

CANADA / JUDGMENT

R.A.F. v. T.N.M.

2020 BCSC 696

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 696 R.A.F. v. T.N.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.A.F. v. T.N.M.,

2020 BCSC 696

Date: 20200505

Docket: S195412

Registry: Vancouver

Between:

R.A.F.

Appellant

And

T.N.M.

Respondent

On appeal from: An Order of the Provincial Court of British Columbia dated April 3, 2019 (File no.: F17889, Abbotsford Registry)

Before: The Honourable Mr. Justice Funt

Reasons for Judgment

Counsel for the Appellant:

G.K. Thomas

Counsel for the Respondent:

F. Nudel

M. Kamangari

Place and Date of Hearing:

Vancouver, B.C.

August 29, 2019

Place and Date of Judgment:

Vancouver, B.C.

May 5, 2020

1. introduction

- [1] This is an appeal under s. 233 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] from an order of the Provincial Court dated April 3, 2019 (the "Provincial Court Order") made pursuant to the April 3, 2019 reasons for judgment (the "Trial Reasons").
- [2] The appellant and the respondent are the father and mother of a boy born November 13, 2011.
- [3] The signal provision of the Provincial Court Order allows the mother to relocate with the parties' son, W, from her residence in Abbotsford to live in Ferndale, Washington, U.S.A., with her new partner.
- [4] The key relief the father seeks is to have the Provincial Court Order as it relates to relocation set aside. He also seeks an order that the parties co-parent W on a "week-on-week-off" schedule.
- [5] For the reasons that follow, the father's appeal is dismissed.

2. grounds of appeal

- [6] In his written argument, the father sets forth his grounds of appeal as follows:
 - 35. The trial judge erred by failing to ascertain and conclude that the applicant had met all US Immigration obligations permitting her and the child to not just enter the United States of America but reside in that country without restrictions or impediment such that she and the child could continue to cross the Canada-USA border without impediment.
 - 36. The trial judge made palpable and overriding errors regarding the evidential record, including but not limited to the following:
 - a. In stating that the applicant raised the child without a lot of financial help from the appellant, where the record was otherwise;

- b. In failing to properly note or factor in the appellant's pre trial increased parenting time, and in his failure to state that the appellant had moved from the interior of British Columbia to the Lower Mainland to obtain shared parenting time with the child that the respondent continued to thwart;
- c. There was no evidential basis for concluding that the child had medical coverage in the United States.
- d. There was no evidential basis for removing all of the appellant's parenting responsibilities under s. 40(3)(a) of the Family Law Act. In fact the respondent did not even seek such an order.
- e. Such further and other errors as will be disclosed by the trial transcripts, which include the following:
- f. The trial judge made palpable and overriding errors by focusing only on limited negative interactions by the appellant toward the respondent and ignoring very similar behavior by the respondent in how she criticized at least implicitly the ability of the appellant to parent [W] and failing to factor in the respondent's failures to allow increased parenting time for personal reasons when she otherwise admitted that [W's] best interests required that her son have a shared parenting arrangement with the appellant.
- g. The trial judge made palpable and overriding errors by failing to recognize that the respondent's relocation parenting plan for [W] had more questions than answers from whether or not the respondent and [W] would obtain US Immigration approval to enter the U.S or not, and whether [W] could be enrolled in a particular school, and if so, what programs the school would provide, and the driving or bus time between the Ferndale home and the particular school. Further, as noted at paragraph [36(c)] there was no demonstrable evidence that [W] would be covered by Michael's medical benefit package.
- h. The trial judge made palpable and overriding errors by failing to factor in evidence that the respondent had limited the appellant's parenting time to [W] as part of her case to succeed on the relocation application, and further failing to conclude if she did that before the trial, she would continue the same practice after the relocation order was made, with the likely result that the relationship between [W] and his father would be significantly impaired in the future.
- i. The trial judge made palpable and overriding errors by failing to perform a fulsome best interests' analysis based upon the evidence before him. Included in this analysis, is that the trial judge treated the appellant's concern regarding driving distance, not as a best interest factor regarding the child, but as an inconvenience for him. That error caused the trial judge to misunderstand other relevant evidence.

- j. The trial judge made palpable and overriding errors by referencing that the respondent has a better value system. The trial record including the various best interests' factors do not support such a conclusion.
- 37. The trial judge erred in how he approached and conducted his legal analysis as to section 46(1) and (2) of the Family Law Act. In particular, he erred with respect to how he dealt with:
 - a. The available parenting arrangement options open to him on this first instance application; and
 - b. The factors that he considered or should have been considered by him with respect to issues of relocation and best interests of the child;
 - c. Each of the parties' parenting plans especially with reference to the anticipated changes or possible impacts on the child.
- 38. Further to paragraph 37, the trial judge erred by failing to employ the blended analysis required by the applicable case law in an initial custody/parent time case where there is an associated relocation application.
- 39. Further to paragraph 37, the trial judge erred by treating the relocation as not a cross border relocation but one involving a seven kilometer further drive. The trial judge by reason of his approach to the issues, failed to properly consider all of the potential implications that such a relocation move might have on the best interests of the child including the impact of a much greater commute on the child.
- 3. standard of review
- [7] In *Kane v. Proffitt*, 2018 BCCA 106, Justice D. Smith, writing for our Court of Appeal, sets forth the applicable standard of review:
- [42] The scope of appellate review in family matters is a narrow one; intervention by an appellate court is subject to a high standard of review. The function of appellate review is not to re-try a case or to continue the trial at a different stage. Rather, its purpose is to examine the record below to determine if material or reversible error has been demonstrated, including an error of law, an error of principle, an error of fact, or a serious misapprehension of the evidence that could reasonably have affected the result and therefore warrants appellate intervention. See *Scott v. Scott*, 2006 BCCA 504; *Jens; R.E.Q. v. G.J.K.*, 2012 BCCA 146; *Moge v. Moge*, [1992] 3 S.C.R. 813 at 832-833; and *Van de Perre v. Edwards*, 2001 SCC 60 at para. 15.
- [43] In *R.E.Q.*, Madam Justice Newbury summarized the appellate review jurisdiction as follows:
- [33] The Supreme Court of Canada has said that the standard of review is a high one, i.e., that in family cases as elsewhere, an appellate court may not interfere with the exercise of discretion of a trial judge in the absence of a material error (including a "significant misapprehension of the evidence", the trial judge's having "gone wrong in principle or [his]

final award [being] clearly wrong"): see *Moge v. Moge* [1992] 3 S.C.R. 813, at 832; and *R.M.S. v. F.P.C.S.* 2011 BCCA 53, at para. 43, citing *Hickey v. Hickey* [1999] 2 S.C.R. 518 at para. 12 and *Van de Perre v. Edwards* 2001 SCC 60, [2001] 2 S.C.R. 1014 at paras. 14-5. In the latter case the Court wrote:

Second, an appellate court may only intervene in the decision of a trial judge if he or she erred in law or made a material error in the appreciation of the facts. Custody and access decisions are inherently exercises in discretion. Case-by-case consideration of the unique circumstances of each child is the hallmark of the process. This discretion vested in the trial judge enables a balanced evaluation of the best interests of the child and permits courts to respond to the spectrum of factors which can both positively and negatively affect a child. [At para. 13]

Thus the authorities make it clear that it is not for an appellate court to re-weigh the evidence or to interfere on the basis that the appellate court would give more weight than the trial judge did to one factor or another - or, in the words of the Court in *Hickey*, that it would have "balanced the factors differently."

4. key legislative provisions

[8] The parties did not marry. Accordingly, the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) is not engaged. The FLA contains the relevant statutory provisions.

[9] For the purposes of this appeal, the key FLA provisions are:

Sections 37 and 43:

Best interests of the child

Sections 39 and 40:

Guardianship

Section 41:

Parenting responsibilities

Section 42:

Parenting time

Section 46:

Changes to a child's residence

[10] Section 37(1) of the FLA reads:

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

[Emphasis added.]

[11] In considering any of the foregoing provisions, the Legislature directs that the "only" consideration is the best interests of the child. The best interests of the child is more than a paramount consideration, it is the only consideration.

[12] With respect to the best interests of the child, s. 37(2), (3), and (4) of the FLA provide legislative guidance. Section 37(2), (3), and (4) read:

37(2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:

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

[13] Regarding a change to W's residence, the parties agree that, for the current matter (and appeal), the relevant provision is s. 46 of the FLA. Section 46 reads:

46(1) This section applies if all of the following circumstances exist:

- (a) no written agreement or order respecting parenting arrangements applies in respect of a child;
 - (b) an application is made for an order described in section 45 (1) (a) or (b) [orders respecting parenting arrangements];
 - (c) the child's guardian plans to change the location of that child's residence and the change can reasonably be expected to have a significant impact on that child's relationship with another guardian.
- (2) To determine the parenting arrangements that would be in the best interests of the child in the circumstances set out in subsection (1) of this section, the court
- (a) must consider, in addition to the factors set out in section 37 (2) [best interests of child], the reasons for the change in the location of the child's residence, and
 - (b) must not consider whether the guardian who is planning to move would do so without the child.
- [14] I agree that s. 46 is the governing provision. For the sake of clarity, I note that an interim order was made on September 18, 2018 regarding parenting time which was after the mother's January 26, 2018 application in Provincial Court to change W's residence to Ferndale, Washington. In such circumstances, the governing provision is s. 46 (and not the relocation provision found in s. 69): K.W. v. L.H., 2018 BCCA 204 at para. 92.
5. key jurisprudence
- [15] The leading authority from the Supreme Court of Canada with respect to the change of a child's residence is its decision in *Gordon v. Goertz*, [1996] 2 S.C.R. 27. For the purposes of the case at bar, *Gordon* is helpful but many of its principles do not have direct application.
- [16] In considering *Gordon* for the present appeal, two aspects must be kept in mind. First, the case involved a married couple. Accordingly, the relevant statutory provisions were found in the Divorce Act.
- [17] Second, the parent seeking to relocate with the parties' child was the custodial parent under an earlier court order. In the case at bar, there is no similar order. Specifically, there had been no order regarding "parenting arrangements" other than the September 18, 2018 interim order regarding parenting time. The FLA defines parenting arrangements to mean arrangements respecting the allocation of parenting responsibilities or parenting time or both: FLA, s. 1, definition of "parenting arrangements".
- [18] In *Gordon*, Justice McLachlin, as she then was, writing for the majority, usefully summarizes the key points as follows:
- [49] The law can be summarized as follows:

1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
 2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
 3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
 4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
 5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
 6. The focus is on the best interests of the child, not the interests and rights of the parents.
 7. More particularly the judge should consider, inter alia:
 - (a) the existing custody arrangement and relationship between the child and the custodial parent;
 - (b) the existing access arrangement and the relationship between the child and the access parent;
 - (c) the desirability of maximizing contact between the child and both parents;
 - (d) the views of the child;
 - (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
 - (f) disruption to the child of a change in custody;
 - (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.
- [50] In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?
- [19] In our Province, the leading decision is that of our Court of Appeal in *Duggan v. White*, 2019 BCCA 200. *Duggan* is specifically applicable to the case at bar because it addresses s. 46 of the FLA and the related relevant sections.

- [20] In the case at bar, the trial judge did not have the benefit of Duggan. In Duggan, the reasons for judgment were delivered on June 6, 2019, approximately two months after the Trial Reasons were delivered.
- [21] In reviewing matters, I have been guided by Duggan as to the correct legal principles. At the hearing before me, counsel addressed Duggan.
- [22] As noted, the standard of review engages whether there has been "material or reversible error", including an error of law.
- [23] I summarize the key law in Duggan as follows:
- a) "Section 37(2) requires a court to consider all of the child's needs and circumstances when making an order, and particularizes certain factors that must be considered" (para. 7);
 - b) "Section 37(3) further emphasizes the breadth of the concept of best interests of the child" (para. 8);
 - c) "Section 45 provides for initial applications concerning parenting responsibilities and parenting time, together referred to as "parenting arrangements"" (para. 11);
 - d) "Section 46 governs the relocation of a child's residence where, as here at the time of application, there is neither a written agreement between the parties nor an order respecting parenting arrangements for the child, and an application is made (under s. 45) for an order respecting parenting arrangements" (para. 12);
 - e) "Section 46(2) adds to s. 37 by directing that, as part of its determination of the best interests of the child, a court must consider "the reasons for the change in the location of the child's residence" and must not consider "whether the guardian who is planning to move would do so without the child"" (para. 12);
 - f) The reasons for the proposed move are legitimate considerations and constitute one more factor to weigh in the balance in relation to the child's best interests (para. 15);
 - g) "There is nothing in the [FLA] that requires the judge to put the reasons proffered [for the relocation] through the strainer of necessity" (para. 17);
 - h) "Full consideration of the reasons [for the relocation] should meet at least the standards of reasonableness and good faith" (para. 17);
 - i) "a presumption in favour of the status quo is eschewed by the [FLA]" (para. 18);
 - j) "by means of s. 46(2), the court is directed to the application presented to the court for comparison with the respondent's responsive plans " (para. 20);
 - k) "a blended analysis is required" (para. 22);
 - l) It is "an error to decide the relocation issue in advance of determining the appropriate parenting arrangements" (para. 22);

- m) What is "required in determining parenting arrangements in the child's best interests [is] a blended, in the round analysis that balance[s] all relevant factors, including the [guardian's] proposed move with the child " (para. 22);
- n) The judge should not stray from the alternatives presented by the parties (para. 58);
- o) Section 46(1)(c) contemplates a significant change and the FLA "is not positioned either for or against change " (para. 59);
- p) The judge should not "intrude into" the self-determination of the guardian proposing the relocation (para. 61);
- q) The prolongation of unequal circumstances is not in the best interests of the child (para. 63);
- r) It is not in the best interests of the child where a guardian's financial independence is constrained which in turn affects the "ability to provide opportunity for the child" (paras. 64 and 65);
- s) The promotion of the economic self-sufficiency of each parent within a reasonable time "recognizes the general advantages of individual financial independence in the family context, including the stronger safety net for the child to protect against the unexpected, consistent with the best interests of children caught in the breakdown of family relationships." (para. 65).

[24] I note finally that Justice Saunders writing for the Court in Duggan, states, in part, at para. 68:

In my view, just as parties must adapt, courts must allow for adaptation in parenting situations, and be assiduous in seeking to avoid results that artificially keep one of the parents down. The best interests of the child is a large concept - one which, in my view, can be quite capable of providing, with a generous stance, an opportunity for one of the parents to lift himself, or herself, closer to the level of the more advantaged parent. It is important in the pursuit of this approach that alternative ways to foster strong relationships between the child and each parent be explored fully, so as not to close the door on a parent to a sensible plan that in the longer sense will strengthen the family, even in its separated circumstance.

[25] In my view, in the legislative context of the FLA and where there is not a "custodial parent", Duggan provides the authority to help answer the question set forth by Justice McLachlin in Gordon: "[W]hat is in the best interests of the child in all the circumstances, old as well as new?"

6. trial reasons

[26] The Trial Reasons have been published: T.N.M. v. R.A.F., 2019 BCPC 62.

7. analysis

- [27] I do not understand the father to be submitting that the mother does not have a good relationship with W or that she is not a good parent. The mother also does not assert that the father does not have a good relationship with W or that he is not capable of being a good parent. The parenting time the mother proposed at the Provincial Court hearing which was subsequently ordered is consistent with her view.
- [28] The mother's relocation of W met the standard of reasonableness and good faith. The father does not argue that the mother's new partner is part of a sham or that the relationship between the mother and her new partner is not as the trial judge describes.
- [29] The trial judge considered the mother's reasons for the proposed move as legitimate and weighed them "in the balance in relation to the child's best interests".
- [30] The trial judge was alive to the fact that the father did not wish his son to relocate to the U.S.A. In making the order allowing the relocation, the trial judge viewed the relocation to Ferndale as providing a safe and proper environment which was consistent with the best interests of W. The U.S.A. is generally recognized as a civil and democratic country with a culture similar in many aspects to that which Canada enjoys.
- [31] The mother's proposal of the father having parenting time with W three out of four weekends and five full weeks in the summer was, in my view, "part of a sensible plan that in the longer sense [would] strengthen the family, even in the separated circumstance".
- [32] The mother's plan also provided a greater degree of financial security which would include a "stronger safety net for [W] to protect [him] against the unexpected".
- [33] As noted, s. 46 of the FLA contemplates that with the relocation, there may be a significant impact on the child's relationship with the other guardian. However, Duggan makes clear that the trial judge should view matters in the longer term. The trial judge, quite properly, did not presume that the status quo should be favoured.
- [34] I am not satisfied that the trial judge erred or had "a serious misapprehension of the evidence" with respect to the mother's reasons for the proposed relocation.
- [35] The trial judge did not "decide the relocation issue in advance of determining the appropriate parenting arrangements".
- [36] Before the trial judge were three alternatives: the father's proposal under s. 45 of the FLA of an equally-shared parenting arrangement under which W would live half the time with him, the mother's proposal to relocate W with her to Ferndale, Washington, and the status quo.
- [37] The trial judge stated that he would consider the father's proposal first. However, when the Trial Reasons are read on the whole, it is apparent that the trial judge engaged a blended analysis and remained focused on all of the relevant factors addressing W's best interests, including W's possible relocation to Ferndale.

- [38] The trial judge described the father's home environment as one where W may "be taught some troubling values". In the trial judge's review of the evidence, there was no evidence that disparaging comments or statements had been made in W's presence or that W came to know of any of the disparaging comments made by his father or his father's family.
- [39] The trial judge was entitled to draw the inference that over the long term, a disparaging attitude towards the mother would suffuse the environment at the father's home: *R. v. Alexander*, 2006 CanLII 26480 (O.N.S.C.) at paras. 21-29. In Duggan, Justice Saunders, in referring to language from ss. 37(2) and (3) of the FLA, adopts Justice L'Heureux-Dubé's phrase, "the conditions which are most conducive to the flourishing of the child": *Young v. Young*, [1993] 4 S.C.R. at 65.
- [40] An environment with a disparaging attitude is not conducive to the flourishing of a child. I am satisfied that the trial judge thought that the father and particular members of his family could learn from past mistakes. Otherwise, the trial judge would not have ordered the significant parenting time he did order for the father.
- [41] Plainly, the trial judge hoped that with the conclusion of the trial the father and his family would learn from past mistakes resulting in a positive home environment and collaborative parenting.
- [42] At the same time, the trial judge guarded against exposing W to an unhealthy home environment. The last paragraph of the Provincial Court Order reads:
- The parties shall encourage the Child to have a good relationship with the other parent in a positive and respectful manner. They shall use their best efforts to maintain, polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in the presence of the Child. The parties shall encourage their respective families to refrain from any negative comments about the other parent and his or her extended family, and from discussions in front of the Child concerning family issues or litigation.
- [43] Where a guardian disobeys a court order, one consequence may be that the parenting arrangements are changed.
- [44] In sum, I do not see a material or reversible error by the trial judge, with all factors considered and balanced, in rejecting the father's proposal and in finding that the mother's proposal offered a "happier home".
- [45] In considering the relocation to Ferndale, Washington, the trial judge engaged in a "blended, in the round analysis that balance[d] all relevant factors, including the [mother's] proposed move with the child". The trial judge addressed the relevant non-inclusive factors set forth in s. 37(2) of the FLA in the context of W's best interests and carried the analysis into the consideration of the proposed relocation.
- [46] The trial judge states, in part:

- [77] The evidence supports the conclusion that the move is being made for a legitimate reason. When parents separate, it is not expected of them that they will live single for the rest of their lives. Here both parties have found partners with whom they are more compatible. The Applicant has not entered into her new marriage impulsively. Her engagement lasted over a year. Her husband is responsible and hard-working. He is someone who values family life and who has developed a good relationship with [W]. He is willing to take on the responsibility of a family and is in a position to provide his new family with both emotional and economic security. He can offer the Applicant and her child a better life than they have now. Often when a prospective spouse learns that the person he or she is dating has a resentful ex-partner, that person may conclude that the new relationship isn't worth the trouble that accompanies it. Mr. [T] has shown a greater devotion to this relationship. He has been supportive of the Applicant throughout these proceedings and it is clear that her desire to move to Ferndale to live with him is because she believes that it is for the betterment of her family.
- [47] I note that in *Gordon*, the Supreme Court of Canada allowed the relocation of the mother with the parties' child to Australia. With the distance between Australia and Canada, contact between the parties' child and the father would, practically speaking, be far more difficult than that in the case at bar.
- [48] Section 16(10) of the Divorce Act directs that "the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with best interests of the child".
- [49] As noted, *Gordon* was under the Divorce Act.
- [50] In *K.L.G. v. D.J.T.*, 2013 B.C.S.C. 1684, Justice N. Brown stated:
- [104] The FLA does not contain a statement of the maximum-contact principle, as found at s. 16(10) of the Divorce Act. But the principle is harmonious with s. 37(2)(a) of the FLA, which identifies the child's health and emotional well-being as essential considerations. The principle of maximum contact is a natural adjunct to the goal of maximizing their health and emotional well-being.
- [51] In the case at bar, the distance is not challenging like that in *Gordon*. I do not see an error in the parenting time for the father as proposed by the mother and as the trial judge ordered (including three out of four weekends, and five full weeks in the summer) as not ensuring maximum contact in the context of W's best interests. In sum, I do not accede to the father's submission that the trial judge did not "put [his] mind" to "the desirability of maximizing contact".
- [52] I finally note that the trial judge referred to the fact that the mother consented to the Provincial Court retaining jurisdiction over this matter and that the father would have the protection afforded by the Hague Convention thereby giving reassurance that W's best interests would be considered in a consistent manner to the extent possible.

- [53] Finally, the trial judge considered the father's proposal and the mother's proposal with the backdrop of the status quo as an alternative. It is clear from the Trial Reasons that the trial judge found the mother's proposed relocation with W to be in W's best interests and noted, in the portion of the Trial Reasons above, that W would enjoy a better life with both emotional and economical security by relocating with his mother to Ferndale, Washington.
- [54] As noted, one of the grounds of appeal is that the mother had not met all U.S.A. immigration requirements to facilitate and allow the proposed relocation. Again, in Gordon, the court did not suggest or require the mother to prove immigration compliance.
- [55] The Provincial Court Order refers to the mother stating that she "may change the residence" of W and in referring to parenting time exchanges prefaces matters with "After the child's residence has changed to Ferndale, Washington".
- [56] In context, the trial judge knew that the proposed relocation was not to be undertaken without compliance with the U.S.A. immigration laws. There was not any suggestion that the mother was proposing to reside with W illegally in the U.S.A. It is also reasonable to assume that possible concerns of the U.S.A. immigration authorities related to the relocation of a young boy would be assuaged by the Provincial Court Order. The mother's new partner also testified that the legal advice he had received was that a court order would be required because the parties were not in agreement as to W's relocation to the U.S.A.
- [57] In sum, this ground of appeal fails. Again, in Gordon, the unlikely event of a border closure for any long period of time between two countries that enjoy good relations was not raised or described by the Court in Gordon as a potential impediment to the mother's relocation with her child to Australia.
- [58] With respect to paragraph 36 of the father's written argument setting forth further grounds of appeal, I find that it is an attempt to re-try the case. I will address each below.
- a) The trial judge found that the mother raised W without a lot of financial help from the father
- [59] The trial judge, in finding that the mother raised W without a lot of financial help from the father, states that the "[father] was unable to do so" and also notes that "[n]either the mother nor her family are wealthy people". I do not read the Trial Reasons as somehow assigning fault to the father. In any event, I cannot see how the result could have been affected: Kane, para. 42.
- b) The father moved to the Lower Mainland and that the mother thwarted the father's parenting time
- [60] I find that the trial judge "seized the substance of the critical issues at trial": R. v. R.E.M., 2008 SCC 51, para. 55. In my view, there is no requirement for a trial judge in delivering reasons to "paint by numbers". The Trial Reasons refer to the parties' life in Kamloops and Falkland.

- [61] With respect to a decrease in parenting time, I accept counsel for the mother's submission that the explanation is that W was older and in school.
- c) No evidentiary basis that W would have medical coverage in the U.S.A.
- [62] The mother's partner testified that the mother and W would have medical coverage under his plan at work. I reject the father's suggestion that there was no evidentiary basis. I find no error.
- d) No evidentiary basis for removing all of the father's parenting responsibilities
- [63] With respect, the father overstates matters. Under s. 42(2) of the FLA, the father, during his parenting time, would have the parenting responsibility "of making day-to-day decisions affecting the child and supervision of the child". In context, I do not find read the Provincial Court Order as providing otherwise. With respect to other parenting responsibilities, the father is not barred from bringing an application for review: FLA, s. 49.
- e) Further errors to be disclosed
- [64] I understand this ground was a place marker. There is no need for me to comment.
- f) Criticisms made by the mother of the father and his ability to parent
- [65] The mother's proposal at trial that the father would have parenting time including three out of four weekends and five full weeks in the summer belies the suggestion that the mother did not view the father as having the ability to parent.
- g) U.S.A. immigration approval, W's school enrollment details, and medical coverage
- [66] I have addressed the U.S.A. immigration approval and medical coverage aspects above. With respect to school enrollment, the mother's new partner testified that there were public schools and a private school in the Ferndale area. I am satisfied that a trial judge should not micro-manage the details of enrollment in a particular school, school programs, and commute times. To the extent that there are initial difficulties or inconvenience, these, like many moves involving school children, can usually be addressed over time.
- h) The mother had limited the father's parenting time and would do so in the future
- [67] The father's assertion is not borne out. The Provincial Court Order provides significant parenting time for the father. In particular, the five full weeks in the summer provides the father with the opportunity to bond and enjoy life with W without the interference of school and work. Just in our Province, there are many sights to see and explore quite inexpensively.
- i) Not a fulsome best interests analysis

[68] As noted, the trial judge did address, as part of his analysis, the non-inclusive list of factors set forth in s. 37(2) of the FLA. With specific reference to commuting time, there was significant commuting time involved under the father's week-on and week-off proposal. I do not find a material or reversible error in the trial judge's analysis.

j) Better value system

[69] Section 37(2) of the FLA does not specifically refer to a value system. However, it provides a non-inclusive list. The issue of a value system may fall within s. 37(3) and, in any event, is relevant to an overall best interests analysis of the conditions "which are most conducive to the flourishing of the child". Again, I do not find a material or reversible error in the trial judge's reliance on s. 37(2).

8. paragraphs 37, 38, and 39 of the father's written submission

[70] With respect to paragraphs 37, 38, and 39 of the father's written submission setting forth further grounds of appeal, I have addressed these grounds in these reasons where I addressed the proposed relocation and the other two alternatives.

9. conclusion

[71] The appeal is dismissed and the Provincial Court Order is confirmed.

10. costs

[72] If the parties wish to speak to costs, I ask that within 90 days they arrange through Supreme Court Scheduling a 9 a.m. 55-minute hearing before me.

"Funt J."

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