FAMILY COURT OF NOVA SCOTIA
Citation: *K.R. v. T.P.* 2014 NSFC 11

Date: 20140612
Docket: FWMCA-065613
Registry: Amherst

Between:

K.D.R.

Applicant/Respondent

v.

T.P.P.

Respondent/Applicant

Judge:	The Honourable Judge S. Raymond Morse
Heard:	June 10, 2014, in Amherst, Nova Scotia
Oral Decision:	June 12, 2014
Written Release of Oral Decision:	July 31, 2014
Counsel:	Andy Melvin, for the Applicant/Respondent Joshua Cormier, for the Respondent/Applicant

By the Court:

INTRODUCTION

[1] All right. This is the matter between T.P. as applicant and K.R. as respondent and pursuant to application to vary dated June 24th of last year, T.P. made application for review of an Order dated September 15, 2011.

[2] The Order of September 15, 2011 is a Consent Order confirming that K.R. was to have sole custody and that T.P. was to have reasonable access including telephone access as agreed upon by the parties, but stipulated that all access was to take place within the Atlantic Provinces. The Order also confirmed that neither party was to change the child's place of residence without permission of the court.

[3] T.P. and K.R. are the parents of T.G-A.R., Date of Birth March *, 20**.

[4] At time of a docket appearance on December 11, 2013, counsel confirmed a joint request to schedule this matter for contested hearing. Counsel for T.P. confirmed that T.P. was requesting custody of the child. Counsel for the respondent confirmed that the application was opposed. The matter was then scheduled for contested hearing on June 10th and 12th this year taking into consideration the fact that T.P. was resident and employed in the province of Alberta and would have to make arrangements to attend Nova Scotia for trial.

[5] A pre-hearing was held on May 21st this year. At that time, counsel for the applicant confirmed that T.P. was now prepared to concede that joint custody would be appropriate and that he would also be prepared to agree that K.R. would continue to have primary care. The applicant's primary concern was indicated to be his desire to maximize his parenting time or access with the child and he confirmed, or his counsel confirmed, that he was requesting block parenting time or access during the summer months of four to six weeks' duration. Counsel for K.R. confirmed that the respondent would be opposing the application and would be taking the position that there had been no material change in circumstance sufficient to justify a variation of the existing Order.

[6] The matter proceeded to trial as scheduled on June 10th. Three witnesses were called on behalf of the applicant, T.P. His sister, T.M., was the first witness to testify, his mother C.P. also testified as well as T.P.'s current fiancée, M.B. T.P. of course also testified on his own behalf. The affidavit of M.B. sworn March

31, 2014 was entered as Exhibit 1. The affidavit of T.P. sworn September 24, 2013 was entered as Exhibit 2 and his supplementary affidavit sworn March 31, 2014 was entered as Exhibit 3.

[7] The respondent's mother, B.R., testified on behalf of the respondent. B.R.'s affidavit sworn February 28, 2014 was entered as Exhibit 4. The respondent K.R. also testified on her behalf and her affidavit also sworn February 28, 2014 was entered as Exhibit 5.

[8] Determination of this matter requires a decision on the following issues.

1. Should the Consent Order dated September 15, 2011 be set aside because it was signed by the applicant under duress or as a result of coercion.
2. If T.P. is unsuccessful in asking that the Consent Order be set aside, then the court must determine whether the applicant T.P. has established a material change in circumstance so as to justify a variation of the existing Order.
3. In the event the court determines there has been a material change in circumstance then what changes or variation, if any, would be consistent with the best interests of the child.
4. Costs.

[9] At the conclusion of the hearing on June 10th, I confirmed that I was reserving decision but would proceed to provide an oral decision on June 12th, the date that had originally been confirmed as the second day for trial. By proceeding in this fashion, I am hoping to provide the parties with early determination of the application so that they will be able to move forward on the basis of the court's ruling. However, in deciding to proceed in this manner I am also reserving my right to file a more detailed and more coherent written reasons at some future point in time, if necessary and appropriate.

[10] One of the factors that I have taken into account in deciding to proceed in this manner is the fact that the applicant, T.P., is currently in Nova Scotia and will be able to discuss the decision with his counsel face to face before he returns to Alberta.

[11] I would confirm that I have carefully reviewed and considered all the viva voce and affidavit evidence as presented on behalf of the parties. I do not intend

for purposes of this oral decision to review the evidence in detail, since the evidence is no doubt fresh in everyone's mind. I have also considered the oral submissions of counsel as well as the written submissions filed prior to the June 10th hearing. I have reviewed the relevant provisions of the **Maintenance and Custody Act** as well as relevant case authorities.

ISSUE #1

[12] The Consent Order was signed by both parties on September 15, 2011 and issued on that date. The Order confirms sole custody of the child, T., with the respondent, K.R. T.P. was to have reasonable access with the child at reasonable times upon reasonable notice and the Order included a specific schedule of access during the months of September and October 2011. The Order confirmed that all access was to take place within the Atlantic Provinces, that neither party was to change the child's place of residence from Nova Scotia without permission from the court. T.P. has attempted to suggest that he signed the original Consent Order under duress and therefore maintains that the Order should not be viewed as legally binding.

[13] The evidence indicates that the Order was put in place quickly as a result of T.P.'s decision to pursue employment in the province of Alberta and move to Alberta with his current partner, M.B. T.P. was informed that any custody issues could be dealt with by way of an appropriate court application but that any such application would likely not be heard and determined until after his departure date, thus necessitating a return to Nova Scotia in order to participate in such a proceeding. The evidence supports and justifies the conclusion that T.P. decided to forego a formal application process in order to facilitate his move to Alberta and have the opportunity for access contact with his daughter before departing.

[14] The evidence does not support and justify a finding that T.P. was coerced into signing the Order by the respondent or that he signed the Order under duress. Indeed the evidence indicated and confirmed that it was T.P. who contacted the Family Court to initiate the process that resulted in the Consent Order. If there was any pressure brought to bear on T.P. it was as a result of the self-imposed deadline relating to his decision to move to Alberta to seek employment.

[15] There is no evidence before the court indicating T.P. was forced to sign the Order as a result of threats or intimidation. There's no evidence indicating or

suggesting that T.P. was confused as to the terms of the Order or somehow misled about the wording of the Order.

[16] Hindsight being 20/20, I think that T.P. now recognizes that it might well have been in his interests to have proceeded to deal with the issue of custody through a more formal court application rather than choose to participate in the expedited process that he did. T.P. would have been aware of his right to seek independent legal advice before he signed the Consent Order. He chose not to do so. I accept that T.P. felt that in the circumstances he had little choice but to sign the Order but it was a decision knowingly made on his part. Again I have little hesitation in concluding that his decision to sign the Consent Order was possibly ill-advised but I am unable to conclude based upon the evidence before me that T.P. signed the Order either as a result of coercion or under duress, and therefore the Order is valid and continues to be binding upon the parties, unless and until varied by the court.

ISSUE #2

[17] As previously noted, the applicant is requesting that the September 15, 2011 Order be varied to an Order for joint custody which would include appropriate access or parenting time for T.P. including block access or parenting time during the summer months in the province of Alberta.

[18] The Family Court's jurisdiction to make a Variation Order is set forth in section 37(1) of the **Maintenance and Custody Act** which provides that the court, on application, may make an Order varying, rescinding or suspending prospectively or retroactively a maintenance Order or an Order respecting custody and access where there has been a change in circumstances since the making of the Order or the last Variation Order.

[19] In *G.S. and C.H.*, 2011 NSFC 19 His Honour Judge Dyer considered an application for variation under the **Maintenance and Custody Act.** In the discussion portion of his decision, His Honour indicated as follows, commencing at paragraph 77:

> [77] Under the **MCA** the child's best interests are paramount when the court has to make decisions regarding custody, access and related issues.
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> [78] Section 37 of the statute is relevant . . .

And he goes on to set forth the wording. His Honour then states as follows:

> [82] **MCA** variation applications, when contested, usually have two steps. Firstly, the applicant must prove a change in circumstances. (The statute does not specify the change must be "material"; but the case law supports the proposition that trivial, fleeting, and frivolous, etcetera changes will not meet the threshold.) Secondly, she/he must establish that as a result of the change(s), the last order no longer reflects the best interests of the child.
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> [83] The requisite steps need not be dramatic . . . .
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> [84] The requirements are not assessed in a vacuum. All the circumstances surrounding the order sought to be varied and the prevailing circumstances must be considered. With that in mind, on the evidence as a whole, I am satisfied that S. has met the two-fold test or standard.

So that was his decision in that particular case.

[20] In *Burgoyne v. Kenny*, 2009 NSCA 34, Justice Bateman in rendering the decision of the court indicated as follows, with respect to proof of material change of circumstance under the MCA

> [20] Like the **Divorce Act,** the "**MCA",** s. 37(1) requires a material change in circumstances as a pre-condition to variation of an existing order.

[21] What does it mean to speak of a material change in circumstance? In *Legace v. Mannett***,** 2012 NSSC 320, NSSC (Family Division), Justice Jollimore articulated the test found in section 17 of the Act, and she's referring to the **Divorce Act,** but indicated as follows:

> [5] In an application to vary a parenting order, I'm governed by *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.). At paragraph 10 of the majority reasons in *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.), then-Justice McLachlin instructs me that before I can consider the merits of a variation application, I must be satisfied there has been a material change in the child's circumstances that has occurred since the last custody order was made.
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> [6] At paragraph 13, Justice McLachlin was more specific in identifying the three requirements that must be satisfied before I can consider an application to vary a parenting order. The requirements are:

> 1. there must be a change in the condition, means, needs or circumstances of the child or the ability of the parents to meet the child's needs;
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> 2. the change must materially affect the child; and
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> 3. the change was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

And then she went on to indicate as follows:

> [7] Material change is more than a threshold to be crossed before varying a parenting order. All parenting applications, including variation applications, are determined on the basis of the child's best interests. Initially proving that there has been a material change establishes that the current order is no longer in the child's best interests and must be changed to do so. Identifying the change which has occurred informs how the new order should be formulated to reflect the child's best interests in the new circumstances.

[22] As applicant, T.P. bears the onus of proof with respect to his variation application. He must therefore establish on balance of probabilities that there has been a material change in circumstance since the Consent Order was filed and that it would be in the best interest of the child to vary the Order in the manner that he has requested.

[23] T.P. points to the following as constituting a material change in circumstance supportive of his application. T.P. has now established a home in Alberta. He's engaged to M.B., has had a child with M.B. and also is involved in parenting his step-daughter. In addition, T.P. points to the fact that he has secure and stable employment. He also relies upon the fact that M.B. is supportive of his application and that they are both committed to the care of their children. He also points to the fact that the child, T., is now six years old.

[24] When the Consent Order was entered into, T.P. was of course already in a relationship with M.B. Similarly, when the Consent Order was entered into, it was understood by both parties that T.P. and M.B. had decided to relocate to Alberta and that T.P. would be seeking employment in the province of Alberta.

[25] Based upon my review of the evidence, I am satisfied on balance on probabilities that T.P. has established material changes in circumstance. I find the

material changes in circumstance consist of the following: T.P.'s relationship with M.B. is now well established and appears to be secure. They have had a child together, they obviously have a very positive partnership and are committed to the care of their son as well as M.B.'s daughter. They intend to marry. They have acquired a home in * located in what they described as being a quiet community with a big front yard and back yard, appropriate for children. The home has the capacity to accommodate all of their family including T. T. is older than what she was when the Consent Order was entered into.

[26] However, I think another significant and material change in circumstance is the evidence indicating and confirming that the relationship between T.P. and K.R., while obviously not positive at the time of the Consent Order, has deteriorated further since the Order was put in place. Respondent's counsel in his closing submissions categorized the parties' relationship as "high conflict" and the evidence presented during the course of the hearing justifies that label. The only exception that the court heard during the course of the hearing was T.P.'s evidence wherein he testified that for the past few months, or several months I think actually, leading up to the actual hearing, he referred to the relationship as having been more civil.

[27] The evidence suggests that a series of referrals were made by T.P. and his partner to the child welfare authorities in Nova Scotia and it is clear from the evidence that this has impacted negatively upon his relationship with K.R. While again I believe this is a conclusion that is readily apparent based upon the evidence, I am unable to accept respondent's counsel's argument that these referrals were motivated by malice or an effort to gain a tactical advantage in the custody dispute. I accept the evidence of T.P. and M.B. that their communications with the District Child Welfare Office in Amherst, Nova Scotia were motivated by genuine concern for T.'s welfare and I do note that the maternal grandmother, during her testimony acknowledged that she herself expressed concern to an agency representative at one point in time that her daughter was making poor choices.

[28] The respondent herself acknowledged during her testimony incidents or situations which tended to some extent at least confirm aspects of the referral information provided by T.P. and M.B. to the agency. However, in the end result on balance, the evidence certainly indicates and confirms that the interaction and communication between the parties has been extremely limited and that their

relationship and interaction has often times been difficult and could quite properly be categorized as adversarial.

[29] Accordingly, I find that there has been a material change in circumstance since the original Order was made. I find that the changes that I've noted as established by the evidence are not trivial, fleeting or frivolous. They are significant changes that impact upon the parents' ability to meet the needs of the child, as well as the needs of the child herself. The changes are changes which materially impact upon T. and I'm satisfied therefore that continuation of the existing Order is no longer in T.'s best interests.

ISSUE # 3

[30] The **Maintenance and Custody Act** was amended in February of last year. The amendments confirm that the former section 18(5) has been repealed and the following substituted.

> 18(5) In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall give paramount consideration to the best interests of the child.

[31] And I want to assure the parties that I've done my best to comply with that provision of the legislation and I've attempted to make my decision based upon consideration of what I believe to be in T.'s best interests. The amending legislation also of course includes sections 18(6), (7), and (8). Section 18(6) confirms that:

> 18(6) In determining the best interests of the child, the court shall consider all relevant circumstances, including . . . .

And then there's a listing of specific circumstances, factors, or criteria that the court is going to consider. I'm not going to read all of those this afternoon for purposes of this decision. I am, however, going to make specific reference to section 18(8) and I am going to read that provision. It provides as follows.

> (8) In making an order concerning care and custody or access and visiting privileges 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).

[32] This is not a case where I have to consider family violence, abuse or intimidation so really I have to focus on the fact that the legislation and the legislators of this province have made it clear that in determining the issue of access the court is to give effect to the principle that the child should have as much contact with each parent as is consistent with the best interests of the child.

[33] Case authorities provide some guidance to a judge or to the courts with respect to what does it mean when we talk about "best interests". In the case of *Yonis v. Garado*, 2011 NSSC 454, Justice Beaton considered the meaning of "best interests" indicating as follows:

> [30] What does it mean to refer to a child's "best interests"? The concept of best interests was discussed at length by the Supreme Court of Canada in *Young v. Young*, 1993 4 SCR 31. I am mindful of the discussion of the best interests test therein and also of a caution provided therein as reiterated by Justice Dellapinna, J. in *Tamlyn v. Wilcox* (supra) at paragraph 37:
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> > [37] In *Young v. Young*, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3, the Supreme Court elaborated on the "best interests" test. At paragraph 17 the Court stated:
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> > > "... the test is broad. Parliament has recognized that the variety of circumstances which may arise in disputes over custody and access is so diverse that predetermined rules, designed to resolve certain types of disputes in advance, may not be useful.... Like all legal tests, [the "best interests" test] is to be applied according to the evidence in the case, viewed objectively. There is no room for the judge's personal predilections and prejudices. The judge's duty is to apply the law. He or she must not do what he or she wants to do but what he or she ought to do."

> [31] In *Burgoyne v. Kenny* 2009 N.S.C.A. 34, Bateman, J. considered *Gordon v. Goertz (supra)*, and the often cited case in this province in *Foley v. Foley*, 124 NSR (2d) 198. At paragraph 25 of *Burgoyne v. Kenny (supra)*, Justice Bateman said this about the list of 17 factors enumerated in *Foley (supra)*:

[34] *Foley* was a decision of His Lordship Justice Goodfellow of the Nova Scotia Supreme Court and Justice Goodfellow in the Foley case actually listed 17 factors, things, that he felt judges should consider in determining custody cases and it's been a benchmark decision, it's referred to in almost every case involving determination of custody or access issues.

[35] In this *Burgoyne* case, Justice Bateman of our Nova Scotia Court of Appeal went on to indicate as follows.

> [25] The list does not purport to be exhaustive nor will all factors be relevant in every case. Each case must be decided on the evidence presented. Nor is determining a child's best interests simply a matter of scoring each parent on a generic list of factors. As Abella J.A., as she then was, astutely observed in *MacGyver v. Richards* (1995), 11 R.F.L. (4th) 432 (Ont. C.A.):
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> > 27 Clearly, there is an inherent indeterminacy and elasticity to the "best interests" tests which makes it more useful as legal aspiration than as legal analysis. It can be no more than an informed opinion made at a moment in the life of a child about what seems likely to prove to be in that child's best interests. Deciding what is in a child's best interests means deciding what, objectively appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has the best opportunity for receiving the needed care and attention. Because there are stages to childhood, what is in a child's best interests may vary from child to child, from year to year, and possibly from month to month. This unavoidable fluidity makes it important to attempt to minimize the prospects for stress and instability. . . .

> 29 Deciding what is best for a child is uniquely delicate. The judge in a custody case is called upon to prognosticate about a child's future, and to speculate about which parenting proposal will turn out to be best for a child. Judges are left to do their best with the evidence, on the understanding that deciding what is best for a child is a judgment the accuracy of which may be unknowable until later events prove -- or disprove -- its wisdom.

[36] While I agree that there has been a material change in circumstance since the Consent Order was filed, I am not satisfied that it would be in the best interests of T. to grant T.P.'s request for variation of the existing Order from sole custody to joint custody. I do not believe that such a variation would be in the best interests of the child given the obvious inability on the part of these parties, these parents, to communicate appropriately or collaboratively on parenting issues. This is demonstrated by their inability to resolve the access issue that is before the court at this particular point in time, as well as the history of interaction that demonstrates an obvious animosity between the parties that continues to impact negatively on their relationship.

[37] Joint custody is generally seen as inappropriate in cases where, for whatever reason, the parties have demonstrated an inability to cooperate on parenting issues in a manner consistent with the best interests of the child.

[38] I believe that in this particular case an Order for joint custody would only serve to potentially place T. in the middle of continued conflict and disagreement between her parents. Accordingly, I do not see joint custody as being in T.'s best interests at this point in time.

[39] In the case of *Mo v. Ma*, Justice Forgeron confirmed that there were three custodial designations available as options including sole custody, joint custody, and parallel parenting. In referring to another case, *Gill v. Hurst* Justice Forgeron acknowledged that in that case the Court of Appeal held that the trial judge made no reversible error where recognizing that the starting point was to determine if joint custody was appropriate. Justice Forgeron indicated as follows at paragraph 96:

> [96] Joint custody is usually not appropriate where parental relationships are rift with mistrust, disrespect, and poor communication, and where there is little hope

> that the situation will change: **Roy v. Roy**, 2006 CarswellOnt 2898, (C.A.). This lack of effective communication, however, must be balanced against the realistic expectation, based upon the evidence, that communication between the parties will improve once the litigation has concluded. If there is a reasonable expectation that communication will improve despite the differences, then joint custody may be ordered: **Godfrey-Smith v. Godfrey-Smith** (1997), 165 N.S.R. (2d) 245 (S.C.).

[40] In this particular case, I am unable to conclude based upon the evidence before me that the communication between the parties will likely improve once litigation has been concluded. While I hope that this decision may assist the parties in moving forward, and recognizing that it is in the best interests of T. that all communications be at all times appropriate, I am unable to say that there is any reasonable or realistic prospect for an improvement sufficient to justify and support a variation to joint custody.

[41] While I have concluded that a variation to joint custody would not be in the child's best interests, I want to make it clear that I do have concerns about K.R.'s attitude towards sole custody. Sole custody is not to be used as a cudgel or a lever to impose one parent's will on the other or to attempt to exclude the non-custodial parent from playing a meaningful role in the child's life, which may deny the child the opportunity to have a meaningful relationship with the other parent. Sole custody is not meant to create a power imbalance between the parents that will impact unfairly or negatively upon the non-custodial parent in a manner inconsistent with the best interests of the child. Sole custody is not intended as an opportunity for the custodial parent to alienate the child from the non-custodial parent. Use or abuse of sole custody in a manner inconsistent with the best interests of the child may ultimately require the court to review whether or not continuation of sole custody is in fact in the best interests of the child.

[42] Now in making these comments I also want to acknowledge that the respondent certainly has been open to and has permitted reasonable, I think we can say, reasonable access when T.P. has been in the province of Nova Scotia and I commend her for that, and I want to acknowledge that evidence. And that is a positive in this particular situation.

[43] I also want to acknowledge another positive and that is that both parties acknowledged that each has a positive relationship and bond with T. and again I want to make note of the fact that the respondent in her evidence acknowledged

that T. loves T.P. and that she has no concerns regarding his parenting. That evidence is certainly noted by the court and is certainly helpful to the court.

[44] I have concluded that there has been a material change in circumstance such that it would be in the best interests of T. to vary the terms of the existing Order in order to facilitate meaningful and positive interaction between T. and her father in recognition of the principles as set forth in subsection (8) of Section 18 of the **Maintenance and Custody Act.** I find that maintaining the existing Order in its current form, current wording, would be inconsistent with the best interests of T.

[45] I want to acknowledge the concerns that were articulated by the respondent K.R. and her mother with respect to the possibility of extended access in the province of Alberta. While these concerns are understandable, they are not reality based as there has been no such visit to date. This Order will provide the parties with sufficient time to prepare for an out of province visit in 2015 and to do their best to try and ensure that the visit will be a positive experience for T. It is the court's expectation that both parents and members of the extended family will all take part in the process of trying to make sure that the visit in 2015 is a positive experience for T.

[46] K.R. and B.R. again have an integral role to play in encouraging T. to look forward to the visit and not be apprehensive. T.P. can do his part, perhaps it could be as simple as providing a video or a picture, pictures of the family home in *, perhaps a video of some of the places that they might be looking forward to taking T. to during the visit. T. is by all accounts an active, bright loveable child who deserves the opportunity to have a meaningful and positive relationship with both her parents. The involved adults, mother, father, extended family, partners have a shared responsibility to see this happens.

[47] I also wish to confirm that in making my decision in this case I have considered the relevant circumstances as referred to in Section 18(6) of the **Maintenance and Custody Act**. With respect to subsection (8) in particular I find that it is necessary to vary the existing Order in order to 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. Maintaining the existing Order would, in my respectful opinion, produce the opposite result.

[48] Accordingly I would confirm the following variation to the Consent Order dated September 15, 2011.

[49] Paragraph 2 of the Order shall be changed to read as follows. T.P. shall have reasonable access with T. at reasonable times and subject to reasonable notice, such access shall include but not be limited to the following. T.P. shall be permitted to communicate with T. by email, FaceTime, Skype or text on a weekly basis. Such communication may take place at the time agreed upon by the parties or in the absence of agreement, such communication shall take place at 8:00 p.m. Nova Scotia time on Wednesday of each week. Any such communication shall be no longer than 10 minutes unless the parties agree otherwise. By agreement of the parties, the communication can also take place on a different day, at a different time and be for a different duration.

[50] T.P. shall be permitted to communicate with the child by telephone on a weekly basis at a time to be agreed upon by the parties or in the absence of agreement, such communication shall take place at approximately 8:00 p.m. Nova Scotia time on Saturdays. The duration of any such phone call shall be no longer than 10 minutes unless the parties otherwise agree. By agreement of the parties, the communication can also take place on a different day, at a different time and be for a different duration.

[51] T.P. shall be permitted to have extended parenting time or block access for a period of two weeks during the months of July or August in 2015, 2016 and 2017 in the province of Alberta. T.P. is to notify K.R. by June 1st each year as to the specific dates for the extended summer access visit. T.P. is also to provide K.R. with an itinerary for the extended summer access visit by June 1st each year. T.P. shall be responsible for all costs associated with transportation of the child from Nova Scotia to Alberta and unless the parties agree otherwise T.P. is to accompany the child from Nova Scotia to Alberta and at the conclusion of the visit shall accompany the child on the return trip from Alberta to Nova Scotia. And where I said all costs, I meant all costs of transportation. I may have only phrased it in the sense of Nova Scotia to Alberta, but I mean to and from.

[52] By agreement of the parties, another adult other than T.P. may accompany the child. In the event that T.P. does not contact K.R. by June 1st, then there will be no extended access visit in the province of Alberta, unless the parties agree otherwise.

[53] T.P. shall arrange to return the child to Nova Scotia at the conclusion of each and every extended summer access visit. The length or duration or the timing of

the summer access visits during the years 2015, 2016 and 2017 may be changed by agreement of the parties.

[54] Commencing 2018, the summer parenting time or block access shall be for a period of four weeks during the months of July or August each year. Again, T.P. shall notify K.R. by June 1st each year as to the dates for the extended summer access visit. T.P. shall also provide K.R. with the itinerary for the extended summer access visit once again by June 1st each year. T.P. shall remain responsible for all costs associated with transportation of the child from Nova Scotia to Alberta and from Alberta to Nova Scotia. Unless the parties agree otherwise, T.P. is to accompany the child from Nova Scotia to Alberta, and at the conclusion of the visit shall accompany the child on the return trip from Alberta to Nova Scotia. By agreement of the parties, another adult other than T.P. may accompany the child. In the event, T.P. does not contact K.R. by June 1st there will be no extended access visit in the province of Alberta, unless the parties otherwise agree.

[55] The need for T.P. or another adult to accompany the child when travelling to and from Alberta, shall be reassessed by the parties depending upon the age and maturity of the child, such that the requirement for T.P. to accompany the child is not to be considered as permanent.

[56] T.P. shall arrange to return the child to Nova Scotia at the conclusion of each and every summer access visit. And again, the length of the summer access may be changed by agreement of the parties.

[57] K.R. shall be permitted to have weekly telephone contact with the child when the child is participating in the extended summer access visits in Alberta on the days and at times as agreed to by the parties. K.R. shall also be permitted to have other forms of contact or communication with T. during her summer access visits as agreed to by the parties. And I'm thinking of again, the internet, Skype, FaceTime, whatever.

[58] When T.P. is in the province of Nova Scotia, he shall be permitted to have reasonable access contact with T. which may include overnight access. T.P. shall be required to provide at least two weeks' notice of any visit to Nova Scotia and at the time of such notice shall confirm his request for access contact while visiting Nova Scotia.

[59] T.P. shall also be permitted to have contact with the child by way of phone or internet communications on special occasions such as the child's birthday and Father's Day.

[60] In addition, T.P. shall also be permitted to have contact with the child by way of phone or internet communications on holidays. In particular, T.P. shall be permitted to have telephone and internet communications with T. on Christmas Day.

[61] In any given year if T.P. is going to be in Nova Scotia during the Christmas holidays, he shall be permitted to have reasonable access contact, which shall include overnight access.

[62] T.P. shall also be permitted to have such additional access, either direct or indirect, as the parties may agree.

[63] Communications with respect to access are to be child-focused and at all times undertaken in a responsible manner. Neither party is to speak negatively about the other in the child's presence.

[64] K.R. shall advise T.P. of any significant parenting issues relating to T., including in particular, any significant health or educational issues as soon as practicable.

[65] T.P. be and hereby is authorized to contact T.'s school, to inquire as to T.'s academic program and progress by way of direct contact with the school principal, vice-principal or child's teacher.

[66] T.P. be and hereby is authorized to contact any health-care provider responsible for provision of health care to T. including her family physician or dentist or any involved specialist to make direct inquiry with respect to any medical issue relating to the child or medical treatment for the child.

[67] Except as varied by this Decision or Order, the provisions of the September 15, 2011 Consent Order shall remain in force and effect such that K.R. shall continue to have sole custody of T. And there will continue to be a clause confirming that there will be no change in the child's place of residence from the province of Nova Scotia without court authorization.

[68] I am also going to require T.P. to register this Order for enforcement in the province of Alberta. And you can discuss this with your legal counsel.

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[69] With respect to costs, given my decision I believe it would be inappropriate to make any award of costs in relation to this matter.

[70] All right. And I think Mr. Cormier I'm going to task you with preparing the Order. All right?

MR. CORMIER: Certainly, Your Honour.

[71] All right. Thank you counsel. I should also add that the briefs that were submitted by counsel on behalf of the parties were helpful as were their submissions and I thank counsel for their effective presentations on behalf of their respective clients. Thank you.

Morse, JFC