

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: S.D. B. v. L.D. B., 2008 NSSC 142

Date: 20080515

Docket: 1201-49943

Registry: Halifax

Between:

S. D. B.

Applicant

v.

L. D. B.

Respondent

Judge:

The Honourable Justice Moira C. Legere Sers

Heard:

February 27 and 28, and April 8, 2008, in Halifax, Nova Scotia

**Final Written
Submissions:**

Peter D. Crowther - April 15, 2008

L. D. B. - April 17, 2008

Counsel:

Peter D. Crowther, for the applicant

L. D. B., self-represented

By the Court:

[1] Ms. B. filed a variation application on October 26, 2006, advising that E. A. B., born September *, 1991, had been residing with her since September 1, 2006. The remaining two children, D. A. B. and J. L. B., born September *, 1993, continue to reside with Mr. B.. This impacts the custody order and the issue of child support. (**editorial note- removed to protect identity*)

[2] Initially, Ms. B. wished to delete a historical term in the order that the children are not to be in the presence of Mr. G. J., his family or anyone associated with the escort industry. She has subsequently withdrawn her request to have that term removed. She wants her access reinstated.

[3] Mr. B. filed an application to disclose child protection and police records as a result of information that came to his attention from one of the children.

Legal History

[4] The parties were married on September 15, 1989, and divorced by divorce judgment issued on February 20, 1997.

[5] The corollary relief judgment issued on February 20, 1997, grants joint custody of all children to both parties. The residence of the children is with the father. In addition to other access provisions, the corollary relief judgement incorporated the order of the Honourable Judge T. T. Daley issued on May 17, 1996. This is as follows:

1. The father shall provide the mother with all information concerning the children, concerning their health, education and welfare.
2. The father shall consult with the mother with respect to the children's health, education and welfare. Except for a necessary medical emergency, this consultation shall be undertaken before any decisions are made concerning the children. The father shall keep the mother advised directly in writing at her last known address, as to their residence and telephone number where the children may be contacted.

3. The father shall transport the children to and pick up the children from access.
4. **That at no time, shall L. D. B. have access to the children in the presence of G. J. or any member of his family or any person associated with the business of escort services.**
5. The mother shall have overnight access to the children only at the residence of her parents, except as agreed by the father.
6. The mother shall have weekend access to the children, at her parents' residence, every second weekend from either Friday evening or Saturday until no later than 4:00 p.m. Sundays.
7. The mother shall have access on Mother's Day and her birthday.
8. The parents shall alternate Christmas.
9. The mother shall have access to the children on Easter and on Halloween.

[6] In the corollary relief judgment issued on February 20, 1997, the learned trial judge added the following clauses:

1. The mother shall have access to the children on their birthdays.
2. Telephone access at all such other times as the children may wish to initiate by phoning her and a specific minimum telephone call every Wednesday between 6:30 and 7:00.
3. An assessment order was issued in April, 2000.

[7] The mother made an undue hardship application which was dismissed by order issued on August 2, 2002.

[8] An application to vary the corollary relief judgement issued on February 20, 1997, resulted in a further court order from the Supreme Court of Nova Scotia (Family Division) issued on May 26, 2005. That order deleted, in its entirety, the

terms of the order incorporated in the original divorce decree as reflected in the order issued on May 17, 1996.

[9] Further, the court lifted the requirement for supervision, set out access between the children and the mother to include access on their birthdays, telephone access at any time, the requirement that the father provide all information concerning the children's health, education and welfare to the mother and a requirement that the father consult with the mother before decisions were made.

[10] The order also granted physical custody or access between the mother and the children on the mother's birthday and Mother's Day, alternate Christmas, Easter and Halloween and every second weekend.

[11] The judge removed the necessity to have the access supervised and at the residence of the mother's parents.

[12] The mother was granted a two week period of block access during the summer months in accordance with the terms of the order. The parties were not entitled to remove the children from Nova Scotia.

[13] The learned trial judge left, as a condition of access, paragraph 2(p) which reads as follows:

(p) that at no time, shall the Respondent (L.) exercise access to the children in the presence of G. J. or any member of his family or any person associated with the business of escort services;

[14] There is a consent variation order issued on May 31, 2006, as a result of an application by both parties.

[15] In this consent variation order, the parties continued to share joint custody of the children and set out a schedule of access that differed from the previous access orders.

[16] The mother was to have physical access every second weekend unsupervised. She was to have access during the school year on Wednesday until Thursday morning on the weeks preceding her non-access weekend and weeknight access (not overnight) on weeks preceding her access weekend.

[17] This consent variation order confirmed her right to have access on Mother's Day, her birthday and liberal telephone access. It confirmed the father's right to have the children on Father's Day and his birthday.

[18] It also confirmed the mother's right to have physical access to the children on their respective birthday's and contact between the children and the mother's child from Mr. J.. Christmas and Easter continued to be alternated between the parents and two weeks of block access during the summer.

[19] The parties agreed to such other acts as could be arranged between them, continued the restriction on mobility and confirmed in paragraph 16 on page 5 the following:

16. At no time shall the Respondent (L.) exercise access to the children in the presence of G. J. or any member of his family or any person associated with the business of escort services.

[20] The parties dealt with child support.

[21] A further consent order was entered into on June 8, 2007. It was to reflect the fact that one of the children, E. A. B., born September *, 1991, began to live with the mother in September, 2006. (**editorial note- removed to protect identity*) The agreement continued the joint custody situation and addressed the child support issue and adjustments reflecting the change in circumstances.

[22] The application to remove paragraph 16 of the order, which restricted contact with Mr. J., was adjourned and it is this matter, together with the mother's request to have access reinstated, that are the subject matter of this proceeding.

[23] There were numerous pre-trial conferences and disclosure issues, including a contested motion to obtain disclosure of police records and child protection records relating to **Mr. G. J.** Mr. J. objected to this disclosure.

[24] The trial commenced on February 27, 2008, and continued on February 28, 2008, and April 8, 2008. The following witnesses testified: Linda Williams, Julianne MacKinnon, S. B., K. M., D. M., S. B., G. J., Constable Susan Foster, P. M., L. B. and Tracy MacInnis.

[25] The records tendered by way of consent are the records from O.L.L. Leasing & Holdings Ltd., the Department of Community Services and the Halifax Regional Police relating to the parties to this action.

[26] The records relating, in particular, to Mr. J. which include records from the Royal Canadian Mounted Police, the Department of Community Services, Halifax Regional Police and Income Assistance were tendered but not all by consent.

Factual History Since Last Variation

[27] E., the parties' oldest child, was, by court order, in the father's care. After a party involving under-age drinking in September, 2006, E. and her father had a serious disagreement. Her father broke her cell phone in anger. She left her father's home and went to live with her mother where she has lived since that date.

[28] Since then, her mother has relocated twice; 16 N.L., Apartment 212, B., and 120B R. L. R., B., where she resides at the present date.

[29] E. returned to her father's residence temporarily and detailed for him the events that transpired at her mother's home between September, 2006, and July 27, 2007.

[30] E. told her father that Mr. J. regularly stayed over at the house and slept there on the weekend. On one occasion, she came upon her mother and Mr. J. in bed together.

[31] The two boys, who currently reside with Mr. B., corroborated that their mother lives with Mr. J.. Mr. J. has been in the home during their access visits. The boys told their father that on several mornings when they stayed over at their mother's home their mother told them to go upstairs before breakfast. Mr. J. would come upstairs from the basement where they indicated their mother's bedroom was.

[32] Mr. J. admitted he smokes marijuana on a regular basis. He indicated he has a medical licence to do up to 5 g per day and a licence to cultivate. Mr. J. has exposed E. to marijuana cultivation.

[33] Both Mr. J. and the mother admit they live in a home together. They maintain that Mr. J. lives downstairs, that they live separately and she, E. and N., Mr. J.'s son, occupy the main floor and upstairs. They maintain they are not living together and that Mr. J. has no exposure to Mr. B.'s children.

Historical Information

[34] Mr. J. has an extensive file with Income Assistance.

[35] The landlord confirmed that Ms. B. and Mr. J. lived together at 132 A. R.. The income assistance file indicated that the owner confirmed they lived there for approximately two years, leaving in May, 2004. Nova Scotia Power confirmed Mr. J. had power in his name. The landlord advised they did not leave on good terms.

[36] On August 3, 2005, Ms. B. advised the assistance worker that she and Mr. J. did reside together at 132 A. R. until 2002. She advised she moved to 16 N.'s L., Apartment 212. She said she was not then in a relationship with Mr. J..

[37] When Mr. J. received in excess of \$100,000 for a settlement, he bought a home in E. and they moved in there. Mr. J. denied he moved in, although he did admit visiting this address where his son resided frequently.

[38] On July 26, 2005, Mr. J. left Ms. B.'s cell phone number with Income Assistance in case they needed to contact him.

[39] From the beginning, Ms. B. denied any contact occurred between Mr. J. and Mr. B.'s children. She also denied that she and Mr. J. lived together.

[40] Mr. P. M., the superintendent for 16 N.'s L., testified. Ms. B. entered into a lease on August 1, 2005, and vacated these premises on February 2, 2007. There is a judgment against Ms. B. in the amount of \$2,744.90 for missed rent, damages, etc.

[41] He advised that Mr. J. was told to stay away from the apartment because of the trouble he had previously caused around the building. He advised Mr. J. he was banned from the building.

[42] In 2007, the superintendent observed Mr. J. jumping over the balcony railing to Ms. B.'s apartment through an unlocked door. When the police arrived, Ms. B. denied he was in the apartment. The police searched her apartment and found him hiding in the apartment. Ms. B. advised she was unaware of his presence in the apartment.

[43] The superintendent also advised that on one occasion he observed Ms. B. with a black eye showing marks and bruises on her face. She denies this.

[44] Ms. B. entered into a lease agreement with Mr. J. for the premises at 120B R. L. Road effective March, 2007. The social assistance workers needed proof of rental to advance Mr. J. any assistance that was due to him as a result of his living circumstances.

[45] On May 24, 2007, the case worker noted she had advised Mr. J. the accommodation does not meet the definition of renting. He would qualify for assistance not as a separate unit, but at a board rate. The case notes following a home visit reveal that Mr. J. did not have a self-contained unit in the house, thus, they would not fund him for a self-contained unit as Ms. B. was living upstairs with their son.

[46] Initially, Mr. J. refused to give the assistance worker the name of the woman with whom he entered into the lease agreement. On May 24, he advised the case worker he was renting the downstairs from Ms. B. at 130B R. L. Drive. Upon inspection, he used a back entrance and had to cross through the kitchen to access his living space. He does not have a kitchen downstairs but Mr. J. and Ms. B. testified that he does have a bathroom, bedroom and his own living space.

Further Evidence of Mr. J.' Presence in Ms. B.'s Residence

[47] The police file relating to Mr. J. discloses, among other incidents, an incident on *May 16, 2000*; a disturbance complaint. The police attended at the residence of Mr. J. and saw his face heavily welted about the forehead and temple areas and his lower lip bleeding.

[48] He advised police that individuals involved with crack and the Angels arrived at his home and assaulted him. He refused to lay charges as he was fearful he may end up in the harbour.

[49] On *May 16, 2000*, the police also investigated death threats allegedly made against Ms. B.. She denied any such threats.

[50] The file from the Halifax Regional Police discloses another investigation on *April 11, 1997*, into an assault on a young woman tenant living in an apartment below Ms. B. at 86 H. P. D.. After investigating, no charges were laid by the police.

[51] During the course of this investigation, the alleged victim disclosed that Ms. B. and Mr. J. lived together in the apartment. During the course of this, the young woman made allegations against Mr. J. whom she said was alone in the apartment.

[52] When the police investigated, they were advised by the owner of the building that Ms. B. and Mr. J. lived in the apartment above the alleged victim. Ms. B. subsequently came forward to the police on *May 19, 1997*, to advise them that Mr. J. could not have been alone during the night in question because she was at home with him working as a dispatcher with P.'s Escort Service.

[53] Mr. J.' mother, the owner of P.'s Escort Service, provided a letter to police verifying that between the 7th and the 14th of the month Ms. B. was working at home and, thus, the allegations from the complainant could not be true.

[54] Ms. B. confirmed to the police that she continued to work for the escort service from *November 13, 1996*, to *February 21, 1997*. She worked out of her home. The police interviewed a witness Mr. J. and Ms. B. brought into the police station to verify Mr. J.' whereabouts on the date under investigation. Mr. A. T. advised he was a friend of both Mr. J. and Ms. B. and stayed at their home in *January, 1997*. He confirmed that he stayed with Ms. B. and Mr. J. and verified that Mr. J. was not alone.

Court Transcript - May 3, 2004, and July 5, 2004

[55] Mr. B. tendered the transcript of the trial and sentencing of Mr. J. regarding a charge of uttering threats against Mr. B.. Mr. J. was found guilty and received a suspended sentence with 12 months probation, conditions to seek counselling and anger management, participate in the Options Anger Program, refrain from direct

or indirect contact with Mr. B. or be within 100 meters of his place of residence or employment.

[56] The evidence of Mr. J. is as follows at page 49:

I mean I haven't been with his wife for three or four years now, right?...

[57] And at page 51 as follows:

I'm not around his children ever...I was with his ex-wife for a little while.

[58] And in response to a question put by the prosecutor, Mr. J. responded as follows at page 53:

MS. GREIG: Mr. J., on the 24th of October 2002, were you and Mr. B.'s ex-wife together as a couple?

A. No.

Q. You had split up at that point?

A. Yeah. I keep very good relationships ... very good relations with her. *I bought my son a house, put it in my name. She lives in it.*

[59] While Mr. J. admitted that he never called Mr. B. at his home, the prosecutor played a recording which commenced as follows:

TAPE RE-PLAYED

Hi S., this is G...I'm just calling on behalf of L. because she's very upset concerning the court documents...

[60] Although he denies making the call, saying he took the phone from Ms. B., it appears that he initiated the call.

Other Child Protection Concerns

[61] The case notes also reveal that, as a result of Mr. J.' explosive rage experienced by staff at the income assistance office, a protection of property notice was issued in September, 2007.

[62] In October, 2007, Mr. J. advised he was living in G. B..

[63] E., the oldest child, advised and Mr. J. admits to a long history of committing serious acts of self-mutilation, including the night of September 1, 2007. During this incident, Mr. J. was intoxicated with a combination of alcohol and drugs, including cocaine, and he severely injured his arm.

[64] On Saturday, September 1, 2007, the police attended 120B R. L. Drive in B.. They were called by Mr. J.' mother. They reported what they observed as an attempted suicide by Mr. J.. The person police listed as a related person was Ms. B. residing at 120B R. L. Drive. Their son was at home during the incident.

[65] They had been informed an adult male had been cutting himself with a razor blade and put his arm through a window. Mr. J.' mother had been called to the residence before the police arrived. She told the police to go to the basement where her son was injured.

[66] Mr. J. was nude, covered in blood, with "the most serious injury seeming to be a large gash in the area of his right bicep". The officers noted many old scars and were told by Mr. J. that he cuts himself. The officers were told Mr. J. had been drinking, doing cocaine and smoking marijuana and had a history of mental illness and self-mutilation.

[67] They had to attempt to stop the bleeding and have him taken to emergency. Ms. B. was said to be present during the attempt and told officers that it was not the first time that it had happened.

[68] E. now resides with her mother although it is not entirely clear exactly how much time she spends with her. Without advising the father, the mother transferred E. to a school outside the district.

[69] During a brief intermission with her father, E. advised her father about activities in her mother's home. She advised that her mother asked her to hide sex

tapes Mr. J. made while with another girlfriend. Ms. B. suggested they were not sex tapes, rather 'sexy tapes'.

[70] E. advised that her mother allowed her to sleep with her then current boyfriend in the home.

[71] E. advised that in 2007 she arrived home and found her mother drunk, spraying perfume on Mr. J.' clothes and then setting them on fire. The mother advised and admitted she was drunk on that occasion and angry at Mr. J..

[72] E. advised she had witnessed her mother pounding Mr. J.. In another incident in the spring of 2007, she heard a loud thud downstairs and found her mother crying. She understood that her mother had punched Mr. J. and he retaliated by pushing her to the floor.

[73] On July 24, 2006, Mr. B. called the residence of Ms. B. and Mr. J. answered. He asked to speak with his daughter, E.. She came to the phone. The police attended the residence and spoke with Mr. J. and noted his son was there as well. There was no mention of Ms. B. being there. He told the police he lives downstairs and he and Ms. B. are no longer a couple.

[74] This is clearly a breach of the order regarding E., as well as evidence directly contrary to that given by Ms. B. to Children's Aid Society that Mr. J. is rarely, if ever, left alone with his son.

[75] Mr. J. indicated, both to the police and to the court in these proceedings, that he is not a party to the order between Ms. B. and Mr. B.. Therefore, he advises the restriction does not bind him. He advised the onus is on Ms. B. to live up to the terms of the order.

[76] The police were given a one-sided picture of the family situation by Ms. B.. They accepted it at face value and removed themselves from the home. The fact that the order indicated the B. children were not to be in Mr. J.' presence escaped notice.

[77] E. has been living with Ms. B. since September, 2006. Despite assurances that she was not in contact with Mr. J., there is significant contact at least weekly, if not daily.

[78] In the fall of 2007, Mr. J. drove E. to Waterville to see her boyfriend. Both her mother and father disapproved of this boyfriend. Ms. B. indicated she gave Mr. J. no permission to take her daughter. He advised it was because E. asked him to do so.

[79] The children have been exposed to extreme levels of conflict between their mother and Mr. J. and to the ongoing conflict between Mr. J., Ms. B. and Mr. B..

[80] There is no doubt, since moving in with her mother, E. has admitted drinking to excess, skipping school and her performance at school has deteriorated. E. admitted to her father that she had experimented with cutting behaviour. Mr. J. is a “cutter” and has extensive scars from this self-mutilation.

[81] Certainly, E. is a troubled young woman and one cannot simply assume it was the transition to her mother’s home that was fully responsible for the deterioration in her behaviour.

[82] E. spoke of an incident in August, 2007. Mr. J. and Ms. B. were sleeping together. Someone knocked at the door. Mr. J. grabbed some knives and stayed up all night watching the window. E. reported he was “freaking out”, he laid out the knives and placed some in his pocket.

[83] E. was interviewed by Child Protection Services and she confirmed open drug use by Mr. J.. She advised that on many occasions Mr. J. was out of it. He admitted at a previous “uttering threats” trial that he smoked “a lot of weed”.

[84] The running file notes from Child Protection Services on August 20, 2007, verify the disclosures made by E. to her father are similar to those made to this agent. Ms. B. was interviewed and denied the allegations. E. was interviewed again on September 7, 2007, and did not recant the allegations regarding the drug use in the household among other admissions.

[85] E. subsequently contacted the worker. She was very upset and advised that she was blamed by her mother for causing problems as a result of these disclosures.

[86] When E. returned to her mother's home where these allegations took place, the agency did not intervene due to the fact E. was 16 and the parents had a joint custody arrangement. They have not intervened since that time despite the allegations regarding open drug use and domestic violence between Ms. B. and Mr. J..

[87] Ms. B. was interviewed by the police on September 9, 2007. She advised them that Mr. J. lived in the basement area of her home. She advised Mr. J. was not overly involved in her son's life describing herself as the primary caretaker. She advised the police he had a "split personality disorder" making his mental health unstable.

[88] Mr. J. gave evidence which was not contradicted by Ms. B. in court testimony. He advised he sees his son every day. He drives him places and is very involved in his life.

[89] Ms. B., when questioned by the police in September, 2007, advised that she rarely sees Mr. J. smoke marijuana in the house or when questioned about whether he smokes when caring for N. she responded "not that I know of". She advised "he is rarely alone with N.."

[90] Ms. B. admits having worked for an escort service called P.'s Escort Services run by Mr. J.' mother. There is clear evidence she continued to work as dispatch for some time after that. Both Mr. J. and Mr. B. worked as drivers in this business.

[91] Ms. B. admitted she worked in the escort business from September, 1994, to July, 1995. Two years later, she admitted she is still involved but as a dispatcher working from her home. In earlier custody proceedings, she testified she had no further involvement whatsoever since June, 1995. That was clearly not true.

[92] In Mr. J. file with Income Assistance, in a purchase order issued August 23, 2007, he received \$325 to buy furnishings for his apartment. He submitted a copy of a standard form of lease agreement between himself, as tenant, and Ms. B. for a tenancy to begin March, 2007, at 120B R. L. Road. The lease agreement was signed on February 3, 2007.

[93] Mr. J. has been described by one doctor as suffering from chronic daily headaches, substance abuse and severe personality disorder.

[94] Mr. J. has been restricted in his communication with Income Assistance due to the fact that he contacted the office and threatened to “go postal” due to differences of opinion between him and workers in the office. His behaviour is considered unstable. He has difficulty containing his temper. He has been served with a protection of property notice and advised not to attend the S. District Office or be in the C. C. H. C. C. for six months dated from the order of September 11, 2007.

[95] In August, 2007, when the Children’s Aid Society received a referral and investigated the B. home, their understanding was that the mother’s current partner was Mr. J. and he was in the home. They confirmed in August he was still in the home.

[96] Ms. B. confirmed to the social worker that Mr. J. was living in the basement. Due to safety concerns expressed as the Department of Community Services began to risk manage this file, agency workers from Child Protection Services were advised not to attend his home while he was present.

[97] The worker admitted it was not in the best interests of the children to be in the house when Mr. J. was present. Because of E.’s age and ability to self-protect, they left her there.

[98] The social worker admitted that it was not often they did not personally interview a principal player in a child protection investigation. In this case, they decided not to interview Mr. J.. They were aware of his volatile behaviour, his threat towards the assistance workers, his suicide attempt and his angry encounters with individuals.

[99] They were subsequently informed by Ms. B. that he was no longer living there. They advised Ms. B. that he was not an appropriate caregiver and ought not to be seeing his son unsupervised.

[100] The worker indicated in court that if he was a child care provider that would be sufficient grounds to reopen the case.

[101] As of September 9, 2007, the agency worker advised that if Mr. J. moved back into the home, the risk to N. would have to be assessed. She advised that due to the emotional state of Mr. J. and his drug use *they would consider N. at physical and emotional risk if Mr. J. returned to their home. They cautioned against exposing N. to the father's erratic and volatile behaviour.*

[102] The agency notes indicate that Ms. B. was advised that the agency has significant concerns about Mr. J.' mental health and drug use and all contact with Mr. J. was to be supervised. Should she allow him to return to their home, or allow her son unsupervised contact with him, more intrusive measures would be taken to assess risk and ensure his safety.

[103] The worker was told to interview N. at school. The child informed the worker that his mom and dad lived in his home together.

[104] N. spoke very positively about his father.

[105] They observed the child to be open, articulate, forthright, pleasant, direct and generally presented well.

[106] The child presented as clean and well dressed. The child confirmed his mother and father lived together. N. advised that his father lived in the basement and him and his mother lived in the home. He spoke positively of his relationship with his father. N. was aware that an interview would take place.

[107] The worker advised his school that N. was not to be released to his father under any circumstances.

[108] On September 11, 2007, Mr. J. informed the agency that he was moving out of Ms. B.'s home to his mother's home.

[109] On September 13, 2007, Mr. J.' mother advised the agency worker that Mr. J. could not stay with them. She advised that he has physical and emotional problems and was a "pain in the ass". She advised that he has his child's best interests at heart and tries to keep N. out of adult issues.

[110] On October 10, 2007, Ms. B. clarified with the agency she was allowed contact with Mr. J. and that access with N. be supervised. The agency concluded

their file on October 25, 2007, on the basis that Ms. B. and Mr. J. were not a couple and the exposure of the child to Mr. J. was minimal.

[111] In her affidavits, Ms. B. suggests that her daughter, E., is lying and she is a troubled young woman. Clearly, she is a troubled youth.

[112] Ms. B. is adept at confusing the issues by pointing the finger at Mr. B. and creating her own version of events. She tells a story that causes the police and others to empathise with her and diverts the attention from her own actions.

[113] Ms. B. advised she is no longer in a romantic relationship with Mr. J.. She advised they still cooperate with each other with respect to raising their son. Clearly, she has no control over her household or Mr. J..

[114] She admits she caught Mr. J. cheating and admits to burning some of his cloths after drinking.

[115] Rather than a denial, she puts Mr. B. to the strict proof of his allegations.

[116] In her September 7, 2007, interview with a worker from the Children's Aid Society, she advised Mr. J. is rarely alone with N.. That is clearly not the truth.

[117] She advised, as of November, 2007, Mr. J. lives with his mother.

[118] She admitted there was an incident in her home during an access visit when her son swung a steak knife at J., her son with Mr. B..

[119] Ms. B. advised that Mr. J. stayed in her residence in an area that was separate from where she and the children live. She denied that she told her children to go upstairs so Mr. J. could enter the residence.

[120] She admits that during the incident described in Mr. B.'s affidavit, the children may have seen Mr. J. and herself sitting together on the couch watching television together. She was not sleeping with him.

[121] Mr. J. made it clear to the court that he intends to continue to see his son, who is in the custody of Ms. B., as much as possible, even daily if possible. He has no intentions of being deterred. Even if Ms B. intended to keep him away, I

am certain it would be difficult without strict court order and constant police intervention.

[122] I am also certain, on the evidence, that Ms. B. has no intention of restricting Mr. J. daily contact with his son.

[123] While Ms. B. had promised Children's Aid Society that Mr. J. does not spend time with his son alone, he clearly spends a great deal of time with his son both with Ms. B. and alone. Ms. B. sees no risk to her child by Mr. J..

[124] Ms. B. works full-time and leaves her child in the care of his father and, on other occasions, with sisters and others. The testimony is clear this child spends time alone in the care of his father.

[125] She acknowledged that E. was doing fairly well in school before she moved into her household and acknowledged her behaviour went down hill sometime later in the fall of 2007. Ms. B. admits she has had considerable difficulty with her daughter's behaviour, drinking, skipping school, etc.

[126] Ms. B. does not believe there is any reason for the restriction in the court order, nor does she see any grounds for the requirement that the children are not to be in the presence of Mr. J. although she is not going to argue for the removal of this clause.

[127] At one point, Ms. B. indicated that when her boys were visiting her, she tried to avoid contact with Mr. J.. This is clearly not supported by objective evidence.

[128] She also advised the court on July 17, 2007, that he had access to her child whenever he wanted. She denied he was living with her when he clearly was. She pretended that he came to see her son and when he was there E. was out or downstairs on the computer. She advised it was very rare they might cross paths. She understood she was obliged to abide by the court order.

[129] Mr. J. advised he was allowed to be in the residence whenever he wanted. The restriction applied to Ms. B.. Despite the direction of Children's Aid Society and the restriction in the order between the B.s, Mr. J. stated that he has no order against him.

[130] He does not have any insight into the effect on the current status quo where his own child may be at risk and certainly the two children Ms. B. has with Mr. B. may be removed permanently from an access order.

[131] Ms. K. M. testified on behalf of Ms. B.. Her knowledge of Ms. B. was not extensive, her support of Ms. B.'s position regarding her personal life did not match her ability to be in a position to assess the B. family. She has some contact in her work place and spoke of her achievements there. Her knowledge is second-hand and her actual contact was minimal. I give her testimony little weight.

[132] Ms. D. M. suggested she and Ms. B. were best friends. She was unaware that Mr. J. lived in the basement apartment although she professed to be in contact regularly. Either she is not telling the truth, or she knows far less than she professes. Her testimony mirrored almost verbatim the testimony of Ms. M. and is essentially Ms. B.'s testimony through a third party. Her evidence was not sustained in cross-examination.

[133] Ms. M. advised after the second time she met Mr. J. she let him babysit her son. She lacks sufficient judgement to consider her testimony with any weight. Her opportunity to observe was less than the affidavit claimed and much of her evidence was hearsay based on the information she received from Ms. B. and heard from others.

[134] Ms. S. B., Mr. J.' mother, testified. She stated at trial she was not sure where her son was living. She advised while Mr. J. and Ms. B. lived together after their son's birth they have not lived together for at least the last year.

[135] Ms. B. professed to know little about her son's activities. She did not know where he worked. She would not give the police any information when they arrived at his residence on September 1, 2007, to rescue her son. She denied he attempted suicide.

[136] She speaks to her grandson daily. She had not been around the twins and she admitted both her son and Mr. B. used to drive her girls to clients who called her escort service. She admitted Ms. B. worked for her first as someone who was sent out to clients and secondly as a dispatcher from her home. She admitted she has almost daily phone contact with Ms. B. although does not visit regularly. She

advised Ms. B. to let the children live with Mr. B. when the two separated. She believed then he was a good parent and had the more stable home.

[137] In general, her testimony was evasive and non-responsive. Her memory was uncertain when challenged yet adamant about those points regarding whether or not Ms. B. and her son lived together. She was called on September 1, 2007, to the very home where Ms. B. and Mr. J. lived together to assist them when her son put his arm through the window.

[138] Generally, Ms. B. tried to assist Ms. B. maintain the charade that while Mr. J. and Ms. B. lived together in the same home, they lived separately.

[139] She advised that when the B.s' parents separated her son, Mr. J., moved in with Ms. B. as they were friends. She advised that she knew through Ms. B. the difficult time she had with Mr. B.. She advised that the injury her son sustained on September 1, 2007, which necessitated immediate intervention, was not in fact a suicide attempt but an indication of the frustration her son had when dealing with the Department of Community Services.

[140] Her memory is poor at times affected by a car accident and morphine for pain. She was unable to recall some details although it is clear she supports Ms. B. and her son. She admits her son has emotional difficulties.

Conclusion

[141] There are two parents before me, both of whom were involved in an escort service with Mr. J. who is the owner's son. I have no actual evidence in support of Mr. B.'s ability to parent. His custody of the children was not in dispute. I make no conclusions about his ability to parent or the health of the two boys in his care. I understand that his long-term relationship with their stepparent is dissolved. This decision is not to be taken as an endorsement of the father's parenting ability as that issue was not before me.

[142] The father's conduct is not before me. There is evidence on which I can conclude he has never stopped trying to discredit the mother or prove that she is living with Mr. J.. He continues to find himself in conflict with Mr. J. and Ms. B. perhaps because he and Ms. B. have three children in common. This creates great conflict between the parties, Mr. J. and the children.

[143] The father admits he spoke to the children about the mother's past involvement in prostitution or the escort industry. His own past seems to have been minimized. His behaviour in court is immature and the evidence supports that he is unnecessarily combative. Perhaps this is why Ms. B. is able to convince authorities that she is a victim of malicious intent on the part of Mr. B..

[144] The mother does not lack intelligence and has adequately put her views across in court. She cross-examined each witness well. Her presentation as a victim of malicious gossip, misinterpretation and parent alienation is entirely deceptive.

[145] Her direct testimony entirely lacked credibility. Her explanations regarding her living circumstances are simply not believable. She has continued to live intermittently with and emotionally supported Mr. J. and fostered his contact with their child. It is unclear to me whether she believes her own falsehoods. There are many.

[146] Mr. J. and Ms. B. have a long history of living together and "separate yet together". At times, Mr. J. maintains a separate apartment. They may, or may not, continue to be in an intimate relationship. I am certain that is not always a constant. However, they are very much a team.

[147] They team up to provide assistance with the necessary backup to support Mr. J.' receipt of assistance. They team up against landlords, when necessary, denying Mr. J. lives there or admitting it when corroboration is necessary for the police.

[148] They continue to maintain that they live in the same residence but remain separate and that Mr. J. does not have frequent daily contact with N. or the twins to avoid scrutiny from Child Protection Services and the order that exists between Ms. B. and Mr. B..

[149] They have advised Income Assistance, Child Protection Services and the court that they do not live together or have a relationship that would expose the children to their lives together or to Mr. J.. The totality of the evidence indicates otherwise, clearly and without doubt.

[150] What is the truth?

[151] Mr. J. has extensive contact with both Ms. B. and his child, N.. Whenever Mr. B.'s children visit their mother, there can be no doubt they are in contact with Mr. J.. E. lives with Mr. J., Ms. B. and N..

[152] Ms. B. and Mr. J. support one another. Ms. B. sees the other side of Mr. J. and believes he would not actually hurt anyone, that he is not a threat. This is despite the fact that she has been seen bruised, he admits to an explosive temper, he admits he would not hurt anyone but will self-mutilate in the home exposing the children to his temper, his mental instability, his drug use, his rage, his fear and his former associates who have caused him bodily harm.

[153] He has been heard to threaten to kill those who anger or threaten him, he has been told to stay away from an apartment building housing Ms. B. because of his behaviour, he has been served with a notice under the *Protection of Property Act*, R.S.N.S. 1989, c. 363, by the Department of Social Assistance because of his verbal explosive behaviour, agents for the Minister of Community Services have been told not to go to the home to interview him and not to interview the child in his home if he is there.

[154] Mr. J. has serious mental and emotional health difficulties, as well as significant personality difficulties, that make it difficult to have peaceful relationships. He uses drugs to address his physical and emotional pain.

[155] He may have the best of intentions towards Ms. B. and clearly loves his son.

[156] He advises he has been seriously abused as a child, comes from a dysfunctional family and was institutionalized in a place where he was the victim of significant abuse.

[157] I have no knowledge of his personal history other than what he was prepared to say and how he presents and he presents as a significantly impaired individual. He is articulate and not without intelligence. He knows how to use the system.

[158] Neither Mr. J., nor Ms. B., nor Mr. B. for that matter, have exhibited any insight into the possible effects of their behaviour on children.

[159] Neither Ms. B. nor Mr. J. exhibit any intent to abide by a court ordered restriction of his contact with the children. In fact, in all probability, they will ignore any similar restriction imposed and continue this subterfuge that *may* fool the casual observer.

[160] Thus, simply keeping the restriction will not sufficiently ensure the children in Mr. B.'s care will not be exposed to Mr. J.. This term will not address the ongoing conflict between the two men and Ms. B..

[161] I can make no finding on the condition of the children in Mr. B.'s household and the effect of his behaviour on the children. Earlier courts have decided, as have Ms. B., that Mr. B. should be the primary parent.

[162] Both have indicated their belief that there should be some contact between the mother and the children. Indeed, without her involvement with Mr. J., there may be fairly extensive contact.

[163] I cannot judge what benefit keeping the contact between the mother and the twins is to the children in these circumstances given I have little evidence on the relationship between the boys and their mother. I do, however, have extensive evidence on the conflict between the parents and Mr. J. and the exposure of the children to this conflict.

[164] Ms. B. does not intend, or appear, able to comply with the court ordered restriction regarding Mr. J.. No doubt having a child together makes this very difficult for her.

[165] However, I am convinced the mother simply will not be truthful about her circumstances.

[166] I have considered terminating her right of access. Courts are very reluctant to move to this sort of finality. I am particularly concerned about closing the door to future visitation and connection because I do not have much by way of evidence about the children's circumstances in the father's home and whether they have any viable options should there be a breakdown in the father's home.

[167] I am left to impose supervision on any contact between the mother and the children residing with Mr. B..

[168] The supervision must be outside the premises where the mother currently resides. It is recommended that the visits be planned in advance by the mother to identify an activity and perhaps a restaurant or public place she intends to take the children.

[169] If Mr. J. is near, or in proximity to, the children and Ms. B. during these visits, her access will and must be terminated pending further order of the court.

[170] The supervision shall be as agreed upon between the mother and father in writing and in advance.

[171] Supervision shall not be by any of Mr. J.' friends or relatives or by any of the witnesses produced by the mother in this hearing.

[172] Mr. J. is prohibited from any contact with the children, either direct or indirect. In the event third party service providers, including police and school officials, etc., observe any contact between Mr. J. and Mr. B.'s children they are directed to report this immediately to child protection authorities.

[173] Supervised visitation will recommence once per week for a period of three hours. The purpose is to keep the children in contact with the mother while maintaining their security.

[174] The visits will take place either on Saturday or Sunday afternoon as agreed upon by the parties in advance in writing.

[175] There shall be no overnight visitation.

[176] Since E.'s custody was not argued before me, I make no order as to her circumstances. However, I do find E. ought not be living with Ms. B. in her current circumstances. She has refused to return to her father's residence and the Department of Community Services, Child Protection Services, have decided not to intervene due to her age and what they consider her ability to self-protect.

[177] She is very troubled and her living circumstances may not assist her to find stability. The father would have her back should she choose to return. It seems to be this warrants investigation by child protection authorities to determine what

options exist for a 16 year old in her state of mind and continued state of dependancy. They were certainly aware of her circumstances before she turned 16.

[178] The issue of joint custody versus sole custody was not pleaded. I make no adjustment to that terminology. I refuse to reinstate unsupervised access for the mother given my reasons as stated above. I allow supervised access only.

[179] The residence of the twins shall remain with the father.

[180] The father shall continue to keep the mother advised in writing at her last known address, as to their residence and telephone number where the children may be contacted.

[181] The children may initiate reasonable telephone contact with the mother.

[182] The mother may have telephone contact with the twins every Wednesday between 6:30 p.m. and 7:00 p.m. She shall also be able to initiate a call and a supervised visit on Mother's Day and on their birthdays.

[183] The parties may agree to a supervised Christmas visit and such other supervised visits as agreed upon between the mother and the father for special occasions.

[184] All such agreements shall be in advance and in writing between the parties.

[185] I order counsel for the applicant to provide a copy of this decision to the appropriate Child Protection Branch of the Department of Community Services. N. is not before me and his circumstances merit investigation by Child Protection Services given their direction to Ms. B..

[186] The financial matters were not before me.

[187] Counsel for the father shall draft the order. The parties may submit written briefs as to costs by May 30, 2008.

Legere Sers, J.

May 15, 2008
Halifax, Nova Scotia