
CANADA / JUDGMENT

R.K.L. v. Z.M.B.

2019 BCSC 1381

COURT

Supreme Court of British Columbia

DECIDED

16 August 2019

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2019 BCSC 1381 R.K.L. v. Z.M.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.K.L. v. Z.M.B.,

2019 BCSC 1381

Date: 20190816

Docket: E54028

Registry: New Westminster

Between:

R.K.L

Claimant

And:

Z.M.B.

Respondent

Before: The Honourable Madam Justice Morellato

Reasons for Judgment

Counsel for the Claimant:

R.L. Aldana

Counsel for the Respondent:

R. Joubin

Place and Dates of Trial/Hearing:

Vancouver, B.C.

May 28-31, 2018

June 1, 2018

November 5-7, 2018

April 23-25, 2019

Place and Date of Judgment:

Vancouver, B.C.

August 16, 2019

I. Introduction

- [1] The key issue in this case is whether it is in the best interests of an eight year old boy, X.B.L. ("Child"), to move to Ontario with the respondent mother, Z.B. ("Mother"). The Child is currently living with his mother in Hope, British Columbia. The Child's father, R.L. ("Father") currently lives in Ladner, British Columbia. The Father has been parenting his son every weekend pursuant to a court order dated March 8, 2018. Prior to this court order, the Father was also involved in parenting the Child, most often in the Mother's presence. The parties have never married and have never lived together. It is undisputed that the Mother is the primary caregiver.
- [2] Both the Mother and the Father are able, loving parents; the evidence also establishes that the Child is bonded to, and loves, both his parents. The Father opposes the Mother's move to Ontario with their Son.
- [3] The other issues to be determined include parenting arrangements, prospective child support and retroactive child support.

II. Background and summary of evidence**A. The Early Years of the Relationship Between the Parties and the Birth of the Child**

- [4] The parties met while they were both working at a pet food store in Ladner, British Columbia; the Father was 18 years old and the Mother was 29 years old. The Father was single and the Mother was married with one child, O.B. The Father is currently 30 years old and the Mother is 42.
- [5] The parties began their relationship as friends and started dating soon after. They were in "a romantic relationship" for about two to three years and then "broke-up" in 2009, although they continued to have sexual relations following their break-up. The Mother testified they "broke up" as a result of her pregnancy with the Child. The Mother hoped, both before and

after the birth of the Child in 2011, that she and the Father could be together as a family. During the pregnancy, the Father made it clear that he did not wish to form a family or to parent the Child. After the Child was born, the Father slowly became a more engaged parent.

- [6] The Mother remained the primary caregiver at all times. She stayed at home with the Child and did not work for the first three years of his life. The Mother and Father kept their separate residences after the birth of the Child, although the parties continued to spend time together with the Child until 2017 when the Mother attempted to move to Ontario and brought the Child with her.
- [7] Prior to 2017, the Mother and Father would spend time together on weekends, sometimes at the Mother's residence and sometimes at the Father's residence. The Mother testified that when she stayed at the Father's home, she and the Child would sleep in a separate bedroom. Both parties acknowledged that they continued to have sexual relations from time to time after the birth of the Child. In the spring of 2017, the Mother asked the Father if there was a future for them as a couple and as a family. The Father responded that there was not. At that time the Father had accepted a contract in Manitoba that spanned several months.
- [8] There is a dispute between the parties as to whether the Father was regularly in the Child's life during the first two or three years after his birth. The Father testified that he was part of the Child's life from the time of his birth but acknowledges that he played a secondary role compared to the Mother. He asserts, however, that his involvement as a father steadily increased after the Child's birth and that, by the summer of 2017, he played an important and key role in the Child's life. The Mother testified that prior to the summer of 2017, the Father did not have a strong bond with the Child, noting that she was present most of the time the Child was with the Father.
- [9] The evidence before me establishes that the Father became increasingly involved in the Child's life, as did the Child's paternal grandparents, when the Child was about two or three years old, particularly after the Mother returned to work. From that point onward, the Father started spending more time with the Child during the week and on weekends. While there were periods of time when the Father was required to work out of town, he made a concerted effort to spend time with this son when he returned, particularly as the Child grew older. This conclusion is supported by the report prepared by Mr. Colby in 2018 ("2018 Colby Report") pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25 [Family Law Act]. Mr. Colby interviewed the Child and reported that the Child himself viewed his Father as his family and as someone of primary importance in his life.
- [10] Based on the evidence before me, it is clear that the Father formed a deep bond with the Child prior to the Mother's departure to Ontario with the Child in 2017. It is clearly in the Child's best interest to preserve and protect this bond.

B. Events Leading to the Mother's Attempted Move to Ontario

- [11] These proceedings were precipitated by events in the summer of 2017 when the Mother travelled with the Child to Ontario for a holiday. In July 2017, the Mother advised the Father that she wished to go visit family in Espanola, Ontario with their son for approximately two weeks.
- [12] As noted above, the Father had made it clear to the Mother earlier that year that he did not wish to be in a relationship with her. The Father began working in Manitoba in March 2017 on a "three weeks on, one week off" schedule. He testified that since he was working in Manitoba for most of that summer, he fully supported the Mother's wish for a holiday with their son. In fact, he paid for the Child's flight to Ontario.
- [13] The Mother was not transparent or forthright with the Father about her reasons for travelling to Ontario that summer. By the time of her trip to Ontario, the Mother had reconnected through Facebook with a high school friend named K.D. K.D. lived in Orangeville, Ontario which is an estimated 4.5 hours drive from Espanola. The Mother planned to meet K.D. and stay with him and the Child in his family's summer home in Georgian Bay.
- [14] After travelling to Ontario and spending time with K.D., the Mother decided she wanted to live in Ontario permanently with K.D. In fact, the Mother and K.D. were subsequently married a year later.
- [15] There is a dispute on the evidence regarding what transpired at the end of July 2017. The Mother testified that while she was in Ontario, she called the Father on July 27, to tell him she wanted to live in Ontario permanently with the Child. She stated that she advised the Father of her plan to return to British Columbia in August 2017, to pack her belongings and to move to Ontario by the end of the summer. The Mother testified that the Father said he "would not stop her." She stated that she then suggested that they work out parenting arrangements so that the Father could spend time with the Child following her move to Ontario. She stated that she agreed to come back to Vancouver in August to pack up and move with the Child by the end of August. She also stated that she agreed to meet with the Father in Vancouver in late September.
- [16] The Father testified that at no point did he agree to the Mother moving to Ontario with the Child. He testified that the Mother called him in July while she was in Ontario and stated she would be returning to British Columbia in early August and that she also wanted to go back to Ontario. The Father testified that, in regard to the Mother's trip back to Ontario that summer, he told her "I'm not going to stop you" and expressly asked the Mother "how long?" He testified that the Mother told him she needed some time "to figure things out and to be happy" and that she assured him she was not moving to Ontario. The Father further testified that the Mother advised him she would be taking a flight to Ontario with their son on August 30, 2017 and would be returning on September 27, 2017. Subsequently, the Mother travelled to Ontario by car with the Child and K.D.

- [17] The Father further testified that on September 10, 2017, the Mother called him from Ontario to advise that she would not be returning to British Columbia and would be living in Ontario permanently.
- [18] The Father produced text messages that supported his evidence. The Mother argued that the text messages were fabricated by the Father. She said she did not send the text messages that he introduced into evidence; she explained she could not provide the original texts because her phone automatically deletes texts after a while but she was categorical that the text messages presented to the Court were false.
- [19] The Father stated he intentionally kept the text messages because he thought he might need them and that he used a special application to reproduce the texts for the Court. On cross-examination he acknowledged that there were numerous phone calls between the parties whose content was not reflected in the text messages. He also acknowledged some irregularities in the reproduction of the texts and that the date sequences for certain text messages seemed misplaced.
- [20] Having carefully considered the contradictory evidence, I am not able to discern whether the text messages were manipulated by the Father or not. Nevertheless, whether or not the Father originally agreed to the Mother's move to Ontario with their son, it is clear that by September 2017, he made his opposition to the move abundantly clear. The Mother never confirmed in writing her intention to move to Ontario with the Child.
- [21] The Father testified that upon learning of the Mother's plans to live in Ontario, he requested a leave of absence from work and left his Manitoba job early, in mid-September. He consulted a lawyer and brought proceedings in Provincial Court for an order that the Mother return the Child to British Columbia. He testified that the application was dismissed on the basis that he brought the proceedings before September 27, 2017, despite having agreed with the Mother that she could return on that date. The Father agreed on cross-examination that he did not advise the Mother of this application.
- [22] The Father travelled to Orangeville later in September 2017. He testified that he went to Orangeville to convince the Mother to return to British Columbia with the Child. When he arrived, the Mother was concerned that he would "kidnap" the Child, based on information she had received from her own mother concerning a conversation her mother had had with the Father.
- [23] The Father testified that when he arrived in Orangeville that September, the Mother did not want to "give me any time with [the Child] unless I signed a parenting agreement." Accordingly, the Father found a draft parenting agreement on the internet. Neither party sought legal advice in relation to this agreement. He drafted the agreement and inserted paragraphs he thought would help ("Parenting Agreement"). Both the Father and the Mother signed the Parenting Agreement on September 28, 2017.

[24] The Father testified that the Parenting Agreement was intended to apply for a short duration. In fact, the Parenting Agreement provided, in part, as follows:

This is a temporary Parenting Agreement to apply to the current (Sept 25, 2017) and any subsequent visits before the end of 2017, for Parent A [Father] to see the Child. As well as basic roles and responsibilities between the parties.

[25] The Parenting Agreement also included the following provisions:

We agree to make/discuss all major decisions together; education, health care, relocation and religion. In the case of a health emergency, the parent who the child is with at the time will make the decision and inform the other parent immediately. As the child is currently residing with Parent B [Mother] they may make the day-to-day decisions; homework, bedtime, chores.

It is agreed that during the visit, Parent A [Father] will not make any unlawful attempt to remove the child from Parent B's [Mother's] care. It is agreed Parent A will not remove the child from Ontario while visiting. Parent A will have unrestricted access to the child so long as it does not interfere with the child's day-to-day schedule; bedtime, school, extra-curricular, that is unless previously agreed to by both parents. Parent B will promote and encourage the child to spend time with the other parent.

It is agreed that when Parent A is not visiting, all attempts will be made so that Parent A may communicate with the child each day at a designated time. At least a half hour of time must be made available for communication with the child, if either the child or the time frame is unavailable for a particular day, Parent B must communicate this before the designated time and an alternative must be discussed.

This plan is to be reviewed and/or replaced before the end of December 2017. At this time we will discuss and negotiate any changes that we agree are appropriate.

In the event of an unanticipated change in circumstance with either the child or inability of the either parent to meet the child's needs we agree that the Parenting Agreement may be amended before the set date of review December 2017. Before any amendments may be applied both parents must discuss and agree to the said amendments. All amendments must be made in writing.

It is agreed that in the case where neither parent can come to an agreement, an official mediator will be used to assist in the final decision.

[26] The Father testified that after the Parenting Agreement was signed and during his first visit, he saw the Child "a lot", "overnight" and "lots of time after school". He noted that the Mother was working in the evenings. The Father helped the Child with his homework, they watched movies in his hotel room, drew pictures and he also bought the Child a Halloween costume.

- [27] The Father testified that he went to Orangeville a second time in October 2017. He stated that, during this second visit, he was not welcomed by the Mother. He stated he tried to tell her he had arrived for a visit but she was not responding to his calls. He was permitted little time with the Child and was not allowed to have him overnight. The Father testified that, as a result of this second visit, he decided to initiate the legal proceedings currently before the Court.
- [28] A significant amount of evidence was led by both the Mother and the Father regarding the actions of the other parent, including various communications between them, some involving alleged threats and inappropriate conduct, particularly (but not limited to) the period spanning the summer and fall of 2017. This was a high conflict time and there is no doubt that the parties harboured a great deal of acrimony towards each other. I will not address all of the various allegations made as many are not particularly material to the issues before the Court; however, I have considered them all nonetheless.

C. Proceedings Before this Court

- [29] After the Father commenced the current action, he brought an application for the return of the Child to British Columbia. On December 19, 2017, Justice Blok ordered that the Child be returned to British Columbia by no later than December 31, 2017. The Mother and Child returned to British Columbia mid-January 2017.
- [30] When the Mother returned to British Columbia, she did not move back to Ladner, where the Father continued to reside and where she resided prior to moving to Ontario. Rather, she moved to Hope, where her brother lives. She does not live with her brother in Hope but lives there with her mother and the Child.
- [31] In March 2018, the parties appeared before Master Harper. The Mother was seeking an order to move back to Ontario before the trial of this matter. Master Harper dismissed her request and ordered, among other things, weekend parenting time for the Father, every Friday from 4:30 p.m. to Sunday at 4:30 p.m. She also ordered that an assessment and report be conducted pursuant to s. 211 of the Family Law Act. Mr. Colby, a psychological experienced in conducting s. 211 assessments, was chosen by the parties to do the s. 211 report.
- [32] The trial was set for five days, and commenced before me on May 28, 2018. An insufficient amount of time was set for trial and, accordingly, I adjourned the trial and directed the parties to find a suitable date for its continuance, for an additional five days.
- [33] The first s. 211 assessment was the 2018 Colby Report. Mr. Colby completed his lengthy report on May 11, 2018. The 2018 Colby Report did not include an interview with the Mother's fiancée or his children. On the first day of trial, the Mother made an application for an order that a second s. 211 assessment be conducted ("Collateral Assessment").

- [34] The 2018 Colby Report concluded that both parents are capable of providing care for the Child and recommended, among other things, equal parenting time with the Child and the parents living in close proximity to each other in British Columbia. Mr. Colby recommended that both parents reside in the same community.
- [35] There was clearly a misunderstanding between Mr. Colby and the Mother regarding K.D.'s involvement in the s. 211 assessment process. Mr. Colby testified that he had understood, at least prior to trial, that the Mother had chosen not to include her fiancée in the interview and assessment process. Mr. Colby's assessment process occurred in British Columbia and the cost of travel was a concern for the Mother. However, the Mother testified that she did not choose to exclude her fiancée, K.D.; she also stated she did not understand that Mr. Colby was willing to travel to Ontario to interview K.D. and his children. Mr. Colby candidly acknowledged, both in the 2018 Colby Report and during his testimony, that the 2018 Colby Report was limited in the scope of its recommendations "without the benefit of having met and interviewed" the Mother's fiancée.
- [36] I issued oral reasons on June 19, 2018 directing that a supplemental assessment was necessary, to properly assess the best interests of the Child. I directed that the Collateral Assessment be conducted in the summer of 2018 in Ontario and that it involve K.D. I also directed that the Collateral Assessment be conducted before the resumption of the trial later that year. My directions included the following orders:
- (i) A Collateral Assessment will be conducted by an Ontario Expert and that expert will be selected by agreement of the parties. The Collateral Assessment will take place in July during [the Mother's] parenting time. The Ontario Expert must provide his or her assessment to the Court no later than August 17, 2018.
 - (ii) Prior to the conclusion of the Collateral Assessment there will be consultation and information sharing between the Ontario Expert and Mr. Colby, as agreed between them. The Ontario Expert will be provided with a copy of the Colby Report.
 - .
 - (iv) Following their consultations, the Ontario Expert and Mr. Colby may issue joint recommendations to the Court. These recommendations may address and/or supplement those made in the Colby Report, and may address parenting arrangements and the relocation issue.
 - (v) If the Ontario Expert and Mr. Colby are not able to issue joint recommendations, then each is free to render their own separate recommendations.
 - (viii) The [Father] is responsible for the cost of the Colby Report including the cost of any further recommendation made by Mr. Colby, joint or otherwise. [The Mother] is responsible for the cost of the Collateral Assessment including any recommendations made by the Ontario Expert, joint or otherwise.

- [37] Ms. Karen Guthrie-Douse, M.S.W., R.S.W., was chosen and agreed to by both parties to conduct the Collateral Assessment.
- [38] Ms. Guthrie-Douse conducted her Collateral Assessment on January 2, 2019 in K.D.'s home in Orangeville, Ontario. She interviewed K.D., the Child, and the Mother. She also conducted a "home observation" which included observing the Child with his new twin step-brother and step-sister. The twins were born in 2010 and are about a year older than the Child. Ms. Guthrie-Douse also interviewed K.D.'s father and conducted telephone interviews with K.D.'s former spouse who is the mother of the twins. Ms. Guthrie-Douse also conducted a criminal records check of K.D.
- [39] Ms. Guthrie-Douse issued her report on February 18, 2019, which also included joint recommendations she developed with Mr. Colby ("Guthrie-Douse Report"). Mr. Colby also provided an additional report dated February 14, 2019 ("2019 Colby Report"), wherein he affirmed the joint recommendations and made additional observations.
- [40] The Guthrie-Douse Report states that: 1) "this clinician had no concerns about the physical environment of the home" in Ontario; and 2) "Throughout the clinician's visit, [the Child] appeared engaged with both the children and adults in the home, and appeared happy and relaxed in their presence." Notably, K.D. advised that once the Mother and the Child move to Ontario, they would all live in the basement of his parent's home. This Report also states that the twins' primary residence is with K.D.'s former spouse and that the twins spend alternate weekends and time during the week with K.D., "which is roughly equivalent to a 50/50 shared parenting arrangement."
- [41] Ms. Guthrie-Douse stated that K.D.'s home "is a suitable physical environment for [the Child], and "it was clear that [the Child] and [K.D.] have a positive emotional bond with one another." She concluded that she "has no concerns about the physical or emotional environment provided to [the Child] in Ontario, and supports that such an environment would be beneficial to him."
- [42] The final recommendations in Guthrie-Douse Report were made following consultations between Mr. Colby and Ms. Guthrie-Douse. The additional comments and recommendations of Mr. Colby were set out in the 2019 Colby Report and were considered by Ms. Guthrie-Douse and Mr. Colby during their consultations. Mr. Colby's views were incorporated into the joint recommendations.
- [43] The joint recommendations of Mr. Colby and Ms. Guthrie-Douse include the following:
1. The primary residence of [the Child] shall continue to be with [the Mother].
 2. [The Child] shall be permitted to move to Ontario with [the Mother].

3. [The Father] and [the Mother] will make efforts to reach joint and mutual decisions regarding parenting responsibilities . In the event of an impasse, [The Mother] will have final decision making capability regarding [the Child's] health and education, and will inform [the Father] in writing of major decisions she make in this regard.
- [44] The recommendations also address a number of additional matters which relate to parenting time throughout the year, respectful communications between the Mother and Father, travel arrangements and the cost of travel.
- [45] The remainder of the joint recommendations are as follows:
 4. The [Mother] will provide in writing to the [Father] the name and contact information of [the Child's] doctor and school in Ontario, and will sign any necessary consent forms for the [Father] to independently obtain health and education information about the [Child].
 5. The [Mother] and the [Father] will have responsibility for day to day decision making when the [Child] is in their parental care.
 6. The [Mother] and the [Father] will keep each other informed regarding any travel, holiday or plans with the same degree of communication that they would exercise should they be living in the same community. This includes providing ample notice to the other party before taking any extended holidays and trips, and inform the other parent of the contact information and itinerary for such travel.
 7. The parent who has the [Child] in their care will hold the [Child]'s passport and travel approval for the duration of that time.
 8. The [Mother] and the [Father] will keep each other informed of the [Child]'s extracurricular activities, and provide the contact information of coaches, and schedules for games and practices.
 9. The designation of the [Child]'s nomenclature for his reference to [K.D.] should differentiate between [K.D.] and the [Father], with each of them being referred to with a different nomenclature so as not to depreciate or interfere with the identity of the [Father] as the [Child]'s father.
 10. The [Child] will maintain the surname of the [Father], and any change in his surname is by mutual agreement of the parents, or through court procedure.
 11. The [Child] and the [Father] will have contact through Skype, FaceTime or telephone, twice per week on designated days agreed upon by the [Mother] and the [Father]. These calls should be scheduled one half hour before the [Child]'s bedtime and should last no longer than ten minutes. The schedule of these contacts are to be reviewed and reset every six months.

11. In the [Mother]'s home, the [Child] should have a picture of his father in his bedroom, and in the [Father]' home, the [Child] should have a picture of his mother in his bedroom, so as to provide support of the relationships between the [Child] and each of his parents.
12. The [Child] shall return to the care of his father in British Columbia during the following times on a yearly basis:
 - a) February Family Day Holiday: Family Day falls on the third Monday in February in Ontario. On the Thursday evening prior to the family day weekend, the [Child] will fly to B.C., resulting in him missing school on Friday. He will return to Ontario on Family Day Monday, in enough time to ensure his attendance at school on Tuesday morning.
 - b) March Break: March Break falls during the second week of March from Monday to Friday. The [Child] will fly to B.C. on the Saturday prior to the beginning of March Break, and return to Ontario the following Saturday.
 - c) Easter Weekend: Easter Weekend usually occurs in April. The [Child] will fly to B.C. on Good Friday, and return to Ontario on Easter Monday, in enough time to ensure his attendance at school on Tuesday morning.
 - d) Victoria Day: On the Thursday evening prior to the Victoria Day weekend, the [Child] will fly to B.C., resulting in him missing school on Friday. He will return to Ontario on Victoria Day, in enough time to ensure his attendance at school on Tuesday morning.
 - e) Summer School Vacation Period: There are nine weeks of summer vacation, and it is suggested that the [Child] spend two-thirds of this vacation time (six weeks) with his father. It is recommended that the weeks be divided as follows: the [Child] to be in his father's care for the first three weeks in July, return to his mother's care for two weeks of the last week of July and first week of August, then in his father's care for three weeks. The [Child] to return to his mother's care for the last week of summer vacation prior to school beginning in September.
 - f) Thanksgiving Weekend: On the Thursday evening prior to the Thanksgiving weekend, the [Child] will fly to B.C. resulting in him missing school on Friday. He will return to Ontario on Thanksgiving Monday, in enough time to ensure his attendance at school on Tuesday morning.
 - g) December/January Christmas Break: Christmas Break is two weeks' duration, with school ending on the Friday prior to Christmas, and resuming on the Monday following New Year's Day. On an alternating yearly basis, the [Child] shall spend one week with his mother in Ontario, and one week with his father in B.C. It is recommended that in December 2019, the [Child] will spend the first week (from Saturday December 21 to Friday December 27) with his mother. The [Child] will fly to B.C. on Saturday, December 28, and return to Ontario on Saturday January 4. The following year in 2020, the [Child] will spend the first week with his father, and the second week with his mother.

14. It is acknowledged that the [Child] will miss three days of school with this suggested access plan.
 15. The [Father] may choose to exercise any of the above access times with the [Child] in Ontario, by informing the [Mother] at least two months in advance, in writing.
 16. The [Child] and the [Father] will have contact through telephone, Facetime or Skype on Father's Day, the [Father]' birthday, and the [Child]'s birthday.
 17. The [Mother] and the [Father] will communicate with one another regarding the [Child]'s health, education, activities and wellbeing through a co-parenting communication platform, such as Our Family Wizard, Coparently, or 2Houses.
 18. Neither parent shall speak negatively of the other, and shall encourage a respectful and loving relationship between the child and each parent.
- [46] The 2019 Colby Report expressly affirms the recommendations set out in the Guthrie-Douse Report. Mr. Colby acknowledges that Ms. Guthrie-Douse addresses the stability of the relationship between K.D. and the Mother, noting that since the 2018 Colby Report, the couple is now in a marriage relationship. Mr. Colby comments: "There is a positive component of the extended family and engagement with the [K.D.] family in Ontario", again noting that Ms. Guthrie-Douse "presents it as a stable environment."
- [47] Mr. Colby also underscores the importance of maintaining a relationship between the Father and Son. He states:

It is important that [the Child] being able to identify his father and his relationship with him in terms of paternity is different from that of [K.D.]'s role. While it is recognized that [the Child] will be in a household with two other children who have nomenclature for their father and [the Child] would want to use the same nomenclature, it is important that his father's identity be maintained with a separate designation than that of [K.D.] with [the Child] being aware of the differing relationship with those individuals. That enhances self-identity in the nature of this relationship with his father. Further this Psychologist feels that it does not enhance the continuity of his relationship with his father to pursue a name change and that should such matters come forward that that should be a matter between the parents and the Court without engaging [the Child] in that decision.

While this Psychologist has concerns in regard to the effect of [the Child] moving away from his father in British Columbia, it is noted that [K.D.] does not present any risk to the wellbeing of [the Child] in the conclusions of Ms. Guthrie-Douse's Assessment. Further, it presents a stable environment for [the Mother] and her marital relationship with [K.D.] in a community that provides support, family structure and appears to be a positive engagement for [the Child] within that community. It is important that every effort is made to maintain [the Father's] parental involvement with his son and the recommendations are consistent with those concerns.

With the recommendations presented this Psychologist feels that the move to Ontario is in [the Child's] best interests.

- [48] K.D. testified at trial. He presented as a kind, responsible and committed husband and family man. He has lived in Orangeville all his life, has a stable job and lives in the basement of his parent's home, paying \$600 a month in rent. He affirmed his intention to maintain, facilitate and protect the Father's relationship with the Child, as a father-son relationship.
- [49] K.D. described the Mother as his "soul mate" and affirmed that he has been in a relationship with the Mother for about three years. They married in early August of 2018 in Ontario. He stated that the Mother is "great with all three kids" and that she is a "great Mom." He also noted that the Mother and his former spouse have developed a good relationship; the extended family have gone "trick or treating" together at Halloween and the Child has had "sleepovers" with his new step-brother and step-sister at his former spouse's home.
- [50] In regard the Father's understandable concern that the Mother was replacing him as the Child's father, K.D. testified that "I don't want to ruin his [the Father's] relationship" with the Child. K.D. testified that it was important to him to have a good relationship with the Father, commenting genuinely that he would "like that." He stated that "I totally respect [the Father]." K.D. testified that he wanted the Child "to be in a strong relationship with his Dad even if I have to pay for it." K.D. testified that he would "facilitate the finances" of the Child travelling to and from Ontario. In fact, K.D. and the Mother have agreed to pay for the costs of the Child's travel to visit his Father.
- [51] K.D. testified that the "[Child] and I get along great. We are close." K.D. also stated that the Child "loves it there" (meaning Ontario), "hanging out with the twins and camping and fishing" together.
- [52] On cross-examination, K.D. confirmed that he and the Mother reconnected on Facebook, in what "might have been" 2016 and that they met in person during the summer of 2017 for the first time since high school. He stated they spent two weeks together and "then she moved in with me in September [2017] and we lived together until she left in January 2018 [pursuant to Justice Blok's Order requiring the Mother to return the Child to British Columbia]".

III. DISCUSSION AND ANALYSIS

Issue 1. Guardianship

- [53] The Father seeks an Order that both he and the Mother are guardians of the Child. While the Mother initially took issue with the Father's guardianship, during closing argument, counsel confirmed that the Mother did not dispute the Father being a guardian of the Child.

[54] Had this concession not been made late in the trial process, I would nevertheless have found, in light of the evidence before me, that the Father is a guardian of the Child. The Father's entitlement to guardianship arises under s. 39(c) of the Family Law Act: he is a parent that has regularly cared for the Child.

Issue 2. Should the Child be permitted to move to Orangeville with the Mother?

A. Position of the Parties Regarding the Applicable Provisions of the Family Law Act.

(i) Submissions of the Father

[55] The Father submits that s. 46 of the Family Law Act applies in the circumstances of this case. Section 46 provides:

Changes to child's residence if no agreement or order

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.

[56] Counsel for the Father asserts that this case falls within s. 46 because the parties had no written agreement or order at the time of the Mother's initial attempt to relocate. She asserts that the Parenting Agreement was entered into in September 2017 after the Mother moved to Ontario with her son; moreover, it was temporary in nature and did not settle the parenting arrangements between the Mother and Father. Further, the Parenting Agreement did not constitute an explicit consent to have the Child reside in Ontario. Indeed, counsel for the Father underscores that both parties testified that it was essentially a mechanism by which the Mother was assured that the Father would not leave Ontario with the Child when he went to see the Child in Orangeville in the fall of 2017. Accordingly, she argues, the evidence establishes that it was not an agreement pursuant to s. 46.1(a) of the Family Law Act.

- [57] Counsel for the Father further argues that since Division 6 of the Family Law Act (ss. 65-71) is not applicable, this Court does not need to make a finding of whether the Mother's proposed move was made in good faith.
- [58] Counsel submits that under s. 46(2) of the Family Law Act, before considering the best interests of the Child, the Court must consider the reasons for the change in location of the Child's residence. Counsel argues that the Mother moved to Ontario for her own personal benefit, to rekindle a romantic connection from her teenage years and to explore that new life. As such, the Mother's actions, she argues, were self-serving and did not consider what arrangement would be reasonable in order for the Father to maintain a relationship with their Child.
- [59] Counsel for the Father submits that while it may have been in the Mother's best interest to move to Ontario, her best interests must not be conflated with that of the Child. She submits that the Child's interest must be considered in light of s. 37(2) of the Family Law Act and, further, that the best interests of the Child requires that both parents continue to reside in proximity to each other in British Columbia, so that they may co-parent the Child under an equal parenting arrangement.

(ii) Submissions of the Mother

- [60] Counsel for the Mother relied primarily on s. 69 and, in the alternative, s. 46 of the Family Law Act. He also argued that the best interests of the Child is the overarching consideration and, further, that those interests favour the Child moving to Ontario with his Mother. In addition, he argued that I must also consider the Mother's health and well-being, citing *Hefter v. Hefter*, 2016 BCSC 1504.
- [61] Counsel argues that the Mother did not relocate until she received permission from the Father; it was only after she received his consent in late July 2017, that she made plans to move to Ontario. Further, he submits that both the Mother and K.D. have committed to supporting the Father's ongoing relationship with the Child including paying for the cost of the Child travelling to and from British Columbia to see his Father. Counsel submitted that in the future, the Mother has also committed to providing the Father with more parenting time during the summer months.
- [62] Section 65 of the Family Law Act applies to the relocation of a child in the circumstances where there is a written agreement between the parties. Section 65 reads as follows:
- 65(1) In this Division, "relocation" means a change in the location of the residence of a child or child's guardian that can reasonably be expected to have a significant impact on the child's relationship with
- (a) a guardian, or
 - (b) one or more other persons having a significant role in the child's life.

- (2) This Division applies if
- (a) a child's guardian plans to relocate himself or herself or the child, or both, and
 - (b) a written agreement or an order respecting parenting arrangements or contact with the child applies to the child.

[Emphasis added]

[63] Counsel for the Mother argues that the Parental Agreement signed by the parties in September 2017 is such a written agreement. He argues that this document reflects an arrangement between the parties that the Child would not relocate to British Columbia.

[64] Counsel also argued that the criteria subsumed within s. 69(3) and (4) of the Family Law Act have been satisfied on the facts before me. These sections provide:

- (3) Despite section 37 (1) [best interests of child], the court, in making an order under this section, must consider, in addition to the factors set out in section 37 (2), the factors set out in subsection (4) (a) of this section.
- (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.

[65] Counsel for the Mother asserts that the proposed relocation was made in good faith. The Mother fell in love with K.D. and married him, and she has created a new blended family with K.D., his twin children and the Child. Both the Mother and K.D. gave evidence that the Child loves his new brother and sister, and enjoyed going to the same school with them in Orangeville in the fall of 2017. The Child's best interests were considered. The Guthrie-Douse Report supported the evidence that the Child's family life in Orangeville was stable and that the Child seemed comfortable and content there. The Mother testified that the family environment in Orangeville was a very positive one for the Child, and an improvement over his living situation in Hope, British Columbia.

- [66] Counsel for the Mother also asserted that she has proposed reasonable and workable arrangements to preserve the relationship between the Child and the Father. He underscores that the Mother is agreeable to each of the joint recommendations advanced by Ms. Guthrie-Douse and Mr. Colby, including those designed to secure and enhance parenting time and contact between the Father and the Child throughout the year, as well as those which recognize their unique father-son bond.
- [67] Counsel for the Mother conceded that the Mother did not satisfy the requirement of s. 66 which required written notice to the Father at least 60 days prior to the proposed relocation. He says, however, that the failure to provide written notice is not determinative and is a minor factor within the overall context of this case.
- [68] Counsel argues, in the alternative, that the requirements of s. 46 have been satisfied. He acknowledges that the Child's move to Ontario would have a significant impact on the Child's relationship with the Father; however, he submits that the reasons for the Mother's change in location from British Columbia to Ontario was to make a better life for both the Child and herself.

(iii) Discussion: Should the Child be Permitted to Move to Ontario?

- [69] Having carefully considered the matter, I am of the view that this issue must be decided under s. 46(1)(a) of the Family Law Act. The Parental Agreement was clearly temporary in nature. It was not drafted with the benefit of legal advice and I accept the Father's evidence that its purpose was to facilitate parental time with his son during his visits to Ontario in the fall of 2017. The Parental Agreement was very limited in its scope and did not settle any parenting arrangements.
- [70] I do not accept that the Parental Agreement constitutes explicit consent to have the Child reside in Ontario. Both parties acknowledged during their testimony that it was a means by which the Mother could be assured the Father would not take the Child back to British Columbia during his visits to Ontario.
- [71] I am in agreement with counsel for the Father that the interim order of Master Harper does not engage a Division 6 analysis on relocation. In (S.J.) v. N.(R.M.), 2013 BCSC 1812, Justice Punnett found that an interim order, made in a proceeding that has already commenced, does not trigger a Division 6 analysis: see also K.W. v. L.H., 2018 BCCA 204. Notably, Master Harper declined to the Mother's application to move to Ontario with the Child pending the trial of this matter.
- [72] Accordingly, the provisions in Division 6 of the Family Law Act do not apply. I am also of the view that parties who rely on the provisions of Division 6 must honour and follow the written notice requirements mandated in the legislation.

1. Sections 46 and 37 Applied

- [73] I have already concluded that there is no written agreement or order as is required for s. 46(1)(a) of the Family Law Act to apply. In addition, the respective parenting time of the parties is clearly in issue in these proceedings, as contemplated in s. 46(1)(b), and the proposed relocation of the Child to Ontario will undoubtedly have a significant impact on his relationship with the Father, as contemplated in s. 46(1)(c).
- [74] Section 46(2) expressly requires that I consider the best interests of the Child as set out in s. 37(2), as well as the reasons for the relocation of the Child's residence. In regard to the reasons for the relocation, having considered the entirety of the evidence before me, I find that the Mother's move to Ontario also involved her consideration of the Child's best interests. The evidence before me established that the Mother and K.D. have formed a new and loving blended family and, further, that the Child has thrived within that environment, with two siblings close in age to him and a step-father whom he has bonded with.
- [75] Section 37(2) of the Family Law Act provides the following prescriptive guidance in assessing a child's best interests:
- (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.

- [76] In assessing these factors, I have carefully reviewed the evidence of each of the parties and all of the witnesses. In addition, I have reviewed the reports of Ms. Guthrie-Douse and Mr. Colby, in the context of the evidence provided by the Mother and the Father, as well as the other witnesses. The joint recommendations provided by these experts were very helpful in considering the best interests of the Child and they were consonant with, and reinforced by, the evidence before me.
- [77] For the reasons discussed further below, I have concluded that it is in the best interests of the Child to move to Ontario with his Mother. However, this order is made on the express condition that all the joint recommendations of Ms. Guthrie-Douse and Mr. Colby, which I have modified slightly, latter in these reasons, must be followed by the Mother. To be clear, it is imperative that the Father's parental relationship with the Child, and his parenting time throughout the year, be protected and honoured as the years ahead unfold. I also accept the Mother's submission that the Child may spend seven weeks with the Father during the summer months.
- [78] As regards s. 37(2)(a), I am satisfied that the Child's health and emotional well-being will be improved by settling in Ontario with his Mother. The Mother has been the Child's primary caregiver over the years and, more importantly, has created a new blended and stable family with her spouse, K.D. The Child has been living through a period of transition since the summer of 2017 and I am of the view that settling in Orangeville with the Mother and K.D, and with his step-brother and sister, will be the best result for him.
- [79] The Child's maternal grandmother also indicated she wished to move to Ontario along with her grandson (the Mother's eldest son and the Child's older brother) to be closer to the Mother and the Child. Although, it appears most likely that the maternal grandmother will settle in Espanola rather than Orangeville, she will nevertheless be closer and more accessible to the Child in Espanola.
- [80] In regard to s. 37(2)(b), while the Child is still very young, having just recently turned eight years old, his views and feelings do matter. The 2018 Colby Report makes clear that the Child has a strong and loving bond with both the Father and Mother. The Child has also expressed a desire to spend more time with his Mother, which is understandable given his history of care. In addition, the evidence before me established that he is comfortable and happy while at K.D.'s home in Orangeville and that he has established a positive relationship with K.D. and the twins. I am satisfied that the Child would be happy with the prospect of living in Ontario; indeed he expressed this sentiment to Ms. Guthrie-Douse.
- [81] Section 37(2)(c) concerns the nature and strength of the relationships between the Child and significant persons in his life. I have addressed this issue to some degree already. The Child is fortunate to have a strong and loving bond with both his parents, and that he has more recently developed strong relations with K.D. and his step-brother and step-sister. It is also very clear to me that the Child has a deep bond with his older brother, O.B. and has lived with his brother most of his life. The Child's maternal grandmother has also been very

involved in raising the Child; he has lived with the maternal grandmother, who has been of invaluable assistance to his Mother in the Child's daily care.

- [82] I am mindful that the Child's paternal grandparents, who live with the Father, have also played a significant role in the Child's life. While it is patent that the Child is well-loved and cared for by a large extended family, this case is made all the more difficult because the extended family lives in separate provinces. On balance, considering the various relationships in his life, I am of the view that the nature and strength of the Child's relationships also weigh in favour of the Child moving to Ontario.
- [83] Section 37(2)(d) deals with the history of the Child's care. While the Father has played an increasingly more significant role in the Child's care, the Mother has undoubtedly been the most dominant figure in his life with the greatest responsibility for this care. In addition, the maternal grandmother has played an integral and important role in the Child's day to day care since his birth. She testified she is committed to continue this close relationship in Ontario. While K.D. has become involved in the Child's life about two years ago, the evidence affirms that the step-father and step-son relationship is strong and healthy. On balance, the history of the Child's care also favors the Child's move to Ontario.
- [84] With regard to s. 37(2)(e), I am satisfied that the Child's need for stability, in light of his age and stage of development would be best met in Ontario with the Mother, K.D. and the twins. The lay evidence before me supports the conclusions of Ms. Guthrie-Douse and Mr. Colby in this regard.
- [85] Section 37(2)(f) requires that I consider the ability of the each person who seeks guardianship or parental responsibility or contact with the Child to exercise his or her responsibilities. I have no difficulties or concerns in this regard. The Child is fortunate to have loving and caring parents, as well as other adults in his life who wish to be involved in his upbringing. Most importantly, both the Mother and the Father are very capable and committed parents. In this sense, this factor weighs equally in favour of both parents.
- [86] In regard to s. 37(2)(g) and (h), I have considered all the evidence before me and I am in agreement with both the Mr. Colby and Ms. Guthrie-Douse that there are no concerns relating to family violence or the Child's safety, security or well-being if he moves to Ontario.
- [87] Considering s. 37(2)(i), I agree with Mr. Colby that both parents have the capacity to cooperate and collaborate in raising the Child. The joint recommendations of Ms. Guthrie-Douse and Mr. Colby are realistic and advisable in light of the evidence tendered at trial and I am in support of their recommendations.
- [88] I would only add, as a caution, that the unique and special relationship between the Father and the Child must be supported in the years to come; this includes a rigorous adherence to the joint recommendation and the orders of this court. If the orders set out at the conclusion of these reasons are not followed, the current arrangement will need to be judicially reconsidered.

- [89] There are no civil or criminal proceedings, of which I am aware, that are relevant to the Child's safety, security or well-being. Accordingly, s. 37(2)(j) is not relevant in this case.
- [90] In summary, I have concluded that it is in the best interest of the Child that his primary residence continue to be with the Mother and that he be permitted to move to Ontario with her.

Issue 3. Parenting Arrangements

- [91] I have addressed the question of parenting arrangements earlier in these reasons. The joint recommendations of Ms. Guthrie-Douse and Mr. Colby are appropriate and supported by the evidence before me. I have made minor adaptations, the most significant being that the Child will spend seven weeks of summer vacation with the Father instead of six. The Mother has consented to this change.
- [92] Of course, should the parties wish to modify the parenting arrangements set out in these reasons, they may do so by mutual agreement, in writing.

Issue 4. Prospective Child Support

- [93] The Father submits that if the Mother is permitted to move to Ontario, it would be appropriate that he pay child support in accordance with the Federal Child Support Guidelines, S.O.R./97-175. His counsel also submits that it would be appropriate to have the Mother be responsible for the cost of the Child's travel to and from British Columbia for his parenting time with the Father. Both the Mother and K.D. testified that they would be agreeable to paying for the costs of the Child's travel to and from Ontario as set out in the joint recommendations.
- [94] I agree that the Father's child support income ought to be determined in accordance with his declared income in his sworn Form 8 Financial Statement. His 2018 Form 8 provides that his income for child support purposes is \$90,972.37 annually. Accordingly child support will be determined based on this amount and will be adjusted annually.
- [95] Counsel for the Father submitted that if the Mother is permitted to move to Ontario with the Child, that the Mother's income ought to be based on her sworn Form 8 Financial Statement. The allocation of s. 7 expenses will be determined based on the parties' respective Guideline incomes as set out in their Form 8 statements.

Issue 5. Retroactive Child Support

- [96] The Mother seeks an order for retroactive child support back to the date of the Child's birth. The Father submits that this is not appropriate under the circumstances, submitting that no retroactive child support ought to be ordered.

- [97] The Father testified that he provided support to the Mother for the Child from the time the Child was born. He stated that over the years he paid for numerous items that the Child needed including groceries, diapers, a breast pump and clothing expenses. The Child was covered under the Father's extended health and dental benefits; when the expenses exceeded the extended health coverage, such as for speech therapy, the Father would pay the difference. The Mother acknowledged during her testimony that the Father contributed to groceries, clothing, school expenses and the cost of extra-curricular activities such as Taekwondo, gymnastics and Hip Hop. The Mother testified, however, that the Father really did not contribute anything towards the Child's care and expenses until the Child was about three. She testified that around the time she started working, she insisted the Father contribute more to the cost of raising the Child.
- [98] The Father testified that after the Child's first birthday, the parties agreed to an arrangement where he would contribute about 10% of his net income for the Child's support. The Father prepared a spreadsheet where he made his best efforts to reconstruct the financial support he provided for the Child from June 2011 forward. He also testified that the Mother never requested he pay any other child support prior to filing her counterclaim on November 21, 2017.
- [99] The Mother initially denied receiving any of the funds the Father included in his spreadsheet; however, at points in her cross-examination she acknowledged that she did receive various funds from the Father. The Mother's evidence and submissions were not clear or persuasive on this issue. Counsel for the Father submitted that the Mother's evidence was weak on this point because she had regularly been receiving money from the Father in accordance with his evidence.
- [100] In *D.B.S. v. S.R.G.*, 2006 SCC 37 at paras. 38-60, the Supreme Court of Canada affirmed a number of foundational principles that underpin child support payments. The question of whether the parental obligation to support one's child compels a parent to make child support payments for those periods of time when the responsibility to do so was never identified or enforced has been coined "retroactive" child support.
- [101] In *D.B.S.*, the Court observed that such "retroactive" awards are not truly retroactive in the sense that they do not hold parents to a legal standard that did not exist at the relevant time. Rather, they are "retroactive" in that they do not operate on a "go-forward" basis; that is, the parent who owes child support is being ordered to pay what, in hindsight, should have been paid before: see *D.B.S.* at paras. 1-2. Such circumstances are distinguishable from those involving the non-payment of arrears; retroactive awards concern the enforceability and quantification of child support that has neither been paid nor claimed when payment was allegedly due.
- [102] In *D.B.S.*, the Court provides a helpful analytical framework for assessing the entitlement and quantum of retroactive awards. At paras. 99-116, the Court outlines four factors which inform the question of whether a retroactive order should be made:

- (a) the reasons for the recipient's delay in asking for child support;
- (b) conduct of the payor (e.g., non-disclosure of income or pressuring the recipient to not ask for more support);
- (c) the circumstances of the child; and
- (d) any hardship the payor might suffer if required to pay retroactive child support.

[103] The Court in D.B.S. at para. 5 also provided guidance on the date to which a retroactive child support order should begin:

[5] Where ordered, an award should generally be retroactive to the date when the recipient parent gave the payor parent effective notice of his/her intention to seek an increase in support payments; this date represents a fair balance between certainty and flexibility.

[104] More specifically the Court in D.B.S. reasoned at para. 121:

[121] By "effective notice", I am referring to any indication by the recipient parent that child support should be paid, or if it already is, that the current amount of child support needs to be re-negotiated. Thus, effective notice does not require the recipient parent to take any legal action; all that is required is that the topic be broached. Once that has occurred, the payor parent can no longer assume that the status quo is fair, and his/her interest in certainty becomes less compelling.

[105] Further, the Court reasoned that while the matter is discretionary and fact dependant, an award of retroactive child support should not generally exceed three years before formal notice has been given. The Court noted at para. 125:

[125] The proper approach can therefore be summarized in the following way: payor parents will have their interest in certainty protected only up to the point when that interest becomes unreasonable. In the majority of circumstances, that interest will be reasonable up to the point when the recipient parent broaches the subject, up to three years in the past. However, in order to avoid having the presumptive date of retroactivity set prior to the date of effective notice, the payor parent must act responsibly: (s)he must disclose the material change in circumstances to the recipient parent. Where the payor parent does not do so, and thus engages in blameworthy behaviour, I see no reason to continue to protect his/her interest in certainty beyond the date when circumstances changed materially. A payor parent should not be permitted to profit from his/her wrongdoing.

[Emphasis added.]

[106] Counsel for the Father underscores that in D.B.S. the Court noted at para. 96, that:

[U]nlike prospective awards, retroactive awards can impair the delicate balance between certainty and flexibility in this area of the law. As situations evolve, fairness demands that obligations change to meet them. Yet, when obligations appear to be settled, fairness also demands that they not be gratuitously disrupted.

[107] Counsel for the Father underscores that the parties reached an agreement regarding child support that should be enforced; that is, he was to contribute 10% of his income. In considering the four D.B.S. factors articulated above, counsel argues that this Court should first consider whether there was a reasonable excuse for why support was not sought earlier. At para. 100 the Court in D.B.S. reasoned:

[T]he circumstances that surround the recipient's choice (if it was indeed a voluntary and informed one) not to apply for support earlier will be crucial in determining whether a retroactive award is justified.

[108] Counsel for the Father submits that the Mother did not seek support simply because she was receiving it, and also because the Father was diligent in paying the agreed upon amount. She notes that the Father increased his monthly support regularly to coincide with his income. In addition, counsel submits that the Mother and the Father were satisfied with the arrangement at least until the counterclaim was filed on November 21, 2017 and, more importantly, the Child was being supported all along.

[109] Second, argues counsel for the Father, the Court is to consider the conduct of the payor parent. In this case, there is no blameworthy conduct on the Father's part. He paid regularly and voluntarily. While paying, he maintained a home for the Child where the Child spent many of his evenings and overnights each weekend.

[110] Third, the circumstances of the Child are to be considered. Counsel for the Father argues that while it is clear that the Father is in a better financial position than the Mother, the evidence does not support the conclusion that the Child would be better off with a retroactive award of support. Counsel argues that the Mother has made poor financial decisions historically, including those that have had a substantial impact on the Father.

[111] Fourth, counsel for the Father submits that the Court should consider that a retroactive award would be hardship to the Father who already has substantial financial hurdles with respect to the Child, particularly his weekly long drive from Ladner to Abbotsford to collect the Child for parenting time.

[112] In regard to the amount of the retroactive award, counsel for the Father relies on para. 117 of D.B.S where the Court refers to two elements which inform this question:

[F]irst, the court must decide the date to which the award should be retroactive, and second, the court must decide on the amount of support that would adequately quantify the payor parent's deficient obligations during that time.

- [113] The Court determined that the date of effective notice is the appropriate date to order support. In this case, the date of effective notice was November 21, 2017. The Mother did not come to court with any evidence of notice, before that date, to the effect that she was seeking child support from the Father.
- [114] Counsel for the Father argues that if this Court were to find it appropriate to order retroactive child support, I must consider the financial hardship that a retroactive award would have on the Father. Specifically, counsel submits that if I were to make a retroactive child support award, I should order the "Table amount retroactive to December 1, 2017, less the amounts already paid".
- [115] Having carefully considered the D.B.S. factors and the specific circumstances of this case, I am in agreement with counsel for the Mother that retroactive child support should be ordered. I am also of the view, however, that the appropriate amount is the table amount, retroactive to the date the Counterclaim November 21, 2017, less the amounts already paid by the Father.
- [116] With the assistance of able counsel and my findings above, the parties should be well able to agree on a specific amount for retroactive child support that remains outstanding. If not, the matter may be referred to the Registrar for determination.

IV. DISPOSITION

[117] In light of the above, I order at follows:

1. both the Mother and the Father are guardians of the Child.
2. The Child is permitted to relocate to Ontario with the Mother.
3. The primary residence of the Child will continue to be with the Mother.
4. The Father and the Mother will make best efforts to reach joint, collaborative and mutual decisions regarding their parenting responsibilities as set out in s. 41 of the Family Law Act. In the event of an impasse, the Mother will have final decision making authority regarding the Child's health and education. The Mother will inform the Father in writing of major decisions she makes in this regard.
5. The Mother will provide the name and contact information of the Child's doctor and school in Ontario to the Father, and she will sign any necessary consent forms for the Father to independently obtain health and education information about the Child.
6. The Mother and the Father will have responsibility for day to day decision making when the Child is in their parental care.

7. The Mother and the Father will keep each other informed regarding any travel, holiday or plans with the same degree of communication that they would exercise should they be living in the same community. This includes providing ample notice to the other party before taking any extended holidays and trips, and informing the other parent of the contact information and itinerary for such travel.
8. The parent who has the Child in their care will hold the Child's passport and travel approval for the duration of that time.
9. The Mother and the Father will keep each other informed of the Child's extracurricular activities, and provide the contact information of coaches, and schedules for games and practices.
10. The designation of the Child's nomenclature for his reference to K.D. should differentiate between K.D. and the Father, with each of them being referred to with a different nomenclature so as not to depreciate or interfere with the identity of the Father as the Child's father.
11. The Child will maintain the surname of the Father, and any change in his surname is by mutual agreement of the parents, or through court procedure.
12. The Child and the Father will have contact through Skype, FaceTime or telephone, twice per week on designated days agreed upon by the Mother and the Father. These calls should be scheduled one half hour before the Child's bedtime and should last no longer than ten minutes. The schedule of these contacts are to be reviewed and reset every six months.
13. In the Mother's home, the Child should have a picture of his father in his bedroom, and in the Father's home, the Child should have a picture of his mother in his bedroom, so as to provide support of the relationships between the Child and each of his parents.
14. The Child shall return to the care of his Father in British Columbia during the following times on a yearly basis:
 - (a) February Family Day Holiday: Family Day falls on the third Monday in February in Ontario. On the Thursday evening prior to the family day weekend, the Child will fly to B.C, resulting in him missing school on Friday. He will return to Ontario on Family Day Monday, in enough time to ensure his attendance at school on Tuesday morning.
 - (b) March Break: March Break falls during the second week of March from Monday to Friday. The Child will fly to B.C. on the Saturday prior to the beginning of March Break, and return to Ontario the following Saturday.
 - (c) Easter Weekend: Easter Weekend usually occurs in April. The Child will fly to B.C. on Good Friday, and return to Ontario on Easter Monday, in enough time to ensure his attendance at school on Tuesday morning.

- (d) Victoria Day: On the Thursday evening prior to the Victoria Day weekend, the Child will fly to B.C., resulting in him missing school on Friday. He will return to Ontario on Victoria Day, in enough time to ensure his attendance at school on Tuesday morning.
 - (e) Summer School Vacation Period: There are nine weeks of summer vacation, and it is suggested that the Child spend seven weeks of this vacation time with his father. The parties are free to determine how these vacation weeks are to be allocated between time with the Mother and time with the Father.
 - (f) Thanksgiving Weekend: On the Thursday evening prior to the Thanksgiving weekend, the Child will fly to B.C. resulting in him missing school on Friday. He will return to Ontario on Thanksgiving Monday, in enough time to ensure his attendance at school on Tuesday morning.
 - (g) December/January Christmas Break: Christmas Break is two weeks' duration, with school ending on the Friday prior to Christmas, and resuming on the Monday following New Year's Day. On an alternating yearly basis, the Child shall spend one week with his mother in Ontario, and one week with his father in B.C. It is recommended that in December 2019, the Child will spend the first week (from Saturday December 21 to Friday December 27) with his mother. The Child will fly to B.C. on Saturday, December 28, and return to Ontario on Saturday January 4. The following year in 2020, the Child will spend the first week with his father, and the second week with his mother.
 - (h) It is acknowledged that the Child will miss three days of school with this suggested access plan.
- 15. The Father may choose to exercise any of the above access times with the Child in Ontario, by informing the Mother at least two months in advance, in writing.
 - 16. The Child and the Father will have contact through telephone, Facetime or Skype on Father's Day, The Father's birthday, and the Child's birthday.
 - 17. The Mother and The Father will communicate with one another regarding the Child's health, education, activities and wellbeing through a co-parenting communication platform, such as Our Family Wizard, Coparently, or 2Houses.
 - 18. Neither parent shall speak negatively of the other, and shall encourage a respectful and loving relationship between the child and each parent.
 - 19. The Father will pay child support in accordance with his current Guideline income of \$90,972.37. This amount is to be adjusted annually.
 - 20. The Mother will pay the costs of the Child travelling to and from Ontario according to the schedule outlined above.
 - 21. The allocation of s. 7 expenses will be determined based on the parties' respective annual Guideline incomes.

22. The Mother is entitled to retroactive child support from the date the Mother's Counterclaim was filed on November 21, 2017 and will be based on the table amount, less the amounts already paid by the Father. If the parties are unable to agree on the net amount of retroactive child support that remains outstanding, the matter may be referred to the Registrar for determination.
23. The Parties are free to amend their parenting arrangements, and the above orders, by mutual agreement in writing.

[118] In my June 19, 2018 decision, I made an order regarding the allocation of costs of the expert and expert reports:

[The Father] is responsible for the cost of the Colby Report including the cost of any further recommendation made by Mr. Colby, joint or otherwise. [The Mother] is responsible for the cost of the Collateral Assessment including any recommendations made by the Ontario Expert [Ms. Guthrie-Douse], joint or otherwise.

[119] I find that this allocation of costs, in regard to the experts, continues to be appropriate in light of the circumstances of this case.

[120] Since the Mother has been substantially successful in these proceedings, apart from the allocation of costs set out in my June 19, 2018 decision and reproduced above, the Mother is entitled to the remainder of her other costs at Scale B.

"MORELLATO J."

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