

IN THE FAMILY COURT OF NOVA SCOTIA

**Citation:** K.L.T. v. M.A.T., 2008 NSFC 16

**Date:** 20080430

**Docket:** 07Y051379

**Registry:** Yarmouth

**Between:**

K.L.T.(M)

- Applicant

v.

M.A.T.

- Respondent

**Judge:**

The Honourable Chief Judge John D. Comeau, CJFC

**Heard:**

April 30, 2008, in Yarmouth, Nova Scotia

**Counsel:**

Gregory Barro, for the Applicant

James P. DiPersio, QC, for the Respondent

**The Application:**

[1] This is an application to vary an order of March 15, 2007, which was an agreement between the parties and provided:

**THAT** the parties shall have joint custody of the child, G., born May \*, 2004, *(editorial note- removed to protect identity)* with shared parenting as can be arranged between the parties.

[2] The parties are unable to agree on certain aspects of the shared parenting arrangement. Through their counsel, they have asked the court to consider both their proposals and make an order that would be in the best interests of the child.

[3] They agree it is not necessary for the court to consider a change in circumstances under section 37 of the **Maintenance and Custody Act** as this exercise is a clarification of shared parenting referred to in the order of March 15, 2007.

**The Facts:**

[4] The Applicant is the mother of the child, G., and she is a nurse who works two days 8:00 a.m. to 8:00 p.m., with a day off and then two nights 8:00 p.m. to 8:00 a.m. Usually following this night shift, she sleeps from the time she gets home until 1:00 p.m. The child is with the father when she works.

**Mother's Proposal:**

[5] The Applicant-mother wants to have the child on the day she is off between shifts. It is understood that since October 2007 she has had that time with G., meeting her and the father in town (H. H. lot) at 8:00 a.m. and returning her to her father at 5:00 p.m. at the same place.

[6] Her amended access would be pick up at the father's home (or at T. car pool as she lives in Q. and he lives in M. and this may be more convenient to both) the night before this middle shift day off and return at 5:00 p.m.

[7] On the day of her last shift, the mother wants to pick up the child at the daycare at anytime but preferably by 3:00 p.m. The father wants to know when she plans to pick up the child but she argues it is not necessary. The parties communicate by email and the mother only wants a call from him if it is an emergency. She is concerned about what she describes as harassment in the past.

[8] The father pays for the daycare and he believes this is a good place for the child to learn social and other skills. He has designated three other persons, other than himself and the mother, to be able to pick up the child. The mother wants to be able to designate three people as well to pick up the child if she is unable to do so but he refuses saying that is too many names to give a day care.

### **The Father's Proposal:**

[9] The Respondent-father is striving towards a 50/50 sharing of the child's care. He proposes that on the first day of her four day shift, the mother would deliver the child to the car pool parking lot in T. by 7:30 a.m. On the final day of the four day shift, he would return the child to the mother at the same place by 5:00 p.m. If she wanted to pick her up earlier, she should advise him. He is not

agreeable to the mother having the child on her day off between day and night shifts.

[10] There is no agreement by the father that the mother can designate three others to daycare as persons who can pick up the child on her behalf.

**Issue:**

[11] Terms of shared parenting.

**Conclusions/Decision:**

[12] The principle that the court is governed by in making a decision with respect to the specifics of shared parenting is, what is in the best interests of the child?

(See *King v. Low* (1985), 44 R.F.L. (2d) 113)

[13] In the case before the court, the Respondent-father is concerned about maintaining an ideal 50/50 shared parenting. He also believes the child is better off in daycare (he is a s. \* (\* *editorial note- removed to protect identity*) ) than with

her mother. The 50/50 shared parenting would be disrupted by the mother picking the child up the night before her middle shift day off. It would be taking his time away from his daughter. He believes that the mother, by proposing this, is not thinking about the best interests of the child.

[14] The consideration in this case is similar to that where a parent applies for access. That access is the right of the child and that the court's duty is to protect the child's interest has been confirmed by the courts in many cases. (see *Young v. Young* (1993), 49 R.F.L. (3d) 117 (S.C.C.) - no limitation on access)

[15] In *Cooper v. Cooper* 2002 Carswell Sask 223, the court gave some guideline as to access schedules which, in the case before the court, are parenting schedules.

The goal of any access (parenting) schedule should be to avoid long separations from both parents to minimize separation anxiety and to have sufficiently frequent and broad contact with each parent to keep the infant (or child) secure, trusting and comfortable in each relationship.

[16] Maximum contact with both parents is the ideal and this does not necessarily mean a 50/50 share in parenting.

[17] It is in the best interests of G. if she can be with her mother or father when they are available. Mother is able to take her between day and night shifts. She would otherwise be in daycare and receive the same, if not better, stimulation if she is with her mother. The daycare is beneficial and she gets enough time there to obtain its benefits. It is also in the child's best interest that the mother be able to designate persons who may pick her up from daycare.

[18] The court finds it in the best interests of G. to make the following order with respect to shared parenting:

1. The child will be in the care and custody of the father when the mother is working her regular shift.
2. The child will be with the mother during her day off in the middle of her day and night shifts. She will pick up the child the night before between 8:30 p.m. and 9:00 p.m. at the T. car pool parking lot. The father is responsible for delivering her there.

3. Following her final shift, the mother will be able to pick up the child at the daycare at anytime but at least by 3:00 p.m.
4. The mother may designate to the daycare up to three persons who may pick up the child if she is unavailable to do so. (see *Blois v. Blois* (1988), 83 N.S.R. (2d) 328 (N.S.S.C.) as to conditions for custody/access)
5. Both parties shall keep the other informed about anything that affects the welfare of the child. (see *Blois v. Blois supra*)
6. The parties have agreed on parenting for vacation, birthdays and holidays and the court requests counsel for the Applicant to set these terms out in an order he will prepare.

[19] As clarification, parenting means that when the child is with one parent or the other, it is that person who decides who will babysit.

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Judge John D. Comeau  
Chief Judge of the Family Court  
for the Province of Nova Scotia