

SUPREME COURT OF NOVA SCOTIA

Citation: *McIntyre v. Veinot*, 2016 NSSC 8

Date: 2016-01-07

Docket: No. 1204-4420C/ SKD 48891

Registry: Kentville

Between:

Roy St. Clair McIntyre

Applicant

v.

Natasha Lynn Veinot (McIntyre)

Defendant

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Judge: The Honourable Justice Pierre L. Muisse
Heard: October 26, 27, 28 and 29, 2015, in Kentville, Nova Scotia
Final Written Submissions: Received December 14, 2015

Summary: The parties had been sharing parenting of their three children, in the Windsor, Nova Scotia area, on a week on / week off basis since 2008. In July of 2015 the father, unable to find employment in Nova Scotia, moved to Alberta for employment. The two daughters, aged 10 and 12, expressed a desire to live with him in Alberta. The son, aged 14, is autistic and unable to understand what it would mean to move to Alberta. The father applied for an order permitting the children to move to Alberta with him. However, pending hearing of the Application, the children remained with their mother in Nova Scotia. The father also sought retroactive variation of his child support obligations to eliminate arrears on the basis that: he had run out of money to pay child support because he lost his part-time employment and the RRIF in which he had deposited his severance package from his prior

full-time job was exhausted; and, the mother had been intentionally underemployed since at least 2010. Going forward, he proposed that, irrespective of who had primary care, no child support be payable to account for high access costs. The mother requested that: the children's primary residence be with her; prospective child support be reduced to account only for one trip per year to exercise access in Alberta during spring break; all other physical access occur in Nova Scotia; special air travel arrangements be required to accommodate their autistic son; the father's child support obligations be increased retroactive to 2009; and, he be required to pay the full table amount from July going forward.

Issues:

1. Did the witnesses provide credible and reliable evidence?
2. What parenting arrangements are in the best interests of the children?
3. What, if any, retroactive change should be made to child support obligations?
4. What, if any, arrears of child support are owing?
5. What, if any, child support is payable prospectively?
6. What, if any, order should be made regarding distribution of the Canada Child Tax Benefit and the Universal Child Care Benefit?

Summary:

1. There were significant reliability concerns, and some credibility concerns in relation to the mother's evidence. There were some reliability concerns in relation to the evidence of the maternal grandfather and the respite care worker. The father's evidence was credible and reliable. Where it conflicted with that of the mother and her witnesses, except where otherwise indicated, it was accepted over that of the mother and

her witnesses. The children's wishes assessor's evidence was also credible and reliable.

2. It was in the best interests of the children that the two girls live with their father in Alberta, and that the son live with his mother in Nova Scotia. The girls had given a lot of thought to fact they would be leaving behind the life and relationships they knew. They were intelligent and mature. Their wishes were properly motivated and carried significant weight. The mother prioritized the needs of the son, who required almost constant attention, to the detriment of the needs of the girls. She expected even the 10 year old to deal with the son in a manner beyond her years. As a result she blamed the 10 year old for some of the son's violent, aggressive or otherwise negative behaviors. The girls were sometimes fearful of the son, who had been aggressive towards them, including by coming after them with scissors. He did not feel pain and unknowingly used excessive force as a result. They felt safer in their father's home. The 12 year old expressed an inability to talk to her mother about serious things such as being bullied at school and her thoughts of self-harm. She was able to speak with her father about those things even though he was in Alberta. The mother was unable to fully connect emotionally with the children. She made comments which indicated she did not trust the 12 year old to make good life choices. The 12 year felt inadequate as a result. She felt her stepmother was more of a mother to her than her own mother. Despite knowing of their wishes, concerns and fears for months, the mother did not discuss those with them. In contrast the father had the emotional flexibility to be empathetic and supportive of the girls, or fun-loving and engaged, as the circumstances required. He encouraged open and honest communications with the girls. Especially the 12 year old was in need of that support. However, he did not prioritize the son's special needs requirements to the extent the mother did. His approach to disciplining the son was more traditional than hers. It would benefit

the son to have the mother's complete specialized attention. A special air travel plan is required to accommodate the son's difficulties with change. Physical access was engineered so that the children would, to the extent reasonably practicable, all be parented by the same parent during spring break and during half of the summer and Christmas breaks.

3. Income was imputed to the mother. She deliberately turned away patients from her chiropractic practice so that she could limit her work to part-time beyond what was reasonably required by the needs of a child. From 2010 to July 2015 her income earning capacity was slightly greater than the father's income. Therefore, using only the set-off figures, because there was insufficient information for a Contino analysis, the mother should have paid the father a total amount of child support that minimally exceeded that which the father should have paid her. Instead, since 2010, the father had paid her over \$65,000 in excess child support. He did not seek return of payments made before his Application. Given that excess payment, Child support was adjusted to remove all arrears and he was not required to pay child support even during the period the children remained with the mother in Nova Scotia between July and Christmas 2015. The parties started 2016 with a clean slate.
4. As a result, there were no arrears owing.
5. Going forward, neither party was ordered to pay child support, even though the mother would otherwise have to pay the father child support, provided that she covered the son's section 7 expenses and the access costs for the girls, which would be high.
6. Each parent would receive any CCTB and UCCB for the child or children primarily residing with her or him.

