

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cain v. Hodgson*,  
2012 BCSC 1228

Date: 20120816  
Docket: E090777  
Registry: Vancouver

Between:

**William Paul Cain**

Claimant

And

**Rachelle Suzanne Hodgson**

Respondent

Before: The Honourable Mr. Justice Blair

## **Reasons for Judgment**

Counsel for the Claimant:

S.N. Mansfield

Counsel for the Respondent:

T.L. Jackson

Place and Date of Trial:

Vancouver, B.C.  
May 7 - 11, 2012

Place and Date of Judgment:

Vancouver, B.C.  
August 16, 2012

[1] The claimant, William Paul Cain, and the respondent, Rachelle Suzanne Hodgson, had a brief eight-month relationship in 2008 and 2009, but never married. The relationship resulted in the birth of their daughter, Katelyn Marie Hodgson (“Katelyn”), on February 5, 2009, who is now three years old.

[2] The dispute primarily involves the parties’ differing perspectives with respect to Katelyn, including her custody, guardianship, residence, Mr. Cain’s parenting time, and the parties’ holiday and travel times with their daughter. Also to be determined are the parties’ respective incomes both past and present, the arrears of child support and childcare expenses, if any, owed by Mr. Cain, the appropriate amount of child support payable by Mr. Cain, and the calculation of each party’s proportionate share of Katelyn’s extraordinary expenses, particularly her childcare costs.

[3] The parties’ respective positions on parenting can be summed up briefly. Mr. Cain seeks a judgment providing for a co-parenting arrangement that has Katelyn spending equal time with each of her parents. He asserts that the parties’ circumstances, their parenting skills, and commitment to their daughter, create an environment ideal for equal parenting and that such an arrangement would both be in Katelyn’s best interests and would achieve the statutory goal that children ought to enjoy the maximum contact possible with each of their parents.

[4] Ms. Hodgson seeks an order continuing the present parenting arrangement in which Katelyn’s primary residence is with her, and in which Mr. Cain has reasonable and generous parenting time with Katelyn. Ms. Hodgson seeks an order providing the parties with joint custody and joint guardianship based on the “Joyce Model”, with the provision that she have final decision-making authority for Katelyn, subject to review by the court upon application by Mr. Cain.

[5] Ms. Hodgson submits that Katelyn remains reliant on her as she has accepted responsibility for much of her daughter’s parenting and this reliance should not be disrupted given Katelyn’s young age. Ms. Hodgson acknowledges that a co-parenting arrangement might well evolve in the future, but submits that Katelyn at

three years of age is too young for this to occur. Ms. Hodgson contends that it is in Katelyn's best interests that the parenting arrangement she seeks continue until Katelyn is eight years old.

[6] Mr. Cain, born June 10, 1971, is 41 years old, and was raised in a small Ontario farming community. He completed high school at age 19, and later pursued a post-secondary education, obtaining a bachelor's degree in business administration from the University of British Columbia's Okanagan facility at age 34. His employment history is varied, and he is presently the director of marketing and sales for a corporation that operates a fishing lodge in the Queen Charlotte Islands. He has a base salary of \$48,000 a year and receives commissions based on the business he attracts to the fishing lodge.

[7] Ms. Hodgson, born June 11, 1974, is 38 years old, and she too was born and raised in Ontario. She obtained bachelor's degrees in arts and education from the Universities of Toronto and York respectively. She worked in 2002 and 2003 as a substitute teacher in Mississauga, Ontario, before moving in September 2003 to Vancouver, where she commenced working in the financial market industry. Ms. Hodgson enjoyed success in that industry, working for various corporate entities before joining in 2007 her present employer, an investment company, where she is presently employed as a regional sales manager and sales coordinator. She earns some \$95,000 annually.

[8] Although both Mr. Cain and Ms. Hodgson work in their employers' Vancouver offices or from their homes on occasion, both are required by their employment to travel. Mr. Cain spends time at his employer's fishing lodge and also attends conferences across North America which offer the potential for him to attract more business for the fishing lodge. Ms. Hodgson's management role involves her travelling to Calgary, Toronto and other North American destinations.

[9] The parties met on an online dating site in early 2008, and over time developed a relationship which led to their co-habiting in the summer of 2008 and to Ms. Hodgson's pregnancy. The parties separated in March 2009, about a month

after Katelyn's birth, and they presently reside within easy walking distance of each other in the Kitsilano area of Vancouver.

[10] Ms. Hodgson and Katelyn live in a two-bedroom apartment while Mr. Cain lives in a one-bedroom unit. Katelyn has her own bedroom when with her mother, but when with her father she takes over her father's bedroom and he sleeps in the living room. Ms. Hodgson submits that Katelyn should have her own bedroom, but as Mr. Cain points out, apartment rents are high in Kitsilano and his income is significantly lower than that of Ms. Hodgson. There are areas in Vancouver where apartment rents are lower than in Kitsilano, but the present arrangement has both parents living in close proximity, thereby facilitating Katelyn's movement between her parents. It would be ideal were Katelyn to have her own bedroom when staying with her father, but given Mr. Cain's financial situation, I conclude that his having a one-bedroom apartment should not necessarily be held against him when considering Katelyn's parenting arrangement.

[11] It appears clear from the evidence that the parties' differing perspectives, attitude and approaches to life made a continuing relationship between them highly unlikely. The bond which has kept them in contact following their separation in March 2009, is their devotion and love for Katelyn and their aim of ensuring that their daughter's best interests are achieved with whatever parenting arrangement is established either by court order or in the future by agreement. Given their differing approaches to life, it is not surprising that the parties have differing perspectives as to what Katelyn's best interests are and how she should be raised.

[12] Although there is visible friction between the parties, the parties have to their credit been able to communicate to some extent with each other with respect to Katelyn. Their e-mails are generally polite and respectful of each other and there has evolved a relatively flexible and accommodating if somewhat strained approach towards Katelyn's care, an important factor considering that both parents travel quite frequently in the course of their respective employment.

[13] During the trial, the parties, who were the only witnesses, made observations reflecting negatively upon the other parent. Although some of those matters must be addressed, it is opportune at this point to consider the observation of Mr. Justice Goepel found in *K.D.P. v. A.R.K.*, 2011 BCSC 1085, in which he wrote at paras. 1 and 2:

[1] No parents are perfect. All have flaws of one kind or another. If families stay together, except in those rare circumstances in which a child is found to be in need of protection, the state and the courts allow imperfect parents to raise their children as best they can. The children, in most cases, are no worse for wear for the experience.

[2] If families separate, however, and issues of custody and access arise, in the guise of determining the best interests of the child, a parent's flaws of character and conduct are put under a microscope. In such circumstances, care must be taken not to lose sight of the strengths that a party brings to the challenge of raising a child.

[14] Goepel J.'s observations are germane when considering the concerns raised by the parties with respect to the behaviour and parenting approach taken by the other parent.

[15] As the parties were not married the applicable legislation is the *Family Relations Act*, R.S.B.C. 1996, c. 128 [*FRA*], which provides that the overriding principle to which the court must direct its attention lies in creating a parenting arrangement in response to the parents' concerns and which, above all, will address Katelyn's best interests.

[16] I will approach the question of Katelyn's best interests by following the guidelines found in the *FRA* in the context of the evidence and the findings of fact I have reached from that evidence. Section 24 of the *FRA* states:

Best interests of child are paramount

24 (1) When making, varying or rescinding an order under this Part, a court must give paramount consideration to the best interests of the child and, in assessing those interests, must consider the following factors and give emphasis to each factor according to the child's needs and circumstances:

- (a) the health and emotional well being of the child including any special needs for care and treatment;
- (b) if appropriate, the views of the child;

(c) the love, affection and similar ties that exist between the child and other persons;

(d) education and training for the child;

(e) the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise those rights and duties adequately.

(1.1) The references to "other persons" in subsection (1) (c) and to "each person" in subsection (1) (e) include parents, grandparents, other relatives of the child and persons who are not relatives of the child.

(2) If the guardianship of the estate of a child is at issue, a court must consider as an additional factor the material well being of the child.

(3) If the conduct of a person does not substantially affect a factor set out in subsection (1) or (2), the court must not consider that conduct in a proceeding respecting an order under this Part.

(4) If under subsection (3) the conduct of a person may be considered by a court, the court must consider the conduct only to the extent that the conduct affects a factor set out in subsection (1) or (2).

**(a) Health and emotional well being of the child:**

[17] Both parents have been involved with Katelyn's health and emotional well being, but I conclude from the evidence that Ms. Hodgson assumes the major responsibility for Katelyn's health and well being. Ms. Hodgson attended the various pre-natal classes to prepare herself for the care of an infant, including instruction on breast feeding, whereas Mr. Cain attended just some of the classes. After Katelyn's birth, Ms. Hodgson attended Katelyn's requisite medical appointments. She also took the responsibility unique to a mother of breast feeding Katelyn for approximately 12 months following the child's birth, having concluded that breast feeding was best for their daughter's health.

[18] Mr. Cain's response to the breast feeding of Katelyn was not entirely positive, as reflected in his persistent requests for overnight visits with Katelyn when she was still breast feeding, when her nourishment depended on her mother's presence. Overnight visits with her father would have disrupted Katelyn's ability to breast feed when needed. Mr. Cain pressed Ms. Hodgson to express milk by way of pumping to provide him with a milk source for Katelyn so that he could feed her on overnight or longer visits. Mr. Cain continued to insist that Ms. Hodgson provide him with milk

expressed through a breast pump in spite of knowing that Ms. Hodgson experienced considerable difficulty and pain with the pumping process. Mr. Cain appears to have perceived that Ms. Hodgson used the breast feeding process as a means to limit his time with Katelyn, rather than as a healthy means of feeding Katelyn. I conclude that Ms. Hodgson utilized the breast feeding process because it was in Katelyn's best interests and for no other reason.

[19] Mr. Cain's somewhat diffident approach to Katelyn's health was also reflected in his response to two medical conditions diagnosed at or soon after Katelyn's birth. One condition, plagiocephaly, involved an asymmetric head shape. Occupational therapist, Patricia Mortenson, of the BC Children's Hospital's plagiocephaly program wrote that the condition resulted in the flattening of the right side of the back of Katelyn's head, and bulging on the left side of her head, thereby causing asymmetry of her facial features and her ears. Katelyn's family physician, Dr. Michael Farmer, described the condition as severe and he, as well as Ms. Mortenson, recommended that Katelyn wear an orthotic headband for a six month period.

[20] The second condition afflicting Katelyn was a giant nevus which involved a mole like growth on her back and was a condition which, if left intact, posed a risk of melanoma. The treatment involved several surgeries to remove the growth, the most recent scheduled for May 2012.

[21] Mr. Cain responded negatively to the treatment proposed for both of Katelyn's conditions. He opposed the headband treatment of Katelyn's plagiocephaly, acknowledging in cross-examination that he did not think Katelyn's condition called for the treatment proposed by Dr. Farmer and Ms. Mortenson. It was only after Ms. Hodgson retained counsel to obtain Mr. Cain's consent to the headband treatment and she agreed to pay the \$3,000 for the headband did the treatment proceed. Although Mr. Cain never provided his consent to the treatment, his medical plan subsequently reimbursed Ms. Hodgson for the cost of the headband.

[22] Mr. Cain acknowledged that he did not approve of Katelyn having to wear the headband 24 hours a day and when she was with him, he did not always ensure that

she wore the headband. He also left it to Ms. Hodgson to attend the frequent appointments in Surrey required to adjust Katelyn's headband. After the treatment was completed, he continued to question whether the headband had been required, although he led no evidence, apart from his own opinion, that the treatment was unnecessary.

[23] Ms. Hodgson encountered similar opposition from Mr. Cain when the surgical treatment of Katelyn's giant nevus was proposed in 2011. The first operation finally proceeded in May 2011 with the sole consent of Ms. Hodgson as the treatment required the consent of just one guardian. Again, Ms. Hodgson initially retained counsel in an attempt to have Mr. Cain consent to the operation. Mr. Cain said he did not consent to the first operation because he was nervous about it and did not want to interrupt Katelyn's summer with the operation, although he did consent to the subsequent operations. Mr. Cain attended the May 2011 operation, but not the following consultation with the physician who performed the operation. Mr. Cain acknowledged that Ms. Hodgson advised him of the consultation appointment, but he forgot about it noting that, while Ms. Hodgson told him of the appointment, she did not send him a further reminder.

[24] Although the treatments for the giant nevus and the plagiocephaly were not of a critical nature, both had been recommended by Katelyn's physicians and Mr. Cain's refusal to grant his consent unnecessarily delayed the treatments. Had Mr. Cain provided a medical basis or some other rationale for opposing the treatments his position might be better understood, but it is difficult to comprehend his opposition in the absence of any justification. Ms. Hodgson heeded the physicians' recommendations and ensured that, in spite of Mr. Cain's opposition, Katelyn received the treatments the child's physicians deemed necessary for her well being.

[25] Ms. Hodgson also expressed another concern relating to Katelyn's health and that involved what Ms. Hodgson described as Mr. Cain's smoking of both marijuana and cigarettes when with Katelyn. She testified that Mr. Cain was a regular and consistent user of marijuana, an assertion denied by Mr. Cain. However, in an



affidavit sworn July 21, 2011, he deposed that he did not use marihuana, but subsequently acknowledged that the denial in his affidavit was untrue because he had in fact recently used marihuana. His explanation was that his occasional use of marihuana did not make him a “user”. Mr. Cain’s attitude towards marihuana use is that smoking marihuana on occasion is similar to having wine on occasion.

[26] I am not prepared on the evidence to find that Mr. Cain used marihuana to the extent described by Ms. Hodgson, but I am satisfied that Mr. Cain does use marihuana on occasion and that he has been less than frank about his marihuana use. As for Mr. Cain’s tobacco use, Ms. Hodgson testified that Mr. Cain’s tobacco use around Katelyn had diminished following Master Taylor’s August 9, 2011 order directing that Mr. Cain not smoke tobacco or marihuana while exercising access to Katelyn, nor allow Katelyn to be exposed to tobacco or marihuana smoke when she was in his care. I am satisfied that it is not in Katelyn’s best interests to be exposed to either marihuana or tobacco smoke, and I will make an order accordingly later in these reasons.

[27] As I have noted, Ms. Hodgson has taken the lead in ensuring that Katelyn’s health and well being have been properly addressed, while with respect to the plagiocephaly and the giant nevus, Mr. Cain has unnecessarily balked at the recommended treatment. Also, in his efforts to gain more extensive visitation with Katelyn he created difficulties with his daughter’s breast feeding arrangement.

**(b) Views of the child:**

[28] Subsection 1(b) of s. 24 provides for consideration of the views of the child, but I find that factor inappropriate in the circumstances, given that Katelyn is just three years old.

**(c) Ties between the child and other persons:**

[29] Subsection 24(1)(c) requires a consideration of the love, affection and similar ties that exist between Katelyn and other persons, the latter including Katelyn’s

parents, grandparents, both maternal and paternal, other relatives, plus others not necessarily related to the child.

[30] Mr. Cain asserted that Ms. Hodgson took steps to thwart both him and his family from spending time with Katelyn. I referred previously to Mr. Cain's complaint that Ms. Hodgson used the fact that Katelyn was still breast feeding as a means of preventing him from having overnight visits with their daughter, but I am not prepared to give his complaint any credence. I accept that Ms. Hodgson fairly concluded that breast feeding was in Katelyn's best interests and that she, Ms. Hodgson, had difficulty in providing Mr. Cain with milk through the use of a pump.

[31] Mr. Cain also asserted that when Ms. Hodgson's father died shortly after Katelyn's birth, the parties travelled to Ontario with Katelyn. During the visit Mr. Cain stayed with his family and Ms. Hodgson and Katelyn stayed with her family. By that time, given the difficulties in their relationship, the parties could no longer be considered a couple. In Ontario, their respective homes were separated by a 90 minute round trip drive. Mr. Cain contended that Ms. Hodgson prevented him from taking Katelyn to see his family on the basis that Katelyn, who was then just a few weeks old, should not be taken from her at a time when Katelyn was dependent on her mother for nourishment.

[32] Ms. Hodgson acknowledged that because Katelyn was still breast feeding she was not prepared to allow her to go with Mr. Cain to visit his family at that time. However, she testified that she told Mr. Cain that his family members were welcome to visit Katelyn at her family's home, but that none of Mr. Cain's family took advantage of that offer. Ms. Hodgson was skeptical as to whether Mr. Cain had advised his family of the invitation to visit Katelyn and in cross-examination, Mr. Cain admitted that Ms. Hodgson had invited his family to her home to visit Katelyn, but that he had not advised his family of the invitation.

[33] Since Katelyn's initial trip to Ontario, Ms. Hodgson, when planning visits to Ontario for family and business reasons, has made direct contact with members of Mr. Cain's family and arranged for Katelyn's paternal relatives to visit her. In making

these arrangements, Ms. Hodgson's e-mails to Mr. Cain's family have been supportive of their visiting with Katelyn. Further, when members of Mr. Cain's family visit Vancouver, Ms. Hodgson's response has been to ensure that Katelyn spends time with her father's family.

[34] I find that Ms. Hodgson has facilitated and encouraged the relationship between Katelyn and her father as well as the maintenance and expansion of her ties with members of both her maternal and paternal families. I also find that Mr. Cain does not appear to appreciate Ms. Hodgson's efforts to create a situation in which Mr. Cain and his extended family share in Katelyn's development and growth.

**(d) Katelyn's education and training:**

[35] Subsection 24(1)(d) establishes the need to consider the roles played by the parents regarding Katelyn's education and training. Both parents attended university, with Ms. Hodgson obtaining two degrees. Mr. Cain did not embark on his university education for some years after he left high school, and to his credit he obtained a university degree when he was 34 years old. I conclude that both parties recognize the need for their daughter to have the opportunity to achieve the independence offered by a good education.

[36] As both parties are employed on a full time basis, Katelyn has been enrolled in a daycare centre which provides her with stability, although at some considerable cost. The cost factor became a concern to Mr. Cain when he lost his job at which time he suggested that Katelyn be taken out of daycare and he look after her to spare the daycare costs for both parties until such time as he obtained new employment. Ms. Hodgson viewed the proposal as one that benefited Mr. Cain by saving him the daycare expense, but did not adequately consider the effect on Katelyn. Ms. Hodgson did not accept Mr. Cain's proposal, not, I conclude, because Mr. Cain would have had greater access to Katelyn, but because it meant removing Katelyn from the daycare in which she had been settled, and there was no assurance that Katelyn would be able to return to the same daycare when Mr. Cain found further employment.

[37] The latter example reflects Ms. Hodgson's forward thinking as it involves Katelyn. Recently, Ms. Hodgson, recognizing Katelyn's future scholastic needs, located several daycares offering educational, sport, and artistic programs which would assist Katelyn when she enrolled in the educational system. Mr. Cain concurred with Ms. Hodgson's choices with respect to a more advanced daycare, and she placed Katelyn's name on the daycares' waiting lists some 18 months ago.

[38] Ms. Hodgson received her education in Ontario's Catholic school system and seeks the same opportunity for Katelyn. Ms. Hodgson has located a Catholic school in the neighbourhood where the parties reside which, from her perspective, will provide a good education for Katelyn, particularly with its emphasis on traditional values. Mr. Cain testified that he was unaware that Ms. Hodgson wanted Katelyn to be educated in a Catholic school. Given that Katelyn is presently just three years old, there is plenty of time for the parents to address Katelyn's education before she starts school.

[39] Ms. Hodgson's primary role in Katelyn's education and training role is further reflected in her establishment of a registered education savings plan soon after Katelyn's birth, to which she has continued to contribute over the past three years. Ms. Hodgson has also sought to expand Katelyn's life parameters by enrolling her in yoga and ballet at a local community centre. As noted by respondent's counsel, Mr. Cain has not involved Katelyn in any scheduled activities in spite of having his daughter overnight on Mondays since August 2011.

**(e) The capacity to exercise rights of guardianship, custody and access:**

[40] Subsection 24(1)(e) involves the consideration of the capacity of each person, in this case, Mr. Cain and Ms. Hodgson, to whom guardian, custody or access rights and duties may be granted to exercise these rights and duties adequately.

[41] While I am satisfied that Katelyn's parents are both capable in their own way of exercising the rights and duties of guardianship, custody and access, the specific question in this situation is whether one of the parents has shown by their particular

conduct that they are more capable of exercising the rights and duties imposed by guardianship, custody, and access.

[42] The factors I take into account in considering the parties' differing parenting capacities include to some extent those already discussed in the context of s. 24(1)(a), (c) and (d). I accept that Ms. Hodgson has assumed the primary responsibility for the Katelyn's health. She arranged and attended pre-natal and other courses, although Mr. Cain took part in some of the courses. Ms. Hodgson also undertook the bulk of the medical care following Katelyn's birth, including the adherence to the treatment recommended by Katelyn's physicians with respect to the child's plagiocephaly and giant nevus, treatments for which Mr. Cain, for his own reasons was at least initially somewhat reluctant to see undertaken.

[43] Ms. Hodgson's concern about Katelyn's health also led her to obtain an order from Master Taylor on August 9, 2011, that Mr. Cain not expose Katelyn to tobacco or marijuana smoke while he is with her.

[44] Ms. Hodgson, by becoming directly involved with members of Mr. Cain's Ontario-based family, has taken steps to ensure that Katelyn has had the opportunity to meet and be with her father's family. I am satisfied that Ms. Hodgson did in fact extend an invitation to Mr. Cain's family to visit Katelyn in March 2009, but Mr. Cain for some inexplicable reason did not convey that message to his family, although I surmise that Mr. Cain's omission followed from the friction then existing between the parties. In any event, the steps since taken by Ms. Hodgson reflect positively on her willingness to ensure that Katelyn has contact and knowledge of both her extended families.

[45] Ms. Hodgson, in an e-mail to Mr. Cain dated March 18, 2009, attempted to avoid taking their dispute to court, and initiated discussions with respect to the arrangements for Mr. Cain's visitations with their then six-week old daughter. In her e-mail she acknowledged that Katelyn:

... is entitled to spend time with you, her biological father, and I would like you to have an active role in her life.

[46] Ms. Hodgson wrote that while Katelyn was breast feeding, all visits or access would be attended by her, but also stated:

Please note that when Katie [Katelyn] is older and no longer breastfeeding, I would like for you to have increased visitation opportunities including overnight visits.

[47] She also wrote that BC Women's Hospital had offered them free counselling appointments to support them in their efforts to co-parent Katelyn.

[48] On the day after she sent the e-mail to Mr. Cain, Ms. Hodgson was served at her doctor's office with the documents with which Mr. Cain initiated this family law action.

[49] In reviewing the capacity of the parties to exercise rights of guardianship, custody, and access, I conclude it germane to consider their respective financial ability to look after Katelyn's needs. Ms. Hodgson has an income roughly twice that of Mr. Cain before commissions, and she has borne the full financial responsibility for Katelyn on those occasions when Mr. Cain neglected or refused to pay his share of their child's needs. Ms. Hodgson paid the \$3,000 for the orthotic headband required to treat Katelyn's plagiocephaly, although Mr. Cain's medical plan subsequently reimbursed her for that expense. Ms. Hodgson also undertook the cost of retaining counsel to take the necessary legal steps to ensure that the treatment of Katelyn's plagiocephaly and giant nevus might proceed in the absence of Mr. Cain's consent.

[50] Mr. Cain also refused or neglected to pay his share of Katelyn's daycare costs on a timely basis. For example, as of January 17, 2012, Mr. Cain owed Ms. Hodgson his share of daycare costs amounting to \$3,543.80. Ms. Hodgson paid the total daycare costs to ensure that Katelyn did not lose her position in the daycare. Further, Mr. Cain was frequently in arrears with respect to the child support payable by him to Ms. Hodgson. Mr. Cain first asserted that he was not behind in his daycare or support payments because he had previously made overpayments to Ms. Hodgson. I am not convinced that Mr. Cain overpaid Katelyn's daycare costs or child

support given the absence of evidence to support his assertion as contrasted with the evidence supporting Ms. Hodgson's position that Mr. Cain was in arrears on both Katelyn's daycare costs and child support.

[51] Counsel for Ms. Hodgson raised the question of credibility as another factor in determining which parent was best able to exercise the rights and duties associated with guardianship, custody, and access. I accept that Ms. Hodgson's credibility remained intact at the conclusion of the evidence. Mr. Cain's evidence offered some inconsistencies which put his credibility into issue. There was, for example, his denial that in March 2009, Ms. Hodgson invited him to have his family visit the Hodgsons' home to see Katelyn, a denial from which, to his credit, he subsequently resiled, acknowledging that he did not tell his family of the invitation.

[52] Mr. Cain deposed in his July 21, 2011 affidavit that he did not have overnight access visits with Katelyn until his counsel brought an application, whereas in fact his overnight visits with Katelyn commenced prior to that application being brought. Mr. Cain also deposed that he was not permitted to see Katelyn for the first seven weeks of her life, except for the first two weeks when the parties still cohabited. However, in cross-examination he admitted seeing Katelyn during that seven-week period. There are other aspects of Mr. Cain's evidence, such as that relating to his marijuana use which cast a shadow on his credibility.

[53] Given the concerns raised about Mr. Cain's credibility, I conclude that where there are discrepancies between certain aspects of his evidence and that of Ms. Hodgson, and there is no other evidence upon which I might rely, then I accept the evidence of Ms. Hodgson.

### **Parenting Arrangement**

[54] The foregoing review of the factors found in s. 24 of the *FRA*, together with the other factors which I have addressed, leads me to conclude that the best interests of Katelyn are satisfied by directing that the primary residence of Katelyn be with her mother, not in the co-parenting arrangement proposed by Mr. Cain which would see Katelyn dividing her life equally between her mother and father.

[55] Although I accept that both parents are closely bonded to Katelyn, I conclude that at three years of age, Katelyn has spent the bulk of her life with her mother and that at such a young age she should continue to have her primary residence with her mother. I find that to put Katelyn into a parenting arrangement in which she would split her time equally between her mother and father would be unfair given her tender age.

[56] My conclusion is supported further by my findings that it is Ms. Hodgson who has primarily attended to Katelyn's medical and educational needs, and it is she who has enrolled Katelyn in programs which have allowed her to become involved with children of her own age. Ms. Hodgson has also taken an active role in creating contacts between Katelyn and her relatives, both maternal and paternal. Further, when Mr. Cain has failed to meet his financial obligations towards Katelyn's support and childcare costs, it is Ms. Hodgson who has paid for the shortfall created by Mr. Cain.

[57] Mr. Cain asserts that Ms. Hodgson has isolated him from Katelyn, but I find that assertion is not supported by the evidence. If there were limits imposed on Mr. Cain's overnight visits during Katelyn's first year, it was for the understandable reason that she was being breast fed by Ms. Hodgson during that period.

[58] Mr. Cain further submits that Ms. Hodgson has been unable to accept and embrace that, like her, he is an excellent caregiver who brings tremendous strengths to Katelyn's parenting. I do not find the evidence to support this submission. I conclude that Ms. Hodgson has, since Katelyn's birth, acknowledged the importance of Mr. Cain's role in raising Katelyn, an acknowledgement clearly expressed in her March 18, 2009 e-mail to Mr. Cain. It is further expressed in Ms. Hodgson's efforts to involve Mr. Cain in the decisions to be made with respect to matters such as Katelyn's medical treatment and her daycare needs.

[59] Mr. Cain proposed a 2-2-5-5 parenting schedule, wherein each parent has two fixed overnights each week, either Monday and Tuesday, or Wednesday and Thursday and they simply alternate weekends.



[60] As I have earlier written, I am not convinced that such a parenting order would be in Katelyn's best interests. Ms. Hodgson has been Katelyn's primary caregiver since birth and, although Katelyn has spent overnight visits with her father on a regular and consistent basis, she has only actually resided with her mother. That relationship between mother and daughter would, I find, continue to provide the consistency, stability and regular routine which is of importance to a young child such as Katelyn: *J.K.R. v. M.C.C.H.*, 2010 BCSC 32 at para. 51. In *J.K.R. v. M.C.C.H.*, Pearlman J. rejected the father's submission that the parties' two year old child should alternate his time with his parents on a monthly basis, finding the submission neither practical nor in the child's best interests.

[61] In *R.M.S. v. F.P.C.S.*, 2011 BCCA 53, Smith J.A. for the majority stated at para. 52 that the "maximum contact" principle is not an absolute principle and is always subject to the best interests of the children.

### **Custody**

[62] I conclude that it is in Katelyn's best interest that the parents have joint custody of their daughter, but that her primary residence be with her mother. Mr. Cain will have reasonable and generous parenting time with his daughter, the details of which I will address later in these reasons.

[63] Joint custody is appropriate, given that the parties live in close proximity to each other and have demonstrated that they are in many ways able to communicate and generally reach agreement on many, but certainly not all, questions arising with respect to Katelyn.

### **Guardianship**

[64] The parties will have joint guardianship of Katelyn on the "Joyce Model" which provides that both parents will be joint guardians of the estate of Katelyn. In the event of the death of either parent, the remaining parent will be the sole guardian of the person of Katelyn.

[65] Ms. Hodgson will have final decision-making authority with respect to the guardianship of Katelyn, with the decision-making process between the parents to be as follows:

- a) Ms. Hodgson, who has the primary responsibility for the day-to-day care of Katelyn is obliged to discuss with Mr. Cain any significant decisions which are required to be made with respect to Katelyn, including decisions concerning her health, education, religious instruction, and general welfare. Mr. Cain will be obliged to discuss these issues with Ms. Hodgson and each parent will be obliged to try to reach agreement with respect to those significant decisions; and
- b) In the event that, despite their best efforts, the parents cannot reach agreement with respect to any major decision, Ms. Hodgson will have the right to make such a decision, and Mr. Cain will have the right, under s. 32 of the *FRA*, to see a review of any decision which he considers contrary to Katelyn's best interests.

[66] Each parent will also have the right to obtain information concerning Katelyn directly from third parties, including teachers, counsellors, medical professionals, and third party caregivers.

[67] In providing Ms. Hodgson with final decision-making authority, I am satisfied that in the past three years she has taken steps to make Mr. Cain aware of matters of significance with respect to Katelyn. I am also aware that Mr. Cain has not always responded in a timely fashion to significant matters brought to him by Ms. Hodgson. For example, he did not respond to Katelyn's treatment of her plagiocephaly and giant nevus, thereby requiring Ms. Hodgson to retain counsel to bring an application for an order enabling the treatment to be pursued. Similarly, Mr. Cain's delayed response to Ms. Hodgson's requests that she be permitted to travel with Katelyn also required her to seek legal recourse to obtain an order dispensing with Mr. Cain's consent. These latter steps taken by Ms. Hodgson come with legal fees, a financial burden which she has borne.

### **Parenting Time**

[68] As a result of the difficulties to date between the parents with respect to Mr. Cain's parenting time, I consider it best to accede to the respondent's submission

that the arrangements for Mr. Cain's visitation, also known as parenting time be described in detail in order to avoid, if possible, the parties encountering further difficulties. The arrangements which follow encompass not just the present time, but also anticipate Katelyn moving on from daycare into elementary school at age five, commencing in the school year expected to be 2014 - 2015.

[69] The parenting time order will be as follows:

- a) On the first week Mr. Cain will pick up Katelyn from daycare or school at 3:30 p.m. on Wednesday and drop off Katelyn at daycare or school at 8:30 a.m. on Friday;
- b) On the second week, Mr. Cain will pick up Katelyn from daycare or school at 3:30 p.m. on Friday and will drop off Katelyn at Ms. Hodgson's residence at 5:30 p.m. on Sunday;
- c) Mr. Cain will be responsible for picking up and dropping off Katelyn;
- d) The parents are each entitled to a maximum of three non-consecutive week's vacation time with Katelyn in each calendar year;
- e) Unless otherwise agreed to in advance by the parents, neither parent may have Katelyn in his or her care for a period in excess of 10 consecutive days;
- f) In addition to her vacation time, Ms. Hodgson may travel with Katelyn on two business trips each calendar year, with each trip not to exceed seven consecutive days;
- g) If Ms. Hodgson wishes to travel with Katelyn beyond the two business trips referred to in subpara. (f), each additional trip will be counted against Ms. Hodgson's vacation time referred to in subpara. (d), provided that Mr. Cain is in Vancouver and available to care for Katelyn during the additional trip or trips;
- h) If Mr. Cain is away from Vancouver, or otherwise unable to care for Katelyn during Ms. Hodgson's additional trip(s), Ms. Hodgson may travel with Katelyn on the additional trip(s), in which case the additional trip(s) will not count as part of Ms. Hodgson's vacation time with Katelyn;
- i) If Ms. Hodgson's business trips as described in subpara. (f) interfere with Mr. Cain's parenting time as provided in subparas. (a) and (b), and provided that he is in Vancouver and available to care for Katelyn during either of Ms. Hodgson's two business trips, then the parties will reach an agreement as to when Mr. Cain will recover that lost time with Katelyn;

- j) I include these provisions relating to Ms. Hodgson's business trips as it appears that these trips often involve her travelling to Toronto, the location of her company's head office, where she has in the past, and presumably in the future, take the opportunity to have Katelyn visit both her extended maternal and paternal family members who reside in the Toronto area. I have not made a similar reciprocal provision for Mr. Cain as his business travel involves various conventions or meetings in the United States and Canada as well as his employer's fishing lodge and these do not appear to provide him with an appropriate environment in which to take Katelyn;
- k) Either parent shall be at liberty to travel with Katelyn throughout Canada and the United States provided that the travelling parent provides notice in writing at least 21 days in advance to the other parent for any such travel outside the Lower Mainland of British Columbia. The written notice shall include an itinerary of the planned travel, together with contact information for Katelyn and the travelling parent during the period of travel;
- l) Upon receipt of the written notice, the non-travelling parent will provide his or her written consent to the travelling parent, stating the dates on which the travelling parent is allowed to travel with Katelyn. Such written consent will not be unreasonably withheld or refused;
- m) When Katelyn commences school full-time in approximately 2014, subparas. (d), (e), (f), (g), (h), (i), and (j) relating to vacation times and Ms. Hodgson's business trips will no longer be in effect;
- n) When Katelyn commences school, each parent will be entitled to vacation time with Katelyn for a period of two consecutive weeks during Katelyn's school summer break;
- o) The parents shall exchange the dates for their proposed summer vacation with Katelyn no later than March 31 of each year;
- p) If the parents cannot agree on the dates for their respective summer vacations, Mr. Cain will have right to make any final decision on summer vacation dates in the odd calendar years and Ms. Hodgson shall have the right to make any final decision on summer vacation dates in the even calendar years;
- q) If a statutory holiday falls on a Monday, unless otherwise agreed to in advance by the parents, the parent who has Katelyn for the weekend will keep Katelyn in his or her care until 5:30 p.m. on the statutory holiday Monday. The statutory holidays include Thanksgiving, Remembrance Day, Family Day, Victoria Day, Canada Day, B.C. Day, and Labour Day;

r) The parents shall alter their respective weekends with Katelyn with the aim of alternating the statutory holidays annually, and each parent shall be at liberty to apply to court for a review regarding statutory holidays in the event of a disagreement;

s) Special days will be dealt with as follows:

- 1) On Halloween, Mr. Cain will pick Katelyn up from daycare or school at 3:30 p.m. on October 31, 2012, and will drop Katelyn off at daycare or school the following morning at 8:30 a.m. The parents will alternate Halloween with Katelyn each year;
- 2) At Christmas and New Year's while Katelyn is attending daycare, Mr. Cain will pick Katelyn up from daycare or Ms. Hodgson's residence as appropriate at 8:30 p.m. on December 24, 2012 and have Katelyn until 4 p.m. on December 25, 2012 at which time he will drop Katelyn off at Ms. Hodgson's residence.

Ms. Hodgson will have Katelyn from 4 p.m. on December 25, 2012 to 8:30 a.m. on December 27, 2012, at which time Ms. Hodgson will drop Katelyn at daycare.

Mr. Cain will pick up Katelyn up from daycare at 3:30 p.m. on December 31, 2012, and will drop Katelyn off at Ms. Hodgson's residence at 5:30 p.m. on January 1, 2013, after which the regular parenting time will resume.

While Katelyn is in daycare the parents will alternate the Christmas morning, Christmas Day and New Year's schedule each year.

- 3) At Christmas and New Year's after Katelyn starts school, the Christmas break will commence at 3:30 p.m. on Katelyn's last day of school and end at 8:30 a.m. on the day she returns to school. The Christmas break will be divided into two periods, the first period commencing at 3:30 p.m. on the first day of the break and ending at 8:30 a.m. on the middle day of the Christmas break. The second period will commence at 8:30 a.m. on the middle day of the Christmas break until 8:30 a.m. on the day Katelyn returns to school.

Commencing in the first Christmas after Katelyn commences school, Mr. Cain will have Katelyn during period one and Ms. Hodgson will have Katelyn during period two.

In any given year, in the event that Christmas Day does not fall in period one, that period one shall be extended to 8:30 a.m. on December 26.

The parties will alternate the Christmas break schedule.

- 4) At Easter, Mr. Cain will pick Katelyn up from Ms. Hodgson's residence at 8:30 a.m. on Good Friday in 2013 and will drop Katelyn off at Ms. Hodgson's residence at 7:30 p.m. on the Saturday, the day following Good Friday. Ms. Hodgson will have Katelyn until 8:30 a.m. on Easter Monday after which the regular parenting times will resume.

While Katelyn is in daycare, the parents will alternate the Easter schedule.

- 5) After Katelyn starts to attend school, the parents will share the spring break which will be deemed to commence at 3:30 p.m. on Katelyn's last day of school and end at 8:30 a.m. on the day Katelyn returns to school.

If the spring break is just one week in duration, the parents will alternate the break with Katelyn. In her first year in school, assumed to be 2015, Mr. Cain will have the spring break with Katelyn on every odd numbered year and Ms. Hodgson will have the spring break with Katelyn every even numbered year.

However, if Katelyn's spring break is two weeks in duration, she will divide her time between her parents. In her first year in school, again assumed to be 2015, Mr. Cain will pick Katelyn up from school at 3:30 p.m. on the last day of school prior to the break commencing and deliver her to Ms. Hodgson's residence at 8:30 a.m. on the following Saturday. Ms. Hodgson will then drop Katelyn off at school at 8:30 a.m. on the Monday morning at the end of the spring break.

The parents will alternate the spring break schedules for each year in which Katelyn's spring break is two weeks in duration.

- 6) If Katelyn's birthday falls on a weekday Mr. Cain will pick her up from daycare or school at 3:30 p.m. and will drop Katelyn off at Ms. Hodgson's residence at 7:30 p.m.

If Katelyn's birthday falls on a weekend, the parent who does not have parenting time with Katelyn will have Katelyn from 9 a.m. to 2 p.m. on Katelyn's birthday.

- 7) On Mother's Day Ms. Hodgson will have Katelyn from 8:30 a.m. to 5:30 p.m. regardless of Mr. Cain's parenting time schedule.

- 8) On Father's Day Mr. Cain will have Katelyn from 8:30 a.m. to 5:30 p.m. regardless of Ms. Hodgson's parenting time schedule.

[70] I am usually reluctant to set out detailed parenting time arrangements such as this, preferring a more flexible arrangement which allows the parents to more easily alter and modify the parenting arrangements when circumstances require modifications to their parenting arrangement. However, I recognize that such detail is required in this situation and that hopefully it will preclude further difficulties.

[71] I also recognize that the foregoing arrangements addressing parenting time contain, by their myriad of detail, the potential for confusion and I, therefore, give the parties liberty to apply for clarification should such be needed.

[72] Ms. Hodgson submits that the parenting time arrangements, including statutory holidays, special days, Christmas and spring breaks should be subject to review upon request by either parent upon Katelyn reaching eight years of age, some five years hence. If the parents are unable to agree to any proposed revision of the parenting time arrangements upon the review, Ms. Hodgson submits that either parent would then be at liberty to apply to the court for a determination of the parenting arrangements. The objective sought by Ms. Hodgson's submission is to preclude yet another extensive and financially demanding hearing which has the potential for disruption and divisiveness to the relationship between the parents and Katelyn.

[73] While I appreciate the aim of Ms. Hodgson's submission, I am loathe to make the order requested as much can happen over the five year period she proposes. I will, however, order that the review Ms. Hodgson envisages might more appropriately be sought no sooner than three years from the date these reasons are filed. By that time, August 2015, Katelyn will be six years of age and in elementary school, and the parents will have had the time to settle into the parenting arrangement described in these reasons and might, with patience, have worked through their differences and reached a consensus with respect to the parenting of Katelyn.

**Child Support and Section 7 Expenses**

[74] During the trial, counsel narrowed their differences with respect to the arrears owing by Mr. Cain as well as his monetary obligation for s. 7 expenses, specifically daycare costs and child support.

[75] Ms. Hodgson seeks child support and s. 7 expenses from Mr. Cain retroactive to Katelyn's birth on February 5, 2009, asserting that the combined arrears amount to \$6,008. I am satisfied that as of the trial, Mr. Cain owes Ms. Hodgson arrears on Katelyn's daycare costs of \$2,692, child support of \$3,172, and s. 7 expenses of \$144, for a total of \$6,008. That sum is to be paid in full by Mr. Cain on or before December 1, 2012. I set this date as it follows the date upon which Mr. Cain anticipates receiving a bonus or commission from his employer. I direct that Mr. Cain's 2012 bonus be used to pay most, if not all, of the \$6,008 in arrears he owes to Ms. Hodgson. If the bonus is insufficient to pay this \$6,008 debt, the sum remaining will be paid by Mr. Cain at the rate of \$300 a month commencing December 1, 2012.

[76] With respect to child support, I order that Master Taylor's August 9, 2011 order directing Mr. Cain to pay child support of \$446 a month and s. 7 expenses of \$223 a month will endure until July 1, 2012. I conclude that Mr. Cain's child support obligation pursuant to the *Federal Child Support Guidelines* (the "Guidelines") amounts to \$432 a month commencing July 1, 2012, based on his *Guideline* income for 2011 of \$46,631. The child support will be payable in two instalments of \$216 on the 1st and 15th of each month.

[77] Mr. Cain's obligation to pay s. 7 daycare expenses to Ms. Hodgson amounts to \$243 a month commencing July 1, 2012, payable in two monthly instalments of \$121.50 on the 1st and the 15th of each month, the \$243 being his proportionate share of the daycare expenses of \$702 a month. Mr. Cain's 2011 income was \$46,631 and Ms. Hodgson's 2011 income was \$88,000, resulting in the daycare expenses being paid 35 percent by Mr. Cain and 65 percent by Ms. Hodgson.



[78] I further order that Ms. Hodgson deliver to Mr. Cain copies of all invoices she receives from Katelyn's daycare provider.

[79] To preclude any further confusion between the parties regarding the timely payment by Mr. Cain of child support and s. 7 expenses (daycare in this case), together with the arrears owing of \$6,008, and to ensure that an accurate and complete record is maintained with respect to the arrears, child support and s. 7 expenses, I order that the parties enrol forthwith in the Family Maintenance Enforcement Program ("FMEP"), and that Mr. Cain deliver his payments on the arrears owing, child support and his share of the s. 7 expenses to the FMEP as required after enrolment.

[80] To determine child support and the sharing of s. 7 expenses payable in the future, the parties shall exchange copies of their complete income tax returns as filed with the Canada Revenue Agency ("CRA"), together with notices of assessment received from the CRA on or before May 31, 2013, and on the 31st day of May each year thereafter. Copies of any notices of reassessment by CRA received by either party will be forwarded to the other party forthwith upon receipt.

[81] Following the exchange of the income tax returns and assessment notices, the parties shall then adjust the child support payable by Mr. Cain to Ms. Hodgson based on Mr. Cain's prior year's line 150 income and that adjusted figure will become Mr. Cain's child support amount payable commencing July 1, 2013, and on each month thereafter until the next adjustment takes place on the subsequent July 1 of each year thereafter.

[82] The parties will also calculate their respective proportionate share of the s.7 special and extraordinary expenses for Katelyn based on their respective prior year's incomes in accord with the *Guidelines*. The parties shall adjust the amount of Mr. Cain's proportionate share of the s. 7 expenses, including the daycare expenses, and shall fix a specific dollar figure representing the new proportionate share, commencing July 1, 2013 and on July 1 of each year thereafter.

[83] The parties will repeat the adjustment process for child support and s. 7 expenses each July 1 thereafter for so long as there is an obligation to make such payments. The parties will advise the FMEP, in writing, and signed by both of them by July 1, 2013 and each year thereafter, of any changes in the amount of child support and s. 7 expenses payable by Mr. Cain or, if circumstances change, by Ms. Hodgson.

[84] In his August 9, 2011 order, Master Taylor directed that Mr. Cain not smoke tobacco or marijuana in his apartment or around Katelyn when he is spending parenting time with her and that he ensure Katelyn is not exposed to tobacco or marijuana smoke while she is in his care. After considering the evidence with respect to tobacco and marijuana, I conclude it appropriate that those provisions found in Master Taylor's order be included as terms of this judgment.

[85] The parties will arrange with Supreme Court Scheduling in Vancouver for a suitable date upon which to address the question of costs.

"R.M. Blair J."

BLAIR J.