

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Coughlin v. Coughlin, 2011 NSSC 204

Date: 20110506
Docket: SFH-MCA-073957
Registry: Halifax

Between:

Renée Hannah Coughlin

Applicant

v.

Stephen Andrew Coughlin

Respondent

Judge:

The Honourable Justice Elizabeth Jollimore

Heard:

April 28 - 29, 2011

Counsel:

Tanya G. Nicholson, on behalf of Renée Coughlin
Geoffrey C. Newton, on behalf of Stephen Coughlin

Introduction

[1] Renée and Steve Coughlin met in Newfoundland in 1995. They moved from Newfoundland to Nova Scotia in 1997 and began to live together. They married in 1999 and, ten years later, their son, Noah, was born. In January 2011, they separated. Ms. Coughlin wishes to return to Newfoundland with twenty-two month old Noah.

Legal context of the applications

[2] On January 31, 2011, Renée Coughlin applied under the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160 for orders relating to parenting and child maintenance pursuant to sections 3 and 7 of the *Nova Scotia Child Maintenance Guidelines*, N.S. Reg. 53/98, spousal maintenance, an order permitting her to move Noah to Newfoundland and costs. Steve Coughlin responded, seeking an order dealing with parenting, child and spousal maintenance, exclusive possession of the family's residence, a division of assets and costs. The motion was scheduled to be heard on an expedited basis and I am to deal with the parenting, mobility and child maintenance motions.

[3] In dealing with the parenting applications, my first step, according to Justice Bateman in *Burgoyne v. Kenny*, 2009 NSCA 34, at paragraph 26, is to determine in which parent's custody Noah's future will best be served. This is to be done on the basis of the available evidence that is relevant to Noah's emotional and physical well-being.

[4] *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.), established the principles which guide the determination of mobility applications. Those principles were summarized in paragraph 49 of the majority reasons in that case. In *Burgoyne v. Kenny*, 2009 NSCA 34, at paragraph 21, Justice Bateman said that these factors are applicable to determining a child's best interests. The factors listed in *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.) are: the desirability of maximizing contact between Noah and both his parents, the reason for the move (only in the exceptional case where it is relevant to the parent's ability to meet Noah's needs, as Ms. Coughlin asserts it is), the disruption to Noah that would result from a change in custody and the disruption that would result from his removal from family and the community he knows. I also consider his relationship with each of his parents.

[5] *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.) related to a variation application under the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3. The claims between the Coughlins are neither variation applications nor are they pursuant to the *Divorce Act*. In *Burgoyne v. Kenny*, 2009 NSCA 34, our Court of Appeal made clear that the decision in *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.) is applicable to cases like this.

Renée Coughlin's plan

[6] Since 2007, Ms. Coughlin has worked at the Nova Scotia Community College. When Noah was born in July 2009, she went on maternity leave. Her absence from full-time work

extended until September 2010 because she was on short term sick leave. Noah attended daycare part-time between September and November 2010. Ms. Coughlin returned to work on a full-time basis in January 2011.

[7] During the last year, she and Noah visited her family in Newfoundland six times. In December 2010, Ms. Coughlin applied for a job in Newfoundland and was the successful candidate. She planned to take a year's leave of absence from her current job, so it would be secure if there was any reason for her to return to Nova Scotia. She was compelled to decline that offer in the absence of Mr. Coughlin's consent to Noah's move or a court order which would allow Noah to be moved. Ms. Coughlin continued her efforts to find work in Newfoundland and has been offered another job. This job pays a similar salary as her current job. Ms. Coughlin has learned that she cannot take a leave of absence. If she moves, she must give up her current job.

[8] Ms. Coughlin wants to accept this new job offer. She wants to move to Meadows, the community where her parents, her brother and two of her sisters live. She says her family is close and they would be able to support her on an *ad hoc* basis when there was illness or a snow day, for example. Meadows is a small community located twelve kilometres from Corner Brook. In Meadows, Noah and his mother would live in a house belonging to Ms. Coughlin's aunt. According to Ms. Coughlin, this house is vacant and I understand it will be available to Ms. Coughlin until January 2012: in her January 2011 affidavit, she said it was available for one year. While living in her aunt's house, Ms. Coughlin would only pay utility costs. She estimates she will save \$700.00 to \$800.00 each month while she lives at her aunt's home.

[9] Meadows has one school for students from primary to Grade Twelve. The school is within walking distance. Ms. Coughlin says she has found a daycare that will accept Noah full-time in June. Until June, Noah can attend part-time and Ms. Coughlin offers her mother as a caregiver for Noah during the days that daycare isn't available. Ms. Coughlin has found a doctor for herself and Noah. She says they will attend church there.

[10] Ms. Coughlin says that her family has applied for aboriginal status and the application will be determined this year. If accepted, she says this will provide access to medical insurance and education funding. The education benefits are only available in Newfoundland.

[11] In Nova Scotia, Ms. Coughlin complains that she and Noah have a long commute each day. Noah attends daycare at Ms. Coughlin's workplace, so he travels with her, and Ms. Coughlin says that car accidents on her commute "often tie us up for hours when we are going to or from daycare" and "it is very confining for a child his age to be in the car for that period of time".

[12] Ms. Coughlin describes herself as Noah's primary parent. She says that she does "all of the care for Noah" and claims that Mr. Coughlin spends his time at work (either at his full-time job or at one of his part-time jobs), fishing, hunting or in his shed.

[13] She proposes that Noah would see his father for "meaningful" block access periods once each month when Mr. Coughlin isn't scheduled to work and that Noah could have additional time with his father at Christmas, Easter, during the summer months and, once Noah is in school,

at the March Break. Ms. Coughlin offers to bring Noah to Nova Scotia three times each year. She proposes that Noah would see his paternal grandparents in Newfoundland. She suggests liberal phone contact and “facetime computer chat opportunities so that Noah can see his father and speak with him via webcam”. She also proposes that if Mr. Coughlin is in Newfoundland at any other times, she will agree to reasonable access and that this would also apply to any trips she might make with Noah to Nova Scotia, beyond the three visits she commits to making.

Steve Coughlin’s plan

[14] Mr. Coughlin works full-time for Innotech Aviation. He also works part-time for Global Aviation and for Tidnish Holdings. He plans to continue with this employment. Currently, he works a rotation of twelve hour day shifts and twelve hour night shifts at Innotech. He has arranged that all his shifts will be night shifts if Noah remains in Nova Scotia. The shift rotation would continue. He proposes that when he works, Noah would be with Ms. Coughlin. If this happened, Noah’s time would be equally divided between his parents. Mr. Coughlin argues that this would maximize Noah’s time with each parent.

[15] The shift rotation sees Mr. Coughlin work Friday, Saturday and Sunday on alternate weekends. When he works a weekend, he works Wednesday and Thursday the following week. If he doesn’t work on the weekend, he works on Monday and Tuesday the following week.

[16] Mr. Coughlin hopes to buy out Ms. Coughlin’s interest in the family home so he can remain there. Mr. Coughlin’s parents, Margaret and Phillip Coughlin, live in Glenwood, Newfoundland, and they have typically travelled to Nova Scotia and spent extensive time here since Noah was born. Noah is their only grandchild. Margaret and Phillip Coughlin each provided an affidavit stating an intention to move to Nova Scotia if Noah remains in Nova Scotia.

Noah’s relationship with each parent

[17] Noah is twenty-two months old. During the first two weeks following his birth, both his parents were at home with him. Mr. Coughlin wasn’t home full-time during that period: he worked approximately 25 hours. After that, Mr. Coughlin returned to his work. Mr. Coughlin has four weeks of vacation each year. During the time he was not working at his full-time job, he worked at his other jobs or, on some occasions, he pursued his hobbies of hunting and fishing.

[18] In cross-examination, Mr. Coughlin’s overtime work hours were re-constructed, based on his earnings. In 2009, the year of Noah’s birth, Mr. Coughlin worked at Innotech and worked an additional 755 hours at his other jobs. In 2010, Mr. Coughlin worked 297 overtime hours at Innotech. He also worked 598 hours at his other jobs. Mr. Coughlin worked both day and night shifts, so some of the time he was at work would have been while Noah was asleep. Mr. Coughlin said he worked while Noah was in daycare. Of course, Noah only began to attend daycare in September 2010.

[19] During her maternity leave and the subsequent period until Ms. Coughlin returned to full time work in January 2011, her health was poor. She had surgeries and was hospitalized. Mr.

Coughlin's parents were in Nova Scotia to visit and to assist. Ms. Coughlin's parents remained in Newfoundland: her father was diagnosed with a terminal illness and her mother cared for him.

[20] Both spouses say that they had difficulties making ends meet financially. In 2008, the last year of Ms. Coughlin's full-time employment before Noah was born, she earned \$38,838.00. That same year, Mr. Coughlin earned \$50,088.00 from his Innotech employment and he had net business income of \$10,479.00 from his part-time jobs.

[21] In 2009, when Ms. Coughlin went on maternity leave, her income dropped by approximately \$3,300.00. Her 2010 income was even lower: \$30,000.00. Mr. Coughlin's income from his part-time work has declined from 2008 to 2010, even though the hourly rate he charged for his work increased in 2010. The decreases in both spouses' incomes would have been significant, given the couples' financial circumstances. This would give greater importance to the income Mr. Coughlin was able to earn, despite the couple's disagreements about his work hours.

[22] Circumstances after Noah's birth were such that Ms. Coughlin has been his primary caregiver. Renée Coughlin has demonstrated an ability to meet all of Noah's needs. She has initiated his involvement in swimming and has been primarily responsible for his daycare arrangements. She has attended all his medical appointments.

[23] Regardless of the limited time Mr. Coughlin has spent with Noah, when pressed Ms. Coughlin voiced no complaints about Mr. Coughlin's ability to care for Noah. She has no negative comment about the quality of the care Mr. Coughlin has provided - just the quantity. Her complaints are that Mr. Coughlin has spent little time with Noah and that he did not and has not provided her with appropriate support in parenting Noah. Neither parent diminishes the other's relationship with Noah.

[24] Ms. Coughlin offers recent examples of her husband's failing to assist her in caring for Noah when she and Noah were ill. I am reluctant to attach importance to these examples. The parties separated on January 21, 2011. Initially, Mr. Coughlin left the home. Ten days later, he received what he called "separation papers" which had been delivered by a courier to his parents. He immediately returned home and remained there until March 11, 2011 when the RCMP suggested he leave. He returned home fearing that he would be prejudiced in responding to the legal claims because of his absence from the home. On March 11, there was a scuffle between the Coughlins over a notebook in which Mr. Coughlin was writing notes and the RCMP were called. Ms. Coughlin's examples relate to the period when the couple was still in the same home. It was Mr. Coughlin's evidence that during this time he was keeping his distance from Ms. Coughlin, abiding by her directions and trying to secure individual parenting time with Noah. So, for example, when Ms. Coughlin dismissed his offer to assist with Noah, to avoid causing friction, he didn't press the issue. He says he made efforts to keep communication between the two of them to a minimum. I do not take the behaviour of either spouse at this time as necessarily indicative of their conduct in less stressful circumstances.

The desirability of maximizing contact with both parents

[25] This consideration is framed as “the desirability” of maximum contact. There is no absolute rule that there must be maximum contact between a child and each of its parents. If there was such a rule, all children would see their time equally divided between their parents.

[26] I’m mindful of Justice L’Heureux-Dubé’s comments at paragraph 170 of her reasons in *Young*, 1993 CanLII 34 (S.C.C.), that I must be careful that “the ideals of parental sharing and equality do not overcome the lived reality of custody and access arrangements and that the child’s needs and concerns are accommodated and not obscured by the abstract claims of parental rights.” While Her Ladyship wrote in dissent, her reasons found support from Justices LaForest, Gonthier, Cory and Iacobucci.

[27] I have repeatedly mentioned that Noah is twenty-two months old. I am told he has a limited vocabulary and that he naps each day. His “lived reality” is one where Ms. Coughlin was the more significant care-giver for the first eighteen months of his life. When he was approximately fourteen months old, he began to attend daycare and he has been in daily attendance at daycare for the past four months. Throughout his life, his father has had a demanding work schedule. Of course, that schedule was one where Mr. Coughlin’s Innotech work was divided between day and night shifts: at times he was working when Noah would be asleep or at daycare.

[28] Ms. Coughlin was asked how often Noah talks on the phone. She said that she and he use Skype with family in Newfoundland. I’m told that Noah says “hi and bye” and that “he tries to vocalize.” Ms. Coughlin said that “the phone is an option when [Noah] has a vocabulary”.

[29] Since the parents have been occupying separate residences, Noah has not been in his father’s care overnight. I do not consider this a situation where Ms. Coughlin “denied” access: Mr. Coughlin asked for overnight access only once.

[30] I am somewhat concerned that Ms. Coughlin is not open to overnight access. In her cross-examination, she offered a number of reasons why there should be no overnight access at this point. Her reasons were shown to be hollow. She said that overnight visits could occur “in the future” or “soon”. She could point to no reason why overnight visits could not begin until some future point or what must happen before overnight visits should begin. Eventually, she said that a child psychologist would need to be consulted to determine when overnight access should begin.

[31] I say that I am “somewhat” concerned. I have said that I don’t take the behaviour of either spouse at this time as necessarily indicative of their conduct in less stressful circumstances. I am mindful that, like her husband, Ms. Coughlin’s behaviour through the separation – which is less than five months old – may be guided by a mistaken sense of how I will view her behaviour or her husband’s.

[32] Noah’s not been described to me as a child with any particular needs or specific characteristics. As a typical child, the approval of a child psychologist is not a pre-requisite for overnight access. Overnight access is associated with a number of parenting experiences that are part of developing and sustaining a meaningful relationship. A child develops and sustains a

meaningful relationship where the child has experienced functional parenting in a variety of contexts: the rituals of bedtime and waking up, responding to night time waking, soothing, feeding, toileting, play, guidance, setting limits and, as a child grows older, assisting with homework, supervising peer relationships, participating in drop offs and pick ups from daycare and school.

[33] It isn't clear what motivates Ms. Coughlin's reluctance to see Noah stay at his father's home overnight. While her opposition was shown to be baseless in her cross-examination, some of her reasons related to Noah (he's not as comfortable with his father as he is with me) and some of her reasons really derived from her dissatisfaction with Mr. Coughlin (we fought in front of Noah). As I say, I am somewhat concerned that Ms. Coughlin wants to keep Noah from overnight visits with his father. She says she wants Noah to have a relationship with his father, but she expresses a very clear reluctance for the very visits which would foster that relationship.

[34] While there is no rule that there must be an equal division of a child's time, it is desirable that a child's time with each parent be maximized where this is in the child's best interests. Ms. Coughlin's plan does not maximize Noah's time with each parent. She offers a number of reasons why her plan is preferable despite this and I will deal with these when I discuss her reasons for the move.

Noah's views

[35] Noah is twenty-two months old. This consideration is not relevant.

The reason for the move

[36] Ms. Coughlin made clear in her cross-examination that she would prefer to live in Newfoundland. She advances many reasons for her proposed move. She says she may have better opportunities for her own education and she will have more opportunities for advancement in her employment. Ms. Coughlin says she will have more family support in Newfoundland near her family. She is unsure whether the family support that Mr. Coughlin will have from his parents will extend to her. She says that if the application for aboriginal status is approved, she and Noah will have educational opportunities in Newfoundland. She says she and Noah will have a superior quality of life in Newfoundland. She believes that if she and Noah stay in Nova Scotia, they will be limited to lower income neighbourhoods, where she will be required to rent a home. She fears there will be ongoing conflict with Mr. Coughlin if she and he are required to co-ordinate their schedules around Noah's care and to make the day-to-day decisions required of a shared custody arrangement and this conflict will have an impact on Noah. Lastly, she questions the flexibility Mr. Coughlin says his employers will show him: it has not been demonstrated since Noah was born or since the couple separated.

[37] According to Justice McLachlin, as she then was, at paragraph 49 of *Gordon v. Goertz*, 1996 CanLII 191 (S.C.C.), I am only to consider the reason for a move only in the exceptional case where it is relevant to Ms. Coughlin's ability to parent Noah.

[38] Ms. Coughlin began her search for work in Newfoundland before the couple separated on January 21, 2011. She was interviewed for a job while she was in Newfoundland in December 2010. A number of reasons she offers to support the move do not relate directly to her ability to parent Noah: better opportunities for her own education and more opportunities for advancement in her employment. Since these reasons do not relate to her ability to parent Noah, I do not consider them.

[39] Ms. Coughlin argues that her family will provide her with support in Newfoundland and that she lacks support in Nova Scotia. When questioned about why her family did not assist her in Nova Scotia (as Mr. Coughlin's family did), Ms. Coughlin explained that her sister worked and was busy with her teen-aged children and her mother was busy caring for her father, who has been diagnosed with cancer. The support Ms. Coughlin seeks from her family, as she describes it, would be less demanding than coming to Nova Scotia: she might call them to assist on a snow day or if she or Noah was ill. There were no affidavits from any members of Ms. Coughlin's family attesting to their willingness to support or assist her.

[40] Ms. Coughlin questions whether her parents-in-law would provide support to her if she and Noah remain in Nova Scotia. Both her mother-in-law and father-in-law provided affidavits indicating she and he would assist with Noah and would maintain a cordial relationship with Ms. Coughlin. Margaret Coughlin was cross-examined. She responded forthrightly to challenges about her relationship with her son and extended the offer of her home to Ms. Coughlin. She and her husband have respected the constraints that were placed on their involvement with Noah when the parents were still together. I accept that they would assist Ms. Coughlin as well as their son in caring for Noah.

[41] I do not consider her argument that if Ms. Coughlin's family's application for aboriginal status is approved there will be educational opportunities for Noah. It is my understanding that these opportunities would exist for Noah at a post-secondary level. They are far too remote to weigh in my decision-making.

[42] The main argument that Ms. Coughlin advances has to do with the standard of living Noah will have in Nova Scotia and that available to him in Newfoundland. First, I note that Ms. Coughlin's salary will not increase by virtue of her new job. She says her financial situation will improve because she can live rent-free for a period of time and because her daycare cost will be lower in Newfoundland. According to the comparative budget she provided, her expenses in Nova Scotia (other than her taxes, employment and statutory deductions) are \$4,576.93 each month. She calculates expenses of \$2,416.16 each month in Newfoundland. The \$2,160.77 difference results from budgeting for no daycare expense in Newfoundland, saving \$1,177.49 each month while she lives in her aunt's house, reducing her food expense by \$150.00 when she moves to Newfoundland, having no expense for parking (\$20.00 each month in Nova Scotia) and not budgeting an amount for dental work which costs \$11.98 in Nova Scotia.

[43] Of course, the significant saving of almost \$2,000.00 comes from the short-term absence of expenses for housing and daycare. Assuming all the rest of her estimates are correct, in the longer term, Ms. Coughlin will save less than two hundred dollars each month because housing is less expensive living in Newfoundland.

[44] Ms. Coughlin says that she will have longer-term savings because daycare is cheaper and will be subsidized in Newfoundland and she will be able to find or build a house for less than it would cost her to have a house in Nova Scotia. I wasn't given detailed calculations for Noah's daycare cost in either province, but these can be estimated. Noah's monthly daycare expense is \$802.00. The childcare deduction is \$7,000.00, which would save Ms. Coughlin \$2,096.50 at her current tax rate, making the after-tax childcare cost \$7,527.50. In Newfoundland, she estimates her childcare expense will be \$6,500.00 annually. At her marginal tax rate in Newfoundland, she would save \$1,787.50 as a result of the childcare deduction, so her after-tax childcare cost would be \$4,712.50, a total saving of \$2,815.00 annually. This comparison is based on Noah's current daycare cost in Nova Scotia: he may be eligible for subsidized daycare now that his parents have separated.

[45] I've been told that the roundtrip airfare from Newfoundland to Nova Scotia costs between \$400.00 and \$600.00. This cost doesn't include the expense of travelling with a young child. Ms. Coughlin's childcare saving may be exhausted by her travel cost. I appreciate that Ms. Coughlin might travel to Nova Scotia by car, but I am also cognizant of her concerns that it's very confining for a child Noah's age to be confined in a car.

[46] Based on this analysis, I'm not persuaded that it will be less expensive for Ms. Coughlin to live in Newfoundland.

[47] Ms. Coughlin says that a suitable home in Newfoundland will cost her in the range of \$70,000.00 and \$90,000.00 if she wishes to buy a home, \$95,000.00 if she wishes to buy a mini-home or \$110,000.00 if she decides to build a home. She anticipates receiving \$60,000.00 from the division of property with her husband and says that she's been approved for a \$40,000.00 mortgage. Buying a mini-home or building a home is completely dependent on her parents giving her land. She says they are willing to do this, but there is no indication from her parents that this is the case. If she must buy land, her plan will not be realized.

[48] The couple's home in Lower Sackville is valued at \$135,000.00. That house couldn't be afforded for Ms. Coughlin according to her evidence. Ms. Coughlin wants a home with a backyard for Noah. I'm not persuaded that there are no less expensive homes in Lower Sackville. Nor am I persuaded that it isn't possible to rent a home with a backyard. Ms. Coughlin has not said what she budgets for her housing costs in Newfoundland when she no longer lives in her aunt's home.

[49] One reason Ms. Coughlin proposes for her move is to escape conflict with her husband. Both spouses described a poor relationship in their affidavits: excessive drinking, foul language, hurled insults, verbal fights and physical fights. Most of these complaints are mutual and neither denies them. The Coughlins have separated. The separation is meant to forestall the conflict that each parent knows, from attending the Parent Information Program, is bad for Noah. Conflict exists because each parent, by times, doesn't rise above an imagined slight or an actual insult. They must do so.

[50] Ms. Coughlin questions whether Mr. Coughlin's employers will provide him with flexibility. Mr. Coughlin has provided letters from each of his employers attesting to their willingness to be flexible. It bears noting that Mr. Coughlin's work for Global Aviation and Tidnish Holdings is not his permanent full-time work. It is work he can do – or decline.

[51] The complaints that Ms. Coughlin has about Noah's current circumstance is the commute to his daycare. This commute has been with Noah throughout his attendance at daycare. A daycare closer to the family's home would resolve the issue of traffic delay.

[52] I've considered all the reasons that Ms. Coughlin offers for her move.

The disruption of changing custody

[53] At Noah's age, the change that would be occasioned by Ms. Coughlin's move to Newfoundland *without* him would be significant. She has been his primary care-giver and relocation of the sort proposed, which would severely limit Noah's contact with her, would severely compromise the relationship between Noah and his mother.

[54] Ms. Coughlin has volunteered that if Noah is not allowed to move to Newfoundland, she will remain in Nova Scotia.

The disruption of removal

[55] At twenty-two months, Noah is not closely integrated into the community: he has a doctor in the area, he has attended daycare at his mother's workplace since last September, he participates in swimming and he has been treated at the IWK Health Centre. His attachment to the community is not profound.

[56] Noah has visited his mother's family in Newfoundland six times. Three visits were described as "extended". In June 2010, the visit lasted over one month. In August 2010, there was a two week visit. In December 2010, there was a visit of almost four weeks. He has seen his cousins in Newfoundland via Skype.

[57] The most significant aspect of removing Noah from Nova Scotia would be its impact on his relationship with his father. Based on Noah's current use of Skype, his limited vocabulary and his inability to use a phone, Noah's entire relationship with his father will be dependent on face-to-face visits. Ms. Coughlin expects these to occur in Glenwood (a few hours' drive from her home in Meadows) at Margaret and Phillip Coughlin's home. There is no indication that this setting is a familiar one to Noah. This setting does mean that Noah is not near his mother if he experiences distress during a visit and wants her presence. It also means that Noah will, for the most part, not visit with his father in his father's home.

[58] Ms. Coughlin proposes approximately fifteen visits each year. She says that if Mr. Coughlin adds vacation days to his days off, he can extend the three and one-half days when he is off work to be longer, more meaningful visits. Mr. Coughlin is entitled to four weeks of vacation and two sick days. This prospect does exist. If Mr. Coughlin travels to Newfoundland

by car and ferry, he loses two days of each visit in transit. If he flies to Newfoundland, he saves time, but incurs a cost, which he estimates to be (at the low end of the range) between \$400.00 and \$800.00. This is the flight cost alone. It does not include any cost for ground transportation or accommodations. Mr. Coughlin estimates that if he flew to Newfoundland, rented a car and stayed in a hotel, rather than in Glenwood with his parents, a typical trip would cost at least \$1,580.00.

[59] Extended monthly visits are possible given Mr. Coughlin's vacation entitlement. It is not possible that a relationship between Noah and his father will be sustained on one visit each month. Both parents have attended the Court's mandatory Parent Information Program. Each would have heard there that children under three years of age need frequent contact with each of their parents and that children just older than Noah is now (ages three to five):

At this stage, children need nurturing from both parents - they are beginning to develop a relationship with their father that is different from the one with their mother. Children experience a significant loss when one parent is less involved in their lives. Not only will they often miss that parent's presence and affection, but some of their physical and emotional needs may not be met.

This information is taken from the Department of Justice's publication "Because Life Goes On . . . Helping Children and Youth Live With Separation and Divorce".

Conclusion with regard to relocation

[60] I'm presented with two plans for Noah. Only Mr. Coughlin's plan provides Noah with the prospect of a relationship with both his parents. It is desirable that Noah have more contact – much more contact – with his father, than is proposed or permitted by Ms. Coughlin's plan. The reasons Ms. Coughlin offers for the move pale in contrast with the devastation of Noah's relationship with his father. I am not allowing Noah to move.

[61] I am left to consider what the parenting arrangement should be for Noah. Mr. Coughlin proposes equally dividing Noah's time, by allowing Noah to be with him on any day when he is not working the night shift. I've noted Justice L'Heureux-Dube's comment about recognizing the lived reality of custody and access arrangements. To do that in this case means a less than equal parenting arrangement. Such an arrangement recognizes the predominance of Ms. Coughlin in Noah's parenting and the need to provide continuity of that relationship. It recognizes the need for frequent contact between Noah and his father. It also recognizes the need for Noah to experience his father in all aspects of parenting.

[62] Mr. Coughlin will work night shifts only. Every other weekend, he doesn't work from 6 a.m. on Friday morning until he goes to work for 6 p.m. on Monday. I order that Mr. Coughlin have access with Noah at the end of the day on Friday, when he will pick up Noah from daycare. Mr. Coughlin would return Noah to daycare on Monday morning. This will happen on every weekend when Mr. Coughlin isn't working.

[63] In those weeks when Mr. Coughlin doesn't work on Monday and Tuesday, Mr. Coughlin will be with Noah from Tuesday overnight until Wednesday. In those weeks when Mr. Coughlin doesn't work on Wednesday and Thursday, Mr. Coughlin will be with Noah from Thursday overnight until Friday. On these weekdays, Mr. Coughlin can collect Noah from the daycare at any time. He can return Noah to the daycare at any time.

[64] Each parent will be entitled to have two uninterrupted five day periods with Noah at times when the parent is not working. These days won't be combined with any other days to make the five day period any longer than five days. The five day periods (whether Mr. Coughlin's or Ms. Coughlin's) must be at least seven days apart. This time may be spent in Nova Scotia or outside the province. If either parent is taking Noah outside the province, he or she must give the other parent one week notice of the plan to take Noah out of the province. In addition to the notice, the travelling parent must provide the other with a travel itinerary, an address where Noah will be at the destination location and a contact phone number. At Noah's age, I am not specifying telephone access. That is not appropriate at this age, but I would expect it to exist by the time Noah is three years old and I would expect that each parent would be entitled to speak with Noah before he goes to bed when Noah isn't with him or her.

[65] Regardless of whose weekend it is, Noah will be with his father from 10 a.m. to 5 p.m. on Fathers' Day and with his mother from 10 a.m. to 5 p.m. on Mother's Day.

[66] I am not making arrangements for specific time between each parent and Noah on his birthday. Each parent can celebrate Noah's birthday at a time of his or her choosing within his or her scheduled time with him.

[67] At Christmas in odd-numbered years, Noah will be with his mother from 4 p.m. on December 24 until 2 p.m. on December 25. In even-numbered years, Noah will be with his father from 4 p.m. on December 24 until 2 p.m. on December 25. This time shall be an exception from the regular schedule.

Child maintenance

[68] Mr. Coughlin's 2010 income was \$56,920.81. He shall pay monthly child support of \$496.00.

[69] Noah's annual childcare cost is \$9,624.00, pre-tax. I estimate the after-tax cost of childcare to be \$7,965.00, on the basis that Ms. Coughlin's marginal tax rate is 23.79% and this applies to the eligible portion (\$7,000.00) of Noah's childcare expense. Ms. Coughlin's annual income for child support purposes is \$38,368.44. I've adjusted her income by deducting her union dues. At the parents' respective income levels, Mr. Coughlin's proportionate share of Noah's after-tax childcare cost is sixty percent, this equates to \$4,779.00 per year, or \$398.00 per month. I am discarding the additional change beyond a round dollar figure.

[70] Mr. Coughlin's child support payments shall start immediately and he will make his payments on the first of each month. His total monthly payment will be \$894.00. Annually, the

parties will exchange their tax returns on May 15 and adjust the child support payments within the following six weeks.

Costs

[71] Each parent has claimed costs. I am not awarding costs to either. I adopt Justice Gass' reasons in *Nemorin v. Foote*, 2009 NSSC 23 in making this decision.

[72] Ms. Nicholson will prepare the order.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia