
CANADA / JUDGMENT

S.R.W. v. R.C.D.A.D.

2021 BCSC 1158

COURT

Supreme Court of British Columbia

DECIDED

14 June 2021

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2021 BCSC 1158 S.R.W. v. R.C.D.A.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.R.W. v. R.C.D.A.D.,

2021 BCSC 1158

Date: 20210614

Docket: E193076

Registry: Vancouver

Between:

S.R.W.

Claimant

And

R.C.D.A.D.

Respondent

Before: The Honourable Mr. Justice Macintosh

Reasons for Judgment

Counsel for the Claimant:

E. Cameron

Counsel for the Respondent:

A.M. James

L. Hiemstra, Articled Student

Place and Dates of Trial:

Vancouver, B.C.

May 17-21 and 25, 2021

Place and Date of Judgment:

Vancouver, B.C.

June 14, 2021

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The Issues

- [1] A proposed relocation by the Claimant, Ms. W., with the two boys of the marriage, from Burnaby to Salmon Arm, BC, is the central question in this family dispute. The other issues are the related parenting arrangements, child support and spousal support.
- [2] The parties in the course of the trial reached agreement about family property and debt.
- [3] The parties also agree that both of them will remain guardians of the two children. The Respondent, Mr. D., seeks a further order, that if one guardian dies, the survivor will become the sole guardian, but I declined to make that order. It is premature. Absent agreement at the relevant time between the surviving guardian and the family of the deceased guardian, the Court can address the question then, when the relevant facts are known.
- [4] Both parties seek a divorce, and a divorce is hereby granted.

Relocation and Parenting Time

Legal Principles

- [5] Who bears what onus on the relocation question?
- [6] If there is no prior agreement or order for parenting time, Division 2, s. 46 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], applies:

Changes to child's residence if no agreement or order

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

- (a) no written agreement or order respecting parenting arrangements applies in respect of a child;
 - (b) an application is made for an order described in section 45 (1) (a) or (b) [orders respecting parenting arrangements];
 - (c) the child's guardian plans to change the location of that child's residence and the change can reasonably be expected to have a significant impact on that child's relationship with another guardian.
- (2) To determine the parenting arrangements that would be in the best interests of the child in the circumstances set out in subsection (1) of this section, the court

- (a) must consider, in addition to the factors set out in section 37 (2) [best interests of child], the reasons for the change in the location of the child's residence, and
 - (b) must not consider whether the guardian who is planning to move would do so without the child.
- [7] The parties are on common ground that Ms. W., as the proposed relocating parent, carries the onus for obtaining relocation if s. 46 applies. The Court in that case endeavours to answer the question, in accordance with s. 46(2), having regard to the best interests of the children (see s. 37(2)), and the reasons for the change in the location of the children's residence.
- [8] But in cases where there is an order in place addressing parenting time, the general rule is that s. 69 in Division 6 of the FLA has application:

Orders respecting relocation

69 (1) In this section, "relocating guardian" means a guardian who plans to relocate a child.

- (2) On application by a guardian, a court may make an order permitting or prohibiting the relocation of a child by the relocating guardian.
- (3) Despite section 37 (1) [best interests of child], the court, in making an order under this section, must consider, in addition to the factors set out in section 37 (2), the factors set out in subsection (4) (a) of this section.
- (4) If an application is made under this section and the relocating guardian and another guardian do not have substantially equal parenting time with the child,
 - (a) the relocating guardian must satisfy the court that
 - (i) the proposed relocation is made in good faith, and
 - (ii) the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life, and
 - (b) on the court being satisfied of the factors referred to in paragraph (a), the relocation must be considered to be in the best interests of the child unless another guardian satisfies the court otherwise.
- (5) If an application is made under this section and the relocating guardian and another guardian have substantially equal parenting time with the child, the relocating guardian must satisfy the court
 - (a) of the factors described in subsection (4) (a), and
 - (b) that the relocation is in the best interests of the child.

- (6) For the purposes of determining if the proposed relocation is made in good faith, the court must consider all relevant factors, including the following:
- (a) the reasons for the proposed relocation;
 - (b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;
 - (c) whether notice was given under section 66 [notice of relocation];
 - (d) any restrictions on relocation contained in a written agreement or an order.
- (7) In determining whether to make an order under this section, the court must not consider whether a guardian would still relocate if the child's relocation were not permitted.
- [9] Under s. 69(3), the best interests of the children are still to be examined, but so are the factors in s. 69(4)(a). Looking further at s. 69(4), if, as in the case before me, Ms. W. has substantially more parenting time than does Mr. D. under the existing order, once Ms. W. satisfies the Court as to the factors in (4)(a), the relocation must be considered to be in the best interests of the children unless Mr. D. can satisfy the Court that it is not in the best interests of the children.
- [10] It can be seen above that whether the relocation analysis is conducted under s. 46 or s. 69, the best interests of the children must be examined.
- [11] In this case, Master Cameron of this Court made a parenting time order on January 10, 2020, but only with regard to the elder son, M.R., who is now four. (M.I., the younger son, was not born until February 1, 2020.) There is no parenting time order concerning M.I. From those circumstances, Ms. W. submits that s. 46 of the FLA applies for M.I., for whom there is no order, and s. 69 applies for M.R. in light of the Cameron order. But it is more complicated than that. The Cameron order was made, on its face, on an interim and without prejudice basis. The hearing giving rise to the order lasted only a day or less. Mr. D acted on his own behalf. Ms. W. was represented by her current law firm. The parenting time part of the order provided as follows:
- 1. On an interim and without prejudice basis, the Respondent will have parenting time as follows:
 - a) Every second weekend from Saturday at 9am to Monday at 9am.
 - b) Every Wednesday and Thursday evening from 5:30pm to 7:30pm.
 - c) In the week in which the Respondent did not have weekend parenting time prior, he will have parenting time from Monday at 5:30pm to Tuesday at 9:00am.

This parenting schedule may be amended with the consent of the parties and in any event, it will be subject to review after October 1, 2020. Master Cameron is not seized of the review.

[Emphasis added.]

- [12] When Mr. D. appeared for the hearing before Master Cameron, he did not know that Ms. W. would be seeking to relocate with the boys to Salmon Arm. She first told him of that plan in June 2020. On August 7, 2020, she gave formal notice of her intention to do so. Accordingly, when Mr. D. made his decisions whether, and to what extent, he opposed Ms. W.'s requests before Master Cameron, he had no way of knowing that his considerations at that time would dictate who carried the onus in any subsequent relocation hearing.
- [13] In my view, an order made expressly without prejudice should not have the effect of transferring the relocation analysis from s. 46 to s. 69(4) of the FLA. If the words, without prejudice, found in the body of the order, are to have meaning, a party cannot be prejudiced by that order when he or she later learns that relocation will become an issue. Our Court of Appeal said only the following, about interim orders, made prior to any notice of intention to relocate, in *K.W. v. L.H.*, 2018 BCCA 204 at para. 93 [K.W.]:
- [93] Whether an interim order made in advance of any claim or notice of intention to relocate would transfer the matter from Division 2 to Division 6 raises somewhat different policy considerations. Arguably, such an order may create legitimate expectations about existing arrangements, particularly if the order has remained in effect for an extended period of time. This issue however does not arise on this appeal and I will say no more about it.
- [14] An order made without prejudice was not before the Court of Appeal for consideration in *K.W.*, and I am not aware of this Court having considered the significance of an order being made without prejudice in the context of a relocation application. Our Provincial Court considered the point in *E.G. v. E.D.*, 2016 BCPC 187 at para. 68 [E.G.]:
- [68] It seems to me that if an order is made "without prejudice", it must be treated as such. Such an order cannot be used to prejudice one side or the other; in this case, to substantively change which provisions of the FLA applicable to the facts of the case. That would render a "without prejudice" provision, presumably the basis upon which the consent was given, meaningless. If, in fact, the Interim Order was made "without prejudice", in my view it ought not to be considered an "order" for the purposes of s. 46 and Division 6 and accordingly does not trigger the application of Division 6 instead of s. 46.
- [15] The Court in *E.G.* added this to its analysis, at paras. 75 and 76:
- [75] Interestingly, the Court of Appeal in [*Fotsch v. Begin*, 2015 BCCA 403] did specifically note that the interim order was expressly made "without prejudice" and that the parties agreed it "did not establish a status quo or presumptive parenting arrangement for determining the best interests of the child" [para 77] but nevertheless appeared to assume that the question of relocation would be decided under s. 69 (instead of s. 46). Although the Court in *Fotsch* appeared to accord particular significance to the fact that the interim order was made "without prejudice", it did not ask, or answer, the question of whether such a "without prejudice" order counted as an order at all for determining whether s. 69 or s. 46 governed

the relocation issue.

- [76] The Court may have proceeded in that fashion because in that case the interim order created substantially equal parenting time, so s. 69(5) would require the relocating guardian to satisfy the Court that the relocation was in the best interest of the child under s. 69(5), just as would be necessary under s. 46. Thus, it was not necessary to address the effect of a "without prejudice" order, but unfortunately there appears to be no other guidance on this issue.
- [16] From that somewhat unsettled state of the law, my own conclusion, alluded to earlier, is that a parenting time order made expressly without prejudice cannot form the basis for transferring the relocation analysis from s. 46 to s. 69 of the FLA. Thus, the analyses for M.R., for whom there is an interim without prejudice parenting time order, and for M.I., for whom there is no order, should both be conducted under s. 46 of the FLA.
- [17] However, if possible, the outcome in this case should not turn on which of the two sections has application, partly because no one suggests that the boys should be separated from one another, and I will endeavor to address relocation under both provisions.

Facts Relevant to Relocation and Parenting Time

- [18] Ms. W., who is 39, moved as a young girl with her parents to Salmon Arm. There, the family built a home on 20 acres. Her parents, and her brother and his partner, still live there.
- [19] Ms. W. is a social worker, both by training and in her career. She earned her Master's degree in social work at UBC in 2013. She was employed as a social worker in various positions from before she and Mr. D moved to Vancouver in 2011, and remained so until the couple had their first child, M.R., in Vancouver, in 2017.
- [20] Mr. D. is from Colombia. He and Ms. W. met in Bogota in 2007. They were there until the summer of 2011, apart from coming to Salmon Arm for their wedding on August 28, 2010.
- [21] Ms. W. wanted to return to Canada from Colombia, in part to be near her family. Mr. D. agreed to the move. He wanted to settle in Calgary, where he thought his work opportunities would be better, but Ms. W. preferred Vancouver and that is the home city they selected.
- [22] Mr. D., born in 1979, has all of his family in Colombia except for his two sons who are at the centre of the relocation application. He was educated in Colombia, earning a Bachelor of Science in electrical engineering, and a postgraduate diploma in information and communication technology. He graduated in 2003, and was employed in Colombia until resigning from his last employment there for the move with Ms. W. to Vancouver. In Vancouver, in 2012-2014, Mr. D. earned several certifications at BCIT related to his work in electronics.

- [23] Throughout the marriage, the family lived in a two-bedroom apartment on Charles Street in Vancouver, with the rent (currently \$1,340 per month including parking) subsidized by BC Housing. Mr. D. still lives in that apartment.
- [24] The party's first son, M.R., was born in Vancouver on March 21, 2017. At that time, Ms. W. and Mr. D. agreed that he would continue with his work at Wajax Limited ("Wajax"), an engineering company, in its Langley, BC office, where he had begun work in 2014. Mr. D. was earning \$70,000 a year at Wajax, more than Ms. W. was earning in her social work, so both parties thought it made sense economically for him to continue with that employment after M.R.'s birth.
- [25] The evidence is voluminous and uniform as to Mr. D.'s unqualified love and support for both of the boys. Ms. W. and her family do not say otherwise. Mr. D. called five witnesses, in addition to himself, all of whom supported the conclusion that he has created and enjoys an exceptionally strong bond with his sons. Even the witnesses called by Mr. D. who are themselves parents said that they have not seen a stronger paternal bond. When Mr. D. speaks with others, he speaks of the boys at every opportunity, pictures included. He cooks for them, cleans for them, takes M.R., and latterly M.I. as well, to Science World, and gets both of them outdoors to play and participate in sports compatible with their ages. He teaches them Spanish. He reads to them. It is safe to say that the boys are the first priority in Mr. D.'s life, the second, and only other one, being his work.
- [26] Before the parties separated, Mr. D. cared for M.R. at the start of the day, and made breakfast for the family before heading to work. On the way home, after work, he shopped for groceries as required. At home, he attended to M.R., playing with him outside when the weather permitted. After dinner, Mr. D. usually gave M.R. his bath. Ms. W. usually had Mr. D. put M.R. into bed. On weekends, Mr. D. took M.R. on field trips of various kinds.
- [27] The evidence is also unqualified in leading to the conclusion that the boys love their father.
- [28] None of what is said above is intended to suggest that the relationship between Ms. W. and the boys is not also an excellent one. It appears from the evidence that it is.
- [29] Ms. W. decided to end the marriage. She did not tell Mr. D. of her intention. On September 23, 2019, she left the family apartment in Vancouver, driving the family car. She left a note for Mr. D. saying that she and M.R. would be safe, but she did not say where they were. She spoke to Mr. D. on the evening of the 23rd, from Salmon Arm, but without disclosing her location. Mr. D. was anxious. Ms. W. disclosed her location on September 25. On November 5, 2019, she returned to Vancouver with M.R. and stayed with friends. She has now obtained a three-bedroom apartment in Burnaby, in subsidized housing, where it appears she will be able to continue living if she does not relocate. It is about 20 minutes from Mr. D.'s apartment.

- [30] The note Ms. W. left for Mr. D. on September 23 said that she no longer felt safe living in the same house because of Mr. D.'s anger and threatening words. The lengthy oral testimony of both parties did not support the conclusion that either side reasonably felt unsafe in the marriage. Both of the parties appeared from the evidence to be reasonable people who generally behaved within the bounds of normally expected behaviour within a marriage. I was shown the variety of embarrassing emails and text messages commonly seen in family litigation. I cannot conclude from that evidence, however, that the marriage was in any way unsafe for either party.
- [31] Having returned to Vancouver on November 5, 2019, Ms. W. proceeded on November 15, 2019 to file her notice of family claim. The Cameron order, referred to above, was made on January 10, 2020. I quote here again the parenting time provisions in that order for M.R.:
- Every second weekend from Saturday at 9am to Monday at 9am.
 - Every Wednesday and Thursday evening from 5:30pm to 7:30pm.
 - In the week in which the Respondent did not have weekend parenting time prior, he will have parenting time from Monday at 5:30pm to Tuesday at 9:00am.
- [32] The parties later agreed to change 5:30 p.m. to 4:30 p.m. in paragraphs (b) and (c) above. Also, M.I. was eventually included in paragraph (a) of the Cameron order, for six hours on Saturdays and six hours on Sundays on weekends when M.R. was with Mr. D.; in paragraph (b) from 4:30 p.m. to 6:30 p.m.; and in paragraph (c) from 4:30 p.m. to 6:30 p.m. on Monday.
- [33] It is apparent under the Cameron order that the boys have frequent contact with their father. Mr. D. is with M.R. two days and two nights every other weekend; overnight Monday in the alternating weeks; and every Wednesday and Thursday evening. He is with M.I. for six hours on the Saturdays and six hours on the Sundays that Mr. D. has with M.R.; and on the Monday, Wednesday and Thursday evenings when Mr. D. has M.R. Under that order, Mr. D. can play an active part in raising the boys.
- [34] After separation, when Mr. D. gets the boys in the late afternoon, he cooks supper for himself and the boys. On weekends, when he has them, he takes them directly to Science World or a park after picking them up at their mother's apartment in Burnaby.
- [35] On April 8, 2020, about four months after the Cameron order was made (including child support and spousal support obligations for Mr. D.), Mr. D. was temporarily laid off at Wajax because of the COVID-19 impact on the company's business. In April, he began receiving a government COVID-19 subsidy of \$2,000 a month. Later, after that subsidy ended, Mr. D. went on Employment Insurance ("EI"), which began at the end of November 2020, in the amount of \$1,130 every two weeks. EI ended early in May 2021. Through extensive "networking", Mr. D. obtained some interim employment, and, beginning in May 2021, a permanent position with a company based in Chilliwack, Sonic Enclosures. That company designs and constructs enclosures for the electronic equipment manufactured by Mr. D.'s former employer, Wajax. At Sonic Enclosures, Mr. D.'s annual salary will be \$85,000. He

expects to be able to work from home about three days per week.

[36] In contrast to the provisions of the Cameron order, Ms. W.'s proposed parenting time allocation, if she could relocate to Salmon Arm, would be as follows:

Relocation

1. The Claimant may relocate with the Children to Salmon Arm, BC, commencing on or after the date of this order.
2. The Children will be primarily resident with the Claimant and the Respondent will have specified parenting time with the Children as set out in this order below.

Parenting Time with M.D.

3. The Respondent will have parenting time with M.I. from 9:00am to 5:00pm on each day that he has parenting time with M.R. during those hours, subject to the following:
 - a. In the event the Respondent's parenting time with M.R. starts later than 9:00am, the Respondent's parenting time with M.I. will start at the same time as his parenting time with M.R.;
 - b. In the event the Respondent's parenting time with M.R. ends earlier than 5:00pm, the Respondent's parenting time with M.I. will end at the same time as the Respondent's parenting time with M.R.; and
 - c. Exceptions for Nochebuena and Halloween set out below, in which cases the Respondent's parenting time with M.I. may end at 7:00pm.

Weekend Parenting Time with M.R.

4. The Respondent will have parenting time with M.R. in Salmon Arm on the first and third weekend of every month, from Friday at 6:30pm to Sunday at 3:00pm (the "Weekend Parenting Time"), subject to the Parenting Weeks and the Holiday Parenting Time set out below.
5. The Weekend Parenting Time may be swapped or extended by request of the Respondent as follows:
 - a. The Weekend Parenting Time may be extended by the Respondent to end at 5:00pm on Sunday upon 3 hours notice to the Claimant, and the Claimant will accommodate the 5:00pm exchange time.
 - b. In the event the Claimant's Holiday Parenting Time, set out below, conflicts with the Respondent's Weekend Parenting Time, the Respondent may select another weekend in the same calendar month on which to exercise his Weekend Parenting Time, upon 3 weeks notice to the Claimant, and the Claimant will accommodate his request.

- c. In the event the Respondent's Holiday Parenting Time, set out below, falls on or within two days of a weekend other than the first or third weekend of the month, the Respondent may request to swap either the first or third weekend of the same calendar month to exercise that Weekend Parenting Time on the weekend closest to his Holiday Parenting Time instead, upon 3 weeks notice to the Claimant, and the Claimant will accommodate his request.
- d. The Respondent may request to extend his Weekend Parenting Time by up to two nights, upon 3 weeks notice to the Claimant. The Claimant will respond to the request within 72 hours and will not unreasonably withhold consent.
- e. In the event the Respondent is not able to exercise his Weekend Parenting Time on the first or third weekend of the month, the Respondent may request to exercise his Weekend Parenting Time on another weekend in the same calendar month, upon 3 weeks notice to the Claimant. The Claimant will respond to the request within 72 hours and will not unreasonably withhold consent.

Parenting Weeks with M.R.

- 6. The Respondent will have extended parenting time with M.R. (the "Parenting Weeks"), subject to the Holiday Parenting Time below, as follows:
 - a. The Parenting Weeks will occur on a 3-1-3 Schedule such that M.R. is with the Respondent for 3 consecutive nights followed by 1 night with the Claimant and then an additional 3 consecutive nights with the Respondent. On the 1st day, the Respondent's parenting time with M.R. will start at 5:00pm when in the Lower Mainland and 6:30pm when in Salmon Arm. On the 4th day, the Respondent will return M.R. to the Claimant at 5:00pm. On the 5th day, the Respondent will have parenting time with M.R. starting at 9:00am. On the 8th day, with the exception of Nochebuena (Christmas Eve) the Respondent will return M.R. to the Claimant at 9:00am (the "3-1-3 Schedule").
 - b. The Claimant will bring the Children to the Lower Mainland for three Parenting Weeks to occur in the Lower Mainland as follows:
 - i. Spring Break - One Parenting Week during M.R.'s Spring Break. In even years, M.R. will be with the Respondent during the first week of Spring Break and with the Claimant during the second week of Spring Break. In odd years, M.R. will be with the Respondent during the second week of Spring Break and with the Claimant during the first week of Spring Break. In 2022, the Spring Break Parenting Week will start on Saturday March 19.
 - ii. July - One Parenting Week in July, including the Respondent's birthday, with the exact dates to be proposed by the Respondent to the Claimant on at least 6 weeks notice. The Claimant will respond to the request within 72 hours and will not unreasonably withhold consent. In 2021, the July Parenting Week will start on Friday July 16, 2021.

- iii. August - One Parenting Week in August, with the exact dates to be proposed by the Respondent to the Claimant on at least 6 weeks notice. The Claimant will respond to the proposal within 72 hours and will not unreasonably withhold consent.
- c. Nochebuena (Christmas Eve) - The Respondent will have a Parenting Week with M.R. in Salmon Arm in the first week of M.R.'s Winter Break, with the last day of the week to be Nochebuena. The Children will be exchanged between the parties at 7pm on Nochebuena. In 2021, the Christmas Parenting Week will start on December 17.
- d. Christmas Day - In odd years, with notice to the Claimant at least 6 weeks in advance, the Respondent may choose to exercise his Christmas Parenting Week in the second week of M.R.'s Winter Break instead of the first, in which case his Christmas Parenting Week will commence at 7:00pm on Nochebuena.
- e. The Respondent will be at liberty to choose up to four other weeks in which to exercise a Parenting Week in Salmon Arm, which will occur in separate calendar months. The Respondent will propose the dates of these Parenting Weeks to the Claimant on at least 6 weeks notice. The Claimant will respond to the proposal within 72 hours and will not unreasonably withhold consent.

Holiday Parenting Time with M.R.

7. The parties will have parenting time for holidays (the "Holiday Parenting Time" as set out below:
- a. Father's Day - The Claimant will bring the Children to the Lower Mainland for the Father's Day Weekend each year. In 2021, the Respondent will have parenting time with M.R. commencing at 5:00pm on the Friday and continuing until 9:00am on the Monday. In future years, the Claimant will propose exchange dates and times to the Respondent on at least 3 weeks notice, taking into account M.R.'s school schedule. The Respondent will respond within 72 hours and will not unreasonably withhold consent.
- b. Thanksgiving - In odd years the Claimant will bring the Children to Vancouver for Thanksgiving. In 2021, the Respondent's parenting time with M.R. will start at 5:00pm Friday October 8 and extend until 5:00pm on October 11. In future years, the Claimant will propose exchange dates and times to the Respondent on at least 3 weeks notice, taking into account M.R.'s school schedule. The Respondent will respond within 72 hours and will not unreasonably withhold consent. The Children will be with the Claimant in Salmon Arm for Thanksgiving in even years.

- c. Easter - In even years the Claimant will bring the Children to Vancouver for Easter. In 2022, the Respondent's parenting time will start at 5:00pm on Thursday, April 14, and extend until 9:00am on Tuesday, April 19. In future years, the Claimant will propose exchange dates and times to the Respondent on at least 3 weeks notice, taking into account M.R.'s school schedule. The Respondent will respond within 72 hours and will not unreasonably withhold consent. The Children will be with the Claimant in Salmon Arm for Easter in odd years.
- d. Without requiring travel for the Children, other than as set out above, the parties will be entitled to exercise the following holiday parenting time:
 - i. M.I.'s Birthday - In odd years, the Respondent may spend February 1 from 9:00am to 9:00am on February 2 with the Children. In even years, the Claimant may spend February 1 from 9:00am to 9:00am on February 2 with the Children.
 - ii. Claimant's Birthday - The Claimant may spend February 11 from 9:00am to 9:00am on February 12 with the Children in each year.
 - iii. M.R.'s Birthday - In odd years, the Claimant may spend March 21 from 9:00am to 9:00am on March 22 with the Children. In even years, the Respondent may spend March 21 from 9:00am to 9:00am on March 22 with the Children.
 - iv. Mother's Day - The Claimant may spend the Mother's Day weekend from Saturday at 9:00am to Monday at 9:00am with the Children each year.
 - v. Respondent's Birthday - The Respondent may spend July 21 from 9:00am to 9:00am on July 22 with the Children in each year.
 - vi. Labour Day - The Claimant may exercise parenting time with the Children for the week following Labour Day in each year starting at 5:00pm on Labour Day and continuing until 9:00am the next Monday.
 - vii. Halloween - In odd years, the Claimant may spend October 31 from 9:00am to 7:00pm with the Children. In even years, the Respondent may spend October 31 from 9:00am to 7:00pm with the Children.

Video Calls

- 8. The Claimant will facilitate a video call between the Respondent and both of the Children on Sundays, Mondays, Wednesdays and Thursdays when neither child is in his care, which Ms. [W.] may commence at any time between 5:30pm and 6:30pm, or otherwise at a time agreed between the parties.

Parenting Time Exchanges

- 9. All parenting time exchanges in Salmon Arm will take place at the front of the Claimant's residence and all parenting time transitions in Vancouver will take place at the front of the Respondent's residence.

10. Exchanges may be facilitated by any of the Claimant's family members or by the Claimant.

Children's Activities

11. The Respondent will take the Children to any scheduled activities or school they are enrolled in during his parenting time in Salmon Arm.

Review of Parenting Schedule

12. Either party may request a review of the parenting schedule for the Children on or after June 1, 2022.

Parental Responsibilities and Guardianship

13. The Respondent and the Claimant are guardians of the Children.
14. The Respondent and the Claimant will share parental responsibilities but in the event there is a disagreement regarding a significant decision that must be made for either child, the Claimant will have the authority to make that decision.
- [37] Under that regime, focusing first on paragraph 4 of the proposal, Mr. D. and the boys would see one another only every other weekend, assuming Mr. D. was able to get to Salmon Arm in light of weather conditions or requirements at work. While the Friday start time in paragraph 4 is 6:30 p.m., unless Mr. D. could get time off work, in reality he would not be with the boys until Saturday. They would be asleep by the time he arrived Friday night. Taking into account winter driving conditions on the Coquihalla, Mr. D.'s travelling time both ways would be uncertain, and sometimes probably hazardous. Mr. D. would need a hotel or bed-and-breakfast ("B&B") for each visit. (Ms. W.'s family, in their testimony, offered that he could stay at their house, but I find that to be unworkable. The various relationships between Mr. D. and members of Ms. W.'s family are not hostile, but nor are they comfortable.) The boys' time with their father, on the alternate weekends, when the weather and his work obligations did allow him to get to Salmon Arm, would be in a hotel or a B&B, not in the boys' home setting.
- [38] Under Ms. W.'s proposal, most of the parenting time for Mr. D. would be in Salmon Arm. With several qualifications, under paragraph 6 of Ms. W.'s proposal, Mr. D. would have only three weeks each year in Vancouver, and usually only with M.R. (Paragraph 3 would give him limited time with M.I. in Vancouver as well.)
- [39] All travel, food and accommodation costs to and in Salmon Arm would be borne by Mr. D. There was debate at trial about the amount of those costs, but clearly they would be in the thousands of dollars annually.
- [40] Ms. W. offers video meetings with the boys. For M.I., who is about one year, four months old, such calls would probably be something of a challenge. In any event, video calls, while better than nothing, are no substitute for live contact.

Application of ss. 37 and 46 of the FLA

- [41] Turning first to s. 46 of the FLA, quoted earlier, sub-s. (2) requires a best interests of the child analysis under s. 37(2), and a consideration of the reasons for the change in the location of the children's residence.
- [42] Ms. W. wants to move with the boys to Salmon Arm to be near her mother and father, and her brother and his partner, all of whom live on the 20-acre property. She wants to have their support for her and the boys.
- [43] Ms. W. would not be going to Salmon Arm for the sake of employment. Her prospects for employment are better in the Lower Mainland. She is trained and experienced as a social worker and has been employed in that capacity in the Lower Mainland from approximately the time of the marriage until she gave birth to M.R. in 2017. Ms. W. and her family testified that she would have reasonable prospects of employment in Salmon Arm, but that is different of course from her work taking her to live there. Furthermore, her employment prospects in Salmon Arm are limited. Her parents used to run a B&B at the family property, and they have said that she could take it over. They testified that her running the B&B would give her an income of approximately \$20,000-\$35,000 annually. However, no one had any financial records of the profitability for the B&B. It has been closed since March 2020. In the five years before that, it operated very little because of health problems of Ms. W.'s parents. In reality, Ms. W. would be resurrecting a former B&B, if not virtually starting it from scratch, and the estimates of revenue for her are rough indeed. Her brother gave evidence that he and his partner run an elderberry farming, processing and wholesale business from the same 20-acre property. He could offer Ms. W. work at \$20 an hour for one day a week. He said that his elderberry business is coming along well, and that Ms. W. might be able to eventually work full-time in that business, earning \$20,000 a year. However, again, no financial information was offered as to the profitability of that business, and there was no explanation of how Ms. W. could divide her time between running the B&B and doing more and more work in the elderberry business. In summary, Ms. W.'s employment prospects in Salmon Arm are modest.
- [44] I would not suggest that there would be anything wrong with young boys being on a farm property, or in Salmon Arm itself, where Ms. W. would intend to find subsidized housing. Mr. D. in his evidence wanted to speak of the hazards of life on a farm, not far from a highway, but in my view, the boys' lives based either in Vancouver or on the farm would be safe enough and rewarding. In other words, I do not believe that the outcome in this case turns on farm versus city so much as it does on the boys having the proper, healthy and fulfilling relationships they should have where possible with both parents. The reality in this case, in my view, is that the boys having maximum contact with both parents is in their best interests, and can be achieved far more easily by having them based in the Lower Mainland, while Ms. W. is also given ample opportunity to have them visit their grandparents and uncle from time to time on the farm in Salmon Arm.

[45] The headings below are the paragraphs from s. 37(2) of the FLA, addressing the best interests of the children.

(a) The children's health and emotional well-being

[46] As I have indicated above, both locations, Salmon Arm and the Lower Mainland, are conducive to the boys' well-being. The more relevant factor under this part of the analysis is ensuring that these boys have regular and frequent contact with, and support from, both of their parents.

(b) The children's views, unless it would be inappropriate to consider them

[47] The boys are too young for their views to be received. The uncontradicted evidence is that they derive ample love and support from both parents, and love both parents.

(c) The nature and strength of the relationships between the children and significant persons in the children's life

[48] The boys' relationships with both parents are excellent. I expect, from the testimony of Ms. W.'s parents and her brother, that the boys also have supportive relationships with them. Those relationships can be nurtured, as is common between children and their grandparents, by visits from time to time where the grandparents live.

(d) The history of the children's care

[49] From their birth until now, the boys have resided largely with their mother. Ms. W. still nurses M.I. Obviously, as the boys get older, particularly M.I., their dependency on their mother will lessen. Nonetheless, for the present, parenting time should be weighted in Ms. W.'s favour. Mr. D. expects that he will be able to work from home three days a week in his new employment, but, in my view, it is premature to settle upon equal parenting time at this stage.

(e) The children's need for stability, given the children's age and stage of development

[50] These boys, like all children, need stability, perhaps especially so considering how young they are. Stability can be maintained if they continue to reside where they always have to this point, at their parents' residences in Vancouver and Burnaby.

(f) The ability of each person who is a guardian or seeks guardianship of the children, or who has or seeks parental responsibilities, parenting time or contact with the children, to exercise his or her responsibilities

- [51] The ability of each of the parties to exercise their respective responsibilities is not an issue. I have referred earlier to the fact that Ms. W. still nurses M.I., and both parties will need to accommodate that reality so long as the nursing continues. I noted earlier that Mr. D. anticipates having the opportunity to work from home up to three days a week. That is helpful in the consideration of his parenting abilities, although as I have said earlier, I do not believe it translates to equal parenting time at this stage.
- (g) The impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member
- [52] Family violence is now described very broadly in the context of family law. However, even allowing for a liberal understanding of that phrase, the boys have never been exposed to it.
- (h) Whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs
- [53] There is no evidence of the impairment addressed in paragraph (h).
- (i) The appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members
- [54] Ms. W. criticized Mr. D. for a rhetorical and unhelpful response to her email about certain medical protocols for the boys; for his taking preliminary steps, without having consulted her, toward enrolling M.R. in a school or preschool for this fall; and for his being late at some handovers for the boys, and holding on to them for a few minutes more than he should have at such times. Mr. D. responded at trial that his attention at those times was dominated by Ms. W. having announced she wanted to take the boys away to Salmon Arm to live. It appears from the evidence that sometimes Mr. D. was late for handovers, and did hold on to the boys for a few minutes too long, but that conduct does not rise to the level of a substantial concern linked to the matters in paragraph (i).
- (j) Any civil or criminal proceeding relevant to the children's safety, security or well-being
- [55] There is no such proceeding in this case.
- [56] From my assessment of the best interests of the boys, and my consideration of the reasons given for the proposed change in the boys' residence, I conclude that the application for relocation should be dismissed under s. 46 of the FLA.

Application of s. 69 of the FLA

- [57] If I am wrong in my conclusion, set out earlier in these reasons, that s. 46 governs, the relocation analysis shifts to the application of s. 69. As noted earlier, in accordance with s. 69(3), the factors considered above under s. 37(2) are also in issue under the s. 69 analysis.

- [58] Turning to s. 69(4)(a), I do not find that the proposed relocation application is brought in bad faith. In that regard, referring to s. 69(6)(b), I do not find that the proposed relocation increases financial or educational opportunities for Ms. W., but that does not lead to a conclusion of bad faith.
- [59] In my view, however, the relocation application must fail under s. 69(4)(a)(ii). For reasons stated above, particularly where I assessed Ms. W.'s parenting time proposal after relocation, I do not find that Ms. W. has proposed a reasonable and workable arrangement to preserve the relationship between the children and Mr. D. If the move to Salmon Arm would not destroy the substance of the relationship between Mr. D. and the boys, it would at least erode it to an extent that is not in the boys' best overall interests.
- [60] I add, in the alternative, pursuant to s. 69(4)(b), that Mr. D. has satisfied me, for all the reasons set out above, that the proposed relocation is not in the boys' best interests.
- [61] In conclusion on this issue of relocation, I would dismiss the application whether it is analysed under s. 46 or s. 69 of the FLA.

Parenting Time

- [62] Ms. W.'s requested parenting schedule without relocation is as follows:

Parenting Time with M.R.

1. M.R. will reside primarily with the Claimant.
2. The Respondent will have parenting time with M.R. every second weekend from Friday at 5:00pm to Monday at 9:00am; and
3. On the Mondays following weekends that the Respondent does not have parenting time with M.R., the Respondent will have parenting time with M.R. from Monday at 5:00pm to Wednesday at 5:00pm.

Parenting Time with M.I.

4. M.I. will reside primarily with the Claimant.
5. The Respondent will have parenting time with M.I. from 9:00am to 5:00pm on each day that he has parenting time with M.R. during those hours, subject to the following:
 - a. In the event the Respondent's parenting time with M.R. starts later than 9:00am, the Respondent's parenting time with M.I. will start at the same time as his parenting time with M.R.;
 - b. In the event the Respondent's parenting time with M.R. ends earlier than 5:00pm, the Respondent's parenting time with M.I. will end at the same time as the Respondent's parenting time with M.R.; and

- c. Exceptions for Nochebuena and Halloween set out below, in which cases the Respondent's parenting time with M.I. may end at 7:00pm.
- [63] That proposal gives Mr. D. two nights with M.R. in addition to his nights with him under the Cameron order, but removes the Wednesday and Thursday evening times.
- [64] Mr. D. proposes equal parenting time. The first parent would have both boys on Monday and Tuesday nights. Then the other parent would have them Wednesday and Thursday nights. They would be back to the first parent for Friday, Saturday and Sunday nights. The schedule would be reversed in the second week.
- [65] I am accepting Ms. W.'s proposal, above, with two qualifications. First, when M.I. turns two, next February, his time with Mr. D. will become the same as M.R.'s time with Mr. D. Second, either party has the right to apply to change the parenting time schedule any time after August 1, 2022, without at that time having to demonstrate a material change in circumstances. The Court at that time will be able to assess, among other things, how Mr. D. is handling his increased parenting responsibilities.
- [66] With regard to summer vacation, Mr. D. will have two weeks' access with the boys every summer. The two weeks need not be consecutive. After February 1, 2022, when M.I. turns two, Mr. D.'s two weeks summer access will include overnight time with M.I.
- [67] Ms. W. will have four weeks' vacation time with the boys every summer. The four weeks need not be consecutive. Ms. W. is receiving twice as much summer vacation time with the boys because I believe it is in their interests to have ample time on the farm, seeing their grandparents.
- [68] The parties will reach agreement on other parenting time issues or, having attempted in good faith and failed to reach agreement, may apply to me for further parenting time orders.
- [69] With respect to parenting responsibilities, with one exception set out below, the parties will share them equally. Ms. W. has asked that she have the ultimate decision-making authority where there is disagreement over a significant decision. I am granting her that power for both boys concerning medical and dental matters. In other matters, the parties will need to apply to this Court for directions under s. 49 of the FLA if they cannot reach agreement in parenting matters.

Child Support and Spousal Support

- [70] The parties will determine ongoing child support and spousal support payments based on the parenting time I have ordered above, employing the midpoint on the federal guidelines. Ms. W. at present lives in subsidized housing costing her \$280 per month, and receives approximately \$1,130 and \$1,300 per month as part of the child tax benefit. For the determination of child support and spousal support payments, Ms. W.'s income will be 0 until February 1, 2022, when M.I. turns two. After that, it will be imputed at \$48,000, bearing

in mind Ms. W.'s age, 39; her education, including a Master's degree in social work; her work history as a social worker from 2007 to 2016; and her most recent annual income, which was earned in 2016.

- [71] Mr. D.'s income for determining ongoing support obligations will be, on and after May 2021, \$85,000, being his annual income at Sonic Enclosures.
- [72] Given the parties' relatively young ages, and the duration of the marriage, spousal support, on a compensatory basis, will end approximately five years after separation, on September 30, 2024.

Conclusion

- [73] The relocation application is dismissed. The parties' joint request for a divorce is granted. Parenting time, guardianship and the criteria for determining ongoing child support and spousal support are addressed above.
- [74] Costs were not spoken to. If costs are in issue, and if any other matters, arising from these reasons or the pleadings, require determination, the parties may set down up to one day before me for further submissions. That said, I of course urge counsel to work toward an agreement on all that they can.

"Macintosh J."

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