

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Manuel v. Crawley*, 2024 NSSC 262

Date: 20240906

Docket: SFHPSA-134143

Registry: Halifax

Between:

Alyssa Manuel

Applicant

v.

Kevin Crawley

Respondent

Judge: The Honourable Justice Christine Doucet

Heard: August 28, 2024, in Halifax, Nova Scotia

Written Release: September 6, 2024

Counsel: Shawn Scott and Kate Frith for the Applicant
Kevin Crawley, self-represented

By the Court:

Introduction

[1] Seven-year-old Scarlett will start Grade 2 this month. I must decide whether that will occur in Alberta, Nova Scotia or Newfoundland.

[2] Although Scarlett's parents live many miles apart in different provinces, they have shown an extraordinary level of cooperation during her entire life. They have always resolved their issues outside of court and do not have an order or written agreement in place.

[3] They disagree, however, whether it is in Scarlett's best interests to relocate from Lower Sackville, Nova Scotia to Grande Prairie, Alberta with her mother Alyssa Manuel, or to stay in Botwood, Newfoundland where she spent the summer with her father, Kevin Crawley. Both parents would rather Scarlett remain in Nova Scotia over the option offered by the other parent.

[4] Ms. Manuel says the proposed move will help her improve her own education and career prospects and will not affect Mr. Crawley's relationship with the child, as he will continue to spend the entire summer vacation and Christmas holiday with her.

[5] Mr. Crawley says the move will greatly increase the distance between Scarlett and him. He also says the child has few supports in Alberta. He further questions the merits of Ms. Manuel's plan for relocation and thinks she will eventually move again, causing more disruption to Scarlett.

Issues

[6] In this decision, I will answer the following questions:

1. Is the proposed move a change of residence or a relocation?
2. Who bears the burden of proof?
3. What, if any, consideration can I give to the mother's alternate position that she will remain in Nova Scotia if relocation is not permitted?
4. Is the move in the child's best interests?

Background Information

[7] In 2009, the parties met in Nova Scotia and began dating. During their relationship, Mr. Crawley moved to Grande Prairie for work opportunities and, about a year later, Ms. Manuel joined him. Scarlett was born in April 2017.

[8] When Scarlett was 11 months old, the parties moved to the father's hometown of Botwood and resided there as a family until they separated in September 2019. Upon separation and with the permission of Mr. Crawley, Ms. Manuel and the child moved to Lower Sackville, where Ms. Manuel's mother resides.

[9] For three years, the parties shared parenting on a month-about basis between their homes in Nova Scotia and Newfoundland. This involved a lengthy car and ferry journey each month, totalling about 16 hours door-to-door. The arrangement was unconventional, but it worked for the parties and their daughter.

[10] When Scarlett started school, shared parenting was no longer feasible. The parties then agreed that Ms. Manuel would have primary care in Nova Scotia, and Mr. Crawley would spend the full summer and two weeks of each Christmas holiday with the child in Newfoundland. They continued to share the transportation between homes.

[11] In March 2024, Ms. Manuel told Mr. Crawley of her intention to move to Grande Prairie with the child. She sent a lengthy text to him, which focussed largely on her own desire for self-improvement and the benefits of the Alberta education system over that of Nova Scotia. Mr. Crawley advised Ms. Manuel that he did not agree with the proposed move.

[12] Since the date of her initial text, Ms. Manuel’s plans have solidified, and she now intends to complete a biology course at Northwestern Polytechnic in Grande Prairie. She has a conditional acceptance to the two-year practical nursing program at the same school, which would start in January 2025. Even with this new information, Mr. Crawley is opposed to the move.

[13] On June 14, 2024, Ms. Manuel filed a “Notice of Emergency Application” seeking permission to move Scarlett to Grande Prairie. On June 28, 2024, the parties appeared by telephone at a conference. I scheduled a trial for August 28, 2024.

[14] Both parties testified by video during the trial – Ms. Manuel from Chetwynd, British Columbia where she spent the summer and Mr. Crawley from Botwood. Neither party called any other witnesses. Ms. Manuel was represented by counsel. Mr. Crawley did not have counsel but was assisted by his aunt Madonna Carey.

Analysis

Is the proposed move a change of residence or a relocation?

Position of the parties

[15] I will first address the threshold issue of whether the proposed move is a change of residence or relocation under the *Parenting and Support Act*, R.S.N.S.

1989 c. 160 (the “Act”). A parent who wishes to change a child’s residence may do so without the same level of judicial scrutiny as a parent who wishes to relocate a child. Section 18E(1)(b)(iii) of the Act states that a relocation is a change to the place of residence of a child “that can reasonably be expected to **significantly impact** the child’s relationship with a parent...”.

[16] Ms. Manuel says her proposed move is a change of residence, rather than a relocation, as it will not impact Mr. Crawley’s parenting time with Scarlett. Mr. Crawley says the move is a relocation, which will have a significant impact on his relationship with Scarlett in three ways. First, he says it will increase the transportation time and cost. Second, he says he would not be able to reach his daughter quickly in an emergency. Finally, he says the 3.5-hour time difference will make it more difficult to regularly communicate with Scarlett.

The law

[17] There are few, if any, published decisions of Nova Scotia courts considering whether a proposed move constitutes a change of residence as opposed to a relocation. In considering similar wording under the *Divorce Act*, in ***DTD v. TAJ***, 2022 SKCA 34, Schwann J.A. stated:

[46] ... As the Court said in *Berry* [2013 BCSC 1095], the relocation analysis examines whether the effect of the move will have a significant impact on the child's relationship with the other parent: "The use of the qualification 'significant', acknowledges that there will be some impact from a move but limits the courts involvement to those moves which will have a significant impact on relationships. The focus is on the best interests of the children" (at para 32).

[47] What this means is that, in assessing the root question of whether the proposed move will have a *significant* impact on the child's relationship with the non-moving parent, a court must take into account more than just the commuting distance between residences. A contextual analysis is called for that would include considerations such as the following:

- a) whether and how the move would change the amount and frequency of parenting time for the non-moving parent;
- b) whether and how the move would affect the degree of involvement of the non-moving parent in the child's activities, schooling and so forth;
- c) whether the moving parent is willing to bear the burden of any increase in the commuting time;
- d) how the distance or commuting time between the two residences would affect the quality of the child's relationship with the non-moving parent; and
- e) whether the non-moving parent has the ability – financial or otherwise – to commute to and from the child's proposed new place of residence or an intermediate location.

[48] Of course, the above is not an exhaustive list, and the factors are not prioritized in any way. The facts of each case will vary. Much will depend on the parenting order in place, the age of the children, the scope of parental involvement (e.g., shared parenting), etc.

[18] I accept Ms. Manuel's position that her proposed move will not significantly impact the amount of time Scarlett spends with Mr. Crawley. In fact, Ms. Manuel has offered to increase Mr. Crawley's parenting time if the court allows the move.

[19] Mr. Crawley argues, however, that the move will significantly impact his relationship with Scarlett in other ways. He says it will increase the transportation time between the two homes, and he will be expected to share this burden. He says it will be very difficult to reach the child if there is an emergency, as it would take over a day to travel to her. He says the significant time difference will mean that he can't call her until late into the evening. He also believes he will have to cover at least part of the additional cost of travel.

[20] I agree with Mr. Crawley that the increased distance between the two homes has the potential to impact his relationship with Scarlett. Ms. Manuel has not offered to bear the burden of the additional commute time. Both Mr. Crawley and the child would be impacted by the longer journey, which is one of the factors set out in *D.T.D., supra*. For that reason, I consider the proposed move to constitute a relocation rather than simply a change of residence.

[21] I reject Mr. Crawley's additional arguments. Although the time difference between the two homes would increase from 30 minutes to 3.5 hours, there will still be ample time each evening around suppertime as well as on weekends for Scarlett to communicate with her father. I find it would be difficult to reach Scarlett in case of emergency regardless of whether she is in Nova Scotia or Alberta, given the lengthy commute. It does not appear that it was the practice of Mr. Crawley to

spontaneously visit Scarlett in Nova Scotia, given the considerable distance between the two homes and the logistics of travel. Finally, on the evidence before me, I am unable to determine whether the move will increase the cost of transportation between the two homes. In any event, Ms. Manuel has offered to share any increased cost and waive child support if the move is permitted.

Burden of proof

The law

[22] Before addressing whether the proposed relocation is in the child's best interests, I must first determine who bears the burden of proof. Ms. Manuel says Mr. Crawley bears the burden of proof under section 18H(1A)(d) of the Act. Mr. Crawley, as a self-represented party, did not take a position on the burden of proof.

[23] Section 18H (1A) of the Act addresses the burden of proof regarding whether a relocation is in the best interests of the child as follows:

- (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.

My decision

[24] In considering the appropriate burden of proof, I must first consider whether the parties have “an order or agreement” in place or whether they have “an informal or tacit arrangement”. The parties verbally agreed two years ago that Scarlett will reside with Ms. Manuel during the school year and with Mr. Crawley for the full summer vacation and two weeks each Christmas. Although their agreement remains unwritten and there is no court order in place, there is no dispute that such agreement

exists. The agreement is clear and explicit. Neither party disputes the existence of the agreement, and neither has breached the agreement. It cannot be described as “an informal or tacit arrangement”. It therefore constitutes an “agreement” as contemplated under section 18H(1A)(a) and (b).

[25] I must next consider whether the agreement provides that the child spends the “vast majority” of her time in the care of Ms. Manuel. Again, there is no dispute that the child travels to Newfoundland as soon as school finishes each summer and stays with Mr. Crawley until school starts in September. The visit lasts approximately 10 weeks. The child spends an additional two weeks with Mr. Crawley at Christmas, for a total of 12 weeks per year. Mathematically, this means the child spends 23 per cent of the year in the care of her father and 77 per cent with her mother.

[26] The Act does not define the term “vast majority”. In the recent Ontario Superior Court of Justice decision of **Rygiel v. Mathes**, 2024 ONSC 33, Brownstone J. provided the following helpful analysis of the term in the context of its similar use in the *Divorce Act* as well as the Ontario legislation:

[18] In considering the interpretation of “vast majority” in the provisions of the Children’s Law Reform Act R.S.O. 1990 c.12 that mirror those of the Divorce Act provisions at issue here, Monahan J. (as he then was) in *Credland v. Cymbalisty*, 2022 ONSC 433 stated as follows (footnotes omitted):

[178] This provision does not define the threshold above which a child could be said to be spending the “vast majority of time” with one parent. However, given that s. 9 of the Federal Child Support Guidelines describes

a 60/40 split in parenting time as one of “shared custody”, in my view a child would need to be spending significantly more than 60% of their time with one parent in order to cross the “vast majority of time” threshold in s. 39.4(6) of the CLRA.

[179] Furthermore, **the relatively few cases interpreting this provision have held that a parent has crossed the “vast majority” of time threshold only when they have a child in their care for more than 80% of the time.** For example, in *KDH v. BTH, Lema J.* held that where an order provided that the mother had the children in her care for 12 out of every 14 nights, or about 85% of the time, “the order indeed provided that the children spend the ‘vast majority of their time’ with her [the mother].” Similarly, **Professor Rollie Thompson, a respected authority on these issues, has opined that “a range of 75 to 87 per cent is a reasonable representation of “vast majority”, but I would personally peg it at 80 per cent”,** noting that this is consistent with the opinions he obtained through a canvass of family law professionals.

[180] In my view, interpreting the “vast majority of time” threshold in s. 39.4(6) in this manner gives meaningful effect to the burden of proof that it contemplates, without giving undue effect to the burden and thereby skewing the “best interests” assessment in a particular direction.

[19] The applicant relies on Professor Thompson’s explanation for the underlying premise of the “vast majority” burden provision, that where one parent is the “predominant primary caregiver of the child, the central figure in the child’s life, the parent whose presence and care is critical to the child’s well-being” and that person intends to relocate the continuity of that predominant primary parent becomes critical”: Rollie Thompson, *Legislating About Relocating*, Bill C-78, NS and BC (2019) 28th Annual Institute of Family Law Conference at p. 20. It is just before this quote that **Professor Thompson states that he would personally “peg” the “vast majority” at 80 per cent of the time,** and that he relies on the policy reason above to explain his position. He then explains that in some cases “the other parent is much less important, and their minority of the time reflects that too”, and “one parent is much more important to the child than the other.”

...

[22] I find that in this case, the parenting arrangement falls between the “vast majority” of the time and “substantially equal” time. As Professor Thompson describes it at p. 21, **these cases include “active non-primary parents”, an apt description of the situation here.** Therefore, s. 16.93(3) applies, and each party has the burden of proving whether the relocation is or is not in the best interests of the child.

[Emphasis added.]

[27] In the current case, I find the child does not spend the “vast majority” of her time with her mother. She spends 77 per cent of the year with her mother, and 23 per cent with her father. Mr. Crawley is an active non-primary parent. Such status is strengthened by the fact that Scarlett historically spent approximately equal amounts of time with each parent.

[28] I therefore find that section 18H(1A)(e) applies. Each party bears the burden of proving what is in the best interests of the child.

Consideration of mother’s alternate position

Position of the parties

[29] In her initial affidavit filed June 14, 2024, the mother did not give any information about what she would do if the court does not allow the move. The affidavit stated, “I acknowledge that this affidavit does not consider whether I would relocate without the children if the relocation is prohibited.” In her supplemental affidavit filed July 23, 2024, she stated, “If the Court does not permit my relocation to Grande Prairie with Scarlett, I will stay in Nova Scotia with Scarlett.” The mother agrees that I can consider her alternative position but relies on ***Weagle v. Kendall***, 2023 NSCA 47 for the proposition that I should not use it to favour the status quo or use the information to taint the analysis as to what is best for the child.

[30] The father says the mother advised him by text that she would not move to Alberta if the court doesn't allow Scarlett to move. In closing argument, he said he is "very supportive of her staying in Nova Scotia."

The law

[31] In order to determine this issue, I must consider the "double-bind" dilemma that arises in many relocation cases. In short, can I consider the mother's evidence that she would not move without the child, and how much weight should I give that information?

[32] Section 18H(3) of the Act states:

In determining whether to authorize a relocation of a child, the court shall not ask or permit a party who opposes the relocation to ask whether the party who intends to relocate the child would relocate without the child or not relocate if the child's relocation is prohibited.

[33] This wording differs from section 16.93(2) of the *Divorce Act*, which directs a court **shall not consider** whether the parent would relocate without the child. In *Weagle v. Kendall*, *supra*, Beaton J.A. clarified that I must consider the issue differently depending on whether the matter is brought under the *Divorce Act* or the *Parenting and Support Act*. She stated at paragraphs 39 and 43:

...The restriction on evidence of whether the relocating parent would move without the child differs under the PSA from that in the Divorce Act. The PSA merely limits

the court from asking or permitting the opposite party to ask the double-bind question. It does not prohibit the information from being offered, nor does it prohibit it from being used by the judge when 2023 NSCA 47 (CanLII) Page 11 offered. “Shall not ask” is the language of the PSA, whereas “shall not consider” is the language of the Divorce Act.

...

The distinction between “shall not consider” in the Divorce Act and “shall not ask” in the PSA cannot be dismissed. The presumption of consistent expression - that the same words have the same meaning -- carries across statutes (Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 at para. 44). By the same token, different words have a different meaning³. It is reasonable to accept as intentional the difference in wording between “shall not consider” in the Divorce Act and “shall not ask” in the PSA.

[34] In this case, the mother voluntarily offered that she would not move without the child. That evidence emerged in the affidavits. I did not ask the mother any questions about her alternate plan at trial, nor did the father.

[35] Now that Ms. Manuel has led evidence that she would remain in Nova Scotia, I will consider that as another option available to me. I agree with Ms. Manuel that I am not to favour the status quo or use the information to taint my analysis of the child’s best interests.

Is the relocation in the child’s best interests?

Position of the parties

[36] Ms. Manuel wants to move the child to Alberta for four reasons. First, she says the move will allow her to be closer to family, in particular her sister Adele

Smith who lives 2.5 hours away in Chetwynd, British Columbia. Second, she says the lifestyle in Grande Prairie facilitates more time outdoors and allows for more hiking and camping. Third, she says the move will allow her to upgrade her education and eventually become a nurse, in order to increase her income. She says the cost of living and taxes are lower in Alberta than Nova Scotia. Fourth, she says Scarlett will have improved access to healthcare in Alberta than in Nova Scotia as the healthcare system is more efficient in that province.

[37] Mr. Crawley objects to the move for two main reasons. First, he says it will considerably increase the distance between his daughter and him. This will increase the time and cost of travel and make it difficult to reach her in an emergency. Second, he says a move is disruptive to Scarlett and offers no real benefits. He says there are other ways for Ms. Manuel to become a nurse without moving to Alberta.

[38] In addition to their primary positions, each party takes the alternative position that the child should remain in Nova Scotia in the primary care of Ms. Manuel.

The law

[39] In determining whether the relocation is in the child's best interests, I am guided by the legislative factors now codified in section 18H(4) of the Act. I must

compare and balance the advantages and disadvantages of each proposed parenting scenario: **D.A.M. v. C.J.B.**, 2017 NSCA 91 at paragraphs 30-33.

[40] I am also guided by the Supreme Court of Canada's decision in **Barendregt v. Grebliunas**, 2022 SCC 22, in which Karakatsanis J. sets out the following principles that apply to this relocation case:

- (a) Determining the best interests of a child is a highly contextual task because of the multitude of factors that affect the best interests. This is even more difficult in the relocation context (para. 97). 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 (para. 152).
- (b) Where there is no pre-existing parenting order, a parent's desire to relocate is simply part of the factual matrix in the assessment of what parenting arrangement is in the best interests of the child (para. 112).
- (c) While it is necessary to consider a parent's reasons for the move, the court should avoid casting judgment on a parent's reasons for moving. A 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. 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 (paras. 128-130).

My decision

[41] I will now consider the factors set out in the Act and, to the extent I am able to do so on the evidence before me, will compare and balance each of the three proposed parenting scenarios. I will first consider the following factors set out in section 18(6) of the Parenting and Support Act, as directed by section 18H(4)(a) of the Act:

Section 18(6)(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

[42] Neither parent presented significant evidence about Scarlett’s physical, emotional, social or educational needs. From what little information I have about Scarlett, I conclude she is a well-adjusted and resilient child. It speaks volumes that neither parent says anything negative about the other parent or their ability to meet the child’s needs. Scarlett is well-loved and well-cared-for in both households and by extended family. The current disagreement about relocation is one of the first times the parties have been unable to agree what’s best for Scarlett. I find Mr. Crawley has historically trusted Ms. Manuel’s judgment about the best way to meet Scarlett’s needs, as he agreed to the primary care arrangement two years ago.

[43] While the mother says Alberta has a superior education system and healthcare system, she did not present any evidence showing that Nova Scotia’s systems are not meeting Scarlett’s needs. I therefore put no weight on this factor. I find that both

parents are able to meet Scarlett's physical, emotional, social and educational needs, regardless of where they reside. They are also able to meet her need for stability and safety and have done an excellent job thus far.

Section 18(6)(b) – each parent's willingness to support the relationship with the other parent

[44] Each parent has shown a high degree of willingness to support the child's relationship with the other parent. They went to considerable lengths to follow the month-about parenting schedule for three years until the child started school, despite the physical distance between them. I note that Ms. Manuel is willing to increase Mr. Crawley's parenting time with the child, by offering March Break, if I allow the relocation.

Section 18(6)(c) – the history of care for the child, having regard to the child's physical, emotional, social and educational needs

[45] Both parties were substantially involved in Scarlett's day-to-day care. They initially had shared parenting and now the father is an active non-primary care parent. I put significant weight on the fact that Mr. Crawley agreed that Ms. Manuel would have primary care, as it shows that he trusted her ability to make decisions in the best interests of the child. I also find that Ms. Manuel has not abused her position as primary care giver. She has sought Mr. Crawley's consent and co-operation with matters, including this potential move.

Section 18(6)(d) – the plans proposed for the child’s care and upbringing, having regard to the child’s physical, emotional, social and educational needs

[46] I have little information about Scarlett’s current circumstances. I know she resides with Ms. Manuel and her maternal grandmother, and last year she attended Smokey Drive Elementary School in Lower Sackville. I am told Scarlett changed schools once already but have no evidence about the reasons for that move. I have no evidence about Scarlett’s current health or wellbeing, the connections to her current community including friends, extended family and extra-curricular activities, nor any evidence about any challenges she or her mother may be facing. Ms. Manuel works as an esthetician and earns about \$30,000 per year.

[47] I also have few details about what Scarlett’s life would look like in Grande Prairie. The mother plans to rent a two-bedroom apartment and enrol the child in St. Patrick’s Catholic School. She says she will arrange after-school care so she can attend nursing school and work part-time as an esthetician. The mother says she has friends in Grande Prairie, several of whom have children. Her main support, however, would be her sister Ms. Smith. Her sister is married with two young children, close in age to Scarlett. She says she and her sister plan to get together once or twice a month.

[48] I know that the father works seasonally in the construction industry and lives in his own home. He says the local elementary school is about “100 yards” from his home. Scarlett’s paternal grandparents live near by, as do several other relatives. The father says the child is very close to her six-year-old cousin, who is like a sister to her. I have few other details about the father’s plan for the child.

[49] From what I do know about each of the three plans, all appear to meet the child’s needs. Again, there was no evidence that Scarlett has any special health or education needs. Scarlett has supports in Nova Scotia, Alberta and Newfoundland. Her parents are committed to ensuring that she spends time with the important people in her life, and I find they will continue to do so regardless of where she resides. A main benefit of the plan to move to Alberta is that it will allow Ms. Manuel the ability to increase her income and live independently.

Section 18(6)(e) – the child’s cultural, linguistic, religious and spiritual upbringing and heritage, including the child’s aboriginal upbringing and heritage, if applicable

[50] Neither parent presented evidence about the child’s cultural, linguistic, religious and spiritual upbringing and heritage.

Section 18(6)(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 be reasonably ascertained

[51] The child is seven years old. It is not appropriate to determine her views and preferences.

Section 18(6)(g) – the nature, strength and stability of the relationship between the child and each parent

[52] The child has a very strong relationship with both of her parents. The parents have each worked hard to ensure that the strength of the relationship with the other parent is not affected by the distance between them. They disagree, however, about whether an increase in that distance will affect the child's relationship with Mr. Crawley.

[53] The mother says the relocation will not weaken the child's relationship with the father because the child is already used to living far away from him during the school year. They will continue to spend Christmas and summertime together. She says they generally Facetime on the weekend and can continue to do so.

[54] The father says the 3.5-hour time difference will make it almost impossible to talk to Scarlett during the week. He says by the time Ms. Manuel comes home from work in the evenings, it will be too late for Scarlett to call him. While I accept that the time difference will create an inconvenience, I reject the notion that it will create a barrier to communication. With some planning, the parties can facilitate phone calls around Scarlett's supertime or anytime on the weekend. I find that the

relationship between Scarlett and her father is strong enough to thrive despite an additional physical distance between them.

Section 18(6)(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

[55] The child is fortunate to have relatives in both Newfoundland and Nova Scotia. Mr. Crawley says that was one reason why he agreed that Ms. Manuel could move Scarlett to Nova Scotia in the first place.

[56] Scarlett has no relatives in Grande Prairie. Ms. Smith is close enough to spend leisure time together once or twice a month, but not be a day-to-day support to Ms. Manuel and Scarlett. Ms. Manuel says her mother may move to Grande Prairie if the move is permitted, but her plans have not been finalized.

[57] The relocation to Alberta would not affect the child’s relationship with her many relatives in Newfoundland, as Scarlett would continue to see them on her vacation time with her father. A relocation to Newfoundland has the potential to affect the child’s relationship with her extended family in Nova Scotia since the mother would be living in Alberta and her parenting time would likely occur largely in that province. I find, however, that Scarlett’s relationships with her Chetwynd relatives will likely be strengthened by the move.

Section 18(6)(i) – the ability of each parent to communicate and co-operate on issues affecting the child

[58] The parents have always communicated and co-operated effectively in relation to the child. I am confident they will continue to do so regardless of the distance between the two homes. I find the mother will not abuse her role as primary care parent and will keep the father fully involved as a co-parent.

Section 18(6)(ia) – any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child

[59] There are no civil or criminal proceedings affecting either parent.

Section 18(6)(j) – the impact of any family violence, abuse or intimidation

[60] I am satisfied there is no family violence, abuse or intimidation.

[61] I will now consider the other factors set out in section 18H(4) of the Act.

Section 18H(4)(b) – the reasons for the relocation

[62] I will now address the four reasons that Ms. Manuel says she wishes to move.

Proximity to family

[63] Ms. Manuel says the move will allow Scarlett and her to be closer to her sister and her family. I accept Ms. Manuel and Ms. Smith have a close relationship and spent the past two months living together and working together. Ms. Manuel says

her sister would be available to help with Scarlett as needed. I accept that it is a benefit to both Ms. Manuel and Scarlett to be close to Ms. Smith and her family. I find that the move would, by nature, create physical distance between Scarlett and other important members of her mother's family. Ms. Manuel has, at times, lived away from these family members in the past and I find would make appropriate efforts to ensure Scarlett has contact with her extended family.

Outdoor activities

[64] Ms. Manuel says the lifestyle in Grande Prairie facilitates more time outdoors and allows for more hiking and camping. Both Nova Scotia and Alberta are provinces known for their many opportunities to explore and experience nature. I therefore reject this factor as a compelling reason for relocation.

Education and career

[65] Ms. Manuel says the move will allow her to upgrade her education and eventually become a nurse, in order to increase her income. She says the cost of living and taxes are lower in Alberta than Nova Scotia.

[66] I accept that Ms. Manuel's plan to upgrade her education and obtain a diploma in practical nursing will assist her in building a new career and increasing her

income. She now works as an esthetician, earning about \$30,000 per year. She expects a starting salary of about \$73,000 as a nurse.

[67] In her affidavit, Ms. Manuel states:

This relocation is not a decision that I have made lightly. In coming to the decision to relocate I have considered the difference in the cost of living, pay structures, and the impact that it may have on Scarlett. I believe that this relocation will provide myself and Scarlett with greater opportunities and stability long-term.

[68] This is the most compelling reason for Ms. Manuel's proposed move. By pursuing a nursing career, Ms. Manuel will be in a better position to independently meet her expenses and improve her lifestyle. This will directly benefit Scarlett as her only dependent.

[69] Mr. Crawley criticizes Ms. Manuel's plan to attend nursing school as a recent development and a path to an eventual move elsewhere. He says she should have tried to get into a nursing school in Nova Scotia or Newfoundland. It would not be appropriate for me to dissect Ms. Manuel's reasons for the move, except to the extent they relate to Scarlett's best interests. As Forgeron J. recently stated in *Westlake v. Morton*, 2024 NSSC 144 at para. 22:

Although I must consider Ms. Westlake's reasons for the proposed move, I must also be mindful of the comments of Karakatsanis J in *Barendregt*. She cautioned against casting judgment on a parent's reasons for moving, or allowing those reasons to deflect from the true focus of a relocation 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.

[70] Ms. Manuel's ability to provide financially for herself and her daughter is relevant to the child's best interests. I am satisfied that her plan is aimed at achieving that goal.

Health care

[71] Finally, Ms. Manuel says Scarlett will have better access to health care in Alberta than in Nova Scotia as the healthcare system is more efficient in that province. She presents no evidence to back up that statement. I cannot consider this factor in the absence of evidence about Scarlett's healthcare needs and her current situation in Nova Scotia.

Section 18H(4)(c) – the effect on the child of changed parenting time and contact time due to the relocation

[72] This is one of the main points of contention between the parents. The mother says the child's parenting time with the father will be entirely unaffected by the proposed move. The father says he will be less able to communicate with Scarlett in

the evenings, due to the time difference between Alberta and Newfoundland. He also says the travel time will increase, cutting into his parenting time.

[73] I have already addressed the issue of the time difference. I accept that while it will create an inconvenience, it will not prevent Mr. Crawley from having regular contact with his daughter.

[74] I agree with Mr. Crawley that the commute between the two homes will increase, likely by several hours. This will increase the inconvenience to the child and the parties and may also increase the cost of transportation. I do not find that the increased commute time will significantly affect the amount of time that Scarlett spends in her father's care. I have no evidence of whether the school vacations in Alberta will differ in length from the Nova Scotia vacations. I note, however, that the mother has proposed that Scarlett spend every March Break with her father, which will lead to an increase, not a decrease, in his parenting time.

Section 18H(4)(d) – the effect on the child of the child's removal from family, school and community due to the relocation

[75] Neither party presented any evidence on this point. Even without such evidence, I accept that the child will be impacted by the move. She will leave the school she attended last year and will have to say goodbye to friends and family in Nova Scotia. This is a downside of most relocations. In this case, the mother says

the child is resilient and well-adjusted, and the father does not dispute that characterization. I find that the planned benefits of the move will outweigh any negative effects on the child.

Section 18H(4)(e) – the appropriateness of changing the parenting arrangements

[76] The child has done well in the current parenting arrangement, with the mother as primary caregiver. While Mr. Crawley opposes the move, he has not presented compelling reasons as to why it would not be in Scarlett's best interests to relocate with her mother. This factor therefore weighs in favour of Ms. Manuel continuing to be the primary care parent, whether that be in Alberta or Nova Scotia.

Section 18H(4)(f) – compliance with previous court orders and agreements by the parties to the application

[77] This factor is not relevant, as there is no court order in place and both parties have complied with the verbal parenting agreement.

Section 18H(4)(g) – any restrictions placed on relocation in the previous court orders and agreements

[78] This factor is not relevant as there are no restrictions on relocation.

Section 18H(4)(h) – any additional expenses that may be incurred by the parties due to the relocation

[79] The parties disagree about whether the move would increase the cost of the child's travel between the two households. The mother relied on an internet search showing round-trip flights from Edmonton to St. John's range in price from \$132 to \$800. The father says in his experience, costs are at the higher end of the range. He also says that the projected costs must factor in the costs of the parent's travel as well, since he believes Scarlett is too young to travel alone.

[80] Unfortunately, neither party presented evidence about the cost of the current travel between Lower Sackville and Botwood. The parties sometimes transport Scarlett by plane, sometimes by ferry, and either way there is a significant drive involved. I cannot compare the costs of the proposed travel to Alberta without information about the current costs.

Section 18H(4)(i) – the transportation options available to reach the new location

[81] The mother says the child will be able to take a direct flight between Edmonton and St. John's, which is about 5.5 hours. She says once Scarlett is 8 years old, she can fly alone. She says she will drive Scarlett from Grande Prairie to Edmonton. She asks the father to pick up Scarlett in St. John's and drive her to Botwood.

[82] The parties disagree on how long the travel will take. I accept that a non-stop flight is 5.5 hours but that the option may not always be available, lengthening the duration of travel. I also accept that it will take 4.5 hours to drive from Grande Prairie to Edmonton. There will be wait time at the airport of about two hours. Once the child arrives in Newfoundland, she will drive another 4.5 hours to Mr. Crawley's home. The journey will take no less than 16 hours.

[83] The mother says the child is a seasoned traveller. She says the current commute between homes takes 16 hours. The journey includes a 4-hour drive from Lower Sackville to the North Sydney ferry, followed by a seven-hour ferry ride and an additional 5-hour drive from the ferry terminal to Mr. Crawley's home.

[84] While the father agrees that the current commute is also lengthy, he says it is comfortable for the child. He says they always get a cabin on the ferry, which allows Scarlett to sleep comfortably for several hours. He also says that the parties sometimes travel by plane between St. John's and Halifax, which shortens the commute by several hours. Mr. Crawley adds that, from his experience, direct flights are not always available from Edmonton to St. John's. He says a transfer will increase the transportation time as well as the opportunities for something to go wrong, such as weather delays. He says it's not safe for Scarlett to travel alone.

[85] I find that the proposed move will increase the transportation time between the two parents' homes. The only viable method of transportation will be by air. I find that while Scarlett is a seasoned traveller who is accustomed to long journeys between her parents' homes, she is too young to safely travel alone. I direct that a parent or other trusted adult accompany her on all flights until she is 12 years old, unless the parents otherwise agree in writing.

Section 18H(4)(j) – whether the person planning to relocate has given notice as required under the Act and has proposed new decision making responsibility, parenting time and contact schedules, as applicable, for the child following relocation

[86] Ms. Manuel has provided the proper notice under the Act. She has offered to continue Mr. Crawley's existing parenting schedule and offered to add March Break.

Decision

[87] Each party bears the burden of proving that their plan for Scarlett is in her best interests. Ms. Manuel's reasons for relocation are focused on Scarlett's best interests. She wishes to reside in close proximity to her sister and her family and pursue a career in nursing. She has shown a high degree of willingness to support the child's relationship with her father and has offered to increase his parenting time if the move is allowed. She has properly provided Mr. Crawley with the required notice under

the Act, and the child has remained in Mr. Crawley's care in Newfoundland while the matter is before the court.

[88] The parties agreed two years ago that Scarlett should reside in Ms. Manuel's primary care. Neither parent presented any evidence that would cause me to question whether such arrangement is in Scarlett's best interests. They both agree she is doing well. I find Ms. Manuel has met the burden of proving it is in the child's best interests to move to Grande Prairie.

[89] I find Mr. Crawley has not met the burden of proving it is in the child's best interests to move to Botwood. While there are many positive aspects of his plan, as the child is very familiar with the community and has strong familial connections there, I find the move would nonetheless be more disruptive to the child. Not only would she be expected to settle into a new school, Scarlett would also be expected to settle into a new primary care arrangement. On balance, the move to Botwood would have a significant negative impact on Scarlett's relationship with her mother while the move to Grande Prairie would have little impact on Scarlett's relationship with her father. Mr. Crawley will continue to be able to communicate regularly with Scarlett despite a move to Grand Prairie. While the distance and transportation time between homes will increase, so will his parenting time as he will gain an additional week over March Break.

[90] Mr. Crawley has also not met the burden of proving that it is in Scarlett's best interests to remain in Nova Scotia. There are positive aspects to the alternate plan, as it would mean that Scarlett would not be disrupted from her school and would remain in close proximity to her maternal grandmother and other family members. I am, however, cognizant of the warning that I am not to favour the status quo and allow it to taint the analysis as to what is best for the child. Ordering that the child remain in Nova Scotia would mean that Ms. Manuel is unable to take the desired steps to improve her education and earning potential in the manner she, as an adult, has deemed appropriate. The result would be that Ms. Manuel stays in a province where the child's father does not even reside, despite her willingness to accommodate increased parenting time for the father.

[91] I therefore allow Ms. Manuel to relocate to Grande Prairie with Scarlett. I direct the parents to make the appropriate travel arrangements so that Scarlett arrives to start Grade 2 no later than Monday, September 16, 2024.

[92] Mr. Crawley shall have parenting time with Scarlett for no less than 14 days each Christmas vacation, which shall coincide as closely as possible with Scarlett's school vacation. He shall also have parenting time each March Break for no less than seven days. He shall have Scarlett in his care each summer from the day following her last day of regular classes to no less than three days before the commencement

of class in September. Mr. Crawley's parenting time may take place in any location of his choosing.

[93] Given that Ms. Manuel has not sought child support from Mr. Crawley, the parties shall equally share the cost of the child's transportation between the two households, as well as the cost of transportation of the adult who accompanies the child.

[94] In the event Ms. Manuel seeks child support in the future, the sharing of transportation costs is subject to review.

Conclusion

[95] Scarlett is fortunate to have two parents who have always cooperated to ensure she has a strong relationship with the other parent. Although they were unable to agree whether a move to Alberta is best for her, I am confident they will continue to work together to ensure this new plan works for Scarlett.

[96] I have conducted a balanced and comparative analysis of the relocation factors in the context of the child's best interests. Ms. Manuel has proven that the relocation is in Scarlett's best interests. Mr. Crawley shall continue to enjoy the existing holiday parenting time with his daughter, plus an additional week at March Break.

[97] Counsel for Ms. Manuel is to draft and circulate the order.

[98] Absent agreement, the parties may address the issue of costs in writing within 60 days of the release of this decision.

Doucet, J.