

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Henderson v. Bal*,  
2014 BCSC 1347

Date: 20140717  
Docket: E43185  
Registry: New Westminster

Between:

**Zoe Ann Henderson**

Claimant

And

**Santokh Singh Bal**

Respondent

Before: The Honourable Madam Justice S. Griffin

## Reasons for Judgment

Counsel for the Claimant:

Bryn C. Hirsch  
A. Ghag, Articled Student

Counsel for the Respondent:

Fred C.M. Lowther

Place and Dates of Trial:

Vancouver, B.C.  
July 7-11, 2014

Place and Date of Judgment:

New Westminster, B.C.  
July 17, 2014

**Introduction**

[1] This case has to do with parenting arrangements and child support, with both parties relying on the *Family Law Act*, S.B.C. 2011, c. 25 (“FLA”).

[2] The respondent also advances a counterclaim seeking spousal support.

[3] While there were also property issues at the start of trial, the parties settled those and a final order was made in that regard. They have a few issues to settle regarding household contents and have liberty to return before me if they are unable to settle those issues.

[4] The parties are to be commended for entering into an Agreed Statement of Facts for purposes of trial, which includes the details of their relationship, occupations, incomes and assets. By reaching this agreement, the parties saved themselves the legal expense of a longer trial.

[5] The parties were not married, but were in a marriage-like relationship for ten years commencing in approximately January 1, 2003. Prior to that they were in an on-again-off-again intimate relationship for approximately four years.

[6] They separated permanently on February 1, 2013.

[7] There are two children who are part of the family. The oldest, a daughter S, is now 16; the youngest, a son J, is now 11.

[8] For ease of reference, I will describe the claimant as the mother, and the respondent as the father.

[9] The mother is in her mid- 40’s and is an elementary school teacher; the father is approximately 6 years younger and an unskilled labourer.

[10] The mother has a health condition which impacts on her ability to work full-time, and so she works three days per week rather than five (approximately 60% of full-time work).

[11] Since 2003 the father has worked for a mattress company in the warehouse and in putting together mattresses. In 2013 he suffered an injury to his shoulder and so began receiving disability benefits from WorkSafe BC while he recovers. He had a medical procedure in relation to his shoulder in March 2014 and is going through a program to get him ready to go back to work.

### **Background**

[12] As for the relevant background regarding the parties' ability to parent, there is no question on the evidence that the mother has been a nurturing and good parent to the children both before and after the break-up of the relationship. She has always taken a very active interest in their well-being.

[13] Likewise, the evidence is that during the relationship, the father was an attentive and involved parent of the two children. In his role as part of the family, the father helped with various chores such as meals, grocery shopping, and yard work. He helped change diapers and did various activities with both the children.

[14] The separation involved the father being asked to leave the family home. Since then the mother has resided in the home with the two children.

[15] Early after the break-up, there were some unfortunate communications by way of text message from the father to the mother. He was clearly upset by the break-up and very worried about how he would afford child support.

[16] At one point he told the mother that he had no interest in S. But this was also immediately contradicted by other communications in which he wanted to see S and wanted her to have a happy birthday. At another point, the father told the mother that he doubted that he was J's father, and he demanded a paternity test. There is evidence that he also said this to the son J which was very upsetting to the son. However, if so, J seemed to forgive him and want the relationship to continue, and the father did too. The paternity test confirmed that the respondent is the biological father of J.

[17] I do not find that the words the father said in the immediate aftermath of the break-up lead to a conclusion that the father was not interested in seeing both children nor do I conclude that he wanted to cause emotional harm to either child. The evidence establishes that he did ask to see S and J both and I find that he did want to continue a relationship with them.

[18] Unfortunately the father's emotional upset after the break-up led to a cascading series of events that had the result of making it very difficult for him to see the children for approximately one year. The father's conduct in the immediate aftermath of the breakup caused the mother concern that he would cause the children emotional distress.

[19] On March 27, 2013, the mother obtained a consent restraining order that prohibited the father's opportunities to contact the children except during "court ordered parenting time". The order did not set out any parenting time for the father.

[20] After the restraining order was in place, the mother took the position that she would not agree to the father seeing the children except on her terms. Those terms included that he must be supervised in his interactions with J.

[21] The father had in the past been a caring and active parent to the children. While the father could have immediately sought a court order for parenting arrangements which allowed unsupervised visits, he did not, nor did he arrange for supervised visits.

[22] The father's formal education ended at the start of Grade 11 in India. He and his large extended family moved to Canada when he was 21. The father did not complete English as a Second Language courses once in Canada. I note that he does not appear literate in the English language, which is not his first language. He also was not earning a substantial income after the parties separated. I mean no disrespect by these observations. Rather, I mean to identify the confusing and difficult context in which this man found himself when he was not able to see his children.

[23] The father's lack of assertive action to obtain court-ordered parenting time has to be understood in the context of his linguistic and financial barriers. I do not infer from the fact that the father did not immediately apply for a court order providing him with parenting time with the children, that this means that he did not want more parenting time with the children.

[24] The father's relatives got in touch with the mother in approximately August 2013, and arranged for the son, J to visit with them at their home in Surrey. They did so by promising that the father would not be there as he was to be out of town on a trip to Victoria. Nevertheless, the father did show up on J's visit with the father's family. His reunion with his son was a positive experience for J.

[25] The fact that the father had arranged this visit by what appeared to be deceptive means and in breach of the restraining order, added to the mother's distrust of him.

[26] I pause to note that the father claims that it was purely coincidence that he happened to be able to visit with the son; and he also seems to claim that the mother had previously agreed to the visit (contrary to her evidence). I did not believe his evidence in this regard which was inconsistent with all of the other circumstances.

[27] Nevertheless in August 2013, by way of Court order made August 12, 2013, the parties did agree that the restraining order could be varied to allow the father to have contact with the son J, for the purpose of visits on terms to be agreed by the parties in writing. The father was still restrained from contacting S.

[28] The mother continued to insist that the father could only see J if it was supervised and could only see S if S agreed to the visit.

[29] In the meantime, his counsel was seeking agreement that there be unsupervised access, but this agreement was not forthcoming.

[30] Rather than agree to the mother's insistence that his visits with J be supervised, the father did not see J from the time of the visit in August 2013, until December 2013. Based on all of the circumstances, I do not infer from this that the father was not interested in seeing J or that he was not interested in J's well-being.

[31] The father eventually agreed to see J under supervised access. He was allowed by the mother to see J on December 26, 2013 but supervised by a third party access supervision service.

[32] On January 10, 2013, the parties agreed to a consent order that provided that the father could see J from the date of the order to and including the first week of March 2014, up to two times per week for up to three hours each time, supervised with a professional supervisor. The order also permitted him to have contact with S, at S's discretion.

[33] I take from the fact of the terms of the January 10, 2013 order that the father was still very much interested in being part of the lives of both children.

[34] However, the father still chafed at the notion that his access to J needed to be supervised. He had four more supervised visits with J, but not as many supervised visits as the order allowed.

[35] I do not infer from the fact he had fewer supervised visits than the January 10, 2013 order permitted, that the father was not interested in spending more time with J.

[36] There was no concern raised about the father's relationship with J and his interaction with him in the visitation reports prepared by the people who supervised his visits with J. No evidence was raised at trial to suggest that these visits were anything but very positive experiences for J.

[37] The child S did not tell the father she wanted to see him, despite the father's efforts to arrange a visit with her. He contacted her by text message. He told her how much he loved her, and missed her, and how much his family loves her and

misses her too. He asked to know how she was doing at school, and offered to go for dinner with her or a movie or anything else she would like. He also sent her a Valentine's Day present in 2014; and she reciprocated.

[38] The father had his lawyer contact the mother's lawyer in early February 2014 to inquire about why S does not contact him and what was going on in this regard. He also asked for unsupervised parenting time with J.

[39] The father had an outstanding application for more parenting time with J. This came before the court on March 13, 2014, at which time the parties agreed to a schedule of unsupervised access between the father and J, but starting with no overnight visits. This eventually evolved into an agreement that he could see J on Wednesday evenings from after school until 8:00 p.m. and every second weekend, from after school on Friday until Sunday at 8:00 p.m. This is the arrangement presently in place.

[40] The mother in her evidence at trial was unwilling to agree to the father having any more access than the present arrangement. She also wanted to decrease the time of the father's access, by having him return J at 7:00 p.m. instead of 8:00 p.m. However, in closing submissions, her counsel indicated she was agreeable to some splitting of holidays as well.

[41] The father wants more time with J. He wants equal parenting time, alternating one week on, one week off; as well as arrangements that result in roughly equal holiday time.

**The Law**

[42] The provisions of the *FLA* which apply to parental responsibilities and parenting arrangements relevant to this case include ss. 37 and 41.

[43] Section 37 of the *FLA* emphasizes that in making an order relating to guardianship, parenting arrangements and contact with a child, the only consideration is the best interests of the child.

[44] Section 37(2) sets out a non-exhaustive list of factors to consider when considering a child's best interests, including:

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's need for stability, given the child's age and stage of development;
- (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[45] On the evidence I find no history of family violence.

[46] Section 40 of the *FLA* provides that there are no presumptions which apply with respect to allocation of parenting time or parental responsibilities. It is important for the parties to understand this. It means for example that there is no presumption that both parents should have equal time with the children.

[47] There is also no presumption that if parents took on certain roles when they were together that they cannot each fulfill a wider set of child care responsibilities once they separate. This is often necessary for parents who have separated and many parents are capable of expanding their parenting responsibilities accordingly.

[48] Section 41 of the *FLA* provides as follows:

41 For the purposes of this Part, parental responsibilities with respect to a child are as follows:

- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- (b) making decisions respecting where the child will reside;
- (c) making decisions respecting with whom the child will live and associate;
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
- (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- (h) giving, refusing or withdrawing consent for the child, if consent is required;
- (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- (j) requesting and receiving from third parties health, education or other information respecting the child;
- (k) subject to any applicable provincial legislation,
  - (i) starting, defending, compromising or settling any proceeding relating to the child, and
  - (ii) identifying, advancing and protecting the child's legal and financial interests;
- (l) exercising any other responsibilities reasonably necessary to nurture the child's development

**The Daughter S**

[49] I will begin by examining the circumstances of the daughter, S.

[50] The oldest child, S, was born to the mother, the claimant, in early 1998. The respondent is not the child's biological father. Only a few months after she was born, the child's biological father, who was then the mother's husband, died.

[51] The mother seeks an order that she be sole guardian of S, and that the respondent have contact with S at S's discretion. The father does not seek to be made a guardian. Under the Act, this means that he will not have any parental responsibilities to S: ss. 40, 41.

[52] However, the Court may make an order granting contact to a person who is not a guardian: s. 59(1) and (2).

[53] The father would like to have access to S equal to the time she spends with the mother. He thinks it would work to have S come see him at the same time as J does, so that the two children spend time with each parent together. However, he recognizes at her age that S should have the ability to refuse to see him.

[54] The father acted in the role of father to S for most of her life. He was in her life as a friend of the mother's when she was under one year old, and remained so until separation from the mother when just before this child's 15th birthday.

[55] The evidence persuades me that during the parties' relationship S and the father formed a close bond. She called him Daddy.

[56] After separation, there has been a distance in the relationship between S and the father which I attribute not to any lack of interest on the father's part. I find that the series of events after separation, and court orders, made it very difficult for the father to pursue time with S for approximately 1 year. When he was able to pursue time with her, beginning this year, he has done so but so far she has not taken him up on his offer to spend time with him.

[57] From the point of view of the well-being of S and even her brother J, it would be good to repair the relationship between S and the father. I hope that the father will continue to make efforts to repair the relationship, and continue to invite S to visit him and to be part of his extended family. He must keep in mind that he is the adult, and that S was still a child when he left the family unit.

[58] I also note that S may have feelings of hurt and rejection by the father, and she may suspect that he is only interested in his child by blood, her brother J. When the parties separated on February 1, 2013, it was close to Valentine's Day and to S's birthday. The father asked to see S but this did not occur, and he instead saw J alone. He bought J a Valentine's Day present and did not buy one for S, nor did he buy her a birthday present. The father claims that in fact he gave money to the claimant's father, who was visiting at the time in February 2013, as a gift for S, but this is denied by the claimant's father, whose evidence on this point I prefer. Adding to this, in some of the text messages to S, the father often asks about J, which may add to a suspicion on S's part that the father is not really interested in her.

[59] I do not know why S has not yet agreed to see her father, but raise that background as possibly relevant. I hope that the father will keep reaching out to the daughter and she will regain some of the trust that was broken.

[60] The parties do not appear to disagree on the appropriate order regarding the father's contact with S.

[61] I order that the father is entitled to communicate with S and to spend such time with her as she chooses at her discretion. I note that the father's accommodation has been somewhat in limbo pending the settlement of the parties' property dispute. I will state the obvious: that if S does choose to go on an overnight visit to the father's home, he must be staying in accommodation that provides her with her own separate bedroom to sleep in.

**Is Child Support Payable in Relation to S**

[62] The parties require the court's determination as to whether or not the father must pay child support in relation to S.

[63] A stepparent may be liable for child support, under Part 7 of the *FLA*.

[64] Section 147 of the *FLA* provides:

147(1) Each parent and guardian of a child has a duty to provide support for the child, unless the child

- (a) is a spouse, or
  - (b) is under 19 years of age and has voluntarily withdrawn from his or her parents' or guardians' charge, except if the child withdrew because of family violence or because the child's circumstances were, considered objectively, intolerable.
- (2) If a child referred to in subsection (1) (b) returns to his or her parents' or guardians' charge, their duty to provide support for the child resumes.
- (3) If a guardian who is not the child's parent has a duty to provide support for that child, the guardian's duty is secondary to that of the child's parents.
- (4) A child's stepparent does not have a duty to provide support for the child unless
- (a) the stepparent contributed to the support of the child for at least one year, and
  - (b) a proceeding for an order under this Part, against the stepparent, is started within one year after the date the stepparent last contributed to the support of the child.
- (5) If a stepparent has a duty to provide support for a child under subsection (4), the stepparent's duty
- (a) is secondary to that of the child's parents and guardians, and
  - (b) extends only as appropriate on consideration of
    - (i) the standard of living experienced by the child during the relationship between the stepparent and his or her spouse, and
    - (ii) the length of time during which the child lived with the stepparent.

[65] There is no dispute that over the many years when the couple was together, the father contributed to the household finances and support of both children. The current proceeding was commenced by the mother in less than a year after the parties separated. As such, the father is deemed to be a stepparent with a duty to provide support for S pursuant to s. 147(4) of the *FLA*.

[66] Two questions arise with respect to the father's duty to provide child support for S:

- a) First, has S voluntarily withdrawn from the father's charge, within the meaning of s. 147(1), such that it relieves him of his duty to pay support?

- b) Second, to what extent is the father's duty to provide support affected by the fact that the mother receives a survivor pension, of which approximately \$508 is attributable to S? Does this bring s. 147(5) into play?

[67] Dealing with the first question, whether or not S has withdrawn from his charge, the father points to the fact that although he has invited S to visit with him, to date she has not done so.

[68] As I have already noted, a series of events out of S's control hindered the father in initiating contact with her since March 2013. Then, when he was able to make contact as of the court order made January 10, 2014, there was agreement between the father and the mother that it would be S's choice whether to visit with him or not. S's text messages to her father have given only one reason for her not meeting with him: she has said that she has been too busy with school and then with spring break. At the same time, she has been polite in thanking him for a Valentine's Day gift in February 2014, and reciprocated with her own gift to him sent through J.

[69] The child S is now 16 years old but she is not as mature as some adult children in other cases where the child has indicated a desire to end the relationship with a parent and the question arises as to whether or not the parent should support the child through post-secondary education. Also, the child S has not made any unequivocal statement to the effect that she wants to be left alone by the father. This distinguishes the present facts from the facts in the two cases cited by the father, namely *Marsland v. Gibb*, 2000 BCSC 471; and *Wahl v. Wahl*, 2000 ABQB 10. It also distinguishes the present case from a case cited by the claimant, namely *Kontogiannis v. Langridge*, 2009 BCSC 1545.

[70] I find that the fact that S has not yet agreed to visit with the father does not amount to S withdrawing from his charge, within the meaning of s. 147(1)(b) of the *FLA*.

[71] I expect the father to continue to invite S to come to his home when J does, or on shorter visits as she sees fit. I hope that the father appreciates that it is important for him to emphasize through actions and words that S is as important to him as J. I expect the mother to encourage S to resume a relationship with the father. I also make the observation that the longer the present situation continues, and as S gets older, the interpretation of her actions may be different and may be considered by another court to amount to a change in circumstances.

[72] The second issue regarding child support for S has to do with the fact that the mother receives a survivor pension arising from the death of her husband and the biological father of S, of which \$508 is attributable to S.

[73] Should the receipt of these funds be taken into account in some way to reduce the amount of child support payable by the father, who is in a stepparent role with S?

[74] The *FLA* provides for some discretion in determining the “appropriate” amount of child support that is payable by a stepparent, taking into account that the support is secondary to the support provided by natural parents and guardians, but also taking into account the standard of living experienced when the stepparent was living with the child’s parent, as provided in s. 147(5) set out above.

[75] This is consistent with previous case law interpreting the predecessor statute, the *Family Relations Act*, as well as s. 5 of the *Federal Child Support Guidelines*: see *H.(U.V.) v. H.(M.W.)*, 2008 BCCA 177 [*H. v. H.*].

[76] An additional factor mentioned in the *FLA* in considering the appropriate amount of support, is the length of time the child lived with the stepparent.

[77] Here the stepparent father lived with the child S for 10 years, and has known her most of her young life. She has not known any other father. He allowed her to treat him as her father and he has benefitted from this relationship. He has experienced the joy, laughter and love associated with raising a child.

[78] The stepparent's role as father has not been replaced by someone else.

[79] During the long time that the stepparent father was part of the household, he assumed parental responsibilities for S and contributed to the household finances.

[80] The evidence suggests that during the time the father lived in the same household as a stepparent to the child S the household was receiving the survivor pension. This is significant because it means that the father has in the past indirectly benefitted from the survivor pension, as a member of the household receiving it.

[81] Since the father has separated from the mother, there is less income in the mother's household and a corresponding decline in the standard of living. The separated father's income in the household of the mother, where S is living, has not been replaced by other income.

[82] Also, on the mother's evidence as to expenses related to her children, combining the survivor's pension attributable to S with child support attributable to S would still fall short of meeting one-half of the household expenses related to the children. I give this factor less weight because there is a dispute about whether the survivor's pension should be grossed up or not because it is not taxable. Regardless, I find that S will not be enjoying a disproportionately high standard of living if her mother's household is receiving both the survivor pension and child support related to S.

[83] Furthermore, there was no evidence as to how the survivor pension was calculated, or what it is based on conceptually, or how long it will last. I can make no finding on the evidence that it stands as the equivalent of child support from the deceased biological father, obviating the need for the separated stepparent father to provide support.

[84] Unlike the authorities cited to me by counsel for the father, such as *H. v. H.*, this is not a case where there is a contest over child support obligations between

three parents of a child: the two natural parents and a stepparent. The biological father is dead.

[85] I find that S will not be enjoying a higher standard of living than what she experienced before when her stepparent, the father, was living in the household, if her mother receives the *Federal Child Support Guidelines* table amount of child support from the father in relation to S, as well as the survivor pension.

[86] In the circumstances of this case, I conclude that the appropriate basis for calculating the child support obligations of the father, as stepparent of S, is by straight application of the table amounts in the *Federal Child Support Guidelines* based on the father's income.

### **The Son J**

[87] I now turn to the guardianship and parenting arrangements regarding J.

[88] One of the factors to take into account is the child's own views. Rather than have the court interview J, pursuant to s. 211 of the *FLA* on June 10, 2014, the court ordered Sandra Jennings to conduct a "hear the child interview" of J as to his views regarding the amount of parenting time he would have with each parent, and to report back to the court.

[89] Ms. Jennings is a lawyer. She understood that her role was simply to interview the child J and report as close as possible in his own words his views on parenting arrangements. It was not her role to assess the child or evaluate the information in any way.

[90] Ms. Jennings conducted the interview on June 11, 2014 and provided her report to the Court, marked as an exhibit at trial.

[91] The mother says that Ms. Jennings' report should not be given any weight.

[92] The mother called Ms. Jennings as a witness at trial. I find that with the exception of two sentences, Ms. Jennings properly understood her role in preparing

her report. I find that she accurately reported on her interview of J, capturing the views he expressed to her.

[93] There were two sentences in Ms. Jennings' report in which she strayed from her proper role, where she speculated as to possible causes of J's behaviour as witnessed by her (his calmness in the face of the awkward meeting of the claimant and respondent at Ms. Jennings' office; and his finger-nail biting). I have given these sentences no weight.

[94] In the "hear the child" interview, J expressed to Ms. Jennings that it was hard when his parents first separated, because he did not see his dad a lot; that it was better now that he could see his dad every other weekend; that he wished he was old enough to drive to his dad's to visit him; and that if he could change the problems he had, he would see his dad more often, the same amount of time with his mom and dad, one week with each. He told her that he did not think this would be too much back and forth between homes, and also that he thought he would be able to get his homework done.

[95] The mother submits that the father coached the child before his interview, because the views the child expressed were too close to what the father has been wanting in terms of parenting arrangements. I am not persuaded by this submission. Reading the report of the interview, it strikes me that the child J was sharing his views in a natural and comfortable manner. Several times he expressed the view that he was unhappy when he did not see his dad, and he would like to see him more. It is possible he knew both parents' wishes before the interview, but I find that it is most likely he was expressing his own wishes in the interview. He is old enough to understand that what he was saying might result in him being able to see his father more often, and I have no reason to believe that he would voice those views if he did not want that to happen.

[96] I note that in a March 13, 2014 court order, both parties consented to a term that neither would speak to J about ongoing litigation. Of course this is not a

guarantee that they did not speak to J about the litigation but well before the interview the point had been brought home to both parties not to do so.

[97] As an 11 year old, J's wishes cannot be the determining factor. However, they are an important factor here given his age and ability to speak for himself and absent any reason to be concerned that his needs cannot be met by both parents.

[98] J has spent time in both parents' homes and wants to spend equal time with both parents. I find that his views are consistent with the evidence as to the nature and strength of the relationships J has enjoyed with both parents throughout his life.

[99] The mother argues that her home offers more stability. It is true that J's father has been living with relatives, but he has a big extended family and there has been no problem with J staying with him in his accommodation. J has many cousins, aunts, uncles and has grandparents on his father's side of the family who live close by and with whom the child apparently likes spending time. J was asked in his interview about his living arrangements with both parents and described them positively.

[100] The mother also suggests that the father's current employment situation is uncertain and that the father has no plan in place for getting J to and from school when the father returns to work. However, the father appears capable of making the proper arrangements. His current living arrangement with relatives is a short drive to J's school.

[101] There is no evidence of any reason to be concerned about J's needs being taken care of when with his father.

[102] The mother argues that the father does not supervise J completing his homework. The father disagrees with this. I find it more likely that the mother is correct that the father has been lax in enforcing homework, but I note that the father's time with the son has been limited to date. If the father has more time with the son, he will be equally responsible for ensuring that the son completes his homework.

[103] Each parent has a responsibility to provide the child with a proper quiet environment for completing schoolwork, including a well-lit table to work on and by ensuring the homework is completed without distractions such as television or games.

[104] The mother argues that she was primary caregiver of J during the parties' relationship, and provides a list of the tasks she has done with him. The father also provides his own list of activities he did with the child. Both parents worked outside the home. In a situation where both parents were actively involved in parenting the child during the relationship, as here, I am unable to weigh one parent's contributions to J's upbringing as worth more than the other's and to then resolve post-separation parenting time accordingly.

[105] The mother also argues that because J has an older sister, S, who lives with them, it will be better for J to spend more parenting time in her household than the father's. I am not persuaded this is a significant factor here.

[106] The facts of this case are not like the facts of the case cited to me by the mother's counsel, *L.A.L. v. R.L.*, 2005 BCSC 1776. In that case, the oldest child was severely disabled and the proposed parenting arrangement would have left him behind while the other two children went off with the father, and the court found that this would be 'potentially devastating' for the oldest child and negative for the other two children (at para. 19).

[107] In this case the sister S is 16 years old and has her own interests. I do consider that it would be appropriate for the father to invite S to come along with J when J goes to his father's home, but if she chooses not to accept the invitation she does not have a veto over J visiting his father. If J has more parenting time with his father, he will still be able to see his sister when spending time with his mother.

[108] I note that J also has many cousins with whom he has healthy relationships, and spending time with his father will give him more time with those cousins.

[109] The mother has also stated that J's behaviour has worsened after spending more time with his father, once unsupervised overnight visits commenced. This evidence was very unspecific, and amounts to J showing her some disrespect or attitude. I simply do not know the cause of this and perhaps the disquiet will disappear once the parenting arrangements have settled down.

[110] The mother also points out that there is some evidence that the father has put the son J in the middle of parenting and child support issues. As one example, he had the son hand-deliver to the mother an envelope with cash child support, identifying it as such. He may also have encouraged, or at a minimum failed to discourage, the son from pleading with the mother to allow him to spend more time with the father. I agree that any such behaviour by the father was inappropriate. The father must not involve the son in issues regarding child support or parenting time. I expect the father to cease doing so.

[111] I agree that if the father was trying to alienate J by showing him disrespect for his mother, this would be a serious concern. But I do not have evidence that this is happening.

[112] It is the responsibility of both parents to teach J to respect the other parent; and this includes respecting the parenting arrangements in place, including the times for any transitions between households. Neither parent should involve the child in discussions regarding any changes in parenting arrangements.

[113] I find that both parents have the ability to be good parents of J. Both parents love J and are capable of exercising all parental responsibilities.

[114] Having considered all of the circumstances, I find that it will be in J's best interests to have roughly equal parenting time with both of his parents, both of whom have played a strong role in his life. In my view, the best way to accomplish this is by a one week alternating schedule, with the transitions on Fridays after school, or if there is no school that day, at 3:30 p.m.

[115] I also find that it would be in J's best interests to have two consecutive weeks with each parent in the summer months, with the timing to be agreed between the parents.

[116] I also find that the holiday parenting time should be split roughly equally. The mother has proposed some terms in this regard which appear sensible to me but I will ask the parties to attempt to reach agreement on the splitting of holidays, which, if agreement is reached, may be incorporated in this court's final order. If they cannot reach agreement, they have liberty to re-appear before me.

[117] Other terms of parenting that I consider important to order in this case include the following:

1. The parties acknowledge that J may make phone calls to either party at his request when with the other party.
2. If either party plans a vacation with J, that party will give the other a detailed itinerary at least 14 days before it begins, including the name of any flight carrier and flight times, accommodation, including address and telephone numbers, and details as to how to contact during the trip.
3. Neither party may remove J from the Lower Mainland area without express written permission from the other parent. For the purposes of this Agreement, the "Lower Mainland area" means the following municipalities: Vancouver, Richmond, North Vancouver, West Vancouver, Coquitlam, Port Coquitlam, Port Moody, Delta, Surrey, Langley, Maple Ridge, Pitt Meadows, Tsawwassen, Ladner, Abbotsford, and Mission. Additionally, the party removing J from the Lower Mainland area must give the other a detailed itinerary at least 14 days before leaving the Lower Mainland area with J, including the name of any flight carrier and flight times, accommodation, including address and telephone numbers, and details as to how to contact J during the trip.

4. If a party plans a vacation outside of Canada with J, and the other party has provided express written permission for the vacation, the other party will provide a notarized letter authorizing J to travel.
5. The party travelling with J will ensure that J have appropriate medical coverage/insurance for the duration of the trip and that party will cover all costs of the medical coverage/insurance for the duration of the trip.
6. Each parent is to return J to the other with clean clothes.
7. Each parent is to supervise J's completion of any homework assignments he has been given while in their care.

[118] I also find it would be in J's best interests if both parents continued to be his joint guardians.

[119] It does strike me that there have been some problems with trust and communication in this case and that it would be appropriate where the parties cannot agree on important issues regarding J that one party have the right to make the decision so that it can be made promptly. As between the two parents, I have found some problems with the father's credibility. I have concluded that the mother should be permitted to make the decision in these instances where there is disagreement but subject to the father's right to apply to court for directions. Of course best efforts should be made to reach agreement first.

[120] I find the guardianship terms stated in the case of *Van Kooten v. More*, 2013 BCSC 1076 at para. 39 to largely be appropriate here, modified as follows:

The guardians will exercise all parental responsibilities with respect to the child on the following terms:

1. in the event of the death of a guardian, the surviving guardian will be the only guardian of the child;
2. each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the child;

3. each guardian will have the obligation to discuss with the other any significant decisions that have to be made concerning the child, including significant decisions about the child's health (except emergency decisions), education, religious instruction and general welfare;

4. the guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;

5. in the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the mother will be entitled to make those decisions and the other guardian will have the right to apply for directions on any decision the guardian considers contrary to the best interests of the child, under s. 49 of the *Family Law Act*,

6. each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers; and,

7. the guardians will maintain a common exchange journal which is to be exchanged when the child is transferred to the other guardians. Each guardian is to record on a weekly basis while the child is in the guardian's care any important matters relating to the child of which the other parent should be informed, including relating to:

- School
- Health
- Social (such as upcoming invitations or events)
- Extracurricular activities (such as dates for registration, practice or game schedules, equipment, and events);
- Key contact information for doctors, dentists, and parents' emergency contact numbers; and

- Any other important matter relating to the care of the child.

[121] A review of term 5 above may be brought on after two years from the date of these Reasons.

### **Child Support in Relation to J**

#### **Calculation of Child Support**

[122] The parties have agreed that once the determination of parenting arrangements is made by this Court, they will attempt to reach agreement on child support.

[123] The child support of J going forward should be based on the tables under the *Federal Child Support Guidelines*, on the basis that J will be spending roughly equal time in each household. As the mother currently has the larger income, this is likely to result in a payment due from her to the father. However, the mother is entitled to set-off against any payment due from the father to her for the child support of S.

#### **Spousal Support**

[124] There were no submissions advanced in support of the father's claim for spousal support.

[125] The evidence suggests that the father suffered no economic disadvantage due to the relationship, nor did the mother receive an economic advantage. The father is self-sufficient. He has led no evidence as to his actual expenses.

[126] The father's evidence does not support any entitlement to spousal support, either on a needs basis, compensatory basis or contractual basis.

[127] The father's claim for spousal support is dismissed.

#### **Other Factual Disputes**

[128] The parties had some differences in their evidence as to their past relationship. I have not found it necessary to decide the facts of every minor

dispute. Many of the differences in the parties' versions of evidence could be explained as a matter of that person's perspective at the time.

[129] As an example, the mother's evidence was that she prepared the majority of the meals for the family when the couple was together, but the father assisted. The father's evidence was that he also prepared meals. This can be a matter of perspective. Both could be correct and in the end it does not matter, as the fact is that both are capable of feeding their children.

[130] It strikes me as counter-productive and harmful to future co-parenting to review each dispute in detail where it does not impact on the material issues in this case.

[131] I found both parties to be sincere in expressing a desire for the children to be happy and healthy.

[132] If I considered either parent to be exposing the children to an environment of dishonesty and deceit it would likely have affected my assessment of parenting ability but I did not reach this conclusion. I expect the parties to be honest, respectful and fair in their dealings with each other, so as to set a good example for the children.

### **Conclusion**

[133] To summarize my conclusions:

- a) the father has child support obligations in respect of S. The appropriate basis for calculating the child support obligations of the father, as stepparent of S, is by application of the table amounts in the *Federal Child Support Guidelines* based on the father's income;
- b) the mother and father will share roughly equal parenting time with J, alternating on a weekly basis with the exchange on Fridays. Holidays will be shared as well;

- c) the mother and father will be joint guardians of J. However, the mother will have the ability to make important decisions if the parents cannot agree, with the father having the right to ask the court to review a decision. The specific terms of the parenting arrangements and joint guardianship are described in the judgment;
- d) the father's claim to spousal support is dismissed.

[134] The parties have liberty to seek a further hearing in front of me in respect of costs and if they are unable to agree on the relevant calculation of child support.

[135] Should any issue arise with respect to parenting arrangements for which a party has grounds for seeking a court order, the parties should attempt to schedule a further hearing before me as it would be appropriate for me to hear such matters if I am available.

"S.A. Griffin, J."

The Honourable Madam Justice Susan A. Griffin