FAMILY COURT OF NOVA SCOTIA
Citation: *J.A.R. v. W.F.C.,* 2014 NSFC 12

Date: 2014-07-21
Docket: Yarmouth No. F.Y.M.C.A. - 034476
Registry: Yarmouth

Between:

J.A.R.

Applicant

v.

W.F.C.

Respondent

Editorial Notice:	Identifying information has been removed from this electronic version of the judgment.
Judge:	The Honourable Judge John D. Comeau, JFC
Heard	June 23, 2014 and June 24, 2014, in Yarmouth, Nova Scotia
Counsel:	Anita Hudak Esq., for the Applicant Hugh Robichaud Esq., for the Respondent

THE APPLICATION:

[1] This is an application to vary brought by the Applicant to vary an order dated July 29 2011. Her application is dated December 20, 2012. The Applicant is requesting the following relief.

1. Neither party discuss court proceedings with the children;
2. That the Respondent not attend athletic events during the time the children are in the care of the Applicant;
3. That all communication between the parties is to be via email not to subject the children to disrespectful comments between the parties;
4. That all costs for osteopath, homeopath and all other natural remedies (medicines) will be shared equally between the parties;
5. That the Respondent pay all sport related costs including travel, equipment and fees (the Applicant was unemployed at the time she made the application)

[2] The Respondent's informal reply (on the record by consent) is for joint custody and primary care with specified access to the Applicant.

[3] The Applicant is opposed to this and requests joint custody and primary care to herself with specified access and conditions attached to the Respondent.

[4] The Applicant J.A.R. is the mother of B., born January […], 2002 and J., born September […], 2003. The Respondent W.F.C. is the father of both boys.

[5] The order of July 29 2011 was a consent document made by another Judge. This order was described as a parenting plan where a parallel scheme was set up. Particular note is paragraph 7 of the order which reads as follows:

> "During the parallel parenting regime the parents understand, as difficult as it may be, that they will not have any contact with the children while the children are with the other parent."

[6] This scheme has not worked for reasons set out in the facts below.

ISSUE: Custody, primary care, access, child support and special expenses.

THE FACTS:

[7] The parties do not get along and cannot communicate property for the welfare of their children. They have two boys referred to earlier who love them both but they are caught in the middle of a conflict between their parents who both display disrespect for the other, sometimes in the presence of the children. This is more complicated by the fact that the Applicant mother has third party supporters

(relatives) who aid her in disrespecting the Respondent. The evidence is one of these supporters, her sister, made an official complaint against the assessor who prepared the combined home study and wish assessment.

[8] The Respondent has no helped the situation by showing contempt for the applicant at times in front of the children. He has breached the court order on numerous occasions, particularly at sporting events when the Applicant has custody. Contact has been made by him with the children at those games, contrary to the court order.

[9] As a third party independent tribunal, the Court has observed from the evidence (which includes oral and affidavit evidence, professional reports and the demeanor of both parties) that they are both caring and loving parents who have the necessary parenting skills to provide for the children's needs. They fall short by not overcoming their animosity for each other which resolution is necessary to promote and foster the children's best interest.

PROFESSIONAL REPORTS:

[10] The Court has had the benefit of two professional reports. One is a home study and combined children's wish assessment, and the other is solely a children's

wish assessment, both done by separate professionals. These form a part of the tools provided to the Court to make an informed decision in this case.

[11] The wish assessment indicate the children want to live with their father. The homestudy also recommends there be joint custody with the Respondent father having primary care. Both assessors indicate that specified access is necessary in the circumstances.

THE LAW:

The Court has considered section 18 of the *Maintenance and Custody Act* and ***Foley v. Foley*** 1993 CANLII 3400 (NSSC) which have mostly been incorporated in the amendments to s. 18 of the ***MCA***.

CONCLUSION/DECISION:

[12] There is no dispute the parties should have joint custody. In this particular case that means the parties shall keep the other informed (given the circumstances by email or text) about anything they know of that affects the welfare of the children. This is a general statement that includes but is not limited to religion, school and medical.

[13] The Court has to consider what is in the best interest of the children. They need their wishes respected if it is concluded it is in their best interests.

[14] Both parents have different parenting styles. The Applicant is more rule oriented while the Respondent may exercise this type of parenting to a lesser extent. The evidence discloses they are both capable of providing for the children's needs.

[15] It is a human parental response to want to watch your children succeed (in this case in sports). Such a response on the part of the Respondent who breached the court order by attending and communicating with the children at their sport events when the Applicant had her parenting time is very difficult to condemn.

[16] Taunting and disrespecting the children's mother at any time is another issue, that if it continues, could have a very grave consequence on the children's best interest.

[17] This type of order (parallel parenting scheme) may work well with some families, but in this particular case, it has hurt the children and it has to be changed.

[18] Section 37 of the ***Maintenance and Custody Act*** requires a change in circumstances described in case law as a material change in circumstnces to provide the Court with jurisdiction to vary an order for custody and access.

[19] There is such a change in circumstances here. The detrimental affect the present order has had on the children and the acrimonious communication between the parties is a change in circumstances to warrant a variation.

[20] It is very difficult to ignore the wishes of the children and the conclusions of the home study, in its written form, supported by testimony of the assessor is professionally and competently done. The method used to complete it is standard fr these type of assessments. There is no evidence of bias in favour of one or the other parties proposed plan of care for the children.

[21] Specific consideration has been given to the provisions of section 18(6) of the ***Maintenance and Custody Act***. It is believed the Respondent father is more likely to foster and promote access. There is here, and it has been brought to the attention of the Court, that there are cultural concerns. This has not been overly emphasized but the Respondent father is aboriginal and capable of providing direction education to the children concerning their heritage.

[22] Emotionally, the children need to have the parallel parenting scheme eliminated. This requires that one parent have primary care and considering section 18 of the ***Maintenance and Custody Act*** and all other evidence before the Court it

is in the best interests of the children that they be in the primary care of their father and the order varied accordingly.

[23] The Curt orders as follows:

1. The parties shall have joint custody with primary care to the Respondent father of the children B., born January […] 2002 and J., born September […], 2003;

2. Access to both children by the Applicant mother shall be every other weekend, Friday after school to Monday morning;

3. One month access in the summer in two week periods, two weeks the beginning of July and two weeks the beginning of August;

4. At any time the children are in the particular care of a parent, that parent shall be responsible to take the children to any activities that they are scheduled to be involved with;

5. Holiday parenting time shall be split (summer access has been referred to earlier). Christmas will alternate 12:00 noon on Christmas Even to 12:00 noon on Christmas day. This will be on a rotating basis and this schedule shall apply to Easter. Christmas Eve this year will

start with the Applicant mother to acknowledge the change in primary care;

6. March break shall be split 50/50 with the Applicant mother having the children the beginning of the week to noon on Wednesday;

7. Neither party shall remove the children permanently from Yarmouth County without the written permission of the other party or by court order. This means the parties may remove the children from the jurisdiction of the court for a period not exceeding two weeks;

8. Child support is terminated as of July 1, 2014 as the evidence discloses the Respondent father is on Worker's Compensation. Any support arrears owing shall be paid through the Director of Maintenance Enforcement at a rate of $25.00 a month, until paid in full. This acknowledges that as a result of the Respondent father having primary care, day to day maintenance costs for him for the children are more than the guideline table amounts. There has been no request by the Respondent for child support from the Applicant;

9. The order for special expenses to be paid by the Respondent is terminated.

[24] Counsel for the Respondent shall prepare the order.

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JOHN D. COMEAU

JUDGE OF THE FAMILY COURT OF NOVA SCOTIA

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