NOVA SCOTIA COURT OF APPEAL
Citation: Reeves v. Reeves, 2010 NSCA 35

Date: 20100428
Docket: CA 318614
Registry: Halifax

Between:

Natasha Olivia Reeves

Appellant

v.

Bruce Allen Reeves

Respondent

Judges:	Bateman, Oland and Farrar, JJ.A.
Appeal Heard:	April 13, 2010, in Halifax, Nova Scotia
Held:	Appeal dismissed per reasons for judgment of Farrar, J.A., Bateman and Oland, JJ.A. concurring.
Counsel:	James R. Morris, for the appellant respondent in person

Reasons for judgment:

I. INTRODUCTION:

[1] This is an appeal by Natasha Olivia Reeves from certain provisions of the July 13, 2009 Corollary Relief Judgment of James R. Williams, J. The reasons for judgment are dated June 12, 2009, [**Reeves v. Reeves**, 2009 NSSC 139]. The appellant alleges that the learned trial judge erred by ordering:

1. The appellant, as custodial parent, to move the children of the marriage within the boundaries of the former City of Dartmouth, Cole Harbour, Eastern Passage, or Bedford, on the sale of the matrimonial home;

2. An extension of the end time of the respondent's alternate weekend access from Sunday afternoon to Monday morning;

3. That the respondent would have first choice of summer access time in each year following 2009.

[2] The appellant seeks reversal of these provisions of the Corollary Relief Judgment alleging a number of errors. The appellant asserts, with respect to the first provision, that the judge failed to consider the limitations on the authority of the court to impose geographical conditions, failed to give adequate weight and respect to the wishes of the appellant, as custodial parent, regarding where the children should live and go to school, failed to consider the range of factors, directed by case law, to be analyzed regarding the best interests of the children, and placed undue emphasis on temporary financial matters, particularly related to the respondent, without acknowledging that they would be substantially resolved by the sale of the matrimonial home and consequential payment of all matrimonial debts and the disbursal of proceeds to the parties.

[3] With respect to the second provision, the appellant asserts that the trial judge extended the end time of the weekend access of the respondent without reasons. She asserts that the extension of the time undermines the children's best interests and jeopardizes her work commitments as she attempts to re-enter the workforce.

[4] With respect to the third provision, she asserts that this was ordered without reasons and is not equitable.

[5] The appellant's overarching argument is that the judge overemphasized the respondent's financial position to the exclusion of properly considering the other factors which, she submits, would have produced a different result.

[6] I am not persuaded that the trial judge ignored or misdirected himself with respect to relevant evidence or otherwise erred in legal principle in reaching his determinations at trial. Accordingly, for the reasons set out below, I would dismiss the appeal without costs.

II. OVERVIEW OF FACTS AND PROCEEDINGS:

[7] Nathasha Olivia Reeves and Bruce Allen Reeves were divorced by a Corollary Relief Judgment dated July 13, 2009.

[8] They met and began living together in early 1997. They married October 23, 1999 and separated February 14, 2007.

[9] They had three children, Ethan, born May 18, 2001, Delaney, born February 20, 2003, and Jake, born October 1, 2004.

[10] Ms. Reeves commenced divorce proceedings on October 18, 2007. An interim hearing was originally scheduled for November 27, 2007, it was converted to a settlement conference which took place on December 5, 2007 before a judge of the Supreme Court (Family Division) which resulted in an Interim Order being issued on May 7, 2008.

[11] The trial of this matter proceeded on February 24, 25 and March 2, 2009.

[12] The learned trial judge rendered his decision, from which the appellant appeals, on June 12, 2009. The Corollary Relief Judgment reflecting the trial decision was filed on July 13, 2009.

[13] By order dated November 2, 2009, the appellant was granted an extension of time to appeal the Corollary Relief Judgment.

[14] Finally, by decision dated January 28, 2010, this court stayed the impugned provisions of the Corollary Relief Judgment pending this appeal.

III. ISSUES:

[15] The issue on this appeal is whether the learned trial judge erred in the manner suggested by the appellant.

IV. ANALYSIS:

1. Standard of review:

[16] The narrow scope of appellate review was explained by Bastarache J. writing for the court in **Van de Perre v. Edwards**, 2001 SCC 60:

> [15] As indicated in both *Gordon* and *Hickey*, the approach to appellate review requires an indication of a material error. If there is an indication that the trial judge did not consider relevant factors or evidence, this might indicate that he did not properly weigh all of the factors. In such a case, an appellate court may review the evidence proffered at trial to determine if the trial judge ignored or misdirected himself with respect to relevant evidence. This being said, I repeat that omissions in the reasons will not necessarily mean that the appellate court has jurisdiction to review the evidence heard at trial. As stated in *Van Mol (Guardian ad Litem of) v. Ashmore* (1999), 168 D.L.R. (4th) 637 (B.C.C.A.), leave to appeal refused [2000] 1 S.C.R. vi, an omission is only a material error if it gives rise to the reasoned belief that the trial judge must have forgotten, ignored or misconceived the evidence in a way that affected his conclusion. Without this reasoned belief, the appellate court cannot reconsider the evidence.

[17] Cromwell J.A., as he then was, succinctly summarized this standard in **The Children's Aid Society of Cape Breton-Victoria v. A.M.**, 2005 NSCA 58:

> [26] This is an appeal. It is not a retrial on the written record or a chance to second guess the judge's exercise of discretion. The appellate court is not, therefore, to act on the basis of its own fresh assessment of the evidence or to substitute its own exercise of discretion for that of the judge at first instance. This Court is to intervene only if the trial judge erred in legal principle or made a palpable and overriding error in finding

> the facts. The advantages of the trial judge in appreciating the nuances of the evidence and in weighing the many dimensions of the relevant statutory considerations mean that his decision deserves considerable appellate deference except in the presence of clear and material error: [citations omitted]

[18] The appellant acknowledges that this is the appropriate standard of review and argues that the learned trial judge made a material error in the appreciation of the facts. She also asserts that the decision of the trial judge gives rise to a reasoned belief that the trial judge must have forgotten, ignored, or misconceived the evidence in a way that affected his conclusions.

[19] I will address the grounds of appeal, individually, on the standard as set out above.

2. Grounds of Appeal

Issue 1: Did the learned trial judge err in placing a geographical restriction on the appellant in his award of custody?

[20] The appellant, in her factum and in argument, asserts that the trial judge failed to consider the limitations on the authority of the court to impose geographical conditions on the appellant in granting custody. In particular, the appellant questions the trial judge's authority to require the appellant to move as a condition of granting custody. As a result, before addressing the individual grounds of appeal, I will address the authority of the court to impose conditions on orders granting custody.

[21] The trial judge was making an initial order for custody under the **Divorce Act**, R.S., 1985, c. 3 (2nd Supp.). Section 16 of the **Divorce Act** authorizes a court to impose on an order for custody whatever terms, conditions and restrictions it thinks "fit and just".

[22] The jurisdiction of a trial judge to impose terms and conditions on an award of custody was an issue in **Card v. Card** (1984), 43 R.F.L. (2d) 74 (N.S.S.C. (A.D.)). In **Card**, Clark J. (as he then was), under the **Divorce Act**, made an order awarding custody of the children to the mother, subject to certain terms and conditions pertaining to the treatment of the mother's personality disorder. The

father appealed. One of the contentions of the appellant was that the trial judge exceeded his jurisdiction by attaching terms and conditions to the custody order. In an oral decision, Macdonald J.A. confirmed that courts have such a jurisdiction under both the **Divorce Act** and the court's *parens patriae* jurisdiction:

> **7** It is my opinion that when Clarke J. made the order for custody with conditions and terms he was operating within the jurisdiction conferred upon him by the Divorce Act and within his general parens patriae jurisdiction.

[23] The relevant provisions of the **Divorce Act** state:

> Custody Orders
>
> **16.** (1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.
>
> ...
>
> (6) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just. (emphasis added)

[24] Although s. 16(6) of the **Act** does not enumerate the matters upon which a court can place conditions and, although it does not specifically state that a court can place restrictions on where a custodial parent may live, the language of s. 16(6) is very broad and should be interpreted accordingly.

[25] Moreover, it is not unusual for custody orders, particularly those which incorporate custody agreements, to include restrictions on where the children must live with the custodial parent. Where such restrictions are imposed, however, they typically state that the children cannot leave a certain geographical area and not, as in the instant case, that the children must move to a particular geographical area.

[26] Section 16(7) of the **Act** provides that a court may order a custodial parent to notify an access parent of his or her intention to relocate with the child:

> **16.** (7) Without limiting the generality of subsection (6), the court may include in an order under this section a term requiring any person who has custody of a child of the marriage and who intends to change the place of residence of that child to notify, at least thirty days before the change or within such other period before the change as the court may specify, any person who is granted access to that child of the change, the time at which the change will be made and the new place of residence of the child.

[27] Although s. 16(7) of the **Act** does not expressly state that a court may order a parent to remain within a certain geographical area or to relocate to a certain geographical area (as occurred in this case), it appears to contemplate possible relocation of the child and the custodial parent. Also, it confirms that the court may maintain some supervisory control over the geographical location of the child.

[28] As noted, it is not uncommon for custody orders, particularly those which incorporate the parents' custody/access agreement, to include restrictions on where a custodial parent may live. The leading case is the decision of the Supreme Court of Canada in **Gordon v. Goertz**, [1996] 2 S.C.R. 27. Some recent cases include: **Paleczny v. Paleczny**, 2010 BCSC 36; **Burns v. Burns**, 2000 NSCA 1; **Bjornson v. Creighton**, [2000] O.J. No. 5168 (Ont. S.C.J.). These are typical of such cases: one parent <u>wants</u> to move with the child from the jurisdiction and will choose to do so if the court permits; the other parent is challenging the request.

[29] The instant case is different. Ms. Reeves <u>does not want</u> to move with the children from Porter's Lake; she wants to stay in that community but the court order gives her no choice if she wishes to retain custody. The trial decision at ¶ 61 is clear: the award of custody is "subject to" Ms. Reeves moving with the children from Porter's Lake and to Dartmouth, Eastern Passage, Cole Harbour or Bedford. As is recognized at ¶ 63, "the order is unusual."

[30] In Nova Scotia, custody orders are also made under the authority of the **Maintenance and Custody Act**, R.S.N.S., 1989, c. 160, which was formerly named the **Family Maintenance Act**. In **Blois v. Blois**, 83 N.S.R. (2d) 328, [1988] N.S.J. No. 142, the Appeal Division held that s. 18(2) of the **Family Maintenance Act** conferred upon judges of the Family Court jurisdiction to impose residence requirements on a custody order. Section 18(2) of the **Family Maintenance Act**, S.N.S., 1980, c. 6, s. 18(2), **as am. by S.N.S. 1983, c. 64, s. 9** (which is the same under the renamed statute) stated:

> 18(2) The court may, on the application of a parent or guardian or other person authorized by the Minister, make an order
>
> > (a) that a child shall be in or under the care and custody of the parent or guardian or authorized person; or
> >
> > (b) respecting access and visiting privileges of a parent or guardian or authorized person.

[31] In **Blois v. Blois, supra**, Jones J.A. gave s. 18(2) a broad interpretation:

> **[13]** Dealing with the first question I am satisfied that s. 18(2) of the **Family Maintenance Act** empowers the Family Court to impose conditions in custody orders including residence requirements. I see no need to give that provision a narrow interpretation. Section 18(5) provides that in any custody proceeding the court must apply the principle that the welfare of the child is the paramount consideration. Accordingly if it is necessary to impose conditions on custody orders for the welfare of the child that is the test.

[32] The courts of Nova Scotia have continued to follow this approach, and impose geographical restrictions upon custodial parents where it is felt to be appropriate (**S.B. v. L.A.**, [2001] N.S.J. No. 367 (Fam. Ct.); **B.A. v. A.A**., [2009] N.S.J. No. 294 (Fam. Ct.)).

[33] It is notable that in **Blois v. Blois**, Jones J.A. chose to use the term "residence requirements", which invites a broader interpretation than the term "residence restrictions". "Residence requirements" can encompass not only conditions that prohibit a custodial parent from moving the child out of a certain geographical area (which are more common) but also conditions that require a custodial parent to move to a particular geographical area.

[34] The following observation of James G. McLeod in **Child Custody Law and Practice**, looseleaf (2010 – Release 2) (Toronto: Thomson Reuters Carswell, 1992), p. 7-17, supports a broad interpretation of a trial judge's jurisdiction to place conditions on where a custodial parent may live:

> It should be noted that neither the *Divorce Act* nor any provincial legislation dealing with custody or access gives a court jurisdiction to stipulate where a parent may live. Rather, the courts have authority only to specify that an award of

> custody is conditional upon the parent living in a certain location... (emphasis added)

[35] Much of the case law dealing with restrictions on the custodial parent's choice of where to live strives to balance the right of the custodial parent to pursue personal freedom and the right of the child to have a close and meaningful relationship with both parents.

[36] In balancing those interests, both the **Act** and the jurisprudence state that the only relevant consideration is the best interests of the child in all the circumstances. All other factors are relevant only to the extent that they have a place in the best interests of the child analysis. Under this rationale, and as noted above, if the trial judge finds that restricting the geographical area in which a child may live is in the best interests of the child, that restriction is appropriate.

[37] Although a condition requiring the custodial parent, as a condition of granting custody – such as the one issued in this case – is highly unusual and should only be used in rare circumstances; there is no restriction on a trial judge's jurisdiction to grant the order if it is in the best interests of the children.

[38] I will now consider whether the trial judge erred in his consideration of the best interests of the children, keeping in mind the narrow scope of review as set out in **Van de Perre, supra**.

Best Interests of the Child

[39] Section 16(8) of the **Divorce Act** is express:

> **16**. (8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

[40] The leading case on the mobility of the custodial parent is **Gordon v. Goertz, supra**. In that case, Justice McLachlin (as she then was), for the majority, said that "the ultimate and only issue when it comes to custody and access is the welfare of the child whose future is at stake" (¶ 20). Although **Gordon, supra**, dealt with an application to vary an existing custody order, this Court in **Burgoyne v. Kenny**, 2009 NSCA 34, stated (¶ 23) that the principles set down by the

Supreme Court of Canada in **Gordon** are equally applicable to a case, such as the instant case, which involves an original custody determination:

> [23] In para. 49 of **Gordon v. Goertz, supra** McLachlin J., as she then was, for the majority, summarized the applicable principles. An original custody determination is informed by the following considerations:
>
> 1. The judge must embark on an inquiry into what is in the best interest of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
>
> 2. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
>
> 3. The focus is on the best interests of the child, not the interests and rights of the parents.
>
> 4. The judge should consider, *inter alia*:
>
> (a) the desirability of maximizing contact between the child and both parents;
>
> (b) the views of the child, if appropriate;
>
> (c) the applicant parent's reasons for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
>
> (d) the disruption to the child consequent on removal from family, schools and the community he has come to know.

Factors Which Are Relevant Under the Best Interests of the Child Analysis

[41] This Court in **Burgoyne, supra**, set out (¶ 24) a comprehensive list of factors enumerated by Goodfellow, J. in **Foley v. Foley**, [1993] N.S.J. No. 347 (S.C.) “which in this Province is often cited . . . [to] assist a court in assessing a child’s best interests”:

1. Statutory direction **Divorce Act**, ss. 16(8) and 16(9), 17(5) and 17(6);

2. Physical environment:

3. Discipline;

4. Role model;

5. Wishes of the children - if, at the time of the hearing such are ascertainable and, to the extent they are ascertainable. . .

6. Religious and spiritual guidance;

7. Assistance of experts, such as social workers, psychologists, psychiatrists, etcetera;

8. Time availability of a parent for a child;

9. The cultural development of a child:

10. The physical and character development of the child by such things as participation in sports:

11. The emotional support to assist in a child developing self esteem and confidence;

12. The financial contribution to the welfare of a child.

13. The support of an extended family, uncles, aunts, grandparents, etcetera;

14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. The **Divorce Act**, s. 16(10) and s. 17(9);

15. The interim and long range plan for the welfare of the children.

16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative

> requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and
>
> 17. Any other relevant factors.

[42] The court notes (¶ 25) that the list is not exhaustive and not all factors will be relevant in every case.

“Maximum Contact” Principle

[43] In general, beneficial contact between the access parent and the child should be maximized. Section 16(10) of the **Act** encourages as much contact between the access parent and the child as is consistent with the child’s best interests. It provides:

> **16.** (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[44] The Supreme Court of Canada in **Gordon, supra**, (¶ 25) identified this “maximum contact” principle as “mandatory, but not absolute”; the court can and should restrict contact where doing so serves the best interests of the child:

> 25 The reduction of beneficial contact between the child and the access parent does not always dictate a change of custody or an order which restricts moving the child. If the child's needs are likely to be best served by remaining with the custodial parent, and this consideration offsets the loss or reduction in contact with the access parent, then the judge should not vary custody and permit the move. This said, the reviewing judge must bear in mind that Parliament has indicated that maximum contact with both parents is generally in the best interests of the child.

[45] As discussed below, the trial judge in this case considered the “maximum contact” principle in his determination of the best interests of the children.

The Trial Judge’s Decision

[46] In analyzing the trial judge's decision to order Ms. Reeves to relocate as a condition of custody, it is important to note that this condition was part of an overall custody arrangement being crafted by a trial judge. He was not evaluating how a proposed relocation might affect an already-established custodial arrangement, but ordering relocation as but one part of a plan that would further the best interests of the children by, in particular, improving the financial well-being of all family members. Relocation was targeted not only at improving access between the children and Mr. Reeves, but at ameliorating some of the family's financial hardship.

[47] In his decision (¶ 56), the trial judge commented that the best interests of the children includes "the financial circumstances of their parents, and the practical consequences where they live with their mother has on their relationship with their father, and the financial circumstances of their parents."

[48] The issue of custody was also addressed (¶ 61-65). The trial judge found that the continued residence of the children and Ms. Reeves in Porter's Lake has and will continue to have a detrimental effect on the financial circumstances of the parents and on Mr. Reeves' ability to exercise access.

[49] The trial judge concluded that, in the circumstances, the difficulties of transportation that come with living in Porter's Lake would have a detrimental effect on the short and long term best interests of the children, which included Ms. Reeves' re-entry into the workforce and access between Mr. Reeves and the children. The trial judge made a determination that Ms. Reeves should move to one of four specified communities in the Halifax Regional Municipality because Ms. Reeves' relocation to one of those areas would ease the financial issues, whereas staying in Porter's Lake will aggravate them. He ruled:

> [61] I conclude that it is in the best interests of the children to be in the custody and primary care of Ms. Reeves subject to the following:
>
> 1. upon the sale of the matrimonial home, Ms. Reeves shall move the children within the boundaries of the former City of Dartmouth, Cole Harbour, Eastern Passage or Bedford. ...
>
> [62] I have identified public transportation, or lack thereof, in the Porter's Lake area as impacting upon other issues:

- Ms. Reeves' ability to re-enter the workforce;

- housing costs as disclosed in the evidence are, if anything, slightly less within the city;

- the children's access to extra-curricular activities;

- Mr. Reeves ability to exercise access.

These factors all related to the children's short and long term best interests. Public transportation is available in the areas I have designated.

[63] I recognize that the order is unusual, I consider Ms. Reeves[sic] desire to remain in the Porter's Lake area to be a wish or desire that is disconnected from the financial realities this couple face, and the future best interests of the children. It is as if she hopes, wishes that nothing will change that Mr. Reeves will keep paying as he has, and for all intents disappear. Much has changed. It is impossible for this Court to endorse such a plan when it has been until now beyond her financial means. She has borrowed heavily from her parents. Her father has indicated that that well is dry.

[64] I have considered the evidence provisions of the *Divorce Act*, including Section 16(10) which provides:

> s. 16 (10): In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[65] I conclude that the order and conditions are in the best interests of the children.

[50] What is apparent from the foregoing passages is that, of the **Foley** factors identified in **Burgoyne, supra**, the trial judge gave the most weight to factors 14 (access) and 16 (financial considerations), and their impact upon factor 15 (plan for welfare of the children). His findings of fact regarding the state of the family's finances were the most critical part of his decision. He found that the financial troubles, in particular, overwhelmed the analysis and measures to address them were what the best interests of the children required most pressingly. Ordering

relocation would both improve the financial difficulties and facilitate access. In doing so he gave proper consideration to the financial situation of the family and did not, as suggested by the appellant, place "undue emphasis on temporary financial matters". The trial judge was clear in his reasons he was considering the short and long term interests of the children (¶ 62).

[51] As acknowledged in this decision, this custody order is not typical. However, it was not inappropriate given the unique circumstances of this case. The language of s. 16(6) of the **Divorce Act**, which permits judges to attach conditions, terms and restrictions to a custody order provided they are "fit and just", is broad language. This Court has held in **Blois, supra**, that a similar provision under the **Maintenance and Custody Act, supra**, (now the **Family Maintenance Act**) should not be interpreted narrowly.

[52] Beyond this, however, is the compelling and overarching principle that custody orders must attend to the best interests of the child. Section 16(8) of the **Act** and the jurisprudence of the Supreme Court in **Gordon, supra** state that best interests are the only consideration. The facts of this case support relocation as an important first step toward securing the present and future best interests of these children. As the trial judge found, relocation will facilitate access and enable Mr. and Ms. Reeves slowly to extricate themselves from their serious financial dilemma. The fact that Ms. Reeves does not appreciate the importance of doing so makes it no less real or necessary to the best interests of these children.

[53] It is clear from the trial judge's remarks during submissions and in his reasons that he had concluded that the financial stressors were exacerbating the conflict between the parents, to the detriment of the children.

[54] The fact that the trial judge did not address each factor expressly does not, here, give rise to a reasoned belief that he must have forgotten, ignored or misconceived the evidence in a way that affected his conclusion. To the contrary, it is clear that he was aware of the challenges facing this family and properly applied the law in coming to his conclusion. In so doing, he did not err in legal principle nor did he make a palpable and overriding error in a finding of fact.

Issue 2: Did the learned trial judge err by extending the end time of the respondent's alternate weekend access from Sunday at 4:00 p.m. to Monday morning?

[55] The appellant argues that the trial judge erred in law because there was no reason to extend the access and, further, by failing to properly understand the implications of the order that was being made.

[56] There is nothing in the decision which would lead to the conclusion that the trial judge did not consider relevant factors or evidence or that he did not properly weigh the factors. It is clear from a review of his decision and the record, including his discussions with counsel, that he was well aware of the many challenging issues being faced by this family.

[57] Further, there were reasons upon which the trial judge could justify making the extended order. These reasons (although not an exhaustive list) may be summarized as follows: first, and perhaps the most important reason, is that extended access appeared to be necessary for the children and, especially the oldest child, to have greater contact with their father.

[58] It also addresses the concern that the respondent was not sufficiently involved in the children's activities. There was evidence from Ms. Reeves, herself, that she did not think that Mr. Reeves was sufficiently involved in the children's activities. The parenting schedule as ordered by the trial judge would give Mr. Reeves more responsibility for the children and their activities.

[59] Finally, the extended access, and in particular the Monday morning exchange, could minimize the contact and conflict between the parties. Mr. Reeves requested the Monday change for that very purpose. It is clear from a review of the transcript that the trial judge was aware of this issue. During final summations, the trial judge observed:

> **THE COURT:** ...You know, one of the purposes of these proceedings is to structure what happens in the future with people. There is very little in your presentation this morning . . . that offers a scintilla of dignity or respect for his role as a father. Now I'm not saying it needs to be, you know, I'm not commenting on opposing shared parenting or putting forward of your client's case that she should have primary care or whatever but I can – well there's been

> nothing to reduce the conflict between these two in your comments this morning and that's your choice...

[60] This is just one example of the expressions of concern that the trial judge had about the continuing conflict between the parties.

[61] A review of the evidence in its entirety reveals that the trial judge had ample reason to grant the extension in access.

[62] I would also point out that it was argued in the appellant's factum that the extension of the access to the father would interfere with the appellant's potential employment. There was no employment plan for the appellant put before the trial judge. Indeed, there was very little evidence of what Ms. Reeves intended to do from an employment point of view. If there is an issue with respect to Ms. Reeves' present employment and this provision of the Corollary Relief Judgment, it can be addressed on an application to vary. It is not a matter for this court. It is not for us to re-weigh the evidence or to take into consideration evidence which was not before the trial judge.

[63] For these reasons, I conclude that the trial judge did not commit any error in granting the extended access.

Issue 3: Did the learned trial judge err in allocating the first choice of summer access times in a manner which gives ongoing preference to the respondent after 2009?

[64] The appellant argues that the learned trial judge erred in failing to provide an explanation for the inclusion of this provision in the order. She asserts, that absent reasons, the Corollary Relief Judgment should be varied to include an equitable sharing of vacation choice.

[65] While it is accurate to say that the trial judge did not provide reasons for this provision in the order, that, in and of itself, is not sufficient to conclude that he committed a reversible error of law. The evidence at trial was that Mr. Reeves was employed and Ms. Reeves was not. This provision in the order would allow him sufficient time to make leave arrangements with his employer.

[66] Even more compelling is that the trial judge expressed clear concern that Ms. Reeves did not give sufficient recognition to Mr. Reeves as a parent. The first choice of summer access would also ensure that Mr. Reeves would be able to arrange quality time with the children during those extended access periods.

[67] There is evidence to support the desirability of such an order.

[68] Based on the evidence before the trial judge, I am satisfied the judge did not make a material error, seriously misapprehend the evidence or make an error of law in setting the summer access as he did.

V. CONCLUSION:

[69] I would, therefore, dismiss all three grounds of the appeal. Mr. Reeves did not seek costs of the appeal and, therefore, there shall be no order with respect to costs.

Farrar, J.A.

Concurred in:

Bateman, J.A.

Oland, J.A.