

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Straume v. Fleming, 2011 NSSC 206

Date: 20110428

Docket: SFHMCA073622

Registry: Halifax

Between:

Lori-Ann Straume

Applicant

v.

Timothy James Fleming

Respondent

Judge:

The Honourable Justice Moira C. Legere Sers

Heard:

April 26 and 28, 2011 in Halifax, Nova Scotia

Decision:

April 28, 2011 (**Orally**)

Written Release: June 1, 2011

Counsel:

Joyce Ruck De Peza for the applicant Lori-Ann Straume
Jennifer Schofield for the respondent Timothy Fleming

By the Court:

[1] This is an interim hearing between Lori-Ann Elizabeth Straume and Timothy James Fleming concerning their daughter, Areena, born July 21, 2003. This matter is being set down for a final hearing in the future.

[2] This is a decision that I am delivering orally for a number of reasons. I am delivering it orally because a decision would not be available until four weeks passed this date and this is a matter that requires some stabilizing.

[3] Thus, I reserve the right to edit the decision for the purpose of issuing a written decision, if necessary. Any editing that takes place will be with respect solely to form and not substance.

[4] The test on an interim hearing is different from the test on a final hearing. As both counsel have alluded to, there is little evidence before me and little corroboration regarding the parties' perspectives and positions relating to the best interests of their child. And thus, at a full hearing, if that becomes necessary, they will have further opportunity to provide verification of information from third-party sources, possibly more objective than the parties that are before the court.

[5] It is not necessary to have a final hearing if the parties reach agreement or involve themselves in a settlement process which would involve either their counsel or a judicial settlement conference. It is my belief that this is a matter that might likely be better resolved in the final instance with a judicial settlement conference in order to allow the parties an opportunity to discuss fully all options available to you and to craft an agreement that better respects your current life situation and the needs of your child as you best know those needs.

[6] I encourage you to pursue that as a better option to litigation for a number of reasons. The first being that it is evident to me at this interim stage that you have focussed your energies on throwing stones at one another and providing the court with a significant history and reasons why the other parent should not have the primary care and control of this child. And in so doing, you obviously have not pointed out what is good about each other in terms of the benefits that this child has from having her parents, such as you are, in her life. You have not focussed on how to maximize the best that you can offer to your child in the long run.

[7] The secondary result of aiming at one another like this is that you air all of your failures before the court but little time has been focussed on providing the court with information about what are truly Areena's needs and what is in her best interests, based not on some ideal standard but what can you two as her parents provide her given that you are who you are, you have the history that you have, and she has only you as her parents.

[8] Obviously she has the benefit in the father's life of a partner who has children of her own and has established some kind of stability with the father.

[9] This child has grandmothers who have provided some extended family support. That needs to be preserved in a setting that will best address her interests. I am hopeful that you will consider that very seriously.

[10] This is not only an interim decision, it is not binding in the final analysis on the court that hears the whole story. I recognize I have just a window of information on both of you and any conclusions that I make are limited by the time that you are before me which is limited and by the number of witnesses that you can bring forward that would be helpful to you. It is further limited because many of the people that you might be able to bring to the court do not live in Nova Scotia and so I recognize this places some limitations on you both.

[11] In light of the cautions that I put around my decision, I have a number of facts that have been presented to me.

[12] I have a mother who is 27 years old and a father who is 38 years old with one child. The parents, I know, lived together for a short period of time, possibly three months together, in Fort McMurray after the birth of this child. The mother acknowledges that both father and mother used drugs recreationally. The mother alleges that the father used coke. The father denies any hard drug usage but he admits historic soft drug usage. The mother alleges that the father continues to engage in some drug or alcohol use, which impairs his ability to parent. The father denies recent or current use.

[13] It is clear that the mother has had a significant drug problem far more serious in relation to the child because the child lived with her during this period of time.

[14] The mother advises that she was in a relationship in which the other party, not Mr. Fleming, was involved in significant drug use and criminal activity and that put her child at risk.

[15] The mother advises that in the absence of her child, she also engaged some drug use, non-prescription, and advises the court that she has been clean since October 2010 of her drug use.

[16] It is not clear to me that whether she has involved herself in alcohol use. There are allegations from Mr. Fleming that in fact she has been involved in alcohol misuse.

[17] While the parents were still together and after the birth, they moved to Greenwood, British Columbia. The father was required to work away from the home for a period of time. During one of these periods of time, he alleges that the mother entered into another relationship. She alleges that the father left her.

[18] I have insufficient evidence to make a conclusion one way or the other except to say that their relationship together was extremely brief. There were significant separations and they separated and went their own ways in or about February of 2004.

[19] From the court's perspective then, let's look at this from the view of the child. She experienced possibly three to six months with her parents together. After February 2004 she spent the remainder of the time up to 2008 solely in the care and control of her mother.

[20] The evidence discloses that the mother's and child's conditions and lifestyle were minimal. They lived in very difficult circumstances for at least some period of time.

[21] There are allegations that the mother lived in a cabin with no water and electricity for some period of time. There are allegations that when the mother sent the child to live with the father that the child was educationally and possibly emotionally delayed.

[22] The mother, in some way, has supported this evidence. It is not my conclusion that the child and the mother lived for those five years in difficult

circumstances but it is clear that those circumstances were so difficult and so significant and so risk-laden for the child that the mother made a very brave decision.

[23] She decided during this time that she needed to care for herself, get herself off drugs and remove herself from this relationship. She chose in 2008 and 2009 to bring the child to the father. Now, that was not without first the father and the child and the mother establishing a relationship via Facebook so that the child and the father could begin to be acquainted with one another.

[24] The mother blames the father for not having any contact with the child from the date of separation of February 2004 to the date when they were reunited by way of Facebook, some time in 2008. They continued to speak via Facebook in the 2008 - 2009 year until the mother delivered the child to the father.

[25] The father blames the mother for an absence of contact between the father and the child after separation up to the date of re-engagement.

[26] I suggest that it is probably a bit of both in that the mother did not live with the father, lived in another relationship. There is no evidence of any application to call the father to responsibility by way of child support; I have no information that there is any movement to enter into any agreement regarding the child, visitation, child support, etc. and I suggest that both parents will have to bear responsibility for their role in failing to keep their child in contact with the other parent.

[27] In any event, after the re-engagement, the mother acknowledges that she was involved with drugs and in a relationship which posed a risk to her child. The father indicates that the mother suggested that this risk not only related to the criminal activity and drug involvement but also related to the concerns that her then current partner may pose a physical risk to the child, by way of some sort of abuse. The suggestion is sexual abuse given the comments and again I only have the parties' information as to what they said to one another.

[28] The mother then decided that she would take the child and drop the child off at the father's, initially for a short period of time and then reluctantly she agreed to a one year academic stay with the father in order to have time herself to care for herself. Her evidence in this regard is substantiated by her mother's testimony, who has come here from British Columbia, who confirmed that her daughter

needed to focus on her own rehabilitation and her need to extract herself from this very risky relationship.

[29] The mother admits that her family were a bit concerned about the mother's decision to take the child to the father. That, I understand, because this is a father who has been absent for five years at least. The mother has suggested in her affidavit before the court in British Columbia that she wanted this child to reside around her only family in British Columbia and that was her support and her network. Her mother testified that she is fairly close by and saw the child on a regular basis.

[30] It raises the question why after all these years did the mother decide in her time of need, and that she ought to be commended for, to remove the child from all of the relatives in British Columbia and place this child with the father. That is an unanswered question, particularly because she has promoted the family in British Columbia as the sole individuals who have had contact with her child. In making that decision I must confess I do not know what pressures were on the mother at that time but it was her decision. Her decision was to remove this child from the only extended family network that she knew and take her to the father. Her testimony is that she believed that the father lived in a stable relationship in a clean and appropriate environment and she, I believe, placed her child there because she felt her child would be safe.

[31] That has to be looked at in the context of her comments and allegations about Mr. Fleming's anger management problem, his instability, his criminal background which she said she knew nothing about. I do not have any comment about whether she did or she did not. Regardless of what she knew, she decided that her child was safest with the father and at that time with the father in his relationship with his current partner. That is the choice the mother made, a difficult choice but the choice she made.

[32] As the year went on, contact between the mother and child continued. The mother struggled to remove herself from the significantly negative influence of her boyfriend with whom she was involved between March of 2009 and June of 2009. Subsequently, there is some evidence to suggest that her last contact with this individual was in August of 2010. A significant statement that this indeed was a struggle; it was not easy for the mother but she struggled with it and she finally withdrew from that relationship.

[33] Her evidence is also to indicate that well into the year she was still involved with drugs. Now, I understand the mother's reasoning: she was missing her child, in a difficult relationship, suffering with an addiction and under the influence of someone who was involved in criminal activity as was she.

[34] She confesses that her move to Nova Scotia and her last bout with drugs was in August of 2010 and from that point forward she has eliminated the negative influence by way of her partner and severed her involvement with non-prescription drugs.

[35] There is some indication that she has still a difficulty with alcohol misuse. She admits that while she planned on doing a three-week detox, because of the events surrounding her need to reconnect with her child, she did not get around to doing that and thus, her work on dealing with substance abuse is all self-help, other than the meetings she attended. She may well need, for long-term abstinence, to look at some more professional assistance.

[36] So she admits that while she delivered the child to the father, and I have absolutely no information what went on almost for the full academic year for that child, she did not immediately extract herself from drugs and from this boyfriend.

[37] Over the year the mother attended meetings and again never actually moved into a detox situation. She maintained regular contact with her child and had a Christmas visit in 2009.

[38] As summer approached, she began to try to reconnect with her child to make plans for the next year. However, as she indicated, and the evidence supports this, the mother had not yet established stability in her life from the risk factors that exposed her child to risk.

[39] She struggled with whether or not to keep her child at Christmas but recognized that she had made a commitment with the father that the child should stay there with him. In spite of her own struggle, she lived up to her agreement and returned the child to the father after Christmas.

[40] That is again, an indication of being able to put her child's wishes and needs above her own. It also is an indication that she recognizes her own frailties.

[41] In March the mother began to have difficulty contacting her child. She contacted the school and found that the father and the children with his family had moved several times; she says four times. In another vein the father, she says, told her he was having some difficulties parenting their child.

[42] In May the mother found out that the father and her child were living in a hotel. She had no contact information. Thus she made an application before the British Columbia court.

[43] The father indicates that the hotel stay was a transitional stay while they began to consider moving back to Nova Scotia. I say back to Nova Scotia because he met his partner here in 2006; they have a family; his partner has an older child and they have a child together. These children have now been reacquainted with the child that is before me and they have established a sibling connection.

[44] I tend to conclude that there were many reasons the father left British Columbia. One reason was to re-establish in a place around family where they had connections and could re-establish employment. A second because the father at that time legitimately was concerned about the mother's (state of) recovery. He was afraid that she would come back at the end of their agreement and take their child back into a situation of considerable risk. Thirdly, I conclude that he likely became attached to his child and did not want to see her go home.

[45] The mother applied to British Columbia court on the basis of her plan to return this child to British Columbia with her because that is what she told the judge that is where her family lived. She asked and obtained an order to have the child removed to British Columbia.

[46] July 30, 2010 was the date the child was to be returned to British Columbia, according to an *ex parte* interim order applied for in June of 2010, obviously without notice to the father.

[47] In December of 2010, the mother came to Nova Scotia. She applied in the Nova Scotia courts for interim custody and asked to have access re-established.

[48] In January both parties arrived at an interim consent arrangement of week on - week off; both parties were to keep each other informed of the activities of the child while in the other's home.

[49] The mother clearly made her decision at that time not to remove the child from Nova Scotia. She made the decision to remain in Nova Scotia herself and made the decision to keep the child connected to the father. She wanted to re-establish herself in Nova Scotia.

[50] She advises that she has started a recovery here; she has stopped drugs. I question what there is for her to go back to except that obviously her mother and family live in British Columbia.

[51] I also suspect that at this time the child has been introduced to sibling contact and expressed to the mother her desire to remain in contact with her new found family; not to lose what she has gained by this re-introduction to her father and his partner and their children.

[52] It is also interesting to note that when she first came to Nova Scotia, the mother was invited into the home of the father and his partner and children. That is a significant statement because in spite of all of the things that you have said about one another, when times got really tough, you placed your child with the father, who you had not had any contact with for years.

[53] When times were really tough, the father and his partner put aside the history and the concern and the fear they must have lived with, recognizing they took this child here without notice and allowed the mother into their home to live there until she could stabilize herself in Nova Scotia. That says volumes about what your good intentions were. But I recognize that this was not likely to last long and it did not.

[54] On November 2nd there was an altercation between the mother and the partner; the police were called; no charges were laid and the mother moved out to a transition home.

[55] From the child's perspective then, *first* she had a very short period of time when she was with her mother and her father and knew very little about her connections at a very young age; *secondly* to a period of time for almost five years

where she lived with her mother and did not know her father; *thirdly* to a period of one to two years where she was re-introduced to her father and family and then lived with them for a full academic year, with the mother's consent, up to and including the end of the academic year in June.

[56] Finally, from June until the current date, the parents did not consent or were not of the same mind as to what the status quo ought to be: the mother wanting the child returned and the father fleeing British Columbia and coming to Nova Scotia with the child. I have no doubt they were concerned that they were taking the child here without the mother's consent. Clearly this is prohibited by law and it placed them in a very serious situation where they could have been charged criminally if not lost the child to them to go back to British Columbia.

[57] But the mother's position has changed a number of times. First she wanted the child to go with the father; then she wanted the child to come back; then when she finds the child has been taken to Nova Scotia, she wanted the child back in British Columbia; when she comes to Nova Scotia, for many reasons and some I think are selfish and some I think focus on the best interests of the child, she recognizes that she cannot now pull this child away from what she has introduced this child to, to enhance this child's life and decides to stay.

[58] She has also entered into a relationship that she thinks is a very good relationship. That may have influenced somewhat her ability to focus her interests on staying in Nova Scotia.

[59] So now, for the first time, we have a child who admittedly has been living in very difficult circumstances in British Columbia, although perhaps somewhat in the bosom of the extended family - I have not very much information on that - to living in the father's care currently, which is really the *de facto* situation as admitted by counsel.

[60] There are now multiple allegations by the mother regarding the instability of the father's home. I do not count as *de facto* custody that period from June to the current date as that has been regulated by consent order, part of it was without the mother's consent.

[61] Looking back the *de facto* was as a direct result of the mother's circumstances and the mother's consent to place the child with the father. I dare

say were her life circumstances more stable, more drug-free and more peaceful, that *de facto* situation likely would not have happened. It certainly would not have happened in a legal sense or in a *de facto* sense by the father's actions because he had already been absent in her life for a significant period of time.

[62] The mother is currently employed part-time, has had employment with and through the benefit of her current partner and has also been unemployed for a period of time in Nova Scotia.

[63] She has lived with the father and his partner; she has lived in a transition home; she has lived on her own and now she lives with her new partner, which appears to be one of the more stable situations that she has been in for a considerable period of time.

[64] It is understandable moving into a new province that you may be employed, not employed, etc. That really does not affect a decision with respect to parenting. Her employment allows her to manage her time around the child.

[65] With respect to her new relationship, it is indeed too short for a court to rely on as providing any long-term stability.

[66] The mother has indicated in the past that she has chosen individuals as partners who were controlling and abusive. She in fact has compared Mr. Fleming with her last partner who posed a significant risk to her health and that of her child.

[67] I recognize that her former partner is not before me. I have no contrary evidence but I do have the evidence of Mr. Fleming who was equally concerned about the danger and the risk and the evidence of the mother that she considered the risk so great that she put her child with the father.

[68] I have nothing but positive evidence about her current partner. This is a very short-term relationship which has brought to her a person who has invited her into his family, which brings with that all the benefits of his extended family and friends in the community in which he is established. From the only evidence I have, I could not make any conclusions regarding any negative influence he might have or whether this fits within the pattern of her past behaviour because certainly the evidence I have is that this is a positive influence. Hopefully, this will be one

that will continue for you and for your child. I cannot, however, indicate at this point in time that I can make any conclusions as to its long-term stability.

[69] With respect to the evidence of your mother, certainly she has been forthright in confirming the difficulties that you had in British Columbia with your partner and has kindly admitted that you needed time to take care of yourself.

[70] Much of the rest of her affidavit is based on your information and belief and does not come from her own personal knowledge of the circumstances other than a conversation, I believe, with Mr. Fleming which would verify that Mr. Fleming was increasingly concerned toward June of 2010 about your continued involvement and what would happen at the end of the academic year.

[71] While that is a legitimate concern, Mr. Fleming, the action that you took was absolutely inappropriate in removing the child from British Columbia without going to the British Columbia court and getting the permission of the court; it is clear across Canada that all courts across Canada do not look positively on parents, for obvious reasons, removing children from the jurisdiction when in fact there are remedies within the jurisdiction that would have addressed your concerns before the court to allow you, if necessary, to remove her from British Columbia to Nova Scotia.

[72] That is why the British Columbia court ordered, without notice to you, without hearing you, that that child be returned to British Columbia. Since you have counsel, I am quite sure that you have been fully advised of the error of your ways in that regard. British Columbia is well-equipped with all of the facilities to deal with interviewing children and determining, as much as Nova Scotia is, what is in the best interests of the children and deciding between parents which parent needs to be with the child.

[73] I will deal with Ms. Donna Kinch's, the mother of the respondent, affidavit just briefly to say that there is obviously difficulty between Mr. Fleming and his mother, all of which is irrelevant to this proceeding. There are historical reasons for that and both parties harbor a resentment and have taken positions to protect themselves individually against contact with the other party. That has to be resolved between Mr. Fleming and his mother and has no place in this proceeding. I do not draw any conclusions about their dispute or the reasons behind their

dispute. I do not draw any conclusions for or against the character of Mr. Fleming or his mother with respect to this.

[74] I recognize that she is parenting the biological child of Mr. Fleming, with whom he had no contact, a child that was removed from the mother's care at a time when he was incarcerated and placed in your care and adopted by you. The families have made unspoken rules about what your child will know. You may not agree on that but that is an issue between both of you and has no play in this proceeding.

[75] Your position or information for or against either party really does not do anything to help the mother and father resolve their issues.

[76] I would say this: if Ms. Kinch is going to be involved in the relationship with her granddaughter, to have contact with this child, the grandmother must recognize as a grandmother that the benefit of having her in this child's life is a positive one as long as she stays out of the fray and does not get involved on one side or the other. She must make sure that this child gets only to see the best of her as grandmother. This child does not need to know her views on either parent.

[77] Her presence just expands the number of relatives and family that this child has to assist it as she moves forward in what has been a very tough life for her so far.

[78] The most serious issues that concern the court with respect to the mother is her past lifestyle issues, the drugs, her choice of partners, excluding as I indicate her current partner about whom I know very little other than what has been said positively before the court.

[79] I do note that he has not been challenged on cross-examination. Indeed, much of your current stability may in fact arise out of the stability that he offers to you. I do not know that but clearly you believe it because you have moved in with him and introduced your daughter to him and she has therefore the benefit of quite an extended family to just add to the numbers of individuals who can support her in her life.

[80] But there has been a clear history of instability in your life and there is insufficient time at this point for me to make any long-term conclusions. A judge

in a final hearing may well be able to do that or simply as time goes on, you will be in a better position to be able to indicate some stability of residence, some freedom from your drug misuse and alcohol misuse and more financial stability or occupational stability.

[81] The positives with respect to the mother include that the child has a connection to you, a long-term connection, a history with you, maybe through some very, very difficult times. Probably the most positive element that plays in my mind is that when the time got really tough, recognizing that you could not pull yourself out of the situation, you looked to make sure your child was safe with someone else.

[82] The most serious issues with respect to the father, and I believe both of you played a role in this, is your absence from your child's life since birth; that is a significant period of time, given that many of the connections in a child's life are cemented in the first five years. Your past criminal history has been described.

[83] I recognize that I do not have your full criminal history but I have no reason to believe otherwise; you have been fairly forthright in the list of your past criminal record including fraud, possession over, dangerous operation of a motor vehicle, possession under, a food fraud, which I presume is stealing from a place that sells food and assault.

[84] These all happened when you were 23 or 24 years old. I recognize you are 38 now and these happened in or about 1995 and 1996. They are serious charges indicating a criminal past for which you have done a maximum of seven months on one charge, five on another; maybe that happened concurrently. I do not know and do not need to know at this point.

[85] Then you did serve probationary time and time served and you did take courses during the period of time. The most recent of your offences are in 2000, which is over 11 years ago.

[86] You have established a relationship with a partner, who is in the court; I have not heard from that partner, I know very little about her; I do know that you have two children that have been living with your for a period of time which indicates some stability and I do know that your daughter was placed with you at the mother's consent.

[87] Your daughter has obviously developed a connection with you and wishes not to lose that connection by moving back to British Columbia. I think that is significant and it would indeed be a loss to her to lose what she has just recently begun to establish as a foundation in her life.

[88] There was mention by the mother of some concerns about step-parenting and the difficulties in terms of treating one child differently than another. That is not unusual in a step-parent/parent, second family situation. I am sure it has been difficult to embrace but I would note that the father and partner and children embraced this young girl into their home after not having any history with her and that is a significant statement. It would not go without considerable difficulty and I urge you both to take advantage of the information that one of you received at parent information and to follow up on the difficulties that second families have with children when there are mixed children.

[89] It is the parents who have to do something to make sure that the child feels loved by all the significant people in her life. These things happen unintentionally when parents are stressed. She does not need that; her little life has already been difficult enough.

[90] The absence from birth I have mentioned; the criminal history is dated, it is obviously there but it is dated, it may show that there is something else but the father has indicated he has no objection to a disclosure of his criminal records.

[91] I am not so certain that he has been forthright with his drug usage in past, although he has indicated currently he has no problems with drugs or alcohol. The mother accuses him of being intoxicated; he accuses the mother of being intoxicated; I suspect there is some alcohol misuse here but both of you know that you have responsibilities to your children and you need to address those in your own way. I cannot make a conclusion that either is abusing alcohol but as I say, I suspect alcohol misuse on both parts.

[92] The obvious positive of the father is that he has re-established connection with his daughter; he has offered to her siblings that she has become attached with and a parent providing the stability in her household of a second adult; and he has allowed the mother for a period of time to live with him. While this was a

generous offer, the writing was on the wall on that one; it was not going to work for long and in fact it ended in an altercation.

[93] The one piece of evidence that I have that comes from somebody other than the parties is the school.

[94] The school evidence shows me that this child has missed 8 ½ days in the last academic year. There is a note from the school indicating that they acknowledge the absences. The mother and partner need to address if some of those are as a result of scheduling difficulties or if they are legitimately as a result of illness. They do not appear to me to be illness because they are not back to back, but it may be that there are some times when the child cannot get to school and that is something obviously that you have to keep in touch with the school about.

[95] The only individual evidence, the objective evidence I have despite the mother's concerns about what is going on in the father's home, is that the school has a history with the father because there is another child at the school and they speak very positively about the father keeping in connection with the school and about the child attending clean and well fed.

[96] Clean is something that both parties indicate happens. The mother has indicated that the child is not being fed, but well fed is recorded. There is no negative comment.

[97] Again, at a final hearing perhaps if the mother thinks that there is something untoward going on here, having that person present if necessary for proper cross-examination might elicit some evidence that might support the mother's position but I suspect not; I suspect if you have the records from the school, if there is anything going on, the records are going to show it.

[98] I have not mentioned all of the allegations that you have made against each other. It is fair to say that both of you come to this court with fairly broken backgrounds. To be fair to you both there are not any perfect parents. But you are the parents this child has; you are all she has from the sense of having a mother and a father and nobody will ever replace either one of you as her parent.

[99] Hopefully, it looks to me like she has two grandmothers from whom she benefits. If exposed to them more, they will have an opportunity to provide and

shore up the gaps where you people have missed out on being more attentive to what she needs.

[100] And with proper choice of partners that have the same goals as you do, she can only have her sense of community enhanced by solid support from those who love her.

[101] She has the benefit of sibling contact which is obviously recognized in all of these situations as critical and very supportive in future and these are the things that the court has to look at and try to preserve.

[102] Now, when I say that you have broken histories, again, both of you have done things in your lives that you probably regret but both of you have committed to moving forward in a way in which you can not only stabilize your home life for yourselves but put yourselves in a better position to parent this child.

[103] So, from my perspective, what I have to do is to try to preserve this for your child. She is probably in the best situation possible in the sense that she has now reconnected with her father, found two siblings, has access to her grandmother, will have continued access to her grandmother in British Columbia, has a little bit more financial stability, has residential stability.

[104] I do note that the dad has moved a considerable period of time; some of them may have been for money, some of them may have been to accommodate you to come and live with them but obviously they are striving for residential stability as well as they are both working, you are trying to get work on a part-time basis, all of this can only help provide benefits to your child.

[105] What I have to do in an interim situation is to make sure that the most stable arrangement possible is put in place.

[106] I am concerned about the interim agreement that you entered into because it was an agreement that really fixed on establishing and maintaining the parental rights because of the move down here, to maintain and establish a *de facto* situation which could equalize the situation and put this child back in contact with mom where she had been cut off from mom but keep her with a stable connection to the father.

[107] But this really did not focus on her best interests. The problem I have is that as I go back to my first comments, I do not have a lot of information about your child that tells me that some children move back and forth well, some do not. This is a child who has experienced a lot of loss in her life and a lot of instability, a lot of mobility; she has experienced your difficult circumstances and in part as a result of your partners and in part as a result of your own choices.

[108] I need to establish somewhat of a status quo on which you both can work and begin to learn about the notion of joint parenting and educate yourself about how you can totally put aside your own best interests and focus on her. My view of it is, although we had in place a shared parenting arrangement, both of you in a sense have not understood the importance of keeping in contact with one another in a civil way. You choose that way; if it is email, if it is cell phone, however it is, but your child's interests and needs demand that you two speak to one another civilly and keep each other informed of educational, medical, spiritual, emotional, physical issues; however you do that, there are all kinds of ways of doing it. You are both able to learn how to do it. Do it through parent information; do it through your reading online; however you wish to do it, do it.

[109] This child is finding, maybe for the first time in her life, some sort of stability. It is fledgling at this point in time.

[110] The mother needs far more time to establish yourself and get yourself absolutely healthy and in a stable situation.

[111] This is an interim order, it is a beginning, it is not meant to map out the future but I am concerned that I need to keep both of you in her life in a very significant a way. I am concerned because she is moving back and forth from the siblings, out of the siblings on a regular basis, missing much of the day to day activity that the siblings are involved in and much of the schedule and quite frankly, a shared parenting arrangement without more may not be addressing her needs.

[112] In my view she needs to know that she will not arbitrarily be pulled from her father or partner or her new siblings. She needs to know that her mother is going to be in her life and stable, drug free and in a stable relationship, if that is what you choose to be. Or single if that is what you choose to be.

[113] This situation needs more time to develop. The mother's position has changed a number of times; I understand the difficulties that you face, the choices that you have had to make but it would be unfair to take from this child the possibility of future stability without first establishing your stability yourself.

[114] If you should change your mind, if something should happen with this relationship, then again, your child's stability is affected and that is something that we do not want to have happen.

[115] So, I am going to order joint custody and joint custody means that each of you must continue to be responsible for making the decisions, consulting one another on the education, emotional, spiritual and physical well-being of your child.

[116] It is your responsibility; you may have input from your partners but the decision-making must be with yourselves. This will essentially be a test period of time for you. The court in the future will be looking at this issue and saying which of these parents can bend over backwards in spite of their own position to facilitate appropriate and healthy contact with the other parent.

[117] So what you do, your conduct, will very much matter either in the agreement that you end up making yourselves or in an agreement before the court.

[118] You should know, at the school, the mother's name needs to be on the list.

[119] The mother needs to make sure that you keep yourself informed by being part of the school process; if you cannot do it together, if you cannot go to teacher's meetings together, you arrange for separate times to keep yourself informed.

[120] It is also your individual responsibility to keep each other informed in a civil way with each other. Whether that is by way of cell phone, email or note. No notes gets transferred - the child does not bring any messages back and forth. Messages are to be civilly discussed with one another and if you cannot, then shared parenting in the future and joint custody may not work. It is in your best interests to make this work.

[121] The child will not be removed from the province of Nova Scotia or the Halifax Regional Municipality area until written agreement of the parties or final order of the court and that means for any vacations outside the province.

[122] The father is to keep the mother informed so that she may attend all and any educational activities. He will add the mother on the list at school to make sure she is kept informed.

[123] I am going to place the child in the joint custody of both but continue in the primary care of the father at this time.

[124] I want to stress this is an interim order; it is my hope that you will move forward to a long-term order. If the mother's position stabilizes that you are likely looking at an expanded version of a joint custody, shared-parenting arrangement, if the mother's position stabilizes.

[125] But currently, until that happens, her primary place of residence will be with the father.

[126] The orders that I make with respect to contact and parenting time for the mother may be changed between the parties based on your schedules and your ability to agree. The changes must occur in writing.

[127] Every second weekend the child shall be with the mother from Friday p.m. and she shall return the child to the school Monday a.m.

[128] I have expanded that so the mother will have the some contact with the school but I have also given the father and his partner a weekend; I recognize that the father is only available on Sundays so that the sibling contact can be maintained at the same time.

[129] You may look at a different situation; it may be you want to keep mom there every Sunday or take the child on Sunday. I am looking at mom and sibling contact. You people know your schedules better than I do but this will be the set schedule unless agreed upon by the parties.

[130] There will be one overnight during the week. I have said one overnight; the father has suggested two overnights. I would suggest that you do that recognizing

that you are stabilizing the child and that her school work must not be disrupted too much. She must have some stability. I am not contrary to two overnights during the week but I have extended the Friday to the Monday and suggested one overnight during the week and another evening meal during the week when the mother does not have the weekend. That will maintain contact. Again, given your shift work, you may have to work around this and you are absolutely free to change this providing it is in writing and agreed upon between the parties.

[131] All third-party service providers will be notified by way of this order that both parents have the ability to be in contact with them to get information directly on education and other medical information. You should advise your doctor that the mother is entitled to information on a regular basis with respect to this.

[132] No alcohol or drugs during the parenting time for the mother and obviously the household has to be operating without misuse of alcohol during the father's parenting time.

[133] I am looking at the overnight access and the weekend access as long as the mother continues in her current situation, not in a transition home. I do not want the child ending up in a transition home if your situation does not stabilize.

[134] Both parties must keep the other informed of any change of address or telephone number and make sure that the parent has contact with the child at any time.

[135] Unlimited telephone contact for the child while in each residence with the other parent.

[136] The father has suggested that the mother may in the summer go and visit the grandmother. The terms and conditions of that have to be agreed in writing with the commitment to return. I would remind the parties until a final hearing this court has jurisdiction over the child and the child must return. My only direction is have your details confirmed in writing.

[137] The mother has suggested a period of time in August and the father has agreed. I will incorporate equal sharing time of the summer block contact and access for the summer months. I am just looking for the dates that the mother said she is going to be away.

MS. RUCK de PEZA: August 20th to the 31st, My Lady.

THE COURT: Pardon.

MS. RUCK de PEZA: August 20th to the 31st.

THE COURT: August 20th to the 31st.

[138] Alright, so that is two weeks and that would, if you are equal sharing then you have to arrange; if you are equal sharing you would have to arrange another two weeks. So in any event, at her age, given the changes in her life, it probably is better not to have one month - one month; it is probably better to have two weeks - two weeks - two weeks - two weeks so that she knows that she has contact with both parents.

[139] I am just going to review this to make sure I have addressed the issues I want to address in the interim.

[140] You can put in the order "no exposure to third-party smoking".

[141] Include a clause which indicates that the child is to be kept away from any conflict or expressions of negative - you have the clause that needs to be included in that for both parties.

[142] There is to be no discussion of these matters with respect to the child or no discussion of the issues before the court with the child.

MS. RUCK de PEZA: My Lady, I was just asked of Ms. Straume whether it would be possible for her to pick Areena up following school today. She's in the midst of the week on pattern, the child wouldn't have been -

THE COURT: Would you say that again, please.

MS. RUCK de PEZA: She - Ms. Straume would like to know if she could pick up Areena after school today. They were in the midst of her parenting time for the week so she would have been returned Sunday to Mr. Fleming so she would like to have some time with her after school today.

THE COURT: Do you have any comments on that?

MS. SCHOFIELD: My client was wondering how long the grandmother, Ms. Price, was in the area and that she could stay with the mother, if she's here for a few more days.

MR. FLEMING: 'Cuz it will be the only opportunity she gets until when - the summer time.

MS. PRICE: I'm flying out tonight, this afternoon, after - we were going to pick Areena up after school. She was going to come out to the airport with us.

THE COURT: You're going - you're leaving today? Alright.

MS. SCHOFIELD: Then that's fine if she takes her today, by all means.

MS. STRAUME: Can I return her on Sunday?

THE COURT: Pardon me?

MS. STRAUME: Can I return her on Sunday? We had a few things we wanted to do.

THE COURT: Well, I'm just wondering if you want to start the long weekend there. That's what your Friday to Monday morning.

MS. SCHOFIELD: Right, do you want to start that this is her weekend?

THE COURT: She would be returned to you on Sunday normally.

MR. FLEMING: Sure, yeah -

THE COURT: I just want to make sure -

MR. FLEMING: Then it would be no interruption in her -

THE COURT: There, yeah.

MS. SCHOFIELD: Regular schedule.

THE COURT: That would be the long weekend until Monday.

MS. SCHOFIELD: Yeah.

THE COURT: And then there's a weekend, the next weekend you don't have her there so there will be an overnight on, you chose the nights -

MS. SCHOFIELD: Right.

THE COURT: Between you when she's not working. Wednesday and then, you do that. Now, what I want to say to you is this. I understand this is extremely difficult for you. And this is an interim order and hopefully your stability will increase and you will be able to move into an agreement whereby she gets the best of both of you but there's stability. There's no - there's not a whole lot of changes in it. So, your counsel are probably going to recommend to you either a four-way meeting or let time go by, do what you have to do to prepare but get a judicial settlement conference. I'm going to presume that that might be something you would consider.

This weekend is going to be difficult for you and it's very difficult for you not to be emotional; it's very difficult for anybody in this circumstance not to be emotional. But your - this child needs to know that she has you, she has you stable, she has you healthy. She doesn't need to be constantly worried about how mommy is feeling, what mommy is doing, why is mommy crying, what's going on in her life and when she goes back into this family, she doesn't need to be worrying about what's going on in their life. She needs it to be normal. She needs to be able to get along with her siblings; she needs to be able to go to school; she needs to leave all these parent issues behind her; she needs both of her parents healthy, drug free; she needs to be in stable relationships. Do you understand what I'm saying? She's only a little girl.

MS. STRAUME: Yeah.

THE COURT: So when your mom said you need time, I'm saying to you, you need more time. And I know you're focussed on that because of what you're doing. Because of the steps you're taking. You need to take care of yourself; you need to be able to take care of yourself so you can take care of your child. So when you say "Can I have this weekend", I do so - and they're consenting - with a little bit of concern that she doesn't over the weekend recognize that you're very unhappy and that she has to start taking care of you. Do you understand what I'm saying about this? It's very difficult for you to do so. So, they're saying yes.

MS. STRAUME: I understand.

THE COURT: They're saying yes and do so knowing that, okay? Do so knowing that, that she needs you healthy and stable and she needs to get on with her life knowing her mom and dad are drug and alcohol free and are there to be there for her, to provide a home for her. She doesn't need to worry; she doesn't need to worry about moving, about losing one of you, about losing her newfound siblings; she needs stability. Okay? Can you draft the order?

MS. SCHOFIELD: Yes, I do just want to clarify one point. The one overnight during the week. Is that every week or the alternate week? I wasn't clear.

THE COURT: I would say providing she continues in a stable place, once - once a week. And I would also say that as you get more comfortable with each other, you might even during the week when she's not going to see mom on the weekend have a Thursday afternoon supper at McDonald's with mom or mom can take her home for a supper. That's usually what happens during the week that the other parent's not there so that their connection is not long gone. I don't

know her activities after school; that's not - I would know that in a long-term hearing probably, but I don't have that, those materials to sort of say how do you incorporate this into her schedule without pulling her every which way but I can tell you this and mom, I just want your attention for one minute. Your ability to work with each other is going to be one of the most significant factors that a court is going to take into consideration if you have to come to court again to have a judge resolve this. Your ability to bend over backwards to keep her in your focus and to keep her, to accommodate one another, to be flexible with one another, not to be too demanding but to be flexible is going to be a significant consideration. Your counsel will tell you that. The judge is going to be watching who's doing the reasonable thing. Is this reasonable to do this? Is it reasonable to expect this? What would parents do who are living together? How would you do this? And what's unreasonable and if one of you are being unreasonable that will be clear. If one of you is bending over backwards to try to be mature and make sure her needs are addressed, that will be clear as well. Alright? So, recognize that. Okay let's set this down. I presume that's what you want to do.

MS. RUCK de PEZA: My Lady, Ms. Straume is indicating that perhaps next weekend would be better. She doesn't wanna be overly emotional and she recognizes that there may be a bit of a challenge so she's willing to start her weekend visit next weekend but would still like to have her after school today.

THE COURT: Okay.

MS. RUCK de PEZA: And the other issue is with respect to the issue of the order, My Lady. I understand -

THE COURT: Okay, I just want to go back and make sure we're all clear on this.

MS. RUCK de PEZA: Sure.

THE COURT: Meaning that on Friday, you take her to school on Thursday -

MS. STRAUME: Friday, tomorrow and they pick her up from school.

THE COURT: And they pick her up from school. And then we start your long weekend - your weekend on Friday of next week and do you want to figure out which day is the best day overnight so you know next week?

MS. STRAUME: I'm good any day of next week.

THE COURT: Wednesday? Wednesday is mid-week for her and that way she's -

MS. ROSS: Tuesday I - I don't work on Tuesdays at all.

MR. FLEMING: I don't have my book in front of me, Your Honour.

THE COURT: Well, what I'm just thinking, not necessarily from your schedule but from the children's schedule. I don't know what the activities are at night but if she's coming - we're trying to establish a solid move, peaceful transition so if she's with mom Friday to Monday then we want her to have some time Wednesday or Thursday so that she is with - she has a regular day with mom that doesn't interfere with her activities, you know, her after school activities or if mom knows about them.

MS. STRAUME: Wednesday?

THE COURT: Wednesday is better for you?

MR. FLEMING: Thursday would be okay with me if okay with you.

MS. STRAUME: Thursday?

MR. FLEMING: Yeah.

THE COURT: Thursday?

MR. FLEMING: Thursday works.

THE COURT: Pardon.

MS. STRAUME: Thursday.

THE COURT: Thursday is okay -

MS. STRAUME: Yeah.

THE COURT: - with you. Thursday is a good day with you.

Okay. How is that with counsel?

MS. RUCK de PEZA: I'd like to see there be a flexibility in the order, My Lady. Thursday, including Thursdays or other day that is mutually agreeable to both parties, not to bind them to a particular day.

THE COURT: I'm concerned about Thursday.

MS. RUCK de PEZA: Yeah.

THE COURT: And I'm gonna let counsel agree on this but this would be my concern about Thursday. Thursday then goes into Friday, Saturday, Sunday, Monday and what we're really trying to do is establish a regular pattern so that she sees mom overnight during the week but then she's - she's back and forth. You have to think of it from her perspective.

MS. SCHOFIELD: So Wednesdays probably a better -

MR. FLEMING: Better.

MS. SCHOFIELD: day.

MR. FLEMING: Lori would just pick her up -

THE COURT: Alright.

MR. FLEMING: - after school I guess.

THE COURT: Because then she goes Wednesday, then she sees her sibs and then she sees mom for the weekend. Okay?

[143] Counsel for Mr. Fleming shall draft the order.

Legere Sers, J.