

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Rose v. Rose, 2011 NSSC 295

Date: 20110719

Docket: SFHMCA-064836

Registry: Halifax

Between:

Kathryn Dawne Rose

Applicant

v.

Stephen Lowell Rose

Respondent

Judge:

The Honourable Justice Deborah Gass

Heard:

November 23, 24 & 25, 2010; February 21, April 13 &
April 18, 2011, in Halifax, Nova Scotia

Counsel:

Angela Walker, for the applicant

By the Court:

[1] This decision is with respect to an application under the *Maintenance and Custody Act*, in which the applicant, Kathryn Dawne Rose, is applying for an order for custody of the parties' son, provision for access with his father, and child support.

[2] The parties were married on June 3, 1995. They separated January 1, 2003. They have one child together: Matthew Stephen Rose, born November 14, 1996. Matthew, who is the subject of this proceeding is now 14 ½ years old.

[3] The parties entered into a separation agreement on July 24, 2003. The agreement provided for joint custody with a shared parenting arrangement. At the time of the agreement, both parties resided in the community of Elmsdale. It appears from the evidence that Matthew resided predominantly with his mother while she resided in Elmsdale, and generally spent weekends with his father. When Ms. Rose moved to Bedford the parenting arrangement became more complicated. This occurred in or around September of 2008.

[4] The parties attempted to re-work the parenting arrangements, but no formal changes resulted. Since her move the parties have essentially maintained a shared parenting arrangement with Matthew residing in alternating weeks with each parent.

[5] Under all of the circumstances the parties agree that this parenting regime does not work for Matthew, and each is seeking a change to the existing arrangements.

[6] In February, 2010, an interim consent order was reached which essentially confirmed the shared parenting arrangement that had been in place for some time. Among other things, the order provided that Matthew would be referred for counselling and testing for ADHD. Matthew had been earlier referred to Martin Whitzman for an assessment to ascertain his views about his living arrangements, but that assessment was inconclusive.

[7] The mother seeks primary care of Matthew, having him reside with her in the city, and changing schools as a consequence. The father seeks to have Matthew reside primarily with him at his home in Elmsdale and to have him attend

high school. He would be changing schools at the conclusion of the 2011 academic year in any event, as he was attending Grade eight at a “middle school” and would, if promoted, be graduating into high school.

[8] The respondent father is employed as a crusher operator at National Gypsum in Milford, Nova Scotia. It is his view that Matthew has actually spent more time with him than was set out in the parties’ agreement to alternate weeks.

[9] He expressed a concern about the amount of school that Matthew missed while he was in his mother’s care since she moved to Halifax in 2008. It is his view that Matthew’s mother is not capable of meeting his needs in that she suffers from MS, and as a result is often tired and lacking the necessary energy to parent her son. He is also of the view that she spends considerable time away from him when he is in her care, teaching yoga or engaged in other activities. It is his position that Matthew would be better served by remaining with him in Elmsdale, close to his extended family who all live in the area. He also is of the view that many of his relatives are highly educated and able to help Matthew with his school work. He believes that Matthew’s mother has been pre-occupied with her concern that Matthew might suffer from some learning disabilities and that he is not functioning at the level he should be for his age. The mother has been concerned about his behaviour and functioning since Matthew was very young, even before elementary school. The father, on the other hand, does not believe that Matthew has any issues and he is passionately concerned about Matthew being labelled. It is his view that discipline and routine in his home are more beneficial to Matthew, and that Matthew is able to get away with more in the care of his mother, and spends too much time in front of a computer.

[10] Matthew’s mother stated that there has been conflict over parenting since separation and it got worse in 2007. She acknowledged there have been difficulties with the parenting arrangements since she moved to Bedford. It is her evidence that she moved because remaining in the Elmsdale area was too oppressive; there was too much conflict and she needed to remove herself from that situation, where Matthew’s extended family on his father’s side was dominant. Once she moved to Bedford, even though the arrangement was for week on week off, there were periods of time when that was problematic. There were issues with respect to transportation, as well as Matthew’s reluctance to attend school on many occasions. Matthew’s mother was concerned that his reluctance to attend school stemmed from the issues he was having with his academic performance and the

severe anxiety that he was experiencing as a result of those difficulties. It is her view that a full educational assessment should be conducted immediately, and that her efforts to have this done in the past have been met with resistance by Matthew's father. She is gravely concerned about his level of functioning in school, and the impact that is having on his general emotional well-being.

[11] It is her position that Matthew needs to reside primarily in one place, and that she is more sensitive to his emotional needs and addressing those needs.

The Current Proceedings:

[12] Throughout this trial Mr. Rose represented himself. He filed a number of documents which were somewhat problematic in their nature, particularly aspects of his affidavits which were objected to by the applicant. Each party sought to strike portions of the others' affidavits. There were issues with respect to the admissibility of certain evidence throughout. The trial continued over a period of six days from November of 2010 to April of 2011. It had initially been scheduled for three days, but the matter was unable to be completed in that time frame.

[13] The court heard from three professional witnesses whose qualifications to give expert opinion evidence were disputed by the respondent, Mr. Rose. Dr. Joan Newman testified that she is engaged is a psycho-therapist working with families and children. She was engaged by Matthew's mother to see Matthew under her employee assistance program. It was clear to her from the outset that the parents had different views of what Ms. Newman's role should be. She saw her role as offering a therapeutic environment for Matthew. She said that Ms. Rose felt that Matthew needed an independent person to process his own conflict and to deal with his feeling of being caught in the middle between his parents. Mr. Rose saw her role as an independent place for Matthew to discuss his fears and anxiety. Matthew extracted the promise that anything that he discussed with her would not be used in court. It was clear from Ms. Newman, regardless of how either parent perceived her role, that Matthew did not want to express his views which would in any way convey a preference, nor did he wish to be responsible for any decision that would be made about where he would live. She indicated that she had to work hard to encourage Matthew to return and that Matthew was extremely aware of court proceedings and was very fearful that his thoughts would be used in court. She found that Matthew was more comfortable coming to her sessions with his mother than with his father. She concluded that he was very much caught in the

middle in terms of his loyalty to both of his parents. She also concluded that each parent had exhibited very different parenting styles. She further concluded that each perceived the parenting challenges differently and their strategies for dealing with them were different. She concluded that Matthew was facing school challenges and that Matthew himself was concerned about his abilities. Dad expressed concerns to Ms. Newman about Matthew's compliance; particularly in doing his homework, and also concerns about his excessive use of the computer especially when he was in his mother's care. His mother expressed more concerns about her son's anxiety and overall mental health. It was clear to Dr. Newman from speaking with both parents that the mother has a less rigid parenting style than the father has, and that perhaps Dad has more structure in his home.

[14] With regard to academic concerns, while the father was aware that Matthew struggles academically, he was also very concerned about labelling or "pathologizing" his son. It appeared that Matthew was internally anxious, but that he is very comfortable in Elmsdale amongst his family and friends. He was anxious to know when all of this would be over and it was clear that his unresolved status contributes to his anxiety. It appeared to her as well that he requires structure and consistency and that he needs to learn how to deal with challenges and change. He appears to be nervous about the unfamiliar and clings to the familiar. It appears that he shares less of his internal feelings with his Dad and that his mother is more aware of that aspect of Matthew's being. He expresses anxiety about change and meeting new friends. Dr. Newman had suggested that psycho-educational assessment would be appropriate for Matthew based on the information available to her.

[15] Brendan Poirier was the second professional witness. He is involved in clinical mental health as a clinical social worker at the IWK and engages also in private counselling. He does some therapeutic work with teens and children. He was initially engaged by Matthew's mother to deal with issues of behaviour management for Matthew. Matthew was apparently displaying some oppositional behaviour and there were concerns about his school performance as well as Matthew's anxiety. Again, Mr. Poirier confirmed that the parents were struggling with the co-parenting arrangement. He found that in his sessions with Mr. Rose he had to re-direct the conversation back to the issue of working with Matthew as Mr. Rose appeared to be pre-occupied with his conflict with Matthew's mother Kathryn. Homework and school performance as well as non-compliance were concerns that Mr. Rose expressed. Mr. Poirier was of the understanding from Ms.

Rose that the school issues have been a concern for some time but that it has been a challenge to obtain Dad's consent to testing. Mr. Poirier acknowledged that Mr. Rose's concern was that all the testing be done by one person. Mr. Rose extensively cross-examined Mr. Poirier with respect to the kind of assessment that was being contemplated. Mr. Poirier testified that he had asked Mr. Rose if Mr. Rose would allow him to make a recommendation to the school for a psycho-educational assessment and Mr. Rose was not comfortable with that. He felt that he was being set up for court and was not interested in participating. Mr. Poirier's final conclusion was that Matthew did need further assessment. He spoke of the difference between a literacy assessment, ADD(HD) assessments, and (cognitive) psycho-educational assessments.

[16] Dr. Deborah Smith was the third professional witness. She is a pediatrician with 26 years in private practice. In the course of her practice she does a lot of ADHD testing. She became involved with the Rose family in March of 2010 as a result of a referral from the family doctor, Dr. Montgomery. Matthew and his parents attended and she took a history. It appeared that the parents had conflicts in their ideas and opinions about Matthew. Both parents were upset. Dad was concerned about Matthew's school attendance and homework. Mom was concerned about his school performance, his anxiety about school and his overall well-being. Dad felt that Matthews abilities were fine. Dad was concerned about Matthew missing school when he was in his mother's care and the mother indicated that Matthew was often upset about school and feeling unwell which she felt was a symptom of a deeper problem. She indicated that she has been concerned about Matthew since a very early age. She described behaviours from birth to age three including repetitive behaviours. Dad didn't express any concerns at all, whereas Mom was very concerned about his attention abilities and his anxiety. The difference between the parents' perceptions of their child was quite significant, more than what she would usually see in her practice. She also spoke with Matthew directly. She found the meetings with the parents to be difficult because of the conflict between them. She was not challenged by Mr. Rose until the third appointment. She indicated that kids with learning problems often have anxiety and she recommended a psycho-educational assessment. Dad did not think it was appropriate at that time.

[17] At any rate, her recommendation was that a psycho-educational assessment be done by a psychologist or in the school setting. She indicated that it was

possible that he had ADHD and that counselling would be helpful. She found Dad to be quite hostile.

[18] Mr. Rose in cross-examining Dr. Smith emphasized to her that it was not so much that he was opposed to the testing but that he wanted it all done at once in one setting and that Matthew was going to too many appointments. She disagreed with Mr. Rose's suggestion that her attention was focussed more on Kathy, the mother. She certainly was very aware that the parties had very distinct rules and differences in parenting. She emphasized the importance of parents communicating with each other and having a uniform plan or arrangement for parenting. She said that conflict between parents would cause major anxiety for the child and would impact on his school attendance and his school performance. She confirmed that it appears that he is comfortable in a familiar place and experiences anxiety and stress as a result of the conflict between his parents and he just needs to get the stress out of his life, and that going back and forth contributes to that.

Evidence of Kathryn Rose:

[19] Kathryn Rose describes a tumultuous separation and described how the parenting arrangement worked out from the time of the parties' separation in 2003 until she moved to Bedford in 2008. During that period of time Matthew was primarily in her care although Mr. Rose's family did look after him from time to time and Matthew was also enrolled in daycare. Things began to deteriorate in 2007.

[20] Mr. Rose accessed her computer and obtained private information about her from emails. She denies giving him permission to go into her computer. She gave him the key to the house to go in and feed the cats, contrary to Mr. Rose's suggestion that she actually wanted him to find the emails that spoke about her personal life and relationships. He obtained her journal without her permission. She said her journal was in her bedroom dresser; he suggested that she left it out for him to read. She denies moving into Bedford to be with a new person. She also denied suggestions from Mr. Rose that she kept Matthew from his family.

[21] In dealing with Matthew's schooling, she spoke of Matthew complaining of headaches and stomach aches. He would cry about the prospect of going to school and she was seeking advice as to how to deal with this. There were times that she

did not force him to go to school and there were times that she picked him up early. She is very sensitive to Matthew's feelings and his mental health. He has gotten into some difficulty in school and she had him stay with her for a two week suspension. It is her evidence that she did most of the shopping, medical and dental care for Matthew when the parties were together and certainly during the period post-separation when Matthew was primarily in her care before she moved to the city. She denies that Matthew's Dad bought most of his clothes up until last year. During the last year she acknowledges that he has paid for items for which she has provided receipts. She denies that she is significantly more lenient than he is and that she has given him permission to do things that are a jeopardy to his safety. She acknowledged that she encouraged more adventurous behaviour such as swimming at the quarry when there were going to be older teens there. She thought maybe they should let him go and generally was of the view that he should be encouraged to be a little more adventurous. However, she did agree in the end that he not go to the quarry. She denied Mr. Rose's suggestion that she did not want to have Matthew with her and she also acknowledged that Matthew really enjoys life in Elmsdale. She acknowledged that her own family is a fair distance away and that there are age differences between Matthew and her daughter Kaitlin, who is 11 years older. She indicates however that they have become very close. She acknowledges that her MS can cause her to be tired from time to time but that she manages her MS through a healthy diet and exercise. She denies having memory loss or impaired thinking and states that MS does not impact her ability to meet the needs of her son. She made her move out of Elmsdale deliberately and sought advice with respect to that because of the circumstances there and the need for her to move away from that environment. She acknowledged that Matthew does worry about her and her health and she denied asking Matthew to stay with her. She says that when Matthew is with her he has chores and he has some adult responsibilities but he does not do anything extra because of his mother's disease. She is of the view that Matthew worries more about her when he does not see her. She needs physical exercise to maintain her physical and mental health and she finds that yoga and teaching yoga is an affordable way to accomplish this. Her teaching classes are not extensive and do not take away from her time with Matthew considering his age. She and Mr. Rose had different views about punishment at home for Matthew's two week suspension from school. She wanted to consult with Joan Newman about punishment and what was appropriate. As a result of the suspension he lost his computer for two weeks and his cell phone for a month. The only time she let him on the computer was to do school work.

[22] She goes to a clinic for monthly infusions of medication to deal with her illness. She wants Matthew in her primary care because she is of the view that she is in a better position to deal with the issues he faces with respect to his academics. She is of the view that she is more in tune with his mental health and emotional well-being and that she is in a better position to address that. She is able to access resources to help him with schooling. She would be willing to be generous with access and recognizes how important his life is in Elmsdale. She described Mr. Rose as being extremely intimidating and relentless about certain issues. She does not want to discuss her private life with him and she described his behaviour towards her as being rude and derogatory and that dealing with Mr. Rose is extremely difficult.

Evidence of Stephen Rose:

[23] In addition to his own evidence, Stephen Rose called three family members. None of these witnesses felt that Ms. Rose was a particularly good mother. They were all supportive of Mr. Rose having Matthew in his primary care. Ms. Bois has not really had any contact with Ms. Rose for a considerable period of time and essentially spoke negatively about her. They all described a very close extended family relationship.

[24] Mr. Rose himself spoke about the kind of testing that was supposed to be done for Matthew and emphasized that the court order had provided for only ADHD testing to be done and that no testing for a learning disability was to be conducted. He was upset with Dr. Smith because she had said that she would do whatever she wanted. He maintained that according to the school, Matthew was an average reader. He felt that Deborah Smith was biased against him and kept information away from him about his son. He felt that Joan Newman did not take his role seriously. With regard to the computer and the journal, Mr. Rose was of the view that Ms. Rose deliberately gave him the keys and told him he could use the computer with the intention that he would see the personal messages about her private life and her plans. He also said that she intentionally left her journal for him to find, so he took the journal and copied it. While they were all living in Elmsdale but living separate and apart he felt that Kathryn kept Matthew from his family. He feels that Matthew's struggles in school are as a result of his mother's carefree attitude towards homework and school attendance. He indicates that Matthew is better off in Elmsdale and that his family is always there for Matthew, whereas in the city with his mother he does not have the benefit of the extended

family. He indicated that his mother was not involved in his schooling, did not attend parent orientation, and did not attend his school concert. He says that Matthew's marks are improving in school, that he is showing more focus and that he is capable of doing the work as he is concentrating more and his marks are coming up. He provided some school tests for the court marked as Exhibits 13 - 17.

[25] He disagreed about testing for learning disabilities because he had no indication from the teachers that it was necessary and none was recommended. He says that he is stricter with Matthew and he does not believe he has learning disabilities. He acknowledges that Matthew has a lot of stress but he needs strict rules, routine and to spend more time on his homework. He drills him with math facts. He is of the view that his mother wants Matthew to fail school. He knows that Matthew does not like school, and that he just wants to finish school and join the Military. He blames Matthew's mother for any poor marks he receives. He has extended family members who are well educated who can help him with his school work. He did not agree with Mr. Poirier who in 2009 recommended he be tested for ADHD and that he have some help to deal with his anxiety. He did not agree with Dr. Smith, and he disagrees with Joan Newman. He feels Matthew's issues are all related to missing a lot of school and he did not want him seeing a lot of different people. He also said that he believed the professionals are biased. He says that Kathy's contact with the school is sporadic when nothing else is going on in her life.

[26] He has devoted a considerable amount of time to working on this case and indicated that he had all of the court papers in his room, where his son may have seen them. He believes Matthew is performing at his grade level. He is in his last year of middle school and will be going into high school. He does not believe that his son has anxiety; he says he needs discipline. He says that Matthew has played his parents off each other his whole life. He does acknowledge that sometimes Matthew is anxious about going to new places and meeting new people. He does not have concerns about him going away to university or any post-secondary educational program, but he does not think it would be fair to move him from Elmsdale. He does not think that he would adjust to the change. He says Matthew wants to keep things the same. He says his extended family is all in the Elmsdale area. He disagreed that Matthew lived primarily with his mother post-separation before she moved to Bedford. He is of the view that Matthew wants things to stay the way they are, with him being with his father 60% of the time and with his

mother 30% of the time. His proposal is that Matthew remain in his primary care and that he spend every second weekend and one day through the week with his mother. He denies that his mother's move into Bedford was difficult for Matthew. He did say that Matthew did not like it in Bedford. He believes that Ms. Rose puts herself ahead of her son and that her teaching of three yoga classes a week affects her ability to care for Matthew. Although he acknowledged that she needs the exercise, he is of the view that it should not conflict with her time with Matthew. He acknowledged that he no longer has a relationship with Kathryn's daughter Kaitlin, although she was part of the family relationship for a period of ten or eleven years.

[27] He believes that Kathy is not a good role model for her son. He feels that Matthew's mother is not a good financial role model and that she could not control her spending, whereas he stays within his budget. He built a self-contained apartment in the house where his friend Peter Isnor has lived for three years rent-free. It is those values such as helping out a friend that he wishes to pass on to Matthew. He says that Kathy will not deal with him and that Matthew would like his parents to communicate. He does not acknowledge that he is difficult to communicate with.

Rebuttal:

[28] Kathryn Rose gave rebuttal evidence in which she addressed some of the issues raised by Mr. Rose. She confirmed that Kaitlin lives with her in the city. She acknowledged that because there has been so much turmoil in her son's life, she gave Matthew more time from the Christmas holiday to spend with his father and to play with his friends, and enjoy his new X-Box. She acknowledged that Matthew doesn't have any friends in Halifax and she wanted him to get his mind off what was going on between his parents.

ISSUES:

[29] The primary issue to be determined in this instance is what parenting arrangement is in Matthew's best interests. From this flows the language of custody and any possible child support obligations.

1. Change in circumstances warranting a variation to the existing custody and access regime:

[30] The parties are bound by a consent shared parenting arrangement that was reached in a separation agreement and subsequently confirmed in a consent order. Since entering into this agreement it has become apparent that the current regime is not working in Matthew's best interests. Both parties agree the existing situation cannot continue.

[31] Guidance is provided to the court in the decision of *Foley v. Foley* (1993) Can. Lii 3400 NSSC. This case is cited regularly by courts in coming to determinations as to what is in the best interests of a child in terms of primary care. Those factors are as follows:

1. Statutory direction Divorce Act 16(8) and 16(9), 17(5) and 17(6);
2. Physical Environment;
3. Discipline;
4. Role model;
5. Wishes of the children - if, at the time of the hearing such are ascertainable and, to the extent they are ascertainable, such wishes are but one factor which may carry a great deal of weight in some cases and little, if any, in others. The weight to be attached is to be determined in the context of answering the question with whom would the best interests and welfare of the child be most likely achieved. That question requires the weighing of all the relevant factors and an analysis of the circumstances in which there may have been some indication or, expression by the child of a preference;
6. Religious and spiritual guidance;
7. Assistance of experts, such as social workers, psychologists, psychiatrists, etcetera;
8. Time availability of a parent for a child;
9. The cultural development of a child;
10. The physical and character development of the child by such things as participation in sports;

11. The emotional support to assist in a child developing self-esteem and confidence;
12. The financial contribution to the welfare of a child;
13. The support of an extended family, uncle's, aunt's, grandparent's, etcetera;
14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. The Divorce Act s. 16(10) and s. 17(9);
15. The interim and long range plan for the welfare of the children;
16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and
17. Any other relevant factors.

Physical environment:

[32] There is no question on the basis of the evidence before this court that Matthew likes living in Elmsdale. Matthew is almost 15 years of age and has primarily resided there for his entire life. His mother is residing in an apartment in the city. While there is nothing to suggest that Matthew's physical environment in Ms. Rose's home is inadequate or inappropriate, it appears from the evidence that the physical environment in Elmsdale enables him to engage in more outdoor activities in a rural setting.

Discipline:

[33] In matters of discipline it is clear from the evidence that the two parties differ greatly, and that each parent has a very different parenting style. It does appear, however, that when it comes to matters of discipline, Ms. Rose is more sensitive to her son's emotional circumstances and that the father's discipline is

more rigid and based more on fear. It is not fear of physical harm, but fear of failing and perhaps ridicule or humiliation.

Role model:

[34] There is nothing in the evidence to suggest that either parent is a better or worse role model than the other, although Mr. Rose was adamant that Ms. Rose is not a good role model for his son. He could find little if anything positive to say about Ms. Rose. He is of the view that his family members are better role models for his son as well. In spite of Mr. Rose's protestations to the contrary, there was little or no evidence to suggest that one parent is any better a role model than the other to Matthew. In fact it would appear that both parents are good role models for their son, and each offers very different models for him.

Wishes of the child:

[35] An assessment was conducted with Mr. Martin Whitzman which was inconclusive. It was clear that Matthew did not want to have any part of, or any responsibility for any determination that the court makes as to where he should reside.

Religious and spiritual guidance:

[36] This did not seem to be an issue in this case.

Assistance of experts, such as social workers, psychologists, psychiatrists, etcetera:

[37] It appears that Ms. Rose is more willing to engage the assistance of professionals in assisting her with issues of parenting Matthew and with issues that relate to Matthew specifically. It is also clear from the evidence that Ms. Rose is more open to receiving recommendations and acting on those recommendations. Mr. Rose expresses distrust of professionals and ultimately is of the view that they are not necessary for his son.

Time availability of a parent for a child:

[38] Ms. Rose is not employed outside the home except for teaching some yoga classes so she does have actually more physical time available to her. Mr. Rose contends that she is not as available to him as he is. Mr. Rose works full-time and relies on family supports for Matthew which are available to him. It does appear that as between the parents, Ms. Rose has more time available to be of assistance to Matthew than Mr. Rose does.

The cultural development of a child:

[39] Culture is not significant here, although one might argue that living in the city would expose Matthew to more culturally diverse people and conditions.

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

[40] There is no evidence before the court to suggest that the environment of one parent is any more conducive to that than the other, although it could be argued a rural environment enables the child to participate in more outdoor activities that are available to him in the rural setting.

The emotional support to assist in a child in developing self-esteem and confidence:

[41] It is clear from the evidence that the mother is more able to address the emotional needs of this child. She is the one who has expressed the concerns about his behaviour and his anxieties from a very early age. She is more concerned about his self-esteem and confidence and is mindful that his unmet needs have contributed to his anxiety, his happiness and his school performance. Mr. Rose, on the other hand, in a desire not to have his child labelled or pathologized, is not as sensitive to those issues.

The financial contribution to the welfare of a child:

[42] Each parent is able to provide for Matthew and child support is available as well.

The support of an extended family, uncle's, aunt's, grandparent's, etcetera:

[43] It is clear from the evidence that there is significantly more extended family available to support Matthew in Mr. Rose's community. Matthew does have a half-sister Kaitlin in his mother's family, but the benefits of the extended family are greater in Elmsdale. However the extended family also has an impact on the overall encouragement of a relationship with both parents. The evidence before the court tended to suggest that the Rose family was somewhat "clannish" and not supportive of Matthew's relationship with his mother. Thus while there is the positive impact of the comfort of having a extended family, that impact can also be negative when it comes to supporting the relationship with the other parent.

The willingness of a parent to facilitate contact with the other parent:

[44] It appears from the evidence that Ms. Rose is the parent who has demonstrated a greater willingness to facilitate and maximize contact with the other parent. She has done so out of a sensitivity to her son's needs. And although she has found Mr. Rose very difficult to deal with and communicate with, she has not maligned him and has demonstrated a willingness to be flexible in ensuring that Matthew has maximum contact with his father. On the other hand, Mr. Rose's attitude towards Ms. Rose is such that, coupled with the attitude of his extended family, would have the effect of excluding Ms. Rose from her son's life.

The interim and long range plan for the welfare of the children:

[45] Matthew is completing middle school and should he pass, will be changing schools. If he did not successfully complete Grade eight in Elmsdale he will be held back and not able to go to the high school. It would be Ms. Rose's intention to have him registered in school in the city. If he did not successfully complete Grade eight he would be attending a new school in the city in any event. It appears that Ms. Rose is intent on getting to the bottom of some of the issues that her son is dealing with and to work with him in improving his circumstances. Mr. Rose, on the other hand, does not see that there is a problem and therefore does not really have a plan for the welfare of the child in that he does not feel that such a plan is necessary.

The financial consequences of custody:

[46] Not applicable.

Other relevant factors:

[47] A number of areas of concern came to the court's attention. It appeared from the evidence that Mr. Rose has been pre-occupied with his wife's behaviour since the parties' separation. Much of his attention has been given to painting her as a negative role model, and an individual who puts herself before her child. He had less insight into any faults or frailties in his own parenting. He also views anyone who suggests to him areas of improvement as a person who is biased against him. His lack of insight into his own rigid way of parenting and his animosity towards the child's mother will colour Matthew's relationship with his mother into the future. Mr. Rose has an approach to parenting and learning that is somewhat simplistic and does not address some of the more complex issues that this young adolescent is coping with at this stage in his life. Another factor is that Matthew is very much at a very significant juncture in his life. He is 14 ½ years of age and he is in transition from junior high to high school. It appears from the evidence before me that Matthew may lack the level of maturity and confidence to cope with these changes and that his difficulties have been exacerbated by this very high tension relationship between his mother and his father. It can only be further exacerbated by the distinctly different ways that each of his parents have in parenting him. In the decision of *C.(J.R.) v. C.(S.J.)* 2010 NSSC 85, the court asked itself a number of questions in assessing what parenting plan was best for the child.

1. What does the parent know about child development and is there evidence indicating what is suggested to be "known" has been or will be put into practice?
2. Is there a good temperamental match between the child and the parent? A freewheeling, risk taking child may not thrive well in the primary care of a fearful, restrictive parent.
3. Can the parent set boundaries for the child and does the child accept those restrictions without the need for the parent to resort to harsh discipline?
4. Does the child respond to the parent's attempts to comfort or guide the child when the child is unhappy, hurt, lonely, anxious, or afraid? How does that parent give comfort and guidance to the child?

5. Is the parent emphatic towards the child? Does the parent enjoy and understand the child as an individual or is the parent primarily seeking gratification of his or her own personal needs through the child?
6. Can the parent examine the proposed parenting plan through the child's eyes and reflect what aspects of that plan may cause problems for, or be resisted by, the child?
7. Has the parent made changes in his or her life or behaviour to meet the child's needs, or is he or she prepared to do so for the welfare of the child?

[48] It appears from the evidence that Mr. Rose has been resistant to any suggestion that Matthew might need some additional educational and emotional help. He is passionate about his son's well-being, but fails to see that his well-being needs to be addressed in ways other than rigid bedtime, rigid homework rules, the drilling of facts, etc. Further, the evidence clearly displays that Mr. Rose is single-minded, persistent and definite about his views that his son Matthew is extremely anxious and lacks self confidence. It appears from the evidence that he does not open up to his father as much as he does to his mother and it is also clear that his mother is very much more the nurturing parent when it comes to comforting him or being sensitive to him when he is unhappy or in need of support and encouragement. Both parents want Matthew to succeed, but Mr. Rose is of the view that his ability to succeed is based on the adherence to the strict discipline of school attendance and homework. Ms. Rose has for years been concerned about her son's behavioural and emotional well-being.

[49] Upon reflecting on the evidence of the professional witnesses, and in particular the evidence of Dr. Smith, it is not surprising that Matthew would experience such a high level of anxiety in going back and forth between two households where the differences in parenting styles were so distinct and where the differences in even the parents' assessment of their child's issues were so different. In looking at the difficulty that the professionals experienced with the parents' differences within the office setting, one can only imagine how difficult it would be for the child Matthew to figure out his life going back and forth between these two very distinctly different households.

[50] It is clear that Matthew is at a stage in his life when the focus needs to be on addressing whatever issues he is struggling with and focussing on getting him

counselling and therapy to deal with those issues including extra help for school. The hearing in this matter concluded before the end of the school year. The evidence was that Matthew was at risk of not passing. The test results that his father presented to the court as an indication of how well he was doing were shockingly lower than what a lay person would expect a 14 year old in Grade eight to be producing. It was clear to the court that this child required an assessment to be conducted immediately so that appropriate steps could be taken to address any issues that an assessment would reveal. His mother is the parent who has seen this go unaddressed for too long. While it would be a challenge for Matthew Rose to primarily reside with his mother in an apartment in the city, for him to reside in Elmsdale with his father and not have these issues addressed, is not in his best interests at this time. The healthy and comfortable environment that his Dad can provide in Elmsdale will continue to be available to him on weekends and during the summer. Now he needs some focus on a new start in school with the help that it appears he is going to need to meet any academic goals. In other words, while many of the obvious factors would tend to support primary care with Dad, the more subtle yet very complex factors favour primary care with Mom at this critical point in Matthew's life.

CONCLUSION:

[51] Considering all of the evidence before me, an order for joint custody is appropriate as being in the best interests of this child. I am not satisfied that the circumstances, difficult though they have been in the past, are such to impose sole custody in one parent or the other. However when it comes to matters of counselling, therapy and supplemental resources to assist the child, should Mr. Rose not be in agreement, Ms. Rose can proceed without his consent.

[52] Matthew will be in the primary care of his mother for the commencement of the academic year in September. The parties will share parenting time during the summer and will continue to work out other holiday times as they have in the past.

[53] During the school year Matthew will spend a minimum of two and maximum of three weekends out of four with his father, and he will have one overnight per week on Wednesdays. It is recognized that with Matthew's age it is going to be necessary in order for him to become fully integrated into his school to

have leisure time with his peers in his new school setting, and the parents will be mindful of that in arranging the parenting time with his father.

[54] Commencing 1 September, 2011 the respondent, Stephen Rose, will pay child support based on his 2010 income. His statement of financial information suggests an income of \$45,254.52, which results in a monthly table amount of \$393.00 per month. However, should this not be an accurate reflection of his 2010 income based on line 150 of his 2010 tax return then the maintenance will be adjusted accordingly.

J.