

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** T.M. v. C.B., 2008 NSSC 62

**Date:** 20080307

**Docket:** SFSNMCA-050086

**Registry:** Halifax

**Between:**

T. M.

Applicant

v.

C. B.

Respondent

**Editorial Notice**

Identifying information has been removed from this electronic version of the judgment.

**Judge:** The Honourable Assoc. Chief Justice Robert F. Ferguson

**Heard:** February 25, 2008, in Sydney, Nova Scotia

**Written Decision:** March 7, 2008

**Counsel:** Danielle Morrison-MacNeil, for the applicant  
Bradford G. Yuill, for the respondent

**By the Court:**

[1] T. M., age twenty three, and C. B., age twenty-seven, are the parents of C. B., born November [...], 2005.

[2] In November of 2006, Mr. M. made application under the *Maintenance and Custody Act*. In the documentation filed in support of this application, Mr. M. noted he was currently being denied access to his child and was seeking an ultimate determination that C. reside with him “half the time.”

[3] Mr. M. also made an interim application on July 11, 2007. The document filed in support of this application indicated Mr. M. was seeking interim access to C. even under the supervisory conditions as allegedly proposed by Ms. B..

[4] An Interim Consent Order issued November 15, 2007, stated, in part:

1. The child C. C. S. B., born November [...], 2005 shall remain in the primary care and control of the mother, C. B.;
2. The Father, T. M. shall have access to the child upon the following terms:
  - a. Access shall take place for one period of two hours duration, each week;
  - b. Access shall be supervised by either the Mother, the child’s care provider or another third party acceptable to the parties;
  - c. Access shall take place at the residence of C. B. located at [...] in Sydney which address may be subject to change, however, the Father will be notified of any such change;
  - d. The specific dates and times of access shall be arranged by agreement of the parties in a telephone conversation to take place on Sunday evening of each week between the hours of 6:00 p.m. and 8:00 p.m. This telephone conversation shall be placed by the Father, and the Mother will provide accurate contact information to him for that purpose;
  - e. The Father will not remove the child from the residence without the express consent of the Mother;

2. This Order is an interim Order and is not intended to prejudice the position of the parties in respect of the issues upon hearing of this application.
3. This Application will return before the court for full hearing on the 25<sup>th</sup> day of February, 2008.

## RELEVANT LEGISLATION

[5] The *Maintenance and Custody Act*:

18 (2) The court may, on the application of a parent or guardian or other person with leave of the court, make an order

(a) that a child shall be in or under the care and custody of the parent or guardian or authorized person; or

(b) respecting access and visiting privileges of a parent or guardian or authorized person.

...

(4) Subject to this Act, the father and mother of a child are joint guardians and are equally entitled to the care and custody of the child unless otherwise

(a) provided by the *Guardianship Act*; or

(b) ordered by a court of competent jurisdiction.

(5) In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall apply the principle that the welfare of the child is the paramount consideration. R.S., c. 160, s. 18; 1990, c. 5, s. 107.

## EVIDENCE

[6] In addition to the parties, there were two other witnesses.

[7] F. M. was called by Mr. M.. Mr. M. acknowledged he had been a friend of Mr. M. since high school days. They are both from Zimbabwe. When Mr. M. and Ms. B. resided together, Mr. M. frequently went to their home for dinner. He portrayed Mr. M. as a parent who baked, changed diapers and “cuddled” with his daughter. He portrayed Ms. B. as “accomplished” and stated that she kept a “clean home.” Mr. M. also indicated he babysat C. on a few occasions. Mr. M. also admitted to being aware that the couple had had “difficulties” and was witness to “arguments.”

[8] D. M. was called by Ms. B.. She lived in the same housing complex with the couple from April to November of 2005. She acknowledged being a friend of Ms. B. while not really being an acquaintance of Mr. M.. She referred to witnessing an incident when the couple were proceeding through the parking lot and Mr. M. was screaming at Ms. B. and pushed her through the entrance to the complex. She later heard screaming coming from the couple’s apartment and the only voice she heard belonged to Mr. M..

[9] T. M. is twenty-three years of age preparing to graduate from [...] this spring. In addition to successfully completing his academic undertaking, he has been a member of student government and served on numerous committees during his time at the university. Further, he has been able to earn, through employment, an income which in 2006 was in the range of \$14,000.00 per year.

[10] C. B. is twenty-seven years of age, the mother of G. who is nine years of age and who has been in her care throughout this relationship and continues to reside with she and C.. Ms. B. has been employed and lived in the Sydney area until late December of 2007 at which time she moved to the Truro area having secured employment in that vicinity.

[11] In January of 2005, the parties began to reside together. They separated a few months later and Ms. B. relocated briefly in the Truro area. Ms. B. found out soon after the separation that she was pregnant. She informed Mr. M. and the couple shortly thereafter reunited in Sydney. The couple remained together through the birth of C. in November of 2005 until late May of 2006 at which time they separated permanently. From May of 2006 until late December of 2007, the couple remained apart but with both living in Sydney.

[12] As previously mentioned, in mid-November of 2007, the couple entered into a consent order which provided Mr. M. to access to C.. Some access was arranged pursuant to this order but within a month Ms. B. had moved with both her children to the Truro area and there has been no access since that time.

## **ISSUES**

- A) Parenting arrangements for C. with her mother and father.
- B) Child support - Mr. M.'s obligation to provide child support to Ms. B. in accordance with the *Child Support Guidelines*.

### **Child Support**

[13] Child support has not been mentioned by Mr. M. in either of his two applications. Neither has it been pleaded in any documentation filed by Ms. B.. However, both parties have for a considerable period of time been aware it was a matter for consideration at any hearing or trial. Ms. B., with C. in her care and Mr. M. with an income in the vicinity of \$14,000.00 would appear to create an obligation on Mr. M. to provide support in the vicinity of \$102.00.

[14] Ms. B. while residing in Sydney indicated a reluctance to seek support from Mr. M. as she felt it would create concerns for Mr. M. that could complicate his successful completion of his studies. Still further, her belief, given his status (a student with a student visa), was that such failure could result in him having to leave the country. Since she has relocated to Truro, she feels this obligation could be utilized by Mr. M. in having access with their daughter.

[15] Given the current circumstances, no official request for support, Mr. M.'s imminent graduation and indicated attempt at relocation and employment, his obvious travel expenses to have access with his daughter, there will be no order for support at this time.

### **Parenting Provisions**

[16] The parties resided together for about six months after the birth of C.. Mr. M. was a full-time student with part-time employment. Ms. B. was employed. They

required and secured child care. Ms. B., during that period, provided more hands-on child care for both of the children. Mr. M. did provide some direct child care and C. was familiar and comfortable in his presence.

[17] After the final separation in late May of 2005, the parties got together to discuss their future interaction. There was a brief discussion as to their living as a couple but the majority of the discussion related to their child, C.. Mr. M.'s primary concern was to establishing time with his daughter. Ms. B.'s primary concern was the provision of child care for both of her children. Given Mr. M.'s studies and employment, he was unable to provide Ms. B. with the ongoing child care she required. In effect, Mr. M.'s sought-after parenting time could not dovetail with Ms. B.'s child care needs. The couple separated without a resolution to either issue. Mr. M. states, a few days later in a telephone conversation with Ms. B., she told him he was "off the hook." Mr. M. took that to mean that he was no longer required in C.'s life. He commenced his legal application shortly thereafter. For the next eighteen months all involved lived in the Sydney area and, surprisingly, no access was arranged.

[18] It was obvious from Mr. M.'s initial application that his desire and request was to the effect that, after some preliminary access arrangements, C. would proceed to live with him for one half of the time. This equated to not only a joint custody but split custody situation.

[19] Ms. B.'s reply was that any agreement or order would provide that she would have custody, sole custody of their child.

[20] It has been clearly established that Ms. B. is a capable mother. She has managed as a single parent of G. for over nine years adding C. as a responsibility along the way. She has procured a position that will provide for she and her two children. She has moved to an area where she has family, some of who are currently providing child care. She requests to be termed the custodial parent and to have C. reside primarily with her. I find, especially with her move to Truro, that it is currently in C.'s best interest to grant Ms. B.'s request.

[21] The question remains as to defining Mr. M.'s parenting relationship with his daughter.

[22] Mr. M., at the relatively young age of twenty three, has attained success during his time in Nova Scotia. That being said, Ms. B. introduced evidence and made submissions to the effect that Mr. M. was the main cause of their troubled relationship. Further, that he barely carried his weight as a parent when the couple lived together. Mr. M. denies this. I find, as previously stated, that Ms. B. provided the majority of child care when the couple lived together. Mr. M.'s position as a full-time student and a part-time employee during this time has been noted. Ms. B. submits her providing evidence as to Mr. M.'s propensity towards spousal abuse and not providing child care was not for the purpose of depriving Mr. M. of having a parenting relationship with their child but as a caution as to any undertakings he may provide.

[23] Mr. M.'s initial request as to parenting time was submitted while the couple resided in the same area. Mr. M. acknowledges Ms. B.'s move changes the reality as to what would be appropriate parenting arrangements.

[24] Further, there is naturally some uncertainty as to where Mr. M. will be residing after his graduation in the spring of this year. He states, on graduation, he now plans to obtain employment and live in the Halifax area. He indicates this move is primarily to be located where he can have a meaningful parenting relationship with C.. All indications are he will graduate on time. He has interviewed for a position in Halifax. He asks the Court approach a determination of his parenting time on this assumption. Ms. B. does not object to this request.

[25] Ms. B. requests he share the term "custodian" with Ms. B.. He wishes to be "a part of C.'s life." He wishes to be able to tell her about her "Zimbabwean culture and heritage." Ms. B. acknowledges the necessity of informing C. of her heritage. She does not object to Ms. B. being involved in their daughter's upbringing.

[26] Paragraph 18(4) of the *Maintenance and Custody Act* states that parents of a child are joint custodians and equally entitled to care and custody of their child unless provided otherwise by legislation or court order.

[27] I believe it would be in C.'s interest to have both her parents maintaining responsibility for her upbringing. I find Mr. M. and Ms. B. should share joint custody of their daughter. This would provide Mr. M. with the right to confer directly with any adults, such as teachers or doctors as to his daughter's welfare. It

provides Ms. B., as the primary care giver, would confer with Mr. M. before effecting any major change in their daughter's life. I order that, in the event of a disagreement, Ms. B., as the primary care giver, would make the ultimate decision.

[28] Mr. M.'s initial request that a court order would state that sometime in the near future C. would live with him one-half of the time is not in C.'s best interests at this time.

[29] There is the uncertainty as to the physical accommodations Mr. M. will be able to provide. Further, given the uncertainty as to the type of his employment and what parenting time he would have available for his daughter.

### **ISSUES AS TO DETERMINATION OF MR. M.'S PARENTING TIME**

#### *A) Risk of Flight*

[30] Mr. M. is from Zimbabwe. However, his parents and other siblings have established residence in Toronto. His current status is governed by his student visa. He testified that he is confident that he will secure employment which will allow him to obtain the necessary documentation to remain in Canada on an indefinite basis. It has not been seriously suggested that Mr. M. would leave the country with his daughter. However, I will order that, in exercising his parenting time, he shall not remove C. from the Province of Nova Scotia without the consent of Ms. B. as the parent providing the primary care.

#### *B) Appropriate Living Quarters and Child Care Equipment*

[31] Before Mr. M. could transport his daughter or have her spend considerable time at his residence, it would be appropriate for Ms. B. to be afforded the opportunity to view the premises and be made aware of the necessary child safety travelling equipment. Unless otherwise agreed between the parents, it would be Mr. M.'s responsibility to make the necessary travel arrangements to exercise his parenting time with his daughter.

#### *C) Supervision*



[32] Much of the Court's time was taken up with the discussion as to the type and length of supervision as it pertains to Mr. M.'s parenting time.

[33] There was some suggestion that supervision was necessary to assist Mr. M. in performing duties required in attending to a child of C.'s age. However, the main emphasis focussed on the time required for C. to recognize and be comfortable while alone in the presence of her father.

[34] Mr. M. acknowledges the necessity of some initial supervision to provide comfort to C. while she becomes reacquainted with him. He believes the necessity of such supervision could be extinguished after a few visits.

[35] Ms. B., on the other hand, believes such supervision would be required for an extended period of time. There was no expert evidence provided on this point.

[36] There is a further aspect that has to do with the determination of Mr. M.'s parenting time and the need of supervision. A request has been made to determine parenting time between now and when Mr. M. would leave Cape Breton to relocate in Halifax which is expected to be in about four months. Given the relocation of Ms. B. and C., the current interim consent order is not beneficial to either the child or either parent.

[37] Mr. M. requests I provide him with parenting time while he still is in Sydney that would require Ms. B. to have the child come to Sydney and, further, that she provide for such transportation. In the alternative, it is requested that an order would provide for the child to be transported by her to some location approximately half way between Truro and Sydney. I do not find it appropriate to make such an order. Ms. B. has agreed to provide Mr. M., his parents, family and friends with access to C. during Mr. M.'s graduation ceremonies. It is open for Ms. B. to cooperate further in this regard but only if she concludes it is not contrary to the interests of the child and herself. It must be remembered, as far as the costs of such access is concerned, that Ms. B. has born the total financial responsibility for C. since the separation.

[38] It is ordered that Mr. M. shall be entitled to parenting time with C. while he remains living in the Sydney area every second weekend in the mornings and afternoons on Saturday and Sunday. This access shall take place primarily at the

residence of Ms. B. and be supervised by Ms. B. or any other third party of her choice.

[39] Beginning on the fourth weekend visit, if that many occur while he resides in Sydney, the access shall continue in a similar fashion but be unsupervised.

[40] On relocation to Halifax, Mr. M. shall be entitled to parenting time every second weekend on Saturday and Sunday; the duration of such parenting time to be arranged between the parents. If there has been three previous weekend visits occurring previous to Mr. M.'s relocation in the Halifax area, the parenting time will not be supervised. If not, Mr. M. must participate in a total of three weekend visits before his access time is unsupervised.

[41] Beginning on the fourth weekend visit after Mr. M. has relocated in the Halifax area, Mr. M. shall have access with his daughter every second weekend from Saturday morning to Sunday evening with C. being allowed to remain overnight at his residence.

[42] It is recognized the parenting time is indefinite to some extent. This has to do with the uncertainties presented. It will require the parents to confer on a rather constant basis as to the interests of their daughter. The parents are also required to make arrangements that would allow C. time with her father on special occasions such as birthdays and Christmas. The order shall also provide for Mr. M. to have such other parenting time as agreed by the parties.

[43] I request that counsel for Mr. M. prepare the order.

J.