

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

**Citation:** Gould v. Googoo, 2013 NSSC 270

**Date:** 20130828

**Docket:** SFPAMCA - 073181

**Registry:** Port Hawkesbury

**Between:**

Hubert Gould

Applicant

v.

Susan Googoo

Respondent

**Judge:** The Honourable Justice Moira C. Legere Sers

**Heard:** June 20, 2013, in Port Hawkesbury, Nova Scotia

**Written Decision:** August 27, 2013

**Counsel:** Wayne MacMillan, counsel for the applicant

**By the Court:**

[1] These are the written reasons relating to the order granted on June 20<sup>th</sup>, 2013.

[2] Mr. Gould, the father, has had notice of these proceedings. He has not appeared for today's hearing.

[3] Mr. Gould began this application for custody and child support November 12, 2010. At that time he was represented by counsel.

[4] Ms Googoo, the mother, filed a response dated September 30<sup>th</sup>, 2011. She seeks an order for custody, child support and exclusive occupation of the residence.

[5] Mr. Gould withdrew his application by Notice of Discontinuance filed on October 14<sup>th</sup>, 2011.

[6] The mother's counsel gave notice she intended to proceed on the Response.

[7] The mother seeks to contest the father's application for a shared parenting arrangement. She seeks to have an order that recognizes that she has been the primary parent since separation and continues to be so today.

[8] There appear to be two principle reasons for proceeding on the response.

[9] The first being that immediately after separation in November 2009 the mother was eligible and did in fact receive the Canada Child Tax Benefit as the primary parent.

[10] This continued until May 5<sup>th</sup>, 2011 when, as a result of an application from Mr. Gould alleging he was the primary parent, Revenue Canada reversed their decision advising her she was not eligible to receive the Child Tax Credit and was ordered to repay the benefits she received (approximately \$20,000).

[11] As a result of the finding of the court on February 1<sup>st</sup>, 2013 she became eligible once again, as primary parent, to receive the benefit. However, they have

garnished her benefits to repay the amount she received between the separation and prior to the court order.

[12] As of June 18<sup>th</sup>, 2013 Revenue Canada indicates she owes \$15,247.79.

[13] The second reason being that as a result of the lack of court order the father has been able to act unilaterally without notice or input from the mother.

[14] In the absence of a court order or mutual agreement, the usual issues surrounding separation, custody and access remain unresolved.

[15] The consequence of this was exemplified recently when the father entered the mother's home in the night, while the mother and children, were asleep and removed one of the children.

[16] Thus, a determination on the facts is necessary to resolve the issues and more clearly define the relationship between the parents and children.

## **Facts**

[17] There are four children: Autumn Shayla Moon Gould, born February 28<sup>th</sup>, 1999; Sage Wekatesk Gould, born August 9<sup>th</sup>, 2000; Maya Mae Putuwesk Gould, born June 26<sup>th</sup>, 2002 and Aiden Weskawek Gould, born April 28<sup>th</sup>, 2007.

[18] In his original parenting statement, the father did not know the birth dates of the middle two children.

[19] The parties had lived together from 1997 to 2009 and separated in October 2010.

[20] Mr. Gould said in his Parenting Statement that the children were living with him and that he was prepared to consent to reasonable access at reasonable times upon reasonable notice. He was seeking joint custody with primary care in his name.

[21] Ms. Googoo has contested these assertions that Mr. Gould has been the primary parent and has provided evidence of her role with respect to the children.

[22] As of January 4<sup>th</sup>, 2011 there was a four day rotation that had the appearance of a shared parenting arrangement. However, the division of responsibilities illustrated something entirely different.

[23] The mother said the children stayed with their father for four nights of the week.

### **Delays**

[24] Mr. Gould contacted the court office on the morning of February 20<sup>th</sup> to indicate that he could not attend court for medical reasons. He asked that the matter be adjourned. He requested time to obtain counsel.

[25] Nova Scotia Legal Aid issued Mr. Gould a certificate to obtain representation.

[26] On February 20<sup>th</sup>, 2012 the court directed that if Mr. Gould was not ready to come before the court, he was to be present to give directions as the matter would be scheduled. The matter was adjourned to April 30<sup>th</sup>, 2012 for a pre-trial.

[27] On April 27<sup>th</sup>, 2012 Mr. Gould contacted the court to advise that his cousin had passed away and that the funeral was on Monday and, therefore, he would not be in court. He requested further time to obtain counsel.

[28] On April 30<sup>th</sup> Mr. MacMillan appeared for Ms. Googoo; Mr. Gould was not present. Another date was set and Mr. MacMillan was directed to file an affidavit outlining the relief he sought with the court. He was directed to have Mr. Gould served with the affidavit to give him notice of the appearance date and the contents of the request for relief.

[29] Mr. Moreau informed his client, Mr. Gould, of the court date, that he would no longer represent Mr. Gould and that he would have to appear or have counsel appear on his behalf.

[30] The custody issues were identified for the court record. They remain the same throughout.

[31] On May 8<sup>th</sup> Mr. Gould contacted the court office. He was advised by the court office that the matter had been before the court and was adjourned to the June 18<sup>th</sup> date at 10:00 am in Port Hawkesbury. A letter was sent on June 18<sup>th</sup> to the address identified by Mr. Gould as his address, confirming the date.

[32] Mr. MacMillan was present in court for Ms. Googoo. Mr. Gould was in court. The court directed Mr. Gould to return to Nova Scotia Legal Aid to speak with the managing lawyer and advise her of his inability to find counsel.

[33] The matter was again adjourned to September 12<sup>th</sup> at 10:00 am for a hearing. Mr. Gould identified that he had received Ms. Googoo's affidavit. He advised he had a certificate from Nova Scotia Legal Aid and he was unable to find counsel. He confirmed that he lives at his brother's home and rents two bedrooms.

[34] At that time, Mr. MacMillan advised that the welfare of the children was a major concern and that the issue of custody had to be addressed as soon as possible. He also advised that Mr. Gould was receiving the child tax credit, had withdrawn his application for custody and left Ms. Googoo with a substantial debt as a result of having received the child tax credit and as a result of a reassessment his application has triggered.

[35] Mr. Gould advised on August 13<sup>th</sup> that he would be in China with his son for the next court date on September 12<sup>th</sup>. This was a trip he arranged through the Make a Wish Foundation.

[36] It was subsequently confirmed that, in fact, Mr. Gould would be present on September 12<sup>th</sup>. He advised that he had consulted with another solicitor who would be representing him.

[37] On July 4<sup>th</sup>, 2011, Mr. Gould was ordered to file his last three years Income Tax Returns together with Notices of Assessment and Reassessment forthwith and to file his year to date income from January 1<sup>st</sup> of 2011 to July of 2011, verified at source.

[38] He was to include both taxable and nontaxable benefits.

[39] Ms. Googoo was to file her year to date income. The case was adjourned to a full day interim hearing.

[40] Mr. Gould has not provided full financial documentation despite numerous repeated efforts to obtain financial information from him

[41] On December 4<sup>th</sup>, 2012 Mr. Gould provided through his counsel a copy of his 2009 Income Tax Return indicating he declared no income and his 2010 Return in which he declared a gross fishing income of \$18,389 which has been processed by Revenue Canada as net income before adjustments of \$17,675. The June 17<sup>th</sup> letter filed by the Whycomomagh First Nation Band indicates he received social assistance of \$178.10 on a bi-weekly basis.

[42] On December 7<sup>th</sup>, 2012 the matter came before the court. Both parties were present and represented by counsel.

[43] Mr. Gould filed an affidavit two days prior to the hearing; not as directed by the court.

[44] Mr Gould's counsel requested an adjournment. The court granted a one hour break to allow counsel to make phone calls and discuss the affidavit with his client after which the matter proceeded.

[45] The hearing was held and a decision was given granting joint legal custody; primary care to the mother.

[46] Any changes in the order were to be made by agreement in writing.

[47] Parenting time was granted to the father every second weekend after school and on Friday. The children were to be returned to their mother by 4:00 pm on Sunday:

On the week that the father does not have weekend parenting time , the father will having Wednesday after school overnight and send them off to school the next morning.

On the week that the father does have weekend access he could have the children with him for supper on Tuesday and Thursday with the children being returned to the mother's home in time to do homework.

In 2012 and every year thereafter the father will have the children on Christmas Eve and return the children at noon on Christmas Day to Boxing Day with the balance of Christmas vacation to be shared.

The children will be with the mother on Mother's Day and with the father on Father's Day.

March break is to be shared.

Summer vacation was not agreed upon and the court did not have enough information to make a decision with respect to summer vacation.

[48] The court did not have sufficient information to deal with the child support issue. This issue was set over for a hearing.

[49] The court adjourned the hearing for both parties to argue child support and the issue of primary care from the separation forward. This was to address the retroactive assessment triggered by Mr Gould's application to Revenue Canada to obtain the child tax benefits and the corresponding debt assessed to the mother.

[50] Mr. Gould was again ordered to provide full financial disclosure of any and all income. He was directed to have the Band office provide a letter confirming his income. The matter was set over to February 18<sup>th</sup>, 2013.

[51] On February 14<sup>th</sup> Mr. Meehan, representing Mr. Gould, requested an adjournment. Alternate dates were scheduled and the matter was set down for April 19<sup>th</sup>, 2013.

[52] On April 10<sup>th</sup>, 2013 the matter was adjourned due to court rescheduling.

[53] Mr. Gould dismissed his counsel and advised the court office that he was not available for the alternate date as he had a doctor's appointment. He advised that he would attempt to have the Band office forward income information for the last three years confirming his receipt of social assistance.

[54] This information was not received by the court. Mr Gould was reminded on April 15<sup>th</sup>, 2013 to forward this information to the court. He advised at that time that he had not yet requested confirmation of receipt of social assistance from the Band and indicated that he was unsure if he would be present on April 16<sup>th</sup>.

[55] On April 16<sup>th</sup>, the court reconvened on this matter with Mr. MacMillan as counsel for Ms. Googoo and Ms. Googoo present. The court was satisfied that Mr. Googoo had been served by the Sheriff. Ms. Googoo had seen Mr. Gould out walking as she approached the court.

[56] Mr. MacMillan again raised the issue of the Child Tax Credit and the need to have some resolution. Ms. Googoo advised that she had care of the children; that she was receiving the Child Tax Credit and using it to care for the children when the children were with her and when the children were with Mr. Gould.

[57] She advised that Mr. Gould was not contributing to the financial welfare of the children.

[58] The evidence relating to the presence of the children and the roles of the parties was ordered to be filed and the matter was adjourned to May 14<sup>th</sup>, 2013 for a hearing.

[59] The May 14<sup>th</sup> hearing was rescheduled to June 20<sup>th</sup> as Mr. MacMillan had not successfully served Mr. Gould with the May 14<sup>th</sup> date as directed by the court.

[60] On June 12<sup>th</sup> Mr. Gould contacted the court, informed the conciliation officer that Sheriff Services were at his house but he did not answer the door. He was informed of the court date on June 20<sup>th</sup>, today's date, and indicated he would attend the court on June 13<sup>th</sup> to be served.

[61] This morning and throughout the course of the last few days we have received correspondence from Mr. Gould that indicates that he is not prepared to participate in the proceedings for numerous reasons.

[62] There is an email from Mr. Gould to the court office to the court clerk dated June 19, 2013 at 8:57 a.m. In that Mr. Gould identifies that he won't be making it today (the actual court date is June 20<sup>th</sup>). He says as follows:



“Hi, I won't be making it today. I have no lawyer for "your" system. I just got the notification last thursday on the 13th of June. What I have atm is a letter from my social assistance officer here in Waycobah First Nation. My oldest daughter moved out of her moms just the other night so I've been busy with her, Autumn S Gould, since yesterday. I told, I believe you, the court that my previous lawyer (Bill Meehan) had all my financial information and should've been submitted back in Dec and Jan. I had the Income tax documents sent to him via fax from Canada revenue. I finally got the letter from social assistance and I'll be attaching that. As well, I am requesting a new Judge and will be making a new application to "your" court regarding custody of the children and to assert my Mi'Kmaq rights pertaining to the raising and protection of my children, etc... If you have any questions or concerns please contact at xxxxxxxxxxxx@xxxxx.com or cell: 902 XXX XXXX. Thanks!”

[63] The court office replied to his email at 10:56 a.m. advised him that his email had been forwarded to Mr. MacMillan with the information from the Whycomomagh First Nation regarding the receipt of social assistance and further advised Mr. Gould that the matter would be proceeding on June 20<sup>th</sup>, 2013 at 10:00 am as scheduled unless there is consent from both parties for an adjournment. It was suggested he contact Mr. MacMillan directly regarding the request for adjournment and if there was no consent he was to be present tomorrow with or without his counsel.

[64] On June 19<sup>th</sup>, 2013 at 4:19, Mr. Gould responded by email indicating the following:

“Yes I understand that you as a "canadian" have to enforce your non native ways but I have prior n new obligations that are far more pressing. My 14 year old moved out n I have to put her interests first(best intetest of the children) before the white colonial courts. If I can make it in I will and as ive told you I do not want this judge presiding over any more matters before your colonial courts. I have made an application to legal aid for legal representation for both myself and my daughter autmn so she will have the right to express herself and to be heard. She needs clothes and food which she is very particular about which I will be getting tomorrow. As soon as I get adequate legal representation for myself and my daughter and get notified properly, not last minute, then I will respectfully try my best to attend. Welalin”

and he was further informed that the matter would be proceeding.

[65] On the morning of June 20<sup>th</sup>, Mr. Gould forwarded an email to the court office indicating:

“Hi sorry I def cant make it in .my son is home sick he went back to bed but ill be taking him in to the docs when he wakes up. He woke up complaining about a sore stomach n his head aching. I msgd ms googoo but her phone must not have any more minutes. Thanks.”

[66] Approximately one hour later, Mr. Gould forwarded an addition email attaching a doctor’s note and a copy of prescriptions for his son.

[67] I am satisfied that Mr. Gould has delayed this matter as long as possible at tremendous prejudice to Ms. Googoo, financially and emotionally. He has had notice and opportunity to be represented; has been represented by at least two lawyers and has discharged those lawyers. I conclude that he does not intend to be present for the purposes of addressing these matters today.

[68] Given the issues before the court, the financial obligations of the mother, the lack of contribution by the father and my finding that the father does not intend to participate meaningfully in the process; I will not be adjourning this further. I will address the issue that I am required to address, including financial and emotional stability of the children.

[69] I have confirmation that both parties have attended the Parent Information Session.

[70] In 2009, Ms. Googoo’s line 150 income was reassessed to \$37,070. Her income statement of April 2011 identifies her income as \$47,702.

[71] It is Mr. Gould's position throughout that the children have been in his primary care and he requests a shared parenting arrangement.

[72] Ms. Googoo has filed a number of affidavits. In her affidavits she advises that this was a 13 year relationship which ended in October of 2009. The parties have four children as noted.

[73] She was living and continuing to live in the home provided by the Whycomagh First Nation Band approximately six years ago. The house has four bedrooms and is situated in a community familiar to the children.

[74] After the separation, Mr. Gould went to live with his brother, wife and five other children. These individuals provided a place for Mr. Gould to live when he was unable to provide independent housing for himself and the children.

[75] The circumstances in this household caused Ms. Googoo to be concerned; the children, she believes, were forced to sleep on a futon or share a single mattress on the floor.

[76] Ms. Googoo graduated from St. Francis Xavier University with a Bachelor of Arts and Bachelor of Education. She has been consistently employed since that time with various employers in the area.

[77] Mr. Gould has not been employed with anyone within the last 15 years. He has been self-employed on occasion. He has been in receipt of minimal social assistance from the Band. He has not indicated what, if any, efforts he has made to become employed in order to financially support his children.

[78] Ms. Googoo advises that immediately after separation the children did go back and forth from both homes to aid them in the distress caused by the separation. This proved very difficult for the children.

[79] They then adopted a four-day rotation, four days at home and four days with their father at his brother's home.

[80] During this period of time Ms. Googoo has essentially supported and facilitated the father's parenting by providing him money and food when the children are with him; transporting the children to his home at night; picking them up; taking them to school; providing their lunches in school whether they are with her or with him; receiving calls from her children when they are hungry and without food and providing them with food; paying for the

majority of any and all extra curricular activities; ensuring they get to their various doctors' appointments; communicating with the teachers, etc.

[81] Contrary to Mr. Gould's affidavit evidence, Ms. Googoo indicates she took care of the house; cooked; attended parent-teacher conferences; attended medical appointments by herself; attended the head start preschool and kindergarten to help them adjust and continued to be involved in their every day activities even when they were with their fathers. She advises that she occasionally had to bring them food, both breakfast and lunch, and clean their clothes so that they go to school during the period of time they were with their father.

[82] She has been advised by the school on occasion when they are with their father that the children had not eaten breakfast nor had they had their lunch.

[83] After school, the children would come to her home, eat supper before going to their father's home at night.

[84] She provided them with money necessary for school, field trips and for extra curricular activities.

[85] She ensures that they attend and are connected with their extended family.

[86] She advises that there are concerns about Mr. Gould's relationship with his family at large and about the information he is conveying to the children.

[87] She advises that Mr. Gould has made it difficult for her to communicate with the children when they are with him and he has admitted that he blocks her home number on occasion.

[88] He has prohibited her from speaking alone with the children at times and he has recently discussed with the children the details of the proceedings.

[89] In order to stop the mother from seeking child support, he told the children that if she continues to seek child support he will have to move away.

[90] He has indicated to Ms. Googoo that he does not need her input on certain decisions.

[91] The mother has been contacted by the school to ensure that when the children are with their father that the children attend school on a regular basis. The teachers have advised her of their concern about the children's absence from school. At some times, she would have to pick up the children every morning from their father's place and bring them to school herself.

[92] She advises that her family is fluent in the Mi'kmaw language and very cognizant of their own culture and she advises that it is not the same with the father. She believes it is important for the children to have strong foundation for who they are as Mi'kmaw.

[93] The father indicates the opposite, that it is he who ensures that the children are cognizant of their culture.

[94] The mother raised her concerns in a subsequent affidavit filed on December 7<sup>th</sup>, 2012 about the state of the children while they were living with the father.

[95] The father claimed that he was ready to move into a mobile home and in his affidavit of December 5<sup>th</sup>, 2012 he confirms that the living arrangements described by Ms. Googoo, ie, that he has been staying with his brother, partner and five children would end shortly as he was moving into a mobile home he purchased and renovated.

[96] The mother advises that the father had consistently undermined her by telling the children that she was becoming assimilated in this culture that chooses to work over spending time with them.

[97] She advises that she has to take clothing and food to the children while they are staying with the respondent and for the first eighteen months of their separation she would pick the children up after school even when they were staying with the respondent.

[98] During the period of time when they were with Mr. Gould, she spent a couple of days with the children, on average three of the four days that they were in his care.

[99] The mother has provided a letter from their family doctor dated September 20<sup>th</sup>, 2010. The mother has also provided information verifying, in particular, one child's absence from school.

[100] The mother has provided a letter dated September 1<sup>st</sup>, 2010 from the Whycocomagh First Nation, Director of Education which verifies that the mother is reported as the parent contact person for the first three children when they were registered in school.

[101] The mother has the primary financial burden to cover the child's expenses. She has provided evidence that sets out her contribution toward the major expenditures together with her contribution when called upon initially to provide income so that he could provide food for them when they were in his home.

[102] The evidence supports the fact that the father contributes little; he has been unemployed - self-employed for a period of 15 years.

[103] The mother has further provided information from the dentist that would indicate that during 2010 and 2011, Ms. Googoo brought and attended all dental appointments with her children with the exception of one appointment.

[104] She has submitted a letter from the bus driver for the grade school for kindergarten to grade six that the normal drop off point for the Gould children is her home.

[105] She has confirmed that she is the person who brings the child Autumn to the psychologist appointment as agreed upon and that it is the mother who has brought her to each session, one in February; two in March; one in April and one in June.

[106] I am satisfied after the hearing, on the totality of the evidence that the mother has been the primary parent from the date of separation forward. She has absorbed and been responsible for the day to day decisions and the financial support.

[107] It is clear that the father has spent a certain degree of time with the children. The mother supports a positive and substantial relationship with the father.

[108] Both appear to want to support the specific and identified culture and language learning for these children.

[109] The evidence would support that the mother has been the primary parent providing the greater degree of stability for the children; the greater degree of hands on parenting with respect to attendance at school; medical appointments; medical/therapist appointments and further that whether the children are with her or not, she has been the parent who has ensured that their primary interests are addressed; ensure that they have food on the table and clothes to wear when they are with the father.

[110] The mother is the only one who substantially supports any extra curricular activity.

[111] In his affidavit dated December 5<sup>th</sup>, the father suggests that the school never brought to his attention their concern about the absences. This in effect is an indication that the communication between the school is with the school and the mother and not the school and the father. The absences have been verified.

[112] If the father is not aware of the school's concern he should be aware of it and he should be actively involved in ensuring that the children attend school.

[113] There are a number of recent incidences that cause the court concern about the father's priorities and ability to set aside his own rights to focus on the needs of the children.

[114] He has on more than one occasion, and most recently this week on Tuesday, June 18<sup>th</sup>, attended at the mother's home unbeknownst to her during the night when she was sleeping and removed the fourteen year old, the oldest child, from the home without her mother's knowledge.

[115] A note was left for the mother apparently written by the child. It confirms the mothers' testimony that this child is very much in the middle of a dispute between the parents and is apparently unable to extract herself. I am concerned that such pressure would be put on a young child.

[116] The children are raising issues to the mother about her pursuit of child support.

[117] This action is assaulting the integrity of the mother's household and potentially disturbing the stability that she, the parent who has been financially and emotionally the primary parent, is able to give them.

[118] By involving the children, the father is effectively accomplishing what he wants and avoids appearing before the court, giving his evidence and presenting himself for scrutiny and for cross-examination.

[119] He has also not supported the child financially and has not offered any reason why for the past 15 years he cannot be employed in such a fashion that he can address some of the financial needs of the children.

[120] He is working through the children to suggest that he can take one of them to Boston for a vacation. He is suggesting he can remove them



from the province without the mother's consent and he is offering this as an incentive which destabilizes the mother's authority.

[121] For these reasons it is important to support the mother financially as she addresses the best interests of the children and to identify for the record that the mother has been the primary parent, not only in word, not only legally, but in action. She has essentially supported the father's involvement to her own detriment.

[122] I am also satisfied that contrary to Mr. Gould's behaviour, the mother will not cut the father out of the children's lives; she will facilitate contact with him and the extended family; she is prepared to endorse the terms and conditions of the order that was granted in February of 2013.

[123] The order should be clear for Mr. Gould and Ms. Googoo. She is the primary parent and she is responsible for making the day to day decisions.

[124] The parties share joint legal custody; it means they have to consult and attempt to agree on all issues relating to major developmental issues respecting the children including the educational, emotional, physical and spiritual welfare of the children. Joint legal custody is not in this case a shared parenting agreement .

[125] The children are not to be removed from the province of Nova Scotia or from the mother's residence without her expressed written consent.

[126] The father is not to remove the children from the school or to change their residence unless agreed upon by the mother.

[127] The father is to deliver to the mother the passports and any identification that the children have with respect to their culture, language and any other ordinary identification.

[128] The parties may come back in the event they cannot resolve summer access or for a change in circumstances.

[129] The mother has given up on trying to get financial contribution from the father and I accept that this cannot continue to be her focus and responsibility given the difficult circumstances in which this family operates.

[130] I reserve the right in the event the mother or the father wish to come back to review the issues of child support.

Moira C. Legere Sers, J.