matter to be addressed in the substance of the application.
- [36] Accordingly, the issue I must determine is whether Ms. R has established that the proposed relocation would not be in C.V.'s best interests. However, in case I am wrong, I will alternatively consider the question on the footing that it is s. 16.93(3) that applies, so that each of Mr. V and Ms. R have the burden of establishing their respective assertions.

General factors to be considered under s. 16(3) in assessing the best interests of C.V.

- [37] I will first address the relevant considerations listed in s. 16(3) of the Divorce Act.

The child's needs, given the child's age and stage of development, such as the child's need for stability

- [38] C.V. is 14 years old and is finishing his first year of high school (grade nine in British Columbia). He will be 15 in the fall. While all children require stability, he is at an age when his horizons are broadening. With increasing maturity, he has acquired a degree of resilience.
- [39] C.V. has faced medical and educational challenges, and Ms. R describes him as less mature than the average child of his age. From age 9 in 2017 until 2019 when he was almost 11, he was under the care of a psychiatrist and attended many counselling sessions at a mental health clinic following a diagnosis of anxiety and attention deficit hyperactivity disorder ("ADHD"). A clinical note made in 2019 described him as an inattentive 11-year old boy who struggled to identify feelings in others and show age-appropriate empathy.

- [40] C.V. has been followed closely and received extra support at school since at least 2017. His Individual Education Plans (or IEPs) show that he is making good progress. The most recent IEP, dated November 24, 2021, notes that C.V. had adjusted well to grade 9 in terms of social connections and there are "no social concerns at this point". He was able to find peers to work with when given choice and able to work when assigned peers. In a contemporaneous email, Ms. R observes that he is typically a C to B+ student.
- [41] While C.V. no longer sees a psychiatrist, he continues to receive treatment for anxiety and ADHD under the care of a family physician. In November, 2021, he took the lead in managing his treatment, following consultation with his parents, by requesting and eventually obtaining his doctor's agreement to restart a prescription medication in April 2022.
- [42] Ms. R describes C.V. and his sister as kind and empathetic kids who both discuss their thoughts and concerns at family meetings. A family friend, A.H., describes C.V. as a sweetheart who understands the value of family and will spend time with her during her visits. Mr. V describes C.V. as an introvert who is sometimes shy and socially awkward, who jokes, smiles and laughs a lot at home, and who enjoys playing games with friends, watching movies, and hanging out with his family. His view is that C.V. has learned to function well with his anxiety, matured a great deal over the past years, and made progress with his emotional regulation and communication skills.
- [43] Ms. R suggests that C.V.'s needs are such that he will be at risk if he is moved to a different province that may not provide the educational and medical resources that have supported him to this point. I do not accept this submission. While C.V. has more needs than a typical child of his age, his needs are not at all extreme. I have no reason to think that he would not be well supported in Edmonton.

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

- [44] Both Mr. V and Ms. R agree that C.V. is well attached to both parents, with a closer connection to Mr. V. He gets along well with his sister, who is less than two years younger, though they have different personalities and friends.
- [45] C.V.'s maternal grandparents live in Port Coquitlam, and he also has a maternal aunt living in the Lower Mainland. He sees them regularly at family dinners and on birthdays, has vacationed with them, and they have sometimes come to activities such as soccer games. If he moves to Edmonton, there will be fewer opportunities for these visits.
- [46] C.V.'s paternal grandparents live in Penticton. He visits with them during holidays and those visits would not likely be curtailed by a move to Edmonton.
- [47] Ms. R has a close friend, M.W., who has children that are close in age to C.V. and K.V. M.W. and her family live in Sechelt, British Columbia. Ms. R views them as members of her extended family. Notwithstanding the distance, M.W. and her children maintain an active

relationship with Ms. R. and her children that includes birthday and holiday visits. Under the schedule of holiday visits proposed by Mr. V, it is likely that this pattern of visiting can be sustained. Moreover, this relationship demonstrates that distance need not put an end to the maintenance of close connections, and I suspect that the door to door travelling time from New Westminster to Sechelt by road and ferry is probably not much different than the door to door travelling time from New Westminster to Edmonton by air.

- [48] Ms. R similarly maintains a close friendship with A.H., who lives in Port Coquitlam and also has children who are close in age to C.V. and K.V. The two families maintained themselves as a single 'bubble' when social interactions were restricted due to Covid-19. There will be fewer opportunities for these visits if C.V. moves to Edmonton.

Each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse

- [49] This is a neutral factor in this case. Both parents have shown themselves willing to support the development and maintenance of C.V.'s relationship with the other parent.

The history of care of the child

- [50] I have already reviewed the parenting history since separation. What needs to be added is that Ms. R has played much the larger role in supporting C.V.'s schooling and as an advocate and facilitator of medical and dental appointments. There are several reasons for this. Until quite recently, Ms. R was the primary parent. By temperament, she is inclined to be the more assertive parent in dealing with educators and doctors. Mr. V is relatively easy going. Mr. V's work schedule was less flexible. And I think it likely that Mr. V was inclined to leave this part of the parenting to Ms. R, trusting her to deal with it.

- [51] I do not think that it follows from this history that Mr. V will not take appropriate steps to advocate for C.V. as may be necessary in Edmonton. He has taken on a more active parenting role with the school since he became C.V.'s primary parent five months ago, and has taken C.V. to medical and dental appointments. Mr. V himself has been diagnosed with ADHD and believes that he understands and can help C.V. with the challenges of his condition.

The child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained

- [52] The evidence is that C.V. is in favour of the move, and that he has come to this conclusion thoughtfully and with due consideration.

[53] Mr. V and Ms. S began to talk about moving to Edmonton in the fall of 2021. At this point, C.V. was not living with them and the move would not have included him. They raised the matter at a family meeting with Ms. R and the children, and later decided not to pursue it. They also considered moving to Langley to purchase a home there. Mr. V mentioned the possibility of Langley to C.V., who mentioned it to Ms. R. She told him that the move would mean that he would have to change schools, and he was upset at the idea.

[54] Mr. V returned to the subject of a move to Edmonton and raised it with C.V. just before spring break of 2022. This time, it was a move that would relocate C.V. They spoke about what the move would mean for C.V., touching upon his relationship and time spent with his mother and his sister, steps that might be taken to keep them involved in his life, his relationship with his extended family, the benefits of living in a house with a bedroom of his own and a yard, and the differences in the climate between Edmonton and the Lower Mainland. Mr. V deposes:

I have made an effort to be very open with him about the realities and difficulties of moving as I do not want [C.V.] to have any unrealistic expectations. I have explained to [C.V.] that it may not all be a positive experience although I do overall believe [C.V.] would benefit from it. We talked about how joining a new school with new peers can be difficult, that it may take him time to develop a new friend group, and that he may feel isolated at first. We have spoken about how what is popular or stylish in New Westminster may be completely different from what is popular or stylish in Edmonton.

[55] After Mr. V had broached the possibility, C.V. spent the first week of spring break with Ms. R and returned to Mr. V's care for the second week. On seeing Mr. V again, C.V. immediately advised that he wanted to relocate. He said that he was certain. It is significant that C.V. came to this decision while he was staying at his mother's house, after he had been away from his father for a week.

[56] Ms. S deposes:

The Claimant and I have had multiple conversations with [C.V.] about his opinion on moving to Edmonton. The Claimant and I want to ensure that [C.V.] truly wants to move. During each conversation, [C.V.] has said that he would like to move. The Claimant and I, each time, have been sure to go through all aspects of [C.V.]'s life that would be affected by moving and [C.V.] has voiced to us that he is still excited to hopefully make the move.

[57] Mr. V and Ms. S. depose that they have discussed the planned move with K.V. and she is enthusiastic and supportive. As Mr. V puts it, she "said it was a good idea and that she loved the idea of us having a home for her to visit", and that "she was okay with [C.V.] relocating with me".

[58] Ms. R asks me to view the evidence of C.V.'s intentions with some scepticism because it is coming from the proponent of the move and his common law spouse. I do not accept this submission. There is no evidence to the contrary. Ms. R has not adduced contradictory evidence based on her own discussions with C.V. and K.V. She has not sought to cross-examine Mr. V and Ms. S. She accepts that the case is suitable for resolution on the evidence before me.

Any plans for the child's care

[59] As I have already noted, Mr. V would enroll C.V. in high school in Edmonton. High school begins at grade 10 in Alberta, so C.V.'s new classmates would all be coming to the school for the first time. Mr. V intends to communicate with the high school in advance to make arrangements for an appropriate IEP and to make the necessary arrangements for C.V.'s medical and dental care.

[60] I discuss below the details of Mr. V's proposal for parenting time and the maintenance of C.V.'s relationships with Ms. R, K.V., and others.

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

[61] Mr. V and Ms. R are both competent, loving parents who are able to care for and meet C.V.'s needs. He benefits from having both of them in his life.

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

[62] For the most part, so far as the evidence discloses, the parties have communicated and cooperated well. As an exception, the evidence includes a text exchange that turned into an argument in December 2021. For most parents, texting is not a productive vehicle for a substantive and respectful exchange of views. I expect that the parties know this, and the argument by text in December 2021 was an isolated occurrence that they will be able to avoid in the future.

Additional factors specific to relocation applications

[63] I turn to consideration of the individual factors enumerated for consideration in relocation applications by s. 16.92(1) of the Divorce Act.

(a) The reasons for the relocation

[64] As already indicated, the reasons for the relocation are essentially economic. It would allow Mr. V and his household, including C.V., to experience a more comfortable lifestyle and a higher standard of living.

(b) The impact of the relocation on the child

- [65] On the positive side, the relocation would offer C.V. tangible and intangible benefits. The tangible benefits are a larger and more comfortable house with a room of his own. Mr. V also expects that the relocation would make it possible for him to save money for any post-secondary studies that C.V. or K.V. might wish to pursue. The intangible benefits include freedom from the risk of eviction from rental premises, the sense of security associated from living in a household that is not only just making ends meet, the adventure of exploring and learning to live in a new place, and the broadening of perspective that comes from that experience.
- [66] There is some evidence suggesting that the schools in Alberta may offer better opportunities for C.V. to transition into an apprenticeship program for training as an electrician or another building trade than would be the case in British Columbia.
- [67] On the negative side, C.V. would spend less time with his mother and his sister. The relocation would constrain C.V.'s easy regular communication with his mother and his sister, and his opportunities to spend time with his maternal grandparents, maternal aunt, and family friends. There is some risk that these relationships would be impaired. There are also the inevitable risks associated with any move: C.V. might not make friends or get along with his classmates at his new school; and he might not fit into his new community as well as he fits in his current community.
- (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
- [68] I have already described the time spent by C.V. with each parent under the current parenting arrangement, and his parents' involvement in his life.
- (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
- [69] As already noted, Mr. V has complied with the notice requirements under s. 16.9 of the Divorce Act.
- (e) The existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside
- [70] There is no order, award or agreement specifying the geographic area in which C.V. is to reside. As already noted, Mr. V's location in the Lower Mainland was at least a foundational assumption underlying the agreement that C.V. would reside with him. However, I do not give that assumption the weight of a specific promise, and even a promise would not necessarily prevent the Court from approving a relocation that was otherwise in the child's best interests.

- (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

[71] Mr. V's proposal is as follows, including amendments made in the course of oral argument:

- a) C.V. will reside with Mr. V in Edmonton and K.V. will reside with Ms. R in New Westminster;
- b) The parties will share decision-making responsibility for both children and, in the event of an emergency, the caring parent will make the decision and promptly inform the other parent;
- c) Both parents and extended family may communicate with C.V. at any time by directly contacting him on his cell phone. I assume that the arrangement would be the same with K.V.;
- d) Each parent shall have telephone or video parenting time with the children on their birthdays;
- e) Ms. R will have telephone or video parenting time with C.V. on her birthday and Mother's Day, and Mr. V will have telephone or video parenting time with K.V. on his birthday and on Father's Day;
- f) Each parent will exercise one week of parenting time with the non-resident child during that child's spring break, so that C.V. will travel to New Westminster for a week during his spring break, and K.V. will travel to Edmonton for a week during her spring break, with both trips to be made by air at Mr. V's expense;
- g) Each parent may exercise up to four consecutive weeks of parenting time during summer break, with K.V. travelling to Edmonton during the month of July, and C.V. travelling to the Lower Mainland during the month of August, with all the trips being made by air at Mr. V's expense;
- h) Each parent will exercise one week of parenting time during the Christmas break with Christmas Day being alternated. In even numbered years, the children will spend the week in which Christmas Day falls with Ms. R and Mr. V will have the other week. In odd numbered years, the children will spend the week in which Christmas Day falls with Mr. V and Ms. R will have the children during the other week. All of the travel by the children for these visits will be by air at Mr. V's expense;
- i) At her option, Ms. R may have parenting time with C.V. during the long weekends in May and October, with C.V.'s travel being by air at Mr. V's expense;
- j) Each parent may have additional parenting time during long weekends and at other times as may be arranged by agreement;

- k) If Ms. R is in Edmonton or Mr. V is in the Lower Mainland, the parties will make reasonable efforts for the travelling parent to have parenting time;
 - l) Each parent will make arrangements for the children to visit with their extended family during their parenting time;
 - m) Until the children are comfortable travelling alone, Mr. V will accompany them on flights at his expense;
 - n) Whenever possible, the children will travel together; and
 - o) Except as set out above, travel for parenting time will be paid for by the requesting parent and may be by air or vehicle.
- [72] The Canadian school year is approximately nine months long, covering the months of September through June, with two gaps of two weeks each at Christmas and spring break.
- [73] Under the present parenting arrangement, Ms. R has parenting time with C.V. for two days every second week while the children are in school. This comes to approximately 39 days of parenting time apart from the holidays (summer vacation, spring break, and Christmas break), which are evenly divided.
- [74] Under the proposed arrangement, holidays would continue to be evenly divided and Ms. R would obtain 6 days of parenting time (during the May and October long weekends) while school is in session, for a net loss of approximately 33 days of parenting time.
- [75] This loss of parenting time is significant and probably unavoidable under a parenting arrangement involving households in neighbouring provinces. The proposed arrangements for travel and communications generally are reasonable. It is appropriate that Mr. V bear the lion's share of the travel expenses made necessary by a relocation proposed for his economic benefit.
- (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.
- [76] There is no evidence of non-compliance by either party with their obligations and no reason to believe that there will be future non-compliance.

Assessment

- [77] The onus is on Ms. R to establish that the relocation would not be in C.V.'s best interest having regard to his physical, emotional and psychological safety, security and well-being. I am not persuaded by her arguments.

- [78] I think that Ms. R's concerns that the move will have a negative impact on C.V.'s education and health are speculative. On the evidence, there is no basis for me to conclude that the educational supports and health services available to C.V. in Edmonton will be materially worse than those available to him here in British Columbia.
- [79] I do not think that there are grounds of substance to fear that the relocation will put C.V.'s emotional health at risk. By all accounts, he is doing well. In my view, that is reasonably likely to continue in Edmonton.
- [80] The most important points made by Ms. R concern the loss of parenting time and risk to C.V.'s relationships with her, K.V., her extended family in the Lower Mainland, and his childhood friends. As discussed above at para. [22], the loss of parenting time with Ms. R is important. So is the loss of personal contact with K.V., relatives, and friends.
- [81] Concerning the parenting time factor, as Barendregt points out at para. 135, the maximization of contact between parent and child is not an end in itself. It is only important insofar as it is consistent with and promotes the best interests of the child.
- [82] The prospective loss of personal contact and consequent risk to important relationships are mitigated by several aspects of the relocation proposal. C.V. will fly to the Lower Mainland for parenting time with his mother five times a year, including sustained visits of four weeks every summer and a week at each of Christmas and spring break. He can spend time with family and friends while he is in the Lower Mainland. There will be regular communication by telephone and video while C.V. is in Edmonton. K.V. will see him in Edmonton during her spring break. It is also important not to over-emphasize the impact of a reduction of personal contact on a teenager who, according to the evidence, lives much of his social life on-line in any event.
- [83] I have outlined the tangible and intangible benefits of the relocation for C.V. In my view, these benefits, coupled with C.V.'s enthusiasm for the move, outweigh the risks and detriments I have outlined. It is natural that a teenager in C.V.'s position would look forward to a room of his own in a house with a yard, considering that he is presently a part of a four-person household occupying an apartment with only two bedrooms and a den. While this is undoubtedly a major consideration in C.V.'s eyes, his discussions with Mr. V and Ms. S have ranged widely. I ascribe particular importance to C.V.'s wishes because they are considered and appear to have been freely arrived at. He is old enough that his wishes should carry substantial weight. Ms. R describes C.V. and K.V. as "a close duo" and "a team" who talk with one another in their bedrooms. I think it is significant, and quite possibly bears on C.V.'s thinking, that K.V. supports the move.
- [84] Taking everything into account, even if I am wrong about the onus of proof, I would find that the relocation is in C.V.'s best interests. It is more likely than not that the relocation will contribute to his safety, security, and well-being. I would not come to this conclusion if the relocation proposal did not make substantial provision for continuing communication and contact between C.V., his mother, and his sister, and if I were not satisfied that those

relationships and the others described in these reasons can be sustained and nurtured while he is living in Edmonton. It will require some effort on all sides, but it can be done.

Other orders

- [85] Mr. V seeks a divorce. I find that the requirements of the Divorce Act are satisfied except that Mr. V has not tendered evidence of the parties' marriage in the form of a marriage certificate. Court records indicate that a marriage certificate was filed in October 2012, but the parties have not made arrangements to retrieve it for my review. If the parties make the necessary arrangements within the next 30 days, I will pronounce a divorce order without a further hearing. Alternatively, either party may apply for a divorce by desk order in the usual way, in which case I am not seized of the application.
- [86] The parties have agreed to an order providing for an exchange of financial information for the purpose of reassessments of child support.

Disposition

- [87] The application to approve the relocation of C.V. to Edmonton is allowed. There will be an order as set out in para. [71] above.
- [88] By consent, the parties will exchange their T1 General Income Tax Returns and Notices of Assessment by June 1 of every year commencing in 2023, and will adjust child support effective on July 1 of every year.

Costs

- [89] Mr. V seeks costs. While he is the successful party on this application, he succeeded in part by virtue of his willingness to modify his relocation proposal in mid-hearing to provide that additional round trip flights between the Lower Mainland and Edmonton would be at his expense. Ms. R's opposition to the application as it was originally framed was not wholly unjustified. In my view, the fair outcome is that Mr. V receive 50% of his costs of the application.

"Gomery J."

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Prepared on 26 October 2026 · Esheria