

CANADA / JUDGMENT

Murray v. Harrison

2022 BCSC 423

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 423 Murray v. Harrison

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Murray v. Harrison,

2022 BCSC 423

Date: 20220104

Docket: E129994

Registry: Kelowna

Between:

Chelsea Alida Murray

Claimant

And

Morgan George Harrison

Respondent

Before: The Honourable Mr. Justice Brongers

(appearing by videoconference)

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant, appearing by videoconference:

E. Cram

Appearing on his own behalf, by videoconference:

M. Harrison

Place and Date of Trial/Hearing:

Kelowna, B.C.

December 17, 2021

Place and Date of Judgment:

Kelowna, B.C.

January 4, 2022

[1] THE COURT:

Introduction

- [2] This is a family law summary trial application for a divorce order and other relief. The applicant is Chelsea Alida Murray. The respondent is Morgan George Harrison.
- [3] Commendably, the parties resolved many of their once contested issues by entering into a detailed separation agreement. They also agree that a divorce should be granted.
- [4] However, two issues remain in dispute. Most significantly, Ms. Murray wishes to move to Cochrane, Alberta, with the children, a relocation that Mr. Harrison opposes. Ms. Murray also seeks relief regarding Mr. Harrison's non-payment of money owing under their separation agreement.
- [5] While Mr. Harrison took the position that this application cannot be adjudicated by means of a summary trial, I do not agree. Paraphrasing the statutory test prescribed by Rule 11-3 of the Supreme Court Family Rules, B.C. Reg. 169/2009, I am of the view that I am able, on the whole of the affidavit evidence tendered, to find the facts necessary to decide the issues in dispute, and I do not feel that it would be unjust to do so: *C.K.M. v. H.R.M.*, 2021 BCSC 1297 at paras. 13 to 16.
- [6] After a recitation of the relevant background, I will address the two disputed issues. The specifics of the order that I am issuing will be set out at the conclusion of these reasons.

Background

- [7] The parties started living together in March 2008 and were married on August 8, 2009. There are two children of the marriage: (1) G.H. who is presently 11 years old, and (2) L.H. who is presently eight years old. Collectively, they will be referred to as "the Children".

- [8] Both spouses worked outside the home during the marriage. Ms. Murray is employed as a registered nurse and is also involved in an online fitness enterprise with a business partner. Mr. Harrison is a carpenter and welder by trade who operates his own design and construction business. They have lived in Kelowna since January 2012.
- [9] The parties separated on November 12, 2020. Ms. Murray filed a notice of family claim on January 26, 2021. Mr. Harrison filed a response to family claim on February 22, 2021.
- [10] On April 8, 2021, the parties entered into a separation agreement which was filed with the court on April 14, 2021. Under its terms, the Children are to reside primarily with Ms. Murray and have parenting time with Mr. Harrison every second weekend. While both parents are guardians of the Children, it was agreed that Ms. Murray has the exclusive right to exercise all parental responsibilities under s. 41 of the Family Law Act, S.B.C. 2011, c. 25.
- [11] The parties further agreed that in lieu of regular child support payments, Mr. Harrison would pay a lump sum to Ms. Murray of \$250,000. In addition, they agreed that neither party will pay the other any spousal support.
- [12] Ms. Murray and Mr. Harrison also reached a comprehensive agreement with respect to the division of their family property. That property includes the former family residence in Kelowna which Mr. Harrison has been designing and constructing since the parties purchased a residential building lot in 2017 (the "Former Family Residence"), as well as their original family residence that they bought when they first moved to Kelowna (the "Original Family Residence").
- [13] The parties agreed that Mr. Harrison would have the sole right to reside in the Former Family Residence while he completed its construction, that it would be put up for sale by July 15, 2021, and that the proceeds of its sale would be allocated between the parties in accordance with the terms of their agreement. That allocation includes a stipulation that the \$250,000 lump-sum child support payment to Ms. Murray is to be made from Mr. Harrison's net share of the sale proceeds.
- [14] As for the Original Family Residence, it was agreed that Ms. Murray would have the sole right to live there pending the sale of the Former Family Residence, after which title to the Original Family Residence is to be transferred exclusively to Ms. Murray.
- [15] The separation agreement also set out in detail how the parties' remaining assets and liabilities are to be divided. Finally, it provides that Mr. Harrison is to make a compensation payment to Ms. Murray in the amount of \$31,767 in order to equalize the global property division. The deadline for this payment is August 30, 2021, or the date of the sale of the Former Family Residence, whichever is sooner. Ultimately an agreement of purchase and sale for the Former Family Residence was not concluded until November 4, 2021, and its closing date is scheduled for January 13, 2022.

- [16] On August 31, 2021, Ms. Murray sent a notice of relocation to Mr. Harrison. It advised him of Ms. Murray's wish to relocate the Children from Kelowna to Cochrane, Alberta. Mr. Harrison delivered his objection to the proposed relocation on September 28, 2021.
- [17] On October 26, 2021, Ms. Murray filed the present application for a divorce order, authorization to relocate the Children, and other relief by way of summary trial. Her application is supported by five affidavits. Mr. Harrison did not file an application response, but he did file a responding affidavit on December 15, 2021.
- [18] The application was heard in chambers on December 17, 2021. At the hearing, Ms. Murray was represented by counsel. Mr. Harrison represented himself.

Disputed Issue #1: Relocation

Ms. Murray's Position

- [19] Ms. Murray seeks an order pursuant to s. 16.91(1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp), authorizing her to relocate the Children to Cochrane, Alberta.
- [20] If such authorization is granted, Ms. Murray intends to reside with the Children in the home of Ivo Stedford, who is Ms. Murray's romantic partner with whom she has been in a relationship since December 2020. Mr. Stedford is a journeyman welder and a project management professional who has lucrative employment in the oil industry. He is also a recently divorced parent of two children who are age 10 and 12, whom he co-parents with his ex-spouse through a shared parenting time arrangement. With respect to work, Ms. Murray is confident that she can obtain employment as a registered nurse in the Greater Calgary area, and she also intends to continue to operate her online fitness business in the future.
- [21] Ms. Murray wishes to relocate to Cochrane so that she and the children can pursue their family lives there with Mr. Stedford and his children. Ms. Murray asserts that her relationship with Mr. Stedford is a healthy, loving, and supportive one. She says that the children will benefit from being in the family environment that she and Mr. Stedford have planned to provide for them. Mr. Stedford tendered an affidavit confirming his warm feelings for Ms. Murray and the children, and his eagerness to live with them in Cochrane. He also testifies that because of his work and his co-parenting arrangement with his ex-spouse, Mr. Stedford cannot relocate from Alberta.
- [22] At the same time, Ms. Murray candidly acknowledges that her desire to relocate the children to Cochrane is also motivated by her dissatisfaction with her current circumstances in Kelowna. Her concerns are partly financial, but stem mostly from the state of her post-separation relationship with Mr. Harrison. In particular, Ms. Murray is troubled by Mr. Harrison's behaviour, communication, and lack of engagement and support for the Children. Ms. Murray points to examples of Mr. Harrison's unreliability when it comes to caring for the Children during his parenting time, his unwillingness to participate in

parent-teacher and counselling meetings with the Children, and his rude responses to her requests for help with childcare.

- [23] She also says that Mr. Harrison makes her feel unsafe and harassed, particularly through his persistent and unpleasant attempts to communicate with her in person, by phone, and electronically. In support of this assertion, she entered into evidence a number of insulting and disrespectful emails and text messages that Mr. Harrison has sent to Ms. Murray since the parties' separation. She also alleges that Mr. Harrison has issues with substance abuse and depression, particularly in recent months.
- [24] These concerns notwithstanding, Ms. Murray acknowledges that Mr. Harrison should ultimately continue to have parenting time following her relocation to Alberta if it is authorized. Ms. Murray proposes in her notice of relocation that Mr. Harrison could continue to exercise his parenting time every second weekend, and that he should also have additional time during spring break and the summer. In the alternative, if Mr. Harrison is concerned about the frequency of the Children's travel between Cochrane and Kelowna, Ms. Murray proposes that Mr. Harrison's parenting time could be scheduled so that it takes place over longer periods during school holidays. In terms of the Children's travel between Cochrane and Kelowna, she proposes that it be effected by road with the parties meeting half-way at Rogers Pass, or alternatively by air. Ms. Murray is also willing to pay the costs of three of the Children's round trips between the parties' residences per year.

Mr. Harrison's Position

- [25] Mr. Harrison is opposed to the relocation of the Children to Cochrane. He says that the only reason Ms. Murray seeks to relocate is so that she can pursue her relationship with Mr. Stedford. Mr. Harrison submits that there is no evidence that the relocation will be in the Children's best interests. To the contrary, Mr. Harrison argues that it is in the best interests of the Children to remain living within the same community as the one in which their father lives. He says that he is hoping to eventually increase his parenting time with the Children, which will not be possible if they move out of province. Mr. Harrison also suggests that the relocation will be difficult for the Children, as this will entail moving away from their friends in Kelowna and will impose upon them a difficult travel schedule for the parenting time transitions.
- [26] Mr. Harrison notes further that under the separation agreement, Ms. Murray is able to reside with the Children in a comfortable home in Kelowna where she currently has full-time employment and a successful business. He questions whether she will be able to replicate these conditions in Alberta. He also argues that Cochrane does not offer any greater amenities than those that are available in Kelowna.
- [27] Finally, while Mr. Harrison acknowledges that the parties have had challenges adjusting to their separation, he does not feel that Ms. Murray's concern with his conduct and behaviour is justified, particularly since he has never been physically violent towards her.

Analysis

- [28] The applicable legal framework for determining whether to authorize a relocation of children in the context of a divorce proceeding is set out at ss. 16.9 to 16.96 of the Divorce Act. It effectively provides that such authorization is only to be granted if the court determines that the proposed relocation is in the children's best interests. That determination must be made by taking into account 18 factors set out in ss. 16(3) and 16.92(1) of the Divorce Act. I will analyze each of these factors individually.
- [29] Prior to doing so, however, it should be noted that s. 16.92(2) of the Divorce Act prohibits the court from considering whether the person who intends to relocate the children could still move in the event relocation is prohibited. In other words, I will not factor into my reasoning the hypothetical question of where Ms. Murray might choose to live in the event the Children are not allowed to relocate to Cochrane.
- [30] Furthermore, it must also be noted that this is a case where the parties have a separation agreement which provides that the Children spend the vast majority of their time in the care of Ms. Murray, the party who is seeking to relocate. Pursuant to s. 16.93(2) of the Divorce Act, this means that it is Mr. Harrison who has the burden of proving that the relocation will not be in the best interests of the Children.

Factor 1 - Needs of the Children

- [31] The first factor to be considered under s. 16(3)(a) of the Divorce Act is the children's needs, given their age and stage of development, such as the need for stability.
- [32] At first blush, this factor would seem to militate in favour of the status quo, whereby the children remain in Kelowna where they have resided for most of their lives. However, the evidence tendered demonstrates that the Children's living arrangements since the November 2020 separation has been unstable and difficult, largely because of the parties' inability to communicate effectively with each other in relation to parenting. I am persuaded that the Children's needs will be better addressed within the more stable family environment that Ms. Murray proposes to provide for them with Mr. Stedford in Cochrane.
- [33] This factor therefore militates in favour of relocation.

Factor 2 - Nature and Strength of the Children's Relationship with Each Spouse and Others Who Play Important Roles in their Lives

- [34] The second factor to be considered under s. 16(3)(b) of the Divorce Act is 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.

- [35] While it is evident that both parties love the Children intensely and unconditionally, I have no doubt that the bond that the Children share with Ms. Murray is stronger than the one they share with Mr. Harrison. This is largely a result of the significantly greater role Ms. Murray has played in raising and caring for the Children since the time they were born, which has continued post-separation.
- [36] On the other hand, I am not persuaded that there is evidence that the Children's relationship with their grandparents or others is such that it warrants having an impact on the analysis. In particular, while Ms. Murray notes that Mr. Harrison's father and stepmother live in Cochrane, Alberta, Mr. Harrison submits that his father does not support the relocation and that the relationship between his father and Ms. Murray is strained. Ms. Murray has not challenged these assertions. Furthermore, Ms. Murray's extended family lives in Saskatchewan and Manitoba, and I do not accept that moving to Cochrane, Alberta, will meaningfully increase the Children's ability to interact with them from what it is presently.
- [37] That said, this factor also militates slightly in favour of relocation.

Factor 3 - Each Spouse's Willingness to Support the Children's Relationship with the Other Spouse

- [38] The third factor to be considered under s. 16(3)(c) of the Divorce Act is each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse.
- [39] I find that Ms. Murray is commendably supportive of the need to ultimately maintain and foster the Children's relationship with Mr. Harrison, notwithstanding the parties' post-separation difficulties. This is evidenced by her proposals for Mr. Harrison's continued parenting time, and her attempts to involve Mr. Harrison in such activities as the Children's counselling and parent-teacher appointments. As for Mr. Harrison, at best, his evidence demonstrates his acceptance of the need for Ms. Murray to be the primary caregiver for the Children.
- [40] This factor militates in favour of relocation.

Factor 4 - History of Care of the Children

- [41] The fourth factor to be considered under s. 16.3(d) of the Divorce Act is the history of care of the child.
- [42] As has already been noted, Ms. Murray has always had primary responsibility for parenting the Children. This is candidly admitted by Mr. Harrison who testified in his affidavit as follows:

I would agree that Chelsea's involvement in the kids day to day activities and routine was greater than mine. Our roles were different, yet never argued about that. It just seemed natural.

[43] This factor militates in favour of relocation.

Factor 5 - Children's Views and Preferences

[44] The fifth factor to be considered under s. 16.3(e) of the Divorce Act is the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained.

[45] No independent reliable evidence was provided with respect to the views of the children regarding their proposed relocation to Cochrane. That said, I generally accept Ms. Murray and Mr. Stedford's assertions in their affidavits in which they indicate their belief that the children appear to be comfortable when visiting Mr. Stedford's home, and are getting along well with Mr. Stedford's own daughters. There is also no evidence before me of any hesitation or reluctance on the part of the Children to relocate to Cochrane.

[46] This factor militates in favour of relocation.

Factor 6 - Children's Heritage

[47] The sixth factor to be considered under s. 16(3)(f) of the Divorce Act is the child's cultural, linguistic, religious, and spiritual upbringing and heritage, including Indigenous upbringing and heritage.

[48] Neither party led any evidence that might suggest that relocation would be either beneficial or prejudicial to the Children in this respect, although Ms. Murray testified to her intent to attend the Cochrane Alliance Church, which offers various programs for children.

[49] Accordingly, I find that this is a neutral factor.

Factor 7 - Children's Care

[50] The seventh factor to be considered under s. 16(3)(g) of the Divorce Act is any plans for the child's care.

[51] A review of Ms. Murray and Mr. Stedford's affidavits reveals that they have considered carefully the details of how they would collectively ensure that the Children are properly cared for in Cochrane. In addition to having the apparent financial means to provide adequate childcare, they have prepared a detailed plan for the Children's home accommodation, schooling, medical care, and extracurricular activities. Mr. Harrison has not suggested in his affidavit or in his submissions that this plan is inadequate in any way.

[52] This factor militates in favour of relocation.

Factor 8 - The Parties' Ability to Care For and Meet the Needs of the Children

- [53] The eighth factor to be considered under s. 16(3)(h) of the Divorce Act is 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.
- [54] As there is no suggestion that Mr. Harrison is prepared at this time to assume any greater responsibility for parenting and caring for the children than he provides presently, this eighth factor does not require any additional consideration to that already given to the seventh factor. It therefore also militates in favour of relocation.

Factor 9 - The Parties' Ability to Communicate and Cooperate

- [55] The ninth factor to be considered under s. 16(3)(i) of the Divorce Act is 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.
- [56] It is evident that the parties have experienced difficulties in communicating and cooperating with each other with respect to the parenting of the children. On my assessment of the evidence, this has largely been due to Mr. Harrison's inability or unwillingness to suppress his resentment and disappointment over the breakdown of the marriage in order to ensure that the children's needs are properly tended to.
- [57] In particular, the written communication between the parties confirms Ms. Murray's assertion that "when I try to communicate about anything, more often than not he responds with insults, swearing, and name calling." A particularly telling example was Mr. Harrison's response to Ms. Murray's simple request for his help with childcare to exceptionally accommodate her work schedule, to which Mr. Harrison wrote: "You are responsible for the kids this weekend and you can't find childcare. Your problem is NOT my fucking problem."
- [58] This factor militates in favour of relocation.

Factor 10 - Family Violence

- [59] The tenth factor to be considered under s. 16(3)(j) of the Divorce Act is any family violence and its impact on, among other things, (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child.
- [60] There is no evidence that either party has been physically violent with each other or the Children. That said, the Divorce Act defines "family violence" to include conduct by a family member that constitutes a pattern of coercive and controlling behaviour that causes another family member to fear for their own safety, including harassment, stalking, and psychological abuse. Accordingly, Ms. Murray alleges that Mr. Harrison has harassed and has been verbally abusive towards her, and that the Children have witnessed this behaviour.

However, I am unable, on the basis of the affidavit evidence tendered, to find that Mr. Harrison's conduct in fact constitutes "family violence" as that term is defined in the Divorce Act.

[61] Accordingly, this is a neutral factor in my analysis

Factor 11 - Court Orders Relevant to the Safety of the Children.

[62] The eleventh factor to be considered under s. 16(3)(k) of the Divorce Act is any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security, and well-being of the child.

[63] No affidavit evidence was led with respect to any such proceedings in this application. However, I was advised at the hearing that just two days prior, on December 15, 2021, Regional Administrative Judge Shaw of the Provincial Court issued a without notice protection order that prohibits Mr. Harrison from having any contact or communication with Ms. Murray, the Children, and Mr. Stedford, subject to very limited exceptions. Counsel for Ms. Murray had no involvement in this proceeding, and no clear explanation regarding the circumstances surrounding the issuance of this order was provided to me. Furthermore, the parties made no submissions with respect to the impact this order should have on my adjudication of the relocation application.

[64] I will therefore consider this to also be a neutral factor in my analysis.

Factor 12 - Reasons for the Relocation

[65] The twelfth factor to be considered under s. 16.92(1)(a) of the Divorce Act is the reasons for the relocation.

[66] I accept Ms. Murray's submission that she seeks to relocate to Cochrane in order to pursue the healthy and loving relationship that she has with Mr. Stedford, which benefits her and the Children, both directly and indirectly. I find that the proposed relocation is also motivated by Ms. Murray's desire to change her present circumstances in Kelowna and avoid the difficulties she has experienced living in the same community as Mr. Harrison post-separation.

[67] In the particular circumstances of this case, I find that these reasons are legitimate and that this is a factor that also militates in favour of relocation.

Factor 13 - Impact of the Relocation on the Children

[68] The thirteenth factor to be considered under s. 16.92(1)(b) of the Divorce Act is the impact of the relocation on the child.

[69] On my assessment of the evidence, the proposed relocation will indeed be beneficial for the Children, because the nurturing and supportive home environment that Ms. Murray and Mr. Stedford plan to provide together appears to be qualitatively superior to the one that the Children are presently experiencing by living in the Original Family Residence in Kelowna.

Furthermore, there is no evidence that the Children will be prejudiced by the move in terms of being denied any opportunities that they currently enjoy in Kelowna which would not be available in Cochrane.

[70] This factor militates in favour of relocation.

Factor 14 - Time Spent and Level of Involvement with the Children

[71] The fourteenth factor to be considered under s. 16.92(1)(c) of the Divorce Act is 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.

[72] As has already been noted, the parties' separation agreement provides that the children are primarily in the care of Ms. Murray and that she exercises all of the parental responsibilities under s. 41 of the Family Law Act. Mr. Harrison's parenting time is limited to every second weekend. Furthermore, the evidence tendered indicates that while Mr. Harrison professes to eventually want to have increased involvement with the Children, he has not made any significant efforts in this regard, even though the children are presently living in the same community as he does.

[73] This factor militates in favour of relocation.

Factor 15 - Compliance by Applicant with Legal Requirements

[74] The fifteenth factor to be considered under s. 16.92(1)(d) of the Divorce Act is whether the person who intends to relocate the child has complied with any applicable notice requirement under s. 16.9, provincial family law legislation, an order, arbitral award, or agreement.

[75] Ms. Murray has provided the requisite notice to Mr. Harrison in accordance with s. 16.9 of the Divorce Act, and the parties' separation agreement is silent on the issue of relocation. Furthermore, there are no outstanding court orders or provisions under the provincial Family Law Act that might impact upon adjudication of this matter either.

[76] This factor militates in favour of relocation.

Factor 16 - Orders or Agreements Specifying Children's Residence

[77] The sixteenth factor to be considered under s. 16.92(1)(e) of the Divorce Act is the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside.

[78] There is no such order, award, or agreement in this case. This factor is therefore inapplicable.

Factor 17 - Proposal for Extent of Contact with the Non-Relocating Parent

- [79] The seventeenth factor to be considered under s. 16.92(1)(f) of the Divorce Act is 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.
- [80] As noted earlier, Ms. Murray has proposed that Mr. Harrison's parenting time be increased from what it is presently, either by adding holiday time to the existing schedule of every second weekend, or by arranging for extended parenting time while school is not in session. With respect to the Children's travel between Cochrane and Kelowna, she suggests that it be done by having the parties each drive and meet half-way at Rogers Pass, or by having the children fly as unaccompanied minors between Calgary and Kelowna. Ms. Murray also proposes that she pay for three of these round-trips per year.
- [81] Mr. Harrison did not clearly address the matter of post-relocation parenting time, but did take issue with the proposed travel arrangements. He says that it would be unfair for him to pay for travel expenses, and argues that it would be unsafe for the Children to travel the Rogers Pass portion of the highway route between Cochrane and Kelowna.
- [82] In my view, Ms. Murray's proposals regarding Mr. Harrison's parenting time and the Children's travel between their parents' residences are reasonable. With respect to the former, she is willing to increase the total amount of parenting time Mr. Harrison has from what it is presently. With respect to the latter, I note that intercity post-relocation travel arrangements for children will always involve some expense and inconvenience. The issue is whether their magnitude is such that they are not in the best interests of the children. I find that not to be the case here and I trust that the parties will be able to come to a mutually acceptable agreement on how to effect the Children's travel in a safe and cost-effective manner that is equitable to both parents.
- [83] This factor therefore militates in favour of relocation.

Factor 18 - Compliance with Legislation, Orders, and Agreements

- [84] The eighteenth and final factor to be considered under s. 16.92(1)(g) of the Divorce Act is 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.
- [85] It is apparent that both parties have complied with their respective obligations under the separation agreement with respect to parenting time and decision-making in relation to the Children. This factor is therefore neutral.

Conclusion - Relocation and Parenting Time

- [86] In sum, after reviewing the affidavit evidence tendered by the parties and considering all 18 factors, I am of the view that Mr. Harrison has not met his burden to demonstrate that the proposed relocation of the Children to Cochrane, Alberta, is not in their best interests. In particular, 13 of the factors militate in favour of relocation. The other five are either neutral or inapplicable. None of the factors militate against the proposed move to Cochrane.
- [87] Accordingly, I will issue an order authorizing the relocation as requested by Ms. Murray.
- [88] With respect to Mr. Harrison's post-relocation parenting time, however, I am not prepared to make an order governing its terms. There are two reasons for this.
- [89] First, Mr. Harrison's evidence and his oral submissions at the hearing were focused on resisting relocation and did not substantively address the issue of how his parenting time should be scheduled in the event relocation is authorized. In my view, the Court cannot fairly determine this question without the benefit of Mr. Harrison's perspective on it.
- [90] Second, as already noted, there is now a Provincial Court protection order in place that prohibits Mr. Harrison from being in contact or in communication with the Children. This protection order will be in effect until November 30, 2022, unless it is set aside or varied prior to then. Obviously, so long as the protection order is in place, Mr. Harrison is precluded from exercising any parenting time with the Children in any event.
- [91] Accordingly, there will be no order made in respect of Mr. Harrison's parenting time. If and when the protection order expires or is lifted, the parties are encouraged to reach an agreement on when and how Mr. Harrison should be afforded parenting time, as they have managed to agree on in the past. If this proves not to be possible, either party will be at liberty to apply to this Court for a parenting time order instead.

Disputed Issue #2 - Outstanding compensation payment

Ms. Murray's Position

- [92] Ms. Murray seeks an order relating to the enforcement of a provision in the parties' separation agreement. The provision in question is paragraph 57. It stipulates that Mr. Harrison is to pay Ms. Murray the sum of \$31,767 in order to equalize the division of their family property. The deadline for the payment is August 30, 2021, or the date of the sale of the Former Family Residence, whichever is first. As the sale had not taken place by August 30th, Mr. Harrison's debt came due on that date. However, Mr. Harrison has not paid it yet.

[93] Accordingly, Ms. Murray seeks an order requiring Mr. Harrison to pay her the sum of \$31,767 within 14 days of the Court's order. In addition, she asks that Mr. Harrison be required to also pay a penalty of \$5,000 to sanction him for his non-compliance. In support of this request Ms. Murray cites *A.J.F. v. N.L.S.*, 2020 BCSC 26, at paragraphs 75, 85, and 86, as authority for the proposition that the Court may impose a fine pursuant to ss. 228 and 230 of the Family Law Act to sanction non-compliance with court orders.

Mr. Harrison's Position

[94] Mr. Harrison does not deny that he owes Ms. Murray \$31,767 pursuant to the separation agreement. With respect to its non-payment, he says that he was initially unaware of the August 30, 2021, deadline. Now that it has been brought to his attention, however, he submits that he does not have the funds to pay this sum at the present time. However, Mr. Harrison says that he will be in a position to pay his debt after the sale of the Former Family Residence closes on January 13, 2022.

Analysis

- [95] As Mr. Harrison has acknowledged that he is in default of his obligation pursuant to paragraph 57 of the separation agreement and has undertaken to pay it shortly, the only issue in dispute is whether the Court should also impose a fine pursuant to ss. 228 and 230 of the Family Law Act.
- [96] In my view, a fine is not warranted in this case. While Mr. Harrison is in breach of a contractual term of the separation agreement that was filed with the Court, this does not demonstrate a pattern of conduct that might justify a financial penalty to discourage future non-compliance. I also accept that Mr. Harrison fully intends to pay his debt shortly once he is in receipt of his share of the proceeds of the sale of the Former Family Residence.
- [97] Accordingly, I will simply order that Mr. Harrison is required to pay Ms. Murray the sum of \$31,767 within 14 days of this order; that is to say, within five days following the scheduled closing of the sale of the Former Family Residence. This is without prejudice to Ms. Murray's right to apply for an enforcement order that includes a financial penalty should Mr. Harrison fail to comply with his obligations under the separation agreement in the future.

Disposition

- [98] For all of these reasons, I will issue the following orders and declarations:
1. This application is transferred to the trial list pursuant to Rule 10-3(7)(d) of the Supreme Court Family Rules and it is directed that the application be heard by summary trial pursuant to Rule 11-3(2)(b) of the Supreme Court Family Rules.

2. Upon being satisfied that all of the conditions precedent required for the granting of a divorce are present, pursuant to s. 12 of the Divorce Act, the claimant, Chelsea Alida Murray, and the respondent, Morgan George Harrison, who were married at Regina, Saskatchewan, on August 8, 2009, are divorced from each other. The divorce is to take effect on the 31st day after the date of this order.
 3. Pursuant to s. 16.91(1)(a) of the Divorce Act, Ms. Murray is permitted to relocate the Children to Cochrane, Alberta, effective immediately.
 4. Within 14 days of this order, Mr. Harrison will pay \$31,767 to Ms. Murray in satisfaction of his obligation pursuant to paragraph 57 of the parties' separation agreement filed with the Court on April 14, 2021.
 5. Except as otherwise provided for in this order, all claims as set out in Ms. Murray's notice of family claim are hereby dismissed.
- [99] As Ms. Murray has been largely successful in this proceeding, she is entitled to her costs from Mr. Harrison. If the parties cannot agree on the form of a costs order, they may contact Supreme Court Scheduling to schedule a hearing on this issue before me.

"Brongers J."

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