FAMILY COURT OF NOVA SCOTIA

Citation: *S.S. v D.W.*, 2018 NSFC 15

Date: 20180802
Docket: Pictou No. FPICMCA-082523
Registry: Pictou

Between:

S.S.

Applicant

v.

D.W.

Respondent

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

Judge:	The Honourable Judge Timothy G. Daley
Heard	July 25, 2018 in Pictou, Nova Scotia
Written Decision: **Corrected Decision:**	August 2, 2018 The text of the original decision has been corrected according to the attached erratum dated August 28, 2018
Counsel:	Mallory Arnott for the Applicant Amber Snow for the Respondent

Introduction

[1] This interim decision is about a six-year-old little girl, J.S., and what is in her best interests. Specifically, I must determine whether she should remain in the primary care of her mother, D.W. between now and the final hearing of the matter or be returned to the primary care of her father, S.S. I must also determine what parenting time would be in her best interest as well as determine the issue of child support for her.

History of Proceedings

[2] The parties first came before this court in October 2012 when the father was living in New Brunswick and the mother in Nova Scotia. An order of October 9, 2012 granted joint custody to the parties for J.S. and primary day-to-day care of her to her mother. The father was granted parenting time every second weekend in Nova Scotia. He was permitted to exercise parenting time in New Brunswick at his home upon notice to the mother.

[3] The parties next came before the court in September 2013 as a result of an application by the Minister of Community Services in a child protection proceeding. The protection concerns related to the mother, specifically issues of domestic violence by a partner, not the father. J.S. was placed in the temporary care of the Minister in a foster home for much of that proceeding.

[4] During the proceedings in March 2014, J.S. was placed in the care of her father in New Brunswick. That matter concluded on September 24, 2015 when an order under the *Maintenance and Custody Act* was issued granting the parents joint custody of J.S. and placing J.S. in the care of her father. The mother was granted reasonable parenting times as agreed between the parents. The Minister was to be notified of any further proceedings between the parties and the Minister's involvement ended.

[5] The order specifically noted that the parties acknowledged that they both were residents in New Brunswick at the time of the issuance of that order and that it was a Nova Scotia Family Court order being issued. This order could be registered in New Brunswick. The parties were left to decide where any future applications for variation of the order were to be made.

[6] From March 2014 until January 2018, J.S. lived in New Brunswick with her father. Her mother has resided in Nova Scotia since shortly after the end of the child protection proceeding.

[7] The next application was made by the mother in July 2017 seeking to vary the order of 2015. She filed an affidavit in which she alleged that she had limited parenting time with J.S. and she raised concerns regarding the father's care of J.S. Most significantly, she alleged that the father was planning to leave J.S. in New Brunswick with a caregiver while he travelled to Ontario for training with the military. This was to last for approximately a year beginning in late August 2017. She sought an order that J.S. be placed with her, at least during this time.

[8] The father replied by denying any allegations of neglect or parenting issues but confirming that he would be travelling to Ontario for training with the military from August 22, 2017 to June 4, 2018, returning intermittently during that time and that J.S. would be in the care of a non-family care provider.

[9] The matter came before me on July 20, 2017 and counsel for the Minister was present, along with both parties. I raised the issue of whether Nova Scotia was the appropriate jurisdiction for this application as the child had lived in New Brunswick, in her father's care, since 2014. At that appearance before me, the mother had J.S. with her for a parenting time visit and refused to return her to the father.

[10] The father confirmed his plans to undertake training beginning August 22, 2017 in Ontario for one year and that he had a plan for a third-party care provider to look after J.S. in the meantime. D.W. wished to have J.S. remain with her and, thereby, be with family.

[11] Counsel for the Minister indicated there were no current protection concerns and had no instructions on the issue of jurisdiction.

[12] Both parties were advised to get legal advice and I informed the parties that I did not believe Nova Scotia was the appropriate jurisdiction because of the length of time the child had lived in New Brunswick. I directed D.W. to make an application to the New Brunswick courts but I did include a direction that if a judge of the New Brunswick court refused to hear the matter, it could be brought back before this

court. No order was issued.

[13] The mother filed another application in August 2017 and the matter returned before me on September 11, 2017. D.W. told me at the time that all her parenting time had been terminated by the father and she could only see the child when the father is in the Nova Scotia. She said that it would take too long to bring the matter before a New Brunswick court.

[14] Counsel for the Minister appeared and indicated there was no ongoing involvement with the parties but if the child were to be placed with the mother, there may be some concerns which the Minister may investigate.

[15] I dismissed the application and confirmed that this court had no jurisdiction to hear the matter as the child had lived in New Brunswick for several years. I directed that leave of the court would be required for D.W. to make any further applications before this court.

[16] Another application by the mother was filed on January 3, 2018. In her accompanying affidavit, the mother made allegations of abuse by the father toward the child. These allegations are discussed later in this decision. The mother had the child with her for parenting time and refused to return the child to the care of the father in New Brunswick.

[17] When the matter came before the court on January 8, 2018 I reviewed the history of the matter and confirmed the correspondence received from counsel for the Minister indicating the Minister took no position on the matter. I noted that at the time of the last appearance I had encouraged both parents to register the 2015 Nova Scotia order in New Brunswick and for the mother to make application in New Brunswick seeking her relief. Neither parent did so.

[18] I was informed by counsel for the mother that the local child protection office (hereinafter referred to as "the Agency") was now investigating the matter at the request of the New Brunswick agency and sought an interim order accepting jurisdiction in Nova Scotia and placing the child in the temporary care of the mother.

[19] The father, who was in Ontario taking his training and attended by phone, opposed that position. He sought to have the existing order enforced and said the

allegations were false.

[20] Because of the new allegations of abuse and the fact that neither parent had registered the Nova Scotia order for enforcement in New Brunswick nor made an application to a New Brunswick court, I accepted temporary jurisdiction over the matter. This was done subject to a New Brunswick court accepting jurisdiction and making an interim order or child protection proceedings being commenced in New Brunswick or until a New Brunswick court declined jurisdiction. I again indicated that I expected one or both parents to apply to a New Brunswick court immediately to register the current order and seek the relief they wished as this was the *forum convenes* to hear the evidence given the duration of time the child had resided in that province. Unfortunately, neither party again complied with the direction of the court in this matter.

[21] I granted an interim order assuming jurisdiction on an interim basis on the conditions described above. The child was placed in the primary care of her mother and the father was granted reasonable parenting time with the child in Nova Scotia. The matter was scheduled for an interim hearing which took place and resulted in this decision.

[22] By the time of this hearing before me, the father had completed his training and had relocated with the military to Greenwood, Nova Scotia. The mother had also relocated with the child from Pictou County to Truro, Nova Scotia. This leads me to conclude that Nova Scotia is now the *forum convenes* to determine all issues concerning the child though, as set out in the order arising from this decision, Pictou County is no longer the appropriate location for any further hearing or determination of the matter and this matter will be transferred elsewhere in Nova Scotia for any further proceedings.

The Law

[23] 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.

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

> In making an order concerning custody, parenting arrangements or parenting time in relation to the 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).

[25] 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. Some of those relevant considerations under this subsection are as follows:

> (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….

[26] I note that subsections (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. Given her age, those views are not available to me.

[27] In this matter, there are allegations of family violence and as a result, I must consider section 18(6)(j) and (7) 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.

[28] When determining the impact of any family violence, abuse or intimidation, the court shall consider:

> (a) the nature of the family violence, abuse or intimidation;
>
> (b) how recently the family violence, abuse or intimidation occurred;
>
> (c) the frequency of the family violence, abuse or intimidation;
>
> (d) the harm caused to the child by the family violence, abuse or intimidation;
>
> (e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and
>
> (f) all other matters the court considers relevant.

[29] 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
>
> (i) 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;

[30] The analysis of the child's best interests does not end with the factors set out under 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.

[31] It is also important and relevant to consider the law respecting interim custody applications. The considerations in the circumstances are different in many ways from those in final hearings. The law was helpfully summarized by Justice Forgeron in the decision of *A.M. v. N.B.* [2005] NSSC 352 beginning at paragraph 30:

> In *Pye v. Pye* (1992) 112 N.S.R. (2d) 109 (T.D.), Kelly, J. reviewed the law

applicable to interim applications and noted that the status quo of the child must be maintained as closely as possible pending the final hearing. The children should be placed in the environment with which they are most familiar. Kelly, J. states at para. 5:

I concur with Grant, J. in *Stubson v. Stubson* (1991), 105 N.S.R. (2d) 155; 284 A.P.R. 155 (N.S.S.C.,T.D.) that the test in such an application was properly set out in *Webber v. Webber* (1989), 90 N.S.R. (2d) 55; 230 A.P.R. 55 (F.C.), by Daley, F.C.J. at p. 57:

Given the focus on the welfare of the child at this point, the test to be applied on an application for an interim custody order is: what temporary living arrangements are the least disruptive, most supportive and most protective for the child. In short, the status quo of the child, the living arrangements with which the child is most familiar, should be maintained as closely as possible.

The status quo which is to be maintained is the status quo which existed without the unilateral conduct of one parent unless the best interests of the child, dictates otherwise. In *Kimpton v. Kimpton* [2002] O.J. No. 5367, Wright, J. defined status quo in para. 1, which reads as follows:

There is a golden rule which implacably governs motions for interim custody: stability is a primary need for children caught in the throes of matrimonial dispute and the de facto custody of children ought not to be disturbed pendente lite, unless there is some compelling reason why in the interests of the children, the parent having de facto custody should be deprived thereof. On this consideration hangs all other considerations. On motions for interim custody the most important factor in considering the best interests of the child has traditionally been the maintenance of the legal status quo. This golden rule was enunciated by Senior Master Roger in *Dyment v. Dyment*, [1969] 2 O.R. 631, (aff'd by Laskin J.A. at [1969] 2 O.R. 748), by Laskin J.A. again in *Papp v. Papp*, [1970] 1 O.R. 331 at pp. 344-5 and by the Nova Scotia Court of Appeal in *Lancaster v. Lancaster* (1992), 38 R.F.L. (3d) 373. By status quo is meant the primary or legal status quo, not a short-lived status quo created to gain tactical advantage. See on this issue *Irwin v. Irwin* (1986), 3 R.F.L. (3d) 403 and the annotation of J.G. McLeod to *Moggey v. Moggey* (1990), 28 R.F.L. (3d) 416.

This principle is more firmly reviewed in the annotation of James McLeod in the decision of *Moggey*, supra, when McLeod, J. states in part:

"Status quo" is not just the short-term living arrangement. It is the way of life that existed before the current issue of custody or access arose. On a variation application, the court should continue the legal custody order in the absence of

clear evidence that the welfare of the child requires another disposition.

The same analysis would suggest that one person cannot unilaterally remove a child from the family home without a custody order and claim that the "status quo" should be maintained pending the hearing. As Vogelsange Prov. J. held in *Lisanti v. Lisanti* (1990), 24 R.F.L. (3d) 174 (Ont. Prov. Ct.,) the removal violates the custody rights of the other parent. The bottom line is that self-help should be discouraged.

[32] As to the factors for consideration, some are set out in the helpful decision of Justice Jesudason in *R.R. v. S.R.* [2015] NSSC 206 beginning at paragraph 7:

Similarly, in *Webber v. Webber*, 90 N.S.R. (2d) 55 (F.C.), Judge Daley stated:

10 Interim custody is directed toward the temporary, short term care of a child. It is a preliminary step taken to ensure the child who is the object of a custody dispute, is looked after as best as possible until a final decision on where the child will live, is made. There must be a recognition that the final custody order may not be the same as the interim order; one parent may obtain the child by interim order, but after all the evidence is in and considering the long term needs of the child, the other parent may obtain the child in the end.

11 Given the focus on the welfare of the child at this point, the test to be applied on an application for an interim custody order is: what temporary living arrangements are the least disruptive, most supportive and most protective for the child. In short, the status quo of the child, the living arrangements with which the child is most familiar, should be maintained as closely as possible. With this in mind, the following questions require consideration.

1. Where and with whom is the child residing at this time?

2. Where and with whom has the child been residing in the immediate past? If the residence of the child is different than in # 1, why and what were the considerations for the change in residence?

3. The short term needs of the child including:

    (a) age, educational and/or pre-school needs;

    (b) basic needs and any special needs;

    (c) the relationship of the child with the competing parties;

(d) the daily routine of the child.

4. Is the current residence of the child a suitable temporary residence for the child taking into consideration the short terms need of the child and:

   (a) the person(s) with whom the child would be residing;

   (b) the physical surrounding including the type of living and sleeping arrangements, closeness to the immediate community and health;

   (c) proximity to the pre-school or school facility at which the child usually attends;

   (d) availability of access to the child by the non-custodial parent and/or family members.

5. Is the child in danger of physical, emotional or psychological harm if the child were left temporarily in the care of the present custodian and in the present home. [emphasis added]

[33] In the decision of *Hewitt v. McGrath* 2010 NSSC 275 Justice MacDonald succinctly set out her view of the issue as follows:

> 3. There are many reasons why the status quo should be maintained. Interim hearings do not provide the quality or volume of evidence that is provided at a final hearing. To change the child's living arrangements on the evidence usually presented during an interim hearing requires clear and convincing evidence that maintaining the child's status quo would not be in the child's best interest.

[34] It is within this legal structure that I must determine the best interests of this child on an interim basis. This is not a final hearing. I have not yet had benefit of all the evidence that may be available, including, but not limited to, the records of the Agency or the New Brunswick child protection authority. I have not heard from any witnesses other than the parties.

[35] I must determine, based on the law and the evidence that is available to me from the interim hearing, what interim parenting arrangement will meet the child's

best interests. In doing so, I must be mindful *"that the status quo of the child must be maintained as closely as possible pending the final hearing."*. I must, of course, also be mindful of all of the evidence, including the significant allegations of family violence against the father in relation to the child, but I must always return to the "golden rule" that *"stability is a primary need for children caught in the throes of matrimonial dispute and the de facto custody of children ought not to be disturbed pendente lite, unless there is some compelling reason why in the interests of the children, the parent having de facto custody should be deprived thereof. On this hangs all other considerations."*

The Evidence and Analysis

[36] The mother made several allegations against the father which she says supports her position seeking interim custody and primary care of J.S.

[37] Before reviewing these allegations, I will note that each parent describes incidents involving difficulties at the transition of parenting time, allegations of parenting time being denied or not sought, various statements alleged to have been made to the child about one another and other similar allegations. Each of these allegations, while significant, I find do not go to the heart of what must be decided here. That evidence will be more fully explored at a final hearing in the matter. It is not necessary to make findings with respect to this evidence in deciding the interim care arrangements for the child.

[38] There is also contained in the evidence of the parties hearsay evidence including, for example, evidence of the father regarding discussions he had with J.S.'s childcare provider in New Brunswick and concerns she had about J.S.'s behaviour and statements. Given that this and other similar evidence is hearsay, I will not consider it in this interim decision, though the parties may wish to call that evidence from the witnesses at a later time.

[39] The mother alleges that the father physically abused J.S. while in his care. She says that J.S. disclosed these allegations to her when she was in the mother's care during the Christmas holidays.

[40] Specifically, she says that J.S. told her that the father spanks her when she is bad and that he hurts her when he is mad. The mother says the child showed her on

her doll how the father pulls her arms and legs. She also says that the child disclosed to her that the father has hit her in the back of the head. She says the child told her that on one occasion when she didn't want to go to bed, the father picked her up and threw her over his shoulder. He put her in the bed, grabbed her by the throat and she said that he had pressed down hard on her heart.

[41] The mother says that J.S. asks her to hide her when the father comes to pick her up because she is afraid of him.

[42] The mother says that she reported these concerns to the child protection authorities in both New Brunswick and Nova Scotia, as well as to the New Glasgow Police.

[43] With respect to the allegations of abuse against J.S., the father says that he does spank J.S. on occasion, but those are rare. He says he only uses spanking when J.S. is behaving very poorly and other forms of correction have been ineffective. He says he first speaks to the child, places her in timeout and removes privileges or toys. He says that spanking is confined to J.S.'s buttocks, over her clothing and no marks are left as he does not use much force.

[44] He denies knowledge of J.S. using a doll to describe her arms and legs being pulled and he denies that he has ever done this to J.S.

[45] He flatly denies hitting J.S. on the back of her head and denies ever striking her anywhere, except for spanking on the buttocks.

[46] He describes the incident when he put J.S. to bed by saying that she was misbehaving and having a meltdown because she didn't wish to go to bed. He says he picked her up, took her to her bedroom and placed her in her bed. He told her to stay in bed and physically made her lie down. She told him that he had hurt her feelings and her neck, but he says he did not touch her neck. They talked the matter out and it was resolved with J.S. going to bed. He denies grabbing her by the throat and did not press her down on her heart as alleged by the mother.

[47] The mother alleges that J.S. is fearful of her father, refuses to talk to him on the phone and displayed tantrums when coming into the care of her father. The father says it is unlikely that J.S. is afraid of him given that he parented her for four

years in New Brunswick. He had spoken to J.S. by the telephone when in her mother's care and she had never expressed any fear of him at any time.

[48] The mother also says that child protective services were involved with the family earlier than the 2012 involvement noted above. She says the father was physically abusive to her after J.S.'s birth and that this was the reason that child protective services became involved with the family for the first time. She says the file was closed after the parents indicated things had improved. The father denies any physical abuse of the mother.

[49] The mother says that, despite the father's claim that he went to great lengths to allow her to have parenting time with J.S., he denied her many requests for such time and that she only had seven to ten visits with the child in three years, including rare visits on holidays. The father alleges that the mother dropped in and out of the child's life over the years, going as long as four months between visits.

[50] It is relevant that the mother, in her initial affidavit and subsequent filings, indicated that the father was planning on going to Ontario for approximately one year for training. He planned to leave J.S. in the care of a non-family care provider in New Brunswick.

[51] The father confirmed this evidence and provided a copy of a letter from him to the mother dated June 26, 2017 which set out, in detail, his plan for training in Ontario and the care of J.S. in New Brunswick in his absence. He also set out in that letter that he had considered having the mother care for the child for that time. He gave reasons why he decided against that plan.

[52] I am troubled by the fact that the mother did not disclose this letter to the court in her filings at any time in these proceedings and left the court with the impression that the father had made the decision without informing her of any details. This letter only came to light when attached to an affidavit of the father, filed April 6, 2018, approximately ten months after she received it.

[53] Respecting the alleged tantrums of the child when the parents met to exchange for parenting time, the mother says one incident occurred on Christmas Day of 2017 when J.S. came to her home. She said she was having tantrums and screaming. She was not listening and was told by the mother that she would call the father. She

says J.S. started crying begged her not to call him.

[54] The father says that this was Christmas Day, J.S. had just travelled with him all the way from New Brunswick for parenting time and was likely tired. She'd been up early that day opening presents.

[55] The mother says similar behaviour was exhibited by J.S. in June 2017 when the father came to pick up J.S. at the mother's home after a visit. She says the father told her "enjoy the last few hours I would ever see her".

[56] The father said that the mother reneged on an agreement to transport J.S. back to New Brunswick and he had come to Nova Scotia to pick her up. They both agree that when they met, J.S. was crying and did not want to go with her father and wanted to stay with her mother. The mother alleges that the father became very agitated, told her to stop hugging the child and began walking towards her with his fists clenched. She says her fiancé got out of the vehicle and the father deescalated his behaviour.

[57] The father says that it was the mother who upset the child by repeatedly telling J.S. that she was never going to see her again. He denies that his fists were ever clenched and says the mother's fiancé was already out of the vehicle.

[58] The mother describes another incident where J.S. resisted going with her father in July 2017. She says the father was angry and grabbed J.S. by the arm and pulled her. She told him to stop or she would call the police. She says that he pushed the mother into his vehicle and said, "good luck with what's coming to you". She reported this to the Agency. The father flatly denies these allegations, acknowledges the mother called the Agency and that after investigation, these allegations were found to be unsubstantiated.

[59] The mother says that on another occasion the father offered her $10,000 to stay out of J.S.'s life and let him take her to Ontario. She declined the offer.

[60] The father says that he did offer the money in a moment of desperation because he wanted to prevent what ultimately happened when the mother made false allegations against him to gain advantage in the care of the child. He says he did not offer the money for the mother to stay out of J.S.'s life forever, rather he sought

an agreement that she would not create chaos and disruption in the child's life while he was away in Ontario.

[61] The mother describes various behavioral issues including problems at school. She describes, for example, J.S. hitting other children, locking a child in the bathroom, cursing, yelling and screaming at school and bullying other students. She said J.S. was hurting the animals at home, stealing and hiding items in the home, purposely flooding the bathroom in the home and laughing about it and other troubling behaviour.

[62] The mother ascribes all blame for these behaviors to the father. She says these behaviors occurred and deteriorated after J.S. spoke with her father. At one point after speaking with her father, the mother says J.S. put a hole in the wall. She says J.S. frequently wakes up with nightmares.

[63] The father says that while J.S. did exhibit some troubling behaviour at school while in his care, none of those behaviors compare with what is described by of the mother since J.S. came to live with her.

[64] I have reviewed these various allocations as part of the overall evidence before the court. I will not detail all the allegations made and each response as that is more appropriately done after all of the evidence is heard at the final hearing. I provide this overview to illustrate the general nature of the allegations made by the mother against the father which gave rise to this interim hearing. In general, almost all of these allegations rely on the credibility of each party and an assessment of the degree to which, if accepted, any of these allegations assist the court in determining what the interim parenting arrangement should be.

[65] It is of relevance to this Court that the school records demonstrate that, while in school in New Brunswick in her father's care, J.S. missed 6.5 days out of 200 total days and was meeting her learning goals. In the first term of grade 1 in New Brunswick, she missed 1.5 days out of 47 days and continued to meet the learning goals.

[66] Since coming into her mother's care, the records indicate that J.S. missed a total of 25 out of a possible 107 days of school for which the mother offers no explanation. The father provided copies of emails between the mother and teacher

respecting J.S.'s serious problems in school which clearly escalated over time.

[67] Also of significance are the allegations each party made respecting the other parent's reluctance to allow for parenting time. The mother says that since J.S. was placed in the father's care in 2014, she has only had 7 to 10 visits with her and the father resists any contact. The father sets out in detail in his affidavits the various efforts he has made over time to encourage and support that parenting arrangement and describes the resistance by the mother, her lack of interest and engagement, her refusal at times to provide for transportation and other problems and barriers to her parenting time.

[68] Since J.S. came into the mother's care under the interim order, the mother says the father has not made any efforts to see her. For example, in one of her affidavits she alleges that the father did not make any efforts to speak to J.S. between May 29, 2018 and June 18, 2018. Yet in cross-examination, by reference to the voluminous texts in evidence before the Court, counsel for the father demonstrated that he had made many requests during that time for contact and each was ignored or refused. In other texts, she threatened that J.S. would never be in his care again and told him that he should not ask to speak to her again. In yet other texts she threatened to cut the father out of the child's life, including one occasion when she blocked him from communication and told him that she would see him in July. She did unblock him the next day but didn't tell the father that she had done so.

[69] In addressing the father's evidence that he had not been allowed to see J.S. since Christmas of 2017, the mother was shown a series of texts in which the father made multiple requests for parenting time and each and every one of them was denied. Some were denied because they would have required parenting time outside of the province, contrary to the interim order, but several others were denied because the mother claimed to have other plans for the child or other reasons were proffered.

[70] The mother says in her evidence that she relocated the child to Truro and informed the father of this. She gave several reasons why she did so, the primary of which seems to be that it was to assist the child. She said in her evidence that the school J.S. was attending in New Glasgow did not have the appropriate supports for J.S. She said the longer she spent at that school in New Glasgow, the worse her behaviour became. She specifically said in her affidavit that J.S. now had a

dedicated resource teacher at her new school which was not offered at the New Glasgow school.

[71] In cross-examination, the mother was shown several texts and emails which clearly revealed that, in fact, J.S. did have a dedicated resource teacher at her New Glasgow school and that there was discussion about having individual support for her at that school. This is in sharp contrast to the evidence of the mother that the reason she relocated with the child to Truro was in large part to ensure that she had the appropriate supports in school.

[72] These issues of the mother's contradictory evidence respecting the father's request for communication with the child, parenting time with the child and the reasons for the move to Truro for support at school raise serious questions respecting the mother's credibility. While there are a great many allegations and counter allegations, explanations and evidence provided by the parents respecting other matters, I find that the mother lacks any credibility on the three distinct issues raised. The challenge to her credibility arises largely from her own words in texts and other communication that make clear that she has given contradictory evidence to this Court.

[73] Moreover, when she provided her *viva voce* evidence, I found her to be evasive at times, changing her evidence and clearly not able to recognize or explain the inconsistencies in her evidence. This is not to say that I disbelieve everything she says. It is to say that, with respect to the key allegations she has made against the father, I do not find her to be credible. Most of the allegations consist of what the child said to her. Putting aside the very real problem of whether a court should accept any of that evidence, given that it is hearsay alleged to have been made by a child to a party in the proceeding, I cannot rely on her evidence of these alleged conversations to make findings in this matter.

[74] In the case of the father, I have not yet had benefit of the full evidence in the matter. That said, I find him to be credible at this stage. He gave his evidence in a forthright and straightforward manner. He has made admissions against his interest, including the admission that he spanks the child and that he picked the child up and put her into bed on one occasion. Overall, I found him to be straightforward and trustworthy.

[75] While a full assessment of credibility will be undertaken at the final hearing, I cannot ignore that issue at the interim stage. The mother is seeking a significant change in the parenting arrangement as it existed prior to the interim order of this Court. Many of the allegation she made against the father rely on an assessment of her credibility and the credibility of the father. Where their evidence differs on these allegations, I accept the evidence of the father and do not accept the evidence of the mother.

[76] It is also relevant that the various allegations made by the mother have been investigated by the Agency or the New Brunswick child protection authorities and they have found each to either be unsubstantiated or inconclusive. The mother raises the issue of whether a finding that is inconclusive by a child protection authority should give rise to a concern for this Court. Absent the records or any evidence from the Agency or New Brunswick child protection authorities, other than their brief letters provided to the parties with those findings, I cannot conclude that any of the allegations made by the mother have merit.

[77] The mother does raise the issue of whether the status quo at the time of proceedings commencing is still in place. The evidence is that both parents have relocated since then, the mother to Truro and the father to Greenwood. Whatever the ultimate outcome, this will benefit the child at least in terms of travel time for parenting time with each parent, reducing it from over four hours to approximately two hours.

[78] It is true that the father no longer resides in New Brunswick. That said, I find that the status quo at the time of this application and the granting of the interim order was that the father had primary care of the child in his home. That was clearly determined by the order granted in 2015 and had been the status quo as early as March 2014. It is true that the father was in Ontario at the initial stages of this proceeding but as of today, he is now back in Nova Scotia and a return of J.S. to his care would return the matter to the status quo.

[79] I have also carefully considered the allegations of family violence. There is certainly some history alleged that dates back several years. I find that the more recent allegations, which father admits to, including the use of spanking on occasion and picking the child up, placing her and holding her in the bed, do constitute family violence. That said, I consider the father's credible evidence that spanking only

occurred occasionally and on one occasion he picked up and placed the child in the bed as described. I do not find that this evidence is of a nature, duration, intensity or character that represents a risk to the child sufficient to displace the current order and status quo on that basis alone.

[80] I have also considered the factors contained in section 18 (6) of the *Act*. Many will be more fully reviewed at the final hearing. Of these, the factor of greatest concern to the court at this time is the willingness of each parent to support the relationship between the other parent and the child. I find that on the evidence before me, the father has established that he was and is prepared to support that relationship.

[81] On the other hand, I am very concerned respecting the evidence of the mother's willingness to support the relationship between the child and the father. I find that the mother did nothing to support any parenting time between the child and the father from December 2017 to today. I find that the mother did nothing to support communication between the child and the father for much of that time. I find that the evidence is clear, at this stage, that the mother has no intention of supporting any relationship between the child and father, except when she requires discipline to be imposed on the child and puts the father on the phone to do so. This suggests to me that the child's reluctance to speak to or be with the father may be in part rooted in the fact that the only time she speaks will now is when he has to discipline her on behalf of the mother.

[82] I am also concerned respecting the social, educational and emotional needs of the child in the mother's care. The severe escalation of behavioral problems at school is troubling. Even more so was the large number of absences from school that are unexplained by the mother. Her unilateral move to Truro appears to have nothing to do with support for the child in school as the evidence is clear that the child had ample support at the school in New Glasgow. I find the claim the mother makes that since the move to Truro the child’s behavior has significantly improved to be lacking in credibility. It is not supported by any corroborating reports from the school and I find it highly unlikely that this occurred in such a short time.

[83] I find that it is probable that the child's extreme behaviors is as a result of a combination of several factors, including the mother's inability to address the child's needs, her lack of support for a relationship with the father, the fact that the child has

not had any contact with her father for months and the fact that the mother has moved the child to Truro to another home and school. These factors may all contributed to the behavioral problems she exhibits today. No doubt there may be expert opinion at the final hearing on this issue but based on what is before me today, I cannot find that the mother's position, that it is the father's parenting that has caused these behavioral issues, is found in the evidence. I find quite the opposite.

Decision and Order

[84] Considering all of the evidence and taking into account the law including the *Act*, case law and law surrounding interim hearings, I find that the status quo as it existed should be maintained and the child should be returned to the care of her father until a final hearing of this matter. The status quo prior to the interim order was that the child was in the care of the father. This was the circumstance for the last for four years. The father has moved to Nova Scotia. I am satisfied that he has adequate housing, an education plan and all of the required supports for the child in his care in Greenwood. Recognizing the principle of the "golden thread", I cannot find that there is any good reason to put aside the status quo for this child pending the final hearing.

[85] There will, therefore, be an order of joint custody. The child will be returned to her father's primary care on a graduated basis. For the next two weeks, the child will be in the father's care at any time that he can come to Pictou County and the mother will immediately turn the child over to the father's care for the time that he is available. That parenting time may be exercised anywhere in the community at the father's absolute discretion.

[86] After two weeks, the child will be returned to the father's primary care and he may relocate her to Greenwood, Nova Scotia. He may register her for school and she will attend school in September 2018 in Greenwood.

[87] The mother will have parenting time every second weekend from Friday to Sunday once the child moves with the father to Greenwood. The mother will be responsible for transportation of the child to and from Greenwood for each parenting time visit. She will pick the child up at 5 o'clock on Friday or another time as agreed between the parties and will return to child to the father's care in Greenwood at his home at 5 o'clock on Sunday or other time as the parties may agree. Pick up

and drop off for the child's parenting time with the mother shall be at the father's home or another location in or near Greenwood as determined in the sole discretion of the father.

[88] Each parent is prohibited from making any negative or derogatory comments about the other parent or the other parent's family or discussing these proceedings at any time that that parent has care of the child, whether the child is present with the parent or not. The parent shall ensure that no other person makes any negative or derogatory comments about the other parent or the other parent's family or is discussing these proceedings at any time that parent has care of the child. If any other person make such comments, the parent who has care of the child shall ensure such comments cease immediately or ensure that that person leaves the child's vicinity or the child is removed from the vicinity of that person.

[89] All communication between the parents shall be conducted in a polite, respectful, businesslike and child-focused manner and shall not contain any comments or reference to these proceedings unless necessary to address the best interests of the child.

[90] Each parent is prohibited from discussing these proceedings with the child or showing the child any documents or pleadings from these proceedings at any time.

[91] Each parent is prohibited from discussing or posting to any social media site or service any comments or documents arising from or concerning these proceedings and shall not permit anyone else to post any such documents from these proceedings to any social media site or service.

[92] Each parent is prohibited from using corporal punishment, including spanking, on the child.

[93] Any further proceeding in this matter will be transferred to the Family Court in Kentville, Nova Scotia and counsel for the parties will contact that court for a docket date when one is required.

Daley, JF

FAMILY COURT OF NOVA SCOTIA

Citation: *S.S. v D.W.*, 2018 NSFC 15

Date: 20180802
Docket: Pictou No. FPICMCA-082523
Registry: Pictou

Between:

S.S.

Applicant

v.

D.W.

Respondent

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

Judge:	The Honourable Judge Timothy G. Daley
Heard	July 25, 2018 in Pictou, Nova Scotia
Written Decision:	August 2, 2018
Erratum:	August 28, 2018
Counsel:	Mallory Arnott for the Applicant Amber Snow for the Respondent

Erratum:

Paragraph 10
Name replaced with initials D.W.

Paragraph 20
The word "with" deleted and the words "to a" inserted.

Paragraph 25
Ellipsis (…) following subparagraph (d) inserted.

Paragraph 30, subparagraph 11

Dash in the word “self-esteem” changed to hyphen

Paragraph 32
Name Jesudesen changed to Jesudason

Paragraph 38
The word “concern” replaced with the word “concerns”.

Paragraph 50
The word “is” replaced with the word “was”. The word “plans” replaced with the word “planned”.

Paragraph 68
The words “May 29, 2018 in June 18, 2018” replaced with the words “May 29, 2018 and June 18, 2018”.

Paragraph 69
The word “had” inserted before the words “not been allowed”.

Paragraph 92
The word “form” replaced with the word “from”.

The following new paragraph added:

[93] Any further proceeding in this matter will be transferred to the Family Court in Kentville, Nova Scotia and counsel for the parties will contact that court for a docket date when one is required.