

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Taylor v. Wanless, 2011 NSSC 336

Date: 20110909

Docket: SFHMCA-060086

Registry: Halifax

Between:

Alexandra May Taylor

Applicant

v.

Martin Gregory Wanless

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: September 1 - 2, 2011 in Halifax, Nova Scotia

Counsel: Kenzie MacKinnon for Alexandra Taylor
Martin G. Wanless, self-represented

By the Court:

[1] Alex Taylor and Martin Wanless are the parents of eight year old Samuel, six year old Joshua and four year old Autumn. They separated in the spring of 2008 and, in August 2009, Ms. Taylor applied unsuccessfully to relocate the children's home from Halifax, N.S. to Victoria, B.C. My decision in that application is found at *Taylor v. Wanless*, 2009 NSSC 267. Now, Ms. Taylor applies to relocate their home from Halifax to Qualicum Beach, B.C.

Threshold consideration

[2] I'm governed by *Gordon v. Goertz*, 1996 CanLII 191 (SCC) in varying parenting arrangements contained in an order. At paragraph 10 of the majority reasons, then-Justice McLachlin tells me that before I can consider the merits of Ms. Taylor's variation application I must be satisfied there has been a material change in circumstances since the most recent parenting order was made. The requirements of such a change were described in paragraph 13:

- a. there must be a change in the condition, means, needs or circumstances of the children or the ability of the parents to meet their needs;
- b. the change must materially affect the children; and
- c. the change was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

[3] Whether there has been a material change is important for two reasons. The first reason it's important is because it tells me "why" the order should be changed: the order should be changed because the circumstances have changed so that the order is no longer in the children's best interests.

[4] The second reason it's important is because all decisions about parenting are determined on the basis of the children's best interests. Once I know that the order doesn't reflect the children's best interests, I am to consider the children's best interests in the new circumstances. This second step informs the decision "how" the order should be changed.

[5] Ms. Taylor says the material change that has occurred since September 2009 is that she has lost her job and she is now compelled, by financial necessity, to move to a location where she and the children will be adequately supported.

[6] Mr. Wanless agrees that there has been a material change in that Ms. Taylor has lost her job, declared bankruptcy, lost her vehicle (as a result of her bankruptcy) and that he has failed to pay child maintenance for over one year during his thirty-one months of unemployment.

Mobility application principles

[7] *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.) established the principles which guide the determination of mobility applications. Those principles were summarized in paragraph 49 of the majority reasons. Based on them, my inquiry is limited to what is in the children's best interests, considering all the relevant circumstances relating to their needs and their parents' ability to meet their needs. I am to consider the current parenting arrangements and the children's relationship with each parent, the desirability of maximizing contact between the children and both parents, the reason for the move (only in the exceptional case where it is relevant to the parent's ability to meet the children's needs, as Ms. Taylor asserts it is), and the disruption that would result from the children's removal from family and the community they know.

[8] While the decision in *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.) directs me to consider the children's views, I don't do that in this application. I've been given no evidence of their views. As well, I am not considering the disruption to the children that would result from a change in custody. Such a consideration relates to the prospect that there is a change in custody because the custodial parent moves without the children. This consideration isn't applicable here because Ms. Taylor has volunteered that she will not move without the children.

[9] The current parenting order dates from September 2009. It was a final parenting decision, in as much as parenting decisions are ever final. By virtue of that decision, Ms. Taylor is the primary custodial parent. Her views are not dispositive of this application but I accord them great respect. As was noted in paragraph 49 of *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.) there is no legal presumption in favour of a custodial parent's plan: "Each case turns on its own unique circumstances." The issue which concerns me is the best interests of eight year old Sam, six year old Joshua and four year old Autumn in the current circumstances.

The family's circumstances

[10] After my decision in September 2009, Ms. Taylor and the children settled in a rented bungalow in Jollimore. The boys were enrolled in John W. MacLeod / Fleming Tower School. Samuel had finished primary at Grosvenor Wentworth Park School. He transferred to John W. MacLeod / Fleming Tower School in September 2009 following the first hearing. Joshua began school here. Both boys are French immersion students.

[11] Ms. Taylor found it difficult to afford this arrangement, despite supplementing her income by hosting international students who contributed between \$700.00 and \$900.00 each month to the household's income.

[12] Mr. Wanless was unemployed. He was ordered to pay child maintenance of \$811.34 which was comprised of child maintenance pursuant to section 3 of the *Child Maintenance Guidelines* NS Reg 53/98, and a proportionate contribution toward daycare and Excel costs. This payment was calculated on the basis of an annual income of \$23,224.00, the annualized amount of his Employment Insurance benefits. In the six month period from September 2009 until the end of February 2010, Mr. Wanless was required to pay child maintenance of \$4,868.04. He paid \$1,876.00. At paragraph 6 of my earlier decision, I noted Ms. Taylor's concern that she could not depend on Mr. Wanless for financial support in raising the children.

[13] In March, 2010, Ms. Taylor's position at Dalhousie was made redundant. She says that she "could have been let go with a regular severance package." Instead, she negotiated a severance package which allowed her to continue to work until May 2010 and to receive her salary for one year. As well, she negotiated a waiver of tuition for enrolment in a Master's degree program at the university. Ms. Taylor said this wasn't the first time she'd considered pursuing a Master's degree. She chose to register in the Master's of Public Administration program and began this program in September 2010. Ms. Taylor described this as "an amazing opportunity" and the "best professional development I've done in my career". She says most students take five years to complete this course. She planned to complete it in just two years. The course is offered online and at the end of each term she is required to be on campus for a period between five and eight days.

[14] In May 2010, Ms. Taylor applied for a job at the University of Victoria which was quite similar to the work she'd done at Dalhousie. While she was interviewed, she wasn't offered the job. In her testimony she said that she "didn't look too long" for a job to replace the one she lost at Dalhousie. She says she looked long enough to weigh the decision of making a lateral move to job that made "day to day living a daily struggle" against training for an improved career.

[15] Ms. Taylor says that part of her decision to take on the MPA program was concern about Mr. Wanless' circumstances. She says she was worried she'd soon be receiving no support from him because he'd been out of work for over a year and his Employment Insurance benefits would be exhausted. She planned to receive her salary for the first year of her program and to receive Employment Insurance benefits for the second year. She also planned on taking advantage of student loans and grants.

[16] In the spring of 2010, Ms. Taylor's brother loaned her \$10,000.00 for a down payment on a home. She expected that buying a home would be more affordable than rent the bungalow. She and the children moved into this home in July 2010. Its location allowed the boys to remain in John W. MacLeod / Fleming Tower School. Mr. Wanless moved to an apartment one street away and Autumn was registered in the daycare centre in his apartment building.

[17] Mr. Wanless' child maintenance payments stopped in June 2010. He gave evidence of his job search and his efforts with four different placement agencies to find work. He applied for financial assistance to re-train, but his application was rejected. He has supported himself and his children, when they are with him, with money from his mother and his girlfriend.

[18] Ms. Taylor had no paid employment during the summer of 2010. Her studies began in September 2010.

[19] In March 2011, Mr. Wanless applied to be a bus driver at Metro Transit. He was one of hundreds of applicants: the initial screening process took place in a university auditorium. He has made his way through this process and, he explains, all that remains is to complete a criminal record and "vulnerable persons" check. If these are satisfactory, Mr. Wanless says he will be entered into Metro Transit's labour resource pool and, depending on need, he will be selected for driver training in late 2011 or early 2012. Ms. Taylor questions whether Mr. Wanless will be

offered a job given his health (diabetes, chronic depression), age (48), lack of experience and his pending criminal charge. It appears these factors have not impeded his application so far.

[20] In April 2011, Ms. Taylor declared bankruptcy. This absolved her of her obligation to repay approximately \$71,000.00 in debts. The van she drove was surrendered as part of the bankruptcy. The home, its contents and a \$700.00 RRSP GIC were exempt from the bankruptcy. Ms. Taylor makes monthly payments of \$340.00 to her trustee which will end in February 2012.

[21] In April 2011 Mr. Wanless applied for a part-time job at Statistics Canada. He says hundreds of people applied for these jobs. He was successful and began work on June 29, 2011. His six week contract has been extended by six months to February 2012. He says he's "guaranteed" thirteen hours work each week, but the paperwork from Statistics Canada does not confirm this. Regardless, he will be working forty hours each week through September. He has applied for a second (and simultaneous) part-time job at Statistics Canada.

[22] Mr. Wanless says he would continue to work at Statistics Canada while he becomes established as a bus driver.

[23] Mr. Wanless' child maintenance payments resumed in August 2011 when a garnishee was placed against his earnings from Statistics Canada. The garnishee collects the current payment and an additional amount on account of arrears. While Mr. Wanless' child maintenance obligation was based on an annual income of \$23,224.00, he did not apply to vary his payments when his Employment Insurance benefits ended. Arrears of approximately \$20,000.00 have accumulated and he has not applied to rescind them.

[24] In her second affidavit, Ms. Taylor said that she planned to move from the home she purchased with her brother's loan "if the mobility application is not approved". She explained that tenants are "less of a risk to the mortgage". When she swore this affidavit, the dates for this hearing were scheduled. Though the hearing had not yet begun, Ms. Taylor rented the home to tenants who moved in on August 20. She and the children are currently living at Bryony House, a transition house for women and children. It appears that Mr. Wanless was not asked if the children could stay with him pending the hearing and decision.

Ms. Taylor's plan

[25] Ms. Taylor's retired parents live in Qualicum Beach, a village of 8,000 – 9,000 people located approximately two and one-half hours from Victoria. Ms. Taylor proposes that she and the children move to Qualicum Beach and live with her parents while she completes her studies. Her sister, brother-in-law and their three children (who are in the same age range as Sam, Joshua and Autumn) live in Victoria. Ms. Taylor envisions social and recreational activities with these members of her extended family.

[26] In Qualicum Beach, there is one local school. In the neighbouring community, there is a school with a French immersion program. She doesn't know whether the children would attend the local school or the school with the French immersion program. Ms. Taylor says she will

work on her studies while the children attend school and after their bedtimes. She doesn't describe a need for childcare.

[27] Ms. Taylor studies online and, at the end of each term, she attends at Dalhousie for between five and eight days.

[28] When her studies are concluded, Ms. Taylor says she will be qualified to work in the management of municipal, provincial or federal government. The starting salary in this field is under \$65,000.00 she says.

[29] Ms. Taylor says she is prepared to look for work after completing her program without restricting the location where she might work and that she'd consider Mr. Wanless' circumstances in making her decision. She doesn't anticipate that work in this field will be available to her in Qualicum Beach, but may be available to her in a commuting community, such as Nanaimo.

[30] Ms. Taylor hopes that Mr. Wanless will move to British Columbia. She has provided information about job opportunities in the marketing field in British Columbia. This is the work that Mr. Wanless did prior to losing his job in 2009. Mr. Wanless notes that none of the opportunities is in Qualicum Beach and, while there are a few opportunities on Vancouver Island, most are on the mainland. Ms. Taylor has provided information about the availability of ferry travel from the mainland to Vancouver Island.

[31] Ms. Taylor suggests that the children would see their father at Christmas, during the March Break and the summer school vacation if Mr. Wanless remains in Nova Scotia. She is not specific about the access he would have if he lived in British Columbia.

[32] Ms. Taylor proposed that Mr. Wanless pay no child support so that he could afford to finance the travel costs that he and the children would have. The children's travel to Nova Scotia would need to be accompanied, given the children's ages. I am told that the cost of round trip travel for the three children and an accompanying adult from British Columbia to Nova Scotia would be \$3,200.00 per visit.

The current parenting arrangement

[33] The children are in joint custody. Their primary residence is with Ms. Taylor.

[34] Currently, Mr. Wanless sees the children on alternate weekends from Thursday afternoon until Sunday afternoon and mid-week every week. His mid-week access alternates in a two week cycle: one week there is a single overnight visit and the other week there is an evening visit. This schedule could not be maintained even if Mr. Wanless moved to Victoria.

[35] There is additional access, as one would expect, on Mother's Day and Father's Day. As well, the children are with Mr. Wanless at Christmas for between four and eight days, during the March Break for five days and during the summer school holiday period for four weeks. Some elements of these visits could be maintained following a move.

[36] Pursuant to the earlier decision, both parents are entitled to attend the children's school and recreational activities, regardless of when these are scheduled. The children are to have daily contact with the parent with whom they aren't staying.

[37] There is no indication that Mr. Wanless hasn't utilized all the access time scheduled for him. He complains that Ms. Taylor has not facilitated the daily telephone calls the children are to make to him and she delays access transfers. For the most part, Ms. Taylor did not respond to this evidence.

[38] It appears that Ms. Taylor hasn't consulted with Mr. Wanless about certain joint custodial matters. She selected the boys' school in 2009 without consulting with Mr. Wanless. While this application comes as school is starting, the parents haven't decided whether Autumn should begin school this year (as she's entitled to do) or remain in daycare. In any event, Autumn is registered for school in Halifax, to preserve the option of that decision.

The children's relationship with each parent

[39] Each parent has provided an extensive description of interaction with the children that was not challenged.

[40] The children are described in the most of positive terms. Sam is "very calm, happy and extroverted", "a natural leader" who "looked out for the other children", "a great student" and someone to whom "the other children [at school] gravitated". Joshua is "a great boy with a wonderful spirit" who does well in school. Autumn is "bright, happy" and "pretty easy going". The children are close to each other.

[41] More so than Ms. Taylor, Mr. Wanless describes the children wanting to share news with their mother about their activities with him and his making an effort to sit together at a school function. Mr. Wanless has provided additional care for the children when Ms. Taylor requests it. As much would be expected of a parent. Mr. Wanless shares custody of his oldest son with that boy's mother and he has that experience of co-parenting as a model for his post-separation relationship with Ms. Taylor. When Mr. Wanless refers to the children's family in Halifax, he includes their mother, their half-brother and their maternal grandmother – he sometimes includes Caleb's mother, as well.

[42] Ms. Taylor's description of the children's lives is less inclusive than Mr. Wanless. She tends to describe what happens at her home or what she does with or for the children, without acknowledging the children's other home or other significant people in their lives. She diminishes the loss of their half-brother, Caleb, and their paternal grandmother, Chieko Hara, from the children's lives by saying that relationships "change".

[43] As I noted at paragraph 17 of my earlier decision, the parents have differing approaches to their responsibilities. For example, Mr. Wanless thinks the children should adhere to a schedule which means that they are available for his phone calls and they are available for access visits when they are scheduled to start, while Ms. Taylor believes the children should not be rushed to complete activities they enjoy to meet an artificial deadline such as the start of access.

While neither approach is inappropriate, each approach aggravates the other parent and neither parent seems willing to modify his or her approach rather than frustrate the other.

[44] Mr. Wanless was explicit in identifying the benefits of the children's relationship with Ms. Taylor. He acknowledges the work she's done to involve the children in sports, despite the family's limited means. Many of the children's organized activities encroach on their time with Mr. Wanless and he is unhappy about this. Regardless, he transports the children to the activities and participates, to the extent he can.

[45] Ms. Taylor questions the benefit of Mr. Wanless' parenting. She attaches no special importance to the children's relationship with him. At paragraph 25 of *Taylor v. Wanless*, 2009 NSSC 267, I wrote:

Mr. Wanless has offered examples of Ms. Taylor scheduling activities for the children during their time with him or encroaching on their time with him by engaging the children in other activities that they might prefer to spending time with him. These actions don't demonstrate a commitment to maintaining the children's relationship with their father: they demonstrate a lack of appreciation that time with their dad is more important than basketball or visiting at friends'. As well, they demonstrate to the children that their mother doesn't think their time with their father is important.

[46] This continues. Despite the family's limited finances, Ms. Taylor was able to arrange for the boys to participate in soccer, hockey, basketball, rock climbing and Scouts. The children take part in swimming. The boys participated in programs at their local library. Many of these activities occur during Mr. Wanless' time with the children, limiting his direct interaction with the children and reducing him to chauffeur and spectator. It is appropriate that the children are physically active and learn the skills that team play can teach. Ms. Taylor describes the boys as "busy". She says the children enjoy quiet time cuddling with her, Autumn reads to herself or her dolls and Joshua comes home to work through his feelings about things that have happened during his day. Her scheduling of activities throughout the children's time with their father reduces the children's opportunity to share these experiences with him.

[47] There's conflict in the parents' relationship and both parents have contributed to this. They can be abrupt in speaking with each other. They can fail to show each other the simple courtesy of saying "thank you" or ensuring the children telephone the parent with whom they aren't spending Christmas Day. In May 2010 during an access exchange, the parents fought in front of the children about Mr. Wanless taking the children outside the city to go camping. In late June 2011 just before this application was filed, they again fought in front of the children during an access exchange. This resulted in a criminal charge against Mr. Wanless. He has yet to enter a plea. A no contact order is in place.

[48] Both parents describe children who are physically affectionate with them and who enjoy the time they spend with each parent. The children's relationships with each parent are appropriate for their ages.

The desirability of maximizing contact with both parents

[49] Ms. Taylor notes that the goal is not maximum contact between children and parents, but the maximum contact that's in the children's best interests.

[50] The children are happy and well adjusted and they do well at their school or daycare. I've quoted phrases describing the children in paragraph 40. It appears the current parenting arrangement is one which suits them and is in their best interests. The proposed move makes it impossible to continue the current parenting arrangement, even if Ms. Taylor's hope that Mr. Wanless moved to British Columbia is realized.

[51] Ms. Taylor says that her desire to move is not motivated by a desire to diminish the children's relationship with their father. Regardless, there are few destinations which could have a greater and more negative impact on contact between the children and their father. If Mr. Wanless remains in Halifax, travel to Qualicum Beach requires a number of flights and a few hours' driving (or fewer flights, a ferry trip and driving). While Ms. Taylor says she hopes Mr. Wanless would move to British Columbia, she doesn't suggest it's viable for him to move to Qualicum Beach: she suggests job opportunities in Victoria or on the British Columbia mainland. Even if Mr. Wanless made a move to one of these locations, it would not allow him to replicate the access arrangement that exists in Nova Scotia.

[52] A move by Mr. Wanless to Victoria would allow Christmas, March Break and summer access to continue in its current form. He would not be able to exercise overnight or afternoon access during the school week and the extent of weekend access would be curtailed.

[53] Ms. Taylor proposes phone calls, Skype and email contact. I have evidence that only Sam can read and write. For Joshua and Autumn, email does not provide direct interaction with their father. It's not clear that contact by telephone and Skype can be initiated by the children on their own: this contact may depend on someone else. If Mr. Wanless remains in Nova Scotia, phone calls and Skype visits are constrained by the significant time difference between Halifax and Victoria.

[54] Ms. Taylor suggests the children see their father during the summer, March Break and at Christmas time, if the children moved to British Columbia and Mr. Wanless remained in Halifax. At Ms. Taylor's estimate, the airfare alone for transporting the children and a chaperone to Halifax would cost \$9,600.00 annually. This excludes ground transportation to an airport in Victoria or Vancouver and any expense for accommodations for the chaperone. If Mr. Wanless travelled to British Columbia, the cost would include his accommodations and, potentially, lost wages. As someone just re-entering the workforce, it's unlikely that any employment would allow Mr. Wanless six weeks of vacation so he could take advantage of the access that Ms. Taylor proposes. The reduction in access which would result from relocation would not be in the children's best interests.

The reason for the move

[55] Ms. Taylor says that her financial circumstances compel her to move. Without employment, she says she must move to provide the children with a stable home and financial support.

[56] Ms. Taylor's parents did not testify or offer affidavits. Offering affidavits might have required them to be cross-examined by video conference or in Nova Scotia and Ms. Taylor wanted to avoid this expense. I was told that Ms. Taylor's parents couldn't afford to continue to provide her with financial assistance and that it had been some time since they had done so. However, they have a home to offer and they invite Ms. Taylor and the children to share their home. Ms. Taylor says that moving to British Columbia will enable her to provide the children a stable home and to support them.

[57] When her job at Dalhousie was eliminated, Ms. Taylor chose not to accept a "regular severance package", but to negotiate the opportunity to pursue a Master's degree. She's excited to be pursuing graduate studies and she undertook this program enthusiastically and with high hopes for the possibilities it offered.

[58] This plan seemed to ignore her experience that her full earnings, with the assistance of income from foreign students and some maintenance payments from Mr. Wanless was insufficient to maintain the bungalow in Jollimore. There's no explanation how she thought it would be possible to survive when her earnings were replaced with Employment Insurance benefits, she had no income from foreign students and Mr. Wanless wasn't paying child maintenance. As well, her plan ignored the fact that most students require five years to complete the MPA program.

[59] Ms. Taylor lost her job in March 2010. I understand from her evidence that her income in 2010 was the equivalent of what her earnings would have been, since she continued to receive her salary throughout that year. According to her 2010 tax return, her employment income was \$67,077.81. She says that after completing her degree she will be eligible for employment with a starting salary of under \$65,000.00. Employment with an MPA may offer Ms. Taylor the potential for greater income in the future, but it appears that it may take some time for her to achieve that potential since the starting salary is less than the salary she earned at Dalhousie. I was not told how long it would take for her to achieve a salary in the public administration field that would match or exceed the salary she had at Dalhousie.

[60] Ms. Taylor's MPA studies have not gone as planned. She says that events surrounding her bankruptcy and this application have meant that she has been required to defer courses. While she planned to be half-way through her course by now, her course deferrals have extended her program so that she now anticipates she will conclude her courses and graduate in the fall of 2013. Her tuition waiver will not apply to all the remaining courses she must take. She must pay tuition for three courses. A course costs \$1,650.00. She says she spends \$250.00 per course for materials and she has nine more courses. The cost for tuition and materials to complete her MPA is \$7,200.00. Additionally, she must travel to Halifax at the end of each term for exams. With at least four terms (if not five) to complete her program, the cost of her airfare to Halifax is

\$3,200.00. Assuming none of these costs increases, the cost of completing her program is \$10,400.00.

[61] If Ms. Taylor's current plan is realized, it will be an unknown number of years before she realizes an income which matches or exceeds the income which she felt, in 2010, "made day to day life a daily struggle". Until then, her plan requires the children to live a life of much reduced circumstances and with little, if any, contact with their father and extended paternal family.

[62] Ms. Taylor's current monthly income is \$2,587.00, comprised of \$2,031.00 from Employment Insurance, \$456.00 from the Canada Child Tax Benefit and \$100.00 from the Universal Child Care Benefit.

[63] Ms. Taylor says that in Qualicum Beach she will have the expense of contributing to household groceries, but she will be spared paying for a home or its operation. Assuming that Ms. Taylor's Employment Insurance benefits continue until April 2012, she will have total income of \$18,109.00 during this and the coming seven months. All but \$7,709.00 of this sum is needed to finance her education.

[64] Ms. Taylor says she found day to day life a daily struggle on an annual income of \$67,000.00. This amount doesn't consider the money she received as Universal Child Care and Canada Child Tax Benefits. Consider the next few years: at best, until April 2012, she will have \$18,109.00. Thereafter, she will be without Employment Insurance benefits and will receive Canada Child Tax and Universal Child Care Benefits. I'm not considering what she may receive as child maintenance. She didn't give evidence of any anticipated earnings until the summer of 2013, approximately fifteen months later, if she is able to find an internship. She would start work with her new degree earning an income of less than \$65,000.00 (\$2,000.00 less than an amount that was insufficient). There's no indication when she might achieve an income that exceeds the inadequate \$67,000.00 she earned at Dalhousie.

[65] In her bankruptcy proceeding, Ms. Taylor completed a Monthly Income and Expense Statement. Her monthly non-discretionary expense was an \$800.00 expense for Autumn's daycare. Her other expenses were premised on living in the home she has since rented and they totalled \$2,580.00. Her current income provides for an almost balanced budget: she brings in \$2,587.00 and she said she spent \$2,580.00, exclusive of the daycare expense for Autumn. Ms. Taylor says that Autumn has been registered for school.

[66] The Statement of Expenses that she has filed in this application is also premised on remaining in the now-rented home. According to this budget, her expenses (inclusive of \$800.00 for daycare for Autumn and \$340.00 for her trustee) are \$3,453.00 and her deficit is \$866.00. Again, with Autumn in school and no expense for child-care, the deficit is reduced to \$66.00 each month and it is replaced with a \$274.00 surplus once Ms. Taylor has completed her payments to her trustee.

[67] I noted in my earlier decision that in *Gordon v. Goertz*, [1996 CanLII 191 \(S.C.C.\)](#) at paragraph 53, the diminution of Samantha's contact with her father, extended family and Canadian community was "somewhat attenuated" by the fact that Mr. Goertz had the means to

travel to Australia. The current financial circumstances of this family do not offer this comfort. Mr. Wanless is working part-time and Ms. Taylor is not working at all. She doesn't intend to return to work for almost two years. The analysis I've done above shows that Ms. Taylor has little money to offer to the expense of access: unless Mr. Wanless' employment prospects are realized, Ms. Taylor's education will consume most of her income.

[68] Ms. Taylor referred me to various decisions of our Family Court and the Supreme Court where mobility applications were allowed in circumstances which she says are analogous to hers. I am not convinced that these decisions guide my own decision in this application. I am mindful of Justice McLachlin's comment at paragraph 49 of *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.): "Each case turns on its own unique circumstances."

[69] In *Sherman v. Rafuse*, 2011 NSFC 16, Judge Wilson allowed Ms. Rafuse to move with five year old Somer to Alberta because Ms. Rafuse was only able to find casual employment locally, while a full-time job was available in Alberta. Similarly, in *S.L.D. v. P.D.M.*, 2008 NSSC 103, Justice Lynch allowed Ms. D. to relocate with her eleven year old son to Australia. Ms. D. had remarried and her husband was the primary financial contributor to the family. He lost his job and was unable to find "employment in North America equivalent to his former job or to the job in Australia", according to Justice Lynch at paragraph 31 of her reasons. Finally, in *Kerr v. Baltazar*, 2004 NSSF 85, Justice Williams allowed Ms. Kerr to move two girls, aged eight and twelve, to Ontario, when Ms. Kerr's job was transferred from Halifax to Kitchener-Waterloo. According to His Lordship, at paragraph 20 of his reasons, there was evidence that "employment with the salary, benefits and potential of the job in Kitchener-Waterloo is extraordinarily unlikely to be available in the Halifax region."

[70] These decisions are easily distinguished from Ms. Taylor's application. Ms. Taylor does not propose to move to Qualicum Beach to provide immediately for the children's financial needs. She proposes to move so that she can pursue the "best professional development" experience she has had in her career which, in some years' time, should improve the children's financial circumstances. Until that comes to pass, the children's financial circumstances will be dramatically reduced from what they were before Ms. Taylor returned to school. As well, they will lose the benefit of relationships with their father and extended paternal family.

[71] In submissions, Ms. Taylor argued that it was incumbent on Mr. Wanless to move to British Columbia. He should, she said, sacrifice his shared parenting arrangement with Caleb and the progress he's made in obtaining work after more than two years of searching for employment. She quoted from Judge Campbell's decision in *McCullough v. Smith*, 2007 NSFC 23 at paragraph 40:

Parenthood comes with joy and challenge but also comes at a cost that is not calculated in dollars but in independence. Parents cannot always have what they want or do what they want. Acting as a parent is one of those few experiences or relationships where it can be said that the ego is naturally subsumed by something greater and infinitely more important.

[72] In making this argument, Ms. Taylor did not explain why these comments didn't apply to her. Why should she be able to spend a few years at graduate school, rather than working to provide for the children's needs? Mr. Wanless hasn't argued that he should not be required to work or that he should be able to wait for a job in his chosen field of employment. His background is in marketing. He hasn't been able to find work in that area so he is working as an interviewer and hoping to work as a bus driver.

[73] Ms. Taylor says financial circumstances compel her to move to Qualicum Beach. Ms. Taylor needs financial assistance, in the main, because she chooses to pursue graduate studies rather than to work. This is not a circumstance where Ms. Taylor is unable to find work in Nova Scotia. She has chosen to not work. Her choice imposes financial sacrifices on the family and personal sacrifices on the children and Mr. Wanless. Her choice may be motivated by the hope of some benefit in the long term, but it is misguided in light of Mr. Wanless' lengthy period of unemployment and the difficulties he has had in finding employment.

The disruption of removal

[74] The children's family in Halifax includes their paternal grandmother, Chieko Hara, and their half-brother, Caleb. Ms. Hara was first asked to come live with the family in 2006, when Sam and Joshua were toddlers. She remained in the family home until it sold in August, 2009. Ms. Taylor admits that the children are attached to Ms. Hara. They see her when they are with Mr. Wanless.

[75] Caleb is Mr. Wanless' son from a previous relationship. Caleb has been in an alternating week shared parenting arrangement for eleven years. Both parents speak positively of Caleb and highly of the relationship Caleb has with his young half-siblings. Sam, Joshua and Autumn are very attached to Caleb.

[76] As was noted in my earlier decision, at five months of age, Autumn had open heart surgery at the IWK Health Centre. Her condition is such that she no longer requires semi-annual check ups by a paediatric cardiologist: these appointments may occur annually and, possibly, once every two years. I have no information about the availability of a paediatric cardiologist on Vancouver Island.

[77] Sam is eight and entering grade three in September. Joshua will turn seven in October and is starting grade two. Joshua has been involved with speech therapy in the past few years. He has progressed well with this and is scheduled to be assessed at school this month to see if this should continue. I was given no evidence about the availability of speech therapy programs at the schools in the Qualicum Beach area.

[78] The children, the boys in particular, have had extensive involvement in activities outside their school: they've taken part in sports and educational programs. In some activities, they are repeat participants.

[79] In 2009, the children had never been to Vancouver Island. It does not appear that this has changed. It appears they have met their aunt, uncle and cousins infrequently. Their maternal

grandparents visited in the fall of 2006 when Autumn was born. Ms. Taylor, herself, originally came to Nova Scotia when she was ten years old.

[80] The children have lived much of their life in immediate proximity to their paternal grandmother. They are as rooted in their local community, as is appropriate at their ages, with family, friends, activities and supports such as the Hearing and Speech Clinic and IWK Health Centre in place. Their primary connections are with their parents, their hero Caleb, and their paternal grandmother.

Conclusion

[81] The burden is on Ms. Taylor to show that this move is in the children's best interests. She has not. I dismiss her application.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia