SUPREME COURT OF YUKON

Citation: *B.B.B. v. A.E.B.*, 2013 YKSC 43

Date: 20130531
Docket: S.C. No. 08-D4092
Registry: Whitehorse

BETWEEN:

B.B.B.

Plaintiff

AND:

A.E.B.

Defendant

Before: Mr. Justice B. Davies

Appearances:
Ben Ingram — Counsel for the Plaintiff
A.E.B. — Appearing on her own behalf

REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH

[1] DAVIES J. (Oral): The sole issue to be decided in this case is what parenting and residency regimes should be ordered for the care of the parties' seven-year-old daughter, K.

[2] I have decided to deliver these reasons orally because I believe that it is important for the parties to know the status of their future parenting relationships and obligations towards K. as soon as possible.

[3] I reserve the right to edit these reasons as necessary to make them more grammatically correct and readable. The result will not change as a consequence of any editing I may undertake. In these reasons, I will be referring to the parties by their first names or as K.'s mother or father as the case may be. I do so not out of any disrespect or familiarity but only to make the reasons more understandable. If these reasons are transcribed, the parties' names in the style of cause will be initialized and they will be referred to in the text of the reasons by their first initials. K. will also be referred to as her first initial in order to protect the privacy of all concerned in a relatively small community. I also now order that the style of cause in this proceeding be amended so that it will become *B.B.B. v A.E.B.*

[4] Before discussing the background circumstances and evidence that inform my decision making in this case, I must first advert to the very important issue that I see as being a central, if not overriding aspect of the disputes that have arisen between the parties concerning their respective roles in K.'s care and development.

[5] B. is a devout Jehovah's Witness who also wants K. to observe that faith and adhere to its principles. He regularly attends with K. at the Kingdom Hall of Jehovah's Witnesses in Whitehorse of which he is a member of the congregation, as well as at scheduled religious events both in Whitehorse and in Alaska.

[6] A. was raised in the Jehovah's Witness faith and in the past was a member of the same congregation of which B. is a member. She has, however, now been shunned or subjected to "Disfellowship" by the congregation and no longer observes her previous faith. She testified that she believes that as a child she suffered exclusion and

disadvantage by reason of her faith and hopes that K. can be spared that same adversity. The ongoing tension between B. and his family and A. concerning her present lifestyle and religious beliefs or non-beliefs, as well as what they perceive to be the negative influence of both on K. was palpable during this trial.

[7] After originally seeking sole custody and primary residence, B. has now submitted that while the existing joint custody regime should be continued, A.'s participation in the parenting of K. should be changed from the week-on/week-off basis that was recently ordered by Mr. Justice Gower on an interim basis pending trial.

[8] In argument, B.'s counsel, Mr. Ingram, suggested a parenting regime that would see K. being with B. for 12 out of 21 days during a three-week rotation during the school year with some adjustments for school holidays. He also suggested a week-on/week-off schedule during the summer with some adjustments to accommodate possible longer holidays.

[9] B. also suggest that there should be a joint guardianship order generally based upon the British Columbia "Joyce Model" but modified so that all decisions concerning the extent to which K. should be allowed to participate in some school activities that are contrary to the Jehovah's Witness faith be made by him alone.

[10] A. seeks a parallel parenting regime with fewer transition times, an equal sharing of holiday time, increased opportunity to take K. on extended vacations and an order that reduces opportunity for conflict with B. or his family concerning the control of her life with A.

[11] A. also opposes B.'s submissions that he should have the only say in determining the extent of K.'s participation in school activities that he submits are contrary to the Jehovah's Witness faith.

[12] Counsel for B. has provided a draft form of order concerning his client's submissions as to the appropriate custody and guardianship order that should be made in this case. I have had the benefit of B.'s submissions concerning that order as well as A.'s response.

[13] After considering the background circumstances and evidence in this case I will discuss each of the terms of that proposed order in deciding what custody and guardianship order should be made by me to best ensure K.'s best interests as required by the provisions of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.).

BACKGROUND

[14] B. and A. were married on May 11, 2002. She was 20 years old and he was 22.

[15] K. was born March 11, 2006 and is now in Grade 1 at an elementary school in Whitehorse.

[16] Before July of 2008, B., A., and K. lived with A.'s father so that they could provide care for him; however, in July of 2008 A.'s father began to reside in an extended care facility and after that B., A., and K. moved into B.'s parents' home.

[17] They all lived there until A. moved out of that home on September 15, 2008.

[18] When A. moved out, B. and K. continued to reside with B.'s parents and B. still does. When K. is in his care she also resides in the same home with B. and his parents. They share the kitchen facilities in the home but B. and K. have otherwise separate accommodations and she has her own bedroom and playroom.

[19] Because B. works full time his mother has been very involved in K.'s care since A. and B. separated. The evidence also establishes, however, that on those days when K. is in his care, he is the one who is primarily responsible for her care once he has finished work. The evidence establishes that he is a devoted father to K. and provides excellent and loving care to meet her needs.

[20] After A. left the home on September 15, 2008, she traveled on a pre-arranged flight to Vancouver on September 16. She testified that although she was intending to then travel to Saskatoon from September 18th to 24th before returning to Whitehorse, B. canceled that portion of the pre-booked flight and A. returned to Whitehorse on September 18th.

[21] A. also testified that B. and his parents hid K. from her after separation and that she only saw K. rarely and always in intimidating circumstances before October 7, 2008, at which time B.'s application for interim sole custody of K. and also for his home to be her primary residence was heard by Mr. Justice Veale.

[22] After hearing that application Mr. Justice Veale ordered on an interim interim basis that:

> 1. The Plaintiff and Defendant shall share joint custody of the one child of the relationship between them, namely K.C.B., born March 11, 2006 ("K.").

2. K.'s care and control shall be shared between the Plaintiff and the Defendant.
3. K.'s time shall be shared between the Plaintiff and the Defendant as follows:
   (a) Mondays and Wednesdays overnight with the Defendant, and the Defendant shall return K. to daycare on Tuesday and Thursday mornings;
   (b) Tuesdays and Thursdays overnight with the Plaintiff and the Plaintiff shall return K. to daycare on Wednesday and Friday mornings;
   (c) Alternate weekends with each of the Plaintiff and Defendant such that the parent having K. for the weekend shall pick her up from daycare on Friday and shall return her to the other parent's home on Sunday evening; and the Defendant shall have K. in her care for the weekend commencing October 10, 2008 and alternate weekends thereafter.
4. Neither parent shall possess or consume drugs or alcohol while K. is in his or her care.
5. The balance of the relief sought in the Plaintiff's Notice of Application is hereby adjourned to November 18, 2008 at 10:00 a.m.

[23] As will later be seen, the prohibition against both parties consuming alcohol while K. is in their custody was not altered by later orders in this proceeding and A.'s alleged breach of that order on September 15, 2012, is a significant aspect of B.'s submissions concerning A.'s continuing role in K.'s care.

[24] After the initial interim interim order was made by Justice Veale on October 7, 2008, and notwithstanding many disputes between them concerning parenting arrangements that I will later discuss, A. and B. entered into a consent order with respect to the care and custody of K. that became part of a divorce order pronounced by Mr. Justice Gower on April 8, 2010. To the extent relevant to these proceedings that final divorce order provided that:

> 2. The parties shall share joint custody of the following child of the marriage:
>
> [K.C.B.] born: March 11, 2006
>
> 3. The parties shall agree to an equal access schedule in writing and not change that schedule without consent of the other party.
> 4. If the parties cannot reach an agreement with regards to access with the Child each party have the right to seek a review of the Child access.
> …
>
> 11. The parties shall continue to co-operate with all decisions related to religious upbringing, educational development, social environment, extra-curricular activities, and health care of the Child.
> 12. Neither party shall remove the Child from the Yukon Territory without the written consent of the other party or a court order.
> 13. If the Child requires emergency health care, the party with care and control of the Child must do all necessary things to provide for such health care and promptly notify the other party of the emergency.
> 14. Each party shall have the right to communicate with the Child by telephone at all reasonable times when the Child is with the other party.
> 15. Each party shall continue to have as full and active parental role as possible with the Child.

[25] A. and B. have never "agreed to an access schedule in writing" as contemplated by Clause 3 of the consent divorce order. There have, however, been some verbal arrangements between them as well as some further interim orders made since April 8, 2010, which have altered the parenting schedule first implemented by Justice Veale in October of 2008.

[26] More specifically:

1. While A. was in Saskatchewan on August 21, 2012 after B. had not consented to K. going with her for that vacation, B. had made a without

notice application to travel with K. to Anchorage, Alaska, from August 22 to 28, 2012. That order was granted.

2. On September 20, 2012, after the incident involving A.'s alleged abuse of alcohol on September 15, 2012, to which I earlier alluded and will later discuss in more detail, B. made an application for interim sole custody of K. and an order making his home her primary residence as well as orders seeking primary care, and decision-making authority. He also sought an order that any access by A. be supervised. After hearing that application on September 21, 2012, Mr. Justice McIntyre adjourned the further hearing of it to September 26, 2012, and ordered that:

> 1. This Order shall be an interim interim without prejudice order;
> 2. This matter shall be adjourned until Wednesday, September 26, 2012 at 10:00 a.m., so the Defendant [Ms. B.] (referred to in this order as [Ms. M.]) may obtain a doctor's letter explaining her medical circumstances on September 15, 2012;
> 3. The Child, K.C.B. ["K."] shall reside with [Mr. B.] until the hearing on September 26, 2012 or until further order of the Court;
> 4. Neither [Mr. B.] nor [Ms. M.] shall consume alcohol or drugs within 24 hours of having [K.] in his or her care, and at the time [K.] is with him or her;
> 5. Neither parent shall discuss the litigation with [K.];
> 6. Neither parent shall make critical remarks about the other parent to [K.] or in [K.'s] presence;
> 7. Neither parent shall question [K.] about the other parent's home;
> 8. [Ms. M.] shall have access to [K.] as follows:
>
> a. Sunday, September 23, 2012, from 8:30 a.m. to 7:30 p.m. [Mr. B.] shall drop [K.] off at [Ms. M.'s] residence, and [Ms. M.] shall return [K.] to [Mr. B.'s] residence;
> b. Monday, September 24, 2012, from 3:00 p.m. to 7:45 p.m. [Mr. B.] shall drop off [K.] at

[Ms. M's] residence, and [Ms. M.] shall return [K.] to [Mr. B.'s] residence;

c. Tuesday, September 25, 2012, from 5:00 p.m. to 7:45 p.m. [Ms. M.] shall pick up [K.] from [Mr. B.'s] residence and return [K.] to [Mr. B.'s] residence.

9. The signatures of the Plaintiff and Defendant as to the form of this order shall be dispensed with and the Child Lawyer shall draft the order.

3. On September 26, 2012, Mr. Justice Goudge further adjourned B.'s application to October 2, 2012 and ordered that:

…

2. There is no necessity for an RCMP assist clause;
3. [Ms. M.] shall report back to the Court on October 2, 2012 with any information regarding her doctor's return;
4. [Ms. M.] shall have overnight access with the Child, [K.C.B.] ("K.") on Wednesday, September 26, 2012 and Thursday, September 27, 2012. [Ms. M.'s] partner shall facilitate transportation to and from [K.'s] school;
5. [Mr. B.] shall pick up [K.] at [Ms. M.'s] residence at 7:30 p.m. on Friday, September 28, 2012;
6. [Ms. M.] shall have further access to [K.] from 8:30 a.m. until 7:30 p.m. on Saturday, September 29, 2012. [Mr. B.] shall drop [K.] off at [Ms. M.'s] residence at 8:30 a.m. and pick [K.] up at [Ms. M.'s] residence at 7:30 p.m.;
7. Paragraphs 4, 5, 6 and 7 of the previous Order made September 21, 2012 shall stand;

…

4. On October 2, 2012, Madam Justice Maisonville again adjourned B.'s application, this time to November 14, 2012 and in doing so set forth a continuing parenting schedule similar to that ordered by Justices McIntyre and Goudge pending that scheduled hearing. She also ordered that:

…

3. Neither [Mr. B.] nor [Ms. M.] shall consume alcohol or drugs within 24 hours of having [K.] in his or her care, and at the time [K.] is with him or her;
4. [Ms. M.] shall not drive a motor vehicle while she has care of [K.];
5. Neither parent shall discuss the litigation with [K.];
6. Neither parent shall make critical remarks about the parent to [K.] or in [K.'s] presence;
7. Neither parent shall question [K.] about the other parent's home;
8. Communication between the parties shall be by email only, and such emails shall only be in respect of [K.] and matters directly related to her, and not for the purposes of advancing the position of a party.

5. B.'s application was finally heard by the Justice Gower on December 12, 2012. At the same time, he also heard a cross-application made by A. and then made a comprehensive interim custody order pending the trial of the issues that are now before me for resolution. That order provided that:

…

4. [K.] shall spend the Christmas Break each year as follows:

   (a) In 2012 and in even numbered years thereafter with the defendant; and

   (b) In 2013 and in odd numbered years thereafter with the plaintiff.

5. [K.] shall be with the defendant from December 14, 2012 to January 4, 2013, unless the parties agree otherwise in writing.
6. [K.] shall attend counselling with Nicole Bringsli at Creative Play Works and the parties shall equally share the cost of [K.'s] attendance at counselling for as long as such counselling is required.
7. Paragraphs 4 and 5 of the defendant's application filed December 10, 2012 are hereby adjourned to a date to be set.

8. Neither parent shall consume alcohol or non-prescription drugs at least 24 hours before, or at a time when [K.] is in his or her care.
9. Neither parent shall discuss the litigation with [K.].
10. Neither parent shall question [K.] about the other parent's home.
11. Neither parent shall make critical remarks about the other parent to [K.] or in [K.'s] presence.
12. Communication between the parents shall be by email only, and such emails shall only be in respect of [K.] and matters directly related to [K.], and not for the purposes of advancing the position of either parent.
13. [Ms. M.] shall not operate a motor vehicle while [K.] is in her care for so long as she is prohibited from driving.

[27] Paragraphs 4 and 5 of A.'s cross-application that were adjourned concerned B.'s potential liability for basic child support obligations under the *Guidelines* as well as extraordinary expense issues. Those issues were not brought forward at this trial and no evidence was led that would allow me to determine them.

[28] If either party wishes to continue to pursue those financial issues after consideration of these reasons they are at liberty to do so because support is the right of the child and the issues have not yet been addressed by the Court.

ANALYSIS AND DISCUSSION

[29] The evidence establishes to my satisfaction that central to B.'s bringing of what was initially an application for sole custody of K. as well as an order making him responsible for her primary residence, care, and for decision-making about her were related to:

1. His perception of the instability of A.'s relationships with other men and her past failure to adhere fully to scheduled parenting which give him concerns for K.'s care and safety while with her mother.
2. Being insufficiently informed of the particulars of A.'s plans, the purposes for any proposed trips with K. or the identity of any of her travelling companions to be comfortable in giving permission to have K. travel outside of the Yukon with A.
3. A.'s abuse of alcohol on two occasions in 2012 that caused him to fear for K.'s safety while with her mother.
4. An incident which resulted in K. having a burn on her foot that he believed was insufficiently treated that caused him to be concerned with the care she is receiving while with her mother.
5. His strong belief as a Jehovah's Witness that K. should not be required to participate in activities that conflict with those beliefs.

[30] Although B. abandoned his applications for sole custody, primary residence and care as well as for primary decision-making authority, it is important to my analysis in this case to address what I believe were his central concerns in advancing those applications and also because they and the evidence surrounding them have informed my decisions in this case.

1) ALLEGED INSTABILITY AND LACK OF PARENTAL INVOLVEMENT

[31] The evidence concerning the extent to which A. was involved in the care of K. after the October 7, 2008 Order was pronounced was much in conflict.

[32] B. and his mother testified that notwithstanding the relative equal sharing of responsibility ordered or agreed upon from time to time after September of 2008, there were in fact few occasions when K. slept overnight in her mother's home until about April 2012.

[33] That evidence was contested by A.

[34] The obvious thrust of B.'s evidence and that of his mother was that notwithstanding her parental rights and obligations, A. often acted for self-interested reasons in not adhering to schedules agreed to by the parties or ordered by the Court.

[35] After considering the totality of the evidence, I am satisfied that:

1. Although there were occasions when A. did not have K. overnight with her when she was entitled to do so, I have concluded that B. and his mother tended to exaggerate the number and length of such occasions.
2. B. has failed to recognize the extent to which his own actions created or influenced the circumstances that resulted in A.'s failure to spend all of her scheduled overnight times with K.
3. A.'s failure to spend any specific scheduled time with K. did not arise solely from self-interest or because she did not want to be with K.

[36] In reaching those conclusions, I specifically note and accept the following explanations given by A. for those periods of time in respect of which she agreed that she did not spend all of her scheduled overnight time with K.:

1. A failed relationship in the summer of 2010 required her to find new accommodations and her economic circumstances made finding suitable accommodations for both her and K. difficult.
2. Accommodation arrangements she made with a friend and her friend's family became unsuitable for K. when B. made allegations of sexual misconduct with K., who was then four years old, involving one of A.'s friend's relatives. Those allegations were investigated by the police and child welfare officials and no remedial action was taken. The allegations left A. with grave concerns about the extent to which B. might go to discredit her as a parent.
3. At the end of July 2012, A. left Whitehorse for about four weeks and went to Saskatchewan for a holiday. Before doing so, she had attempted to obtain B.'s permission to take K. with her but could never satisfy him that permission should be granted. She eventually gave up trying and left K. in B.'s care.

2) INSUFFICIENCY OF TRAVEL INFORMATION

[37] While I acknowledge B.'s evidence that he was concerned that he did not know sufficient particulars of A.'s travel plans for the trip to Saskatchewan, I am also satisfied that the reasons he expressed about his concern for K.'s safety were unfounded and based more upon a desire to control A.'s contact with K. than for the reasons advanced by him at trial.

[38] I accept A.'s evidence that her plans were fluid to the extent that she did not know precisely where she would be at any time on a planned "road trip". I also accept that A. tried for months to obtain B.'s consent without adequate response by B. notwithstanding the information she did provide to him.

[39] The totality of the evidence also establishes to my satisfaction that with the possible exception of the one instance that gave rise to B.'s without notice application to take K. to Alaska in August of 2012 when he knew A. was in Saskatchewan, A. has been generous in providing her permission to allow K. to travel with B. out of the Yukon. I note, for example, the many previous trips to Alaska, a long trip to Hawaii, and even a trip to Costa Rica in 2009.

[40] The totality of the evidence satisfies me that the instances where B. thwarted A.'s travel plans were an unnecessary and unwarranted interference in the development of K.'s relationship with her mother. It is also noteworthy that B.'s refusal to provide permission for K. to travel outside of the Yukon with A. arose before the September 15, 2012 incident which gave rise to B.'s applications for sole custody on September 21, 2012, which I will now address.

3) ALLEGATIONS OF ALCOHOL ABUSE

[41] The incident of September 15, 2012 to which I have previously alluded is of course of grave concern. Coupled with A.'s conviction for impaired driving in July of that same year, I cannot and do not in any way fault B. for seeking to ensure that K. would not be subjected to similar incidents in the future.

[42] Briefly stated, I find that the following occurred on the evening of September 15, 2012, in A.'s home when K. was in her care:

1. A. put K. to bed after a busy day at her usual bedtime of 7:00 p.m.
2. At about 8:30 p.m., K. called B. and told him that "she could not wake Mommy up."
3. B. called his parents who then went immediately to A.'s home. There was a glass of wine beside her on a table, she was unconscious and could not be wakened. B.'s father called 9-1-1.
4. B. also drove to A.'s home after receiving K.'s telephone call and waited outside until K. was brought to him by his mother. K. was very afraid and he comforted her.
5. After the ambulance attendants arrived, A. was responsive to the extent of being able to be guided to the ambulance which took her to the hospital.

[43] A. did not deny any of that evidence or offer any excuse for her conduct other than to say that she did not believe that the Interim Interim order of October 7, 2008 prohibiting either party from consuming alcohol was still in effect after the divorce order.

[44] Although B. testified that K. has told him that A. told her she should not have called B. and that both of them were in trouble with A. for that phone call, I am not satisfied that I can accept that evidence as being reliable.

[45] A. has denied making such statements and given her forthrightness generally as a witness I am not prepared to rely on hearsay evidence to discredit her testimony on the point.

[46] That does not mean that the incident of September 15, 2012, can be, in any way, excused. It was wrong for A. to drink alcohol to the extent that she became unconscious while K. was in her care, whether asleep or not, and whether or not the alcohol prohibition order was in effect.

[47] That episode and the impaired driving episode only two months earlier give rise to serious concerns that must be addressed by her, and A. has recognized that.

[48] She took steps to have her suspended driver's licence restored earlier than was ordered by taking required courses and having a breathalyzer attached to the ignition installed in her vehicle.

[49] There is no evidence of any further consumption of alcohol by her while K. has been in her care under various orders since the September 15, 2012 incident, including on a week-on/week-off basis since December of 2012. She has attended alcohol counselling and readily consents to an order preventing her from consuming alcohol or non-prescription drugs while K. is in her care. Those steps and that consent convince me that A.'s involvement in the co-parenting of K. should not be further precluded or diminished by reason of those two episodes.

4) THE ALLEGED UNTREATED BURN

[50] B. and his mother testified that after the September 15, 2012 alcohol episode, A.'s partner, Mr. M., who is a fireman, dropped K. off at their home with a burn on her foot apparently from a spoon that had landed on her foot. They both testified that it was a large burn that was puffy or raised and had no covering on it, was painful, and was

covered with socks and shoes. A. testified that the burn was not covered because as a first aid trained fireman, Mr. M., who looked after K., did not cover it.

[51] I have insufficient evidence upon which to base any conclusion that A. or Mr. M.'s treatment of the burn was neglectful. I also note that B.'s mother was told of the burn by Mr. M. when he dropped K. off that day, and I have no medical evidence as to the extent of the injury or its impact upon K.'s wellbeing. In conclusion, I find that a single episode of injury while K. was in her mother's care should not preclude A. from full participation in the joint parenting of K.

5) CONFLICTS BETWEEN SCHOOL ACTIVITIES AND THE JEHOVAH'S WITNESS FAITH.

[52] B. is concerned that K. will be unduly confused between her father and grandparents' adhering to the Jehovah's Witness faith by being required to participate in school activities that are contrary to that faith. Of particular concern to him are the school's tradition of the daily singing of Canada's national anthem as well as its observation of Easter, Christmas, and Halloween.

[53] A. is concerned that if K. is required to abstain from participation in such common and generally enjoyed activities, K. will be isolated in her school and singled out by students for her differences. A. testified about her own experiences where she was required to withdraw from participation in similar activities and the sense of isolation and vulnerability she suffered as a consequence.

[54] In my opinion, both parents have legitimate religious and social concerns which should be accommodated to the extent possible, but it is obvious to me that such accommodation will be limited since only a full prohibition will be satisfactory to B.

[55] I will further discuss this impasse when addressing the terms of the draft order sought by B.

PROPOSED DRAFT CUSTODY AND GUARDIANSHIP ORDER

[56] As noted above, I have the benefit of a draft custody and guardianship order proposed by Mr. Ingram as counsel for B. setting forth his positions in concrete terms which I have discussed with both Mr. Ingram and A.

[57] I am grateful for Mr. Ingram's assistance in providing that document which offers a useful and practical tool for me to use as a basis for determining the various discrete issues I must resolve.

[58] In using that tool, I must first, however, advert to the unusual nature of this trial of the issues raised.

[59] As noted, these applications arise out of a final divorce order, so that in the usual course B. would have to establish a material change of circumstances before the existing divorce order could be varied. It is, however, more than arguable that because the parties never did agree in writing to the schedule that was to govern their affairs, that this application is, by reason of Clause 4 of the divorce order, a review application which does not require proof of a material change of circumstances. I have thus concluded that I should approach the issues raised as a review application.

[60] I might have reached a different conclusion had B. continued to pursue his sole custody application contrary to the terms of the consent divorce order, but that is not the case.

[61] What is now before the Court is a joint custody order that was not fully reduced to writing as contemplated. What is also before the Court are joint guardianship issues that were not addressed by the consent divorce order and are directly related to the custody issues raised by that Order, and which are necessary to resolve in my review of the parties' arrangements.

[62] The draft order provided by B.'s counsel suggests the following terms:

1. The parties shall continue to have joint custody of the Child.
2. The parties shall share access with the Child on the following basis:
    a. during the school year, the parties shall parent the Child on a three week cycle: in Week 1 and Week 2 the Child will be with the father Sunday night through Thursday night and with the mother from Friday after school to Sunday night; in Week 3, the Child shall be with the mother from Sunday night to Friday after school, and with the father from Friday to Sunday night;
    b. the parties shall each have one week (or one-half) of the winter school holiday and spring break school holiday with the Child;
    c. the parties shall have week on/week off access with the Child during the summer holiday, subject to extended out of town vacations with the Child, in which case the parties will consult and exchange travel details by May 15 of each year;
    d. travel authorization letters will be provided by each party upon request no less than 10 days before the identified start date for the specific trip; and

e. the father shall be entitled to travel with the Child to regularly scheduled Jehovah's Witness meeting out of town, and to the extent such meetings impact upon the access time of the mother, then the father shall promptly arrange for make-up time for the mother and the Child at the direction of the mother.

3. each parent will have the right to be consulted and to choose to look after the Child in the event that the other parent, during their access time, is unable to care for the Child for a period of more than three hours.
4. when the Child is with on parent, the other parent shall be entitled to speak with the Child on two occasions during any access period greater than two nights, and the parent with the Child shall facilitate such calls.
5. the parties shall be the joint guardians of the Child, on the following terms:

    a. in the event of the death of a guardian, the surviving guardian will be the only guardian of the Child;
    b. each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the Child;
    c. each guardian will have an obligation to discuss with the other guardian any significant decisions that have to be made regarding the Child, including significant decisions about the health (except in emergency decisions), education, and general welfare of the Child;
    d. in the event of any serious medical emergency or hospitalization for any reason, each guardian agrees that while the Child is in his or her care, the guardian will immediately contact the other and facilitate their consultation with the attending doctors, and until such time as the Child is competent to make treatment choices for herself, each guardian will consult and cooperate with the other to provide treatment that is in the best interest of the Child;
    e. each guardian will have the obligation to try to reach an agreement on significant decisions;
    f. in the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the parties shall seek to resolve the issue through the services of a

mediator, or in the alternative, either party may apply to Court for a resolution; and

g. each guardian will have the right to obtain information concerning the Child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party caregivers.

6. the father shall have sole responsibility for making decisions regarding the Child's school-time participation in the singing of national anthems, Halloween activities, Christmas activities, and Easter activities. This provision of the order is subject to review on application of the mother after July 1, 2016.
7. the responsibility for organizing the Child's extra-curricular activities shall be shared between the parties.
8. the parties shall not consume alcohol or non-prescription drugs during access time with the Child.
9. the parties and the Child shall be identified by their initials, and the style of proceeding is amended accordingly.

DECISIONS

[63] Concerning that draft order, I make the following decisions and consequential orders:

1. I agree that Clause 1 should be a term of this custody order.

The parties shall continue to share joint custody.

2. I do not agree with Clause 2(a).

[64] In my opinion, the regime suggesting by B. would require too many transitions by K. from one home to another. The evidence establishes to my satisfaction that Justice Gower's Order of December 10, 2012, has had a significant impact upon K.'s well-being. Her grade one teacher testified that she seems more settled and less anxious than before that change of the parenting regime. A. also testified that K. suffers less

from previous difficult frequent transitions and both B. and his mother acknowledged continued improvement with transitions in 2013.

[65] Although Justice Gower's Order which provided for one-week on/one-week off parenting has had salutary effects, I have concluded that a schedule of two weeks-on/two weeks off will better promote K.'s best interests by maximizing contact with two excellent parents and further minimizing the anxiety of transition.

[66] The evidence also establishes that K. is better accepting of and looks forward to stability and certainty which I consider important in setting this rotation. Also, according to B.'s mother K. has an innate sense of fairness so that I believe she will willingly accept that new regime.

[67] The two-week rotation I am ordering will commerce on Friday June 8, 2013 immediately after school with the parent who did not have K. the previous week having the first two weeks. If any transition Friday is a holiday or professional development day, K. will remain in the care of the parent with whom she is residing until 5:00 p.m. that day.

[68] I also continue paragraph 3 of the order of Justice Gower on December 12, 2012 that:

> A parallel parenting regime shall apply to [K.'s] residential time with her parents such that [K.] shall be subject to the rules, values and beliefs of the parent with whom she is residing during that week. When a decision is made by one parent that will overlap onto [K.'s] time with the other parent, the parents shall communicate with one another by email to determine how to address the overlap.

3. I agree with Clause 2(b) but also order that during those break periods the two week rotation shall be suspended to allow the sharing of those breaks and shall resume immediately thereafter to complete the two week rotation. I decline to make the special order concerning Mother's day as requested by A.

4. I do not agree with Clause 2(c). I am satisfied and order that the two week rotation I have ordered should be continued in the summer to K.'s benefit except that each parent will be entitled to extend one of their two week periods to three weeks each summer. In 2013, and all following odd numbered years, A. will have the first choice of the two week period she wishes to extend and B. will have the second choice. In 2014, and all following even numbered years, B. will have the first choice and A. the second choice.

5. I agree with Clause 2(d) to the extent that it requires each parent to provide travel authorizations 10 days after being notified of an intended trip out of the Yukon, but would not limit that obligation only to summer travel. I also order that B. deliver K.'s passport to A. 10 days before any travel outside of Canada, together with all necessary travel authorizations. I further require both parents to provide a brief itinerary to the other parent setting forth the date of any anticipated departure from the Yukon, the ultimate destination and anticipated return date. All of that information as well as the notice of an intended trip can be provided by e-mail. I specifically do not order that either parent will require the consent of the

other, to travel with K. out of the Yukon so long as that travel will occur only within their scheduled time with A. or, as discussed below when B. wishes to take K. to regularly scheduled Jehovah's Witness events out of the Yukon on dates that happen to fall within A.'s scheduled time with K.

6. I agree with Clause 2(e) which appropriately balances B.'s interests without unduly impacting upon A.'s time with K. I do, however, require than B. provide at least 20 days' notice of any trip to Alaska so that A. can comply with her obligations to provide travel authorizations within 10 days. I confirm that notices in writing for these trips can also be provided by e-mail.

7. I do not agree that Clause 3 should form a part of the final order in this case. I am satisfied that the autonomy of each parent in their care of K. should be respected. The clause now proposed would unduly interfere with that autonomy and would be fertile ground for further disputes that are not in K.'s best interest.

8. I generally agree with Clause 4 but will modify it to provide that in each week of any scheduled time with one parent, the other parent will facilitate three telephone calls of up to 15 minutes duration. Those calls will be facilitated between 5:00 and 6:00 p.m. each Sunday, Tuesday and Thursday, and will be initiated by the parent who does not then have the care of K. In the event that K. is travelling with a parent while a telephone

call is to be facilitated, that parent will provide the other with a telephone number where K. can be reached.

9. I agree with Clause 5 and each sub-paragraph of Clause 5 except that I will order that Clause 5(f) should be modified to require that the parties must first seek to resolve the issue with the assistance of a mediator, before applying to Court for resolution. I make that order to attempt to avoid a continuation of the protracted disputes that have existed in this case at great expense to the parties and to K.'s disadvantage.

[69] I also want to specifically note that in agreeing to Clause 5(d), I have deliberately refrained from making any orders with respect to medical care for K. that might involve the highly controversial religious issue concerning blood transfusion. As I expressed during argument, the evidence before me would not allow me to properly order that a blood transfusion either be allowed or prohibited.

[70] The issue is at this point, a hypothetical and highly charged one that should only be resolved in the event that it becomes a real issue. I sincerely hope that that never occurs but if it does Clause 5(d) appropriately preserves the interests of both parents, protects K.'s interests and does not preclude possibly necessary state intervention.

10. I have concluded that I cannot agree with Clause 6.

[71] While I hope that the parties can resolve this issue on a case by case basis each school year, I agree with the submissions of both that the evidence makes it unlikely that any agreement will be reached. While I understand B.'s position and recognize the limited time for which he seeks to exercise sole authority on the issue, I have concluded

that K.'s best interests will not be served by the order sought. The evidence of K.'s teacher which offers much guidance in the resolution of this issue is that K. wants to participate in theatrical events and seems to want to sing the national anthem.

[72] I do not ignore, but place less weight on A.'s evidence of her own childhood experiences and feelings of isolation that she says she suffered when excluded from participation in such events.

[73] While the decided case law overwhelmingly supports the proposition that a parent must not be prevented from exercising his or her religious beliefs and involving his children in them during periods of access or joint parenting even if the child's other parent disagrees, that same proposition dictates that the other parent's beliefs can also not be overridden.

[74] I am persuaded by the totality of the evidence that A. will act in K.'s best interests and is more likely to bear in mind B.'s belief when making decisions concerning K.'s participation in these contested activities than would be the case if the decisions were solely those of B.

[75] I have also agreed that B. should have the special right to remove K. from the Yukon for regularly scheduled Jehovah's Witness meetings. He will also be able to continue his attendances with her at the Kingdom Hall in Whitehorse to whatever extent he wishes when K. is with him. K. will also have the benefit of her paternal grandparents in her religious upbringing all of which will ameliorate any perceived harm that could arise from her participation in the impugned school activities.

[76] I also pay heed to the evidence of those witnesses who testified in this trial in support of B. about the importance of personal choice in a Jehovah's Witness decision to devote themselves to only their God. It seems to me that if free choice is a cornerstone of that faith then exposure to other possibilities cannot be an altogether bad thing.

[77] After weighing all those concerns and with the greatest of respect for B. beliefs I have concluded that if the parties cannot agree on the extent to which K. can participate in the activities identified in Clause 6, A. should make the final decision in relation to those activities until K. is in Grade 6, at which time that aspect of this order will be open to review on application by the father prior to the Grade 7 school year.

11. I generally agree with Clause 7 but will also order that in the event that agreement cannot be reached on an extra-curricular activity that will involve both parents' time with K. that B. will have the final decision-making power concerning such activities in 2013 and each subsequent odd numbered year and A. will have that authority in 2014 and all subsequent even numbered years.

12. I agree with Clause 8.

13. I have already ordered Clause 9.

[78] In addition to those orders there are other orders that have been made in this proceeding on an interim basis which I am satisfied should, in K.'s best interests be continued.

[79] I accordingly order that, as ordered by Justice Gower on December 10, 2012:

1. K. shall attend counselling with Nicole Bringsli at Creative Play Works and the parties shall equally share the cost of K.'s attendance at counselling for as long as such counselling is required unless the Court otherwise orders.

2. Neither parent will discuss this litigation with K.

3. Neither parent will question K. about the other parent's home.

4. Neither parent will make critical remarks about the other parent to K. or in K.'s presence.

COSTS

[80] Unless there are matters of which I am unaware, I order that each of the parties bear their own costs of this trial and all applications filed since September 15, 2012. They shall also equally share any government court fees related to those applications or this trial. I make those orders because I do not wish to attribute blame to either parent or give either an additional reasons to continue their disputes.

_____

DAVIES J.