IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA

Citation: **E.S.M. v. J.B.B.,** 2011 NSFC 21

Date: 20110812

Docket: FNGMCA

Registry: Pictou

BETWEEN:

E.S.M. Applicant

- and -

J.B.B. Respondent

DECISION

Judge: The Honourable Associate Chief Judge James C. Wilson

Heard: August 3, 4 and 5th, 2011

Pictou, Nova Scotia

Decision: August 26, 2011

Counsel: Lloyd Berliner for E.S.M.

Roseanne Skoke for J.B.B.

Decision: Wilson, J.F.C.

[1] This case concerns the primary care of two year old L.S. Currently L.S. is in the joint custody of her parents, with the mother E.S.M. having primary care and the father J.B.B. having regular and consistent parenting time. The parties are only 21 and 22 years old respectively and were involved in a casual relationship. They have never cohabited. Previous applications to court resulted in consent orders. The mother E.S.M. commenced this application to seek court approval to move to Alberta to live with her boyfriend with whom she is currently expecting a child in November. The respondent father opposes the move and is seeking primary care.

[2] At the conclusion of the evidence, I indicated I was not prepared to endorse the relocation of the child but the decision on primary care would be reserved. What follows are the reasons for both the mobility and primary care decisions.

Decision: Wilson, J.F.C.

[3] I will deal first with the mobility application. Justice McLachlin, as she then was, in *Gordon v. Goertz* [1996] 2 S.C.R. 27 summarized the law on a mobility application as follows:

> **49** The law can be summarized as follows:
>
> - 1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
> - 2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests 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.
> - 3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
> - 4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
> - 5. 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.
> - 6. The focus is on the best interests of the child, not the interests and rights of the parents.
> - 7. More particularly the judge should consider, inter alia:
>   - (a) the existing custody arrangement and relationship between the child and the custodial parent;
>   - (b) the existing access arrangement and the relationship between the child and the access parent;
>   - (c) the desirability of maximizing contact between the child and both parents;
>   - (d) the views of the child;
>   - (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
>   - (f) disruption to the child of a change in custody;
>   - (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.
>
> **50** In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be

> weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

[4] Using the analytical frame work suggested in *Gordon v. Goertz*, the first step in the analysis is to determine whether or not the parent applying for permission to move with the child can demonstrate a material change in circumstances affecting the child. Since the last order the applicant has become pregnant and wishes to relocate with her boyfriend to Alberta where he has found employment. This change, together with other circumstances of the parties that will be more fully described in this decision, is sufficient for the court to "embark on a fresh 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 meet them".

[5] Having determined a material change in circumstance, I must consider the following:

(a) Custodial Parent's Views

[6] There are no legal presumptions in favor of the custodial parent although her views are entitled to great respect. In this case it is understandable that E.S.M. wishes to reside with the father of the child she is expecting. Over the past year E.S.M. and her boyfriend have not been able to earn sufficient income locally to maintain their own accommodation. As a result, E.S.M. has moved back to her mother's home, while her boyfriend, T.D. went west to find work. T.D. has a grade 10 education. He found employment over the past couple of months working at $18 dollars per hour as a service truck driver. E.S.M. has a family member residing in Alberta but not in the community where she intends to move. T.D. has indicated in his evidence that he will return to Nova Scotia if E.S.M. is not permitted to move to Alberta with L.S.

(b) Best Interests

[7] *Gordon v. Goertz* reminds us at paragraph 49:

> 6. The focus is on the best interests of the child, not the interests and rights of the parents.

(c) Existing custody arrangement and relationship between the child and custodial parent

[8] The current joint custody order has L.S. in the primary care of E.S.M. For about half of L.S.'s life E.S.M. has lived in her mother's home where she currently resides. L.S. is thereby very familiar with her mother's extended family. The evidence suggests a strong bond between mother and child and the child is described by all as a healthy, happy, affectionate and bright child.

> (d) Existing access arrangement relationship between the child and the access parent

[9] In addition to access every second weekend from Friday to Sunday and every Wednesday overnight to Thursday at 6:00 p.m. , J.B.B. exercises additional access during holidays and special occasions. He is also given priority for childcare should E.S.M. need assistance during the time the child is with her. The order also provides both parents the ability to authorize emergency medical care and requires they consult and share decision making in relation to major decisions affecting the health, education, religion and general upbringing of the child. The order provides for and J.B.B. has exercised extensive parenting responsibility.

> (e) The desirability of maximizing contact between the child and both parents

[10] The evidence supports the conclusion that the child has benefited from maximum contact with both parents. While there is some evidence from J.B.B.'s family that L.S. demonstrates some stress when being returned to her mother, the mother's evidence is that she settles quickly when returned to her care.

> (f) The views of the child

[11] In this case the child is too young to ascertain her views.

> (g) The custodial parent's reason for moving only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child.

[12] E.S.M. has been employed at Tim Horton's. Despite one or more attempts to complete her High School equivalency, she has not yet attained a High School certificate. She expects to be on maternity leave over the next year. She testifies her plan, after maternity leave, would be to obtain her G.E.D. and seek further clerical training. There is no evidence a relocation is necessary for any immediate education needs.

(h) Disruption to the child resulting from a change in custody

[13] L.S. is two years old. By all accounts she is developing normally and has benefited from daily contact with her parents and the extended family. Given her age, any disruption in the stability of caregivers she has known is a potential risk.

(i) Disruption to the child resulting from removal from family, schools and community he or she has come to know

[14] At L.S.'s age, her extended family is her community. At this important time in L.S.'s life, there is little substitute for the physical presence of known caregivers. She is simply too young to be able to maintain important relationships via electronic or other means. She is at a stage of development where frequent face to face contact with significant attachment figures is in her best interest.

[15] As I stated at the conclusion of evidence, the facts in this case do not come close to supporting a successful mobility application. A move to Alberta

may be in the interests of T.D. if relocation can provide the means by which he is able to support himself, E.S.M. and their expected baby. A move at this time appears to do little, if anything, for E.S.M. other than to allow her to reside with T.D. E.S.M. would lose the support of extended family during an important time where she will be out of the workforce on maternity leave. Her options for schooling are as available here as they would be in Alberta.

[16] A move for L.S. from the supports she has known in this location would be contrary to her best interests. Here L.S. has what she now requires. L.S. has the support of extended family and, perhaps as important, E.S.M. has much greater supports here to help her care for L.S. and the expected child then would exist if she moved. T.D.'s work history is exceedingly brief. Before any consideration should be given to L.S. being subjected to the attachment stresses she would likely experience with a move, it is incumbent upon E.S.M. and T.D. to demonstrate they have a stable long term relationship and that they are capable of maintaining employment over the Long term. L.S.'s best interests require that she remain where she has access to both parents and the support of extended family.

PRIMARY CARE

[17] The issue of primary care requires a careful analysis of the particular facts in this case. J.B.B. is seeking a change in primary care because he believes E.S.M. has exercised poor judgment in the parenting decisions she has made respecting L.S. J.B.B. submits that E.S.M. has no responsible plan for herself or L.S. He claims her decision to enter into a relationship with T.D., who has had problems with domestic violence and the law, places L.S. at risk. He further submits that not only has E.S.M. exercised poor judgment in terms of her choice of partner and other lifestyle decisions but she has also ignored the clear terms of the present order by allowing T.D. unsupervised contact with L.S., thereby placing L.S. at risk. J.B.B. argues that E.S.M. has refused to consult with him on important issues around L.S.'s health care and daycare arrangements.

(a) Relationship issues

[18] J.B.B. alleges that his daughter L.S. is at risk in the care of her mother because of her mother's relationship with T.D. E.S.M. and T.D. began dating in

February 2010 and have lived together since about May 2010. Initially they resided in T.D.'s mother's home while T.D. was under house arrest. On or about October 2010 they obtained their own apartment in Trenton. They resided there until May 2011. At that point, E.M.S. and T.D. were unable to afford the apartment, so T.D. went to Alberta to work and E.S.M. returned to her mother's home. Given the court's finding that L.S. should not be removed from Pictou County, the evidence before the court is T.D. will move back to Pictou County and the parties will again co-habit.

[19] T.D., who is 21, has an admitted history of domestic violence. A former partner and the mother of one of his children offered graphic evidence of the abuse she suffered during their relationship. T.D. admits that at the time of that relationship, ('07-'09) he was suffering from clinical depression for which he was medicated for about a year. He admits he had anger management issues and was focused on power and control. He sought the services of New Leaf, a group for men who have been abusive in their intimate relationships. His New Leaf counselor testified that T.D. was in regular attendance at the program for more than a year. It is the counselor's opinion that over the time T.D. was involved

with New Leaf he came to understand that his previous relationships had been unhealthy and abusive. The counselor testified that T.D. has demonstrated insight into his part in the abuse and has learned how changing his attitude and choices could lead to a better life for himself. The counselor believes T.D. now seems more focused on cooperation, fairness and positive interactions rather than control, power and confrontation. The counselor cautioned that he is not in a position to make predictions or assurances but does believe that T.D. has demonstrated insights, attitude changes and an ability to change how he responds to situations.

[20] T.D. also has a criminal record. He was involved in an incident in 2009 that involved his illegal entry into a dwelling house with a weapon. His sentence for those charges included a period of house arrest and probation.

[21] J.B.B. does not accept that T.D. has changed. J.B.B. and T.D. had two confrontations in the fall of 2010. Apparently harsh words were exchanged between the two over a Pit-bull (American Staffordshire Terrier) that T.D. and

E.S.M. acquired soon after moving into their apartment. J.B.B. felt the dog posed a potential risk to the child L.S.

[22] A second incident occurred between J.B.B. and T.D. a month or so later. The two exchanged comments with respect to family that resulted in some more harsh words and T.D. grabbing J.B.B.

[23] Subsequent to the incidents between J.B.B. and T.D. in October/November of 2010, the custody order was amended to contain a provision that T.D. would have no unsupervised contact with L.S. There is evidence subsequent to that order that T.D. has picked up or dropped off L.S. from daycare. J.B.B. alleges this indicates T.D.'s disrespect for the court orders.

[24] J.B.B. has also expressed concern that T.D. is a poor role model as a step-parent. While only 21, T.D. has at least two other children that he does not support financially, nor does he maintain a consistent and regular access schedule. He is the father of the child E.S.M. is expecting in November. Given T.D.'s lack of involvement and support for his own children, J.B.B. argues that the

risks for L.S. being exposed to someone with T.D.'s history far outweight any potential benefits.

(b) Facebook

[25] Tendered in evidence by J.B.B. were a number of photographs E.S.M. had posted to her Facebook. These photos included some "modeling" photos of E.S.M. including one photo where E.S.M. and a male model are pictured in a topless embrace. J.B.B. suggests these photos are in poor taste and say more about E.S.M.'s immaturity then her responsibility as a parent. Other photos suggest to J.B.B. that the child is not being properly supervised while photographed during a bath or climbing stairs. These allegations are denied and the circumstances explained by E.S.M. Some of the other photographs included are either benign baby pictures or adolescent party pictures. The issue is whether posting this material on Facebook is an exercise of good parental judgment. Included in the Facebook material is one very crude statement that appears on E.S.M.'s Facebook. No one questions the vulgarity of the comment but E.S.M. denies she is the author. Apparently she left her account open and someone

(perhaps a friend of T.D.'s) posted the remark as a joke. The comment at least raises an issue about the character of the friend.

(c) Health issues/Daycare

[26] The current joint custody order requires the parents to consult and work cooperatively on issues involving the health, education and general welfare of the child. J.B.B. argues E.S.M. refuses to consult or cooperate. According to the evidence there was at least one occasion when L.S. was required to visit the emergency department and J.B.B. was not advised until sometime later. Perhaps more importantly the parties are not agreed on the current daycare arrangements. L.S. has been attending at a daycare home. The home is under the general supervision of the Department of Community Services and appears to have other children who attend on a regular basis. Issues have arisen which are a concern to J.B.B. and his family. E.S.M. does not share their concerns. J.B.B. and his mother filed a complaint. Upon investigation, at least one of the concerns was substantiated. E.S.M.'s position is that she is generally happy with the care L.S. is

receiving and L.S. seems to be happy in the environment. E.S.M. has obtained a daycare subsidy and her plan would be to carry on with the current provider.

[27] J.B.B. further alleges that L.S. is being exposed to second hand smoke. Both E.S.M. and T.D. deny this happens. The only party with frequent contact to L.S. who appears to smoke is the maternal grandmother. Her evidence is that she does not smoke in the home when the child is present. She does at times smoke in the basement (laundry area) of the home. The daycare home provider acknowledged smelling smoke from L.S.

[28] J.B. B. has further concerns that L.S. is being spanked while in the care of either her mother or the daycare home. These concerns are based on either comments the child has made or the actions of the child in spanking a doll. E.S.M., T.D. and the child care provider deny these allegations. It is acknowledged that very short time outs are used for discipline.

[29] As a result of the conflict between J.B.B.'s family and the daycare provider, E.S.M. decided to change the hours of daycare. This was done without consulting J.B.B. who now finds that these hours make it difficult for him to drop off and pick up L.S. and maintain his class schedule. J.B.B. would like to enroll L.S. in the Kinder Campus associated with the Community College where J.B.B. attends. In J. B.B.'s opinion L.S. would benefit from not only hours that are consistent with his school schedule, but also a more structured/skills oriented daycare program.

(d) Assault

[30] In the fall of 2010 E.S.M. presented with obvious signs of having been in a physical confrontation. Given T.D.'s past history, J.B.B. and his family queried whether E.S.M. had been a victim of an assault by T.D. Both T.D. and E.S.M. denied anything occurred. E.S.M. testified that the assault was perpetrated by a female acquaintance of hers, someone with whom she has a history. There is no evidence to the contrary. When questioned as to why the assault went

unreported by E.S.M., E.S.M. testified she simply didn't want to be involved in the court process. No further explanation was offered.

(e) Role of extended family

[31] Because these parties are young and working to gain their financial independence, the extended family on both sides have been involved. During the first year of L.S.'s life she resided with E.S.M. in her grandmother's home. After almost a year of living elsewhere E.S.M. and L.S. are back in the home because of economics. There is no question that the maternal grandmother has been supportive and continues to be so. During the time E.S.M. and L.S. were residing away from the maternal grandmother's home, the maternal grandmother had very limited contact with them in their other residences. She did continue to have fairly frequent contact with them in her own residence.

[32] J.B.B.'s extended family has been very involved in supporting their granddaughter. J.B.B.'s parents both assist J.B.B. with pick-up and delivery of the child as well as providing child care for J.B.B. while he is working. The B. extended

family has provided child care to E.S.M. during her parenting time when she has required it. They have also provided gifts and other practical support.

[33] There is clearly tension between E.S.M. and J.B.B. and his family. The B. family wants what is best for their granddaughter. The B. family's attempts to intervene or change circumstances they do not agree with have been interpreted by E.S.M. as attempting to control her as a parent. A current issue is the child's name. She is registered as L.S. but J.B.B.'s mother frequently refers to the child to her friends as L.B. Her broadcast birthday message was by the name of L.B. The B. family's concerns with T.D., criticism of child care choices and their reaction to material posted on the internet all contribute to the current tension.

PLANS OF CARE

[34] While E.S.M. brought this application to gain authorization to move to Alberta where T.D. had employment, the evidence is clear that E.S.M. would not leave Pictou County without her daughter. T.D. states he will return to Pictou County if E.S.M. cannot relocate. E.S.M. is currently living with her mother for

economic reasons. Assuming T.D. returns to Pictou County, E.S.M.'s circumstances are likely to change. Her current plan is vague and unsettled.

[35] J.B.B. works part time at the Nova Scotia Liquor Commission while attending full time in the Business Program at the Nova Scotia Community College. He has his own two bedroom apartment. If L.S. were placed in his care he would have the support of his parents and extended family to assist him with caring for L.S. while he attends school or work. Upon completion of his program within the next year he will seek full time employment, possibly with his current employer. He would propose that if L.S. is in his care, that she attend the college campus daycare where the hours would be consistent with his school schedule. He would propose reasonable access to E.S.M. but on condition that L.S. not be in the unsupervised care of T.D.

ANALYSIS

[36] Courts in deciding cases dealing with the care of children must apply the principle that the "best interest" or "welfare of the child" is the paramount

consideration. While the principal is easy to state, its application in any particular set of circumstances is much more difficult.

[37] The best interest test is very broad. Previous courts have offered guidance on what judges should consider in determining best interests. In *King v. Low* (1985) 44.R.F.L. 2nd, 113, (S.C.C.), Justice McIntyre offered the following at page 126:

> I would therefore hold that in the case at bar the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he will be equipped to face the problems of life as a mature adult. Parental claims must not be lightly set aside, and they are entitled to serious consideration in reaching any conclusion. Where it is clear that the welfare of the child requires it, however, they must be set aside.

[38] In *Young v. Young* [1993] 4 S.C.R. 3, the Supreme Court of Canada again offered direction on what is involved in applying the best interest test. At paragraph 202-203 Justice McLaughlin wrote:

Decision: Wilson, J.F.C.

> **202** First, the "best interests of the child" test is the only test. The express wording of s. 16(8) of the Divorce Act requires the court to look only at the best interests of the child in making orders of custody and access. This means that parental preferences and "rights" play no role.
>
> **203** Second, the test is broad. Parliament has recognized that the variety of circumstances which may arise in disputes over custody and access is so diverse that predetermined rules, designed to resolve certain types of disputes in advance, may not be useful. Rather, it has been left to the judge to decide what is in the "best interests of the child", by reference to the "condition, means, needs and other circumstances" of the child. Nevertheless, the judicial task is not one of pure discretion. By embodying the "best interests" test in legislation and by setting out general factors to be considered, Parliament has established a legal test, albeit a flexible one. Like all legal tests, it is to be applied according to the evidence in the case, viewed objectively. There is no room for the judge's personal predilections and prejudices. The judge's duty is to apply the law. He or she must not do what he or she wants to do but what he or she ought to do.

[39] Justice MacDonald of the Nova Scotia Supreme Court Family Division writing in *P.D. v. D.D. [2007] N.S.S.C. 67,* summarized the law as follows*:*

> **4** The sole and guiding principle to follow when adjudicating custody and access disputes is to determine what is in the best interest of the child or children involved. Several cases provide guidance to the court in applying this principle: See for instance *Foley v. Foley (1993), 124 N.S.R. (2d) 198 (N.S.S.C); Abdo v. Abdo (1993), 126 N.S.R. (2d) 1 (N.S.C.A)*. Particularly useful is the comment in Dixon v. Hinsley (2001), 22 R.F.L. (5th) 55 (Ont. C.J), p. 72:
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> > • "The best interests" of the child is regarded as an all embracing concept. It encompasses the physical, emotional, intellectual, and moral well being of the child. The court must look not only at the child's day to day needs but also to his or her longer term growth and development."
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> What is in the child's best interests must be examined from the perspective of the child's need with an examination of the ability and willingness of each parent to meet those needs. Each parent's plan for the child must be examined carefully in light of the child's needs.. . . (my emphasis)

[40] Parents seeking to have custody or primary care must demonstrate that he or she has the plan that will best facilitate the child's optimum

development within a safe environment. It is not sufficient to be simply a good enough parent to protect the child from harm. When two parents, who are at least good enough, are both seeking primary care, the court must decide which plan is optimal, which plan can not only meet the child's basic needs today, but who is most likely to adapt to the child's further needs as circumstances change.

[41] Custody cases frequently refer to a child's need for stability, predictability and a nurturing environment. Children need stability in their relationship with parents and family, children do best when they experience stability in the home and school environment. Children do best when they have not only the necessities, but the chance to experience more of life's opportunities. For parents to provide this kind of nurturing environment they must be able to demonstrate success in their own lives. This means the demonstrated ability to succeed at school, work and in the wider community. Parents who struggle to establish their own independence are likely to face challenges as parents. While optimal parenting requires the ability to put the child's needs first, this is much more difficult when the parents themselves are struggling to get established.

[42] Young parents face real struggles to demonstrate the kind of parenting every child deserves. Because of youth, they frequently lack the education, employment or life skills parenting requires. While most acquire some or all of these over time, the experience should not be at the expense of their child. This means they need support, usually from family.

[43] As well as support, young parents need a reasonable plan to gain the stability parenting requires of them. Without a plan, life too often becomes a series of unrelated events yielding neither the stability nor predictability that is fundamental to better parenting. In the circumstances of this case, the issue is not whether either of the parents is capable of meeting the child's basic needs, but which parent is in a better position to offer optimal parenting.

[44] J.B.B. argues E.S.M. has exercised poor judgment in bringing T.D. into L.S.'s life. Given T.D.'s history, any father would have concerns. While T.D. acknowledges his past mistakes, he says he has changed and has the support of professionals who have worked with him. Only time will tell if he has left his

abusive behaviors behind and can become a supportive presence in the lives of his children and partner.

[45] J.B.B. argues that getting a pit bull type dog in a home where there is a helpless one year old was another error in judgment. While L.S. suffered no harm, most would agree the dog represents a needless risk. Similarly, posting of material on Facebook is a judgment call. It is neither right nor wrong, but is an exercise of judgment from which conclusions can be drawn.

[46] E.S.M. admitted to being assaulted. According to the evidence T.D. was not the perpetrator. That J.B.B. would be concerned about L.S.'s possible exposure to domestic violence is understandable. What is less understandable is E.S.M.'s unwillingness to engage in the legal system and her decision to do nothing about the assault. Again, an exercise of judgment.

[47] E.S.M.'s request to relocate was another exercise in judgment. Based on a few weeks of employment by her boyfriend, she was prepared to relocate L.S. from all the supports she has known. This move would also have occurred at

a time E.S.M. is about to give birth to her second child. Similarly, her decision to unilaterally change daycare hours that were incompatible with J.B.B.'s school schedule seems more an exercise of control then a move to promote the best interests of the child.

[48] As noted by Justice MacDonald in *P.D.*, supra, parenting requires a plan. J.B.B.'s plan is to complete his education this year and hopefully move to full time employment where he is now working. He has a two bedroom apartment and the support of an extended family that are extremely flexible in their support. He proposes the child attend daycare located at his college. His plan would ensure L.S. continues frequent contact with her extended family on both sides.

[49] E.S.M.'s plan is vague. T.D. testified he will return to Nova Scotia if E.S.M. cannot join him. Where they will live or how he would support E.S.M. and the child is not clear.

[50] L.S. has been spending her days in daycare. Both parent's plans suggest this will continue. L.S.'s time with family will be afterschool and weekends, much as it is now. It is in L.S.'s best interest that any plan for her care insures continued contact with the primary attachment figures in her life.

CONCLUSIONS

[51] For either of these young parents to offer optimal parenting, they need a workable plan and family support. Within that context they must also exercise good judgment, judgment that will put the child's needs first. They, like all parents, are not perfect and will need time and experience to reach mature parenthood.

[52] Based on the evidence before me, J.B.B. has met the burden and persuaded me that a change in primary care is necessary in L.S.'s best interest. In my opinion E.S.M. has exercised judgment that is not consistent with L.S.'s best interest. While no single decision by itself was fatal, the overall exercise of judgment has been more about E.S.M.'s wishes than L.S.'s best interest.

Furthermore, E.S.M. has only the vaguest of plans as to how she will provide a stable and nurturing environment for L.S. in the future. Left in the primary care of E.S.M., L.S. faces a lot of uncertainty, circumstances that are not conducive to optimal parenting.

[53] Because E.S.M. is capable of being an adequate parent, it will remain a joint custody order but primary care and the day to day decisions associated with that including the choice of daycare after consultation, will be with J.B.B.

[54] L.S. should continue to have frequent contact with E.S.M. In addition to reasonable access, E.S.M.'s parenting time will include alternating weekends and at least one overnight per week. Unless otherwise agreed by the parties', access will rotate over a two week period as follows: week one the child will be in the care of the father Sunday, Monday, Tuesday and Wednesday, being transferred to the care of the mother after daycare on Thursday and continuing in the care of the mother until 6:00 p.m. the following Sunday when she will be returned to the father. The mother will have further access during week two from after daycare on Wednesday to 6:00 p.m. Thursday, when the child will be

returned to her father. If permitted by the daycare, E.S.M. may choose to exercise her access with the child by keeping the child out of day care one day per week when the child would normally be in daycare during E.S.M.'s access period.

[55] The order will continue to contain a provision that no parent will relocate the child outside the Province of Nova Scotia without agreement of the parties or a court order.

[56] The parties shall continue to follow the Christmas access schedule set out in the current order but alternating the access provisions such that in odd numbered years the applicant mother will have the child in her care from 11:00 a.m. on December 24th to 6:00 p.m. on December 24th and on Christmas Day from 5:00 p.m. overnight to Boxing Day at 6:30 p.m. In even numbered years the access provisions will reverse.

[57] The order will contain a further provision that the parents will alternate holidays including Easter and Thanksgiving. The order will have a provision that both parents have the right to have the child attend special events,

family birthdays, etc. The parent who is not the care giving parent on the child's birthday may have access for a three hour period. The child will be with her father on Father's Day and her mother on Mother's Day. Both parties will be entitled to extended summer access upon reasonable notice. Extended access periods will not exceed two weeks unless otherwise agreed by the parties.

[58] The terms of the current order dealing with priority of childcare, ability to authorize emergency medical care and sharing of information in a timely manner will be continued.

[59] I will not require that T.D.'s contact be supervised, but I will continue the provision that L.S. not be left in his sole care pending further review. At this point too little is known about the future plan of T.D. and E.S.M. If E.S.M. and T.D. establish a viable long term relationship and there is no further evidence of domestic abuse, this restriction should be revisited. While it is incumbent on the court to take measures to ensure children are not placed at risk of exposure to domestic violence, the court cannot regulate partner choice.

Decision: Wilson, J.F.C.

[59] The current support order payable by J.B.B. is terminated as of this date. There is insufficient evidence before me to make a support order in favor of J.B.B. but the support issue remains subject to review.