SUPREME COURT OF NOVA SCOTIA
(Family Division)
Citation: Smith v. Harnish, 2022 NSSC 19

Date: 20220117
Docket: SFHMCA 085124
Registry: Halifax

Between:

Jessica Veronica Smith

Applicant

and

Andrew Frederick Harnish

Respondent

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Judge:	The Honourable Associate Chief Justice Lawrence I. O'Neil
Hearing:	November 17 and 18, 2021 in Halifax, Nova Scotia
Issues:	1. Has there been a change of circumstances conferring jurisdiction on the Court to consider the application to vary parenting? 2. If the Court has jurisdiction to order a change in the primary care and to order relocation of the parties' child, should it?
Summary:	The subject child is in the primary care of the father in the Halifax Regional Municipality. The mother wants primary care changed to her and for the child to be relocated to Shubenacadie East where she lives. The Court found no change of circumstances occurred and even if it did, the best interests of the child dictated that no change in the primary care of the child should occur.
Keywords:	Relocation, best interests, change of circumstances
Legislation:	*Parenting and Support Act*, R.S.N.S. 189, c.16
Cases Considered:	*Irwin v. Irwin,* 2018 NSSC 261

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Counsel: Kerri-Ann Robson, Counsel for Jessica Smith
David Hirtle, Counsel for Andrew Harnish

Overview

On January 6, 2022 the Court advised the parties there would not be a change in the primary care of the subject child and that written reasons would follow on January 14, 2022. These are those reasons.

[1] The applicant Jessica Veronica Smith will be referred to herein as the mother. The respondent Andrew Frederick Harnish will be referred to as the father. They are the parents of a daughter born in early 2010. The parents were young when the child was born. The mother was only 20 years of age. At the time of the child's birth, both parties were living with the father's mother. Two years later, they secured their own residence. They lived together for six months thereafter. They have been living separate and apart since that time.

[2] Following separation, the child remained in the primary care of the mother. A court order dated October 2013 confirmed primary care of the child with the mother. However, the child has, in recent years, lived primarily with the father in the Halifax Regional Municipality in a home shared with his mother and his younger brother. The mother currently lives with her mother, her stepfather and her fiancée in Shubenacadie East.

[3] The mother explains that although the 2013 Court order gave her primary care of the child, she was suffering from drug addiction in 2013. As a result, she agreed to having the child placed primarily in the father's care. The mother says she returned to Court in 2014 seeking parenting time with the child.

[4] In early 2015 a second consent order issued. It provided for continued joint custody of the subject child with primary care remaining with the father and reasonable access by the mother to the child.

[5] The 2015 order was varied in 2017 as a result of a settlement conference. The 2017 order continued the clauses in the 2015 order dealing with joint custody, primary care and provided for week on/week off parenting during the summer months. It also provided for specific parenting time for the mother every weekend during the school year. The mother's regular parenting time during the school year was defined as Friday afternoon to Sunday at 5:00 p.m. each week.

[6] The matter is now before the court, in response to a variation application filed by the mother on January 8, 2021.

[7] In her December 2020 affidavit the mother expressed concern about the child's absences from school and about the child not receiving help to address speech and language deficiencies. She also complained that the child was not participating in extracurricular activities. She expressed concerns about the child's hygiene.

[8] She asked that the court order that the child live with her during the week and that the child live with her father every second weekend and during the school breaks.

[9] In her more recent affidavit sworn October 8, 2021 the mother provided school records to support her claim that the child missed many days from school and was late for school on other days while in the father's care.

[10] She says since September 2021 she and the child's father have had improved communication, she is hopeful better communication will continue.

[11] The mother says she has been clean since November 3, 2014.

Position of the Parties

[12] The mother began living with her mother on July 31, 2020. She says the child is currently with her every second weekend. Although she acknowledges the schedule had the child with her every second weekend before mid 2020.

[13] As stated, the mother now proposes that the child live primarily with her in Shubenacadie East. She and her partner propose to build a home next to her mother's home where they currently live. She argues her circumstances and those of the family, including their child, have changed and the child's best interests require a change in the primary care of the child. She says she is in a more settled situation and the child is not being appropriately cared for by her father. She points to the child's absences from school to support that conclusion. She also says the child requires speech and language services and other educational support which is not being provided to the child.

[14] In addition, the mother complains that, as a result of the current parenting regime, the child is not participating in extra-curricular activities; the child's hygiene is poor, and the child does not have a regular bedtime.

[15] She says the father is often away from home and the childcaring role is often left with his mother.

[16] Finally, she says the child wants to live with her.

[17] The father argues circumstances have not changed since 2017 and the Court should not assume jurisdiction to vary the existing parenting order.

[18] The father says he has been living with his mother and his young brother for approximately four years. His brother is approximately one year older than his daughter.

[19] He says he, not the mother, sought to change the 2013 order which gave the applicant primary care of the child. He says he sought to vary the order because of concern about the conditions in which the child was living. The resulting consent order which issued in early 2015 conferred primary care of the child on the father.

[20] He says that following 2017, the mother's parenting time was inconsistent even though the 2017 order gave her parenting time every weekend. He says the mother's parenting time has been more regularly exercised since July 2020 following her moving in with her mother. He credits the maternal grandmother with ensuring the child had time with the mother and the mother's family over the years.

[21] He says that between 2017 and 2019 the maternal grandmother's time with the child was occasional. He says it was not regular. Since 2019 the maternal grandmother has picked up the child every second weekend.

[22] He says he has always encouraged the child's mother to spend time with their child, but she has not exercised the opportunity to parent which the orders have provided.

[23] The father says their child has educational challenges but says they are being appropriately addressed. He described how he addressed the circumstances which gave rise to the parties' child being bullied and it was the bullying that was causing the child to feign illness as a way to successfully avoid school from time to time.

[24] The father says the mother's interest in spending time with the child has varied over the years reflecting whether she was in a relationship. He says there have been multiple relationships and fiancées. The clear implication being that the child has not been a priority for the mother.

[25] The father described the relationship between his daughter and his younger brother as akin to a sibling relationship, not that of an uncle and niece, given they

are only a year apart in age.

[26] The father described how he is attentive to his daughter's educational needs, including that he reads with her each evening before bedtime. He denies that she has poor hygiene or poor selfcare generally. He says there has never been a complaint of that nature communicated to him by the child's mother or anyone else.

[27] The Court also heard from other witnesses whose evidence support the thrust of the position advanced by the party who called them.

[28] Shelly Carrick is the maternal grandmother. Her husband passed in April 2021.

[29] She confirmed her involvement in the subject child's life and the suitability of the living conditions in her home where her daughter and her daughter's fiancée live.

[30] Ms. Carrick confirmed that prior to 2020, she and her husband were the ones who picked up the subject child in Halifax every second weekend and returned to Shubenacadie East. It is clear that Miss Carrick has been a consistently positive influence in the child's life and places a high priority on protecting the child's well-being. Ms. Carrick has ensured the child was in her home frequently when it was the mother's parenting time. She has taken the child on vacations. Clearly during the extended periods when the mother was not exercising her parenting time, she attempted to fill the void. However, I am satisfied, as Mr. Harnish testified, prior to 2019 such attention was inconsistent. Nevertheless, the child has been and remains very fortunate to have Ms. Carrick in her life.

[31] She said she has concerns about the child's hygiene. In her affidavit she details concerns about the child's hygiene and the cleanliness of the child's clothing. I do not dismiss her concerns in this regard entirely. However, I believe these concerns are overstated and influenced by her belief that she has been a better caregiver for this child than the child's father or his family. There may very well be a need for a higher standard of personal care for this child. I ask that all caregivers for this child be mindful of this potential need. I cannot however agree that the need is as characterized by the maternal grandmother.

[32] She confirmed that on September 25, 2021, her daughter's fiancée moved into her home and now lives there with her daughter.

[33] Mr. Terry Moore confirmed he intends to marry the child's mother and to live with her in Shubenacadie East in a home to be build next to Ms. Carrick's home. He supports the mother's application to have primary care of the child and states that he is committed to parenting the child with the mother. Mr. Moore has stable employment as a supervisor with a local corporation.

[34] Darlene Sudds is a friend of the paternal grandmother, Judith Harnish.

[35] Ms. Sudds stated the child in question was never unclean when she observed her at Judith Harnish's home. Ms. Sudds says she is a weekly visitor to the home.

[36] The paternal grandmother, Judith Harnish testified that the child and her son, the child's father, came to live with her four years earlier, that is in 2017. She says her youngest son and her granddaughter are 'as siblings'. Judith Harnish testified and confirmed the close relationship between her granddaughter and her youngest son. She says these children attended the same elementary school for three of the last four years, but this year her son is attending the Junior High School which is nearby.

[37] Ms. Harnish provided details of the parenting arrangement/structure in her home for her granddaughter and says she has regular contact with school officials. She stated that she buys clothes for her granddaughter as needed. As an example, she says she purchased winter jackets and boots for her granddaughter in each of the last four years and that her son also gives her money to purchase items for the child.

[38] She says it was only after the child's mother moved in with her mother that the mother began regularly picking up the child for weekend visits.

[39] Ms. Harnish says her granddaughter is never left alone in her home and she does not permit 'weed' to be smoked in her home by her son, the child's father. She says the child is well cared for by her and the child's father and she rejects a

description of the child as having poor hygiene and as not suitably clothed.

Change of Circumstances

[40] This variation proceeding is brought pursuant to s.37 of the *Parenting and Support Act*, R.S.N.S. 189 c.16 the "PSA":

> 37 (1) The court, on application, may make an order varying, rescinding or suspending, prospectively or retroactively, a support order or an order for custody, parenting arrangements, parenting time, contact time or interaction where there has been a change in circumstances since the making of the order or the last variation order.
>
> (1A) In making a variation order regarding custody, parenting arrangements, parenting time, contact time or interaction, the court may include any provision that could have formed part of the original order that is being varied.
>
> (2) When making a variation order with respect to child support, the court shall apply Section 10.

[41] Prior to considering the merits of the application to vary the current parenting order, the Court must determine if a change of circumstances exist as required by s. 37(1) of the 'PSA'. It is argued that failing a change of material circumstances for this child, the Court lacks jurisdiction to consider the variation application.

[42] In *Irwin v. Irwin*, 2018 NSSC 261 at paragraphs 23-28, I discussed the meaning attributed to 'a material change in circumstances' when a Court is asked to vary a parenting order, in that case a Corollary Relief Order following a divorce. The following is a restatement of the law in this area as summarized in my earlier decision:

> [23] Justice Beaton had occasion to discuss the legal effect of these provisions when the Court is asked to vary the parenting arrangement outlined in a final 'CRO' or a 'CRO' already varied. Her review of the law is a thorough and concise overview of the meaning of s.17(5) and (9) of the Divorce Act. Beginning at paragraph 15 she said in Salah v. Salah, (2013 NSSC 308) [affirmed 2014 NSCA 36]:
>
> > [15] The Court must be satisfied that there has been a material change in the condition, means, needs, or other circumstances since the making of the May 2011 order. That change must be in relation to the child, not the parents. And if

such a change is found to exist, any changes I might make to the order must be done only through the lens of what is in the best interests of (sic) as opposed to what either party might perceive as being in their own best interests.

[16] What does it mean to speak of a material change in circumstances? Guidance about that is found in any number of decisions, including the Supreme Court of Canada's decision in Gordon v. Goertz. Recently in this court, Justice Jollimore provided a helpful summary of Justice McLachlin's instructions in Gordon v. Goertz., found at paragraphs five, six, and seven of Legace v. Mannett, reported at 2012 NSSC 320 (CanLII) wherein Justice Jollimore stated, and I quote:

> (5) In an application to vary a parenting order, I am governed by Gordon v. Goertz., 1996 CanLII 191 (SCC). At paragraph 10 of the majority reasons in Gordon v. Goertz, then Justice McLachlin instructs me that before I can consider the merits of a variation application, I must be satisfied there has been a material change in the child's circumstances that has occurred since the last custody order was made.
>
> (6) At paragraph 13, Justice McLaughlin was more specific in identifying the three requirements that must be satisfied before I can consider an application to vary a parenting order. The requirements are (1) There must be a change in the condition, means, needs, or circumstances of the child or the ability of the parents to meet the child's needs (2) The change must materially affect the child; and (3) The change was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

[24] Justice Beaton continued:

> [17] The Court's reflection on that observation by Justice Jollimore of course then leads to the next question which is: what does it mean to talk about the best interests of a child? The concept of "best interests" was discussed at some length by the Supreme Court of Canada in Young v. Young. In a decision by my colleague, Justice Dellapinna in Tamlyn v. Wilcox, 2010 NSSC 266 (CanLII) he referenced the Young case and said as follows: In Young v. Young, (1993) 4 S.C.R.3 the Supreme Court elaborated on the best interests' test. At paragraph 17, the Court stated: "The test is broad. Parliament has recognized that the variety of circumstances which may arise in disputes over custody and access is so diverse that predetermined rules designed to resolve certain types of disputes in advance may not be useful. Like all legal tests, the best interests test is to be applied according to the evidence in the case, viewed objectively. There is no room for the judge's personal predilections and prejudices. The judge's duty is to apply the law. He or she must not do what he or she wants to do but what he or she ought

to do."

[25] A preliminary question which must be answered is what is the change following the issuance of the order sought to be varied? Does the change qualify as a change in circumstances for the purpose of s.17 of the Divorce Act? If the parties contemplated that change when the order sought to be varied issued, can it nevertheless be a material change of circumstances? What if the change was only objectively foreseeable but not considered at the time of the issuance of the order sought to be varied?

[26] In the view of Professor Rollie Thompson, caselaw dealing with the meaning of 'material change' is described as blurring the distinction between an objective test and a subjective one. The Court in *Dedes v. Dedes*, 2015 BCCA 194 and *S.A.F. v. M.H.M.*, 2016 BCCA 503 discussed the distinction between whether a claimed material change is actually a material change within the meaning of s.17 of the *Divorce Act*. The answer often turns on whether the alleged change was actually contemplated as opposed to reasonably foreseeable.

[27] The Supreme Court in *L.M.P. v. L.S.*, 2011 SCC 64 described a material change as change that if known, would have likely resulted in different terms. I am satisfied I must decide if the change(s) identified occurred and were contemplated. The Supreme Court in *L.M.P.* summarized the threshold for variation:

> [32] That "change of circumstances", the majority of the Court concluded in Willick, had to be a "material" one, meaning a change that, "if known at the time, would likely have resulted in different terms" (p. 688). G. (L.) confirmed that this threshold also applied to spousal support variations.
>
> [33] The focus of the analysis is on the prior order and the circumstances in which it was made. Willick clarifies that a court ought not to consider the correctness of that order, nor is it to be departed from lightly (p. 687). The test is whether any given change "would likely have resulted in different terms" to the order. It is presumed that the judge who granted the initial order knew and applied the law, and that, accordingly, the prior support order met the objectives set out in s. 15.2(6). In this way, the Willick approach to variation applications requires appropriate deference to the terms of the prior order, whether or not that order incorporates an agreement.
>
> [34] The decisions in Willick and G. (L.) also make it clear that what amounts to a material change will depend on the actual circumstances of the parties at the time of the order.
>
> [35] In general, a material change must have some degree of continuity, and not merely be a temporary set of circumstances (see Marinangeli v. Marinangeli (2003), 2003 CanLII 27673 (ON CA), 66 O.R. (3d) 40, at para. 49). Certain other

> factors can assist a court in determining whether a particular change is material. The subsequent conduct of the parties, for example, may provide indications as to whether they considered a particular change to be material (see MacPherson J.A., dissenting in part, in P. (S.) v. P. (R.), 2011 ONCA 336 (CanLII), 332 D.L.R. (4th) 385, at paras. 54 and 63).
>
> (28) Once a material change is found the Court should determine what if any, change is warranted. When the order sought to be varied is a parenting order, an assessment of the best interests of the subject child must be undertaken as part of an analysis to determine the impact of a change of circumstances once found to exist.

[43] The pre-trial memorandum on behalf of the mother, states, "there has been a material change in circumstances, in that Mr. Harnish does not appear able to meet 'R-L's' basic or educational needs and a change in primary care is in 'R-L's' best interest." I will consider this basis for the argument in favour of a change of circumstances for the child and also the claim by the mother that the mother's personal circumstances have stabilized and this too represents a change of circumstances.

[44] The father, Mr. Harnish says there is no basis for the allegation that the child is not well cared for. He says the child continues to be well cared for by him and the child's best interests are served by the Court continuing his primary care of the child.

[45] For the reasons that follow I am satisfied no change of circumstances has been shown and the jurisdictional threshold established by the *PSA*, s.37(1) has not been met.

[46] I am satisfied on a balance of probabilities the child has been spending her mother's parenting time in the home of the maternal grandmother for a number of years. This is not a new development.

[47] The mother has not taken the lead in caring for the daughter when the child is not in the father's care. This role has fallen to the maternal grandmother. The child's mother has not had a child focused life in recent years and her mother has compensated for this shortcoming.

[48] The mother says she has been clean since 2014. Nevertheless, she agreed to orders dated 2015 and 2017 which provided that primary care of the child would

be entrusted to the father.

[49] In July 2020 the mother began living with her mother. This was not an unanticipated development. The mother had lived with her mother in the past and had other relationships since the parties separated and which were presented as enduring. She had been engaged earlier and lived proximate to the child when the child was living primarily with the father and that relationship did not endure. The prospect of her re partnering has always been foreseeable.

[50] The father and his extended family have continued to provide a consistent living arrangement for the child. That arrangement is essentially unchanged from that which was available to the child in 2017.

[51] I am not satisfied the allegations of inattention to the child on the part of the father and the presentation of the child as having poor personal care are supported by the evidence. I am also satisfied the father and the paternal grandmother are addressing the issue of the child's school absences appropriately. I accept the father's explanation of why the child was missing school and his evidence that the situation has been addressed successfully.

[52] Today, the mother is more motivated to assume primary care of the child but that alone does not meet the test for determining whether a change of circumstances exist for the child within the meaning of section 37 (1) one of the "PSA".

[53] The child's needs are being met currently and they have been over the past four years while the child has been in Mr. Harnish's care. Clearly, the mother believed the father was capable of meeting the obligations he accepted, and he has done so.

[54] The mother's circumstances have remained consistent in terms of her offering a home for the child on the weekends. Regardless, for most of the past four years, the mother's parenting time has primarily been exercised by the maternal grandmother.

[55] In the event of my being mistaken in my conclusion that there has not been a change of circumstances, I offer the following assessment of the best interests of

the child which assessment is impacted by the statutory criteria applicable when relocation of a child is proposed.

Relocation

[56] Herein a relocation of the child is proposed. The mother wishes to have the child enrolled in a school in her district and to have the child live primarily with her. This plan requires me to consider the factors outlined in s.18E-18H of the 'PSA', the relocation provisions:

> 18E(1)(B) "relocation" means a change to the place of residence of
>
> ….
>
> (iii) a child
>
> that can reasonably be expected to significantly impact the child's relationship with a parent, a guardian or a person who has an order for contact time with the child.
>
> 18H (1) When a proposed relocation of a child is before the court, the court shall be guided by the following in making an order:
>
> > (a) that the relocation of the child is in the best interests of the child if the primary caregiver requests the order and any person opposing the relocation is not substantially involved in the care of the child, unless the person opposing the relocation can show that the relocation would not be in the best interests of the child;
> >
> > (b) that the relocation of the child is not in the best interests of the child if the person requesting the order and any person opposing the relocation have a substantially shared parenting arrangement, unless the person seeking to relocate can show that the relocation would be in the best interests of the child;
> >
> > (c) for situations other than those set out in clauses (a) and (b), all parties to the application have the burden of showing what is in the best interests of the child.
>
> (2) Unless the court otherwise orders, only a person entitled to receive notification under Section 18E may oppose a relocation.
>
> (3) In applying this Section, the court shall determine the parenting arrangements in place at the time the application is heard by examining

> (a) the actual time the parent or guardian spends with the child;
> (b) the day-to-day care-giving responsibilities for the child; and
> (c) the ordinary decision-making responsibilities for the child.
>
> (4) In determining the best interests of the child under this Section, the court shall consider all relevant circumstances, including
>
> > (a) the circumstances listed in subsection 18(6);
> > (b) the reasons for the relocation;
> > (c) the effect on the child of changed parenting time and contact time due to the relocation;
> > (d) the effect on the child of the child's removal from family, school and community due to the relocation;
> > (e) the appropriateness of changing the parenting arrangements;
> > (f) compliance with previous court orders and agreements by the parties to the application;
> > (g) any restrictions placed on relocation in previous court orders and agreements;
> > (h) any additional expenses that may be incurred by the parties due to the relocation;
> > (i) the transportation options available to reach the new location; and
> > (j) whether the person planning to relocate has given notice as required under this Act and has proposed new parenting time and contact time schedules, as applicable, for the child following relocation.
>
> Upon being satisfied that the child's needs or circumstances have been changed because of the order granted under subsection 18G(2), the court may vary a previous order granted under Section 18 or 37. 2015, c. 44, s. 20.

[57] I must consider the statutory factors for assessing the child's best interests as required by s.18(5) - (8) of the 'PSA' whether relocation is proposed. Section 18 (5), (6) and (8) provide as follows:

> 18(5) In any proceeding under this Act concerning custody, parenting arrangements, parenting time, contact time or interaction in relation to a child, the court shall give paramount consideration to the best interests of the child.
>
> (6) In determining the best interests of the child, the court shall consider all relevant circumstances, including
>
> > (a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development.

(b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

(c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs.

(d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;

(e) the child's cultural, linguistic, religious and spiritual upbringing and heritage.

(f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained.

(g) the nature, strength and stability of the relationship between the child and each parent or guardian.

(h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;

(i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child; and

(j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

. . . . .

(8) In making an order concerning custody, parenting arrangements or parenting time in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j).

. . . . .

Conclusion

[58] I have already stated there has been no change of circumstances for the child. I offer my conclusions with respect to my assessment of the child's best interests. I do by reference to the relevant sections of the PSA.

[59] I am satisfied that the child's physical, emotional, social and educational needs including the child's need for stability and safety are well served by the current parenting arrangement which has primary care of the child resting with the father.

[60] I am satisfied that each parent is willing to support the development and maintenance of the child's relationship with the other parent. I am satisfied further that the history of primary care of the child resting with the father have served the child well and the father's plan moving forward for the child is also a healthy one. The father proposes that the child will continue to live with him, his mother and the father's youngest sibling who is a boy of approximately the same age as the subject child in this proceeding. I'm satisfied these two children have a relationship that is analogous to that of siblings. They attended the same elementary school for a period of years, and I'm satisfied have a close relationship. Preserving this close relationship and supporting it, is in the best interests of the subject child. This is best attained by the children continuing to live primarily in the same household, the same community and with having the opportunity to attend the same school.

[61] The court does not have evidence of the views of the subject child and in any case given the age of the child the views of the child would not be determinative of the outcome of subject application.

[62] Turning to the nature strength and stability of the relationship between the child and each parent I am satisfied that the relationship of the child with both grandmothers is very strong and that as between the mother and father, the father has a stronger relationship with the child than does the mother. Currently the mother is demonstrating a higher level of interest in the child and it is anticipated that the relationship with the child will be enriched as a result.

[63] I'm satisfied that the father is more motivated than the mother to ensuring the mother has a significant role in the life of the child than is the reverse.

[64] In summary, I find that the mother's application is motivated by her desire to have a greater involvement in the life of the child because she believes she has achieved a healthier place in her own life. I'm satisfied that the current parenting arrangement will allow the mother to achieve that objective; the child's life will be enriched as a result and the child will have the benefit of continuing to prosper in the primary care of the father, all the while living with the paternal grandmother and another child who has a sibling relationship intersect with her.

[65] The mother's application to relocate the child and to change the primary residence of the child is therefore dismissed. The parties expressed a level of confidence that they can be flexible in the parenting arrangement moving forward. I will therefore not structure the ongoing parenting in greater detail and will await an order that reflects the agreements reached between the parties now that the core issue before the court has been decided.

[66] I am inclined to order the mother to pay child support based on the current minimum wage income and a forty-hour work week. The mother is employable and whether she chooses to work outside the home or not a child support obligation exists. No evidence has been offered to support a conclusion that she cannot work or that work outside the home is unavailable. She has a recent history of working full time although now suggests she does not wish to continue in the work force outside the home. Counsel are asked to conclude the details of the support order and to advise the court whether they wish to have income imputed at a different level. I retain jurisdiction to rule on issues not concluded as a result of discussions between the parties and this decision.

ACJ