IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: A.M. v. N. B., 2005 NSSC 352

Date: 20051214
Docket: 27050
Registry: Sydney

Between:

A. M.

Applicant

v.

N. B.

Respondent

Editorial Notice

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

Judge:	The Honourable Justice Theresa Forgeron
Heard:	November 29, 2005 and December 9, 2005 in Sydney, Nova Scotia
Written Decision:	December 21, 2005
Counsel:	Douglas MacKinlay, for the Applicant David Iannetti, for the Respondent

By the Court:

Introduction

[1] The matter before the court for determination concerns the interim parenting arrangement for the child, R. A. M., the biological son of A. M. and N. B..

[2] A parenting determination is one of the most important decisions a court is asked to make as such decisions reach more deeply into the lives of the child and of the parties than any other decision a court will render. Great care must be taken to ensure that the best interests of the child is met in conformity with the relevant legislation, case law and evidence.

Background

[3] The parties lived together in a common law union from approximately September 1999 until April 28, 2005, with intermittent periods of separation during that time. One child was born during this relationship, namely R. on January *, 2003.

[4] During the relationship the parties lived an unhealthy and unsafe lifestyle. Both regularly used illicit drugs and Mr. B. sold street drugs, including cocaine, when he

wanted to earn extra money. The parties' drug use escalated from soft drugs such as marijuana to cocaine. Mr. B. and Ms. M. frequently partied and socialized with other friends who likewise abused drugs. Not surprisingly, domestic abuse developed. Little respect was shown between the parties. Mr. B. and Ms. M. were oblivious as to how such a lifestyle was incompatible with a healthy, stable home environment necessary for the proper discharge of their parental responsibilities.

[5] The relationship ended when Ms. M. discovered Mr. B. in bed with her sister, C. L. on the morning of April 28, 2005. Mr. B. and Ms. L. had spent the previous night in a hotel room drinking and using the drug "ecstasy" while the three children of Ms. L. were left at home alone. The oldest of those children was 13 and the twins were toddlers.

[6] When Ms. M. discovered her sister and Mr. B. in compromising circumstances, Ms. M. physically attacked Mr. B.. Ms. M. was eventually charged with assault. She pled guilty to the charge and was apparently given a sentence which included a period of probation with conditions. Contact with Mr. B. was to occur only with his consent.

[7] Following the final separation in April 2005, R. lived with Ms. M. and his two other siblings - E., who is seven years old, and A., who is nine years old. E. and A. are the children of Ms. M. from prior relationships.

[8] Mr. B. exercised access on a somewhat regular basis following the April separation when he was not *. When Mr. B. was *, access was based upon Mr. B.'s irregular work schedule. In addition, Ms. M. frequently made R. available to the paternal grandparents for visitation and telephone contact. The parties were able to work through access issues, for the most part, until approximately September 2005.

[9] In September 2005, R. was enrolled in the * Daycare in * by Ms. M. R. enjoyed the daycare centre and he was described by its executive director, M. B., as a "happy little boy" who enjoyed all of the daycare activities and who got along well with his peers. Fortunately, the lifestyle which had been adopted by Ms. M. and Mr. B. during their union had not had any visible, nor significant impact upon R..

[10] In the fall of 2005, Mr. B. was concerned that access difficulties were developing. As both parties were represented, each made contact with his/her lawyer. Ms. M. disputed the allegation that access difficulties had surfaced. Nonetheless, Ms.

M. did agree to establishing an access schedule which was “reasonable and ample” as noted in correspondence transferred between counsel on October 24th, 2005.

[11] In October 2005, Ms. M. understood that Mr. B. had threatened to sell her furnishings and household contents which had been stored in Ms. L.’s home. This proved too much for Ms. M., given the other stressors which she had recently experienced, including the miscarriage and grief of losing a child, the breakdown of her relationship with Mr. B., the betrayal of Mr. B. and Ms. M.’s sister, and the ongoing control and manipulation by Mr. B.. Ms. M. took an overdose of over-the-counter medication and was hospitalized for a short period of time. She started to seek professional help after the overdose attempt.

[12] In October 2005, and following Ms. M.’s overdose, Mr. B. made an ex parte application for custody. The ex parte application was refused. Further, Mr. B. notified the Children’s Aid Society as to his concerns. The Agency did not take action. Mr. B. did not file an inter partes application after the ex parte application was denied.

[13] On November 18th, Ms. M.'s father, R.M., was picking up R. from daycare as Ms. M. was unavailable. Mr. B., with no prior notice, attended at the daycare. When R. saw his father, he was happy and gave Mr. B. a hug. Mr. M. asked Mr. B. to leave R. with him. Mr. M. requested that Mr. B. contact Ms. M. to make access arrangements. Despite Mr. M.'s protests and suggestions, Mr. B. took R..

[14] Mr. B. placed R. in his vehicle and drove R. in the truck without proper child restraints. Mr. B. took R. to Ms. L.'s home.

[15] Mr. M. contacted the police from the daycare and advised them that Mr. B. had taken R. without notice to Ms. M. and without permission. The police did not act upon the complaint as no court had order issued giving either party custody of R..

[16] Ms. M.'s parents went to the home of Ms. L.. Mrs. P. M. entered the home first and an altercation ensued. Mr. B. forcibly removed R. from Mrs. M.'s arms. Mrs. M. was injured in the altercation and R. is believed to have suffered a very minor injury. It should be noted, however, that no one saw how R.'s injury occurred or if in fact it occurred during the altercation. Mr. M. entered the home after the altercation had commenced between his wife and Mr. B..

[17] Ms. L. contacted the police. The police arrived at her residence after R. and P. M. had left. Cst. MacEachen told Mr. B. to take R. to the hospital. Later, Cst. MacEachen advised Ms. A. M. that she was permitted to attend the hospital to see R., but that her parents were not. Mr. B. had also consented to Ms. A. M. attending the hospital.

[18] The Children's Aid Society were contacted by Cst. MacEachen and later by Ms. A. M.. The Children's Aid Society had limited involvement with the parties other than recommending that R. remain with Mr. B. on the night of November 18th and providing minimal direction to the investigating officer.

[19] Mr. B. kept R. in his *defacto* custody with his parents, F. and C. B. from November 18th until this court ordered R. to be returned to Ms. M.'s care on December 10th.

[20] Mr. and Mrs. M. have been charged in respect of the altercation which occurred on November 18th at Ms. L.'s residence. In addition, charges are presently being investigated against Mr. B.. P. and R. M. state that they did not assault Mr. B., nor did

they refuse to leave the residence of Ms. L. when asked to do so. A criminal trial is being scheduled to determine these issues.

[21] Despite having permission from both the police and Mr. B. to attend the hospital, Ms. A. M. has since been charged with breaching the terms of the April probation order by attending at the hospital and having contact with Mr. B.. Ms. M. will be pleading not guilty to the charge.

[22] A. M. is 26 years old, and N. B. is 28 years old. Ms. M. is a student in the adult learning program at the * of the Nova Scotia Community College. Mr. B. is a *. Both parties are currently living with their respective parents. Mr. B. lives in * and Ms. M. lives in *. Ms. M. is awaiting accommodations through the Regional Housing Authority and she anticipates that the accommodations will be available once renovations are completed by the end of the month.

Interim Applications

[23] Ms. M. made an ex parte application for interim custody of R. on November 21st when Mr. B. did not return R. following the weekend visit, as was the usual practice. The ex parte application of Ms. M. was refused. However, in the circumstances, an

inter partes hearing was scheduled with abbreviated notice requirements given the urgent circumstances of the case.

[24] Mr. B. seeks interim custody of R. with supervised access to Ms. M.. Mr. B. is open to attending counselling so that he and Ms. M. will learn to communicate effectively on matters involving R.. Mr. B. is also open to attending a parenting course. Mr. B. denies that he has a drug problem and thus does not agree to obtain treatment.

[25] In addition to seeking custody, Ms. A. M. has requested an order which limits Mr. B.' right to transport R. unless Mr. B. has not consumed alcohol or drugs, and unless in the presence of a third party. Ms. M. will consent to an order which will require her to continue with professional counselling in light of the overdose and the stressors in her life. Ms. M. consents to an order issuing which will require her attendance at treatment/counselling for addiction issues and anger management issues.

[26] The interim applications were heard on November 29th and December 9th. The following people testified at the hearing: Mr. R. M., Mrs. P. M., Ms. M. B., Ms. L. C., Ms. A. M., Cst. MacEachen, Ms. C. L., Mr. N. B. and Mrs. F. B.. I have

considered the *viva voce* evidence of the parties and the witnesses. I have also reviewed the affidavits which were filed and have considered the evidence contained in the affidavits, except to the extent that such refer to opinion evidence, hearsay evidence, speculation and submissions contrary to case law and Rule 70.12(8) and 70.12(9) which state:

> (8) Any affidavit or statutory declaration used pursuant to this rule shall not contain material that is argumentative, merely speculative, scandalous, irrelevant, immaterial or otherwise oppressive.
>
> (9) Upon the application of a party or upon its own motion, the court may strike out any material filed by another party that does not comply with Rule 38 or sub-rule (7) and may order costs against that other party or against that other party's solicitor personally.

Law

[27] Interim custody orders are designed to meet the best interests of the child for a relatively short period of time. As such, emphasis is placed upon the preservation of the *status quo*. Interim orders are not binding upon the trial judge and no change in circumstance is necessary to be proven at the time of trial. The jurisdiction to make a parenting order is found in s.18 of the *Maintenance and Custody Act*, ss. (1), (2), (4) and (5):

> 18 (1) In this Section and Section 19, "parent" includes the father of a child of unmarried parents unless the child has been adopted.

> (2) The court may, on the application of a parent or guardian or other person with leave of the court, make an order
>
> (a) that a child shall be in or under the care and custody of the parent or guardian or authorized person; or
>
> (b) respecting access and visiting privileges of a parent or guardian or authorized person.
> ....
>
> (4) Subject to this Act, the father and mother of a child are joint guardians and are equally entitled to the care and custody of the child unless otherwise
>
> (a) provided by the *Guardianship Act*; or
>
> (b) ordered by a court of competent jurisdiction.
>
> (5) In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall apply the principle that the welfare of the child is the paramount consideration. R.S., c. 160, s. 18; 1990, c. 5, s. 107.

[28] In Marshall v. Marshall (1998) 168 N.S.R. 48 (C.A.), the Nova Scotia Court of Appeal commented on the scope of interim proceedings. Roscoe, J.A., states at para. 26:

> The focus is on the *status quo* and the short-term living arrangements for the child. Although in this case the parties had been separated for a few years, and had consented to the first order, the test that should have been applied was the same: if there is no reason to change the existing situation, that situation should continue until the trial. There is authority for variation of interim orders: see Foley v. Foley (1994), 124 N.S.R.(2d) 198 (S.C.).

[29] In Foley v. Foley, supra, Goodfellow, J. varied an interim order given the substantial change in circumstance brought about by the wife's unilateral change to the *status quo*. The wife had moved from the matrimonial home with the children without the consent of the husband. The variation order was granted to preserve the *status quo* while awaiting the divorce hearing. Goodfellow, J. states at paras. 27 and 29:

> 27. Mrs. Foley's removal of the children has also brought about a substantial change in the parenting environment that existed for some time prior to July 6, 1993.
> ....
> 29. The frequent acceptance of the *status quo* as a decisive reason for granting a parent interim custody is often no more than deference by the court to what has been put in place by the parties as parents.

[30] In Pye vs. Pye (1992) 112 N.S.R. (2d) 109 (T.D.), Kelly, J. reviewed the law applicable to interim applications and noted that the *status quo* of the child must be maintained as closely as possible pending the final hearing. The children should be placed in the environment with which they are most familiar. Kelly, J. states at para. 5:

> I concur with Grant, J. in Stubson v. Stubson (1991), 105 N.S.R. (2d) 155; 284 A.P.R. 155 (N.S.S.C.,T.D.) that the test in such an application was properly set out in Webber v. Webber (1989), 90 N.S.R. (2d) 55; 230 A.P.R.. 55 (F.C.), by Daley, F.C.J. at p. 57:
>
> > Given the focus on the welfare of the child at this point, the test to be applied on an application for an interim custody

> order is: what temporary living arrangements are the least disruptive, most supportive and most protective for the child. In short, the *status quo* of the child, the living arrangements with which the child is most familiar, should be maintained as closely as possible.

[31] The *status quo* which is to be maintained is the *status quo* which existed without the unilateral conduct of one parent unless the best interests of the child dictates otherwise. In Kimpton v. Kimpton [2002] O.J. No. 5367, Wright, J. defined *status quo* in para. 1, which reads as follows:

> There is a golden rule which implacably governs motions for interim custody: stability is a primary need for children caught in the throes of matrimonial dispute and the *de facto* custody of children ought not to be disturbed *pendente lite*, unless there is some compelling reason why in the interests of the children, the parent having *de facto* custody should be deprived thereof. On this consideration hangs all other considerations. On motions for interim custody the most important factor in considering the best interests of the child has traditionally been the maintenance of the legal *status quo*. This golden rule was enunciated by Senior Master Roger in Dyment v. Dyment, [1969] 2 O.R. 631, (aff'd by Laskin J.A. at [1969] 2 O.R. 748), by Laskin J.A. again in Papp v. Papp, [1970] 1 O.R. 331 at pp. 344-5 and by the Nova Scotia Court of Appeal in Lancaster v. Lancaster (1992), 38 R.F.L. (3d) 373. By *status quo* is meant the primary or legal *status quo*, not a short lived *status quo* created to gain tactical advantage. See on this issue Irwin v. Irwin (1986), 3 R.F.L. (3d) 403 and the annotation of J.G. McLeod to Moggey v. Moggey (1990), 28 R.F.L. (3d) 416.

[32] This principle is more firmly reviewed in the annotation of James McLeod in the decision of Moggey, supra, when McLeod, J. states in part:

> "*Status quo*" is not just the short-term living arrangement. It is the way of life that existed before the current issue of custody or access arose. On a variation application the court should continue the legal custody order in the absence of clear evidence that the welfare of the child requires another disposition.
>
> The same analysis would suggest that one person cannot unilaterally remove a child from the family home without a custody order and claim that the "*status quo*" should be maintained pending the hearing. As Vogelsange Prov. J. held in Lisanti v. Lisanti (1990, 24 R.F.L. (3d) 174 (Ont. Prov. Ct.,) the removal violates the custody rights of the other parent. The bottom line is that self-help should be discouraged.

[33] The parenting factors which are frequently addressed in interim custody disputes are reviewed by Goodfellow, J. in Foley v. Foley, supra, at para. 16, which states:

> Nevertheless, there has emerged a number of areas of parenting that bear consideration in most cases including in no particular order the following:
>
> 1. Statutory direction Divorce Act 16(8) and 16(9), 17(5) and 17(6);
>
> 2. Physical environment:
>
> 3. Discipline;
>
> 4. Role model;
>
> 5. Wishes of the children - if, at the time of the hearing such are ascertainable and, to the extent they are ascertainable, such wishes are but one factor which may carry a great deal of weight in some cases and little, if any, in others. The weight to be attached is to be determined in the context of answering the question with whom would the best interests and welfare of the child be most likely achieved. That question

requires the weighing of all the relevant factors and an analysis of the circumstances in which there may have been some indication or, expression by the child of a preference;

6. Religious and spiritual guidance;

7. Assistance of experts, such as social workers, psychologists-psychiatrists- etcetera;

8. Time availability of a parent for a child;

9. The cultural development of a child:

10. The physical and character development of the child by such things as participation in sports:

11. The emotional support to assist in a child developing self esteem and confidence;

12. The financial contribution to the welfare of a child.

13. The support of an extended family, uncles, aunts, grandparents, etcetera;

14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. *The Divorce Act* s. 16(10) and s. 17(9);

15. The interim and long range plan for the welfare of the children.

16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate

> accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and
>
> 17. Any other relevant factors.

[34] As each party has sought a form of a supervision order from the court in respect of the other party, I will briefly review the law in this area. A child is entitled to share in the daily life of his/her parents unless such is not in the child's best interests to do so. Access is the right of the child and not the right of the parent. There is no presumption that contact with both parents is in the best interests of the child, although such contact generally is, and in this regard I reference: Young v. Young (1993), 160 N.R. 1 (S.C.C.) and Abdo v. Abdo (1993), 126 N.S.R. (2d) 1 (C.A.).

[35] Supervised access is appropriate in specific situations, some of which include the following:

> [a] where the child requires protection from physical, sexual or emotional abuse;
>
> [b] where the child is being introduced or reintroduced into the life of a parent after a significant absence;
>
> [c] where there are substance abuse issues; or

[d] where there are clinical issues involving the access parent.

[36] Supervised access is not appropriate if its sole purpose is to provide comfort to the custodial parent. Access is for the benefit of the child and each application is to be determined on its own merits.

[37] In reaching my decision, I have applied the proper legal onus in respect of the competing applications. Each party bears the burden of proof in respect of his/her application. The burden of proof is the civil burden which is proof on the balance of probabilities.

Findings

[38] In reaching my decision, I make the following relevant findings:

(a) Ms. A. M. was the primary care giver of R., both before and after the separation until Mr. B. unlilaterally changed the *status quo* on November 18, 2005.

(b) Mr. B. displayed extremely poor judgement in removing R. from the care of Mr. R. M. on November 18th. Mr. B. stated that he did not attend at the daycare with the intention of removing R., but rather Mr. B. wanted to confirm access arrangements for later in the evening. Ms. B. overheard the conversation between Mr. B. and Mr. M..

She confirmed that Mr. M. asked Mr. B. to leave R. and to arrange access details with Ms. M.. Yet, despite Mr. B.' stated intention, and despite Mr. M.'s direction, Mr. B. nonetheless took R.. No reason was put forth which could reasonably justify such inappropriate conduct. I accept the evidence of Ms. B. and Mr. R. M. where it conflicts with the evidence of Mr. B.. I find that Mr. M.'s tone and comments were most appropriate and reasonable. The self-help measures taken by Mr. B. cannot be condoned and are to be discouraged.

(c) Mr. B. is an individual who attempts to control people and the circumstances in which he finds himself. When confronted with a direction to leave R., Mr. B. did just the opposite to show Mr. M. that he, Mr. B., was in control. Mr. B. does not take direction well. Mr. B.' need to be in control is so strong that Mr. B. was unable to discern and act in R.'s best interests. Mr. R. M. did absolutely nothing inappropriate at the daycare which could possibly have justified Mr. B.' reaction.

(d) Mr. B. continued to exercise poor judgement in transporting R. in his vehicle without the proper child restraint. The fact that Mr. B. did not travel a great distance is no excuse as accidents can and do happen in such circumstances.

(e) Mr. B. continued to display poor judgment when he took R. from the arms of Mrs. P. M.. He did so in such a manner that the safety of R. was compromised. I accept the evidence of P. and R. M., and I reject the evidence of Mr. B. and Ms. L. in

respect of the altercation which occurred in Ms. L.'s home following Mr. B.' unwarranted removal of R. from the care of his maternal grandfather at the daycare on November 18th.

(f) Nothing significant flows from the fact that Mr. B. removed R. outside the gate of the daycare, and not in the daycare building. The end result is the same.

(g) Mr. B. continued on the path of poor judgment when he created yet another scene in R.'s presence at the hospital. Where Mr. B.' evidence conflicts with the evidence of Ms. A. M., I accept the evidence of Ms. M..

(h) Mr. B. inappropriately and unilaterally changed the *status quo* living arrangements for R. and kept R. from Ms. M. under the guise that a toddler, showing signs of upset and fear, did not request to see or speak with his mother. Given what transpired at Ms. L.'s residence and at the hospital, there is no doubt that R. would have been upset. Mr. B. did not properly manage R.'s upset. Mr. B. made matters more difficult for R. as Mr. B. did not reunite R. with his mother until directed to do so by the court. R. needed confirmation of his mother's presence and love at this difficult time. Instead, he was isolated from her. Once again, Mr. B. failed to properly discern and balance R.'s needs and bests interests. Mr. B. put self interest first as he hoped to gain a tactical advantage by keeping R. in his *defacto* custody and attempting to develop a new *status quo*.

(i) The parents of Ms. A. M. have much to offer R. and in addition, have much to offer Ms. A. M.. P. and R. M. are credible and gentle people. I do not accept the allegations that they are anything other than good grandparents who have provided R. and A. M. with love and support. I further understand that the Undertaking preventing R. and P. M. from contact with R. has since been removed.

(j) Both Mr. B. and A. M. have serious and longstanding drug related issues which must be resolved before either can be effective parents. Ms. A. M., to her credit, is willing to attend counselling, while Mr. B. refuses to even admit that he has a problem. I prefer and accept the evidence of Ms. M. and Ms. C. as it relates to Mr. B.' use and trafficking of drugs, including cocaine. I reject the evidence of Mr. B.. I further note that Mr. B. has a criminal record in this area and I do not accept the claim that Mr. B.' use and sale of drugs terminated once R. was born, other than on the one occasion in April 2005 when Mr. B. used the drug ecstasy with Ms. M.'s sister in the hotel.

(k) I find that Mr. B. has longstanding anger management and control issues which negatively impact on his ability to parent and to place R.'s best interests as a priority. Ms. A. M. likewise has anger management issues, but to a lesser extent than that of Mr. B..

(l) Ms. A. M. has significant and longstanding emotional issues confronting her which have yet to be resolved. Certainly Ms. M. is to be credited for seeking help and attempting to turn her life around. She will require support from family and friends, in addition to the professional assistance which she has only started to receive. Ms. M. is likely to continue to experience many stressors in her life and she must learn to deal with these in a healthy and appropriate fashion. More than three counselling sessions are required. I recognize that Ms. M. has dealt with the stressful period of post-November 18th in a mature and responsible fashion. This confirms that Ms. M. is on the right track and I encourage her to continue to do so.

(m) I find that Ms. M. justifiably denied access on one occasion when Mr. B. arrived in an intoxicated state and it would have been dangerous for R. to be placed in Mr. Burn's care. I accept the evidence of Ms. M. and her mother in respect of the communication and visitation regime which existed prior to November 18th between R. and his paternal side of the family. I prefer their evidence to that stated by Mr. B. and his mother. I note that Mrs. F. B.' recollection of access in September was faulty. Mrs. B. confirmed her affidavit account was inaccurate on at least one occasion when confronted with one of her own e-mails pointing out that error during cross examination.

(n) R. has a loving and happy relationship with his paternal grandparents and they too have much to offer R..

(o) R. is loved by Mr. B. and Ms. M.. R. loves both of his parents. However, if R. is to develop into a healthy, stable, happy, well-adjusted adult, you, his parents, must change those areas of your personal life which I have previously identified.

(p) R. has a close and loving relationship with his sister and brother and this relationship must be fostered and maintained.

(q) R.'s life from April 28th until November 18th had stabilized. R. was happy, safe and well cared for by Ms. M. in conjunction with her parents and by the staff at the * Daycare. This was disrupted by the unilateral change in the *status quo* by Mr. B..

Decision

[39] I will therefore grant an interim order which will return R. to the primary care of his mother to re-establish the *status quo* which existed pre and post separation before Mr. B.' unilateral change. This *status quo* provides a better environment for R. and ensures that his best interests are met.

[40] I have considered the law, legislation and the "Foley" factors in finding that it is better for R. to be in the interim custody of his mother, Ms. A. M., than in the

interim custody of Mr. B., provided certain conditions are met by Ms. M.. Ms. M.'s parenting skills and circumstances, although far from stellar, are superior to those offered by Mr. B.. In the best interests of R., I therefore order that Ms. A. M. shall have sole custody of R. M., born January *, 2003, subject to the following conditions:

(a) Ms. M. will reside with her parents, or one or both of her parents will reside with Ms. M. if she moves to Regional Housing and when R. is in her care until further order of the court;

(b) Ms. M. will continue with treatment from the mental health professionals until such time as the professionals in whose care Ms. M. is placed deems such treatment is no longer necessary, or until further order of the court;

(c) Ms. M. shall commence drug addiction counselling until such time as the professional in whose care Ms. M. is placed deems such treatment is no longer necessary, or until further order of the court;

(d) Ms. M. shall obtain counselling for anger management issues until such time as the professional in whose care Ms. M. is placed deems such treatment is no longer necessary or until further order of the court;

(e) Ms. M. shall abstain from the use of all illicit drugs and shall ensure that the environments where R. is placed are free from illicit drugs and any excessive use of alcohol;

(f) Ms. M. shall enroll in and successfully complete a parenting course; and

(g) Ms. M. shall complete the Parent Information Sessions offered through the Supreme Court of Nova Scotia, Family Division.

[41] Mr. B. shall have access to R. every second weekend from Friday at noon until Monday at 4:00 o'clock in the afternoon, but subject to Christmas and other holiday and special occasion access, all such access to be subject to the following conditions:

(a) Mr. B. will reside with his parents or one or both of his parents will reside with Mr. B. when R. is in his care, or until further order of the court;

(b) Mr. B. will obtain counselling for anger management and control issues until such time as the professionals in whose care Mr. B. is placed deem such treatment is no longer necessary, or until further order of the court;

(c) Mr. B. shall commence drug addiction counselling until such time as the professionals in whose care Mr. B. is placed deem such treatment is no longer necessary, or until further order of the court.

(d) Mr. B. shall abstain from the use of all illicit drugs and shall ensure that the environments where R. is placed are free from illicit drugs and any excessive use of alcohol. R. shall not be in the company of Ms. C. L. given her untreated drug use. I

have no evidence that Ms. L. has sought treatment for drug use or that she was no longer using illicit drugs;

(e) Mr. B. shall enroll in and successfully complete a parenting course;

(f) Mr. B. shall complete the Parent Information Sessions offered through the Supreme Court of Nova Scotia, Family Division; and

(g) Mr. B. shall not transport the child in a vehicle when he has consumed any alcohol or drugs, or prescription medication, and proper child restraints shall be utilized.

[42] Neither party shall communicate directly with each other at this time. Further, given the criminal undertakings, Mr. B. shall have no direct communication with Ms. A. M.'s parents. The situation is much too volatile to allow communication between the parties or between Mr. B. and P. and R. M. at this time. I am hopeful that this will change in the future after the parties have obtained counselling.

[43] The parties shall use a third party facilitator for communication purposes. In the event that Mr. B.' parents will continue to act in this role, Mr. B.' facilitator will either be his mother or his father. Mr. B.' facilitator will communicate with Ms. A. M.'s parents and not with Ms. A. M.. The communication will be via email and in a

format which can be saved. The facilitators shall exchange email addresses immediately and any changes thereto will be provided on a timely basis. All communication between the facilitators shall be child-focussed and provide information on the health and general welfare of R.. No other communication is necessary. All such communication shall be respectful and free from any inappropriate language and accusations.

[44] To clarify, Ms. M. will keep Mr. B. current as to R.'s health, education and general welfare and will do so via email communication to be transferred by either P. M. or R. M. to Mrs. F. B., who in turn will provide that information to Mr. B.. The information which is to be communicated is to be saved and is subject to the court's review should further issues develop and it is determined that the contents of the email are relevant.

[45] Mr. B. shall have telephone access to R. every Tuesday and Thursday evening at 7:00 o'clock. Ms. A. M. will ensure that the telephone number where R. can be reached during such times is made available to Mr. B.'s access facilitator well in advance of such calls.

[46] The court adopts the Christmas schedule proposed by both parties. Ms. M. shall have R. in her care all day on December 24th until 2:00 pm on December 25th. Mr. B. shall have R. in his care from December 25th at 2:00 pm December 28th at 2:00 pm.

[47] All access pickup and drop off shall occur in * at a mutually convenient place which the parties have deemed to be * on the *.

[48] The court adopts the suggestion of both parties that the child, R., shall not be removed from the jurisdiction of the court during this interim stage.

[49] I did not make a determination as to the parenting arrangement for Easter, birthdays, vacations, special occasions or holidays as this is an interim decision only and the parties should attempt to resolve these issues through counsel or have the matter set for final determination. If, however, the parties are unable to reach agreement on these issues, then either party may make an application to the court for a determination of the same.

Costs

[50] Costs in the amount of $350 are awarded to the Applicant and payable to Nova Scotia Legal Aid given the outcome, and the financial circumstances of the parties.

Costs can be awarded to or against a recipient of legal aid: O.(N.) v. E.(B.) 2005 CarswellNS 97 (S.C.); M. v. F. 2004 CarswellNS 487 (S.C.); S. v. M. 1996 CarswellNS 385 (C.A.); and, Carruthers v. Carruthers 1992 CarswellNS 411 (T.D.).

Conclusion

[51] Mr. B. and Ms. M., you have been gifted with a bright, happy, little boy. R. has, unfortunately, seen and experienced events which are not in his best interests. I urge you both to make the necessary changes to your lifestyle that have been identified so that not only will you become better people, but R. will have the parents that he deserves.

[52] I also want to commend counsel for their vigorous, yet professional representations. Both parties have been well served by their counsel. There are issues which have to be negotiated and, if possible, I urge the parties to listen to their counsel so that a reasonable resolution can be achieved in keeping with R.'s best interests.

[53] Mr. MacKinlay is to draft the Order.

THERESA FORGERON, J.