

FAMILY COURT OF NOVA SCOTIA

Citation: *G. G. v. B. M.*, 2021 NSFC 7

Date: 20210518

Docket: Digby, No. FDPSA 118543

Registry: Digby, N. S.

Between:

G. G.

Applicant

v.

B. M., A. B.

Respondent

Restriction on Publication: Pursuant to subsection 10(2) of the *Family Court Act*, the judge is required to as far as possible guard against any publicity in proceedings in the Court. Information that would identify the parties, witnesses or children in this proceeding has been anonymized so that this decision can be published.

Judge: The Honourable Judge Marci Lin Melvin

Heard: March 18, 2021, in Yarmouth, Nova Scotia

Final Written: May 18, 2021

Counsel: Regan Murphy, for the Applicant, G. G.

Alexander Pink, for the Respondent, B. M.

By the Court:

Pleadings

[1] The Applicant, G. G., filed a notice of application on June 26, 2020, pursuant to Section 18 of the *Parenting and Support Act*, for custody and parenting time for G. G.-E., born September 5, 2012. She also sought leave to apply and to be found to be a parent for the purposes of the application.

Background

[2] Initially G. G. sought shared decision-making and equal parenting time, however, at the time of the hearing she was seeking parenting time every second weekend from Friday after school, until Monday when the child returned to school.

[3] The Respondent father, B. M., opposed her application.

[4] Respondent, A. B., the child's biological mother, according to testimony and documents filed, has never been involved in the child's life.

[5] There is an order granting custody of the child to B. M.

[6] The matter was initially heard by the Honourable Justice Christenson, who, given her findings with respect to the evidence on a leave application, determined

that the child had the right to a continued relationship with G. G., and granted G. G. leave to pursue her application.

[7] By all accounts, the parties had a turbulent, violent, off-again-on-again relationship, steeped in a culture of daily alcohol consumption.

[8] G. G. was the only witness who testified on her own behalf with respect to her relationship with the child and B. M.

[9] B. M. testified on his own behalf. He had two other witnesses. One was the biological son of G. G., and the other was a neighbor.

Issue

[10] The issue this Court has to determine is whether or not it is in this child's best interest to continue to have a relationship with G. G.

Evidence

[11] The Court has reviewed all of the evidence in this matter.

Applicant

[12] G. G. met B. M., and moved in with him in March 2015. The child was two and a half years old, at this time.

[13] G. G.'s evidence was that she cared for the child all day as B. M., was always in his garage either working or visiting with friends and customers, and often alcohol was involved.

[14] The parties began having difficulties in August 2015, but G. G. remained at B. M.'s house, helping to raise the child until November 2016.

[15] In November 2016, G. G. moved to New Glasgow and then Truro to work. Her evidence is that she continued to return to Digby on as many weekends as possible to spend time with the child.

[16] In September 2017, an incident occurred at B. M.'s home, where G. G.'s evidence is that B. M. became upset with her and smashed her personal items in the presence of the child. She decided to stop visiting the child at that point to de-escalate further incidents of violence.

[17] Twenty months passed with no visits between G. G. and the child.

[18] In May 2019, B. M. allowed G. G. into the home and she saw the child at that time. Her evidence is that the child continued to recognize her as his mother and she made him a promise that regardless of her relationship with B. M., she would play a consistent role in his life. At that point she began travelling to Digby two to three days a week to spend time with the child in B. M.'S home.

[19] The parties had another falling out in August 2019, but G. G. continued to travel to Digby to see the child on the weekends, renting an Airbnb for herself. G. G. said it was at that time that the child found out she wasn't his biological mother, and she explained to him that she would always be there for him.

[20] Her evidence was that the child had anxiety not knowing, if and when, he could see her again, and she put specific dates on the calendar which seemed to help with his anxiety.

[21] In December 2019, the parties resumed discussions about G. G. moving back to Digby to continue raising the child.

[22] In January 2020, G. G. moved back to Digby to B. M.'s home, which she described as very poorly kept and that the child had fallen well behind his peers in school skills according to school reports.

[23] G. G. determined that the relationship wasn't going to work. As a result of an incident between the parties which culminated in G. G. being charged. She has not seen the child since February 2020.

[24] G. G. and the child were able to spend another ten months together before the most recent altercation between the Applicant and B. M. separated them again.

[25] G. G. was forthright in her evidence, admitting on cross-examination that throughout the entire time that she and B. M. resided together, she was drinking and so was he. She said, “alcohol was the root of our problems.”

[26] G. G. is now working on her sobriety and has been with AA since November 2020, and is involved with a Jehovah’s Witnesses support group.

[27] G. G.’s evidence is that she made a commitment to be involved in this child’s life even though the relationship with B. M., was extremely difficult and fraught with conflict.

Respondent

[28] B.M. confirms the basic relationship timeline as noted above, as well as difficult nature of the off-again-on-again relationship.

[29] His evidence on cross-examination in March 2021, was that his new girlfriend was the new mother in the child’s life. They had started dating in November 2020. He wants her to act as the child’s mother. He was asked: “If you break up, you intend to introduce the next woman as his mother?” His response was, “he didn’t intend to break up.”

[30] The Court notes they had been together for four months at the time of this hearing.

[31] B. M., in cross-examination said he used to have problems with drinking and he was working on getting his license back. His evidence was that he had lost it ten years ago for drinking and driving. It was his third conviction. In cross-examination he testified that the last time he had problems with alcohol was four months ago.

[32] He also testified to having lung issues.

[33] In cross-examination, B. M. confirmed that he has a garage at his home and he works from it. He said sometimes when people pull into the garage, they have a drink and sometimes he drinks with them.

[34] He testified that Family and Children Services had been called on him a number of times, and he admitted he drank and they brought a letter back saying he couldn't drink in the presence of the child, G. G.-E.

[35] The Court finds that B. M. allowed G. G. to be involved in the child's life off-and-on despite what their relationship was, for a minimum period of thirty-eight months.

[36] The Court finds there is no evidence that B. M. has any insight as to how, or why his child's relationship with G. G. might impact the child, emotionally and psychologically.

Analysis

[37] It is clear from the evidence, that G. G. considers herself this child's mother figure. In the face of all manner of difficulty, even not being permitted to see the child, she has struggled through the legal system to ensure she has parenting time with this young child. She did not give up.

[38] The Court has not heard from the child, as no Voice of the Child Report was ordered. G. G.'s evidence however, is that she believes the child is bonded with her and has a strong attachment to her.

[39] Her evidence on cross-examination is that B. M. is a good father in areas that he can parent but he doesn't focus on the child's education or nutrition, and there are things that she can teach the child that he can't. When cross-examined as who is to say that his new partner isn't doing those things with the child, her answer was: "That would be good." She did not denigrate B. M., or his parenting abilities, even given the difficulties these parties have had between themselves.

[40] G.G. addressed her alcoholism and the steps that she is making to live a clean and sober life. She admitted to having a slip up in November.

[41] The Court finds her evidence to be credible. She has clearly spent a lot of time and effort in trying to maintain a relationship with a child to whom she has no biological attachment.

[42] The Court was not as certain as to B. M.'s evidence. The Court wasn't clear, if perhaps he didn't understand some of the questions, didn't recall, or was trying to avoid answering. For example, on cross-examination, B. M. testified he had last had a drink four months ago. Then, he said he had two coolers about two months ago. His witness S. L., who is a neighbour, said he last saw B. M. drink about a month ago.

[43] There were other times when the Court believed he was being less than truthful. The Court cannot with confidence make a credibility finding regarding B. M.

[44] What the Court was quite clear on however, having heard the evidence of B. M., is his animosity towards G. G.

[45] The end result is that this child has not seen G. G. in the last fifteen months, as a result of an incident of where tension in the relationship appeared to be at an all-

time high, compounded by the pandemic, which has backlogged and delayed many matters before the Courts.

[46] Justice Christenson, on reviewing the application for leave in this manner, accepted that:

... the child is emotionally attached to the Applicant. She is for all intents and purposes the only mother he has ever known and despite an absence from his life for a two-year-period, I accept that upon arrival that she was greeted by the child, who continued to identify her as “mom.

[47] Mr. Pink, on behalf of B. M., argues that the test in a leave application and the test on an application for “*parenting*” time with a child are two separate tests. He argues:

In a nutshell B. M.’s evidence is that he was in an off-again-on-again relationship with G. G. for roughly five years. G. G. is not the biological mother of G. G.-E., and while she was involved in G. G.-E.’s life, she should not be considered his mother and be awarded parenting time.

[48] He continues:

This Court has evidence from both G. G. and B. M. that their relationship was one with no shortage of conflict and alcohol consumption. B. M. has moved on and is in a new relationship. His new partner resides with him and the child. B. M. sees her as having a maternal role at the present time. Allowing G. G. to have parenting time with G. G.-E. would likely cause issues and potential be confusing for the child.

[49] Mr. Pink submits the case of the **Delorey v. Callahan**, [2009] NSJ No. 607, wherein the fact situation bore a bit of similarity to the one at bar, albeit for child support. The Honourable Justice Williams found that:

...I conclude that Mr. DeLorey was generous and concerned in his support and caring for and I have Tristan – but that he did so at the time of separation from his Callahan, as a person in addition to, not in place of, a parent.

[50] In the case of **Cook v. Cook**, [2000] NSJ. No. 19, the Honourable Justice Campbell wrote:

...It follows in my view that parental status should not be assigned automatically or from the mere willingness of the stepparent to share with children and to assist with their financial, emotional and physical needs. There must be a relatively clear assumption of responsibility shown by or inferred from the stepparents' actions over a sufficient period of time for that relationship to constitute a commitment.

...On the other hand, a child who has been made to be dependent upon a stepparent by actions of the adults in the definition of their relationship with each other and with the child should not be deprived of that support in appropriate circumstances....

...the threshold for a parental status finding must be pegged at a sufficiently high point that it avoids the imposition of obligations and the acquisition of access in custody rights except where a stepparent can be clearly shown to have assumed the role of a natural parent and in substantial substitution for the natural parent's role.

[51] The Court has considered all of the evidence before it, as well as relevant jurisprudence and the written submissions of counsel.

[52] The Court is not automatically assigning a stepparent status to G. G. because of her willingness to assume that role, even subjecting herself to a protracted court process as earlier noted.

[53] The Court does find, however, that the child was made dependent on G. G., as a result of the actions of his father B. M. and G. G. The Court finds that G. G. was in the child's life in some capacity, based on the combined evidence of both parties, for approximately thirty-eight months.

[54] There is clear evidence that G. G. acted in a parental role towards the child from the time the child was two and a half years old. Although there is no direct evidence from the child that he has a bond with her, the Court accepts the evidence of G. G. The Court has already found her evidence to be credible and this piece of the evidence is no exception.

[55] The greatest difficulty in this matter, given the evidence, is determining what would be in this child's best interest.

[56] Would it be in his best interest to have quality time with a person who by her own evidence promised the child she would not abandon him again and stood by that promise, culminating in a hearing on March 18, 2021? A hearing that took much

longer than likely contemplated [fifteen months] as a result of the pandemic and the havoc the pandemic caused the Courts.

[57] On the face of it, the answer to this question should be yes.

[58] However, is it in the child's best interest to have quality time with G. G., when his biological father is so adamantly opposed to it? Would this cause the child more upset than it was worth? Especially given B. M. has no apparent concept of any bond that this child might have with G. G., as a result of B. M.'s own actions?

[59] The regrettable reality even between biological parents is the bitterness between them when it comes to parenting rights. B. M. and G. G., by their own evidence, had a raucous and contentious relationship fuelled by alcoholism. G. G. has testified that she is tending to her sobriety with the help of the 12-step program and meetings with the Jehovah's Witnesses.

[60] B. M. also would seem to want the Court to believe that he is no longer drinking as a result of health issues. His evidence is that he is in a new relationship since November 2020 [four months prior to the hearing] and that this new woman is the child's new mother.

[61] The fact that the child's biological father is in a new relationship is again not that uncommon. The point is that the child, although he has had an off-again-on-

again relationship with G. G. through no fault of his own according to the evidence before this Court, has had more time with G. G. than any other mother figure.

[62] The Court finds that there is a clear assumption of responsibility shown by G. G. over the last six years and that the relationship between herself and the child constitutes a commitment, on her part, to parent this child. She was not just a swinging door.

[63] Further, as noted above, the actions of the child's father, B. M., allowed the child to become dependent on G. G., as a mother figure and the child should not be deprived of this.

[64] The Court finds further that G. G. assumed the role of a natural parent, even returning from New Glasgow and Truro, where she was working as a heavy equipment operator, and spending her weekends with the child until the relationship became so difficult with B. M., that she decided it was not in the child's best interest to continue to put him in conflict. Despite of all of the conflict between G. G. and B. M., at no point in her testimony did she denigrate him. In fact, she was very clear that B. M. was a good father.

Conclusion

[65] The Court finds that it is in the child's best interest to have parenting time with G. G. The Court is ordering that the child have parenting time with G. G. every second weekend from Friday after school until Sunday at 6:00 p.m., and at any other times at the wishes of the child, or upon the mutual agreement of the parties.

[66] G. G.'s testimony is that she rented an apartment with two bedrooms so the child could have his own room, which she had rented-out on occasion to help make ends meet; however, no one was living there at the time of the hearing.

[67] Therefore, G. G. is to have a properly appointed residence and the child is to have his own bedroom, which he does not have to share with anybody. Furthermore, as a precaution, G. G. will not use alcohol twenty-four hours prior to, or during, her parenting time with the child. I am cognizant of her quest for sobriety, and this provision is merely a safeguard, not a comment on use.

[68] And finally, there is to be a provision in the order as follows: neither B. M. nor G. G. will speak negatively about the other in the presence of the child. B. M. and G. G. will not make the child feel guilty, or as if he is doing something wrong, by virtue of the time that he will be spending with G. G.

[69] These two parties will endeavour to be civil and respectful to one another at all times, understanding that the child has the right to pursue the relationship with G. G.

[70] Thank you, Mr. Pink and Mr. Murphy, for your excellent representations with respect to your clients in this matter.

Marci Lin Melvin, JFC