

SUPREME COURT OF YUKON

Citation: *B.-P. v. W.*, 2021 YKSC 2

Date: 20210118
S.C. No.: 20-B0022
Registry: Whitehorse

BETWEEN:

N. B.- P.

PLAINTIFF

AND

W. L. W.

DEFENDANT

Before Mr. Justice P. Kane

Appearances:
Malcolm Campbell
Baird Makinson

Counsel for the Plaintiff
Counsel for the Defendant

RULING

INTRODUCTION

[1] The parties are the parents of twin daughters, L.-R. and A., who were born on March 6, 2019, and will therefore be two years of age on March 6, 2021 (the “Children”).

[2] The mother commenced this action by Statement of Claim and Notice of Application on July 16, 2020.

[3] The father on August 14, 2020, filed a Statement of Defence, a Response to the mother’s Notice of Application and his Notice of Application.

APPLICATION AND INTERIM RELIEF SOUGHT

[4] The mother, by Notice of Application pursuant to s. 33 of the *Children’s Law Act*, R.S.Y., 2002, c. 31 (“*Children’s Law Act*”), ss. 32 and 34 of the *Family Property and Support Act*, R.S.Y., 2002, c. 83 (“*Family Property and Support Act*”), and the *Yukon Child Support Guidelines Regulation*, O.I.C. 2000/63 (“*Child Support Guidelines*”), seeks the following interim orders:

- a. waiver of the Family Law Case Conference requirement;
- b. interim custody of the Children;
- c. leave to relocate the Children from the Yukon to Grand Prairie, Alberta;
- d. access to the father and until further ordered, that such access be supervised and conditional upon him remaining sober and drug-free during such access periods;
- e. that the father pay child support in accordance with the *Child Support Guidelines* since their separation in October 2019 to and be enforced by the Director of Maintenance Enforcement (the “Director”);
- f. that the father provide financial disclosure, including his sworn Financial Statement, his Income Tax returns for the years 2017 to 2019 and a copy of his recent pay stubs; and
- g. that the mother be permitted to obtain passports for the Children without the father’s written permission or consent.

[5] The father in his Response consents to the mother’s requests to waive the Family Law Case Conference requirement, the requested involvement of the Director

and that he provide the financial disclosure requested. He opposes all other application relief requested by the mother.

[6] In his Notice of Application and relying upon the same legislative provisions and guidelines, the father seeks the following interim orders:

- a. that the parties shall share custody of the Children;
- b. that the Children are to reside with each parent during alternating weeks;
and
- c. that the parents each pay child support pursuant to the *Child Support Guidelines* based on such equal, alternating weekly residence of the Children with each parent.

BACKGROUND

[7] The parties are each members of a First Nation.

[8] The plaintiff mother stated that she and the defendant father commenced their common-law relationship in May 2018 and that it ended some 17 months later when she separated from the father in October 2019.

[9] The father “recollects” that his relationship with the mother commenced in 2015 and that upon the March 2019 birth of the Children, they had been together for four and a half years.

[10] It’s difficult to understand how one of these parties is in error by three years as to when their relationship commenced and whether it lasted 17 months or 4.5 years.

[11] The mother alleges that:

- a. the father has a history of consuming non-prescription drugs, excessive consumption and dependency on alcohol and that his use and dependency thereof continues;
- b. the father's use of such drugs and excessive alcohol consumption decreased during her pregnancy but resumed following the birth of the Children;
- c. the father choked and assaulted her on one occasion, which led to the involvement of police;
- d. she terminated their relationship and separated from the father in October 2019; and
- e. that the father's dependency on and excessive consumption of alcohol has continued since their separation including during periods when he has had care of the Children and he thereby placed the Children at risk of harm and injury.

[12] The mother further alleges the father has been inconsistent in his efforts and time with the children and generally only does so in response to her initiatives and planning to make that contact happen.

[13] The father denies the above allegations, including his use and dependency on alcohol and use of non-prescription drugs.

[14] The Children, since the October 2019 separation of their parents, have primarily resided with the mother.

[15] The father has had intermittent periods of access with the Children since the parties' October 2019 separation. Each party blames the other for his limited time with the Children since then.

[16] Each of the parties, since their separation, has commenced a relationship with another partner. The mother's new partner took a leave of absence from his employment in the Yukon for new employment in Grand Prairie, Alberta, where the mother seeks leave to relocate the Children.

[17] The mother wishes to and has been accepted in an educational program offered in Grand Prairie which she states is not offered in the Yukon. The course runs between January 11 and September 19, 2021. She applied for and will be receiving additional funding from her First Nation to undertake that educational program. She believes that such educational course will better qualify her for future employment opportunities.

[18] It is the parties' intentions that they will return to court by the end of August 2021 to review the orders now granted and to determine any other matters. The plans of the mother as to residency and whether she intends to return to the Yukon should be better known in August 2021.

APPLICATION AFFIDAVITS

- [19] The mother filed six affidavits on her Notice of Application, consisting of:
- a. three of her own, filed on July 16, September 2 and December 9, 2020;
 - b. an affidavit from the Children's paternal grandfather, filed on July 16, 2020;
 - c. an affidavit from her aunt, filed on December 8, 2020; and
 - d. an affidavit from her grandmother, filed on December 8, 2020.

[20] The mother in her third affidavit describes herself as being of the City of Grand Prairie, Alberta, as compared to her two prior affidavits in which she describes herself as being of a community in the Yukon.

[21] The father filed five affidavits including:

- a. his three affidavits, filed on August 14, October 8 and December 4, 2020, in which he describes himself as of Whitehorse;
- b. an affidavit of his lawyer's legal assistant filed on August 14, 2020, which attaches copies of several emails and notes in support of the father; and
- c. an affidavit from the same paternal grandfather, his father, filed on December 4, 2020.

ALLEGED MISCONDUCT

Mother's Allegations

[22] The mother states that her relationship with the father was difficult prior to becoming pregnant as the father was jealous and accused her of being unfaithful. She states however that the father became supportive and decreased his consumption of drugs and alcohol when she became pregnant and that their relationship thereupon improved.

[23] The mother's pregnancy became high risk. Her required specialized medical care necessitated the parties relocate and live in Vancouver for five months. Following the March 6, 2019 birth of the Children, the family on April 19, 2020 returned to live in Whitehorse.

[24] The mother states that their relationship deteriorated following the birth of the Children due to the father's absence for work, the fact he would come home late in

order to go drinking with his friends and his then increased consumption of alcohol and drugs.

[25] She recounts an instance of the father arguing with her and pushing her to the ground while she held one of the infants. Police on that occasion attended however no charges were laid against the father. The father denies pushing the mother to the ground and states that the mother on this occasion yelled and slapped him.

[26] The mother separated from the father in October 2019. She thereupon resided with the Children in a Yukon community. She states the father during the first three months following their separation infrequently took the initiative to see the Children and generally only did so in response to her initiative in suggesting and bringing the Children to Whitehorse to see their father. She acknowledges that on occasion, she denied the father access because he was then intoxicated.

[27] The father had the Children for two days in January 2020 and according to the mother, began to “sober up”. The parents thereupon agreed that the Children would reside with each of them on a week-about rotation.

[28] Due to a death of one of the mother’s parents, the Children resided with the father for 11 consecutive days in February 2020.

[29] The mother states that the Children however were being returned to her with rashes or illnesses, that the father resumed getting high on drugs and being intoxicated with alcohol while he had the Children in his care and that he refused to reveal his activities and plans with the Children. She states she found weapons and sharp objects in the father’s home which were accessible to and placed the Children at risk.

[30] The mother agreed to the Children spending several days with the father commencing on March 9, 2020. She states that the father on March 10 told her that the Children were being cared for by the paternal grandfather at the defendant's home. The mother checked that house however no one was home.

[31] The father then told the mother that his sister was caring for the Children, however that sister advised the mother she did not have the Children.

[32] The paternal grandfather thereupon told the mother that the Children were not in his care and he believed they were with M.B., the father's new girlfriend. The mother alleges Ms. B. is known to use crack cocaine. The mother thereupon spoke to and confronted the father with the above information learned. She states the father thereupon acknowledged that the Children were with Ms. B. and that he had misled her because he knew she would object if he had told her that Ms. B. was caring for them.

[33] The mother cites two instances when her aunt and the defendant's father found the defendant unconscious from drugs or alcohol while he had the Children in his care. She thereupon in May 2020 decided the father's access with the Children had to be supervised.

[34] The mother states the father, between May 26 and July 26, 2020, only saw the Children twice and with the supervision of his father or his sister.

[35] The mother states the Children were with the father between:

- a. June 26 to 29, with the supervision of his sister; and
- b. July 6 to 9, 2020.

[36] The second visit between the Children and their father commencing on July 6, ended early on July 9 as the mother learned that the father was then consuming

alcohol. That resulted in Family and Children Services being called, intervening and it placing the Children with a third party until the mother travelled from a Yukon community to pick them up.

[37] The July 9, 2020 notes of the Family and Children's Services representative (the "Worker") state that the father:

- a. appeared to have been consuming alcohol and noted open or empty beer cans in a baby stroller and on the kitchen counter;
- b. had very red eyes;
- c. spoke slowly and in a careful manner;
- d. stated that everything in the house was family oriented, however the Worker noted that there was a large amount of debris covering the floors which the Children could choke on as well as a food blender and dirty diapers; and
- e. was argumentative and aggressive towards the Worker.

[38] The father responded to the Worker that children enjoy playing with household articles, that the blender then on the floor had no blades and that he takes out dirty diapers when enough of them have accumulated.

[39] The mother states the father had been partying and consuming alcohol with others on the evening of July 8, 2020 and had hired a babysitter in order to do so. J.J. was the July 8 and 9 babysitter who challenged the Worker in attendance on July 9. J.J. was charged for operating a motor vehicle on July 11, 2020 while impaired with alcohol. The mother was concerned the father was leaving the Children in the care of other users of drugs and alcohol.

[40] The mother states that as she occasionally came to shop in Whitehorse, she telephoned and twice arranged with the father in July 2020, for him to visit with the Children and that they agreed upon a time and place to meet in Whitehorse in order to deliver the Children. She states those agreed upon visits were cancelled as the father, on both occasions, was intoxicated and was unable to come and pick up the Children.

[41] The mother on August 19, 2020 departed with the Children for several weeks to visit her boyfriend in Grand Prairie. She states she told the father in advance about this planned trip, asked if he would like to see the Children before August 19 and that the father said yes.

[42] The mother states she brought the Children to Whitehorse and the father had a good visit with them on August 15, 2020. She states she offered to bring them again on August 16 or 17, however the father stated he would be working those days in another Yukon community. The mother attaches a photograph she states of the father partying with friends on August 17, 2020. The father replies that the photograph exhibit is unclear and that prevents him from identifying the people in it.

[43] The mother states that she then again asked the father whether he wished to see the Children before her August 19 planned departure, however the father said no because he wanted to be “straight” for any visits with his Children.

[44] The mother states that the paternal grandfather arranged to come to Grand Prairie to visit with the Children during her then visit with her boyfriend. She states the grandfather told her that the father was unable or unwilling to participate in this visit with the Children in Grand Prairie.

[45] The mother states that in August 2020, she proposed that a FaceTime schedule be agreed upon between the father and the Children, however the father thereafter never FaceTimed with the Children.

[46] The mother returned with the Children from Grand Prairie to the Yukon in early October 2020 and following the required Covid two weeks of isolation, the Children resided with the father between October 30 to November 13, and from November 17 to 29, 2020. The mother thereupon returned with the Children to Grand Prairie. The mother states these access periods generally went well, however she noted the father appeared to be impacted by alcohol and that she saw empty beer cans inside his home when she picked up the Children on November 29, 2020.

[47] Subject to him not using alcohol or drugs while the Children are in his care, the mother proposes that the father will continue to have access:

- a. during periods when she returns to the Yukon;
- b. between March 12 to 26, 2021, when she proposes to bring the Children back to the Yukon;
- c. for alternating weeks during the months of July and August 2021, when she plans to reside in the Yukon; and
- d. in Grand Prairie which she will accommodate, if the father is willing to exercise access there.

[48] The father's rejects the mother's above access proposal as insufficient. He wants:

- a. to have the Children reside for three weeks with him, every two months; and

- b. that as part of his above three weeks care of the Children every two months, he and his father will drive to Grand Prairie to pick up and return and drop off the Children, provided the mother agrees to pay one half of his travel and accommodation costs to exercise such access.

[49] The mother replies that her limited financial support from her First Nation for child care and for her educational program costs which she is enrolled in between January 11 and September 19, 2021, prevents her contributing towards the transportation and accommodation costs every two months of the father and the paternal grandfather as the father proposes.

Father's Allegations

[50] The father states:

- a. he did not come home late after work while they lived in Vancouver following the birth of the Children because he would go out partying with others;
- b. that following the Children's birth, he did not start to consume heavy levels of drugs and alcohol;
- c. following their return from Vancouver after the birth of the Children, the mother frequently left their home in Whitehorse and that he had concerns as the mother on occasion attended with the Children at a home where there were frequent parties and use of alcohol and drugs; and
- d. that on the occasion of the police attendance referred to by the mother, she had yelled at and struck him however he did not on this occasion choke and push the mother to the ground as she alleges.

[51] In his August 14, 2020 affidavit, the father:

- a. states the mother prevented him from seeing the Children for “about one month” following their October 2019 separation and that his absence in not seeing the Children did not continue for three months as she alleges;
- b. denies he showed little interest or initiative to see the Children during the three months she refers to;
- c. states the week-about residence of the Children with each parent commenced “a month after our separation [which would be in November or December 2019]. This continued until the middle of June of 2020 when the Plaintiff unilaterally terminated my time with my children.”;
- d. denies the mother’s allegations that the Children frequently arrived after access periods with him with rashes or illnesses, that he was drinking heavily and using drugs while caring for the Children and that she found weapons, sharp objects and a crack pipe in his home in areas accessible to the Children;
- e. states the Children were sick frequently when the mother delivered them to him, which sicknesses, despite his care, sometimes continued until he returned the Children to the mother;
- f. denies ever being high on drugs or drunk with the Children in his care and denies there was a crack pipe in his home;
- g. denies the allegations of his own father who alleges that he found the defendant at home on May 26, 2020 while the Children were in his care,

essentially unconscious and of being unable to wake him due to his alcohol and/or drug consumption; and

- h. is concerned that the mother's proposed move to Grand Prairie has not been carefully considered, as that move would essentially terminate his relationship with the Children as the mother's dependency on social assistance will limit her ability to return the Children frequently to the Yukon as she states is her intention and that she has not disclosed where the Children will reside in Grand Prairie or how she will support their needs.

[52] Despite not receiving child support from the father and her remaining at home to care for the Children to date, there is no evidence the mother has not adequately financially supported the Children to date.

[53] Three emails and two letters of support of the father were sent to the father's lawyer and are attached to the above affidavit of that lawyer's legal assistant.

[54] In addition to these five communiques not being sworn statements, they do not reveal how often or how much time those individuals have been present with the father while he had the Children in his care.

[55] Those communiques are also silent regarding the issue as to the father's level of consumption of alcohol and drugs.

[56] Such communiques affirm the father's popularity amongst adults. The fact that the father conducts and cooks wonderful dinner parties for other adults is not relevant as to what is in the best interest of the Children.

[57] Such communiques in support of the father are not relevant evidence for the above reasons.

ANALYSIS OF ISSUES

Waiver of Family Law Case Conference Requirement

[58] The requirement for a Family Law Case Conference prior to argument of these applications is waived on consent of the parties.

Interim Custody and Access

[59] The first issue to be determined is interim custody until the end of August 2021 when it is agreed that these applications and the interim orders now made should be reviewed by the Court.

[60] Interim custody must be determined prior to the determination of the mother's request for leave to relocate the Children to Grand Prairie.

[61] The relevant legislation regarding custody, access and the interim relief now sought by these parties are contained in ss. 29 to 31 and 33 of the *Children's Law Act*.

PART 2

CUSTODY, ACCESS AND GUARDIANSHIP

...

Purposes of Part 2

29 The purposes of this Part are to

- (a) ensure that applications to the courts dealing with
 - (i) custody,
 - (ii) incidents of custody, or
 - (iii) access

to children will be determined in accordance with the best interests of the child; and

...

Best interests of child

30(1) In determining the best interests of a child for the purposes of an application under this Part in respect of custody of or access to a child, the court shall consider all the needs and circumstances of the child including

(a) the bonding, love, affection and emotional ties and between the child and

(i) each person entitled to or claiming custody of or access to the child, and

(iii) persons, including grandparents involved in the care and upbringing of the child;

(b) the views and preferences of the child, if those views and preferences can be reasonably determined;

(c) the length of time, having regard to the child's sense of time, that the child has lived in a stable home environment;

(d) the ability and willingness of each person applying for custody of the child to provide the child with guidance, education, the necessities of life and any special needs of the child;

(e) any plans proposed for the care and upbringing of the child;

(f) the permanence and stability of the family unit with which it is proposed that the child will live; and

(g) the effect that awarding custody or care of the child to one party would have on the ability of the other party to have reasonable access to the child.

(2) The past conduct of a person is not relevant to a determination of an application under this Part in respect of custody of or access to a child unless the conduct is relevant

to the ability of the person to have the care or custody of a child.

(3) There is no presumption of law or fact that the best interests of a child are, solely because of the age or the sex of the child, best served by placing the child in the care or custody of a female person rather than a male person or of a male person rather than a female

(4) In any proceedings in respect of custody of a child between the mother and the father of that child, there shall be a rebuttable presumption that the court ought to award the care of the child to one parent or the other and that all other parental rights associated with custody of that child ought to be shared by the mother and the father jointly. S.Y. 2002, c.31, s.30 (Emphasis added)

Division 2 Custody and access

Rights and responsibilities

31(1) Except as otherwise provided in this Part, the father and the mother of a child are equally entitled to custody of the child.

(2) A person entitled to custody of a child has the rights and responsibilities of a parent in respect of the person of the child and must exercise those rights and responsibilities in the best interests of the child.

(3) If more than one person is entitled to custody of a child, any one of them may exercise the rights and responsibilities of a parent on behalf of them in respect of the child.

(4) If the parents of a child live separate and apart and the child lives in the care of one of them with the consent, implied consent or acquiescence of the other of them, the right of the other to exercise the entitlement to custody and the incidents of custody, but not the entitlement to access, is vested in the parent with the care of the child until an agreement between the parents or an order otherwise provides.

(5) The entitlement to access to a child includes the rights to visit with and be visited by the child and the same right as a

parent to make inquiries and to be given information as to the health, education and welfare of the child.

(6) In addition to rights referred to in subsection (5), the parent not having care of a child shall have

...

(b) the right to give consent to urgent medical treatment for their child if the consent of the parent entitled to the care and custody of the child cannot expeditiously be obtained.

...

(8) Any entitlement to custody or incidents of custody or to access under this section is subject to alteration by an order of the court or by an agreement between the parents or other persons entitled to the custody or access.

...

Application to the court

33(1) A parent of the child, or any other person, including the grandparents may apply to the court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of the child.

(2) In an application under subsection (1) the court

(a) may grant the custody of or access to the child to one or more persons;

(b) may determine and make an appropriate order about any aspect of the incidents of the right to custody or access; and

(c) may make any additional order the court considers necessary and proper in the circumstances. S.Y. 2002, c.31, s.33 (Emphasis added)

[62] The father's denial of excessive use and dependency on alcohol and his use of non-prescription drugs is disproven on the evidence. The evidence is not limited to the

mother's allegations of such. It includes the following affidavit evidence of his dependency and excessive use of alcohol and/or non-prescription drugs:

- a. the first July 16, 2020 affidavit of the paternal grandfather as to the events on May 26, 2020, which allegations are not retracted in that grandfather's second affidavit: paras. 4-7 and 10;
- b. the affidavit of the maternal aunt, regarding three events since the parties separated, including on November 21 and 28, 2020, of the father while having the Children in his care, being inebriated from alcohol and/or high from drugs, to the point she was unable to wake him up, of him later then waking up and staggering to stand and of him being unable to focus and respond to her questions: paras. 4,7 and 8;
- c. the affidavit of the maternal grandmother, who witnessed the father passed out due to alcohol consumption in Vancouver, her observation of the then numerous boxes of empty beer containers with their accompanying smell in and outside the parties' then residence and the father's refusal on one occasion to close the windows despite one infant then being cold to the touch and the grandmother's fear the Children would become ill: paras. 2, 3 and 7; and
- d. the reports of the Worker filed as exhibits.

[63] The mother's allegations regarding the father's level of consumption and dependency on alcohol and/or non-prescription drugs are confirmed by this other evidence. The father's credibility in denying such conduct is thereby impaired.

[64] The father's ability to care for the Children on the evidence is currently impaired by his addiction or dependence on alcohol as well as his use of non-prescription drugs. The father's dependency and use of excessive alcohol and drugs as alleged places these Children at risk. Regardless of the reason for such dependency and use, the father has no right to subject his Children to the risk his use of such substances represents for which he alone is responsible to eliminate.

[65] The father's dependency upon and excessive consumption of alcohol and/or drugs relates directly to the factors listed in ss. 30(1), 30(1)(d) and (f), 30(2) and 30(4) of the *Children's Law Act*.

[66] The parties and the Children fortunately have support from extended family members. That support from extended family members however is not a substitute for the constant, 24/7 care required by infants by the parent then caring for them.

[67] The father's generalized and non-specific concerns and allegations against the mother and her care of the Children are contradicted by the above three affidavits of other family members who report the mother to be a loving, competent and caring parent of these infants.

[68] This is not a case of the mother making unsubstantiated allegations against the father in order to keep and deny the father access with the Children. This mother has done the exact opposite in promoting contact between and for the benefit of the Children and their father, despite the errors and backsliding she has seen regarding the father's use of alcohol and drugs.

[69] The Court does not doubt that the father loves these Children. His love of them however is not the issue. Love of one's child on its own, is insufficient to protect and promote the best interest of a child.

[70] The issue is the father's lack of sufficient personal development and self-control to prioritize, protect and promote the interests of these infants.

[71] For the above reasons, the mother is granted interim custody of the Children pending the review thereof in August 2021. Hopefully the father in the interim will take concrete measures to address his alcohol and drug dependency and thereby improve and promote the interests of the Children and himself.

[72] The father shall have reasonable access with the Children, which is not in dispute, subject to the terms thereof including supervision.

[73] The father's addiction to or dependency upon alcohol and drugs necessitates that there should be some level of supervision in order to safeguard and protect the Children until the father has taken measures to remedy such addictions.

[74] While the Children are in his care, the father is prohibited:

- a. from consuming alcohol or non-prescription drugs;
- b. from having the Children cared for by M.B., the father's new girlfriend, by J.J., or by anyone who consumes excessive amounts of alcohol or uses non-prescription drugs;
- c. from having the Children present in any social gathering where other participants are consuming alcohol or non-prescription drugs; and

- d. from placing the Children in the care of anyone who consumes alcohol while caring for such infants or is known to have used non-prescription drugs.

[75] The other terms as to access will be impacted if the Court grants the mother's application to relocate the Children to Grand Prairie. Such other terms of access accordingly will be determined following decision of the relocation issue.

PASSPORTS

[76] The mother's request that she be entitled to seek passports for the Children without the father's consent is currently academic given the present recommendations from health authorities against travel outside of Canada and the parties' anticipated return of these applications by August 2021. Such issue accordingly is adjourned.

LEAVE TO RELOCATE

[77] The father's time with the Children, as indicated, commenced as week-about access in January 2020 which the mother then terminated by May due to reports she was receiving as to the father's alcoholic condition. The father's access thereafter included material but sporadic periods of time. There have been as stated, offered periods of access which the father has not accepted or has not then been in a condition to perform.

[78] The distance between Grand Prairie and Whitehorse, the current Covid-19 isolation requirements of those jurisdictions and the cost and time to transport the Children between these locations are considerable.

[79] The distance between Whitehorse where the father lives and Grand Prairie is just over 1,500 kilometres. That is a long drive for these parents and for the infant Children.

[80] Traveling between and by residents of Alberta and the Yukon currently requires Covid-19 fourteen-day isolation periods upon arrival in that other jurisdiction.

[81] The linkage to Grand Prairie as stated is:

- a. the mother's current partner taking a leave of absence from his employment in the Yukon in order to work for an unidentified period in Grand Prairie;
- b. The mother learning about, applying to and being accepted into a business administration and tourism event planning course in Grand Prairie which runs between January 11 and September 19, 2021 and is not an educational course available in the Yukon;
- c. The mother obtaining financial support to pursue such education program from her First Nation; and
- d. The mother's hope that such educational program will better position her to thereafter become gainfully employed, thereby improve her capacity to care for her herself, for the Children and therefore promote the best interests of the Children.

[82] The requested leave to relocate therefore is not simply a case of a parent wishing to pursue a romantic interest. Nor is this leave sought indefinitely as the mother's plans after the September 19, 2021 completion of the educational program she seeks to pursue are currently unknown. The mother reserves the right however to seek leave to permanently live outside of the Yukon upon the August 2021 return of these applications.

[83] Applications for leave to relocate like this are governed by the principles in *Gordon v. Goetz*, [1996] 2 S.C.R. 27.

[84] The case in *Gordon* involved a request to vary an existing court determination of custody to the mother and access to the father. The mother subsequent to those awards wished to relocate with the child. The father objected to the proposed move and brought an application to change the existing order and sought custody. The mother in response sought leave to relocate with the child.

[85] The Supreme Court of Canada in *Gordon* decided the case under s. 17(5) of the *Divorce Act*.

[86] The parties in the present case never married and their applications are not brought under that legislation. The principles in *Gordon* however remain relevant to this Court's determination of this requested leave to relocate.

[87] The Supreme Court of Canada in *Gordon* stated:

49 The law can be summarized as follows:

1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.

5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
 6. The focus is on the best interests of the child, not the interests and rights of the parents.
 7. More particularly the judge should consider, *inter alia*:
 - (a) the existing custody arrangement and relationship between the child and the custodial parent;
 - (b) the existing access arrangement and the relationship between the child and the access parent;
 - (c) the desirability of maximizing contact between the child and both parents;
 - (d) the views of the child;
 - (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
 - (f) disruption to the child of a change in custody;
 - (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.
- 50 In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

[88] The mother has met the threshold test in demonstrating a material change in circumstances affecting the Children as her proposed relocation of the Children to

Grand Prairie would constitute a material change in circumstances affecting the Children's regularity of access with their father.

[89] The custodial relationship on the evidence between the mother and the Children is loving, protective and positive.

[90] The existing access arrangement between the father and the Children has varied. The father loves his daughters, has acted on some occasions as a responsible parent, but has acted irresponsibly on other occasions in failing to protect and exposing the Children to his lack of care and risk of harm.

[91] The desirability of maximizing the Children's contact with each parent generally weighs against granting leave to relocate.

[92] The father however has not presented a plan or details as to how much time he can or will be with the Children while in his care, such as his work commitments and who he proposes as a child-care provider when he is at work. The mother on the other hand has provided a plan for the Children's care when she would be at school between January and September 2021 and would otherwise be with the Children.

[93] The views of these infants cannot be ascertained due to their age.

[94] The employment marketability of the mother may improve upon successful completion of her proposed educational program. Enhanced employment opportunity for her would benefit the Children's longer-term interests.

[95] The Court believes there would be disruption in the lives of these two infants and risk to them if their custody was to revert to the father.

[96] Factors such as change of school and community are not material at this time due to their age.

[97] The Children's young age diminishes the level of impact their December 2020 to September 2021 stay in Grand Prairie would produce regarding the other listed factors but does not eliminate all such impact, as it would result in less time and frequency with their father and with the extended members of the two families.

[98] Based on the above factors which includes the personal work the father needs to undertake; the mother's request for leave to relocate the Children to Grand Prairie, Alberta until completion of her educational course on September 19, 2021 is granted, subject to the decision of this Court in August 2021.

[99] The mother is required to:

- a. immediately provide the father with her current address where she and the Children are and will be residing, as well as any future change of address;
- b. to not move and relocate the Children outside of Grand Prairie, Alberta, unless she resumes residence in the Yukon, in which case she shall then immediately advise the father of her Yukon address;
- c. advise the father immediately in the event either child shows signs of sickness, injury or need of medical attention and to provide him with full details thereof, including the name of any health care provider involved in the treatment of the Children.

Additional Terms of Father's Access

[100] The father's interim access with the Children until the return of these applications in August 2021 or further court order, shall be pursuant to the following terms:

- a. the mother shall bring the Children to the Yukon on March 12 and June 30, 2021 in order to permit the father to exercise access with his Children;

- b. the father shall have access and care of the Children from 10 AM on March 12 and 10 AM on March 26, 2021, provided he confirms his wish and commitment to do so in writing to the mother on February 26, 2021;
- c. the Children shall reside in the Yukon between July 1 and August 31, 2021, during which time they shall reside during alternating weeks with each parent, provided the father in writing confirms to the mother his wish and commitment to do so by May 1, 2021;
- d. the father's alternating weeks of access with the Children between July 1 and August 31, 2021, shall commence at 10:00 AM on Saturday, July 3, until 10:00 AM on Saturday, July 10, 2021, with such weekly schedule to repeat every second week thereafter. Each parent shall drive and deliver the Children to the other parent's home for the commencement of the Children residing with that other parent during the following week. The father's final "week" of access during those two months shall end at 10:00 AM on Tuesday, August 31, 2021;
- e. subject to eight days prior written confirmation and commitment by the father of his intention to do so, as well as three days prior written re-confirmation thereof by him, the father shall be entitled to two consecutive weeks of access and care of the Children, from and until 10:00 AM on Saturdays i) between January 30 and February 13, 2021, and ii) between May 8 and 22, 2021. For such periods of access, the parties shall each drive to and exchange the Children to the other parent at 10:00 AM on January 30 and February 13, and/or on May 8 and May 22, 2021, at the

front door of the Toad River Lodge located in Toad River, British Columbia, which is approximately one-half way between Whitehorse and Grand Prairie. Due to the length of the drive and the young age of the Children, these two periods of access are conditional upon a member of the father's family accompanying the father for his pick-up and return of the Children to the mother in Toad River. Each parent is responsible for any costs they incur regarding such two access periods by the father;

- f. the consumption prohibitions as stated in para. 74 apply during all periods of the father's access with the Children;
- g. the father during his periods of access is required to arrange for a member of his family to verify the status of the Children each evening prior to the Children being put to bed and to instruct such family member(s) of the requirement that they are to immediately advise the mother if the father on any such occasion appears to have consumed alcohol, non-prescription drugs, or is then in the presence of anyone who appears to have consumed such substances;
- h. if required to do so, the father during periods of access may only leave the Children during the evening or overnight with a member of his immediate family and is required to immediately advise the mother in writing in such event, including the name of his family then caring for the Children;
- i. the father during the day may only leave the Children in the care of a member of his family or with someone who carries on the business or

occupation of child day-care provider and is required to immediately advise the mother in writing of the name of such person;

- j. the father is required to advise the mother immediately in the event either child shows any sign of sickness or injury and to provide the mother with full details thereof including the name of any health care provider involved on that occasion; and
- k. the father shall be entitled to communicate with the Children by telephone or by electronic platform, up to three times per week while they are in the care of the mother, provided the father proposes a reasonable weekly, infant time-appropriate schedule he is willing to commit to and performs.

Child Support

[101] The mother seeks \$378 of monthly child support based on the *Child Support Guidelines* and the father's anticipation of earning some \$25,000 in 2020, as well as child support arrears at that rate since their October 2019 separation.

[102] The father has not paid child support since the parties separated in October 2019.

[103] The mother states she has been living on Social Assistance since March 2020, in the amount of \$1,212 per month, which equates to \$14,544 per year. It appears such Social Assistance or financial support from her First Nation has increased recently to include funding for her upcoming educational program but remains low.

[104] The father states that:

- a. he and the mother jointly received social assistance through Indigenous and Northern Affairs Canada for three or four years; and

b. he has operated his own business since June 2019.

[105] The father's Notices of Assessment from the Canada Revenue Agency indicate his Line 150 income was:

- a. \$0 in 2017;
- b. \$1,456 in 2018; and
- c. \$9,018 in 2019.

[106] Despite the above limited declared income, the father states that he owns a three-bedroom home.

[107] The mother alleges the father does work for payments "under the table" and is understating his true income.

[108] The following provisions in ss. 32 and 34 of the *Family Property and Support Act*, are relevant as to this claim for interim child support.

Support obligation of parent

32 Every parent has an obligation, to the extent the parent is capable of doing so, to provide support for their child. S.Y. 2002, c.83, s.32

...

Order for support

34(1) A court may, on application, order a person to provide support for their dependants and determine the amount thereof.

[109] The father is required and should be paying child support pursuant to the above legislation.

[110] For the purpose of calculating his child support obligation, the Court assumes the father's 2020 annual income is, as he indicates, \$25,000.

[111] The father accordingly is ordered to pay \$378 of interim child support on the first day of each month, effective January 1, 2021.

CHILD SUPPORT ARREARS

[112] The Court is unaware of the specific date of separation. The father's stated income is low.

[113] The father has not filed his past income tax returns nor his current Financial Statement, which may disclose information as to his full income in 2020.

[114] Relying upon the father's expectation that his 2020 annual income is \$25,000, the Court without prejudice to any future court ordered adjustment thereto, orders the father to pay the mother retroactive child support at the rate of \$378 per month since July 1, 2020. The amount of such arrears to December 30, 2020 is \$2,268.

[115] Payment of interim child support and the arrears thereof shall be made to, and be enforced by, the Yukon Director of Maintenance Enforcement.

DOCUMENTATION TO BE SERVED AND FILED

[116] Pursuant to the *Child Support Guidelines*, as enacted under the *Family Property and Support Act*, the father is required and hereby directed to comply with and serve the mother by June 30, 2021, with the applicable following documentation:

Obligation of applicant

19.(1) ...

(a) a copy of every personal income tax return filed by the parent for each of the three most recent taxation years [including the year 2020];

(b) a copy of every notice of assessment and reassessment issued to the parent for each of the three most recent taxation years [including 2020];

...

(d) if the parent is self-employed, for the three most recent taxation years [including 2020];

(i) the financial statements of the parent's business or professional practice, other than a partnership, and

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the parent does not deal at arm's length;

(e) if the parent is a partner in a partnership, confirmation of the parent's income and draw from, and capital in, the partnership for its three most recent taxation years [including 2020];

(f) if the parent controls a corporation, for its three most recent taxation years [including 2020],

(i) the financial statements of the corporation and its subsidiaries, and

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;

...

(h) in addition to any income information that must be included under paragraphs (c) to (g), if the parent receives income from employment insurance, social assistance, a pension, workers' compensation, disability payments or any other source, the most recent statement of income indicating the total amount of income from the applicable source during the current year, or if such a statement is not provided, a letter from the appropriate authority stating the required information; and

(i) a sworn statement of the personal net worth of the parent showing the value of all of the parent's assets and liabilities.

LIMITING PROCEEDINGS TO YUKON

[117] In order to avoid possible tactical advantages due to distance, any resulting time delays and the associated increased costs thereof, Courts outside of the Yukon are requested to not determine and to redirect either of these parties to the Supreme Court of Yukon if court proceedings are commenced in another jurisdiction regarding these Children and/or their financial support.

COSTS

[118] Any party seeking a cost award regarding this hearing shall within twenty days from the date hereof, serve and file written submissions seeking the same, together with a draft Bill of Costs and a copy of the time docketed claimed.

[119] Any reply to a request for costs shall be in writing and served within fourteen days after being served by the party seeking costs. Such reply shall include a copy of the time docketed incurred by such party opposing the costs requested.

A handwritten signature in black ink, appearing to read 'Kane', is written over a horizontal line.

KANE J.