

CANADA / JUDGMENT

W.C.S.B. v. H.N.R.

2025 BCSC 1529

COURT

Supreme Court of British Columbia

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2025 BCSC 1529 W.C.S.B. v. H.N.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

W.C.S.B. v. H.N.R.,

2025 BCSC 1529

Date: 20250711

Docket: E251274

Registry: Vancouver

Between:

W.C.S.B.

Claimant

And

H.N.R.

Respondent

Before: The Honourable Justice E. Sigurdson

Oral Reasons for Judgment

Counsel for the Claimant:

C.M. MacKay

Counsel for the Respondent:

J. Chow

Place and Date of Hearing:

Vancouver, B.C.

June 24, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 11, 2025

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- [1] This application for determination of jurisdiction arises in the context of a very recent marital breakdown. The parties separated at the end of April or beginning of May 2025. As of the hearing on June 24, 2025, the parties had been separated approximately seven weeks. The parties have one child. To protect the privacy and well-being of the child, I have initialized the names of the parties in the style of cause, and used initials for the parties and the child in these reasons.
- [2] W.C.S.B. filed a Notice of Family Claim on May 13, 2025. The claim seeks orders for divorce, parenting arrangements, child support, spousal support, family property, and other orders including respecting preservation of property.
- [3] The Respondent, H.N.R., makes an application to the Court pursuant to ss. 74 and 106 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], ss. 3 and 4 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), and the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28, asking for orders that the court does not have jurisdiction in relation to parenting arrangements, child support, spousal support, division of family property and debt, or the parties' divorce.

- [4] The application further seeks orders that the parties' child, F.R.B., should be delivered to H.N.R. for immediate return to Australia, and that W.C.S.B. should return the child's passport and provide an authorization for his travel. I understand that this aspect of the application is not being pursued, as the parties have made interim parenting arrangements, and agreed that counsel for W.C.S.B. will retain the passport safely at his offices.
- [5] There is some urgency in deciding this matter related to H.N.R.'s desire to relocate back to Australia at an early date. Accordingly, I am rendering this decision orally. I reserve the right to edit these reasons for clarity, syntax and citations but the result will not change.
- [6] I have concluded that this Court has and maintains jurisdiction in relation to parenting issues. I am adjourning all other jurisdictional questions in the application because I cannot see that they are ripe for determination on the record before me.

Facts

- [7] W.C.S.B. (36) and H.N.R. (34) are both Australian citizens. They began cohabiting in 2017 in St. Kilda, Victoria, Australia in an apartment owned by H.N.R.
- [8] W.C.S.B. and H.N.R. were married on December 3, 2023, in Melbourne, Australia.
- [9] There is one child of the marriage, F.R.B., born June 2022 in Melbourne. F.R.B. is an Australian citizen.
- [10] Both parents have had primary caregiving roles in relation to F.R.B.: H.N.R. breastfed him after he was born and was responsible for day-to-day caregiving particularly during her maternity leave; W.C.S.B. was responsible for full-time caregiving for F.R.B. after H.N.R. began a fellowship in Vancouver.
- [11] H.N.R. is trained as an oncologist. In January 2024, she received an offer for a two-year oncology fellowship at the BC Cancer Agency under the Provincial Health Services Authority.
- [12] H.N.R. and W.C.S.B. moved to Vancouver on February 11, 2024. H.N.R. has a work permit through her employer, and W.C.S.B. and F.R.B. have temporary visas dependent upon H.N.R.'s work permit. The permit and visas expire on February 18, 2026, with the completion of the two-year fellowship on February 11, 2026.
- [13] The parties rented an apartment in Vancouver under a fixed-term lease to January 31, 2026. The cost of the apartment is \$3,200 per month.
- [14] H.N.R. opened bank accounts in Canada; W.C.S.B. did not.
- [15] H.N.R., W.C.S.B. and F.R.B. are enrolled in British Columbia's Medical Services Plan, have medical insurance coverage, and have a local family physician and dentist.

- [16] On March 10, 2025, H.N.R. was offered a permanent staff-oncologist position effective November 1, 2025. She initially accepted the offer but later declined it on May 23, 2025.
- [17] The parties discussed whether to file a joint application for Canadian permanent residency. The application was not made.
- [18] The parties have not secured full-time childcare for F.R.B. in Vancouver. He has been enrolled in a part-time daycare program providing about six hours a week of care. W.C.S.B. has provided the balance of the childcare while H.N.R. has been working.
- [19] W.C.S.B. had been pursuing his master's degree in education in Australia and has one year left to complete it. In Canada, he has not been employed other than in the provision of childcare to F.R.B. and has not generated employment income.
- [20] The parties allege slightly different dates for their separation. Nothing turns on the precise date at this point, and for present purposes it is sufficient to say that W.C.S.B. and H.N.R. separated at the end of April or beginning of May 2025.
- [21] H.N.R. asserts that during the relationship she experienced family violence on the part of W.C.S.B., including physical violence; demeaning, harassing and intimidating verbal conduct; and financial exploitation.
- [22] After the separation, H.N.R. expressed to W.C.S.B. that she wished to return to Australia. She was willing to remain in Canada until the end of the summer if they could remain amicable.
- [23] Each party alleges that the other behaved inappropriately on May 10, 2025. H.N.R. alleges that W.C.S.B. surreptitiously took F.R.B.'s passport and left the family home. W.C.S.B. alleges that H.N.R. removed F.R.B. without notice from the family home and denied him regular parenting time.
- [24] H.N.R. has been living at short term accommodations since May 10, 2025. Her mother came to Vancouver to support H.N.R. since the separation.
- [25] On May 13, 2025, W.C.S.B. obtained an order without notice that H.N.R. may not remove F.R.B. from the Greater Vancouver Area without the written consent of W.C.S.B. or a further court order. W.C.S.B. served H.N.R. with a notice of family claim and the order that same day.
- [26] The parties have been in negotiation of an interim settlement relating to parenting time. An interim equal parenting schedule commenced by agreement on June 11, 2025.
- [27] H.N.R. owns a home in Australia. The parties have a physician in Australia. Both H.N.R. and W.C.S.B.'s families are there. H.N.R. attests that her parents are willing to provide child care.
- [28] Neither party presently has work in Australia, but W.C.S.B. may complete his master's degree. Evidence on the application indicates that childcare is available in Australia for F.R.B. H.N.R. has indicated she has a plan for housing in Australia.

[29] The evidence and argument did not reveal to me definitively whether W.C.S.B. was willing to relocate back to Australia, although there was some evidence that he had expressed willingness to do so at some point. Nor was it clear to me on what basis he could remain in Canada after the expiry of H.N.R.'s work permit. H.N.R. submitted that she wished to return to Australia imminently, and that she could do so prior to completing her fellowship, as her employer would release her from the program. She has not yet left the program. The evidence shows that she has taken some steps in planning to relocate back to Australia, for example by confirming child care.

Jurisdiction respecting parenting issues

Analytical Framework

[30] The primary issue requiring determination on this application is whether this Court does or should have jurisdiction in relation to the parties to make orders respecting parenting.

[31] A determination of jurisdiction involves two stages:

- a) First, the court will determine whether it has territorial competence over the dispute. The burden to establish territorial competence is on the party asserting that the court has jurisdiction.
- b) Second, if territorial competence is found, the court will then consider whether it ought to decline jurisdiction in favour of another forum that is "clearly more appropriate." The burden to establish this rests with the party which asserts another forum is clearly more appropriate.

B.C. v. D.E., 2022 BCSC 1597 at para. 23 [D.E.]; Aleong v. Aleong, 2013 BCSC 1428 at para. 80; and JTG Management Services Ltd. v. Bank of Nanjing Co. Ltd., 2015 BCCA 200 at para. 45 [JTG Management].

Territorial competence

[32] The question of the BC Supreme Court's jurisdiction in respect of parenting arrangements is reflected in s. 74 of the FLA:

Determining whether to act under this Part

74 (1) This section applies if an order respecting guardianship, parenting arrangements or contact with a child may be made, respecting the same child, in more than one jurisdiction.

(2) Despite any other provision of this Part, a court may make an order under this Part respecting guardianship, parenting arrangements or contact with a child only if one of the following conditions is met:

- (a) the child is habitually resident in British Columbia when the application is filed;

- (b) the child is not habitually resident in British Columbia when the application is filed, but the court is satisfied that
 - (i) the child is physically present in British Columbia when the application is filed,
 - (ii) substantial evidence concerning the best interests of the child is available in British Columbia,
 - (iii) no application for an extraprovincial order is pending before an extraprovincial tribunal in a place where the child is habitually resident,
 - (iv) no extraprovincial order has been recognized by a court in British Columbia,
 - (v) the child has a real and substantial connection with British Columbia, and
 - (vi) on the balance of convenience, it is appropriate for jurisdiction to be exercised in British Columbia;
- (c) the child is physically present in British Columbia and the court is satisfied that the child would suffer serious harm if the child were to
 - (i) remain with, or be returned to, the child's guardian, or
 - (ii) be removed from British Columbia.
- (3) A court may decline to make an order under this Part if the court considers that it is more appropriate for jurisdiction to be exercised outside British Columbia.

[33] Habitual residence is defined in s. 72(2) of the FLA:

72 (2) For the purposes of this Division, a child is habitually resident in the place where the child most recently resided

- (a) with the child's parents,
 - (b) if the parents are living separate and apart, with one parent
 - (i) under an agreement,
 - (ii) with the implied consent of the other parent, or
 - (iii) under an order of a court or tribunal, or
- (c) with a person other than a parent on a permanent basis for a significant period of time.
- (3) The removal or withholding of a child without the consent of a guardian does not affect the child's habitual residence unless the guardian from whom the child is being removed or withheld acquiesces or delays in applying for an order of a court or an extraprovincial tribunal.

Assessing Habitual Residence

- [34] Part way through the hearing, I was provided with the Supreme Court of Canada's very recent decision in *Dunmore v. Mehralian*, 2025 SCC 20. I appreciate counsel and their student's diligence in ensuring the most recent authority was brought to my attention. Due to constraints of time and the late arrival of this decision, the implications of *Dunmore* were not fully canvassed. It is critical to the analysis in this case, however, and I address it here.
- [35] As here, the Court in *Dunmore* considered a question about a court's jurisdiction to hear a proceeding under a provision that required consideration of where a child was "habitually resident" in the jurisdiction. That case arose, like this one, outside of the Hague Convention context. The issue in *Dunmore* was whether Ontario had jurisdiction over the child under their provincial legislation, the Children's Law Reform Act, R.S.O. 1990, c. C.12 [CLRA]. As in this case, a critical issue was the interpretation of the statutory definition of "habitual residence" under the CLRA. The definition of habitual residence in Ontario's CLRA is virtually identical to the statutory definition of habitual residence under s. 72 of the FLA. The legislation considered in *Dunmore* similarly does not define residence. *Dunmore* is accordingly applicable and binding in this case. As here, the Court in *Dunmore* was required to address this question because a court may only make parenting orders if jurisdiction is established, and jurisdiction is dependent upon a child's habitual residence.
- [36] The Supreme Court of Canada reached the following conclusions that are of particular note in this case.
- [37] The application of the legislation providing jurisdiction over parenting orders is informed by the purposes of that legislation. This includes that applications concerning children will be dealt with based on their best interests, avoidance of jurisdictional overlap, discouragement of abduction of children as an alternative to due process, and the provision of effective enforcement of orders concerning children: *Dunmore* at para. 33.
- [38] The Court concluded that the question of residence is essentially a determination of where a child is at home. The term must be appreciated purposively and in context: *Dunmore* at paras. 46-50.
- [39] At the hearing in this case, counsel initially relied heavily on the argument that the search for habitual residence is a search for the parties' "settled intention". This expression was the standard for habitual residence relied on by our courts until *Dunmore*: *Kong v. Song*, 2019 BCCA 84. With *Dunmore*, however, the Supreme Court of Canada disagreed that courts should take a shared parental intention approach to determining where a child resides: paras. 53-61. I reproduce portions of the analysis here in this respect:
- [53] There is nothing in the text of the provision that indicates the ordinary meaning of "resided" is displaced by a concept focused around shared parental intention (see *Korenic v. DePotter*, 2022 ONSC 3954, 77 R.F.L. (8th) 207, at para. 22; *Logan v. Logan*, 2022 ONSC 4927, 82 R.F.L. (8th) 193, at paras. 27-28; *Barakat v. Andraos*, 2023 ONSC 582, 85 R.F.L. (8th) 189, at para. 66).

Rather, the distinct concepts of parental "consent", "acquiescence", "undue delay", etc., are already used elsewhere in the statutory definition of habitual residence in s. 22(2) and (3). Notably, while the concept of "consent" is expressly mentioned in the enumerated circumstance applicable to parents living separate and apart (s. 22(2) 2), it is completely absent from the circumstance applicable to this case, which simply refers to where the child is residing with both parents (s. 22(2) 1).

- [55] This Court's guidance in *Balev* serves to underline the inappropriateness of a shared intention approach here. This Court has said, in the Hague Convention context, that attempts to overlay the fact-specific concept of habitual residence with complex legal constructs like parental intention have failed (see *Balev*, at paras. 69 and 73). This militates equally against an artificially narrow reading of "resided" in the Act. *Balev* stands for the proposition that a more open-textured approach best fulfills the goals of prompt return and best protects children (paras. 59 et seq.). This guidance is equally true of Part III, which shares the same broad goals (s. 19; *Bala*, at pp. 308-9).
- [56] This Court has also said that a parental intention approach allows parents to manipulate the scheme to their own ends (see *Balev*, at para. 61), a feature that is similarly undesirable here. Parents cannot be allowed to contract out of the ordinary meaning of "resided" used by the legislature (see, by analogy, *Balev*, at para. 73). The legislature directs us to where the child actually resided, not where the parents agreed the child would reside.
- [57] The vulnerability of the shared parental intention approach to manipulation is particularly relevant in cases involving family violence. Family violence is broadly defined in Part III to include any violent or threatening conduct, as well as patterns of coercive or controlling behaviour, between family members (s. 18). Tactics and patterns of abuse such as "isolation, manipulation, humiliation, surveillance, micro-regulation of gender performance, economic abuse, intimidation, and threats" as well as acts of physical and sexual violence can undermine a victim's autonomy, including the ability to freely express their intention (J. Mosher et al., "Submission to Justice Canada on the Criminalization of Coercive Control", in Osgoode Hall Law School Legal Studies Research Paper Series, Research Paper No. 4619067 (October 30, 2023), at p. 5; see also J. Tolmie, R. Smith and D. Wilson, "Understanding Intimate Partner Violence: Why Coercive Control Requires a Social and Systemic Entrapment Framework" (2024), 30 *Violence Against Women* 54). In circumstances involving family violence, judges may understandably struggle to find any genuinely shared parental intention to reside in a specific location.
- [58] Nor do I accept that it is a less complex standard because it does not require a consideration of all relevant factors (see *Balev*, at para. 62)

- [59] A shared intention approach thus wrongly takes the focus away from objective factors, such as where the child lived, and gives undue priority to the parents' subjective views. It treats children as "passive recipients of their parents' decisions", when the better view is that they are "people with a part to play in their own lives" (In re LC (Children), [2014] UKSC 1, [2014] A.C. 1038, at para. 87, per Lady Hale, concurring).
- [60] To the extent that different considerations apply in cases outside the scope of the Hague Convention, they only further militate against a shared parental intention approach. Canadian courts cannot assume that jurisdictions not party to the Hague Convention will be guided by the best interests of the child (F. v. N., at para. 53; Geliedan, at para. 38; Ojeikere, at paras. 60-61), nor that they will demonstrate the reciprocity necessary for orderly interjurisdictional decision making with respect to children (F. v. N., at para. 73; J. Morley, "International child abduction and non-Hague Convention countries", in M. Freeman and N. Taylor, eds., Research Handbook on International Child Abduction: The 1980 Hague Convention (2023), 244, at pp. 249-50). In this context, Professor Nicholas Bala notes that parents, "especially mothers", may have "great challenges" in enforcing custody rights in some non-Hague countries, "even if the children were born in Canada and spent their entire lives here" (pp. 309 and 357; see also Morley, at p. 252).
- [61] In this context, Ontario courts should be even more cautious before accepting a rigid approach to the meaning of "resided" that would stand in the way of them taking jurisdiction. Balev's rejection of the shared parental intention approach therefore applies with even greater force in these circumstances.

[Emphasis added.]

- [40] Instead of a focus on settled intention, the court mandates that the fundamental question is: where is the child at home at the relevant time. The focus is not on a search for legal formalities but on the child's life and circumstances. The Court identifies a number of principles that will apply, emphasizing that judges must be aware of the social context that shapes how children live and where they are at home, and the need to appreciate the evidence in light of the particular family, being alert to its particular dynamics, including gender and family violence: Dunmore at paras. 71, 73. These principles are as follows:
- a) Physical presence in a jurisdiction is neither necessary nor sufficient to demonstrate residence at a point in time: Dunmore at para. 64.
 - b) Permanence is not necessary to establish residence. "A child can reside somewhere even if no one intends they live there permanently:" Dunmore at para. 65.
 - c) For very young children, the ties of their caregivers are likely to weigh more heavily. This recognizes that the ties of adults to a jurisdiction and their intentions about the family's residence are relevant: Dunmore at para. 66; Office of the Children's Lawyer v. Balev, 2018 SCC 16 at paras. 44-45.

- d) A child may reside in more than one jurisdiction, which reflects that children may share their time with both parents in different jurisdictions: Dunmore at para. 67.
- e) The court should be looking to "all relevant links and circumstances" in asking where the child is at home, but only relevant ones: Dunmore at para. 68.
- f) The analysis should focus on the factual connections between the child and the jurisdiction in question as well as circumstances surrounding any movement to and from the jurisdiction: Dunmore at para. 69.

- [41] My review of the Supreme Court of Canada's decision suggests that the analysis in Dunmore displaces the singular search for "settled intention" on the part of the parents in determining "habitual residence" under s. 72(2) of the FLA. Accordingly, as of Dunmore released on June 20, 2025, my task instead involves a somewhat different inquiry than that set out in the principal authorities referred to and relied upon on this application, being *Johansson v. Janssen*, 2020 BCSC 1738, *Kong*, and *E.G.U. v. A.M.E.S.*, 2021 BCSC 996 [E.G.U.], all of which focussed the analysis on the question of settled intention.
- [42] I note that, as the Court in Dunmore emphasized, the parents' intention is not irrelevant; it simply must not override the broader and more contextual question of where the child was at home at the relevant time.

F.R.B.'s Habitual Residence

- [43] On this application for determination of jurisdiction in relation to parenting decisions, the question is where F.R.B. was "habitually resident", i.e., where was he at home, at the relevant time.
- [44] The relevant time for the determination of habitual residence under s. 74(2) is the time that an application is filed. In *PKS v. ANR*, 2024 BCSC 2110 at paras. 23-24, citing *D.E.* at para. 80, Justice Crerar noted that the reference in s. 74 to an "application" is not limited to a notice of application but includes the filing of a notice of family claim seeking relief with respect to guardianship, parenting arrangements, or contact.
- [45] For the purposes of the present case, the time at which habitual residence must be determined is therefore May 13, 2025.
- [46] I conclude that this Court has territorial competence pursuant to s. 74. The child in question was habitually resident in British Columbia as at May 13, 2025, for the following reasons.
- [47] F.R.B., at May 13, 2025, was at home in British Columbia. The child had been living in the jurisdiction since February 2024. Mere presence is insufficient; nevertheless, F.R.B. resided here at that date, with both parents in a settled, if potentially time-limited manner. F.R.B.'s parents both reside here, albeit with the potential end date of February 2026. At the relevant time W.C.S.B. was not employed, but was fully engaged in parental responsibilities, to the end of supporting H.N.R.'s ability to carry out her fellowship in British Columbia. H.N.R.

was engaged in the second year of her fellowship, to be completed February 2026, and considering or (temporarily) accepting an offer for ongoing employment in Canada in her field. The parties resided in a suite for which they had a fixed term lease until February 2026. They had secured some part-time child care for F.R.B. and he was engaged in something of a routine. These facts depict residence and show that the child's home at the relevant time was in British Columbia.

- [48] In this case, some consideration must be given to the parents' intentions because the child is very young, and his parents' ties to the jurisdiction will be more informative. It is clear that the parties do not need to have intended to settle permanently to be habitually resident: *Fasiang v Fasiangova*, 2008 BCSC 1339 at paras. 60-62; see also, *Kong* at para. 20 and *E.G.U.* at para. 15.
- [49] Taking into account the intentions of the parents, although this is not the central consideration, in considering the evidence before me of both what was occurring at the relevant time, and what has been put in evidence since, I can see that the parties may well move back to Australia. The evidence discloses that childcare is available for F.R.B. in Australia. Neither party has secured employment there, but W.C.S.B. may complete his Masters, and H.N.R. is qualified for positions in her field. They may decide to make this move, separately or together, literally at any time. H.N.R. has submitted that she could be released from the balance of her fellowship, depending on whether she returns to Australia.
- [50] However, the facts before me suggest the parties have not fully settled on their intent about residence either and there is some conflicting information about their future plans. In these circumstances, the parents' intentions, which do merit some weight, and in this case may or may not diverge from one another, I do not find to be determinative. What I must ask is where FRB was at home on May 13 2025.
- [51] It is apparent to me that on May 13, 2025, F.R.B. was at home in British Columbia, if for the time being, and if only until February 2026. I therefore conclude that this Court has territorial jurisdiction in relation to the parenting issues because F.R.B is habitually resident in British Columbia within the meaning of s. 72(2).

Whether Jurisdiction Should be Declined

- [52] Where the court has territorial competence, it may nevertheless decline jurisdiction in favour of a forum that is "clearly more appropriate". The party seeking to displace the initial choice of forum bears the burden of establishing that another forum is "clearly more appropriate": *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at para. 103; *JTG Management* at para. 45.
- [53] Section 11 of the CJPTA outlines a list of factors, though non-exhaustive, that the court may look to when considering whether to utilize its discretion to exercise territorial competence:

Discretion as to the exercise of territorial competence

11 (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

(2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
- (b) the law to be applied to issues in the proceeding,
- (c) the desirability of avoiding multiplicity of legal proceedings,
- (d) the desirability of avoiding conflicting decisions in different courts,
- (e) the enforcement of an eventual judgment, and
- (f) the fair and efficient working of the Canadian legal system as a whole.

[54] In this case, I cannot conclude on the record before me that another forum is clearly more appropriate. Considering the above factors, I conclude there is insufficient information before the Court that would permit a just conclusion to be made that another jurisdiction is clearly more appropriate.

[55] Looking at the first factor, "the comparative convenience and expense for the parties", it is not yet clear on the record before me, when or if each or both the parties would return to Australia. There is no evidence before me of the cost and expense of participating in proceedings there versus here in respect of parenting arrangements. There were some arguments raised respecting the presence of family witnesses in the jurisdiction in Australia. There was no significant information provided that would allow the court to conclude whether it was prohibitively expensive or inconvenient for proceedings to take place in British Columbia, including by accommodating witnesses by videoconference, using affidavit evidence or any other measures.

[56] There is no evidence before me of the law to be applied to the proceedings. A proceeding has not yet been commenced in Australia. Nor is there evidence about the potential for enforcement of a judgment.

- [57] I cannot conclude in this case, at this time, that the Australian courts provide a forum that is clearly more appropriate in relation to parenting arrangements. The parties are in British Columbia now, they have retained local counsel, I am advised they have resolved some parenting issues on an interim basis in their present location. While H.N.R. has stated her intention to return to Australia, W.C.S.B. has been at best equivocal and has not said that he refuses to contemplate return.
- [58] I do not reach this conclusion because one party or the other has made a more persuasive case for one jurisdiction over the other. Rather, the applicant has not made out her burden to demonstrate that another jurisdiction is clearly more appropriate in relation to parenting issues. H.N.R. has not shown at this time that the court should refuse jurisdiction in favour of another jurisdiction in relation to parenting orders, and accordingly the court maintains jurisdiction in relation to these issues. Since these issues may well evolve and the evidence and circumstances change, including that the parties may reach consent, the parties will have leave to make a further application to vary my decision on whether this court should decline to exercise jurisdiction.

Remaining Jurisdictional Issues

- [59] Because the primary concern of navigating parenting issues is a present and more urgent one, I have decided the court's jurisdiction to address those matters now. In the circumstances, however, I am left with a concern about whether the other jurisdictional issues in this case are ripe for decision at all. It appears to me on the evidence, and the submissions which were equivocal at best, that it is too soon to know whether there is a true dispute on the question of jurisdiction in relation to the other matters to be resolved between the parties.
- [60] I am simply unequipped on this application to make determinations conclusively about the parties' real and substantial connection to the jurisdiction, their ordinary residence, and other issues, both because of the limits in the evidence and that, given the evidence and argument, I am not persuaded that the parties are at a point where they have met issue on these questions of jurisdiction.
- [61] I also note that the other issues arising from the separation are not as urgent. For instance, divorce is not available in British Columbia for almost a year. The issues of property division are not emergent and the jurisdiction questions arising may require further consideration and evidence. I can see merit to the argument that aspects of the parties' divorce, in particular the division of property, are better addressed in the jurisdiction where the real property exists. If the parties ultimately both relocate to Australia, as appears quite possible on the evidence, I do not anticipate there would be a jurisdictional dispute. However, this eventuality remains factually unclear, and it may be counterproductive for the court to make a definitive conclusion at this time on its jurisdiction to determine all of the issues in the parties' divorce.

[62] As I have found there is territorial competence and the court should retain jurisdiction in respect of parenting issues at this time, the parties are in discussions about how to move forward by agreement, and there is still uncertainty about whether in fact there is going to ultimately be a dispute about jurisdiction, I do not see there being any practical purpose in making a declaration respecting jurisdiction in relation to the other aspects of the parties relationship breakdown at this juncture.

[63] Accordingly, my conclusion is as follows:

- a) This Court has and maintains jurisdiction in relation to orders about parenting;
- b) If circumstances or the evidence changes, or if the parties' consent, the parties have leave to bring an application to vary the court's order respecting its jurisdiction on orders regarding parenting; and
- c) I am adjourning the aspects of the application addressing the issue of jurisdiction in relation to divorce, child support, spousal support and property division. The parties may bring these issues back for determination with additional evidence identifying a true dispute over jurisdiction and providing further evidence respecting the considerations that should be applied both for determination of territorial competence and whether the court should decline jurisdiction.

"E. Sigurdson J."

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