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**IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA**  
**[Cite as: P.P. v. M.Z., 2007 NSFC 2]**

**BETWEEN:**

**P. P.**  
**- APPLICANT**

**AND**

**M. Z.**  
**- RESPONDENT**

**BEFORE THE HONOURABLE JUDGE BOB LEVY**

**HEARD AT: KENTVILLE**

**DATE HEARD: JANUARY 4, 2007**

**DECISION DATE: JANUARY 9, 2007**

**APPEARANCES: PETER VAN FEGGELEN FOR THE APPLICANT**  
**DONALD URQUHART FOR THE RESPONDENT**

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**DECISION**

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**ISSUE: Mobility, Fact Specific**

By the Court:

1. The Applicant, P. P., wants to move with her fiancé to Grand Falls-Windsor, Newfoundland. She is the mother of two children; one is the one year old child of herself and her fiancé, and the other is a six year old boy, A. A's father is the Respondent M. Z. and he opposes the move. Ms. P. and her partner say that if her application is denied they will live here rather than lose primary care of A. The Respondent advises that if so he will not pursue his application for primary care for himself.

2. The parties got together when they were very young, aged 16 for her and 17 for him. A was born later that same year. The parties spent a lot of time together in the home of Mr. Z.'s mother, but separated when the child was two years old. In their early years as parents it seems that they lacking in several respects. However, I accept that they have both matured considerably, (they are now in their late twenties), and in largest measure they seem to both be caring parents, loving towards A., loved by him.

3. Ms. P. has had the primary care of the child and this was confirmed by a 2003 consent Family Court order. Mr. Z. has had weekly access, which has grown to become every weekend: one weekend for two nights and the intervening weekend just Friday until late afternoon on Saturday. There is little indication that Mr. Z. has sought more access though and agreed on the stand that for the most part he hasn't really experienced any serious difficulties having the access and contact he asked for. As always, there are the odd irritants, but as these things go, very few, which is a testament to their level of maturity, their ability to communicate one with another and their mutual recognition of the importance of

the other in the boy's life.

4. Both parties are currently in live-in relationships and both their respective partners testified as of course did the parties and the mother of Mr. Z.. Both "new" partners made a favourable impression on the court and the presence of each of them in the child's life is clearly a positive. The evidence is that the child is well attached to all four adults and as well to his paternal grandmother.

5. The child has only ever lived in Kings County, Nova Scotia although he has visited Newfoundland on several occasions for two or three weeks at a time in the summers. By all accounts he is a happy and well-adjusted child. He is quite attached to his baby brother. He seems to go easily back and forth between his parents. There is some indication that he needs a measure of special attention at school to help him "stay on task", but the evidence does not establish that any particular school program or setting, available here or in Newfoundland, is better suited to meet his needs.

6. The willingness of Mr. Z. for the child to remain in the primary care of the Applicant if she remained here is an obvious endorsement of her care of the child. Ms. P. for her part acknowledges that the child has a "great relationship" with his father although she professes to have some reservations about the child spending "lengthy access" with his father because of "lack of rules and structure".

7. The Respondent is a life-long resident of Kings County and his mother and a number of brothers and sisters live in the area. He has a grade nine education and for a number of years has had low-paying, seasonal jobs in the construction industry earning, until 2006 in any event, less, well less than ten thousand dollars per year, including Employment Insurance. Ms. P. believes that he works "under

the table" but he denies that and she acknowledges that she cannot prove it. He has not looked for other employment, rather he hopes that sooner or later he will get full-time employment with this firm. His partner works in the retail grocery sector earning a little over \$15,000 per year.

8. Pursuant to a 2004 consent Family Court order, when he claimed (and the Applicant accepted), that he was then earning \$7,000 per year, he nonetheless agreed to an order that he pay \$50 monthly for the months when he was working, April through December. I gather that he has met the terms of that order. The evidence of the Applicant, which I accept, is that he has almost always pleaded poverty to requests that she has made for extra assistance even though his income has improved somewhat in 2006. He doesn't dispute that but does say that he has bought some things for the child such as boots and his mother said that she and he each gave the Applicant \$50 in September for back to school requirements.

9. It is interesting that notwithstanding the most meagre income and repeated protests of poverty when asked to assist with the child costs, he and his partner have three vehicles between them and a house, a modest but nice house by the looks of the pictures attached to his affidavit, the latter being subject to a mortgage which they managed to obtain.

10. Mr. Z. has not at any point contacted the child's school or met with his teachers. He asserts that Ms. P. has never given him any information or report cards to the school, although there is no evidence that he ever asked her. Thus, he said, he just found about the "staying on task" problem. His not having contacted the school, he says, was because he did not understand that the joint custody order gave him the right to do so. Similarly, although not surprisingly given the primary care arrangement, the Applicant has done by far the bulk of the doctor's visits with

the child.

11. The Applicant is just concluding a year's maternity leave. She had worked for years in retail at minimum wage. She says she wants something better and has settled on the goal of becoming a home care worker. She can get the education for this either here at Kingstec or at what I take to be a community college or equivalent in Grand Falls. I gather that the program might be available sooner in Newfoundland, but it will start here in September. She advises that her fiancé's family have offered "their daycare assistance" to enable her to work or to pursue an education. Child care costs, not surprizingly, would be a major hurdle for her.

12. Her fiancé is a heavy equipment mechanic originally from Grand Falls. He and the Applicant have been together three years. He moved to Nova Scotia in 2000 and has had two jobs of three years each as a mechanic ever since. He didn't like his last job here saying there was a high employee turnover and believing that the business owner didn't treat his employees well and "demeaned" them. He has not looked for other employment here although it would appear, (Exhibit #4), that there is likely some real demand for his skills. He responded to an offer from a nation-wide company that has a depot in Grand Falls and was hired, and in fact has now been working there for a month. He moved to take the job not wanting to take the chance that it might be lost if he didn't.

13. He gave several reasons for wanting to take this job and to return to Grand Falls. He said that his home offers an "easier way of life, not as complicated as it is here". He took this job offer as it means more money, (currently he earns a dollar an hour more, but he hopes and expects that with the training the new company offers he will get a higher income and be more secure). He says the job has a better medical/drug plan, paying 100% instead of the 80% he was getting here, and he

says that the new company offers a pension plan whereas there was none with the company he just left.

14. He is currently living with his parents in Grand Falls and plans to do so until this case gets resolved and then, if Ms. P. is allowed to move, they will go house hunting. He has done extensive investigations about what might be available for the child and his affidavit notes a number of activities that would be available for him and some information about the school that the child would attend.

15. The Applicant's move to Newfoundland would, if permitted, be a major "change of circumstances" requiring that the court determine whether it would be in the best interests of the child for the move to proceed or to stay here. (*Gordon v. Goertz* (1996), 19 R.F.L. (4<sup>th</sup>) 177, (S.C.C.), see especially paragraphs 49-50)

16. I accept that the Applicant's fiancé has his reasons for wanting to return home and to take the job he has. I accept as well that the Applicant would want to maintain the family intact and that she has, as it happens, family of her own in the Grand Falls area, namely grandparents, some aunts and uncles and some cousins. I accept too that she can get the education she wants there and that it might be easier for her if, as is not the case here, there was assistance available with child care.

17. In my view however the material and educational benefits of the move are only theoretical or minimally better than are available here. The positive impacts, if any, as far as the best interests of the child are concerned do not equal the negative consequences of uprooting the child from his father and his family, his community and his school. I know nothing about the fiancé's family, whom, it would seem, would be playing a very large role in his life. It is evident that the fiancé has the drive and the willingness to seek and find employment here. I am satisfied that

in all likelihood he can once again obtain a job here and that the Applicant can pursue an education in her chosen field here.

18. By all accounts the child is happy and doing well here. He has a "great relationship" with his father and is used to seeing him every week. While his father does not appear to be the soul of ambition, and has not to date pulled his weight when it comes to finances or even attention to the child's education, he is most definitely not without his positives. He has been faithful in his parenting times and his attention and is an important and positive fixture, as his partner and his mother, in the child's life. The change for the child of being uprooted from his home environment and his school, and going from contact every weekend with his father to only seeing him and his extended family at most a few times a year, would be substantial and, I believe, negative.

19. The application is denied.

20. It needs to be said however that the time has come for the Respondent to "pull his weight" financially and to lose the idea that parenting is just playing with or being with the child on weekends. It does involve financial sacrifice and it does mean involving oneself in his education. He cannot expect to tie up the Applicant and her family insisting that they stay here and still continue to foist almost the entire burden of raising the child on them. To date he has let far too much of the ongoing responsibilities and the costs of child rearing fall on the shoulders of the Applicant. Indeed her costs will increase as she pursues her education. Let this be understood: should the Respondent prove unwilling or unable to rise to the challenge financially and the welfare of the child suffers as a result, if the door to a better quality of life turns out to be truly barred to the Applicant (and therefore by extension to the child) because of his failure, a court could on application

reconsider this decision.

21. As always, with decisions on mobility applications I am conscious of the disappointment that inevitably results - either way. There is very seldom any middle ground. I wish it were otherwise.

22. I would ask counsel for the Respondent to prepare the order.

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Bob Levy, J.F.C.