SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Giles v. Blois, 2011 NSSC 149

Date: 20110418
Docket: SFHMCA072842
Registry: Halifax

Between:

Cynthia Giles

Applicant

v.

Bain Blois

Respondent

Judge: The Honourable Justice Moira C. Legere Sers

Heard: March 31, 2011

Counsel: Bryen Hebert for the applicant Cynthia Giles
Brian Bailey for the respondent Bain Blois

By the Court:

[1] This matter was heard on March 31, 2011. Both parties were represented by counsel.

[2] In the umbrella application dated November 8, 2010 pursuant to the *Maintenance and Custody Act* the applicant mother seeks to register the agreement entered into between the parties on May 19, 2009. She seeks custody, defined access, child support and costs.

[3] This decision relates to the motion for interim relief dated November 5, 2010 made by the applicant. The applicant seeks a variation of the separation agreement; an order for interim custody, interim defined access and interim child support.

[4] The children are G.B., born December 4, 2000 (10) and G.B., born May 18, 2004 (6).

[5] The separation agreement at paragraph 19 indicates that both parties had independent legal advice.

[6] At the time of the agreement (May 2009), Mr. Blois declared annual gross earnings related to his business of approximately $75,000. Ms. Giles was earning $46,200 in her employment.

[7] Paragraph 10 and schedule "A" (p.8) of the separation agreement endorses a joint custody arrangement with the mother having primary care and the father having parenting time on an equal basis.

[8] Each parent is entitled to two weeks of uninterrupted summer vacation and each acknowledges the importance of maintaining a close relationship between the children and both parents.

[9] The parties agreed to consult with each other on all major questions relating to health, education and general well-being of the children and further recognized:

> That decisions regarding religion, education and non-emergency matters shall be made by the primary caretaker of the children if a joint decision cannot be arrived at between the parties.

[10] The applicant is seeking interim relief due to:

> (1) the lack of cooperation and communication that exists between she and the respondent; and
> (2) the significant changes in his employment schedule.

[11] Coupled with the lack of communication, the scheduling changes have resulted in last minutes changes in her schedule to adapt after school child care arrangements and untimely responses to the children's difficulties.

History

[12] The parties lived together from November of 1998 to February 26, 2009.

[13] The parties differ as to what roles they played during the relationship. The applicant believes that she was the primary caretaker when the respondent traveled. She was home early from her employment typically whether he was home or not, putting her in the home by 2:30 in the afternoon.

[14] The applicant indicates that she was the one who typically arranged and attended the children's doctor, dentist and specialists' appointments, parent-teacher events and other school events without the respondent.

[15] The respondent traveled considerably within and outside the country, leaving the children in her care.

[16] The respondent calls the pre-separation agreement a shared parenting arrangement.

Separation

[17] In February 2009 at separation, the parties had a heated dispute. The applicant returned to her bedroom; the respondent followed her, began throwing

things from tabletops and flipped the bed that she was sitting on. She landed on the floor.

[18] The respondent left; the police were called by a family member and the respondent was charged. That charge subsequently resulted in a plea of guilty to a charge of destruction to property. The respondent was placed on an undertaking that he would have no contact with the applicant.

[19] The applicant testified she was not advised of the plea arrangement until well after it occurred.

[20] Following this incident, the children remained in the home with the mother. The father was originally permitted parenting time at a family member's home (he denies it was supervised) once per week. This was ultimately increased to parenting time on his own.

[21] The incident occurred February 2009. The parties entered into the parenting agreement in May 19, 2009.

Schedule changes

[22] The father was unable to take the children for any of his parenting weeks in March 2010 as he was required to travel during one of his parenting weeks. He took a vacation to Mexico during the second parenting week.

[23] During the month of April 2010, one of his weeks was spent traveling with business and he therefore missed one of his two weeks in April.

[24] In July 2010, the father's parenting time was reduced as a result of a business trip. He also wanted to alternate his parenting time for more of July. The mother was unable to change her plans.

[25] In October 2010, the father missed one of his parenting weeks and in November 2010 he was to be away during his parenting week on a business trip. He proposed to the mother that the children remain with his new common-law spouse.

[26] The applicant opposes this. She wishes the children to be returned to her care during his frequent business trips.

[27] The applicant has proposed and the respondent has not denied that he has now expanded his business prospects to include an overseas country. This will require him to travel again through various locations in Canada, the United States and Europe. Her expectation is he will be traveling more often and thus will not be able to have the children during his parenting time.

Communication difficulties

[28] Communication difficulties preceded the separation. The applicant maintains that since the incident at separation, there has been limited communication with one another on matters relating to the children. Despite her request to have direct communication, the respondent has insisted the parties communicate by way of text messaging and email.

[29] As of the applicant's affidavit dated November 5, 2010, the parties had only spoken on the phone once since the separation.

[30] The applicant has attempted to call the respondent on numerous occasions and has had to wait several days to receive a response from the respondent with respect to important decisions affecting the children. She advises that sometimes she receives no response.

[31] The respondent has not denied that he has refused up until the recent past to take telephone calls from the applicant. He has testified that lately (shortly before proceeding to this litigated interim hearing) he has demonstrated flexibility to take telephone calls.

[32] During his parenting time, the respondent has restricted the applicant's ability to talk to the children and while there are no restrictions in the separation agreement, he has designated a once per week call.

[33] Subsequently the respondent has allowed calls but restricts them to very specific evening times and is exacting as to when they will be forfeited if they are not connected and completed within the time specified.

[34] The applicant has given the children a cell phone in order to facilitate her contact. She has been advised that the respondent rarely allows them access the phone while the children are in his care.

[35] The respondent's pattern of pick ups and drop offs avoids all contact between the parties. When the children are dropped off at school in the morning, the respondent then takes their overnight bags to the applicant's home and leaves them at her front door.

[36] With respect to the child support, the respondent has decided to purchase items and clothes for the children and then deduct these from the child support. This makes the applicant's budget more precarious.

[37] Not surprisingly, this tension between the parents has filtered down to the children.

Consequences

[38] The applicant was contacted by her son’s teacher and advised that he was very upset and sad. He wanted to talk to the teacher about how unhappy he was. The teacher advised that the child told her his life was "wrecked".

[39] The teacher was concerned about his emotional state. She advised the mother that the child had been making previous comments to her regarding the February 26, 2009 incident that resulted in the separation.

[40] Upon hearing this, the applicant contacted the respondent immediately. She then contacted her son and advised him that speaking to the teacher was a good thing to do. Her son asked to speak to a doctor.

[41] Her son was in the father's care at the time. The mother asked her son to have the father put on the phone so she could speak to him. She was advised by her son that the father did not wish to speak to her and that she was to continue to contact him via email.

[42] It was the mother's intention to set up counseling as soon as possible. The father failed to respond productively to the emails sent out by the mother to establish a timely connection with a counselor.

[43] Both children have started counseling as of October 27, 2010.

[44] The father believes the shared parenting arrangement is working and benefitting the children. Despite hearing what the applicant, the teacher or babysitter said, the respondent believes that he and the applicant have been able to make child care arrangements needed to accommodate his work.

[45] The respondent acknowledged that the applicant wanted to be able to telephone him and communicate more directly. As of his affidavit February 6, 2011, he stated as follows:

> ...I believe our current communication methods are satisfactory. We communicate by e-mail, a journal and text messages.

[46] On one occasion, in paragraph 9(h), he indicates:

> I feel there is no need to speak on the telephone. Communication between us works through text messaging.

[47] In a responding email of February 13, 2011, he advised that he did not want any phone calls: "No phone calls thanks. I got the message loud and clear".

[48] The respondent advises he did not restrict telephone communication but in the past he did not find it to be an effective tool.

[49] E-mail messages were introduced to the respondent in cross examination; evidence of messages between the parties arising out of the mother's concern about their son's state of mind.

[50] On February 12, 2011 the mother sent to the father a message via email concerning a number of issues that needed to be discussed between the parents, including homework, the son's medication and the teacher’s concerns.

[51] The applicant confirmed in the email that she had received a call from both children’s teachers. Both teachers stressed that the children needed more attention with homework and tests.

[52] The teacher noticed that during the week the child was with the father one child often comes to school without her reading done and has to stay at recess to complete the work. The teacher was asking for consistency in the children's work.

[53] There was also in the emails an expression of concern about the medication that another child was taking. The mother was attempting to determine from the father what dosage he was giving because there were some problems noted.

[54] With respect to the medication, the respondent's response was as follows: "Never says anything about a buzz in his head here so it isn't what I am giving him. He has been with you for a while".

[55] With respect to counseling, he says as follows:

> Do you really expect things to go away just because of counseling? I am quite sure it might be helpful but to say and expect that he hasn't had an episode since and to be surprised by this because he has been in counseling??? Don't know what to tell you. He hasn't had any questions or problems here and has had a couple friends over doing very well. Language can be a problem with him.

[56] And he indicates at paragraph 9(o):

> When the children are in my care they blend into a happy normal family. I do not see any signs of a need for counseling.

[57] The respondent suggested he did not have the counselor's information although the mother provided proof of emails in which she advised of the counseling.

[58] In his affidavit, the respondent alleges that the applicant sometimes lets the child's medication run out.

[59] On cross-examination it was clear that the father had received the medication and waited too long to fill the medication. As a result, he contacted the doctor directly, who was unable to see him immediately. The doctor's notes indicate that the father suggested to the doctor that if he could not be seen he would and did go to the office and refused to leave until he could get the prescription renewed.

[60] The medical records of the specialist verify the mother's statements regarding this incident wherein the father repeatedly called her office and said he would sit in her waiting room until she came out.

[61] On a second occasion, the respondent gave the child an old prescription the child had been taken off of because it caused a negative change in the child's behaviour.

[62] The respondent's in-court testimony regarding measuring the dosage was not entirely satisfactory.

[63] The respondent does advise that the children have been introduced to a new family through his common-law spouse including a brother, sister, two step-sisters and a stepmother. He therefore indicates that there is no reason the children have to go to the mother if he is temporarily unavailable.

[64] The respondent did not deny that the applicant was responsible for most if not all the children's appointments with the doctor, dentist, eye examinations, counseling and parent teacher meetings.

[65] The respondent did not deny that the applicant is the one that has to make alternate child care arrangements when he is away.

[66] There are consequences to the children due to this rigid system of communication. Some consequences are more serious than others.

[67] On March 23, 2011 the child was scheduled to attend a field trip with his class. The father has previously signed the permission slip; the mother was unaware of the trip and thus had to arrange to have child care. Her attempts to contact the father to determine what was the case (for the purposes of child care) was not answered and thus the mother contacted the school directly on the date of the trip to determine whether alternate arrangements had to be made.

[68] The father enrolled one of the children in a skipping class following school in January 2011. The mother was not informed and did not then advise the child care provider. The child care provider found out about this when they attended the school to pick up the children.

[69] The father enrolled the children in swimming lessons, did not inform the mother. She was informed through the children. When the mother found out about the swimming, she was told she was not welcomed to go and watch swimming. Eventually the father provided her a schedule so that she could take them during her parenting times.

[70] The mother has been flexible to make sure that the children have contact with their father. For the last two years she allowed the children to stay with him for Christmas Eve and Christmas Day so they could be with their father and his children from a previous marriage. She supports their involvement in the family vacation and in a cruise with their father.

[71] The father's behaviour indicates he has significant difficulty voluntarily cooperating and communicating on an adult, mature level with the mother.

[72] His behavior is disrespectful. It leaves to the children the responsibility of communicating changes in schedule or their activities to the mother.

[73] The day to day care givers must be well informed of the children’s schedule at all times.

[74] The mother acknowledges that while the father has not responded to her communication attempts prior to January, his response times have improved since January 2011.

[75] There is no doubt the mother's testimony not only rings true but is supported by information from the babysitter and from the teachers as well as from the doctor; all of whom are third-party sources.

[76] Essentially the father does not deny that he has refused telephone calls. He is adamant that the current arrangement works for him and for the children.

[77] The father's response when concerns are voiced by the babysitter or the teacher is to challenge them on these disclosures rather than examine what these concerns mean to his children.

[78] The approach suggests their disclosures are an act against him rather than an expression of concern about the children.

[79] That is consistent with his responses in the email; denial that any problem exists, assertion that everything is okay in his house; deferring the issue to whatever circumstances are going on in the mother's house.

[80] This does not lead to or allow for appropriate discussion and resolution that is child focused, a process inherent in a viable shared parenting arrangement.

[81] The only excuse offered for the father's behaviour regarding this stilted communication is that for six months following the separation he was under a no-contact order. He simply has continued to abide by the terms, notwithstanding that the undertaking has long ago expired.

[82] This is an unacceptable explanation and does not adequately speak to the issues that have been raised by the applicant.

[83] These parties have been separated since February 26, 2009. The no-contact order has long since expired.

[84] The separation agreement is dated May 19, 2009. Sufficient time has elapsed, given the parties both apparently had legal advice, to see a demonstrable improvement in the relationship between the applicant and the respondent.

[85] The agreement does not reflect the *de facto* custody situation. It is a fiction. While it is a statement of what one might hope would be attainable, it is not a true reflection of what is going on with these children.

[86] It is not a workable situation without a substantial change in the father's behavior, evidence of insight into the needs of the children, how a shared parenting relationship benefits the children and a demonstrated ability to rise above whatever is motivating this particular conduct so that the best interests of the children can be addressed in an appropriate manner.

[87] This is a situation in which these children have access to two very confident and capable parents. Whatever is interfering with the father's ability to behave in a mature fashion with the mother, it has had significant affect on the children's ability to recover from the separation of their parents.

[88] Interim orders usually guard the status quo unless there is sufficient evidence before the court to indicate that there are needs of the children that need to be addressed immediately and that intervention is required prior to a full hearing on the merits applying the best interests test.

[89] While the *Divorce Act* does not apply to these parties, the test of best interests as explained by the Supreme Court of Canada in **Young v. Young** SCC 1993 Carswell B.C. 264, is instructive and important to note.

[90] In **Young v. Young**, McLachlin J. summarized the law relating to best interests as follows:

> 8 The *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), provides that a court shall abide by the following matters in deciding questions of custody and access.
>
> 16 (8) In making an order under this section, the court shall take into consideration ***only*** the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
>
> ...
>
> (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage *should have as much contact with each spouse as is consistent with the best interests of the child* and, for that purpose, shall take into consideration **the willingness of the person for whom custody is sought to facilitate such contact.** [Emphasis added.]
>
> **The Wording of the Act**
> Parliament has adopted the "best interests of the child" test as the basis upon which custody and access disputes are to be resolved. Three aspects of the way Parliament has done this merit comment.
>
> **First, the "best interests of the child" test is the only test**. The express wording of s. 16(8) of the *Divorce Act* requires the court to look only at the best interests of the child in making orders of custody and access. **This means that parental preferences and "rights" play no role.**
>
> Second, the test is broad. Parliament has recognized that the variety of circumstances which may arise in disputes over custody and access is so diverse that predetermined rules, designed to resolve certain types of disputes in advance, may not be useful. Rather, it has been left to the judge to decide what is in the "best interests of the child", by reference to the **"condition, means, needs and other circumstances"** of the child. Nevertheless, the judicial task is not one of pure discretion. By embodying the "best interests" test in legislation and by

> setting out general factors to be considered, Parliament has established a legal test, albeit a flexible one. Like all legal tests**, it is to be applied according to the evidence in the case, viewed objectively.** There is no room for the judge's personal predilections and prejudices. The judge's duty is to apply the law. He or she must not do what he or she wants to do but what he or she ought to do.
>
> Third, s. 16(10) provides that in making an order, the court shall give effect **"to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child."** This is significant. It stands as the only specific factor which Parliament has seen fit to single out as being something which the judge must consider. **By mentioning this factor, Parliament has expressed its opinion that contact with each parent is valuable, and that the judge should ensure that this contact is maximized**. The modifying phrase "as is consistent with the best interests of the child" means that the goal of maximum contact of each parent with the child is not absolute. **To the extent that contact conflicts with the best interests of the child, it may be restricted.** But *only* to that extent. Parliament's decision to maintain maximum contact between the child and both parents is amply supported by the literature, which suggests that children benefit from continued access: Michael Rutter, *Maternal Deprivation Reassessed* (1981), Benians, "Preserving Parental Contact", in *Fostering Parental Contact* (1982).

[91] There are situations that do not fit well into a shared custody parenting strategy for a variety of reasons. These may include geographical distance between the parties, the employment of a parent that causes that parent to be physically unavailable or the existence of unresolved emotional issues that effectively impede the collaboration and cooperative spirit require to make these parenting arrangements function effectively to address the children's best interests.

[92] Unresolved anger and conflict can be such an impediment.

[93] E.E. Gillese, J.A. wrote for the Ontario Court of Appeal in **Lawson v. Lawson**, 2006 Carswell Ont 4789:

> Joint custody is not appropriate where parents are unable to co-operate or communicate effectively. See **Kaplanis v. Kaplanis**, [2005] O.J. No. 275 (Ont. C.A.).

[94] And in **Nairmn v. Lukonski,** Ontario Superior Court of Ontario 2002 Carswell Ont 1119, Blishen J. said as follows:

> Although neither party is requesting an order of joint custody, it is within the discretion of the court to impose joint custody even when it is not on consent, **but only in circumstances where such an arrangement would ultimately be in best interests of the children. If a joint custody order will negatively impact on the children by continually exposing them to ongoing conflict and hostility, then it is not appropriate.**

[95] The Ontario Court of Appeal in **Wreggitt v. Belanger,** [2001] O.J. No. 4777 (Ont. C.A.) confirmed the trial judge's decision to vary a joint custody order and order sole custody to the mother in light of the worsening conflict between the parties. Madam Justice Simmons stated:

> **Conflict and lack of cooperation, whatever the source, are an impediment to an effective joint parenting arrangement, as well as a source of stress for the children**.

[96] As stated by Justice Aston in **M. (T.J.) v. M. (P.G.)**, [2002] Carswell Ont 356 (Ont. S.C.J.)], (30 January 2002) Stratford R00-98:

> There are cases from across Canada where orders of joint custody are made, even in cases where parents are hostile and uncooperative when they are crafted as "parallel parenting" instead of "cooperative parenting". Justice Aston refers to the decision of Mr. Justice Kruzic in **Mol v. Mol**, [1997] O.J. No. 4060 (Ont. Gen. Div.), which provides a review of a substantial number of cases from across Canada which have made orders of "parallel parenting". In **McKone**, supra, Justice Aston concludes that "parallel parenting" orders have become a subcategory of joint custody which does not depend upon cooperative working relationships or even good communication between the parents. He states:
>
> > The concept (consistent with subsection 20(1) of the *Children's Law Reform Act*) is that the parents have equal status but exercise the rights and responsibilities associated with "custody" independently of one another. Section 20(7) of the *Children's Law Reform Act*, R.S.O. 1990, c. C.12 provides clear authority for the court to deal separately and specifically with "incidents of custody". The form of a "parallel parenting" order addresses specific incidents of custody beyond a mere residential schedule for where children will reside on a day-to-day basis. For example, in **South v. Tichelaar**, [2001] O.J. NO. 2823 (S.C.J.), the court granted "joint custody" but then went on to give the father sole decision-making authority over the children's sporting activities and the

> mother sole decision-making authority over the dental health of the children.
>
> In this case, as noted above, there is no question as to the open hostility, anger, mistrust and lack of respect between the parties. **Although the children are resilient and appear to be doing well, the comments made to their counselors and their reactions to access exchanges demonstrate the negative effects of their parents' behaviour**. Although Dr. Weinberger initially recommended some joint decision-making, he also stated, given the history and the prevailing atmosphere of mistrust and ill feelings, it was difficult to see any basis for a viable joint decision-making process. **Even a "parallel parenting" arrangement would require some communication and information sharing. Even the most basic of information sharing has been extremely difficult in this case. Therefore, I find that a joint custody order, even if arranged as "parallel parenting", would not be in the best interests of William and Nicholas.**

[97] This is one step beyond a joint custody situation. It is a situation where the mother has primary care but the parents are to have equal time sharing.

[98] The compelling factors here causing me to intervene at an interim stage of these proceedings is the third-party information that verifies the mother's statement. The children are indeed suffering from the lingering effects of the separation, the parenting agreement currently in effect and the lack of communication between there principle care givers such their needs have not been the primary focus.

[99] Indeed, if the teacher and the babysitter and, in particular the teachers of two children, indicate that something is wrong, and one of the children is expressing great difficulty and sadness; waiting for a full hearing to preserve the rights of each of the parents is not an appropriate course of action.

[100] It is important to intervene now in this situation such that some stability and consistency will be in play reflecting the defacto arrangement so that the parent who is willing to cooperate can unilaterally address the needs for counseling and for consistency.

[101] Coupled with the difficulty experienced by the children, the father acknowledges that his schedule pulls him away as a primary parent for large blocks of time.

[102] To leave the children with his common-law partner, a fairly recent relationship since the separation in 2009, does nothing to improve communication between the mother and his household.

[103] This simply places his right to insist on sharing parenting and maintenance of the status quo in direct competition with the best interests and the needs of his children.

[104] I do not doubt the father's or mother's love for their children. Nor do I doubt their capacity to parent and provide for their children. However, there is sufficient evidence before me to conclude that this father needs to develop significant insight into whatever impediments are impairing his ability to properly enter into a shared parenting relationship with the mother.

[105] Should this occur in the final hearing, an appropriate shared parenting arrangement may be more workable. Currently it is unworkable. This is not due to the mother's lack of trying; it is directly related to the father's circumstances.

[106] Delaying this for a final hearing will simply jeopardize the children's emotional security further. Their needs are the priority. They cannot wait until a trial is set; likely not until January of 2012.

[107] Therefore, the mother shall continue to have primary care. The children's schedule will change in order to better reflect when the father can be present with the children.

[108] This is not meant to interfere with the significant and valuable relationship with the father.

[109] The father will need to address his difficulties engaging in a full and appropriate communication strategy with the mother of his two children.

[110] The parties shall continue to share joint custody. The mother will continue to be the primary parent. This will retain for the children their parents involvement

in their lives including the right to be consulted and to jointly make decisions regarding the major issues of education, physical, emotional and spiritual welfare of the children.

[111] The variation pending full hearing will relate to the issue of equal parenting time.

[112] Shared parenting for the purposes of custody and access (not child support) can be achieved by a parenting plan that maximizes the exposure of the children to their parents in a manner that recognizes first and foremost the needs of the children and the ability of the parents to meet these needs. It does not demand as a prerequisite equality of parenting time.

[113] The parent having day to day care will be responsible for the day to day decisions.

[114] Should the father not be available for his parenting time, he shall advise the mother in writing, well in advance (as soon as he becomes aware of his impending absence) and he shall provide to her six months in advance his intended regular travel schedule as to his periods away from his home.

[115] The father shall immediately, when he becomes aware of a need to take a trip during his parenting time, advise the mother so that she may make appropriate arrangements.

[116] It is important that he abide by these directives in form and in spirit because in a final hearing, if this is not working other parenting strategies will have to be considered. Last minute changes have the potential of placing the other parent in a position where their own employment is jeopardized in order to address child care matters.

[117] The father shall have parenting time with the children every other weekend, commencing Friday after school and continuing until Monday, where he shall deliver the children to the school.

[118] The father shall have one overnight parenting time with the children every week. In the event he is unable to be present during that time, he may arrange in advance by consultation and consensus with the mother for an alternate time.

[119] The father shall immediately address the need to have telephone conversations regarding the best interests and the needs of the children on a regular basis.

[120] The father shall forthwith respond immediately to email inquiries regarding needs for the children.

[121] The counselor shall have the right to address the children's needs with the permission of the mother and without need to have the permission of the father. The counselor may as they deem necessary consult with or involve the father or mother in these sessions.

[122] The father shall allow the children unlimited telephone contact with the mother while the children are in his home and likewise, the mother shall allow the children to have unlimited contact with the father when they are her home.

[123] When the father is unavailable during his parenting time, the children are to be returned to the mother.

[124] Should the father not be willing to attend parent sessions with the mother at the school, he shall make arrangements to attend separately and to address any deficiencies with respect to the children's needs.

[125] No extra-curricular activities will be assigned to the children while the children are in the care of the one parent without the other parent's consent in advance.

[126] As this is an interim order, I will not vary any of the conditions of extra-ordinary or summer time holiday time.

[127] I have given the mother the right to make final decision-making authority with respect to medical matters given the difficulty in instituting the counseling on a timely basis. However, with respect to final decision-making authority on other issues, that will be a matter for the final hearing.

Child Support

[128] This matter was set down for a very short period of time and thus a proper analysis of the child support issue cannot be completed. The focus was on custody issues.

[129] The respondent believes that he has provided sufficient information to cause the court to conclude that his net income for purposes of child support is $61,038.67. In the agreement his income is listed as $75,000.

[130] The applicant asks the court to add back into his income certain deductions claimed by the respondent as depicted in his business statement of income and expenses.

[131] The father did not have sufficient information concerning his business deductions to allow me to conclude that his net income as reflected in the statements provided is accurate. He is sufficiently uncertain of the statement such that these issues need to be clarified before the net income for the purposes of child support can be altered. In fairness to the father he was unable to provide the explanation as he did not prepare the statements.

[132] There are clearly difficulties quantifying the father's actual total annual income for child support purposes. These needs to be resolved after further disclosure and explanation by the respondent, in a full review of his income.

[133] It appears from the face of the documentation and after hearing the parties speak to these issues that the father is operating on more income than is being utilized to determine his child support obligations.

[134] A look at the history of his incomes illustrates that in 2004 his line 150 shows $61,704; in 2005 $79,686; in 2006 $101,403; in 2007 $44,555 (this return shows him to be married); in 2008 $46,673 and in 2009 $52,185. He has incorporated his business and obviously has changed his method of tax reporting.

[135] The father shows a $27,500 expenses off his gross income for administrative support paid to his common-law partner. She is working full time as a mother and working on his books with respect to his company. Further explanation is needed to determine what if any amount of income should be factored back into the household income.

[136] The father obviously does not claim undue hardship but there are significant deductions in his home-office company that require further clarification. A determination must be made as to what, if any, percentage of his business deductions ought to be added back into his income for child support purposes:

> His airfare, accommodations and meals for the period January 1, 2010 to December 31, 2010 appears to be $26,274.26. There is also some issue as the period of time the business statements depict given the date of incorporation.
>
> The office phone and a cell phone relating to his business which is operated out of his home = $6,829.83.
>
> There is an automobile expense of $15,898.80. In 2009 the father returned his own leased truck. From December 2009 to December 2010, he leased his common-law partner's vehicle and claimed that as a deduction. For 2010, he has claimed as deductions for equipment lease, lease payments, auto insurance and fuel a total of $15,894.80.

[137] It is questionable as whether this ought not to be reflected partially or wholly in his income for the purposes of child support.

[138] While the respondent has submitted his income statement which show net sales of $554,475.00, his testimony initially indicated these commissions were paid to his company. This was later altered and he was unable to clarify whether on the expense list the commissions he has noted as $65,746.20 are paid to his company or to other persons at arms' length.

[139] These and other issues relating to the amortization of $8,400; a determination with respect to what, if any, percentage of the cell phone and office phone, as well as the issue regarding the commissions and the splitting of income ought to be resolved at a final hearing.

[140] The agreement the parents signed assumed the father has an annual income of $75,000 and the mother $46,200. In comparison, the mother's income for 2010 is now $39,750.00.

[141] I am not satisfied that I have sufficient accurate information to reduce his income from the $75,000 set out in the separation agreement.

[142] I will maintain the income at $75,000 until these issues have been properly clarified in a final hearing.

[143] The father shall pay $1,084 per month in child support monthly commencing April 15th 2011 and continuing thereafter every month until further order of the court.

[144] The father shall pay his prorated share of the child care after tax costs.

[145] The mother will immediately provide an accurate accounting of after tax costs for child care.

[146] The father shall pay his proportionate share of the counseling. The mother shall provide him with a bill for any amount over and above insurance and he shall pay it within 15 days of receipt of the confirmation of the cost of the counseling.

[147] The mother's counsel shall draft the order.

Legere Sers, J.

April 18, 2011
Halifax, Nova Scotia