

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *Nova Scotia (Community Services) v. SD*, 2022 NSSC 206

**Date:** 20220722

**Docket:** SFHCFSA No. 121381

**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v

SD, CR, and BJ

Respondents

and

BD and TD

Third Parties

**And Between:**

**Docket:** SFH 1201-067528

**Registry:** Halifax

BJ

Applicant

v

SD

Respondent

**And Between:**

**Docket:** SFHPSA No. 124504

**Registry:** Halifax

BD and TD

Applicants

v

BJ and SD

Respondents

**Judge:** The Honourable Justice Theresa M. Forgeron  
**Heard:** March 2, 3, 7, 8 , 9, 10, 11; May 4 and 5, 2022 , in Halifax,  
Nova Scotia

**Last Submissions**

**Received:** June 17, 2022

**Decision:** July 22, 2022

**Counsel:** Shawn O’Hara, counsel for Minister of Community Services  
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applicants, SD, TD, and BD

**Restriction on Publication: Restriction on Publication**

Pursuant to subsection 94(1) of the *Children and Family Services Act*, S.N.S. 1990, c. 5, there is a ban on disclosing information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

**By the Court:**

**Introduction**

[1] This decision concerns the child, SJ, who is almost ten years old. About seven years ago, the child's mother, SD, was granted custody, primary care, and final decision-making of the child during a contested divorce proceeding. The mother, however, can no longer parent the child because of dangerous and long-standing protection concerns. Therefore, the child's father, BJ, and the child's maternal grandparents, BD and TD, seek primary care of the child.

[2] The parenting decision which I must make is complicated for three reasons. First, the child was frequently exposed to child protection dangers. The Minister of Community Services commenced a protection application because of the serious concerns. Recently, the Minister reassessed the child's circumstances. The Minister now agrees that the protection proceeding can be terminated if either the father or grandparents are granted primary residence and strict conditions are attached to all parenting contact between the mother and the child. When fashioning the parenting plan, I must ensure that the child protection issues are safely managed.

[3] Second, this decision involves the relocation of the child because the father and his family live in Calgary while the grandparents and the child live in the HRM. I must analyze relocation factors when assessing best interests, including the child's relationship with each parent, the grandparents, and her siblings. The child has four siblings - two living in the HRM and two living in Calgary.

[4] Third, I must assess the capacity of the grandparents and father to foster a positive relationship between the child and the other party. The father questioned the grandparents' commitment given their past conduct. The grandparents deny wrongdoing. The grandparents state that the father's lack of relationship with the child is not of their making and confirm their willingness to foster a healthy father-daughter relationship.

[5] In reaching my decision, I had the benefit of reviewing an extensive body of evidence entered during a multi-day trial, as well as the written and oral submissions of counsel. After reviewing the law, evidence and submissions, I have determined that it is in the child's best interests to be placed in the father's primary

care with defined parenting time to the grandparents and the mother. I will now explain the reasons for my decision.

### **Issues**

[6] In reaching my decision, I addressed the following issues:

- What are the positions of the parties?
- What factors inform my analysis?
- Is relocation in the child's best interests?
- What parenting plan is in the child's best interests?

### **Background**

[7] Before addressing the issues, I offer detailed background information to provide context to my decision.

#### *Mother's early life*

[8] The mother was raised in HRM with the grandparents and her two siblings. The mother started to abuse alcohol when she was about 15 years old. Although the grandparents enrolled the mother in a treatment program, the mother continued to abuse alcohol, favouring a party lifestyle. The mother told her psychiatrist that her father (the grandfather) had issues with alcohol and her mother (the grandmother) had been hospitalized once for a nervous breakdown: 2014 assessment report of Dr. Poder, exhibit 4, tab 10.

[9] The mother became pregnant at an early age. In March 2006, the mother gave birth to a daughter, V. Eventually, the paternal grandparents were granted custody of V, while the mother's access was terminated. In 2010, the maternal grandparents were granted access to V only if the mother was not present or mentioned during the access visits. Unfortunately, this provision was breached on one occasion. Nevertheless, the grandparents continue to enjoy visits with their granddaughter V, although given her age and other interests, such visits do not necessarily conform to the ordered schedule.

[10] In either 2006 or 2007, the mother was sexually assaulted by a friend while attending a party. Not unexpectedly, the mother experienced trauma and anxiety.

Regrettably, the mother did not participate in counselling or therapy. As a result, the mother continues to experience mental health symptoms which remain untreated to this day.

*Move to Dubai and marriage*

[11] After the sexual assault, the mother moved to Ontario and then to Dubai. The mother told Dr. Poder, that while living in Dubai, she was also sexually assaulted. The mother did not participate in counselling or therapy while in Dubai.

[12] Further, while in Dubai, the mother met the father. In October 2011, after a brief courtship, the mother and father married. There was no abuse in the relationship between the father and the mother.

[13] The mother almost immediately became pregnant. In December 2011, she returned to Nova Scotia. In August 2012, the father also moved to Nova Scotia. The mother, however, did not wish to continue the marriage.

*Birth of child and formation of new relationships*

[14] After returning to Nova Scotia, the mother started to date a boyfriend, CR. The mother's relationship with the boyfriend was physically and emotionally abusive. The mother was both a victim and perpetrator of intimate partner violence (IPV).

[15] SJ, the child of the father and mother, was born in August 2012. Initially, the father, mother, and the child lived with the grandparents. As the mother was not happy, she and the child quickly moved out of the grandparents' home to live with the boyfriend.

[16] Before long, the mother became pregnant with the boyfriend's child. While pregnant, the boyfriend violently punched the mother in the stomach. The mother neither reported the violence to authorities, nor did she end the relationship. In July 2013, a son, MR, was born to the mother and the boyfriend.

[17] For his part, the father moved from Nova Scotia and formed a relationship with another woman, LA, whom he married once the divorce was finalized. The father and the wife have two children together - IJ born in April 2015 and ZJ born in June 2019. They all live in Calgary. The father and wife enjoy a happy, stable, and violent-free relationship.

*First child protection proceeding*

[18] In October 2012, the police reported protection concerns about the mother to the Minister of Community Services. At the request of the father, the police had conducted a wellness check on the child because the mother was stated to be suicidal and intoxicated. The police reported their findings to the agency for investigation. In addition, in October 2012, the boyfriend slapped the mother after the mother spit on him. The boyfriend was charged with assault.

[19] In January 2013, the agency received another referral from the police who had responded to an argument between the mother and boyfriend. After investigating, the agency closed their file because the mother and boyfriend acknowledged the agency's concerns, reported that they understood the dangers of IPV, and confirmed that they would not expose the children to violence.

[20] The parties' insight and commitment was short lived. Other assaults followed on August 24, 2013 and September 11, 2013. Further, in September 2013, while in an intoxicated and jealous rage, the mother left the child, SJ, alone at home while she went to bar to confront the boyfriend. She left the baby, MR, with a neighbour. Upon returning home, the mother assaulted a police officer by hitting, kicking, and attacking him with a broken liquor bottle. The police noticed superficial cuts on the mother. The mother later admitted to cutting herself in an attempt to frame the boyfriend. The grandparents took the children into their care until the agency completed their investigation.

[21] In October 2013, a referral was received from police about another argument which occurred in the children's presence. During discussions with agency workers, the mother and boyfriend denied and minimized the ongoing protection concerns.

[22] The agency determined that long term services were required. On October 30, 2013, the Minister filed a protection application based on ss. 22 (2)(b) and (g) of the *Children and Family Services Act*, 1990, c. 5 – substantial risk of physical harm and emotional abuse.

[23] On November 4 and 27, 2013, interim supervision orders issued. The children were placed in the mother's care while living with the grandparents. The mother and boyfriend were not allowed to have contact in the children's presence. On January 27, 2014, the protection finding was entered, by consent pursuant to s. 22 (2)(g) of the *CFSA*.

[24] On April 15, 2014, the disposition order was granted. The children continued in the mother's supervised care, while living in the grandparents' home. The father and boyfriend were granted access. The mother and boyfriend were required to engage in counselling and rehabilitative service to address IPV, anger management, healthy coping mechanisms, relationship instability, substance abuse, and the mother's mental health.

[25] On June 9, 2014, a disposition review and an access hearing were held to determine the father's summer access schedule.

[26] On September 30, 2014, the protection proceeding terminated. The mother and boyfriend were no longer a couple. The boyfriend had moved to Quebec to open a cleaning business. Further, the plan of care indicated that the mother and boyfriend had successfully engaged in services to alleviate the identified protection risks. Both parties completed individual counselling. The mother also accessed mental health services.

#### *Divorce*

[27] On December 5, 2013, the father initiated divorce proceedings and sought custody of the child. The divorce proceeding was held in abeyance until the child protection application concluded.

[28] On September 30, 2014, the parties entered into an interim consent order, confirming that the mother would have interim primary care of the child, SJ, on a without prejudice basis pending the divorce trial.

[29] Around the same time, the boyfriend and mother decided that they would resume their relationship. The mother visited the boyfriend in Quebec. The mother stated that she and the boyfriend were getting along "quite well" and that they used the skills that they were taught to productively resolve occasional disagreements": divorce decision, reported as *BAJ v SD*, 2015 NSSC 205, page 5, para 26.

[30] From June 1 to 5, 2015, a divorce trial was held to determine the contested parenting dispute. On July 23, 2015, Dellapinna, J rendered his written decision, and granted the mother custody and decision-making. In his decision, after recounting the reported acts of IPV, Dellapinna, J briefly reviewed the extensive criminal records of both the mother and the boyfriend, as well as the mother's past suicide attempt, and noted that the violence, criminal convictions, and isolated

suicide attempt all took place before 2013 and the successful completion of remedial services. At para 72, Dellapinna, J held “[t]here is no evidence that at this time S.J. is in any way suffering while in the care of her mother or that she is at risk of any harm.” Because of this finding, and the absence of a significant father-daughter relationship, Dellapinna, J denied the father’s custody request, while granting him access and other parenting rights.

*Moves to and from Quebec*

[31] After the divorce hearing, the mother and the children moved to Quebec. In July 2015, child protection authorities became involved because the children were exposed to violence and substance abuse. For example, while heavily intoxicated, irate, and dysfunctional, the mother tried to jump off a balcony. The boyfriend, CR and others restrained the mother during a violent and rage-filled exchange that was captured on an audio recording. The mother and children returned to live in HRM.

[32] After a brief period of time, the mother took the children back to Quebec. The children were again exposed to violence. In August 2016, the boyfriend assaulted the mother in the children’s presence. The mother then contacted the father to advise of her extensive injuries and fear that the boyfriend would kill her.

[33] The grandparents travelled to Quebec to move the mother and the children back to their home. Since August 2016, the mother and the children have generally lived at the grandparents’ home, except when staying with other boyfriends of the mother. The grandparents were not, however, always present because they went away for week-end craft fairs, especially in the autumn.

[34] Further, in May 2017, the mother took the children back to Quebec for a visit. The mother was subsequently arrested and jailed in Quebec because of an outstanding warrant. Another boyfriend of the mother drove the child, SJ, back to HRM.

*Father’s access*

[35] In 2015, 2016, and 2017, the father exercised in-person parenting time with the child. In 2015, the father, his wife, and their newborn had two periods of extended access. Overnights and family activities were enjoyed by all. In 2016, the child went to Calgary for 14 days. She had an excellent visit. Similarly in 2017, the child again visited the father in Calgary for about a month where she enjoyed another happy visit with the father, his wife, her brother, and extended family.



[36] The father did not have an in-person visit for the next three years. In 2018, the father asked the mother to consider sending the child to live with him for a year. The mother did not respond and then failed to cooperate with the scheduling of the father's parenting time. The father was unable to exercise access in 2019 because of the birth of another child and financial constraints. In 2020, COVID protocols prevented the father from exercising in-person access.

[37] During the protection proceedings in 2021 and 2022, the father exercised in-person parenting time in Nova Scotia. In 2021, I denied a visit to Calgary because of COVID.

[38] Further, although the father, and at times his wife, exercised virtual access, the mother and the grandparents did little to facilitate or encourage such contact.

*2020 child protection investigation*

[39] In June 2020, the police contacted child protection authorities. The police stated that the mother and children had been staying with the mother's boyfriend, JM. While there, the child, SJ, found a bag of drugs in the basement which resulted in an argument between the mother and boyfriend. The mother was heavily intoxicated and the boyfriend left with the drugs. The police arranged for a sober friend to take the mother and children back to the grandparent's home.

[40] On August 17, 2020, a referral was received from Victim Services who reported that the mother was charged with damaging property after she trashed the former boyfriend's home.

[41] On October 27, 2020, the police advised the agency that the mother had assaulted a female friend in the children's presence. Earlier that day, the mother, who was heavily intoxicated, was arrested for breaching a no-contact order by attending the home of the former boyfriend, JM. After being released from custody, the mother immediately returned to his house. The female friend persuaded the mother to leave to avoid being rearrested. The female friend restrained the mother when she tried to get a knife. After returning to the grandparent's home, the mother physically attacked the female friend in the children's presence. The grandmother called the police. The mother was arrested. The female friend advised the grandmother that the mother had been using cocaine for the past few weeks.

[42] The agency opened another investigation. Initially, the agency's safety plan barred the mother from the grandparents' home and from contacting the children. By November 6, 2020, the mother was permitted to visit the children at the grandparents' home provided they supervised all access. In December 2020, the mother and the grandparents asked to modify the safety plan. The agency amended the safety plan to allow for some sleep overs at Christmas provided all access was supervised. Without agency knowledge or approval, in mid-January 2021, the mother moved back to the grandparents' home. On February 2, 2021, the grandmother informed the agency that the mother was now living in their home.

[43] The agency wanted the mother to participate in drug testing. By March 2022, the mother reluctantly agreed. Unfortunately, the mother didn't follow through.

[44] In response, the agency prepared a MOU outlining the safety plan and agency expectations regarding access, drug testing, and services. According to the plan, the mother was not allowed to live in the grandparents' home and all access had to be supervised. On March 4, 2022, the MOU was presented to the grandparents and mother who was connected by telephone. Neither the grandparents nor the mother signed the MOU.

*Current child protection proceeding*

[45] On March 5, 2022, the agency held a risk management conference. The agency decided to file a protection application because of escalating concerns surrounding the mother's mental health and substance abuse, and the mother's minimal engagement with the investigation and services. Further, the agency was troubled by the family's lack of insight, minimization of the protection concerns, and reluctance to follow the safety plan. In the circumstances, a protection application was the least intrusive option.

[46] On March 17, 2021, the protection application was filed. The Minister relied on ss. 22 (2)(b), (g), (i), and (k) of the *CFSA* – substantial risk of physical harm, substantial risk of emotional abuse, exposure to violence, and substantial risk of neglect.

[47] The agency spoke to the mother and grandmother about the protection application. They were upset with the agency's decision, including the notification that would be sent to the father. On March 23, 2021, the grandmother lashed out at protection workers. On several occasions, the grandmother screamed that she "was

done” and that she would no longer care for the children. The grandmother blamed the social worker for destroying her family, the children, and the mother.

[48] On March 23, 2021, a second risk management conference was convened because the grandparents refused to provide care. Without an alternate plan, the agency intended to apprehend the children. Once informed, the mother reached out to the grandparents who subsequently changed their minds. The grandparents would continue to care for the children.

[49] The matter proceeded to court. On March 24, 2021 and April 9, 2021, interim orders were granted placing the children in the supervised care of the grandparents, together with a list of services to be completed by the mother, including family support work, counselling, and drug testing. The mother was granted two hours of supervised access each day. The father was also granted access. He travelled to Nova Scotia to be with the child, after self isolating in compliance with COVID protocols. The father’s access was positive and appropriate.

[50] On June 11, 2021, the protection finding was entered by consent pursuant to s. 22 (2)(g) of the *CFSA* – substantial risk of emotional abuse.

[51] On June 14 and 15, 2021, after a contested hearing, I determined the father’s summer access. I was unable to grant the father’s request for access in Calgary because of COVID. Instead, the father was granted summer access in Atlantic Canada.

[52] On September 7, 2021, the disposition hearing was held. The mother was ordered to participate in counselling, drug screening, family support work, and mental health therapy to address the four protection concerns - substance abuse, emotional regulation, family violence, and criminal involvement. Further, at the father’s behest, an interprovincial request was sent to the Alberta agency seeking an updated assessment of the father’s home because the father continued to seek primary care of the child.

[53] At the November 26, 2021 review hearing, the order was renewed and dates were requested for various matters, including a contested placement hearing.

[54] For their part, the grandparents and mother filed a motion for a voice of the child report. The father objected. On February 4, 2022, I heard the motion which ultimately resolved by consent. All parties confirmed that the child wanted to live

in Nova Scotia with either the mother or grandparents, and her brother, MR. All parties confirmed that the child did not want to live with the father.

[55] On February 22, 2022, the supervision order was renewed for a second time. In addition, all parties agreed that the evidence from the contested *CFSA* placement hearing would be considered as evidence for the contested parenting hearing to determine the father's variation application and the grandparents' custody application.

[56] On February 24, 2022 and March 1, 2022, O'Neil, ACJ convened a case management conference at which time the Minister advised of her revised position. The Minister stated that the protection application could be terminated if primary care was granted to either the father or grandparents, with supervised access to the mother.

*CFSA placement hearing*

[57] The contested *CFSA* placement hearing was held on March 2, 3, 7, 8, 9, 10, and 11, 2022. The following witnesses testified: social worker, Nicole Warren; social worker, Dayna Balaban; family support worker, Erica McNeill; the father; the father's wife; the mother; and the grandparents. In addition, other evidence was entered by consent. Further, the parties provided written and oral submissions.

[58] On April 22, 2022, I granted an interim order preserving the *status quo* pending the completion of the upcoming trial during which I would determine whether it was in the child's best interests to relocate to Calgary to live with her father or to remain in the primary care of the grandparents in HRM.

*DA and PSA hearing*

[59] After the contested placement hearing was concluded, the grandparents retained a psychologist to prepare an expert report about the child. The father objected to the admission of the report. On April 27, 2022, I refused to admit the late-filed report where the report had little probative value; where its admission was neither in the interest of justice nor in the child's best interests; and where significant prejudice would flow from its admission. My decision is reported as ***BJ v SD***, 2022 NSSC 116.

[60] The contested parenting hearing was held on May 4 and 5, 2022, during which social worker, Dayna Balaban testified. Additionally, the parties provided both oral and written submissions.

[61] Soon after the hearing, the Supreme Court of Canada published two decisions which discussed issues relevant to the decision I was making. I therefore asked for further submissions. On June 14, 2022, counsel for the father filed his submissions. On June 17, 2022, counsel filed submissions for the other parties. I considered their submissions when making my decision.

[62] I will now provide my analysis of the issues.

### **Analysis**

#### **[63] What are the positions of the parties?**

##### *Father's position*

[64] The father seeks primary care of the child. Although acknowledging that he had not acted as primary care parent in the past, the father states that he can nevertheless provide the child with the love, support, nurture, stability, and guidance that she desperately needs. The father notes that he is no stranger to the child, and that she easily and happily transitioned into his care once they were able to reconnect and he and his family were able to visit the child. The father states that any current reticence on the child's part is due to the alienating conduct of the mother and grandparents who refuse to support his relationship with the child. He says they have gone so far as to lie about him to agency and IWK staff in their attempts to restrict his involvement in the child's life.

[65] In addition, the father is deeply concerned that the child's safety and security will continue to be jeopardized if she remains in the care of the grandparents. From the father's perspective, the grandparents will not protect the child because the mother has dominated the grandparents' household and will continue to do so into the future. The mother, and not the child, will always be the priority for the grandparents. One only has to read the report given by the grandmother to the IWK counsellor on October 27, 2020 to understand what the child's life was like when parented in the grandparents' home.

[66] The father also relied on the following reasons to support his concerns about the child's security:

- The mother is addicted to drugs and alcohol. Neither she nor the grandparents have any insight into the issues surrounding this protection concern. In fact, the grandparents minimize, excuse, and tolerate the

mother's behaviour. The mother is not held accountable. As a result, the mother failed to affect permanent lifestyle changes.

- Since the 2015 corollary relief order, the mother exposed the child to violence on multiple occasions. The mother physically attacked others and was also physically attacked by her partners. The October 26, 2020 assault is especially notable because it links the mother's drug and alcohol addiction with a corresponding willingness to engage in extreme violence with a knife.
- Neither the mother nor the grandparents acknowledge that the child's exposure to violence negatively and extensively affected her development, contrary to para 143 of *Barendregt v. Grebliunas*, 2022 SCC 22 and contrary to the reports given to the IWK counsellors, which the grandmother attempted to downplay at trial.
- The court must consider the real impact that the mother's violence and addiction had on the child's healthy development, together with the corresponding willingness of the mother and grandparents to cover up and minimize the violence and addiction issues, as well as their impact on the child.

[67] Further, the father argued that the Minister ignored or minimized clear evidence of child neglect, violence in the presence of the children, and the mother's drug and alcohol addiction by allowing the parental misconduct to go unchecked. The father states that despite the red flags and the independent evidence to the contrary, agency workers tended to believe the mother and grandparents. The Minister thus shaped the *status quo*, a factor deemed relevant by the Supreme Court of Canada in *BJT v JD*, 2022 SCC 24, para 69.

#### *Grandparents' position*

[68] In contrast, the grandparents state that the child's best interests will be served by being placed in their primary care for four main reasons – the child's lack of attachment to the father, the child's wishes, the child's positive attachment to the maternal family, and the grandparents' proven ability to protect the child.

[69] First, the grandparents argue that there is virtually no bond between the child and the father. From their perspective, the father is to blame for the lack of relationship. They argue that the father was absent from the child's life for four

years because he prioritized his family in Calgary. Additionally, they say it is naïve to believe that the father-daughter relationship can be repaired at this stage.

[70] The grandparents state that the father and his family are almost strangers to the child. The child has no connection with the father. The grandparents submit that the child's emotional and psychological development will be jeopardized if she is placed in the father's primary care. The grandparents note that the father has no real plan for managing the child's traumatic upheaval should relocation be granted.

[71] Second, the child has clearly and unequivocally stated that she wants to live in HRM with either the mother or grandparents, and her brother. The child said that she absolutely does not want to live with the father in Calgary. The child's views are worthy of great respect.

[72] Third, the grandparents note that the child has a strong and positive bond with them, her brother and sister, and the extended maternal family. The grandparents are a stable influence in the child's life. They stepped up to the plate when the Minister became involved. These positive maternal attachments will be destroyed if the child relocates to Calgary to live in the father's primary care.

[73] Further, the grandparents state that despite her challenges, the child's closest and most important relationship is with her mother. The mother has been a constant in the child's life. The child loves her mother and the mother loves the child. The child will be emotionally harmed if the mother is removed from the child's life.

[74] Fourth, the grandparents state that they have and will protect the child by supervising all contact between the mother and the child and by ensuring nothing inappropriate occurs when there is contact. The grandparents have not run afoul of the strict safety plan imposed since the child protection proceeding began. The grandparents can and will do better in terms of keeping tabs on the mother, despite at times being too ready to believe and forgive: page 2, May 6, 2022, written submissions of Mr. Eagan. The grandparents acted protectively in the past and will do so in the future.

*Mother's position*

[75] For her part, the mother recently confirmed that she was unable to parent the child because she struggles with mental health and addiction issues. The mother

supports the grandparents' plan of care for the reasons articulated by the grandparents.

*Minister's position*

[76] The Minister is prepared to terminate the protection proceeding if primary care is vested with either the father or grandparents and strict conditions, including supervision, are attached to the mother's parenting time.

[77] Further, the Minister takes umbrage with the arguments that the father leveled against her. The Minister makes two points. First, the agency constantly assesses and reassesses its position based on the family dynamic which unfolds and develops over time. It is inappropriate to judge the actions of the agency with the benefit of hindsight. The agency does not have a crystal ball. Rather, the agency must make decisions based on legislative directives, the facts and circumstances known at the time, and available tools, including prior court decisions and orders.

[78] Second, it is not the Minister's role, in the absence of risk not mitigated by a safety plan, to determine what parenting plan is in the child's best interests or which is the better parenting plan. Rather, such a role falls to the parents, or in a contest, to the courts. The agency role is to identify child protection risks and then attempt to address the known risks. If the risk is satisfactorily addressed or resolved, the agency does not go further to determine if there might or could be a "better" parenting arrangement.

[79] The Minister states that she fulfilled her role in an appropriate fashion.

[80] **What factors inform my analysis?**

*Two legislative schemes*

[81] This case involves two separate legislative schemes. First, pursuant to s. 17 (1) of the *Divorce Act*, RSC, 1985, c. 3 (2nd Supp), the father seeks to vary the parenting arrangement stated in the CRO. Second, the grandparents selected s.18 (1) of the *Parenting and Support Act*, 2015, c. 44 as the venue from which to seek primary care and decision-making. Both *Acts* require me to make parenting decisions based on the child's best interests. Both *Acts* provide an extensive list of best interests factors, including those which touch on the child's physical, emotional, psychological, educational, cultural, and social well-being; the child's need for security and stability; parenting ability; the quality of the parent-child relationship; the history of caregiving; the child's views and preferences; the



willingness of each party to support the child's relationship with the other; the history of compliance with prior court orders; the impact of family violence on the child's best interests; and other court proceedings which impact safety concerns. I considered these factors when making my decision.

*Best interests and relocation principles*

[82] In the recent case of *Barendregt v Grebliunas*, *supra*, Karakatsanis, J provided an overview of the legal principles which apply to relocation cases, noting that the best interests inquiry is highly contextual, with the child's welfare being at the heart of the inquiry:

[97] But, even with a wealth of jurisprudence as guidance, determining what is "best" for a child is never an easy task. The inquiry is "highly contextual" because of the "multitude of factors that may impinge on the child's best interest": *Canadian Foundation for Children, Youth and the Law*, at para. 11; *Gordon*, at para. 20.

[98] The difficulties inherent to the best interests principle are amplified in the relocation context. Untangling family relationships may have profound consequences, especially when children are involved. A child's welfare remains at the heart of the relocation inquiry, but many traditional considerations do not readily apply in the same way.

[83] Additionally, Karakatsanis, J confirmed that both the *DA* and *PSA* were recently amended to apply a similar statutory scheme to relocation applications:

[107] At the time *Gordon* was rendered, the *Divorce Act* and provincial family legislations did not contain any provisions pertaining to relocation. In 2019, Parliament amended the *Divorce Act* to provide a statutory regime that governs relocation applications. Several provinces have enacted similar statutory relocation regimes in recent years: see ... *Parenting and Support Act*, R.S.N.S. 1989, c. 160, ss. 18E to 18H; ....

*History of caregiving*

[84] Further, although noting that the history of caregiving is a relevant consideration, Karakatsanis, J held that ultimately the court must determine the relocation request in the context of the particular child in the particular circumstances of the case:

[123] Therefore, in all cases, the history of caregiving will be relevant. And while it may not be useful to label the attention courts pay to the views of the parent as a separate "great respect" principle, the history of caregiving will sometimes

warrant a burden of proof in favour of one parent. Indeed, federal and provincial legislatures have increasingly enacted presumptions, bringing clarity to the law. In all cases, however, the inquiry remains an individual one. The judge must consider the best interests of the particular child in the particular circumstances of the case. Other considerations may demonstrate that relocation is in the child's best interests, even if the parties have historically co-parented.

*Reasons for moving*

[85] In addition, while observing that legislative amendments instruct courts to consider a party's reasons, Karakatsanis, J cautioned against casting judgment on a parent's reasons for moving, or allowing those reasons to deflect from the true focus of the application:

[129] That said, the court should avoid casting judgment on a parent's reasons for moving. A moving parent need not prove the move is justified. And a lack of a compelling reason for the move, in and of itself, should not count against a parent, unless it reflects adversely on a parent's ability to meet the needs of the child: *Ligate v. Richardson* (1997), 34 O.R. (3d) 423 (C.A.), at p. 434.

[130] Ultimately, the moving parent's reasons for relocating must not deflect from the focus of relocation applications — they must be considered only to the extent they are relevant to the best interests of the child.

*Parenting time factor displaces maximum contact principle*

[86] Karakatsanis, J also discussed the interpretative overreach that courts often applied to the maximum contact principle. In so doing, she noted that the maximum contact principle is better referenced as the “parenting time factor”, and that parenting time must always be consistent with the child's best interests:

[135] These interpretations overreach. It is worth repeating that what is known as the maximum contact principle is *only* significant to the extent that it is in the child's best interests; it must not be used to detract from this inquiry. It is notable that the amended *Divorce Act* recasts the “maximum contact principle” as “[p]arenting time consistent with best interests of child”: s. 16(6). This shift in language is more neutral and affirms the child-centric nature of the inquiry. Indeed, going forward, the “maximum contact principle” is better referred to as the “parenting time factor”.

*Double bind question*

[87] Karakatsanis, J also confirmed that the court is prohibited from asking the double bind question:

[140] The same approach is now reflected in the *Divorce Act*: s. 16.92(2) precludes the court from considering whether the moving parent would relocate with or without the children. I would add that a responding parent could just as easily fall victim to the problematic inferences associated with the double bind: see *Joseph v. Washington*, 2021 BCSC 2014, at paras. 101-11 (CanLII). Therefore, in all cases, the court should not consider how the outcome of an application would affect the parties' relocation plans.

#### *Family violence*

[88] Further, Karakatsanis, J provided much needed clarification on the significance of family violence in the relocation analysis:

[146] The recent amendments to the *Divorce Act* recognize that findings of family violence are a critical consideration in the best interests analysis: s. 16(3)(j) and (4). The *Divorce Act* broadly defines family violence in s. 2(1) to include any violent or threatening conduct, ranging from physical abuse to psychological and financial abuse. Courts must consider family violence and its impact on the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child.

[147] Because family violence may be a reason for the relocation and given the grave implications that any form of family violence poses for the positive development of children, this is an important factor in mobility cases.

#### *Relocation framework*

[89] Finally, Karakatsanis, J restated the relocation framework, describing the crucial question as whether relocation is in the child's best interests, based on a fact-specific review of general best interests factors and those unique to the relocation inquiry:

[152] The crucial question is whether relocation is in the best interests of the child, having regard to the child's physical, emotional and psychological safety, security and well-being. This inquiry is highly fact-specific and discretionary.

[153] Our jurisprudence and statutes provide a rich foundation for such an inquiry: see, for example, s. 16 of the *Divorce Act*. A court shall consider all factors related to the circumstances of the child, which may include the child's views and preferences, the history of caregiving, any incidents of family violence, or a child's cultural, linguistic, religious and spiritual upbringing and heritage. A court shall also consider each parent's willingness to support the development and maintenance of the child's relationship with the other parent, and shall give effect to the principle that a child should have as much time with each parent, as is consistent with the best interests of the child. These examples are illustrative, not

exhaustive. While some of these factors were specifically noted under *Gordon*, they have broad application to the best interests of the child.

[154] However, traditional considerations bearing on the best interests of the child must be considered in the context of the unique challenges posed by relocation cases. In addition to the factors that a court will generally consider when determining the best interests of the child and any applicable notice requirements, a court should also consider:

- the reasons for the relocation;
- the impact of the relocation on the child;
- the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child’s life of each of those persons;
- the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;
- the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and
- whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

The court should not consider how the outcome of an application would affect either party’s relocation plans — for example, whether the person who intends to move with the child would relocate without the child or not relocate. These factors are drawn from s. 16.92(1) and (2) of the *Divorce Act* and largely reflect the evolution of the common law for over 25 years.

[155] As I have explained, several pillars underlying the Court’s reasoning in *Gordon* have shifted over time, leading courts and now legislatures to refine, modify, and supplement the *Gordon* factors. These refinements leave us with a clear framework going forward.

#### *No preference for biological parent*

[90] In another recent case, *BJT v J*, *supra*, the Supreme Court of Canada rejected a legal presumption in favour of a biological parent, noting that such a

preference is not in keeping with either caselaw or legislative best interests factors. Wagner, CJ held that although biological ties may be relevant, such ties carry only minimal weight and should not be the decisive factor when two prospective custodial caregivers are otherwise equal.

[109] For these reasons, I disagree with the majority of the Court of Appeal that biology must be a tie-breaker when two parties are otherwise equal under this legislation. A court is not obliged to turn to biology and engage in a fraught determination of who may be a closer blood relative. While biological ties *may* be relevant in a given case, they will generally carry minimal weight in the assessment of a child's best interests.

#### *Burden of proof*

[91] In this case, the father seeks to vary the custodial provisions of the CRO so that he has primary care of the child, which would involve the relocation of the child from HRM to Calgary. Pursuant to s. 17(5.2) of the *DA*, the father does not need to demonstrate a change in the circumstances of the child and I do not need to be satisfied that there has been a change in the circumstances beyond the proposed relocation: *Al Kowatli v. Berrwin*, [2021] OJ No 3838 (Ont. Sup. Ct. J.), paras 17 to 20.

[92] The issue of who bears the burden with respect to relocation is determined under s.16.93 of the *DA*. In *KDH v BTH*, 2021 ABQB 548, Lema, J interpreted these provisions as follows:

[33] My reading is that ss. 16.93(1) and (2) focus on whether parenting "on the ground" squares, more or less ("substantially comply"), with parenting as ordered. Subsection 16.93(1) asks, effectively: is there an order for equal (or almost-equal) parenting and, if so, are the parties actually parenting in that way? If so, the would-be mover has the onus of showing a move is in the child or children's best interests. That is presumably because of the proposed major disruption of a *status quo* in which each parent is equally (or almost equally) involved in caring for the children i.e. an obvious earthquake (if move approved) in the children's lives.

[34] Subsection 16.93(2) effectively asks: is there an order making one parent the very clear primary parent and, if so, is that parent actually doing the vast bulk of parenting? If so, the onus is on the access parent, to show that the move is not in the child's or children's best interests, (presumably) given the less dramatic (compared to equal or almost-equal parenting) shift in the child's or children's lives (if the move is approved) i.e. they will continue to be with the parent with whom they already spend the vast majority of the time, only now more so.

[93] In this case, although the CRO provides the mother with custody and primary care of the child, the current parenting arrangement is not in substantial compliance with that order. Instead, the child was placed in the care of the grandparents, and the mother admits that she is unable to parent. As a result, s. 16.93(3) applies, and the parties to the divorce variation have the burden of proving whether the relocation is in the best interests of the child.

[94] For their part, the maternal grandparents oppose the father's application and seek primary care of the child pursuant to s. 18(H) of the *PSA*. As under the *DA*, all parties to the application have the burden of showing what is in the best interests of the child as noted in s. 18H(1A)(e):

18H (1) When a proposed relocation of a child is before the court, the court shall give paramount consideration to the best interests of the child.

(1A) The burden of proof under subsection (1) is allocated as follows:

(a) where there is a court order or an agreement that provides that the child spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child, unless the other party is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(b) where there is a court order or an agreement that provides that the child spend the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child, unless the party who intends to relocate the child is not in substantial compliance with the order or agreement, in which case clause (e) applies;

(c) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child;

(d) where there is no order or agreement as referred to in clause (a) or (b) but there is an informal or tacit arrangement between the parties in relation to the care of the child establishing a pattern of care in which the child spends the vast majority of the child's time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child;

(e) for situations other than those set out in clauses (a) to (d), all parties to the application have the burden of showing what is in the best interests of the child.

[95] Although this proceeding involves two different pieces of legislation, the crucial question under both is whether relocation is in the best interests of the child, with all parties having the burden of proving their case.

*Other evidentiary principles*

[96] For the parties' benefit, I will also review three of the other evidentiary principles that I applied to my decision. First, this is a civil proceeding which requires proof on the balance of probabilities. There is no presumption of innocence in civil cases: *FH v McDougall*, 2008 SCC 53, para 42. To reach a factual conclusion in this civil case, I must scrutinize the evidence with care to decide whether it is more likely than not that an event occurred. I must determine whether the evidence is sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test: *FH v McDougall*, paras 44 to 46. There is no heightened burden on any party.

[97] Second, in making credibility findings, I applied the law reviewed in *Baker-Warren v Denault*, 2009 NSSC 59, as approved in *Gill v Hurst*, 2011 NSCA 100. In addition, I made inferences in keeping with the comments of Saunders, JA in *Jacques Home Town Dry Cleaners v Nova Scotia (Attorney General)*, 2013 NSCA 4.

[98] Third, I examined past parenting history. Although “[t]here is no legal principle that history is destiny”, past parenting is relevant, as it may signal “the expectation of risk”: *SAD v Nova Scotia (Community Services)*, 2014 NSCA 77, para 82. The court is concerned with probabilities, not possibilities. Therefore, where past parenting history aids in the determination of future probabilities, it is admissible, germane, and relevant: *Nova Scotia (Community Services) v JM*, 2016 NSSC 80, para 86.

[99] **Is relocation in the child's best interests?**

[100] I will now analyze this parenting dispute according to the relocation framework, in keeping with the legislative best interests factors enumerated in both the *DA* and the *PSA*, while highlighting the factors that counsel raised on behalf of the parties. In so doing, I applied the balanced and comparative approach mandated in *DAM v CJB*, 2017 NSCA 91. My analysis will address the following 10 subheadings:

- History of caregiving
- Child's views and preferences
- Child's safety and security, including family violence
- Willingness to support the child's relationship with the other party
- Reasons for relocation
- Impact of relocation on the child
- Time spent and involvement in the child's life
- Legal geographic limitations on the child's residence
- Reasonableness of the relocation parent's proposal, including travel expenses
- Past and future compliance with court order.

*History of caregiving*

[101] The mother was the child's primary caregiver for her whole life, before and after the issuance of the CRO, until March 2021 when the child was placed in the care of the grandparents after child protection proceedings were commenced. At no time did the father exercise primary care of the child. The father was an access parent who did not have fulsome physical and virtual contact because of geography, finances, COVID travel protocols, and the mother actively impeding the father's attempts to visit and connect with the child.

[102] As will be explained later in this decision, the mother's caregiving was less than exemplary. She did *not* provide the child with the stability, nurture, guidance, and care that the child required. Instead, while in the mother's primary care, the child was exposed to a toxic and chaotic lifestyle fueled by violence and substance abuse. The mother is addicted to alcohol and drugs. Not surprisingly, the child experienced trauma because of the mother's care.

[103] In August 2016, the mother and child moved in with the grandparents. The mother continued to be the child's primary caregiver, although the grandparents provided the child with many of her physical needs. They also provided emotional



support. The grandparents, however, acquiesced to the mother's parenting decisions, including taking the child out of the home to stay with boyfriends for days at a time, preventing the child from enrolling in activities, and dispensing "tough love", as the mother thought the child needed to be less sensitive.

[104] After the March 2021 child protection application, the child was placed in the grandparent's care and custody, subject to the supervision of the Minister. The mother was allowed to visit but was not supposed to live with the grandparents. The grandparents exercised their decision-making role by enrolling the child in therapy and activities, supervising her school work, and providing the child with an organized structure and routine.

[105] The history of caregiving favours the grandparents' parenting plan.

*Child's views and preferences*

[106] All parties confirm that the child wishes to live in HRM with either her mother or grandparents and her brother. The child does not want to move to Calgary to live with the father. The child is almost 10 years old and her views are an important but not decisive factor in my analysis of her best interests.

[107] The child's views and preferences favour the grandparents' parenting plan.

*Child's safety and security issues, including family violence*

[108] There are significant safety and security issues at play in the life of this child while in the care of the mother and the grandparents. In contrast, I find no safety and security issues with the father. I will now explain why.

*Safety and security issues while with the mother*

[109] I find that the child's safety and security were jeopardized while in the mother's care as illustrated by the following examples:

- Both before and after the divorce trial, violence regularly occurred in the child's presence or hearing. The mother was often assaulted by boyfriends and the mother also assaulted them. The mother was both victim and aggressor. Further, in 2020, the mother assaulted her female friend. The violence occurred in Nova Scotia and in Quebec. At times, police and protection agencies were called to investigate. I infer, however, that the child was likely exposed to more violence than documented in agency files. It is

not probable that every act of violence was either reported to, or investigated by police and protection agencies. Especially as violence is an embedded part of the mother's life. I further find that the child was profoundly traumatized by her exposure to violence.

- The child was frequently exposed to the mother's emotional dysregulation. A voice recording of one of the 2015 episodes was entered as an exhibit. This recording showed the intensity and extent of the mother's rage and dysregulation in a way that words cannot express. Contrary to the mother's denial, I find that the child was present. The mother lacks credibility. I also find that it is probable that the child was exposed to this type of rage on multiple occasions. Rages are not always reported for investigation. Recordings aren't usually made. I further find that the child was profoundly traumatized by her exposure to the mother's loud, violent, piercing, and rage-filled screams and dysregulation.
- Despite her previous denials, I find that the mother has an untreated drug and alcohol addiction. She regularly abuses cocaine and alcohol. The mother enjoys a party lifestyle. The mother also uses drugs and alcohol to cope. Drugs and alcohol fueled the mother's rages and capacity for violence. The mother is not willing to make permanent lifestyle changes. For example, even after drug testing was commenced, the mother regularly used cocaine. The mother's denials, excuses, and explanations are not credible. Further, the child actually handled illegal drugs that she found while playing in the basement of the mother's former boyfriend, JM. In addition to poor role modelling, the mother's use of drugs and alcohol exposed the child to a substantial risk of physical harm.

[110] I also find, on a balance of probabilities, that these safety and security issues will continue into the future because the mother has little insight into the issues, refuses to accept responsibility for her decisions, and did not successfully complete any program designed to treat her long standing mental health, addictions, and coping challenges.

*Safety and security issues while with the grandparents*

[111] I find that the child experienced safety and security issues while in the grandparents' care for two reasons. First, although the grandparents love the child, their priority is the mother. Two examples that support my conclusion are:

- During the 2020 protection investigation, the grandparents were advised that the mother was not to live with them. In December, the grandparents advocated for the mother's return. Although the agency agreed to a few sleep-overs during Christmas, the grandparents eventually allowed the mother to move back home without the agency's knowledge or consent. The grandparents were not credible when they said that they didn't fully appreciate the safety plan. I find that although the grandparents were aware of the rules, they were nevertheless willing to break them because they assigned priority to the mother's needs.
- After the protection application commenced, the grandparents frequently asked the agency to allow the mother to return to live with them. The grandparents wanted the mother to move back home even though the mother was not co-operating with the case plan. For example, the mother was testing positive for cocaine. The grandparents' unconditional love and blind hope clouded their judgement. The grandparents unrealistically believed the mother would change. The grandparents did so because they prioritized the mother without fully appreciating the negative consequences that such a move would have on the child.

[112] Second, the grandparents failed to act protectively. The grandparents were always involved in the child's life. Since August 2016, the child lived with the grandparents. During this time, the grandparents knew the child was experiencing serious emotional and psychological challenges because of her exposure to violence and as a result of the mother's parenting. Yet, the grandparents did not report, or do anything to correct the negative impact that the mother's care was having on the child. They did not take concrete steps to protect the child until October 2020 when they called the police to report the mother's assault on her friend. The police, not the grandparents, contacted child protection authorities.

[113] During interviews in 2020 and 2021 with IWK staff, the grandmother, and later the grandfather, confirmed that the child had an extensive trauma history because she was exposed to violence and was likely frequently left alone while in the mother's care. They reported that the child experienced long-standing attachment issues and had problems socializing, noting that the child didn't have friends, that she was controlling and mothering when interacting with peers, that she spent a lot of time alone in her room, and that she was extremely sensitive. The grandmother also reported that the child sought reassurance and love from her mother who was, at times, cold and unloving. The grandmother said that the child

frequently complained of stomach aches, was unable to eat because of anxiety and worry, and had difficulty sleeping. The grandparents said that the child assumed responsibility for conflict between others and was inordinately worried about the mother.

[114] At trial, the grandmother attempted to distance herself from these reported comments. She said that the IWK notes did not accurately reflect her statements. I do not believe the grandmother for three reasons. First, the notes contained multiple references to the same issues. Trained IWK staff are not likely to be so incompetent that they would consistently misunderstand and misrepresent. Second, the child's symptoms as described by the grandmother are consistent with the type of symptoms I would expect a traumatized child to experience. Third, because the grandmother assigns priority to the mother, the grandmother minimizes and denies conduct that places them in a negative light.

[115] I also find, on a balance of probabilities, that these safety and security issues will continue into the future because the grandparents lack insight, prioritize the mother's needs, and minimize the parenting and protection concerns. As an example, the grandparents said that the mother was a competent mother until the October 2020 assault in their home. At trial, the grandparents failed to recognize that the mother's tough love parenting model, addictions, and dysfunctional lifestyle were devastating to the child for many years. The grandparents were willfully blind to the mother's negative conduct; they were content to ignore the red flags. On a balance of probabilities, the grandparents will continue to minimize and ignore protection risks in order to protect the mother.

*Safety and security issues while with the father*

[116] In contrast, there are no safety and security issues associated with the father. There is no violence. The father and the wife have a loving and respectful relationship. There is no drug and alcohol abuse. The father and the wife neither drink alcohol nor use illegal drugs. The child will not find drugs while playing in their home. The father and the wife do not frequent bars, instead they enjoy spending time with family and friends. The father and the wife provide their children with love, stability, guidance, structure, routine, and rules. Children are presented with developmentally appropriate opportunities and healthy role models while in the father's care. The father and his wife are family oriented.

[117] In summary, the father's parenting plan is overwhelmingly preferred when I consider factors associated with the child's safety and security, including factors related to family violence.

*Willingness to support child's relationship with the other party*

[118] The relationship between the father and the mother and grandparents is poor primarily because of the father's quest for primary care of the child. The grandparents want the child to live with them, close to the mother. Because the father challenges the appropriateness of this living arrangement, the grandparents and the mother interfered with the father-child relationship as demonstrated by the following examples:

- The grandfather lied to protection authorities when he stated that the father's past abuse of the mother triggered previous child protection intervention. This statement is false.
- The grandmother lied to IWK staff when she said that the child does not see her father because of a conflict caused by cultural differences involving dowry expectations. This statement is false.
- The grandparents did not always facilitate virtual communication between the child and father or his wife by not answering their phone. When the father purchased electronics to foster virtual communication, the grandparents refused to remind the child to charge the battery. The grandmother unconvincingly said that they wanted to teach the child responsibility.
- As the child was leaving a message on the father's phone, the grandfather made disparaging comments about the father. The grandfather, who didn't realize that his voice was also being recorded, said to the child: "That bugger. He's going to try to take you away from us." I infer that this type of statement was not an isolated one.
- The mother's text message to the child, found in exhibit 9, tab 7, is an example of the mother manipulating the child to think poorly of the father. When the child said that the father called her, the mother texted: " "Awe I'm sorry what happened." Later she texted "Ugh what did he ask tell me if u want" and then "Awe baby good for u don't worry ur not going anywhere with him."

- The mother consistently molded the child into calling the father “baba” and not “daddy” even though the father wanted to be called “daddy”. Instead, the mother encouraged the child to call the boyfriend, CR, “daddy” even though the mother’s relationship with the boyfriend was violent and unstable.

[119] In contrast, I am satisfied that the father and wife will support a relationship between the child and grandparents and mother, provided safety and security provisions are met. The father understands that the child loves the grandparents and mother. The father wants to ensure that the healthy aspects of those relationships are supported.

[120] The father’s plan is therefore superior to the grandparents’ when this factor is considered.

*Reasons for relocation*

[121] The father wants the child to relocate to Calgary because he and the wife live there. The father wants the child to live with him, his wife, and his other children. The father is not seeking relocation to thwart the relationship between the grandparents or mother. The father is seeking relocation because he believes that the child will have a better life in Calgary.

[122] This factor is a neutral one in my decision-making process.

*Impact of relocation on child*

[123] Relocation will have a significant impact on the child’s life. Negative impacts include the child being removed from the only primary caregivers that the child has ever known – the mother and grandparents. Further, relocation will separate the child from her brother, MR. The child and the brother share a close and loving relationship. The child will also be removed from regular contact with other family members, including her sister, V, her aunt, and cousins. Finally, the child only visited, but did not live in Calgary. The child will have to transition and adjust to a new life. This will be extremely difficult and challenging for the child.

[124] On the other hand, relocation will also have a significant positive impact on the child’s life. The child will be placed in a loving, family-oriented home, free from violence, substance abuse, and dysregulation. The child will have the love, stability, structure, and guidance that the father and his wife will provide. The child

will be exposed to healthy role models. The child will reconnect with her brothers and extended family who live in the Calgary area.

[125] On balance, I find that the child will benefit more by relocating than by remaining in the grandparents' care, despite the negative impacts that the child will experience. The negative impacts will be tempered by the consistent, loving, and nurturing parenting offered by the father and the wife, together with virtual and in-person parenting time between the child and her maternal relatives.

*Time spent and involvement in the child's life*

[126] This factor favours the grandparents because they spent more time with the child than did the father for the reasons previously reviewed. I find, however, that the child does nonetheless love the father and readily bonds with him once she is with him and free from the manipulation of the grandparents and mother.

*Legal geographic limitations on the child's residence*

[127] This factor is not particularly relevant in the context of this case. It was not highlighted by the parties likely because the Supreme Court of Canada did not publish *Barendregt v. Grebliunas*, *supra*, until after the hearing was concluded.

*Reasonableness of the relocation parent's proposal, including travel expenses*

[128] This factor was not discussed by the parties likely because the Supreme Court of Canada did not publish *Barendregt v. Grebliunas*, *supra*, until after the hearing was concluded.

[129] The father's proposal will result in the child moving to Calgary. Parenting time with the mother, brother, and grandparents will have to be structured to ensure safe, healthy, and protective parenting time that is in-person and virtual.

*Past and future compliance with court order*

[130] The mother did not comply with the access and parenting provisions of the CRO. She did not consult with the father about important issues involving the child. She did not keep the father apprised of important matters affecting the child's life. She did not keep the father apprised of the child's addresses and contact information. She did not provide the father with at least 60 days notice of the child's relocation. She did facilitate virtual and in-person parenting. The

mother will likely ignore future court orders. The mother does not assign priority to legal responsibilities and court orders.

[131] Although the grandparents are more likely to follow court orders than is the mother, they are also likely to interpret legal provisions narrowly and in a way that suits their needs. The grandparents will continue to prioritize the mother in the decisions that they make.

[132] The father followed court orders and will likely do so in the future.

*Summary of best interests and relocation factors*

[133] I find that the father overwhelmingly proved that it is in the child's best interests to relocate to Calgary. I recognize the weaknesses and challenges associated with his plan. The father was never the child's primary care parent. The father had limited contact with the child. Relocation will result in the child being removed from the only primary care providers that she has known. Relocation will result in the child's separation from her brother and extended family. Relocation will result in the child moving to a new province and living in a new household. These are serious considerations.

[134] Despite these challenges, I nonetheless find that it is in the child's best interests to relocate to Calgary with her father. It is not a decision lightly made. In so deciding, I find that the positive impact associated with the move significantly outweighs the negative impact for three primary reasons.

[135] First, the child will be subject to continued safety and security issues if she is placed in the grandparent's primary care. The grandparent's assign priority to the mother, not the child. The grandparents lack insight into the serious protection risks associated with the mother's violent lifestyle, dysregulation, untreated mental health issues, and substance abuse. The grandparents minimize these concerns. In the past, the grandparents failed to act protectively of the child. The grandparents will not likely change their approach.

[136] Second, the grandparents and the mother interfered with the child's relationship with the father because the father sought primary care. The grandparents and mother manipulated the child in an attempt to bolster their claim of primary care. In contrast, the father did not negatively influence the child's relationship with the grandparents.



[137] Third, the father will provide the child with a loving and nurturing home, free from violence and substance abuse, where there are rules and routines, and where the child can grow and develop into a secure and happy adult. The father and the wife are aware of the difficulties that lie ahead. They are prepared to meet the challenges because they love the child, have strong parenting skills, and they will reach out for professional assistance when needed.

[138] The relocation is therefore granted in the child's best interests.

[139] **What parenting plan is in the child's best interests?**

[140] The following parenting plan is in the child's best interests.

*Primary care and decision-making*

[141] The father will have primary care of the child.

[142] The father will make all important decisions about matters affecting the health, education, and general welfare of the child. The father is authorized to obtain the child's passport and to travel internationally without the consent of the mother or grandparents.

*Contact between the child and her brother, MR*

[143] The father will encourage and facilitate virtual and in-person contact between the child and her brother, MR. I have no jurisdiction to provide details of such contact because the brother was not a subject of this application.

*Information sharing*

[144] The father will keep the grandparents informed of important matters affecting the child's health, education, and general welfare through monthly e-mail updates if the grandparents provide their email address to the father and if they communicate in a polite and child-focused fashion.

*Therapeutic counselling*

[145] The grandparents must select a qualified counsellor to provide them with therapeutic counselling. The grandparents must provide their counsellor with a copy of this decision. The grandparents must address the following issues:

- To acquire knowledge about the negative impacts that IPV, substance abuse, instability, and neglect had on the child.
- To acquire skills to recognize signs of substance abuse, including both drug and alcohol based addictions.
- To acquire skills to recognize enabling patterns and to employ those skills in their approach when supporting the mother.
- To acquire knowledge about the negative impact that direct and indirect manipulation of the child's affection had and will have on the child's healthy development and to acquire skills to prevent its reoccurrence.

[146] Upon completing the therapeutic goals, the grandparents must provide the father with a report from their counsellor. The counsellor must confirm that they reviewed this decision. The counsellor must provide details of the therapy and confirmation that the grandparents successfully completed the therapeutic goals. The counsellor must supply a copy of their CV.

*Contact time for grandparents*

[147] The grandparents will have supervised, virtual and in-person contact time with the child pending their successful completion of the therapeutic goals. The grandparent's contact will be at reasonable times, upon reasonable notice, and at times when the father or wife, or another person approved by the father, is available to supervise the contact. In-person supervised contact will occur in Calgary or such other place approved by the father.

[148] Once the grandparents successfully complete the therapeutic goals, supervision will no longer be required. In-person contact can occur once yearly in HRM provided the mother is not personally or virtually present. The father will select the dates for the contact based on the child's schedule, his family vacation plans, and the grandparents' availability. The father and grandparents will equally share the cost of the child's travel to and from HRM.

[149] The grandparents' contact must be child-focused. The grandparents must not make disparaging comments or innuendo about the father, the wife, their children, or their home. The grandparents must not negatively influence the child about the father, the wife, their children, or their home.

*Parenting time for the mother*

[150] The mother will have supervised virtual parenting time with the child at times determined appropriate by the father, and when the father or wife, or another person approved by the father, is available to supervise the contact.

[151] The mother must not be under the influence of drugs or alcohol when exercising virtual parenting time. Parenting time will terminate if the mother is under the influence.

[152] The mother's parenting time must be child-focused. The mother must not make disparaging comments or innuendos about the father, the wife, their children, or their home. The mother must not negatively influence the child about the father, the wife, their children, or their home. Parenting time will terminate if the mother does not comply with this provision.

[153] The mother's parenting time will not be varied without court order. The Minister of Community Services must be served with a copy of the application. The Minister is entitled to participate in any variation application.

### **Conclusion**

[154] The father's relocation application is granted in the best interests of the child, with specified parenting time and contact time provided to the mother and grandparents. The father's obligation to pay child support terminates.

[155] The father will make immediate arrangements to travel to HRM to relocate the child to Calgary. The father will notify the Minister and the grandparents' counsel of the details of those arrangements. The Minister will assist in transferring the child from the grandparents' care into the father's care. Once the transfer is complete, the child protection proceedings will be terminated in favour of the parenting provisions detailed in this decision.

[156] The parties are to attempt to resolve the costs issue. Failing agreement, submissions by the father should be filed by September 7, 2022 with responses filed by September 28, 2022.

Forgeron, J.