

# SUPREME COURT OF YUKON

Citation: *JGSF v KJH*,  
2025 YKSC 10

Date: 20250203  
S.C. No. 24-B0061  
Registry: Whitehorse

BETWEEN

J.G.S.F.

PLAINTIFF

AND

K.J.H.

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff

Kelly Labine

Counsel for the Defendant

Amy Steele

**This decision was delivered in the form of Oral Reasons on February 3, 2025. The Reasons have since been edited for publication without changing the substance.**

## REASONS FOR DECISION

[1] DUNCAN C.J. (Oral): A.J.D.F. will be [redacted] next week. He is the son of K.J.H. and J.G.S.F., both of whom love and care about him very much. This is a difficult case. The mother, K.J.H., has relocated without notice to the father with A.J.D.F. to live in Olds, Alberta, with her mother, stepfather, and siblings. She has been in Alberta since October 2024. The father, J.G.S.F., lives in Mayo, Yukon, with his parents in their home.

[2] There are two applications. The first is an application by the father for custody and primary residence of A.J.D.F. with the father. The second application is by the mother for relocation to Olds, Alberta, with A.J.D.F. and primary care and residence with her. The parents have now agreed to joint custody, so the main issues are primary residence and relocation.

[3] This case is especially difficult because unlike many other cases of this kind, where one parent wants to relocate, both parents seem to care about each other and are trying to develop and maintain an amicable co-parenting relationship for the sake of their son, and both want the other parent to play a significant role in A.J.D.F.'s life. The impediment to facilitating this is the mother's desire to remain in Alberta and the father's desire to stay in Mayo.

[4] I will review the background in summary form and then I will address relocation and primary residence together. The relocation issue is how this matter first came to court, since the mother promised the father in writing that she would be visiting family in Alberta for 10 days but then did not return.

[5] But primary residence is inextricably connected with the relocation decision. A decision that relocation is not permitted means that unless the mother chooses to move back to Mayo, the father will have primary residence. If relocation is permitted, then the mother will have primary residence unless the father moves to Olds, Alberta.

[6] Decisions in both relocation and primary residence require, first and foremost, a determination of what is in the best interests of A.J.D.F. So, I will review the legal principles applicable to both relocation and primary residence, apply them to the facts here and then give my decision.

## Background

[7] The parents met online at the end of 2021 and their relationship began in person in March 2022, in Alberta, when they were 22 and 21 years of age. They travelled to Mayo for a visit in March 2022 and stayed there until October 2022, when they returned to Alberta. The father was working to support them in both Mayo and Alberta.

[8] In June 2023, when the mother was 4½ months pregnant, they agreed to return to live in Mayo for financial reasons. The father immediately got a better paying job and the two found a dry cabin to live, showering two doors away at the father's grandfather's house. When their son was born on [redacted], they moved into a new cabin with plumbing.

[9] The parents argued throughout their relationship. When A.J.D.F. arrived, the stresses and pressures of raising a child and trying to live a healthy balanced life increased the arguments. The mother, who had suffered from depression in the past, struggled with postpartum depression and feeling as though she were losing herself. She did not feel sufficiently supported by the father, as he was working most days and had other interests, such as fitness influencing. She felt trapped in Mayo without a driver's licence, a job, and her own family support. The father was trying to help her by encouraging her to socialize more and by offering to work on co-parenting together. They broke up and got back together many times.

[10] The parents described several incidents that occurred during that time in different ways. It is difficult to know exactly what occurred from the conflicting affidavit evidence. It is also difficult to make credibility findings on the affidavit evidence. So, I will focus first

on the essentials of what is agreed upon by the parties about these incidents, and I will also make note of where there is disagreement.

[11] On Christmas Eve, both had been drinking, although neither to the point of intoxication. They returned home and the mother told the father that she did not want to be with him anymore and then barricaded herself with A.J.D.F. in the bedroom with a dresser against the door. The father heard banging and screaming and broke into the room and took A.J.D.F. away because of the mother's emotional state. The father and mother were both yelling. The mother said she was having a panic attack. She called the father's dad for help and texted her own mother to get a plane ticket to Alberta. The father's dad helped to diffuse the situation.

[12] Shortly after, the father's aunt came by to drop off some formula and the situation escalated again. The mother said that the father yelled at his aunt and had a filleting knife which was bloody because he was using it to hurt himself. The father denies having a knife.

[13] The mother left the house with the father's aunt and spent the night in his uncle's cabin with A.J.D.F. The mother said she reported this incident to the RCMP, but the father had no knowledge of that, and no charges were ever laid. Both agreed that the situation was intense; both were emotionally upset and yelling. There was no evidence of physical violence by the father against the mother.

[14] The next incident, described in different ways by the parents, occurred in September 2024. The mother was hired to babysit the father's nephew and niece, ages [redacted] and [redacted] at his parents' home while the parents were in Whitehorse. The father was helping her.

[15] The affidavit evidence again is conflicting. There were some arguments in the early morning, some yelling, name-calling by the father of the mother, slamming doors, which led to the mother texting her mother in Alberta and the mother in Alberta calling the RCMP. Although the situation is not clear, the mother said the father was angry, critical of her, trying to get her to leave, and trying to take her phone. The RCMP report described no physical violence, that the father was pacing and agitated on their arrival, and that the mother was peacefully sitting on the couch with A.J.D.F.

[16] Family and Children Services were contacted as a result of the police involvement and the mother spoke to them, among other things, about having nowhere to go and only having the F. family as support.

[17] After that September incident, the two began living in separate cabins close to one another. The mother had A.J.D.F. in her cabin. The father visited the two of them frequently, almost daily, and sometimes stayed overnight. Although the two had broken up, they still behaved in many ways like a family unit. This was no doubt a confusing emotional time.

[18] A few weeks after the September incident, another argument ensued, and the mother told the father to leave her cabin. The father became afraid she was going to leave Mayo with A.J.D.F. He grabbed diapers, wipes, took A.J.D.F., and was on his way back to his cabin. The mother then threatened to leave Mayo with A.J.D.F. if he left. He threw the wipes, he says, at the shelf behind the mother; she says he threw the at her. He then stayed at her cabin and played with A.J.D.F. until things were calmer. There was no contact between the wipes and the mother.

[19] Similar themes emerged during these arguments. The mother was angry and jealous that the father was texting with other young women, and she believed he was cheating on her. This betrayal made her anxious and upset. The father was continually worried that the mother would make good on her threats to leave Mayo with A.J.D.F. to live in Alberta. This fear made him agitated and upset. The uncertainty surrounding the future of their relationship and the implications of a complete breakup created tension and stress for both of them.

[20] At the same time, during this period and, in fact, continuing to this day, the evidence of texts between them, the amount of time they spent together in Mayo and in January in Olds, Alberta, demonstrates ongoing mutual caring and certainly a shared love for A.J.D.F.

[21] In mid-October 2024, the mother said she wanted to visit her family in Alberta with A.J.D.F. She agreed in writing that she would return to Mayo on October 28th. During the visit, she spoke regularly with the father, and had FaceTime calls with him so he could see A.J.D.F. and interact with him. On October 28th, however, the mother stopped communicating with the father. Shortly after, her mother texted the father's mother to advise that the mother and A.J.D.F. would not be returning to Mayo and that A.J.D.F. was safe. This turn of events gave rise to the father's application.

[22] Since October 18th, the day of the mother's departure, the father has been communicating regularly with A.J.D.F. by FaceTime. Between January 1st and January 10, 2025, the father travelled to Olds at his own expense and saw A.J.D.F. every day from 11 a.m. to 8 p.m.

[23] Turning to the legal principles, the most recent pronouncement by the Supreme Court of Canada on the legal principles applicable to relocation in the common law context is *Barendregt v. Grebliunas*, 2022 SCC 22. The Supreme Court said:

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

[24] The Supreme Court of Canada went on to describe the many factors that a court must take into account, in general, in determining best interests of a child, including:

- the history of caregiving;
- incidents of family violence;
- a child's cultural, spiritual upbringing and heritage;
- the willingness of each parent to support the development of the relationship with the other parent; and
- the principle that that child should have as much time as possible with each parent, as is consistent with the best interests of the child.

[25] In addition, there are specific factors to be considered in relocation cases, such as:

- the reasons for the relocation;
- the impact of the relocation on the child;
- the amount of time spent with the child by each person with parenting time;

- the reasonableness of the proposal of the relocating parent to allow the other parent parenting time, decision-making responsibility or contact, given the location of the new place of residence and travel expenses;
- whether each person with parenting time or decision-making responsibility has complied with obligations under family law legislation, and the likelihood of future compliance.

[26] In this case, the following factors are the most relevant:

- the history of caregiving;
- the reasons for relocation and the impact of family violence;
- the parenting time factor and the reasonableness of the proposal of the mother to allow the father parenting time;
- the compliance with obligations under family law and the likelihood of future compliance.

[27] All of these factors need to be looked at in the context of the best interests of the child — of A.J.D.F. in this case.

[28] Best interests are also defined in the *Children's Law Act*, RSY 2002, c 31 ("*Children's Law Act*") in the Yukon for the purposes of custody and incidents of custody, which would include residence and access. There is some overlap between the relocation factors and the best interest tests.

The factors for determining the best interests of A.J.D.F. in the Yukon, which is set out in s. 30 of the *Children's Law Act*, is as follows:

- (a) the bonding, love, affection and emotional ties between the child and
  - (i) each person entitled to [claim] custody ...,



- (ii) other members of the child's family who reside with the child, and
- (iii) persons, including grandparents involved in the care and upbringing of the child;
- (b) the views and preferences of the child (In this case, that is not applicable because A.J.D.F. is too young.)
- (c) the length of time ... the child has lived in a stable home environment;
- (d) the ability and willingness of each person applying for custody of the child to provide the child with guidance, education, the necessaries [as written] of life and any special needs of the child;
- (e) any plans proposed for the care and upbringing of the child;
- (f) the permanence and stability of the family unit with which it is proposed that the child will live; and
- (g) the effect that awarding custody or care of the child to one party would have on the ... other party to have reasonable access to the child.

[29] Finally, past conduct under the *Children's Law Act* is not relevant unless it is relevant to the ability of the person to have care or custody of the child.

[30] There is no presumption of law or fact that best interests of the child solely because of the age or sex of the child are best served by placing the child in the care and custody of a female rather than a male or male rather than a female.

[31] I will consider the general best interests of the child throughout. I find the specific factors most relevant from s. 30 are:

- the length of time that the child has lived in a stable home environment;  
and

- the permanence and stability of the family unit in which it is proposed the child will live.

[32] The first factor to be considered is the history of caregiving. The parents disagree on who has been the primary caregiver for A.J.D.F. over his short life.

[33] The mother says that she has provided most of the care to him: feeding, cleaning, changing, getting him to sleep. The mother says the father worked most days, came home, and would go online or play video games. She said the father was detached from A.J.D.F.'s caregiving needs. She fears that the father does not know enough to care for him on a day-to-day basis and that if A.J.D.F. were to live in Mayo, the father's mother would provide most of the day-to-day caregiving.

[34] The father deposed that he has been actively caring for A.J.D.F. since his birth: staying up with him at night, changing diapers, making bottles, and feeding him. He says although he worked during the day, he rose early in the morning to be with A.J.D.F.; in the evenings, he would keep him on his lap while playing video games or he would play guitar with him.

[35] The evidence supports the father's assertion that he played a large role in parenting. He and A.J.D.F. clearly have a strong bond. A.J.D.F.'s excitement to see him was evident from the affidavit material, calling him "Dada" (phonetic) and even recognizing and communicating with them over FaceTime, which is unusual for a child of such a young age. The father was able to care for A.J.D.F. for nine days for most of the day without assistance in Alberta. The mother asked the father on one evening to come over to help her with A.J.D.F.'s bath, as he was crying constantly.

[36] However, given A.J.D.F.'s young age, I find that the mother has been the primary caregiver thus far. The father's work and other commitments and life choices meant that he did not spend the same time with him as the mother did, and I accept her evidence that she provided for his daily needs most often.

[37] Yet there was clearly a shared parenting arrangement, and the father has been and continues to be an involved parent. This is a situation where even though the mother has been A.J.D.F.'s primary caregiver, in my view, there is no burden of proof in her favour. The views of both parents about A.J.D.F.'s best interests are entitled to respect.

[38] The next factors are reasons for relocation and family violence. These two factors are linked, so I will address them together. The mother says that the father's escalating violence against her is what caused her to leave Mayo and not return without telling him in advance. She also described the father as coercively controlling. She says he did not like it when she texted her friends and family, which has been denied by the father except on one occasion; she had no bank account; no means of transportation out of Mayo or within Mayo; no job until the fall of 2024; and was socially isolated.

[39] The father agrees that this was her situation but said that these were her choices.

[40] On a review of the allegations of family violence as described by both parents, the RCMP report, the Family and Children Services notes, and the evidence of the current and ongoing relationship between the parents, I do not accept the mother's characterization of the incidents as escalating violence against her by the father, justifying her need to leave suddenly without notice. I do not dispute or minimize that

there were incidents at Christmas Eve 2023, in September and October 2024; and I accept that the two parents were arguing regularly, yelling, and that at least twice the father was throwing things and yelling at the mother. These incidents are troubling, and it is not in A.J.D.F.'s best interests to be exposed to these kinds of altercations between his parents.

[41] The reasons for these altercations may be attributed to issues of young parents trying to cope with a new young baby, the mother's jealousies and feelings of anger at being unfairly criticized by the father, and the father's fears of the mother leaving Mayo with A.J.D.F.

[42] I note that the police did not lay charges when called after the September incident. Other than a home visit and support, Family and Children Services made no efforts to remove A.J.D.F. from the father's care. The mother's interactions with the father by phone and in person during his January visit, as evidenced by the texts and the affidavit evidence, did not seem to be those of a person who was afraid, controlled, or coerced. I do not accept that the father established an atmosphere of coercive control. There is no evidence of that control in the text messages.

[43] The father's evidence before the Court is that he encouraged the mother to socialize, and she refused. He encouraged her to work; she chose not to until she began the daycare job in September of 2024. He encouraged her to get her driver's licence, but she did not pursue this vigorously; and she chose not to have a bank account. The mother also could have obtained counselling for her depression in Mayo. I note that a co-parenting counselling session was booked in the fall before she left for Alberta, but it was not pursued.

[44] I have sympathy for the mother's situation. There is no doubt that she felt isolated. She is not from Mayo. It is a small community that she did not particularly like. She is away from her own family, and she was having to cope with the stresses of being a new young mother. I acknowledge her improved mental health and family support in Alberta and the fact that this is better for A.J.D.F. As noted by the court in *Barendregt*:

[173] ... "the reality [is] that the nurture of children is inextricably intertwined with the well-being of the nurturing parent" ... A child's welfare is often advanced in tandem with improvements in the parent's financial, social, and emotional circumstances. ... (citations omitted)

[45] The mother's move to Alberta though does not appear to provide other advantages that would contribute to A.J.D.F.'s best interests. She is earning less money at the restaurant job than she did at her work at the daycare in Mayo. Although she is living rent free in her mother's home, she and A.J.D.F. share a room, and there is no confirmation of how long they can stay there. She has not taken A.J.D.F. to any activities, although she has intentions to do so. In Mayo, she could also live rent free in accommodation offered by the father's mother. She could likely have her job back at the daycare. A.J.D.F. could attend the same daycare for free. The mother does not propose a real plan for A.J.D.F. or describe with concrete examples how and why life would be better for him in Olds, Alberta, than in Mayo.

[46] The next factor is compliance with court orders. The deception of the mother in signing an agreement to return to Mayo with A.J.D.F. after her family visit in Alberta and not doing so, giving no hint of her intentions at any time during her absence, is troubling. As I said in the case of *G.J. v. C.M.*, 2021 YKSC 20, where the circumstances were similar, this shows a lack of respect for the father's role as a parent to A.J.D.F. and it

assumes it is in A.J.D.F.'s best interests to be apart from his father and his father's extended family.

[47] It is possible that the mother received poor advice from a social worker that there would be no negative consequences to her relocating without a court order or without consent from the father. At the very least, she may have received mixed messages, as Victim Services appeared to advise her that this was a matter for family court if there were no agreement with the father, and that they could not advise her to leave with A.J.D.F. There is some indication in the Family and Children Services notes that they told her they could support her if she left Mayo with A.J.D.F. for Alberta — and this is the evidence of possible mixed messages she may have been receiving.

[48] I have already provided my view that the incidents on Christmas Eve, in September and in October, as described, did not rise to the level of a compelling circumstance to justify the mother's leaving without notice or court order. Instead, it seems more "consistent with a self-help intention to impose a new status quo ... beneficial to herself" (*Pret-Lescard v. Pret-Lescard*, 2023 ONSC 1901, para. 58).

[49] Since the relocation, the mother has acknowledged through her lawyer that she made a bad decision, and she has been relatively generous in allowing access by FaceTime and in person to the father. While the mother's more recent behaviour since the court application suggests that future compliance with court orders is likely, there remains a question about whether she will put herself first before considering A.J.D.F.'s best interests in the future.

[50] The next factors are stable home environment, permanence, and stability of the family unit. I am considering those two factors together. The first year of A.J.D.F.'s life

was in Mayo. He had the benefit of contact with both parents, a large extended family on the father side, including cousins, grandparents, great-grandparents, uncles, and aunts. Family members were close by and willing to care for him. The grandparents' home is approved by Family and Children Services. A.J.D.F. was getting regular medical care at the nursing station, was socializing with other children at the daycare once the mother started working there in September. He was taken outside in nature frequently by his extended family and exposed to musical gatherings when the extended family got together.

[51] The grandmother has been a strong, consistent, and stable support to both A.J.D.F. and the parents, and has provided affidavit evidence pledging her continued support if A.J.D.F. returns to Mayo with babysitting, providing A.J.D.F. and the father a place to live in their house, opening her house to the mother or another cabin to the mother to stay in if she chooses to return.

[52] Other than the exposure to the altercations described by the parents, A.J.D.F. has had a stable home life in Mayo for the first year of his life.

[53] The mother is living in Alberta with her mother, stepfather, and two siblings, ages 18 and 21. Sadly, her younger sister attempted suicide by ingesting pills earlier in 2024, but her mental health appears to have improved, and she is back at school. Although the mother appears to have a close relationship now with her own mother, there have been fractures in the past. The mother candidly and bravely admits that she experienced trauma in her childhood, including abuse from an extended family member — a partial cause of her episodic depression and mental health struggles.

[54] There is no evidence from any members of the mother's family about their relationship with A.J.D.F., any activities they enjoy with him, care or support they provide him, or how long the mother and A.J.D.F. can stay in their home. This absence of evidence makes it difficult to assess the stability and permanence of the mother's family unit in Alberta or the supports available to A.J.D.F. in Alberta on an ongoing basis.

[55] The evidence before me favours Mayo as the more stable and permanent family unit for A.J.D.F.

[56] The next factor is parenting time and the proposal by the relocating parent to allow access to the other. There is no question in this case that it is in A.J.D.F.'s best interests to have as much parenting time as possible with both parents. The parents agree on this as well. While each parent criticizes the other's parenting abilities — for example, the mother says the father has not done enough practical caregiving and does not understand A.J.D.F.'s practical needs, and his mother would be doing most of the caregiving work and the father says that the mother does not get A.J.D.F. onto a proper sleep schedule and does not engage him in any activities — these are parenting skills that could improve over time and with experience, and they, in my view, do not negatively affect the parenting time afforded to A.J.D.F. by either parent. It is this element that makes this case, again, excruciatingly difficult, given the locations of each parent.

[57] The mother has been offered a place to stay rent free in Mayo by the father's mother if she were to return. In Olds, Alberta, the father would have to find and pay for his own accommodation. The father has a well-paying job in Mayo, and he would have



to look for work in Olds, and it may be less well-paying than his current job, although that is speculative. The mother has a part-time job in Olds working in a restaurant several evenings a week. She could likely get her job back at the daycare in Mayo if she returned — full-time — where she would earn more money.

[58] A.J.D.F. would benefit from greater financial support and a stable living environment for both parents if he and the mother were to return to Mayo. A return of A.J.D.F. to Mayo provides a greater likelihood of his contact with both parents, which is in his best interests. If the mother does not return to Mayo to live, it will be less expensive for her to visit for extended periods of time because of the accommodation that the father's mother is willing to provide, and this will lead to a better chance of maximum contact for A.J.D.F. with both parents.

[59] Considering the best interests of A.J.D.F., the strength of the family unit in Mayo, especially in the absence of evidence about the family unit in Alberta, the length of time A.J.D.F. has spent there, the greater ease for him to have access to both parents in Mayo, my finding that the allegations of escalating violence by the father were not well-founded, and that the mother's decision to attempt to relocate without notice was unreasonable and unjustified and gives reason for concern with her future compliance with family law court orders and family law legislation, all leads to my decision that the mother's relocation application is denied and the father's request for primary residence is granted.

[60] The child shall be returned to Mayo. We can talk, counsel, about timing. He shall live in the home of M.F. with the father and the primary residence will be with the father.

[61] Reasonable and generous access shall be provided to the mother, as agreed.

[62] The mother shall not remove the child from the Yukon Territory without written permission from the father or a further order of this Court.

[63] Now, I wanted to discuss with counsel a couple of things. But before I do that, I just want to say a few words to J.G.S.F. and K.J.H.

[64] I appreciate that both of you are young, that A.J.D.F. is very young, and his needs and best interests will change as he grows over the coming months and years. Despite everything that has happened between the two of you over the last months, your efforts to continue an amicable and respectful relationship for the sake of A.J.D.F. are commendable. I strongly encourage you — in fact, I plead with you — to continue this approach as you work through this challenging co-parenting relationship. Get counselling if you feel that you need it. Get it separately. Get it together. A.J.D.F. will benefit from your mature and respectful relationship which minimizes conflict and puts him first.

[65] I know this is a very difficult decision for you, in particular, K.J.H., and I do not know what your decision will be about whether you will stay in Alberta or return to Mayo. But if you return to Mayo, please consider seeking out supports that are there for you in Mayo: the support of counsellor L., the F. family. I know it is not your family, but they are willing and able to provide support to you for the sake of A.J.D.F. You are his mother — and they know that, and they will not forget that. Seek out other supports in the community through your work, through other activities, through daycare, or through other parents of young children.

[66] I appreciate, as I said, that this is a difficult situation. But the fact that the two of you are able to communicate as well as you have been through this very intense

situation gives me hope that you have the basis of continuing a respectful relationship. And, again, that will only benefit A.J.D.F. in the best possible way.

[DISCUSSIONS]

[67] MS. LABINE: J.G.S.F., when would you be available to go and pick up A.J.D.F.?

[68] J.G.S.F.: I could go anytime this week.

[69] THE COURT: So, can we say within two weeks? Two weeks from today? So on or before February 17th.

[DISCUSSIONS]

[70] Joint custody is ordered.

[DISCUSSIONS]

[71] If the mother returns to live in Mayo, the parents may share the care of A.J.D.F. 50-50. It does not have to be that exact wording, but to that effect.

[DISCUSSIONS]

[72] I will add the RCMP enforcement clause to the order but say that it will be in effect until the end of February.

[DISCUSSIONS]

[73] There was some evidence about use of marijuana, I think, at least — maybe not recently, but in the past. I do not think there is any harm in putting it in. Based on the evidence in the past and concerns that there may be issues in the future, I will include that clause.

[DISCUSSIONS]

[74] The rest of the defendant's application will be dismissed, so paras. 8 to 12 are dismissed and I do not think we need to deal with para. 13. But thank you for putting it in there. It is helpful.

[DISCUSSIONS]

[75] If and when K.J.H. returns to live in Mayo, the parents shall share parenting time of A.J.D.F. on a 50-50 basis.

[DISCUSSIONS]

[76] When I said that was before you said that you were planning to come back to Mayo yourself. If more time is needed for you to get your things together, arrange a place to live, and so on, I am willing to extend that — although I am aware that every week that passes, it is another week that J.G.S.F. does not see A.J.D.F.

[DISCUSSIONS]

[77] All right. So, we will leave it at February 17th, then.

[78] Thank you for that, K.J.H.

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DUNCAN C.J.