SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Young v. Stephens*, 2015 NSSC 169

Date: 20150608
Docket: *Halifax* No. FTMCA-075431
Registry: Halifax

Between:

Shelley Anne Young

Applicant

v.

Michael Stephens

Respondent

Judge:	The Honourable Justice Douglas C. Campbell
Heard:	June 4, 2015, in Halifax, Nova Scotia
Written Release:	June 8, 2015
Counsel:	Judith Schoen, for the Applicant Kim Johnson, for the Respondent

By the Court:

[1] This matter comes before the Court in the form of competing plans as between a child's mother and father for the parenting of that child.

[2] Throughout the separation of the parties, the child had been of a preschool age. That will change approximately three months from now when the child commences school in September 2015.

[3] A significant event that contributed to the litigation between the parents was that, a number of months ago, the mother moved to the province of Québec with the child without the sanction of the Court or the approval of the father. The parties had been operating under a division of parenting time. The mother dealt with the distance factor brought about by that move by transporting the child from Québec to the father's residence at Millbrook, Nova Scotia, every second Sunday for the child to spend a week with the father. The return journey by the mother with the child to Québec occurred on the intervening Sundays. Thus, the child was traveling every Sunday.

[4] A hearing took place before me on December 16th and 17th, 2014 after which I commented that I had no authority to insist on the mother's choice of residence but that I could deal with parenting rights which could be made conditional upon her choice of residence. I commented that the transportation of the child on a weekly basis by car for many hours was not acceptable on a medium or long-term basis. I ordered an arrangement for the child's care that allowed the mother to have some time to choose where she would permanently reside. To provide a mechanism for that to unfold, I adjourned the matter for a review which occurred a few days ago on June 4, 2015. The within decision follows that review hearing.

[5] It should be noted that the mother had begun a relationship with a man who resided at the subject location in Québec and that by the date of the above-noted review, a wedding between them had been planned for the coming November of 2015. It was the evidence of that person that he would move to Halifax so that the couple would make their home there. This supports the mother's plan for the parenting of the child.

[6] In ordering a parenting arrangement, and in particular the review above-noted, I was anxious to afford an opportunity to the mother to choose a place of

residence that would make some form of shared parenting workable. This objective was born out of the fact that I had then concluded that both parents had a plan with positive attributes that would benefit the child and that it would have been unfortunate to curtail the involvement of either of them to any greater extent than the circumstances surrounding their separation would make necessary. Also, they had had a history of mutual involvement in the parenting of the child.

[7] As such, it was my hope that the parties would reside in the same school district and that some arrangement similar to that which had been followed by them in the past could have been implemented formally.

[8] Subsequently, the mother changed her residence from the Provence of Québec to Halifax with effect that she now resides approximately one hour away from the location where the father resides. (I have concluded that his residence is not changeable from a practical point of view.)

[9] Both parties, through counsel, indicated that they would not seek a so-called "week on/week off" arrangement. They appear to have thereby confirmed their recognition that the transporting of the child to the school located in the district of the opposite parent every second week for each and every day in which school is in session would be unworkable for the child. I agree that such arrangement would not be in the best interest of the child.

[10] The unfortunate truth that comes from this realization is that I must order an arrangement whereby the child lives primarily in the home of one of the parents. Because of the positive attributes of each parent's plan, I have concluded that this presents a very difficult task for the Court. The best solution in light of that fact is the making of an Order that provides for the child to be in the care of the opposite parent for significant amounts and frequency of times.

[11] It is to be noted that both of the parents and the child are of First Nations. They belong to the Mi'kmaq community. Therefore a number of cultural factors must be at the forefront of the Court's mind in deciding what to do about this parenting dispute. Of particular concern to the mother is the fact that the father does not speak his native Mi'kmaq language (although he is attempting to learn it) while she, by stark contrast, not only speaks the language but teaches it and is therefore, to a degree, an expert with respect to it.

[12] The mother's affidavit devoted many paragraphs to a description of her ability to promote and respond to the cultural needs of the child along with many other types of needs. I would not dispute any of those assertions.

[13] The father resides in a First Nations community. He stresses his ability to expose the child directly to cultural amenities by virtue of that fact and also by reference to the fact that his parents and other relatives live there as well and are active in the child's life.

[14] If there is any good news in this case, it is the fact that the child will have the benefit of being exposed to many cultural events and teachings while in the care of each of the parents respectively.

[15] I am satisfied that the many cultural issues that are urged upon me to be determinative of the legal issue are not at all determinative because of the fact that both parents have a great deal to offer the child in that regard and because the opposite parent will play a significant role no matter what the parenting plan may be, given my conclusion that both parents should be involved in a major way.

[16] Both parents have suggested that the opposite parent would have significant amounts of parenting time while the child would live primarily with that parent.

[17] For example, the mother has proposed an arrangement whereby the child would be with her primarily and would spend parenting time with the father for three weekends out of four, which weekends would be extended for an extra day when the child is not in school along with two of three Spring breaks, 50% of the Christmas school break, and a "week on, week off" arrangement in the summer.

[18] She submitted a calendar through counsel which suggests that her plan would mean that she would have the child for 338 days compared to the father's 242 days over the balance of the year 2015 and all of the year 2016 (which is 41.7% of that time frame). She compares this to the father's plan which would see him having the child for 387 days compared to her parenting time at 193 days - 33% approximately. (That math is not altogether instructive because some parts of the parenting time-share spreads over 3 years.)

[19] It is encouraging that each of the parties recognizes the importance to the child of having what they see to be a maximum amount of time with the opposite

parent without compromising the school year. On the other hand, this acknowledgement underscores the difficulty that the Court faces in deciding between their two plans.

[20] Time does not permit me to elaborate with respect to my reasons as fully and completely as I would otherwise do. It is more important, in my opinion, that the parties receive a decision from me well in advance of the commencement of the school year. I explained to the parties that I would not allow my now pending Supernumerary Leave for several months to delay the pursuit of that goal.

[21] The parents should rest assured that I have considered their evidence and summations very carefully and that I feel satisfied that I am aware of their respective positions and the facts upon which they rely.

[22] After considering all of the evidence, I have decided that the child's best interest is served by residing primarily with the father provided that significant amounts of time can be made available for the child to reside with the mother so as to maximize the available time in light of the school year commitment.

[23] In the father's primary care, the child is expected to attend a public school in Truro travelling by school bus each day from the Millbrook. The mother's plan would have seen the child go to a private school in Halifax, the primary funding of which had been arranged by way of a scholarship and a grant from the Band Council with whom the mother has contact.

[24] I make no comment about the attributes of public schools versus private schools, or with respect to the particular schools involved here. I do wonder how the funding for private school will occur as each of the next 12 or more years go by. However, that concern may well be unfounded. Only time will tell. I note that the mother has no current or foreseeable ability to pay those costs from her own income or resources.

[25] It occurs to me that the mother may conclude that her plan is being rejected based on her having moved the child unilaterally to Québec. It might be said that her case would have been stronger if that had not occurred. What is more significant is that the impact of that move was the weekly journey by car from Québec to Millbrook. It is my view that a decision to solve the mobility issue in that way was one by which the mother placed her own interest ahead of the child's

interest. It was an unfortunate development and it was based on a questionable judgement call.

[26] Counsel for the father placed some reliance on the transient history of the mother's place of residence during the separation years. She suggests that this also raises a concern about whether the mother's plan to remain in Halifax after her forthcoming wedding might change. Indeed, the evidence from her fiancé did not leave the Court with a decided confidence in his commitment to that plan. He simply said that he would move to Halifax and that his biological children were at an age and stage where he was free to do so. There may be nothing fundamentally wrong with the speculated risk materializing but it would be a development. I do not speculate about that possibility. I merely note the father's concern and his view that the mother's history suggests that risk.

[27] In the end, I have concluded that the father's plan offers stability of residence, access to culture from both his family, himself and from the child's mother, and access to both of these very committed parents.

[28] Accordingly, the child shall reside in the primary care of the father, and the mother shall have parenting time as proposed by the father; namely, the mother shall have parenting time for two weekends of each set of three weekends which two weekends shall be at her choice upon 30 days notice.

[29] For better clarity, the weekend is defined as spanning from Friday at an hour to be included in the Order when both parents are available after the child's school session until Sunday at 6:30 pm. The below provision shall apply if the parents cannot agree as to the starting hour on Friday. On Friday, the father shall transport the child to the mother's residence and on Sunday the mother shall transport the child to the father's residence.

[30] In addition, she shall have her choice of long weekends except that the Easter weekend and the Thanksgiving weekend will be alternated between the parents each year with the mother having Easter in even numbered years and Thanksgiving in odd numbered years.

[31] Further, she shall have parenting time for 50% of the Christmas school break, the details of which shall either be included in the order as agreed by the

parties or left for them to agree on a year-to-year basis; provided always that it shall be relatively equal over time while recognizing that school and other important commitments must be honoured. If the parents cannot agree as to the implementation of this direction the provisions below may be invoked to invite the Court to decide the issue.

[32] During the summer school break the child shall be with the parents on a so-called "week on/week off" basis with the transition day and hour being specified in the order, as agreed. The first relevant seven-day period of summer in 2015 shall be assigned to the mother. If the parents cannot agree as to the implementation of this direction the provisions below may be invoked to invite the Court to decide the issue.

[33] As a matter of transition, the following applies to the year 2015: a) even though the child is not currently in school, the summer of 2015 shall be deemed to be a summer school break dating from the summer school break at the school in Truro where the child is currently expected to attend; and b) the balance of the month of June in 2015 from this decision date until the summer week on/off arrangement occurs, shall be part of the 2 of 3 weekends assignment mentioned above (whether or not this Decision is reduced to an Order by then) meaning that the mother shall have parenting time for a minimum of 2 weekends in June 2015 regardless of whether there are 2 or 3 weekends prior to the commencement of the week on/off regime.

[34] In the event that the parties are unable to agree upon the meaning of this decision or the wording of the court order to give effect to this decision, after exhausting every possibility of attempting to do so, either party may apply to the Court for a one half-hour appearance on my docket for that purpose and the Court hereby reserves its entire Jurisdiction regarding all matters before the Court including jurisdiction to finalize any and all outstanding issues or to give new and different direction than was stated or intended herein.

[35] If such access to the Court is needed before the commencement of school in early September 2015, the requesting Counsel is at liberty to ask the Scheduler to arrange a time during July or August 2015 after learning my availability during those times.

[36] In the event that either party seeks costs in this proceeding, that party shall, within 30 days of the date of this decision, obtain from the Scheduling Office a one

half-hour appearance on my docket after October 1, 2015 for the purpose of arguing same. In the event that no such docket time is arranged within that deadline, that party shall be deemed to have accepted that there shall be no costs,

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Campbell, J.

Halifax, NS