FAMILY COURT OF NOVA SCOTIA
Citation: *C.O. v. S.M.*, 2017 NSFC 22

Date: 2017-09-07
Docket: Pictou No. 88854
Registry: Pictou

Between:

C.O.

Applicant

v.

S.M.

Respondent

Editorial Note: **Identifying Information has been removed from this electronic version of the judgment.**

Judge: The Honourable Judge Timothy G. Daley

Heard May 31, June 21, July 10 and July 14, 2017 in Pictou, Nova Scotia

Counsel: Roseanne Skoke, for the Applicant
Jay Matheson, for the.Respondent

Introduction

[1] This decision is about a wonderful four-year-old boy, F.M., and what parenting arrangement are in his best interests.

[2] This matter began as an application by the mother, C.O., seeking changes to an existing order. That existing order granted to the father, S.M., sole custody and primary care of F.M. and parenting time to C.O. In C.O.'s application, she sought joint custody and shared parenting time.

[3] Soon after C.O. filed her application, S.M. filed his own, seeking to relocate F.M. with him to Saskatchewan. S.M. wishes to relocate with F.M. because he cannot find adequate work in Nova Scotia. He has work in a family business available to him in Saskatchewan, where most of his family resides.

[4] C.O. opposes the relocation of F.M., saying that she has a deep and loving relationship with her son, all her family is in Nova Scotia and if F.M. is permitted to relocate with his father, her and her family's relationship with F.M. will be at an end because of her limited financial means to exercise parenting time given the great distances involved. She now seeks joint custody and either primary care or a shared parenting arrangement for F.M.

Issues for Determination

[5] There are several issues for determination in this matter arising from the applications of the parties. Those issues are as follows:

1. Should S.M. be permitted to relocate F.M. with him to Saskatchewan?

2. If S.M. is permitted to relocate F.M. with him to Saskatchewan, what custodial and parenting arrangement would be in F.M.'s best interests?

3. If S.M. is not permitted to relocate F.M. with him to Saskatchewan, what parenting arrangement in Nova Scotia would be in F.M.'s best interests? What child support should be paid?

History of Parenting

[6] The parents were in a common-law relationship from early 2009 until July 2013. F.M. was approximately two months old at the time of separation and there

is disagreement respecting the level of involvement of each parent in his care from birth.

[7] S.M. said that he has been the primary caregiver for F.M. for most his life. He said that even during the brief time that they were together and although he worked full time, often on the night shift, he still provided most of the care for F.M.

[8] C.O. said the opposite, that she provided almost all the care for F.M. both before and after separation until the custodial parenting arrangements changed in 2014.

[9] C.O. has another child, C.C.O., who is 12 years old. C.C.O.'s father is D.M. C.C.O. lives with C.O. and sees her father and paternal grandmother, G.C. C.O. says that C.C.O. has a loving and meaningful relationship with F.M.

[10] C.O. said that she left S.M. in the summer of 2013 because she feared for her safety and that he was mentally and physically abusive. She said that, two days prior to separation, S.M. attended counselling with New Leaf, a local program for men around issues of domestic violence, and disclosed abuse and death threats towards C.O. and her mother, M.C. She said the matter was referred to the Department of Community Services (the agency) for review of child protection concerns and workers from the agency required her and the children to stay at Tearmann House, a local women's shelter and temporary housing facility in New Glasgow.

[11] S.M. said that he did attend at New Leaf but it was he, not the counsellor, who contacted the agency to report his behaviours and the difficulties between himself and C.O.

[12] He said that in February 2015 he pled guilty to two counts of uttering threats, one against C.O. and one against M.C. He was sentenced to two months of house arrest and 18 months of probation, which expired in October 2015. He said he had also faced assault charges at that time, but those charges were dismissed. He said that he has no prior criminal record or involvement with the law other than a public disturbance charge when he was young. He said that he had no problems during his period of probation.

[13] During the involvement of the agency, the matter was brought before the court as a child protection matter under the *Children's and Family Services Act*.

During those proceedings, the agency took the children from C.O. for reasons that are unclear to me. The agency involvement ended when an order under the now-repealed *Maintenance and Custody Act* was granted, giving S.M. sole custody and primary care of F.M. with access to C.O. C.C.O. was returned to C.O.'s care.

[14] Since that time, S.M. has had sole custody and primary care of F.M. and C.O. has had scheduled parenting time with F.M. There is disagreement over whether that parenting time has been honored or obstructed.

The Law

[15] To properly assess the evidence in this matter, it is important to review the applicable law, including the applicable legislation and case law.

***Parenting and Support Act* and Case Law**

[16] The governing legislation in this circumstance is the *Parenting and Support Act* 1989 RSNS c.160 as amended. The beginning point in any analysis under that *Act* is Section 18(5) which directs that:

> In any proceeding under this act concerning the 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.

[17] Section 18(8) further directs that:

> In making an order concerning the 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.

[18] In determining what I should consider in assessing what is in F.M.'s best interests, Section 18(6) sets out some of the relevant considerations to be considered, though this list is not exhaustive. The relevant considerations under this subsection include the following:

> (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…;

(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…;

(h) the nature, strength and stability of the relationship between the child and each… grandparent and other significant person in the child's life;

(i) the ability of each parent… or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child….

[19] In this matter, there are allegations of family violence and as a result, I must consider section 18(6)(j) as follows:

the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[20] Family violence is defined in Section 2(da) as follows:

"family violence, abuse or intimidation" means deliberate and purposeful violence, abuse or intimidation perpetrated by a person against another member of that person's family in a single act or a series of acts forming a pattern of abuse, and includes

causing or attempting to cause physical or sexual abuse, including forced confinement or deprivation of the necessities of life, or

(ii) causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour including, but not limited to,

(A) engaging in intimidation, harassment or threats, including threats to harm a family member, other persons, pets or property,

> (B) placing unreasonable restrictions on, or preventing the exercise of, a family member's financial or personal autonomy,
>
> (C) stalking, or
>
> (D) intentionally damaging property,
>
> but does not include acts of self-protection or protection of another person;

[21] There are other factors listed in this subsection, such as reference to cultural, linguistic, religious and spiritual upbringing, heritage and the views and preferences of the child, all of which I find inapplicable in this circumstance.

[22] The analysis of F.M.'s best interests, however, does not end with the factors set out under Section 18(6) 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 the *Act* and 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 is 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.
>
> With whom would the best interest and welfare of the child be most likely achieved?
>
> **18** 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.
>
> **19** 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.
>
> **20** 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.

[23] In this case, there is also the issue of mobility; that is, S.M.'s request to relocate F.M. with him to Saskatchewan. This requires consideration of the law applicable to such matters. The *Act* includes new, specific provisions respecting mobility. Some of these provisions, including those respecting the requirement to provide adequate notice of relocation and the consequences of a failure to do so, I find are not applicable in this case as the application was brought before the *Act* and these provisions were proclaimed. I find that other provisions as set out below are applicable:

> 18G
> ...
> (2) On application by

(a) a parent … of the child;

…

the court may make an order authorizing or prohibiting the relocation of a child and may impose terms, conditions or restrictions in connection with the order as the court thinks fit and just.

(3) An application for an order authorizing or prohibiting the relocation of a child may be filed at any time prior to or after the relocation occurs.

18H (1) When a proposed relocation of a child is before the court, the court shall be guided by the following in making an order:

(a) that the relocation of the child is in the best interests of the child if the primary caregiver requests the order and any person opposing the relocation is not substantially involved in the care of the child, unless the person opposing the relocation can show that the relocation would not be in the best interests of the child;

(b) that the relocation of the child is not in the best interests of the child if the person requesting the order and any person opposing the relocation have a substantially shared parenting arrangement, unless the person seeking to relocate can show that the relocation would be in the best interests of the child;

(c) for situations other than those set out in clauses (a) and (b), all parties to the application have the burden of showing what is in the best interests of the child.

….

(3) In applying this Section, the court shall determine the parenting arrangements in place at the time the application is heard by examining

(a) the actual time the parent or guardian spends with the child;

(b) the day-to-day care-giving responsibilities for the child; and

(c) the ordinary decision-making responsibilities for the child.

(4) In determining the best interests of the child under this Section, the court shall consider all relevant circumstances, including

(a) the circumstances listed in subsection 18(6);

(b) the reasons for the relocation;

> (c) the effect on the child of changed parenting time and contact time due to the relocation;
>
> (d) the effect on the child of the child's removal from family, school and community due to the relocation;
>
> (e) the appropriateness of changing the parenting arrangements;
>
> (f) compliance with previous court orders and agreements by the parties to the application;
>
> (g) any restrictions placed on relocation in previous court orders and agreements;
>
> (h) any additional expenses that may be incurred by the parties due to the relocation;
>
> (i) the transportation options available to reach the new location; and
>
> (j) whether the person planning to relocate has given notice as required under this Act and has proposed new parenting time and contact time schedules, as applicable, for the child following relocation.
>
> (5) Upon being satisfied that the child's needs or circumstances have been changed because of the order granted under subsection 18G(2), the court may vary a previous order granted under Section 18 or 37.

[24] Prior to the proclamation of the *Parenting and Support Act*, including the provisions in section 18 respecting mobility, courts looked to case law for guidance when dealing with an application to relocate a child. The leading decision on such mobility matters is the Supreme Court of Canada decision in *Gordon v. Goertz*, [1996] 2 SCR 27, 1996 CanLII 191 (SCC).

[25] I find that with the proclamation of the *Act*, the provisions on mobility contained in section 18 are a complete legislative scheme for considering such matters, these new provisions subsume and override the direction in *Gordon and Goertz* supra and I therefore find that decision is no longer binding with respect to the factors I must consider in this analysis.

Standard of Proof

[26] It is helpful to note that the standard of proof in this circumstance remains the same as in all civil matters as set out by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53, at paragraphs 40 and 49, as follows:

> . . . I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.
>
> …
>
> …I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

Credibility

[27] In this case credibility has been raised as an issue. In assessing credibility, I am mindful of the comments of Forgeron, J. in *Baker-Warren v. Denault* 2009 NSSC 5 in which she provided the following helpful guidance:

> **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, 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*).

[28] The issue of C.O.'s credibility in this matter was put squarely before this court during her cross-examination respecting prior inconsistent statements contained in an affidavit she swore on August 8, 2013 (the prior affidavit) which was filed in a prior child protection proceeding involving this family and which is described elsewhere in this decision.

[29] As part of her evidence in this proceeding, C.O. filed three affidavits (the current affidavits). In those affidavits, she maintained that she is close with her family, particularly, with her mother and step-father. She said that they are supportive of her and the children and that they would always be there to help her, as they always were, in caring for F.M. As described elsewhere in this decision, she resides with the children in a home next door to her mother and step-father, on a property they purchased for her use.

[30] She said in cross-examination that her mother was unsupportive of her remaining with S.M. around the time that she was at Tearmann House and her mother cut off communication with her. She explained that she did not move in with her mother because she felt it was not safe as that location was too close to where S.M. was living.

[31] In the prior affidavit, C.O. described her mother as an alcoholic, that her mother constantly denied this, but would not stop drinking and would not seek assistance. She said there was no positive relationship between them because her mother started fights when she was drinking at family events and further maintained that her mother did not give her any support. She maintained that the only support she had was from S.M.

[32] Respecting family violence, C.O. says in her current affidavits that she left the relationship with S.M. in the summer of 2013 because she feared for her safety and was subjected to mental abuse by him. She went on to describe the steps she took through the agency and Tearmann House after she left. She states that S.M. has a criminal record for assaulting her and her mother. She specifically says that S.M. assaulted her on three occasions and I infer from this that each of those alleged assaults occurred before the separation of the parties in 2013.

[33] This stands in contrast to the contents of her prior affidavit where she said that S.M. grabbed her but did not choke her and there were not multiple incidents of physical violence. In that portion of her affidavit, she directly contradicts the statements of the social worker for the agency on these allegations.

[34] She stated elsewhere in the prior affidavit that S.M. grabbed her, did not choke her, she did not lose consciousness and he left no marks of any kind on her and caused no injury. She also absolutely denied there were three or four incidents of domestic violence or assault by S.M. on her.

[35] In the prior affidavit, C.O. gave a detailed account of the incident which occurred on July 16, 2013. She said it was her mother who was verbally aggressive, calling S.M. terrible names when he said he did not want to speak to her. She said he told her mother that he wanted her to leave his home, that her mother had verbally attacked S.M. only a few weeks earlier when she was drunk on Father's Day and it was clear he didn't want to speak with her. She described the things her mother said to S.M. as being intended to provoke and insult him and when he asked for the baby she turned away and cursed at him. She said that S.M. took the baby from her mother and handed him to C.O.

[36] C.O. said that from there the verbal exchange escalated, her mother refused to leave the home and that S.M. was not holding her or blocking her. She said that her mother tried to punch him once and missed, swung again and hit him in the face, cutting the inside of his cheek. She said this was in front of the children. She said she did not underestimate S.M.'s responsibility for the situation but it was he who was being assaulted, provoked and he was running on insufficient sleep. He had been provoked and humiliated a few weeks earlier on Father's Day.

[37] This was inconsistent with her evidence in her current affidavits as well as the evidence of her mother and sister in the current proceedings.

[38] Elsewhere in that same affidavit of August 8, 2013, C.O. responded to an allegation that her daughter C.C.O. was allowed to ride a bike without a helmet, with no brakes and in the dark by saying it was her mother's fault and responsibility that this occurred. She said she would like to limit her mother's access until she demonstrated that she had been successfully treated for her alcoholism. In the current proceeding, C.O. denies this allegation, including that her mother is an alcoholic.

[39] All of this is quite significant as a challenge to the credibility of C.O. The prior inconsistent statements are material and relevant to these proceedings on several important issues, including what occurred in the home on July 16, 2013 involving S.M. and M.C., as well as C.O.'s claim that M.C. is a good support to her and that she has a close relationship with her.

[40] There is an issue concerning C.O.'s credibility before the court. As counsel for S.M. argues, this prior affidavit gives rise to the question of whether C.O. is trustworthy as a witness in the current proceedings.

[41] C.O. replies to this allegation in two ways. First, she maintains that she did not draft the affidavit, but rather it was drafted by S.M.'s mother, H.F.G. C.O. says that H.F.G. presented her with this affidavit when C.O. was at Tearmann House and under tremendous stress given the circumstances of her separation and the ongoing child protection proceedings. Her evidence was that she wanted to reunite her family and signed the affidavit in that circumstance.

[42] Second, she says that she recanted the contents of that prior affidavit in the child protection proceedings itself. When this issue arose, the court adjourned the current proceedings to permit counsel to review the prior child protection proceedings, including the recordings of all appearances before the court and any relevant affidavits filed to determine if C.O. had in fact recanted the affidavit.

[43] In dealing with this issue of credibility, I permitted certain documents from the prior child protection proceedings to be admitted in this proceeding for limited purposes. Specifically, I allowed the introduction of an affidavit of service proving the C.O. had been served with the child protection documentation while a resident at Tearmann House. I also permitted the admission of portions of a Parental Capacity Assessment prepared by Heather Power, not for the purpose of providing opinion evidence, but for the limited purpose of permitting evidence of any recantation by C.O. in the prior child protection proceeding.

[44] The evidence of C.O., uncontradicted by S.M., was that there was never a contested hearing in the child protection proceedings. Therefore, C.O. did not have an opportunity to recant her affidavit at a hearing on the matter. There is nothing in the record of that proceeding indicating that her then-council put her recantation on the record nor is there any affidavit of C.O. in that proceeding confirming such recantation.

[45] On the other hand, in the Parental Capacity Assessment report of Heather Power, she notes in part as follows:

> File information reveals that C.O. has stated that her mother had a history of alcohol abuse and that her mother was not supportive of her because of issues related to alcohol use. In fact, she documented in her own affidavit, "once again, I feel it is important to point out that my mother is responsible for decisions that placed my child at risk. I would like her access limited until she demonstrates that she has successfully been treated for alcoholism." She also made other statements in her affidavit such as denying that S.M. ever choked her; however, she later recanted her own statements, unfortunately calling into question the accuracy of her self-report, as it seems that she tends to side with individuals whom she perceives as her primary supports at any given time. At present, she views her mother as a support and stated that they are "closer than ever," and denied that her mother has had problems with alcohol use.

[46] With respect to the issue of authorship of the affidavit, the evidence is clear that it was sworn by C.O. on August 8, 2013. Her oath was taken by a lawyer but no one at that lawyer's firm was representing her at the time. It is agreed by counsel on the record that no legal advice was provided to her at that time by anyone at that firm. Equally important, C.O. was not represented by any other counsel at the time that she swore the oath on the prior affidavit.

[47] Respecting the content and language of the August 8, 2013 affidavit of C.O. and her allegation that H.F.G. drafted and presented her with the prior affidavit, I allowed the affidavit of H.F.G. from that child protection proceeding to be admitted in this proceeding to review its form and content. H.F.G. was not recalled to give evidence to contradict the assertion that she authored the affidavit of C.O., though counsel for S.M. was given the opportunity to recall witnesses if required.

[48] On review of the content of these affidavits, I conclude that they were authored by the same person. Moreover, I conclude without hesitation that none of them was authored by C.O. While I mean no disrespect to her, the complexity and sophistication of the language and sentence structure, grammar and syntax is

inconsistent with the quality of the oral evidence given by C.O., as well as inconsistent with her general level of education. I conclude that these affidavits were drafted by someone with significant education and sophistication with the English language and that, on the balance of probabilities, it is more likely that the affidavit of C.O., sworn August 8, 2013, was drafted by H.F.G. during the prior proceedings. She is highly educated and the language she used in her affidavit in the current proceeding, the extensive, though irrelevant, reference to her own education in that affidavit and the quality of her *viva voce* evidence in this proceeding reinforce that finding.

[49] I am also led to this conclusion by statements in C.O.'s prior affidavit in which she purports to deny claiming that H.F.G. had the children taken away from her years before by the agency. The affidavit alleges that the worker for the agency made false statements and C.O. sought to have these statements removed from the court record. All of this is consistent with language used by H.F.G. in her own affidavit. The similarities, again, lead me to conclude that H.F.G. was the author of C.O.'s prior affidavit.

[50] Respecting the alleged recantation, I find there is some evidence of that in the child protection proceeding in 2013 when C.O. took some steps to recant the contents of the prior affidavit through Heather Power. While not formally on the record via an affidavit or submission of counsel, it is sufficiently clear in the report of Heather Power that C.O. told her that she recanted the contents of her affidavit. In fact, Ms. Power reflected on the very concern of this court respecting the effect of such recantation on an assessment of C.O.'s credibility.

[51] I therefore accept the evidence of C.O. that she was not the author of the prior affidavit and that H.F.G. was. I accept her evidence that it was the focus of H.F.G. to ensure, by the filing of this prior affidavit, that S.M. had parenting time with F.M. and C.C.O. during the child protection proceeding and that C.O. signed this affidavit in the hopes of facilitating this outcome, as well as reunifying her family. I also accept that she was under tremendous stress while living at Tearmann House and signed this prior affidavit.

[52] That said, the issue of credibility remains. When any person swears or affirms an affidavit, the purpose of doing so is to bind that person's conscience respecting the truthfulness of the contents of that affidavit. The content of an affidavit is, for legal purposes, identical to sworn or affirmed evidence given *viva voce* during a trial or hearing. It is a solemn undertaking to do so. The

consequences of failing to be truthful in such circumstances can be quite severe, including, but not limited to, a criminal charge of perjury and potential jail time.

[53] In this circumstance, even if I accept, as I do, that C.O. recanted the contents of the prior affidavit during the child protection proceeding, it still leaves a significant question of her credibility before the court. She essentially maintains that she swore the affidavit in circumstances of extreme stress. Even if true, this does not relieve her of the responsibility to be truthful. Thus, her recantation does not automatically wipe the slate clean respecting the contents of the prior affidavit. It merely leaves the court in a difficult position regarding the assessment of her credibility.

[54] Coming forward to the current proceedings, that difficulty is not entirely relieved. She has provided evidence by affidavit and *viva voce* that is in direct contradiction to the contents of the prior affidavit. The recantation certainly is relevant but I must be exceedingly careful regarding the assessment of the credibility of any evidence of C.O. It is important that I am mindful to seek out corroboration of any statements she makes and carefully assess any such evidence for internal and external inconsistencies.

[55] Having said that, I do not automatically discount her evidence in this proceeding as lacking overall credibility nor do I find that her evidence given, respecting the various allegations made, is automatically lacking in credibility.

The Evidence

[56] In the course of considering the various factors required to assess F.M.'s best interests as set out under the *Act* and case law, I will review the relevant evidence below. I find it helpful to first review the incidents which gave rise to the involvement of the agency and the criminal charges against S.M. as part of that evidence.

July 16, 2013 Incident

[57] The incident which gave rise to the criminal charges and convictions and involvement of the agency referred to above occurred on July 16, 2013. The evidence of what occurred is conflicting but relevant in this matter for several reasons, which will be set out later in this decision.

[58] C.O.'s mother, M.C., said that she was visiting C.O. and S.M. C.O. invited her sisters, A.C. and J.C. for a visit. M.C. said that when they arrived, S.M. was sleeping. When S.M. awoke, M.C. was holding F.M. S.M. came into the room, ran up to her, grabbed F.M.'s leg and forcibly pinned M.C.'s arms against the wall while she was holding F.M. She said that C.O. took F.M. from her arms and A.C. was pounding on S.M.'s back to get him off her mother. M.C. said that S.M. told her, "I am going to kill you and rip (or tear) the flesh from your bones."

[59] A.C. echoed her mother's evidence, saying that she observed the entire incident including S.M. being so close to her mother's face that his spit was hitting her cheeks when he was screaming at her. She said she was horrified and desperate to get S.M. off her mother so she pounded on his back and screamed at him to stop.

[60] S.M. said that he had worked the night shift the night prior to this incident. He was in the living room when M.C., A.C. and J.C. arrived at the home. He said that M.C. entered the living room and held F.M. He was not pleased to see M.C. He said he had told her that she was not welcome in the home because of an altercation between them about a month prior.

[61] S.M. said that M.C. tried to strike up a conversation with him but he did not want to speak to her and asked her to leave him alone. At that point, he said that M.C. began to insult him and use profanities. He said that he told her to hand F.M. to him and M.C. again used profanity and refused to hand F.M. to him. He said that he repeated the request several times and she repeated the profanities.

[62] S.M. said he then reached out and took F.M. from M.C. and passed F.M. to C.O. M.C. continued to insult him and yell profanities. Unfortunately, F.M. and C.C.O. were present for this.

[63] S.M. said that at that point he raised his voice and demanded that M.C. leave. She refused, continued to verbally abuse him, he told her again to leave and she refused. He told her if she did not leave he was going to remove her, she refused again. She said that if he tried to remove her she would punch him. S.M. said that he then grabbed M.C., turned her toward the door and she again threatened to hit him.

[64] He said he released M.C. as she was facing the door, she turned and struck him in the face and his mouth began to bleed. He then told M.C. he was going to tear the flesh from her bones. He said he was frustrated, angry and tired from his

night shift and knew he should not have said what he did. He said M.C. and her two daughters left while he, C.O., C.C.O. and F.M. remained.

[65] M.C. did not deny punching S.M. in the face and cursing at him and admitted she may have called him a psychopath during that incident. She admitted keeping F.M. from his father and swearing at him. She admitted being told to leave and not doing so. She said she was concerned about her daughter and grandchildren. She said that she did not provoke S.M. and that he attacked her out of the blue.

[66] S.M. said that he went to the police station that evening to report the incident and filed for a so-called peace bond against M.C. Later, M.C. filed for a peace bond against him.

[67] All of this resulted in various criminal charges against S.M. He pled guilty to uttering threats to M.C. as described above and to a separate charge of uttering threats to C.O. in April 2014. Assault charges were dropped and the sentence of house arrest and probation, as described above, was imposed.

[68] This evidence is relevant, in part, because it clearly demonstrates a circumstance of family violence which took place in front of both children and their mother. It is also relevant because it raises questions respecting the behaviour of S.M., as well as M.C. This is material to the parenting plans of both S.M. and C.O., as she identifies M.C. as a significant support person in her life and the life of the children.

June 2013 Incident

[69] S.M. said that the incident of July 2013 was preceded by another incident in June 2013. He said that on Father's Day there was a family gathering at M.C.'s home. He, C.O., F.M. and C.C.O. attended.

[70] He said at one point he was alone with M.C. in the kitchen. He said he was discussing some concerns he had regarding C.O. but M.C. was dismissive of those concerns. He was feeling tired, having worked the night shift the evening before, and he left M.C.'s home to get some sleep. After resting, he returned to M.C.'s home. He said that he spoke to C.O. before he arrived and that she had told him that she wanted to leave because M.C. had started to drink alcohol.

[71] S.M. said that he arrived at M.C.'s home and entered the dining room. M.C. was angry with him for missing the family supper. He said she appeared to be intoxicated and that she used vulgarities towards him. He told M.C. he was not going to get involved with her, he wanted to pick up C.O. and the children and leave. He asked for F.M. and C.O. told him he was upstairs so he walked toward the stairs.

[72] S.M. said that M.C. jumped in front of him and confronted him, preventing him from getting to F.M. When he told her that F.M. was his son and that she was not going to stop him from taking him home, he said that M.C. moved close to his face and said, "You want to bet." C.O. and M.C.'s husband, T.C., told her to sit down and cool off. She stepped aside and S.M. went up to get F.M. When he returned downstairs, he said that M.C. yelled insults and profanities at him and he left with C.O. and the children.

[73] M.C. denied that she has an alcohol problem. She also denied starting verbal fights at family events.

[74] C.O. gives little evidence on these incidents, simply saying in an affidavit that S.M. physically assaulted her on three occasions and he was convicted on two charges of uttering threats. As noted below, she also swore an affidavit in 2013 during a child protection proceeding in which she said that no such assaults occurred.

[75] This evidence is relevant because, depending on what occurred, it raises concerns regarding M.C.'s behaviours, alcohol consumption and whether she is an appropriate support person for C.O. and the children. I will return to the issue of M.C.'s circumstances later in this decision.

Should S.M. be permitted to relocate F.M. with him to Saskatchewan?

Section 18H – Burden of Proof

[76] The first step in determining the issue of relocation under the *Act* is to determine where lies the burden of proof concerning the proposed relocation.

[77] Section 18H(1) of the *Act* sets out three possible circumstances of parenting at the time of the application for relocation and identifies a distinct and different burden of proof for each.

[78] It is important to note that there is nothing in the *Act* to suggest that any one of these factors is of a higher priority than the others and, as a result, one factor may be more relevant for one family than for another. I find that I must conduct a blended analysis of the evidence and these considerations to determine what the parenting arrangements were at the time of the application for relocation.

[79] I begin this analysis by ruling out the circumstance described in section 18H(1)(b), that of a substantially shared parenting arrangement. The evidence before me is that S.M. has had primary care of F.M. for some time and C.O. has had parenting time with him which does not amount to substantially shared parenting. I make this finding considering the factors under section 18H(3).

[80] In considering section 18H(1)(a), I note that this subsection creates a presumption in favour of the relocation if:

1. a primary caregiver is identified,
2. that primary caregiver requests the order for relocation,
3. someone is opposing the relocation and
4. the person opposing the relocation is not substantially involved in the care of the child. If those four circumstances are present, then the burden falls to the person opposing to prove that the relocation would not be in the child's best interests.

[81] The evidence before me is clear that:

1. S.M. is F.M.'s primary caregiver and has been for some time
2. It is S.M. who is making the request for relocation and
3. C.O. is opposing the move. Therefore, the central question to be determined is
4. whether C.O. is "substantially involved" in the care of F.M.

[82] To determine the matter of substantial involvement, I must take into account the factors set out under section 18H(3). The first factor is the actual parenting time exercised by C.O. with F.M. The evidence before me is that C.O. exercises parenting time on a regular basis. It was her application to seek an increase in that parenting time and an order of joint custody, which brought the matter before the court.

[83] The history of parenting of F.M. is somewhat varied. Initially, the parties were together after F.M.'s birth but separated in the summer of 2013. After

separation, F.M. was in the primary care of C.O. The agency became involved in their life as a result of the reports made by S.M. to the agency as described earlier in this decision. The agency remained involved for approximately 18 months and during that involvement, the children were taken from C.O. and placed in the primary care of S.M. Thereafter, and during the agency involvement, C.O. had supervised parenting time with the children for approximately two months.

[84] At the time of this application, C.O. had parenting time with F.M. every Tuesday and Wednesday from 7:30 AM to 5 PM and every second Saturday from 12:30 PM to Sunday at 5 PM. as well as a sharing of Christmas and other special holidays. In her evidence, she said that S.M. took many steps which interfered with that parenting time and he was not supportive of extra time for her with F.M., proving many examples of such behaviors. S.M. denies the allegations of interfering with her parenting time and says he was always supportive of that relationship.

[85] Whatever that history, during this application S.M. agreed to vary custody to joint custody and to increase C.O.'s parenting time. This is a clear indication that he sees her input and involvement as important and appropriate. That goes some distance to addressing the issue of day-to-day caregiving responsibilities for F.M.. While S.M. makes decisions for F.M. when he is in his primary care, major decisions concerning F.M. are, by agreement, joint decisions to be made by the parents together.

[86] As to the ordinary decision making responsibilities for F.M., this history has likewise been somewhat varied. The evidence is that once F.M. came into the primary care of S.M. under the sole custody order, he has made major decisions for F.M. This began in August 2014 and was confirmed in an interim order in 2015. Again, he now says that a joint custodial order should be granted and increased parenting time for C.O. should be granted if his mobility application is denied.

[87] Yet S.M. said that C.O. has not always wanted to be involved in significant decisions for F.M. over the last few years. For example, he said that, when exploring the developmental issues for F.M., he took the child to virtually all his medical and dental appointments. He took F.M. to many experts to address concerns that he may be on the autism spectrum as well as exploration of developmental delays with Early Intervention, Occupational Therapy and hearing and speech therapists.

[88] S.M. said that he provided C.O. with the medical information, including the names of the healthcare professionals seeing F.M. He states that generally she had little involvement with F.M.'s health concerns, asked few questions and otherwise provided little input. He said that she declined to participate in the professional observation of F.M. as part of his assessment for autism, saying that she told him that she was uncomfortable having someone in her home after dealing with the agency.

[89] C.O. said that she was unaware of most of the medical professionals involved with F.M. and only discovered those names from S.M.'s affidavit in this process. She described attending some of the appointments involving F.M. but denied that she was informed of most of the appointments and questioned why so many doctors and assessments are involved with F.M. She said that she did not refuse to allow observations in her home as part of the autism assessment but rather she asked for information regarding the doctors so she could contact them to set up a meeting for herself. She said that S.M. never provided any information and it was never raised again.

[90] The phrase "substantially involved" merits some attention. The word "substantially" is variously defined to mean "significant", "to a great or significant extent" and "not imaginary or illusory". While reference to dictionary definitions is not determinative in such analysis, this does provide a beginning.

[91] In considering this section in the context of the amendments to the *Act* concerning relocation with a child, it is clear to me that section 18H(1)(a) creates a presumption in favour of the relocation in a circumstance where the parent opposing such relocation has minimal or moderate contact, involvement and decision-making responsibility or interest in the child. It is intended to prevent such a parent from unreasonably obstructing a move and respects the decisions of the primary caregiver in such circumstances. It is, in many ways, an effort to mitigate against claims by minimally or uninvolved parents where there is little likelihood of success in opposing the relocation and does so by placing the burden squarely on the parent opposing to show that the relocation would not be in the child's best interests.

[92] I further find that this is consistent with the language of the Supreme Court of Canada in *Gordon v. Goertz*, [1996] 2 SCR 27, 1996 CanLII 191 (SCC) which preceded the amendments to the *Act*. In that seminal decision on mobility applications the court held at paragraph 49 that:

> 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.

[93] As noted earlier, I find that this decision has now been superseded by the amendments to the *Act* regarding relocation. An example of these changes included in the amendments is the Supreme Court of Canada's language that the court should consider "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" which has now been modified in the *Act* to require that such reasons be considered in all mobility matters under section 18H(4)(b).

[94] On careful review of all the evidence, I am satisfied that C.O. was and is substantially involved in the care of F.M. Substantial involvement does not equate to shared parenting nor does it require complete unanimity on decision-making or in day-to-day care. She has sought and has had consistent and meaningful parenting time, which both parties agree should be increased if F.M. remains in Nova Scotia. She has sought input into decisions for F.M. and I accept her evidence respecting the medical issues for F.M. Both parties agree a change to joint custody is appropriate, reflecting that desired involvement.

[95] Having found that C.O. has been substantially involved in the care of F.M., I further find that this circumstance falls squarely within section 18H(1)(c) and that both parents have the burden of showing what is in the best interests of F.M.

Factors under Sections 18(6) and 18H(4)

[96] Now that I have determined that each parent bears the burden of proof to prove what is in the best interests of F.M., it is next appropriate to review the relevant considerations and factors set out under section 18(6) and 18H(4) of the *Act*. In doing so, I again note this list of factors is not exhaustive and I further consider those factors listed in the *Foley* supra decision. I will now briefly review each factor and the evidence respecting each.

F.M.'s Physical, Emotional, Social and Educational Needs Including His Need for Stability And Safety

[97] F.M. is four years old and has been attending the 4 Plus program. He is, by all accounts, a loving and affectionate child and the evidence is clear that he has a loving and supportive relationship with each of his parents. While each parent

complains of communication issues, involvement in decision-making, concerns regarding extended family members and whether the other parent supports their relationship of F.M., the evidence is clear that F.M. is doing well despite the separation of his parents. In an ideal world, he would have parents who are supportive of him and each other and fully cooperative in all decisions concerning him. Even though that is not the case in all respects in this matter, there is little evidence before me that F.M. has been in any significant way compromised in the care of either of his parents.

[98] The most significant challenge for F.M. is his developmental delay and the possibility that he is on the autism spectrum. He has seen many specialists while in the care of his father and I am satisfied that all his developmental needs, whatever they may be, have been fully addressed in those consultations and assessments in Nova Scotia. While C.O. has complained that she has not been kept fully informed, she will be a joint custodial parent and will have complete access to all information and service providers without having to go through S.M. for such information.

[99] S.M. has considered what the relocation would mean for F.M.'s needs and has identified appropriate supports and services in Saskatchewan. I am satisfied that F.M.'s physical, emotional, social and educational needs, including his stability and safety needs, can be fully met by his parents, either in Nova Scotia or in the care of his father in Saskatchewan.

[100] There is a significant question of how the proposed relocation might affect F.M. emotionally in that he would have a significantly compromised relationship with his mother and sibling. As will be discussed later in the decision, C.O. has a very modest income as a hairdresser. She cares for her daughter, C.C.O., who has a relationship with F.M. There is a significant question as to whether any real relationship can be maintained at such a distance for either C.C.O. or C.O. with F.M. under the plan proposed by S.M.

[101] While he proposes that C.O. have significant parenting time when she can go to Saskatchewan or when he visits Nova Scotia, as well as block time in the summer and on special occasions, S.M. does not propose how such travel and associated costs would be paid. I find it highly unlikely that C.O. could afford to travel to Saskatchewan or to have F.M. travel to Nova Scotia very often, if at all. They can, of course, maintain a relationship using electronic media, videoconferencing and occasional in-person visits. But it is a significant factor in assessing F.M.’s best interests that the plan of the father and the modest income of

the mother may not allow continuation of a meaningful relationship between F.M. and C.O., as well as C.C.O.

[102] On the other hand, the guarantee of employment for S.M. would surely provide much-needed financial stability for F.M. and would, in doing so, reduce strain on S.M., which presumably would decrease his stress and improve his ability to parent F.M.

Each Parent's Willingness to Support F.M.'s Relationship With The Other Parent

[103] Each of these parents complained that the other is not fully supportive of F.M.'s relationship with them. C.O. said, for example, that S.M. does not always have F.M. ready for her parenting time and he unnecessarily intervenes in putting F.M. in the car seat. This is denied by S.M.

[104] S.M. said that C.O. is not fully involved in decisions regarding F.M., that she made decisions such as enrolment in the 4 Plus program without his early input and otherwise has not been properly supportive of his relationship with F.M.

[105] I find that, on review of the evidence, each party is quite defensive of their parenting role and there certainly are trust issues between them. That said, I do not find that there is much evidence that either parent has undermined or otherwise been significantly unsupportive of the relationship of the other parent with F.M. The fact that the parties have consented to an amended order of joint custody speaks to some level of good faith between them.

[106] I find that it is likely that each of these parents will support the relationship of the other parent with F.M. once this litigation ends, joint custody is in place and a parenting arrangement is settled for the parents and F.M.

The History of Care of F.M.

[107] I have already reviewed the history of parenting after separation until the conclusion of the agency's involvement with the family. The history since F.M. came into S.M.'s care in 2014 has been reasonably consistent. S.M. has had primary care of F.M. and C.O. has had parenting time with him. Their communication has been less than ideal but they have been able to co-parent F.M. with some success and have agreed that, should he remain in Nova Scotia, C.O. should have increased parenting time. Under the sole custody order in place at that

time, S.M. made all the major parenting decisions and there is some disagreement about whether he has properly consulted with C.O. on such decisions.

[108] I find that the history of parenting of F.M. has been appropriate and supportive with S.M. providing the bulk of that parenting over the last few years. I do find that there have been challenges respecting C.O.'s parenting time and I accept that S.M., at times, has not been as supportive of that time as he could have been.

The Plans Proposed for F.M.'s Care and Upbringing

[109] While this issue will be dealt with more fully below when addressing the specific factors set out under section 18H(4), S.M. has provided a detailed and thorough plan for F.M.'s care in Saskatchewan. This must be balanced against the reasons for his move, the impact it will have on the relationship between F.M. and his mother and sibling as well as the impact it will have on F.M. and his relationship with extended family.

[110] C.O. has also presented a plan for F.M.'s care if he remains in Nova Scotia which I will also review more fully below. That plan is, likewise, thorough and must be balanced against the advantages to F.M. of relocation, the impact it will have on his relationship with his father and his extended family in Saskatchewan.

The Nature, Strength and Stability of F.M.'s Relationship With Each Parent

[111] The evidence on this issue is clear. I find that F.M. has a deep and loving relationship with each of his parents. He was, for some time after separation, in the primary care of his mother and for the last few years has been in the primary care of his father. Despite the involvement of the agency, I find that both parents are now stabilized in their lives and the conflict which gave rise to the agency's involvement appears to be behind them.

[112] F.M.'s relationship with his father is clearly solid and appropriate. They love one another and there is no evidence before me that S.M. does not have a deep and loving and stable relationship with F.M.

[113] Similarly, the evidence before me makes clear that F.M. has a deep and loving relationship with C.O. The fact that F.M. is not primarily residing with her is not a concern respecting this issue. Even though F.M. was taken from her care by the agency, she has maintained a strong relationship with him in the years since.

The fact that she has made this application for joint custody and increased parenting time suggests that she perceives that relationship to be deep and meaningful. I have considered the brief video that was admitted into evidence of F.M.'s reaction when leaving his mother's care. This suggests to me that F.M. enjoys his time with her and C.C.O. and there is nothing in the evidence to suggest that F.M. is anything other than close with his mother.

[114] F.M.'s relationship with each of his parents is deep, meaningful and important to his emotional and social stability.

The Nature, Strength and Stability of F.M.'s Relationship With His Grandparents And Other Significant Persons

[115] It is here that some significant challenges arise. M.C. is F.M.'s maternal grandmother. There is evidence that on at least two occasions in 2013 she behaved inappropriately in her interactions with S.M.

[116] C.O.'s evidence in this proceeding was that her mother is very supportive of her and is not an alcoholic. In essence, she characterizes her as a good and solid support system with an appropriate, loving and supportive relationship with her and F.M.

[117] As noted earlier, C.O. also swore an affidavit in the child protection proceedings in 2013 in which she said the opposite, maintaining that her mother was an alcoholic, behaved inappropriately and that she did not have a positive relationship with her because she started fights and was unsupportive of her.

[118] While the accounts of the incidents in 2013, particularly that of July 16, 2013, differ among the witnesses, where there are differences, particularly with respect to the behaviours of M.C., I largely accept the evidence of S.M. over that of M.C. and the other witnesses. I find that M.C. does drink alcohol to excess, at least in social circumstances, and that she has been confrontational and violent towards S.M. in the presence of F.M.

[119] That said, I do not accept that S.M. did nothing to trigger the behaviours of M.C. on July 16, 2013. On that point, I accept the evidence of M.C. and other witnesses that S.M. was aggressive toward her, grabbing F.M. and pinning her against the wall. I find this is more consistent with the description of the overall event and consistent with what is most probable, arising from the incident between them of June 2013 and S.M.'s behaviours in July 2013.

[120] I find that there are concerns regarding M.C.'s behaviours and therefore her relationship with F.M. when she is consuming alcohol. I accept the evidence of C.O. in this proceeding that her mother is a support to her, but I also accept that her mother has an alcohol problem, that she can be verbally and physically abusive in social situations when she is drinking and that this can put F.M. at risk if not controlled.

[121] Despite this finding, M.C. and her husband have been very supportive of C.O. They purchased a home next to theirs, have given C.O. and her children that home to reside in and have in many other ways been directly and indirectly supportive of her and the children since the separation.

[122] I also consider the relationship between F.M. and his paternal grandmother, H.F.G. I have already discussed the involvement of H.F.G. in the drafting of the child protection affidavits in 2013 and my finding that she drafted C.O.'s affidavit in that proceeding. I find that the content of that affidavit served her and her son's interests and placed C.O. in a very difficult position before this court in the current proceedings with respect to her credibility.

[123] I do have concerns based on the evidence of C.O. and her description of H.F.G.'s involvement with her, F.M. and S.M. when she lived on their property, describing her as being interfering and supportive of her son, S.M., and not of C.O.

[124] That said, H.F.G. has been supportive of her son and F.M. over the years and has supported him in this proceeding, forming part of his plan for relocation to Saskatchewan.

[125] Despite the concerns that have been raised in the evidence respecting H.F.G., I do not find that she poses a risk to F.M. On the other hand, there is little evidence before me that she has a significant relationship with F.M. given the physical distances between them and the limited history of F.M.'s involvement with her. That is not to say that she would not be supportive if F.M. were in Saskatchewan, but it is to say that between the two grandmothers, and notwithstanding the issue of alcohol for M.C., I find that M.C.'s relationship with F.M. is the more significant of the two and the more directly supportive of him and his mother.

The Ability of Each Parent to Communicate and Cooperate on Issues Affecting F.M.

[126] The evidence of communication between the parents is varying over time and does suggest some challenges. Each accuses the other of being difficult in such communication. For example, C.O. complains that S.M. did not keep her informed of the medical issues and physicians involved in F.M.'s care and assessments. S.M. complains that C.O. was not interested in such information and she did not communicate her concerns to him on various issues that she now raises.

[127] Despite this, the parties have agreed that joint custody is appropriate which suggests that they believe that they can communicate effectively regarding F.M.'s best interests. I find that this is apparent on the evidence, notwithstanding the history of family violence and the many challenges they face in attempting to co-parent F.M. given their history.

[128] It is to their credit that they have cooperated as much as they have over time despite the challenges and limitations. Given that the order, until recently, has been one of sole custody, communication would naturally be challenged in that circumstance. Now that joint custody is agreed, I have no concerns based on the evidence before me regarding their ability to communicate in the future.

Family Violence

[129] I have already reviewed the incidences of June and July 2013 and the various criminal charges and convictions involving S.M. I find that there is a history of family violence in this matter. I make that finding with respect to S.M. in relation to uttering threats and his physical confrontation with M.C. and with respect to M.C. in relation to her verbal and physical confrontation with S.M.

[130] C.O. alleges other assaults and family violence against her by S.M. but I am not prepared to make that finding based on the limited evidence regarding those circumstances in this matter.

[131] Having made that finding, I do consider that the allegations of family violence are somewhat dated, the last having occurred approximately 3 to 4 years ago. The incidents were limited to two. One of them, that of July 2013, took place in the presence of F.M. and involved him directly. This appears to be the only time that he has been directly involved in such circumstances. I also consider that since that time, S.M. has parented F.M. and the evidence suggests to me that he has been appropriate and responsible in that parenting. Further, I find these incidents of

family violence have not damaged the ability of the parents to cooperate on issues affecting F.M. and do not currently threaten the safety or security of F.M. or C.O.
[132] I also must consider the factors under section 18H(4) and do so as follows:

The Reasons for the Relocation

[133] S.M. sets out in detail the reasons for his proposed relocation of F.M. with him to Saskatchewan. He said that he is trained through the Nova Scotia Community College (NSCC) in the plumbing program and is qualified as an apprentice plumber. To obtain his apprenticeship hours, he must work in that trade for approximately 8000 hours of combined practical and technical training. To date, he has completed 2000 hours, working for a local plumbing company and through the NSCC program. Unfortunately, he was laid off from his plumbing job in November 2015. He reviewed in some detail his attempts to obtain employment in that field in Nova Scotia, with no success.

[134] He also said that he had worked in truck driving in the past and said that his efforts to secure employment in that field were, likewise, unsuccessful.

[135] He even obtained employment as an artist creating a mural for the town of New Glasgow but such work is not a long-term solution to the financial needs of him or his family.

[136] S.M. said that he is currently in receipt of social assistance through the Department of Community Services and a condition of that benefit is that he must seek employment and demonstrate that he has done so. He set out in some detail the efforts he has made.

[137] He said that he has secured guaranteed employment in Regina, Saskatchewan with a bathroom renovation company, Bathx, which is owned by his mother's husband. Unfortunately, this work will not count towards his plumbing trade apprenticeship hours. But, he said it will provide a stable and significant income of $25 per hour for 40 hours of work per week.

[138] As part of his plan for the relocation, he said that he will have the support of his mother, her husband and his two brothers. He notes that he has a third brother, who lives with his wife and two children, located just under three hours away from Bethune, where S.M. will be residing with F.M. These and other extended family members would be available to him and F.M. for support

[139] C.O. said that there is no need for S.M. relocate for employment and said that there are many jobs available to him in Nova Scotia, attaching to her affidavit listings of current employment opportunities for him. She said he could join the plumber's union to work toward his hours for his apprenticeship and that he has provided no evidence to verify that he has attempted to do so.

[140] She said that he has not made attempts to return to transportation work, including with his former employer, Armour Transport, and said that they are hiring full-time drivers.

[141] C.O. said that S.M. has an inconsistent employment history, including periods on social assistance and employment insurance, and said that she believed that he was employed for the last year or so.

[142] C.O. also expressed concern that with the hours he will be working in Saskatchewan, he will not have time to care for F.M. appropriately. She raised other concerns respecting his plan which will be dealt with further below.

[143] In reply, S.M. said that the job offer with Bathx is firm. The company has been in existence for many years and his brother has been employed with the company for about ten years.

[144] He said that he has regularly attended the offices of his former employers, Armour Transport and TMB Plumbing, seeking employment, to no avail. He said he made many attempts to find employment locally but has been unsuccessful. He provided a list of some of the employers to whom he applied. He also noted that the job postings provided by C.O. require plumbing experience, 3 to 4 years or journeyman status, neither of which he has. He said the trucking positions usually require availability for night shifts or long-haul duties which would interfere with his parenting of F.M.

[145] He noted that many of these positions require that the applicant not have a criminal record and he does.

[146] Respecting work through the union, S.M. said that he has received advice not to apply through that route as many companies are not unionized and any such decision would reduce his employability as a plumber.

[147] On review of this evidence, I find that S.M. has made reasonable efforts to find work in the local area to no avail. I further find that his reasons for relocation,

to obtain steady employment, to have an opportunity to gain his apprenticeship plumbing hours and to gain the support of his family, are valid and legitimate reasons to such a relocation, which would benefit F.M.

Effect on F.M. of Changed Parenting Time due to the Relocation

[148] S.M. said that the relocation plan includes parenting time for C.O. either in Saskatchewan or in Nova Scotia when he visits with F.M., or when F.M. comes on his own for extended time. He also proposed contact through electronic means while F.M. is in Saskatchewan.

[149] C.O. said that the relocation would effectively end any meaningful relationship between her and F... She is a hairdresser, earns a very modest income, must support C.C.O. and would have no means to either travel to Saskatchewan or to pay for F.M. to come to Nova Scotia. F.M. is obviously too young to travel on his own and would require an adult to accompany him at additional cost. It was her evidence that she simply does not have the income for the transportation required to maintain a meaningful relationship with F.M. It is her position that this would clearly not been the best interests of F.M. as it would mean the end of their relationship as mother and son.

[150] I find that this is a very significant factor for consideration. I accept C.O.'s evidence that she has no means to pay the costs of travel for time with F.M. and that this would mean an end to any meaningful relationship with him.

[151] S.M.'s plan offers no realistic solution to this challenge. He did provide evidence that he may be able to assist with travel costs and that he may visit Nova Scotia with F.M. in the future but these, I find, were very uncertain plans at best.

The Effect on F.M. of his Removal from Family, School and Community due to the Relocation

[152] While F.M. is quite young and does not attend school, he is involved in the 4 Plus program and does have family members who are close to him in Nova Scotia. These include his mother, his sister C.C.O., his maternal grandmother and her husband and C.O.'s siblings. Without reviewing each relationship, it is clear that C.O. and F.M. have a meaningful relationship with each of her family members, who support her and F.M. as well as C.C.O. and have done so for some time. For example, I have already noted the significant commitment made by her mother and her mother's husband to her, F.M. and C.C.O.'s well-being.

[153] F.M. is young and there's no evidence that he has friendships and relationships with other children in the community. He is not involved in any organized activities. But he is involved with his mother's family and it is C.O.'s evidence that he would be adversely affected by the removal from those family members and the community where he has spent his entire life.

[154] I accept that removing F.M. from Nova Scotia would adversely affect him, in that he would lose his relationships and connections with his mother's family. These relationships have generally been positive for him and, for the reason of travel costs, I find those relationships would be significantly and adversely affected by relocation.

The Appropriateness of Changing the Parenting Arrangements

[155] I find that this factor can be more fully dealt with in my analysis set out below.

Compliance with Previous Court Orders by the Parties

[156] There is some evidence from each of the parties that the other has not properly complied with the court order put in place after the termination of the agency's involvement. C.O. said that S.M. did not properly support her parenting time, often resisted additional time requests, was late for the beginning of parenting time and on occasion refused a parenting time.

Any Additional Expenses that may be Incurred by the Parties due to the Relocation

[157] This factor has already been discussed in the context of the lack of ability of C.O. to exercise meaningful parenting time with F.M. if relocation is permitted given her very limited financial means, the cost of travel to and from Saskatchewan and the young age of F.M. which will require an adult to accompany him on such trips.

[158] With respect to the balance of the factors set out under section 18H(4), I do not find them relevant in this circumstance and will make no further comment on them.

Analysis and Decision

[159] In weighing the various factors at play in this case, I am inexorably drawn to the balance between the reasons for and benefits to be derived from the relocation for F.M. against the loss of his relationship with his mother and her family in Nova Scotia.

[160] On one hand, I accept that there are many benefits to be realized for F.M. if he relocates to Saskatchewan. He will be with his father who has been providing his primary care for several years. His father will be able to provide an improved standard of living because of his new employment, which appears to be secure and long term. There is opportunity to further improve F.M.'s standard of living if S.M. can obtain his apprenticeship hours in plumbing.

[161] The relocation will improve F.M.'s financial stability and, indirectly, improve his circumstance by providing his father with meaningful work and access to his family which will no doubt increase S.M.’s sense of satisfaction and contentment.

[162] F.M. will also benefit by the relationships he will form and develop with his father's family in Saskatchewan. While concern has been raised regarding S.M.'s older brother and his issues with the law, S.M. says that he will not leave his brother with F.M. and does not expect him to be around F.M. much, as he lives some distance away.

[163] The plan put forward by S.M. is reasonable. Employment has been discussed. S.M. and F.M. will initially live with one of his brothers and his brother's wife and S.M. will eventually seek his own accommodation. This is S.M.'s community of origin and I have no doubt that it will offer both him and F.M. many advantages through those family and community relationships into the future.

[164] I also accept that if I permit such relocation, F.M.’s relationship with his mother, sister, maternal grandmother and his entire extended family on his mother's side will effectively end. This is an extremely concerning circumstance and which one which calls for careful consideration.

[165] In many mobility applications, there is a clear plan for continued parenting time between the parent remaining behind and the child who is relocating. Sometimes child support can be waived to free up money for travel. A child may

be old enough to travel alone by plane, thereby minimizing costs. The parents sometimes have sufficient income to support such travel to maintain the relationship. In many cases the distances are relatively short, travel by car, bus, ferry or other means is realistic and the costs are minimal. In this circumstance, all those mitigating factors are absent.

[166] This would be less concerning if C.O.'s relationship with F.M. and F.M.'s relationship with his sister and his mother's family were not deep and meaningful. In this case, the opposite is true. I have already made findings that those relationships are important to F.M., particularly his relationship with C.O. Despite the difficulties experienced by the parents, particularly around the time of the agency's involvement with the family, I am satisfied that they have been able to communicate regarding F.M.'s well-being and that the joint custodial order agreed to will significantly enhance that communication in the future. This would otherwise provide the opportunity for F.M. to benefit by his mother's deeper involvement in his life but in the circumstance of relocation, that opportunity will be lost.

[167] Taking into account all of the factors, and on careful review of all of the evidence before me, I find that it is not in F.M.'s best interest that he be permitted to relocate with his father to Saskatchewan and I order that he remain in Nova Scotia. I find that the benefits of the relationships F.M. has with C.O., C.C.O., his grandmother and others in his life in Nova Scotia outweigh the benefits to him of relocation to Saskatchewan.

If S.M. is not permitted to relocate F.M. with him to Saskatchewan, what parenting arrangement in Nova Scotia would be in F.M.'s best interests?

[168] With respect to C.O.'s application for shared parenting, I do not find that such an arrangement will be in F.M.'s best interests. He has been in his father's primary care for several years and has done well in that arrangement. This parenting arrangement will remain in place. I order this based on S.M.'s position that he will remain in Nova Scotia if relocation is not permitted. If he decides otherwise, I retain jurisdiction to make further orders in the matter.

[169] Shared parenting would require a level of communication and cooperation between the parents that I do not believe is possible at this point. While I do find that they have done reasonably well in the recent past, there was evidence of difficulties between them and, more importantly, a lack of trust. Shared parenting requires a significantly enhanced level of communication and cooperation between

parents to be successful for the child. I am not satisfied that there is evidence before me that would support a shared parenting arrangement as being in the best interests of F.M.

[170] I will order increased parenting time for C.O. with F.M. and the parents will have joint custody of F.M. which will enhance her ability, both to spend time with F.M. and to be involved in major decisions concerning his upbringing and well-being.

What child support should be paid?

[171] Given that S.M. will have primary care of F.M., C.O. shall pay child support to S.M. Her 2016 tax return indicates an income at Line 150 of $14,937.00. She testified that she receives tips as a hairstylist that she does not declare as income. She estimated that her income should be grossed up by around 10% to account for this. I find this reasonable and impute income to her of $16,500. She will therefore pay child support of $91.10 per month commencing on the first day of September 2017 and continuing on the first day each month thereafter.

Terms of Order

[172] I, therefore, grant an order on the following terms:

1. S.M.'s application to relocate F.M. with him to Saskatchewan is denied.

2. The parties will have joint custody of F.M.

3. Each parent will have equal access to all information from any third-party service provider respecting F.M. and will be able to speak to and meet with any such third-party service provider including, but not limited to, doctors, dentists, teachers, child care providers, therapists or anyone else or any organizations involved with F...

4. The parents will keep each other informed of all major matters concerning F.M. including, but not limited to, medical or educational concerns or issues, any appointments, assessments or other matters concerning F.M., his health, education and general well-being.

5. All communication between the parties shall be in a polite, respectful, businesslike and child focused-manner.

6. Each parent is prohibited from making any negative or derogatory comments about the other parent or the parent's family at any time F.M. is in the parent's care. Further, they are required to prevent anyone else from making any such negative or derogatory comments when F.M. is in that parent's care and if such third-party makes such comments, they are to have that third-party cease such comments immediately, have that part third-party removed from F.M.'s vicinity or remove F.M. from the vicinity.

7. F.M. shall be in the primary care of the father.

8. The mother shall have parenting time (known as normal parenting time) with F.M. as follows:

a. Every second weekend from Friday after school/4 Plus until she brings F.M. to school/4 Plus on Monday morning. If F.M. is in neither school or 4 Plus on those days, she shall have him from Friday at 3:00 PM until Monday at 8:00 AM.

b. On the week following her parenting time weekend, from Wednesday after school/4 Plus until Thursday when she brings F.M. to school/4 Plus. If F.M. is in neither school or 4 Plus on those days, she shall have him from Wednesday at 3:00 PM until Thursday at 8:00 AM.

c. If a school in-service occurs on a Friday and/or a statutory holiday occurs on a Monday of a weekend when she has parenting time with F.M., her parenting time shall be extended to include those days, such that her parenting time shall commence on Thursday after school/4 Plus or 3:00 PM and end on Tuesday morning when he is brought to school/4 Plus or 8:00 AM, as the case may be.

9. The following special parenting time shall apply and shall supersede any normal parenting time set out above:

a. Summer school break- The parents shall share the summer school break on an approximately equal basis. Each parent will be entitled to two, two week non-consecutive weeks blocks of parenting time (a total of four weeks each), and they shall share the balance of the time approximately equally between them. Each parent shall notify the other in writing, which may be by email or text, by April 1 of each year of the weeks they wish to

have that summer and if there is no conflict in dates, those dates shall apply. If there is a conflict, the mother's dates shall take priority in even-numbered years and the father's dates shall take priority in odd-numbered years. If a parent fails to provide notice as required by the date required, that parent shall lose any priority of dated for that year. The father shall have F.M. in his care for at least the last three days prior to the commencement of school.

b. Christmas school break - The parents shall share parenting time for the Christmas school break approximately equally between them. One parent will have F.M. from the commencement of the school Christmas break until Christmas day at 2 PM and the other parent shall have F.M. from Christmas Day at 2 PM until F.M. returns to school after the Christmas school break. The mother shall have F.M. with her for the first part of the Christmas school break in odd numbered years and the father shall have F.M. with him for the first part of the Christmas school break in even numbered years.

c. School spring break - The parents shall share parenting time for the school spring break. If the mother's normal parenting time weekend is at the beginning of school spring break, she shall have F.M. until Wednesday at 5 PM of that week and father shall have F.M. from Wednesday at 5 PM of that week until he returns to school on Monday of the following week. The opposite parenting time will apply if the mother's normal parenting time weekend is at the end of the school spring break.

d. Easter - The parents shall share parenting time on an approximately equal basis for the Easter weekend. One parent shall have F.M. from the end of school on Easter Thursday until Easter Saturday at 5 PM and the other parent will have F.M. from Easter Saturday at 5 PM until he returns to school on Tuesday morning. The mother will have F.M. for the first half of the Easter weekend during odd numbered years and the father will have F.M. for the first half of the Easter weekend during even-numbered years.

e. Birthdays - There will be no special parenting time for F.M.'s birthday or the parents' birthdays unless otherwise agreed between the parents.

f. Mother's Day and Father's Day - Notwithstanding any normal parenting time, the mother shall have F.M. on Mother's Day from 9 AM to 5 PM and the father shall have F.M. on Father's Day from 9 AM to 5 PM.

10. Each parent shall have reasonable telephone or videoconference contact with F.M. while in the care of the other parent and such contact, including its frequency and duration, shall take into account F.M.'s age and level of maturity.

11. M.C. is prohibited from consuming alcohol 24 hours prior to or at any time when she has care of F.M. M.C. shall not be intoxicated when in the company of F.M. at any time. If the mother reasonably believes that M.C. has so consumed alcohol prior to or while having care of F.M., or reasonably believes that M.C. is intoxicated while in the company of F.M., she shall remove F.M. from M.C.'s presence or care.

12. Each parent is entitled to travel with F.M. anywhere in the provinces of Nova Scotia, New Brunswick and Prince Edward Island during their parenting time without notice to the other parent.

13. Each parent is entitled to travel anywhere in Canada outside of the provinces of Nova Scotia, New Brunswick and Prince Edward Island during their parenting time upon giving notice in writing, which may be by text or email, to the other parent at least seven days in advance including notice of the travel dates, location of the travel and a contact number where F.M. can be reached.

14. Each parent is entitled to travel with F.M. outside of Canada during their parenting time upon giving notice in writing, which may be by text or email, to the other parent at least thirty days in advance including notice of the travel dates, location of the travel and a contact number where F.M. can be reached. The non-travelling parent shall cooperate in permitting such travel by F.M., including signing any authorizing documents required and cooperating in obtaining a passport for F.M. Any such passport shall be held by the father and provided to mother on her request and shall not be unreasonably withheld.

[173] Given the mixed success of the parties, each party will bear their own costs.

[174] Counsel for C.O. shall draw the order.

Daley, JFC