

SUPREME COURT OF YUKON

Citation: *[AA] v [CDC]*,
2026 YKSC 63

Date: 20260728
S.C. No.: 25-B0037
Registry: Whitehorse

BETWEEN:

[A.A.]

PLAINTIFF

AND

[C.D.C.]

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff

Christiana Lavidas

Counsel for the Defendant

Shayne Fairman

REASONS FOR DECISION

Overview

[1] This is an application by the plaintiff mother [A.A.], for primary residence of the child of the relationship, [A.B.C.D.] and the ability to relocate to the [redacted] region of British Columbia with her. The defendant father [C.D.C.] objects on procedural and substantive grounds. These reasons will address the father's objection to a decision on an interim basis rather than after a trial; and whether the mother's proposed relocation to British Columbia and request for primary residence are in the best interests of the child. It will also briefly address residential time and decision-making responsibility.

[2] [A.B.C.D.] is seven years old. She has a complex diagnosis and special needs, a significant consideration in this case. [A.B.C.D.] has two biological parents who love her very much and are in a high conflict relationship with one another.

[3] As stated in previous decisions, relocation cases are among the most difficult in family law – ‘excruciating for the parents and a daunting task for the courts’, ‘gut-wrenching’ and having ‘a profound effect on all members of the family’ (*ENAG v JSP*, 2024 YKSC 31 at paras. 3, 5 and 110). This is because if relocation is permitted, the relationship between the child and the parent who is not relocating will be unavoidably impacted. If relocation is not permitted, the parent seeking to relocate will be prevented from pursuing a new chosen path.

[4] The sole concern of the court in deciding these cases is the best interests of the child. “The crucial question is whether relocation is in the best interests of the child, having regard to the child’s physical, emotional and psychological safety, security and well-being. This inquiry is highly fact-specific and discretionary” (*Barendregt v Grebliunas*, 2022 SCC 22 (*Barendregt*), at para. 152).

Brief conclusion

[5] It is in [A.B.C.D.]’s best interests at this time to relocate with her mother to British Columbia. I know this will be an immense disappointment to the father. The primary reasons for this decision are: the mother is the primary caregiver and source of stability for [A.B.C.D.]; she has worked hard and continues to work hard to find the right supports for [A.B.C.D.] to meet her complex needs; in British Columbia she will be assisted by her sister and her family in providing more stable support for [A.B.C.D.]; although the father clearly loves [A.B.C.D.] and is a good parent, he has been an

inconsistent presence in [A.B.C.D.]’s life and has demonstrated his willingness to place his interests over those of [A.B.C.D.]. His pattern of different jobs, homes, partner relationships, and residences in various geographic locations does not inspire confidence that he will be able to provide the stability that [A.B.C.D.] requires.

[6] Extensive affidavit evidence was filed for this application, especially by the mother. It is not possible to address every aspect of the evidence in these reasons, but I have reviewed everything that was filed as well as the oral submissions.

Issues

- i) Should the question of relocation be decided by an interim application?
- ii) If yes, should the mother be permitted to move to [redacted], British Columbia with [A.B.C.D.]?
- iii) What should the residential schedule for [A.B.C.D.] be?
- iv) Who should have decision-making responsibility for [A.B.C.D.]?

Background

[7] The parties have had a cyclical relationship over the last seven or eight years. The evidence of the changing nature of their relationship before their separation is murky, including the date of their final separation, over which they disagree. They met in February 2017 in Victoria, British Columbia. In April 2017, the mother moved to Iceland to live with the father where he was working as [redacted]. Their child [A.B.C.D.] was born on [redacted]. The father moved for work to a different community in Iceland in July 2019 approximately two hours away from the mother and [A.B.C.D.] He returned to their shared home on weekends – six-nine days per month. This continued until February 2020.

[8] The family then decided to move to [redacted] Yukon where the father obtained a temporary teaching position. They arrived in [redacted] in August 2020.

[9] In May 2021, the mother left [redacted] with [A.B.C.D.] to visit with family in southern British Columbia for the summer, using a mini van for travel. The father joined them for a week's vacation.

[10] In August 2021, the father obtained a permanent teaching position in [redacted], Yukon. The mother agreed to return to the Yukon in September 2021, but chose to live in Whitehorse, not [redacted]. She shared a house with two roommates temporarily until she moved to her own apartment in December 2021, in [redacted] where she still lives today. The father returned to Whitehorse from [redacted] on weekends to be with the mother and [A.B.C.D.] during the 2021-22 school year.

[11] In September 2021, as part of the mother's move to Whitehorse, Yukon when [A.B.C.D.] was three, the parties signed an agreement related to the mobility of the mother. It provided among other things that she and [A.B.C.D.] could visit her sister and family in British Columbia for Christmas with or without the father and stay for the birth of her sister's baby for approximately one month, that she and [A.B.C.D.] could visit family in British Columbia and Ontario for two to four weeks at a time, and that she could relocate to British Columbia with [A.B.C.D.] in June 2022 to a location of her choosing, for example, [redacted]. There was also a clause providing for the payment of monthly child support by the father to the mother. It appears from this agreement that the couple may have been separated although this is not clear, given the father's return to Whitehorse on weekends.

[12] The mother did not move to British Columbia in 2022. In September 2022, the father took a leave from his [redacted] job and began a [redacted] program with classes based at Yukon University in Whitehorse. He obtained a two-bedroom apartment [redacted].

[13] In the summer of 2023, the father had to vacate the apartment on campus. The mother offered that he move into her home, which he did in August 2023. The father then moved into a three-bedroom townhouse with a roommate in February 2024. In June 2024, again at the mother's offer, he returned to live with her and [A.B.C.D.] This lasted until September 2024, when he rented a two-bedroom condominium in Whistle Bend on his own. During this time, from the fall of 2022, 2023, and 2024, the evidence is not clear whether the father was attending school or working, or both, or neither.

[14] In December 2024, the father accepted a job as [redacted] in [redacted]. He resigned from his teaching position in [redacted] in January 2025. In June 2025 he left this position and relocated from [redacted] to Whitehorse. As of July 2025, he has been living in a rental apartment in [redacted] very close to the mother's home. Initially he had a roommate, but now lives with his new partner, [F.F.] There is no direct evidence of his current employment, or when it began, although it was clear in the family law case conferences that he began working after October 2025.

[15] The mother has been employed at [redacted] in Whitehorse for the past number of years in an administrative position. There is no direct evidence of her job title, duties or length of time in the position.

[16] [A.B.C.D.]’s primary residence since birth has been consistently with the mother.

As can be seen from the history of the living arrangements of the parents and the father’s changing employment circumstances described above, the father has maintained an ongoing presence in [A.B.C.D.]’s life on a less consistent basis.

[17] When the father lived in [redacted] and in Whistle Bend in the fall of 2024, [A.B.C.D.] had overnights with him on occasion. She also travelled with the father outside of the Yukon to British Columbia to visit his family at least once. In April 2025, [A.B.C.D.] travelled on her own to [redacted] to visit her father for a few days and visited a second time in [redacted] accompanied by her paternal grandmother, for a total of approximately seven overnights.

[18] The father had an intimate partner relationship with another woman, A., during this period, although the dates are not clear. [A.B.C.D.] knew A., enjoyed various activities with A. and the father, and according to the mother was upset when the relationship ended. The mother did not know about this relationship for many months and says contact between A. and the father was occurring when she and the father were trying to conceive another child together.

[19] The father now has a new partner, [F.F.], whom he met in Alberta in January 2025. [F.F.] relocated to the Yukon to live with the father in March 2026. She has been working as an [redacted] in mental health for 13 years, and over the last three years has worked in specialized and intensive programs with neurodiverse children with co-concurrent mental health conditions, and their families. She has received advance training in supporting Attention Deficit Hyperactivity Disorder (ADHD), collaborative

problem solving, emotion focused family therapy and interoception. She and [A.B.C.D.] have met and [F.F.] has described positive interactions[redacted].

[20] The mother did not learn of the father's relationship with [F.F.] until the summer of 2025. His belongings remained at the mother's home until July 2025. The mother says she and [A.B.C.D.] both believed that they and the father were a family unit until that time. The father says their relationship ended in the fall of 2024.

[21] From July 2025 to December 2025, the father had one overnight visit with [A.B.C.D.], with the paternal grandmother present. From January 2026 to June 2026, there were eight single overnight visits, with a June 5 to 7, 2026, camping trip as the only multiple night visit. The father's regular access times, beginning in October 2025 after a family law case conference, were Monday and Thursday evenings and during the day on Saturdays.

[22] [redacted].

[23] [redacted].

[24] [redacted].

[25] [redacted].

[26] [A.B.C.D.] has regularly engaged in a significant number of extra-curricular activities including gymnastics, downhill skiing, cross-country skiing, swimming, judo and softball. With her father she plays chess, does puzzles, plays games and engages in orienteering, disc golf, rock climbing, canoeing and camping. They also watch movies together.

[27] The mother's proposal for parenting time for the father in Whitehorse after her relocation is of a block of four weeks in the summer, in either one or two segments, one

week in December and one week in March (the dates of which would alternate yearly), and other occasions as planned and agreed for him to visit in [redacted]. It also includes twice weekly phone or video calls with [A.B.C.D.], and a sharing of all information related to her medical, educational, extra-curricular and social activities, and participation in decision-making.

i) Should relocation be decided by an interim application

[28] For the reasons below, this matter may be decided by interim application.

[29] The Supreme Court of Yukon *Rules of Court* (the *Rules*) provide that an application in a family law matter results in an interim, not final, order. In this jurisdiction, due to the resolution of most family law matters without a full trial, orders made after family law applications are often in effect final orders. Counsel can request a court to clarify once an order is made whether it is interim or final (see Supreme Court of Yukon Practice Direction Family-7, *Identification of Family Law Orders*).

[30] Counsel for the mother in this case requested before the granting of the order, that it be a final order. Counsel for the father has objected, relying on the principles set out in the leading case of *Plumley v Plumley* (1999), 90 ACWS (3d) 740 (Ont Sup Ct) (*Plumley*), as well as a decision of the Supreme Court of Yukon, *CRM v TEH*, 2008 YKSC 58. He argues the evidence relied on by the mother in this application has not been tested by cross-examination. Further, there are gaps in the evidence, related to [A.B.C.D.]'s needs, that could be filled by information gained through a custody and access report. In addition, counsel for the father notes an interim order may create instability for [A.B.C.D.] if the unsuccessful party exercises their right to a trial and the interim decision is reversed.

[31] The Court in *Plumley* set out the following principles:

- a) courts are generally reluctant to upset the status quo where there is a genuine issue for trial;
- b) where there are compelling circumstances such as financial benefit to the family unit that may be lost by the time of trial, or attending a school at the new location is in the best interests of the children, the move is more likely to be allowed; and
- c) where there is a strong probability that the relocating parent's view will prevail at trial, the move is more likely to be allowed.

[32] In *Plumley*, the Court allowed the move because the school at the new location was in the best interests of the children and it was highly likely the relocating parent, the mother, would be successful at trial. A trial judge had already decided after a trial that sole custody by the mother was in the best interests of the children; she showed willingness to allow the father additional access; and the motivation for her move was not to frustrate additional access.

[33] Generally, in interim applications, the burden is on the relocating parent to persuade the court that the move is in the child's best interests. Courts are cautious where there are material facts in dispute that could affect the outcome; where there is conflicting evidence; or where there are gaps in the evidence. Courts note that in deciding cases about children a fully rounded analysis is needed.

[34] In this case, as will be outlined below, there is not uncontested evidence in the areas of material dispute. Testing of the evidence through cross-examination is unlikely to affect the outcome. The father suggests a court requested custody and access report could help explain the significant increase in [A.B.C.D.]'s dysregulation and behavioural management issues over the last year and a half. The mother does not address this

issue directly but suggests through her submissions on the benefits of relocation that the more structured and supported daily lifestyle she says is available to them in British Columbia is likely to assist [A.B.C.D.]’s ability to regulate and cope with transitions.

[35] As I wrote in *ENAG v JSP*, 2024 YKSC 32:

[14] There are no published guidelines for counsel’s reference or for courts to apply in deciding whether to request a custody and access report. Generally, due to their high cost, intrusiveness, and extensive preparation time, they are requested infrequently, and reserved for circumstances where the Court is unable on the evidence and arguments provided by the parties and counsel to determine what custody and/or access provisions, or other orders related to the children, are in the best interests of the children.

...

[24] There is no doubt an assessment can be helpful to the court in cases where the parents have an unhealthy, dysfunctional, blaming, disrespectful relationship, where there is a clinical diagnosis of the parents or children that may make parenting challenging, and/or where the court has little to no reliable evidence or highly contradictory evidence that makes determining the children’s best interests difficult (*Glick* at para. 48) ... However, “a court should not delegate its duty to determine what parenting arrangement is in a child’s best interests to an assessor: ... courts typically will give substantial weight to the recommendations of an assessor, but these must be only one factor to consider in the determination.” (citations omitted) (*PRH v MEL*, 2009 NBCA 18 at para. 16).

[36] Although [A.B.C.D.] has a clinical diagnosis that makes parenting challenging, there is insufficient reason to delay a decision in this matter by requesting a custody and access report. [redacted] [A.B.C.D.]’s behavioural management issues appear to relate to the implementation of the recommendations by parents and other caregivers rather than the absence of a diagnosis of the issues, [redacted]. The focus of custody and

access reports is on the ability of each parent's household to provide a home that is in the best interests of the child. The issue in this case is not about either parent's ability to provide a good and healthy home environment for the child, or to be a good parent; it is about whether the current living situation as structured is in [A.B.C.D.]'s best interests.

[37] The negative impact [A.B.C.D.]'s increased dysregulation has on her schooling, her social life, her extra-curricular activities, and her relationships needs to be addressed. This is a compelling circumstance that supports the need for an earlier decision. Something needs to change in [A.B.C.D.]'s life to improve her mental health. While it may be possible to address these concerns in a manner other than relocation, the evidence about the relocation supports an improvement in the factors contributing to her dysregulation and behavioural difficulties.

[38] In this case, the absence of contested evidence on material issues, the fact that a custody and access report is unlikely to provide additional helpful information, and the potential reduction of [A.B.C.D.]'s challenges through a more structured living environment after relocation make this an appropriate case for an interim order.

[39] After relocation, if the mother's promises related to the father's access, to be confirmed by court order, are not kept, or if [A.B.C.D.]'s behaviours continue to deteriorate despite the expectations of the proposed changes in structure and routine, and the father intends to remain in Whitehorse and is unsatisfied with his access, then a trial, with more specific [redacted] evidence about [A.B.C.D.], may be necessary. A trial however is a last resort measure to resolve parental conflict, and I encourage the parties to continue to seek solutions through alternative dispute resolution processes.

ii) Should the mother be permitted to move to [redacted], British Columbia with [A.B.C.D.]?

[40] The mother's relocation proposal is in [A.B.C.D.]'s best interests at this time.

[41] Increased conflict and an absence of trust between the parents especially since the summer of 2025 may have detrimentally affected [A.B.C.D.] She has experienced more frequent irregular transitions in recent months: from school to after school care, to her father's care and/or to extra-curricular activities, and counselling; and transitions on average three times a week between her father and her mother. Relocation will diminish the daily conflict between the parents due to an absence of regular transitions of [A.B.C.D.] between them; there will be a reduced or no need for after-school care because of the assistance of [A.B.C.D.]'s aunt; and there will be an opportunity to establish a more regular and expected routine. While longer blocks of residential time for [A.B.C.D.] with the father could occur without relocation, remaining in Whitehorse will not allow the mother to have the additional family support and structure for [A.B.C.D.] Further, the close geographic proximity of the parents to one another in addition to their high conflict relationship, may make sustaining longer blocks of residential time with the father difficult.

Legal Principles

[42] The applicable legal principles to a decision about relocation arise from two sources – the best interests of the child for the purpose of custody and access set out in s. 30 of the *Children's Law Act*, RSY 2002, c 31 (CLA) and the factors listed by the Supreme Court of Canada in the leading case of relocation in the common law relationship context, *Barendregt*. After some general background and a review of the principles, I will focus on the factors that apply to this case. There is some repetition

between these two sources, some of the factors can be combined in the analysis, and some of the factors are inapplicable on the facts of this case.

[43] As the Supreme Court of Canada stated in *Barendregt* at para. 8:

Determining the best interests of the child is a heavy responsibility, with profound impacts on children, families and society. In many cases, the answer is difficult – the court must choose between competing and often compelling visions of how to best advance the needs and interests of the child. The challenge is even greater in mobility cases. Geographic distance reduces flexibility, disrupts established patterns, and inevitably impacts the relationship between a parent and a child. The forward-looking nature of relocation cases requires judges to craft a disposition at a fixed point in time that is both sensitive to that child’s present circumstances and can withstand the test of time and adversity.

[44] Further in this same decision, the Supreme Court of Canada said at paras. 97

and 98:

[97] ... even with a wealth of jurisprudence as guidance, determining what is “best” for a child is never an easy task. The inquiry is “highly contextual” because of the “multitude of factors that may impinge on the child’s best interest”
[citations omitted]

[98] The difficulties inherent to the best interests principle are amplified in the relocation context. Untangling family relationships may have profound consequences, especially when children are involved. A child’s welfare remains at the heart of the relocation inquiry, but many traditional considerations do not readily apply in the same way.

[45] The *CLA* provides:

30 Best interests of child:

(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 between the child and
 - (i) each person entitled to or claiming custody of or access to the child,
 - (ii) other members of the child's family who reside with 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.

[46] The Supreme Court of Canada in *Barendregt*, paras. 153-154, set out the following factors in determining whether relocation should occur:

- (a) The child's views and preferences;
- (b) The history of caregiving;

- (c) Any incidents of family violence;
- (d) A child's cultural, linguistic, religious and spiritual upbringing and heritage;
- (e) A parent's willingness to support the development and maintenance of the child's relationships with the other parent;
- (f) The principle that a child should have as much time with each parent as is consistent with the best interest of the child;
- (g) Reasons for relocation;
- (h) The impact of the relocation on the child;
- (i) The amount of time that each parent spends with child;
- (j) The level of involvement in the child's life of each parent;
- (k) The existence of an order or agreement specifying where the child is to reside;
- (l) The reasonableness if the proposal to relocate; and
- (m) Compliance with the previous court order and legal obligations.

[47] I will focus on the following factors in this case: the history of caregiving, degree of bonding, love and affection, and the length of time in a stable home environment; the level of involvement of each parent in the child's life and time spent with the child; the ability and willingness of each party to provide for the child; the reasons for the relocation and the reasonableness of the proposal, including plans for care and upbringing; the impact of the relocation on the child; the willingness of each parent to support the maintenance of the child's relationship with the other parent and the effect

of the relocation on the father's access; compliance with previous court orders and legal obligations; and the mother's allegation of coercive control by the father.

History of caregiving; length of time in a stable environment; level of involvement; and bonding, love and affection

[48] While there is bonding, love and affection between the child and both parents, the mother has been [A.B.C.D.]'s primary caregiver throughout her life and has provided her with a stable living environment with her. The father's level of involvement in her care has increased recently, but has been inconsistent due to his residence and work in different geographic locations, and pursuit of other interests.

[49] There is no dispute that the mother is and has been [A.B.C.D.]'s primary caregiver. The history of the relationship between the parents described above shows significant periods of living separate and apart or co-habiting only on some weekends. At all times [A.B.C.D.]'s primary residence was with the mother. They have lived in the same home in Whitehorse since December 2021. While the father shared in the childcare responsibilities and decision-making when he was present with the mother, the majority of the caregiving from the time [A.B.C.D.] was an infant was by the mother. The mother has been and continues to be the primary contact with [A.B.C.D.]'s school and [A.B.C.D.]'s school support team. She consistently, although not exclusively, attends at the school or speaks with [A.B.C.D.] at school when required by [A.B.C.D.]'s behaviours. The mother has sourced the supports for [A.B.C.D.] – her paediatrician, her counsellor, the after-school care, her play therapy group, the occupational therapy assessment- and is the primary contact with these care providers. She has arranged and supported [A.B.C.D.]'s participation in extra-curricular activities.

[50] Until recently the parents had a more collaborative approach to decision-making about health, education and other matters affecting [A.B.C.D.] although the mother appears to have been the primary decision-maker, especially with respect to supports. The increased conflict since the summer of 2025 has reduced the quality and frequency of the communication between the parents about decisions affecting [A.B.C.D.]’s life.

[51] The father has lived within walking distance of the mother’s home since July 2025 and has established a bedroom space for [A.B.C.D.], and her personal belongings. He has shown significant interest and engagement with [A.B.C.D.]’s school in recent months, especially since the fall of 2025, has participated meaningfully with [A.B.C.D.]’s counsellor, asking good questions and sharing insightful observations about [A.B.C.D.] in an effort to improve the quality of his access time with her. He is attempting to implement the recommendations of the paediatrician and the occupational therapist in his interactions with her.

[52] The father has been persistent in his recent requests to the mother to increase his parenting time with [A.B.C.D.] He notes that before May 2025 the mother was more generous in allowing him time with [A.B.C.D.]

[53] The mother notes that the father’s access three times a week during the day is more than he had when he was in [redacted] or [redacted]. She further calculated that the father was outside of Whitehorse approximately 222 days between January 21, 2025, and January 21, 2026, not allowing for significant additional parenting time. The father was away for various reasons such as participating in poker tournaments, visiting [F.F.] and his family, and vacations.

[54] While the father's increased engagement and caring is positive, it is clear the mother has had a greater level of involvement in [A.B.C.D.]'s life and spent more time with her. The father has pursued interests which have taken him outside Whitehorse or the Yukon and reduced the time available for parenting.

[55] There is a strong bond, as well as love and affection between [A.B.C.D.] and both parents. The bond with her mother has developed due to the consistent time spent with her and provision of supports for her. The bond with the father comes from the activity-based relationship he has with [A.B.C.D.] His descriptions of his recent parenting time with [A.B.C.D.] show his attentive, responsive, fun, engaged approach, enjoying many activities with [A.B.C.D.] and combining structure with more relaxed time. His recent descriptions of his management of [A.B.C.D.]'s dysregulation when she is in his care shows sensitivity and effectiveness.

Ability and willingness to provide guidance, education, the necessities of life and any special needs

[56] Both parents acknowledge [A.B.C.D.]'s complex needs. Both have demonstrated willingness and ability to provide support to meet those needs. However, the greater responsibility has always fallen to the mother to assess [A.B.C.D.]'s needs, identify concerns, coordinate appointments, organize the supports, and continue to follow up. This includes working with the school to develop and help implement a school support plan.

[57] The mother alleges the father minimizes [A.B.C.D.]'s needs and challenges, citing as an example his scepticism about the conclusions of the occupational therapist about [A.B.C.D.]'s sensory challenges, suggesting instead simpler environmental

factors may be the cause. The mother also gave examples of the father's difficulties in meeting [A.B.C.D.]'s dietary needs while she was with him.

[58] I find that the father is not minimizing [A.B.C.D.]'s challenges. His comments could equally be interpreted as useful critical analysis and an exploration of all possible explanations in an attempt to find solutions. Meeting [A.B.C.D.]'s dietary challenges has also improved over time as a result of his efforts in obtaining and implementing expert advice.

[59] Although the father has demonstrated willingness to be involved in meeting [A.B.C.D.]'s needs, his past decisions to pursue employment outside of Whitehorse have limited his ability to do so on a consistent basis. There is no recent evidence of his current employment or its location, and while it appears he will be remaining in Whitehorse for the foreseeable future, given [F.F.]'s relocation here, his pattern over [A.B.C.D.]'s life suggests otherwise.

[60] Part of the challenge of this situation includes difficulties both parents have expressed about sharing of needed information about [A.B.C.D.] due to their strained relationship. The father complains he is not given sufficient access to information from the professionals, and the mother says the father does not share with her concerns about [A.B.C.D.]'s behaviour expressed by third parties (such as after school care providers) to him. The communication between the parents needs to improve in order to ensure [A.B.C.D.]'s best interests are met.

[61] Both parents are capable of and appear willing to meet [A.B.C.D.]'s needs, although the father has not had an opportunity to show that he can do so on a routine

daily basis, and parental sharing of necessary information is a challenge needing to be addressed.

Reasons for relocation and reasonableness of the proposal, including plans for care

[62] The reasons for the relocation are consistent with [A.B.C.D.]’s best interests and the proposal is reasonable. The increased family practical support and other planned supports will assist during times where [A.B.C.D.] is at risk of dysregulation. The added emotional support and greater sense of security for the mother from her family, as well as the satisfaction coming from a new job with a desired employer, will contribute to her sense of well-being, balance and self-esteem, which in turn may improve her parenting of [A.B.C.D.] While it is as yet unknown whether the new school and other health supports will meet [A.B.C.D.]’s needs, the mother has demonstrated persistence and resourcefulness to date in ensuring [A.B.C.D.] obtains the services she needs. There is no reason to expect she will take a different approach in British Columbia.

[63] Despite the services provided to [A.B.C.D.] in Whitehorse, her dysregulation and behavioural difficulties have recently increased. More is required to assist her. The mother’s plan to create a calmer, more structured routine for [A.B.C.D.] with the help of family and reduce the transitions and the environment of parental conflict is in [A.B.C.D.]’s best interests. I do not agree with the father that the mother’s underlying motivation for relocation is to limit his access with [A.B.C.D.]

[64] The father’s argument that the mother’s reasons for relocation appear to be connected with her wish to limit his contact and relationship with [A.B.C.D.] will be addressed more fully below in the discussion of the effect of the move on the father’s access. The father says the extensive supports [A.B.C.D.] is receiving in Whitehorse

serve her best interests and should be continued. He says any services and schooling options in British Columbia are speculative and may not be sufficient or at least as helpful as her current supports. His plan of care would be to continue the current supports and routines established here in Whitehorse. I agree that [A.B.C.D.] is receiving significant supports in Whitehorse, but the increase in her dysregulated behaviours means a different approach is required.

[65] The mother notes that since she returned to live in the Yukon after a summer in British Columbia in September 2021, she has been contemplating relocating to British Columbia. She has been applying for jobs in British Columbia since 2022, and in particular to [redacted] from which she has now received a job offer. Her primary reason for relocation is to be close to her sister, who is a stay-at-home mother of two children, [A.B.C.D.]'s cousins, ages four and two. The sister and, in later years, her partner and children, have been a regular part of [A.B.C.D.]'s life since she was an infant through visits and virtual contact. Over the past 18 months or so, [A.B.C.D.] has spent approximately five weeks with the sister and her family over three visits. The mother notes [A.B.C.D.] participates positively with her relatives in active outdoor play and family activities. In British Columbia, the mother will have reliable and consistent practical family support to assist in [A.B.C.D.]'s care. After-school care will no longer be required as [A.B.C.D.] can be picked up regularly from school by her aunt, go directly to her aunt's house, and maintain a routine which may allow for calmer and consistent end of day transitions. In recent months [A.B.C.D.]'s ability to transition from after school care to her father's care has become difficult, leading to concerns expressed by the after-school care providers.

[66] The mother says her parents, who live in Ontario, visit the sister's family in [redacted] several times a year and her mother is considering moving there within the next year. This would provide additional family support for her and [A.B.C.D.]

[67] Other than [A.B.C.D.]'s father, the mother has no supports in Whitehorse to assist with childcare. The strained relationship between the parents does not help the mother feel secure or well-balanced. The additional security and support for the mother provided by her sister and her family, combined with the fact that she has wanted to move to the [redacted] area since at least 2021 may help her to be more emotionally grounded and maintain a positive approach. As noted in *Barendregt* at para. 169, relocation that can improve a parent's emotional and psychological state can enrich their ability to cultivate a healthy, supportive and positive environment for their children: children's best interests are furthered by a well-functioning and happy parent.

[68] The mother's further stated reason for the proposed move is the greater availability of specialized supports for [A.B.C.D.] in British Columbia in contrast to what she says are the 'limited local services' particularly in the areas of ongoing occupational therapy and counselling/mental health supports in Whitehorse. A review of the many supports for [A.B.C.D.] in Whitehorse makes this reason difficult to accept. I have limited information on the length of the waitlists and the absence of required specialized disciplines. However, [A.B.C.D.] currently has access to [redacted]. The mother has not identified specifically what supports are lacking or are unavailable due to waitlists, although the father stated [A.B.C.D.] would be on a waitlist for [redacted].

[69] The mother is working to replace [A.B.C.D.]'s Whitehorse supports in British Columbia. [redacted]. [A.B.C.D.]'s current paediatrician has referred her to a paediatric

clinic in [redacted], has confirmed the medical records can be transferred and the scheduling of an intake appointment for August 24, 2026. These are all good initiatives. However, as none of these services has yet been accessed, there is no basis to conclude that they will be equal or superior to those she is currently receiving in Whitehorse.

[70] The mother has narrowed school options for [A.B.C.D.] to four schools – two independent schools with fees, and two public schools. A primary consideration will be a place where [A.B.C.D.]’s needs are recognized and attempted to be met: specifically, through predictable routines, supported transitions, sensory and emotional regulation support and consistent adult expectations. The mother references the supports and strategies set out in the current student support plan: [redacted]. All of the potential schools the mother has visited have small class sizes. Other advantages vary and include a focus on creativity, movement and outdoor learning; a structured, supportive inclusive environment; an individualized relationship-based approach; or an emphasis on student belonging and proximity to family supports. The mother has not made a final decision pending the outcome of this application, the location of their housing, school availability, and [A.B.C.D.]’s needs at the time of enrolment. The mother also wishes to discuss the options with the father.

[71] The mother has identified affordable long term rental housing availability in the area near her sister. She and [A.B.C.D.] can live with her sister and family temporarily if necessary.

[72] The mother has full-time permanent employment as [redacted] in [redacted], British Columbia. This allows her to maintain a stable income and to be close to [A.B.C.D.] and her supports.

[73] The mother also proposes that she and [A.B.C.D.] spend time with the father's family who live on Vancouver Island. Their closer proximity will make access easier. This is consistent with the mother's approach to date in Whitehorse, where she has encouraged and facilitated visits between [A.B.C.D.] and the father's mother.

[74] While not all of the mother's stated reasons for relocation are justified, on balance the reasons accord with [A.B.C.D.]'s best interests and the proposal is reasonable.

Impact of the relocation on [A.B.C.D.]

[75] The relocation proposed by the mother may give [A.B.C.D.] a better opportunity to have a structured routine and consistent and clear adult expectations, once she becomes stabilized in the new locale. A greater distance from the intensity of the parental conflict may assist in increasing her stability.

[76] The father argues that the stability [A.B.C.D.] has gained from living in the same house and attending the same school in Whitehorse for most of her life, coupled with her multiple supports here, including a network of friends, outweighs the speculative supports that may be available to her in British Columbia.

[77] The mother says the relocation will have a positive impact on [A.B.C.D.]: more predictable structure and routine for her as a result of family support, fewer transitions, and block parenting time with the father. [A.B.C.D.] has expressed a preference to leave

[redacted] so a new school in Whitehorse may have been required if there were no relocation, although I make no finding on this point.

[78] The mother is acutely aware of the negative effect of a change of routine, and multiple new environmental stressors on [A.B.C.D.] To this end she has planned not only to access and establish the necessary supports for [A.B.C.D.] in British Columbia, but she also plans to focus on her stabilization during the first 90 days of relocation, rather than scheduling too many activities and preventing the institution of a structured routine.

[79] The mother provided significant detail in her affidavit evidence of [A.B.C.D.]’s dysregulation over transitions particularly between March and June 2026. [A.B.C.D.]’s distress manifested when anticipating parenting time with the father, during exchanges, and after returning to the mother’s care. The after-school care providers noted that transitions into the father’s care were increasingly difficult over the last several months. They observed she is more dysregulated on Tuesdays and Fridays after her parenting time with the father. Her increased distress also coincided with a gradual increase in parenting time, to include more overnights with the father.

[80] The purpose of reviewing this evidence is not to criticize the father’s parenting or to justify reduced parenting time. There is evidence that he is able to get [A.B.C.D.] to settle once she is in his care by distracting her from her distress and engaging her in activities. But the evidence shows that the gradual increase in parenting time with the father, especially when it is not consistent or routine, and occurs in the context of frequent transitions, is having a negative impact on [A.B.C.D.]

[81] Relocation is not the only solution to this issue, but it provides a chance for a more structured and supportive routine for [A.B.C.D.] once the transition to British Columbia has occurred. The establishment of a stronger stable base may contribute to easier transitions to parenting time with the father in future.

Willingness to support the child's relationship with the other parent and the effect of the relocation on the father's access; compliance with court orders and legal obligations

[82] While the relocation will affect the frequency of the father's access with [A.B.C.D.], the proposal for block parenting time may improve the quality of his residential time. The mother supports the development and maintenance of a positive and stable relationship between [A.B.C.D.] and the father and is working towards putting a structure in place that may help to achieve that. The mother's adjustments to the agreements at the family law case conferences were based on the best interests of [A.B.C.D.] and the changing nature of her responses.

[83] The father perceives the mother is unwilling to support [A.B.C.D.]'s relationship with him, and the relocation will negatively affect his continuing access. He says the mother's restrictive approach began in May or June 2025. He promptly addressed each of her stated objections to overnight access to no avail (employment, duration of rental accommodation, presence of roommate, and lack of bedroom space for [A.B.C.D.]). He attempted a collaborative approach to increasing his time through mediation, and family law case conferences where a gradual approach to increased parenting was initially accepted. The father has requested a block of residential time with [A.B.C.D.] this summer, whether or not this application is granted. The mother's demonstrated

reluctance to provide increased parenting time with [A.B.C.D.] to the father does not give him confidence that she will do as she promises in the relocation proposal.

[84] The father is also concerned about the mother's requirements that block parenting time be subject to [A.B.C.D.]'s ability to cope and to professional recommendations. He says these potential restrictions will be used to prevent his residential parenting time.

[85] The father's concerns are bolstered by the mother's failure to comply with certain agreements arising from the family law case conferences: the mother refused to attend joint sessions with [A.B.C.D.]'s counsellor to receive advice on consistent management of [A.B.C.D.]'s behaviours after attending one joint session; the mother did not offer the father parenting time with [A.B.C.D.] on professional development days rather than accessing third party child care; and the mother enrolled [A.B.C.D.] in extra-curricular activities without consulting the father.

[86] The mother adamantly states that she does not want or intend to limit the father's parenting time. She is concerned that the father's proposed residential time increases, including his introduction of [F.F.] in a manner she considered inappropriate, were not based on [A.B.C.D.]'s functioning or responses, but on his own interests and timing. For example, he requested more overnights before [F.F.] relocated to the Yukon. [redacted].

[87] The mother insists that she has never discouraged a relationship between [A.B.C.D.] and the father, but that she wants parenting time to be 'paced' according to [A.B.C.D.]'s actual functioning, safety and support needs. She notes the father had overnights with [A.B.C.D.] for approximately 40% of all weekends between mid-February and June 2026.

[88] I consider the mother's relocation proposal of parenting time for the father in Whitehorse of a block of four weeks in the summer, in either one or two segments, one week in December and one week in March, and other occasions in [redacted] with appropriate advance planning is consistent with maintaining a bonded relationship between [A.B.C.D.] and the father in a manner that accords with [A.B.C.D.]'s capacity. It is also consistent with the father's observations that [A.B.C.D.] is more regulated with longer, more focussed, undistracted parenting time. While relocation is not necessary to implement block parenting time, the distance between the parents lends itself to a more likely successful outcome. [A.B.C.D.] will not be able to leave the father's care easily and will have a better opportunity to settle into parenting time with him.

[89] I accept the mother's sincere intention to continue to encourage the father's involvement in [A.B.C.D.]'s life. Her resistance to increased parenting time over the past year, while coinciding with a higher conflict in the parental relationship, has been largely based upon [A.B.C.D.]'s reactions. The mother is focussing on the larger picture of [A.B.C.D.]'s overall coping, while the father's emphasis appears to be placed on [A.B.C.D.]'s enjoyment during the time spent with him and his desire to increase that time. [redacted]. As noted above, the after-school care providers have expressed concerns about the father remaining on the pick-up list due to difficulties with transitions to his care. The larger picture described by the mother reinforces the need to create a more stable and structured existence for [A.B.C.D.], minimizing parental conflict and disruption to her routine. Block parenting time after relocation will assist in achieving these outcomes.

[90] Ensuring [A.B.C.D.] is coping and that professional guidance is followed is in [A.B.C.D.]'s best interests. Currently both parents have been consulting with [A.B.C.D.]'s therapist about how to manage her transitions better as well as the optimal amount and timing of parenting time. This kind of continuing professional guidance for [A.B.C.D.], given her complex needs is appropriate. It will allow for objective, educated, independent recommendations from a therapeutic child-focused perspective. These requirements should not be understood as a barrier to the father's parenting time.

[91] The father's concern that the mother has failed to comply with certain items of agreement at the family law case conferences needs to be considered in the context of [A.B.C.D.]'s challenges and the ongoing parental conflict.

[92] The mother attended one session with the father and [A.B.C.D.]'s therapist, but thereafter felt uncomfortable due to the conflict with the father. She continued to consult with the therapist to receive advice around transitions and appropriate amount of parenting time with the father.

[93] The mother's failure to discuss the possibility of the father providing childcare instead of a third party on school closure days was affected by the escalating dysregulation of [A.B.C.D.], in late 2025 and throughout 2026. The evident distress caused by ongoing disruptions of routine needed to be managed.

[94] The mother's failure to consult with the father before enrolling [A.B.C.D.] in skiing and softball may have been a misunderstanding. The mother explained that neither of these was a new activity for [A.B.C.D.] and therefore not covered by the Agreement; the mother enrolled her as she always has. The fact that softball coincided with one of the agreed upon evenings of parenting time for the father, however, should have prompted

a consultation with the father. In this case, the mother did not follow at the very least the spirit and intent of the Agreement, which was to involve the father in decisions related to new extra-curricular activities, including timing that may affect parenting time and responsibilities.

[95] The family law case conferences set out agreements, not court orders. In this case, the Court will order the parenting time proposed by the mother. Failure to comply with a court order has serious consequences including contempt of court.

Family Violence and Coercive Control

[96] Allegations of coercive control are serious. The conflict between the parents has led to some behaviours that are not child-focused or mature, but the father's conduct described by the mother does not rise to the level of coercive control. It is in [A.B.C.D.]'s best interests for the parents to improve their communication and make efforts to reduce their conflict.

[97] The mother alleges she has been subject to coercive control by the father, although she is not asking the Court to find an independent tort. She describes the father's behaviour as boundary violations, intimidation, pressure, and attempts to control mobility, home stability, and parenting decisions, all of which have deprived her of autonomy. This has created instability and tension in the household, unpredictable living arrangements, difficult parental communication due to lack of trust. In turn, this negatively affects [A.B.C.D.]'s emotional security, and the ability of the parents to make consistent child-focused decisions. Specific examples include the father's resistance to the mother's ability to travel with [A.B.C.D.], evidenced by the need for the September 2021 Agreement allowing her to visit her sister in British Columbia with [A.B.C.D.], and

pressure (in earlier years) to make relocation conditional on his preferred timing related to his schooling or employment. The mother was dependent upon the father financially for several years. In 2023 his reference to self-harm as a result of emotional distress following a trust rupture in their relationship delayed her plans to relocate. The father's attendance on her property and refusal to leave during parenting time exchanges, and his aggressive public encounter with her at the Canada Games Centre are described as intimidating and boundary violations. The mother says his communication style is directive and controlling, with phrases such as "I expect you to" or "that's not acceptable".

[98] The father did not respond directly to these allegations, except to say through counsel that they are overstated and exaggerated. Instead, he says during the course of their relationship and since separation, the mother has continually made unilateral decisions about residential arrangements for [A.B.C.D.] "and in that regard has been controlling".

[99] Claims of coercive control, even if not made to establish an independent tort of intimate partner violence as in this case, are serious. The Supreme Court of Canada in *Ahluwalia v Ahluwalia*, 2026 SCC 16, set out a comprehensive framework for the assessment of coercive and controlling conduct in the context of an intimate partnership. Some of the types of conduct arising in an intimate partnership that are capable of constituting coercive control are physical and sexual violence; emotional and psychological abuse, including verbal abuse; harassment, humiliation and denigration; financial control; stalking and surveillance; behaviour that isolates a partner from others, or that denies a partner access to educational, employment and recreational

opportunities; litigation abuse; threatening conduct including threatening to harm the children or take them away; and threatening to commit suicide. The conduct must be determined to be coercive objectively; that is, a reasonable person, fully apprised of the relevant context of the relationship, would perceive the acts, considered cumulatively, as an assertion of control depriving the partner of their dignity, autonomy and equality in the relationship.

[100] In its analysis, the Supreme Court of Canada writes:

[196] ... coercive control is best understood as abusive conduct and not simply antisocial conduct that often characterizes high conflict relationship breakdown... Courts should refrain from imposing liability based on the inevitable ups and downs of a relationship or for mere dysfunction. ... an intimate partnership may suffer from dishonesty, infidelity, emotional neglect, lack of maturity, or even cold and dismissive conduct; it may be altogether antagonistic and disagreeable ...

...

[198] The coercive control lens calls for an inquiry that asks whether the ... conduct has objectively undermined the [partner's] ability to make fundamental decisions pertaining to their own life or to meaningfully participate in decision-making that concerns the intimate partnership. Coercive control constitutes "breaking down a victim's will" such that "the victim's individual decision-making ability" is removed. (citations omitted)

[101] In this case, the father's conduct described by the mother supports a finding of a disagreeable degree of conflict, undue or unwarranted pressure, and a failure to respect certain boundaries. This has occurred against a backdrop of the father's infidelity, or at least lack of clarity about the end of the relationship. However, the mother has not shown that her decision-making ability has been removed, or that her will has been broken. There was no evidence that she was prevented by the father from relocating or

visiting family, or from seeking employment. The mother's characterization of the father's reference in a text that he understands why people consider self-harm as a suicide threat is exaggerated and unfounded. The father's attendance on her property in the context of parenting exchanges and the aggressive verbal confrontation at the CGC are symptoms of heightened emotions and a high conflict relationship breakdown. This is not commendable conduct, but it does not rise to the status of coercive control in this context. Both parents agree the mother has throughout [A.B.C.D.]'s life been the primary caregiver and decision-maker for her, and certainly throughout this litigation, she has successfully set parameters around the father's involvement in [A.B.C.D.]'s life.

[102] High parental conflict has negative repercussions for the child of the relationship. In [A.B.C.D.]'s case the effects of the conflict may be more acute due to her complex needs. It is the responsibility of both parents for the sake of [A.B.C.D.] to work hard to move beyond the conflict between them. I appreciate the efforts thus far to address the legal challenges through family law case conferences and not court applications (until the present one). I urge the parents to attempt to find a mature and child-focused approach to future communications and decision-making about [A.B.C.D.]

Agreement of September 2021

[103] Although it is not necessary given my decision on this application to address the September 2021 Agreement between the parties, because counsel for the mother asked me to place significant weight on it, I will provide a brief assessment.

[104] The Agreement has weight to the extent that it demonstrated the mother's desire to relocate to British Columbia to be closer to her sister and her family in 2021, and the father knew and agreed to it at that time. In other words, this current relocation

application is not a surprise to the father. However, it cannot be relied on today as representing the consent of the father to the mother's relocation application made five years later.

[105] There is incomplete evidence about the context in which this Agreement was developed. The mother says it set out the conditions by which she agreed to return to the Yukon in September 2021. There is no evidence about discussions that occurred at the time of its drafting, the specific reasons why the mother believed it was necessary, or the father's views or understandings of it. It is also outdated, as it references the mother's potential relocation to British Columbia in June 2022, which did not occur. There is no evidence of any discussion of the agreement at a later date, or whether it was attempted to be renewed. For these reasons, the Agreement has limited weight.

iii) What should the residential schedule be?

[106] The mother's proposal for residential time of [A.B.C.D.] with the father shall be ordered. I encourage ongoing dialogue among the parents and [A.B.C.D.]'s supports to determine if this schedule continues to be appropriate or requires adjustment so that [A.B.C.D.] can benefit from the love and support of both her parents.

iv) Who shall have decision-making responsibility?

[107] The father seeks joint decision-making responsibility. The mother did not make submissions on this point – her request was for primary residence and relocation. She has indicated her willingness to share information about [A.B.C.D.] with the father, and to receive his advice on decisions such as choice of school. She has not expressed concerns about his parenting abilities. The father continues to demonstrate real interest in [A.B.C.D.]'s progress and to have useful insights and questions for the professionals

and ideas to meet her challenges. It is in [A.B.C.D.]’s best interests to continue to have his input into decisions about her life. I will grant joint decision-making responsibility in the areas of health care, education, extra-curricular activities, and social life. However, if a disagreement remains after consultation and discussion between the parents, the final decision-making shall rest with the mother. Day to day decisions shall be made by the parent with the residential care of the child.

Conclusion

[108] For the above reasons, the application of the mother is granted. I order as follows:

[109] The plaintiff shall have primary residence of the child of the relationship, [A.B.C.D.], born [redacted] (the Child).

[110] The plaintiff shall be permitted to relocate with the Child to British Columbia in the area of [redacted].

[111] The plaintiff and the defendant shall have joint decision-making responsibility for the major decisions of the Child. In the event of disagreement after discussion, the mother shall have final decision-making authority. The parent with residential care of the Child shall make day to day decisions.

[112] The plaintiff and the defendant shall share all information relevant to the medical, educational, extra-curricular, and social aspects of the Child’s life.

[113] The defendant shall exercise access with the Child after relocation as follows as long as it is consistent with the recommendations of professionals such as paediatricians, counsellors or therapists providing support to the Child and consistent with the Child’s emotional regulation:

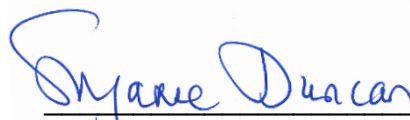
- a. Up to four weeks during the summer school break in either one four week block or two separate two week blocks, to be confirmed in writing by March 1 each year.
- b. Seven consecutive days each year during the two week Christmas holiday, alternating weeks each year, or as agreed.
- c. Seven consecutive days each year during the March break, alternating weeks each year, or as agreed.
- d. Additional residential time in British Columbia in the region of [redacted] as agreed in writing.
- e. Additional and gradual increase in residential time as agreed in writing and based on the recommendations of professional supports and the Child's best interests and needs.

[114] The parties shall confirm in writing in advance of any access visits with the defendant: flight itineraries; exchange times and locations; and emergency contact information while the child is travelling.

[115] The travel costs related to the defendant's access with the child after relocation shall be shared proportionate to the parties' incomes or as otherwise agreed in writing.

[116] The defendant shall have the ability to speak with the Child twice weekly by phone or by video call.

[117] The Child shall be permitted to call the non-residential parent when they are in the care of the other parent.


DUNCAN C.J.