

FAMILY COURT OF NOVA SCOTIA

Citation: *J.M. v. S.M.*, 2020 NSFC 12

Date: 20200904

Docket: FPICMCA-068875

Registry: Pictou

Between:

J.M.

Applicant

v.

S.M.

Respondent

DECISION

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

Judge: The Honourable Judge Timothy G. Daley

Heard: March 5th & 6th, 2020, in Pictou, Nova Scotia

Final Submissions: March 6th, 2020

Written Decision: September 4th, 2020

Counsel: Robert E. Moores for the Applicant, J.M.
Respondent, S.M., Self-Represented

Introduction

[1] This decision is about three children, a boy, JDPM, his brother, JWPM, and their sister, RPM, and what custodial and parenting arrangement is in their best interests.

[2] A fourth child, RP, is the biological child of the mother, SM, and stepdaughter of the father, JM. She is not a subject of this application.

Issues Not in Dispute

[3] To narrow the issues for determination, the parties have confirmed the following:

1. There is no dispute that the mother will have primary care and residence of the children.
2. The parties agree that the father's parenting time need not be supervised any longer.
3. The mother will have final decision-making authority for major decisions concerning the children including their health, education and general well being.
4. There will be no parenting time ordered for the father with RP.

Issues in Dispute and Positions of The Parties

[4] There are two issues for determination by the court as follows:

1. Should the mother be required to meaningfully consult with the father on any major issues concerning the health, education and general well-being of the children before the mother makes any final decision.
2. What should be the parenting time for the children with their father and should RM be included in that parenting time.

[5] On the first issue, the mother requests that she be given sole custody and that there be no requirement that she consult with the father major issues arising for the children. The father requests that he be meaningfully consulted on any such issues.

[6] On the second issue, the mother requests that the father's parenting time not include RPM. She says that RPM does not know that JM is her father. JM says she is aware he is her father and calls him "daddy". Whatever the truth of that, RPM has had very limited contact or parenting time with JM since her birth.

[7] As to parenting time with the boys, and possibly RPM, the mother requests that it be limited to daytime visits twice each week and on Saturdays with longer periods in the summer. She asked that there be no overnight visits, that the visits take place in the community and, specifically, that they do not take place at the home of the paternal grandfather.

[8] The mother requests that there be special parenting time for each parent on both Mother's Day and Father's Day, and that for Christmas the children be with her, spending time with their father on the afternoon of Christmas Day. She requests the same for Easter such that the father would have the children on Easter Sunday afternoon.

[9] The father asks for parenting time with all three of his biological children every second weekend from Friday to Sunday. He would welcome RP to take part in those visits but is not asking the court to order same.

[10] For special parenting time, the father asks that there be an approximately equal division for Christmas, Easter and school spring break, and that he have two weeks of block parenting time in the summer for vacation. He also asks that each of the parents have time on the respective Mother's Day and Father's Day.

Applicable Provision of the Act

[11] Before reviewing the evidence relevant to the issues in the matter, it is useful to review the applicable law which is always driven by the best interests of the children.

[12] The applicable legislation in this matter is the *Parenting and Support Act* (the Act) and the beginning point in any analysis under the 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.

[13] 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).

[14] In determining what I should consider in assessing what is in these children's best interests, 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....to communicate and cooperate on issues affecting the child...

[15] Given that family violence is alleged in this matter, I first note that it is defined in s.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;

[16] I am directed to consider family violence as a factor in determine the children's best interests under s.18(j) as follows:

(j) 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.

[17] I must also consider s.18(j) in the context of s.18(7) as follows:

(7) 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.

[18] When considering these factors under the *Act*, I note that I have omitted some. First, I have made no reference to the children's cultural, linguistic, religion or spiritual upbringing and heritage as there is no evidence before me on issue. Second, I have no views and preferences of the children to consider and therefore will not refer to this factor in the decision.

Summary of Evidence

[19] The history of co-parenting for these parents is one of dysfunction and conflict. They began their relationship in 2008 and, according to the father, separated and reconciled 9 to 10 times before finally ending the relationship. Each parent says the relationship was rife with family violence. Into this maelstrom the children were born.

[20] Over the years the parents have been before this court many times and many orders were granted. In each the mother was granted sole custody and primary care of them, except when they were taken into temporary care by the Minister of Community Service (the Agency) during a child protection proceeding.

[21] At various times, the father was granted parenting time with his sons and sometimes with all four children, though usually under supervision of family, the Agency or the Supervised Access and Exchange Program (the SAEP).

[22] From 2010 to today the father's parenting time has generally been limited to daytime only and most often with the boys only. But that was not always the case.

[23] A significant exception to this occurred between 2015 and 2017 when the parents agreed he would have unsupervised parenting time which was flexible. The father says he then had 2 to 3 visits per week, sometimes overnight, sometimes for one week and up to two weeks.

[24] Underlying all these orders and informal parenting arrangements is a history of conflict between the parents and their families. The Agency and police have been involved with them on several occasions. The father has been charged with many criminal offences involving the mother. Members of both families have been involved in threats and violence towards one another resulting in criminal convictions.

[25] Before reviewing those circumstances, I first note that the precipitating event leading to this application is the mother's evidence that JWPM told her in January 2017 that the father's brother had touched his "privates" and that it hurt him. She says he told her that the uncle asked the child to touch his privates as well. She further alleges that the uncle told JDPM and JWPM to touch each other's privates. She said that JDPM confirmed this to her a few weeks later.

[26] Following these allegations, the mother refused any further parenting time to the father and called the police and the Agency.

[27] She further alleges that the boys were told by the father, uncle and paternal grandfather that they could not tell anyone because they would go to jail. She alleges this conversation took place near school before the children returned home. She said that one of the boys pulled hair out of his head due to his anxiety and terror over these circumstances.

[28] In a joint interview of the boys with the police and the Agency, the boys did not disclose any sexual abuse. The mother says this was due to fear and alleges the father is unable to protect the children from his brother.

[29] The mother also says that the paternal grandfather is a risk to the children. She says she has witnessed him abuse his wife and says that she believes this abuse took place throughout the father's life in that home.

[30] The mother also says that the father abused her throughout their relationship. She says this abuse was verbal, emotional, physical, and sexual, and often occurred in front of the children. Incidents include an allegation that the father held a knife to her throat when one of the girls was behind her, and on another occasion, he tackled her to the ground. She says he threatened her on multiple occasions, including a threat that he would burn the house down and that he would kill her. She says that she is afraid for her life and for the life of her children.

[31] The father was convicted of assault with a weapon in 2011. The mother was the victim. He still denies the allegation and says he pled guilty, without counsel, in fear of what would occur if he did not plead guilty.

[32] As well, the mother says the father has a long history of drug abuse, including bath salts and "pills" but says she is not sure what type of drugs he is using currently.

[33] The mother says the father was an alcoholic throughout the relationships and, for example, he was "falling down drunk" in the hospital during the birth of JWPM.

[34] The mother says that JDPM exhibits behavioural problems after visits with his father, including verbal abuse to the mother. She says he is aggressive, says derogatory things about her, including that it was her fault that the parents separated and that she took the children away from their father.

[35] The mother describes the relationship with the father as toxic and says that she has sought services, including through Tearmann House, a local organization that supports women who have suffered abuse during domestic relationships. She says that she has arranged for the boys to receive mental health counselling.

[36] The father denies all the allegations made, including denying that he has alcohol or drug abuse issues, or a history of same, and denying any abuse of the mother at any time.

[37] It was his evidence that, though the Agency became involved with the family over the years and referred him for services, he did not complete the services because he had neither an addiction issue nor had he ever abused the mother or the children. He says that any suggestion that the Agency was concerned that he had not completed services when they concluded their involvement is unjustified because he required no services at all. He says the mother fabricated everything alleged and also denies of speaking to the boys about the sexual abuse allegations.

[38] To the issue of the alleged sexual abuse of the boys by his brother, the father does say he spoke to the children after school but did not discuss any allegations of molestation. He said he had not seen them in a while and missed them, told them he loved them and was doing everything to get them back home. He said the children were excited to see him.

[39] The father says that there are many problems in the mother's behaviour and parenting as well. He says her family adds to these problems.

[40] For example, he alleges that the mother's brother came to his residence in 2014 and threatened to kill him if he continued with his Family Court application. For many months around that time, he says that the mother's husband, DKM, called him regularly demanding that he stop seeing the children and he perceived this communication as threatening and intimidating.

[41] As well, the father describes an assault on the paternal grandfather in 2011 by the maternal grandfather and maternal uncle for which they were convicted of assault causing bodily harm and placed on house arrest under a conditional sentence order.

[42] The father alleges that his brother had been harassed by DKM, calling him a pedophile, which began at the time of the alleged sexual abuse of the boys. The father says the DKM also threatened him.

[43] I acknowledge many of these allegations are hearsay, including those of the children respecting abuse by their uncle. I do not accept this evidence as proof of the allegations made, but I do consider the evidence when assessing the overall circumstances of the children over the last many years and the relationships among their family members who will have regular and intimate contact with them.

[44] While I am not confident that I have a complete record of all of the criminal charges laid against the father involving the mother, the father discloses that he pled guilty to assault with a weapon in 2011 as he described earlier.

[45] The father says the mother charged him in or around 2013 with break and enter, mischief and unlawful confinement. He says all charges were dismissed when the mother did not attend for trial.

[46] The father was subject to a peace bond by the mother in 2012 and she tried to obtain a peace bond again in 2014. The father says the 2014 application was dismissed as the mother did not attend at court.

[47] The father says the mother had the paternal grandfather charged with uttering threats, but the charge was later dropped. He also says that she attempted to place peace bonds against other immediate family members as well.

[48] More recently, the father was charged in or around 2017 with uttering threats to the mother. The father says that the trial went forward, and the mother attended for the first day, but did not return for the completion of the trial so the matter was dismissed.

[49] The father points to these criminal and peace bond proceedings as evidence of the mother's attempts to interfere with his relationship with the children and that she is acting in a vengeful manner towards him. He believes she has mental health issues.

[50] The father also expresses strong concern about the mother's husband, DKM, who he says is a known drug user. He says the children described to him that DKM drinks beer every night and the mother and DKM argue if he cannot get more.

[51] He also says that DKM has an extensive criminal record, which is uncontroverted by DKM and the mother, including convictions for fraud, failure to comply, mischief, taking a motor vehicle without consent, impaired driving, drug possession, breach of probation and possession for purpose of trafficking. He has been incarcerated for some of these matters.

[52] The paternal grandfather testified and said the mother, her husband and her parents have constantly threatened him and his family. He described an incident in 2011 when the mother's parents, brother and a friend attended at their home and assaulted him and his family members, including his son and wife. His ribs were broken, and he was bruised all over his body. The mother's brothers and father were sentenced to six months house arrest in 2011.

[53] The paternal grandfather says that in 2020, DKM approached him aggressively with his middle fingers raised and began video recording him. He says he told DKM to stop recording and admits he was rude. He said he was assaulted by DKM, wound up on the ground with injured ribs and that DKM had been charged with assault with a weapon.

[54] The mother says that she observed this incident and it was the paternal grandfather who was the aggressor, attacking DKM and grabbing his collar. She says both men were charged with assault offences.

[55] The mother says that the father's family, including the father on occasion, have harassed her in public and in her own yard.

[56] The Agency became involved in 2011 and on at least one occasion since. In 2011, the concerns appear to have been neglect, housing and heat (including frostbite of some of the children), presence of drug paraphernalia in the mother's bedroom and, either initially or subsequently, family violence by the father.

[57] It is important to note that the parties called limited evidence from the Agency except to introduce some workers' affidavits filed in the child protection proceedings and some Agency case notes. I find the evidence of the Agency involvement somewhat confused and incomplete but there is no dispute that the Agency was involved with the parents over the years.

[58] The father says that he began services to address family violence and addictions, but he did not complete these at that time or at any time since. He says that he has no issues to deal with and therefore the services were not necessary.

[59] The children were taken into temporary care in or around 2011 and after many months in care, the father says the mother contacted him to reconcile and they presented a plan to the Agency. They resumed cohabitation in 2012. The children remained in temporary care and the parents were trying to have them returned home.

[60] The father says that in 2012, the mother assaulted him with a frying pan and the next day she snapped, screaming and hitting him on the head with a book at which time he left. That ended the relationship for a time.

[61] It was in July of that year that the assault on paternal grandfather took place for which the mother's brother and father were convicted.

[62] By December of that year, the children were returned to the care of the mother. The father had supervised parenting time.

[63] The parents reconciled again in 2013, though the father accuses the mother of being abusive towards him and acting irrationally and erratically. As noted earlier, the mother says the father was abusive to her throughout this and other times. It was in August of that year that they discovered the mother was pregnant again.

[64] The Agency became involved again in 2017 through 2018. In its plan of care, the Agency said it expected the father would attend counselling to work through issues of co-parenting, the importance of consistency of access and the impact on the children.

[65] An Agency worker's affidavit from 2018 was introduced and that worker confirmed that the Agency sought to terminate its involvement in favour of an order granting sole custody to the mother and parenting time to the father at the mother's discretion. In that same affidavit the worker confirmed that the father had stopped attending New Leaf, a program for men who have been domestically violent, because he believed he did not need to attend any longer. The Agency also recommended the father's parenting time be suspended until he was able to demonstrate a commitment to parenting time through participation in counselling. He has not done so.

[66] Before the court are records from the SAEP covering a period in 2019 which report the interaction of the father and his sons for approximately two dozen visits as ordered by the court. To be brief, all those visits went very well and there is no indication that there were any issues respecting the father's interaction with the children or any parenting issues.

[67] There was one incident reported from 2020, when the father and the mother's husband were fighting outside the facility and the police were called. The children did not know of this and were not in the vicinity. It appears no charges were laid.

[68] The Agency was involved with the mother and DKM in 2017 because of an argument between them. The case notes for that incident found family violence was substantiated. It said the mother had reported to Tearmann House staff that she was on the bed holding RPM. DKM was "ranting and raving" and he punched a hole in the bathroom door. He then went to kick her while she was sitting on the bed and missed. He almost kicked RPM. In cross-examination, the mother did not deny the allegation except to say that he was not attempting to kick her, just gestured as if to kick.

[69] In a subsequent Agency case note from 2017, an interview with JWPM revealed that he told the worker that DKM had kicked his mother in the head because he saw it happen, they were in the bathroom and he was in the room with RPM.

[70] Ultimately, the Agency's involvement with the mother and DKM ended after they separated and were waiting for couples counselling. They then reconciled and no counselling took place other than a first session.

Findings and Credibility

[71] Without going further through the details of every breakup, reconciliation, allegation, and cross allegation, I find this summary gives a sufficient overview of the difficulties experienced by these parents in coping both with each other and as parents. There is clear evidence to conclude that neither of them is innocent of poor decisions nor behaviors. I accept the evidence of each of them that the other was acting aggressively and abusively from time to time.

[72] I also accept that this abusive behavior meets the definition of family violence under the *Act* including finding that some of this family violence took place in front of or involved the children or they would be aware of same. I find it reasonable to conclude that all the children have been adversely affected by this family violence and other poor parenting throughout their lives.

[73] Put simply, this was a toxic relationship. It was never in the children's best interests or in the interests of the parents, that they reconcile so many times over so many years. It is baffling as to why they thought that it was a good idea, but the history is clear, and I find that it was both abusive and dysfunctional.

[74] I also find the acts of DKM investigated by the Agency constitute family violence. Given his lengthy criminal history and alcohol issued described, it is no surprise that this might occur. So, while the mother is a victim in that incident, that relationship clearly continued of a pattern of family violence to which the children were exposed.

[75] When considering the credibility of the parents, I am mindful of the comments of Forgeron, J. in *Baker-Warren v. Denault* 2009 NSSC 5 in which she provided the following helpful guidance:

18 For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" *R. v. Gagnon* 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" *R. v. R.E.M.* 2008 SCC 51, para. 49.

19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

- a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: *Re: Novak Estate*, 2008 NSSC 283 (S.C.);
- b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
- c) Did the witness have a motive to deceive;
- d) Did the witness have the ability to observe the factual matters about which he/she testified;
- e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
- f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: *Faryna v. Chorney* [1952] 2 D.L.R. 354;
- g) Was there an internal consistency and logical flow to the evidence;
- h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
- i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

20 I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: *R v. Norman*, (1993) 16 O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in *Re: Novak Estate, supra*, at para 37: There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See *R. v. D.R.*, [1996] 2 S.C.R. 291 at 93 and *R. v. J.H.*, [2005] O.J. No. 39, *supra*).

[76] I do not find the father to be credible when he denies any physical abuse or alcohol abuse allegations. He pled guilty to assault with a weapon involving the mother. I find her evidence on the subsequent incidents of abuse to be credible. Her evidence was clear and forthright and is supported by the evidence of Agency involvement and the criminal conviction.

[77] I find the father has an alcohol abuse problem as alleged. This is supported by the Agency record in which the father admitted alcohol problems to the Agency. It is bolstered by the father's admission that he attended an inpatient detox program for five days. His claim that he did so simply to prove that there was not a problem has no air of reality. I find it highly improbable that a detox centre would admit

anyone who is denying an alcohol addiction issue. His denial is simply not credible.

[78] As to current drug use, the evidence is very limited, and I cannot make any finding on that issue. I do find the mother's evidence of past drug use credible.

[79] There are credibility issues for the mother as well. She offers no explanation as to why she would pursue criminal charges and then fail to testify on repeated occasions, including peace bond applications.

[80] As well, on the first day of hearing this matter it was expected that her husband, DKM, would testify. He had filed an affidavit. The court made it clear that though he did not attend for the first day, the mother could call him to testify on the second day. She chose not to call him and withdrew the affidavit without explanation.

[81] In cross-examination, she initially confirmed that she and DKM were together, but then admitted on further questioning that they had separated. I infer from that admission that this is the reason he did not testify.

[82] On one hand, the fact that the mother and DKM separated is not determinative of any issue before the court. On the other hand, the fact that she was not forthright with the court on this issue, even when asked in cross-examination, until finally confronted with the possibility of impeaching evidence, leaves the court with concern respecting her credibility.

[83] There is also evidence that the mother identified three different persons as having sexually molested JWPM. This is found in a case note of the Agency from 2017 which indicates that the referral was made through mental health when the mother disclosed that she was concerned that the father had sexually abused the children. In another entry, the Agency's note indicates that the mother informed them that JWPM told her that his great uncle touched his private parts when he was visiting his father. The mother confirmed at trial this was not the uncle alleged. She then said in her testimony that it was the father's brother. In other words, it appears that on three occasions the mother has identified three potential abusers. This also goes to credibility.

[84] Despite these credibility concerns, the evidence before me, including the affidavits and various exhibits attached such as text messaging and other documents make clear there is a long history of threats and violence between the

mother's and the father's family and, for a time, between DKM and the father's family. None of this speaks well of any of the adults involved and there is no more blame to be ascribed to one family than the other.

Analysis and Decision

[85] Applying the evidence and findings to the applicable provisions of the *Act*, and taking into account the limited range of issues in dispute before the court, I can say the determination of the children's best interests, even for these limited range of issues, is difficult in this case because of the history of poor decision-making and behaviours by both parents.

[86] That said, there is agreement that the mother should retain primary care of the children and I do find that she is able to provide for the children's physical, emotional, social, and educational needs. I do have concerns respecting her ability to provide for their stability and safety, including emotional safety and support, as evidenced by her history of relationships with the father and DKM. Despite these concerns, I find that there is no alternative available within this family.

[87] When considering the willingness of each parent to support the development and maintenance of a relationship with the other parent, there remain significant challenges. I accept the mother's evidence that the father has been critical of her in conversations with the children. On the other hand, there have been periods when the mother has been cooperative in maintaining that relationship through parenting time and at other times when she has made that difficult. On balance, I find that she can maintain and support a relationship between the father and the children on a limited basis.

[88] The history of care of the children is summarized in the evidence. It has been a difficult life for them. Their parents have come together and separated many times, creating instability. Within that relationship, there has been ongoing family violence and incidents of violence and abuse among and between extended family members. It is impossible to conclude that the children have not been impacted by this. The mother's attempt to obtain counselling for the children show some recognition of this. But that long history of conflict and dysfunction, and the toxic relationship of the parents, has impacted the children not only now but will continue to do so into the future. They will pay a price for the poor decisions of their parents.

[89] Respecting the plan for the children, this addresses the central question of the father's parenting time. In considering this, I also consider the nature, strength and stability of the relationship between the children and each parent. It appears the father has a closer relationship with the boys than with the girls. He is not seeking parenting time with RP despite saying that he has been a father figure to her for most of her life.

[90] The father's relationship with the boys has been impacted by a long history of instability and family violence which they have witnessed. But there is a relationship, nonetheless.

[91] The SAEP reports are generally positive and support ongoing parenting time for the father with the boys. The mother is no longer seeking supervision of their parenting time and I find that to be a reasonable position to take notwithstanding the long history described. Now that the parties are separated, it appears that it will be reasonably safe for the boys to spend time with their father in an unsupervised environment assuming the families behave appropriately.

[92] The question of RPM's relationship with her father is more difficult. Even if she is aware that he is her father, the evidence is clear that she has spent little time with him. The mother says that she should spend no further time with her father, both because she does not know him and because the long history of family violence to which she has been exposed puts her at risk.

[93] Yet it is difficult to accept that a child should not be aware of who a biological parent is, however flawed they may be, when they see them involved with siblings on a regular basis. RPM knows JM. The question is whether it is in her best interest to know him as her father, or at least to spend time with him in the company of her brothers to develop a relationship.

[94] Considering all the evidence and carefully weighing the risk against the advantages to RPM of that relationship, I am satisfied that she should have parenting time with her father. I leave to the mother the question of whether RPM should be informed (or further informed) of her biological relationship with him. I find that it is highly probable that she identifies him as her father, biological or otherwise, and it will be healthy for her to spend time in his company along with her brothers.

[95] When considering the plan for parenting time, I also consider the nature, strength and stability of the relationship between the children and extended family.

In particular, I consider the evidence respecting the paternal grandfather and paternal uncle.

[96] The paternal grandfather has been involved in violent incidents where he has been the victim of attacks by the mother's family for which they been convicted. As well, he was involved in a violent confrontation with the mother's husband while the children were nearby in the family services office. While I do not conclude which of them initiated the aggression, I do find that they both behave aggressively, and they were both charged with the assault.

[97] This, coupled with the mother's evidence that she witnessed the paternal grandfather abusing his partner in the past, leaves me with concern respecting the paternal grandfather.

[98] There is also little evidence of the paternal grandfather's relationship with the children. He says in an affidavit that the children enjoyed staying with him, his wife and his son and cried when they went back to the mother and DKM's home. But there is nothing beyond this. It is therefore difficult to assess those relationships.

[99] I must weigh the limited evidence against the evidence of the paternal grandfather's history, as well as the presence of the uncle in the home should visits take place there. While I have not concluded that the uncle abused the boys as described, there is likewise no evidence of his relationship with the children and how it would be in their best interests that they spend time in his company.

[100] In balancing all of this, I conclude that any parenting time between the father and the children should not include the uncle. The mother says it should not take place in the grandfather's home. I will allow such visit to take place in the grandfather's residence. The paternal grandfather may be present for such parenting time, but the father must ensure he does not adversely affect the children.

[101] This will minimize any risk to the children and ensure that the father spends the time with them to redevelop the relationship between them. This is particularly so for RPM as she must develop a new relationship with her father while accompanying her brothers.

[102] The final issue respecting parenting time concerns overnight visits. On careful review of the evidence and being mindful of the maximum contact principle articulated in s.18(a) of the *Act*, I note that this principle must be applied

"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."

[103] In this matter, I have already found that the father has committed acts of family violence during the course of the relationship and that the children have been exposed to, or would be aware of, many of those acts. I also found that the father has a history of alcohol abuse, which has not been addressed. I also consider that, during the period of the Agency's involvement, there was recommendation that the father engage with services, which he never completed, while denying that he had any issues of violent behaviour or addictions, either historic or current. I have already found this denial not to be credible.

[104] I also consider the mother's concerns that if such overnights were to occur at the home of the grandfather, the uncle and grandfather could pose a risk to the children.

[105] Considering all of this, I find that it would not be in the children's best interests for them to spend overnight parenting time with their father. This may be subject to change if the father can establish that he is obtaining services to address the various historic issues, but until he does so, I find it consistent with the children's best interests and the maximum contact principle that he have parenting time for daytime visits only. The risks to the children of extended parenting time outweigh the benefits.

[106] Finally, when considering the question of whether the parents should be required to meaningfully consult on major issues concerning the children, this custodial issue includes consideration of the ability of the parents to communicate and cooperate on issues affecting the children. The history of this is very poor. But for the period between 2015 and 2017, the evidence discloses very limited ability of the parents to communicate and cooperate at any time.

[107] There are multiple separations, a history of family violence and lack of insight by each of them as to their responsibility for the difficult history and circumstances of their children. This does not suggest to me that they will be able to communicate effectively on any major issues for the children in the future. Until there is a major change in that ability to communicate and cooperate, I do not see an opportunity for meaningful communication at all.

[108] I, therefore, conclude that the mother should have sole custody and not be required to meaningfully consult with the father on major issues concerning the children. Despite her significant shortcomings in the past, she is the one with primary care and the one who has had to make those decisions for many years. I do not see an advantage to the children in attempting to force the parents to communicate as they clearly have no ability to do so. Any such attempt, I find, would likely give rise to more conflict rather than less and be contrary to the children's best interests.

Order

[109] I will grant an order as set out below.

[110] The mother shall have sole custody and primary care and residence of the children. She will be solely responsible for making all major decisions concerning the children's health, education, religious upbringing, and general well-being.

[111] Each parent will be entitled to authorize emergency medical care for any of the children when the children are in their care. Immediately upon authorizing such emergency medical care, that parent will inform the other of the circumstance and from that point forward, the sole custodial provisions of this order shall apply.

[112] All communication between the parents shall be polite, respectful, business-like and child focused.

[113] Both parents are prohibited from making any negative or derogatory comments about the other parent or anyone in that parent's family any time that they have care of the children, whether the children are present at the time or not. Each parent is also responsible to ensure that no other person makes any such comments, and, if such comments are being made, that parent shall ensure that the comments stop immediately or the other person is removed from the vicinity of the children.

[114] Unless otherwise agreed upon between the parties, the father shall have the following parenting time:

1. Every Tuesday and Thursday from after school until 6:00 p.m. When there is no school, that parenting time shall be from 3:00 p.m. to 6:00 p.m.

2. Every second weekend on Saturday from 10:00 a.m. until 5:00 p.m., and Sunday from 10:00 a.m. until 5:00 p.m.

[115] The following special parenting time shall apply and override the parenting time set out above as follows:

1. Christmas - The mother shall have the children with her on Christmas Eve from 9:00 a.m. until Christmas Day at 1:00 p.m. The father shall have the children with him on Christmas Day from 1:00 p.m. to 7:00 p.m.
2. Easter - The mother shall have the children with her from Easter Thursday to Easter Sunday at 1:00 p.m. The father shall have the children with him on Easter Sunday from 1:00 p.m. to 6:00 p.m.
3. Father's Day and Mother's Day - The father shall have the children with him on Father's Day from 10:00 a.m. to 6:00 p.m. The mother shall have the children with her on Mother's Day from 10:00 a.m. to 6:00 p.m.

[116] All parenting time shall be unsupervised and may take place in the home of the paternal grandfather. The paternal uncle shall not be present for any parenting time with the father. The paternal grandfather may be present during parenting time with the father, and the father shall ensure that the paternal grandfather acts appropriately.

[117] The father is prohibited from consuming or being under the influence of alcohol or any non-prescription drug when he has care of the children and may only consume medication prescribed to him in the appropriate doses when he has care of the children.

[118] The father shall be responsible for the pick-up and drop-off of the children for all parenting time visits including picking them up at school when required. The paternal grandfather shall not be present for any pick-ups or drop-offs at the home of the mother or when the mother is present.

[119] Counsel for the father shall draw the order.

Timothy G. Daley, JFC