IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *D.T.F. v. K.S.,*
2019 BCSC 75

Date: 20190124
Docket: E54924
Registry: New Westminster

Between:

D.T.F.

Claimant

And

K.S.

Respondent

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment

Counsel for the Claimant:	G.C. Laschuk
Counsel for the Respondent:	D.B. Simpson
Place and Date of Hearing:	New Westminster, B.C. September 20 and 21, 2018
Place and Date of Judgment:	New Westminster, B.C. January 24, 2019

[1] The parties bring competing applications as to whether the respondent – Ms. S., mother of the parties' two children, a son, Y., now age 11, and a daughter, R., now age 8 – will be allowed to relocate with the children from Aldergrove, B.C. to Stonewall, Manitoba, a community located about 25 km north of Winnipeg. The children's father, the claimant, Mr. F., is opposed to the relocation.

[2] In consideration of the children's privacy I have anonymized the style of cause, and the names of the parties, the children and family members, in the text of these reasons.

[3] Mr. F is now 52 years old, and Ms. S. is 36. They were in a common law relationship from 2007 to 2015. Ms. S. is now married to Mr. S., and they have a daughter, N., now two years old. Ms. S. was employed full-time as a veterinary assistant from 2005 to 2015, when she took time off for the birth of N., and she is now back at work on a casual basis. Mr. F works as a framing and drywall subcontractor.

[4] Under a separation agreement the parties entered into in April 2015, the children have resided primarily with Ms. S. The agreement provided for Mr. F having parenting time on alternating weekends from Friday evening until Sunday evening; and, on off-weekends, Saturday from 8:00 a.m. to 6:15 p.m.

[5] Mr. F. did not regularly avail himself of his right to the alternating-Saturday parenting time until these relocation proceedings were commenced. He did, however, regularly enjoy contact with the children beyond the times prescribed in the separation agreement. For the most part, this was as a consequence of his involvement in both the children being in ice skating lessons, and Y. playing hockey. The parties agree that Y. is an enthusiastic and talented young player. He is captain of his team.

[6] It is clear on the evidence that the claimant and his son have had a close relationship, very much centred on Y.'s hockey playing, since separation. He is also close to his daughter R., though less involved in her life. Mr. F.'s evidence is that

most of his time with the children revolves around Y.'s hockey practices and games. There has been a pattern through the first three years in which Y. has played organized hockey – beginning in the 2015-2016 season – of Y. staying overnight with his father on Sundays, so the claimant could take him to practice early Monday morning, and on Tuesday nights, to make Wednesday morning practices. The claimant would typically attend both Y.'s regular game on Saturdays, and development practices on Sundays. In addition to paying child support, Mr. F. has paid for all costs associated with Y.'s hockey playing.

[7] Both parties strike me as loving, caring parents who genuinely desire the best for their children.

[8] Ms. S.'s desire to relocate to Stonewall – her new husband's home town – is driven chiefly by two factors. The first is economic. The cost of housing is significantly lower there than in the Lower Mainland, and it is submitted that freeing up the S. family's cash flow through only having to service a smaller mortgage would improve their financial situation and inevitably benefit the children, directly or indirectly, through an improved standard of living.

[9] A further economic consideration is that the S. family has very high debt – not only the mortgage, but also unsecured debt totalling more than $200,000. To service this debt, Mr. S. – who is an emergency room nurse – has begun taking contract work in northern Manitoba; differences in scheduling, the pay scale, per diem allowances, and taxes afford him the opportunity to earn a substantially higher income than he would through accepting similar assignments in rural or northern British Columbia. The downside to the Manitoba work is that, as a non-resident of that province, his contracts are on a schedule of two-weeks-on, two-off. When he is back in Aldergrove on his off-weeks, he is able to pick up casual hours from local hospitals, but his regular, lengthy absences are putting a strain on the family. His parents – I will refer to them as the children's step-grandparents – often travel from Manitoba to Aldergrove to be with Ms. S. during the weeks he is away, but still his absence places additional parenting and emotional burdens on Ms. S. It is not

unreasonable to think that these regular, lengthy absences may also interfere with him building a relationship with the children.

[10] The second factor is the parties' relationship, which Ms. S., through her counsel, describes as "toxic", marked by hostility and Mr. F. showing a lack of respect to her. Allowing her to escape from the emotional burden of that relationship through relocating, greatly reducing the parties' contact, will, it is submitted, improve her well-being and thus indirectly benefit the children.

[11] Ms. S. substantially framed her application in terms of establishing that the relocation is being proposed in good faith, such that by operation of the *Family Law Act*, S.B.C. 2011, c. 25 [*FLA*], the onus is on the claimant to establish that relocation is not in the children's best interest.

[12] Section 69(4) of the *FLA*, provides:

> If an application is made under this section and the relocating guardian and another guardian do not have substantially equal parenting time with the child,
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> (a) the relocating guardian must satisfy the court that
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> (i) the proposed relocation is made in good faith, and
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> (ii) the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life, and
>
> (b) on the court being satisfied of the factors referred to in paragraph (a), the relocation must be considered to be in the best interests of the child unless another guardian satisfies the court otherwise.

Mr. F.'s initial position, reflected in his application and his response to Ms. S.' application, was that functionally the parties did have substantially equal parenting time. This position was abandoned on the hearing of the applications; however, Mr. F. submits that the prerequisites in s. 69(4)(a) are absent, and that s. 69(4)(b) is therefore not applicable in this case.

[13] I note that s. 69(4) has been interpreted only to create an evidentiary burden; not a "presumption". I described this in *LeMasurier v. Parsons*, 2017 BCSC 1536, drawing on the reasoning of N. Smith J. in *Hefter v. Hefter*, 2016 BCSC 1504:

> [17] In *Hefter*, N. Smith J. did in fact undertake a thorough s. 37 analysis. This analysis, however, was preceded by a section in his judgment in which he summarized the interplay between sections 69 (4) and (5):
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> > [37] Counsel for the claimant argues that another significant difference [between the *FLA* and the common law] relates to the rights of a custodial parent. In *Gordon* [*v. Goertz*, [1996] 2 S.C.R. 27], the court said that although the custodial parent's views are entitled to great respect, the inquiry does not begin with a legal presumption in his or her favour. Counsel for the claimant argues that s. 69(4) creates just such a presumption and indicates a clear direction from the legislature that primary care parents acting in good faith should be permitted to relocate with their children.
> >
> > [38] In creating that presumption, counsel argues, the legislature must have understood that any move would disrupt or change a child's relationship with the other parent and that such disruption, in and of itself, is not sufficient to rebut the presumption.
> >
> > [39] I am not persuaded that the effect of s. 69(4) goes that far. When ss. 69(4) and 69(5) are read together, it is apparent that they create alternative evidentiary burdens. Where s. 69(5) applies, the parent wishing to move must present evidence to show that the move is in the child's best interests. Where s. 69(4) applies, it is the party opposing the move who must present evidence that the move is not in the child's best interests.
> >
> > [40] <u>But once the matter has been put in issue, the duty of the court is to consider all of the evidence and all the criteria in s. 37(2) to determine what is in the child's best interests</u>. It could not have been the legislature's intention to bar decisions that would otherwise be in the child's best interests and nothing in s. 69(4) requires or permits greater or lesser weight to be given to any of the factors in s. 37(2). <u>At most, in my view, s. 69(4) mandates a decision in favour of a relocating parent who has the majority of parenting time when considerations of the child's best interests are evenly balanced</u> (see *N.W. v. L.V.*, 2015 BCSC 976 at para. 43).
> >
> > [Emphasis added.]
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> [18] Under this analysis, therefore, s. 69(4) cannot be properly understood to create a presumption, or to institute a lower standard of proof. It is simply a matter of who bears the evidentiary burden. I agree with the observation of N. Smith J. that the most that can be said is that in the limited case of the child's best interests being evenly balanced between relocation and the *status quo*, relocation will be preferred.

[14] As Mr. Justice Verhoeven explained in *A.P. v. J.C.*, 2018 BCSC 1381, notwithstanding the provisions of s. 64 of the *FLA*, any relocation case must be focused on the best interests of the child:

> [43] However, the case law under s. 69 establishes that the focus of the analysis must be on the question of the best interests of the child. Therefore the analysis does not end with the issues, factors, onus or presumptions (the legislation is inconsistent as to this) set out in ss. 69(4)-(6). The factors or issues set out in these subsections may be relevant to the overall best interests of the child analysis: [citations omitted]. Moreover, some of the factors or issues set out in ss. 69(4)-(6) overlap with the question of the best interests of the child in s. 69(4)(a)(ii).

Pursuant to s. 69(3) of the *FLA*, relocation decisions must consider both the "best interests" factors enumerated in s. 37(2), and the factors of "good faith" and "reasonable and workable arrangements" set out in s. 69(4)(a).

[15] There are many decisions of this Court that treat determination of the s. 69(4) factors as a threshold issue. I find it is neither necessary nor desirable that I do so in this case. Both parties have submitted extensive evidence on the s. 37(2) "best interests" factors, and I find after considering these factors holistically that the present case is not, ultimately, one where the considerations are "evenly balanced" between allowing and disallowing relocation, such that s. 69(4)(b) would apply. Furthermore, Mr. F. has presented extensive evidence rebutting Ms. S.' evidence on the s. 69(4)(a) factors; to resolve the issue of good faith one way or the other in the present action might very well require cross-examination of the parties on their affidavits, and it is not in the parties' interests to have the process lengthened and the cost of the process increased unnecessarily.

[16] I turn to consider the section 37(2) of the *FLA* sets out the factors that apply in determining the best interests of a child:

> (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
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> (a) the child's health and emotional well-being;
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> (b) the child's views, unless it would be inappropriate to consider them;

> (c) the nature and strength of the relationships between the child and significant persons in the child's life;
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> (d) the history of the child's care;
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> (e) the child's need for stability, given the child's age and stage of development;
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> (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
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> (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
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> (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
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> (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
>
> (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
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> (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
>
> (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[17] There are no dire threats or risks to the children's health and emotional well-being posed by either option, remaining in BC or relocating to Manitoba. The children are doing well, and may reasonably be expected to be able to adapt to and thrive in a new location, all other things being equal. Indirectly, the opportunities for Y. to pursue hockey at an elite level, should his interest in the sport continue, would be more limited in Manitoba in the near future, as – I was told – Stonewall does not have a "rep" level team for his age group. That is a factor that weighs somewhat against relocation. Otherwise, the "health and emotional well-being" factor is indirectly implicated in discussion of how the relocation would impact the children's relationships with family members, and how the parties relate with each other.

[18] The children, according to a Views of the Child Report prepared by the psychologist Robert Finlay, based on interviews he conducted in July 2018, have strong bonds of affection with their parents; with Mr. S. (though R. describes some apprehension around one specific incident, when she was five or six years old, of Mr. S. being angry with her); and with other members of their extended family. Other family members who are acknowledged by both parties to have close relationships with the children include, in particular, Mr. F.'s mother and her husband; Ms. S.' mother; and Mr. S.' mother. In addition, Ms. S. attests to her sister L. being involved in R.'s life from a young age.

[19] Mr. F. attests to the children also having close relationships with their cousins on his side of the family – two sons of his brother O., and two daughters of his brother U. Affidavits of Mr. F.'s mother J. and her husband D., of his brother O. and O's wife V, and of his brother U. and U.'s wife G., corroborate his evidence. In particular, U. describes his daughters and R. as "the best of friends", and V. says that she and her family see Y. and R. "virtually every two weeks when they have their time with their father", enjoying "countless backyard BBQ's, pool time family fun, sleep overs, cul-de-sac hockey games", etc.

[20] Ms. S. contests there being any such relationship between the children and their cousins. In response to these affidavits she maintains that the children have had "limited involvement" with Mr. F.'s mother, J.; and that the children have "very limited contact with [O.], [V.] and their children".

[21] The Views of the Child Report generally supports the evidence of Mr. F. and his family members. Mr. Finlay records the children speaking generally of their relationships with aunts, uncles and cousins. He describes R. drawing a picture of people in her family using stick figures. She drew, first, her mother and her brother, then her father, then Mr. S., then one of O.'s sons, and then grandparents, aunts and uncles, and cousins, all of whom she appeared to know a great deal about. Y. also described his extended family generally as including his aunts and uncles and cousins; he is quoted as saying:

> I get to see my cousins [O.'s sons] because we go to their house and play road hockey, or we go in the pool, or we play video games.

[22] I note that if what Ms. S. in fact meant to say in her affidavit was that the children's involvement with their cousins was minimal while she and Mr. F. were still together, and she has no information as to the strength of their relationships currently, that would be one thing; but Ms. S., instead, appears to be flatly denying or at least disparaging those relationships. This inconsistency leads me to treat Ms. S.' evidence with some caution.

[23] Mr. S., I will add, has siblings in the vicinity of Stonewall, and they have children; but those "step-cousins" are older than Y. and R. Ms. S.' affidavits describe Y. and R. as being involved in family gatherings when they have visited Stonewall, but aside from their relationship with Mr. S.' parents, it seems unlikely the children would form attachments with family members in Stonewall as numerous and strong as they have with those in the Lower Mainland.

[24] Ms. S. has proposed an elaborate and generous scheme under which she says the children's relationships can effectively be preserved. As set out in her notice of application, this would entail the claimant having parenting time as follows, with the cost of airfare to be borne by Ms. S. and her husband:

a) 7-10 days over spring break, in Langley, B.C.;

b) 2 weeks in July and 2 weeks in August, for a total of 28-30 days, in Langley;

c) 10 days over Christmas school break, alternating Christmas and New Year's every other year, in Langley; and,

d) Up to 6 times per year,

    i. in Langley for an agreed-upon long weekend visit, or

    ii. at the claimant's discretion, in Winnipeg for a long weekend visit, the additional cost of the claimant's hotel and car rental to be borne by the respondent.

[25] This arrangement, it is submitted, would give the children 52 to 54 days in Langley, and an additional 12-18 days in either Winnipeg or Langley. Ms. S. recognizes the need for Y. and R. to have and maintain a strong bond with their father, and she and Mr. S. are willing to work around the claimant's vacation schedule in order to accommodate him.

[26] Before analyzing the suitability of these proposed arrangements, and considering whether they might adequately address any negative impact on the children, it is important to acknowledge the children's own views. In his Views of the Child Report, Mr. Finlay states his opinion that the children's views, as expressed to him in the interviews he conducted, can be relied upon as truly reflecting their thoughts and feelings.

[27] In his first interview, Y. is reported to have been "clear in saying he doesn't want to move"; he became emotional when talking about having to leave family and friends. However, in the second interview he:

> …expressed some openness to moving provided he sees his father "quite a bit" defined as a minimum of once per month for several days and extended periods at other times of the year.

[28] R. expressed opposition to moving in both interviews, and her statements suggested to Mr. Finlay that she was "feeling a lot of anxiety over the proposed move". Mr. Finlay concludes his report with the statement:

> She was not open to any option other than leaving the parenting arrangements the same.

[29] These two factors together – the closeness of the children's relationships with their father and members of his family here in the Lower Mainland, and the children's expressed preferences – militate strongly in favour of the children remaining here. The factors offered by Ms. S. as weighing in favour of relocation simply pale in comparison.

[30] The lengths to which Ms. S. is willing to go in the proposed travel scheme, to address the problem of the children being separated from their father and family

members, are a testament to how deep and important those relationships are. The proposal, however, is completely impractical, and not in the best interests of the children. I reach that conclusion for several reasons:

a) Mr. F.'s work schedule will not allow lengthy absences from the Lower Mainland, nor lengthy time off work for the proposed summer vacation periods;

b) His parenting time, as I have said, has been scheduled around the children's activities, in particular Y.'s early-morning and weekend hockey game and practice schedule. In *Burseth v. Burseth*, 2017 BCSC 2076, Mr. Justice Marchand interpreted the requirement in s.69(4)(a)(ii) of the *FLA* – that the proposed reasonable and workable travel arrangements "preserve" a child's relationships with guardians and important people in their lives – to not require that those relationships remain the same (at para. 45). I would adopt that reasoning, in the context of a s. 69 inquiry into whether a relocation is being proposed in good faith. But a s. 37(2) analysis requires a much deeper consideration of the quality and character of the children's relationships. Here, the relocation, even with the proposed travel arrangements in place, would fundamentally, qualitatively, and detrimentally alter Y.'s relationship with his father. The proposed arrangements, generous as they may be, simply cannot accommodate that relationship in a manner that properly meets Y.'s best interests;

c) The travel plan is also insufficient to maintain the children's relationships with their cousins, aunt and uncles. Those relationships would inevitably be severely weakened, at least;

d) Travel is hard, and the travel schedule, including the children having to adjust to time differences, would be physically demanding for the children; and

e) The frequency of the children' absences from their new home in Stonewall would impair their ability to form new relationships with their peers and become fully involved in new activities in Stonewall, and would risk interfering with their ability to complete school homework.

[31] These practical difficulties also mean that the conditions under which Y. expressed, in Mr. Finlay's words, "some openness to moving", so long as he could see his father "quite a bit" would be rendered unrealistic.

[32] Further, the proposed arrangements would be costly. Ms. S.' finances are said to be a chief motivating factor for the proposed move, but I do not find the she has adequately accounted for the financial burden these travel arrangements would impose.

[33] I accept Ms. S.' evidence as to the direct financial benefits that may accrue to the family from lower housing costs in Stonewall, as to the availability of higher-income work for her husband in Manitoba (at least at present), with an advantageous tax burden. I also accept her evidence as to the burdens she bears as a result of her husband's regular absences from home in order to work there. However, I find the family's financial distress currently is at least in part a consequence of poor choices and poor financial management. I point to three specific indications:

a) Ms. S. acknowledges that the house in which she and Mr. S. now reside was above their price range when they purchased it. As of the date of this hearing, their house was being listed for sale, and their intention was to acquire more affordable housing in the Langley area;

b) When Ms. S. and her husband needed to buy a vehicle in late 2017, after the engine of their Dodge Journey seized, they traded the Journey in for a new Dodge Ram truck, taking on additional debt of $83,000. That loan, and another vehicle loan, account for debt of $125,000, more than one-half the family's unsecured debt. It is not at all clear why this couple, burdened as

they say they are, has not made do with a more modestly priced second-hand vehicle;

c) Ms. S.' Visa statements appear to reveal a pattern of discretionary spending inconsistent with the family being in a situation of financial hardship.

[34] If Ms. S. and her husband find themselves in financial difficulties, the solution lies in budgeting, belt-tightening, and if necessary investigating alternatives such as credit counselling. The appropriate response to their circumstances should not entail disrupting the lives of their children through relocation.

[35] Much of the Ms. S.' affidavit evidence, and of the submissions made on her behalf, was directed at evidence of Mr. F.'s behaviour and attitude towards Ms. S., and towards her new husband and his family. This evidence was primarily submitted in support of Ms. S.'s position that the relocation has been proposed in good faith, being motivated in part through her desire to extricated herself, as much as distance will allow, from what she characterizes as the parties' toxic relationship.

[36] The evidence of Ms. S. in this regard is wide-ranging. She describes Mr. F.'s conduct during a relationship with a girlfriend he had prior to the parties' relationship; his conduct and attitude during the parties' relationship, including fights when she says he pushed her, and most significantly an incident of family violence towards the end of their relationship when he uttered a threat against her, leading to police involvement; and his post-separation conduct.

[37] I indicated above that Ms. S.' denial or disparaging of the children's relationships with their cousins leads me to treat her evidence with some caution. Likewise, I find that her lengthy, detailed criticism of Mr. F.'s conduct over the years is simply excessive, and this undermines the strength of her position. Her first affidavit, which runs to 353 paragraphs – over 61 pages, plus exhibits – reads in parts like a catalogue of his misdeeds and deficiencies of character, including many bits of evidence that could have no conceivable bearing on the issue of relocation. Two examples are her complaint that he spent little time with her and R. when R.

was hospitalized shortly after her birth; and that he never takes the children for haircuts or trims their nails. While there have been, sadly, many points of serious conflict between the parties throughout their relationship, and while Mr. F.'s behaviour has at times been egregious, I am left with the impression that Ms. S. has strained to portray Mr. F. in the worst possible light.

[38] Ms. S.' evidence of Mr. F.'s post-separation conduct includes incidents where he has directed anger towards her in person, and abusive language towards her in text messages; evidence of his past excessive use of alcohol, and her belief that he continues to consume alcohol in the presence of the children (although she also consumes alcohol when the children are in her care); an incident in 2015 when Mr. F. squirted a water bottle at her, in the course of a disagreement between them during one of Y.'s hockey practices; belligerent behaviour towards Mr. S., including one incident of shouting profanities at him outside a hockey arena (which Mr. F. says was provoked by Mr. S.); and intemperate remarks made to or about Mr. S. and his family members, including a series of text messages to Y. in which he belittled Y.'s relationship with Mr. S.' parents, calling them "substitute grandparents" (which Mr. F. says he regrets).

[39] For the reasons I have stated, "good faith" is not an issue in my determination of these applications; to the extent this evidence was offered in support of Ms. S.' "good faith" submissions, it has no relevance. In respect of the analysis of whether relocation is in the best interests of the children, the *FLA* circumscribes the extent to which such evidence can be considered, as follows.

[40] Part 4 of the *FLA* deals with "Care Of and Time with Children", and includes the aforementioned s. 37 provisions, and provisions that govern relocation applications under Part 4, Division 6. Section 37(4) limits the extent to which a court may consider evidence of a person's conduct:

> 37(4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[41] As noted above, ss. 37(2)(g) and (h) specifically require consideration of certain specified forms of family violence. Furthermore, s. 38 requires such consideration to include:

> (a) the nature and seriousness of the family violence;
>
> (b) how recently the family violence occurred;
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> (c) the frequency of the family violence;
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> (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
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> (e) whether the family violence was directed toward the child;
>
> (f) whether the child was exposed to family violence that was not directed toward the child;
>
> (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
>
> (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
>
> (i) any other relevant matter.

[42] Given these statutory provisions, how does this evidence of Mr. F.'s conduct affect the analysis of the children's best interests? The incident in which Mr. F. uttered a threat which led to police involvement, is indisputably an episode of family violence that was directed at Ms. S. I say "indisputably" though I acknowledge Mr. F.'s evidence is that the utterance was made in jest. The children's involvement in that episode and their knowledge and memories of it however appear to be minimal. The incident occurred in July 2014; Y. was then six years old, R. was only three. When Mr. Finlay asked Y. about the incident, he said:

> I remember my dad being in handcuffs, he was fighting with my mom and abusing her, that was what my mom said. I was scared that he wouldn't come back. I don't think about it now. They get along good now. When they talk face to face they aren't mean to each other.

R. recounted her knowledge of the incident when Mr. Finlay asked her to rate her father on a scale of 1 to 10:

> He is the best dad because he works hard to take care of [Y.] and I. I do remember him yelling and my mom yelling and I wish they had done things differently. Once my dad was mad, he hit the stove with his hand and it broke. My mom told me. Most of the time I wasn't around except one time the Police

> came. My dad said he put a hat on my mom's head and pulled it. I felt sad. My brother told me that he wouldn't be coming home. I worry now that if we move, my dad will go away.

[43] I do not find that this incident has substantially affected any of the factors enumerated in s. 37(2), with respect to either child. Specifically, it has not impacted either child's sense of safety, security or well-being, except to the extent that it may have created some lingering anxiety on the part of R. that she might be separated from her father in the future. The violence was situational, and does not indicate any impairment of Mr. F.'s ability to care for the children and meet their needs.

[44] The other incidents that Ms. S. enumerates in her affidavits are largely examples of poor anger management on the part of Mr. F., many of which stemmed from clashes in the parties' parenting styles. Threatening, belligerent, or abusive conduct and communications may form "family violence"; that term is defined in the *FLA* as including psychological or emotional abuse through intimidation, harassment, coercion or threats. (See, for example, the decision of Pearlman J. in *Sandhu v. Bhullar*, 2016 BCSC 59 at paras. 62-66). The other incidents do not rise to the level of family violence, and further the incidents in themselves have not substantially impacted the s. 37(2) factors.

[45] What has affected the children, however – Y. in particular – is this inconsistency in parenting styles, in particular with respect to discipline issues. Mr. F.'s philosophy can be characterized as an "old school" or "tough love" approach. Ms. S. is more permissive and more nurturing. She is opposed to Mr. F.'s approach to parenting; she thinks the approach is not well-suited to Y.'s personality and she sees it as counterproductive. In her first affidavit, she says:

> 143. [D.] describes … that he was raised in a good home and his parents provided well for them. He also notes that he was strapped a fair bit and that his dad was pretty physical with him. I do not believe physical discipline can be described as a good home environment and it is concerning that he thinks that is good parenting for [the children]. [D.] has never been physically abusive towards [the children], but he is very strict with them and with [Y.] in particular who does not respond well to that approach as he is very sensitive.
>
> 144. During our relationship, [D.] often told me how he did not like his father's constant criticism of him and how much he resents him for that. I try to remind

> [D.] in his dealings with [Y.] that he needs to avoid repeating the same mistakes his father made.

[46] Ms. S. does not reinforce Mr. F.'s disciplining of the children. Mr. F. says that Ms. S. and her husband "reward [Y.] and support him in any dispute or disagreement he and I may have". Consequently, he feels his role as a parent is being undermined.

[47] Both parties acknowledge that there was an episode in December 2017 in which Mr. F. felt Y. was treating his sister in an unacceptable manner. Mr. F. reacted by criticizing Y., telling him he did not deserve to be captain of his team, and then refusing to take him to have him stay over on Sunday nights and take him to his Monday hockey practice, for several weeks. In his second affidavit, Mr. F. responded to Ms. S.' description of this incident, saying that it was a "temporary falling out", and protesting that "my occasional tough love approach is being blown out of proportion by [K.]". Yet, in his first affidavit, Mr. F. acknowledged that since December 2017 Y. was "starting to pull away from me a little".

[48] This inconsistency in the parties' parenting styles, and their lack of cooperation, is not in the children's best interests. It must be addressed. I do not, however, find that the need to address this matter justifies relocation.

[49] For the foregoing reasons, I find that relocation is not in the children's best interests.

[50] The respondent's application for permission to relocate to Stonewall, Manitoba, is denied, and the claimant's application for an order prohibiting relocation is allowed.

[51] Mr. F. indicated in the course of this hearing that he is willing to be subject to a conduct order, and to undergo anger management and respectful relationship counselling. He acknowledged that he had anger management issues in the past; he did undergo a lengthy series of counselling sessions in 2014 and 2015, but he also concedes that some of his recent text messages to Ms. S. were "intemperate". His

affidavit evidence shows some measure of self-awareness, but only to a limited extent. It is apparent that he feels considerable frustration with Ms. S., and some hostility to her and to Mr. S. To some extent this may be a result of feeling that his role as a parent has been undermined. He shows little understanding of how his anger and his approach to discipline have negatively impacted the family dynamics.

[52] Having Ms. S. remain with the children in the Lower Mainland will functionally require the parties and Mr. S., in the words of s. 37(2)(i), "to cooperate on issues affecting the [children]", in a manner that has so far eluded them, as respects discipline. Cooperation requires active participation by all three of these adults; but at this point, the onus to change, and to learn new and more effective parenting skills rests with Mr. F.

[53] Therefore, in concert with my order disallowing relocation, in furtherance of promoting the best interests of the children I order the following:

(1) The parties will make a real effort to maintain polite, respectful communications with each other;

(2) The parties will encourage the children to have a good relationship with the other parent, will speak to the children about the other parent in a positive and respectful manner, and will refrain from making negative or disparaging remarks or comments about each other in the presence of the children;

(3) Mr. F. will make a real effort to maintain polite, respectful communications with Mr. S., and will refrain from making negative or disparaging remarks or comments about Mr. S. and members of his family, in the presence of the children;

(4) Ms. S. will encourage Mr. S. to make such effort in respect of his communications with Mr. F., and will encourage Mr. S. to refrain from making negative or disparaging remarks or comments about Mr. F. in the presence of the children;

(5) The parties' communications with the children concerning the outcome of these applications will be limited to explaining to the children that a judge has decided that relocation to Stonewall would not be what is best for them. In all other respects, the parties will not discuss with the children court issues, legal issues, or financial issues related to child support and payment for the children's activities'; and

(6) Within the next six months following from pronouncement of this order, Mr. F. will undertake at least 12 counselling sessions with a qualified counsellor in respect of anger management, respectful relationships, and healthy parenting and discipline methods.

[54] Mr. F. has been substantially successful on these applications, and will have his costs.

"A. Saunders J."