

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: J.G.W. v. T.L.W. 2007 NSSC 392

Date: January 4, 2007

Docket:1202-001632 (049993)

Registry: Amherst

Between:

J. G. W.

PETITIONER

-AND-

T. L. W.

RESPONDENT

Judge: The Honourable Justice J. E. Scanlan

Heard: January 4, 2007, in Amherst, Nova Scotia

Written decision: January 8, 2009

Counsel: Tammy C. MacKenzie, for the Petitioner
Stephanie Hillson, for the Respondent

Editorial Notice

Identifying information has been removed from this unofficial electronic version of the judgment.

By the Court:

[1] There are a number of agreements as between the parties dealing with issues such as exclusive possession, who pays the matrimonial debts, or at least who services them, I should say, agreement that the house hopefully will be sold. There is no specific offer at this point in time, it's not listed, there's no agreement to list it. I did encourage the parties yesterday to cooperate in selling the house if there was a pending sale because I think it's in both of their interest to do so.

[2] On the issue of access, there are also agreements as regards sharing of holidays. Counsel, I don't have specifics as regards the details of that agreement, but I'm assuming that since you said there was an agreement, you worked that out as between yourselves. Basically as I understand it, if one parent gets Christmas the other parent gets Easter. That doesn't deal with the entire Christmas break. I'm not sure if you worked that out or not. I would hope that maybe the way you could do it is to have the first half of the Christmas break with one parent, and the second half with the other, switching some time just around Christmas, and whoever has the Christmas Eve, Christmas morning, would not have Easter morning. Okay? That's basically what I would expect is the norm in any event.

[3] The main contested issues in this case deal with access and whether it should be supervised, and whether these children should be in the presence of Mr. W.'s parents, including his mother and step-father. I must say that in many cases that come before this court, credibility is not really an issue where the parties come before the court and say, "This is what has happened, this is what my plan is, pick the best plan in terms of the best interests of the children". This is a somewhat unusual case because I'm satisfied that in this case, indeed credibility is an issue. When I'm talking about credibility, what I'm talking about is truthfulness.

[4] I'm satisfied Ms. W. did just about everything in her power to make Mr. W. look as bad as possible so that she could minimize any time he or his parents including his step-father would have with these children. Ms. W., I want to point out to you that as I understood the evidence and as I accepted the evidence in terms of the inexcusable behaviour in the presence of these children, you are every bit as much to blame as Mr. W.. Both of you have problems in terms of anger management. There is a way to deal with one another in the presence of these children. Sooner or later what you are doing is going to have a negative impact on these children. It's not going to do you or the children any good for you to come to

this court and ask the court to make a determination based on a misrepresentation as to the facts.

[5] There is enough truth to go around for this court to make arrangements that are in the best interests of the children based simply on the truth and on the facts. I would hope that in terms of your future dealings with Mr. W., you're not going to be coming to this court or any other court in exaggerating or misrepresenting the facts in attempt to keep the children away from Mr. W.. I hope in the future you will not act in a way that would jeopardize his relationship with the children, his job, and even his freedom. Those are possible consequences of the types of complaints you made. Those are the types of representations you made.

[6] Mr. W., as I understand the situation and accept the situation, is a good parent who loves his children. He wasn't the primary care giver; he was the primary breadwinner in the family. That meant he couldn't and didn't look after the children on a regular basis for extended periods. He was away working. He was on the road *. (*editorial note- removed to protect identity*) That doesn't mean he wasn't able to love and care for these children and protect these children every bit as much as you could. He just didn't have the time.

[7] It's obvious, in terms of the incident that occurred on October 22nd, that it was inexcusable for him to come home banging on the door complaining about it being locked. I understand how the situation blew up. As I say to you, Mr. W., those types of actions are inexcusable. But Ms. W., you then insisted that he take the children without you accompanying him, and to take them to the house. You are now saying Mr. R. presents a danger to these children because he is a pedophile, according to you and according to his daughter. That's just not consistent. The evidence is that in fact he could and did care for these children in the presence of Mr. R. and in the presence of his mother. I can't imagine any mother who is as concerned, as you now say you are in terms of the safety of these children and the ability of Mr. W. to look after them. Then you would be fighting the way you were to have him take the children with him on October the 22nd. Like I say, that is inconsistent with the position that you now maintain. Totally inconsistent.

[8] In view of the evidence that has come from C. W., I can understand and appreciate the concerns that you have. I wasn't there, you weren't there, Mr. W. was not there, even Mr. W.'s mother was not there, when these alleges were said to

have happened as between Mr. R. and C. W.. We don't know. I accept the proposal that Mr. W. makes and it's agreed with by Mr. R. and by his wife.

[9] The proposal they make is they will take steps to make sure that Mr. R. is never with these children by himself. I'm prepared to make that part of the order. In other words, it's not a choice that you get to make anymore, Mr. W.. Ms. R. doesn't get to make the choice and Mr. R. doesn't. It's a court order which says the children will not be left alone with him at any time. Okay?

[10] Not to say that I'm satisfied that anything untoward happened as between Mr. R. and C. W., I'm simply saying lets ensure the risk is not present as there'll be no opportunity. It's your obligation to ensure that is in fact what happens. If there's anything that's going to risk you having continued access to your children with your mother and with Mr. R., it will be if you don't comply with that term of the order. So don't slip in that regard.

[11] The fact of the matter is that these children's lives have changed dramatically. They no longer have a situation where they can see dad when he is home each and every weekend with mom in the same home. Mom's not going to be there so as to limit the number of hours or times that dad has with the children. But they're not in their own home either. They no longer have immediate access to Ms. R., their grandmother, the person they've known as their grandfather, Mr. R.. All of that has changed, and it cannot be maintained because physically the parties just live too far apart.

[12] While Mr. W. may not have been a primary care giver, I'm satisfied there's nothing in the evidence that would indicate that he is not an appropriate parent. In other words, I'm not happy with the outbursts that occurred as between Mr. and Ms. W.. They're inexcusable. To the extent that each of you share the blame in that regard, each of you have to address the issue. That type of behaviour as described to the court is not acceptable. The children as a witness to that type of behaviour will learn from it. They will come to think that that's the way that you resolve issues as between adults. Ms. W., you come to court and say, "Well that's the way we argue" and somehow suggest that it's okay because that's the way we argue. Well it's not okay.

[13] Your children are going to have to witness adults dealing with their disputes or disagreements in a different way so that they learn to have partners and deal

with their partners in a way that doesn't result in the slamming of doors and the cursing and swearing and yelling. I'm satisfied it was to the point that H. wet herself and the other children obviously suffered from some increased anxiety.

[14] These children were witnessing things that they should never have to witness. As I said, Ms. W., I don't in any way accept your explanation that it was all Mr. W.'s fault. The types of arguments that went on in the car; maybe he did hit his head, maybe he did turn around and go home, but it was because there was a fight going on as between the two parents. That should never have gone on the way it did. You both need anger management. You both need parenting courses. I suggest very, very strongly that you get those anger management programs, you get that counselling, because whether you are together or apart you have to find a different way to deal with other adults in your lives so this type of thing does not continue.

[15] For Mr. W., if what Ms. W. says is true in terms of the way you deal with the children, if you have a loud voice, you're going to have to find a way to take it down a notch or two. You're going to have to find a way to deal with the children so they don't think you're trying to teach them based on anger. You're going to teach them based on reason. In other words: "You don't eat your vegetables because I'm yelling at you or because I won't let you get up. You eat your vegetables because I'm going to explain to you why it's important in terms of health and growth." Okay? Because there is a difference.

[16] They both achieve the same thing, but the children are much happier with one approach than they are with the other. They will learn that approach so they can hand it on to their children and their children can hand it on to their children. In other words, there's always a better way. Seek the better way in everything you do with your children. Learn from others who might give you counselling. Learn from others in the community, your friends, your new acquaintances, that there are better ways.

[17] As much as you might think I've criticized you and I've been hard on you as parents, and as I've said, there's enough blame to go around for both sides. I'm not suggesting for a minute, you don't love these children and that they don't love you. You wouldn't be here fighting over them if you didn't love them. Remember as well as you move forward it's not going to do your children any good for you, independent of the other parent to criticize mom if the children are with you, Mr.

W., or dad, if the children are with you, Ms. W.. That includes not just you but your extended families.

[18] These children love mom and dad. And they love you unconditionally. In other words, no matter how much you or somebody else in your families may say against the other parent, they're going to still love that parent. You can only imagine how much it will hurt these children to hear mom criticizing dad, or dad criticizing mom. That is criticizing somebody who they love more than anybody else in the world.

[19] The approach you're going to take from here on in is to engender as much love and respect for the other parent as you possibly can and make their lives as good as it possibly can be, knowing full well that you two can't live together or are not living together. In other words, your objective will be to do what is best for the children from here on out. Every time you go to say or do something, ask yourself, "Is this going to help H.? Is this going to help K.? Is this going to help N.?" If the answer is no, then you probably shouldn't do it. If you're only trying to do something to spite the other side, or the other side's family, it's wrong.

[20] In terms of access, as I said, I'm satisfied, certainly as regards to the parents, that they are both capable loving parents. Ms. W., you wouldn't have been fighting so hard to get dad to take the children with him to see his grandparents if you didn't think he was capable of it on October 22nd, 2006. He's just as capable now as he was then. The fact of the matter is, the time that he's going to have with these children is for longer periods of time, but less often. He's not going to see them every weekend like he did before. He can only see them some weekends. How often is that?

[21] On the even months of each year, he will see them for two weekends a month, the times have been agreed on between counsel. The time will be extended on the weekends if there's long weekends. That is either the Friday or the Monday, depending on when the holiday is if it falls on his weekend. On the odd months of the year, he will see them three weekends a month, so that they don't have to spend every other weekend with dad. For some months through the year they will get to see him a little bit extra time. It recognizes they will have new friends; they will have new activities. The distances in terms of travel are burdensome for children. You know, traveling for, you're talking S., you're talking

an hour and a half minimum from S.. That's a lot to ask of little children to travel that far every other weekend.

[22] For the weekends when there are special events, they will have to be switched around. So, if he's getting them for Father's Day, that will be one of his weekends, counsel, because I don't know how they're going to fall. The same with the Christmas, if in December, if that's, well that's an even month, it's the 12th month of the year, he would normally only get them for two weekends and there's some extra time there, counsel. But if he's getting them for the second part of the Christmas into January, then that is his extra weekend in January. Okay? Do you understand what I'm saying?

Ms. MacKenzie: Yes, My Lord.

Ms. Hillson: Yes, My Lord.

[23] If not, it soon adds up that he has them almost every weekend for a lot of months, and that's not what I intend. It's a compromise. In other words, it's not every thing dad wants, it's not every thing mom wants. You know, you're going to have to start compromising because you're going to be stuck with one another for the rest of your lives, whether you know it or not right now. These are always going to be your children. There is going to have to be some give and take for the rest of your lives. Some day, dad's going to come to you and say, "Look, I've got something coming up. I want to do some extra work renovating my house, or my parents' house, or some event that's coming up and mom, can you help me out? Can you take the children this weekend and I'll make up for it another time?" Or dad's going to come and say, "Look, there's a special family event with my family or something that's going on in my life and I would like the children with me. Can I trade weekends with you, mom?"

[24] The same will be for you, mom. Just communicate and understand that if you give on one thing, you can expect that the other side will give on another thing down the road. What I say is not cast in stone. It's just a matter of give and take. That is going to be the access, counsel. Like I say, in the even months it's two weekends, and the odd months it's three weekends.

[25] As regards the maintenance, the parties agree the table amount would normally be \$570.00 per month. This is not a wealthy family. It wasn't a wealthy

family before you broke up. Had you been making ends meet, I suppose you wouldn't have a mortgage and credit card debt. Because the credit card debt, as I understand it, was being used as a line of credit. There's a \$8,000.00 limit and you're almost to it. So you seemed to be going behind even when you were together. I didn't hear any evidence of \$300.00 or \$500.00 a month in lottery tickets or knickknacks. You were just barely making it when you were together. To suggest that somehow there's a whole bunch of magic money from Mr. W. now where he can service the debts and pay extra money to Ms. W. ignores the reality of the situation. There is no more money now. There are more expenses, but no more money. Having said that, the obligation of Mr. W. under the **Divorce Act** is to pay the child maintenance first and the creditors second.

[26] The second reality as between the parties is that it is in both their interest to protect the one asset they have until it can be sold. Whether the house is fixed up and sold or sold "as is" doesn't much matter. It still has to be protected. It appears to me that that's really the only asset that they have to dig themselves out of the hole. Mr. W. doesn't have to pay the credit card and doesn't have to pay the mortgage. I don't know what he's going to do when he has an increased expense or an equivalent expense in terms of getting an apartment for himself and three children, because he's going to have to have accommodations for three children when he has access for them. He can't have them live in the garage or his parents' house. He needs a place to accommodate them. That will have to be worked out once we see what the situation is in terms of the sale of the property and how much debt is cleared off.

[27] Clearly, it's not a situation where he's going to have an awful lot of benefit from the matrimonial home because I'm authorizing exclusive possession to him. As he has indicated, there's nothing in it in terms of furniture. It also needs substantial renovations. Finally, there may be an imminent sale. For all those reasons, it's not as though we're going to give him the use of an asset and relieve him of some other expense. He just has the use of the asset and access to it, but nothing else more in terms of benefit.

[28] In addition, he has very substantial access costs as a result of the order I've just made in relation to access. That has to be taken into account. When I say substantial access costs, this court deals with situations where parents travel across the province, across the country, or around the world to exercise access. Substantial access costs is all a question of relevance. Relative to his income, the

access costs is very substantial. The situation with his parents and the arrangement he has is basically the same as the arrangement he had during the marriage. That is he pays them \$50.00 a week for the use of the car, plus he pays the gas he uses to exercise the access or do whatever else he has to do with the car on the weekends. That hasn't changed. It's no more unfair to the parties now than it was during the marriage. In fact, it's probably a good arrangement, when you do a cost benefit analysis.

[29] Access costs, the extent of the matrimonial debt, who services the debt in terms of debt burden; those things are all things that I can consider in terms of making an award for maintenance. I'm satisfied that the maintenance in this case should be adjusted to take those factors into account. What I'm prepared to order is \$325.00 in maintenance for the children. It is payable to Ms. W. on a monthly basis. I'm going to fix it at the first of each month starting the 1st of January, 2007. In addition, Mr. W., you're going to pay \$10.00 per month to H. for an allowance and you're going to pay \$8.00 a month to the other two children for an allowance. That basically takes it up to the \$350.00 that you were talking about. I'm satisfied you really can't afford much more than that, nor should you be ordered to pay much more than that at this point in time.

[30] As regards the request for the internet hook-up, there are a lot of children that made it through this world without internet hook-ups before, and there are going to be an awful lot of them who make it through this world without internet hook-ups in the future. If they really need internet, they can probably go to a neighbour's, they can probably go to a school. I understand there are still some government sponsored websites around the county. If they need it that bad, they can get it. I know it's in public libraries as well. I am really not satisfied that a 10 year old girl can't get along without it. This is a family that's just going to be struggling to survive without going bankrupt. Some things have to go. In this case, one of them is internet.

[31] As regards Mr. R., I did mention earlier and I'm just going to mention again to emphasize it, the order will include a provision that he is not to be left alone with the children.

[32] Counsel, I did mention that they both need anger management and they both need some parenting courses. I would like that in the order as well, so they understand it's not just a suggestion, it's a direction.

[33] As regards the issue of supervision, I'm not requiring that Mr. W. have any supervision when he has the children with him. He can exercise the access alone, with his parents, grandparents, or just the children if he wishes. The only stipulation as I said, was Mr. R. is not to be alone with the children. I'm not sure if there is anything else, counsel, that I missed.

(Inaudible Comment)

[34] The summer access, excuse me, the issue is as to whether or not Mr. W. can have two consecutive weeks in the summer or one week in July and one week in August. It wasn't clear to me, counsel, as to whether he has to take his vacation in a two week block or can he split it up. Can you check with him?

Ms. MacKenzie: Yes, My Lord.

(Discussion off microphone)

Ms. MacKenzie: It's Mr. W.'s understanding, My Lord, that he's required to take his summer vacation in a block period because his employer has to bring in a cover.

[35] I'm satisfied these children will have some adjusting to having time with dad, and dad adjusting to having time alone with the children. That is going to be a new experience for him where he alone has the weekend responsibility. Between now and next summer, these children will be adapting throughout that time. They will be used to being away from mom. Shorter periods initially. There will be some longer periods when you add in the Easter vacations and some of the long weekends that fall between now and the summer. So, they'll be used to being with dad and being away from mom.

[36] Dad's evidence is that, and representation through counsel just now in relation to the issue of summer vacation, is that he has to take a two week block period. The issue is whether we force the children to have only one week with him next year because he can only get a block of two weeks and then have no other time to be with the children alone? So, it's either one week with dad next summer or two weeks consecutive. That's really the only choice that the court has. I'm satisfied that in terms of the children's best interests, it is in their best interest that

they get to know dad, who he is, what he's all about. To do that they need some periods of time, more than a weekend, which is slightly more than 48 hours. I'm satisfied that for the summer of 2007 and henceforth until varied by the court, there will be two week block periods that the children can be with dad.

[37] I would hope that as the children get older and if Mr. W. with his work can accommodate that the time sharing throughout the summer period should even become longer. For this year and until it's varied by the court that's what it will be. Mom, just recognize that the summertime is just as important for them to be with dad as it is to be with you. So maybe you can accommodate if dad has some special requests this summer if he can get some extra time off during certain periods.

J