FAMILY COURT OF NOVA SCOTIA
Citation : *J.B. v. E.D., 2018 NSFC 8*

Date: 20180228
Docket: Pictou No. FPICMCA-067127
Registry: Pictou

Between:

J.B.

Applicant

v.

E.D.

Respondent

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

Judge: The Honourable Judge Timothy G. Daley

Heard September 20, 2017 and October 26, 2017 in Pictou, Nova Scotia

Written: February 28, 2018

Counsel: Scott M. Brownell, for the Applicant
Respondent E.D., self represented

Introduction

[1] This decision is about a little girl, L.S., who is eight years old, and what parenting arrangement is in her best interests. Specifically, I must decide whether she should remain in the primary care of her father, J.B., in Pictou County or whether I should permit her to relocate to Halifax with her mother, E.D., formerly known as E.S.M.

[2] J.B. says that L.S. has been in his primary care since an order of this court was granted in August 2011. He says that over that time, E.D. and her husband, T.D., had lived in Pictou County until April 2016 when they moved to Halifax, and her parenting time with L.S. has been unpredictable, varied and problematic. He has significant concerns about the risk T.D. poses to L.S. if she is permitted to relocate permanently to Halifax and into his home. He says there is simply no reason for change in primary care, including relocation to Halifax, and it would not be in L.S.'s best interest to permit this.

[3] E.D. says that a change in primary care and relocation to Halifax would be in L.S.'s best interests. She says that J.B. has had an unpredictable employment history, has been inappropriate in his parenting of L.S. over these years and is not capable of safely and properly parenting L.S. She says that the relocation of L.S. to Halifax would allow her to provide L.S. with a better home environment, greater stability and a better future.

Issues for Determination

1. Has there been a material change in circumstance since the granting of the order in August 2011?

2. If there has been a material change, is the proposed relocation in L.S.'s best interests?

3. If such relocation is permitted, what is the appropriate parenting arrangement for L.S.?

4. If such relocation is not permitted, what is the appropriate parenting arrangement for L.S.?

5. What is the appropriate child support order

Procedural and Parenting History

[4] These parties also have a significant parenting history and history before this court which is of relevance to this decision.

[5] E.D. and J.B. began dating in 2006 and maintained "an off-and-on" relationship until December 2007.

[6] The parties reconciled briefly in 2008. The relationship ended permanently in November 2008, prior to E.D. learning she was pregnant with L.S.

[7] At the time of L.S.'s birth, on July 21, 2009, J.B. was living and working in Alberta. He returned to Nova Scotia the day of her birth, remained here for a week and then returned to Alberta. He permanently returned to Nova Scotia in September 2009 and began exercising parenting time for short periods.

[8] The first proceeding before this court was under the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160, as amended. Following the birth of L.S., the matter was heard on December 8, 2009, and an interim order dated January 18, 2010, was granted which ordered sole custody of L.S. to E.D. with reasonable access, now known as parenting time, to J.B. The interim order also provided for DNA paternity testing to be completed. The paternity test confirmed J.B. was the father of L.S.

[9] The parties next entered into a consent order on June 25, 2010, which changed the custodial arrangement. It provided that the parties were to have joint custody of L.S. with E.D. having primary day-to-day care and J.B. having specified access.

[10] In November 2010, J.B. applied to vary the order to accommodate changes in his work and school schedule. The application was heard on January 5, 2011, and a further consent order was issued on March 4, 2011, which provided J.B. with access on alternate weekends and one overnight each week. The parties also consented to a provision requiring that L.S. would not be left unsupervised in the care of T.D., who was E.D.’s boyfriend and is now her husband.

[11] On May 25, 2011, E.D. made an application requesting that she be permitted to relocate to Alberta with L.S. to join T.D. At that time, she was pregnant with a child from her relationship with T.D. That child, E., was born on November 2011. On June 6, 2011, J.B. opposed the relocation application and made a counter application for sole custody of L.S. with E.D. to have supervised access. The applications were scheduled for August 2011.

[12] On that same day, June 6, 2011, the court issued an interim order directing that L.S. was not to be removed from Nova Scotia and further directing that she was to have no contact with T.D.

[13] At the time of the hearing in August 2011, E.D. was employed at Tim Horton's. She and T.D. had been living together in an apartment in Pictou County from October 2010 until May 2011. In May 2011, T.D. moved to Alberta and E.D. and L.S. went to live with E.D.'s mother in New Glasgow. J.B. was entering his second year of studies in the Business Administration Program at the Nova Scotia Community College and was a casual employee at the Nova Scotia Liquor Commission.

[14] At the conclusion of the hearing, the court dismissed the application to relocate, citing concerns about the loss of support from extended family for both E.D. and L.S. The judge found that it was in L.S.'s best interests to remain where she had access to both parents and the support of extended family. In the court's decision, J.B.'s application was allowed and primary care of L.S. changed from E.D. to him and restricted L.S. from being in the care of T.D.

[15] The order of August 26, 2011, granted joint custody of L.S. to the parties, primary care of her to J.B. and reasonable access to E.D., including a two-week rotating schedule. That schedule provided E.D. with unsupervised parenting time in the first week from Thursday after daycare until Sunday at 6 p.m. and the next week from Wednesday after daycare, overnight to Thursday at 6 p.m. She was also permitted to have L.S. with her for one day when L.S. would otherwise be in daycare. E.D. was granted parenting time for Christmas, Easter, Thanksgiving, Mother's Day, and for special events and family birthdays. She also had parenting time for extended periods of up to two weeks during the summer

[16] There was an absolute prohibition on L.S. being in the care of T.D. and neither parent was permitted to relocate with L.S. outside of Nova Scotia without the other parent's agreement or order of the court. No child support was ordered.

[17] E.D. appealed this decision and her appeal was dismissed.

[18] There was one varied order granted until this current proceeding. That order of September 2012 set child support payable by E.D. to J.B. at $29 per month based on an income of $12,000 per year. E.D. was ordered to contribute to child care costs for L.S. in the amount of $37 per month.

[19] J.B. filed an application to vary with this court in April of 2017 seeking a review of child support. E.D. filed a response on June 26, 2017, seeking that

primary care of L.S. change to her and that L.S. be permitted to relocate with her to Halifax.

[20] This court granted an interim variation order confirming the joint custody of L.S. By that time, E.D. had relocated with T.D. and their son, E., who is now 5 years old, to the Halifax area. The court granted parenting time with L.S. on a reasonable basis, including every second weekend from Friday at 3:30 p.m. or 3:45 p.m. until Sunday at 6:30 p.m. and expanding those weekends to include school in-service days and statutory holidays.

[21] Child support payable by E.D. to J.B. was adjusted to $311 per month based on income of $37,000. Enforcement of any child support arrears was suspended.

[22] A further varied interim order was granted on June 26, 2017, providing specific parenting time to E.D. with L.S. totaling three weeks in July and three weeks in August.

[23] Between the proceeding and the decision of 2011 and this application beginning in April 2017, the evidence of parenting is brief. It appears that the parenting arrangement set by this court in 2011 continued until the parties agreed to change that arrangement to one of shared parenting on a week about basis in 2012. J.B. says this was the time period between L.S. attending grade primary and the middle of grade one and that they made this change at L.S.'s request. He says that there was a lack of consistency in that arrangement which adversely affected L.S. and, from the evidence, it appears the parenting arrangement returned to the one granted in the order of 2011.

[24] The next significant change in the parenting arrangements occurred when E.D. and T.D. relocated with their son, E., to Halifax in April 2016. They now live in Eastern Passage.

[25] J.B. says that after the move, E.D. and T.D. requested to have L.S. with them every weekend and that they would provide the transportation. He says that he initially refused every weekend, based on concerns of whether they would be reliable in exercising this parenting time. He says there is a long history of E.D. being late with drop-offs.

[26] J.B. says that he initially insisted on doing the transportation of L.S. in order to maintain consistency. He insisted on parenting time every second weekend and that there was no issue with consistency because he was doing the driving. J.B. says that in March 2017 he offered parenting time to E.D. of every weekend but they did not reach agreement.

[27] E.D. says communication with J.B. has been difficult since the relocation to Halifax. She agrees that J.B. initially provided transportation for parenting time but that this was later changed so that either she or T.D. transported L.S. She says that J.B. is very controlling of her relationship with L.S.

Has There Been a Material Change in Circumstance Since Granting the Order in August 2011?

[28] Before an order can be varied, the party seeking the variation must establish that there has been a material change in circumstance since that order was granted. In this case, J.B. began the application seeking a variation in child support. E.D. then made her application to relocate L.S. with her and T.D. to Halifax.

[29] The test applicable in determining whether there has been a material change in circumstance was set out by the Supreme Court of Canada in *Gordon v. Goertz*, [1996] 2 S.C.R. 27. The relevant portion of that decision is as follows:

> 12 What suffices to establish a material change in the circumstances of the child? Change alone is not enough; the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way: *Watson v. Watson* (1991), 35 R.F.L. (3d) 169 (B.C.S.C.). The question is whether the previous order might have been different had the circumstances now existing prevailed earlier: *MacCallum v. MacCallum* (1976), 30 R.F.L. 32 (P.E.I.S.C.). Moreover, the change should represent a distinct departure from what the court could reasonably have anticipated in making the previous order. "What the court is seeking to isolate are those factors which were not likely to occur at the time the proceedings took place": J. G. McLeod, *Child Custody Law and Practice* (1992), at p. 11-5.
>
> 13 It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

[30] In this case, I am satisfied that there has been a material change in circumstances since 2011. The application at that time sought permission for E.D. to relocate L.S. with her to live with her and T.D. in Alberta. The court expressed concerns regarding the brief work history of T.D. at that time, the loss of relationship between L.S. and her family in Nova Scotia, the history of domestic violence of T.D. and his criminal record from 2009. The court was concerned about an unreported assault on E.D., which raised questions about her judgment.

The court was also concerned that the plan for parenting of L.S. by E.D. was vague.

[31] Since then, T.D. relocated back to Nova Scotia and, until their move to Halifax in 2016, T.D. and E.D. resided in Pictou County and E.D. exercised parenting time with L.S.

[32] This application by E.D. seeks relocation to Halifax, not Alberta. I find that this is a material change which affects the ability of the parents to meet the needs of L.S. and would materially affect her. Moreover, this plan was not before the court at the time in 2011, therefore, it could not be reasonably contemplated by the judge who made the order. It is a different plan which, on its face, would have significant impact on L.S.'s relationship with her father and extended family in Pictou County. He has been her primary caregiver for many years and the proposed relocation would significantly reduce J.B.'s opportunity, and that of his family, to interact with L.S., and her with them.

[33] As noted in *Gordon* supra, at para.14

> These are the principles which determine whether a move by the custodial parent is a material change in the "condition, means, needs or other circumstances of the child". Relocation will always be a "change". Often, but not always, it will amount to a change which materially affects the circumstances of the child and the ability of the parent to meet them. A move to a neighbouring town might not affect the child or the parents' ability to meet its needs in any significant way. Similarly, if the child lacks a positive relationship with the access parent or extended family in the area, a move might not affect the child sufficiently to constitute a material change in its situation. Where, as here, the child enjoyed frequent and meaningful contact with the access parent, a move that would seriously curtail that contact suffices to establish the necessary connection between the change and the needs and circumstances of the child.

[34] I, therefore, find that there has been a material change in circumstance and I must now review all the evidence to determine what is in L.S.'s best interests now.

Is the proposed relocation in L.S.'s best interests?

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

The Law Applicable to Relocation and Best Interests

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

> In any proceeding under this Act concerning custody, parenting arrangements, parenting time, contact time or interaction in relation to a child, the court shall give paramount consideration to the best interests of the child.

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

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

[38] In determining what I should consider in assessing what is in the child's best interest, s.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… sibling, 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….

[39] I note that s-ss. (e) and (f) were not considered. The former considers the cultural, linguistic, religious and spiritual upbringing and no evidence of this was before the court. The latter considers the views of the child. The most common way the child is heard is through a voice of child report, but given her age and the fact that neither party requested such a report, I do not have one to consider.

[40] Each of the parties sought to have L.S.'s voice heard through hearsay evidence, based on what L.S. is alleged to have told them or other witnesses. I permitted this hearsay to be admitted to, so as to reduce the time taken to deal with it piecemeal at the commencement of or during the hearing, but I place no weight upon it for the reasons set out below.

[41] Each witness who proffered such hearsay is a party or a close family member. Each has a motive to misstate, exaggerate or simply lie about this evidence. It is contradictory and favors the side proffering it only. It may be that the child is telling each person what she thinks they want to hear, as many children do, to cope in conflictual circumstances. It cannot be tested under cross examination. It is not corroborated in any way by other evidence such as documents or by independent witnesses such as teachers or therapists. It is simply too unreliable for me to place any weight upon it and I find it has no probative value.

[42] The analysis of L.S.'s best interests does not end with the factors set out under s. 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 s. 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.

[43] In this case, there is also the issue of relocation. This requires consideration of the law applicable to such matters. The *Act* includes specific provisions respecting relocation. 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. 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;

…

(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.

[44] Prior to the proclamation of the *Act* in 2017, which included new provisions in s. 18 respecting relocation, the leading judicial authority on relocation matters was the Supreme Court of Canada decision in *Gordon v. Goertz*, [1996] 2 SCR 27, 1996 CANLII 191 (SCC).

[45] I find that, with the proclamation of the *Act*, the provisions on mobility contained in s.18 are a complete legislative scheme for considering such matters under the *Act*. These provisions were enacted long after the decision in *Gordon*, supra and clearly were designed to clarify and, in some cases, modify the analytical structure from that decision in determining such matters.

[46] For example, the Supreme Court of Canada held in *Gordon* at para. 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.

[47] The court did discuss what this means. Yet this statement has caused some confusion in its application in relocation cases. Deciding how to determine who is

the custodial parent and what is meant by that parent's views being "entitled to great respect" has been a challenge ever since.

[48] To address this, the *Act* creates a three-part test to determine who bears the burden of proof in such relocation matters. Section 18(H)(1) sets out three possibilities and creates presumptions in favor or against relocation in the first two. In the third, no presumption applies and the burden of proof rests with each party.

[49] Section 18(H)(3) then sets out the factors to consider in determining the parenting arrangements which are then to be applied to the tests under s.18(H)(1).

[50] These lists in both s.18(H)(1) and s.18(H)(3) are exclusive and closed. They do not, in my view, permit consideration of other factors in determining the presumptions and burdens in relocation matters.

[51] In contrast, s. 18(H)(4) sets out a list of factors to be considered in determining a child's best interests in relocation matters including the non-exclusive list set out in s. 18(6). Section 18(H)(4) also begins with the non-exclusive language "the court shall consider all relevant circumstances, including…". This language invites the court to consider other relevant circumstances which surely include case law such as *Foley* supra.

[52] In my view, this language also allows consideration of some factors from *Gordon* supra. But consideration of factors from *Gordon* supra cannot override, restrict or derogate from the affirmative language under s. 18(H)(1) and s. 18(H)(3). The *Act*, not *Gordon* supra, must be used to determine the burdens and presumptions.

[53] As another illustration of the changes under the *Act* which modify the approach in *Gordon* supra, the Supreme Court of Canada said 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". This has also caused some confusion and challenge to courts ever since. In a distinct departure, the *Act* now requires consideration of the reasons for the proposed move in all relocation matters under s. 18(H)(4)(b), not just in exception cases. This provision clearly modifies the direction in *Gordon* supra and is another example of how these new provisions subsume and override much of the direction in *Gordon* supra.

Relocation Analysis

[54] As a preliminary matter, it is important to note that, though the court has several options available for parenting arrangements in relocation matters, these parties have only identified two. E.D. says she wants L.S. to relocate to Halifax to live with her, T.D., and their son. She has not suggested the alternative option of declining the request for relocation but awarding her primary care of L.S. in Pictou County and she has not presented any evidence or plan to suggest or support such an option.

[55] Likewise, J.B. has only requested that the court maintain the status quo by rejecting the relocation application of E.D. He has not put forward an alternative position or any evidence or plan that I could allow the relocation but place E.D. in his primary care in Halifax if he relocated as well. The only plans put forward are the relocation proposal by E.D. and the status quo position by J.B. I am aware that I am not limited to these proposed plans in my analysis and decision.

[56] With that said, I must next determine the issue of relocation. The first step under the *Act* is to determine where lies the presumptions, if applicable, and the burden of proof concerning the proposed relocation. Section 18(H)(1) sets out three possible circumstances of parenting at the time of the application for relocation and identifies a presumption in the first two circumstances and a distinct and different burden of proof for each.

[57] I begin by ruling out the circumstance described in s. 18(H)(1)(b), that of a substantially shared parenting arrangement. I find that the use of the term "substantially" implies that the court is not compelled to use the definition under the Provincial Child Support Guidelines of a shared parenting arrangement existing when "a parent exercises parenting time with a child for not less than 40 per cent of the time over the course of a year." This is reinforced by the requirement that the court consider the three factors under s. 18(H) (3) in determining the parenting arrangement rather than count days.

[58] The evidence before me is that, except for a period of shared parenting time when L.S. was in grade primary to the middle of grade one, J.B. has had primary care of L.S. since 2011. E.D. has had parenting time every second weekend and for special occasions. On any version of the evidence, J.B. has been the primary caregiver and remained so at the time of the application.

[59] As to the day to day care giving responsibilities for L.S., the evidence also is clear that, other than for the period of shared parenting noted earlier, J.B. has been the one with this responsibility. There is no evidence that E.D. had such day to day

responsibilities before her move to Halifax in 2016. Likewise, there is no evidence that she has had such responsibilities since that move. Indeed, it would have been difficult for her to do so after her move, given both the distances involved and the difficulties in communication between the parties that she has identified.

[60] As to the ordinary decision making for E.D., the evidence is that, as a result of being the primary caregiver, J.B. has been making most of the decisions. There is no evidence that E.D. has been involved, either before or after her move to Halifax. For example, she complains that J.B. does not notify her of parent-teacher conferences, though as a joint custodial parent she could make inquiries herself with the school on this, and presumably she has not attended most. For those reasons, I rule out a circumstance of substantially shared parenting under s. 18(H)(1)(b).

[61] In considering s. 18(H)(1)(a), I note that this subsection creates a presumption in favor 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.

[62] I find that this circumstance is also not applicable. I have already found that J.B. has been the primary caregiver for L.S. He is not requesting the relocation. This section only applies if the request for relocation is made by the primary caregiver. Thus, on those facts and findings alone, s. 18(H)(1)(a) cannot apply. It is not necessary to go further in that analysis.

[63] The result is that I find that s. 18(H)(c) applies and each of these parents bears the burden to prove what plan is in L.S.'s best interest.

Best Interests Factors

[64] It is important to note that there is nothing in the *Act* to suggest that any one of the factors to be considered under ss. 18(6) and 18(H)(4) 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 factors, including the applicable "*Foley* factor" and applicable guidance from *Gordon* supra in arriving at a decision respecting L.S.'s best interests.

L.S.'s physical, emotional, social and educational needs, including her need for stability and safety, taking into account her age and stage of development - (s.18(6)(a), *Foley* factors)

[65] J.B. says that L.S. is doing well in his care. He describes, in some detail, L.S.'s daily schedule. She wakes early, he makes them breakfast, she watches a little television and prepares for school. He drops her off at school and after school she attends the YMCA afterschool program at the Wellness Centre in Stellarton. He picks her up, they have supper about 5:30 p.m., she then does homework and has some free time. L.S. goes to bed about 8 p.m. and he spends time with her talking about the day.

[66] J.B. says that he and L.S. belong to the YMCA; that she started attending weekly craft classes and swimming lessons and they swim together at least twice a week. She has earned three swimming badges since 2016.

[67] J.B. says L.S. has a group of friends at school that she's known since grade primary and several since preschool. She has friends in the afterschool program and has good relationships with neighbourhood children.

[68] J.B. says L.S. is doing well in school, that all reports are positive, and that L.S. is a happy child at school. J.B. says that he volunteers at L.S.'s school and works as a school crossing guard. He says he is very involved in many school activities and extracurricular activities as well.

[69] L.S. has extended family on her father's side in the county, with whom J.B. says she has good relationship. This is supported by the evidence of R.B., L.S.'s paternal grandmother, H.L., R.B.'s common law spouse, and D.B., L.S.'s paternal grandfather. They each describe J.B.'s parenting in positive terms and say that L.S. has family in Pictou County with whom she is close. The evidence from these three witnesses suggests that L.S. is very well cared for by J.B., she is in a stable and supportive home, has loving and supportive extended family and community around her and they express no concerns for her safety or wellbeing.

[70] Respecting R.B. and H.L., E.D. confirmed that she has a civil relationship with R.B. She said that L.S. has a good relationship with her paternal grandmother. R.B. babysat for E.D. when she lived in Pictou County. E.D. has no issue with R.B. or her partner, H.L.

[71] J.B. says L.S. has opportunity to speak with the guidance counsellor on a confidential basis at school to discuss anything that may be stressing her. He does not know what is said and that he thinks L.S. finds it helpful to be able to talk things out privately with an adult.

[72] E.D. describes her life as stable and very structured. She says that her husband, T.D., has been employed with the same company since 2011 and has been successfully moving up within the organization.

[73] E.D. says that their son, E., is five years old, going into grade one and is excelling in French immersion.

[74] E.D. says L.S. spent almost the entire summer with her, settling in well to the daily routines and has plenty of friends in her neighbourhood.

[75] She says that J.B. has an unstable life. She claims he has not had a stable job or career since L.S. was born. She says his casual shiftwork affects L.S.'s routine at his house and that she has been staying between J.B.'s house, her paternal grandmother's home and her paternal grandfather's home. She says that she has had to track L.S. down when she calls to say good night to her.

[76] To the allegation that he has not had stable employment, J.B. says this is not true. His evidence is that he worked for a local oil company prior to graduating from college at the top of his class and continued working with that company for a year beyond graduation. He then went to work for a local software company, a position he held for 3 1/2 years until he was laid off in 2016. He then started his own company in the spring or summer of that year but was unsuccessful. He is now employed as a counsellor with Highland Community Residential Services (HCRS). He says that his job has not affected L.S.'s routine and they have a very structured and consistent life. In cross-examination, J.B. explained that his current employment is casual but describes it as stable, obtaining 2 to 3 shifts, and sometimes 3 to 4 shifts, per week. He says that if a shift is from 3 p.m. or 4 p.m. to 11 p.m., or overnight, L.S. stays with her paternal grandmother, R.B.

[77] He says the suggestion that L.S. sleeps in multiple homes is misleading and that E.D. rarely calls to talk to L.S. in any event. L.S.’s primary babysitter is her paternal grandmother.

[78] E.D. says that J.B. has told her at times that he cannot afford to feed L.S., yet he purchased two kayaks and a new Jeep. She says she has been buying school supplies and clothing for school every year since L.S. began school.

[79] J.B. says the purchase of the kayaks did not affect L.S. in any way, explaining that he sold one of two vehicles and used those funds to purchase the kayaks. He also said he sold his vehicles and purchased a less expensive vehicle which is cheaper to operate. He did admit that he told E.D. that there was a time he couldn't feed L.S. He denies this was in any way connected with the purchase of the kayaks or the vehicles.

[80] J.B. says that E.D. did purchase school supplies in the past, but that he did so for the 2017-18 school year. He denies that E.D. has purchased much clothing for L.S., saying she has only done so and sent clothing to his home less than four times since 2011 and only after he begged her to do so.

[81] E.D. raises several other concerns respecting J.B.'s parenting. She says that L.S. told her she has been grounded by him and made to stay in her room for two straight days, only being permitted to come out to use the washroom. She says L.S. was even forced to eat her meals in her room.

[82] J.B. flatly denies this allegation. He does admit to being firm in his discipline, saying that if L.S. persists in bad behaviour he makes her stand up straight and use words such as "yes sir".

[83] In cross-examination, J.B. said that he had a very difficult childhood including a brother who was an emotional bully. He described this as extreme and that it interfered in his relationships with others. He denies any abuse by his parents. He also said that, after being in Afghanistan for six months as a civilian contractor, he came back with a different worldview and a changed attitude.

[84] J.B. described L.S. as a picky eater. E.D. says that when L.S. was with her in the summer she tried a number of new foods but was told by L.S. that the reason she was scared of new food is because J.B. shoved a chicken nugget down her throat which choked her and made her gag.

[85] J.B. says this allegation is misleading. He describes an occasion at dinner in 2015 when L.S. was not allowed to leave the table until she finished her meal, which included chicken nuggets. She sat there until 9 p.m. at which time he attempted to feed her the nugget. In cross-examination, he said that he put the

chicken nugget in L.S.'s mouth and she refused to eat. She remained there for a long time and he admits that this approach was a mistake. He denies that any time was she choking or gagging.

[86] J.B. agreed that it was a good thing E.D. was getting L.S. to try new foods over the summer when she had her at her home. He says L.S. has been a picky eater since she was born and he's even tried reward stickers when she tried new foods. This led to stress and he stopped using the technique.

[87] E.D. raises concerns about a trip L.S. took with J.B. to Magic Mountain waterpark in New Brunswick. She says that L.S. told her that she got lost in the waterpark because her father was on his phone and didn't see her. J.B. says that L.S. had a long wait for a water slide and when she finished the slide she "disappeared to the wave pool without informing me." In cross-examination, he said that he reported this circumstance to the lifeguard and he flatly denies that he was on his phone during that time.

[88] E.D. says that in early 2017 J.B. told her he would be moving to Halifax with his girlfriend and that he already had a summer job in Halifax. She says J.B. told L.S. of this possibility, L.S. became very excited because she would be closer to her mother, but it never came to be.

[89] J.B. says that he did consider a move to Halifax after E.D. and T.D. moved there. He says it was not financially possible for him to do so. He says it was during a time when he was dating a woman from Halifax, between November 2016 and February 2017. He thought it made sense that if they were still together in the summer of 2017, the move to Halifax might be possible. He explored different job opportunities and got an offer of a temporary summer job with a Halifax tour company. He says this was never his primary plan for L.S. He only considered it because he had a partner at the time who expressed a desire to help financially with the relocation.

[90] J.B. said he discussed the possibility with L.S. one time. He is unsure if L.S. became excited but conceded she might have become so. He says he believed it was an appropriate discussion to have with L.S. under the circumstances. The relationship with that woman ended and the move did not go ahead.

[91] E.D. says that J.B. has a history of mental illness, specifically bipolar disorder, type I. She also says that J.B. told her he was using marijuana as a treatment for his mood disorder.

[92] J.B. says that as a teenager he was misdiagnosed with bipolar disorder. He was reassessed as an adult by a specialist and was diagnosed with attention deficit hyperactivity disorder (ADHD) and treated for this condition. He says many of his behavioural issues as a young person resulted from living in a very aggressive household and that he was not taught appropriate coping mechanisms for life stressors.

[93] Respecting the use of marijuana, he says that he told E.D. that he used this substance to treat his moods. She asked about a prescription one day when she dropped L.S. off to him. He showed her the prescription bottle and asked her what she wanted to know. He says he answered all her questions and thought that was the end of the matter.

[94] J.B. says that the marijuana is taken as therapy for his ADHD and that he saw the specialist every three months from the spring of 2013 until spring 2016. That specialist reinforced that he did not suffer from bipolar disorder, but did have ADHD.

[95] J.B. says he was initially prescribed Ritalin to help with concentration at work. He says the side effects were not worth the benefit. He found it hard to sleep and it was difficult to relax. He was then prescribed cannabis for two months. He says there is no high from use of this type of cannabis, that it has no recreational value. He only takes it for treatment of the symptoms of ADHD. After the time of trial, he was approved for a full year prescription and took all appropriate legal steps to obtain the substance. This allowed him to stop ingesting the standard ADHD medication. He does not use cannabis every day, only as required, typically for a few hours every few days to enable him to do chores around the house.

[96] E.D. says that when he was doing the transportation to and from Halifax, J.B. was frequently inconsistent. J.B. denied this, saying he consistently left Pictou County between 3 p.m. to 3:30 p.m. and arrived at E.D.'s home between 5:30 p.m. and 6 p.m.

[97] E.D. says L.S. told her that she has to get herself up for school at 5 a.m. and wake her father to take her to school at 7:30 a.m. J.B. says L.S. decided in early 2017 she wanted to get herself up and make her breakfast. She chose her own time to wake, despite his suggestion of a later time. He wakes up when she does but stays in bed. J.B. says that since September 2017, L.S. wakes at 6 a.m. instead.

[98] In cross-examination, J.B. said that he admired L.S.'s initiative in deciding to get up early. He said he supervises her and nothing dangerous was occurring. This began over Christmas of 2016. He did try to discourage such an early hour.

[99] In cross-examination, J.B. said that he did the transportation to and from Halifax for parenting time until January 2017. He denied that he stopped transporting due to the breakup of his relationship with a woman from Halifax. He says it was because he was losing shifts on Fridays and Mondays with this employer, HCRS. He wanted E.D. to do the transportation and when she started to do so, she was not consistent.

[100] When asked in cross examination regarding when he introduced a girlfriend to L.S., he admitted that he did so too early in the relationship and felt that this was an error in judgment. This is the girlfriend with whom he was discussing relocation to Halifax.

[101] J.B. said that the weekend prior to this hearing he asked the maternal grandmother if she wanted to see L.S. more often. He denied this was due to his mother's inability to provide care for L.S. He said that whenever L.S. was in the care of a sitter, he was almost always working during that time. He said that most nights L.S. is at home with him, but she does spend time with her paternal grandmother and paternal grandfather. He agreed that it would be better if she could spend more time with E.D. but notes that it was E.D. who chose to move away from Pictou County to Halifax.

[102] When asked about the care of L.S. by his mother, J.B. agreed that he was not well disciplined as a child and that his mother allows L.S. to talk back to her. He says that he has spoken to his mother to explain his concern and they do disagree on some parenting issues. He says he has never yelled at his mother and that his behaviour has changed for the better since his time in Afghanistan as a civilian contractor. He says that the experience changed him and he "grew up".

[103] R.B., J.B.'s mother, confirmed that she has observed J.B. raising his voice at L.S. but not yelling at her. She says J.B. will correct L.S.'s behaviour. She has known L.S. to cry about these corrections as she is a very sensitive child and cries easily.

[104] In cross-examination, J.B. admitted that, since the order was granted in 2011, there is no evidence that T.D. has been abusive but he does say that E.D. describes T.D. yelling at her, in her face.

[105] Each party called evidence of matters that pre-date the 2011 order of this court and I have not considered this evidence. I find that this amounts to an attempt to go behind that order and relitigate issues that would or could have been before this court in 2011.

[106] In considering all the evidence above, I find that J.B. is doing well in his parenting of L.S. L.S. appears to be doing well in school and has a good group of friends around her in school, in the afterschool program and in her neighbourhood. She has good relationships with her extended family on the father's side in the county.

[107] J.B. has provided for her physical needs in his home and, despite there being one occasion when he struggled to feed her, there is no evidence that he has been unable to provide for her physical needs since he has had care of her in 2011.

[108] J.B. describes a very appropriate home life and routine that respects L.S.'s wish to rise early while providing appropriate supervision. He provides an appropriate afterschool program for her that she seems to enjoy and he is involved at both her school and in extracurricular activities.

[109] Respecting L.S.'s emotional needs, I find that J.B. has, likewise, done well since 2011. He admits to some missteps such as trying to force her to eat on one occasion, inappropriately discussing relocation with her, and introducing her to new partner too early in that relationship.

[110] To his credit, he agreed to try shared parenting for a time at L.S.'s request and terminated that when he felt it was not in her best interests.

[111] J.B. has provided L.S. with an opportunity to speak with the guidance counsellor on a confidential basis to discuss anything that is concerning her. He respects that confidentiality and believes it helps L.S.

[112] Though he has shiftwork employment with HCRS, I find that this is a stable employment circumstance. Like many workers, he works in shifts which sometimes include evenings and overnights, but he has an appropriate childcare arrangement for L.S. with her paternal grandmother for those times.
[113] It is true that he has had various jobs since 2011 but I am satisfied that his experience with employment is not significantly different than many parents. His first job after completing his education was followed by 3 1/2 years with the company who then laid him off. Attempts at self-employment were unsuccessful,

but he has been employed steadily for some time with HCRS. He says, and I believe him, that this work suits him well and there is no indication that it will change in the foreseeable future.

[114] I am satisfied that the allegations that he was irresponsible in buying and selling kayaks and vehicles, is not well-founded. His explanation is clear and rational and does not leave me with any doubt about his intent to address L.S.'s best interests in those decisions.

[115] I do not accept the allegations that J.B. has been inappropriate in his discipline of L.S. Certainly, he concedes with respect to the incident involving the chicken nugget, that he was inappropriate. I accept his denial that he has kept L.S. in her room for excessive periods of time. He is firm in his expectations of L.S., including making L.S. stand up straight when she misbehaves and using the phrase "yes sir", but to me this does not indicate inappropriate parenting, simply a parent who has a different parenting style than the mother.

[116] I am satisfied, that the incident at Magic Mountain was unfortunate, but not indicative of poor parenting. It was certainly concerning to the court that J.B. lost track of L.S. at the water park but I find that he took appropriate steps when this occurred and I accept his denial that he was on the telephone and distracted. I accept in a water park or amusement park environment, there are times when a child can be lost, even for a moment, and this would concern any parent. The question is, what does a parent do when that occurs, I find J.B. acted appropriately.

[117] Respecting mental illness, I accept J.B.'s explanation that he was misdiagnosed with bipolar disorder and was properly diagnosed a later time with ADHD. Having heard his evidence, I am not concerned about his use of prescription marijuana as treatment of this condition. A large number of Canadians consume prescription cannabis for various conditions, and, like any other medication, if taken appropriately and in accordance with the prescription, there is no evidence before me that it represents a risk to J.B.'s parenting of L.S. He describes this cannabis as having no recreational use and that it does not create a high and I accept that evidence.

[118] With respect to E.D., I likewise accept that she is now in a stable long-term relationship with T.D. They have a son, E., and there is no evidence before me to suggest that there are any difficulties in their home.

[119] I acknowledge that there is no evidence that T.D. has been charged with any criminal offences since 2011. I further accept that T.D. is fully employed on a regular basis since then.

[120] I will discuss later in this decision the relationships between L.S. and significant adults in her life and that I have concerns regarding T.D. I also note that he did not testify in this matter, either by affidavit or *viva voce* evidence. Given the various allegations made about him in the evidence of J.B., I find it material and relevant that he has chosen not to provide evidence. I will discuss this further, later in this decision.

[121] I further find that, with respect to E.D.'s proposal for relocation, there is very little information of that plan. While I will deal with this later, I note that there is very little evidence of how she would address L.S.'s physical, emotional, social and educational needs, including the need for stability and safety.

[122] After careful review of the evidence under this factor, I find that J.B. has provided a good, stable and supportive home for L.S. and has provided for her physical, emotional social and educational needs.

[123] I further find that E.D. could provide a similar environment for L.S. but there is scant evidence of how she would do so. I have concerns regarding the role T.D. would play in L.S.'s life and in that home environment, including E.D.'s and T.D.'s ability to ensure a stable relationship between L.S. and J.B., if relocation were permitted.

Each Parent's Willingness to Support the Development and Maintenance of The Child's Relationship With The Other Parent – s.18(6)(b), *Foley* Factors

[124] On the issue of each parent's willingness to support the development and maintenance of L.S.'s relationship with the other parent, I have significant concerns. In his affidavit, sworn July 27, 2017, J.B. says that after each of his two relationships with other women ended, E.D. contacted each of these women in an effort to find out negative things to say about him for court. He says during a phone call with E.D. in early 2017, he wanted to discuss transportation for L.S. and says that E.D. instead threatened to go to court, slander him with lies and rumors from his former partners and paint a negative picture of him.

[125] J.B. says that E.D. has attempted to undermine his position as a parent and primary caregiver in many ways. He says that E.D. attempts to manipulate L.S.'s emotions towards him, she refuses to respond to telephone calls or texts in a timely manner, does not support behavioural interventions he thinks are important, did not assist financially with child support and she says negative things about him to L.S. As well, he expresses concern respecting financial and emotional manipulation of L.S. by the purchase of a cat for L.S. which remains at E.D. and T.D.'s home, the purchase of an expensive computer for L.S., and taking L.S. on extravagant vacations in the summer and at Christmas of 2016, as well as discussing with L.S. the cost of these purchases and vacations.

[126] T.D. says that after leaving this court on May 18, 2017, he tried to reach agreement on a summer schedule with E.D. T.D. jumped in and started to insult and mock J.B. He says this is consistent with T.D. inserting himself in parenting conversations and acting in a hyper-aggressive manner, raising his voice or yelling and insulting J.B. J.B. says a few of the things said to him by T.D. on May 18, 2017 included, "Give it up! You only want child support to pay your mortgage!", "Get a fucking job. You are 30 years old and a fucking crosswalk guard!", "Get your fucking life together. Just wait. Your daughter is going to live with me and I can't wait. You're pathetic." J.B. says that all of these behaviours and statements by T.D. were unprovoked by him.

[127] As noted earlier, all of these allegations are concerning to the court. E.D. had opportunity to file an affidavit responding to each of these allegations. She did file an affidavit on August 22, 2017, well after J.B. filed his, and said nothing in response to these allegations. She had further opportunity to follow up with an affidavit prior to the hearing. She did not do so. The only comment about the behaviours of T.D. at court were offered by E.D. in cross-examination when she confirmed that T.D. doesn't like J.B., that he raised his voice at J.B., but he did not display aggressive body language.

[128] As well, T.D. had every opportunity to participate in this hearing. He is an integral part of E.D.'s plan for L.S. in relocating to Halifax. I find it concerning that he did not file an affidavit nor did he testify at the hearing. I am left wondering what his view of his role in the L.S.'s life will be, what parts he will play in the plan for her upbringing, and how he will support her relationship with J.B. in the years to come if relocation is permitted. All of this is left without answer.

[129] As well, T.D. had opportunity to respond to the allegations made by J.B. in his affidavit. If he wished to deny the allegations of his verbal aggression towards J.B. and the allegation that this is typical of his behaviour towards J.B. in the past, he had opportunity to do so. By choosing not to participate, he has left me with significant concerns regarding his behaviours and how those behaviours would impact his relationship with L.S., J.B. and the father-daughter relationship in the future.

[130] Each of the parents confirms that communication between them has been poor. J.B. facilitated transportation at times to and from Halifax for L.S. to see her mother and agreed at one point to a shared parenting arrangement at L.S.'s request. There is little evidence before me that J.B. has been unwilling to support L.S.'s relationship with her mother.

[131] This evidence leaves me with significant concern that if relocation is permitted, E.D. and, particularly, T.D. will not support the development and maintenance of L.S.'s relationship with J.B. The uncontroverted allegations by J.B. respecting E.D.'s behaviours and attempts to undermine him as a parent and his uncontroverted evidence of T.D.'s statements and behavior at the courthouse leaves me with the clear impression that T.D. and E.D. have no intention of supporting an ongoing relationship between J.B. and L.S.

The History of Care for L.S. Having Regard To L.S.'s Physical, Emotional, Social And Educational Needs – s.18(6)(c), *Foley* factors

[132] The evidence on this factor issue is clear. L.S. is well settled in Pictou County. Her whole life has been spent in her father's primary care, with the exception of the period of shared parenting, since 2011. That history of care has been reviewed earlier in this decision and I find it appropriately addresses L.S.'s needs. She is doing well at school. She has a circle of friends and family who support and love her. She is well cared for in her home. She is emotionally cared for as well, including allowing her to speak to a guidance counsellor at school in private. J.B. has made some missteps and mistakes, which I have reviewed previously, but none of these, taken individually or collectively, gives rise to any concern about her history of care by him.

[133] There is little evidence of E.D.'s participation in the care of L.S. since 2011. There is no question that E.D. loves her daughter. That is not the issue. There is

simply little evidence that she has contributed to L.S.'s needs other than exercising parenting time.

[134] It is significant that, since 2011, E.D. has contributed nothing to child care costs, afterschool activities or extracurricular activities, saying in her cross-examination that all of that should be paid out of the Canada Child Benefit received by J.B. The evidence confirms that she has also not paid child support regularly. Enforcement of her arrears is currently suspended. Financial support for a child is an important indicator of a parent's commitment to the child's well-being, and I find that E.D. has not provided much of that support.

The Nature, Strength and Stability of The Relationship Between L.S. and Each Parent – s. 18(6)(g), *Foley* factors

[135] I have no hesitation in finding that L.S. loves both of her parents and each of them loves her. Concerns have been raised by each parent regarding the other's relationship with L.S. E.D. raised issues with J.B.'s parenting which have been addressed earlier in this decision. She maintains that he is not the appropriate parent to care for L.S.. E.D. does not suggest that J.B. has an inappropriate relationship or that it is not a strong one with L.S. She instead suggests through the evidence that J.B.'s various behaviours as primary care parent gives rise to concerns regarding the nature and stability of that relationship.

[136] J.B. says that E.D. has been only involved with L.S. during parenting time and notes it was E.D.'s decision to relocate to Halifax in 2016, taking her further away from her daughter.

[137] There is little evidence directly addressing this issue but on careful review of all the evidence before me, I am satisfied that J.B. has an appropriate, deep and stable relationship with L.S. who he has cared for since 2011. There is nothing in the evidence to suggest otherwise. He has made many sacrifices and made many appropriate decisions on her behalf. As noted earlier, he has also made mistakes but I do not find that these reflect on the nature of his relationship with his daughter.

[138] I also find that E.D. has a strong, stable and deep relationship with L.S. as well. She is parenting at a distance but there is nothing to suggest that the relationship is inappropriate except for some evidence of emotional manipulation of L.S.

The Nature, Strength and Stability of The Relationship Between L.S. And Each Sibling, Grandparent and Other Significant Person In L.S.'s Life – s. 18(6)(h), *Foley* factors

[139] L.S. has several relationships of note in her life. The first of these is with her half sibling, E. The evidence is that E. is five years old and lives with his parents in Halifax. L.S. would have contact with him on her visits to their home. There is nothing to suggest that they do not get along but there is also no evidence from E.D. as to the nature and strength of that relationship. I can draw no conclusions from this other than to say this relationship should be maintained in the future.

[140] L.S. has a relationship with her paternal grandparents and her paternal grandmother's husband. Some of their evidence was reviewed earlier in this decision.

[141] R.B., L.S.'s paternal grandmother, says that she looks after L.S. if J.B. works late by either going to J.B.'s home or having L.S. at her home. She provides last-minute care and support if asked. She says that L.S. never needs another babysitter as she and her husband are always available.

[142] R.B. says that L.S. and her own children are her life and she will always be there when needed. She says she is very close to L.S. and they share a special bond. L.S. has spent many nights at her home and even has her own bedroom there.

[143] As noted earlier, E.D. speaks positively of this relationship and has no issues with R.B. or her husband, H.L.

[144] R.B.'s husband, H.L., says that he and his wife have a strong relationship with L.S. and enjoy spending time with her whenever they can.

[145] L.S.'s paternal grandfather, D.B., says that from the day L.S. was born his main concern has been her, not her parents. He wants her to have the best upbringing, education and that she should enjoy herself and be happy. He reinforces his commitment to L.S. by saying that if he had any concerns about J.B., he would take the matter to court. He says that L.S. is supported and surrounded by her family in Pictou County.

[146] B.D. provided evidence. She is E.D.'s mother-in-law and says that she loves L.S. as one of her own grandchildren. She described spending a lot of the summer with E.D. and the children.

[147] In her affidavit, she referred to a number of conversations she had with L.S. and I have already made my decision with respect to these hearsay statements and place no weight on them.

[148] The other significant person in L.S.'s life is T.D. Without repeating the evidence already reviewed and the conclusions reached earlier in this decision, I have significant concerns respecting his role in L.S.'s life should relocation be permitted. His behaviours toward J.B. strongly suggest to me that he will not be supportive of L.S.'s relationship with her father.

[149] I am also concerned that the behaviours exhibited in the courthouse and those described prior to that time suggest to me that T.D. still has anger issues. E.D. said in her evidence that he completed anger management and she has no concerns about him in her home. Yet, in the courthouse, where one might expect an adult to be on their best behaviour, he could not control himself. It leaves the court with concern as to how he would behave toward L.S., or in her presence, should issues arise in his home and L.S. was there full-time. Adding another child to anyone's home, keeping in mind that L.S. is not T.D.'s biological child, would present challenges in any family. Since he has chosen not to provide evidence, I am left to wonder about his views, role in that relationship with L.S. and the risks that he could pose to her if she was with him in the home full-time in Halifax.

[150] Overall, I find that L.S. is blessed with strong and stable relationships with her two grandparents, her paternal grandmother's husband and her maternal step grandmother. I find that they all love her and it is appropriate that these relationships be maintained.

[151] L.S. has had benefits of more frequent contact with her family in Pictou County since 2011. Her paternal grandmother and her husband have provided regular and significant childcare for L.S. and she has spent overnights in their home on many occasions. That relationship cannot be underestimated and it is essential that it be maintained and supported going forward. That is not to diminish the importance of the other relationships but this one is clearly of significance in L.S.'s life.

The Ability of Each Parent or Other Person in Respect of Whom The Order Would Apply To Communicate And Cooperate On Issues Affecting L.S. – s. 18(6)(h), *Foley* Factors

[152] It is clear on the evidence that each parent struggles with communication with the other. They each described what happens when they discuss issues such as transportation, relocation and activities, and it rarely seems to go well. Each blames the other. I have already reviewed that evidence earlier. I find that communication is a continuing challenge for them and limits their ability to cooperate on issues affecting L.S. That said, there is some history of cooperation on transportation of L.S. between Pictou County and Halifax and the agreement, for a period of time, to have L.S. spend shared time between their homes when E.D. was residing in Pictou County.

[153] It seems unlikely that communication will improve in the near future. I am particularly concerned that if relocation is permitted, communication will become even more problematic. I have already reviewed the evidence of emotional manipulation of L.S. by E.D. and T.D. I have also reviewed the concerning evidence respecting T.D.'s attitude and behaviour towards J.B. and the risk that it poses to L.S.'s relationship with her father. These concerns lead me to the conclusion that it is highly likely that E.D. and T.D. will not communicate well with J.B. if relocation is permitted. T.D. has essentially said so to J.B. at the courthouse. E.D. has not denied this. I find that relocation will create even more significant cooperation and communication difficulties between the parties.

The Reasons for The Relocation - s. 18(H)(4(c)

[154] E.D. says that relocation of L.S. to Halifax to live with her and T.D. will be best for her because of the parenting challenges J.B. faces. I have already made findings respecting J.B. and that he is providing a stable, safe and appropriate home for L.S. in Pictou County.

[155] E.D. says another reason for the relocation is to provide L.S. with a more stable and richer life in the metropolitan area. I have already made findings with respect to concerns I have about the relocation, particularly in regard to T.D. L.S. is already engaged in many activities in Pictou County and E.D. has failed to provide any evidence of additional benefits that would be available to L.S. on relocation. Any deficiencies in L.S.’s activities and opportunities could have been

addressed, in part, if E.D. had contributed to L.S.'s activity, childcare and afterschool costs and had paid child support regularly since 2011. Despite this, it appears to me that L.S. leads a full and active life with her father.

The Effect On L.S. Of Changed Parenting Time And Contact Time Due To The Relocation – s. 18(H)(4)(d)

[156] While E.D. argues that L.S. will benefit by more time with her and T.D. in Halifax if relocation is permitted, the evidence is clear that L.S. has a significant and loving relationship with J.B. in Pictou County. I find it reasonable to assume that a change in parenting as proposed by E.D. would have a significant and adverse impact on L.S., and the loss of her time with her father must be carefully weighed against the advantage, if any, of the relocation and increased time with her mother and her mother's husband.

[157] Given my findings made respecting T.D., I find that the advantage that could be obtained for L.S. by increased time with E.D. is not as significant as the negative impact relocation would have on L.S. as a result of the loss of her close relationship and parenting arrangement with her father. Put simply, I am not persuaded that there is sufficient gain to be had for L.S. in these relationships to support the request made by E.D.

The Appropriateness of Changing the Parenting Arrangements – s. 18(H)(4)(e)

The Plans Proposed for L.S.'s Care and Upbringing Having Regard To L.S.'s Physical, Emotional, Social And Educational Needs – S.18(6)(d), Foley Factors

[158] I will deal with the two factors noted above together as I see them as interrelated in this matter. The appropriateness of changing the parenting arrangement is, in significant part, premised on the plan proposed for L.S.'s care and upbringing.

[159] J.B.'s plan is simple. He proposes the status quo arrangement continue. I have already made positive findings with respect to L.S.'s life with him in terms of her physical, emotional, social and educational needs as well as her relationships with extended family.

[160] The plan put forward by E.D., on the other hand, is deficient. She does not identify a plan for L.S.'s education, including where she will attend school. She does not identify any social or extracurricular activities in which she would propose to enroll L.S. There is no indication of E.D. having arranged a doctor, dentist and other health professionals for L.S. if she relocates. She does not provide any plan respecting her care after school, in the summers or otherwise when E.D. and T.D. are both working. She provides no plan to deal with the inevitable emotional consequences for L.S. of the relocation.

[161] E.D. does not address the relationship, if any, between L.S. and E., between L.S. and T.D., or anyone else, and T.D.'s family. She does not address how she proposes to maintain the relationship between L.S. and her extended family in Pictou County.

[162] Put simply, E.D.'s plan is very thin, consisting of the proposal to relocate to live with her and T.D. and very little else. The lack of a plan is of serious concern to this court.

Decision on Relocation, Custody and Parenting Time

[163] After careful review of all the evidence, the law including the *Act* and case law, I am satisfied that J.B. has satisfied the burden of proof on a balance of probabilities that it is in L.S.'s best interest that she remain in his primary care in Pictou County. I am satisfied that E.D. has not met the burden of proof on a balance of probabilities that it is in L.S.'s best interest that she relocate with E.D. to live in Halifax.

[164] In any matter concerning a child's best interest, and particularly in matters involving relocation, there is always a balance to be struck. I have already identified, in some detail, the history of parenting arrangements and parenting involved, the relationships L.S. has with her parents, extended family and other significant people in her life.

[165] I find that, though J.B. has faced some parenting challenges, had missteps and made mistakes, he has generally provided a very appropriate, supportive, stable and safe environment in which to raise L.S. and has done so for many years. He has attempted to compromise through a shared parenting arrangement and transportation to and from Halifax when he felt it was appropriate for L.S. He is

not a perfect parent. That is not the standard. I do find that he is more than adequate in his parenting of L.S.

[166] L.S. has a deep relationship with her father and he with her. She also has significant, loving relationships with her paternal grandparents and her paternal grandmother's husband, all of whom live in Pictou County. She sees her paternal grandmother and husband regularly, spends time at their home and I find it is essential to maintain that relationship. To remove her from Pictou County would significantly restrict her time with both her father and her grandparents and spouse and that would have a significant, negative impact on her.

[167] As well, she is settled in to school, has a wide circle of friends and is involved in several activities. She's spent her entire life in this area. This is her home.

[168] This must be balanced against the request for relocation. I have no doubt that E.D. would be a loving and supportive parent to L.S. if she were in her care full-time. But, I also have significant concerns respecting T.D. and his role in L.S.'s life if L.S. were in his home full-time. I am also concerned respecting the very thin plan put forward by E.D. for L.S.'s care. I accept that L.S. has a good relationship with the maternal grandmother and assume she has a good relationship with her half-brother. Unfortunately, there is little evidence beyond this.

[169] It is helpful to return to comments in *Foley* supra the court noted:

> 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 will the best interests and welfare of the child be most likely achieved?

[170] In this particular case, I find that L.S.'s best interests and welfare would be most likely achieved by her remaining with her father. The benefits that might be accrued on relocation are overwhelmingly outweighed by the losses to L.S. on her removal from Pictou County. I therefore dismiss the application of E.D. to relocate L.S. with her to Halifax.

Child Support

[171] The final issue for determination is child support. E.D. has filed a notice of reassessment for 2014 confirming an income of $39,856. She filed a notice of assessment for 2015 confirming an income of $44,514. She also provided two pay statements for pay periods ending April 15, 2017, and April 29, 2017. The first shows a gross payment of $1,427.73, and the latter, a gross payment of $542.77.

[172] More importantly, the statement for the pay period ending April 29, 2017, shows a gross income year-to-date of $11,173.44. When annualized, this suggests an income for 2017 of $34,177.

[173] The interim variation order of this court dated May 18, 2017, sets child support at $311 per month payable at the rate of $143.54 biweekly based on an imputed income to E.D. of $37,000. I find that this remains a fit and proper amount of child support based upon the calculation of her annual income for 2017 and that will be the child support put in place in this matter.

[174] Respecting section 7 expenses, there has been no statement of special or extraordinary expenses filed by J.B., though there has been reference in the evidence to lack of contribution by E.D. to what might be appropriate expenses for L.S. I will therefore not order any payment for section 7 expenses. That will not prevent J.B. from making an application for contribution toward such expenses if he chooses.

[175] The parents shall have joint custody of L.S.

[176] Each parent shall have equal access to any third-party service provider or records concerning L.S. including, but not limited to, doctors, dentists, teachers, schools, hospitals, and childcare providers.

[177] Each parent shall be entitled to authorize emergency medical care for L.S. while in his or her care. In such circumstance, that parent will notify the other parent as soon as possible of such emergency medical circumstances and treatment. From that point forward, all decisions respecting the medical circumstances and treatment shall be made jointly.

[178] E.D. shall have reasonable parenting time with L.S., at reasonable times, and upon reasonable notice to J.B. including, but not limited to, the following:

(a) Every second weekend from Friday at 5 p.m. to Sunday at 6:30 p.m.

(b) If a school in-service day or statutory holiday falls on the Friday or the Monday of the weekend parenting time of E.D., such parenting time shall be extended to Thursday or Monday as the case may be.

(c) Other such parenting time as the parties may agree to from time to time.

[179] The following special parenting time for E.D. with L.S. shall be in addition to and shall take precedence over any of the parenting time set out herein:

(a) Christmas - During the Christmas school vacation, L.S. shall spend approximately equal time with each parent. In 2018, E.D. shall have L.S. from 5 p.m. on the last day of school prior to the Christmas school break until Christmas day at 6:30 p.m. J.B. shall have L.S. with him from Christmas Day at 6:30 p.m. until he returns L.S. to school at the end of the Christmas school break.

In 2019, J.B. shall have L.S. with him from the last day of school prior to the Christmas school break until Christmas Day at 5 p.m. E.D. shall have L.S. with her from Christmas Day at 5 p.m. until 6:30 p.m. on the day before L.S. returns to school.

This schedule shall rotate each year thereafter.

(b) Easter - During Easter weekend, L.S. shall spend approximately equal time with each parent. In 2018, E.D. shall have L.S. from 5 p.m. on Easter Thursday until Easter Sunday at 6:30 p.m. J.B. shall have L.S. with him from Easter Sunday at 6:30 p.m. until he returns L.S. to school at the end of the Easter weekend.

In 2019, J.B. shall have L.S. from 5 p.m. on Easter Thursday until Easter Sunday at 2 p.m. E.D. shall have L.S. with her from Easter Sunday at 2 p.m. until Easter Monday at 6:30 p.m.

(c) School spring break- Whichever parent has L.S. for a parenting time the weekend prior to the school spring break week shall continue to have L.S. until Wednesday at 6:30 p.m. The other parent will have L.S. from

Wednesday at 6:30 p.m. for the remainder of the week and their parenting time weekend. If E.D. has L.S. for the second half of the school spring break week, she shall return L.S. to J.B. at his home on Sunday at 6:30 p.m.

If either parent wishes to have L.S. for a travel vacation during school spring break in any year, they shall be entitled to do so upon providing written notice to the other parent of at least 60 days in advance. If this occurs, the other parent shall have L.S. for the entire school spring break the following year. Under no circumstance, unless otherwise agreed by the parties, shall either parent have L.S. for the entire school spring break for travel vacation in consecutive years.

(d) Summer school break - Each parent shall have L.S. on a two-week rotating schedule. Each such period shall commence on Sunday at 6:30 p.m. E.D. shall have L.S. with her for the first two-week period commencing on the first Sunday after the end of school. Notwithstanding the summer school break schedule, L.S. will be returned to the care of J.B. at least three days prior to the first day of school in September.

(e) Mother's Day and Father's Day - E.D. shall have L.S. with her each Mother's Day from Saturday, the day before, at 6:30 p.m. to Sunday at 6:30 p.m. J.B. shall have L.S. with him for Father's Day from Saturday, the day before, at 6:30 p.m. to Sunday.

(f) Birthdays - There shall be no special parenting time for the birthdays of L.S., the parents or L.S.'s sibling unless the parties otherwise agree. L.S. shall have a brief telephone call from the other parent or sibling on those days.

(g) Transportation - E.D. shall be responsible for all transportation of L.S. for parenting time with the exception that, during the summer school break, J.B. shall pick L.S. up at E.D.'s home when L.S. is coming into his care and E.D. shall pick L.S. up at J.B.'s home when L.S. is coming into her care.

[180] Both E.D. and J.B. shall continue medical, dental and drug plan coverage for L.S. available through his or her present or subsequent employer or otherwise shall

reimburse the other parent for receipts provided for submission to the insurer, without delay.

[181] Neither parent shall permanently remove L.S. from the County of Pictou, Province of Nova Scotia without the written consent of the other party or a further order of a court of competent jurisdiction.

[182] Either party may travel with L.S., including travel outside of Canada, upon reasonable notice for reasonable periods of time. Either parent, upon providing notice to the other parent, may arrange to obtain a passport for L.S. Either party may also obtain picture identification for L.S. as is required by airline authorities. The passport and picture identification shall be retained by J.B. and made available to E.D. if she is travelling with L.S. from time to time.

[183] Either parent proposing to travel with L.S. shall provide the other parent with reasonable notice and if travel includes travel outside of Canada, the other parent shall provide the travelling parent with a letter confirming the parents have joint custody of L.S., but that the travelling parent is travelling with L.S. with the knowledge and consent of the other.

[184] Should policy regarding travel outside of Canada change in the future, the parents shall modify the arrangements set out in this paragraph such that the travelling parent shall receive the cooperation of the other parent as may be necessary to carry out the travel plans. The travelling parent shall provide to the other parent a general itinerary and telephone contact shall be arranged between L.S. and the other parent as is reasonably consistent with the travelling plans and the availability and cost of such telephone contact.

[185] All communications between the parents shall be conducted in a polite, respectful, business-like and child focused manner. The primary means of communication between the parties shall be via text, email or other electronic communication. Telephone or in person communication shall only take place in the case of an urgent or emergency circumstance concerning L.S. Any communication between the parents at the point of exchange of L.S. for parenting time shall be limited to vital information respecting L.S.'s well-being.

[186] The parents are prohibited from making any derogatory comments respecting each other at any time that they have care of L.S., L.S. is in their home or otherwise in the company of that parent, or if L.S. might be within hearing distance of that parent. Further, each parent shall ensure that no one else makes

such derogatory comments about either parent in such circumstances and if the other person does not immediately cease such comments, the parent in care of L.S. shall remove L.S. from that circumstance or ensure that the other person is removed.

[187] Pursuant to the Provincial Child Support Guidelines and the Nova Scotia table, E.D. shall pay child support to J.B. in the amount of $311 per month, payable at the rate of $143.54 biweekly commencing on May 26, 2017, and continuing every second weekend thereafter.

[188] All child support payments shall be made directly by the mother to the father in a form mutually acceptable to them. Either party may elect at any time to register with the Maintenance Enforcement Program and once registration is complete, all further payments shall be made in a form acceptable to and made through the Office of the Director of Maintenance Enforcement, P.O. Box 803, Halifax, Nova Scotia, B3J 2V2, while this order is filed for enforcement with the Director.

[189] The suspension of all enforcement of arrears of child support payable up to May 26, 2017 contained in the order of this Court issued June 1, 2017 is hereby lifted and all such child support arrears may now be enforced

[190] A payor or recipient under a maintenance order being enforced by the Director of Maintenance Enforcement shall advise the Director of a change of address within ten days of the date of the change. A payor under a support order being enforced by the Director shall advise the Director of any change in location, address and place of employment, including the commencement or cessation of employment, within ten days of the date of such change.

[191] On or before June 1st of each year the mother shall provide to the father a complete copy of her income tax return with all attachments for the previous taxation year (whether such return is filed with Canada Revenue Agency or not) and notices of assessment for the previous taxation year.

[192] The usual enforcement clause shall be included in the order.

[193] Counsel for J.B. shall draw the order which must be submitted to the court within two weeks.

[194] If the parties wish to be heard on costs, they shall provide written submission within two weeks.

Daley, JFC