
CANADA / JUDGMENT

M.T. v. F.G.

2022 BCSC 1459

COURT

Supreme Court of British Columbia

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2022 BCSC 1459 M.T. v. F.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.T. v. F.G.,

2022 BCSC 1459

Date: 20220819

Docket: E220984

Registry: Vancouver

Between:

M.T.

CLAIMANT

And

F.G.

RESPONDENT

Before: Master Hughes

Reasons for Judgment

Counsel for Claimant:

J. M. Stein

Counsel for Respondent:

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Place and Date of Hearing:

Vancouver, B.C.

August 2, 2022

Place and Date of Judgment:

Vancouver, B.C.

August 19, 2022

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Introduction

- [1] This matter involves cross-applications for interim parenting time. Since their separation, the parties have shared parenting equally, until the respondent moved from Surrey to Chilliwack in April 2022. The claimant resides in Delta. Each party now seeks primary residence of the children, with limited parenting time to the other parent.

Background

- [2] By way of background, the parties are both from Brazil and were married there in 2010. The parties' first child, H., was born in 2012 in Brazil. H. is now 10 years old.
- [3] M.T. immigrated to Canada from Brazil in September 2015. F.G. remained in Brazil with H. temporarily, living with M.T.'s mother. F.G. and H. immigrated to Canada to join M.T. in March 2016.
- [4] The parties' second child, T., was born in 2019. She is now 3 years old.
- [5] M.T.'s mother, C.V., travelled to Canada in October 2016 and lived with the parties for six months, after which she returned to Brazil. C.V. then immigrated to Canada permanently in August 2019, shortly after T.'s birth, and has resided with the family since then.
- [6] The parties lived in a large home in Delta, shared with C.V. and a number of other extended family members. The claimant says this was a mutually supportive, multi-generational household. C.V. played an important role in providing childcare, transporting H. to and from school, and cooking meals, and the children are very attached to her. Each of the parties' sisters also provided child care from time to time.
- [7] The parties separated in February 2021, when the respondent moved out of the family home and moved in with her sister who lived nearby. The parties agreed to an ad hoc, week-on week-off shared parenting arrangement.
- [8] At that time, the respondent was working full time and also had her own immigration business on the side. The claimant says that the respondent worked 10 to 12 hours per day. During her parenting weeks, the claimant relied on either C.V. or one of the sisters to provide childcare. As a result, the children spent considerable time at the family home with the claimant and his family, even during the respondent's weeks.

- [9] In January 2022, F.G. moved to Surrey, still relatively near to the family home in Delta.
- [10] On April 13, 2022, the respondent informed the claimant in a telephone call that she would be moving in with her boyfriend in Chilliwack in June. The respondent says that she told the claimant that she had found new employment in Chilliwack; the claimant says that he was told that she was looking for a job in Chilliwack but had not found one yet. The claimant also says that the respondent told him that she had found a new school for H., and was applying for daycare for T. in Chilliwack.
- [11] The respondent did not wait until June to move. The respondent moved to Chilliwack on April 25, 2022. After a week of driving H. from Chilliwack to his school in Delta, the parties agreed that the twice-daily commute was too difficult on the children. They reached a temporary agreement that H. would stay with the claimant during the week, until the end of the school year. T. continued to spend alternate weeks with each parent. This arrangement had the unfortunate side effect of separating the children from each other for a significant amount of time.
- [12] A Judicial Case Conference was conducted by Justice Stephens on June 20, 2022, and the parties consented to a declaration that they both continue as guardians of the children. Justice Stephens also directed that this matter be set for a five-day trial at the earliest mutually convenient date.
- [13] The parties have agreed to equal parenting time throughout this summer, and a consent order was made by Master Bilawich on June 21, 2022. However, to their credit, they both recognize that having equal parenting time during the school year will cause an undue burden on their children having to travel back and forth between Delta and Chilliwack on a daily basis, every other week.
- [14] In their applications, each party sought primary residence of both children, and proposed that the other parent have parenting time on alternate weekends and one afternoon per week. This would be a considerable change for the children, who are now used to spending equal time with each parent. At my urging, both parties have proposed a somewhat modified parenting schedule, which would allow the parent who does not end up having primary residence to have more parenting time than initially proposed.
- [15] However, I am still tasked with deciding where the children will primarily reside on an interim basis, which will also determine where H. will attend school.

The Claimant

- [16] M.T. is employed as the general manager of a catering company in Abbotsford. He typically works Monday through Friday from 8:00 am until 4:30 or 5:00 pm. In the summer, during the busy catering season, he often works on one of the weekend days and then will have Monday or Tuesday off work. He has deposed that his work schedule has some flexibility, in that he can work from home in the morning approximately two days per week, go to the office, and then come home early, in the mid-afternoon.
- [17] M.T. continues to reside in the former family home, which is a 7,000 square foot, five-bedroom, four-bathroom home in Delta. The home is shared with M.T.'s mother, C.V., his sister and her three children, the parties' adult son P., and M.T.'s new partner, S.R.
- [18] H. and T. share a bedroom, and each have their own bed. H.'s school is a 10 minute walk away, and his 7-year-old cousin, the daughter of M.T.'s sister, attends the same school. H. has attended the same school since November 2019.
- [19] During M.T.'s parenting time, child care is provided by C.V., M.T.'s sister, or sometimes S.R., who largely works from home.
- [20] F.G. complains that when the children are with their father, most of the parenting duties are performed by other family members. However, M.T. deposes that he often drops off H. at school, and that he is the one who bathes and feeds the children and helps H. with his school work. M.T. also attends all parent-teacher meetings and special school events, and has coached H.'s football team.

The Respondent

- [21] During the parties' relationship, F.G. worked as an immigration consultant. There is some disagreement as to the hours that she worked at various times. F.G. says that she was always the children's primary caregiver, at least until March 2020. I accept that F.G. was and is a hard worker, and works the hours that she needs to work in order to make ends meet.
- [22] The parties agree that F.G. worked long hours from March 2020 until separation, as she was the primary income-earner during that time. M.T. was unemployed and in receipt of CERB benefits due to the Covid-19 pandemic. F.G. says that they agreed that she would work and that M.T. would take over primary care of the children during this period. She also says that, instead of caring for the children himself, M.T. foisted off his parenting responsibilities on his mother, C.V. M.T. denies this allegation. I am unable to resolve this issue on the affidavit evidence before me, but it is fair to say that according to the evidence of both parties, C.V. has played a significant role in the children's lives.
- [23] After separation, F.G. struggled to find employment in Delta, although she continued to operate her immigration consultancy business.

- [24] F.G. has moved to Chilliwack and is living with her new partner, R.G., in a home that he owns.
- [25] Upon moving to Chilliwack, F.G. was initially employed from 6:00 am to 2:30 pm, Monday through Friday. She later obtained a different job, as a production worker, working 10 hours per day, four days per week. Her evidence is that R.G. is available to care for the children in the mornings. He takes T. to daycare, and could take H. to school if H.'s school were to be in Chilliwack. She would be able to pick up T. from daycare around 3:00 pm, and to pick up H. from school. She deposes that she is limiting her immigration clients in order to be able to spend more time with the children. She also says that she would be able to enrol the children and take them to extracurricular activities in Chilliwack, and that they have not been engaged in any extracurricular activities since January 2022.
- [26] In submissions, counsel provided some new information about F.G.'s plans for the fall. F.G. just learned, on the last business day before the hearing of this application, that she had been accepted into a trade training program at the University of the Fraser Valley. Although there was no evidence in the materials before me, due to this very recent news, counsel advises that this is a full-time, eight-month program, which runs from 8:00 am to 2:00 pm, Monday through Friday.
- [27] While she is attending school, F.G. would be able to take the children to and from daycare or school if they lived with her and attended school and daycare in Chilliwack, and she would not need to rely on R.G. for transportation.
- [28] M.T. submits that this new change further adds to the instability exhibited by F.G. since separation, as she has now moved three times since February 2021, has changed jobs twice, and is now planning to go back to school. F.G. says that she is trying to create a more stable life for herself and the children, and that her move to Chilliwack, along with her return to school, all contribute to that future stability. F.G. submits that, in the event her relationship with R.G. does not last, she can better afford to support herself and the children given the lower cost of rental accommodation in Chilliwack as compared with Delta or Surrey.
- [29] No evidence has been provided as to the respondent's employment prospects or likely hours of work after she completes her training program. The respondent says she has a back-up plan in that she can return to her current employment as a production worker if needed.

Legal framework regarding the respondent's move

- [30] The respondent originally filed an application about a family law matter in the Chilliwack Provincial Court. The claimant, M.T., was served with that application on April 30, 2022. He filed his notice of family law claim in this proceeding two days later, on May 2, 2022. No further steps have been taken in the Provincial Court proceeding.

- [31] In order to file this application, M.T. sought and obtained an exemption from the requirement that a judicial case conference must be conducted prior to serving an interim application.
- [32] The claimant says that the relocation provisions of the Divorce Act apply to the respondent's move to Chilliwack, and that the respondent has not complied with the Divorce Act notice requirements set out in s. 16.9.
- [33] The respondent says that the Family Law Act applies, as the move occurred prior to the commencement of this proceeding. She also says that her move to Chilliwack is not a relocation as defined in Division 6 of the Family Law Act, but it is rather a change of residence as contemplated in section 46 of the FLA.

Relocation under the Divorce Act

- [34] As the federal legislation is paramount, I will first address the arguments related to the Divorce Act. Section 2 of the Divorce Act says

relocation means a change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility -- or who has a pending application for a parenting order -- that is likely to have a significant impact on the child's relationship with

- (a) a person who has parenting time, decision-making responsibility or an application for a parenting order in respect of that child pending; or
- (b) a person who has contact with the child under a contact order;

- [35] Section 16.1(1) of the Divorce Act says

16.1 (1) A court of competent jurisdiction may make an order providing for the exercise of parenting time or decision-making responsibility in respect of any child of the marriage, on application by

- (a) either or both spouses; or
- (b) a person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent.

(emphasis added)

- [36] Section 16.8 of the Divorce Act says the following regarding a change in residence:

16.8 (1) A person who has parenting time or decision-making responsibility in respect of a child of the marriage and who intends to change their place of residence or that of the child shall notify any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child of their intention.

- (2) The notice shall be given in writing and shall set out

- (a) the date on which the change is expected to occur; and
- (b) the address of the new place of residence and contact information of the person or child, as the case may be.

[37] Unlike the Family Law Act, the Divorce Act has no presumptions regarding parenting arrangements in the absence of an order. Accordingly, the references to a person who has parenting time or decision-making responsibility, both in the relocation and "change in place of residence" sections, can only refer to a person who has an order, or (in the case of a relocation) a pending application for such an order, under the Divorce Act.

[38] At the time of the respondent's move to Chilliwack on April 25, 2022, this proceeding had not yet been commenced. There was no order of any court for parenting time or decision-making responsibility, nor was there a pending application under the Divorce Act.

[39] Accordingly, the Divorce Act relocation and change of residence provisions do not apply to the respondent's move to Chilliwack.

Relocation under the Family Law Act

[40] Turning then to the provisions of the Family Law Act, Division 6 addresses relocation. Section 65 says:

65 (1) In this Division, "relocation" means a change in the location of the residence of a child or child's guardian that can reasonably be expected to have a significant impact on the child's relationship with

- (a) a guardian, or
 - (b) one or more other persons having a significant role in the child's life.
- (2) This Division applies if
- (a) a child's guardian plans to relocate himself or herself or the child, or both, and
 - (b) a written agreement or an order respecting parenting arrangements or contact with the child applies to the child.

[41] Both counsel made submissions as to whether F.G.'s move from Surrey to Chilliwack would have such a significant impact on the children's relationships with the other parent and other important people in their lives, such that the move should be considered a 'relocation' rather than a 'change in place of residence'.

[42] It is important to note that the parties have never had a written agreement regarding parenting. Until the consent order of Master Bilawich made June 21, 2022, the parties agree that they had an ad hoc, equal parenting arrangement, the specifics of which have changed somewhat from time to time. The applications before me were filed on June 3, 2022 and June 20, 2022 respectively, both prior to the consent order.

[43] Division 6 of the FLA regarding relocation only applies if both conditions in s. 65(2) are met. There was no written agreement or court order respecting parenting arrangements, as required by s. 65(2)(b), either at the time of F.G.'s move or at the time that these applications were filed. Accordingly, the relocation provisions set out in Division 6 of the Family Law Act are not applicable, and I need not determine whether the move had such a 'significant impact' as to qualify as a 'relocation'.

[44] I am satisfied that the parties' parenting arrangements from the date of separation until June 21, 2022, fall within the definition of 'informal parenting arrangements' as set out in s. 48 of the FLA, which provides as follows:

Informal parenting arrangements

48 (1) If

- (a) no agreement or order respecting parenting arrangements applies in respect of a child, and
- (b) the child's guardians have had in place informal parenting arrangements for a period of time sufficient for those parenting arrangements to have been established as a normal part of that child's routine,

a child's guardian must not change the informal parenting arrangements without consulting the other guardians who are parties to those arrangements, unless consultation would be unreasonable or inappropriate in the circumstances.

(2) Nothing in subsection (1) prevents a child's guardian from seeking

- (a) an agreement respecting parenting arrangements, or
- (b) an order under section 45 [orders respecting parenting arrangements]

[45] The parties' informal parenting arrangements were in place since February 2021, certainly long enough to form a normal part of the children's routines. I am satisfied that F.G. notified M.T. of her intended move to Chilliwack, albeit with very little notice, and attempted to consult with him with respect to changing their informal parenting arrangements, as required under s. 48(1). The parties reached a temporary, informal agreement which lasted from early May until June 21, and then entered into the consent order which covered the period June 21 to August 31, 2022. That consent order explicitly states that it is "without prejudice to either party's position on parenting arrangements for September 2022 onwards". They are now both seeking an interim order under ss. 45 and 216 of the Family Law Act, as contemplated under s. 48(2)(b), or under s. 16.1(2) of the Divorce Act. I am therefore treating this as an initial application for an interim parenting order.

Applicable legislation regarding parenting

- [46] Visser v. Visser, 2019 BCSC 1856 and Y.Q. v. J.D., 2021 BCSC 1185 are authority for the proposition that, under either legislative scheme, the court's central consideration on all parenting issues is the children's best interests. The doctrine of paramountcy is only triggered if there is an operational difference between the two pieces of legislation.
- [47] In S.A.H. v. J.J.G.V., 2021 BCSC 2132, Madam Justice Douglas says at paragraph 28:
- [28] I adopt the reasoning of Justice Sewell in B.D.M. v. A.E.M., 2014 BCSC 453 [B.D.M.] at paras. 113 - 118 and conclude that the doctrine of paramountcy does not preclude consideration and application of the FLA in family law proceedings in which a divorce is granted. As noted by Sewell J in B.D.M., at paras. 113 - 114, an overlap in legislation does not, without more, trigger paramountcy; paramountcy only arises if a provincial law would frustrate the purpose of a federal law. The parties agree that the underlying purpose of the FLA and the DA is identical: both require the court to consider the best interests of the child in determining parental responsibility. Given recent amendments to the DA, the two statutes are now more closely aligned; in the result, I am satisfied that the factors in s. 37 of the FLA provide a helpful analytical framework, regardless of which statute the parties rely upon.
- [48] Accordingly, as was done in each of the three cases I have just referred to, I will determine parenting arrangements under the Family Law Act.

Best Interests of the Children

- [49] Justice Stephens has already made a declaration, by consent, that the parties are both guardians of the children pursuant to s. 39(1). There is no order or agreement with respect to allocation of parental responsibilities, nor have I been asked to make such an order.
- [50] Section 37 of the Family Law Act sets out a non-exhaustive list of factors to be considered in making an order regarding parenting arrangements.

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;

- (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[51] I will consider each of the listed factors in turn.

Child's health and emotional well-being

- [52] There was no disagreement between the parties as to the health and emotional well-being of the children, at least none that brought them to court, until F.G. moved to Chilliwack. Prior to the move, the children appeared to be doing well under the parties' ad hoc shared parenting regime.
- [53] As part of this application, M.T. has raised concerns regarding the care provided by F.G. He alleges that she does not bathe or change the children's clothes as regularly as she should, and on one occasion T.'s diaper was not changed prior to a parenting exchange. He also alleges that T. returned to his care with an eye infection on one occasion.
- [54] F.G. denies the allegations regarding the lack of bathing and changing clothes. She acknowledges that she did not notice T.'s wet diaper on the one occasion, as she had been injured and was resting.

- [55] None of these allegations support a finding that the children's health or emotional well-being is at risk while in the care of F.G. A single incident of an eye infection, relatively common in young children, or an unchanged diaper is hardly evidence of neglect. The photograph of said diaper attached to the affidavit was unnecessary. Again, I note that none of these allegations were raised until after F.G.'s move.
- [56] The parties have also disagreed as to the appropriate method of treatment for T.'s constipation issues, but there is no medical evidence before me that would support either party's allegations that the other parent's method of treatment is harmful to T.

The child's views, unless it would be inappropriate to consider them

- [57] There is no independent evidence of H.'s views, and I am not prepared to consider statements attributed to H. as deposed to by the parties or their relatives. A 'views of the child report' may well be helpful for the trial judge, but I have not been asked to make an order for such a report at this time. T., at age 3, is too young to have her views considered.

The nature and strength of the relationships between the child and significant persons in the child's life

- [58] The children clearly have strong relationships with both parents, and with each other. In addition, they have had the benefit of living in a multi-generational household. M.T.'s evidence is that his mother, C.V., has played a significant role in the children's lives. Prior to the parties' separation, she cared for the children so that both parties could work. Post-separation, she continued to provide child care for both children, take H. to and from school, prepare meals, etc. F.G. complains that M.T. has foisted off some of his parenting responsibilities onto his mother, which he denies. However, even if I were to accept F.G.'s evidence in this regard, it strengthens M.T.'s argument as to the importance of C.V. in the children's lives.
- [59] The children have also been cared for at times by both M.T.'s sister, who resides with him, and by F.G.'s sister. The children apparently have good relationships with both M.T.'s new partner, S.R., and F.G.'s new partner, R.G.
- [60] If the children's primary residence were to be with F.G., child care would no longer be provided by family members; instead, the children would be in daycare in Chilliwack. The children's time with M.T. and his immediate family members, with whom the children have been living, would be limited to weekends and holidays.

The history of the child's care

- [61] The parties disagree as to which of them was the primary parent prior to separation. However, it is not necessary for me to determine that at this stage. It is clear that both parents were involved in raising the children, and that C.V. and other family members also played a significant role.

[62] As indicated, since separation, the parties have shared parenting roughly equally. While the parties worked, child care was provided primarily by C.V., with some assistance from other family members. Since the parties moved to Canada, neither of the children had been in daycare until F.G. unilaterally enrolled T. in daycare in April 2022.

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

[63] M.T. submits that T. in particular has a strong need for routine and stability given her age. He also says that H. has finally achieved stability for the first time since coming to Canada, after changing schools in 2019. His evidence is that H. is thriving in his school and community. M.T. says that the children have an established routine and close relationships with extended family which should not be disrupted.

[64] He points to the fact that F.G. has moved twice since separation and has changed jobs three times. She is also now about to undergo another change when she starts her training program in September.

[65] F.G. says that T. benefits from the routine and socialization that daycare provides. She also says that she has a steady schedule at work, is able to be home at the same time every day at a reasonable hour, and can consistently take the children to extra-curricular activities. However, as noted, F.G. is about to embark upon a new schedule with her schooling, and does not know what her schedule will be like after her 8-month program is complete.

[66] F.G.'s counsel argues that the changes F.G. is making are all with the goal of achieving increased stability for herself and the children for the future. As M.T.'s counsel points out, while that may be a factor at trial, the greater consideration on an interim application is stability for the children pending trial.

The ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities

[67] The claimant is an involved parent with a strong familial network of support. The respondent is an equally involved parent, but with her move to Chilliwack her available support network has shrunk to just her current partner R.G. I am satisfied that both parents are equally able to care for the children's daily needs, including education, health, extra-curricular activities, etc.

The impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member

[68] Both parties have made allegations of family violence against the other. F.G. alleges that M.T. has called her names, controlled her actions and, on one occasion, grabbed her arm resulting in a bruise. She also raised an allegation of a death threat made by M.T., but there is only hearsay evidence in this regard. M.T. denies each of these allegations.

[69] M.T. points to an incident that occurred in February 2022, where F.G. hit H. She admits that she "maybe hit him hard enough to hurt his feelings". She also admits to pushing H.'s head in March 2022 when H. was calling her names.

Whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs

[70] I do not consider M.T. to be impaired in his ability to care for the children. F.G. may benefit from learning some better strategies for managing H.'s sometimes challenging behaviour, but on the whole I am satisfied that this is not a relevant factor.

The appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members

[71] This is not a relevant factor insofar as risks are concerned.

[72] Both parents have expressed concerns about the other parent's unilateral decision-making. F.G. points to M.T. enrolling H. in summer day camps which impinge on her parenting time, making decisions about T.'s health without consulting her, and (as noted previously) foisting off his parental responsibilities onto others.

[73] Conversely, M.T. says that F.G. moved to Chilliwack with little notice and no discussion, and unilaterally enrolled T. in daycare and H. in a school in Chilliwack for this September.

[74] It is important for the children's well-being that both parents make their best efforts to communicate and cooperate on issues regarding the children. That includes consultation on any decisions regarding education, health care, child care arrangements, and extra-curricular activities.

Any civil or criminal proceeding relevant to the child's safety, security or well-being

[75] There is no such proceeding and therefore this is not a factor.

Status Quo

[76] The primary purpose of interim orders in family law proceedings is to preserve the status quo pending trial, so long as that is in the best interests of the children. (*L.A.Y. v. S.A.Y.*, 2019 BCSC 853). Preservation of the status quo is generally considered to be in the best interests of the child unless there is a compelling reason to change the existing custodial situation. (*Marsden v. Bercovitz*, 2013 BCSC 1246). The status quo becomes increasingly more significant in determining what is in the best interests of a child the longer the arrangement has been in place. This is particularly so where the status quo has created a stable and secure environment for a child and there is no evidence the child is not doing well in that environment. (*Johnson v. Johnson*, [1999] B.C.J. 1738).

- [77] In this case, the status quo is that the parents are both equally involved in parenting the children, with considerable support from extended family members. H. has been attending the same elementary school since 2019, and by all accounts is doing well. He can walk to school and has friends at school and in the neighbourhood. Both children are particularly attached to C.V. Although the parties shared equal parenting time, the fact that C.V. still provided childcare during F.G.'s parenting time meant that, prior to F.G.'s move to Chilliwack, both children spent the majority of their time at the former family home.
- [78] F.G. argues that the status quo is not in the children's long-term best interests due to the difficulties F.G. faced in seeking employment and affordable accommodation in Delta. Again, while that may well be a consideration at trial, it is not the test on an interim application.
- [79] There was no compelling reason to change the parenting arrangements other than the fact that F.G.'s move to Chilliwack has made the former ad hoc arrangement unworkable and not in the children's best interests due to the length of the daily commute.
- [80] As in Johnson, I find that the status quo here has created a stable and secure environment for the children, and there is no evidence that the children are not doing well in that environment. With respect to the best interests factors in s. 37 of the Family Law Act, most of them are neutral as between the two parents. However, the children's ties to their extended family members and need for stability tip the scales in favour of their primary residence being in the Delta home, so that H. can continue to attend the same elementary school and C.V. and other family members can continue to provide childcare.

Decision

- [81] Accordingly, taking into consideration the revised parenting proposals made by the parties, I make the following orders on an interim basis, subject to change by agreement of the parties or further order of the court:
- a) Effective September 1, 2022, the children shall reside primarily with the claimant.
 - b) H. shall remain enrolled at his current elementary school for the 2022-23 school year.
 - c) The respondent shall have parenting time with the children from between 10:00 to 11:00 am on Thursday, September 1, 2022 until Sunday, September 4, 2022 between 6:00 and 7:00 pm, with the claimant to transport the children on Thursday and the respondent to transport the children on Sunday;
 - d) Commencing Monday, September 5, 2022, the respondent's parenting time shall be on a two-week rotating schedule as follows:
 - i. Week 1 - the respondent shall have parenting time:

- 1) On Tuesday from between 4:00 and 4:30 pm until 7:00 pm, with pick-up and drop-off to be at a mutually agreed location in Abbotsford;
- 2) On either Wednesday or Thursday, with 24 hours notice from the respondent, from between 3:00 and 4:00 pm until 7:00 pm, with the respondent to pick up and drop off the children at the claimant's home in Delta;
- 3) On Friday
 - a) with T. from 10:00 am, or as soon thereafter as the respondent is available, and
 - a) with H. from after school, or earlier if it is a non-instructional day and the respondent is available,

until 7:00 pm, with the respondent to pick up and drop off the children in Delta.

ii. Week 2 - the respondent shall have parenting time

- 1) On Tuesday from between 4:00 and 4:30 pm until 7:00 pm, with pick-up and drop-off to be at a mutually agreed location in Abbotsford;
- 2) On either Wednesday or Thursday, with 24 hours notice from the respondent, from between 3:00 and 4:00 pm until 7:00 pm, with the respondent to pick up and drop off the children at the claimant's home in Delta;
- 3) For the weekend,
 - a) with T. from 10:00 am Friday, or as soon thereafter as the respondent is available, and
 - b) with H. from after school Friday, or earlier if it is a non-instructional day and the respondent is available,

until 6:00 pm Sunday, with the respondent to pick up the children at the beginning of her parenting time and the claimant to pick up the children at the end of the respondent's parenting time.

- 4) In the event that the Monday immediately following the respondent's Week 2 weekend is a statutory holiday or non-instructional day, the respondent's weekend parenting time shall be extended to 6:00 pm on the Monday.
- e) Notwithstanding the foregoing schedule, and by consent, the parties shall share the school Christmas break as follows:
 - i. In even years
 - 1) The respondent will have from 6:00 pm on the last Friday before Christmas break until 12:00 pm on Christmas Day;
 - 2) The claimant will have from 12:00 pm on Christmas Day until 12:00 pm on New Year's Day; and

3) The respondent will have from 12:00 pm on New Year's Day until Sunday at 6:00 pm the night before school starts in January.

ii. In odd years

1) The claimant will have from 6:00 pm on the last Friday before Christmas break until 12:00 pm on Christmas Day;

2) The respondent will have from 12:00 pm on Christmas Day until 12:00 pm on New Year's Day; and

3) The claimant will have from 12:00 pm on New Year's Day until the return of school in January.

f) Notwithstanding the foregoing schedule, and by consent, the parties will share the school spring break as follows:

i. The respondent will have parenting time for the first week of spring break from 6:00 pm on the last Friday before Spring Break until 12:00 pm on the following Saturday; and

ii. The claimant will have parenting time for the second week of spring break from 12:00 pm on Saturday until the return of school on the following Monday.

g) In the event that the parties are unable to reach an agreement as to summer holiday time in 2023, they are at liberty to apply.

[82] If the parties wish to make submissions as to costs they may schedule a 30 minute appearance before me by submitting a request via Supreme Court Scheduling.

"Master Hughes"

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