CITATION: D'Silva v. Ilia, 2025 ONSC 6880
COURT FILE NO.: FS-22-45005-01
DATE: 2025-12-08

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Norra D'Silva, Applicant

AND:

Furat Ilia, Respondent

BEFORE: Kurz J.

COUNSEL: Susan Berry for the Applicant

Garav Gill for the Respondent

HEARD: December 1, 2025

ENDORSEMENT

Introduction

[1] This is a motion by the Applicant mother (the "Mother") for an order allowing for the interim relocation of the parties' two children, M (age 9) and D (age 12), to Dubai. The Mother has sold her home and has recently moved to Dubai. There, she has established a home and obtained a job. She has also arranged for the enrollment of the children in an international English language school in Dubai.

[2] The requested order represents an interim variation of the final order of this court of March 16, 2023. That order calls for shared parenting of the children on a 2-2-5-5 basis, with the Mother entitled to final say on major issues.

[3] For the reasons that follow, I find that this motion is premature. The test for an interim variation of a final parenting order is a very stringent one. Here, the issues raised by this motion require a full trial of the many contested issues.

Background

[4] The parties are both Iraqi Christians, who married in Dubai in 2006 before the Respondent father (the "Father") emigrated to Canada in 2008. From here, the Father sponsored the Mother's immigration to Canada in 2009. The children have never lived in Dubai. They did visit the Emirate for three weeks in the summer of 2025.

[5] The children currently attend a Catholic school in Oakville.

[6] The parties dispute which of them was the children's primary caregiver prior to March 2023. The Mother says that she was the primary caregiver until 2023. She adds that the Father then refused to allow her to see the children for about three months after she left the matrimonial house. She was unsuccessful in obtaining exclusive possession of the matrimonial home. The Father denies most of those allegations.

[7] The Father is a real estate agent and architect. There is a dispute about his income, but it is at least $100,000 per year. The Mother says that she had a successful career in Iraq and Dubai before moving to Canada, a move she claims to have come at the Father's behest.

[8] The Mother argues that it is in the best interests of the children that she be able to relocate them to Dubai prior to trial because:

a. Notwithstanding the March 16, 2023 shared parenting order, she has always been their primary caregiver;

b. Following a three-week trip to Dubai last summer, the children wish to move to Dubai.

c. In its closing letter of September 30, 2024, the Halton C.A.S. (the "CAS") has noted three parenting concerns regarding the Father:

- He slapped D once or twice;

- He frightened M by allowing her to play alone in a park across the street from his home, secured only with a walkie talkie; and

- He has spoken ill of the Mother to the children.

d. The Mother says that the children have told her that the Father is often not around to parent them. Rather, he has engaged a woman to drop them off and pick them up from school. In fact, he may be gone for much of the week. The children even told her that he was away for a week when they could have been in her care.

e. The children will be exposed to less conflict in Dubai than they experience in Halton;

f. They will have opportunities to engage with their Arabic culture in Dubai.

g. The children will have experiences with their maternal family not available in Halton. That includes the care by their seventy-five-year-old maternal grandmother, who will move from Iraq to Dubai to help care for them and a maternal aunt who will also assist.

h. They will have opportunities in the English language school in which the Mother has enrolled them. D, who is an avid soccer player and fan will be able to play at his new school. M will be able to dance, and they will be able to swim.

i. The move will offer the Mother enhanced career opportunities. She claims that her lack of success in Canada is due to the Father's sabotage of her attempts to gain a foothold in certain internet businesses.

[9] The Father opposes the move. He says that the evidence before the court is not sufficient to meet the high bar required to allow for an interim relocation order. He makes the following arguments:

a. The status quo for the past two and a half years has been a shared parenting arrangement. The proposed move will effectively remove him from their lives for most of the year.

b. The Father admits that a woman he has hired conducts some of the drop-offs and pick-ups of the children but denies the remainder of the Mother's claims regarding his parenting time.

c. The children have never spent extended time in Dubai other than a three-week trip this summer, during which the Mother convinced them to agree to the move.

d. The Mother has improperly withheld parenting time from him last summer, when the CAS investigated and ultimately closed its file without further action. That led him to commence this proceeding, which is a motion to change in order to allow him to have final decision-making rights for the children.

e. The Mother's lack of success in Canada was due to her unreasonable career expectations.

f. The maternal grandmother is 75 years old and lives in Iraq, 2,200 km from Dubai. There is no evidence that she is able to move to Dubai. Further she has virtually no relationship with the children as she has not seen them since M's christening about eight years ago. Rather than care for the children on behalf of the Mother, it may turn out to be the other way around.

g. The evidence which the Mother has presented regarding her new job and income is incomplete, as set out below. At the very least, more disclosure is required.

h. Because much of what the Mother claims is contested a trial is required to determine the contested issues.

Applicable Law

Interim Variation

[10] In determining the issues in this motion, the court must consider the law regarding both an interim variation of a final order and an interim relocation order. I will deal with them in order:

[11] In *Epshtein v. Verzberger-Epshtein,* 2021 ONSC 7694, at para. 176, I set out the four-part test for an interim variation of a final parenting order as follows:

a. A strong *prima facie* case that there is a material change in circumstances regarding a parenting issue;
b. The parenting issue must be an important one;
c. The circumstances arising since the final order must be urgent or pressing; and,
d. The moving party must then prove that the remedy sought is in the child's best interests.

[12] The difference between the tests of a serious issue and a strong *prima facie* case was discussed by the Divisional Court in *Loops, L.L.C. v. Maxill Inc.,* 2020 ONSC 5438 (Ont. Div. Ct.), at para. 44. There, the court described the difference, as follows:

> A serious issue to be tried is a flexible standard. There are no specific requirements to be satisfied. The judge is to make only a preliminary assessment of the merits. The threshold to be met is low. The judge must be satisfied that that the application is neither frivolous or vexatious. Conversely, a strong *prima facie* case is a high standard, said, in one case to be "a strong case with a high although not absolutely assured likelihood of success based on the material presently before the court."[1]

Divorce Act Provisions Regarding Relocation

[1] citing *Quizno's Canada Restaurant Corporation v. 1450987 Ontario Corp*., 2009 CanLII 20708, [2009] O.J. No. 1743 (SCJ), at para. 42

[13] The *Divorce Act*, R.S.C., 1985, c. 3 (2nd Supp.), contains provisions regarding notice of relocation and an objection to that notice. They are not in issue here, as proper notice was provided, as well as a proper notice of objection. The remaining relevant relocation provisions of the *Divorce Act* are as follows:

> **16.91 (1)** A person who has given notice under section 16.9 and who intends to relocate a child may do so as of the date referred to in the notice if
>
> > **(a)** the relocation is authorized by a court; or
> >
> > **(b)** the following conditions are satisfied:
> >
> > > **(i)** the person with parenting time or decision-making responsibility in respect of the child who has received a notice under subsection 16.9(1) does not object to the relocation within 30 days after the day on which the notice is received, by setting out their objection in
> > >
> > > > **(A)** a form prescribed by the regulations, or
> > > >
> > > > **(B)** an application made under subsection 16.1(1) or paragraph 17(1)(b), and
> > >
> > > **(ii)** there is no order prohibiting the relocation.
>
> **…**
>
> **16.92 (1)** In deciding whether to authorize a relocation of a child of the marriage, the court shall, in order to determine what is in the best interests of the child, take into consideration, in addition to the factors referred to in section 16,
>
> > **(a)** the reasons for the relocation;
> >
> > **(b)** the impact of the relocation on the child;
> >
> > **(c)** the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons;
> >
> > **(d)** whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement;

(e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;

(f) the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and

(g) whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance.

(2) In deciding whether to authorize a relocation of the child, the court shall not consider, if the child's relocation was prohibited, whether the person who intends to relocate the child would relocate without the child or not relocate.

Burden of proof — person who intends to relocate child

16.93 (1) If the parties to the proceeding substantially comply with an order, arbitral award, or agreement that provides that a child of the marriage spend substantially equal time in the care of each party, the party who intends to relocate the child has the burden of proving that the relocation would be in the best interests of the child.

Burden of proof — person who objects to relocation

(2) If the parties to the proceeding substantially comply with an order, arbitral award or agreement that provides that a child of the marriage spends the vast majority of their time in the care of the party who intends to relocate the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child.

Burden of proof — other cases

(3) In any other case, the parties to the proceeding have the burden of proving whether the relocation is in the best interests of the child.

Power of court — interim order

16.94 A court may decide not to apply subsections 16.93(1) and (2) if the order referred to in those subsections is an interim order.

Case Law Regarding Interim Relocation

[14] In *N.P. v. D.H.*, 2022 ONCJ, 535, at paras. 53-56, Sherr J. of the Ontario Court of Justice summarized the relevant principles which apply in a motion to allow an interim relocation order. I adopt those reasons. Sherr J. wrote:

> **53** The jurisprudence also requires the court to conduct a stringent analysis before permitting a party to relocate a child on a temporary basis.
>
> **54** The leading case for determining if a relocation should be permitted on a temporary motion is *Plumley v. Plumley* [1999] O.J. No. 3234 (S.C.J.), where the court set out the following principles:
>
> a) A court will be more reluctant to upset the status quo on an interim motion and permit the move when there is a genuine issue for trial.
>
> b) There can be compelling circumstances which might dictate that a justice ought to allow the move. For example, the move may result in a financial benefit to the family unit, which will be lost if the matter awaits a trial of the best interests of the children or the best interests of the children might dictate that they commence school at a new location.
>
> c) Although there may be a genuine issue for trial, the move may be permitted on an interim basis if there is a strong possibility that the custodial parent's position will prevail at trial.
>
> **55** The following are additional principles regarding temporary relocation cases:
>
> a) The burden is on the parent seeking the change to prove compelling circumstances exist that are sufficient to justify the move. See: *Mackenzie v. Newby*, [2013] O.J. No. 4613 (OCJ).
>
> b. Courts are generally reluctant to permit relocation on a temporary basis. The decision will often have a strong influence on the final outcome of the case, particularly if the order permits relocation. The reality is that courts do not like to create disruptions in the lives of children by making an order that may have to cause further disruption later if the order has to be reversed. See: *Goodship v. McMaster* [2003] O.J. No. 4255 (OCJ).

c. Courts will be more cautious about permitting a temporary relocation where there are material facts in dispute that would likely impact on the final outcome. See: *Fair v. Rutherford-Fair* 2004 CarswellOnt 1705 (Ont. S.C.J.). In such cases, the court requires a full testing of the evidence. See: *Kennedy v. Hull*, 2005 ONCJ 275.

d. Courts will be even more cautious in permitting a temporary relocation when the proposed move involves a long distance. It is unlikely that the move will be permitted unless the court is certain that it will be the final result. See: *Boudreault v. Charles*, 2014 ONCJ 273.

e. Where one parent moves to another city or community with the child without notice to the other parent, the other parent may apply to have the child returned to the home community. See: *Hazelwood v. Hazelwood*, 2012 ONSC 5069; *Jennings v. Cormier*, 2022 ONCJ 338, per Justice Melanie Sager.

f) There is a difference in a temporary relocation analysis between permitting a temporary move and sanctioning a move that has already happened, particularly when the move is contrary to a temporary non-removal order. A court cannot sanction the latter. See: *Wiafe v. Afoakwa-Yeboah*, 2021 ONCJ 68. This is applicable by analogy when the move is in the face of a written objection to the move. See: *Jennings v. Cormier, supra*.

g) Courts will permit temporary relocation where there is no genuine issue for trial (see: *Yousuf v. Shoaib*, [2007] O.J. No. 747 (OCJ)), or where the result would be inevitable after a trial (see: *Mackenzie v. Newby, supra*, where the court observed that the importance of the father's contact with the child could not override the benefits that the move would have on the child).

56 Although it was a final relocation decision, the Supreme Court of Canada in *Barendregt v. Grebliunis*, 2022 SCC 22, set out the following relocation considerations:

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

b. Even where there is an existing parenting order, relocation will typically constitute a material change in circumstances and therefore satisfy the first stage of the *Gordon* framework (par. 113).

c. The so-called second stage of the *Gordon* framework is often the sole issue when determining a relocation issue. The crucial question is whether relocation is in the best interests of the child (par. 115).

d. In all cases, the history of caregiving will be relevant. And while it may not be useful to label the attention courts pay to the views of the parent as a separate "great respect" principle, the history of caregiving will sometimes warrant a burden of proof in favour of one parent (par. 123).

e. The court should avoid casting judgment on a parent's reasons for moving. A moving parent need not prove the move is justified. And a lack of a compelling reason for the move, in and of itself, should not count against a parent, unless it reflects adversely on a parent's ability to meet the needs of the child. Ultimately, the moving parent's reasons for relocating must not deflect from the focus of relocation applications -- they must be considered only to the extent they are relevant to the best interests of the child (pars. 129-130).

f. Relocation that provides a parent with more education, employment opportunities, and economic stability can contribute to a child's wellbeing. These considerations all have direct or indirect bearing on the best interests of the child assessment (par. 171).

Analysis

[15] Having the reviewed both parties' materials, I find that the Mother's request for relocation on an interim basis is premature. I say that for the reasons which follow.

[16] The Mother says that one of the key reasons for her move is that it provides her with enhanced employment opportunities. She blames the father for sabotaging her employment prospects in Canada by constantly defaming her to their shared cultural community. The Father denies this claim and says that the Mother was never realistic about her career in Ontario, seeking far-fetched opportunities to become a wealthy "influencer". He adds that the Mother's claims regarding her new, allegedly well-paying employment in Dubai are not credible.

[17] The Mother counters that she has produced proof of both her employment as a salesperson and her enhanced income in Dubai. But the evidence she produced is scant and raises questions. The employment letter she produced does not indicate her income. It only refers to a job as a sales representative. Further, the Mother produces no employment contract. Instead she produces one pay stub, which she says is for the Canadian equivalent of $11,460/mo. However that lone pay stub raises as many questions as it answers. In particular:

a. the pay stub does not set out the period of time for which the equivalent of $11,460/mo. covers;

b. The court has not been provided with any evidence of what is it that the Mother sells. Even the name of her employer, “Kastron Trading L.L.C.”, reveals little.

c. Even assuming without deciding that the pay stub which the Mother produced really represents an alleged annual salary of $11,460/mo. or $137,520/year, why would a Dubai company give the Mother that much money for an entry level sales job? The evidence before me fails to provide her qualifications for so high-paying a job.

d. In her sworn financial statement, the Mother claims monthly expenses of $14,399. Even if her income claim is true, she would nonetheless experience a $2,939 net loss every month.

[18] The Mother says that the children wish to move to Dubai. But that wish is based on a three-week “honeymoon” style trip, where they stayed in various hotels around Dubai. That had little to do with their actual life in Dubai. Furthermore and quite worrying is the fact that Stephen G. Cross, who conducted the Voice of the Child assessment, does not believe that the children’s expressed views and preferences are independent. He has clearly articulated that concern as follows:

> It is this clinician's opinion that their choices regarding their wish to relocate to Dubai may not have been made independently. Both children have presented as

> preoccupied with the notion that they wish to live in Dubai with their mother. This theme was evident throughout discussions with both children. The children's wishes in this regard are "black and white", and neither child appears to understand the consequences of moving to a new country, leaving a parent, friends and familiar educational and cultural systems. Neither child is able to fully understand how their relationships with significant people, such as their father, friends, and teachers, would be impacted.
>
> The children are clearly aligned with their mother's wish to relocate to Dubai, and the children's wishes are not held independently from their mother's narrative and wishes. Each child has reported that their mother has talked to them extensively about her wish for them to move to Dubai and has shown them the potential school that they could attend. Both children have focused on the recent trip, which they had taken with their mother to Dubai, where they stayed in hotels and participated in many fun activities, while on vacation.
>
> The words which both children have used are most similar to the words that their mother has used to describe the reasons for moving, namely: Dubai offers a better life than Canada; this is a new opportunity for a new life experience and how they feel connected to Dubai.
>
> The parents are reminded that [D] is eleven years old, [M] is nine years old, and as such, may not contemplate the full implications of the statements made.

[19] The assistance to be offered by the maternal grandmother is questionable at best because of her age, location in Iraq and lack of contact with the children. It is not even clear that she would be allowed to emigrate to Dubai.

[20] The Father is at this time an equal caregiver to the children in a 2-2-5-5 arrangement, subject to any better evidence that he is not caring for the children during his parenting time.

[21] The issue of his family violence, which he mainly denies, requires a trial. The fact that the CAS agrees at least in part with the Mother is not determinative of the issue.

[22] During the course of argument of this motion, I raised the issue of the *Hague Convention on the Civil Aspects of International Child Abduction*, Can. T.S. 1983 No. 35 (the *"Hague Convention*"). Dubai is not a signatory to the *Hague Convention.* If the

children are allowed to move to Dubai on an interim basis and a trial decision reverses that order, it cannot be enforced in Dubai. The Mother's counsel responded she returned the children from their three-week vacation in Dubai last summer. But that was before she obtained her new job and rented a new home. Furthermore, there was no order at the time allowing the move.

[23] The Mother also points out that the Father owes her an equalization payment of $62,500, which was due almost a year ago, on Dec 31 2024. Of course, that too is a reason to return with the children before a court order is made. The Mother also says that she is holding about $300,000 in a Canadian bank, which could operate as security for her return of the children if their return were ordered. That may be the case but is no guarantee of the return of the children if that return were ordered. It would simply result in more court proceedings.

[24] While the Mother has, perhaps rashly, burned her bridges in this jurisdiction by selling her home and moving to Dubai, that is not a reason to accede to her desire to relocate with the children at this time. The issues require the type of full consideration only available at trial.

Conclusion

[25] For the reasons set out above, I dismiss this motion.

[26] Further, I order that this matter be placed on the spring 2026 trial blitz.

[27] I believe that this matter would benefit from a clinical investigation by the Office of the Children's Lawyer under s. 112 of the *Courts of Justice Act,* R.S.O. 1990, c. C.43. If the parties wish, they may bring a 14B motion for that relief to my attention.

Costs

[28] The parties should attempt to resolve the issue of costs on their own. If they are unable to do so, the Respondent, as the successful party, may submit his costs submissions of up to three pages, double spaced, one-inch margins, plus a bill of

costs/costs outline and offers to settle within 14 days of release of this endorsement. He need not include the authorities upon which he relies so long as they are found in the commonly referenced reporting services (i.e. CanLII, LexisNexis Quicklaw, or WestlawNext) and the relevant paragraph references are included. The Applicant may respond in kind within a further 14 days. No reply submission will be accepted unless I request it. If I have not received any submissions within the time frames set out above, I will assume that the parties have resolved the issue and will make no costs order.

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Kurz J.

Date: December 8, 2025