IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Gunderson* v. *Thompson*, 2004 YKSC 44

Date: 20040702
Docket No.: 04-B0018
Registry: Whitehorse

Between:

SACHA GUNDERSON

Plaintiff

And

RYAN MILES THOMPSON

Defendant

Before: Mr. Justice L.F. Gower

Appearances:
E. Joie Quarton — For the Plaintiff
Debbie P. Hoffman — For the Defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] In this difficult case, the plaintiff mother applies for interim custody of her eight-year old daughter, P., and permission to move to Vancouver Island with her new husband and her six-month old son. The defendant father cross-applies for joint interim custody of P. and asks that the primary residence be with him in Whitehorse. Both parties have also applied for child support, which of course will depend on the location of the child's primary residence.

[2] The defendant lives with his mother and father, and has done so since the parties separated in 1997, with the exception of some time out of the Yukon for post-secondary education. The defendant father remains single. His parents and other extended family members (the “T. family”) have developed a close relationship with P., who has a hearing impairment and a probable learning disability. The paternal grandmother in particular has played a major role in the child’s upbringing to date.

ISSUES

[3] The main issue is whether it is in P.’s best interests to reside primarily with the father and his extended family in Whitehorse or, alternatively, whether she should be permitted to move with her mother, stepfather and baby brother to Vancouver Island. The resultant issues are the access by the parent who does not have primary care of the child and whether that parent should pay child support.

BACKGROUND

[4] The plaintiff mother will be 27 years old this coming August. The exact age of the defendant father was not disclosed, but he is approximately three years older than the plaintiff. The couple began dating when they were both in high school. The plaintiff became pregnant with P. in 1995 when she was 18 years old. She and the defendant began living together in March 1996 and P. was born on June 26, 1996. The couple separated in June 1997 when P. was about one year old. P. continued to reside with her mother, although she also began to spend an increasing amount of time with the defendant and his parents.

[5] There is a surprising amount of variance in the affidavit evidence of the plaintiff, the defendant and the paternal grandmother about how much time P. spent with each party after they separated. The situation was somewhat complicated by the fact that the father left the Yukon to attend university between January 1998 and April 2000, although he returned during his summer holidays over that period. Another important fact is that the plaintiff informally gave custody of P. to the defendant and his parents beginning in April 2000.

[6] The plaintiff began to suffer from significant emotional problems in the fall of 1999, when she was 19 years old. She began drinking heavily. She claims that she was caring for P. on her own and found the responsibility very difficult. Her own parents had just divorced and this added to her stress. Her drinking led to depression and ultimately to hospitalization for a week. She then learned that she had tumour on her liver, which was later found to be benign, but requires monitoring. She began to doubt her ability to provide adequate care for P. In April 2000, the mother placed P. with the defendant and his parents, while she moved to Vancouver to live with her father and recuperate from her depression. There is again conflict in the affidavit evidence about the circumstances in which that happened. However, it is clear that P. lived solely with the defendant and the paternal grandparents while the mother was in Vancouver from April to mid-August 2000.

[7] Upon her return to Whitehorse, the mother stayed with an aunt and uncle for approximately 1 ½ months until she was able to regain her old rental premises. Once again, there is a dispute in the affidavit evidence about what happened next. The plaintiff claims she immediately attempted to have P. returned to her care, but that she

experienced resistance from the paternal grandmother who wanted to have P. ease into the transition more slowly. The mother also says that she was told by the defendant father quite simply that P. was going to remain where she was. On the other hand, the paternal grandmother says that the plaintiff did not ask for P. to be returned to her care until the following March 2001 and, in the meantime, the plaintiff had only sporadic contact with P. This is denied by the plaintiff, however there is a gap in the plaintiff's evidence about exactly how much time she spent with P. over the one-year period following her return to Whitehorse in August 2000. What the plaintiff does say is that by approximately October 2001 P. was staying with her about half of each week.

[8] Although the evidence on the topic continues to be in conflict, from September 2002 to the present, it becomes clearer that P. has been spending more and more time with her mother. Most recently, since September 2003, P. has been living with her mother from Monday to Friday and with the defendant father and his parents from Friday afternoon to Monday morning.

[9] In their submissions, counsel for the parties went into significant detail about how much time P. was spending with each of the mother and the father, and sought corroboration in such other evidence as the child's school reading log. However, for the purposes of this application, I find that there was effectively a shared custody arrangement between the parties and that P. spent roughly equal amounts of time with each, especially over the last couple of years. Counsel for the parties each tried to make the case that their client was the primary caregiver and that this should figure prominently in the argument about where the child should principally reside. However, I am unable to conclude that either party was a primary caregiver or custodial parent. And

even if I could make that conclusion on the facts, there would be no legal presumption in favour of that parent for this reason: see *Gordon* v. *Goertz*, [1996] 2 S.C.R. 27; (1996), 134 D.L.R. (4th) 321, at paragraph 49.

[10] One of the unusual features in this case is the extent to which the paternal grandmother, a recently retired elementary school principal, became involved in P.'s life after the couple separated. She began by purchasing some necessities for the young child, such as a crib, stroller and car seat, as P. was spending more time with the T. family on evenings and weekends. Her involvement appears to have increased gradually as P. grew older, but took a significant turn when P. began to live with the T. family in April 2000. Although the defendant father signed the necessary forms and permission slips, the paternal grandmother essentially began to take on the role of a psychological parent for P. For example, she was doing such things as:

1. purchasing clothes for P.;
2. registering P. for kindergarten and elementary school;
3. attending with P. at kindergarten orientation and her first days of school;
4. choosing P.'s teacher for each of grade 1 and 2;
5. attending at parent-teacher interviews;
6. paying for all of P.'s school supplies, fees, school pictures, clothing, activities and other basic necessities;
7. registering and paying for extra-curricular activities such as dance, swimming and skating;
8. registering P. for a "chronic disability" program in connection with her hearing impairment;
9. purchasing a hearing aid for P. as well as arranging for all related medical and specialist appointments;
10. arranging for P. to have a "FM" system utilized in her school for her hearing impairment;

11. applying for a Social Insurance Number for P. for the purposes of establishing a Registered Education Savings Plan;
12. providing the names of the T. family members for the “contact sheet” at P.’s school, to be used in case of emergencies;
13. moving P. from one daycare to another at a time when the plaintiff mother was out of the Yukon; and
14. arranging to double the numbers of days per week that P. attends the Child Development Centre.

[11] The plaintiff and her counsel acknowledge that, in almost every instance, the types of things the paternal grandmother was doing for P. were and are in her best interests. However, while she appears grateful for that, the mother also complains that in many, if not all of these cases, the paternal grandmother acted without previously consulting her and even without subsequently notifying her. That complaint is largely unanswered by the grandmother, except to say that the plaintiff did not need an invitation to get involved and could have done these things on her own initiative if she wished.

[12] The plaintiff mother acknowledges that she was immature and inexperienced in her early years as a mother, but claims to have worked very hard over the years to learn how to become a good, stable and consistent parent. She therefore denies the repeated suggestions by the father and his mother that she is unreliable and inconsistent.

[13] In fairness, the plaintiff has also made strong allegations about the father’s conduct and previous character, such as getting fired from his job and being an alcoholic. He has taken great exception to these broad and unsubstantiated allegations and says they should give me reason to question the credibility of the mother. While I tend to agree with the father on that point, the past of the parties is largely irrelevant to the current issue of the best interests of the child: see s. 30(2) of the *Children’s Act*,

R.S.Y. 2000, c. 31. As the Supreme Court of British Columbia said in *Huggins* v. *Carson,* [2001] B.C.J. No. 992 at paragraph 38:

> The Court must not take into consideration the past conduct of a parent unless the conduct is relevant to the ability of the parent to act as a parent of the child. …

[14] The other significant circumstance in this case is that the mother began a relationship with Mr. G. in June 2001. Mr. G. is skilled both as a journeyman utility arborist and a fishing boat engineer and skipper. He came to the Yukon to work for a company which promised him two years of employment, but was laid off unexpectedly and prematurely. He has since sought other employment, but has been forced to accept jobs outside of the Yukon, resulting in him being away for months at a time.

[15] The plaintiff and Mr. G. were married in August 2003 and their son B. was born on December 29th of that year. The couple have decided to relocate to Cobble Hill on Vancouver Island, where Mr. G.'s family reside, including his parents, his sister, a nephew, an aunt and his grandfather. P. met this family in the summer of 2003 and reportedly became quite attached to Mr. G.'s mother, who is a homemaker on a small hobby farm with five horses. Mr. G.'s aunt is a retired elementary school teacher who has offered to tutor P. and assist her with her reading. The plaintiff has deposed that Mr. G.'s family is functional, stable, close and most family members are non-drinkers. She and Mr. G. are hoping to reside with the family this summer and build or purchase a home in the fall.

[16] Mr. G. expects that the move will result in more regular employment for him either on fishing boats or as an arborist. He reportedly earned approximately $55,000 in 2003, apparently on jobs outside the Yukon.

[17] Mr. G. deposed that he has established a positive relationship with P. and is committed to caring for her and providing a stable and loving home.

[18] P. not only has a hearing impairment, she apparently also suffers from a learning disability in reading and mathematics. The plaintiff also claims to have a learning disability, although she has recently worked hard and done very well with her upgrading efforts at Yukon College. Nevertheless, she claims to take P.'s education very seriously because of her own struggles in that regard. She also claims to recognize the importance of additional help and an appropriate school setting. Consequently, she has located a school called "Evergreen Independence School" in the Cobble Hill area, which appears to be a partially private, parent-run alternative school, which emphasizes small class sizes, theme teaching, experiential learning and community involvement. It also emphasizes individual learning styles.

[19] The plaintiff says that if P. is allowed to move to Cobble Hill, she will have opportunity to continue with her dancing, swimming and Brownie activities.

[20] On the other hand, as I have stated and largely as a result of the efforts of the paternal grandmother, much has already been done to accommodate P.'s impairment and learning disability, as well as to enrich her extra-curricular time. For instance, there is the hearing aid and the FM system. In addition, P. has been participating in a reading recovery program at her school and receives individual treatment there. I am told the staff and the principal are well acquainted with her learning difficulties. The defendant and his mother tutor P., when she is with them, in math and reading respectively. A psycho-educational assessment of P. was completed on April 5, 2004 and a resultant report has been prepared. P. has been enrolled in skating, swimming and dancing. As

well, the paternal grandmother has voluntarily participated with P. in a number of her Brownie activities.

ANALYSIS

[21] There is no question that both parents clearly love P. and wish nothing but the best for her. It is also clear that P. has a loving relationship with each of her parents. In short, parental capacity or fitness is not in question on either side. To be clear, I give no weight to the mutual allegations of past bad conduct or character against each party.

[22] I recognize that *Gordon* directs me to consider not only the past and present circumstances of the child, but also the proposed future circumstances. McLachlin J. (as she then was) said at paragraph 50:

> In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

See also *Yaghoobian* v. *Yaghoobian,* [1995] B.C.J. No. 2535 (B.C.S.C) at paragraph 27.

[23] However, in deciding this case, I am primarily concerned with the recent and proposed future circumstances of the child, her parents and their respective extended families, and only insofar as they affect the child's best interests.

[24] I agree with the defendant's counsel that I can regard his close relationship with his parents and other extended T. family members as a strength rather than a weakness. On the other hand, I am somewhat concerned by the fact that the defendant is approximately 29 years old, still employed on a seasonal basis earning less than

$13,000 gross annually, and continuing to reside with his parents. While I accept the defendant's evidence about the time he spends with P. and the activities he is involved in, I also have some concerns about the level of dependency he may have upon his parents.

[25] The much-quoted leading case in this area is *Gordon* v. *Goertz,* cited above. That case involved an application to vary a custody and access order. Consequently, there was a threshold requirement for a material change in circumstances. In the case before me, there is no existing court order with respect to custody or access. Therefore, I am solely concerned with what is in the best interests of the child. The guiding principles in *Gordon* were set out and slightly rephrased by the Ontario Court of Appeal in *Bjornson* v. *Creighton*, 62 O.R. (3d) 236 at 241, leave to appeal to S.C.C. refused [2003] S.C.C.A. No. 14, because that was a case, like the one before me, where the parents were equally entitled to custody and therefore could not be divided into "custodial parent" and "access parent":

> 1. The judge must embark on a fresh inquiry into what is in the best interest of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
>
> 2. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect and the most serious consideration.
>
> 3. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
>
> 4. The focus is on the best interest of the child, not the interest and rights of the parents.
> 5. More particularly, the judge should consider, [among other things]*:*

(a) the existing custody arrangement and relationship between the child and the custodial parent;
(b) the existing access arrangement and the relationship between the child and the access parent;
(c) the desirability of maximizing contact between the child and both parents;
(d) the views of the child;
(e) the custodial parent's reasons for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
(f) the disruption to the child of a change in custody; and
(g) the disruption to the child consequent on removal from family, schools and the community he has come to know.

[26] As the couple were never married, this case is also governed by the principles and provisions in the *Children's Act*, cited above, in particular, ss. 30 (1) and (4) as well as ss. 33(1) and (2). Firstly, there is a rebuttable presumption in favour of joint custody, with care of the child being awarded to one or the other parent. Secondly, in determining the best interests of the child, I must consider:

- all the circumstances including the bonding, love, affection and emotional ties between the child and her parents and grandparents;
- the ability and willingness of each parent to provide the child with guidance, education, the necessities of life and any special needs of the child;
- any plans for the care and upbringing of the child, the permanence and stability of the family unit with which it is proposed the child will live; and
- the effect that awarding custody or care of the child to one party will have on the ability of the other to exercise reasonable access.

[27] The Ontario Court of Appeal in *Bjornson* also said that in relocation disputes, *Gordon* dictates that careful attention should be paid both to the potential negative

effects on the child if relocating is restricted, as well as the potential positive effects on the child if relocation is permitted.[1]

[28] *Gordon* also directs that the court should only consider a parent's reason for moving in the exceptional case where it is relevant to that parent's ability to meet the needs of the child. An increase in the financial stability of the new family unit has been recognized as a legitimate reason for moving relating directly to the best interests of the child: *Huggins* v. *Carson*, cited above, at para. 39.

[29] The defendant argues that two factors tip the scale in his favour in meeting P.'s best interests. First, the disruption which P. will suffer by moving to Vancouver Island and the consequent separation from her father, paternal grandparents, maternal grandmother, aunts and uncle as well as her school, friends and medical professionals. Second, the defendant says that he and his family are best able to meet P.'s needs.

[30] I do not find either of those points to be compelling. P. will suffer disruption regardless of whether she stays in Whitehorse or moves to Vancouver Island. If she stays, she will be separated from her mother, her new baby brother, and her stepfather. That will no doubt cause her considerable anguish. As for meeting P.'s needs, I am simply not persuaded on the evidence that the home provided by the defendant and his parents is a preferable environment for P. in comparison with the home which the plaintiff and her husband plan to make for P. on Vancouver Island.

[31] As for the disruption, the facts in *Huggins* v. *Carson*, cited above, were similar and there the court said at paragraph 46:

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[1] *Bjornson* v. *Creighton,* cited above, at para. 29.

> Again, leaving their familiar community will be a bit disruptive. However, in my view these disruptions, as well as the diminishment or change in the nature of their time with their father, as presently experienced, are substantially off-set by their needs, which are best served by continuing to live with the mother, and in the Bellingham area, where their mother will, for example, see to their educational requirements, both in and out of school, and their step-father will provide a better financial base for their future up-bringing. I have already noted these benefits to the move which are attainable in Bellingham.

[32] And, as was noted in *Lowcay* v. *Lowcay,* [2000] B.C.J. No. 1688, by Ryan J.A. of the British Columbia Court of Appeal at paragraph 15:

> … Given the age of the children the move to Ontario away from friends and school will be disruptive, but not as difficult as it might be if the children were in middle or high school with a highly developed network of friends and community. The move away from grandparents is very difficult at any age.

[33] One of the objectives from *Gordon* is the desirability of maximizing contact between the child and both parents. However, this objective cannot always be met and should not prevent a court from permitting a child to move in appropriate circumstances. Although the court must recognize that maximum contact with both parents is generally in the best interests of the child, the reduction of beneficial contact between a child and one parent does not always dictate a restriction on moving. If the child's needs are likely to be best served by moving with one parent, and this consideration offsets the reduction in contact with the other parent, then the court should permit the move.[2] While the maximum contact principle does apply and is important, it is not absolute and it remains

[2] *Gordon* v. *Goertz,* cited above, at page 333 D.L.R.

one factor in the whole of the analysis. It is not to be treated as a governing factor: *Bjornson* v. *Creighton*, cited above, at para. 34.

[34] I also recognize that a parent's decision to relocate, even if it is made in good faith, must either conform to the child's best interests or be disregarded: *K.K.Q.* v. *F.W.R.*, [2003] B.C.J. No. 2748 (B.C.S.C.). *K.K.Q.* v. *F.W.R* was a case similar in many respects to the case before me. The parties had previously been in a common-law relationship and had a five-year old daughter, K.R. The main issue was whether it would be in the best interests of the daughter to live with her mother in Qatar in the Middle East, or to remain in British Columbia with her father. The mother had remarried and the couple had a fifteen-month old daughter. The defendant father sought an order for joint custody and primary residence, so as to prevent the mother from removing their daughter from the country. The court recognized that there would be much disruption to the daughter whether she remained in British Columbia or moved to the Middle East. It said that the move would cause her to miss her paternal grandparents, who had developed a loving relationship with her. However, in the end the court acknowledged that the mother would have far more time available to spend on the daughter's care and up bringing than would the father. Also, the daughter had a good relationship with her new stepfather and the court found she would also be able to further develop her relationship with her little sister. The court concluded at paragraph 183:

> In that environment, and at her young age, I think K.R. would be able to adapt to most of the changes within a reasonably short period of time, so as to reduce the duration of the acute disruption.

[35] In *Murphy* v. *Murphy*, [2002] Y.J. No. 13, at paragraph 52, Hudson J. of this Court recognized the employment of the stepfather as a legitimate reason for a move, when the stepfather would be seeing to the major financial, physical and other immediate needs of the children.

[36] *Murphy* also acknowledged, at paragraph 53, that children can adapt to disruption:

> There will be disruptions to the children on removal from Whitehorse, but these kinds of things occur to children who, in functional families, move from one community to another. I take judicial notice of the ability of children to adapt to these changes. I see no changes likely here which defy adaptation.

[37] The defendant's counsel relied on *Slade* v. *Slade*, [2002] Y.J. No. 105 (Y.S.C.) and *Rudge* v. *Rudge*, [2003] B.C.J. No. 2204 (B.C.S.C.) as examples where the mother was not allowed to move with the children. However, I find there are distinctions between both of those cases and the one before me.

[38] *Slade* was an application to vary a custody and access order. Therefore, a material change in circumstances had to be established. In that case, Veale J., also of this Court, accepted that a deterioration of the mother's financial situation met the threshold of a material change in circumstances. He also seemingly recognized that such a change would affect the best interests of the child. In that case, after the couple separated, the mother retrained as a horticulturist. She was unable to find employment in that field in Whitehorse, but was able to find a related job in British Columbia, where she had made arrangements to move. The daughter was ten years old. Veale J. said at paragraph 8:

> … The material change in circumstances presented is Ms. Slade's deteriorating financial situation. While it may be questionable whether the financial situation affected [the daughter], it certainly affected Ms. Slade ***and that would impact on the child.*** I therefore find that the onus has been met, … (emphasis added)

Prior to the proposed move, the parents shared custody on an equal basis and neither could claim to be the primary caregiver. The daughter had a good relationship with both parents and the shared custody achieved the desired goal of maximum contact between the daughter and each of her parents. Veale J. concluded that the move would be a disruption of the daughter's life and that her best interests would be better served by remaining with both parents in Whitehorse with her friends, her school and a continuation of her developmental gymnastic program.

[39] Veale J. found that the factors of disruption and maximum contact were paramount in *Slade.* I do not find those factors to be paramount in the case before me. Also, Veale J. gave no weight to the expected improvement in the mother's financial situation resulting from the move. This is curious, given that he apparently found the mother's financial situation would have an impact on the child's best interests. In any event, I have already determined that it is appropriate to consider the expected improvement in the finances of the mother's new family unit as a factor relevant to the mother's ability to meet the needs of the child. Another reason to distinguish *Slade* is that in the case before me the mother has established a new family unit, including a six-month old brother, to whom P. is clearly attached. In *Slade*, the mother was planning to move as a single parent with her only daughter.

[40] I agree with the defendant's counsel that *Rudge*, cited above, is a case very similar on its facts to the one before me. There, the mother planned to move with her children from the Lower Mainland to Williams Lake, British Columbia, to live with her fiancé who had a well paying job and a five-bedroom home. The father was noted to be close to his children and an equal participant in their up bringing. He had an extended family in the Lower Mainland who visited the children frequently. The mother claimed that she would suffer uncertainty and financial disaster if she were to remain in the Lower Mainland. However, she also indicated to the court that she would not move to Williams Lake unless she was allowed to do so with her children. In the end, the court disallowed the move principally for the reasons of disruption and maximum contact, and in that respect the case was similar to *Slade*.

[41] However, in *Rudge,* the fiancé in Williams Lake had not made any effort to explore the opportunity for employment in the Lower Mainland, with a view to joining and making a home with the mother in that location. That is not the case in the matter before me. Mr. G. has made efforts to find employment in the Yukon over the last couple of years and those efforts have been unsuccessful. It is also noteworthy that at paragraphs 76 and 77 of the *Rudge* case, the court noted:

> I think the facts and circumstances in the case at bar are very different from those cases relied upon by plaintiff's counsel because of the parental relationship between the defendant and the children, and the fact that there are ***no employment*** or health ***issues which tip the scales in favour of the plaintiff*** moving with the children to Williams Lake
>
> Moreover, I do not think that the plaintiff remaining in the Lower Mainland with the children will be the financial disaster that the plaintiff suggested in her evidence. …(emphasis added)

[42] I have already decided the employment/financial circumstances of Mr. G. and the mother's new family unit are legitimate reasons for the move. And, I repeat, I have not found the factors of disruption and maximum contact to be the governing factors in the case.

[43] In any event, *Gordon* clearly states that each case turns on its own unique circumstances.

[44] Finally, I would like to address a point which caused me considerable unease. The plaintiff feels as if the paternal grandmother has attempted to control her time with P. because she does not regard the plaintiff as a fully competent parent. In particular, the plaintiff states that the paternal grandmother has not fully recognized her growth, maturity and progress in parenting in recent years, and still regards her as young and having problems. Frankly, I tend to agree with the mother on this point. While I am confident the paternal grandmother has nothing but the best of intentions for P., the extent of her involvement in P.'s life, particularly when she has acted without prior or subsequent consultation with the plaintiff, seems unusual at best and perhaps even overbearing at worst. The plaintiff is entitled to an opportunity to stake her claim and prove herself as a mother to P. It strikes me that if P. is allowed to continue to reside primarily with her father, then the dominant influence of the paternal grandmother will continue to prevail and the plaintiff will be largely excluded from becoming a full and contributing parent to P. I think that would be contrary to the child's best interests in the long term.

CONCLUSION

[45] I conclude by awarding interim joint custody of P. to both parties. I find the plaintiff has not rebutted the presumption of joint custody in s. 30(4) of the *Children's Act*, cited above.

[46] I order that the primary residence of P. shall be with the plaintiff and that the plaintiff has permission to change P.'s residence to Cobble Hill, British Columbia.

[47] I further order that the defendant shall have reasonable and generous access to P. at the following times:

1. For at least 5 days during the spring school vacation each year;
2. For ½ of the Christmas school vacation, with Christmas day alternating between the parties from year to year;
3. For one month during the summer school vacation, with arrangements to be made between the plaintiff and the defendant as to the dates when the defendant will exercise access;
4. By ordinary mail, telephone and email;
5. By "web cam" computer contact. To facilitate this contact, I direct that the plaintiff purchase the necessary equipment to facilitate this form of contact. I note she has already purchased a computer for P.;
6. Reasonable access if the plaintiff is going to be in Whitehorse, Yukon Territory with P., upon providing reasonable notice to the defendant; and
7. Such other reasonable access as may be agreed upon by the parties from time to time.

[48] As for the costs of access, I direct that these shall be shared equally between the parties, subject to the following. Access costs will be the cost of transporting the child from her new home on Vancouver Island to Whitehorse and return. I expect that this transportation will primarily be by air. However, if the child is traveling with the mother to the Yukon in any event, for example when the mother returns to the Yukon to visit her

family here, then the plaintiff shall bear the entire transportation costs for the child. Similarly, if the defendant wishes to exercise access to the child on Vancouver Island, then he would bear his own travel costs in that regard. If required, the parties may return before me for further directions as to access costs.

[49] Not much was said by either counsel in oral argument on the issue of child support, however it is part of the plaintiff's application. I note the defendant said in his Affidavit #1 that he earns approximately $12,618 gross per year. Pursuant to the Child Support Guidelines, I direct that the defendant pay child support to the plaintiff in the amount of $36 per month.

[50] I did not receive submissions from the parties on the issue of court costs. I note that the plaintiff did not seek costs in her application, whereas the defendant did. I would be inclined to have each party bear their own costs on these cross applications. However, I am prepared to hear further submissions on the point if the parties wish to do so.

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GOWER J.