

CANADA / JUDGMENT

T.F. v. J.F.

2023 BCSC 2226

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Supreme Court of British Columbia

DECIDED

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2023 BCSC 2226 T.F. v. J.F.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.F. v. J.F.,

2023 BCSC 2226

Date: 20231218

Docket: E18297

Registry: Chilliwack

Between:

T.F.

Claimant

And

J.F.

Respondent

Before: The Honourable Justice Kent

Reasons for Judgment

Counsel for Claimant:

S. Ghag

Counsel for Respondent:

A. Moffet

Place and Dates of Trial:

Port Coquitlam, B.C.

October 30 - November 3, 2023

Place and Date of Judgment:

Chilliwack, B.C.

December 18, 2023

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- [1] In these reasons for judgment I have anonymized the names of the parties and their children to protect the privacy interests of the latter.

Introduction and Overview

- [2] This is a high conflict family law case which proceeded to trial a mere 14 months after the lawsuit was first filed.
- [3] The most important issue in dispute is whether or not the respondent ("Mother") can relocate the two young children of the marriage to Saskatchewan over the objections of the claimant (the "Father").
- [4] For the reasons that follow, I find that it is in the best interest of the children for them to be relocated to Saskatchewan with the Mother. I also grant an order for divorce along with collateral relief respecting parenting time and child support.

Basic Factual and Procedural Background

- [5] The parties were married on June 24, 2017. They separated some five years later on July 11, 2022.
- [6] There are two children of the marriage namely K1 born March 31, 2016 and K2 born May 21, 2018.
- [7] K1 was born with a bicuspid aortic valve, a heart condition. The symptoms present as lethargy and chest pain.
- [8] K2 has a more serious medical condition called hypoxic ischemic encephalopathy which has affected her neurological development. She has cerebral palsy. Her major symptoms currently present as absent seizures and mobility issues.
- [9] The Mother also has four sons from previous relationships, L.W., C.W., A.L.W. and A.U.W. ranging from 25 to 17 years in age. The youngest, L.W. was the only son who testified at trial.
- [10] A.L.W. is in a common-law relationship with A.E.S., and they have one child together. Their family lives in Regina, Saskatchewan, as do two of the Mother's other sons, L.W. and A.U.W. along with the maternal grandmother.
- [11] The Father is 44 years old and also has three older children from a previous relationship. He is in substantial arrears of his child support obligations with respect to those children.
- [12] During the relationship, the Father worked as a window installer. He suffered serious back injuries from which he has not yet fully recovered and he is currently unable to work. His source of income comprises CPP and disability benefits.

- [13] The Mother is also currently on long-term disability leave from her employment in the mental health field. Her sources of income include employment insurance, long-term disability benefits, and the child tax benefit ("CTB").
- [14] Both parents live in very modest financial circumstances.
- [15] Before separation, the parents had vague discussions regarding the possibility of moving to Saskatchewan where they might possibly be able to afford a home and where several members of the Father's family also live. No decision was made on the matter before separation, however on August 18, 2022, the Mother unilaterally relocated to Regina with the two young daughters. She did not comply with the formal notice requirements contemplated by either the Family Law Act, S.B.C. 2011, c. 25 or the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.).
- [16] The Father immediately filed a Notice of Family Claim in the Chilliwack Registry on August 25, 2022. He pleaded that the Mother had relocated to the children without his consent and sought an order for their return along with an order that the children reside primarily with him, that the Mother have supervised parenting time, and that the Mother pay him child support.
- [17] Various pretrial applications have been made in this case. Some of the more relevant orders granted include:
- a September 7, 2022 order requiring the children to be returned to the Chilliwack area within seven days and providing that they would remain in the Mother's care if she also returns to Chilliwack, failing which the children were to live primarily with the Father;
 - a December 9, 2022 order prohibiting communication between the parties except for the purposes of arranging parenting time, and encouraging them and their respective families to communicate respectfully and refrain from negative commentary about the others, particularly in front of the children;
 - reasons for judgment/an order issued January 26, 2023 adjourning generally an application by the Mother to relocate to Saskatchewan and granting the Father six supervised visits with his two daughters on Wednesdays (starting February 1, 2023) from 3 p.m. to 4 p.m. on the condition that he be "in a sober condition not having consumed alcohol for at least 12 hours" beforehand, with "some increase in parenting time for the father" thereafter by agreement between the parties, failing which the Father would have "liberty to apply". All such parenting time was stated to be on "an interim and without prejudice basis";
 - a July 25, 2023 "without notice" protection order forbidding the Father's attendance anywhere near the mother or the children and also forbidding communication except through lawyers or family dispute resolution professionals. That order has an expiry date of July 25, 2024; and,

· an August 28, 2023 order dismissing the Father's application to terminate the protection order but granting him leave to amend his pleadings in this proceeding to claim relief from that order at trial.

- [18] The trial occurred over a period of five days between October 30 and November 3, 2023. Other than the Mother and Father, only three additional witnesses were called to testify: the Father's sister, the Mother's youngest son, L.W., and her daughter-in-law, A.E.S. As well, certain documents were put into evidence by consent for the truth of their contents including the Ministry of Children and Family Development ("MCFD") records, police records, and a letter from a psychologist regarding the results of a screening test for post traumatic stress disorder ("PTSD") symptomology on the part of one of the daughters.
- [19] One of the issues at trial was whether there were any criminal proceedings outstanding against the Father. The Mother's daughter-in-law, A.E.S., testified that criminal proceedings had been initiated against the Father and she had recently been in contact with the Crown to provide a statement in that regard. The Father insisted that no such proceedings existed and that that there had been no contact from the police or the Crown in that regard.
- [20] Due to the high conflict nature of the relationship between the parties, a sheriff was present in the courtroom throughout the trial. The sheriff's office made inquiries regarding the existence of any criminal proceedings against the Father. It turns out that an indictment had been issued against the Father on October 5, 2023 in relation to alleged extortion of A.E.S. on August 18, 2022 contrary to s. 346(1.1)(b) of the Criminal Code, R.S.C. 1985, c. C-46, and that a warrant was outstanding for the Father's arrest in that regard. Indeed, the sheriffs executed that warrant and arrested the Father in the courthouse resulting in a brief adjournment of the trial. He was quickly released and the trial thereafter continued to conclusion in his presence.

Legislation Governing Relocation

- [21] Since the parties were formally married and the Mother's counterclaim was amended to include an order for divorce, the relocation contest between the parties will be determined by the relevant provisions of the Divorce Act. Those provisions include:

INTERPRETATION

Definitions

2. (1) In this Act,

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;

relocation means a change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility - or who has a pending application for a parenting order - that is likely to have a significant impact on the child's relationship with

- (a) a person who has parenting time, decision-making responsibility or an application for a parenting order in respect of that child pending; or
- (b) a person who has contact with the child under a contact order; (déménagement important)

Best Interests of the Child

Best interests of child

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

Primary consideration

- (2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Factors to be considered

- (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.

Factors relating to family violence

- (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.

Past conduct

- (5) 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.

Maximum parenting time

- (6) In allocating parenting time, the court shall 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.

Relocation

Notice

16.9 (1) A person who has parenting time or decision-making responsibility in respect of a child of the marriage and who intends to undertake a relocation shall notify, at least 60 days before the expected date of the proposed relocation and in the form prescribed by the regulations, any other person who has parenting time, decision-making responsibility or contact under a contact order in respect of that child of their intention.

Content of notice

- (2) The notice must set out
 - (a) the expected date of the relocation;
 - (b) the address of the new place of residence and contact information of the person or child, as the case may be;
 - (c) a proposal as to how parenting time, decision-making responsibility or contact, as the case may be, could be exercised; and
 - (d) any other information prescribed by the regulations.

Exception

- (3) Despite subsections (1) and (2), the court may, on application, provide that the requirements in those subsections, or in the regulations made for the purposes of those subsections, do not apply or may modify them, including where there is a risk of family violence.

Application without notice

- (4) An application referred to in subsection (3) may be made without notice to any other party.

Relocation authorized

16.91 (1) A person who has given notice under section 16.9 and who intends to relocate a child may do so as of the date referred to in the notice if

- (a) the relocation is authorized by a court; or
- (b) the following conditions are satisfied:
 - (i) the person with parenting time or decision-making responsibility in respect of the child who has received a notice under subsection 16.9(1) does not object to the relocation within 30 days after the day on which the notice is received, by setting out their objection in
 - (A) a form prescribed by the regulations, or
 - (B) an application made under subsection 16.1(1) or paragraph 17(1)(b), and
 - (ii) there is no order prohibiting the relocation.

Content of form

- (2) The form must set out
- (a) a statement that the person objects to the proposed relocation;
 - (b) the reasons for the objection;
 - (c) the person's views on the proposal for the exercise of parenting time, decision-making responsibility or contact, as the case may be, that is set out in the notice referred to in subsection 16.9(1); and
 - (d) any other information prescribed by the regulations.

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.

Factor not to be considered

- (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.

Burden of proof - person who intends to relocate child

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.

Burden of proof - person who objects to relocation

- (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.

Burden of proof - other cases

- (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.

Power of court - interim order

16.94 A court may decide not to apply subsections 16.93(1) and (2) if the order referred to in those subsections is an interim order.

Family Violence

- [22] The Mother claims that the Father is an abusive alcoholic who has perpetrated family violence in one form or another upon her and the children throughout the years leading to trial. She claimed more than once during the trial that she was and remains "terrified" of him, even though the parties are separated.
- [23] Given the prominence of family violence in this case, I propose to deal with that subject first, although I recognize it is only one of many factors that must be taken into account in reaching any decision regarding relocation.
- [24] I also note that in *Barendregt v. Grebliunas*, 2022 SCC 22, the Supreme Court of Canada recently made the following observations regarding family violence as a factor in relocation cases:
- "family violence is a significant factor impacting the best interests of the child" (para. 9);
 - "any family violence or abuse may affect a child's welfare and should be considered in relocation cases courts have been significantly more likely to allow relocation applications where there was a finding of abuse" (para. 142);
 - "children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experience its aftermath, or hearing about it" (para. 143);
 - "domestic violence allegations are notoriously difficult to prove family violence often takes place behind closed doors and may lack corroborating evidence thus, proof of even one incident may raise safety concerns for the victim or may overlap with and enhance the significance of other factors" (para. 144);
 - "because family violence may be a reason for the relocation and given the grave implications that any form of family violence poses for the positive development of children, this is an important factor in mobility cases" (para. 147)

The Mother's Testimony

- [25] The mother testified that the relationship with the Father broke down because of his alcoholism. She says that over the years he has pushed her (even when she was pregnant), choked her, and punched her in the head.
- [26] She also testified that the Father has "gone after all the boys except the youngest", including fighting and choking. She said he has broken doors trying to get to them and there have been multiple incidents of fighting between the Father and her sons.
- [27] The Mother testified that the Father would frequently call her vile names "whore", "slut", "retard", "cunt", "loser", and the like. He would call the children "retards", "pussies", and "little bitches". She says that this type of verbal abuse is not limited to the Father but also extends to other members of his family. She stated that even during the trial the daughters' paternal grandmother called her a "fucking cunt" outside the courtroom.
- [28] The Mother says the Father would get drunk and then post on Facebook. One example put into evidence was a post referring to her as a "bitter, angry fucking shrew".
- [29] The Mother also produced at trial a video of the Father taken in January, 2022. It depicts him lying on the floor, utterly intoxicated and barely able to move, with his daughters attempting to play with him. While he is slurring his words, one can clearly hear him swearing and telling one of his daughters to "get off me, you dick-fucker". Both the Mother and her daughter-in-law, A.E.S., testified, and I accept, that he also used the word "cunt" towards the children during this episode.
- [30] The Mother confirmed that when the Father was sober and not hung over he did in fact assist with the care of the children during the relationship. He would pick them up from school but would often "smell of booze". She said he has been arrested for drunk driving, that she has found alcohol bottles in his car, and that she has witnessed him driving drunk when the children were in the car.
- [31] The Mother produced at trial a photograph of a blob of phlegm deposited on the door handle of a vehicle. She says someone deposited it on her car during one of the court appearances in this case. She assumes it was the Father who did this (something her youngest son confirmed during his testimony).
- [32] The Mother testified that the Father would sometimes be intoxicated during parenting time telephone calls with the children. The calls were usually quite short, the longest lasting nine minutes. On one occasion in May 2023, one of the children stayed in the washroom rather than staying on the call. She acknowledged she has terminated some of the calls because of his intoxication.

[33] The Mother also testified that she had received extensive counselling for family violence during the period July 2021 to August 11, 2022. She put into evidence a letter dated August 12, 2022 from the "ann davis transition society" (sic) confirming "14 sessions of individual Stopping the Violence counselling" during that period.

L.W.'s Testimony

[34] Following separation L.W. did not relocate to Saskatchewan with his Mother but instead stayed with his Father because he "wanted to stay in Chilliwack" and "was being told things" about his Mother (drugs) and his brother (rapist). He swore an affidavit on September 16, 2022 in support of his stepfather in which he stated, among other things:

- the Father was "like a father-figure to me" and "is as protective towards the [daughters] as he was with me";
- "my mother's claims that [the Father] is violent are untrue"; and,
- "my mother claims that [the Father] is violent so she could justify abandoning me and running away to Saskatchewan with my sisters".

[35] L.W. was 16 years old when this affidavit sworn.

[36] Not surprisingly, L.W. was confronted with this affidavit during his cross-examination at trial. He said that his affidavit was based on "what I heard" and that the Father "is not the man I thought he was". He said he "felt a little forced" in signing the affidavit and that he "would not file it today".

[37] In May, 2023 he moved to Saskatchewan where he now lives with one of his brothers and his grandmother in the house where his Mother and sisters lived during their brief relocation to Regina in August-September 2022.

[38] At trial, he stated that, although the Father has never been physically violent towards him "at times, I was a little scared". He has witnessed his Father punching walls and pushing his new girlfriend, yelling in her face and calling her names like "cunt", "bitch", and "loser".

[39] L.W. testified that his Father was a "big drinker", usually vodka or rum, who became violent when he was intoxicated. He has witnessed him grabbing his brothers in the past.

[40] L.W. testified that he actually saw his stepfather spit on his Mother's car while they were at court on one occasion. He was not sure of the date.

[41] L.W. testified that his Father drove intoxicated "all the time". He referred to one occasion when the Father video-called him while he was driving drunk. He is aware that his Father was arrested for "DUI" in late 2022 and that his truck was impounded, although he was not present at the time. He confirmed the truth of a text he exchanged with the Father's girlfriend on December 25, 2022 in which,

- the girlfriend asked L.W. to hide the Father's keys when he is not looking because he should not be driving;
- L.W. replied "he's hammered, if u could come over and calm him down and get his booze from him if u have nothing to do";
- the girlfriend queried "is he angry?" and then indicated she would come over after her family dinner but that L.W. should "tell him he needs to drink two big glasses of water if he wants to talk to the girls"; and,
- when the girlfriend later inquired whether they had called the girls, L.W. confirmed that the call did not occur because the Father was "to drunk" (sic) and was now "passed out downstairs".

[42] During his testimony, L.W. also confirmed the truth of certain emails he had sent to his Mother in May 2023 and which formed part of an affidavit that she swore for court purposes. Among other things, he stated,

- when the Father gets stressed he drinks and whilst he was living with him the Father would get drunk at least a few days out of every week;
- he missed a couple of the scheduled calls with his sisters because he had been drinking;
- on one occasion in late July or early August 2022 when L.W. got back from a fishing trip, he noticed a full gas can in the front yard and the Father later told him that he had gone to the Mother's house planning on burning it down but changed his mind at the last moment;
- at various times in January and February 2023, he would hear the Father under the influence of alcohol talking about killing his Mother and sisters and then killing himself he said this was "almost a regular occurrence";
- on one occasion in August 2022, the Father offered L.W. "shroom chocolate" which resulted in L.W. "tripping out for a few hours, then passing out"; and,
- there were times that the Father would "get paranoid about [his brother or Mother] sending someone to hurt him" and that he would keep a knife at the door as a form of protection.

A.E.S. Testimony

[43] A.E.S. has known the family since 2014. She is the common-law spouse of one of the Mother's sons with whom she has a three-year-old daughter. They live in Regina, Saskatchewan, four blocks away from the house owned by the grandmother.

- [44] A.E.S. confirmed she has seen the Father intoxicated, aggressive, rowdy and abusive. She only knows of physical violence occurring between the Father and one of the Mother's sons and which was triggered by the Father kicking over a bucket of dog poop that the son had collected from the backyard. She has seen the Father threaten the Mother, although she cannot recall the exact words used. She has never seen the Mother or the Father striking each other.
- [45] A.E.S. testified that the Father would frequently yell at the Mother's sons calling them "retards" and "Mama's boys". She was present during the January 2022 video incident when the Father was lying drunk on the floor and called the youngest daughter a "cunt" and a "dick-fucker". During that same incident, she says the Father looked up at her and called her "so fucking hot".
- [46] A.E.S. confirmed that she had sexual contact with the Father for a period of time. She vehemently denied that it was a romantic relationship and said she was sexually assaulted by him. She told no one about it because he threatened to tell others "if I wasn't playing nice" and she was scared her world would be turned upside down and she would lose everything.
- [47] A.E.S. accompanied the Mother on the day of the breakup, July 11, 2022. On that day, the Father came home drunk, grabbed his toolbox and left the home taking the Mother's truck. She and the Mother went to his sister's house to recover the truck but he had pulled the battery so it could not be driven. She says she recorded the Father's sister charging the Mother at that time, although no such video was put into evidence during her testimony.
- [48] A.E.S. confirmed she had sexual contact with the Father later that same day. She says she went along because she was terrified and felt she had no choice. She says all this information has been given to the police and although they told her they had recommended four counts of sexual assault, no charges appear to have been laid. She does not know why.
- [49] A.E.S. confirmed that the Father had been charged with extortion. This is because after the Mother left for Saskatchewan in August 2022, the Father threatened to reveal the sexual relationship unless she provided him the Mother's address in Saskatchewan. She says she eventually got sick of being scared and so she finally took matters into her own hands by involving the police. In December 2022, she had a breakdown and was hospitalized for a time. She still receives psychological therapy in Saskatchewan. She now feels validated by the arrest of the Father.
- [50] According to A.E.S., the Mother is the more stable parent of the two parents. In her opinion, given his propensity for drinking, name calling and driving while intoxicated, the children would not be safe with the Father.

The Father's Testimony

- [51] In his examination in chief, the Father explained his decision to separate on July 11, 2022. He says he was "just unhappy" with the relationship. He denies that he had been drinking at the time. He says that the Mother struck him in front of the girls and he simply decided "that's it". He observed that she has thrown things at him in the past.
- [52] The Father acknowledges that he has no relationship with any of the Mother's older children. He acknowledged that one of those children hit him with a steel pipe on one occasion, after being provoked by him. For that reason he did not retaliate. A photo of his bruised ribs was put into evidence.
- [53] With respect to A.E.S., he says the relationship was "purely sexual" and that it was by mutual consent. He believes no charges have been laid against him because the police seized his electronic devices and would have seen that it was a consensual relationship.
- [54] The Father testified that he did not know beforehand about the application for a protection order (in July 2023). He says the evidence provided to the court at that time was not true. He stated "I have never been violent to [the Mother] or my daughters". He acknowledged there "have been a few incidents" involving alcohol but he says the Mother never called him abusive or alcoholic during their relationship.
- [55] The Father denies that the Mother's allegation that he is a violent, abusive alcoholic. He says "I have never struggled with alcohol". He acknowledges that he drank once or twice a week during the parties' relationship. He pointed to a photograph in evidence of him and the Mother in a hot tub each holding a drink.
- [56] The Father called his relationship with the two daughters "fantastic". He said they did everything together. He points to the report marked as an exhibit at trial regarding his supervised parenting time with the children. That report is very positive regarding his conduct. The children were happy to see him. There were no indications of apprehension or reluctance in their behaviour. Instead, they displayed deep affection for the Father (and their brother, L.W. who was also present during the visits).
- [57] The Father acknowledges that he used drugs, including cocaine and mushrooms, "years ago". He has also smoked marijuana in the past but only once in the past year. He pointed to a recent letter from a doctor in Chilliwack which was marked as an exhibit and which confirms that a recent "urine drug screen" was negative in October 2023.
- [58] The Father pointed to several documents extracted from the MCFD and police files. Some of the former refer to allegations by the Mother of intoxication and inappropriate behaviour marked "incident closed" based on "no findings" or "no ongoing concerns". Three of the police "occurrence reports" referred to "well check" or "mental health" events. One such report states "police checks on the family show an extensive reporting history by [the Mother] on [the Father] regarding child safety and custody issues". Another related to the Mother reporting L.W.'s information about the Father's threat to kill her and himself back in

January or February 2023. That report notes "police check showed dozens of calls between the ex-couple. There is currently a custody battle taking place in the courts as well according to both. Many of the prior calls have no proof or legitimacy."

- [59] On cross-examination, the Father again confirmed that he does drink alcohol, mostly vodka as a mixed drink. He also acknowledged that he missed some of the scheduled phone calls with the children. And he admitted that he had threatened A.E.S. with exposure of their "affair" unless she informed him of the children's location.
- [60] The Father denied that he was a "violent alcoholic" as alleged. When asked why the Mother would have attended 14 sessions of "stopping the violence" counselling, he stated he did not believe this actually occurred and that the document containing this information is a "fake letterhead".
- [61] The Father stated "I don't admit to violence", however he does acknowledge that "aggressive arguments and conversations" did occur.
- [62] The Father denies spitting on the door handle of the Mother's car. He says "I find it disgusting but I didn't do it". He also denies all of the allegations made by L.W., stating that L.W. fabricated these allegations "because his mom bought him a truck and a puppy". He says he has never owned a weapon.
- [63] With respect to the children reporting to teachers and other of him having a "special bottle" and getting "sick" from it, he says they "would never say things like that" and that the Mother is "telling them to say that".
- [64] When confronted with the January 2022 video of his intoxicated exchange with the children, the Father admitted that he "does not remember that day". He says the "girls should not have been kept around me". He says this video was an "eye-opener" for him and that he began to limit his alcohol consumption from that point forward.
- [65] The Father now describes himself as a "recovering alcoholic", one who no longer drinks to excess. He maintains that he is "an adult" and is entitled to have a drink. However he also says he no longer gets drunk and he only has "maybe 4 to 6 drinks over a full weekend".
- [66] The Father was confronted with some of the police file documents regarding his past alcohol-induced misconduct. This includes an arrest for drunken assault of one of the Mother's sons in March 2016 (while she was pregnant), and an arrest for drunk driving in the early morning of August 29, 2022.
- [67] On this latter occasion, the Father was found by the police asleep in his vehicle which was parked in the middle of the road. The vehicle had been involved in a hit-and-run incident earlier that night. An empty bottle of liquor was found in the driver's side door. The Father was slurring his speech, smelled strongly of alcohol and was unable to walk straight. He failed the roadside breathalyzer test. His vehicle was impounded and he was issued an immediate roadside prohibition.

- [68] The police records also confirm that the Father contacted the Chilliwack RCMP in the middle of June 2023 to report receiving death threats from the Mother. There was no direct threat in that regard but he reported his sister had received a text from a friend in Alberta about the Mother accusing the Father of sexual assault and asking people to "take care of" the Father. The police investigated the matter, including an interview of the Mother, and were satisfied that "no criminal defence took place".
- [69] Shortly thereafter the Father sent an email to each of the Mother and the mother of his older children, copying his own lawyer with the correspondence. He informed them he was aware that they were trying to organize for someone to "take care of me". He demanded that they both "stop this now!", stating "no one deserves to be in jail for murder for assault or conspiracy to murder all just for revenge".
- [70] At trial, he refused to identify the person who had relayed this threat to his sister. He stated "she will get hurt if I let her name out".
- [71] At the commencement of trial, the Mother was accompanied by several individuals, mostly family. The Father requested that the court direct one of these individuals to remove himself from the courtroom, stating that this person had threatened him and that he was not comfortable with their presence. This is one of the reasons why the sheriff was sitting in the courtroom for most of the trial.

M.F. Testimony

- [72] M.F. is the sister of the Father. She is 43 years old and is the mother of two boys. She moved to BC in August 2017 and met the Mother at that time. Initially the relationship between everyone was good and lots of family things were done together.
- [73] M.F. no longer has any relationship with the Mother "because of everything she has done to me".
- [74] M.F. declined to identify her employer on the stand. She said she was refusing to do so because the Mother would "come after me at work".
- [75] M.F. believes the Mother was responsible for creating an alias social media account in the name of "John Smith" which was used to contact many people in M.F.'s life with disparaging comments about drug addiction, alcoholism, abuse, and the like. She says the Mother's sons were responsible for many of these communications and included in the evidence were certain text exchanges in that regard. In one of these exchanges one of the older sons called M.F. a "cunt".
- [76] In one of M.F.'s text exchanges with the Mother, the latter apologized for her role in the "John Smith thing", stating that she "has been struggling since [one of the daughters] was born and "still does so much mentally [that] I snapped". [In her testimony, the Mother said the struggling was a reference to the years of abuse and the Father's alcoholism].

- [77] For her part, M.F. testified that "I personally have not seen [the Father] struggle with alcohol or drugs". She also stated that she has never seen any violence between the Father and the Mother, the daughters or the Mother's other children.
- [78] M.F. believes that her brother was the "hands-on parent" when the Mother was working, although the latter was the one who arranged appointments and attended to financial matters. Since the separation, she has been involved with her brother daily and he is with her children a couple days every week. She has no concerns about her children being in his presence.

Analysis of the Family Violence Factor

- [79] I start my analysis by repeating for the parties an explanation I frequently give self represented litigants about how the court goes about resolving conflicting testimony and making findings of fact in family law and other civil cases:
- [1] The primary role of a trial judge is to make findings of fact, i.e. to determine what happened in any given case, and to apply the law to those facts in order to generate the appropriate legal result. Findings of fact are based on admissible evidence presented to the court. As in this case, that evidence can include testimony under oath from witnesses respecting their actions and observations, as well as documents or other material marked as exhibits. The role of the trial judge is to appropriately weigh all of this evidence and to determine which alleged facts have been proved in accordance with the applicable standard of proof - in civil cases, on a balance of probabilities.
 - [2] The assessment of a witness's oral testimony necessarily entails an assessment of credibility. The role of the court is not usually reduced to simply choosing between two or more versions of events, and it is not an all-or-nothing process. In determining facts, i.e. making findings as to what actually occurred in any given case, the court is free to reject some aspects of a witness's evidence while accepting others and, indeed, to assign different weight to different parts of the witness's evidence.
 - [3] A human being's perception and memory of events is fallible. Memories are fragmentary, suggestible, and malleable. They often contain amnesic gaps, information out of order, guesses, and incorrect details. They are subject to decay, interference, distortion, and constructive error. Witnesses in a trial usually do their best to provide accurate evidence about a sequence of events or the content of conversations, but there is a great deal of room for error and reconstruction, and conflicting testimony is commonplace.
 - [4] Accepting all or part of the testimony of any witness involves an assessment of credibility (truthfulness/honesty) and reliability (accuracy) of both the witness and the evidence. That in turn involves consideration of many different factors including:

* consistency of the witness's account of events;

- * consistency with other admissible evidence from witnesses, documents, or other physical objects;
- * whether the evidence is reliably corroborated or contradicted by other evidence;
- * the witness's ability to reliably recall and communicate details;
- * the demeanour of the witness and whether the questions are answered in a frank and forthright fashion without evasion, speculation, or exaggeration; and
- * the inherent plausibility of the evidence and its consistency with the probabilities affecting the case as a whole.

[5] Sometimes, however, witnesses deliberately lie and intend to deceive. When that occurs, it may be impossible to accurately separate truth from falsehood and the court may simply find the witness's testimony wholly unreliable. The more frequently the witness lies, the more likely that will be the case. If as a consequence a truth is not accepted as a fact by the court, the witness has only himself or herself to blame.

[80] I have recited the evidence of the parties and the three other witnesses at considerable length, perhaps excessively so, so that the readers of these Reasons might understand the utterly toxic nature of the ongoing relationship between these parents and their respective family members. There is simply no excuse for some of the behaviours that have been exhibited in this case, whether they were triggered by alcohol or otherwise.

[81] While I have some reservations about some of the Mother's evidence and I exercise caution in assessing the evidence of L.W., I generally accept that evidence where it is in conflict with the testimony of the Father. The Father's declaration that he has "never struggled with alcohol" is simply not the truth. It is clear, and I find as a fact, that he has a significant alcohol problem which exacerbates a tendency towards verbal abuse and risky behaviour and which is a primary cause of the marriage breakdown in this case.

[82] The evidence in this case persuades me on the balance of probabilities, and I find as a fact the following:

- the Father has had a fraught relationship with the Mother's older sons which has included incidents of physical conflict, the breaking of doors and screens and the frequent exchange of profanity and other verbal abuse;
- he has frequently directed verbal abuse at the Mother, particularly during the later part of their relationship, including the use of the profane terminology recited by the Mother in her evidence;
- some of this behaviour has occurred in the presence of the children towards whom he has also directed similar profanity from time to time;
- the events depicted in the January 2022 video and described in the December 25, 2022 text exchange between L.W. and the father's girlfriend did occur; and,

· the Father did indeed frequently drive his vehicle in an intoxicated condition, not only on those occasions when he was charged by the police but on many other occasions, including times when he had the children with him in the vehicle.

- [83] The Mother's youngest son, L.W., struck me as a gentle individual struggling with the rather toxic conflict between his parents and the resulting fallout upon not just himself but also his sisters. I accept his evidence that he felt forced into signing his September 16, 2022 affidavit and that he was scared by the Father's conduct both before and after separation from the Mother. I also accept his evidence and find as a fact that he witnessed his Father punching walls, and directing verbal abuse to not only the Mother but also the Father's new girlfriend.
- [84] I have some reservations about L.W.'s evidence regarding the Father's stated but aborted plans to burn down the Mother's residence and about killing his Mother and sisters and then killing himself. I do not believe this was a fabrication on his part and I expect the Father has said things while intoxicated that L.W. may have misconstrued. It is very clear, however, and I find as a fact that he has seen his stepfather drunk on many occasions.
- [85] I accept L.W.'s testimony, and I find as a fact that he saw his stepfather spit on his Mother's car and that the photograph marked as an exhibit accurately depicts the phlegm deposited by the Father on the door handle of the Mother's vehicle while she was attending court on one occasion. I am unable to make any finding of fact regarding the date of that occurrence, but it more likely than not occurred in 2023.
- [86] I also accept the Mother's testimony about, and find as a fact that, the paternal grandmother did indeed direct the profanity to the Mother as described and I conclude that the tensions between the two sides of the family remain high notwithstanding the passage of time since the parent's separation.
- [87] Furthermore, I find as a fact that the Mother did indeed receive extensive counselling for family violence during the period July 2021 to August 2022 and I reject the Father's assertion that the supporting correspondence in that regard is fabricated. That the Mother saw the need to obtain counselling is very compelling evidence in support of the dysfunction within the household and the abuse to which she was subject.
- [88] I also reject the Father's suggestion that the children's reporting to teachers and others of him getting "sick" from his "special bottle" is the product of the Mother's coaching. The query from the teacher was not triggered by the Mother and the children have been interviewed by the authorities. They have clearly observed the Father drinking and, of course, they were present during the unfortunate episode video recorded in January 2022.

- [89] The evidence satisfies me and I find it is a fact that the children have witnessed the verbal abuse directed towards the Mother by the Father and have also witnessed his drinking and drunken behaviour from time to time. The evidence about one of the children possibly displaying PTSD symptomology is not fully developed and I am unable to make any specific findings in that regard. The fact that the child was having nightmares involving the Father is deeply disconcerting.
- [90] Lastly, I accept the Mother's evidence that she is terrified by the Father and that she would feel a lot safer in Regina where he is not in close proximity. She stated, and I accept, that it is "easier for her to care for the kids without him around because there are no worries about his behaviour".
- [91] I also accept her testimony, and find as a fact that she has set up cameras around her house in Regina and that the residence has been listed as a domestic violence unit with the Regina police so that a priority response time can be triggered if necessary.
- [92] In my view, the family violence factor in this case militates strongly in favour of the proposed relocation to Regina of the Mother and the two children.

Other Relocation Factors

- [93] Section 16.92 of the Divorce Act makes it mandatory for any court deciding whether to authorize a relocation of children to determine what is in the best interests of the child having regard to the matters specified in that section in addition to the factors referred to in s. 16 of the Act.
- [94] There are 11 factors specified in s. 16(3) of the Divorce Act, eight additional factors specified in s. 16(4) related to family violence, and seven additional factors specified in section 16.92 of the Act. I will deal with each of them separately.

Section 16(3) - Best Interests of the Child

- (a) The Child's Needs given the Child's Age and Stage of Development, Such as the Child's Need for Stability
- [95] I do not have the benefit of any report pursuant to s. 211 of the Family Law Act nor, for that matter, any expert evidence regarding social science on the needs of these children given their age and stage of development. Such evidence would have been extremely helpful not just generally but also in the context of separation circumstances that exist here (a history of alcoholism and particularly verbal abuse by one parent, almost exclusive parenting by the other parent for approximately one and a half years since separation, and a strong desire by that latter parent to relocate the children to another province beyond the reach of the other).
- [96] In some cases, such as *L.V.J. v. E.M.S.*, 2023 BCSC 2087 the parties may agree on parenting guidelines and principles such as the social science-based "parenting plan guide" produced by the Ontario chapter of the Association of Family and Conciliation Courts (AFCC Ontario,

December 2021 a similar guide is currently under construction by the British Columbia chapter of that association and will no doubt make a frequent appearance in this court). That case made extensive reference to social science data supporting propositions such as the following:

- children do best in both short-term and the long-run when they feel loved and cared for by both parents and they generally do better when both parents have stable and meaningful involvement in their children's lives;
- quality of parenting is the central variable and major predictor of child outcomes and, independent of secure attachments with mothers, secure attachments with competent and involved fathers are associated with many positive outcomes for children both parents can make independent, overlapping and positive contributions to a child's healthy development.

[97] In this case, although the Father was involved in the care of the children in their early years, particularly when the Mother was at work, the Mother has always been the primary care-giver and, indeed, essentially the exclusive care-giver for the past one and half years. The situation is further complicated by the fact that the children have serious medical issues that require extra attention and it has been primarily if not exclusively the Mother who has been consistently arranging and attending their necessary healthcare appointments.

[98] The maternal grandmother is the owner of the home in Regina but it was purchased so that the Mother and her two daughters could have a home that they simply cannot afford to buy in Chilliwack. During her brief unilateral relocation to Regina the Mother secured a referral to a pediatric cardiologist and was able to register the children in a local school. She was able to purchase and set up a portable hot tub to deal with the mobility and stiffness issues of the youngest child who is afflicted with cerebral palsy and whose condition is likely to deteriorate as the years progress. The home in Regina has four bedrooms as well as a large backyard and is capable of being renovated to accommodate the increasing mobility challenges confronting the child.

[99] The Mother submits, and I agree, that the home in Regina is a platform for future stability for the children, one that can be maintained at much less cost than any rental in Chilliwack.

(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

[100] The strength of the two children's relationship with their Mother is undeniable. The relationship with their Father was also profound during their infancy and early years, particularly when he played the parenting role while the Mother was at work. However, since separation, and notwithstanding the positive response of the children to the Father's supervised visits in early 2023, that relationship has been largely absent for almost one and a half years. So-called "electronic parenting" is a poor substitute for in-person parenting and even that has not occurred for many months. Any relocation to Regina will surely and

inevitably perpetuate a decline in the quality of the children's relationship with the Father.

- [101] The two children have a close relationship with their brothers, particularly L.W. Two of the brothers live in the same home in which the mother and the children propose to reside. The children's three-year-old cousin lives with another brother and A.E.S. four blocks away in Regina. The maternal grandmother also lives there as does some of the Father's family, although it appears no contact has been cultivated with those individuals as of the present date.
- [102] The Father lives in Chilliwack and has indicated that he will not be able to afford to move to Saskatchewan even if he was inclined to do so. He has a sister, nieces and nephews and also a mother who all reside in BC. The latter is the paternal grandmother who called the Mother a "fucking cunt" in the courthouse during the trial. The Mother claims that she had too is an alcoholic although no evidence was tendered in support of that assertion.
- (c) Each Spouse's Willingness to Support the Development and Maintenance of the Child's Relationship with the Other Spouse.
- [103] This is a particularly challenging factor to assess. As noted, the relationship between the two sides of the family is characterized by toxic profanity and profound animus. This is unlikely to change in the immediate future even if the Mother and children were to stay in Chilliwack and particularly so while the criminal proceedings are outstanding against the Father.
- [104] In both her testimony at trial and her written Notice of Relocation issued under the Divorce Act, the Mother proposes video phone calls between the Father and the children three times a week and in-person parenting time once a month in Regina, albeit conditional upon the Father being accompanied by his family in that city. She has offered to pay some of his travel costs and says she is prepared to dispense with supervision if the Father goes to rehab and successfully maintains sobriety for one year.
- [105] I would note that the Mother did offer the Father further video calls with the children following the expiry of the court ordered supervised visits in 2023 but the Father neither accepted that invitation nor applied to the court for further parenting time as expressly contemplated by the January 26, 2023 order of this court.
- [106] The Father also missed a number of the scheduled video calls with the children in the last three months of 2022, some because he was intoxicated at the time. It remains to be seen whether the Father, who claims to be a "recovering alcoholic" who has supposedly limited but not actually eliminated his drinking will succeed in that endeavour. His track history is not encouraging.
- (d) The History of Care of the Child

- [107] As noted, the Mother has always been and she remains the primary care-giver of the children, although of course the Father is seeking to change the current parenting arrangements at this trial. The Mother has historically been the one to manage most if not all contact with teachers, medical professionals and instructors for the children. She has been, and will doubtless remain, extremely diligent in pursuing resources to assist and support the family including, of course, the children's medical challenges.
- [108] The Father made meaningful contribution to the care of the children while the Mother was working but has had little or no role in that regard since separation.
- (e) The Child's Views and Preferences, giving due weight to the Child's Age and Maturity, unless they cannot be Ascertained.
- [109] The children are far too young for their views and preferences to be given much weight in a case like this. Nevertheless, I do note that the report of the parenting supervisor made very positive observations regarding the affectionate interaction between the Father and his daughters in the early part of 2023.
- (f) The Child's Cultural, Linguistic, Religious and Spiritual Upbringing and Heritage, including Indigenous Upbringing and Heritage
- [110] The Father is Métis although he stated in his testimony that he does not often participate in Indigenous cultural events. His sister, however, does work for an aboriginal organization and the Father says he does go to a couple of their functions.
- [111] The Mother testified that she has always supported the children's Métis background. They were enrolled in the Sto Lo Nation school. The Mother has taken full advantage of the various financial benefits and programs that are available to help support Indigenous children.
- [112] The Mother notes that the Métis population in Saskatchewan is much larger than BC. She expects to be able to register the children as Métis members in Saskatchewan and to access the various benefit programs available in that province. She notes that, although the school in which she will be registering the children is a Catholic school, it is a school which has made an open commitment to traditional First Nations values.
- [113] I am satisfied that the children will be provided access to and support with their Indigenous heritage in the event relocation to Saskatchewan is permitted. For sure, they will not receive the support of their aunt who lives in BC and who very likely has much to offer in that regard. It remains to be seen whether any relationship between the children and her paternal relatives in Regina will develop in due course but should it occur, additional cultural support and development would presumably be available.
- (g) Any Plans for the Child's Care

- [114] This has already been addressed above. If relocation to Regina is permitted, the mother and children will reside in the house owned by the maternal grandmother. That house can be renovated to better accommodate the mobility challenges posed by the youngest child's cerebral palsy. From a practical perspective, this type of accommodation is not available to the Mother and children in Chilliwack if relocation is not permitted. The Father rents a two-bedroom apartment in Chilliwack he put into evidence a picture of a closet full of clothing and shoes for the children at his home. The children are already in school and activities here in BC.
- [115] The Mother has been granted approval to register the children into the Sacred Heart Elementary School in Regina if they are allowed to relocate. She hopes to find employment in the mental health field in Regina. She expects childcare assistance would be provided by her two sons who would live with her in the home in Regina and also by A.E.S. who lives nearby and has a young daughter.
- [116] The Father also hopes to find employment if and when his required second back surgery is performed. He is seeking overnight parenting time on weekends or alternatively from Sunday morning to Tuesday morning of each week with a drop off at school. While it was not canvassed at trial, he is presumably available to provide childcare for the children if the Mother returns to work in Chilliwack and has no other childcare options available assuming, of course, the court is prepared to endorse such an arrangement.
- (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 Children
- [117] As noted earlier, both parents have very limited financial resources. However, the Mother has proved to be very resourceful and determined in accessing benefits and other programs available for the children's support. She testifies that she will do the same if relocation to Regina is permitted and has already made contact with various charitable organizations in that city. She says that the Father has not provided any financial support to her since separation and even if it is ordered, she does not expect him to pay any child support in the future. She has become accustomed to providing everything the children need on her own and she expects that this will be the same situation moving forward.
- [118] The Father acknowledges that he has engaged in problematic behaviour in the past but says he is prepared to consent to and abide by a no alcohol restriction before and during his parenting time and that he is able and ready to exercise both parenting time and parenting responsibilities for his daughters. He urges the court to deny relocation so that this can occur.

- [119] In assessing the ability of the Father to care for and meet the needs of the children I have to also weave into the analysis the factors identified in ss. 16(3)(j) and (4) related to the impact of family violence. These same considerations also impact the nature of any parenting regime that might be imposed whether in the event of relocation to Regina or continued residency in the Chilliwack area.
- [120] The Father's problematic behaviour in the past is no doubt a product of his character to some degree but it is also related to excessive alcohol consumption. His threatening and abusive communications were directed towards the Mother and all her children including, regrettably, the two daughters with whom we are concerned here. Even though the parties have now been separated for some 16 months, the animosity towards the Mother has continued, as evidenced by the spitting on the Mother's car, the profane insult by the paternal grandmother in the courthouse, and the Father's completely unfounded accusations of fabricated evidence by the Mother and the other persons called as witnesses on her behalf.
- [121] As well, I have accepted the Mother's evidence and found as a fact that she remains terrified by the Father notwithstanding the fact that they are separated and no longer live together. Furthermore, I have made a finding that, although he has never been physically violent towards the children, he has cast drunken slurs in their direction and the children have in any event witnessed his drunken behaviour and the verbal abuse he directed towards the Mother. One of the children was having nightmares involving the Father and apparently displaying some degree of PTSD symptomology.
- [122] In the circumstances, it may not be appropriate to make any order regarding parenting time or parenting responsibilities that would require substantial cooperation by the Mother on issues affecting the children.
- [123] I am required by s. 16(4)(g) to consider any steps taken by the Father to prevent further family violence from occurring and to improve his ability to care for and meet the needs of the children. I accept that while it may be challenging, it is certainly not impossible for an alcoholic to achieve functional sobriety, to refrain from verbally abusive behaviour, and to have a positive parental influence upon his or her children. The question is the extent to which the Father has taken steps down this road to recovery.
- [124] The only evidence I have before me regarding the Father's efforts to change his alcohol consumption is his own uncorroborated testimony to the effect that he has reduced but not entirely eliminated his drinking. One cannot help but be sceptical about the uncorroborated assertions and promises of a "recovering alcoholic" who continues to drink, all the more so where the credibility of his testimony has been found wanting. I recognize that the Father's sister has testified in support of her brother but I find her statement that she has not seen him struggle with alcohol or drugs to be at least improbable and perhaps deliberately disingenuous. I have already found that such struggles have occurred throughout the past several years and likely continue to some, if not the same,

degree today.

[125] The January 26, 2023 reasons for judgment also expressed scepticism about the Father's assertions of abstinence. The court was prepared to grant the Father parenting time but, given the lack of contact between him and the children, favoured a gradual process of reintroduction starting with a series of supervised one hour visits on the condition that the Father be in a sober condition and not having consumed alcohol for at least 12 hours before the start of each visit.

[126] I conclude that much the same circumstances exist today and I find that it would be in the best interest of the children for a similar approach to be taken at this time whether in Regina or Chilliwack.

(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 and (j) Any Family Violence and its Impact Among Other Things

[127] It is not necessary for me to separately address these two factors as I have already woven them into the analysis above.

(k) Any Civil or Criminal Proceeding, Order, Condition or Measure that is relevant to the Safety, Security and Well-Being of the Child

[128] I have already referred to the previous orders made in this case.. Quite apart from the January 26, 2023 supervised parenting order referred to above, it will be recalled that the court also issued an ex parte protection order on July 25, 2023 prohibiting the Father from attending upon or communicating with the Mother and the children except on certain conditions. The court dismissed the Father's subsequent application to vacate that protection order and directed that the issue be determined at the trial.

[129] The Father is now confronting criminal proceedings related to his coercive and threatening behaviour towards A.E.S. These criminal proceedings will be determined on a much higher standard of proof than applies in a civil proceeding such as this family law case. However, I have already concluded, albeit on the civil balance of probabilities standard of proof, that the Father did indeed attempt to extort information from A.E.S. regarding the location of the Mother and the children by threatening to disclose the sexual contact that had occurred between them.

[130] Having addressed the best interests of the child factors set out in s. 16(3), I now turn to the additional relocation factors required to be considered pursuant to s. 16.92 of the Divorce Act.

Section 16.92 - Additional Factors to be Considered

(a) The Reasons for the Relocation

[131] These have been set out in detail above. In summary, the history of the abuse by the Father has made the Mother deeply fearful of him and she wishes to move away for safety reasons. As well, she has access to better and less expensive housing and will receive support from other family members who live in Regina. The cost of living in Regina will likely be less than the lower mainland of BC.

[132] These are all valid reasons for the proposed relocation. The downside, of course, is that any future parenting by the Father will be made more difficult and less effective by reasons of geography and the shortcomings of electronic instead of in-person presence. As well, relocation will necessarily involve disruption of the children's current lifestyle in Chilliwack until such time as the family becomes re-established in Regina.

(b) The Impact of the Relocation on the Child.

[133] In the past 15 to 16 months the children have been living exclusively with the Mother but she has changed residence three or four times. Any relocation to Regina may bring much more stability in that regard inasmuch as their new home is owned by the grandmother.

[134] However, any such relocation will also disrupt the arrangements for medical care that are currently in place as well as the programs for financial and other support that the Mother has been able to put in place in Chilliwack including, of course, those connected to the children's status as Métis. The children's schooling will again be disrupted. Nevertheless, I am satisfied that adequate resources for the children's needs are available in the city of Regina and that the Mother will be diligent in ensuring a smooth as possible transition to school and other programs in that city. The children are still young and will likely adjust to the change without difficulty, all the more so because the Mother will be happier and less anxious about her safety in Saskatchewan.

[135] In Saskatchewan the children will also be surrounded by other members of the Mother's family, including their young cousin, the daughter of A.E.S. and one of the Mother's sons. Access to the Father's family members living in Regina may also occur in the future if the current toxic atmosphere eventually dissipates.

[136] As noted, the downside of the relocation will mean a substantial reduction in any future in-person parenting time with the Father and other time with the members of his family who live in the Fraser Valley.

(c) The Amount of Time spent with the Child by Each Person who has Parenting Time or a Pending Application for Parenting Order and the Level of Involvement in the Child's Life of Each of those Persons

[137] Currently, the children are in the Mother's exclusive care and have been since separation in July 2022. The Father has only had very limited in-person parenting time with the children, sporadic electronic visitation, and no contact whatever since the protection order was granted.

(d) Whether the Person who Intends to Relocate the Child Complied with any Applicable Notice Requirement under s. 16.9, Provincial Family Law Legislation, an Order, Arbitral Award or Agreement

[138] The Mother did not strictly comply with the formal notice requirement under s. 16.9 of the Divorce Act before removing the children to Regina in August 2022. She did send the Father a text in March indicating that she was planning on leaving for Saskatchewan with the children and the Father responded by refusing his consent and demanding that the matter be resolved by a court. This court has already determined in the January 26, 2023 reasons for judgment that the notice given by the Mother was inadequate.

[139] However, the Mother did comply with this court's order to return the children to the Chilliwack area. In May 2023 she did complete and issue the formal Notice of Relocation required by the Divorce Act. The matter is now properly before the court for determination and no procedural bar applies in the circumstances.

(e) The Existence of an Order, Arbitral Award or Agreement that Specifies the Geographic Area in which the Child is to Reside

[140] The September 7, 2022 Order of this court not only required the children to be returned to British Columbia but also that they not be removed within 15 km of downtown Chilliwack. This, however, was an interim order which can and will be superseded by any order made by the court following this trial.

(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

[141] The Mother's formal Notice of Relocation proposes three video phone calls per week between the Father and the children and one in-person visit per month in Regina supervised by members of the Father's family.

[142] She proposed alternate Christmas vacation where she would bring the children to BC and pay for half the travel costs provided the Father's visitation was again supervised. She proposed unsupervised parenting time in due course provided the Father goes to rehab and is "successfully clean/sober for a year", to be confirmed by hair follicle testing.

[143] She proposes much the same regime in her final submissions at trial. While the court may not necessarily agree with each of the terms proposed by the Mother, it cannot be said that her proposal is unreasonable in the circumstances.

(g) Whether Each Person Who Has Parenting Time or Decision-Making Responsibility or a Pending Application for Parenting Order has Complied with their Obligations under the Family Law Legislation, an Order, Arbitral Award, or Agreement and the Likelihood of Future Compliance

- [144] The Father points out, correctly, that the Mother breached the September 7, 2022 Order by moving with the children to Aldergrove for a period of time. She has also refused to provide the Father with the address of the residence in which she and the children were and are living.
- [145] The Father has not breached any court orders, although I doubt that spitting on the Mother's car represents the sort of "polite, respectful communication" required by the order issued by this court on December 9, 2022. For sure, he has breached his common-law obligations by failing to pay child support and also by refusing to make the requested contributions to some of the children's medical expenses incurred by the Mother.

Relocation Determination

- [146] I have carefully considered and weighed all of the factors required by the legislation, as discussed more fully above, and I have concluded that relocation of the children with the Mother to Regina is indeed in their best interests. Given the history of the Father's alcoholism and his proclivity for verbal if not physical abuse while intoxicated or otherwise, the Mother is rightly fearful both for herself and for the well-being of her children. The court is required to give primary consideration to the children's physical, emotional and psychological safety, security and well-being. In this case, these factors are very much linked to the Mother's psychological and physical well-being, something that, if not assured, is at least better promoted in her own home surrounded by her family members in Regina.
- [147] I am satisfied that Regina offers much the same resources as Chilliwack to meet the needs of the children, including the promotion of their Indigenous heritage.
- [148] I fully understand, and regret, the negative impact this will have on the Father's parenting time and, indeed, his involvement generally in the upbringing of his daughters. This is, unfortunately, the inevitable result of these relocation cases and the reason why they are so difficult to decide. Nevertheless, the matter must be determined with reference only to the long-term best interests of the children and that is what I have attempted to do here.
- [149] I therefore make an order pursuant to s. 16.1(7) of the Divorce Act authorizing the Mother to relocate the children to Regina. I now turn to the question of divorce and the other corollary relief that is appropriate in the circumstances.

Divorce

- [150] I am satisfied that all of the conditions necessary for an order for divorce have been met in this case. Accordingly, subject to s. 12 of the Divorce Act, I order that the claimant and the respondent, who were married at Kelowna, BC, Canada on June 24, 2017, are divorced from each other. The divorce will take effect on the 31st day following the date of the release of these Reasons for Judgment.

Parenting Time and Parental Responsibilities

- [151] The recent amendments to the Divorce Act have brought both concepts and terminology on parenting into better alignment with the Family Law Act.
- [152] Section 16.1 of the Divorce Act authorizes this court to make an order "providing for the exercise of parenting time or decision-making responsibility in respect of any child of the marriage". Generally speaking, any person who is allocated parenting time "has exclusive authority to make, during that time, day to day decisions affecting the child" (s. 16.2(2)). However, decision-making responsibility in respect of a child can also be allocated to either spouse separately or to both spouses in whatever combination is considered appropriate (s. 16.3).
- [153] All orders regarding parenting time or decision-making responsibility must be based only on the best interests of the child and in that regard it is mandatory for the court to give primary consideration to the child's physical, emotional and psychological safety, security and well-being (s. 16(1) and (2)).
- [154] There is, however, one significant difference between the Divorce Act and the Family Law Act with respect to the so-called principle of "maximum contact". Section 40(4) of the Family Law Act states that "in the making of parenting arrangements, no particular arrangement is presumed to be in the best interest of the child". However, s. 16(6) of the Divorce Act provides that in allocating parenting time "the court shall give effect to the principle that the child should have as much time with each spouse as is consistent with the best interests of the child."
- [155] In *Barendregt v. Grebliunas*, 2022 SCC 22 the Supreme Court of Canada stated that previous decisions indicating maximum contact with each parent is necessarily or presumptively in the child's best interests "overreach". The court emphasized that this maximum contact principle is only significant to the extent that it is in the child's best interests and it must not be used to detract from this inquiry (paras. 131-135 emphasis added).
- [156] I have already determined that it is in the best interest of the children in this case for them to be relocated with their Mother to her home in Regina, Saskatchewan. The Father has indicated that he cannot afford to move from Chilliwack to Regina and so, from a practical perspective, his in-person parenting time with the children in the future is going to be considerably restricted. One factor that weighed heavily in favour of the relocation was the Father's proclivity for family violence and while that may change in the future as a consequence of separation, it nevertheless militates in favour of a cautious approach in the allocation of parenting time and decision-making responsibility at this time.
- [157] Even if a parent is granted relatively limited parenting time and/or decision-making authority with respect to the child, that parent is still generally entitled to be kept informed of the child's whereabouts (place of residence) and their well-being, including their health and education (ss. 16.4 and 16.8).

[158] In the circumstances of this case, I consider the following order to be appropriate and in the best interests of the children:

1. The children will reside full-time with the Mother who shall have exclusive decision-making responsibility for them including, without limitation, for those matters described in s. 41 of the Family Law Act. That decision-making authority must at all times be exercised in a manner that is consistent with the best interests of the children;
2. As much as is reasonably possible, the Mother must keep the Father informed of all significant decisions and developments affecting the well-being of the children, including ongoing information respecting their health and education, their involvement in Métis or other Indigenous cultural activities, and their recreational activities;
3. The Father will have parenting time with the children by way of video conferencing on Sundays and Thursdays at 7 p.m. each week or such other and additional time as the parties may agree in writing. The Father must be sober during this electronic parenting time and must not have consumed any alcohol or non-prescription drugs at any time in the immediately preceding 24 hour period. If the Father is visibly intoxicated at the time of this video conferencing, the Mother is authorized to unilaterally terminate the call;
4. If the Father visits Saskatchewan for the purpose of in-person parenting time with the children, he may have up to two consecutive hours of parenting time with the children each day he is present for that purpose, at times to be agreed between the parties and which will not unduly interfere with their education or organized recreational activities. The Father must be sober during this parenting time and must not have consumed any alcohol or non-prescription drugs at any time in the immediately preceding 24 hour period.
5. For the purposes for the first 12 periods of this parenting time, the Father must be accompanied and supervised by at least one of his family members (uncle Nick, uncle Marty, or aunt Georgette), a professional supervisor arranged and paid for by the Father, or another person as agreed between the parties. If the Father is visibly intoxicated or is in possession of alcohol at any time during these parenting visits, the Mother is authorized to immediately terminate the visits and to take the children back into her care.
6. If the Father attends rehabilitation for his alcohol addiction, including at least 26 sessions of Alcoholics Anonymous or similar counselling, and provides to the Mother evidence of his ongoing sobriety through hair follicle testing, he may have unsupervised in-person parenting time with the children as above or for such additional time as the parties may agree or as any court of competent jurisdiction may order.

Child Support

- [159] The Father testified that he receives approximately \$1,400 per month by way of CPP and disability benefits. This equates to \$16,800 a year and would ordinarily trigger a child support obligation of \$243 per month pursuant to the Federal Child Support Guidelines, SOR/97-175 ("FCSG").
- [160] The Mother is also claiming arrears of child support retroactive to August 1, 2022, the start of the month during which the parties separated. The Mother has had the children in her exclusive care since that time and the Father has made no child support payments of any sort. As noted earlier, he is also in significant arrears in his child support obligations to his other children by a previous relationship.
- [161] At trial, the Father testified that he has less than \$10 in his two bank accounts, that his sister is helping him with monthly expenses and that he also uses the food bank from time to time. He hopes things will improve in the future after he undergoes his second back surgery and can get back to some type of work. In the meantime, he says that the payment of any amount of child support would cause him undue hardship and he asks the court to order child support in the amount of only \$150 per month commencing November 1, 2023.
- [162] As noted earlier, both parents live in extremely modest financial circumstances. It is only through the Mother's persistence and ingenuity that she has been able to keep food on the table and attend to her daughter's medical needs. Rather remarkably, she advised during closing argument at trial that she acknowledged the financial hardship experienced by the Father and would be willing to accept the \$150 monthly child support that he has offered. Of course she also said she expects she will receive nothing at all from him and that she will have to continue looking after the family on her own.
- [163] I am not oblivious to the Father's strained financial circumstances. I would observe, however, that he has managed to find enough money to keep himself in alcohol while not paying a cent towards the support of his daughters. The court has little sympathy for someone who behaves in this fashion.
- [164] In the result, however, I order that the Father pay to the Mother child support in the amount of \$150 per month. I also award the Mother an additional \$2,000 as arrears of child support and partial reimbursement for some of the expenses she has incurred with respect to the children's medical care.
- [165] I would remind both parents of certain fundamental child support principles stated many times by the highest court in the land:
- a parent-child relationship presumes dependency and imposes a fiduciary obligation on both parents to financially support the child from birth;
 - that ongoing legal obligation is to provide financial support commensurate to their income;

- this obligation to pay, and the children's right to receive, support exists as a matter of common law independently of any statute or court order;
- child support is the right of the child, not of the parent seeking support on the child's behalf;
- support payments are based on earning capacity and not just on what a parent actually earns as a result, parents have a legal obligation to earn as much as they are reasonably capable of earning so that the child receives an appropriate level of support;
- a parent does not fulfil his/her obligation to his/her child if (s)he does not increase child-support payments when his/her income increases; and,
- both parents must always put their children's interests ahead of their own when it comes to negotiating and litigating child support.

[166] Alongside the obligation to pay child support is the related obligation to make ongoing disclosure of information respecting each parent's income. This includes not only personal income tax returns but also documentation and information regarding income that is, for whatever reason, not actually declared in income tax returns. It is each parent's total income, actual or imputed, which determines the amount of child support and which also provides the basis for proportionate sharing of any "special or extraordinary" expenses contemplated by s. 7 of the FCSG.

[167] In the result, I make the following order regarding exchange of information, annual adjustment of child support, and the payment of s. 7 expenses:

1. Starting in 2024, both parents will exchange all information required by the FCSG by May 15 of each year to determine their respective guideline incomes for child-support purposes, including but not limited to a copy of their respective income tax return filed for the previous calendar year and all attachments such as T-4 slips, a copy of their respective notices of assessment or reassessment received from Canada Revenue Agency for the previous year's filed return, and a copy of the most recent statement of earnings received from any employer;
2. Following the exchange of income information as set forth above, the parties will adjust the payment of child support in accordance with the FCSG and will also determine the percentages for proportionate sharing of any s. 7 special or extraordinary expenses incurred;
3. The new amount of child support, if any, will be effective as of July 1 of each year;
4. If the parties are unable to determine the amount of the adjusted child-support by July 1 after the exchange of financial information, they may apply to a court of competent jurisdiction for a determination of the amount of child support payable retroactive to July 1 of each year;

5. The following expenses are included as special or extraordinary expenses within the meaning of s. 7 of the FCSG: any medically necessary expenses for the children as prescribed in writing by any medical professional, dance classes, swimming lessons, and such other expenses as agreed to between the parties in writing;
6. The parties will first discuss the cost and agree to the expense before asking for reimbursement. Consent must not be unreasonably withheld;
7. Both parents must first utilize any funding or benefit programs to which they may have access for each special or extraordinary expense. Thereafter, upon receipt of proof of payment by one parent for any special or extraordinary expense, the other parent shall pay his/her proportionate share of the expense within seven days; and,
8. For the time being and until proportionate responsibility changes pursuant to the annual adjustment mechanism provided for above, the parties shall equally share (i.e. 50% each) the children's special or extraordinary expenses incurred from this point forward.

Protection Order and Communication

[168] As noted earlier, this court issued an ex parte Protection Order on July 25, 2023 forbidding the Father's attendance anywhere near the Mother or the children and also forbidding communication except through lawyers or family dispute resolution professionals. The Father's application to set aside that protection order was dismissed on August 28, 2023 but the issue of whether that order should remain in place was referred to this trial.

[169] In my view, the Protection Order should be terminated for several reasons.

[170] First, the Mother and the children will shortly be moving to Saskatchewan, some 1,600 km away from Chilliwack. The protection order was deemed necessary because the Mother had been compelled to return to Chilliwack and was thus in close vicinity of the Father, a person who had perpetrated physical and verbal abuse upon her for several years. She was justifiably fearful of that proximity and the potential it provided for further violence. That risk, assuming it continues to exist, is much diminished if not eliminated by the move back to Regina.

[171] Second, the refusal to set aside the Protection Order in late August 2023 was based on the interlocutory court's inability to summarily resolve the conflicting evidence before it. It was for that reason that the matter was quite rightly referred to trial where the court has now made the necessary findings of underlying fact.

[172] Third, while the history of abuse justifies the Mother's anxiety about her safety, there has been very little contact between the parties since separation and no violence beyond some ongoing disrespectful profanity and one, now dated, incident of spitting phlegm on the Mother's car.

- [173] Fourth, the issues in dispute between the parties have now been resolved by a trial. While this does not necessarily mean that the conflict between the parents will completely disappear, this decision will hopefully illuminate the path forward and may well lessen the toxicity that has pervaded the past.
- [174] The harsh reality is that their two daughters are still very young and the parties will have to deal with each other on parenting matters for many years to come. They must find a way to communicate constructively.
- [175] Accordingly, I order that the Protection Order dated July 25, 2023 will expire 60 days from today's date. The intervening period should be sufficient for the Mother to arrange her affairs and to relocate herself and the children to Regina. The parties are, of course, free to negotiate an earlier expiry date and are at liberty to enter a consent order to that effect should they so wish.

Conclusion

[176] In summary following the trial of this case I have made the following orders:

1. The claimant and the respondent, who were married at Kelowna, BC, Canada on June 24, 2017, are divorced from each other. The divorce will take effect on the 31st day following the date of the release of these Reasons for Judgment;
2. The relocation of the children with the Mother to Regina is in their best interests and is hereby authorized pursuant to s. 16.1(7) of the Divorce Act;
3. The children will reside full-time with the Mother who shall have exclusive decision-making responsibility for them including, without limitation, for those matters described in s. 41 of the Family Law Act. That decision-making authority must at all times be exercised in a manner that is consistent with the best interests of the children;
4. As much as is reasonably possible, the Mother must keep the Father informed of all significant decisions and developments affecting the well-being of the children, including ongoing information respecting their health and education, their involvement in Métis or other Indigenous cultural activities, and their recreational activities;
5. The Father will have parenting time with the children by way of video conferencing on Sundays and Thursdays at 7 p.m. each week or such other and additional time as the parties may agree in writing. The Father must be sober during this electronic parenting time and must not have consumed any alcohol or non-prescription drugs at any time in the immediately preceding 24 hour period. If the Father is visibly intoxicated at the time of this video conferencing, the Mother is authorized to unilaterally terminate the call;

6. If the Father visits Saskatchewan for the purpose of in-person parenting time with the children, he may have up to two consecutive hours of parenting time with the children each day he is present for that purpose, at times to be agreed between the parties and which will not unduly interfere with their education or organized recreational activities. The Father must be sober during this parenting time and must not have consumed any alcohol or non-prescription drugs at any time in the immediately preceding 24 hour period;
7. For the purposes for the first 12 periods of this parenting time, the Father must be accompanied and supervised by at least one of his family members (uncle Nick, uncle Marty, or aunt Georgette), a professional supervisor arranged and paid for by the Father, or another person as agreed between the parties. If the Father is visibly intoxicated or is in possession of alcohol at any time during these parenting visits, the Mother is authorized to immediately terminate the visits and to take the children back into her care;
8. If the Father attends rehabilitation for his alcohol addiction, including at least 26 sessions of Alcoholics Anonymous or similar counselling, and provides to the Mother evidence of his ongoing sobriety through hair follicle testing, he may have unsupervised in-person parenting time with the children as above or for such additional time as the parties may agree or as any court of competent jurisdiction may order;
9. The Father will pay to the Mother child support in the amount of \$150 per month. The Father must also pay to the Mother an additional \$2,000 as arrears of child support and partial reimbursement for some of the expenses she has incurred with respect to the children's medical care;
10. Starting in 2024, both parents will exchange all information required by the FCSG by May 15 of each year to determine their respective guideline incomes for child-support purposes, including but not limited to a copy of their respective income tax return filed for the previous calendar year and all attachments such as T-4 slips, a copy of their respective notices of assessment or reassessment received from Canada Revenue Agency for the previous year's filed return, and a copy of the most recent statement of earnings received from any employer;
11. Following the exchange of income information as set forth above, the parties will adjust the payment of child support in accordance with the FCSG and will also determine the percentages for proportionate sharing of any s. 7 special or extraordinary expenses incurred;
12. The new amount of child support, if any, will be effective as of July 1 of each year;
13. If the parties are unable to determine the amount of the adjusted child-support by July 1 after the exchange of financial information, they may apply to a court of competent jurisdiction for a determination of the amount of child support payable retroactive to July 1 of each year;

14. The following expenses are included as special or extraordinary expenses within the meaning of s. 7 of the FCSG: any medically necessary expenses for the children as prescribed in writing by any medical professional, dance classes, swimming lessons, and such other expenses as agreed to between the parties in writing;
 15. The parties will first discuss the cost and agree to the expense before asking for reimbursement. Consent must not be unreasonably withheld;
 16. Both parents must first utilize any funding or benefit programs to which they may have access for each special or extraordinary expense. Thereafter, upon receipt of proof of payment by one parent for any special or extraordinary expense, the other parent shall pay his/her proportionate share of the expense within seven days;
 17. For the time being and until proportionate responsibility changes pursuant to the annual adjustment mechanism provided for above, the parties shall equally share (i.e. 50% each) the children's special or extraordinary expenses incurred from this point forward; and,
 18. The Protection Order dated July 25, 2023 will expire 60 days from today's date
- [177] With respect to costs, it is apparent that the Mother has been the substantially successful litigant at trial and she is therefore awarded the costs of these proceedings.

"Kent J."

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