
CANADA / JUDGMENT

R-P T. v. D-P T.

2013 BCSC 732

COURT

Supreme Court of British Columbia

DECIDED

29 April 2013

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2013 BCSC 732 R-P T. v. D-P T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R-P T. v. D-P T.,

2013 BCSC 732

Date: 20130429

Docket: E052845

Registry: Vancouver

Between:

R-P T.

Claimant

And

D-P T.

Respondent

Before: The Honourable Mr. Justice Pearlman

Reasons for Judgment

Counsel for the Claimant:

J.A.W. Schuman, Q.C.

Counsel for the Respondent:

J. Anderson

Place and Date of Hearing:

Vancouver, B.C.

November 8, 2012

Place and Date of Judgment:

Vancouver, B.C.

April 29, 2013

INTRODUCTION

- [1] The respondent D.C, formerly D-P T., who I will refer to as Dr. C. applies pursuant to s. 17 of the Divorce Act, R.S.C. 1985 c. 3 (2nd Supp.) to vary the order of Madam Justice Morrison made June 17, 2008 to provide that the child, V.I.F. ("V."), born December 19, 1998, be primarily resident with her. Dr. C. also seeks an order that V. continue to attend Mark R. Isfeld Secondary School in Courtenay, British Columbia.
- [2] Morrison J.'s order of June 17, 2008 provided for joint custody and guardianship, and for V. to reside in alternating years with the claimant, R-P T. ("Mr. T."), who lives in Burnaby, and with the respondent, who had recently moved from Vancouver to Comox.
- [3] The claimant opposes this application, and seeks the continuation of V.'s year on/year off residence with each parent.
- [4] The respondent's applications for an order varying the order of Justice Morrison to provide for the payment of child support by the claimant to the respondent, and for an order requiring the claimant to contribute to extraordinary expenses for orthodontic treatment for V., were adjourned generally at the commencement of the hearing of this application.

BACKGROUND FACTS

The Parties and the Child

- [5] The respondent and the claimant were married in Romania in 1995. After they immigrated to Canada in 1997, they took up residence in Vancouver. The parties separated in 2005 and were divorced by the order of Justice Morrison made June 17, 2008.
- [6] V. is the sole child of the marriage, and is now 14 years old. She is, by the accounts of both her parents, a bright, outgoing and healthy child. However, V. has suffered distress as a result of this dispute, and the disruption of her relationship with her father.
- [7] The respondent is a 42-year-old physician. After obtaining her licence to practice medicine in British Columbia, she found employment with a medical clinic in Comox, on Vancouver Island, in June 2008. Dr. C.'s move to Comox led Morrison J. to make her order that V. live in alternate years with each parent. At the time of Morrison J.'s order, the respondent was in a new relationship with another physician, Dr. A.T., who joined the same medical clinic in

Comox. The respondent and Dr. A.T. have since married and continue to live and practice medicine in Comox.

- [8] The claimant is a 42-year-old software engineer who resides in Burnaby, British Columbia. Mr. T. was also in a new relationship when Morrison J. made her order. The claimant and his new partner, Ms. O.B. have married, and now have a child of their own, a daughter born in April, 2012.

Madam Justice Morrison's Order of June 17, 2008

- [9] At the time Madam Justice Morrison pronounced her order, V. was nine and a half years old. Her mother had recently qualified to practice as a doctor in British Columbia, was about to commence a new job at a medical clinic in Comox and sought sole custody in order that V. could move to Comox with her. Madam Justice Morrison found that V. was a friendly, intelligent and outgoing child who was doing well scholastically and socially at the Montessori school she had attended in Vancouver since kindergarten. The court also found that V. was afraid of disappointing either parent and would say to either parent what she felt that parent wanted to hear. Her wishes were to spend equal time with both parents.
- [10] In her Reasons for Judgment, indexed as T. v. T., 2008 BCSC 781, Madam Justice Morrison explained her decision to order that V. spend alternating years with each parent at paras. 55 and 56:
- [55] The question of which parent should have custody of V. is a very difficult one. If both parties lived in the Vancouver area, or the Lower Mainland area, I would not hesitate to follow the recommendation of Dr. Elterman, and award joint custody and joint guardianship, with alternate weeks with each parent. But the move to Comox has made that impossible. In the event that Dr. C. should ever move back to the Lower Mainland, then it would be my order that that alternate week parenting schedule would immediately take effect. However, that does not appear to be the case.
- [56] I am therefore going to make an unusual order, and that is that V. shall live with each parent for one year, to alternate. She will spend this coming school year with her father in Vancouver, and continue to attend the Montessori School. She will then spend the next year, including the school year with her mother in Comox. The year following that, she will return to live with her father for that next year, and so on.
- [11] At para. 67 of her Reasons for Judgment, Madam Justice Morrison observed that Dr. C. had a tendency to be secretive and to ignore some of Mr. T.'s requests respecting scheduling. She also observed that both parents had a tendency to be very controlling, and continued:

I am hoping that this arrangement for custody will lessen some of that need to be controlling. In dealing with one another, they will have to realize that what goes around will come around. In my view, it is important these two parents be on an equal footing. Dr. C. had a tendency to dictate when she was in control. Mr. T. showed the same tendency although to a lesser degree.

- [12] The court made the following orders with respect to the parenting arrangements for V.:
- (8) There will be an order of joint custody and joint guardianship, with the Joyce model of joint guardianship to be instituted. V. is to live alternate years with each parent. Beginning now, and for this coming year, V. will live with her father in Vancouver, and she will continue to attend the Vancouver Montessori School. V. will then live with her mother for the next year, in Comox, for the school year September 2009 to the end of June 2010. And the years will then alternate.
 - (9) For the summer 2008, V. will spend six weeks with her mother, and then six weeks with her father in 2009 and so on, alternately. V. will spend at least the final week of her summer vacation with the parent who will have her for the school year.
 - (10) The parent who does not have principal residence in a year will have V. for ten days over Christmas, all of Easter and Spring Break, all long weekends, with a minimum of two weekends a month in any event.
 - (11) A land line phone will be provided for V. in her bedroom in each of her homes, with answering machine facilities.
 - (12) There will be a webcam set up for V. in each home.
 - (13) Neither parent will interfere with or dictate to the other parent with regard to V.'s activities outside school. Each parent will pay for any activities while V. is in their care, either for weekends, or for the full year.

Implementation of Morrison J.'s Order

- [13] Pursuant to the order of Madam Justice Morrison, V. lived primarily with Mr. T. in Burnaby through the 2008 - 2009 school year and attended the same Montessori school where she had been enrolled prior to the trial. Throughout the 2008 - 2009 school year, Dr. C. had access to V. as contemplated by the order of Morrison J. Mr. T. provided V. with a landline telephone, internet access and a webcam in order to facilitate her communications with her mother.
- [14] For the 2009 - 2010 school year, V. lived primarily in Comox and attended a French Immersion elementary school there. Mr. T. encountered difficulties in arranging access to V. Dr. C. suggested that the claimant make arrangements directly with V. and did not always support Mr. T.'s requests for weekend or vacation time access. Mr. T.'s first weekend access during the 2009 - 2010 school year did not occur until October 17, 2009, when he travelled to Comox. After some negotiation, the parties agreed that V. would spend nine days over the winter break with her father in Vancouver, rather than the 10 days provided in the order of Morrison J.
- [15] In January 2010, V. expressed the desire to live in Comox, and on March 31, 2010 she e-mailed Mr. T. to say he should not contact her anymore unless he promised to let her live in Comox. On another occasion in March 2010 when Mr. T. travelled to Comox and met the

respondent and V. at the location where he was to pick her up, V. refused to enter his car. Mr. T. left Comox without spending any time with his daughter. He maintains that although he asked Dr. C. to assist him in persuading V. to accompany him on this occasion, she failed to do so.

[16] The respondent has deposed that Mr. T. was upset and unhappy when V. told him that she wished to remain in Comox and not move back to Burnaby for the 2010 - 2011 school year. Dr. C. says that Mr. T. blamed her for alienating V., and that as a result of his conflict with V. over her desire to remain in Comox, he stopped all access visits in March 2010. The respondent maintains that she encouraged Mr. T. to continue regular access with V.

[17] Mr. T. has sworn that he was not angry when V. expressed her desire to remain in Comox. At paragraph 6 of his affidavit number 20 sworn June 27, 2011, Mr. T. deposed:

... I wanted to understand V. and what kind of change happened and make sure that's what she wanted, as she was only eleven years old at the time. I was not given that opportunity as V. told me to not talk to her anymore unless I promised her she could live in Comox. I asked the respondent to assist in the change back to Vancouver in accordance with Madam Justice Morrison's Order. It was the Respondent's failure to do so that made the application before Mr. Justice Schultes necessary.

[18] The claimant does not deny that he stopped access visits to V. in March 2010. Mr. T. made no attempt to visit his daughter from March through August of that year. I find that Mr. T. chose not to exercise access during that time, and instead waited until the commencement of the 2010 - 2011 school year to resume parenting time with his daughter. Whether the respondent had alienated V. from her father is a matter to which I will return later in these Reasons.

[19] For the 2010 - 2011 school year, V. returned to Burnaby and lived primarily with Mr. T. While in Burnaby, she attended a French Immersion elementary school. Before moving from Comox to Burnaby in September 2010, V. again expressed reluctance about relocating to the Mainland and changing schools again.

Further Proceedings

[20] During the late summer of 2010, Mr. T., who was concerned that Dr. C. was interfering with his access to V., and encouraging her to remain in Comox, brought two applications. On August 12, 2010, Mr. T. applied before Mr. Justice Schultes for an order that Dr. C. be found in contempt of the order of Madam Justice Morrison of June 17, 2008 by not facilitating his access, and for an order specifying his summer access time with V. By unreported oral Reasons for Judgment pronounced August 12, 2010, Schultes J. dismissed the respondent's contempt application. The Court was not satisfied beyond a reasonable doubt that Dr. C. had intentionally failed to comply with the terms of Morrison's J.'s order. However, at para. 14, Schultes J. did draw the inference that Dr. C. had failed to take active steps to assist Mr. T. in obtaining the degree of access contemplated by the order.

[21] During the hearing of August 12, 2010, counsel for Dr. C. argued that in light of V.'s reluctance to leave Comox and return to her father's home in Burnaby for the 2010-2011 school year, the court could invoke its *parens patriae* jurisdiction to order that V. remain in Comox. In the absence of any evidence of imminent harm to V., and where the respondent had not brought an application to vary Morrison J.'s order of June 17, 2008, the court declined to interfere with the order that V. live with each parent in alternating years. At para. 29 of his Reasons for Judgment, Schultes J. stated:

... the evidence shows that this is a child who knows her own mind, and if there is a fault here it is perhaps that she has been allowed to grow comfortable in her current location, because of the inherent moral hazard to the respondent being able to create that type of environment, then to disavow that she is playing any role in V.'s preferences. I am not suggesting that there has been any alienation, the evidence does not demonstrate that, but it does demonstrate that, despite the clear language of the judgment and the spirit of the order, Ms. T. has not exerted herself to remind V. that the trial judge considered all of these concerns and still came to a conclusion that there should be this alternating yearly process.

[22] Schultes J. declined to grant the summer access sought by Mr. T. He reasoned that V. would shortly be moving to Burnaby for the 2010/11 school year, and that if he were to grant the summer access time sought by the respondent shortly before V. made her annual change of residence there would be little time for the parties to prepare her for the move.

[23] On September 17, 2010, after V. had moved to her father's home in Burnaby, Mr. T. applied for orders that all access by Dr. C. to V. take place in Burnaby or Vancouver, and that the mother's telephone access be restricted. By unreported oral Reasons for Judgment of September 17, 2010, Mr. Justice Davies declined to restrict telephone access between V. and her mother. The court was not prepared to find on the material filed that Dr. C. had abused telephone access. The evidence before Davies J. showed that the telephone access was initiated by V., rather than her mother. The court also ordered that Dr. C. would have access to V. in either Comox or Burnaby, and that if access occurred in Comox, the respondent would bear the cost of V.'s travel. In dismissing both applications, Davies J. commented that he considered those applications were neither necessary nor urgent, and that they constituted an attempt by Mr. T. to control the situation in a way that ought not to have occurred.

[24] Two incidents which occurred in December 2010 serve to illustrate that Dr. C. has also sought to monitor or control V.'s time with her father in ways that have interfered with his access time and on occasion, have resulted in some distress to V. On December 18, 2010, Mr. T. took V. and two of her friends to an evening concert in Vancouver. Dr. C. had asked V. to send her a text message after the concert. When V. failed to text her, Dr. C. became anxious, went to the claimant's residence, and waited there until he and V. returned some time after 12:30 a.m. They had stayed late after the concert so that V. could obtain autographs from the performers. Mr. T. alleges that Dr. C. was agitated, created a scene, and told V. that while she knew she could not trust her father, now she could not trust V. Dr. C. acknowledges that she

was upset because she had been unable to contact V., but denies that she said anything to V. to suggest that she distrusted her. In the absence of viva voce evidence tested by cross-examination, it is not possible to resolve the conflict between the parties about what Dr. C. said on this occasion. However, it is common ground that V. was disturbed by the fraught confrontation between her parents.

- [25] Shortly before Christmas in 2010, the claimant and his new partner took V. on a one day shopping trip in Washington State. The respondent was unhappy about Mr. T. taking V. across the United States border and told V. that there would be no more trips to the United States. Mr. T., not surprisingly, regarded Dr. C.'s intervention as an unwarranted attempt to regulate his parenting time with V.

V.'s wish to remain in Comox and the breakdown of the Claimant's access

- [26] In September 2011, V. returned to Comox to reside with Dr. C. and began high school at Mark R. Isfeld Secondary School in Courtenay. Since then, she has expressed a strong desire not to change schools again, and refused to return to Burnaby for the 2012 - 2013 school year.
- [27] In early October 2011, the claimant and the respondent, with the assistance of counsel agreed on a schedule for Mr. T.'s access to V. from October through December 2011. On each of the weekends of October 7, October 20 and November 4, 2011, Mr. T. travelled from Burnaby to Comox to pick up V., took her home to Burnaby, and then returned her to Comox on the Sunday evening.
- [28] On November 7, 2011, V. told her father that she wanted to stay in Comox for the next school year. Mr. T., who wished to continue the year on/year off access arrangement, resisted that idea, and later, without success, encouraged V. to attend Lord Byng High School in Vancouver for grade 10 in the 2012 - 2013 school year.
- [29] Mr. T. had his last weekend access with V. on November 19 - 21, 2011. Although he was scheduled to pick up V. on Friday, November 18 at Comox, he was unable to contact her or her mother that day and as a result, did not pick her up until the Saturday morning.
- [30] On November 29, 2011, V. e-mailed her father to say that she did not wish to go with him to Vancouver for the December 2 weekend, but that he could come to Comox on December 2, 2011 to meet her teachers that Friday evening. Mr. T. went to V.'s school, met her teachers, and thought he would then pick V. up at the school and spend some time with her. However, after he was unable to locate V., he learned that Dr. C. had already taken V. home. Later that evening, V. called Mr. T. on her cell phone. She said that she was stressed about Mr. T. coming to her school and that she did not want to see him. Dr. C. has deposed that V. told her that she had specifically asked her father not to come to her school. According to Dr. C., she explained to V. that Mr. T. was entitled to go to her school and talk to her teachers, and she encouraged V. to see her father. Dr. C. says that by the time she had convinced V. to meet with her father on the following day, he had already left Comox to return to Burnaby. Mr. T. has deposed that he had decided to return to the Mainland after V. had texted him to say that

she would not see him on the Saturday.

- [31] On December 21, 2011, Mr. T. travelled to Comox to pick up V. for access over the Christmas break. The claimant had spoken with his daughter on December 19, 2011, her 13th birthday, and understood that she had agreed to meet him on December 21. On December 20, 2011, Mr. T. sent an e-mail to V. in which he referred to their phone call of the night before, and confirmed that he would be coming to Comox the following day. Mr. T. told V. that he and her mother had an agreement by which she would be spending her winter vacation with Mr. T., and also referred to the order of Morrison J. to the same effect. V. responded to her father by e-mail, saying that he had never discussed this with her the night before, asserting that Mr. T. never listened to her, and that she did not want to see her father no matter how much her mother begged her to do so. V. went on to state "I only want to see you a few days before new years but I'm not even sure about that anymore."
- [32] Mr. T. then e-mailed Dr. C., to request her help in preparing V. to meet with him in Comox. When they met at the location in Comox where Mr. T. usually picked up V., she refused to come to his vehicle. She complained that her father never listened to her. Mr. T. left Comox without V., and in the result, had no Christmas access with her that year.
- [33] From December 21, 2011 through the spring of 2012, Mr. T. had limited telephone access with V.
- [34] Attempts to arrange access when V. was in Vancouver with her mother on March 30 and 31, 2012 also failed. On the first attempt, when the parties and V. met at the Burrard Sky Train station, Dr. C. refused to leave V. alone with her father when Mr. T. requested that he and V. talk alone. On the second occasion, when they met again in downtown Vancouver, Dr. C. did leave V. alone with Mr. T. in a Starbucks coffee shop while she waited in a nearby store. After a short time, V. made it clear that she wished to rejoin her mother. A subsequent brief discussion among both parents and the child quickly deteriorated into acrimony.
- [35] On the morning of April 6, 2012, Mr. T. e-mailed Dr. C. to inform her that he wanted to come to Comox that day and take V. to Vancouver for spring break. When he asked Dr. C. to prepare V. she responded that she would do so, but wanted him to speak with V. first. Mr. T. says that he did not want to talk to V. without her mother first encouraging her to go with him to Vancouver because he "sensed D. pushes the situation again to the point that V. will not want to come to Vancouver giving her again a reason to not support the plan." I understand the claimant to mean that if Dr. C. was not prepared to immediately support and encourage his access to V., he feared she would find some way to undermine his efforts to exercise access.
- [36] In the event, Mr. T. travelled to Comox on April 7, 2012. He reiterated to Dr. C. that it was her responsibility to support his access to V., and to do so before he met with his daughter. Mr. T. also told Dr. C. not to tell V. that he was coming to Comox before she convinced the child that she should have access time with her father in Vancouver. Dr. C. declined to do so but offered to bring V. to the usual meeting place in Comox so that Mr. T. could make

arrangements for access directly with V. Mr. T. says that he did not want to upset V., and because Dr. C. could not promise that she would talk with their daughter and convince her to come to Vancouver, he decided to return to the Mainland.

- [37] On April 12, 2012, the claimant made a final attempt to arrange for access with V. He travelled to Comox and waited in his parked vehicle at the place where he was to meet V. Mr. T. saw Dr. C.'s vehicle stop across the street and then drive away. He looked for V., and when he could not find her, called Dr. C. on his cell phone. Dr. C. responded that she had dropped V. off and had then gone shopping. Later, Dr. C. sent a text message to Mr. T. stating that she had found V. at home in tears. Mr. T. persuaded Dr. C. to bring V. back to the meeting place. When she did so, V. refused to join Mr. T. in his vehicle. When V. asked her father why he had not approached her when he saw her earlier that afternoon after her mother had dropped her off, Mr. T. said that he had not seen her. V. also told her father that she waited for him to call her and because he had not done so, she had made other plans for Easter and could not come to Vancouver. V. returned to her mother's vehicle when Dr. C. asked her to do so. Mr. T. returned to the Mainland, and had no Easter access with V.
- [38] In early 2012, the claimant and the respondent jointly retained Dr. Michael Elterman, a clinical and forensic psychologist, to prepare an updated s. 15 report providing his recommendations concerning custody and access for V. Dr. Elterman had initially been appointed in 2006 by a consent order of Mr. Justice Leask to prepare a psychological assessment of the parties and V. His reports dated October 4, 2006 and January 4, 2008 were before Morrison J. when she made her order of June 17, 2008.
- [39] In his first report, Dr. Elterman found that V. was anxious to please both parents and wanted equal time with each of them. He recommended joint custody with V. spending alternating weeks in each parent's home. Dr. Elterman also reported that V.'s maternal grandparents expressed a great deal of animosity about Mr. T., and that this lent to credibility to the child's complaint her grandparents were "bad mouthing" her father, and upsetting her by doing so. At the time of Dr. Elterman's first report, V. was spending considerable time in the care of her maternal grandparents while her mother studied and worked. Dr. C. has now adjusted her hours to be able to pick up V. after school and be with her for the rest of the day. V.'s contact with her maternal grandparents, who now reside in Comox, is limited to one or two short visits of no more than an hour each week.
- [40] In his second report, Dr. Elterman thought there had been efforts to influence V. before he interviewed her and expressed his distrust of what he had been told by both parents. He continued to regard the maternal grandparents as a negative influence. Dr. Elterman recommended that if Dr. C. was able to adjust her working schedule in order to have afternoons off to spend with V., and if the grandparents returned to Romania, he would recommend that Dr. C. continue to have the primary residence of V., with generous access to Mr. T. In the event that Dr. C.'s parents remained in Vancouver and continued to care for V., Dr. Elterman recommended that a week on/week off parenting arrangement be implemented. Dr. Elterman was unaware that Dr. C. would move to Comox when he

completed his second report.

[41] I have briefly discussed Dr. Elterman's first and second reports to show that he was very much alive to the potential that either parent might seek to influence or manipulate V., and that he was well acquainted with the personalities and history of this family before he embarked upon his third report.

[42] Dr. Elterman delivered his third report on July 6, 2012.

Dr. Elterman's Report of July 6, 2012

[43] Dr. Elterman interviewed each parent, their new spouses and V. When the parties sought his further assessment, the respondent took the position that V., who was then thirteen and a half years old, was mature enough to make her own decision that she wished to stay in Comox and complete her high school there. For his part, Mr. T. believed that V. had been pressured by her mother to remain in Comox. Mr. T. had V. in his care until August 2011. She then returned to Comox to begin school there in September 2011. According to Mr. T., in November 2011 V. told him that she did not wish to travel to Vancouver anymore and insisted that he come to Comox to visit her there. The claimant told Dr. Elterman that he made attempts to visit V. in Comox but she did not want to see him after November. Mr. T. informed Dr. Elterman of his concern that Dr. C. pressured V. to stay with her and had alienated his daughter from him. Mr. T. provided Dr. Elterman with a detailed explanation of his concerns respecting the respondent's failure to support his efforts to exercise access with V., his unsuccessful attempts to arrange access after November 2011, and multiple instances of what he regarded as Dr. C.'s interference with his relationship with V.

[44] In his interview with Dr. Elterman, Mr. T. expressed his desire to continue with the year on/year off custodial arrangement. He acknowledged that V. was getting older and more mature and might not want to keep switching schools and friends. However, if V. was to remain in one place, Mr. T. thought it should be Vancouver, where in his view, there were better schools available and better opportunities for extracurricular activities.

[45] V. expressed a strong preference to Dr. Elterman to remain in Comox, where she had made close friends. She informed Dr. Elterman that she had a close relationship with her mother and a good relationship with the respondent's new spouse, Dr. A.T.

[46] V. told Dr. Elterman that she felt that she did not have a strong relationship with her father and that she had been hurt by his failure to call her despite her requests that he do so.

[47] Dr. Elterman noted that V. contradicted herself when she initially denied that she had ever said that she would not see her father, but later acknowledged making that statement. She then explained that she told her father that she would not see him because of the way he was treating her. I understand this to refer to Mr. T.'s refusal to agree that V. remain in Comox with her mother, rather than relocate to Burnaby for the next school year.

[48] Dr. Elterman offered the following opinion and recommendations:

While it would seem fair to the parents for V. to spend a year in each home, it is not difficult to understand how onerous this could become for her. V. talks about having to be in a new school every year which she has done for the past 4 years. I think that anyone who considers what this must be like, would reflect on the instability and difficulty associated with making new friends and becoming involved in a new school and community every year. It therefore does not surprise me that V. would at a certain point, particularly as a teenager, say that she does not want to do this any longer. I do not think that this expression is the result of pressure or influence by Dr. C. and the reasons that V. gives are persuasive. For this reason, I don't see V. going back at a mature 13 going on 14 to the previous arrangement.

In the normal scheme of things at this age her wishes should be given more weight and often children of this age are simply required to go through a Views of the Child Report in order to determine where they wish to reside. I have heard the reasons why both Mr. T. and Dr. C. put forward about why it would be better to have V. residing in either Comox or Vancouver, and neither of these are as important as V.'s preference at this point.

Mr. T. has raised the concern that V.'s wishes are the result of pressure and influence. I think that V. is and has always been a child who wants to please both parents. Her desire for stability eventually overcame her wish to please during this last year. I think that Dr. C.'s relationship with V. is more emotionally dependent, involved and with a high degree of mutual expectations. There was previously and continues to be an unfortunate level of competitiveness between the 2 parents as they each fear the loss of love from V. While there might be some element of influence on V. by Dr. C., I don't believe that her stated wish to now stop the alternate year arrangement and to reside in Comox is the result of this influence.

Mr. T. makes the point that the issue of where V. goes to school has been mixed with V. coming to visit him. There is still love between V. and Mr. T. and V. has not talked about not visiting but says that she wants to start slowly again. Also, I think that there has been an element of posturing by V. over the past several months so that she does not have to face Mr. T. and the questions that he might ask her about her wanting to be in Comox. I also think that this posturing extends to V. needing to demonstrate to Mr. T. by the absence of visiting that she truly wants to reside with her mother and not with him in Vancouver.

My recommendation in this case is that the parents continue to have joint custody and joint guardianship but that the primary residence be now with Dr. C. in Comox. I think that V. should be allowed to continue her schooling in one school as she wishes with the friends that she has made there. I also think, given the amount of contact and commitment that Mr. T. has shown in the past that the relationship between father and child should be re-established as soon as possible. This is likely to involve the efforts of Dr. C. to get behind the idea that V.'s psychological well-being in the future depends also on having a healthy relationship with her father and that this not become an area of loss and longing for her as she gets older.

It may be necessary to secure the services of a counsellor in Courtenay or Comox in order to have a number of sessions between V. and Mr. T. to get things going but that the arrangement of having her spend alternate weekends or every 3rd weekend with him should be re-established. Also, if he is working on Vancouver Island, he should be able to take V. out for lunch or dinner with a week's notice given to Dr. C. about this intended plan.

Positions of the Parties

- [49] The respondent submits that at age 14, V.'s views are entitled to considerable weight. Dr. C. contends that there has been a material change in V.'s circumstances since Morrison J. pronounced her order of June 17, 2008. She submits that at age 14, V.'s needs have changed – she desires and requires the stability of remaining in the same school and community through high school. The respondent urges the Court to adopt Dr. Elterman's recommendation that V. continue her primary residency with Dr. C. in Comox. Dr. C. also supports Dr. Elterman's recommendation that the parties engage in counselling in Comox or Courtenay to assist in restoring the relationship between V. and her father. Finally, the respondent says that Mr. T.'s refusal to acknowledge V.'s desire to remain in Comox has led to V.'s estrangement from her father. Dr. C. denies that she has in any way encouraged or influenced V. to curtail her parenting time with her father.
- [50] For his part, Mr. T. contends that the respondent has undermined his efforts to maintain a healthy relationship with his daughter by failing to support his attempts to have parenting time with V. during the years she has had her primary residence in Comox. The claimant maintains that the respondent has encouraged V. to believe she has the right to choose when and if she will spend time with her father. Mr. T. says that during the 2011-2012 school year he regularly encountered difficulty in arranging access time, and when he did make arrangements with the respondent for visits with V., Dr. C. failed to cooperate in ensuring that V. had weekend or holiday access time with her father. Further, Mr. T. says that Dr. C.'s insistence that V. communicate regularly with her by telephone when in her father's care has reinforced her dependence upon her mother and elevated her reluctance to leave Comox, or indeed to see her father there, to the point where Mr. T. has had no access to V. since November 2011, other than by telephone, e-mail or Facebook.
- [51] The claimant submits that Dr. Elterman's report of July 6, 2012 is flawed. The claimant submits that Dr. Elterman failed to investigate why Mr. T. had no meaningful access with V. since November 2011; failed to assess whether V. is expressing a desire to remain in Comox in order to please her mother; failed to examine whether Dr. C. has alienated V. from her father; and made no inquiries about what, if anything, Dr. C. has done to encourage V.'s access with her father.
- [52] The claimant submits there has been no material change in circumstances since Madam Justice Morrison pronounced her order that would warrant the variation of its provisions relating to custody. He submits that the passage of time, or a change in the age and maturity of a child is not a change in the condition, means, needs or circumstances of the child

within the meaning of s. 17(5) of the Divorce Act, relying upon *Dietrich v. Kujbida*, 2004 BCSC 455 at paras. 20, 21; *Gilmaine v. Gilmaine*, 1999 CarswellBC 90 at para. 24; and *Wiegers v. Gray*, 2008 SKCA 7, [2008] 4 W.W.R. 225 at paras. 22, 23 and 25.

ISSUES

[53] The following issues arise for determination on this application:

- (a) Has the respondent established a material change in circumstances warranting a variation of custody?
- (b) If so, what custodial order is in V.'s best interests?
- (c) In determining what the custodial arrangement is in V.'s best interest, it will be necessary to consider whether, and to what extent, the respondent has alienated V. from her father, or has otherwise influenced her preference to remain in Comox.

DISCUSSION

Section 17 of the Divorce Act

[54] Section 17 of the Divorce Act permits the court to vary custody orders. The relevant provisions of s. 17 of the Divorce Act are as follows:

17. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,

...

- (b) a custody order or any provision thereof on application by either or both former spouses or by any other person.

...

- (5) Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.

- (6) In making a variation order, the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.

...

- (9) In making a variation order varying a custody order, the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the court shall take into consideration the willingness of that person to facilitate such contact.
- [55] On an application to vary an order relating to custody and access under the Divorce Act, the court engages in a two-stage inquiry. First, the applicant for the variation must establish a material change in the circumstances of the child since that last custody order was made. If the court is satisfied that there has been such a change, then it must consider the merits of the application and make the order that best serves the interests of the child in the new circumstances: *Gordon v. Goertz*, [1996] 2 S.C.R. 27 at paras. 9, 10.
- [56] In *Gordon v. Goertz* at para. 13, McLachlin J., as she then was, for the majority, in describing what constituted a material change in circumstances, held:

It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

- [57] If that threshold is met, the court embarks on a fresh inquiry into the best interests of the child, taking into account all the relevant circumstances. There is no presumption in favour of either parent. Each case will turn on its own particular facts. The court must determine the best interests of the child in the particular circumstances of the case, and will focus on the best interests of the child rather than the interests of rights of the parents: *Gordon v. Goertz* at para. 49.

Has there been a Material Change in Circumstances?

- [58] In support of her position that V.'s needs have changed since Morrison J. pronounced her order, and that at age 14 V.'s views should be given considerable weight, the respondent relies on *Alexander v. Alexander* (1988), 15 R.F.L. (3d) 363 (B.C.C.A.); *O'Connell v. McIndoe* (1998), 56 B.C.L.R. (3d) 292 (B.C.C.A.); *Pott v. Pott*, 2003 BCSC 1169; and *Vig v. Vig*, 2012 BCSC 898.
- [59] In *Alexander*, the Court of Appeal varied a custody order to award custody of a 14-year-old boy to his mother in circumstances where the child, for the three years since custody was originally granted to the father, had continuously asserted his wish to reside with his mother. No change in the child's wishes was to be expected. The court observed that while what the child wishes is not necessarily best for the child, there does come a point when at near adult years a child capable of responsible thought must be deemed to be able to settle his or her own future on the matter of custody and access.

- [60] Here, Dr. Elterman thought that V., as a mature 13-year-old at the time he interviewed her, would not change her view about remaining in Comox, rather than going back to the year on, year off residency with each parent.
- [61] In O'Connell, the Court of Appeal varied an order awarding sole custody of a 13-year-old boy to his mother. The child had run away from his mother's home on five occasions and wished to reside with his father and siblings. In O'Connell at para. 13, the Court held that for custody orders relating to children in their teens to be practical, they must reasonably conform with the wishes of the child. Even though there was evidence that the father had alienated the child from his mother, the Court concluded that it would be in his best interests to return to his father's home.
- [62] In Pott, the husband applied to vary a custody order providing for the younger son to reside primarily with his wife. In finding that there had been a material change in the situation of the younger son, the court took into account two factors. First, the mother's failure to exercise access with the older child had precluded the younger son from taking advantage of an opportunity to spend sufficient time with his siblings. Second, the court, applying Alexander and O'Connell concluded that the wishes of the child, then 11½ years old, to spend more time with his father were entitled to substantial weight. The court ordered that the younger son's residence alternate between the two parents' homes on a weekly basis.
- [63] The relief sought in Vig was an original order for custody and access, rather than the variation of an existing order. In Vig, there were five children, ranging in age from 11 to 16. At para. 39, the court stated that in determining the best interests of the children, the single most appropriate factor to consider was the views of the children, given their ages. Although Vig does not address the question of what constitutes a material change of circumstances warranting the variation of a custody order, it does provide additional authority for the principle that the views of children approaching or in their teens are a significant factor for the court to consider in determining their best interests.
- [64] As the claimant submits, mere change in a child's age and level of maturity does not constitute a material change in circumstances warranting the variation of a custody order: Dietrich v. Kujbida at paras. 20, 21. The Saskatchewan Court of Appeal put the point this way in Wiegers v. Gray, at para. 25:

It is my view that mere passage of time and increased maturity of the child does not, in and of itself, constitute a material change of circumstance as is required by s. 17(5) of the Divorce Act and the case law that has interpreted that section. Were it otherwise, there would be an automatic right to seek variation of custody orders on a regular basis every few years. This is clearly contrary to the established law. While the revealing judge may, of course, take into account the child's needs may change as he or she matures, it is necessary to go further to determine whether and to what extent those changes have, in the case before the reviewing judge made the original order inadequate.

- [65] The party applying to vary a custody order must show not only change, but also "the necessary connection between the change and the needs and circumstances of this child": *Gordon v. Goertz* at para. 14.
- [66] In Dr. Elterman's opinion, V. is and always has been a child who wishes to please both her parents. However, Dr. Elterman concluded in his report of July 6, 2012 that during the 2011 - 2012 school year V.'s desire for stability eventually overcame her wish to please both parents. I accept Dr. Elterman's opinion on this point. Since Morrison J. made her order of June 17, 2008, V. had changed schools four times in four years. At age 14, this child has not only a desire, but also the need for stability in completing her high school education in a familiar school and in a community where she has developed a strong circle of friends. In my view, V.'s current need for stability and continuity in her school and social life amounts to a change in her condition, needs and circumstances that materially affects her. Further, V.'s refusal to return to her father's home for the 2012 - 2013 school year constitutes a material change in circumstances warranting a determination of whether the order of Morrison J. ought to be varied.
- [67] At the time Morrison J. made her order, V. was nine and a half years old and wanted to spend equal time with both parents. Morrison J. recognized, at para. 56 of her Reasons for Judgment, that she was making an unusual order. That order also contemplated a high level of cooperation between the claimant and the respondent in order to ensure that the regime of primary residence with one parent and generous access to the other in alternating years would serve V.'s best interests. While it may have been foreseeable at the time, Morrison J. made her order that V.'s needs might change as she matured, how her needs have changed was not foreseen.
- [68] I find that the respondent has met the threshold requirement demonstrating a material change of circumstances affecting V.

What Custodial Order is in the Child's Best Interests?

- [69] I will begin by considering whether there has been parental alienation by Dr. C. The Reasons for Judgment of Mr. Justice Barrow in *D.S.W. v. D.A.W.*, 2012 BCSC 1522 provide a helpful discussion of the concept of parental alienation. At para. 25, Barrow J. notes that there are at least two schools of psychological thought on the subject of parental alienation. One school, led by Dr. Richard Gardiner, an American psychologist, recognizes "parental alienation syndrome" as:

... a disorder that arises primarily in the context of child-custody disputes. Its manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from a combination of a programming (brain washing) parent's indoctrinations and the child's own contributions to the vilification of the target parent.

[70] The other school of thought, as described in *D.S.W. v. D.A.W.* at para. 26, propounds a "systems theory" of parental alienation which requires a careful and comprehensive examination of a parent's alienating conduct in the context of background factors, including any history of intense marital conflict, the personalities of each parent, parenting beliefs, sibling relationships and the child's particular vulnerabilities within the dynamics of the family.

[71] At para. 27 of his Reasons for Judgment in *D.S.W. v. D.A.W.*, Barrow J. set out the eight characteristics of parental alienation syndrome identified by Dr. Gardiner:

1. The child aligns with the alienating parent in a campaign of denigration and hatred against the alienated parent.
2. The child's rationalizations for the denigration are weak, inconsistent, illogical or absurd.
3. The child's feelings toward the alienated parent admit of no ambivalence.
4. The child maintains that his or her reasons for rejecting the alienated parent are his or her own.
5. The child has equally unambivalent but positive feelings towards the alienating parent.
6. The child expresses no guilt about the rejection of the alienated parent and no empathy for that parent's feelings.
7. The child borrows the language and jargon of the alienating parent, and the rejection appears rehearsed.
8. The child's animosity extends to other members of the alienated parent's extended family.

[72] While not all of these characteristics must be present to support a finding of parental alienation, the more of these features that are present, the greater the likelihood that the child is being alienated.

[73] In *D.S.W. v. D.A.W.* at para. 64, the court described the essence of parental alienation:

At the core of parental alienation, regardless of which doctrinal approach to that subject one is inclined to follow, is the notion that the child's decision to refuse to have a relationship with the targeted parent is without justification or without convincing reason. If there is a reason given by the child for taking the extreme step of refusing to have a relationship with a parent, it will often be out of all proportion to the decision taken. The reasons for such decisions need to be assessed with the particular personality and experience of the child involved. What may seem a thin or unconvincing rationale for one child may have a much more convincing force in the context of the personality and experience of another child.

[74] V. has never expressed any hatred toward her father. Nor has she aligned herself with any campaign to denigrate Mr. T. She has asserted that she does not wish to see her father unless he agrees to her remaining in Comox. On some occasions, she has refused to see her father

when he has come to Comox. She has also expressed her disappointment that Mr. T. has not called her, at times for periods of weeks or months, when she has wanted him to do so.

Where V. previously had a close relationship with her father, her feelings are now ambivalent, and to some degree conflicted. V. told Dr. Elterman that she feels she does not have a strong relationship with her father and that she now has a stronger relationship with her mother. V. does not wish to cut off all contact with her father. When Dr. Elterman interviewed her for his July 6, 2012 report, V. said that she would like to live with her mother and visit her dad.

- [75] Dr. Elterman concluded in his opinion of July 6, 2012 that there is still love between V. and Mr. T. V. told Dr. Elterman that she wanted to start visits with her father slowly. V. is not a child without empathy for her father's feelings.
- [76] While V. clearly has positive feelings toward her mother, she has not expressed or demonstrated any animosity toward Mr. T.'s wife, Ms. O.B., or her paternal grandmother. Although she has had no recent contact, in the past she has enjoyed a positive relationship with Ms. O. B. and Mr. T.'s extended family.
- [77] I turn next to the core factor of whether there is any convincing reason or justification for V.'s decision to resist access time with her father since November 2011. This is not a case of a child refusing to have any relationship with her father. Rather, V. has demanded to have that relationship on her own terms. I accept Dr. Elterman's opinion that there has been an element of posturing by V. that has included her refusal to spend access time with Mr. T. as a means of demonstrating to her father that she wants to reside with her mother in Comox.
- [78] Particularly since November 2011, Dr. C. has failed to consistently encourage V. to spend time with her father. While I accept that there have been some occasions when Dr. C. has made efforts to persuade V. to have access time with Mr. T., the respondent has also left it to V. to make the decisions about whether and when she will see her father. The mixed messages that V. has received from her mother have probably encouraged her to believe that she is responsible for making the decisions about her relationship with her father.
- [79] V. has also received mixed signals from her father. On the one hand, Mr. T. has made many attempts to exercise access with V. However, at times he has chosen to limit his communications and contact with her, most notably in 2010 when he made no attempt to exercise access from March until September, when V. moved to Burnaby for the new school year.
- [80] Viewed from V.'s perspective, her refusal to accompany her father for access time is a response to Mr. T.'s refusal to agree to her remaining in Comox, and an assertion of her desire to reside with her mother there, to continue to attend the same high school, and to avoid the disruption of an annual change of residence. I am satisfied that V. has provided a convincing explanation for her desire to remain in Comox. At age 14, she no longer wants to repeat the disruption of changing schools and making new friends every year. V. has close friends in Comox and is flourishing academically at the school she attends.

- [81] V. is a child caught in the middle of the competition by both parents for her affections. Dr. C. has influenced V. by failing to whole-heartedly support Mr. T.'s access. I find that the respondent has not fully accepted that it is in V.'s best interest to have a healthy and enduring relationship with her father. Dr. C. has also attempted to exercise an inordinate degree of control over V.'s activities with her father when she was in his care.
- [82] I find that while Dr. C. has influenced V., she has not alienated the child from her father. I am satisfied that V. is a child with a mind of her own, that she has reached a stage in her life where, as Dr. Elterman put it, her desire for stability has overcome her wish to please both parents, and that she has expressed her own wish to continue to reside in Comox with her mother.
- [83] The claimant argues that Dr. Elterman's report of July 6, 2012 is so flawed that the Court should attach no weight to it in determining whether V.'s preference to remain in Comox is her own choice or the product of parental alienation or influence by Dr. C. Mr. T. contends that Dr. Elterman failed to assess whether V. expressed her own desire to remain in Comox, or expressed that preference in order to please her mother; failed to examine whether Dr. C. had alienated V. from her father and failed to investigate why Mr. T. has had no access since November 2011.
- [84] I am not persuaded that the claimant's criticism of Dr. Elterman's report is warranted.
- [85] By Mr. T.'s count, Dr. Elterman interviewed him on six occasions between February and June of 2012. The report contains numerous references to Mr. T.'s concerns that Dr. C. had alienated V. from him; that Dr. C. "pushed" or influenced V. to stay with her; and that V. wanted to keep her mother happy and would give up her own preferences in order to accommodate her mother's wishes. In his report, Dr. Elterman summarized the events as Mr. T. related them that gave rise to his concerns. When he interviewed Dr. C., he put many of those events to her and received her explanations, which frequently conflicted with Mr. T.'s version. For example, Mr. T. told Dr. Elterman that Dr. C. did not want people at V.'s school in Comox to know that she had a dad in Vancouver. Mr. T. said that on the school registration form Dr. C.'s new partner, Dr. A.T. was identified as the father. Mr. T. also said that when he called the school to speak with V.'s teacher she was unaware that he, rather than Dr. A.T. was V.'s father.
- [86] Dr. C. denied that she did not want the school to know that V. had a father in Vancouver or that she identified Dr. A.T. as the child's father. She informed Dr. Elterman that Mr. T. was named on the school registration papers as the child's father. As for the teacher who was unaware V. had a father in Vancouver, Dr. C. explained this occurred at the beginning of a school year, when V. had a new teacher. Short of obtaining the school records and following up with V.'s teachers, Dr. Elterman was not in a position to resolve the conflicting accounts of the parties. However, what Dr. Elterman did do was to explore with V. whether her friends knew who her father was. V. said that she had told them that Dr. A.T. was her stepfather and that her dad was in Vancouver. There was no suggestion that V., either acting on her own, or

under the influence of her mother, was attempting to keep secret the identity of her father.

- [87] To digress for a moment, the truth regarding the school registration forms lays somewhere between the positions of each party. The claimant has produced a student verification form for the elementary school V. attended in Comox for the 2009 - 2010 year which identifies Dr. C. as V.'s mother and Dr. A.T. as the stepfather. Dr. C. has produced two school registration forms dated February 11, 2009 for V.'s grade five year, and January 9, 2011 for V.'s grade seven year, both of which clearly identify Mr. T. as V.'s father, provide contact information for him, and also identify Dr. A.T. as the stepfather. It appears that the Comox school records were corrected, probably at the claimant's insistence, to include Mr. T. as the father sometime after he discovered that information had been omitted from V.'s initial registration. In the absence of cross-examination of the parties on their affidavits, it would be unfair to make a finding that Dr. C. withheld information concerning Mr. T. in order to conceal his identity as the child's father. Furthermore, it is unnecessary to resolve that point when there is no evidence that V. was influenced by, or aligned herself with any attempt by her mother to keep the true identity of her father from the school authorities.
- [88] Although Dr. Elterman did not examine every event in the chronology of Mr. T.'s attempts to exercise access since November 2011, he did canvass with each of Mr. T., Dr. C. and V. their explanations for the strained communications between father and daughter, and the breakdown of the claimant's access to V.
- [89] Dr. Elterman was well aware of V.'s desire to please her parents, and particularly, her mother. He had previously interviewed V. on several occasions, and interviewed her again in preparing his report of July 6, 2012. By virtue of his prior involvement, Dr. Elterman was familiar with each member of this family. Based on that knowledge, his considerable experience in performing psychological assessments of children and parents in custody matters, and the exercise of his professional judgement, he concluded that V.'s stated wish to reside in Comox with her mother was not the result of alienation or influence by her mother. As to the reason for V.'s refusal to spend access time with her father, Dr. Elterman thought this involved "posturing" by V., both to avoid having to face her father and respond to the questions he might ask about her wanting to remain in Comox, and to demonstrate to her father her desire to stay there.
- [90] In my view, Dr. Elterman was alive to the risk of alienation, and has provided an opinion that assists the Court and is deserving of considerable weight.
- [91] For the following reasons, I find that it is in V.'s best interests that the claimant and the respondent continue to have joint custody and joint guardianship, but that V. have her primary residence with Dr. C. in Comox.
- [92] Both parents are capable of caring for V. and each has the means to provide a comfortable home for her. However, V. has a very close emotional bond with her mother, shares confidences with her, and receives love and emotional support from her.

- [93] V.'s relationship with her father is strained to the point where Mr. T. has not had any parenting time with his daughter for many months. I have no doubt that Mr. T. dearly loves his daughter and that, as Dr. Elterman reports, V. still loves him, although it may take some time to restore their relationship.
- [94] V. is an intelligent child who has done well academically at each of the schools she has attended. She is an A student, excels in science and mathematics, and participates in various extracurricular activities, including swimming, ballroom dancing and guitar lessons. She enjoys her classes and teachers, and is near the top of her class at the high school she attends in Courtenay. V. has made close friends in the Courtenay-Comox community and finds it easier to meet new people in Courtenay than in Burnaby.
- [95] Although Mr. T. believes there are better schools in the Greater Vancouver area than in Courtenay or Comox, he has presented no evidence to show that any particular school that V. might attend in Vancouver would provide her with a superior education to Mark R. Isfeld Secondary School in Courtenay, or to show that her continued attendance at her current school is not in her best interest.
- [96] While V. has demonstrated in the past that she is an adaptable child by moving from one school to another in each school year, she has now reached a stage in her life where she has asserted her desire for stability.
- [97] At age 14, V.'s wishes, although not determinative, are entitled to substantial weight. I also bear in mind that V. has reached the age where for a custody order to be practical, it "must reasonably conform with the wishes of the child": O'Connell at para. 13. V. now has a need for continuity in her residence, schooling, and social life through her high school years that is best served by remaining in her mother's home in Comox.
- [98] I have also given substantial weight to the opinion and recommendations of Dr. Elterman. He is a highly experienced clinical and forensic psychologist who has prepared numerous psychological assessments for custody cases. Dr. Elterman has interviewed V. in the course of preparing each of his three reports. He was alive to the efforts of both parents to influence V. when he prepared his earlier reports. In preparing his report of July 6, 2012, Dr. Elterman considered Mr. T.'s concern that V.'s wishes to remain in Comox were the result of pressure or influence from Dr. C. Although Dr. Elterman thought Dr. C. might be exercising some influence on V., he concluded that V.'s stated wish to stop her alternating residence with each parent and to reside in Comox with her mother was an expression of her own view rather than the result of pressure or influence from her mother.

[99] It is also in V.'s interest that regular access with her father be restored as soon as possible. A healthy relationship with her father is essential to her psychological and emotional well-being. Mr. T. and Ms. O.B. have much to contribute to V.'s development. Furthermore, V. should have the opportunity to develop a relationship with her stepsister. In keeping with the maximum contact principle, V. should have frequent weekend access and generous access with her father during school vacations.

[100] At the time of the hearing, Mr. T. was working two days a week on the Lower Mainland, and two days a week in Victoria. I accept Dr. Elterman's recommendation that if Mr. T. is working on Vancouver Island, he should be able to take V. out for dinner on a week's notice to Dr. C.

CONCLUSION

[101] The order of Morrison J. made June 17, 2008 is hereby varied to provide that the child V.I.T., born December 19, 1998 will have her primary residence with the respondent Dr. C. at Comox, British Columbia.

[102] Morrison J.'s order is further varied to provide that Mr. T. will have the following access:

- (a) commencing May 24, 2013 the claimant will have access to V. every other weekend for the entire weekend, from Friday at 5:30 p.m. to Sunday at 9:00 p.m. If the following Monday is a statutory holiday, the access shall be extended to include Monday;
- (b) one half of the Spring school break and the whole of the Christmas school break;
- (c) four weeks during the summer school holidays; and
- (d) on one week's notice to Dr. C., weekday evening access for dinner with V. when Mr. T is working on Vancouver Island.

[103] The Court appreciates that depending upon whether Mr. T. travels to Comox by ferry to pick up and deliver V., or arranges for air transportation to and from Vancouver, some adjustments to the pick-up and drop-off times for weekend access may be necessary. There will be occasions when the parties will have to show some flexibility in order to meet the objective of ensuring that V. has weekend parenting time with her father from Friday evening after school until she returns to Comox on Sunday evening.

[104] As a child in her teens, V. has reached a stage in her life where she will increasingly develop her own interests, and a social life of her own. I have substituted four weeks of summer access time for the six weeks previously ordered by Morrison J. to ensure Mr. T. has a substantial block of parenting time with V. each summer while still allowing adequate time for any recreational activities she may plan for her summer school vacations. I have adjusted access time for the Spring break for the same reason.

- [105] Both parties agree that V. requires therapeutic counselling to assist her in repairing her relationship with her father. That counselling will require the participation and full support of Mr. T. and Dr. C. if it is to be effective. Mr. T. has said that he is prepared to participate in counselling but wishes the counselling sessions to take place in Burnaby. For her part, Dr. C. has also said that she will participate, but submits that counselling should be arranged in Comox. I have determined that V. will have her primary residence in Comox. In my view, at this stage, counselling is likely to be more productive if conducted in the location where V. feels most comfortable, which is Comox.
- [106] Counselling is unlikely to succeed if one or the other parent only participates reluctantly, and only under compulsion of a court order. Rather than make an order for counselling, I make a strong recommendation that the parties immediately select and engage an experienced youth and family counsellor in Comox to provide counselling to V., and that each of the parties participate in the counselling as and when requested to do so by the counsellor. The cost of counselling for V. will be shared equally by the claimant and the respondent.
- [107] Both parties recognize that counselling is in V.'s best interests. With that in mind, they should cooperate to ensure that V. receives all of the help she needs in order to repair her relationship with her father. I have ordered that V.'s weekend access with the claimant commence on May 24, 2013 so that, if the parties act promptly on my recommendation, V. will have the benefit of some counselling before access resumes.
- [108] It is critical that the respondent consistently and unequivocally support and encourage V.'s access with her father, and the court expects her to do so.
- [109] There will also be an order that the child V.I.T., born December 19, 1998 continue to attend Mark R. Isfeld Secondary School in Comox, British Columbia.

Costs

- [110] The respondent has succeeded on this application. However, in light of her past failure to provide a consistent message to V. regarding access with Mr. T., the respondent and the claimant will bear their own costs of this application.

"PEARLMAN J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/13/07/2013BCSC0732.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-p-t-v-d-p-t-2013>

Prepared on 26 October 2026 · Esheria