
CANADA / JUDGMENT

Stewart v. Stewart

2016 BCSC 1656

COURT

Supreme Court of British Columbia

DECIDED

8 September 2016

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2016 BCSC 1656 Stewart v. Stewart

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stewart v. Stewart,

2016 BCSC 1656

Date: 20160908

Docket: 13278

Registry: Salmon Arm

Between:

Crystal Dawn Stewart

Claimant

And

Daniel John Stewart

Respondent

Before: The Honourable Madam Justice Hyslop

Reasons for Judgment

Crystal Daw Stewart appeared on her own behalf:

Daniel John Stewart appeared on his own behalf:

Place and Date of Hearing:

Salmon Arm, B.C.

August 26, 2016

Place and Date of Judgment:

Salmon Arm, B.C.

September 8, 2016

INTRODUCTION

- [1] As a result of a hearing in July of 2015, I permitted the claimant, Crystal Dawn Stewart, to move the children, Gauge Landon Stewart, born January 1, 2005 and Dexter Thor Stewart, born April 27, 2006 (the "Children") to Grand Prairie, Alberta for the 2015/16 school year: Stewart v. Stewart, 2015 BCSC 2242 (unreported). The move to Grand Prairie was opposed by their father, Daniel John Stewart, who sought 100% parenting of the Children or that the Children live with him at his home in Salmon Arm. I adjourned his application to July of 2016.
- [2] At the hearing of July 2015, I found that Ms. Stewart and Mr. Stewart agreed that the Children would live in Grand Prairie, Alberta with her and her partner, Randy Every, for the school year 2015/16 and alternate each year with each parent: paras. 14-29 of my oral reasons. I concluded that Mr. Every's "employment is steady and reliable" and that Ms. Stewart and Mr. Every "rent a home which, as described, is suitable for family accommodation": para.10 of my reasons. The Children had been to Grand Prairie prior to their move with their mother. They were introduced to the community, made some friends and were familiar with the school that they would attend and the home in which they would reside.
- [3] In her affidavit #2 filed June 26, 2015, Ms. Stewart swore to the following:
2. I am gainfully employed in Grande Prairie, I am renting a four bedroom home all set up and ready for the boys to come.
 4. Randy and I had opened a business, not long after opening this business did we start hearing rumors that Dan and people at D.C. Chop Shop (Dan's Business at the time) had been telling their clients that Randy and I had opened the business... We borrowed the money from Randy's Grande Parents to start this business.
 10. Dan continued to make life very stressful for me in salmon arm so I then decided to see if I could relocate with the kids to Grande Prairie, where my Finance was already residing. It only made sense to me that we [would] not be supporting two households with only his income. I felt I would be able to provide better for my children if we saved cost there. I also was very hopeful that I would be able to find work there as jobs are plentiful in Grande Prairie. This too would be in the best interest of the children as I would be financially stable and be able to provide for them. Also in Grande Prairie, Dan would not be able to twist the truth and constantly remind people of my charges (convictions, the way Dan tells it). I have always been honest to people about my charges and have always made sure to tell those who

should be notified. I don't need Dan going around telling everyone his version of my charges. I would at least like my fair chance in front of the courts to prove my innocents, before Dan tells the whole world he believes I am guilty.

- [4] Not surprisingly, my order of August 7, 2015 (the "order") focussed on the best interests of the Children. The order focussed on the Children transitioning to a different province with the possibility that the Children would experience difficulties with a new school curriculum. Little did I know that their school year would be cut short by their return to Salmon Arm. The move to Grand Prairie was not successful. Ms. Stewart, Mr. Every and the Children left Grand Prairie on January 15, 2016, and returned to the Salmon Arm area on June 17, 2016.
- [5] This hearing was to determine with whom the Children should live and where the Children should attend school.
- [6] At this hearing, both Ms. Stewart and Mr. Stewart filed affidavits. In addition, each of them had some new evidence to present. As a result, I permitted them to testify under oath and to cross-examine each other, not only concerning the new evidence, but also on their affidavits. The affidavit of Ms. Stewart and the affidavit of Mr. Stewart had attachments to them that were inadmissible, as they came from third parties who did not provide sworn testimony.
- [7] Despite the significant change in circumstances, which is that Ms. Stewart returned to the Salmon Area and Mr. Stewart, in about March of 2016, moved to Kelowna, the Stewarts carried on with the order. This led to complaints from Mr. Stewart as to not having the Children enough and Ms. Stewart complaining about receiving only 24 hours notice when Mr. Stewart wanted the Children. This was a term of the order, but this term was when the Children were residing in Grand Prairie as it was unlikely that Mr. Stewart would see the Children in Grand Prairie regularly.
- [8] At the end of this hearing, I told the Stewarts that the Children would reside in Kelowna with Mr. Stewart and his wife, Chali Stewart. I ordered that Mr. Stewart would pick up the Children in Salmon Arm on September 3, 2016 at 6:30 p.m. I further ordered that until these reasons were published, Ms. Stewart, starting September 9, 2016, would have the Children every weekend from Friday after school until Sunday at 6:30 p.m., when Mr. Stewart will pick up the Children in Salmon Arm. Upon the receipt of my reasons, these weekend times that has been allocated to Ms. Stewart to the Children ends. Ms. Stewart will have the Children in accordance with the orders that I make in these reasons.
- [9] These are my reasons.
- [10] Upon Ms. Stewart and Mr. Every leaving Grande Prairie, they arrived back in the Salmon Arm area on January 17, 2016. They, together with the Children, lived at Mr. Every's parents' residence at White Lake (this is a short distance from Salmon Arm). The Children were enrolled in the Carlin Elementary School ("Carlin"). They anticipated that they would move into Ms. Stewart's mother's basement suite in Salmon Arm when the suite became vacant;

they did so in April of 2016. At this time, Ms. Stewart enrolled the Children in the Hillcrest Elementary School ("Hillcrest"), the school the Children attended when they lived with Mr. Stewart in the 2014/15 school year. Ms. Stewart stated that the Children's report cards revealed that the Children did well at Carlin. She did not explain why she did not have the Children complete their school year at Carlin, other than the obvious, that they had moved to Salmon Arm.

[11] Mr. Stewart learned of the move from Grand Prairie to Salmon Arm on January 13, 2016, as a result of an email from Gauge's teacher, which stated:

Jan. 14, 2016 at 12:37 PM

Hi Dan,

I just heard the great news yesterday! As a father, I am really happy for you, and know that you must be really excited to see your boys. They are kind, creative and awesome kids, and I just know they're going to love being closer to their dad:)

I will send home with Gauge all of his books, which will be important to give his new teacher. The provincial topics will not line up, but it will give his teacher a good idea about where he's at.

Again, sorry to see him go, but excited for you:) Have a great day Dan, and let me know if there's anything else I can do.

Rob Twelvetree

Jan. 14, 2016 at 7:23 PM

Hey Rob! This is actually really great news you're right! And I'm sure you can imagine my excitement!!! But this is actually the first I have heard about it. I had NO idea. Are they moving back to Salmon Arm? Do you know when the last day in clairmont is? Wow I'm blown away!! This is great news for us. I'm super excited a bit shocked that I was not informed tho at all. Like I talked to the kids on Saturday and heard nothing of it. Please yes if you can give me any information you may have. As you can tell I'm left in the dark.

Jan. 16, 2016 at 1:41 pm

?Wow talk about left in the dark, sorry I presumed you knew. I heard of it on Wednesday by the office and they let me know that Thursday would be his last day. I was told that they both got jobs down there, and were moving back to Salmon Arm. He packed up all of his stuff and had a nice going away party with some of the kids here in class. As much as I'm sad to see him go, this has got to be a good move being close to you and hopefully jobs and everything work out for them. That's all I really know, hopefully a more complete update is headed your way via Mom?

If I get any other word about the situation, I'll be sure to let you know. Us dads need to stay in the loop right?

Sincerely,

Rob 12tree

- [12] By this time, Mr. Stewart and his wife, unbeknownst to Ms. Stewart, had decided to move to Kelowna to live and work.
- [13] As a result, I was required to determine the Children's primary residence as Salmon Arm or Kelowna.
- [14] However, before I address the merits of where the Children should live and the recommendations in the report prepared pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], I will review what occurred after the order.
- [15] Pursuant to the order, Mr. Stewart was to return the Children to Ms. Stewart in Grand Prairie on August 23, 2015 (Alberta time). When Mr. Stewart arrived, he found the four bedroom home that the children were to reside in was all packed up. Ms. Stewart informed Mr. Stewart that she, Mr. Every and the Children would be residing at a trailer park in Clairmont, Alberta, where the Children would attend school.
- [16] Clairmont is a town some 15 to 20 minutes by car outside of Grand Prairie. Ms. Stewart explained that the move was because she wanted the Children to attend the Clairmont School rather than the school that was originally planned, as it was a better school.
- [17] Mr. Stewart later discovered that Ms. Stewart and Mr. Every had been evicted for non-payment of rent. What is disputed is whether the residence was damaged and garbage and junk was left at the premises by Ms. Stewart and Mr. Every.
- [18] Mr. Stewart later learned through Facebook of the alleged damages and junk left at the residence, which was displayed pictorially. This evidence was not admissible as the landlord who provided the pictures to Mr. Stewart and who had an electronic conversation with Mr. Stewart, did not give evidence under oath. Ms. Stewart acknowledged they had been evicted and had been court-ordered to pay the amount of rent due. Ms. Stewart does not dispute the authenticity of the damages and the garbage in the pictures, but counters that this allegation regarding the damages to the house and the garbage and junk in the yard is the condition of the home when they moved in as a result of the actions of the previous tenants.
- [19] Ms. Stewart points to an inadmissible letter from the landlord who states that Ms. Stewart and Mr. Every were very good tenants. There is no evidence from the landlord as to the authenticity of this email, nor is the electronic conversation admissible from messages alleged from the former tenants stating that the garbage and junk would be picked up. I do not accept that the damages to the house and the junk and garbage were left by the previous tenants. I cannot imagine why she and Mr. Every would move the Children into a residence in this condition, particularly when she led the court to believe that the house was suitable for the Children.

- [20] It was clear from the outset that the Children and Ms. Stewart would be supported by Mr. Every. They relied on his income from the oil patch. That is the employment that drew Ms. Stewart to reside in Grand Prairie. In her affidavit #13, at paragraph 10, Ms. Stewart stated that Mr. Every started a landscaping business "in anticipation of the lay offs that were coming due to the recession." It appears that when the Stewarts were in court in 2015, Ms. Stewart knew that Mr. Every's job would likely be lost. Ms. Stewart and Mr. Every had already started a new business. Mr. Every lost his job August 15, 2015.
- [21] A dispute arose between one of Mr. Every's landscaping customers and the customer obtained a judgment against Mr. Every for \$4,800.00. This is not disputed by Ms. Stewart.
- [22] After moving to Clairmont, Mr. Every and Ms. Stewart were evicted from the Clairmont trailer. By this time, Mr. Every had lost his employment. Ms. Stewart explained that had Mr. Every obtained a job for which he had applied, then they would have moved into another rental unit near or in the same trailer park and continued to reside in Clairmont. Mr. Every did not obtain a new job and he and Ms. Stewart did not have sufficient funds to meet the rent as any funds they had they needed to meet their expenses to leave Grand Prairie.
- [23] I have concluded that Ms. Stewart knew when we were in court in July of 2015 that led to the order, that they would not be living in the four-bedroom home and the Children would not be going to the school as represented at the hearing. Ms. Stewart also knew that Mr. Every's employment and their continued tenancy in the four-bedroom home were in jeopardy. I think it would be fair to say that in 2015 a recession in the oil industry was apparent.
- [24] While the Children were living in Grand Prairie, both Mr. Stewart and Ms. Stewart had many complaints about the other relating to communication with the Children following the order. As an example, Mr. Stewart complained when Ms. Stewart cancelled the Internet and Skype in favour of the Children's hockey (the Children were given hockey equipment and entry fees were paid by a charity and Canadian Tire). Ms. Stewart complained that when Mr. Stewart travelled to Grand Prairie around Halloween in 2015 to visit the Children, he cancelled the attendance of the Children at their hockey tournament and one child's attendance at breakfast club, which was contrary to the order.
- [25] I must consider the reliability and credibility of the evidence of Ms. Stewart and Mr. Stewart. For the most part, I found Mr. Stewart a credible witness. At times, I found some of his complaints were petty. Examples are the Children's clothing, Dexter's weight (which eventually resolved itself) and some of his complaints about communication with the Children. However, Ms. Stewart twisted each criticism made against her and placed the fault on someone else, or on a particular event or situation instead of accepting responsibility herself. Here are some examples.

[26] Ms. Stewart blamed being evicted from the four-bedroom home in Grand Prairie because of the cost of coming to court in July of 2015. She stated that she was about four hours late in returning the Children on September 4, 2015 as ordered because of a road race on the highway. She blamed all of the difficulties she had in Grand Prairie upon Mr. Stewart, none of which had merit. She claimed that the Children could not go to the Hillcrest school because her mother's suite was occupied.

SECTION 211 REPORT

[27] I ordered a s. 211 report. The report is dated July 22, 2016 and authored by Karen Fenton, a Family Justice Counsellor from the Family Justice Report Service within the Ministry of Justice of British Columbia. The report made the following recommendations:

Given the information I have learned about this family I recommend:

- Dan and Crystal are guardians of Gauge and Dexter and should share parental responsibilities and participate in all counselling and third party professionals involved with their sons.
- Gauge and Dexter should have the right to participate in counselling or group activities suited to their individual needs, as long as one parent provides consent.
- It is not in the children's best interest to change schools from year to year and therefore there is a need to determine one parent as the primary caregiver.
- The children are happy to be back in Salmon Arm where the community is familiar and they have extended family and friends.
- [Gauge] is excited to move on to middle school with his peers and does not want to change school districts and spend two more years in elementary school.
- The boys are open to their mother finding a larger house in Salmon Arm as long as it does not mean changing schools.
- Both parents must provide consent before the boys can be moved from their 2016/2017 school placements.
- Should Crystal have primary residence, Dan should have parenting time on alternate weekends, expanded by all the professional development days and statutory holidays that coincide with his weekends. Dan should have half of the school breaks in winter, spring and summer. Whenever Dan or his wife are in Salmon Arm they should have the right to interact with the boys independently as long as they abide by the school schedule and give Crystal 24 hours notice of their plans to pick the boys up and drop them off.
- Should Crystal plan to leave the Salmon Arm area the children should automatically go to live primarily with Dan in Kelowna.

- [28] Ms. Fenton personally interviewed Randy Every, Chali Stewart, the Children, Ms. Stewart, Mr. Stewart and the grandmothers of the Children by telephone. She concludes there is no history of family violence between the Stewarts. No allegations of family violence were before me, although Mr. Stewart expressed concerns in Ms. Stewart and Mr. Every's relationship through the electronic media attachment to Mr. Stewart's affidavits from persons in Grand Prairie. These people did not swear affidavits and, as a result, I did not consider this evidence.
- [29] In her report, Ms. Fenton notes that Gauge, between kindergarten and grade 5, has changed schools six times and has lived in and out of his grandmother's basement suite several times. She notes that Dexter experienced the same disruptions.
- [30] She reports that Ms. Stewart and Mr. Every planned to remain in the basement suite until they could locate at least a three-bedroom residence. The basis of the recommendation that the Children stay with Ms. Stewart in Salmon Arm is that Gauge wants to remain in his present home and with his mother. Ms. Fenton reports that Dexter is undecided and she states that Dexter "is close to Gauge and will follow his lead."
- [31] Ms. Fenton reports that the Children have a close relationship with their paternal grandmother and paternal cousins. Ms. Fenton notes that:

Significant changes occurred when Crystal commenced a relationship with her current partner Randy Every in 2011. Although she was not convicted of criminal charges related to the trafficking of drugs and use of firearms she was involved with people who had direct involvement. Crystal subsequently wanted to relocate the boys away from Salmon Arm which Dan opposed.

- [32] Ms. Stewart was to stand trial, which was divided in two separate parts. The second portion of Ms. Stewart's trial was still outstanding at the time of the order. It has since been stayed by the Crown.

DISCUSSION

- [33] Both parents often accept as gospel statements made by the Children about the other parent. The Stewarts then use the Children's comments as a basis to criticize the other parent, instead of checking the facts with the other parent. Ms. Stewart's affidavit relies frequently on the Children's wishes as justification for actions she makes. Sometimes these decisions should be made by parents and not the Children. An example of this is Gauge's lack of adult supervision on Skype. Mr. Stewart presented evidence which became an exhibit with Gauge Skyping at 5:20 a.m., 1:07 a.m., 12:50 a.m., 4:13 a.m., 3:03 a.m., 3:11 a.m. and 5:12 a.m., as well as other times. Ms. Stewart was aware of some of this Skyping as she is shown in the background of one of the Skyping sessions. Ms. Stewart's justification for the 5 a.m. Skypes is that Gauge wanted her to get him up at 5 a.m., when she gets up to go to work. In any event, she justified Gauge's use of Skype as it was in the summer months and not on school nights.

- [34] Both Ms. Stewart and Mr. Stewart have suitable accommodation in which the Children are to reside. Gauge will have to change schools, whether he lives in Salmon Arm or Kelowna. The school that Gauge and Dexter will both attend in Kelowna is an elementary school and is located a short distance by car between Mr. Stewart's residence and his work. The Children will be driven to and from school by him each day. If after-school daycare is required, Mr. Stewart and his wife have arranged with a relative who lives across the street from the school to care for the Children. However, the need for care is unlikely for the next year as Mrs. Chali Stewart will be on maternity leave shortly as a result of the birth of their child, which is expected this October.
- [35] Mrs. Chali Stewart is a licensed practical nurse ("LPN") and employed full-time by the Kelowna hospital. When working, she is on a rotating shift for a period of two weeks from 7 a.m. to 7 p.m., three days one week and four days the next.
- [36] Mr. Stewart testified that his barber shop is starting to be successful. His shop has four chairs and he is looking for other barbers for the business, which is located in downtown Kelowna. Presently his hours of work are 10 a.m. to 7 p.m., Tuesday to Friday, and 10 a.m. to 5 p.m. on Saturday and Monday. I conclude, being self-employed, that Mr. Stewart can make changes to his work schedule to meet the needs of the Children.
- [37] Ms. Stewart is living with the Children in her mother's basement suite. The plan that the Children move to Grand Prairie for the school year 2015/2016 ended badly for the Children. The Children, in the school year 2015, lived in four different residences and attended three different schools. She and Mr. Every were evicted from two residences in Grand Prairie. Ms. Stewart technically claims that the Children never lived in the first residence. This may be true, but it was held out to the Children, Mr. Stewart and the court that the Children would be residing in that particular residence and would be going to a particular school. Had Mr. Every obtained work after the second eviction, they would have remained in Grand Prairie and moved down the street. They were financially unable to do so. They made a last-minute decision to move back to Salmon Arm. They could not move directly into the Salmon Arm basement suite as it was occupied.
- [38] Ms. Stewart stated with some pride that the Children had never been without a roof over their heads and she also confirmed she had only been evicted on one occasion from a rental residence in Salmon Arm. It is apparent that living in her mother's basement suite is a default or fall-back residence for Ms. Stewart. At one time, Ms. Stewart had lived there with Mr. Stewart. It is clear from the s. 211 report that she and Mr. Every will be looking for a rental unit in which to reside. Further, Mr. Every works out-of-town and returns home only on weekends.
- [39] However, in her submissions, Ms. Stewart advised me that she and Mr. Every had separated. She stated that the reason is these proceedings; she did not elaborate. This separation occurred between the time Ms. Stewart swore her affidavit on August 19, 2016 and the hearing of this application. I questioned Ms. Stewart as to when she and Mr. Every were last

together; it was Monday before the start of this hearing. Ms. Stewart stated she last saw Mr. Every the day before this hearing. Mr. Every was assisting Ms. Stewart with her affidavit and preparing it for the court, which Mr. Stewart received the evening before the hearing by email.

- [40] Ms. Stewart's LPN license lapsed. She has made application for its re-instatement. She expects to receive her license shortly. She is presently working on-call at two care homes in Salmon Arm. She is presently considering a full-time position at one of the care homes where she works. The position is night shift, which allows her to be available for the Children during the day and in the evenings the Children would be cared for by their grandmother.
- [41] Ms. Stewart has displayed a lack of good judgment in making some important decisions for the Children. This has impacted the lives of the Children and has impacted, to a lesser extent, the Children's relationship with their father. This does not just relate to the time when the Children were in Grand Prairie, but it also occurred after the Stewarts' separation and after the Children returned from Grand Prairie. Ms. Stewart provided no explanation as to why she moved the Children from the Carlin school, which according to her, they were doing well and then to Hillcrest. It was obvious the Children should have gone to Hillcrest as she and Mr. Every were planning on residing in the basement suite. Either way, she could have driven the Children to and from Carlin or to and from Hillcrest. Had she done this, the Children, in the school year 2015/16, would have attended two schools instead of three.
- [42] There is no evidence before me as to her future plans with Mr. Every and, maybe as a result of the recent separation, Ms. Stewart simply does not know.
- [43] I came to the conclusion that Mr. Stewart and his wife can provide the Children with the stability they need. Mr. Stewart resided in the same residence in Salmon Arm for four years before his move to Kelowna.
- [44] Though Ms. Fenton recommended in the s. 211 report that the Children remain living with Ms. Stewart and Mr. Every in Salmon Arm, this recommendation was based on the Children returning to their former environment of friends, family and school and the wishes of Gauge.
- [45] It was also recommended that if Ms. Stewart should leave Salmon Arm, the Children would automatically live permanently with Mr. Stewart in Kelowna. This is an indication that Ms. Fenton had confidence in Mr. Stewart and his wife's ability to provide the Children with the care and stability they need.
- [46] The Children's lives have been in various states of stability and instability since 2011, caused mainly by the criminal charges Ms. Stewart was facing, the bail she was on for almost five years and her relationship with Mr. Every. Added to this were the various applications brought on by the Stewarts in these proceedings, starting in 2012.

- [47] Some of this could have been avoided by better communication between the Stewarts. The communication has not always been honest and often been used to further their legal positions relating to the Children and Ms. Stewart's lack of candor regarding the living and school arrangements for the Children in Grand Prairie. I concluded that, based on the best interests of the Children, Mr. Stewart should have primary residence of the Children, Gauge Landon Stewart, born January 1, 2005 and Dexter Thor Stewart, born April 27, 2006, and the Children will reside in Kelowna.
- [48] In about seven or eight years, the Children are likely to have graduated from high school. These next years are very important to the Children in establishing themselves as adults in the near future. Mr. Stewart's actions by starting a business, signing a five-year lease, a new child coming and permanent employment of his wife, all point to a stable environment to complete the raising of the Children. Ms. Stewart's life continues to be in a state of flux. It is unknown as to the impact of her separation from Mr. Every, her employment and her ongoing living arrangements.
- [49] Crystal Dawn Stewart and Daniel John Stewart shall continue to be the joint guardians of Gauge Landon Stewart, born January 1, 2005 and Dexter Thor Stewart, born April 27, 2006 pursuant to the FLA. The Children's primary residence is with the respondent in Kelowna, British Columbia. Crystal Dawn Stewart and Daniel John Stewart will make joint decisions and jointly care for the Children pursuant to s. 40 of the FLA, and share parental responsibilities pursuant to s. 41 of the FLA, except for the following:
1. Ms. Stewart will have the Children on all of the following long weekends, starting with Thanksgiving of 2016: Family Day; Easter from Good Friday to and including Easter Monday; Victoria Day; Canada Day, B.C. Day and Remembrance Day, should Remembrance Day fall on a Monday or a Friday;
 2. Ms. Stewart shall have the Children one additional weekend in each month when she has the Children in a month with a long weekend as set out above, except the months of July, August and December;
 3. In the months where Ms. Stewart does not have the Children for long weekends, except the months of July, August and December, Ms. Stewart will have the Children for two weekends per month, starting September 9, 2016;
 4. Whether the weekend includes long weekends or not, the weekends that Ms. Stewart has the Children shall not be consecutive;
 5. On all long weekends or other weekends, as set out above, Ms. Stewart will pick up the Children from school at 2:30 p.m. and, if school is not in session, then at 2:30 p.m. at their residence. Mr. Stewart shall pick up the Children from Ms. Stewart's residence in Salmon Arm on Sunday or Monday (depending on whether Monday is a holiday) at 5 p.m.;

6. The Christmas school vacation will be shared equally between the Stewarts starting the day after school ends, with Ms. Stewart having half the Christmas school vacation in odd numbered years, which shall include Christmas Day, and Mr. Stewart having the children in even numbered years, which shall include Christmas Day. Ms. Stewart will pick up the Children starting the day after school ends for Christmas school vacation at 10 a.m. and, in even numbered years, Ms. Stewart will pick up the Children at 10 a.m. on her first day with the Children. Mr. Stewart will pick up the Children in Salmon Arm in even numbered years on the Saturday before school starts at 5 p.m. and at 5 p.m. in Salmon Arm in even numbered years;
7. Spring school vacation will be divided equally with Ms. Stewart having the Children in even numbered years during the first half of spring school vacation starting after school at 2:30 p.m. and ending at the half-way mark at 5 p.m. Mr. Stewart will have the Children during the spring school vacation in odd numbered years. Mr. Stewart will have the Children for the first half of spring school vacation in odd numbered years, which will end at 2:30 p.m., when the claimant will pick up the Children in Kelowna;
8. Mr. Stewart must maintain a telephone landline for the Children's use to communicate with their mother in privacy. All communications shall take place between the Children and their mother between 7:30 a.m. to 7 p.m. The telephone shall have a recording which permits the caller to leave messages for the Children;
9. The Children will be with Ms. Stewart in the month of July of each year and Mr. Stewart will have the Children during the month of August of each year, except B.C. Day;
10. Ms. Stewart will give Mr. Stewart at least 30 days' notice of the weekends she chooses to have in addition to the long weekends and the weekends in the months where there are no long weekends. None of the weekends, including long weekends, shall be consecutive. Ms. Stewart's notice to Mr. Stewart must be by email or text;
11. The Stewarts must agree to the extracurricular activities the Children are to be enrolled in before school starts in the fall of each year and before the New Year of each year. When scheduled activities take place, the parent who has the Children pursuant to this order must ensure the attendance of the Child or Children at the activities;
12. The Stewarts must agree and approve of a list of people who have their permission to drive the Children between Salmon Arm and Kelowna for purposes of picking up and returning the Children pursuant to this order;
13. The Stewarts must communicate between themselves as it relates to the Children, by email or text, and only by telephone in the case of an emergency;
14. Both Mr. Stewart and Ms. Stewart must give their names, home and work telephone numbers and addresses to the school for contact purposes, as well as to each other;

15. Each parent must ensure that the other parent receives all schedules regarding extracurricular activities, all school notices, and ensure each parent receives report cards and notification of parent/teacher meetings. That obligation is satisfied upon either Ms. Stewart or Mr. Stewart making direct arrangements with the Children's school and extracurricular activity providers;
 16. Except otherwise provided in this order, Ms. Stewart, or a person appointed by her, is responsible to pick up the Children in Kelowna. Pick up time should be 2:30 p.m. or whenever school is out and, if school is not in session, then the Children will be picked up at Mr. Stewart's residence;
 17. When Ms. Stewart has the Children in Salmon Arm, Mr. Stewart, or a person appointed by him, shall pick up the Children from Ms. Stewart's residence at 5 p.m.
 18. Mr. and Ms. Stewart must meet each other in the presence of a counsellor recommended by Ms. Fenton for purposes of supervising the Children's use of electronics, which includes Skype. They must determine how much time the Children can use their electronics, which includes Skype, and each parent must enforce their agreement with the Children.
- [50] Mr. Stewart stated he did not want child support from Ms. Stewart. No application for child support is before me. As a condition of no payment of child support, Mr. Stewart asks that Ms. Stewart provides clothing for the Children when she has them. Mr. Stewart's reasoning is that he does not want the Children to have to carry suitcases back and forth. I think this is a laudable reason. However, I am not aware of the financial circumstances of either party, nor are there any financial statements sworn and filed by the parties. It strikes me that, with children who are growing, the cost of jackets, footwear and other more expensive clothing, ought to be apportioned between the parties or, at this time, shared equally. In addition, any equipment, clothing or fees for extracurricular activities should also be apportioned or shared equally. Ms. Stewart made no comment about Mr. Stewart's position and, if she does not agree with this or she and Mr. Stewart cannot come to some other agreement or arrangement, then either she or Mr. Stewart may come back before me and set out their position. At that time, the parties must file financial statements and I will make an order.
- [51] I am also going to be seized of any further applications for a period of one year.
- [52] Each party will bear their own costs.

"H.C. Hyslop J."

HYSLOP J.

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Prepared on 29 October 2026 · Esheria