

Action No: 4801-161224
E-file Name: CVQ19 [REDACTED]
Appeal No: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

[REDACTED]

Plaintiff

and

[REDACTED]

Defendant

PROCEEDINGS

Calgary, Alberta
October 30, 2019

Transcript Management Services
1901-N, 601 – 5 Street SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392 Fax: (403) 297-7034

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1 [REDACTED] lived primarily with dad, and his mother moved to Bonneville.
2

3 The one week on, one week off, has worked relatively well for the parents, because both
4 work in the health and safety sector in the oil patch, with a one week on, off schedule. They
5 have arranged their schedule so that one is off and the other is working, other than for one
6 day. During this one day when both parents are working, [REDACTED] stepmother cares for
7 him.
8

9 [REDACTED] has lived in Airdrie since 2013 when he was 3. Before that, he lived with his parents
10 in Fort McMurray. [REDACTED] is in grade 4. It is not contested that [REDACTED] is well adjusted and
11 settled in Airdrie. He has numerous friends and regularly plays sports and games with them.
12 He has played community soccer in Airdrie since he was 3. He has friends over to his home
13 with his dad two to three times each week.
14

15 A summary of my decision, this application proceeded by way of affidavit evidence and
16 transcripts of cross-examinations on those affidavits. I advised the parties that I would not
17 rely upon any substantial evidence that was in conflict in making my decision, and that if
18 they wanted me to do so, the matter would need to be adjourned to a viva voce hearing.
19 Both parties agreed, both wanting it to proceed by way of this half day domestic special.
20

21 It is never easy to make a determination on mobility applications, and this case was
22 particularly difficult. In making my decision, however, as I set out earlier, I'm assisted by
23 the factors set out in legislation and the case law. I have concluded that these factors,
24 particularly the history of care, proposed childcare plans, and the disruption and stability
25 factor, weigh in favour of [REDACTED] remaining with his father in Airdrie, subject to the
26 conditions that I will set out.
27

28 Factors. I do not have [REDACTED] wishes before me, nor should I, given his young age. In any
29 event, both parents claim he prefers to live with them. The particularly relevant factors
30 argued before me commonly characterized in these mobility application are a child's
31 history of care, the issue of disruption or stability for the child in the face of the move, each
32 parties' proposed plan for the child's care and upbringing, and the ability and willingness
33 of the parents to communicate and cooperate with each other and facilitate maximum
34 contact with the other parent.
35

36 Both parents are willing and able to care for [REDACTED]. I am also confident that both parents
37 are able and willing to communicate and cooperate with the other in raising [REDACTED]. Both
38 would facilitate access to the other. To date, both parents have worked well together, and
39 made sure parenting worked. They and the father's wife, [REDACTED] stepmom, are to be
40 commended for this. It's speaks volumes about their commitment to and love for [REDACTED].
41

1 The majority of the factors I consider weigh in favour of ██████ remaining in Airdrie with
2 dad. In considering the history of care of ██████ I note that this factor remains in favour
3 of ██████ remaining with his dad. ██████ has either lived with his father primarily, or in a
4 shared, a one week on, one week off, parenting regime all of his life. ██████ has never lived
5 primarily with mom.

6
7 When ██████ lived primarily with dad when mom was in Bonnevillie, dad did not request,
8 nor did mom pay child support for ██████. Child support is the right of the child, and I'm
9 therefore hesitant to commend any parent that does not request or seek child support, but
10 what this factor does tell me or reinforce for me, is that dad is focused on ██████ best
11 interests in seeking that ██████ reside primarily with him. He his not motivated by child
12 support factors. In fact, dad has also proposed to reduce his child support to off set
13 transportation costs, which I will address towards the end of my decision.

14
15 I also consider the parties proposed childcare plans for ██████. Mom has rented an
16 apartment in Fort McMurray and will be working outside of Fort McMurray one week on,
17 one week off. She has arranged for a childcare provider for ██████ on the weeks she is
18 working. During the weeks that she is working, mom has to catch a bus to her work site a
19 5:47 AM. ██████ has to be dropped off with the childcare provider before then. That means
20 that ██████ has to be up shortly after 5:00 AM every other week, on the weeks when his
21 mother is working.

22
23 Mother then works until 6:00 PM, then catches that half-hour bus home. This means ██████
24 will not be home before 7:00 PM on the weeks mom is working. ██████ will be in childcare
25 13 to 14 hours during that seven day stretch and outside his home. Mom will then have
26 seven days when she is not working and able to focus on ██████ care.

27
28 In Airdrie, like his mom, ██████ dad has seven days when he's not working to focus on
29 ██████ care. When dad is working and gone for seven days, ██████ would live in the same
30 house, but with his stepmom and brother. During this week, he would leave the house
31 around 8:00 AM with his stepmom and brother. They would drop his brother off at ██████
32 ██████, then he would be dropped off a school at 8:20. He is then picked up by his
33 stepmom in the afternoon, and has dinner at 5:00 PM, then it's homework time, bedtime at
34 8:30.

35
36 After ██████ class moves to another school in January, he will attend ██████ for
37 before and after school care, along with his brother, ██████, where he will be picked up by
38 4:30 each day.

39
40 Mom has relied upon a case, *Lundberg*, in which the courts allowed a child in a shared
41 parenting regime to move with his mother, giving her primary care, in large part because

1 the child's dad's schedule was such that the child was with his stepmom more than his dad.

2
3 Mom argues that this case stands for the proposition that I must not favour a stepparent
4 over a biological parent, and that if I allow ██████ to remain in Airdrie, I will be doing that,
5 since ██████ will be with his stepmom every other week, and while I agree with the
6 principles of that case, I note that it is quite distinguishable from the case at bar.

7
8 In *Lundberg*, dad was away three to ten weeks at a time, followed by a week or two at
9 home. Here ██████ dad works one week away, followed with a week at home. The
10 biological parent argument only slightly weighs in mom's favour. If ██████ remains in
11 Airdrie, he will not be with any biological parent every other week. He will be cared for
12 by his stepmother, but if he moves with his mom, he will, for 13 to 14 hours each of those
13 days, be out of his home and cared for by a daycare provider, who he doesn't know very
14 well.

15
16 I am advised that dad is currently and actively looking for a position that will allow him to
17 work consistently near home. Dad has not found such a position, and therefore, I do not
18 consider this factor.

19
20 I have also considered that dad works every other week at a camp, about an hour outside
21 of Fort McMurray, and therefore would be relatively close to ██████ every other week,
22 were ██████ to live primarily with his mother in Fort McMurray. Having considered the
23 evidence, however, I conclude that it would be very difficult, and certainly far from easy,
24 for dad to visit ██████ when dad is working outside of Fort McMurray. Dad's work shift
25 ends at 6:00 PM, the camp is an hour away, and dad doesn't have a vehicle. Any such visit,
26 if successfully executed, would be very brief, given ██████ age and bedtime
27 requirements.

28
29 I must also consider the issue of the disruption of this move and the stability of this move.
30 Although I do not consider mom's reasons for moving, I do consider that mom's
31 employment in Fort McMurray is temporary. She has only a three to six-month
32 employment contract. She has no assurances that her employment will continue beyond
33 this term. Mom has had four different employers in the past six to seven years. So, her
34 employment situation is not as stable as dad's who has been with his current employer for
35 over nine years.

36
37 In addition, in considering stability and disruption, understanding, of course, that there's
38 no presumption in favour of the status quo, if ██████ remained in Airdrie, he would
39 continue in the same school until January, when he and his entire class, moves to a new
40 building. He would continue to study with the same classmates, continue to live in the same
41 community, with the same friends, in the same sports and activities. He would live in the

1 same home he has lived in every other week until July, with his brother and dad and
2 stepmom. He would continue to have dinner at the same time each evening, go to bed at
3 the same time each evening.
4

5 I also consider that [REDACTED] has some roots or history with Fort McMurray, and some of his
6 mom's extending family lives there, but given his young age when he left Fort McMurray,
7 this factor does not weigh heavily in my decision, and certainly doesn't tip the scale.
8

9 Mom's temporary job does not pay for flights in and out of Fort McMurray. She sold her
10 condo in Airdrie and fully located to Fort McMurray believing that dad agreed to her move
11 with [REDACTED]. Dad denies he consented, and there is some evidence before me that dad was
12 considering different scenarios, such as [REDACTED] living one year with mom, next year with
13 dad.
14

15 Dad was leaving for a three-week family vacation the day after receiving notice of the
16 proposed move. I accept that he hadn't had an opportunity to consult with counsel until his
17 return, and only after receiving advice from counsel did dad firmly raise any objections.
18

19 Ultimately, I have decided that this factor should not be weighed too heavily against dad.
20 It's clear from the evidence before me that dad was struggling with mom's proposal to
21 move [REDACTED], and ultimately, was trying to make the shared parenting regime continue to
22 work for [REDACTED]. Regardless, this analysis is not about the parent's best interest or the
23 parent's convenience, but what is in [REDACTED] best interest.
24

25 In terms of facilitating access and maximizing contact, mom argues that her parenting plan
26 provides more time for dad with [REDACTED] than dad's proposed plan for mom. This, she
27 argues, demonstrates mom is more likely to maximum contact and is a factor in her favour.
28 I'm not persuaded by this argument. As I stated earlier, I'm satisfied that both parents can
29 and will work together to facilitate access and maximize contact. Further, my decision can
30 be subject to the parties working out a generous access plan for mom.
31

32 I do not consider the factor of family violence in this case, although I acknowledge the
33 evidence relating to an assault by mom against dad in 2011. Much time has past since then,
34 and the parties here really should be commended on how well they have done in putting
35 [REDACTED] best interest first and foremost.
36

37 Overall, on a balance of probabilities, I find that it is in [REDACTED] best interest to remain in
38 Airdrie with his dad, who has always had primary care of or equal and shared care of
39 [REDACTED], all of [REDACTED] life.
40

41 In considering [REDACTED] life in Airdrie versus Fort McMurray, I find that his life would be

1 more stable and would be easier and less disruptive if he were to remain in Airdrie. If he
2 moved, he would again have to rise and leave home shortly after 5:00 AM every other
3 week for seven days. In Airdrie, as I stated, he could remain in bed for the same time each
4 day and return home at the same time each day. His schedule can be even more flexible on
5 the weekends.

6
7 In Airdrie, [REDACTED] can remain with his brother, with whom he's close, and every other week
8 when dad's at work, he can still remain in his home with his stepmom caring for him, as
9 she did when his mom was living in Bonneville for 18 months.

10
11 A move would significantly disrupt [REDACTED] life, particularly as it could be on a temporary
12 basis, as might be the case if mom's employment is not extended.

13
14 I have made this decision knowing and understanding that mom has already moved to Fort
15 McMurray. Mom had proposed that if [REDACTED] were allowed to move, he could fly to Airdrie
16 to visit dad at least once per month. However, if [REDACTED] were to remain in Airdrie, for the
17 same cost [REDACTED] could instead fly to Fort McMurray. Alternatively, for the same cost,
18 mom could fly to Airdrie. A portion of the transportation costs could be offset against child
19 support, something dad has already agreed to.

20
21 Given the temporary nature of mom's job, it's also possible that mom could return to
22 Airdrie and resume the shared parenting regime she had previously, and which [REDACTED] had
23 has enjoyed for most of his life. If mom's job becomes permanent, it's also possible that
24 her employer may pay for flights in and out. Which such an arrangement, mom may also
25 decide to resume the shared parenting regime in Airdrie. If she chooses this, some childcare
26 costs should be offset against her cost of setting up a home at Airdrie.

27
28 At this stage, however, many things are up in the up in the air, and [REDACTED] is still young. A
29 child's best interest can change as he ages, or as his parents' circumstances change. For the
30 purposes of this decision, however, I have assumed that mom will remain in Fort
31 McMurray.

32
33 Given my decision, the parties are encouraged to consider all of factors that would allow
34 [REDACTED] to have maximum contact with his mother. In the interim, if the parties are unable
35 to agree, I can hear submissions about proposed parenting plan.

36
37 I would also propose to retain case management if necessary, over this. I don't want to call
38 it case management, because that has changed how we do that, but to maintain control over
39 the file, if that would be necessary. I suspect it won't be, given how well the parents have
40 cooperated to date, but something to think about.

41

1 **Certificate of Record**

2
3 I, Monica Neitzert, certify that this recording is a record made of the evidence in the
4 proceedings in Court of Queen’s Bench, held in courtroom 1604, at Calgary, Alberta, on
5 the 30th day of October, 2019, and that I was the court official in charge of the sound-
6 recording machine during the proceedings.
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1 **Certificate of Transcript**

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3 I, Denise Garner, certify that

4
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best
6 of my skill and ability, and the foregoing pages are a complete and accurate transcript of
7 the contents of the record, and

8
9 (b) the Certificate of Record for these proceedings was included orally on the record and is
10 transcribed in this transcript.

11
12 Denise Garner (Kaye Garner)
13 Order Number: AL-JO-1004-2956
14 Dated: November 3, 2019

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