
CANADA / JUDGMENT

M.S.F.G. v. D.V.G.

2003 BCSC 544

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.S.F.G. v. D.V.G.,

2003 BCSC 544

Date: 20030409

Docket: 11598

Registry: Terrace

Between:

M.S.F.G.

Plaintiff

And

D.V.G.

Defendant

Before: The Honourable Mr. Justice Sigurdson

Reasons for Judgment

Counsel for the Plaintiff:

Irene Peters

Counsel for the Defendant:

Terrence Wright

Date and Place of Trial:

December 16-20, 2002

February 17-20, 2003

Terrace, B.C.

INTRODUCTION

- [1] In this action there are two main issues.
- [2] The first is whether M.S.F.G. should have sole custody of the parties' three children or whether there should be an order for joint custody in favour of her and her former husband, D.V.G..
- [3] The second issue is whether Ms. M.S.F.G. should be allowed to move with the children from Terrace to Alberta.

FACTS

- [4] M.S.F.G. and D.V.G. presently live in Terrace, British Columbia. They are both 40 years old. They have three children. A. is eight years of age and in Grade 2, L. is six and in kindergarten, and N.Z. is almost 4 years old.
- [5] The parties separated in 1999, three or four months before N.Z. was born.
- [6] The parties and their extended families are members of the Seventh Day Adventist Church. The G.s met in high school in Lacombe, Alberta at a private school operated by their church.
- [7] They married almost twenty years ago in August, 1983. After originally considering living in Alberta, where M.S.F.G.'s parents live, in 1984 they settled in D.V.G.'s home town of Terrace, British Columbia.
- [8] D.V.G. is a truck driver who has worked mainly in the logging industry for the last twenty years. Ms. M.S.F.G. has a high school degree and, while working for an accounting firm in Terrace, obtained her CGA degree in 1992. She obtained her degree as a chartered accountant in 1994.
- [9] Mr. D.V.G.'s mother lives in Lacombe, Alberta but his father, who has remarried, lives in Terrace.
- [10] Ms. M.S.F.G.'s parents are in their 70's and live in Calgary, Alberta.
- [11] The parties divorced on June 16, 2000.
- [12] Mr. D.V.G. has remarried to T.B. and they live in Terrace. She has two children, boys aged 15 and 18. T.G. is also a member of the Seventh Day Adventist church. Until the separation of D.V.G. and M.S.F.G., T.B. and M.S.F.G. were close friends.

- [13] D.V.G. did well as a trucker until he overextended himself and declared bankruptcy in 1993. Ms. M.S.F.G. worked as an accountant for various clients, including dentists and doctors.
- [14] At the birth of their first two children, M.S.F.G. was working at the accounting firm and took a six-month maternity leave. D.V.G. was then usually away for most of the week driving truck. For a time in 1998, M.S.F.G. was working for various parties on a contracting basis - doctors, accountants and the school board. Until D.V.G. purchased a new truck and became an owner-operator in the latter part of 1998, he was engaged in much of the childcare for their then two children.
- [15] Cutbacks at the area's largest mill in 1999 and a general downturn in the forest industry have had a serious impact on D.V.G.'s ability to earn an income.
- [16] After the parties separated in 1999 and after the birth of their third child, Mr. D.V.G. worked out of Vernon as a long-haul driver until near the end of that year.
- [17] Although he earned \$42,000 in 2000 working for several different people, by 2001 Mr. D.V.G. was unemployed and in 2002 he did only a minor amount of trucking work.
- [18] Since their separation, M.S.F.G. has been the primary caregiver for the three children.
- [19] On November 17, 1999, Judge de Walle of the Provincial Court ordered that Ms. M.S.F.G. have interim custody of the children and that Mr. D.V.G. have access.
- [20] The matter then came on for hearing before Judge Lawrence of the Provincial Court on December 22, 1999. He ordered that Ms. M.S.F.G. have sole custody, that there be joint guardianship, and that Mr. D.V.G. have access on alternate weekends and Wednesdays from 10:00 a.m. to 2:00 p.m.
- [21] On December 13, 2001, Mr. Justice Henderson of the Supreme Court of British Columbia ordered that M.S.F.G. have sole interim custody of the three children, that the parties have interim joint guardianship, and that D.V.G. have access to the children for alternate weekends from 10:00 a.m. Saturday to 6:30 p.m. Sunday, and Wednesdays from 10:00 a.m. to 2:00 p.m.
- [22] Mr. Justice Henderson also ordered that a Section 15 report be prepared by Dr. Peter Meuser, a psychologist, with respect to the issues of custody and access.
- [23] Since separation, there has been a great deal of tension between the parties. Some of the reasons are obvious: the separation occurred when M.S.F.G. was five or six months pregnant; D.V.G. left, later moved in with and then married Ms. M.S.F.G.'s best friend; financial difficulties, an issue that troubled the marriage, have continued; and, to a degree, members of their church congregation have taken sides about their matrimonial problems.

- [24] Ms. M.S.F.G. presently works for the school board as an assistant secretary-treasurer, a job that she has had since September, 2000. She works shorter than regular hours, from 9:00 a.m. to 3:00 p.m., and then goes home to take care of her children. She completes her work at home in the evenings and on weekends. She also performs free-lance bookkeeping services from her home for dentists and doctors. She has had daycare assistance while she is at work.
- [25] At the outset of their separation, prior to the court orders, access arrangements were somewhat informal. Mr. D.V.G. was working and initially access was provided informally and, it appears, without any real difficulty. However, tension between the parties developed or at least continued. In 1999, Mr. D.V.G. asked Ms. M.S.F.G. if she would consider moving to Vernon, then his base, but she declined. The family owned a home in Terrace, which has now been sold. In November, 1999, Mr. D.V.G. returned to Terrace.
- [26] In 2000, Mr. D.V.G. continued to work as a trucker in the Terrace area. That year the eldest child was enrolled in kindergarten.
- [27] In early 2001, when Mr. D.V.G. was unemployed and Ms. M.S.F.G.'s ordinary child-care provider was not available, Mr. D.V.G. took care of the children in the daytime. In March 2001, Ms. M.S.F.G. terminated this arrangement.
- [28] For a few months, Mr. D.V.G. and his new wife, T.G., also went to the eldest child's kindergarten class and assisted the teacher. Eventually, Ms. M.S.F.G., after speaking with the school administration, stopped this. In March, 2001 Ms. M.S.F.G.'s mother came out from Alberta and cared for the children during the day.
- [29] Mr. D.V.G. generally was unemployed in 2001. In the fall of 2001 he would occasionally have lunch with his daughter at school. Ms. M.S.F.G. took the position that it was not in her daughter's best interests for her husband to attend at lunch at school and, as the custodial parent, wrote to the school and required him not to attend for access visits on those occasions.
- [30] At trial, some of the issues around access that have caused friction between the parties were explored. There is no doubt that there has been tension and friction between the parties. Mr. D.V.G.'s point is that Ms. M.S.F.G. is controlling and inflexible, something he argues will change if she is removed from a position of control and there is an order for joint custody. Ms. M.S.F.G.'s viewpoint is that certainty and stability are important for the children. With respect to the question of Mr. D.V.G.'s attendance at their eldest child's school, she says that when the parents do not attend the school, there is less pressure on the children, something she says is in their best interests.
- [31] During the course of these reasons for judgment, I will discuss some of the difficulties during access. Access appears to be working reasonably well at the present time but some friction between the parties persists.

- [32] Mr. D.V.G. says that it is in the best interests of the children that he sees them more frequently than he does at the present time and that joint custody, or shared parenting, with a week on and a week off, is the best regime.
- [33] Ms. M.S.F.G. says that it is in the best interests of the children that she have sole custody and importantly, she says, that it is in the children's best interests that she be allowed to move with them to Alberta where she can work as a chartered accountant, re-establish herself financially and socially, and build a solid future for the children.
- [34] Mr. D.V.G. is presently working intermittently as a trucker in the Terrace area and the work that he will actually undertake over the next while is related to the outcome of this trial. His position is that he is able to share parenting on a one week on, one week off basis because of his schedule. His wife T.G. is a successful dental hygienist, has a very active practice in Terrace and is presently able, and apparently prepared, to financially support their four-person family unit. Mr. D.V.G. assisted T.G.'s two children, ages 15 and 18, with home schooling until they returned to school in September, 2002.
- [35] Mr. D.V.G., the evidence shows, could easily find trucking work outside the Terrace area, but in the present circumstances, he does not want to be work outside the Terrace area because he would be unable to spend regular and sufficient time with his children.
- [36] The parties are loving and devoted parents. Their parenting styles and general approach to work and the children, like their personalities, are quite different.
- [37] Ms. M.S.F.G. is a precise, talkative and objectively somewhat controlled person. She is organized and efficient. I have no doubt that she is an extremely devoted, loving, affectionate, forward-thinking and caring mother.
- [38] Mr. D.V.G. is less organized and perhaps more overtly an affectionate parent. Again, I have no doubt, and there is no dispute, that he is a loving and caring father.
- [39] Their different approaches to parenting and their different personalities have resulted in conflict after the separation. Ms. M.S.F.G. is very mindful of time because of the tight schedule in which she must fulfil her responsibilities to the children, her work, and her clients. Mr. D.V.G. takes a more relaxed attitude to child rearing as he does to scheduling, but I find he is equally concerned for the children's well-being. However, these differences have caused friction between the parties.
- [40] Presently, Ms. M.S.F.G. earns a total annual income of about \$89,000, but would like to move to Calgary, Alberta, or perhaps Red Deer, and work as a chartered accountant. If the court permits, she will move with the children to Alberta in the summer and place the children in schools in Alberta in the fall. In her view, moving to Alberta will allow the family to establish a stable structure which will be in the children's, and in her, long-term best interests.

- [41] Mr. D.V.G. opposes the move, which he says is not in the children's best interests. He says that there should be an order for joint custody in Terrace where the children will have maximum contact with both parents. A move to Alberta, he says, will not be in the children's best interests because they will be deprived of regular contact with him. Ms. M.S.F.G.'s track record, he says, shows that she has made and will likely continue to make access difficult for him in the future.
- [42] The parties have agreed on maintenance of \$745 per month based on an agreed imputed income of \$40,000 per annum, even though Mr. D.V.G. does not actually presently earn that income. Ms. M.S.F.G. has agreed that she will not seek extraordinary expenses.
- [43] The balance of the family assets are the sum of \$8,858.84 in court, which the parties have agreed will be apportioned \$2,000 to Mr. D.V.G. and the balance to Ms. M.S.F.G.. Mr. D.V.G. has agreed to pay over the sum of \$2,000 in satisfaction of costs owing under the order of Mr. Justice Henderson of December 13, 2001.
- [44] The parties have agreed to keep their own pensions with all other property claims being dismissed. They have agreed to pay the court costs of the extended trial equally.

PARTIES' POSITIONS ON THE ISSUES OF JOINT CUSTODY & MOBILITY

- [45] Ms. M.S.F.G.'s position is that she should have sole custody of the children because she, primarily, has nurtured them from birth, has generally had regular care of them since separation, and has provided the stable home that they need. She opposes joint custody and shared parenting because of the disruption Mr. D.V.G.'s proposal means to the young children's routine and because of the parents' difficulty in communicating about the children.
- [46] M.S.F.G. seeks to move to Alberta because she sees such a move as being in the long-term best interests of the children. She says that she is professionally, socially and religiously isolated in Terrace, something which she says impacts on her ability to provide the necessary resources for a home for the children. She says that her social, spiritual and emotional health is important, but, for the purposes of this case, only to the extent that it impacts on the children.
- [47] Ms. M.S.F.G. wishes to move to Calgary or possibly Red Deer. Her plan is to relocate in a place with better long-term employment prospects, close to her extended family and away from an isolated community that she says has faced and will continue to face a significant economic downturn. She feels that a move will allow her to re-establish her financial base, reconnect with the church and have more social opportunities. She says that the financial consequences of the divorce have put her in a position where it is urgent at her age to re-establish a solid financial foundation for the children's future. She feels that at 40 her marketability as a chartered accountant will diminish over time. Her children, she says, require financial and social security. She expects that she can earn the income she is presently earning, in Calgary.

- [48] She suggests that a move to Alberta will be more difficult as the children become older, and although it is critical for their father to have contact with them, she says that he will be able to see them for established visits. In Alberta, there is extended family support for her and the children. She says that the children's relationship with their father may be different, but access can be reasonably provided. She suggests that moving after this school year is the most appropriate time.
- [49] Mr. D.V.G.'s position is that there should be joint custody with liberal access and joint guardianship. His proposal is essentially alternate week custody. He says that this arrangement would reduce, rather than increase, discord because it would remove the existing power imbalance between himself and M.S.F.G..
- [50] Even though the possibility of a move to Alberta was discussed in the marriage, D.V.G. opposes it now because the children's home has been in Terrace all their lives. He says that she has denied access, and that a move by her to Alberta will make difficult access even harder. He says that her denial of access, something she rejects, is a good reason to refuse her proposal. Contact with both parents, he says, should be maximized and a move, he says, will irreparably damage the children's relationship with their father.
- [51] Further, Mr. D.V.G. opposes the move as well because the children are better in a small community and Ms. M.S.F.G. has a solid job at the present time. Given that his wife has an ongoing practice with an established clientele and owns a home in Terrace, a move at the present time will not be easy. He says that he would be prepared to relocate if the court allows the move, but that given their financial obligations and his wife's financial and practice commitments, a move is difficult at this time. He also suggests a move, if it takes place, would be easier for the children when they are older and are better equipped to communicate with him.
- [52] Mr. D.V.G. says that the children have no particular reason to move to a different location. He says that she is without a specific job offer in Alberta. He submits that the children are doing well in Terrace and her reasons for the move - the church, her isolation, her job prospects - are overblown.
- [53] Mr. D.V.G. says he wants to parent the children, something which he says will be denied if they move with their mother to Alberta. Mr. D.V.G. says that if the children stay in Terrace that he will see them regularly and that he is able, given his employment situation, to see them even more.

The First Issue - Sole Custody v. Joint Custody

- [54] This court has not yet pronounced a final order on the issue of custody. Interim custody was awarded to M.S.F.G. on December 13, 2001.

- [55] The appropriate order of dealing with the issues appears to be to decide the question of custody, and then to decide the issue of mobility (*Bjornson v. Creighton*, [2002] O.J. 4364 (Ont. C.A.)).
- [56] The first issue is whether it is in the best interests of the children that there be joint or sole custody.
- [57] Relevant provisions of the Divorce Act read:
- 16(8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
- (9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.
- (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.
- [58] The evidence indicates that the both parents are loving and devoted parents. The children have lived in a stable loving home provided by their mother and have been in her primary care for the last four years. D.V.G. has spent a good deal of time caring for the children and his new wife supports his application for more time to care for them.
- [59] The children are young, and not a great deal of evidence was led about their particular needs or circumstances at trial. More was stated about the eldest child who, the evidence suggests, has suffered the most emotional upset from their parents' separation. The children appear generally, at the present time, to be doing fine.
- [60] The children are now 8, 6, and almost 4. No evidence suggests any special needs or problems that these children have that require particular attention or concern. Based on the evidence of the parties and T.G., the teachers and the other witnesses who have seen the children with their parents, it is a reasonable conclusion that, at the present time, the children, in their existing circumstances, are doing fine. For example, Ms. R., A.'s Grade 2 teacher at E.[] school speaks of her strong reading ability and creative side. L., who is in kindergarten, appears well-adjusted, meets the expectations for a kindergarten student and plays well.
- [61] The emotional ties of these parents to their children are very strong.
- [62] I think it is a reasonable conclusion on the evidence that, not surprisingly, the children have picked up on the friction between the parents and as that has subsided the children appear to have done better.

- [63] Much of the evidence that I heard at trial related to access difficulties.
- [64] At this juncture, I will discuss my assessment of the credibility of the parties. Generally, I found both parents to be credible witnesses. I think that D.V.G. was more open in his evidence and that M.S.F.G. was more reserved and less forthcoming in some of her answers, particularly on cross-examination. The main issue between the parties, that is of significance to the issue of custody and the issue of mobility, is whether the mother has taken steps, consciously or unconsciously, to restrict the access that Mr. D.V.G. ought to have received. D.V.G.'s counsel, Mr. Wright, suggests that M.S.F.G. uses her power to restrict his access to the children, something that he says is objectively not in the children's best interest. He points to the fact that she terminated his provision of daycare for the children in January and February, 2001 without good reason, that she prevented his attendance at his eldest child's school in kindergarten and grade one without good reason, and that she exaggerated the impact on her of the alleged circumstances of violence.
- [65] Although Ms. M.S.F.G. was occasionally verbose and not always direct in her answers, I found her to be a careful, contemplative and generally an honest witness. I think that the friction between the parties has to a degree coloured their perceptions of issues surrounding the question of access to the children. I think the question really comes down to whether Ms. M.S.F.G., because of that friction and continuing tension, is acting in a manner that is not in the best interests of the children. In other words, is her conduct in connection with access, or her actions in connection with the father's desire to see more of the children or to attend at his daughter's school, motivated by concerns other than the children's best interests.
- [66] The main issues that were raised by the father relate to the steps taken by the mother to discontinue daily care by the father and his regular attendance with his new wife at the eldest child's school in kindergarten and his attendance at the child's school at lunch.
- [67] Upon a consideration of all of the evidence, I conclude that Ms. M.S.F.G. was not concerned about her former husband and his new wife attending at her daughter's school, per se, but was concerned because her daughter was exhibiting upset outside the school at that time. It is not clear to me precisely why the daughter was upset or if it really related to her father and T.G.'s attendance at school, but I conclude that Ms. M.S.F.G., in being concerned about it and raising it with the principal, was acting bona fide in her daughter's best interests.
- [68] What about Ms. M.S.F.G. terminating Mr. D.V.G.'s daycare for the children in the spring of 2001? Mr. D.V.G. testified that he thought that the arrangement was going fine while he was not working. Ms. M.S.F.G. testified that there were issues that arose concerning naps for the youngest child and conflict over Mr. D.V.G. reporting on what the children had done or eaten. Part of the concern that Ms. M.S.F.G. raised at this time related to the children being taken on occasion to his new wife's workplace. The plaintiff terminated the arrangement when her mother came out to visit and provided the care for the children for an extended time while Ms. M.S.F.G. was at work. Ms. M.S.F.G.'s mother has seen the children frequently

and appears to have a good bond with them.

- [69] I find that much of the difficulty between the parties arises from their difficulty in communicating. Tension on both sides contributes to this.
- [70] However, I do not find that Ms. M.S.F.G. consciously took steps that were not in the children's best interests. The parties have difficulty speaking about some of the more mundane matters of the children's care. The parties' attempts to resolve these issues by mediation simply sputtered.
- [71] Although there is continuing tension, I find that generally the parents appear to be unselfish and emotionally healthy people who attempt to act with the best interests of the children in mind. I do not get a great deal of guidance from the evidence of the problems that arose during access visits such as the incident at Christmas when there was a dispute as to the time the children would be returned and the incidents in Alberta in 1999 and in British Columbia over the return of the children. Mainly these incidents show the difficulties that the parties have had in communicating concerning the children.
- [72] Although there was evidence of an occasion when Mr. D.V.G. kicked Ms. M.S.F.G. in 1998 and an event during 1999 when he had access and grabbed her wrist, I do not accept that Ms. M.S.F.G. really fears her husband or that there is any risk of violence. However, there is subdued hostility that pervades their relationship. It is not extreme, but it is continuing.
- [73] The Section 15 report was prepared by Dr. Peter Meuser to assist in determining custody and access arrangements for the three children. The report was stated to be prepared with the children's best interest and well-being as the paramount consideration. Dr. Meuser did not give evidence. Although the report discusses the three central adults, it does not tell me much about the children of the parties to this litigation. It contains Dr. Meuser's opinion that both households are suitable to raise the children and that they have different strengths or characteristics. He suggests that exposure to both households will benefit the children. He opined that the acrimony between the parents is "deep-seated" and relates to different personality styles, the perception of imbalance in control, and historical anger on the part of M.S.F.G..
- [74] The report describes T.G.'s two teenaged sons. Dr. Meuser felt that D.V.G. and T.G. had strong parenting skills, but, to the extent that it was relevant, he thought that the two teenagers were too preoccupied with their own lives and social activities to be safe or reliable babysitters. Dr. Meuser endorsed D.V.G. and T.G.'s home as a suitable, supportive and a safe environment to raise young children.
- [75] While noting a difference in the ambiance of that household to M.S.F.G.'s household, Dr. Meuser commented that he would equally leave his children in M.S.F.G.'s care and found both homes equally suitable to raise children.

[76] Dr. Meuser recommended joint custody. He said "[t]his would end the perception of a control imbalance, and while it would not necessarily end the bickering, at least they would both be on a level playing field in negotiation or mediation".

[77] I think that the best interests of these children are in the custody of their mother and living with her on a day-to-day basis. With respect to the recommendation of Dr. Meuser, I respectfully disagree. To track the language of Mr. Justice Lambert in *Ness v. Ness* (1999), 43 R.F.L. (4th) 363 (C.A.) at ¶17:

I am satisfied that [the parents] do not have the degree of mutual deference and respect that is necessary for joint custody to create a harmonious situation for the children.

[78] I do not think, given the tension between the parties, that the arrangement proposed by Mr. D.V.G. will lessen tensions. Rather, I think it will increase tension.

[79] Being in the care of Ms. M.S.F.G. is the arrangement that the children have been used to throughout their lives. For over four years she has provided a stable and secure environment. Notwithstanding the father's desire to care for the children on a much more frequent basis, I think that there is a real possibility that ordering an alternate week custody arrangement would provide instability for these children. Under that proposed arrangement, there is a greater need for communication and that will likely generate more friction.

[80] Mr. D.V.G., I think, is suggesting that much of the concern that Ms. M.S.F.G. expressed about his regular attendance at the eldest child's kindergarten and first grade, which was not seen as a problem by the teachers, was trumped up. I disagree. I accept her evidence that she did it because of concerns about her eldest child. I do not find that she did it to gain control or restrict access without good reason. Although I find that Ms. M.S.F.G. has not been as flexible as she might have been in dealing with her husband, much of that is a matter of style and approach and her sincere belief that the young children need an established routine. Mr. D.V.G.'s approach is more relaxed, but their difference in approach just highlights differences that brought tension in the marriage.

[81] Considering all of the evidence and the factors in the Divorce Act, I conclude that it would be in the best interests of these children to grant sole custody to Ms. M.S.F.G.. I award the parties joint guardianship, something to which the parties have agreed.

[82] I will now deal with the question of mobility.

Mobility

[83] The central issue in this trial was the question of M.S.F.G.'s proposed move to Alberta with the children and whether it should be allowed.

[84] I have summarized above the parties' positions on the question of the possible move.

THE LAW

[85] For an application such as this, the applicable principles are described in *Gordon v. Goertz*, [1996] 2 S.C.R. 27. The Supreme Court of Canada summarized the law at ¶49 as follows:

1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
6. The focus is on the best interests of the child, not the interests and rights of the parents.
7. More particularly the judge should consider, inter alia:
 - (a) the existing custody arrangement and relationship between the child and the custodial parent;
 - (b) the existing access arrangement and the relationship between the child and the access parent;
 - (c) the desirability of maximizing contact between the child and both parents;
 - (d) the views of the child;
 - (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
 - (f) disruption to the child of a change in custody;
 - (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.

[emphasis in original]

DISCUSSION

[86] As noted from the summary above, in determining this issue I must embark on a fresh inquiry into what is in the best interests of the children. There is no presumption in favour of Ms. M.S.F.G. as the custodial parent. However, her views are entitled to respect and serious consideration. Her reasons for moving are of significance only insofar as they are

relevant to the custodial parent's ability to meet the needs of the children, and relate to the question of the best interests of the children. Although this dispute, like most separations, has been difficult for the parents and my decision of course will impact on their future, it is not the impact of the move on the parents that is important. The best interests of the children must be the focus of my consideration.

- [87] In this case, I have to consider the existing custody and access arrangement, a situation that presently is good for the children, and the desirability of maximizing contact with both parents. If the order sought by the plaintiff is granted there will be disruption to the children in terms of their community, family and schools which must be considered.
- [88] The determination of the question of whether the proposed move is in the children's best interests depends on the particular circumstances of this case. I heard eight days of evidence and argument and had the benefit of the report prepared by Dr. Meuser. Much of the evidence at trial focussed on difficulties during access visits or exchanges. Mr. D.V.G.'s point is that difficulties with access to his children will be exacerbated if the proposed move to Alberta is permitted.
- [89] I find that both parents' positions are grounded in a sincere belief that what they propose for the future residence of the children is in the best interests of the children.
- [90] The children are quite young.
- [91] The separation appears to have had the hardest impact on the eldest child, but the evidence suggests that in more recent times all of the children appear to be doing satisfactorily.
- [92] Since separation, they have been primarily in the care of their mother, and this is reflected in the orders of the court. However, they have had frequent contact with their father and Terrace has been their home all of their lives.
- [93] I have set out my assessment of the parents earlier in these reasons. Both parents are very loving and committed parents, but they have different styles and approaches to parenting. There is no suggestion of any abuse.
- [94] M.S.F.G.'s and D.V.G.'s desire and need to care for and see the children has effected their employment. For example, Ms. M.S.F.G. works from 9:00 to 3:00 so that she can take the children to daycare and school and pick them up. Mr. D.V.G., in recent times, has been sporadically employed and has not taken long-range hauling jobs because it effects the time that he is able to see his children, something that he thinks is not sufficient.
- [95] The children are well cared for and see their father frequently. Given the support and love that they receive from both parents this is obviously an argument for the status quo - that their best interests are served where both parents live.

[96] The Supreme Court of Canada in *Goertz* indicated one of several factors that should be considered in determining the best interests of the children in connection with a possible relocation is the view of the custodial parent. Madam Justice McLachlin, as she then was, said, at ¶48:

While a legal presumption in favour of the custodial parent must be rejected, the views of the legal parent, who lives with the child and is charged with making decisions in its interests on a day to day basis, are entitled to great respect and the most serious consideration. The decision of the custodial parent to live and work where he or she chooses is likewise entitled to respect, barring an improper motive reflecting adversely on a custodial parent's parenting ability.

[97] Financial security is a major part of M.S.F.G.'s plan to move. Ms. M.S.F.G. believes, and I accept that this is her honestly-held view, that a move to Alberta will be in the children's best long-term interests. The family presently does not now have a solid economic base. She believes the separation, this litigation, and the economic downturn in Terrace have contributed to that situation. She believes that she is the person who will have to provide that economic base for the children.

[98] Ms. M.S.F.G., in planning the children's future, is focussed on creating a set of circumstances that she sees as providing the best situation for the children. She is of the view that the children are best located in Alberta where she can more likely, over the long run, continue to earn a reasonable income to provide for their needs. Ms. M.S.F.G. intends to find work there as a chartered accountant and purchase a home.

[99] It was not suggested that her proposed move was frivolous, and I do not find that it is rooted in spite or that it is an attempt to deny access. Rather, the opposition to the move is grounded on the fact that it is really unnecessary and because it will deny the contact between the father and the children that is in their best interests.

[100] It is also implicit in Ms. M.S.F.G.'s position that she will be better able to provide that stable base for their long-term interests if she is in an area that has ample employment for her profession, has the support of her extended family and provides a religious and social structure in which she can flourish. I have little doubt that Ms. M.S.F.G.'s efforts are essentially focused on the provision of a home for the children and satisfying the needs of her children.

[101] Given that she has been the primary provider for the children and given her views of the limited number of jobs that are available for chartered accountants in Terrace should she lose her present job, is her view reasonable? Is it likely to provide a life that is in the children's best interests in the long run?

[102] Ms. M.S.F.G.'s view is that the period of separation has been a tumultuous and disruptive time for the family. Although her plan is not completely finalized, I think that, in large part, has to do with her desire to obtain the court's permission before making definitive plans for the move.

- [103] In considering whether the move should be allowed, the views of the custodial parent are significant. This is particularly so where, as here, those views appear to be well considered and focused on the long-term best interests of the children. M.S.F.G.'s concern over the long-term financial security of the children is a legitimate factor, and should be considered in assessing whether the proposed move is in the best interests of the children. I think that Ms. M.S.F.G.'s plan is sensible.
- [104] Apart from Ms. M.S.F.G.'s view, on the evidence, is the proposed move in the best interests of the children? One component of the children's interests is their future economic well-being. Is this move in the children's long-term economic interests or will the children's long-term economic interests be enhanced by staying where they presently reside?
- [105] The evidence suggests that she will be able to find comparable work as a chartered accountant in Alberta that will generate at least the income that she earns now. If she moves, given her abilities, I expect that she will likely find work that will allow her reasonable flexibility to care for and support the children.
- [106] Is she, as Mr. Wright suggests, leaving a secure job at the school board for an uncertain situation in Alberta? Presently she works in a flexible working arrangement that allows her to care for the children. She is able to do that because of an employer who is sympathetic to her childcare needs. Although her job is not presently at risk, it is fair to say that it is not entirely secure. She works in a sector of employment where there have been significant cutbacks and long-term employment is far from certain. If her job is lost, there are fewer opportunities for her in Terrace, particularly as she has not done tax work for some time, to find comparable employment than if she moved to Alberta. The fact of being in a larger community will be an advantage, I think, in securing permanent work.
- [107] Financial security for the children is probably brighter if she moves. At the present time, the family financial base is very weak. Their assets are minimal. It is in the children's interests if their parents are able to secure a more solid financial base.
- [108] As I will discuss momentarily, if Ms. M.S.F.G. moves. Mr. D.V.G. will likely move as well. That move, overall, will likely provide for more solid economic support for these children.
- [109] Is the move realistic? The possibility of a move to Alberta was a topic of conversation during their marriage. Both parties considered that Alberta had an advantage, and there were family connections there. However, they purchased a home on a large property with logging potential, and a possible move, that had been discussed earlier in the marriage, was not pursued.

- [110] Given the fact that the children have been in Terrace all of their lives and have started school there, there is little doubt that it will be disruptive for them to be moved from their schools and friends. Ms. M.S.F.G. wishes to move in part because of her family connections. Contact with her parents will be good for the children, particularly during a period of readjustment. Ms. M.S.F.G.'s parents in Calgary should be able to aid the children in the transition. Ms. M.S.F.G.'s mother has spent a good deal of time with the children.
- [111] The children have their paternal grandfather in Terrace, but it appears that they do not see him frequently. That however might be a by-product of the amount of time that the children spend with their father rather than any other reason.
- [112] A move will be disruptive, not just because the children will not see their father as frequently, but because it appears that they have established a good bond with T.G.. I think that she is a very caring person and I accept her evidence that when she sees the children she is not trying to replace M.S.F.G. as their mother.
- [113] If Ms. M.S.F.G. were unable to move at this time I expect that that she will seek to move again at a later time. A move now, given the family support and the age of the children, I think will likely be less disruptive to the children than a move when they are older and more settled in school.
- [114] It is in the best interests of the children to have as much contact with both of these loving parents as is possible in the circumstances. Mr. D.V.G. was quite candid when he was asked what he would do if the Court allowed the proposed move. He is prepared to follow the children. He feels strongly that it is very important for them to maintain close and regular contact with him. He indicated that he would commute to Alberta until he and his wife were able to sell their home and his wife was able to liquidate her business.
- [115] I understand that, although Mr. D.V.G. believes that remaining in the relatively small community of Terrace is in the best interests of his young children, his real reason for opposing the move was simply that he believes that he is tied down to the Terrace area, at least for the time being. I have no doubt that if Mr. D.V.G. were not married or committed to T.G., he would immediately move once M.S.F.G. did.
- [116] If he were single, Mr. D.V.G., given his recent employment history, would probably conclude that such a move was in his and the children's best interests from an economic perspective. However, at the present time, with his wife's work and family commitments, her established clientele, and the present value of property in Terrace, this is not the best time for them to move.
- [117] The most difficult aspect about this possible move is the impact that less frequent access, at least over the interim period, will have on the relationship between the children and their father. Mr. D.V.G. has a close relationship with his children and one that he has been attempting to foster since the separation, and particularly over the last couple of years. Although I find that M.S.F.G. recognises the importance that each parent should be actively

involved with the children, she recognises that a move on her part will have an impact on the children's relationship with their father.

- [118] If Ms. M.S.F.G. were to relocate, what would the likely impact be on the access that Mr. D.V.G. has to his children? The evidence indicates that D.V.G. will likely relocate in the short run and commute from Terrace until his family is able to join him. That may be quite disruptive to D.V.G. and his new family for a year or longer. It will likely be better for Mr. D.V.G. from an employment perspective. He will be able to travel and visit the children, I think, on a regular basis. Mr. D.V.G.'s mother is in Alberta and I expect that he may be able to stay at her place for awhile during any transition period.
- [119] I think that D.V.G. was quite sincere when he said that he would move to maintain contact with his children. Not only is he in a line of work that allows him to do this, but I expect that he will. His commitment to maintaining contact with his children and his ability to travel in his line of work will reduce the impact of the move on his relationship with his children.
- [120] I understood Mr. Wright to argue that Mr. D.V.G. was not being realistic when he said that he would follow the children. It will not be an easy matter for his new family to move, particularly as they do not yet know the precise circumstances of the move that M.S.F.G. intends to make. However, I think that D.V.G. will be able to make that transition and I expect that he will be able to see his children reasonably regularly while he relocates. Moreover, I think that the evidence shows that Mr. D.V.G., while he is considering how a move will be done, will find work that will take him to Alberta and that will allow him to have reasonable access to the children while he considers a possible permanent relocation.
- [121] Mr. Wright argues that if the mother is allowed to move the children with her, given the track record, she is likely to deny him the maximum amount of access. Although there has been conflict between the parties, I conclude that Ms. M.S.F.G.'s conduct is not demonstrative of an intention to frustrate her ex-husband's access. I find that she recognizes that frequent contact between the children and their father is in their best interests.
- [122] I accept that Ms. M.S.F.G. has added as much to the difficulties of access as Mr. D.V.G. has. However, I have concluded that if the children are allowed to move with her, access by their father will have to be less structured, at least until he resettles. I expect that if Ms. M.S.F.G. is allowed to move, that she will likely cooperate with necessarily more flexible access.
- [123] The quality of the access that the father will have is the important thing. Although access, in terms of maximum contact, will be disrupted for a short time, it will be ample during the summer of this year and can be granted reasonably frequently while the G.s consider when or whether they will relocate. As McLachlin J. noted in Goertz and as was observed in Bjornson: frequency of contact is one factor, an important one but it is not absolute and ought not to be the governing factor.

- [124] Mr. D.V.G.'s additional cost of access should be dealt with as an aspect of the maintenance order. I will hear further submissions by telephone as to the amount by which maintenance should be adjusted to compensate Mr. D.V.G. for additional access costs he will likely incur to visit the children over the next year.
- [125] I have read and considered the report of Dr. Meuser. It is consistent with my view of the evidence that both homes are loving and supportive places and that the children's interests are well protected and enhanced while they are in either one. I also agree with him that the evidence indicates that there is ongoing friction and tension between the parties, but I do not agree that this is an appropriate case for an order of joint custody.

CONCLUSION

- [126] The realistic alternatives that I think exist here are either that both parents remain in Terrace, where the children will regularly see both parents, or Ms. M.S.F.G. moves with the children to Alberta, Mr. D.V.G. moves in the reasonably near future, and his wife T.G. follows in due course. I do not think it is a likely result that Ms. M.S.F.G. will move and Mr. D.V.G. will not.
- [127] Obviously, it is in the best interests of these children to have significant contact with both of these parents. That is particularly so given the apparent good relationship and loving support that they receive from each of these devoted parents.
- [128] The custodial parent's view is that it is in the long-term best interests of the children to move to Alberta. I find her objectives are proper. I think her opinion is sensible and one that is entitled to significant weight and consideration.
- [129] I also expect that the move will have a favourable economic impact on the family and in that sense will be in the best interests of the children.
- [130] I do not think that the motive for the move is that Ms. M.S.F.G. wants to avoid Mr. D.V.G.. I think that the reason for the move is what she sees to be in the long-term interests of the children. Ms. M.S.F.G. testified that a move was in her personal best interests, not only from an employment perspective but also from an emotional, social and religious perspective. I think that is so, but it is relevant only to the extent that it impacts on her ability to meet the needs of the children, and as such I give that factor some modest weight.
- [131] The present regime of custody and access is quite good and a move will, in these circumstances, cause disruption. However, if there is a move, I expect that Mr. D.V.G. will follow the children to Alberta and over the next while will settle there himself and see the children regularly. I think that if this move were refused it would be pursued again, if Ms. M.S.F.G. can afford to apply to court, and that it is probably better for the children to move now at their present ages. If a move is made, it is unlikely that there is an optimal time or a time when both parents could agree.

- [132] I think that there will be some disruption in Mr. D.V.G.'s new family, but eventually I think that T.G. will follow her husband.
- [133] The children will have contact that is beneficial with Ms. M.S.F.G.'s parents in Alberta.
- [134] I would be very concerned about making this order if I thought that Ms. M.S.F.G. would deny Mr. D.V.G. access or make his access to the children difficult. I think that the access problems are not a product of such an attitude but rather are the by-product of the particular circumstances of this disrupted marriage.
- [135] Over the long run, the children will likely have maximum contact with both parents. It appears that relocation, in those circumstances, is in the children's best interests.
- [136] For these reasons, I am satisfied that in all of the circumstances the best interests of the children are to move with their mother to Alberta. There will have to be flexibility on the part of both parties over the next year or so. If the parties are unable to work out the terms of access given my order they may apply by phone on a day arranged through the registry.

"J.S. Sigurdson, J."

The Honourable Mr. Justice J.S. Sigurdson

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