

FAMILY COURT OF NOVA SCOTIA

Citation: *A.M. v. S.F.*, 2016 NSFC 22

Date: 2016-09-13

Docket: Pictou No. FPICMCA 76746

Registry: Pictou

Between:

A.M.

Applicant

v.

S.F.

Respondent

Judge:	The Honourable Judge Timothy G. Daley
Heard:	July 20, 2016, in Pictou, Nova Scotia
Decision:	September 13, 2016
Counsel:	Ellen R. Burke, for the Applicant Roseanne Skoke, for the Respondent

Introduction and Issues

[1] This decision is about a child, O.F., (born November 15, 2011), who is four years old, and what parenting arrangements are in his best interests. Specifically, I must determine whether he should be primarily in the care of his mother, A.M., or his father, S.F., and what access and other arrangements should be put in place for his care and support. I must also determine issues of child maintenance and special expenses for O.F.

Positions of the Parties

[2] S.F. says that O.F. should reside primarily with him and have access with his mother or, in the alternative, they should have a shared parenting arrangement. He takes this position for several reasons including, but not limited to, his concerns regarding the mother's alleged use of marijuana, her changing living arrangements, the poor lifestyle choices she has made, her mental health and emotional state, and her denial of access for him.

[3] A.M. says that O.F. should primarily reside with her and should have access with his father for several reasons including, but not limited to, her having been

O.F.'s primary caregiver since birth and since the separation, her now being in a stable relationship with a new partner in a suitable home, O.F. doing well in her care, and her being best equipped to care for him. She absolutely denies using marijuana now or in the past and denies any other substance abuse problem. She says S.F. has a temper, they have communication problems and he has refused to return O.F. to her care on at least one occasion.

[4] The only order in place at this time is an interim order of December 23, 2015 which granted the parties joint custody of O.F, placed him in the primary care of A.M. and granted S.F. scheduled access with him.

Background

[5] The parties do agree that they were in a relationship since 2011. A.M. became pregnant with O.F. before the parents began to reside together. They began cohabiting in January 2012 and separated in July 2015. Since then, O.F. has primarily resided with his mother and has had access with his father, including since the interim order was granted by this court.

Legal Framework

[6] In order to determine the appropriate parenting arrangements for O.F., I must review all of the evidence in the context of the law which I am required to apply. Central to that analysis is the requirement that I must make my decision based on O.F.'s best interests and on no other consideration. In order to do so, I must first consider the provisions of the Maintenance and Custody Act, R.S.N.S. 1989, c.160 as amended, which is the governing legislation in this circumstance.

[7] Any consideration of parenting arrangements begins with Section 18 (5) of the Act which reads:

(5) In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall give paramount consideration to the best interests of the child.

[8] Section 18 (6) provides guidance regarding what I must consider when determining the best interests of O.F. The following provisions I find to be relevant in this circumstance:

(6) In determining the best interests of the child, the court shall consider all relevant circumstances, including

- (a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;
- (b) each parent's ...willingness to support the development and maintenance of the child's relationship with the other parent or guardian;
- (c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs;
- (d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;
- ...
- (g) the nature, strength and stability of the relationship between the child and each parent...;
- ...
- (i) the ability of each parent...to communicate and co-operate on issues affecting the child....

[9] Finally, I must take into consideration Section 8 of the Act as follows:

(8) In making an order concerning care and custody or access and visiting privileges in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6) (j).

[10] In this matter I find that there is no evidence of family violence, despite A.M's evidence respecting certain statements made to her by O.F. regarding S.F. Therefore, I will not consider the provisions of section 18(6) (j).

Case Law

[11] The analysis of O.F.'s best interests does not end with the factors set out under Section 18 of the Act. I must also look to what other courts have said in relation to the determination of a child's best interest. The leading decision in Nova Scotia respecting that analysis is *Foley v. Foley*, 1993 CanLII 3400 (NSSC), a decision of Goodfellow J. I note that this decision predates amendments to the *Act* which set out the factors contained in section 18(6) and I find that the so-called "Foley factors" have been largely subsumed by those amendments. That said, *Foley supra* remains a helpful analysis of the test of best interests. The following are a list of those factors which are relevant to this case:

15. ... In determining the best interests and welfare of a child the court must consider all the relevant factors. The diversity that flows from human nature is such that any attempt to compile an exhaustive list of factors that could be relevant is virtually impossible.

16. Nevertheless, there has emerged a number of areas of parenting that bear consideration in most cases including in no particular order the following:

1. Statutory direction ...;
2. Physical environment;
3. Discipline;
4. Role model;
- ...
8. Time availability of a parent for a child;
- ...
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. ...;
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.

17. The duty of the court in any custody application is to consider all of the relevant factors so as to answer the question.

18. With whom would the best interest and welfare of the child be most likely achieved?

19. The weight to be attached to any particular factor would vary from case to case as each factor must be considered in relation to all the other factors that are relevant in a particular case.

20. Nevertheless, some of the factors generally do not carry too much, if any, weight. For example, number 12, the financial contribution to the child. In many cases one parent is the vital bread winner, without which the welfare of the child would be severely limited. However, in making this important financial contribution that parent may be required to work long hours or be absent for long periods, such as a member of the Merchant Navy, so that as important as the

financial contribution is to the welfare of that child, there would not likely be any real appreciation of such until long after the maturity of the child makes the question of custody mute.

21. On the other hand, underlying many of the other relevant factors is the parent making herself or, himself available to the child. The act of being there is often crucial to the development and welfare of the child.

S.F.'s Evidence

[12] In S.F.'s evidence he raises several concerns regarding the circumstances of A.M. and her ability to parent O.F. safely and appropriately. I will briefly review his evidence on each of these issues raised.

[13] S.F. has a concern that A.M. has a history of marijuana use which materially affects her ability to parent O.F. He cites nine examples in his affidavit of such observations he made. Given the specificity of each incident, I will deal with each separately including any responding testimony.

[14] I note that, respecting each incident or observation, S.F. has failed to provide corroborative evidence, such as photographs, text messages, Facebook postings or witnesses. While such corroboration is not always required, in a circumstance where each party has an interest in the outcome of a litigation, corroborative evidence can be extremely helpful to the court in determining the veracity of the claim being made.

[15] With that in mind, S.F.'s allegations are as follows:

1. S.F. says that when A.M. was resident in Trenton he observed ashes and roaches in her bathroom. He describes a roach as the end of a marijuana joint. A.M. flatly denies this allegation.

2. S.F. says that when A.M. was residing in New Glasgow he found a baby wipes container in the children's bedroom closet that contained matches, a pipe, business cards, stem paper and baggies and there were matches on the shelf. A.M. says that her brother was staying with her at the time and that these items, which consisted of matches and papers only, were present in the home but belonged to her brother. She kicked her brother out and was extremely upset by this incident.

3. S.F. says that when A.M. was residing in Westville he observed marijuana residue and particles on the kitchen table in that home and papers hidden in surgical gloves in her closet. A.M. says that S.F. normally only came to the front entrance of her apartment; was only in the apartment once to help her move, at which time the kitchen table was not present, and he was never in the bathroom. She therefore denies this allegation.

4. S.F. says that when A.M. was resident in New Glasgow, in a different apartment, he observed marijuana roaches on the roof near her apartment entrance. A.M. said that she knew nothing about these items; that if they existed, any such items were not hers, that there were four other apartments in that building and that S.F. never mentioned this concern to her at any time until the hearing.

5. S.F. says that he found items which suggest marijuana use on numerous occasions. A.M. flatly denies this allegation.

6. S.F. alleges that on December 20, 2012 he arrived home in the morning from work to find A.M. smoking a joint on the doorstep while O.F. was in the house by himself. He says that A.M.'s father, M.M., witnessed this. A.M. denies this allegation. M.M. testified and also denied witnessing his daughter smoking a marijuana cigarette on that or on any other occasion. It was M.M.'s evidence that he had never observed his daughter using marijuana or any other controlled substance. He does admit that S.F. raised the issue of A.M.'s alleged drug use but that he did not drop in to check on her and believes that S.F. is obsessed with any type of drug use.

7. S.F. says that he found drugs, papers and baggies wrapped in a baby diaper in a makeup bag in A.M.'s motor vehicle trunk in the winter of 2015. A.M. denies this allegation.

8. S.F. alleges that he observed a Facebook message from A.M. to another person seeking oxycodone and dilaudid. A.M. flatly denies this allegation.

9. S.F. claims that he found roaches in A.M.'s jean pockets while doing laundry. A.M. denies this allegation.

[16] It is also material to note that A.M.'s partner, J.C., provided evidence in which he said that he has never observed A.M. to use marijuana or any other drug. I take this to mean any illegal drug.

[17] As well, A.M.'s former partner, J.M., provided evidence in the matter in which he testified, in part, that he has known A.M. since 2006 and has never observed, nor is he aware of, any drug use by A.M.

[18] Allegations of drug use, whether marijuana or any other nonprescription drug or medication, are always serious matters which must be carefully analyzed when assessing the best interests of the child. While not all drug use will necessarily weigh against a parent's ability to safely and adequately take care of the child, the potential risk is very real and must be carefully considered.

[19] Thus it may be that a parent who is taking several significant drugs but doing so in accordance with properly issued prescriptions and while under the care of a licensed physician may pose little to no risk to a child. On the other hand, a parent who is using a non-prescribed drug or medication, even modest amounts of marijuana, may pose a significant risk to a child as it may impair that parent's ability to safely and adequately parent. The facts of each case will differ and the court must be careful to consider all of the evidence in determining what weight, if any, to give such allegations.

[20] Moreover, any such allegations must be proven on the balance of probabilities. The court must therefore find that the allegation is more likely true than not. This determination may be done respecting each individual allegation of drug use. The court may also look at the collective allegations in assessing the credibility of that evidence, and the weight to be given to it.

[21] In doing so, assessment of credibility is essential. This is particularly so when there is no corroborative, more objective evidence by way of photographs, video, texts or Facebook postings. In assessing credibility, I adopt the reasoning of Forgeron J. in the decision of *Baker-Warren v. Denault*, 2009 NSSC 59 when she noted:

18 For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" *R. v. Gagnon*, 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" *R. v. R.E.M.*, 2008 SCC 51 at para. 49.

19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

- a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: *Re: Novak Estate*, 2008 NSSC 283 (S.C.);
- b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
- c) Did the witness have a motive to deceive;
- d) Did the witness have the ability to observe the factual matters about which he/she testified;
- e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
- f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: *Faryna v. Chorney*, [1952] 2 D.L.R. 354;
- g) Was there an internal consistency and logical flow to the evidence;
- h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
- i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

20 I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: *R v. Norman*, (1993) 16 O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in *Re: Novak Estate*, *supra*, at para 37:

There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See *R. v. D.R.*, [1996] 2 S.C.R. 291 at 93 and *R. v. J.H.*, [2005] O.J. No. 39, *supra*).

21 Ultimately, I have considered the totality of the evidence in making credibility determinations. I have thoroughly reviewed the *viva voce* and documentary evidence in conjunction with the submissions of counsel, and the applicable legislation and case law.

[22] In the present case, I note that each witness, including the parties, has an interest in this litigation and, in the case of supporting witnesses, has a connection to one of the parties. This can even be said of J.M., who, though he is the former partner of A.M., maintains a good relationship with her and co-parents their children with her.

[23] I found that each witness who spoke of the allegations of drug use testified in a straightforward manner. The only exception to this were parts of J.M.'s testimony respecting a peace bond matter from some time ago. I found him to be not as forthcoming as one might expect. That said, I am entitled to accept some of his evidence while rejecting other parts of that evidence. I accept his evidence when he denies seeing A.M. using drugs.

[24] I take into account that A.M. did admit to the presence of drug paraphernalia in her home on one occasion which she says belonged to her brother. I view that as an admission against her interest and she certainly could have denied this allegation as she did the rest.

[25] I find that A.M., M.M. and J.C. gave their evidence in a straightforward manner, were not evasive or hesitant and were generally credible.

[26] Taking into account all of the evidence, I cannot conclude that S.F. has proven on the balance of probabilities his various allegations respecting drug use by A.M. I accept that he believes that A.M. does use marijuana and that he believes that this affects her ability to safely parent O.F. He has simply failed to prove his allegations.

[27] S.F. next said that A.M. has moved with O.F. several times since the separation and that this is evidence that her life is not stable and she therefore cannot adequately parent O.F.

[28] S.F. also said that A.M.'s relationship with J.C. is too new and not sufficiently stable and that the current living arrangements in J.C.'s home are therefore not in O.F.'s best interest.

[29] A.M. admitted that she has moved several times since the separation. It was her evidence that she moved into her sister's home temporarily while she looked for other accommodation. She then set out the various apartments she resided in with O.F., explaining why she moved from each. These reasons can be summarized as concerns she had regarding safety, noise or suitability of the accommodation.

[30] A.M. said that she has been in a relationship with J.C. since the summer of 2015 and that she and O.F. have resided in J.C.'s home with him since November 2015. She says that this is a stable relationship, in a suitable home for O.F.

[31] The evidence is that J.C. has two children, J., who is 11 years old and C., who is one and a half years old. J.C. has a split custody arrangement with the children's mother whereby J. resides with his father full-time and spends time with his mother and C. resides with his mother full-time and spends time with his father. The evidence is that the children have their own bedrooms and when A.M.'s children, L.M. and J.L.M., come for a visit on weekends they share bunk beds with O.F. in his bedroom.

[32] While unstable living arrangements can indicate issues in parenting, based on the evidence before me I am satisfied the A.M. moved on each occasion with O.F. for good reason and that she is been in a stable and appropriate home environment with him since November 2015. From both her and J.C.'s evidence it appears they have a solid relationship and a future together and that the living arrangements for all of the children, though at times tight, are appropriate.

[33] S.F. said that A.M. is emotionally unstable. He alleged that there was prior involvement of child protection services in her life respecting her two older children. S.F. said that the fact that J.M., the children's father, has sole custody of their two children is evidence of parenting issues for A.M. He said that A.M. suffers from depression. He said that she is emotional, having hollered at O.F. and having acted irrationally in his relationship with her. S.F. says that A.M. moved out of their home several times when they were residing together. He implied that this is evidence of emotional instability by A.M.

[34] A.M. admitted that she did suffer from depression after being the victim of a sexual assault many years ago but that she has appropriately dealt with this and does not suffer from any mental health disorder at this time. She said that there was no involvement of child protection services regarding her two older children. She said the sole custody arrangement between her and J.M. was consensual, was entered into when she was struggling with her mental health and that since both parents returned to Nova Scotia, they parent cooperatively. She denies hollering at O.F. but does admit that she has, from time to time, raised her voice to him.

[35] There is some evidence that the relationship between A.M. and J.M. was not as co-operative as is alleged. For example, there was a peace bond put in place between them in 2012 to which no reference was made in their affidavit evidence. As well, a Facebook communication was entered into evidence suggesting some conflict between J.M. and A.M. in the past. Again, this was not referenced in either of their affidavits.

[36] A.M. admitted that she did move out of the home several times during her relationship with S.F. She said this was based on his constant allegation that she was having affairs and his concern regarding her use of illegal substances. She described the relationship as "tumultuous".

[37] Having carefully reviewed the evidence, I am satisfied that there is no evidence before me to suggest the A.M. suffers from a mental health disorder, is emotionally unstable or is unable to co-parent her two older children with J.M.

[38] S.F. alleged that A.M. has attempted to alienate O.F. from him. In his affidavit he sets out a number of statements that he alleges O.F. made to him. These statements are clearly hearsay. Despite this, the court does have discretion to consider them if I find that they are necessary and trustworthy.

[39] I placed little weight on the statements alleged to have been made by O.F. to S.F. I have no corroborative evidence from any other witness or source to assist in establishing their accuracy. All the alleged statements were made to S.F. who clearly has an interest in this litigation. All the alleged statements were made by a young child to a parent and that child may simply have been telling the parent what the child believed the parent wished to hear. Finally, when examining each of the statements, they do not, individually or collectively, suggest alienation but may suggest that A.M. may have said some inappropriate things around O.F.

[40] S.F. said that A.M. engaged in alienating behaviour by arguing with him in front of O.F., threatening to keep O.F. from him around Christmas of 2015, interrupting his time with O.F. with phone calls, seeking O.F.'s early return from access, planning activities during access time, refusing to allow S.F. to take O.F. to appointments and other similar allegations.

[41] Regarding the allegation that A.M. called the Department of Community Services with a claim that O.F. had said S.F. had abused him, it was A.M.'s evidence that she called when O.F. told her on two occasions that S.F. had hit him. There is correspondence from the department confirming that the investigation was inconclusive on this matter but that the department had substantiated concerns regarding emotional harm on the basis that O.F. had been present and exposed to the conflict between the parties.

[42] A.M. said that she reported the statements made by O.F. to the department as she was required. While I cannot determine with any certainty whether such statements were made by O.F., I am not critical that a parent would make such a

report to the department for investigation. There is a statutory requirement to do so under the Children and Family Services Act. Moreover, in the reporting letter, the department did not suggest that the report by A.M. was false, rather that the results of that investigation were inconclusive.

[43] With respect to the other allegations made by S.F. respecting alienation, it is sufficient to say that A.M. denied each. She did admit that there was an issue with S.F. travelling with O.F. to Prince Edward Island the week prior to the hearing. She said she wanted details of the arrangements for travel and the ability to speak to O.F. by phone. She said the trip did go ahead and O.F. was returned on time as agreed.

[44] S.F. said that A.M. interfered at his workplace and had called his workplace to complain about O.F. being in a plow with him. A.M. admits that she did make a call to S.F.'s supervisor based on the statement O.F. made that he was sitting unsupervised in an excavator. She was extremely concerned about O.F.'s safety and did not want O.F. at the local landfill with his father in an excavator.

[45] S.F. alleged that there was an altercation on January 17, 2016 when A.M. and J.C. arrived at his place of work. He says J.C. tried to initiate a fist fight with him. Peace bond applications were filed arising from that incident. Both A.M. and J.C. said the incident is currently before the provincial court and made no further comment.

[46] S.F. said that there was another incident in January 2016 when S.F. was plowing at a local Sobeys store. A.M. said that she understood from S.F. that he was not working that day and had care of O.F. She and J.C. went to Sobeys as she suspected S.F. would be working, given the weather. When they discovered S.F. was working in his plow, they said he cut them off with the plow and got out, yelling at them. J.C. says that S.F. came to his window and was hollering at him. S.F. said the opposite.

[47] Whatever happened, it is clear from the evidence that the behaviour of the parties and J.C. was inappropriate in that circumstance and it is most regrettably an indicator of poor communication between and among them. Fortunately, O.F. was not present at the time.

A.M.'s evidence

[48] Much of A.M.'s evidence was by way of reply to the allegations made by S.F. in his testimony. As I have already reviewed much of that in this decision, I will not repeat her version of events here.

[49] A.M.'s evidence was that she has been the primary caregiver for O.F. since his birth and continuing after the separation. She said she spent a year of maternity leave caring for him. She said that he has never spent any extended time away from her. She said that she does not use nonprescription drugs, does not abuse alcohol, is emotionally stable and her mental health is good.

[50] A.M. said that she is now in a stable and long term relationship with J.C., has resided in his home with O.F. since November 2015 and the parenting arrangements are appropriate and stable. A.M. says O.F. is doing well in his blended family.

[51] A.M. said she has been employed for some time as a full-time cleaner at the local hospital and has recently had a change in her shift so that she works Monday to Friday, 7:15 a.m. to 3:15 p.m. She said she is able to take O.F. to the bus in the morning for school and has an arrangement to have him cared for briefly by her brother after school until her arrival home at approximately 3:30 p.m.

[52] She said that she has recently been placed off work with a gastrointestinal problem and is on disability benefits. When she is able to return to work she will go back to her shift as described above.

[53] She said that S.F. has shared in the cost of child care but he has not paid any child support since separation.

[54] A.M. said she is supportive of O.F.'s relationship with S.F. and will encourage it in the future. She acknowledges some difficulties in the communication between the parties. She says that S.F. is obsessed with her alleged drug abuse. She feels that they can co-parent O.F. once an order is granted.

[55] She says it is in O.F.'s best interest that she have primary care of him and that he should have access with his father.

Analysis and Findings

[56] There is no question that both S.F. and A.M. love O.F. very deeply and want what is best for him. It is also clear that, given their history, their poor ability to communicate, S.F.'s suspicion of substance abuse by A.M., pending peace bond applications, the referral to the Department of Community Services and many other circumstances, they are unable to agree upon an appropriate and effective parenting arrangement between them and find themselves in a high conflict circumstance. It is left to me to determine what the parenting arrangement must be.

[57] In carefully reviewing all of the evidence and considering that evidence in the context of the law, I find that it is in O.F.'s best interests that he primarily reside with A.M. and have parenting time with S.F. in a joint custodial arrangement. I do so based on the following findings and reasons:

1. A.M. has been the primary care parent for O.F. both before separation and after separation.
2. O.F. has done well since separation in the care of his mother and there is no credible evidence before me to suggest that she has been unable or unwilling to provide appropriate parenting to him.
3. A.M. is now in a stable and long-term relationship with J.C. and, despite the problems between them and S.F., I am satisfied that this blended family is a suitable and stable arrangement for O.F.
4. S.F. has failed to prove his allegations of substance abuse by A.M. Nor is there any evidence before me to suggest that A.M. is suffering from any mental health disorder or is emotionally unstable. There is no doubt that there have been some significant challenges in the parties' behaviours and communication, but I find that A.M. is not a risk to O.F. in any respect.
5. I am satisfied that A.M. is the parent more likely to support the relationship between O.F. and the other parent, S.F. I find that S.F. is heavily focused on his belief that A.M. is mentally unstable and abusing substances. He is less likely to encourage and support access except within the very narrow confines of an order.
6. O.F. has a very strong and stable relationship with both of his parents and each of them should be as fully involved in his life as is reasonable and appropriate in his best interests.

7. I am satisfied that a shared parenting arrangement is not in O.F.'s best interests. Given that he is now beginning school and taking into account the long and difficult history respecting trust, communication and cooperation between the parties, I find that a shared parenting arrangement would not be suitable.

Order

[58] There will be an order of joint custody with A.M. having primary day-to-day care and control of O.F. Each party shall have equal access to any third party service provider or records concerning O.F. including, but not limited to, doctors, dentists, teachers, schools, hospitals, child care providers.

[59] Each party shall be entitled to authorize emergency medical care for O.F. while in that party's care. In such circumstance, that party will notify the other party as soon as possible of such emergency medical circumstance and treatment.

[60] S.F. will have parenting time on a reasonable basis at reasonable times upon reasonable notice as agreed between the parties including, but not limited to, the following:

1. S.F. shall have access with O.F. on a two week rotating schedule as follows:

a) Week One - S.F. shall have O.F. in his care from Friday after school or when S.F. is finished work, whichever is earlier, until Monday morning when S.F. will drop O.F. off at school.

b) Week Two - S.F. shall have O.F. in his care from Friday after school or when S.F. is finished work, whichever is earlier, until Sunday at 10 a.m.

2. S.F.'s parenting time with O.F. shall be extended when a school in-service day occurs on Friday, such that S.F. will pick up O.F. on Thursday rather than Friday. S.F.'s access on the week one schedule shall be extended to include any statutory holidays that occur on Mondays, such that he will drop O.F. off at school on Tuesday morning.

3. The following special access time for S.F. with O.F. shall override any of the access provisions set out above as follows:

a) Christmas school break - During the Christmas school break, O.F. shall spend approximately equal time with each party as shall be agreed between them each year. Access from Christmas eve, through to and including boxing day, shall be divided approximately equally between the parties, such that one party shall have O.F. from Christmas eve at 5 p.m. until Christmas day at noon and the other party shall have O.F. from Christmas day at noon until boxing day at 5 p.m. and this schedule shall rotate between the parties each year. S.F. shall have O.F. for Christmas eve to Christmas day in even numbered years and A.M. shall have O.F. for Christmas eve and Christmas day in odd numbered years.

b) Easter - During Easter, one party shall have O.F. from Thursday at 5 pm. until Easter Saturday at noon and the other party shall have O.F. from Easter Saturday at noon until Easter Monday at 5 p.m. This access schedule shall rotate between the parties each year, with S.F. having O.F. from Easter Saturday through Easter Monday in odd numbered years and A.M. having O.F. from Easter Saturday through to Easter Monday in even numbered years.

c) School spring break - Either party may notify the other in writing on or before January 1st of any year of their intent to have O.F. with them during the school spring break for vacation. If only one party provides such notice, that party will have O.F. for the entire school spring break and the other party shall have the right to have O.F. with them for the next year's school spring break. If both parties give notice of such intent in any year, A.M.'s notice shall have priority in even numbered years and S.F.'s notice shall have priority in odd numbered years. If no such notice is given by either party, A.M. shall have O.F. with her during the first half of the school spring break until Wednesday at noon and S.F. shall have O.F. with him for the balance of the school spring break from Wednesday at noon until he drops O.F. off at school on Monday.

d) Summer school break- During the summer school break the normal access schedule will apply except that each party shall be entitled to two consecutive or nonconsecutive weeks of block access

for vacation with O.F. The parties shall notify each other in writing by May 1st each year of their proposed weeks of summer block access and, if there are no conflicts in the proposed schedules, those weeks of summer block access shall apply. If there is a conflict in the proposed schedules, A.M. shall have priority of schedule in odd numbered years and S.F. shall have priority of schedule in even numbered years. If a party fails to provide notice by the date required, that party will lose any priority for summer block access in that year.

e) Mother's day and Father's day - O.F. will be with S.F. for Father's day from 9 a.m. to 5 p.m. and with A.M. for Mother's day from 9 a.m. to 5 p.m.

4. Either party may travel with O.F., including travel outside of Canada, upon reasonable notice for reasonable periods of time. Either party, upon providing notice to the other, may arrange to obtain a passport for O.F. Either party may also obtain picture identification for O.F. as is required by airline authorities. The passport and picture identification shall be held by A.M. and be made available to the party traveling with O.F. from time to time. Either party proposing to travel with O.F., shall provide the other party with reasonable notice and, if travel includes travel outside of Canada, the other party shall provide the traveling party with a letter confirming the parties have joint custody of O.F. but that the traveling party is traveling with O.F. with the knowledge and consent of the other. Should policy regarding travel outside of Canada change in the future, the parties shall modify the arrangements set out in this paragraph such that the traveling party shall receive the cooperation of the other party as may be necessary to carry out traveling plans. The traveling party shall provide to the other party a general itinerary and telephone contact shall be arranged between O.F. and the other party as is reasonably consistent with the traveling plans and the availability and cost of such telephone contact.

5. Neither party shall permanently remove O.F. from the county of Pictou, province of Nova Scotia without the written consent of the other party or a further order of a court of competent jurisdiction.

6. All communication between the parties shall be conducted in a polite, respectful, businesslike and child-focused manner. The primary means of communication between the parties shall be via text, email or other

electronic communication. Telephone or in-person communication shall only take place in the case of urgent or emergency matters concerning O.F.

7. The parties are prohibited from making any derogatory comments respecting each other when they have care of O.F. This applies when O.F. is in the home of or in the company of that party, or if O.F. might be within hearing distance of the party. Further, each party shall ensure that no one else makes derogatory comments about the other party and if the other person does not immediately cease such comments, the party in care of O.F. shall remove O.F. from that circumstance or ensure that the other person is removed.

8. The parties are prohibited from discussing these proceedings with O.F. and shall not permit O.F. to read any materials filed in or respecting these proceeding.

9. Each party is absolutely prohibited from consuming or being under the influence of any non-prescription drug or alcohol during their parenting time with O.F.

Child Maintenance

[61] It has been suggested by A.M. that I should consider imputation of income to S.F. I declined to do so as I am satisfied that he has disclosed his income.

[62] S.F.'s income in accordance with this 2015 tax return summary is \$48,129.20. S.F. will therefore pay child support for O.F. based on the Nova Scotia table in the amount of \$403 per month. That amount may be paid biweekly if the parties agree and if so, the amount will be \$186 biweekly.

[63] The evidence is that S.F. did not pay child maintenance since the date of separation. I find the date of separation is June of 2015. Child maintenance shall therefore be payable effective the 1st day of July, 2015. Any arrears in child support to date shall be paid by S.F. to A.M. within 30 days unless the parties otherwise agree to a payment arrangement suitable to them. If such arrangement is made, it shall be incorporated into this order.

[64] Respecting childcare costs, it is A.M.'s evidence that S.F. shared in those costs to date. She now says that she has no ongoing costs given her current disability and her work schedule when she returns to work. Therefore there will

be no order for contribution by the parties to expenses pursuant to section 7 of the Child Maintenance Guidelines.

Costs

[65] If the parties wish to be heard on the issue of costs, counsel shall provide a written submission within two weeks and I will provide a written decision on that issue.

[66] Counsel for the applicant, A.M., shall draw the order.

Daley, J.