

CANADA / JUDGMENT

N.D.A. v. A.N.P.

2025 BCSC 2675

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2675 N.D.A. v. A.N.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

N.D.A. v. A.N.P.,

2025 BCSC 2675

Date: 20251031

Docket: E30868

Registry: Cranbrook

Between:

N.D.A.

Claimant

And

A.N.P.

Respondent

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

Counsel for the Claimant:

B. L. Veenstra

Counsel for the Respondent:

J.S. Baidwain

Place and Date of Trial/Hearing:

Cranbrook, B.C.

August 19-22 and 26, 2025

October 23, 2025

Place and Date of Judgment:

Cranbrook, B.C.

October 31, 2025

- [1] THE COURT: I will be addressing only the application for relocation and orders relating to parenting time and parenting responsibilities. There was insufficient time to fully consider and address the issues about support or costs. I will canvass with the parties later on how to address those.
- [2] The ultimate issue between these parties is what parenting arrangements are in the best interest of their children. The claimant father seeks to relocate the children to live with him in Calgary, and the respondent mother submits they should remain residing with her in [town 1].
- [3] I want to start by acknowledging what this Court has said in a number of cases: relocation is one of the most serious decisions the Court is asked to make because it can have lifelong impacts on children and their relationships with their parents, and because of the serious nature of the issue. I add that it is a very challenging decision for the Court to make.
- [4] I am also aware of the possibility that my judgment may be perceived as this Court essentially preferring one party over the other, or the judgment making some statement about the capacity of the parents as parents. I want to emphasize that this is not how the issues are approached or decided, and not how the judgment should be seen. I am bound by clear legal principles. I must apply them in a neutral and fair analysis based only on the evidence at trial. But, I would be remiss if I did not acknowledge at the outset that I am aware of and sensitive to the fact that my decision will be enormously impactful to both the father and the mother, but also to their families.

I. FACTS

A. Uncontested Facts

- [5] I will first review the undisputed facts that provide background:
- a) The parties had a brief marriage: they were married in August 2014 and separated in June 2017.
 - b) They have two children together: L., born in January 2015, and E., born in November 2016 (collectively, the "Children").

- c) They lived together in [town 1] when the Children were born.
- d) After separation they briefly lived in the same house, but shortly thereafter the father moved to [town 2].
- e) At that time, the parties had roughly equal shared parenting time, with the father getting no less than 40% before he moved away. At that time the schedule was that the father had the Children from Thursday to Sunday, and the mother had them Monday to Wednesday.
- f) In 2020, the father decided to move to his current residence, which for convenience I will refer to it as being in Calgary, although technically, it is in a community very close to the city limit. Since then, there is no dispute that in order to exercise his parenting time, the father has done all the driving from his home to [town 2] to pick up and drop off the Children every other weekend.
- g) Both parties have re-partnered. The father and his current spouse have been living together since he moved to Calgary. She has three children from a previous relationship who live with her and the father, although those children also see their biological father.
- h) Since separation, the mother has had two children with her current spouse, S.K.: J., born in March 2022 and S., born in July 2023. They live together in what was the parties' family home.

B. Litigation History

- [6] A full understanding of the litigation history is relevant to parts of my analysis.
- [7] The parties had a parenting order granted by Judge Doerksen of the Provincial Court in July 2019.
- [8] The father filed the notice of family claim in September 2021, and the mother filed a response and counterclaim in October 2021. The father's response to that counterclaim was filed in December 2021.
- [9] In his notice of family claim, the father asked for orders that, among other things, the parties share parenting responsibilities, and that he would have the option to exercise parenting time every long weekend and any other times as agreed to by the parties.
- [10] The mother's pleadings sought orders, among other things, giving her final decision-making authority with regard to parenting responsibilities, and limiting the father to parenting time every other long weekend.
- [11] The parties attended a Judicial Case Conference ("JCC") on August 9, 2022, which resulted in a variation of the order of the Provincial Court with respect to parenting arrangements (the "JCC Order"). I will highlight a term that becomes significant later: with regard to parenting responsibilities, the JCC Order stated that neither party was at liberty to make a decision unilaterally. I note that was not what the mother originally had sought.

- [12] The parties entered into a consent order in January 2023 that dealt with property. The consent order addressed the fact there were no arrears of child support, and no spousal support was being sought. This consent order produced no change to the JCC Order regarding parental responsibilities or arrangements.
- [13] The father filed an application that is the genesis of this trial on July 6, 2023. In that he specifically asked that the application be put on the trial list because he was seeking to vary the JCC Order and wanted an order that the Children would reside with him in Calgary.
- [14] On July 24, 2023, the final order of divorce was granted by way of summary trial. However, Justice Taylor also ordered that the father's July 2023 application regarding parenting arrangements be referred to the trial list. Justice Taylor also held that in lieu of further pleadings, the parties would file trial briefs, and he set deadlines for that to be done.
- [15] The content of the trial briefs is important because of the order of Justice Taylor.
- [16] The father filed his first trial brief on August 30, 2023, and sought the following orders:
1. An order that the [Children] are to reside with the Claimant in Calgary, Alberta.
 2. An order that the Children shall relocate to Calgary, Alberta, if required in addition to the above term.
 3. An order that the Claimant will solely have all parental responsibilities for the Children as set out in section 41 of the Family Law Act.
 4. In the alternative, an order that in the event that the parties are unable to reach agreement in relation to the exercise of a parental responsibility, the Claimant shall be entitled to make those decisions and the Respondent will have the right to apply for directions on any decision considered to be contrary to the best interests of the children under section 49 of the Family Law Act.
 5. In the further alternative, an order pursuant to section 41(f) of the Family Law Act, and subject to section 17 of the Infants Act, the Claimant shall have all parental responsibilities for giving, refusing, or withdrawing consent to medical, dental, and other health-related treatments for the Children, and the Respondent will need to take all such reasonably and necessary steps to ensure she is following decisions made by the Claimant in relation to the Children.
 6. Such further relief as reasonably and necessarily connected to the issues relating to parenting time and the exercise of parental responsibilities as set out in the trial brief for the Claimant, including an adjustment under the Federal Child Support Guidelines, or alternatively, as determined by the Honourable Court.
 7. Costs.

- [17] I note that in the father's trial brief, he specifically sought an order for relocation to allow the Children reside with him.
- [18] The mother's trial brief, filed on September 12, 2023, sought changes to the JCC Order because she wanted to have sole parenting responsibilities. She also sought an order that the weekend parenting time of the father would have to occur only in British Columbia, which was a significant change.
- [19] A trial management conference was held in September 2023. At the conference, the trial was set for five days to start on February 6, 2024, and other procedural orders were made.
- [20] On February 2, 2024, the mother, who had been represented by counsel, filed a notice of intention to act in person and filed an application for an adjournment. The trial was adjourned to January 2025. That date was later set to May 5, 2025, and the parties again filed trial briefs.
- [21] The mother's trial brief for the May 2025 trial was filed on March 12, 2025. It stated that she sought different parenting orders from what she had in her previous trial brief. This time she sought an order that parenting responsibilities would be shared, but that she could make final decisions about the Children, and the father could challenge them in court. She also sought an order that all healthcare providers had to be local BC providers.
- [22] The father's trial brief was filed March 25, 2025, and in it he sought the exact same orders that he sought at closing submissions of this trial, including the order for relocation. He also sought orders that the mother would get parenting time every other weekend and that the exchanges would occur in [town 3] instead of [town 2] where they had been exchanging the children. I am not going to review the rest of the orders sought.
- [23] On March 27, 2025, the mother's counsel applied to withdraw and did withdraw. The mother filed an application to adjourn the trial that was scheduled for May 5, 2025, because she did not want to be self-represented. The father agreed to the adjournment, but on certain terms. An order was entered at the end of April 2025, which reset the trial to August 19, 2025.

II. WHAT IS THE LEGAL FRAMEWORK?

- [24] The parties differ on the applicable legal framework in this case because their positions on who bears the legal burden at the outset differ. I need to resolve that issue first.
- [25] One factor complicating the parties' positions is that the father, who is the relocating parent, had already relocated away from the Children's primary residence when the application for relocation was brought, but not in a way that was in defiance of a prior court order or agreement. He now seeks to have the Children relocate to his residence. That factual circumstance is different from most cases that discuss relocation. However, that difference does not alter the legal principles I have to apply.

[26] The father submits the issue at trial is whether he has met the burden under s. 69 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], that addresses relocation. The mother's position is that the father must first establish a material change in circumstances to justify varying a final order, by which she means the JCC Order. The father disagrees that that is the correct legal analysis. He also raises the issue of prejudice.

A. Does the Father have to Establish a Material Change?

1. Prejudice

- [27] The father submits that as early as May 2023, he raised the issue of relocation with the mother. She did not agree, which necessitated his application. He also stresses that it has been clear from his application, filed in July 2023, that he was seeking relocation of the Children to live with him and was not seeking to merely vary the JCC Order, even though the language of July 2023 application does not use the term relocation. I agree with the father that that was clearly the effect of that application. He also was seeking to change the parenting responsibility regime.
- [28] Moreover, after Justice Taylor ordered that the parties' trial briefs would stand in the place of pleadings, the father's trial brief filed in September 2023 expressly sought an order for relocation. He points out that in every trial brief the mother filed, she also sought to vary the parenting arrangements in significant ways, including at one point wanting final decision-making authority as well as changes to his parenting time, including the location of that parenting time.
- [29] That being the case, the father asserts that the mother must be taken to have conceded there was a material change in circumstances. He was not advised until the first day of trial that the mother took the position that he would have to establish a material change in circumstances. He says he was prejudiced by this, as his whole plan for trial was based on having to address the test for relocation only.
- [30] In response, the mother said that her trial brief should not be taken as conceding a point of law and while that stance might be reasonable in most cases, the problem here is that Justice Taylor explicitly ordered that the trial brief would take the place of pleadings and that the parties were required to specify the orders sought therein.
- [31] The mother's position on the appropriate parenting time and parenting arrangements has changed over time, including up to the final submissions. Also, I agree with the father that that in none of the trial briefs the mother filed did she take the position that there should be no changes to the JCC Order, or that the father had to establish a material change in circumstances to succeed on his relocation application; that is a relevant factor. As I pointed out, she too sought significant changes to the existing JCC Order.

- [32] Therefore, I agree with the father that the mother's position taken at trial --that he must establish, as a threshold, a material change in circumstances -- was a new position and potentially prejudicial.
- [33] I know, over the course of the litigation, both parties were self-represented for periods of time, although for the father that was only a brief period. The mother has changed lawyers a few times, and most significantly, she became self-represented twice when the trial was adjourned. Thus, notwithstanding the order of Justice Taylor, I need to be mindful that her status as a self-represented litigant for periods of time in the life of this litigation does not operate to visit upon her a significant disadvantage.
- [34] In that light, I am not sure it would be appropriate or in the interest of justice to fail to even consider the mother's argument about material change in circumstances simply because she did not identify it as a threshold issue in her trial brief. However, the prejudice to the father that I have identified might be relevant to costs, but that is not an issue that I am going to address now.
- [35] Therefore, it is appropriate to consider her argument. However, for the reasons I now explain, I do not agree that the father must demonstrate a material change in circumstances to succeed in his application for relocation.

2. Case Law

- [36] A number of cases address this issue, and they clearly state that a material change in circumstances does not need to be demonstrated to succeed on an application for relocation.
- [37] The most relevant of these cases is *B.W.H. v. T.B.H.*, 2024 BCSC 1235. In that case, the parties had both a final order and an agreement regarding parenting issues and child support. The father brought a relocation application to move where he and his new family had been residing since the previous summer. He wanted to vary the existing final order to adjust parenting time accordingly.
- [38] Justice Wolfe said that the father's notice of application, on its face, was framed as a variation application, but before her, the parties framed the submissions in terms of material change in circumstances. She stated at para. 41:
- [41] However, the background of this matter, the materials filed in support, and the hearing itself made it clear that the true core of what the Father seeks is relocation of the children.
- [42] If the Father is successful in what he seeks, a variation of the Final Order will be a necessary corollary and is expressly permitted by s. 70(1) of the FLA. Accordingly, I will focus on the legal test for relocation. In a practical sense, there can be little doubt that, as a result of the parties' various moves and the agreed change to a week on / week off schedule for almost four years, there has been at least one "material change" - if not more - since the Final Order, with the most recent being the Father's summer 2023 move to Salt Spring Island.

- [39] In *R.C. v. R.E.H.*, 2014 BCSC 2348, also a relocation case, Justice Armstrong stated that the FLA is different from the traditional views expressed by the Supreme Court of Canada about relocation. In *Gordon v. Goertz*, [1996] 2 S.C.R. 27, 1996 CanLII 191 [Gordon], the party seeking relocation first had to establish a material change in circumstances since the last order was made. As noted by Justice Armstrong, the FLA does not require there be established a change in circumstances as a threshold issue before considering changes in residence of guardians or children (para. 61). I also refer to the case of *D.T.S v. S.P.M.*, 2022 BCSC 547, a decision of Justice Francis dismissing an appeal from a decision of the Provincial Court, at para. 26:
- [26] Since there is no threshold requirement of a material change of circumstances under Part 4, Division 6 of the FLA, the trial judge was not required to find a change of circumstances
- [40] Justice Francis added, however, that the trial judge's findings were, in fact, consistent with a change of circumstances in any event.
- [41] Before me, the mother relied on *A.H. v. M.B.*, 2025 BCSC 873. She asserts that in that case, the Court held that the first question for relocation applications is whether there is a material change in circumstance, and if there is not, then the inquiry would end.
- [42] I do not agree that is what the case stands for. This case was an appeal from a Provincial Court decision dealing with parenting. The parties had two children and had entered into a separation agreement that expressly permitted A.H. to relocate with the children. After relocation, problems developed, and A.H. sought exclusive parenting responsibilities. In response, M.B. sought to change the children's residence to that parent's residence.
- [43] The Provincial Court judge granted M.B. sole parenting responsibilities and ordered the children to be relocated. On appeal in this Court, one of A.H.'s arguments was that the trial judge erred in setting aside a signed separation agreement, which explicitly made an order about relocation without first finding a material change in circumstances.
- [44] Neither the trial judge nor the reviewing judge considered the legal framework under the FLA for relocation. I find that to distinguish the case.
- [45] Therefore, the mother's reliance A.H. and the reference to Gordon being applicable is misplaced. Gordon was relevant in A.H. because the trial judge did not treat the proceeding as a relocation application; rather, the trial judge treated it as an application to set aside a separation agreement.
- [46] In any event, the other cases are very clear that you do not need to have a material change in circumstances to succeed on a relocation application.

3. Final Order

- [47] Another facet to the mother's argument on the applicability of A.H. was that there was a final order or an agreement regarding relocation. She submits because of that, it was necessary to show a material change in circumstances.
- [48] Counsel purported to draw an analogy between the agreement in A.H. and the JCC Order at issue in this case, saying both represent an agreement akin to a final order.
- [49] I disagree. Among other things, B.W.H. is the case that is more directly applicable because there was both a final order and an agreement.
- [50] Regardless, the JCC Order is not a final order. Except for the divorce, I take the view that there has not yet been any final order regarding parenting time. Nor do I agree that an order can be analogized to an agreement simply because it was granted at a JCC, or by consent.
- [51] The mother relied on A.H. for her position on this. That case is distinguishable because the parents specifically turned their minds to the issue of relocation and agreed that A.H. could relocation with the children. In this case, there was no relocation of the children in the JCC Order.
- [52] Finally, the mother's approach on this issue is not consistent with the wording of the FLA. The father explicitly sought in his July 2023 application an order to have the children's primary residence change, so they would live with him; that was not merely an application for a variance in the JCC Order with regard to parenting time or parenting responsibility.
- [53] Section 65(2) of the FLA states that Division 6 of the legislation (the division respecting relocation) applies where the parent plans to relocate and there is an existing order or agreement regarding parenting arrangements. Since no application would be necessary if an order or an agreement expressly allowed for the relocation, it is clear that every application for relocation would necessarily involve varying parenting arrangements. If the mother's position was accepted, then the relocation would never be allowed without first establishing a material change in circumstances. That is contrary to the clear wording of the FLA and the case law on relocation.
- [54] Therefore, the operative section before me is s. 69 of the FLA.

B. Division 6 of the Family Law Act - Relocation

- [55] It is important to understand the structure of Division 6.
- [56] Section 65(1) defines relocation:
- 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.

- [57] Division 6 applies if guardians intend to relocate either themselves, their children, or both, and there is an order already in place: s. 65(2).
- [58] Section 66 provides for notice requirements that apply even if a guardian intends to relocate themselves only, or the child, or both. Section 67 states that where notice is given, the guardians must make best efforts to try and resolve any issues that arise from that.
- [59] The father moved to Calgary in 2020. Before that move, the parties had a Provincial Court order in place that established shared parenting, and the father had no less than 40% of parenting time. The father submits that at that time, the parties lived in close proximity, the parenting arrangements were workable and the parties were flexible with one another. Before his move to Calgary, the father outlined what he said was the regular schedule, which I have described above.
- [60] When the father moved, the parenting time was altered: he had parenting time every other weekend, and they split the holidays. There was no court application respecting that change. The evidence at trial indicates that the parties did actually cooperate in order to come up with a parenting arrangement for the father, even though he had relocated.
- [61] The test for relocation is set out in ss. 69(4) and 69(6).
- [62] Section 69(4) provides as follows:
- 69(4) If an application is made under this section and the relocating guardian and another guardian do not have substantially equal parenting time with the child,
- (a) the relocating guardian must satisfy the court that
 - (i) the proposed relocation is made in good faith, and
 - (ii) the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life, and
 - (b) on the court being satisfied of the factors referred to in paragraph (a), the relocation must be considered to be in the best interests of the child unless another guardian satisfies the court otherwise.
- [63] Section 69(6) lists out the factors that the court must consider in determining whether the proposed relocation is made in good faith:
- (a) the reasons for the proposed relocation;
 - (b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;
 - (c) whether notice was given under section 66 [notice of relocation];

- (d) any restrictions on relocation contained in a written agreement or an order.

C. Legal Principles Regarding Relocation Applications

- [64] First, good faith under s. 69 is a subjective inquiry into the relocating parent's state of mind: *D.T.S. v. S.P.M.*, 2022 BCSC 547 at para. 46.
- [65] With respect to good faith, in *D.T.S.*, the Provincial Court judge had found that the mother, the relocating party, had taken significant steps to restart her life in Kelowna and that she had effectively moved. That was in defiance of a court order because she had previously applied for relocation and was denied permission. The father in that case argued it was, therefore, impossible for her to meet the good faith test. Importantly, on appeal, this Court stated that the analysis focuses not on the actions of the mother, but the best interests of the children. Therefore, the focus of the good faith enquiry is not intended to penalize the bad behaviour of parents: *D.T.S.* at para. 59. In *B.W.H.*, Justice Wolfe commented that good faith amounts to an absence of bad faith (para. 51).
- [66] This means that relocation can still be allowed even if the test for good faith is not established where the court concludes relocation is in the best interests of the child: *L.V.R.L. v. M.A.E.S.*, 2022 BCSC 2437 at paras. 31-32. Where an applicant meets the conditions set out in s. 69(4), the relocating parent benefits from the presumption that relocation is in the best interests of the children (*C.M.B. v. B.D.G.*, 2014 BCSC 780 at paras. 75-78) although, it is still open for the respondent parent to rebut that presumption. This makes sense because the Court has an overriding obligation flowing from its statutory duty, as well as its *parens patriae* jurisdiction, to consider whether relocation is in the best interests of the children regardless of any statutory preconditions: *C.M.B.; Hadjioannou v. Hadjioannou*, 2013 BCSC 1682 at paras. 17-19.
- [67] The mother challenged the reasons the father gave for moving to Calgary. She wanted the Court to make findings that his testimony about why he moved to Calgary was not reliable and/or credible, which she asserts is relevant to the good faith analysis.
- [68] It is not clear to me that it is legally relevant. It is important to remember that s. 69 deals with the request to relocate the child. When the parent alone, relocates it seems like the notice section (s. 66) applies, but that is not at issue in this case. The ability of an opposing party to file an application opposing relocation is only triggered when the relocating parent also seeks to relocate the child (s. 68).
- [69] In my view, the father's reasons for his relocation to Calgary are not material to my analysis. The situation would be different if the father had relocated in defiance of a court order, but those are not the facts before me. Certainly, there are cases where, even when a relocating parent moves in defiance of a court order, that fact alone does not necessarily defeat the application for relocation of the child: *B.W.H.* at para. 50.

[70] In this proceeding, the issue of notice--either about the father's move or of the application for relocation--was not contested by the mother. I did not understand either party to suggest there were restrictions on his relocation as that term is used in the FLA. Therefore, based on the evidence and their submissions, only s. 69(6)(a)-(b) are contested.

III. RELOCATION ANALYSIS

[71] I note that in addition to the parties, the father's current spouse and the mother's father, who lives in Winnipeg, testified. Notably, the mother's current spouse and the father of her two youngest children did not testify.

A. Overview of the Evidence

[72] The parties disagree on the characterization of life in either party's household. The parties also dispute the seriousness of a number of events and the significance of those events as it relates to the legal issues before me. While the existence of these events themselves may not be disputed, the parties differ in opinion about the significance of these events and what inferences may be drawn from them.

[73] By way of overview, the father says that the relocation is in the Children's best interests. He says he sought relocation based on his position and belief that the mother did not engage in reasonable or effective co-parenting, resulting in her admitted breach of the parenting order currently in place. Most significantly, he asserts that she failed to consult or seek his input, much less consent, regarding issues of significance to the Children, especially regarding their medical care. He also says she failed to provide him with important and timely information about matters of significance to the Children. He was also concerned by what he characterized as the disordered life for the Children in the mother's home.

[74] For her part, the mother was candid in admitting having made some mistakes and struggling at times with raising four young children, but she emphasized her commitment as a primary caregiver to the Children over the course of their young lives. She also says that it cannot be demonstrated that the Children's quality of life will improve by moving to Calgary versus remaining in [town 1].

[75] In relocation applications, there is a significant overlap with the factors that I must examine with those that I must also consider under s. 37; there may be duplication or references to the discussion of evidence in other parts of the judgment.

B. Relocation Made in Good Faith (s. 69(4)(a)(i))

1. Reasons for the Relocation (s. 69(6)(a))

- [76] I have already explained that I do not agree with the mother about the materiality of the father's stated reasons in his testimony for the move to Calgary, and I rely on that discussion here. The focus must be on why the father believes that the Children should be relocated to live with him.
- [77] Even if I am wrong about the appropriate focus, I do not agree with the mother's characterization of the father's testimony about why he moved to Calgary. This is relevant because she challenged his credibility based, in part, on this evidence about his move.
- a. Father's Move to Calgary
- [78] The father says he moved to Calgary in 2020 to improve his financial situation. He works as a carpenter, and when COVID-19 emerged, he was working for a small company. He said he did not have the flexibility to work full time and still follow protocols. He was not making much money, and he was living in a basement suite. He came to believe that he could not get ahead. Specifically, he thought it would be very difficult in the near future to find and afford a house big enough to accommodate the Children and him in one residence.
- [79] He testified that he was motivated to improve his financial situation, and that by moving to Calgary, he could get a better paying job, clear up some debt, and get back on his feet. His testimony was that this belief turned out to be true. He has worked for the same employer since he moved there and has continued to get promotions. His income has improved from being about \$50,000 annually, to \$82,000 a year. He is now a site supervisor, which gives him more flexibility regarding his time.
- [80] In response, the mother submits that his income while he was in [town 1 and town 2] was decent and sufficient. She also points out that COVID-19 struck across the entire country. She submits the Court should be suspicious of the father's reliance on COVID-19 as the genesis of his move. Her position is that that he was using COVID-19 as a cover for him wanting to move to Calgary in order to move in with his current spouse.
- [81] I find this submission was devoid of an evidentiary basis other than the mother's suspicions, and I do not accept that it necessarily accords with common sense.
- [82] I have no reason to doubt the father's evidence about his income situation prior to the move or the genuineness of his belief that the prospects in Calgary would be better. Good faith refers to a subjective state of mind. I also find that his belief turned out to be true as his income and his type of job did improve.
- [83] I do not agree that the father's reference to COVID-19 prompting his move to be a suspicious statement. I find nothing inherently problematic with the suggestion that opportunities to find work in carpentry during COVID-19 would be easier in a big city than a small town where there would naturally be fewer employers. But again, whether the father's reasons were true is not the issue in this analysis because good faith is subjective. Even if it was not, the mother presented no evidence to support her position about COVID-19 or the unreality of the father's testimony on that point.

[84] The mother also submits that the father was being disingenuous in saying he moved for financial prospects because there is no dispute that he moved in with his current spouse in Calgary. However, the father did not deny that was part of the reason he moved. His explanation was that what prompted his decision to move was a consideration of his lifestyle and needs, and what he could accomplish financially if he stayed in [town 2] versus moving to Calgary. I am not persuaded that the father was either disingenuous or dishonest in his testimony about why he moved.

[85] Moreover, moving in to be with one's partner is not indicia of bad faith, especially since he did not move immediately after separation. The father moved to Calgary about three years following the separation with the mother.

b. Timing of the Application

[86] The mother also challenges the timing of the relocation application. She submits that because the father filed a relocation application less than a year after consenting to an order that the children live primarily with her (the JCC Order), it draws into question the bona fides of his request. She emphasizes that the evidence he relied on to justify relocation centred on disputes about medical care that took place before the JCC Order.

[87] I agree with the father that the mother's characterization is not fair. I accept his position that what was significant at the JCC was his disagreement with the mother's desire to have final decision-making authority over the Children, which she had sought in her response to the notice of family claim. The father's understanding is that the term in the JCC Order setting out shared parental responsibilities required the parties to come to an agreement over important decisions affecting the Children. Significantly, the father says that the JCC Order provision that neither party could make a unilateral decision was critical to his consent because of his concerns regarding events in 2021 and 2022, which he raised at trial (these are primarily issues relating to the Children's medical conditions and how the mother responded to them, which is addressed later in this judgment).

[88] The father says he had hoped that having that term in the JCC Order would encourage greater cooperation between he and the mother. He submits the JCC Order made it clear that they would have to go to Court if they did not agree. Specifically, he testified that he believed the mother's failure to inform him and to seek consent about parenting decisions in the past could be improved by the JCC Order. However, in his view, there had been no improvement on that following the entering of the JCC Order and that is why he applied for relocation.

[89] I do not accept the mother's position that the timing of the relocation application should be significant to my determination of good faith. I reiterate that the good faith test is subjective and not meant to penalize a parent: D.T.S. at para. 59. Therefore, even if one of the father's motives was suspicious (and I do not find that it was), it would not necessarily be fatal to this relocation application.

[90] In any event, I am satisfied that the father's reasons for seeking to relocate the Children is consistent with what he believes to be in the best interests of the Children and, thus, consistent with having good faith.

2. Quality of Life (s. 69(6)(b))

[91] The second factor under good faith is whether the Children's general quality of life will be enhanced by moving to Calgary to live with their father.

[92] The evidence relevant to this factor overlaps to a significant degree the analysis I am required to undertake when I consider the best interests of the Children under s. 37. To avoid repetition, I incorporate here as necessary discussions later in this judgment about the list of factors in s. 37.

[93] I will start with a general comment that this Court makes no assumptions one way or another about whether life in a small community or large city centre is more likely to enhance a child's quality of life. The assessment I am making is based on evidence presented at trial, and the needs and circumstances of these particular Children in light of their family situation.

a. Education/Recreation

[94] To a large degree, the mother's submissions and the questioning of the parties focused on the availability and range of recreational activities and medical professionals in [town 2] and Cranbrook. The mother also stressed that the Children had lived in [town 1] since birth, and that they had established relationships with teachers, friends, and other professionals.

[95] I accept that the Children's ability to access recreational, medical and health-related services does not differ significantly in any way between the two geographical locations ([town 1] and Calgary). Thus, at their current young age, I am unable to conclude that the recreational or educational opportunities favours one location over another. However, that is not to say that in the future that will remain true.

[96] By the same token, I do not agree with the mother's submission that relocation--because it means moving away from the current school, friends, activities--will undermine, not enhance, the Children's quality of life. Every relocation application engages those types of changes. To accept the mother's argument that those factors are decisive or carry significant weight would amount simply to preferring the status quo because it is the status quo. That line of argument is contrary to the case law.

[97] In any event, I find the evidence illustrates that there is a significant difference in the quality of the Children's lives in the two households, especially as it relates to their emotional well-being.

b. The Parties' Households

- [98] In Calgary, the Children will be living in a large house on an acreage. Each child has their own room. They are part of the father's new family whose other members take an active role in supporting the father's parenting of the Children.
- [99] I do not find any concerns were identified in direct examination or cross-examination in terms of his current spouse's ability to be supportive and involved in taking care of the Children. The father's current spouse teaches piano in the family home, often in the evenings when the father is back from work. She is able to be present for the Children (and her children) during the day and also earn income to contribute to the family.
- [100] Both the father and his current spouse testified about what they say was their ability to successfully blend the two families. His spouse's mother lives on the same property and is involved in the family as a support for driving and care, but also as a loving grandmother. The father reports the Children have a good relationship with her. I add that the father and his current spouse are married and that she owns the family home mortgage-free.
- [101] The mother lives in what was the parties' family home. The mother does not own the home; it is owned by her brother-in-law. The Children share a room. They have a non-family member tenant in the basement, but it is a person the mother says she knows well. She testified that they recognized they may have to make a change in future so that the older child will get his own room, but that would mean losing rental income. There is no clear plan in place right now to address that.
- [102] The mother has two younger children with her current spouse, S.K. As I will discuss below, I find the evidence demonstrated that this has compromised her ability to meet the needs of the Children, which, in turn, has significantly contributed to what I find to be a less stable environment in her household.
- [103] To be clear, this is not a general finding that parenting four young children represents less stability. It is based on the evidence in this case, much of which came from the mother herself. In my view, this analysis relates directly to and overlaps with s. 37(e)-(f) of the FLA, which codifies the test for the best interests of the child. I adopt my discussion of those factors here.

c. Meeting the Children's Basic Needs

- [104] I commend the mother for her candid and clearly genuine testimony about some of the challenges she has faced parenting four young children. She explained that she understood at times she needed assistance and, therefore, she did not hesitate to reach out to social services for that assistance. Nothing in this judgment should be taken as suggesting there was anything wrong with that in and of itself. Nevertheless, it is material to my analysis that the mother admitted that she has had to rely on outside supports to provide for the basic daily needs of her family, including food preparation, putting food away, laundry, household chores, and how to maintain a schedule.

- [105] In fact, in the mother's home, there has been extensive involvement of social services. While no protection issues were identified, the degree and duration of that involvement, in my respectful view, is not consistent with the best interests of the Children. The involvement of social services is relevant to her ability to exercise her parenting responsibilities, to provide for their daily care, and to promote stability.
- [106] Additionally, the mother has admitted to a history of difficulties getting the Children to school on time, and she has said that she sometimes has to drop lunch or snacks off after the Children have already left. The mother felt this was not serious because the school understood and because it was related, in her mind, to a medical issue the Children have. I will address that point later.
- [107] In my view, the mother downplayed the significance of the Children's late arrivals to school. While one cannot say that the Children's education would actually suffer by late arrivals at this young age, the chronic lateness is indicative of someone not managing time well. This issue is not merely the result of hectic or busy household with four young children. It is a situation where there have been significant periods of time where the Children's basic needs cannot be met by the mother unless she had the assistance of social services.
- [108] I note that these issues are particularly concerning when the mother lives with a spouse who appears unable to provide sufficient support. The mother gave some non-specific evidence of support that she receives from her current spouse, but obviously, that support was neither consistent nor sufficient because she had to rely on social services. This contrasts sharply to the father and his spouse's evidence about how they managed their busy household with five children. It is true that three of those children are older, but as anyone that has teenagers knows, having older children does not mean it is easier to manage their time--in some ways, the logistics might be even more challenging.
- [109] I also incorporate and rely here my discussion later about significant concerns that I have about the mother's spouse, including an incident of family violence. Together with my concerns about the involvement of social services and the Children's consistent late arrivals at school, I find those to contribute significantly to my conclusion that the mother's household is less able to provide stability for the Children, commensurate with their age and stage of development. It is for all those reasons I find the quality of the Children's lives will be enhanced by relocation, specifically as it relates to their emotional well-being.

3. Conclusion on Good Faith

- [110] For all those reasons, I conclude that relocation has been made in good faith.

C. Reasonable and Workable Arrangement (s. 69(4)(a)(ii))

- [111] Section 69(4)(a) requires the court to consider whether the proposed arrangements are reasonable and workable in order to preserve the relationship with the other parent.

[112] The father has proposed arrangements that could be made if relocation is granted. In his trial brief filed March 25, 2025, the father proposed the following parenting arrangements should relocation be granted:

2. During the school year, the mother will have parenting time as follows:
 - a. Every other weekend from 3:00 PM on Friday until 1:00 PM on Sunday. In the event that a non-instructional day is attached to this weekend, the mother's parenting time will include the non-instructional day;
 - b. In addition, the mother may exercise parenting time on any other weekend that includes a non-instructional day on either the Friday or Monday (i.e. any long weekend), with the exception of Easter and Thanksgiving, which shall be addressed separately. The mother will provide at least seven (7) days' notice of her intention to exercise parenting time pursuant to this order;
 - c. If the non-instructional day is on a Friday, the mother will have parenting time from Thursday after school until Sunday at 1:00 PM.
 - d. If the non-instructional day is on a Monday, the mother will have parenting time from Friday after school until Monday at 1:00 PM.
 - e. For the purposes of exchanging the Children, the parties will meet at the McDonalds in [town 3].
 - f. The parties may agree to alter this schedule from time to time, or the drop off/pick up times or locations, provided both parties agree in writing.
3. During the summer school holiday, the children will spend two (2) weeks with the father, and the remainder of the summer with the mother. Unless the parties agree in writing otherwise, the summer holiday will be split as follows:
 - a. The mother will have parenting time from Sunday at 12:00 PM following the last day of school until the commencement of the last week of July;
 - b. The father will have parenting time from 12:00 PM on the Sunday prior to the last week of July until 12:00 PM on the Sunday two weeks later.
 - c. The children will then be with the mother until Saturday at 1 PM that precedes the children's first day back in school.
 - d. For the purposes of exchanging the Children, the parties will meet at the McDonalds in [town 3].
 - e. The parties may agree to alter this schedule from time to time, or the drop off/pick up times or locations, provided both parties agree in writing.

4. During the school spring break, the children will be with the mother from 3:00 PM on Friday until 1:00 PM on Sunday before the children return to school. The parties will meet at the Petro Station in [town 3] British Columbia for the purpose of pick up and drop off. The parties may agree to alter this schedule from time to time, or the drop off/pick up times or locations, provided both parties agree in writing.
5. The parties will alternate between Thanksgiving and Easter long weekend. The father will have Easter long weekend on odd-numbered years, and the mother will have Thanksgiving. On even-numbered years, the father will have Thanksgiving weekend and the mother will have Easter weekend.
6. At all other times, the children will reside with the father, unless otherwise agreed between the parties in writing.
7. Neither party will arrange extracurricular activities for the children while they will be with the other parent, unless with the express written consent of the other party.
8. Each party shall be at liberty to provide the Children with a communication device, including a cell phone or tablet, and the Children shall be at liberty to communicate directly with the other parent at dates and times as agreed between the Children and that other parent.
9. Parental responsibilities must be exercised as follows:
 - a. [Both parties] will have the obligation to advise each other of any matters of a significant nature affecting the children;
 - b. [Both parties] will have the obligation to discuss with each other any significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
 - c. [Both parties] will have the obligation to discuss with each other and the obligation to try to reach agreement on those decisions;
 - d. [Both parties] will respond to any communications about the welfare of the children, including their health, education and general welfare, within 72 hours;
 - e. In the event that the mother and the father cannot reach agreement on a significant decision despite their best efforts, the father will be entitled to make those decisions and the mother will have the right to apply for directions on any decision she considers to be contrary to the best interests of the children, under section 49 of the Family Law Act;
 - i. Alternatively, the parties may agree in writing to retain a parenting coordinator, and if done so, the parenting coordinator will be entitled to resolve any disagreement between the parties as it relates to exercising parental responsibilities.

- f. Each party will inform the other about any medical, dental, and other-health related treatments for the children at least 7 days before any scheduled treatment date, or where that is not possible because of an emergency, then as soon as possible. Further, each party will inform the other of the results of any medical, dental, or other health related treatment within 48 hours of the treatment date if the other party was not present at the treatment.
 - g. In the event that the father makes a decision relating to medical, dental, and other health-related treatments for the children, the mother will follow and take all such reasonable and necessary steps to ensure the children receive the treatments while they are in her care, unless otherwise ordered by the court or as decided by a parenting coordinator.
- [113] I find that the father has proposed arrangements that are workable and reasonable to preserve the Children's relationship with the mother.
- [114] I highlight the important aspects of this plan. He is proposing that she would have parenting time every other weekend, and, if any Friday or Monday is a non-instructional day, it would expand the parenting time that she has.
- [115] The father suggests equalizing the travel time by meeting in [town3]. I find this makes no difference to the travel time for the Children. They will still have to travel and return from Calgary to [town 2] over the course of a weekend, which puts them in the car roughly eight hours a day, roughly twice a month--the exact same amount of travel time under the current parenting arrangement. The only difference is that the father's travel time would be reduced by half, and the mother would have to spend eight hours driving.
- [116] The increase in driving time is the main reason for the mother's position that the father's proposed arrangement is unreasonable. She says that because she is the mother of two other young children, the requirement that she has to drive eight hours every other weekend is not reasonable nor workable for her.
- [117] In addition to the expense and time, she is concerned about having young children on the highways that often. She also points out that her time with the Children will be significantly reduced from what it is now.
- [118] I acknowledge the relocation proposal will mean that there is a driving burden that is equally shared, which represents a significant difference from the current arrangement and creates a significant inconvenience for the mother. However, I do not agree that inconvenience rises to the level that it makes a proposal either unreasonable or unworkable. Part of the mother's position was that she would have to do all the driving and take her younger two children with her. However, it is not clear to me why that would always be the case. I accept there might be times when the mother has to drive with her two other children in the car, but she has not provided any evidence as to why that would have to occur every time.

- [119] My concern here is emblematic of a larger issue that I address later about the gap in evidence caused by the mother's current spouse not testifying as a witness. The lack of testimony from the mother's current spouse, S.K., is a further indication that the mother's claim that he is supportive may not be reliable. It might be there is a good reason why she felt she had to take her two young children in the care for exchange every time. The lack of that explanation on this point is troubling.
- [120] With respect to inconvenience, it is undeniable the proposal will be inconvenient to the mother. However, I do not necessarily find that means the new arrangement will have a negative impact on her relationship with the Children, which is the crux of the issue.
- [121] I add that the plan calls for the mother to have the bulk of the summer holidays with the Children. This aspect of the arrangement provides considerable advantages to her, especially in that it will make it easier for her own family members to come and see the Children without time restrictions and for her to go to Manitoba for a long period of time. She did not address that aspect of the plan in her submissions under this part.
- [122] It is obviously true that her parenting time with the Children will be significantly reduced, just as the father's time will be significantly increased. However, the case law confirms that the focus under s. 69(4)(a)(ii) must be on whether the proposal is workable and reasonable with respect to relationships being preserved, not with respect to preserving the status quo, which is the tenor of her position: B.W.H. at para. 68. As noted at paras. 67-68, in many scenarios for relocation, the reality is it will reduce one parent's time and increase the other's, but the FLA does not require maintaining the status quo. I add that the FLA does not make any assumptions about what type of parenting plan is in the best interests of the child, as it is always an individualized assessment.
- [123] I also note that the mother's concern about the Children being in the car on the highway for long periods of time applied equally to when the father was exercising his parenting time, and yet she consented to that.
- [124] For all those reasons, I find that the father's proposal provides reasonable and workable plan to preserve the relationship with the mother.

D. Conclusion on Relocation

- [125] To conclude, for the reasons discussed above, I find the father has met the burden to establish that relocation should be allowed. This finding is subject to the mother demonstrating that the relocation is not in the best interests of the Children.

IV. BEST INTERESTS OF THE CHILDREN (s. 69(4)(b))

[126] In discussing and analysing the evidence on this issue, I am guided by the framework set out in ss. 37-38 of the FLA. I repeat that my discussions under some headings relating to relocation are relevant to the discussion of the Children's best interests and where necessary, adopted.

[127] Section 37(1) states that when a court makes an order respecting parenting arrangements, the court must consider the best interests of the child only. Section 37(2) sets out the factors the court must consider in determining what is in the best interests of a child:

- (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 the person's 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 the person's 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.

[128] Section 38 deals with family violence in the context of assessing the best interests of a child. For the purposes of s. 37(2)(g)-(h), the court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;

- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[129] I add that this discussion is not only relevant to relocation, but it also relates to the competing plans of the parents about how to allocate parenting responsibilities.

[130] I find there are a number of overarching themes to the evidence that are material to my analysis and conclusions, and they are relevant to multiple factors. Some of these themes I have already relied upon in my assessment of whether relocation would enhance the quality of the Children's lives. I will address these by topic.

A. Overarching Themes to the Evidence

1. Failure to Call S.K. as a Witness

[131] As noted, the mother did not call her current spouse to testify. I find that her failure to do this without explanation is highly problematic. As the mother's spouse and the father of her two youngest children, S.K. is in a position to be a parent to the Children. S.K. is a person the mother says she relied on, who has provided support to her, and in whose care the Children are in or could be in for significant periods of time.

a. Family Violence

[132] S.K. is also a person involved in several concerning incidents: one involving the police. The father raises concerns about S.K. assuming a primary or important role in caring for the Children.

[133] One of the father's primary concerns related to S.K.'s alcohol consumption. While the father holds the opinion that S.K. abuses alcohol, the mother did not accept that characterization. She said that he has one or two drinks virtually every day and has for the last decade. She acknowledged that he sometimes drinks to excess, as do many people.

[134] In cross-examination, the mother was asked if she considered S.K. to be a heavy drinker. While at first she disagreed, she then said that she is not a doctor or did not have a document to make that determination. I do not discount the possibility that someone can drink as often as S.K. does and present no concerns regarding their capacity to parent, but that is not the evidence before me.

- [135] Another major concern in this case was a serious incident that the mother identified as being a result of S.K.'s alcohol consumption. When she was asked whether S.K.'s drinking was problematic, she said no with the exception of one incident, which she went on to describe. There was an incident in the mother's home in January 2025 in which the mother feared for the safety of herself and her children. She called the police as a result of what happened.
- [136] The mother testified about that incident. She now says both she and S.K. are ashamed by what happened and the fears she had at the time turned out not to be justified.
- [137] She also explained the circumstances that led up to the incident to put it into context. Unfortunately, the mother's daughter had been very ill and had to be hospitalized. The mother was spending significant amounts of time at the hospital. Obviously, she was worried and tired. When she returned home, tensions in the home were high, understandably. She asked S.K. to assist her, and he did not respond quickly. They had an argument. Both were upset. She sent the Children to their room and kept the younger two children with her. She wanted to get away from him, so she went into her room and shut the door.
- [138] S.K. barged in, and the door hit one of the younger children. The mother saw blood on the child's nose and the child on the floor. She testified that at that point she was terrified. She fled into the next room where the Children were and called the police. She described herself as being hysterical on the phone. In the end, it turns out that the child was not seriously injured, and she accepted that S.K. did not intentionally hit the child with the door.
- [139] What is material and significant is at the time the mother had a subjective fear for the safety of herself and her child because of S.K. and called the police. In a healthy, trusting relationship, when you have a partner not prone to angry outbursts or violence, if a door hits and injures a child, even during an argument, it is difficult to conceive that a parent would be terrified of that spouse. One would assume that it was an accident and unintentional, even if careless. I accept that the other parent might be angry at the carelessness, but I do not accept that such an incident on its own would logically or naturally lead to the other parent being terrified. I cannot imagine calling the police or being hysterical in the situation where the partner was trusted and not prone to outbursts.
- [140] The mother's reaction to that incident speaks volumes as to her sense of safety and trust in her own spouse. The Children did not see the door slamming. However, they were in the same room with the mother, who described herself as being terrified and hysterical when she called the police because at the time she believed that the door slamming had seriously injured one of her other children. It is not realistic to suggest that the Children were not aware at that time that their mother feared for the safety of herself and her children from her own intimate partner because she believed that he had injured their younger sibling.

- [141] In my view, this was an incident of family violence. I am satisfied based on the Children's proximity to the incident and because they were with the mother as she was terrified and hysterical to call the police, that they were exposed to family violence.
- [142] I find this incident to be significant on its own, but its gravity is compounded by the nature of the mother's communication with the father about it. She gave him minimal information, and when he asked for more information, a part of her response was words to the effect that, "I am not discussing the details of this matter with you". In her testimony, she said that she was told by someone not to tell the father and not to give him full details. She said perhaps it was the police, but she then clarified it was someone from Ministry of Children and Family Development (MCFD).
- [143] I find that difficult to accept. It would be surprising if a professional suggested that a parent could not have full details of a police incident at the home where the their children resided. Regardless of that, as ss. 37-38 of the FLA and case law from the Supreme Court of Canada and the Court of Appeal make clear that courts are required to carefully assess any incident of family violence.
- [144] Here, the violence was not directed at the Children, but their proximity to the incident and their exposure to their mother expressing fear of her own spouse are very concerning. The incident of family violence was recent, and I do find that the Children were exposed to it even if the violence was not directed at them.
- [145] I am not satisfied that this incident represents a pattern of behaviour. However, it was a significant event. I find there was insufficient evidence at trial about steps the parties have taken to ensure there would not be a reoccurrence. As I have said earlier, the reason for this gap in evidence is primarily because the mother chose not to call her spouse, S.K., as a witness. She claimed that S.K. stopped drinking "as much" after the incidents, but there is no direct or indirect evidence that he sought counselling for anger or drinking. I therefore draw an adverse inference from the mother's failure to call S.K. that he has taken no or minimal steps to address the incident, his alcohol consumption, or anything else that contributed to that incident.
- [146] The mother's position was that I can rely on her testimony that steps have been taken. However, even if that was sufficient, all that she said on that issue was that she and S.K. talked to someone at MCFD about it. When asked what they have done to prevent a future recurrence, her response was simply that she would not hesitate to remove herself and call 911 in the future. With respect, that is not a step to address the possible future occurrence. It is a rational response to what one should do in such a situation, but it is a reactive measure, not a preventive one.
- b. Allowing S.K. to Make Decisions without Father's Input
- [147] Apart from the incident of family violence, I also find the evidence demonstrates that S.K. has had other problematic interactions with the Children. Two incidents stand out.

- [148] First, in January 2025, S.K. gave one of the Children a gun for his 10th birthday. The father was not informed; he only found out when the child told him. When the father asked for information, the mother's response was, "[w]ell, it was legal and everything was fine." She confirmed that S.K. has taken the Children to target practice. I acknowledge there is nothing inherently wrong with gun ownership or use, but giving a gun to a young child and allowing someone who is not that child's parent to take them to a gun range is clearly an issue upon which reasonable parents may disagree. It is certainly an issue on which parents clearly have a right to have input and seek consent. She did not inform the father about the gift or about S.K. taking the Children to target practice. It is unclear in the evidence if she knew or was asked ahead of time if that gift was acceptable or appropriate.
- [149] Similarly, S.K. takes the Children on his motorcycle. Again, there is nothing wrong with that on its own, and I accept that reasonable people can differ on the acceptability of taking a child on a motorcycle. However, again, this was not subject to discussion with the father. The mother downplayed the seriousness of that lack of consultation or information and simply said that all appropriate safety precautions were taken. The mother's testimony would have benefited from the corroboration had S.K. testified. More important, it is an issue on which the father clearly had a right to have input, and arguably one which required his consent.
- [150] Apart from the lack of consultation and what I find to be inadequate communication, another concern naturally arises from all of these incidents is the extent to which the mother is allowing her spouse to make significant decisions about the parenting of the Children. This raises concerns about her ability to exercise parenting responsibilities over the two Children.
- [151] I add that individually, apart from the incidence of family violence, the above incidents on their own might not have been problematic in my assessment of the best interests of the Children. In the circumstances of this case, however, given what both parties say are their poor co-parenting relationship and communication and the mother's the failure to call her spouse as a witness, these events represent a significant issue that calls into question the ability of the mother's ability to exercise her parenting time and to effectively co-parent with the father.

2. The Mother's Breaches of Court Orders

- [152] This was a consistent theme of the father's motivation to seeking relocation. As noted, the JCC Order made clear that neither party had liberty to make unilateral decisions on significant matters affecting the children. The parties were meant to discuss to try and reach agreement. The mother confirmed that she understood that term and that she agreed to it at the JCC. Unfortunately, there are a number of email communications which make clear that she did not abide by that term. Below I will give a few illustrations.

- [153] The first example centred around the mother's decision to fire the doctor who provided care to the Children. There is a series of emails between the parties following this decision. In an email dated July 18, 2021, the mother wrote, "I acted as a parent concerned for our children and I did not need your permission to fire the doctor". In a later email, when she discusses trying to find a doctor, she wrote, "[t]his is not your decision to make for my family".
- [154] On September 25, 2021, the parties communicated about the parenting schedule. The mother's email stated that, "I primarily am taking care of the children. I know what is best for them but you think the kids need is a shot in the dark. You are not present in their everyday lives. So, stop trying to control them from afar". In another email, she said the father knows nothing about the children.
- [155] On October 23, 2021, the mother stated, "[y]ou have been updated as required and will be informed of any future updates. Communicate with my lawyer". There are other emails in the same vein.
- [156] In final submissions, counsel for the mother correctly stated that the mother accepted and admitted during her testimony that she had made poor decisions and that specific emails like those above were examples of poor choices, which she regretted.
- [157] The father submits his concern is that these are not isolated incidents, but a consistent and recurrent pattern of the mother's attitude not only towards the father, but towards the notion of co-parenting.
- [158] The father's position is supported by the evidence at trial, both from the documents and the testimony. I acknowledge and appreciate that the mother testified that she intends to follow court orders in the future, recognizing that she has made poor choices in the past and that she aims to be better at co-parenting. Unfortunately, I have concluded that her assessment of her ability to do so is overstated.
- [159] Again, I acknowledge how candid the mother was in her testimony, but her answers during re-examination were very telling. She stated that she was not proud that she made unilateral decisions in breach of a court order. She was asked when she realized this was not the right way to approach making decisions about important issues affecting the children. She responded that she struggles with that issue; specifically, she has in the past chosen to overlook the court order because of a belief that she was doing what was best for the Children.
- [160] That answer was painfully honest, and, in my view, it illustrates that while she honestly hopes to be better at co-parenting in the future, she does not yet have the outlook, the attitude, nor perhaps the skills to do so.

- [161] I specifically asked the mother what she had done to address what she described as her struggle to follow court orders that required her to cooperate, to consult and get input from the father even when she believed her decisions was best for the Children. She stated that she is in counselling, which is an extremely positive step. She also noted that she has been recently diagnosed with ADHD and is now on medication.
- [162] It was a theme of her counsel's submissions that this recent diagnosis could explain a lot about her behaviour. With respect, I do not understand, nor I was given any evidence (medical or even by common sense), as to how or why having ADHD can explain what she described as a philosophical and intellectual struggle with following a court order.
- [163] The mother also stated that coming to trial meant she could not ignore these problems or walk away from the issue.
- [164] I find her past inability to follow court orders, requiring effective co-parenting and the admission that she struggles with that because it conflicts with her internal sense of what should be done, is a reliable predictor for the future behaviour. This strongly suggests that father's proposal is, in fact, in the children's best interests.

B. Section 37 Factors

1. Children's Health, Emotional Well-Being, and Stability (s. (37(2)(a)(e))

- [165] With regard to s. 37(2)(a) and (e)--the Children's health, emotional well-being and stability--I incorporate my prior discussion about the Children's emotional well-being from my analysis of their quality of life earlier in this judgment when discussing relocation. I find the discussion above about the mother's failure to court orders is pertinent to both factors, as is my discussion about the involvement of social services in the mother's household.
- [166] The children have several medical conditions, none of which are life-threatening, but which are significant. The parents' ability to co-parent effectively is crucial to managing those conditions in a way consistent with the Children's best interests.
- [167] Both Children have been diagnosed with encopresis, a condition where toilet trained children defecate in places they should not, including in their clothing. The parties were told by doctors and a specialist that this is linked with chronic constipation.
- [168] The evidence at trial did establish that the parents have approached this medical issue differently, which has a negative impact on the success of treating it. The father wanted to strictly follow medical advice from the family doctor, which he said was complemented by the advice from a medical specialist. Both emphasized consistency of routine, using a medication called PEG, and avoiding suppositories or laxatives. The father understood the consistency and routine of how to manage the condition are essential because the process retrains the neural communication between the child's brain and their bowels.

- [169] The father's approach to managing the Children's condition came about after the children had spent 45 days with him when the mother was hospitalized because of COVID-19. The father said he knew there was an issue before that, but he was not aware of the extent and scope of the issue because he only saw the Children on the weekends.
- [170] He wrote a long email to the mother to update her on the proper medically-advised treatment plan and why it was important to strictly adhere to it. He testified (and stated in the email) that following the treatment plan showed a dramatic improvement in the Children's condition. He said that after the parties returned to the regular parenting schedule, the Children's problems regressed and he believed it was because the mother was not following the same protocol with the same rigour.
- [171] The mother admitted that she did not always follow the advice the father had written in the email to the same degree or with the same consistency and rigour. She held a different view on whether the treatment plan was mandatory, and she said that she wanted to explore other avenues of treatment. She had concerns about the Children's long-term use of PEG. She said that the father essentially exaggerated the problem; she denied the problems were happening in her home to the same degree, suggesting it only happened when the Children were with the father. She said she found his emails about this issue to be controlling and potentially harassing.
- [172] The father tendered evidence of dozens of pictures of the Children's soiled underwear. It is clear from those images and his testimony that the mother has significantly downplayed the seriousness of the Children's condition. It is common sense that struggling with that issue could possibly be psychologically scarring for the Children. The inability of the parents to agree on the proper course of treatment and to be consistent in treating this concerning condition is going to have a negative impact on the Children's physical and emotional well-being.
- [173] To be clear, I am not making a finding about whether the medical advice that was received had to be followed in the way described. The point here is that the mother's reasons for saying there was no harm deviating from the treatment plan has a weak evidentiary basis. For instance, I have difficulty accepting her claim that the issue did not occur when the Children were with the mother especially because the father only had them on the weekends. Given the nature of the condition, it is difficult to believe this would only occur on weekends.
- [174] I also find that the mother did not grapple with the considerable photographic evidence. She described what sometimes happened was mere "smearing" of feces in the Children's underwear was simply not consistent with the evidence. Accordingly, I find that the father's version of the Children's condition, and the associated impacts of the parents not agreeing on the approach to treatment, to be more consistent with the documentary evidence from the doctor and the specialist.

- [175] Without reviewing the evidence in detail, the father raised similar issues about how the parties approach the Children's other conditions, which included stuttering and a recent ADHD diagnosis. In particular, the issue of giving the Children medication for ADHD has been fraught.
- [176] Reasonable parents can disagree about the approach to medical conditions, but in a shared parenting arrangement, there is a heightened responsibility and obligation of both parents to be flexible, open minded, and to compromise at times. Many emails and letters from doctors were put into evidence, and I find, overall, they are objective evidence as to how these issues were dealt with by the father and the mother. Viewing that evidence, together with the parties' testimony, I find that the mother's position that the father's attitude toward managing the Children's conditions was demanding, harassing, negative, or in any way unconnected to the best interests of the Children is not justified.
- [177] As I said, there are many emails in the record. I do not see any from the father that were anything but polite and making appropriate enquiries as a parent about the Children. In contrast, I cannot say the same thing about the mother's emails. At times, I find she was delayed in her responses or did not respond at all, and that is detrimental to cooperative, joint decision-making. Some of her responses failed to recognize the father's rights as a parent.
- [178] One significant incident that both parties testified about was when the mother fired the family doctor. She admitted in her testimony that it was a mistake to do so without consulting the father.
- [179] She explained why she made the decision. She believed the doctor acted in a way that was unprofessional and potentially disrespectful of the Children's bodily integrity. She said he wanted to examine their testicles, but he did not wait to ask and did not respect her when she expressed concern. She said he made a highly inappropriate comment about her spouse and her younger child in the Children's presence.
- [180] If those events are true, I do not find her decision to discontinue the Children's care with that doctor to be questionable at all. It may be that she acted rashly in the moment by immediately firing him, but I do not agree with the father that firing the doctor was an example of a completely unreasonable behaviour on her part.
- [181] However, even if things happened as the mother described, her email communication to the father was inadequate. She gave details about why she fired the doctor. She also insisted that the father has no say in who the new doctor would be. That statement just heightened the mistrust between them, especially because the doctor was someone that the father had found to have been very helpful in treating the Children's encopresis.
2. Appropriateness of an Arrangement Requiring Cooperation (s. 37(2)(i))

- [182] Another factor I must consider is the appropriateness of an arrangement that would require the parents to cooperate on issues affecting the Children, including whether requiring cooperation would increase any risks to the safety, security or well-being of the Children: FLA, s. 37(2)(i). All of the preceding discussion about the Children's medical conditions is relevant to this factor.
- [183] In addition, the evidence points to numerous other incidents where I tend to agree with the father's position that the mother's unwillingness to share information easily or promptly heightens the conflict between them, which hinders their ability to cooperate on issues affecting the Children. Examples of this behaviour include:
- a) at one time not sharing the status of her relationship with her new spouse;
 - b) not giving information to the father immediately about her use of laxatives on the Children in her home when the father and one of the Children were in the emergency room;
 - c) not giving accurate information to the child's school about the father's rights to parenting time; and
 - d) not adding the father as a person who was allowed to pick up the Children from school and not telling him why she did that.
- [184] The father also submits that the social services records indicate the mother had made significant steps towards a plan to move to Manitoba with S.K. This was concerning to the father because she had not told him about it.
- [185] The mother denied that there were any such plans. Rather, she said it was just something being contemplated given the financial difficulties her and her spouse were in.
- [186] I find the mother's testimony difficult to reconcile with what is revealed in documentary evidence that discusses what she and S.K. actually did. They looked at properties. They prepared a budget. Both come close to being a plan. Therefore, I do not find her testimony on that matter to have been forthright.
- [187] It is significantly concerning that when the father raised this issue with her, she wrote an email back, saying he was making unfounded accusations about such a plan, despite what I find is clear evidence that at the time her actions were akin to a plan to move.
- [188] Another issue that is important arises because the mother is Indigenous, and she very much wants her children to be raised with full knowledge and respect of that heritage. She alleges the father is not receptive to that, which ought to weigh heavily against his relocation application.
- [189] I do not agree he is not receptive. He asked the mother for information, and, in my view, she has ignored that request. There is absolutely nothing wrong with his request. He is a parent. He is entitled to be consulted and to have input on that issue.

- [190] More importantly, the mother gave no specific information about what is required to ensure the Children are raised with respect for their Indigenous heritage. She made a vague statement that she attended certain activities. She raised an issue about the fact the father had not signed some form which would entitle them, I believe, to status or benefits. She insisted the information that the father was seeking was contained in the pamphlet accompanying the form that she sent. She claimed it was his fault that the Children did not yet have status, and should weigh against him. I disagree with her characterization of what happened.
- [191] There is no doubt that the Children's Indigenous heritage is important, and that it is important because it is a connection to the mother and to her family. I am not satisfied that the evidence showed that the father is unwilling or incapable of respecting or adhering to anything that is required to promote their Indigenous heritage. I find again the mother has made an accusation that is not warranted. I also find that, in any event, she has failed to identify what is needed in order to ensure that the Children's heritage is respected, and that is another flaw with her position. She cannot claim the father is not respecting their heritage if she does not tell him what needs to be done.
- [192] The last factor that is significant to the assessment of the best interests of the Children and the parties' ability to provide for the Children's stability and their emotional well-being. It is true that the father and his spouse made calls to social services about the Children in the mother's care. The mother implied that, at least at one time, she believed this was a nefarious action meant to stigmatize her and to gain advantage in the litigation. The court must be very wary of that possibility when parenting is in dispute. I refer to and adopt my earlier discussion about how they handled the Children's medical issues, which is relevant here.
- [193] However, I am not satisfied that is what happened here. Through emails, it was clear that the father was attempting to engage the mother in several important topics directly relating to the children's well-being, especially about their encopresis. As noted, this condition could be extremely embarrassing and psychologically harmful to the Children. The fact that the parents could not agree on how to treat it would be very upsetting for any parent. The mother did admit that at times she did not respond or did not respond promptly to emails about this. I appreciate her being candid and honest.
- [194] She also stated in those emails that she had sole authority to figure out what to do and that the father's input was not welcome. This was despite the existence of the JCC Order saying she could not make unilateral decisions about things that are significant to the children. Treating this condition clearly was significant. She was supposed to try and reach agreement and cooperate.
- [195] I find that the father was making efforts to seek cooperation from her and to discuss treatment, and that the mother rebuffed those attempts and did not make a genuine effort to reach agreement on this significant issue. I find she was not following the JCC Order.

- [196] The father felt he had no choice but to call social services in order to protect the Children and provide for their well-being. I am not suggesting that action should have been taken or had to be done, but I find his actions were in no way nefarious or motivated by anything other than looking out for the best interests of the Children.
- [197] This is in stark contrast to two occasions when the mother contacted the authorities. She accused the father of harassment in relation to the emails about this medical condition and his contact with social services. I do not find any of the emails or the frequency of their content to be consistent with an allegation of harassment. More concerning, the mother went to the police because one of the Children said the father's spouse threatened to kill her. Not only did she go to the police, she took her son there. It is disconcerting that the mother treated that statement from a young child as an actual threat. This is especially so when there are emails on the record where the father is asking about things the Children told him that happened in the mother's household. One of her responses to such an email was, "Well, the children will play you." Clearly, she did not take that attitude when the child reported something that happened in the father's house.
- [198] Even more troubling was an incident where one of the Children reported that her younger child had perhaps been touched inappropriately by another boy. She did not call the police nor go to social services,
- [199] To the extent the mother argues that the father's reporting to social services was not to promote the Children's best interests but was, instead, harassment or abusive or done in bad faith, I reject that outright. Instead, I find that the mother made very poor decisions to implicate her own child in what had to be a minor matter (claiming the father's spouse made a threat). That is simply not in keeping with the Children's best interests.
3. The Views of the Children (s. 37(2)(b))
- [200] Another factor I consider is the Children's view: FLA, s. 37(2)(b).
- [201] I find that Children too young to have their views given serious weight in this case, and I expressly reject counsel's submissions that I should place any weight on a statement in a document from social services attributed to one of the Children.
- [202] I add that the consent order issued March 31, 2025, allowing access to social services records specifically stated that they were not to make any reference to any transcripts of interviews with the children. While the statement at issue was not a transcript, the intent of that order is to maintain the privacy of the Children. Placing any weight on that statement would undermine that. In my respectful view, the submission should not have been made.
- [203] In any event, there is no indication that the Children have expressed strong views one way or another. They clearly love both their parents. They are clearly happy and content in both households.

4. Relationships with Significant Persons (s. 37(2)(c))

- [204] Another factor I must consider is the relationship with the Children and other significant people in their life: FLA, s. 37(2)(c). The Children live in a blended family with the father. Their stepsiblings' grandparents and uncle live nearby.
- [205] The mother's family lives in Manitoba, which is relevant because her ability to have the Children spend time with her family is unaffected by the order that is being proposed. Arguably, it will be easier for them to do so because the Children will have some blocks of time with their mother that are longer in duration.
- [206] I am concerned by something that the Children's maternal grandfather said in his testimony. He lives in Manitoba. He believed that it would be more difficult for him to see the Children if there was relocation. There is no basis for that concern.
- [207] The Children have two half siblings who live with the mother. It is clear that the relocation will affect the Children's relationship with them because they will have less frequent contact. That is significant, and in my view this factor most strongly supports the mother's position. However, it is not determinative, and I find it is significantly outweighed by the totality of the evidence and the other factors that I have discussed.

5. The History of the Children's Care (s. 37(2)(d))

- [208] The history of the child's care is also relevant: FLA, s. 37(2)(d). When the parents were together, the father worked full time. The mother was able to stay home and look after the Children. In that way, they were in her primary care when they were very young.
- [209] She says overall, this factor strongly supports resisting relocation because they have been in her primary care since birth. In my view, that factor does not do so. That is because the parents have had shared parenting since the Children were extremely young and the Children have experienced a shared parenting arrangement that requires extensive travel for at least five years.

C. CONCLUSION

- [210] Looking holistically at all the factors, I find that relocation to Calgary and primary residence with the father is in the best interests of the Children. The mother has not met her burden to demonstrate it is not.

CONCLUSIONS

- [211] By way of summary of my conclusions on relocation and the Children's best interests, the following are my primary conclusions:
- a) I find the mother's failure to call her current spouse as a witness to be a very significant factor, in light of: the incident of family violence; what I found to be some concerning interactions with the Children, involving guns and other things; and the lack of evidence that S.K. has taken to address his drinking, which led to a concerning incident.

- b) I have reluctantly come to the conclusion that an arrangement that allows the Children to remain living in the same household as S.K. in the situation as I have described, where he did not testify and where there is an indication that the mother allows him to make significant parenting decisions, is not an arrangement that is in the Children's best interests.
- c) I find that the nature of the household in which the mother lives where she has, at times, had to rely on social services does not promote the stability of the Children commensurate with their age and stage of development.
- d) I find the history of the mother's pattern of breaching of court orders, and her demonstrated attitude limiting the father's role, impairs her ability to exercise her parenting responsibility in a manner that is in the Children's best interests.
- e) The preceding factors and accompanying discussion lead me to conclude that relocation to live with the father is the parenting arrangement that best protects, to the greatest extent possible, the Children's physical, psychological, emotional safety, security and well-being as mandated in s. 37(3) of the FLA.
- f) That conclusion, together with my analysis of other factors under s. 37(2), lead me to conclude that the children should be relocated. Therefore, I grant the order sought by the father that the children will be relocated.

[212] For all those reasons, with the exception of one, I am granting all the orders sought by the father.

[213] I would like the parties' submissions about the proposal that there be a term in the order that the parents can give a device to the Children and that the Children have liberty to contact the other parent. In my view, there needs to be some conditions put in place to ensure that the parent, with whom the Children are, still has the ability to have some control over the Children's access to digital media. I think that is the only fair thing to do, especially at their age. I do not think they are at an age where they should have complete control over use of a phone or a tablet, even if it is to contact the other parent. I will say that, however, during the transition period the Children are to have a generous ability to contact their mother, but I will hear proposals on that.

[214] I will also want to hear submissions on whether there are any other terms needed to implement the orders that I am making. In terms of logistics, I will want to get confirmation about arrangements that are in place with regard to schooling and any other preparations. Lastly, I want the parties to address when and how I address logistics and supports.

[FURTHER SUBMISSIONS ON ACCESS TO PHONES, SUPPORT AND COSTS]

[215] I order that each party shall be at liberty to provide the Children with a communication device, including a cell phone or a tablet, and the Children shall have reasonable and generous ability to communicate directly with the other parent.

[216] I did not have the time to turn my attention to the issue of costs or support. I am content, if the parties have no concerns, that I would issue brief written reasons about that later.

[217] The mother and/or her counsel have leave to provide brief written submissions, restricted to the issue of child support, no later than two weeks from today. They should be sent to Supreme Court Scheduling in Kamloops.

"Sharma J."

Appendix A: Orders that were Granted

1. The children shall relocate to Calgary, Alberta, and shall reside with their father, the claimant.
2. During the school year, the respondent mother will have parenting time as follows:
 - a. Every other weekend from 3:00 PM on Friday until 1:00 PM on Sunday. In the event that a non-instructional day is attached to this weekend, the respondent's parenting time will include the noninstructional day;
 - b. In addition, the respondent may exercise parenting time on any other weekend that includes a non-instructional day on either the Friday or Monday (i.e. any long weekend), with the exception of Easter and Thanksgiving, which shall be addressed separately. The respondent will provide at least seven (7) days' notice of her intention to exercise parenting time pursuant to this order;
 - c. If the non-instructional day is on a Friday, the respondent will have parenting time from Thursday after school until Sunday at 1:00 PM.
 - d. If the non-instructional day is on a Monday, the respondent will have parenting time from Friday after school until Monday at 1:00 PM.
 - e. For the purposes of exchanging the Children, the parties will meet at the [Town 3].
 - f. The parties may agree to alter this schedule from time to time, or the drop off/pick up times or locations, provided both parties agree in writing.
3. During the summer school holiday, the children will spend two (2) weeks with the claimant, and the remainder of the summer with the respondent. Unless the parties agree in writing otherwise, the summer holiday will be split as follows:
 - a. The respondent will have parenting time from Sunday at 12:00 PM following the last day of school until the commencement of the last week of July;
 - b. The claimant will have parenting time from 12:00 PM on the Sunday prior to the last week of July until 12:00 PM on the Sunday two weeks later.
 - c. The children will then be with the respondent until Saturday at 1 PM that precedes the children's first day back in school.

- d. For the purposes of exchanging the Children, the parties will meet at the [Town 3].
- e. The parties may agree to alter this schedule from time to time, or the drop off/pick up times or locations, provided both parties agree in writing.
- 4. During the school spring break, the children will be with the respondent from 3:00 PM on Friday until 1:00 PM on Sunday before the children return to school. The parties will meet at the [Town 3] for the purpose of pick up and drop off. The parties may agree to alter this schedule from time to time, or the drop off/pick up times or locations, provided both parties agree in writing.
- 5. The parties will alternate between Thanksgiving and Easter long weekend. The claimant will have Easter long weekend on odd-numbered years, and the respondent will have Thanksgiving. On even-numbered years, the claimant will have Thanksgiving weekend and the respondent will have Easter weekend.
- 6. At all other times, the children will reside with the claimant, unless otherwise agreed between the parties in writing.
- 7. Neither party will arrange extracurricular activities for the children while they will be with the other parent, unless with the express written consent of the other party.
- 8. Parental responsibilities must be exercised as follows:
 - a. The parties will have the obligation to advise each other of any matters of a significant nature affecting the children;
 - b. The parties will have the obligation to discuss with each other any significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
 - c. The parties will have the obligation to discuss with each other and the obligation to try to reach agreement on those decisions;
 - d. The parties will respond to any communications about the welfare of the children, including their health, education and general welfare, within 72 hours;
 - e. In the event that the parties cannot reach agreement on a significant decision despite their best efforts, the claimant will be entitled to make those decisions and the respondent will have the right to apply for directions on any decision she considers to be contrary to the best interests of the children, under section 49 of the Family Law Act;
 - f. Each party will inform the other about any medical, dental, and other-health related treatments for the children at least 7 days before any scheduled treatment date, or where that is not possible because of an emergency, then as soon as possible. Further, each party will inform the other of the results of any medical, dental, or other health related treatment within 48 hours of the treatment date if the other party was not present at the treatment.

9. In the event that the claimant makes a decision relating to medical, dental, and other health-related treatments for the children, the respondent will follow and take all such reasonable and necessary steps to ensure the children receive the treatments while they are in her care, unless otherwise ordered by the court or as decided by a parenting coordinator.
 9. Each party shall be at liberty to provide the Children with a communication device, including a cell phone or tablet, and the Children shall be at liberty to communicate directly with the other parent at dates and times as agreed between the Children and that other parent.
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