SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Cite as: Chaisson v. Williams, 2012 NSSC 224

Date: 20120612
Docket: SFHMCA-072026
Registry: Halifax

Between:

Carlene B. Chaisson

Applicant

v.

Michael Mack Williams

Respondent

Judge:	The Honourable Justice Beryl A. MacDonald
Heard:	May 18, 2012, in Halifax, Nova Scotia
Counsel:	Carlene B. Chaisson (self-represented) Michael Mack Williams (self-represented)

By the Court:

[1] On September 20, 2011 I delivered an oral decision in respect to a dispute between these parties about custody of their son and the appropriate parenting plan. At the time their son was two years old. I ordered the parties were to have joint custody. I set the terms of their parenting plan and required them to return on December 12, 2011 to inform me about the arrangements each requested for holiday and summer vacation time considering the parenting plan I had imposed. When the parties returned on December 12 they had agreed with all of the holiday parenting time with the exception of summer vacation time. The parties were ordered to return to this court on May 18, 2012 so that I might receive any evidence they wished to present and their submissions about the summer parenting time each requested. In the meantime the Mother filed an application on May 1, 2012 seeking to vary the order I previously granted so she could move the residence of the child to British Columbia. I ordered that application to form part of the hearing to be held on May 18, 2012.

[2] In the original application the Mother alleged the Father posed a risk to her, to her daughter (step-child to the Father) and to their son. She complained about his call to the Department of Community Services that resulted in a very brief investigation consisting primarily of a conversation with her. She questioned his moral character because of past difficulties to which he readily admitted but appeared to have overcome. I addressed these issues in my decision and noted in particular:

> Even though she has made these serious allegations against him, she continues to suggest the interim parenting arrangement is appropriate and is prepared to see the child in (the Father's) care for additional time -perhaps overnight Wednesday until Thursday morning...
>
> I also note that (the Father) had a responsible job in Nova Scotia as an instructor for persons with intellectual disabilities from 1994 until 2008. His present job with Capital Health also requires him to work with a disabled population. Whatever his past might have been it appears to be well behind him.
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> (The Mother) has also stated (the Father) speaks very disrespectfully to her, and that he is rude and dismissive. She alleges fearfulness because of his verbal aggression and suggests he should not be allowed to be near her, her car or her property because he in some way presents as a danger to her eight-year-old daughter to whom he has shown aggression in the past.
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> I have no doubt (the Father) may not speak to (the Mother) the way she wishes him to. But I am satisfied from (the Father) she also is not without the ability to be insulting although in a more subtle way. This dynamic has resulted in what I perceive to be a struggle for power and control - the object to fight over is their son...

> I do not accept that (the Father) is a risk to either (the Mother), her daughter or (their son).

[3] Notwithstanding my decision the Mother has repeated these complaints in her present application and suggests she is:

> "requesting the mobility rights and permission to move with my son for better job prospects and also to provide a better environment for my son. (The Father) has placed calls to the Department of Social Services which has affected me professionally, spiritually and emotionally. My home has become somewhat of a prison for me and has heightened my anxieties as I never know who will be at my door or what will potentially ignite his calls.....I am a counselor and work in the social service area and (the Father's) exposure of my name in this mannerism has been very damaging for me professionally and I feel has altered job opportunities in this area."

[4] The Father has not made any calls to the Department of Community Services since the previous proceeding. The Mother introduced no factual material to support her suggestion she now has "altered job opportunities in this area". The mother is still working with the employer she had at the time of the original application.

[5] In *Gordon v. Goertz*, [1996] 2 S.C.R. 27, the Supreme Court of Canada provided direction about the considerations to be taken into account when a court is faced with a request from a parent to remove a child's residence to another province or country. As always, the primary direction is to make a decision that is in the "best interest of the child". There is no presumption in favor of the custodial parent (or in this case the primary care parent) but that parent's decision to live and work where she or he chooses is entitled to "great respect". Past conduct of a parent is not to be taken into consideration unless the conduct is relevant to that parent's ability to parent the child. The parent's reason for the move has no relevance absent a connection to parenting ability, as may be the case when the sole reason for move is to frustrate or interfere with access.

[6] The Supreme Course directed a judge should consider, amongst other factors:

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> 7.....
> (a) the existing custody arrangement and relationship between the child and the custodial parent;
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> (b) the existing access arrangements and the relationship between the child and the access parent;
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> (c) the desirability of maximizing contact between the child and both parents;

> (d) the views of the child;
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> (e) the custodial parents reason for moving, only in the exceptional case where it is relevant to that parents ability to meet the needs of the child;
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> (f) disruption to the child of a change of custody;
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> (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.
>
> 50 In the end, the importance of the child remaining with the parent in whose care and custody the child has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, extended family and community. The ultimate question in every case is this: what is in the best interest of the child in all the circumstances, old as well as new?

[7] An analysis of cases that have applied these principles provides additional detail about the factors to be considered. Those details are:

- the number of years the parent's cohabited with each other and with the child;
- the quality and the quantity of parenting time each has provided the child;
- the age, maturity, and special needs of the child;
- the advantages of the move to the moving parent in respect to that parent's ability to better meet the child's needs;
- the time it will take the child to travel between residences and the cost of that travel;
- the feasibility of a parallel move by the parent who is objecting to the move;
- the willingness of the moving parent to ensure access will occur between the child and the other parent;
- the financial resources of each of the family unit;
- the expected permanence of the new custodial environment;
- the ability of the moving parents to foster the child's relationship with the other parent over long distances.

[8] These parents did not live together for a significant period of time before or after the birth of their child. He will be three years old in October. He is described as a happy, engaging child. No special needs have been identified. Contact between this child and his Father was regularized by an Interim Order granted January 25, 2011. By that Order the Father was to have this child in his care every Wednesday from noon until 5:00 p.m. and every second weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m. The recent order I granted confirmed my oral decision delivered on September 20, 2011. It placed this child in the care of his Father for periods of time as provided by the Interim Order and included an opportunity for him to have his son in his care, dependent on his availability, every second Thursday from 12:00 p.m. until 5:00 p.m. in the week when he would not have the child in his care on a weekend.

[9] This is a very young child. I do not think it is controversial to say that children under five generally require relatively frequent contact with each of his or her parents to establish and maintain healthy attachments. The *Divorce Act*, R.S. , 1985, c.3 specifically directs that a child is to be provided as much contact with each of that child's parents as is consistent with that child's best interests. Although this requirement does not specifically appear in the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160, the *Act* under which this application had been commenced, this principle is recognized and applied. This is because it has now been understood both parents play a significant role in developing a healthy well adjusted child. Negative consequences can result from infrequent contact with one of the child's parents.

[10] The Mother plans to move to Nelson, British Columbia to enroll in a two-year diploma program offered by the Kutenai Art Therapy Institute. The program runs from September until May. The tuition for the first year appears to be $10,500.00 and for the second year $6,937.00. The Mother has not yet been accepted into this program. As a result she does not know where she will live. She cannot estimate what her expenses will be. She has not sought out any educational opportunities in Halifax to build upon her Bachelor of Arts degree in Psychology and augment the counseling courses she has already taken including her "background in Early Childhood Education". (The Mother's affidavit filed August 22, 2011 paragraph 8) She professed ignorance about the opportunity offered by the Kutenai Art Therapy Institute to attend programming in Halifax, Nova Scotia. This organization is offering a program in the Maritimes for people seeking training to become Art Therapists. This will be accomplished through a combination of distance course work, experiential course work, practicum placements and supervision offered in Halifax, Nova Scotia. The program is provided in conjunction with the Chebucto Art Therapy & Counseling Center. I am satisfied that the Mother did not find this opportunity because she did not look for it. She suggests the practicum will only be provided in Nelson but the online information does not suggest this.

[11] The Mother at one time provided blood testing for a company called Canada Wide Mobility. She no longer performs this work and offered no explanation why this has occurred. She apparently works for her present employer part time. She suggests she will have sufficient money available from student loans to fund pursuit of the educational opportunity in British Columbia. Her present annual income inclusive of the child tax benefits and the GST credit is approximately $22,800.00. She already has a student loan although I do not have the total

amount presently owing. She will lose her income if she moves to British Columbia and she has not suggested any particular job opportunities in Nelson she intends to pursue while taking the Art Therapy diploma or during the summer months. In short, this is an ill-conceived plan put forward and promoted primarily to get as far away from the Father as the Mother can go. It is clear from her evidence she has no respect for the Father and is prepared to interpret his every statement and every move negatively. As I said previously, this Father bears some responsibility for what has happened in their relationship but it is the Mother's unrelenting animosity that fuels her desire to remove herself and their son from regular direct contact with the Father. She refuses to accept that the Father has anything meaningful to provide to their son through regular contact and believes a three-year-old can achieve a sufficient relationship with a geographically distant parent through the use of Skype as a communication tool. This child is far too young to develop a relationship let alone maintain one through the use of this tool.

[12] Neither of these parents have the financial resources required to ensure this child will have an opportunity to be in his Father's care on a frequent basis if the child is moved to British Columbia. It is doubtful they could afford to have him return to Nova Scotia twice a year.

[13] At the time the Mother was seeking to have this child in her custody she filed an affidavit on August 22, 2011. In paragraph 15 she states:

> With regards to extended family, my parents live in the area, in sackful, and are extremely involved in my children's life. My son goes camping with them and my mom provides his care when I have to work. I also have a lot of family in the area, including aunts and uncles who also partake in my son's upbringing.

[14] Now it appears these extended family contacts are not as significant in this child's life as they were approximately 7 months ago. This inconsistency in her testimony is another reason why I have decided the Mother's true motivation for this move is to get away from the Father thus preventing his exercise of access with their son. The Mother is not to remove this child's residence from Nova Scotia.

[15] The parties have previously filed a document on December 2, 2011 that both had signed and which outlined their agreements in respect to holidays and special occasion arrangements for the parenting of their son. Their agreement will be reflected in the order that will be issued by the court. They were unable to agree about how much time the child should be in his Father's care for his summer vacation. At a minimum the Father wants to have care of this child for seven consecutive days and his maximum request is for a full two-week period.

[16] There appears to be some consensus amongst those who study child development that children younger than two or three should have an opportunity to interact with both parents every day or every other day (if at all possible) in a variety of functional contexts such as feeding, play, discipline, basic care, limit setting, and putting the child to bed. Most children who have a secure attachment to their parents can move from one parent to the other without concern about psychological distress. They may still exhibit transition stress reactions typical for their

age but generally these cause no long term damage if properly managed by the child's parents. After the age of two it is generally recognized many children can manage 2 consecutive overnights with one parent in the absence of the other. After age 3 many children tolerate 3 to 4 consecutive days absence from one parent while in the care of the other parent and they may be able to be quite happy for several consecutive days with that parent when they are in a stimulating situation, going on a special trip for example. Many child psychologists would not recommend a child to be absent from the care of one of his or her parents for as long as two consecutive weeks until that child reaches six years of age. These are general recommendations. Whether they should apply to a particular child will depend upon many factors including the personality and temperament of the child and the personality, temperament, and parenting skills of the parent.

[17] This child will not be three years old until October 2012. While he sees his Father every second weekend and for periods of time during each week, the majority of the time he is in the care of his Mother. I realize the Father wants to have a longer period of time with his son in the summer than three or four days. He wants to take him to the United States to visit his elderly grandmother who is 82 years of age and unable to travel to Nova Scotia to visit with her grandson. Because this child is so young it is very unlikely he will remember much about any visit with his grandmother. Young children can forget an infrequently seen relative because they have not developed the capacity to hold the memory of that person in their mind. I do not know the exact capacities of this child and therefore can only evaluate his experience in light of what often can be expected of a child his age. As a result I cannot say it is in his best interest to visit with his grandmother although I recognize this is something both she and the child's Father may want in their own best interest.

[18] For every week of the Father's summer vacation he is to have this child in his care for 3 consecutive days which must be followed by the child being in the care of the Mother for at least 2 consecutive days. When the child is 5 years old, in the summer of 2015, the Father is to have him in his care for seven consecutive days during his vacation and when the child is 6 years old, in 2016, he is to have him in his care for a minimum of 14 consecutive days. The Father shall inform the Mother of the days he has chosen 30 days before the beginning of his vacation. If there is any conflict with the Mother's vacation schedule, he shall have his choice of time in even years and in odd years he will have to work around the Mother's schedule.

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Beryl MacDonald, J.S.C.