

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *P.J.L. v. J.L.C.*, 2015 NSSC 336

**Date:** 2015/11/20

**Docket:** *Halifax* No. 1201-062437

**Registry:** Halifax

**Between:**

P.J.L.

Applicant

v.

J.L.C.

Respondent

Editorial Notice: Identifying information has been removed from this electronic version of the judgment.

Judge: The Honourable Justice Moira Legere Sers

Heard: November 9<sup>th</sup>, 2015, in Halifax, Nova Scotia

Written Release: November 24<sup>th</sup>, 2015

Counsel: Bernard Thibault for the Applicant  
Michèle Poirier for the Respondent

**By the Court:**

[1] The Respondent asks for costs of \$11,250 as if she was wholly successful.

**History of proceedings**

[2] This Applicant father made application for sole custody in December 2013. He was motivated to do so as a result of a serious change in his child's behavior. This behavior was corroborated by third party witnesses.

[3] The matter required three settlement conferences, all of which were unsuccessful. The matter then required 2 ½ of days of hearing.

[4] In the course of the proceeding and delays incidental to the proceeding, the mother took heed and addressed the conflict that had arisen in her household. She reduced the conflict the child was experiencing when moving between her family, the father's, and those people and family members with whom he had contact.

[5] On seeing the improvement in the child's demeanor the father changed his relief request from sole custody to joint and shared custody, seeking equal time with his son.

[6] The mother responded to this application by contesting the father's bid for sole and expanded parenting. She sought retroactive and prospective child support, effective January 2013, with a specified contribution to Section 7 expenses.

[7] Both parents have had extensive involvement in their son's life, the mother as primary caretaker and the father in his extracurricular life.

[8] The father has had difficulty expanding his parenting time on a consensual basis.

**Parenting results**

[9] The father was successful in expanding his parenting time although, not to the extent of shared custody as defined by the child support guidelines.

[10] He has a legitimate concern about the child's living circumstances.

[11] The mother was successful in obtaining enhanced retroactive and prospective child support and a prospective contribution to Section 7 expenses.

### **History**

[12] The parties agreed in 2008 to a schedule of parenting time in their Corollary Relief Judgement. There is no designation of primary parent in the orders.

[13] Their original agreement respecting child support was accepted as a reasonable arrangement for the child. The mother was on social assistance.

[14] While they agreed to no child support, the father contributed \$150 to maintain the mothers' lease. He continued these payments until 2011 when he learned the mother was employed.

[15] The father was active in the child's extracurricular life and focused his support on Section 7 costs, school and sporting trips etc.

[16] However, although the fathers' income increased, no adjustments were made to the monthly support.

### **Parenting plan**

[17] The offers of settlement on January 7<sup>th</sup> and January 9<sup>th</sup> proposed primary care with the mother. This decision did not alter their original arrangement in which there is no designation of a primary parent.

[18] The offer increased his parenting time by two nights per month

[19] The Court maintained the same weekly parenting time (generally ten overnights per month) but increased the father's holiday time to equal sharing of all holidays; Easter, Christmas, March Break and summer, moving from one week to four and adding the extra day on a long weekend or teachers in-service.

[20] Since historically the father has not been successful in his negotiating extra time, this court order was more permissive than the offer.

[21] On the whole, the Applicant achieved more than the Respondent in that his parenting time was expanded and the obvious signs of conflict affecting the child was reduced.

### **Financial**

[22] Child support was entirely subject to the decision as to the structure of parenting time.

[23] Since I did not grant shared custody and the portion of time did not exceed 40% by the guidelines, the mother was more successful than the father even though his time increased significantly.

[24] I did not grant retroactive Section 7 expenses. The father was already paying a significant sum to support their child in his sporting activities.

### **Retroactive**

[25] The Court awarded retroactive child support in the amount of \$7,935 retroactive to March 2014. The mother asked to go back further in time in her original application however, her offer to settle all retroactive claims was for a sum of \$6000.

[26] She was successful on that award.

[27] As to the request to claim the child for income tax, in her offer she agreed to give up 2012 and 2013 in return for the right to claim prospectively.

[28] On the whole, she was more successful than he and her offer more advantageous to him than the Court ordered payments.

[29] While there was mixed success the mothers position was the more successful.

[30] I am conscious of the need to ensure parents are not denied access to the Courts when the best interests of the child dictate the need for modification or alteration of existing agreements.

[31] I have reviewed the case law submitted by counsel.

[32] This was not an either or decision, rather, it was a modification and enhancement of the father's custody, given serious concerns regarding the conflict.

[33] Each parent is to be credited, the father for bring the matter forward and the mother for addressing the conflict.

[34] This is also a case where if the conflict arises again there may well be a need to re-litigate if a consent on improvement cannot be reached between the parties (paragraph 135, page 14 of the decision).

[35] On the other hand, the child support ought to have been adjusted much earlier as the Applicant father was in an improved financial situation to contribute more appropriately to his child's regular table amount support.

[36] I have noted the Applicant's changed circumstances and obligations towards his second child.

[37] I award costs of \$5,000 payable in two installments, the first payable by February 27<sup>th</sup>, 2016, and the second by June 30<sup>th</sup>, 2016.

[38] The arrears of child support and back taxes are payable by an additional \$175 per month until payment is made in full.

[39] Any refunds in income tax shall be secured and paid towards reduction of the arrears until payment in full has been completed.

[40] Counsel for the Respondent shall draft the order.

Legere Sers, J.