NOVA SCOTIA COURT OF APPEAL
Citation: *Devison v. MacDougall*, 2019 NSCA 87

Date: 20191113
Docket: CA 482207
Registry: Halifax

Between:

Travis Devison

Appellant

v.

Gerri-Lynn MacDougall

Respondent

Judge:	The Honourable Justice M. Jill Hamilton
Appeal Heard:	September 11, 2019, in Halifax, Nova Scotia
Subject:	Family Law, Short Term relationship, Parenting time, Spousal Support and Division of Property
Summary:	The parties have a daughter born before their short one year common-law relationship began. The father financially supported his daughter and the mother after the child's birth, before they lived together. During the year they lived together, they bought land as joint tenants and built a duplex and lived in one of the units for approximately four months. The mother moved out of the unit taking their daughter with her. Thereafter she had primary care of the child, with the father's parenting time increasing over the years. The father and his present common-law spouse lived in one unit of the duplex for over six years. He collected rent from the other unit. He also operated a construction business and his present common-law wife testified that she worked for his company.
Issues:	(1) Did the judge err in the parenting time she allocated to the father?

(2) Did the judge err by imputing income to the father?

(3) Did the judge err in her application of the principles of unjust enrichment when she awarded the mother a 25 percent interest in the equity of the duplex?

(4) Did the judge err in finding the mother was entitled to spousal support and in ordering the father to pay her $6,000 retroactive spousal support?

Result: The judge's Order was corrected to reflect the father's summer parenting schedule, but otherwise the appeal was dismissed with costs of $2,000. The judge did not err in maintaining the parenting status quo, rather than award the father shared parenting on an alternating-week basis, given the child was thriving and some tension still existed between the parents. The judge did not err in imputing income to the father given his failure to disclose relevant financial records, the vaguely described work done by his present common-law spouse for his company and the lack of reliable evidence with respect to his rental income. The judge did not err in awarding the mother a 25 percent interest in the equity of the duplex given the manner in which the land had been acquired, their contribution to its construction and the benefits the father obtained from it. Nor did the judge err in finding the mother was entitled to $6,000 in retroactive spousal support given the mother's need and the father's ability to pay shortly after they separated.

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Respondent

Judges:	Wood, C.J.N.S., Hamilton and Bryson JJ.A.
Appeal Heard:	September 11, 2019, in Halifax, Nova Scotia
Held:	Appeal dismissed, but September 4, 2018 Order corrected to reflect Justice Lee Anne MacLeod-Archer's reasons, with costs, per reasons for judgment of Hamilton, J.A.; Wood, C.J.N.S. and Bryson, J.A. concurring
Counsel:	Stephen Jamael, for the appellant Candee J. McCarthy, for the respondent

Reasons for judgment:

[1] The appellant father, Travis Devison, appeals four aspects of Justice Lee Anne MacLeod-Archer's June 20, 2018 decision (2018 NSSC 150) that determined parenting, support and property issues arising from his separation from the respondent mother, Gerri-Lynn MacDougall, his common-law spouse. He says the judge erred by (1) allocating him too little parenting time with his then nine-year-old daughter; (2) imputing income to him; (3) granting the mother a 25 percent share in the equity of the duplex where they lived in 2011 and (4) finding the mother was entitled to spousal support and ordering him to pay her $6,000 retroactive spousal support.

[2] During the hearing of the appeal, it was agreed that the Schedule A attached to the judge's September 4, 2018 Order did not accurately reflect the parenting time she allocated to the father in Schedule A to her reasons. The Order failed to include the definitions and the father's summer parenting time set out on the first page of Schedule A.

[3] I am satisfied the appeal should be dismissed except to the extent required to correct the judge's September 4, 2018 Order to ensure it corresponds with Schedule A to her reasons.

Background

[4] The mother and father had a two-year on and off relationship before their daughter was born in early 2009. Once she was born, they delayed living together until the father completed his military training in New Brunswick and returned from his deployment in Afghanistan in December 2010.

[5] In December 2010, they began living together in an apartment owned by Mr. Devison's father. On January 25, 2011 they purchased, as joint tenants, a lot of land from Ms. MacDougall's brother. On May 9, 2011, without legal advice, the mother quit claimed her interest in the land to the father to enable him to obtain a construction mortgage to build a duplex on the land. During construction of the duplex, the father worked outside the province for 14 or 15 weeks. In September 2011, when the duplex was complete, the parties moved into one unit of the duplex and rented the other unit. The mother moved out in December 2011, taking their daughter with her.

[6] During the period from 2009 to 2012 the mother was going to university, working part-time and caring for their daughter and the household. The father contributed financially to their support.

[7] Following the parties' separation in December 2011, a series of consent orders were issued. By the time one of the last consent orders was issued on June 29, 2015, the father had moved from limited supervised parenting time with his daughter to having her spend every second weekend, plus a Wednesday afternoon and a Wednesday overnight with him every month during the school year and three days per week during the summer.

Issues

[8] The issues are:

(a) Did the judge err in the parenting time she allocated to the father?

(b) Did the judge err by imputing income to the father?

(c) Did the judge err in her application of the principles of unjust enrichment when she awarded the mother a 25 percent interest in the equity of the duplex?

(d) Did the judge err in finding the mother was entitled to spousal support and in ordering the father to pay her $6,000 retroactive spousal support?

Standard of review

[9] The standard of review applicable to all of the issues is as set out in *Haines v. Haines*, 2013 NSCA 63:

> [5] This Court has consistently stressed the need to show deference to trial judges in family law matters. In the absence of some error of law, misapprehension of the evidence, or on the award that is clearly wrong on the facts we will not intervene. We are not entitled to overturn an order simply because we may have balanced the relevant factors differently. (**Hickey v. Hickey**, [1999] 2 S.C.R. 518, ¶10-12.)
>
> [6] Findings of fact, or inferences drawn from the facts are reviewed on a standard of palpable and overriding error. Matters involving questions of law are subject to a correctness standard. When the matter is one of mixed fact and law and there is an extricable question of law, the question of law will be reviewed on

> a correctness standard. Otherwise, it is reviewed on a palpable and overriding standard. (**Housen v. Nikolaisen**, 2002 SCC 33).

See also: *Van de Perre v. Edwards*, 2001 SCC 60, paras. 9 and 10; *Kuszelewski v. Michaud*, 2009 NSCA 118, para. 16; *Ezurike v. Ezurike*, 2008 NSCA 82, para. 6; *Young v. Young*, 2003 NSCA 63, para. 6; and *MacLennan v. MacLennan*, 2003 NSCA 9, para. 9.

Analysis

(a) Did the judge err in the parenting time she allocated to the father?

[10] Before the trial judge, the father sought shared parenting on an alternating-week basis. The mother sought to retain the status quo with refinements to avoid the type of conflicts that had arisen in the past.

[11] The judge decided that maintaining the status quo with refinements was in the daughter's best interests:

> [10] The child is 9 years of age. She has been in her mother's primary care for her entire life. For lengthy periods of time in her formative years, T.D. was either deployed, or working outside the local area. He also had a drug addiction that impacted his ability to play a significant role in P.D.'s life.
>
> …
>
> [14] There are a number of transitions in the current schedule, but the back and forth likely poses more of a problem for the parties than P.D. They are working parents with other responsibilities and distances to travel. In particular, clause 2(c) of the current order allows T.D. to exercise access three days per week after school, if G.L.M. is working. That means that potentially, he could end up driving ½ hour to get P.D. and bring her to his home for a few hours, then ½ hour back to deliver her home again by 7 pm. I agree with T.D. that this does not serve P.D.'s interests.
>
> [15] Other than excess travel issues created by clause 2(c) of the order, I am not satisfied that the current schedule no longer works for P.D. It's a schedule reached by the parties by consent that has worked for several years. The fact that there are younger siblings in the picture now impacts the ability of each parent to juggle their responsibilities, but it does not mean the schedule no longer meets P.D.'s physical, emotional, social and educational needs.
>
> [16] I am satisfied that P.D.'s need for stability and safety given her age and stage of development is currently being met. …
>
> …

[18] Both parents assert a willingness to support the development and maintenance of P.D.'s relationship with the other. In particular, G.L.M. has been open to increased contact between P.D. and T.D. since he implemented lifestyle changes.

…

[20] Historically, G.L.M. has provided primary care for the child, and has met all of her physical, emotional, social and educational needs. For a number of reasons, T.D. didn't play a large parental role in P.D.'s early years. Although he is now in a better position to do so, P.D. has become accustomed to her mother's primary care and there's no good reason to fix what isn't broken.

…

[23] P.D. shares a strong and loving bond with both parents. Her mother has provided her with a stable primary residence since birth, and her father is now in a position to provide her with a stable residence when P.D. is with him.

[24] The parties have been better able to communicate and cooperate on P.D.'s care lately, though there are still signs of tension. The baptism plans are an example. In addition, T.D.'s decision to search P.D.'s phone and use a video G.L.M. made of P.D. as evidence at the hearing, raises questions about his claim that they can cooperatively parent in a shared parenting arrangement. Instead of contacting G.L.M. to discuss his concerns with that video, T.D. opted to use the video as evidence.

[25] In addition, the tone of his replies to G.L.M.'s texts is often hostile. But that may be a response to G.L.M.'s inflexibility. She resisted P.D. being left in the care of [the father's present common-law spouse's] mother because she hadn't met her, yet when she had the opportunity to meet [the father's present common-law spouse's] mother, she did not take the time to become acquainted. She has also resisted [the father's present common-law spouse's] involvement with P.D., though given some of [the father's present common-law spouse's] comments, she had reason for concern. Despite these difficulties, T.D. insists that they can cooperatively parent P.D. under the schedule he proposes. I am not convinced.

…

[27] There is no longer an issue of family violence which would impact the ability of either parent to provide care for P.D. However, T.D. still struggles with anger. This showed itself in some of his communications with G.L.M., and at times in presenting his evidence. He continues to address this through counselling, which is appropriate.

[28] The parents will have joint custody. G.L.M. will have primary care of P.D.

[29] T.D. will have parenting time with P.D.

> [30] The parenting schedule which meets the best interests of the child, having regard to all of the circumstances noted above, is outlined in Schedule "A".

[12] Schedule A provided detailed parenting provisions generally maintaining the status quo. There were, however, some changes anticipated by the judge's reasons, including the removal of the provisions in paragraphs 1(b) and 2(c) of the June 29, 2015 Order giving the father parenting time with his daughter (1) every second Friday in the summer if the mother was working; and (2) after school three times per week during the school year if the mother was working.

[13] The father does not suggest the judge considered the wrong law when she decided not to award him shared parenting on an alternating-week basis or when she removed the two provisions of the June 29, 2015 Order whereby he had the possibility of additional parenting time while the mother was working. Rather, he says she erred by failing to properly consider and weigh the evidence.

[14] The judge's reasons make it clear she understood and considered the parenting evidence. The weight she gave it attracts considerable deference from this Court. She explained why she decided for the most part to maintain the status quo. The child had been in the mother's primary care throughout her life, that arrangement had been reached by consent, the child's physical, emotional, social and educational needs were being met by this arrangement as were the child's need for stability and safety. The judge was not convinced an equal sharing of parenting time would work given the continuing tension in the parents' relationship and the father's continuing struggles with anger. She indicated there was no need to fix what wasn't broken, other than to remove some provisions that had not routinely resulted in extra parenting time for the father and that had caused conflict between the parents.

[15] The parenting time she allocated to the father was not clearly wrong. I would dismiss this ground of appeal; however, I would correct the deficiency in the judge's September 4, 2018 Order by including the definitions and the provisions for the father's summer parenting time in the parenting schedule, to be attached as Schedule A to the order to be granted by this Court.

(b) Did the judge err by imputing income to the father?

[16] Before the trial judge, the mother sought an imputation of income to the father on two grounds: unreasonable expense deductions from his rental business

and his company's construction business and his failure to provide adequate financial disclosure despite it being requested.

[17] The judge set out some aspects of the father's financial situation:

> [32] T.D. receives [Veterans Affairs Canada (V.A.C.)] benefits under a program which assists injured veterans in finding civilian employment. V.A.C. pays 85% of his salary, which will be scaled down as he earns income. T.D. previously worked in construction, so in late 2015 he established a construction business in an effort to become self-sufficient. He says the business hasn't made much income yet, because it's hard to break into the industry. He also says there is little work in this area, and he's had a few bad debts.
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> …
>
> [35] T.D.'s brother is another paid employee. He manages the crew for T.D.
>
> [36] T.D. says that the company cannot afford to pay him a salary.

[18] The judge also dealt with the duplex, noting that until March 2018, over six years after the mother moved out, the father continued to live in one unit of the duplex with his current common-law spouse and collect the rent from the second unit. She referred to the father's evidence that the rental income was mostly offset by expenses and that the rent for each unit was $700 per month, as opposed to the $900 per month rent the mother claimed was being charged. She noted the difficulty of determining the father's income caused by his failure to provide his full 2016 tax return and other financial records.

[19] The judge found the rent to be $900 per month:

> [41] G.L.M. alleges that T.D. charges $900.00/month rent, not $700.00/month as he claims. She argues that the regular deposits of $900.00 cash at the end of the month to T.D.'s bank account represent rent payments for the following month. She also points to the appraisal report, which notes that rent is "$900 per month plus utilities, which is considered in line with market rents for similar units."
>
> [42] T.D. denies this. He says that his father helps him out financially on occasion, and that these deposits may reflect money received from his father. He acknowledges that he collects rent in cash, and that he pays the mortgage and taxes in cash.
>
> [43] G.L.M. requested particulars of T.D.'s rental income, including copies of all leases signed with tenants since 2015 and proof of expenses incurred. T.D. tendered copies of his mortgage on the rental property, two leases with what appear to be his tenants' signatures, some tax and water bills, bank statements and an insurance certificate in his Exhibit book. He did not disclose the details of his

> maintenance or repair expenses. G.L.M. suspects that repairs and maintenance are done by his construction company.
>
> [44] The leases produced by T.D. show a monthly rent of $700.00, but I'm not satisfied those documents reflect the actual agreement between T.D. and his tenants. I'm satisfied that he charges $900.00/month in rent.
>
> …
>
> [46] I accept that T.D. has not been forthcoming with financial information and that his explanation for cash transactions lacks credibility.

[20] The judge explained why she found it reasonable to add $42,000 to the father's 2017 income with respect to his construction company:

> [48] T.D. testified that his company pays [his present common-law spouse] $20.00/hour. His evidence about what work she performs, what weeks she worked, and how long she was employed with the company in 2017 was vague, and satisfies me that [the father's present common-law spouse] is not a true employee whose contribution to the company is necessary in order for T.D. to earn income. This is supported by the fact that [the father's present common-law spouse] was equally vague about what she earns and when she works.
>
> [49] From 2016 to 2017, company wages and salaries increased by about $42,000.00. T.D. claims that business is slow, so new hires and a significant increase in wages wouldn't be expected.
>
> [50] At the same time, T.D. claims that his company doesn't make enough to pay him a salary. Yet in 2017, it paid [the father's present common-law spouse] a wage of $20/hour for an unknown period of time, to complete a vague list of duties for which there's no evidence she is qualified. No payroll documents were tendered to confirm the total paid to [the father's present common-law spouse] in 2017, and T.D. became combative and defensive when pressed on these details. Together with [the father's present common-law spouse's] inability to quantify what she earned for what period in 2017, this satisfies me that the payments made to [the father's present common-law spouse] are an income diversion.
>
> [51] T.D. has an incentive not to pay himself a salary. V.A.C. will pay him as long as he is pursuing gainful employment. In order to qualify, he must attend regular medical and therapeutic appointments, and check in weekly with his V.A.C. representative. V.A.C. does not audit his books. It appears to accept that T.D. is pursuing self-sufficiency for purposes of their program. I am viewing the evidence through a different lens.
>
> …
>
> [53] I find it's reasonable to add back the sum of $42,000.00 to T.D.'s 2017 income. That sum includes wages, benefits and remittances paid on [the father's present common-law spouse's] behalf. It reflects an amount that could have been drawn from the company as income by T.D.

[21] The judge considered whether other company expenses and rental expenses were reasonable. She found some were and some were not and imputed different amounts of income to the father for 2012 to 2017 inclusive.

[22] The father argued that the judge's decision to impute income to him was an error because it was arbitrary and unreasonable, specifically in 2017 when she failed to recognize the legitimacy of the salary paid to the father's present common-law spouse. He said there is no explanation for the $42,000 amount the judge imputed in 2017.

[23] The judge did explain why she added $42,000 to the father's 2017 income in paragraphs 48 to 51 of her reasons, set out in paragraph 20 above. It was not an arbitrary amount. It was the amount by which the father's company's wages and salaries increased from 2016 to 2017, at a time when the father testified business was slow. In the absence of adequate financial records from the father (such as payroll records) and recognizing the reduction in the amount of money the father would receive from V.A.C. if he took a salary from his company, the judge did not accept his explanation that this increase related to vaguely described work provided by his present common-law spouse.

[24] This Court gives considerable deference to the judge's determination of what evidence to accept and reject. With respect to the father's income, her findings of fact, and the inferences she drew from those facts, do not disclose a palpable and overriding error.

[25] There is no merit to this ground of appeal.

(c) Did the judge err in her application of the principles of unjust enrichment when she awarded the mother a 25 percent interest in the equity of the duplex?

[26] The mother sought a declaration that she was entitled to compensation for half the value of the equity of the duplex or, alternatively, that half the duplex was held in trust for her by the father.

[27] In reaching her decision, the judge noted the land on which the duplex was built was bought from Ms. MacDougall's brother. She noted that it was registered in the parties' names jointly. She also noted that the mother later quit claimed her interest to the father—without legal advice—because this was required for financing purposes, as the mother had no credit. The judge referred to the fact the

parties were living together when the property was acquired and quit claimed and when the mortgage was signed. She found the father managed the construction and the mother chose the finishes.

[28] She found there was a joint family venture, relying on *Kerr v. Baranow*, 2011 SCC 10, and assessed the mother's interest in the equity at 25 percent:

> [84] The parties were clearly in a joint venture together when building the duplex, with plans for the future and a child together. It's doubtful G.L.M.'s brother would have sold them the land otherwise. G.L.M. provided childcare and household management, while working part time and taking courses towards her degree. T.D. worked full time to support the family in the meantime.
>
> [85] I am satisfied that G.L.M. should be compensated for her interest in the duplex. It's not reasonable to grant her an equal interest, given the nature of her contribution and the relatively short-term relationship. As Justice Cromwell noted in **Kerr v. Baranow** (*supra*) at paragraph 62:
>
> > 62 Unlike much matrimonial property legislation, the law of unjust enrichment does not mandate a presumption of equal sharing. However, the law of unjust enrichment can and should respond to the social reality identified by the legislature that many domestic relationships are more realistically viewed as a joint venture to which the parties jointly contribute.
>
> [86] However, child and homecare contributions count. As noted by O'Neil, J. in **Darlington v. Moore**, 2015 NSSC 124:
>
> > In the *Vanasse* appeal considered by the Supreme Court with the *Kerr v. Baranow* appeal, the contribution claimed was in the form of domestic and childcare services (paragraph 134). The trial Judge found that a link existed between wealth accumulated during a middle period of the parties' relationship when Ms. Vanasse was almost solely responsible for the home and children.
>
> [87] Considering all of the evidence and caselaw, I have assessed G.L.M.'s interest at 25% of the equity in the duplex as of June 1, 2018. I exercise my discretion in choosing that date, rather than the date of separation, because G.L.M. was denied her interest until now, and T.D. has enjoyed the benefits of occupation, plus a rental income.

[29] At the appeal hearing, the father admitted entitlement but disputed the amount of equity the judge awarded to the mother, which was quantified at $24,117. He said it should have been a lump sum of $7,500.

[30] The father argued the judge applied the law incorrectly given the short time the parties lived together in the duplex and the mother's limited contribution to the

construction itself, as compared to the father's payment of all costs associated with it.

[31] While the amount awarded to the mother is substantial, I am not satisfied it is clearly wrong.

[32] It is not just the time the parties lived in the duplex that is relevant to this issue. The parties discussed living together after their daughter was born but delayed doing so because of the father's military training and deployment in Afghanistan. Almost as soon as the father returned to Nova Scotia, the judge found that the parties lived together "in a committed relationship with plans for the future" and bought the land on which the duplex was built as joint tenants from the mother's brother. The judge found it was doubtful he would have sold them the land if they had not had plans for a future together, an inference she was entitled to draw from the evidence. The land was transferred into the father's name solely, without legal advice, to accommodate financing. Had the land remained registered in the names of both parties as joint tenants, there would be a presumption that they each held a half interest in it; *Chechui v. Nieman*, 2017 ONCA 669, paras. 29 – 35; *Richardson v. Underwood*, 2018 NSSC 258, paras. 13 – 17 and *Braithwaite v. Turner*, 2015 NSSC 221, paras. 33 and 34. The mother made some contribution to the construction itself by selecting the finishes and provided child care and household management. The father benefitted from living in one unit of the duplex rent free for over six years and collecting the rent from the second unit.

[33] There is no merit to this ground of appeal.

(d) Did the judge err in finding the mother was entitled to spousal support and ordering the father to pay her $6,000 retroactive spousal support?

[34] At trial, the mother sought retroactive spousal support of $63,024 for 2012 – 2015 while she was taking her degree, acknowledging that after 2015 she was self-sufficient as a nurse.

[35] The judge found the mother was entitled to retroactive spousal support of $250 per month for two years post separation, a total of $6,000, which she ordered the father to pay at the rate of $100 per month. She explained her reasons for arriving at her decision:

> [99] The parties' daughter was born in 2009, two years after they started dating. They split up briefly a couple of times before P.D. was born. However, they were in a committed relationship when T.D. was deployed in 2010. While

> overseas, he supported G.L.M. and P.D. by transferring monies through a joint account. He also bought an expensive engagement ring before returning home.
>
> [100] The parties' relationship was not long-term, but it was traditional in many ways. G.L.M. was the primary caregiver for P.D., even when T.D. returned home from deployment. T.D. was the main income earner. G.L.M. and P.D. were dependent on T.D. for financial support before and after December, 2011.
>
> [101] G.L.M. is entitled to spousal support. The question is for what period and how much. G.L.M. seeks support while she completed her degree. Thereafter, she acknowledges that she was self-sufficient and able to support herself. She calculates the amount owing retroactively at $63,024.00 from 2012 – 2015, based on the **Spousal Support Advisory Guidelines**.
>
> [102] T.D. says that if G.L.M. is entitled to spousal support, it should be limited to the period before she started living common-law with her current partner in 2012.
>
> [103] The **D.B.S.** [*D.B.S. v S.R.G.*, [2006 SCC 37] factors are relevant in retroactive spousal support claims. I accept that G.L.M. did not delay in advancing her claim, and that T.D. exhibited blameworthy conduct. Undoubtedly, G.L.M. had need of spousal support after separation, and T.D. had the means to pay. But there's no evidence that G.L.M. has a need now which must be addressed through a lump sum. And a large lump sum award on top of his other financial obligations would create hardship for T.D.
>
> [104] Considering all of the evidence, and taking into account the parties' current circumstances, I award retroactive spousal support to G.L.M. in the amount of $250.00 /month, for two years post-separation. That equates to a lump sum of $6,000.00, which shall be paid through M.E.P. at the rate of $100.00 /month until paid in full.

[36] The father argued entitlement and amount. He said the short period of time the parties lived together did not give rise to an entitlement to spousal support. He said his continuing to pay the car loan of $6,500 on the mother's car after separation and his payment of some child support was sufficient if there was entitlement.

[37] In ordering retroactive spousal support and setting the amount at $6,000, the judge made no error of law, did not misapprehend the evidence and her decision is not clearly wrong. A trial judge's decision on spousal support is entitled to considerable deference. While the parties' relationship was short, the judge found it was traditional, with the mother the primary caregiver and the father the main income earner. For the years immediately following separation, the mother had a need for support and the father had the ability to pay. The judge took into account

the father's payment of the car loan and child support, together with the parties' current circumstances, in setting the amount and its terms of payment.

[38] I would dismiss this ground of appeal.

Disposition

[39] I would correct the judge's September 4, 2018 Order to incorporate the missing parenting provisions set out on the first page of Schedule A to the judge's reasons, by replacing paragraphs 2 to 28 inclusive of the judge's September 4, 2018 Order with the paragraphs set out in Schedule A hereto. I would otherwise dismiss the appeal with costs in the amount of $2,000, including disbursements, payable forthwith by the father to the mother.

Hamilton, J.A.

Concurred in:

Wood, C.J.N.S.

Bryson, J.A.

SCHEDULE A

Terms for Joint Custody/Parenting and Access Schedule

Definitions –

(a) "After school" means the time when the child is normally discharged from school (approximately 2:30 p.m. at present).

(b) "Consecutive days" means from 10 a.m. on the first day until 10 a.m. on the 7th day, unless the parties otherwise agree in writing, in advance.

(c) "Important events" means events which fall outside the ordinary and routinely scheduled dates in the child's life.

(d) "In writing" means communication by text or email to the last number/address provided by the other party.

(e) "Return date" means the day Travis Devison returns home if he's working outside the Cape Breton Regional Municipality. An arrival after 6 p.m. will be deemed to be an arrival the next day for purposes of parenting time during rotation days.

(f) "Rotation days" means days off work spent in C.B.R.M.

(g) "School year" means the first day of school for P.D. (as established by the Department of Education yearly) until grading day.

(h) "Summer holidays" means the day after grading day until the day before Labour Day.

Parenting Time –

2. The summer schedule as contained in the most recent order will continue, meaning the Respondent, Travis Devison, will have parenting time from Monday at 10:00 a.m. until Wednesday at 6:00 p.m. each week of the summer holidays (subject to #3 below).

3. Both parents may opt to exercise parenting time over a block of seven consecutive days during the summer holidays. The Respondent must communicate his choice of dates in writing to the Applicant, Gerri-Lynn MacDougall, no later than May 31st of each year, starting in 2019. The Applicant will then have her choice of dates, not to coincide with the Respondent's dates. The Applicant must communicate her choice of dates in writing to the Respondent by June 15th of each year. In the event a party fails to communicate dates by their deadline, that party will be deemed to have waived their block of time.

4. During the school year, the Applicant has primary care and residence for the child, and the Respondent has care and residence on a four-week rotating schedule at the following times, according to the following terms:

    a) WEEK 1: The Respondent will have parenting time with the child from Friday after school until Sunday at 5:00 p.m.;

    b) WEEK 2: The Respondent will have parenting time with the child on Wednesday from after school until 7:00 p.m.;

    c) WEEK 3: The Respondent will have parenting time with the child from Friday after school until Sunday at 5:00 p.m.;

    d) WEEK 4: The Respondent will have parenting time from Wednesday after school until Thursday morning.

5. The Respondent shall be responsible to retrieve the child at school and deliver her back to school in WEEK 4 or to the Applicant's home if there's no school.

6. The Respondent may choose to have another licensed and insured driver over age 25 retrieve or return the child after parenting time.

7. The parent who has care of the child when an activity is scheduled will be responsible to bring her to that activity. This does not preclude the other parent and extended family from attending as well, but the parent who has care of the child that day will be responsible to prepare her, transport her, dress/equip her, and ensure her other needs are met during the scheduled activity.

8. In the event the Respondent accepts work outside of Nova Scotia, he will notify the Applicant within 48 hours. His parenting time will then be as follows:

    a) On his rotation days, he will have parenting time with the child overnight for three consecutive nights, to start two calendar days after his return date. Parenting time will run from after school (or at 2:00 p.m. if there's no school that day) until 7:00 p.m. on the scheduled return date.

    b) In order to exercise such parenting time, he must notify the Applicant in writing at least 7 days in advance of his return date.

    c) For every 7 days he's home on rotation, the Respondent will have the same parenting time, to repeat weekly for a maximum of three weeks each rotation. Thereafter he will be deemed to be laid off, and the regular schedule will apply.

    d) In the event he is laid off and returns home, the Respondent's parenting time will revert to WEEK 1 of the regular schedule.

9. The Applicant will consult the Respondent on all major decisions affecting the child, including health, education, religious and social aspects of her life. If, after meaningful consultation, the parties cannot agree, the Applicant shall make the final decision.

10. The child may not be enrolled in additional extra-curricular activities which impact the Respondent's parenting time without his written

consent. At present, the child takes dance lessons. All clothing, shoes and items required by the child for dance class will travel with her for classes scheduled on the other parent's time. If dance class falls on the Respondent's parenting time, he will return those items to the Applicant when he delivers the child home and *vice versa*. In the event one parent forgets to send these items with the child, the parent who forgot will deliver the items before the child's next scheduled dance class.

11. In the event that either parent is working during the time they would have the child in their care, they shall make their own arrangements for child care, which may include grandparents, new partners or sitters of their choosing.

12. The child will have special occasion time with the Respondent at the following times on the following terms:

    a) March Break: from after school on Friday at the beginning of March Break, until the following Wednesday at 6:00 p.m.;

    b) Easter: from Easter Saturday at 2:00 p.m. until Easter Sunday at 6:00 p.m., and on Easter Monday from 2:00 p.m. to 6:00 p.m.;

    c) Christmas:

        - Christmas Eve (December 24th) from 3:00 p.m. until 6:00 p.m., unless otherwise agreed between the parties;

        - Christmas Day (December 25th) from 11:00 a.m. until 3:00 p.m., unless otherwise agreed between the parties. This access supersedes the usual parenting schedule between the parties, between December 24th and December 26th;

- December 28th at 2:00 p.m. until December 29 at 6:00 p.m., at which point the regular access schedule will resume.

d) The child shall be with her siblings on their birthdays (Harper, William and Maxon) from 2:00 p.m. – 5:00 p.m.;

e) The child shall be with her mother on her birthday (which is also the mother's birthday), except that the father may have a visit with her from 2:00 p.m. until 4:00 p.m.;

13. In addition, the Respondent will have parenting time (should he not already be scheduled for parenting time) on the following special occasions:

a) On his birthday from after school until 7:00 p.m.;

b) On Father's Day from noon until 5:00 p.m.;

c) On Halloween, from after school until 7:00 p.m., starting in 2018 and each even-numbered year thereafter;

d) On Remembrance Day from 10:00 a.m. until 2:00 p.m.; and

e) On Grading Day from 11:00 a.m. until 3:00 p.m.

14. Should the Respondent's parenting time on a Sunday fall on Mother's Day, he will return the child at noon instead of 5:00 p.m.

15. The parties will participate in counselling for parents in cooperative parenting arrangements, which may be in the form of a refresher program with Children and Family Services of Eastern Nova Scotia, or with a licensed and registered therapeutic counsellor who provides such services. They must take no less than 10 sessions and focus on civil and cooperative communications. The Respondent's partner,

Katie Brown, must participate in the same programming should she wish to provide care for the child in the Respondent's absence.

16. The parties will refrain from making negative, critical, or disparaging remarks about the other parent to the child, or within the child's hearing. They will ensure others refrain from doing the same.

17. The parties will communicate about issues affecting the child respectfully, in writing, with copies of all exchanges to be retained for purposes of any future court hearings.

18. The parties will each provide the other with updated contact information should their phone or email address change, such information to be communicated within 24 hours of the change. Confirmation of receipt of the information must be provided within 24 hours, and a response to any inquiries must be sent within 24 hours. If a response is delayed, an explanation for the delay will accompany the response.

19. The party in whose care the child is in the time of any emergency will access emergency care for her and notify the other immediately. Both parties may attend routine and non-routine medical appointments for the child.

20. Both parents are entitled to directly contact the child's doctors, dentists, therapists, teachers, coaches and other third-party service providers or professionals involved in the child's life, to request and receive information about the child and to consult about her care and progress.

21. The Applicant will notify the Respondent of the contact information and names of the child's doctors, dentists, therapists, teachers, coaches and other third-party service providers or professionals involved in the child's life from time to time, as the list changes.

22. The Respondent will be responsible to keep himself informed on the child's health, social development and general welfare through contact with the child's doctors, dentists, therapists, teachers, coaches and

other third-party service providers or professionals involved in the child's life.

23. The Applicant will notify the Respondent of the dates for any important events in the child's life as soon as those dates are known. The Respondent may not schedule important events for the child without the Applicant's consent in writing.

24. Both parents and their partners and families may attend important events, including dance recitals, sports games, special school events such as concerts, religious ceremonies and other special events in which the child is involved. They may both take photos and interact with the child, but may not monopolize her at such events. The parent who has care of the child that day will take the child to and from the event, unless otherwise agreed in writing between the parties.

25. The Respondent will be listed as a second contact with the child's doctors, dentists, therapists, teachers, coaches and other third-party service providers or professionals involved in the child's life.

26. Each parent is permitted to travel within Nova Scotia with the child during the time she is in their care.

27. In the event either party wishes to travel outside of Nova Scotia with the child, the other party will be provided with a contact number, destination, and return date at least 7 days before departure.

28. In the event either parent's travel plans include travel outside of the country, the travelling parent must provide no less than 60 days' notice to the non-travelling parent, who will cooperate and sign all documents required for purposes of travel, including a passport. The passport shall be the property of the child and shall be held by the Applicant, who must make it available to the Respondent on his request in writing.

28.1 The parties may arrange additional parenting time, change the parenting schedule laid out above, or adjust retrieval/return times in writing by agreement, from time to time.

28.2 If the parties disagree about the interpretation or implementation of this parenting schedule, or if they are unable to resolve disputes arising from these parenting arrangements, they must participate in mediation to resolve the dispute before proceeding to court. The cost of mediation will be shared equally.