

FAMILY COURT OF NOVA SCOTIA

Citation: *R.D.W. v. P.L.W.*, 2020 NSFC 9

Date: 2020-09-30

Docket: Bridgewater No: FBWPSA-112839

Registry: Bridgewater

Between:

R.D.W.

Applicant

v.

P.L.W.

Respondent

Judge: The Honourable Judge John D. Comeau

Heard June 21, 2020 and August 25, 2020, in , Nova Scotia

Counsel: Kathryne M. Dumke and Jessica Rose, for the Applicant

Shawn D'Arcy, for the Respondent

By the Court:

INTRODUCTION

[1] This is an application under the *Parenting and Support Act*. The Court is being asked to determine custody, parenting time and child support.

[2] The Applicant, who is the mother of the children, commenced her application December 2018 with original affidavit filed February 6, 2019. These documents also contained a parenting statement which has changed over the course of this proceeding. This will be discussed further when the Court considers what remedy each party is asking for.

[3] There are three consent orders the parties entered into dated June 24, 2019, August 7, 2019 and December 18, 2019. The first order provided for parenting time for the Respondent father with certain conditions. The second order set out a specific day (Sunday) for parenting time, again with some added conditions. The final interim order was more specific and made reference to the Applicant having primary care with the children residing with her. Parenting time was again more specific and included child support in the amount of \$288.00 each month starting on January 1, 2020 through the Maintenance and Enforcement Program, and thereafter on the first of each month. Retroactive child support was to be considered at a binding settlement conference before another Judge on February 13, 2020. This was not completed. Further financial disclosure was required by the Respondent on June 1 of each year.

ISSUES

Custody, parenting time and child support.

FACTS

[4] The record, as disclosed in the interim order of June 24, 2019, indicates the Respondent has been identified as a possible father of the children, twin girls, A and S, born February [**], 2014. A subsequent paternity test has confirmed the Respondent is the biological father of the twins.

[5] Although the Applicant was the primary caregiver of the twins, the Respondent has also cared for them when the Applicant worked in 2015 and 2017.

[6] There have been allegations of physical and sexual abuse by the Respondent against the Applicant.

[7] There is also concern about the Respondent's alcohol use (considered by the Applicant as abuse) when he has parenting times with the children. She describes his history of caring for the twins as neglectful as to soiled and dirty diapers. In July 2018 the Applicant left the home with the children and the twins remained in her primary care. Visits by the Respondent and other communication were arranged and the Applicant says many of these were missed opportunities.

[8] The Respondent denies all the Applicant's allegations and there is very limited evidence to support her claims. There is no application for supervised access and the Applicant has failed to prove and discharge the onus on her that access should be restricted in any way.

LAW

[9] Section 18 of the *Parenting and Support Act* provides authority for the Court to deal with custody and parenting time. Section 11 of the *Act* deals with child support which is determined in accordance with Section 10 and the *Child Support Guidelines* are applicable.

[10] Section 18(4) is as follows:

...Subject to this Act, the father and mother of a child are joint guardians and are equally entitled to the custody of the child...

[11] Section 5 is as follows:

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

[12] To determine this, subsection 6 sets out certain factors the Court should consider. One of these items stands out in this particular case:

6(b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian.

(g) the nature, strength and stability of the relationship between the child and each parent or guardian.

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

(j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed.

[13] This section is an incorporation of the principles set out in *Foley v. Foley* [1993] 124 NSR (2d) 198 into legislation.

CONCLUSION/DECISION

[14] The Court spent two days of trial on a case that should have been settled within an hour or so. There is an outstanding order dated December 18, 2019 that provides for primary care and residence of the children with the Applicant mother and specific parenting time was set out. This was agreed upon between the parties.

[15] Most of the Court's time was taken by the Applicant's counsel's attempt to try and impeach the credibility of the Respondent father with respect to his use of alcohol and his statement of income. Both of these failed for lack of credible evidence on the part of the Applicant.

[16] Given the fact that the parties agreed to a number of parenting orders, there has been no subsequent evidence to discharge the onus and prove supervised parenting is required (see *Bellefontaine v. Slawter*, 2012 NSCA 48).

[17] The onus was on the Applicant who has not presented any credible evidence to satisfy the Court that in this particular case it would be in the children's best interest to place such a condition on parenting.

[18] The Applicant's counsel argues that since the interim order there has been sporadic parenting on the part of the Respondent. She proposes reference to a psychologist who would work with the parties and determine when regular access could take place. This is to transition the children back to regular access. Such an Order would be a delegation of the Courts' authority and while transition in some cases is warranted, in this particular case it is not. In fact, any lack of exercise of parenting time is the fault of the Applicant who appears, from her actions, to be a roadblock to the Respondent exercising regular parenting time as provided by Court order.

[19] Dealing with the child support, the Court finds that the Respondent's current income is found in his 2019 tax filing of \$13,087 with the table amount being \$94.99 for two children and he has agreed to pay \$200 per month going forward. This will be ordered through the Director of Maintenance Enforcement starting October 1, 2020 because it is partly a gratuitous payment. The Respondent will be required to file his tax assessment with the Director by June of each year.

Final Order with Respect to Parenting

[20] The custody of the parties' twin children, A and S born February [**], 2014 shall remain as set out in section 18(4) of the *Parenting and Support Act* (joint custody). Primary residence will be with the Applicant mother. Both parties shall keep the other informed about anything that affects the welfare of the children which includes but is not limited to the following, education and medical (which includes mental or behavioural issues).

[21] There shall be parenting time which has been reasonably requested by the Respondent and which the Court finds in the best interest of the children. Counsel for the Respondent has put forward a parenting plan which is specific to days and times. This is something that is required in this case because of the lack of proper communication on the part of both parties, but more particular because of the failure, at times, by the Applicant to comply with Court Orders.

[22] Both parties agree a detailed Order is required so they are aware, without ambiguity, what their rights and responsibilities are.

[23] Parenting time will be as follows and commence the weekend following the delivery of this decision on October 2, 2020 which is Friday, October 9, 2020. Both parties and, particularly the Applicant, by way of transition (unless the interim order is being followed) shall approach and deal with the twins in a manner as to make it easier for them to be happy and content with the parenting schedule.

Continuous Parenting Time

[24] Every second "weekend" which is defined as Friday at 5:00 p.m. to Sunday at 5:00 p.m. For the purpose of this Order, this regular parenting time will start the weekend of October 9, 2020.

Christmas

[25] Parenting at “Christmas” which is defined as Christmas Eve, Christmas Day and Boxing Day shall alternate between the parties.

In Year 2020 - Christmas

[26] Christmas Eve at 5:00 p.m. until Christmas Day at 4 p.m. the children will be with the Applicant mother, taking into consideration the importance of transition for the twins this year. The Respondent father will have the children from 4 p.m. on Christmas Day to 5:00 p.m. on Boxing Day.

[27] This access parenting scheme shall be reversed for each parent on subsequent years, alternating each Christmas.

In Year 2021 – Easter

[28] On the Easter weekend, the Respondent father will have access from 5 p.m. Thursday until 5 p.m. on Saturday.

[29] The Applicant mother will have the children from 5 p.m. on Saturday until 5 p.m. Monday.

[30] This access parenting scheme shall be reversed for each parent in subsequent years, alternating each Easter.

In Year 2021 – Summer

[31] The Respondent father will have access parenting time one week in July and one week in August. This scheme takes into account summer activities the children may have. The Respondent father shall advise the Applicant mother which weeks in July and August he will be seeking, always taking into account these weeks are compatible with the children’s schedule of activities.

[32] The Respondent father shall advise what weeks he is seeking by the end of May each year. This scheme will continue in subsequent years.

In Year 2021 – Father’s and Mother’s Day

[33] The Respondent father will have access, parenting time from 9 a.m. to 5 p.m. on Father’s Day as will the mother on Mother’s Day.

[34] This scheme will continue in subsequent years.

In Year 2021 – Children’s Birthday

[35] The Respondent father will have parenting time with the children (twins) on their birthday for three hours. Some or all of this parenting scheme will require notice and reasonable communication. This communication shall be child focussed and child friendly always, taking into consideration they must comply with Court Orders.

[36] Reason must be exercised if weather or illness prevents parenting time.

[37] All other statutory holidays shall be shared equally.

Transportation of the Children

[38] The Applicant mother shall be responsible for dropping off the children and the Respondent father shall be responsible for returning them.

[39] The Respondent father shall not consume alcohol or non-prescribed drugs while he is parenting the children.

[40] The parties are free to consent to any parenting time other than what has been ordered.

[41] Any specific holiday or special occasion access that is exercised during the Respondent’s continuous regular parenting time shall not require any make-up time.

[42] The Respondent shall be free to communicate with the children at any time.

[43] During the course of parenting or communicating with the children both parties will respect each other in a manner which will be conveyed to the children.

COSTS

[44] The Respondent father’s counsel has asked for costs because of the failure of the Applicant, with assistance of counsel, to settle. The Respondent indicates costs are intended to reward success and penalize the Applicant for an unnecessary trial.

[45] During the course of this trial, it did appear like an exercise to impeach credibility with emphasis more on support than parenting. In the end, there was no evidence that financial disclosure was fraudulent. There was also no evidence that there was opposition to the Respondent father's parenting or actually having access.

[46] This case meets the criteria for costs (see *M.C.Q. v. P.L.T.* 2005 NSFC 27, Dyer, JFC) however, in this particular case costs against the Applicant mother would not be of benefit to the children's best interest at this time.

[47] The Respondent father may request costs to be taxed against the Applicant mother on a future date, where the Applicant mother has been found to have failed to comply with this Order pursuant to section 41 of the *Parenting and Support Act*.

[48] For the purposes of the Court Order in the proceeding, the Order shall read "costs to be taxed at a future date in accordance with this Order."

[49] For this purpose, the part on costs will be adjourned without date.

[50] Counsel for the Respondent father shall prepare this Order in all respects and submit it to the Court for approval.

John D. Comeau, JFC