

CANADA / JUDGMENT

S.K.G. v. v. B.S.G.

2024 BCSC 455

COURT

Supreme Court of British Columbia

DECIDED

19 March 2024

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2024 BCSC 455 S.K.G. v. v. B.S.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.K.G. v. v. B.S.G.,

2024 BCSC 455

Date: 20240319

Docket: E056575

Registry: New Westminster

Between:

S.K.G.

Claimant

And:

B.S.G., D.S.G., S.G., H. Ltd., and B. Inc.

Respondents

Before: The Honourable Madam Justice Morellato

Reasons for Judgment

Counsel for the Claimant:

J.F. Brown

Counsel for the Respondent B.S.G.:

P. Mann

Place and Dates of Trial:

New Westminster, B.C.

November 28-30, 2022

December 1-2, 5-9, 12-13, 15-16, 2022

February 15-16, 2023

May 19, 2023

Place and Date of Judgment:

New Westminster, B.C.

March 19, 2024

INTRODUCTION

- [1] The central issue in this family law matter is whether it is in the best interests of the parent's five-year-old child to relocate with the claimant mother to Buffalo, New York "and its surrounding areas", or to remain living in the Lower Mainland of Vancouver with the respondent father.
- [2] The complainant and the respondent were married in April 2016. Their daughter, S., was born in May 2018. The parties separated for the first time in November 2018. In December 2018, the claimant filed a Notice of Family Claim seeking sole guardianship and custody of S. The parties reconciled for a short time in the spring of 2019 and separated for their second and final time in September 2019.
- [3] The mother is currently S.'s primary caregiver, although the father has been an active part of S.'s life before and after the parties separated. Prior to the mother's notification of this relocation issue, the father brought applications in 2019, 2020, and 2021 to increase his parenting time. The father's efforts to increase his parenting time continue to this day.
- [4] The father filed a Counterclaim in November 2019 seeking primary parenting time and, in the alternative, a shared parenting arrangement. Since then, the father has pursued a shared parenting arrangement. At trial, he accepted the recommendation of Dr. Krywaniuk who issued a comprehensive 100-page, s. 211 report ("Report") that concluded it would be in their daughter's best interest to remain in Vancouver with shared parenting. The mother has resisted an equal parenting arrangement.
- [5] Both the mother and the father are able, loving parents.
- [6] The parents each seek a divorce order. They have settled other family law issues between them relating to property division and past child support obligations. They have agreed that spousal support and prospective child support issues will be addressed at a later time.

BACKGROUND

- [7] The mother was born in January 1990 in Williamsville, a suburb of New York, and raised there. She is an American citizen with permanent residency status in Canada. The mother's parents continue to reside in Williamsville, along with her sister. The mother's extended family either live in the Buffalo area or within a few hours drive from Williamsville.
- [8] The father was born in January 1983 and raised in the Lower Mainland of Vancouver. The father's parents, brother, sister and extended family also live in the Lower Mainland.
- [9] Both parties have very close relations with their respective parents.
- [10] The parties first met online in 2014. They commenced a long-distance romance and were engaged in 2015. The respondent and his family travelled to Williamsville, New York for an engagement ceremony which was conducted according to Sikh customs. The parties were married the following year in Buffalo. Extended family and friends of both the bride and groom attended.
- [11] After the marriage ceremony, the claimant moved to British Columbia and the couple lived with the respondent's family in Richmond, in a large family home owned by the respondent's parents. Their plan was to save money to purchase a condominium of their own in the Richmond area. However, the cost of property was a significant impediment.
- [12] The living arrangement at the Richmond family home turned out to be an unhappy one for the claimant. The relationship between the claimant and the respondent's family, particularly the respondent's father, became strained; this, in turn, became a source of conflict between the couple. The claimant wanted the couple to move into their own home.
- [13] When S. was born in May 2018, it became clear that continuing to live in the Richmond family home was no longer a viable arrangement. In July 2018, the parties and their infant daughter moved into a renovated family home in Delta. The couple continued to have marriage difficulties and ultimately separated.
- [14] The mother has a teaching degree. She also took an on-line program right after the marriage, from April 2016 to January 2017, entitled "Applied Behaviour Analysis" offered by Florida Tech University. In January 2017, she began working full-time as a special education teacher at SET-BC with the Vancouver School Board. She has since continued to work in that position. In 2023, her Guideline Income was expected to be approximately \$88,000, although she acknowledged at trial that a new collective agreement was about to be ratified that would increase her salary.

- [15] The father graduated with a bachelor's degree in Economics and has a certificate in Computer Science. At the time of trial, he had been recently promoted to Director of Operations and Business Applications at the University of British Columbia ("UBC"), earning about \$125,000. He is also receiving rental income from the property in Delta but testified that his net rental income is at a deficit after he refinanced the mortgage on the Delta home in order to "buy-out" the claimant's property interests in it.
- [16] The mother alleges that while married and during her ectopic pregnancy, the father did not support her in obtaining the medical treatment she needed because she was not covered by any medical insurance at that time. However, I am unable to reach this conclusion on the evidence before me. I accept the father's very detailed evidence of the efforts he made for the mother to receive the medical care she needed.
- [17] The mother testified that the father attempted to control her so that she was not allowed to call her family in Buffalo. I accept and prefer the father's evidence that this was not the case. His evidence was supported by the mother's father who testified he regularly spoke to his daughter without the father being present.
- [18] The mother testified that the father restricted her travel to Buffalo during their marriage with his excuse that they "were broke". While the evidence does indeed show that the parties were often relying on a line of credit to meet their monthly expenses, they in fact travelled to Buffalo a number of times during their marriage. The mother also travelled to Buffalo without the father. Again, I accept and prefer the father's testimony in this regard.
- [19] The mother indicated that the father and his parents were disappointed that S. was not a boy. The evidence before me does not support this conclusion as a whole. Rather, the evidence establishes that each of the paternal grandparents and the father were very happy and excited when S. was born and also that she was a girl. For example, the paternal grandfather enthusiastically attended at the hospital with the family including the maternal grandparents after S.'s birth holding balloons, and he also arranged a special prayer at the hospital; he was the one who recited the prayer for S. When the new parents brought their baby home from the hospital, the father describes how lights were turned on all around the house, including the fence outside it, to welcome "new life" and to celebrate S.'s arrival at the home. The father testified it was a "full on party." Both paternal grandparents tenderly described the joy S. has brought into their lives and how much they loved her.
- [20] As counsel for the father notes, the s. 211 Report mentions that the mother's ectopic pregnancy was a girl. However, the mother affirmed on cross-examination that she did not know the sex of the baby during this pregnancy. Yet, Dr. Krywaniuk testified that it was the mother who told him the gender of the ectopic pregnancy.

- [21] Having considered the evidence, I am unable to conclude that S.'s paternal family has a South Asian gender bias as suggested by the mother. However, the false narrative of the paternal family's gender discrimination against S. described by the mother appears to have been accepted by Dr. Gamache, whose views in this regard were reiterated by Dr. Krywaniuk in his Report.
- [22] The mother describes various situations, while living in the paternal family home before S. was born and shortly thereafter, to suggest it is not a healthy environment for a child. On the totality of the evidence before me, I find her evidence unpersuasive in this regard. For example, I do not accept that she was not permitted to use the father's vehicle, or that her movements were restricted, or that she was obliged to cook and cater to the paternal family and their guests. These assertions remain unproven. Moreover, I prefer the evidence of the father, as well as that of each of the paternal grandparents. Their evidence was clear, cogent, and respectful.

A. Prior parenting orders

- [23] The history of proceedings to date provides important context in this case, particularly as it relates to the father's efforts to increase his parenting time with S. since the parties separated.
- [24] Two days after the mother and the father separated in November 2019, the father brought an application seeking an equal parenting-time arrangement. On November 26, 2019, Master Keighley, as he then was, issued a Consent Order that addressed guardianship and parenting time as well as other parenting issues ("2019 Consent Order"). The 2019 Consent Order provides in part that:
- (a) both parties are the guardians of their child;
 - (b) both share parenting responsibilities equally under s. 41 of the Family Law Act, S.B.C. 2011, c. 25; and
 - (c) a gradual increase in the father's parenting time, on a without prejudice basis, from November 25, 2019 to April 6, 2020 (at clauses 4, 5 and 10-14) towards a shared parenting arrangement.
- [25] More specifically, the 2019 Consent Order stated, at clause 15, that:
- Commencing April 6, 2020, the Claimant and the Respondent [names redacted] will commence a shared parenting schedule for the Child.
- [26] In light of their 2019 Consent Order, on February 5, 2020, the father sent text messages to the claimant to discuss what the shared parenting schedule would look like beginning in April 2020. He proposed a 2-2-3 shared parenting schedule with the view that it would be in their child's best interest because it would ensure S. was not away from either party for a long period of time every week.

- [27] Pursuant to Clause 16 of the 2019 Consent Order, the parties were only communicating by text messages at that time. The mother did not respond to the father's inquiry in February 2020.
- [28] On March 11, 2020, the father's lawyer sent an email to the mother's lawyer requesting a discussion on the transition to a shared parenting time arrangement. No response was received and on about March 30, 2020, the father texted the mother and once again proposed a 2-2-3 schedule. The mother responded by saying she thought it best "to let the lawyers communicate about this."
- [29] While a Judicial Case Conference had previously been set for April 7, 2020, it was adjourned generally due the COVID-19 pandemic. Further, the parties' lawyers were not able to negotiate a shared parenting arrangement.
- [30] On April 9, 2020, counsel for the father sent a letter to the mother's counsel stating that the mother was in breach of the 2019 Consent Order by refusing to transition to a shared parenting schedule. Counsel for the mother responded advising that she was not agreeable to transitioning to an equal parenting regime as it was the mother's position that it was not in S.'s best interest to undergo the transition during COVID-19. The mother also suggested that they continue with the March 2020 parenting schedule until further agreement or court order.
- [31] On May 22, 2020, the father brought a further Notice of Application, seeking an order to enforce Clause 15 of the 2019 Consent Order, including an order that a 2-2-3 shared parenting schedule be implemented "forthwith".
- [32] The father deposed that he was following strict protocols and provincial guidelines since the COVID-19 crisis began and that everyone in his family's household was "extra cautious" and would follow all government guideline to ensure S. was safe. He explained he worked as a procurement partner at UBC and worked remotely during the pandemic.
- [33] The mother opposed the application. Notably, in her Response, the mother did not refer to the COVID-19 pandemic as the reason to resist an increase in the father's parenting time. She deposed she had several other concerns, including: the father had an unaddressed "anger problem"; the father continued to harass her in text communications; and, when S. spent more than four hours with the father and had overnights with him, S. came home "clingy" and had nightmares where she cried and called for her mom. The mother also deposed that, at the time the 2019 Consent Order was made, she understood that the father was living in their former family home in Delta. However, after the 2019 Consent Order was signed, he moved in with his parents and she was of the view that the environment there was not a stable or good one for S.
- [34] In her June 2020 affidavit, the mother also deposed:

19. It was not my intention in agreeing to the [2019] Consent Order that the parenting schedule would shift to an equal parenting schedule. I did not understand that a shared parenting schedule meant 50/50.
20. It was my intention that the Consent Order provided for a gradual increase of the Respondent's parenting time with [S.] and that at the JCC scheduled on April 7, 2020 we could discuss with a judge whether there were any concerns and what the schedule should be going forward.
- [35] It appears that the May 22, 2020 application to enforce the 2019 Consent Order did not proceed to Court. However, on September 24, 2020, the father filed another Notice of Application that was very similar to that filed on May 22, 2020; he was continuing to seek a 2-2-3 parenting schedule.
- [36] The mother continued to oppose an increase in the father's parenting time in her October 6, 2020 Response, reaffirming her previous concerns. She also added other concerns including that the father "appears to have trouble feeding [S.]" and that the father was "relying on others for assistance with parenting [S.] including his family".
- [37] The mother also deposes in her affidavit at that time that when S. was six-weeks-old she was diagnosed with bacterial meningitis. Although S. recovered, the mother states her view that S. is at risk of developmental delays and so she immersed herself "since the beginning in working to support and help [S.] reach milestones" and that she "monitors [S.'s] current strengths and areas in which supports need to be provided." The mother further asserts, in this light, that shared parenting is not in S.'s best interest after all and that decreasing time with the mother (presumably by increasing parenting time with the father) would not be in S.'s best interests.
- [38] I would note at this juncture that, while the mother has training as a special education teacher, the evidence at trial did not support the conclusion that S. is currently experiencing developmental set backs or educational needs that will continue into the future. Regardless, as I discuss later in these Reasons, I am satisfied that both the mother and the father are able to attend to and care for any particular future needs that S. may have in this regard in the future.
- [39] The mother also argued in her October 6, 2020 Response that the "shared parenting schedule" referenced in Clause 15 of the 2019 Consent Order "is too vague to be enforced and that there is no evidence to demonstrate that the father's equal parenting schedule was contemplated by the parties".
- [40] The father's application for equal parenting time was heard before Justice Norell. In her October 28, 2020 oral judgment, Justice Norell reasons, in part:

I do not agree that Clause 15 is that vague. Clause 15 does not state [or] include words to the effect that "parenting arrangements will be reviewed generally". It states that the parties "will commence" a shared parenting schedule for [S]. Further, Clause 22 states that the parties will review child support in April 2020, "when" a shared parenting schedule comes into effect .

- [41] Justice Norell observes that the language at Clause 22 "could be interpreted as lending support for the conclusion that the respondent was to have at least 40 percent parenting time otherwise there would be no need to review child support." However, she reasons that the language of the 2019 Consent Order was not explicit in this regard.
- [42] Further, Justice Norell did not agree with the father's submission that Clause 15 of the 2019 Consent Order necessarily means equal shared parenting. She concludes:
- [17] I conclude that the objective intention of the parties was that as of April 6, 2020, the parties would in good faith negotiate and enter into an agreement to commence a shared parenting schedule that was not on a without prejudice basis, and in which the respondent would have at least the parenting time he was exercising as of April 6, 2020. However, I find there was no concluded agreement between the parties for a specific parenting schedule after April 6, 2020. I therefore find that Clause 15 is not enforceable in the manner the respondent seeks. To make the orders sought by the respondent would be to effectively create a new agreement for the parties.
- [43] While declining to enforce the Clause 15 of the 2019 Consent Order, Justice Norell found that the mother had not complied with the spirit and intent of that order:
- [18] I also find that the claimant has not complied with the spirit of the Consent Order. She did not engage in discussions with the respondent when he tried to negotiate from February to April 2020. The claimant initially used the excuse that the COVID 19 pandemic was a reason not to review parenting time. On the evidence, there was no basis for the pandemic to be used as an excuse. Unfortunately, the pandemic persisted and delayed this court application and another JCC.
- [19] It follows that the respondent's application to "enforce" the Consent Order with an order for specified equal parenting time must be dismissed. In my view, the parties must follow the intent of the Consent Order, which is to make good faith efforts to agree to and commence a shared parenting schedule forthwith. If they cannot reach an agreement either prior to or at the JCC, which is scheduled to be on December 4, 2020, then the parties are at liberty to make applications for a parenting order.
- [44] Subsequently, the parties were not able to reach agreement to commence a shared parenting schedule.
- [45] What followed was the mother's notification that she wished to relocate to the Buffalo area with S.
- [46] On February 25, 2021, the mother filed a Further Amended Family Claim and pleads:

The Claimant is seeking primary residence of the child with the Respondent [father] having a set schedule for parenting time during the day only with no overnights. The Claimant is also seeking to be sole guardianship-and custody and final decision making, and sharing of parental responsibilities consistent with the Claimant having sole custody. The Claimant be able to relocated the child to Buffalo, New York, United States and surrounding areas.

[emphasis in the Further Amended Claim]

[47] On March 24, 2021, the father once again brought a Notice of Application for an order that the parties commence a shared parenting arrangement on a 2-2-3 parenting schedule.

[48] On April 1, 2021, the mother brought her own Notice of Application seeking a parenting order that essentially mirrored the parenting schedule as it existed prior to April 6, 2020.

[49] On April 8, 2021 Justice Caldwell issued the following Consent Orders, which increased the father's parenting time during the week:

1. BY CONSENT, Pursuant to section 45 of the Family Law Act, commencing immediately the parties will have the following parenting schedule:

a. The Respondent will have parenting time:

i. every Monday from pick up at daycare at 3:00pm to 7:00pm drop off at Visions Electronics Parking Lot located at 1672 SE Marine Drive, Vancouver, BC ("Visions1");

ii. every Wednesday from pick up at daycare at 3:00pm to Thursday drop off at daycare in the morning;

every other Friday from pick up at daycare at 3:00pm to Sunday drop off at 5:00pm at Visions.

b. The Claimant will have all other parenting time with [S.]

2. BY CONSENT, pursuant to the Family Law Act, the Respondent will have parenting time with [S.] on May 1, 2021 from 11:00am to 7:00pm and will have parenting time with [S.] on May 1 in each odd year thereafter, the Claimant will have parenting time with [S.] on May 1, 2022 from 11:00am to 7:00pm and will have parenting time with [S.] on May 1 in each even year thereafter, unless otherwise ordered or agreed upon by the parties.

3. BY CONSENT, pursuant to section 211 of the Family Law Act, Dr. Larry Krywaniuk is appointed to prepare a report assessing the needs of the child, the views of the child and the ability and willingness of the parties to satisfy the needs of the child (the "Section 211 Report").

4. BY CONSENT, the cost of the Section 211 Report shall be shared equally between the parties at first instance with liberty to seek a different apportionment of the cost at trial.

[50] The parties have followed the above parenting schedule to date, although each have sought to amend the schedule at trial.

B. Discussion of Dr. Krywaniuk's Section 211 Report

- [51] Dr. Krywaniuk is a registered psychologist. He has expertise in assessing the needs of the child, as well as the ability and willingness of the parties to satisfy a child's needs. He concluded his Report on April 8, 2021.
- [52] I found Dr. Krywaniuk's Report of considerable assistance and have reviewed it carefully. I have also reviewed his viva voce testimony at trial. While I have considered his various conclusions and opinions, I have also necessarily measured them against the evidence before me at trial and also in light of the requirements of the Divorce Act, R.S.C., 1985, c. 3 (1985 (2nd Supp.)) [Divorce Act] and related jurisprudence.
- [53] As discussed below, I have departed from Dr. Krywaniuk's views in some instances where warranted, in light of the applicable law and the entirety of the evidence tendered at trial: see *Kwan v. Lai*, 2016 BCSC 1626 at para. 46.
- [54] Dr. Krywaniuk acknowledges the mother's concerns and nevertheless recommends that S. remain in Vancouver "where she has grown up and where she is medically known." He adds:

It is generally recognized that significant moves place stress on children and unnecessary moves should therefore be minimized but not necessarily eliminated.

As a starting point, I would recommend the parenting schedule remain as the one currently in place with the addition of an extra hour or two on Mondays [with the father] to reduce the rush and stress associated with [S.] at 7 o'clock. However, whatever changes are made to the current schedule should recognize and accept S.'s established bedtime and other routines.

If it is manageable for [the father], I would recommend a stage moved towards a 50-50 or equally shared parenting arrangement. However, it should also be noted that research shows children's tolerance of separation from the primary parent is also related to the child's age and may also be specifically important for S. because of her medical background. In an ideal sense, a child's ability to be away from the primary parent for more than two or three days at a time happens at about the same time as the child is ready for school. In the present matter, this would suggest that increases be introduced quite gradually and keeping in mind S.'s reaction to it.

- [55] During cross-examination by counsel for the mother, Dr. Krywaniuk agreed that from his perspective the term "shared parenting" does not necessarily mean 50/50 but, rather, a shared level of parenting where each parent has a meaningful and satisfactory role in providing for the child. He agreed with counsel's suggestion that "shared parenting could mean 50/50, 40/60, 25/75 or some other proportion".

- [56] Dr. Krywaniuk notes in his Report that the mother and Dr. Gamache "expressed some reasons to doubt [that the father] is fully ready and capable at the present time of accepting the responsibilities associated with playing a significant role in [S.'s] life." In this light, he adds that he would "recommend the parenting arrangements overall be reviewed in one year's time."

[57] I have considerably difficulty with the weight to be given to Dr. Gamache views as they were relayed to Dr. Krywaniuk, relied upon by Dr. Krywaniuk and then documented in his Report. Dr. Gamache was not a witness at trial, she did not issue an expert report, and she was not cross-examined. Moreover, to the best of my understanding, Dr. Gamache met with the father only a few times, some time ago. As well, according to Dr. Krywaniuk, she was "a marriage and reconciliation therapist" who worked, in Dr. Krywaniuk's words, "mostly independently" with the parties and met with them together in only "one conjoint session." More importantly, neither Dr. Gamache nor Dr. Krywaniuk had the benefit of hearing the more recent and considerable body of evidence before me at trial that has informed my assessment of the father's parenting capacity, including the question of whether it would be necessary to review the parenting situation after a year. Considering all the evidence before me, and with the greatest of respect, I am of the view a one-year review is not needed or required.

[58] Dr. Krywaniuk also opines:

Based on the information I have collected as part of the current assessment, I have developed the opinion both parents love [S.] deeply and are capable of providing a home and appropriate care to [S.], perhaps with some assistance and support from other family members.

[59] Dr. Krywaniuk also notes in his Report that the father acknowledged he had been a difficult person to live with in the past. However, Dr. Krywaniuk adds that the father explained to him that he has given "a lot of thought and has made significant changes in his attitude and the way he does things." Dr. Krywaniuk also reports that the father shared with him that he is "fully focused on S. and her best interests and his goal was to have a strong co-parenting relationship with the mother."

[60] On the whole of the evidence before me at trial, I accept the father's statements to Dr. Krywaniuk as being genuine and truthful. He is more self-aware than he was when the parties were married and also for a time after they separated, when his conduct at times was reactive and very disrespectful. He has learned and is continuing to learn how to work through conflict with the mother in a healthier way. He has made progress in his co-parenting relationship with the mother. Furthermore, I am of the view that the father is indeed capable of accepting the responsibilities associated with playing a more significant role in S.'s life and, moreover, that he is able to be a primary care-giver should the circumstances require it.

[61] Later in these Reasons for Judgment ("Reasons"), I will continue to address the key issue of S.'s best interests as it relates to various other statutory factors that must also be considered and assessed in determining the relocation question.

(a) Missing analysis in Dr. Krywaniuk's Report

[62] Counsel for the mother correctly points out that Dr. Krywaniuk erred by failing to consider the effects on S. if the mother were to move to the Buffalo area without S.

[63] In his Report, Dr. Krywaniuk states that "the primary choice seems to be between the mother and S. returning to Buffalo versus S. remaining in Vancouver in an arrangement of share parenting." With the greatest of respect, I cannot agree that the necessary analysis is this narrow.

[64] Our Court of Appeal has made it clear that the issue in relocation cases is whether it is in the best interest of the child to move with the relocating parent or stay living where they are with the other parent: *Link v. Lenskyj*, 2022 BCCA 341 at para. 7. In this case, this includes an analysis, among other scenarios, of the impact on S. should the mother relocate to the Buffalo area without her. Accordingly, I undertake this broader analysis later in these Reasons during my discussions of the applicable factors that inform S.'s best interests.

(b) Dr. Krywaniuk's Assessment of the Family Violence Issue

[65] Dr. Krywaniuk interviewed the parents about the mother's allegations of abuse. He states that the list of behaviours and experiences the mother described regarding her relationship with the father and his family "generally falls into the category of abuse that could include emotional, psychological, financial abuse, stalking, intimidation, threatening and body shaming and perhaps others". He then adds:

As far as I am aware, there was no significant indications of abuse of a physical nature toward [the mother] or [S.]. I am aware that [the mother] has reported various situation involving [the father] to the police and indicated she has felt unsafe because of this. During my contact with her, she described this situation as contributing to the reasons she wishes to move to the Buffalo area. I am not aware of any indication [S.] has experienced any direct abuse of this nature although, by virtue of the conflict between the parents, it may be that she has felt the impact of this in an indirect fashion. As noted, she was felt to be showing some signs of anxiety, especially associated with the exchanges, and I understand she has had some counselling associated with this. Because of her relatively young age at the time of separation, she may not have observed or understood any of the conflict directly although it is possible she would react to raised voice or the emotional tone what she heard at the time. It may also be she would react to her parents' associated behaviour, particularly the mother being upset.

[66] As noted earlier, Dr. Krywaniuk recommends a shared parenting time arrangement with both parents in Vancouver, which suggests he was not concerned that S. would be a victim of family violence. Nevertheless, I have taken the allegations of family violence very seriously and have addressed this issue squarely later in these Reasons. For present purposes, it is sufficient to say that, based on the evidence before me, I have concluded that S. is safe in her father's care and that she would not be in danger of being a victim of family violence in the father's home. Further, I am not persuaded that the mother is relocating for reasons relating to issues of family violence.

LEGAL ANALYSIS AND DISCUSSION

- [67] The parties have correctly agreed that the issue of relocation and the related parenting orders should, in the present circumstances, be determined according to the Divorce Act. The Divorce Act sets out a complete code for the analysis required in a relocation case: C.C. v. S.P.R., 2023 BCCA 422 at para.18.
- [68] It is axiomatic that relocation decisions must be based only on the child's best interests. Section 16 of the Divorce Act provides the analytical framework that shapes the courts' assessment by setting out various factors to consider regarding the best interests of a child.
- [69] Section 16(1) mandates that only the best interest of the child is to be considered in making a parenting order. The language of s. 16(2) makes it clear that the court must provide "primary consideration to the child's physical, emotional and psychological safety, security and well-being" when considering the factors set out in s. 16(3) pertaining to the best interests of the child.
- [70] Section 16(3) of the Divorce Act provides:
- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
 - (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
 - (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
 - (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
 - (d) the history of care of the child;
 - (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
 - (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
 - (g) any plans for the child's care;
 - (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
 - (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
 - (j) any family violence and its impact on, among other things,

- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[71] As regards the issue of family violence, s. 16(4) sets out the following factors that inform the court's analysis:

- (4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
 - (a) the nature, seriousness and frequency of the family violence and when it occurred;
 - (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
 - (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
 - (d) the physical, emotional and psychological harm or risk of harm to the child;
 - (e) any compromise to the safety of the child or other family member;
 - (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
 - (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
 - (h) any other relevant factor.

[72] Subsection 16(5) expressly provides that in determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

[73] As well, in allocating parenting time, ss. 16(6) requires the court "to give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child".

[74] The analytical framework that informs the best interests of the child is enlarged in scope by the factors set out in s. 16.92 (1) of the Divorce Act, which provides as follows:

Best interests of child -- additional factors to be considered

16.92(1) In deciding whether to authorize a relocation of a child of the marriage, the court shall, in order to determine what is in the best interests of the child, take into consideration, in addition to the factors referred to in section 16,

- (a) the reasons for the relocation;
- (b) the impact of the relocation on the child;
- (c) the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons;
- (d) whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement;
- (e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;
- (f) the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and
- (g) whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

[75] Importantly, the language of s. 16.92 (2) expressly states that the court is not permitted to consider whether the relocating parent will or will not relocate if the child's relocation is prohibited:

- (2) In deciding whether to authorize a relocation of the child, the court shall not consider, if the child's relocation was prohibited, whether the person who intends to relocate the child would relocate without the child or not relocate.

[76] In addition, our Court of Appeal has directed that, in determining what parenting arrangements are in the child's best interests, the court must conduct a "blended analysis" and balance all relevant factors "in the round": see: *K.W. v. L.H.*, 2018 BCCA 204 at paras. 108 to 110, including the proposed move to a new community. I am also mindful of the decision of our Court of Appeal in *C.C. v. S.P.R.*, 2023 BCCA 422, at paras. 14-19, where the Court reasons that the trial judge in a relocation application under the Divorce Act is not required to conduct a four-scenarios analysis. Rather, we are to conduct our relocation assessments in accordance with s. 16.92, in the context of the options presented to the Court by the parties.

[77] As to the burden of proof, the parties agree that s. 16.93(3) of the Divorce Act applies. Section 16.93 states:

16.93(1) If the parties to the proceeding substantially comply with an order, arbitral award, or agreement that provides that a child of the marriage spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child.

(2) If the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spends the vast majority of their time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child.

(3) In any other case, the parties to the proceeding have the burden of proving whether the relocation is in the best interests of the child.

[78] I agree with the parties that in the particular circumstances of this case, s. 16.93(3) applies. I find that neither subsection 16.93 (1) or (2) are applicable. To date there has been no substantially equal parenting arrangement, by agreement or otherwise, such that subsection (1) does not apply. Subsection 2 is also not applicable; there has been no order or agreement that S. is to spend the vast a majority of her time with the mother.

[79] Furthermore, under s. 16.94, the court may decide not to apply s. 16.93(1) and (2) if the order referred to is an interim order. The procedural history of this case is such that the orders issued prior to trial were interim in nature and in some cases made on a without prejudice basis. The temporal nature of those orders galvanizes my decision to apply s. 16.93. In light of the particular circumstances of this case, the burden lies with each party, pursuant of s. 16.93(3), to prove whether the relocation is in their daughter's best interests.

A. Discussion of the Factors that Inform the Child's Best Interests

[80] I now address the factors set out in the Divorce Act.

(a) the child's needs, given the child's age and stage of development, such as the child's need for stability

[81] I am of the strong view that S.'s age, stage of development and her need for stability weighs in favour of not relocating her to the Buffalo area. In his report, Dr. Krywaniuk opines:

At her current age, it is likely [S.] is beginning to become familiar with Vancouver and the social and other experiences that it offers. In Buffalo, she would be starting anew. Research has shown moves of this nature are stressful and unsettling to children, particularly in the four to seven-year ranges and this may have at least some emotional consequences in addition to those already associated with the marital breakup.

- [82] In addition to this assessment, as noted earlier in these Reasons, Dr. Krywaniuk also refers to the advantage of S. staying in Vancouver where "[S.] is medically known". I would add that the effect of a major move on her psychological and emotional well-being is also of concern because of S.'s difficulties with anxiety. The evidence at trial confirms she is suffering from anxiety and requires counselling. A move to an unfamiliar place, away from her routine may very well exacerbate her anxiety or trigger it anew.
- [83] Of course, I must also consider the impact on S. if she is separated at this stage of life from her mother, as well as the effect on S. if she is separated from her father. I agree with counsel for the mother, that I must consider both these scenarios. Clearly, being separated from her mother would be detrimental to S. Yet, if she is permitted to relocate to the Buffalo area with her mother, she will be separated from her father, and this will also have a detrimental impact on S. This is a "no win" situation for S.
- [84] I have considered the scenario where the father might move to the Buffalo area. However, I find this is not a viable or reasonable option. The father is not an American citizen. He would need to overcome significant barriers to work in Buffalo and, understandably, does not wish to relocate. He was attracted to the new job at UBC because it did not require the travel that his previous job did, and also because the job had more flexible hours at work. The father testified that this job enables him to better attend to his parenting responsibilities. Furthermore, he was recently promoted and is earning a higher income. As well, the conflict arising from the breakdown of the marriage has compromised his relationship with his in-laws, making the move to Buffalo more problematic than it might be otherwise.
- [85] In this light, S.'s age and stage of development does not favour her relocation. I find that destabilizing S. by moving her to the Buffalo area would, on balance, more seriously compromise her well-being than if she stayed in the Vancouver area.
- (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life
- [86] I am mindful that the mother has had more parenting time with S. than the father. However, I am satisfied that S. has developed a very strong and loving relationship with both her parents. Indeed, she is fortunate to have such a loving and dedicated mother, as well as a father that adores her. I am satisfied on the evidence before me that S.'s bond with both the mother and father is profound, healthy and very loving.
- [87] The evidence is also very clear that S. has regular weekly contact with her paternal grandparents, and that she has grown very close to them. S. has also developed strong bonds with her paternal aunt and uncle, and plays with a number of cousins who live in the Vancouver area.

- [88] As well, S. has developed a loving bond with her maternal grandparents during her visits to Buffalo and when her grandparents have visited Vancouver. In addition, I am mindful that S. also has an aunt and cousins in the Buffalo area, although some extended family members live several hours' drive from Williamsville. I am satisfied that if S. were to relocate with her mother, she would continue to build on these relationships.
- [89] As regards the strength of S.'s bonds with her grandparents and extended family, I find her relationships with her paternal grandparents and other extended family in the Lower Mainland of Vancouver are the deepest in relative terms. These bonds are rooted and strengthened by regular weekly contact, habitual interactions, and a positive and loving environment that has been built around S. in the paternal family home. The evidence not only of the father but also of both the paternal grandmother and grandfather was compelling in this regard. I am satisfied that eliminating such routine contact with the grandparents and extended family would be a tremendous emotional loss for S. not only now but into the future. This finding by no means diminishes the strength and importance of S.'s relationships with her maternal grandparents and extended family in Buffalo. I respectfully recognize these are also significant and cherished.
- [90] Having considered the nature and strength of S.'s relationships with each spouse, each of their grandparents and other persons who play an important role in her life, I find that, on balance, this second factor weighs against relocating S.
- (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse
- [91] There is evidence before me that both parents have to some degree supported the development of their child's relationship with the other parent. The mother asserts that she supports S.'s relationship with her father. However, there is also a persuasive body of evidence before me that the mother has resisted rather than facilitated the move towards a more fulsome shared parenting arrangement.
- [92] The father testified that he has struggled since the parties separated to establish more parenting time with S. because of the mother's resistance. He is concerned that if S. relocates to Buffalo, this struggle will continue. I accept his evidence that he had been steadfast in his efforts to increase his parenting time.
- [93] The father points to the history of the various parenting applications he has brought, summarized earlier in these Reasons, and he underscores his resolve to increase his parenting time so that he has a larger day to day role in his daughter's life. He believes this would be in S.'s best interests. I agree. This is not to suggest the mother's parenting role is any less important, or not in S.'s best interest. It is clearly not.
- [94] I am concerned that the father was required to bring repeated applications to increase his parenting time, particularly after both the 2019 Consent Order and Justice Norell's decision (as discussed earlier in these Reasons). As well, the father has struggled to obtain holiday

time with S. At the time of trial, the most holiday time the father had received since the parties separated in November 2018 was three days in July 2022. I am mindful that, at the time of trial, the mother proposed more holiday time (e.g., during Christmas time and summer breaks). Nevertheless, I remain concerned that her pattern of limiting or narrowing the father's parenting time will continue in the future.

[95] Overall, while some progress has been made since April 2021, I remain concerned that the mother is not particularly willing to support the development of S.'s relationship with her father in a consistent, fulsome and reliable manner. Conversely, I have no difficulty in concluding that the father will support S.'s parenting time with her mother. He has clearly manifested his commitment to facilitating the development of the mother's relationship with S.

[96] Accordingly, this factor also weighs against S. relocating to the Buffalo area.

(d) the history of care of the child

[97] As noted earlier, the mother has had the most parenting time with S. since the parties separated. Nevertheless, the father has continued to pursue an equal parenting arrangement.

[98] The mother seems to suggest that the father is off-loading his parenting responsibilities on his own mother. The evidence before me does not support this conclusion. The father testified about his weekly routines with S. and I find that he is taking the primarily role in caring for her, as a good parent would, when S. is in his care.

[99] S. is fortunate in that she is living in an extended family environment. The testimony of the grandparents established that they too have special routines with S., providing the exceptional additional love and care that only grandparents can. I was particularly impressed by the evidence of the father, and the paternal grandparents in this regard. I find that the situation in the father's home is very nurturing and that the father takes his parenting responsibilities very seriously. These are clearly a priority for him. Again, this is not to suggest that the mother has not been a wonderful parent or caregiver. She has been.

[100] Nevertheless, on balance, I find this fourth factor does weighs in favour of S. relocating with the mother: S. has resided primarily with the mother since the parties separated, and the mother has been S.'s primary caregiver to date.

(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained

[101] The parties both submit that, given the age of the child, this factor is inapplicable. I agree.

(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage

- [102] Both parents are of the Sikh faith and both of them are committed to raising S. in that faith. S. will be able to enjoy the benefits of a close-knit and supportive Sikh community in both the Lower Mainland of Vancouver and in the Buffalo area.
- [103] The father routinely takes S. to the temple in New Westminster, as well as to daily prayers in their home. The paternal grandmother testified about how "they have Guru Granth Sahib at home", and she described how S. sits on her paternal grandfather's lap while he reads from the holy scriptures.
- [104] The father testified that he speaks the Punjabi language at the "master's level" and actively teaches S. how to speak the language. He explains that most of his family speaks Punjabi at their home and this immersion assists S. in learning the language.
- [105] The mother candidly acknowledged that she is not that fluent in Punjabi. However, she testified that there are several Sikh programs that she can enroll S. in at a Sikh Temple near Buffalo. The evidence established there are also numerous Punjab classes and enrollment opportunities in the Lower Mainland of Vancouver.
- [106] On the evidence before me, I find that the "cultural, linguistic, religious and spiritual upbringing and heritage" factor slightly favours S. remaining in Vancouver.
- (g) any plans for the child's care
- [107] S. began kindergarten in September 2023 and requires afterschool care as both parents work full-time.
- [108] The mother testified, supported by the evidence of the maternal grandparents, that she will have the assistance of her family in Buffalo in caring for S., which will include an aunt, uncle and sister. Because she is a teacher, she intends to work similar hours as when S. is at school.
- [109] The father points out that the mother's child care needs when she moves to Buffalo are uncertain. The mother will first have to requalify as a teacher and it is not clear what her child care needs will be once she obtains a teaching position.
- [110] The mother referred to some past job postings in the Buffalo area which would require the work day to begin work at 7:00 a.m. When the maternal grandparents testified, they made it very clear that they would assist with any child care needs necessary.
- [111] I find this factor is neutral.
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child

- [112] I have already addressed this issue earlier in these Reasons in the context of Dr. Krywaniuk's Report and the evidence at trial as a whole. My reasons and findings need not be repeated here. Suffice it to say that I am satisfied that both parents are able and willing to care for and meet the needs of S., and that both have the parenting capacity to be the primary care-giver with primary residence.
- [113] Considering the evidence as a whole, I am satisfied that this factor is neutral as regards the relocation analysis.
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child
- [114] The mother asserts that this factor weighs in favour of relocation. She submits there is significant conflict between the parties that makes co-parenting challenging at this time, and argues that "it remains to be seen whether the parents will be able to communicate effectively on matters affecting [S.]".
- [115] The father has a different perspective. He recognizes that the parties currently "do not have the best communication", yet he insightfully observes that the relocation trial, coupled with the court applications since 2019, have engaged both parents in an adversarial process that has engendered mistrust and challenged their efforts to communicate directly. Nevertheless, the father remains hopeful that once this case is resolved, the parties will be "able to be more cordial once again." He also testified that there has been collaborative parenting more recently.
- [116] The father notes that once he and the mother saw Dr. Gamache, their communication was able to improve. He asserts it was unfortunate that the parties stopped attending these sessions. Nevertheless, I accept his evidence that he is, continuing to improve his communication skills and is developing a greater awareness of how to better communicate and collaborate with the mother on parenting issues. As well, he has sought counselling in regard to personal, communication, and parenting issues.
- [117] Despite the current state of the affairs where the parties continue to communicate by text messages, in reviewing numerous text communications between the mother and father, as noted earlier, there are important examples where the mother and father have ably communicated with each other and co-parented for purposes of ensuring S.'s needs are met. The mother was effectively cross-examined on this point at trial.
- [118] Nevertheless, the parties are encouraged to move towards direct verbal communications with the assistance of a third-party professional. Dr. Krywaniuk made helpful recommendations in this regard including:

- (a) that the parents research parenting websites that will best meet their planning, information sharing and communication needs; for example, the Our Family Website, which has a modest subscription fee but which provides many of the tools needed for effective communication and planning in a respectful and transparent manner;
- (b) that the mother and the father pursue additional counselling around personal and parenting issues;
- (c) the mother and father have greater flexibility around the parenting schedule;
- (d) they ensure reasonable access to both extended families;
- (e) they use a parenting coordinator to help the parents organize their co-parenting approach and schedule in a way that is suitable to both parents and in S.'s best interests.

[119] I am of the view that these recommendations would benefit the parents and ought to be pursued and implemented by them by choice, regardless of the outcome of this relocation case. I am also of the view that once the parties resolve their parenting arrangements, as intelligent parents who want the best for S., their communication struggles will ease.

[120] On the whole of the evidence before me, the father has demonstrated that over time he has developed a greater willingness and ability to engage in more effective communications, as well as a genuine commitment to cooperative and collaborative parenting.

[121] I do not agree with the mother's submission that this factor weighs in favour of relocating S. On balance, this factor also favours S. staying in Vancouver.

- (j) any family violence and its impact on, among other things
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child

[122] The term "Family Violence" is defined in the Divorce Act as follows:

family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person -- and in the case of a child, the direct or indirect exposure to such conduct -- and includes

- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
- (b) sexual abuse;
- (c) threats to kill or cause bodily harm to any person;
- (d) harassment, including stalking;

- (e) the failure to provide the necessities of life;
- (f) psychological abuse;
- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property; (violence familiale).

[123] The mother asserts that she had been subjected to "ongoing family violence by the father, including verbal, psychological and financial, and coercive control". She also asserts that S. was exposed "to a few instances" of family violence.

[124] The mother is not alleging, nor does the evidence before me support, the conclusion that the father ever struck the mother or was physically or psychologically abusive in any way towards S.

[125] There is no evidence of the father ever yelling at S.; however, I do accept that the parties had heated arguments where they both raised their voices against each other in their daughter's presence.

[126] There were text messages between the parties where the father made very derogatory and disrespectful comments to the mother. I also accept that, in the past, the father did not properly control his anger and was verbally abusive towards her. This occurred primarily during their marriage and for a period following their separation.

[127] In November 2018, the mother called the police during an argument with the father just before their first separation. I have reviewed the events of that night, and the evidence of the mother and father. While the argument and exchanges between the parties were heated, I am unable to conclude that the father threatened to harm the mother. The evidence is at best equivocal on this point. No charges were laid.

[128] The mother testified that she was fearful of the father following their final separation. For example, she described an incident in June 2020 when she observed the father sitting in his vehicle, parked below her apartment balcony by her River District condominium. She explained she did not understand why the father would be there on that occasion and she reported the matter to the police. The father testified that he was not even aware of what unit the mother lived in at that time, as that information was not disclosed until later in this litigation. The father explained that he was meeting a friend (who he identified) that lived in the River District area, an area which the father described as a "busy area of town." When he met his friend that night, the father decided to park in the usual spot that he parked in when he picked-up S. The father denies that he was there to stalk the mother. There were no other incidents before me where the father parked in front of the mother's apartment in circumstances where he was not picking up S. No charges were laid. The police simply advised the father to notify the mother if he planned to park in his usual spot when he was not there to pick-up S. The evidence as a whole does not establish that the father ever

stalked the mother.

- [129] During the trial of this matter, I issued oral reasons for judgment in which I admitted four recordings made by the mother. These recordings comprise a portion of four arguments between the parties. Each of the recordings are undated, although the parties agreed the recordings took place years ago, before they first separated in November 2018.
- [130] The mother admitted that the recordings were surreptitious recordings and incomplete records of the discussions with the father, further they were not only selective in nature but are outdated depictions of the parent's interactions. The recordings took place while the parties were living together, in an environment in which they no longer find themselves.
- [131] In two of the four recordings, when both parties were quarrelling, S., who was less than six months old at that time, could be heard in the background. The recordings capture her vocalizing, although both parties testified that she was not crying or distraught. There is no evidence before me about how often the parents argued in front of S. and, moreover, there is no evidence that S. suffers from emotional difficulties as a result of hearing her parents argue.
- [132] During another recording of an argument, the mother acknowledges she was chopping and preparing food; the chopping was audible on the tape. Another recording of an argument took place when the parties were staying with the mother's parents in Buffalo. In another recording, the father agreed to go to counselling to address their relationship issues.
- [133] On the witness stand, the father acknowledged and expressed sincere remorse and regret for calling the mother demeaning names, and also for his recorded threat to take steps to place the mother in jail and to take S. away from her. The father testified that he never intended to hurt the mother. He expressed his fear of losing his daughter, acknowledged that his fear caused him to react in unacceptable ways, and testified he "absolutely regretted" saying what he said to the mother. I found the father's remorse and regret genuine. In addition, as noted earlier in these Reasons, he has sought counselling to address this conduct.
- [134] I am satisfied that the father now understands the importance of respectful and collaborative co-parenting and how this is in their child's best interests. As I discussed earlier in these Reasons, I accept that he has made significant progress in this regard. Having reviewed all the evidence before me, it has not been established that the mother or S. is at risk of any family violence at the hands of the father. Indeed, he has parented S. since the parties separated in November 2019 without incident.
- [135] The father testified that the mother has also called him names and that she made abusive comments towards him both during the marriage and after they separated. He added that the mother also made disparaging remarks about his family. He explained that he had made surreptitious recordings of their arguments. However, on reflection, he chose not to tender those recordings at trial because he decided he did not want to embarrass the

mother. I accept his evidence that he made surreptitious recording but chose not to use them against the mother. Regardless of the content of those recordings, the father's choice not to tender them at trial, reflects the father's growth in better understanding what is necessary to be an effective co-parent. This is a significant step forward in my view in his interactions with the mother and a clear sign of respect. I am satisfied that the father has learned from his past experiences. With the benefit of counselling he has developed greater self-awareness, and has moved beyond the point he was once at.

[136] I wish to make it clear that I have not concluded that the mother's interactions with the father are to be construed against her as verbal abuse in this relocation case.

[137] I advised the parties that I would consider the weight to be given to the surreptitious recordings, after I had the opportunity to consider all the evidence before me at trial. I have now had the opportunity to do so. In light of my Reasons, I find that the mother's surreptitious recordings are of minimal probative value and are entitled to little weight as they relate to S.'s best interests, including the relocation issue.

[138] I find that the evidence falls short of establishing the mother's additional allegations of family violence. For example, as regards allegations of financial control or abuse, I accept the father's evidence that the mother asked him to take care of their banking and finances, and that she actually had access to bank cards and credit cards. The documentary record supports the father's evidence in large measure. The evidence is also clear that during the marriage, as soon as the mother expressed her wish to separate her banking and finances from the father's, the father readily agreed and the couple did so. Money was clearly an issue between the parties, which is understandable given that, for significant periods of time during the marriage, the parties were spending more than they earned and relying on the father's line of credit. Nevertheless, on the whole, the evidence before me does not rise to the level of financial control or a form of related family violence.

[139] After having had the opportunity to review all the evidence before me, and also having had the benefit of observing the mother and the father on the witness stand over the course of several days, I am unable to conclude that family violence is an operating factor in this case. I would add that the mother, being the loving mother and strong, independent and professional person that she is, would not have entered into an unsupervised, shared parenting arrangement with the father, with increases in overnight parenting time over time, if she were at all concerned that S. was not safe in his care. Further, as noted early in these Reasons, the evidence before me establishes the father is an able parent, and that S. is safe in both her father's care and in the home he shares with his extended family. I note also that Dr. Krywaniuk is an experienced psychologist who often assesses families where family violence is alleged, and he did so in this case. It defies logic that he would recommend a shared parenting arrangement for any period of time if he was of the view that S. would be in any danger in her father's care.

[140] This factor does not favour S.'s relocation.

(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child

[141] I have addressed this factor to a large extent already. In the circumstances of this case, it is entirely appropriate, and indeed in S.'s best interest, to make an order that would require the mother and father to cooperate in raising and parenting S. together.

[142] I am frankly of the view that both parties made mistakes in dealing with each other in the past. The father has established he has recognized these mistakes and that he has made, and is continuing to make significant changes, for the better. I am confident the mother will do the same for the benefit of her child.

(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child

[143] There are no such civil or criminal proceedings.

B. Additional Factors Specific to Relocation

[144] Having considered the factors listed in s. 16(3) of the Divorce Act, I must now consider the following factor specific to relocation cases under s. 16.92(1).

(a) the reasons for the relocation

[145] Counsel for the mother asserts as follows:

(a) "The Claimant's reason for the relocation is ultimately to make a better life for herself and [S.] in Buffalo as a single mother, is compelling and sincere."

(b) "The Claimant had only moved to the Lower Mainland to pursue her relationship with the Respondent, and the Claimant's evidence was that the parties' agreement to reside in the Lower Mainland was temporary."

[146] The mother submits that her economic prospects will improve in Buffalo. She does not have a teaching job in the Buffalo area. However, she testified she has a network of contacts there that will facilitate her employment prospects. She is of the view that she will be able to obtain an equivalent job to what she has in Vancouver. She also intends to enroll in teaching programs that will assist in subsidizing her current student loans. The mother's cousin, who is a project director for the New York State Department of Education, testified that he would be able to use his connections to assist the mother in securing employment in New York.

[147] The mother has several teaching certificates in New York State that enable her to teach students for grades 1 - 12, including students with disabilities. Her teaching certificates have expired and she will need to requalify to teach again in New York State. However, she testified that she can be reinstated by paying the requisite fees and completing 175 hours of professional development work. She also stated that she can complete the professional

development work "in a month or so". She produced job postings that suggest that the starting salary for special education teachers ranged from \$43,000 USD to \$55,000 USD. Given her work experience and master's degree, the mother believes she will be able to negotiate a higher starting salary than that.

- [148] The mother owes \$41,722 USD in student loans from her previous studies in the United States. However, she explained there are partial loan forgiveness programs available for teachers in New York, which she argues are an additional financial benefit as these are not available in Canada. The Public Service Loan Forgiveness Program forgives the remaining balance of federal direct loans after 120 qualifying monthly payments while working full-time for a qualifying employer. The Teacher Loan Forgiveness program forgives up to \$17,500 of a loan after five complete consecutive years of teaching at a qualifying school. Since moving to Canada, the mother has not paid down any of her student loans
- [149] The mother submits that the cost of living in Buffalo is lower than it is in the Lower Mainland of Vancouver and that she anticipates she will be able to purchase a home there. She tendered various documents at trial that show the prices of detached homes in Buffalo range from \$234,000 to \$299,000 USD, which required a down payment of 10-20%. The mother submitted that the average monthly mortgage payment for a \$300,000 detached home in Buffalo is approximately \$1,500. The mother noted she is currently paying more as a renter in Vancouver. She is renting her two-bedroom apartment for \$2,030 per month. The mother testified that even with her \$180,000CAD property settlement, she is unable to find a suitable 2-bedroom apartment for purchase.
- [150] The mother testified that she will have medical, dental and vision insurance after she obtains employment in Buffalo. In the interim, she expects to purchase private medical coverage for her and S., which ranges from \$585 to \$830 USD per month.
- [151] As noted earlier, the mother is able to live with her parents in Williamsville until she obtains employment and becomes more established there. Her parents have also offered to provide financial assistance and other supports the mother may need, including childcare for S.
- [152] The mother states that in addition to having a supportive extended family in the Buffalo area, she has a large network of professional and personal friends there as well as a strong Sikh community.
- [153] Notably, the mother does not state that her reasons for moving include family violence.
- [154] Counsel for the father asserts that the mother's two main reasons for moving, namely economic benefits and being closer to the family, do not withstand scrutiny. He notes that the mother is currently making more money than she would in Buffalo, "leaving approximately \$21,000 on the table" if she moved. He underscores her current job in Vancouver comes with full benefits, pension and a flexible holiday schedule since it follows the school schedule. He adds that there is no guarantee she would be able to afford a house

in Buffalo, noting the recent interest rate increases.

- [155] The father submits that in light of the s. 211 report, S. is very comfortable in the River District of Vancouver and at his home. He asserts that, in comparison, living in the Buffalo area would not be an advantage for her. In a previous application the mother deposed that the River District area was: "beautifully kept" with "parks, multiple playgrounds, a beach area, walking paths and extremely family friendly", and with "many children" and "a Neighbourhood Centre that arranges many child centred activities."
- [156] As regard's the mother's evidence, that it was the intention of the parties to reside in the Lower Mainland temporarily after they were married, the father testified this was not at all the case. He submits that none of the mother's decisions upon arriving in Vancouver were temporary in nature, and none of his decisions were temporary either. The mother commenced a full-time job with the Vancouver School Board in 2017, and he pursued a new career at UBC, which the mother supported. The father also emphasizes that the mother led no evidence "of any actual action plans of the parties moving out of the Lower Mainland".
- [157] I note in this regard that the mother described moving out of the Vancouver areas was "an option" and stated that early in the marriage the parties discussed the possibility of moving to Buffalo or another city in the United States in the future.
- [158] The father was adamant he had no intention of ever moving to the east coast of Canada or the United States. He acknowledges that he at one point did apply for a US green card in regard to a specific real estate investment that he did ultimately did not pursue; he allowed the application to elapse. He testified that he was also headhunted by Amazon to work in the Seattle area. He did not apply for the job there but used the opportunity to bolster his negotiations with his employer in Vancouver at that time; this was before his job at UBC. The father also testified that the mother was hoping her parents would relocate to the West Coast, as their retirement age was approaching.
- [159] On the evidence before me, I am not able to conclude that the parties had agreed to move to Vancouver on a temporary basis. At best, there may have been some general discussion early in their relationship or marriage of the option of possibly moving to other areas as a couple, which were not limited to the Buffalo area. However, there is certainly no persuasive evidence before me that the parties agreed Vancouver was a temporary location, or that that they ever agreed they would move to Buffalo, Seattle, Toronto or elsewhere. Indeed, they both ultimately made choices after their marriage that were inconsistent with the mother's alleged agreement that living in Vancouver was a temporary arrangement.
- [160] The father respectfully acknowledges the mother's desire to be closer to her family. He also acknowledges the close bond that S. has with her paternal grandparents. The father noted the evidence that the mother's immediate and extended family have travelled to Vancouver to visit the mother and S. on numerous occasions. The father testified he is not opposed to long visits to Buffalo in the summers or other holidays. He affirmed that he understands the

importance of, and will accommodate, the relationship of S. with the mother and her maternal extended family. He proposed providing a "travel bank" of \$4000 every year to assist S. in spending time with her maternal family in the Buffalo area.

- [161] It is somewhat understandable, in the aftermath of a failed marriage, that the mother wishes to move back to the Buffalo area where her parents and extended family reside. I also do not doubt that S. will benefit from the care and love of her maternal grandparents and extended family there. However, I cannot lose sight of the emotional cost to S. in losing regular contact with her father, her paternal grandparents and the rest of extended family in Vancouver. Also, as I have addressed earlier, in such a scenario, S. is at an age where moving across the country away from all she knows will be destabilizing as discussed by Dr. Krywaniuk and be detrimental to her psychological well-being.
- [162] I am also not persuaded that the mother will realize economic benefits in Buffalo that will surpass her current circumstances, or that will work to S.'s significant benefit. While I appreciate housing prices are lower in Buffalo, there are other very significant considerations that factor into the equation that impact S.'s welfare and lifestyle. The mother not only has a meaningful well-paying and secure union job with excellent medical and extended benefits in Vancouver, but she is living in a community with facilities and amenities that she herself has recognized are of benefit to S. The mother has previously acknowledged that S. has adjusted to the River District in Vancouver well, and described how S. leads the mother to her favorite play spots on their walks. These benefits would be lost to S. in the event of a relocation.
- [163] I note that caution should be exercised in weighing the differential in housing costs between Vancouver and other cities, particularly in light of the challenging reality of housing prices in Vancouver compared to most other places. The cost-benefit analysis is clearly more nuanced than the relative cost of owning one's home, otherwise most relocation cases would favour the child not living in Vancouver simply by virtue of the cost of housing in this city. Housing costs are a consideration but they are not necessarily determinative in assessing a parent's reasons for relocating.
- [164] I have also considered the mother's argument that what benefits the mother, also benefits the child. However, in the circumstances of this case, I am of the strong view that what S. stands to lose from the relocation far outweighs what she stands to gain.
- [165] In the final analysis, the reasons for the mother's relocation must be considered in the context of the evidence as a whole and I am not persuaded they are as compelling as the mother submits. Moreover, I am unable to conclude that the mother's reasons to relocate are in S's best interests.
- (b) the impact of the relocation on the child
- [166] I have addressed this issue earlier in these Reasons. I will address them again briefly, but only in response to the parties' further submissions on this point.

- [167] The mother acknowledges that the most significant impact of the relocation on S. is to limit her contact with her father and paternal relatives, while increasing her contact with her extended family on the maternal side.
- [168] The mother adds that S. would benefit from the relocation, and would generally benefit from her mother's increased overall well-being. She also points out the evidence of Dr. Krywaniuk that it would be harder for S. to detach from her than the father as the mother is the primary parent.
- [169] The father emphasizes that S. has a very close bond with him, they are together on a regular basis, and he is concerned the relocation will be difficult for her, particularly given her age. He refers to Dr. Krywaniuk's Report that research shows that relocations are destabilizing for children at S.'s age.
- [170] The father describes how S. has also established a bond with her paternal grandparents, as well as the close cousins she plays with. The father adds that his time with S. will be drastically reduced if she relocated and that video technology at her age, given her limited attention span and the time zone difficulties, are a poor substitute for in-person interactions.
- [171] The father also points out that both he and the mother have testified that S. has anxiety episodes. He is concerned that she will react poorly if she is away from him for long periods of time. I note, of course, that S. would likely also react poorly if her mother was to relocate without her and that this might also trigger her anxiety.
- [172] The father also states that the court should consider the disruptions which may prevent travel to Vancouver if S. were to relocate. He notes that Buffalo had recently had two big winter storms that caused travel disruptions. He submits travel disruptions are a factor that may further limit his parenting time. Of course, such disruptions may also limit the mother's parenting time. In either event, it is S. who loses important parenting time.
- [173] Considering all the submissions of the parties and assessing this issue from various perspectives, I remain of the view that permitting S. to relocate will have the most negative impact on her well-being and stability.
- (c) the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons
- [174] I have addressed this issue earlier and need not address it again. To date, the mother has spent more time with S. than the father and this factor in isolation favours her relocation.
- (d) whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement

[175] The claimant has provided notice of her intention to relocate with S.

(e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside

[176] This factor is not applicable.

(f) the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses

[177] I have in large measure addressed this issue already. I address additional submissions below.

[178] In addition to his previous submissions, the father asserts that the mother's proposed father-daughter parenting time is unreasonable. He notes that the mother has stated that she would facilitate a weekend visit with the father once a month and that she would contribute \$250 or 50% towards his flights, or whatever is less. The father points out that by the mother's own evidence, a visit to Buffalo from Vancouver costs the traveller two days of travel time. He submits that the parenting time proposed by the mother "does not meet the maximum objective principle." He underscores that if, for example, he left Friday morning, assuming his work schedule would permit, he would only have 1.5 days parenting time a month, as he would have to leave by Sunday.

[179] The father also notes that the mother has also proposed that they each travel one way to drop off S. during one week of Spring Break and one week in July, August and Christmas. The father asserts that this proposed schedule would drastically impact the quality of his relationship with S., which would not be in her best interests.

[180] Furthermore, the father also points out that this proposed schedule would also limit S.'s ability to have any meaningful connections with the remainder of the paternal family.

[181] As regards the father's proposed parenting time, the mother submits that his proposal is premised on the impermissible assumption that she will continue to reside in British Columbia and it is therefore unreasonable: see *B.M.W.G. v. J.W.G.*, 2022 BCSC 1346 at para. 113. The father asserts that he accepted Dr. Krywaniuk's proposal of a shared parenting arrangement in good faith, and he should not be penalized for doing so, particularly since he is sincerely of the view that a shared parenting arrangement is in S.'s best interest. I do not find the father's rationale in this regard in any way strengthens the reasonableness of the mother's parenting plan or undermines his opposition to the relocation. I have little doubt that the father would undertake the primary care of his daughter if the mother leaves for Buffalo. As discussed earlier in these reasons, I find that he has the ability and skills to do so; I note in this regard that in his Counterclaim, filed November 2019, he sought primary parenting time and, in the alternative, a shared parenting arrangement.

[182] I do not find the mother's parenting proposal to be a reasonable one. The father's points are well-taken and accepted. His parenting time, in the event of a relocation, and as proposed by the mother, will be unreasonably reduced and this would be to S.'s detriment.

(g) whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

[183] This factor is inapplicable.

CONCLUSION

[184] This case has required that I determine what parenting arrangements are in S.'s best interest. This has, in turn, necessitated making the very difficult decision of whether S. should be permitted to relocate to the Buffalo area with her mother, or stay in the Lower Mainland of Vancouver with her father.

[185] As noted earlier in these Reasons, s. 16.92(2) of the Divorce Act prohibits me from considering whether the mother "would relocate without the child or not relocate." Further, I clearly cannot compel either parent to relocate or stay.

[186] I have carefully and methodically considered and weighed the myriad of Divorce Act factors discussed in these Reasons, with a view to the totality of the evidence before me. I find that a relocation to the Buffalo area is not in S.'s best interests. S. will stay with her father in the Lower Mainland of Vancouver.

[187] I am mindful that due to the "double bind" prohibition, the mother has not yet addressed: a) her parenting time, with S. living in the Lower Mainland of Vancouver while she lives in the Buffalo area; or b) her parenting time in the event she chooses to stay in Vancouver. With my decision made, that S. will live in the Lower Mainland of Vancouver, the mother will now be given the opportunity to provide her views in this regard, first to the father and, if no agreement is reached, to the Court. I strongly encourage the mother and the father to reach agreement on their outstanding parenting arrangements as soon as possible without the need for further litigation. However, if the parties are not able to reach an agreement between them in light of the mother's additional views, I grant leave to the mother to apply for orders that address the outstanding parenting time arrangements, regarding whatever circumstances present themselves following this judgment: see *Burton v. Carter*, 2022 BCSC 2004.

[188] In addition, I provide the following interim guidelines to assist the parents once this decision is released. These directions are temporary and apply to the period while the parents are either attempting to reach an agreement on their outstanding parenting time arrangements and/or while waiting for the mother's application to be decided by the Court based on my decision to prohibit S.'s relocation, as contemplated in the previous paragraph of these Reasons: see for example *Havelette v. Morrison*, 2024 BCSC 319 at para. 127.

[189] The following terms may or may not apply, depending on which scenario actually transpires once this decision is released: see *A.J.L. v. V.G.L.* 2021 BCSC 2429 at para. 132.

A. Scenario with the mother in Buffalo and S. in the Lower Mainland

- a) In the event this scenario transpires, the father would facilitate as fulsome a parenting schedule between the mother and S. as distance will permit, including:
 - (i) the mother would have equal parenting time with S. during spring break, July and August of each year and December holiday time, as agreed upon by the parents;
 - (ii) the mother would have additional reasonable and generous parenting time with S., either in the Buffalo area or the Lower Mainland of Vancouver, during additional times of each year, including but not limited to Mother's Day and other special family events as agreed upon by the parents;
 - (iii) the mother would also have video or telephone parenting time with S. at least three times per week, on the days and times as agreed upon by the parents;
 - (iv) the father and mother would share parenting time with S. on her birthday, and on additional holidays or holy days, in alternating years, as agreed upon by the parents; and
 - (v) the father will have all other parenting time with S.

B. Scenario with mother and father in the Lower Mainland of Vancouver

- a) In the event this scenario materializes, S. would have equal parenting time with her parents on a 2/2/3 basis or as otherwise agreed upon between the parents.
- b) The following additional parenting arrangements would apply:
 - (i) the father and mother would have equal parenting time with S. during the December holidays and spring break, as well as during July and August of each year as agreed upon by the parents;
 - (ii) the mother would have Mother's Day with S. and the father will have Father's Day with S.;
 - (iii) the father and the mother would share parenting time with S. on her birthday and additional holidays or holy days, in alternate years, or as agreed upon by the parents;

(iv) the father would provide \$4000 per year to the mother to assist with the cost of S.'s travel to visit her maternal family in the Buffalo area; and

(v) the parents may make other more specific arrangements as agreed.

[190] Again, the above terms are temporary in nature, intended to guide the mother and father on an interim basis only after the release of this judgment, until they resolve their outstanding parenting issues on their own accord, or until a court determines the parenting arrangements with S. living in the Lower Mainland of Vancouver, having regard to the mother's submissions and the father's response. Of course, the parents may choose to "take or toss" these interim directions in designing and finalizing their own resolution.

[191] I will remain seized of the matter if the parties wish, to assist in the implementation of this decision.

[192] Despite the struggle that both parents have faced in the past, including the difficulties associated with this trial and the court proceedings prior to it, in the circumstances of this case, it is my hope that these guidelines provide both the guidance and flexibility the parties may require to move forward in the interim towards an increasingly collaborative co-parenting dynamic, with the assistance of able legal counsel and perhaps other resources as they may choose.

[193] The parties will continue to share their guardianship and decision-making responsibilities.

[194] The parties will have their divorce order. I am satisfied that the requirements of the Divorce Act at sections 8 through 12 have been satisfied. Accordingly, pursuant to s. 12(1) of the Divorce Act, the divorce will take effect the 31st day after the issuance of this order.

[195] If the parties are not able to reach agreement on the issue of costs, they are to exchange written submissions on the following schedule, unless otherwise agreed between the parties:

- (a) the mother's costs submissions are to be filed and provided to the father 45 days from the date of this judgment;
- (b) the father's costs submissions are to be filed and provided to the mother 45 days after receipt of the mother's submissions;
- (c) the mother's reply is to be filed and provided to the father 10 days after receipt of father's response.

"MORELLATO J."

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