

FAMILY COURT OF NOVA SCOTIA
Citation: *Kaiser v. Bezanson*, 2021 NSFC 2

Date: 2021-02-02
Docket: FKPSA No. 119055
Registry: Kentville

Between:

Devin Kaiser

Applicant

v.

Virginia Bezanson

Respondent

Judge: The Honourable Judge Jean M. Dewolfe
Heard January 6, 2021, in Kentville, Nova Scotia
Final Written Submissions: January 12, 2021 for the Applicant
January 19, 2021 for the Respondent
Oral Decision: February 2, 2021
Counsel: Nicholaus Fitch, for the Applicant
Lauran Haas, for the Respondent

By the Court:

Background

[1] The parties are the parents of two young sons, J. and R., ages 7 and 4 respectively. They separated in November 2017. Ms. Bezanson seeks sole decision making, and primary care. She proposes access to Mr. Kaiser three out of four weekends and on holiday times. Mr. Kaiser seeks joint decision making and week on/ week off parenting.

[2] The children have resided primarily with Ms. Bezanson since separation. Mr. Kaiser's evidence is that his parenting time has been unreasonably curtailed by Ms. Bezanson. Prior to the COVID pandemic, he generally had at least J. on weekends, but only limited time with R. Mr. Kaiser also alleges Ms. Bezanson has kept information from him, e.g. J.'s Cerebral Palsy exercises. Ms. Bezanson denies this, but indicates that their communication has been challenging, characterized by Mr. Kaiser's aggressive texting.

[3] Ms. Bezanson's evidence is that she has been responsible for the children's healthcare, communication with teachers, and enrolling J. in swimming lessons pre-COVID. She is concerned that Mr. Kaiser does not value routine in his

home and does not supervise J.'s online access in his home. She also is concerned about Mr. Kaizer's racist texts he sent to her in relation to someone who is black, and his post of a photo of himself holding a book with a large swastika on the front.

[4] Mr. Kaiser says he is not racist or a white supremacist, and notes that he has indigenous and Metis ancestry. He also has concerns about J.'s screen time at his mother's home.

[5] Both parties allege drug use by the other.

[6] Mr. Kaiser seeks a 50/50 parenting arrangement. He says this will provide the boys with certainty and an opportunity for them to spend more time with his family. He and his new partner live in the home in which the family resided prior to separation.

[7] The current applications arose in the summer of 2020 after Mr. Kaiser kept the children for a week of access to go camping and threatened to impose a 50/50 parenting arrangement.

Law

[8] This Court is bound by the provisions of s.18 of the *Parenting and Support Act* (“the *Act*”) in making custody, parenting and child support orders. The Court must make an order in the best interests of a child [s.18(5)] and must consider all relevant circumstances including those set out in s.18(6) and 18(8) of the *Act*. The Court must balance all relevant factors as they impact a child’s best interests.

[9] Parents do not have the right to 50/50 parenting. The *Parenting and Support Act*, provides that the Court must only consider the best interests of a child. The Court must weigh a number of factors in assessing a child’s best interests. Case law while helpful tends to be fact driven. I have received and considered the cases provided by counsel and thank them for providing same.

[10] Courts generally emphasize the need for good communication in order for shared parenting arrangements to work, and to be in a child’s best interests, e.g. *Hammond v. Nelson* (2012), NSCC 27.

[11] Justice Chiasson of the Nova Scotia Family Division recently addressed this concern in *Einsfeld v. Anthony*, 2019 NSSC 227. At para. 53, she summarized the approach that a Court should take when assessing the impact of communication issues on a proposed shared parenting arrangement:

1. Whether impediments to communication are within the control of one or both parties.
2. Are incidents of poor communication statistically significant given the parenting history.
3. Effects on the child.
4. Communication improvements or suggestions for improvements.

[12] In *Einsfeld*, most of communication was respectful, here it is not. Here, Mr. Kaiser texts were more than “regrettable” – they were nasty, threatening, and demeaning. Ms. Bezanson’s communications were for the most part civil and constructive. Mr. Kaiser was relentless, rude & unresponsive in his communication, until lawyers got in the middle. Currently, the parties communicate through their lawyers, and no plan exists by Mr. Kaiser to improve direct communication once it resumes. Ms. Bezanson suggests email or a communication notebook.

[13] In *Einsfeld*, both parties were active and engaged, here they are not. No doubt Mr. Kaiser loves the boys but he has not been an active and engaged parent, and that is not due to Ms. Bezanson. He has failed to take an interest in the children’s health and education until recently, but complains that Ms. Bezanson has not kept him informed. Mr. Kaiser could have done more to be involved in his children’s lives post separation. While Ms. Bezanson did not actively facilitate this, she did not prevent it either. Mr. Kaiser simply did not

try to communicate regularly with J.'s school or make efforts to receive information directly.

[14] In *Einsfeld*, there was flexibility in parenting. Here there is limited flexibility. The parties agreed to a change in school for J., which was Mr. Kaiser's idea. They agreed to no access during COVID due to his partner's employment, and have been able to work out holiday access. However, Mr. Kaiser has exhibited no flexibility regarding parenting; "50% equals fair" in his approach.

[15] In *Einsfeld*, at para. 60, other factors supporting shared parenting were noted:

- 1) Proximity to school. Here both parents live in the same school district.
- 2) Need to provide a consistent schedule, and a lessening of transitions. That is not at issue here.
- 3) Ability to schedule weekday/weekend activities. Here, this can be achieved without a shared parenting arrangement.
- 4) Both parents are able to meet the needs of the child, and have been highly engaged parents.

[16] Here, Mr. Kaiser has a relaxed structure for the children, and no experience or involvement with organizing or participating in the medical needs of either child.

[17] Mr. Kaiser has discussed adult issues with the children. Mr. Kaiser has told two very young children that he will be getting 50/50 parenting, with no regard for the confusion or anxiety this could bring to the children, or the effect it could have on undermining Ms. Bezanson's parenting.

[18] I find that Mr. Kaiser has demonstrated immaturity, volatility, and unreasonableness since separation. He failed to take responsibility for his actions (e.g. refusing to return the children, aggressive texting) until the matter was brought before the Court. He presents as very impulsive, and I share Ms. Bezanson's concern that the children do not follow a schedule in his home.

[19] In this case, I find that despite the contributions by Mr. Kaiser during cohabitation, Ms. Bezanson was the primary caregiver of the children prior to separation, and as well as since separation. She has been responsible for the considerable medical needs of J., arranging daycare and activities, dealing primarily with the school, and arranging extracurricular activities, e.g. swimming for J.

[20] Mr. Kaiser has shown no respect for Ms. Bezanson's parenting. These children have done well in her primary care, and she has ensured that they have had their physical, medical, educational, and social needs met with little input from Mr. Kaiser.

[21] Therefore, the weight of evidence is against a shared parenting arrangement and I will not order shared parenting.

[22] It is not necessary for parents to have equal parenting time in order to build and maintain a good parent/child relationship. Regular contact is important as well as special holiday parenting time.

[23] The Court suggested alternate weekend parenting and a mid-week visit on the alternate week as it promotes regular contact and provides weekday/weekend parenting to both parents as opposed to exclusively weekend parenting times. The parties agreed with this option.

Decision Making

[24] Ms. Bezanson seeks sole decision making. Mr. Kaiser seeks joint decision making. He is particularly concerned about having input into medical decisions. Ms. Bezanson testified that she intended to speak to J.'s doctor before deciding whether to vaccinate J. against COVID-19, due to concerns relating to his

Cerebral Palsy condition. She has vaccinated both children against all childhood diseases. She has made all medical decisions for the children, and has consistently acted responsibly and in the children's best interests. There is no reason to believe she will not do so in the future.

[25] While Mr. Kaiser should be routinely advised as to all medical, educational and other issues, I am concerned that his aggressive communication style and lack of respect for Ms. Bezanson's parenting will make it difficult to jointly make decisions in the children's best interests. Given the communications I have read, and after hearing Mr. Kaiser and Ms. Bezanson testify, I am concerned that Mr. Kaiser would use a joint custody order to cause conflict, which would not be in the children's best interests.

[26] Ms. Bezanson has always been the more involved, mature medical and educational decision maker. I am satisfied she will follow the advice of medical professionals. Mr. Kaiser has no insight into his communication challenges, and no plan for improvement. Therefore, Ms. Bezanson will have sole decision making authority for the children.

[27] Ms. Bezanson will provide Mr. Kaiser with an email at least once a month and more frequently if issues arise, advising of significant health and

educational issues and seeking input prior to making decisions, if possible. She will notify him as to any extra-curricular activity schedules and provide him with contact information for the children's medical, educational, and other professionals so that he may contact them directly and receive information.

Child Support

[28] Mr. Kaiser lost his long-term employment at Eden Valley Foods in 2019. He then secured alternate employment but was let go due to COVID. He currently works for Canadian Tire with part-time hours; however, he expects to receive full time hours. He did not provide full disclosure of his 2020 income.

[29] Ms. Bezanson's counsel suggests that I impute \$26,104.00, i.e. full time minimum wage (at the time of the hearing). Mr. Kaiser earns \$12.55 per hour and works 8:00 am to 5:00 pm, 10 to 14 days per month. Mr. Kaiser testified he paid cash to Ms. Bezanson for child support, but provided no evidence of any payments.

[30] I estimate Mr. Kaiser's income at \$16,867.00 (14 days per month) until June 2021 then \$26,104.00 (full time hours, 40 hours per week). He will pay the table amount of child support based on those respective incomes commencing

October 1, 2020. Any cash payments acknowledged by Ms. Bezanson or received should be credited to Mr. Kaiser.

[31] In summary:

1. Ms. Bezanson shall have sole decision making and primary care of the children.
2. Mr. Kaiser shall have parenting time on alternate weekends from Friday after school until Monday when they are returned to school. The parties agreed that if a child is registered in an activity on Sunday, the return time will be Sunday at 9:30 am unless otherwise agreed.
3. On weeks preceding Ms. Bezanson's weekend Mr. Kaiser will have the children in his care Thursday overnight with pickup and return to school.
4. If there is no school the parties will meet at the Access Nova Scotia parking lot unless otherwise agreed.
5. No adult issues shall be discussed with the children by either party.
6. Consultation, notification and information sharing by Ms. Bezanson as previously indicated regarding health, education and

extracurriculars shall be by email or through a communication notebook.

7. Mr. Kaiser to have one week parenting time during each of the months of July and August with advance notice to Ms. Bezanson. The parties agreed to one month's notice.
8. Mr. Kaizer to have odd years from December 24th at 2:00 pm to Christmas Day at 2:00 pm and Ms. Bezanson to have even years from December 24th at 2:00 pm to Christmas Day at 2:00 pm. The parent who does not have Christmas Eve overnight will keep the children until 6:00 pm Boxing Day.
9. Sharing of other holidays as agreed.
10. Child support of \$208.00 per month commencing October 1, 2020, increasing to \$381.00 on July 1, 2021 (based on an estimated income).
11. The parties agreed that Mr. Kaiser would pay for the net cost (after a deduction calculated by counsel for any tax saving to Ms. Bezanson) for one week of daycare each summer. This should be paid by August 1st of each year unless otherwise agreed.

Conclusion

[32] Counsel for Ms. Bezanson please prepare the order. I will hear submissions on costs.

Jean M. Dewolfe, JFC