

**IN THE FAMILY COURT OF NOVA SCOTIA**

**Citation:** N. R. G. v. S. R. G., 2011 NSFC 4

**Date:** 20110208

**Docket:** 07Y053247

**Registry:** Yarmouth

**Between:**

N. R. G.

Applicant - Respondent

- and -

S. R. G.

Respondent - Applicant

**Judge:**

Before the Honourable Chief Judge John D. Comeau,  
Judge of the Family Court of Nova Scotia

**Heard:**

January 12, 2011 in Shelburne, Nova Scotia

**Decision Date:**

January 25, 2011

**Counsel:**

Gregory D. Barro, Esq., for the Applicant  
Hugh Robicheau, Esq., for the Respondent - Applicant

**The Application:**

[1] The original application in this file was made by N. R. G., and it is desirable to keep the same heading that was on the first application. In this particular case N. R. G., is the Respondent.

[2] S. R. G., the Respondent-Applicant applies for the following relief, as a variation of an order dated June 17, 2009, as follows: S. R. G., is requesting an access review and special expenses review.

[3] Particulars of what is being requested was outlined by counsel prior to the hearing.

[4] Counsel on behalf of Applicant - Respondent, N. R. G., is requesting that the order be changed from one week on to one week off, Sunday to Sunday. That this would be in the children's best interest.

[5] Counsel on behalf of the Respondent - Applicant, S. R. G., indicates the present schedule was developed around the work schedule of his client and in effect took into account that both parents worked. If the Applicant - Respondent's

proposed change was accepted she would lose time with the children because she would be working. Further she says there should be some certainty about pick up and delivery.

**The Issue:**

1. Change in circumstances
2. A shared parenting plan that is in the best interest of the children.
3. Payment of special expenses

**The Facts:**

[6] The parties live ten minutes apart. Both has accommodations that fit the children's needs. S. R. G., is the mother and N. R. G., is the father of the children.

[7] The order that is the subject of this application to vary was developed with the help of their counsel and provides for a shared parenting scenario, child support and payment of Special Expenses. This order dated June 17, 2009 is as follows:

**1. The parties shall continue to share joint custody of the children, Madison, (date of birth December 27<sup>th</sup>, 2000) and Cole, (date of birth March 12<sup>th</sup>, 2006) on the following parenting plan:**

**(a) For as long as S. R. G., is on a four day on, five day off work cycle, both children shall be with N. R. G., for the four full days that S. R. G., is working. The children shall be with S. R. G., for the five full days that she is off work. This would continue to rotate to coincide with S. R. G's work schedule.**

**(b) Each party shall have two non-consecutive seven day blocks of access with both children during each summer break.**

**(c) In September of 2009 when S. R. G's work schedule changes, N. R. G., shall have the children for three full days each week. For one week, he would have the children from Thursday at 7:30 p.m. until Sunday at 7:30 p.m. In the following week, he would have the children for three consecutive days**

**which would either be Monday at 7:30 p.m. to Thursday at 7:30 p.m. or Tuesday at 7:30 to Friday at 7:30 p.m. depending on S. R. G's work schedule.**

**(d) N. R. G., shall have the children from December 24<sup>th</sup>, 2009 at noon until December 25<sup>th</sup>, 2009 at noon and every second year thereafter.**

**Child Support:**

2. Commencing July 1<sup>st</sup>, 2009 and continuing on the first day of each and every month thereafter, N. R. G., shall pay S. R. G., the sum of \$300.00 per month for support. The amount of child support reflects the shared parenting arrangement between the parties.

**Section 7 Special Expenses:**

3. N. R. G., and S. R. G., shall share Section 7 medical and dental expenses and expenses for extra curricular activities including Brownies, dance, pre-school and school supplies with N. R. G., responsible for 57% and S. R. G., responsible for 43%.

[8] The Respondent - Applicant, S. R. G., complains about the return time of the children when it is her parenting time. Her evidence is that they were to come back

at 7:30, Sunday morning but the Applicant - Respondent, N. R. G., indicates he was not going to meet her. This resulted in the R. C. M. P., being called. They are usually unable to resolve such issues.

[9] N. R. G's evidence is that he was not supposed to return the children until Sunday evening. He complains that he has not been able to call the children when they are with their mother for the past year.

[10] The proposed seven day on seven day off schedule proposed by N. R. G., would not work for S. R. G., stating that she would not see the kids for three weeks and would require the use and payment of a babysitter. There is evidence that the Respondent - Applicant, S. R. G's schedule will change the end of January 2011.

**Special Expenses:**

[11] There was evidence that S. R. G., presented N. R. G., with details of Special Expenses for which he was to reimburse her 57%. This has not been done because he says that the receipts are not legitimate, not signed by the payee. He does agree

that he knows she paid the Special Expenses but was waiting to come to court and have all matters resolved. “Whatever expenses are legitimate, I will pay.”

[12] Maintenance Enforcement has advised by letter that clause three with respect to special expenses (referred to earlier) in the order of June 17, 2009 (actually issued December 1, 2009 is not enforceable by the Director, “As it does not state that one party shall pay the other party but simply that the parties shall share the expenses.”

### **The Law:**

[13] The Maintenance and Custody Act provides for variation of court orders

### **Powers of court**

**37(1)** The Court, on application, may make an order varying, rescinding or suspending, prospectively or retroactively, a maintenance order or an order respecting custody and access where there has been a change in circumstances since the making of the order or the last variation order.

**Conclusion/Decision:**

[14] There are two changes in circumstance that provide the Court with jurisdiction to vary the June 17, 2009 order issued on December 1, 2009. One is a breakdown in communication and interpretation of the Court Order. The other is that the order with respect to special expenses is unenforceable by the Director of Maintenance Enforcement.

[15] The parties in the best interest of the children require changes in the order to give them a better understanding and clarification of what they are requested to do.

[16] The order, of June 17, 2009, will be varied as follows:

A. Clause (a) of paragraph 1 will remain the same and that parenting schedule will continue to rotate with respect to the Respondent - Applicant, S. R. G's work schedule. A seven day on and seven day off schedule would be contrary to the children's best interests as they would lose valuable time with their mother. S. R.



G., will provide the Applicant - Respondent with her schedule as soon as she has it.

Pick up and drop off times shall be 10:00 a.m. on Sunday.

B. Both parties shall have phone access once a week when the children are with the other parent. The children shall have liberal phone access to their parents.

C. The Applicant - Respondent, N. R. G., shall pay all special expenses and it shall be his duty to inquire what those expenses are. The Respondent - Applicant, S. R. G., shall pay to N. R. G., 43% of the expenses upon request accompanied by proper receipts.

The present Special Expenses owed by the Applicant - Respondent N. R. G., to the Respondent - Applicant S. R. G., appear to be \$750 representing 57% of those expenses.

The Applicant - Respondent N. R. G., will pay to the Respondent - Applicant \$750.00 within fifteen days of the date of this decision.

Counsel for the Respondent - Applicant S. R. G., Mr. Robicheau shall  
prepare the order.

---

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