

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *A.C. v. K.T.*, 2017 NSSC 142

Date: 2017-05-26
Docket: SFHMCA-095941
Registry: Halifax

Between:

A.C.

Applicant

v.

K.T. and G.C.

Respondents

Judge: The Honourable Justice R. Lester Jesudason

Heard: March 3, 2017, in Halifax, Nova Scotia

Written Release: May 26, 2017

Counsel: Tanya G. Nicholson for A.C.
Jennifer L. Schofield for K.T.
G.C., not participating

By the Court:

Introduction:

[1] A well-known proverb says that “it takes a village to raise a child”. In other words, many people, beyond a child’s parents, can help that child grow up to be a healthy adult.

[2] On the other hand, non-parents have no automatic right to be part of a child’s life. Indeed, sometimes their involvement may not be in a child’s best interests and could potentially undermine the parent/child relationship.

[3] This tension is often front and centre in the increasing number of cases where grandparents, wishing to play a role in a child’s life, ask a judge to order access over the objection of the child’s parent(s). Such is the case before me where I am being asked to determine if it is in the best interests of a seven-year-old child to have court-ordered access with his paternal grandmother over the objection of his mother.

Family History:

[4] The child at the heart of this proceeding is K. He was born on July 10, 2009, and is in Grade 2. By all accounts, he is a happy and well-adjusted child.

[5] K’s parents are K.T. (the Mother) and G.C. (the Father). His paternal grandmother is A.C. (the Grandmother).

[6] When K was born, his parents were 15 and 16 years old respectively. The Father lived with the Grandmother while the Mother lived next door at her own mother’s home. The Grandmother’s and Mother’s family appear to have had a friendly relationship with the Mother’s younger sister referring to the Grandmother as “Nanny” .

[7] The Mother and the Father were in a relationship for about three years although they had break ups and reconciliations during that time. For a short period of that time, the Father was incarcerated for a weapons-related criminal offence.

[8] In 2012, when K was three, his parents separated for good. The Mother subsequently commenced a relationship with a new partner, T, and, in July 2012, moved with him and K to British Columbia. They returned to Nova Scotia in the Summer of 2014.

[9] The Mother and T are no longer together. They have their own son who is five. According to the Mother, T plays an active role in both of her sons’ lives as they stay with him every second weekend. T also often picks up both boys up from school or visits them at her home.

The Grandmother's Contact with K:

a) K's Early Life (July 2009 to July 2012)

[10] The parties agree that the Grandmother was involved in K's life prior to the Mother's move to British Columbia in July 2012. They disagree, however, as to the extent of her involvement.

[11] The Grandmother says she had almost daily contact with K from the day he was born until he was about 2 ½ years old. This included being left in a caregiver role on multiple occasions.

[12] The Grandmother indicates that the frequency of her visits with K never changed during this period. She says she worked 5-6 days per week and would often return home to find the Mother, the Father, and K in her home. She says there were never any restrictions on her contact with K.

[13] The Mother, on the other hand, testified that the Grandmother only saw K regularly until September 2009, when the Father started high school again. She says the Grandmother's visits then stopped being regular.

[14] The Mother also attempted to go back to high school in September 2009 to complete her diploma. She asked the Grandmother to look after K on Mondays when she was at school. The Mother says this arrangement only lasted for about a month as she had to give up going to school due to her other childcare arrangements falling through.

[15] After this happened, the Mother says that the Grandmother would only occasionally drop by unannounced to see K, or would call and ask the Mother to bring him over for a visit. The Mother says that when these visits occurred, they were always short.

[16] The Mother says that the visits grew further apart and that eventually, the Grandmother was only asking to see K on holidays or on days when the Grandmother was off from work.

b) Contact while K lived in British Columbia (July 2012- Summer 2014)

[17] The parties agree that, after the Mother moved to British Columbia in July 2012, the Grandmother did not have any further contact with K until October/November 2012, when the Mother returned to Nova Scotia for a visit with her family. The Grandmother visited K and the Mother's family for a few hours at the Mother's family home. The Mother claims that her mother pressured her into agreeing to a visit with the Father and the Grandmother at that time. The Mother returned to British Columbia after this visit.

c) Contact after the Mother moved back to Nova Scotia (Summer 2014 - Present)

[18] In the Summer of 2014, the Mother, her partner, K, and her other son returned to Nova Scotia for good.

[19] The Grandmother subsequently saw K and the Mother at the Grandmother's niece's wedding in August 2014. The Grandmother spent time with K that evening. She gave the Mother her phone number and indicated that she wanted to set up a future visit with K.

[20] In September 2014, the Grandmother encountered the Mother and her boys at a bus stop. The Grandmother says that the Mother called out to her and she went over and played with K. The Grandmother reiterated to the Mother that she wanted to schedule a visit with K.

[21] The encounter at the bus stop was the last time that the Grandmother had any contact with K. Later that summer, the Mother left a voice-mail message for the Grandmother advising that she did not feel that the Grandmother should currently be involved in K's life. She indicated, however, that when she felt it was time for K to be able to know the Grandmother, she would advise.

[22] The Grandmother subsequently commenced this litigation in May 2015 seeking court-ordered access with K.

Procedural History:

[23] The procedural history of this matter is as follows:

- On May 5, 2015, the Grandmother filed an application seeking access to K.
- In the Fall of 2015, the parties agreed to participate in a Settlement Conference. No date, however, was ever finalized for same.
- On April 8, 2016, the Grandmother filed a Notice of Motion for Directions seeking a hearing date.
- On June 13, 2016, the parties appeared before me for the Motion for Directions. Both parties were represented by counsel. The Mother's counsel indicated that the Mother was no longer interested in participating in a settlement conference so a hearing was scheduled for January 10, 2017. The parties were given filing dates for same.
- On December 9, 2016, the Mother's counsel wrote the court enclosing a Notice of Intention to Act on One's Own signed by the Mother. She requested an extension for the Mother to file her affidavit which was due on December 13, 2016.

- On December 13, 2016, the Mother filed her own letter requesting an extension to file her affidavit. She also indicated that she needed more time to seek legal counsel.
- On December 14, 2016, counsel for the Grandmother wrote the court advising that she was agreeable to giving the Mother whatever extension I deemed appropriate but wanted to have the Mother's materials by January 3, 2017.
- On December 16, 2016, my judicial assistant wrote to the parties advising that I was granting the Mother an extension until December 19th to file any affidavits. I also modified the other filing dates so that the Grandmother would have the opportunity to respond to any materials filed by the Mother. Finally, I referred the parties to the decision of *Simmons v. Simmons*, 2016 NSCA 86, which I encouraged them to consider given that it dealt with the issue of grandparent access.
- On December 21, 2016, the Mother sent another email asking that the hearing scheduled for January 10, 2017, be adjourned so she could obtain new counsel.
- On December 23, 2016, the Grandmother's counsel responded by opposing the adjournment request but suggested that, as a compromise, the Grandmother would be agreeable to participating in a settlement conference on January 10, 2017.
- On December 29, 2016, the Mother wrote to the court again asking for an adjournment of the hearing. My judicial assistant responded that day advising that unless the parties reached an agreement on how to proceed, they were expected to appear for the hearing.
- On January 10, 2017, the parties appeared for the hearing. The mother did not have counsel and had not filed any evidence opposing the Grandmother's request for access. She indicated that she was not ready to proceed without a lawyer. She advised that she had been in touch with a lawyer who would be available to conduct the hearing from February 2017 onwards.
- After a discussion with the parties, counsel for the Grandmother agreed to an adjournment on the basis that the Grandmother reserved the right to seek costs on account of the adjournment.
- Given that the Grandmother consented to an adjournment, and I believed that it was in K's best interests to have evidence from the Mother, I granted a brief adjournment and double-booked myself on March 6, 2017, to potentially hear this matter. I gave the parties filing dates for same and made it clear that I would not be inclined to adjourn this matter again.
- On March 6, 2017, the hearing proceeded. Both parties had counsel. I reserved my decision.

Positions of the Parties:

a) The Grandmother

[24] The Grandmother seeks to have regular contact time with K involving a gradual reintroduction into his life. She also requests specified holiday access time during Christmas and Easter as well as the opportunity to attend his school concerts and activities. Finally, she requests regular telephone access.

[25] The Grandmother's counsel submits that I follow a similar approach to that ordered by Associate Chief Justice O'Neil in the *Simmons* case which she suggests should be modified as follows:

- Visitation in a neutral public location for a period of time for two hours every second Saturday during which the Mother could be present;
- After a period of time, the visits would change to a location of the Grandmother's choice without the Mother being present;
- After another month or so, the visits would change to four hours in duration;
- After another three months, the visits would change to 10:00 a.m. to 4:00 p.m..

[26] The Grandmother's counsel also indicated that the Grandmother would agree to abide by any other conditions which were deemed to be in K's best interests.

b) The Mother

[27] The Mother's position has changed somewhat throughout this litigation. In her Parenting Statement filed on August 20, 2015, the Mother proposed that the Grandmother have supervised access once a month for two hours on a weekend at a child friendly location (e.g. swimming pool, library or park). She proposed that she would act as the supervisor for the visits and that no visits would occur in the Grandmother's home.

[28] In her affidavit sworn to on February 9, 2017, the Mother requested that if access was ordered, the following terms/conditions be imposed:

- Access occur once per month to be supervised at Veith House;
- The Grandmother not consume alcohol 48 hours prior to a scheduled visit.
- The Grandmother not discuss the Father with K until such time as she and the Father come to an agreement about reintroducing the Father into K's life; and

- Neither the Grandmother nor herself will speak disparagingly about the other in the presence of K.

[29] During her closing submissions, the Mother's counsel confirmed that the Mother's primary position is that the Grandmother should not have any access at all with K. However, her alternative position was that if access is ordered, it should be done on terms and conditions including supervision by a third party. Furthermore, if the Grandmother failed to abide by those conditions, her access should be terminated. The Mother's counsel also suggested that, if access was ordered, the situation be reviewed after 3-6 months to see how things progressed which would hopefully allow the parties time to build up some trust.

c) The Father

[30] The Father did not participate in the hearing. He was incarcerated for part of the time this proceeding was ongoing in relation to drug trafficking charges and advised the court he would not be participating in the hearing. He was apparently released in late December 2016 and has been living with the Grandmother since that time. The Grandmother indicated that he was looking for work and that she expected him to be moving out of her home by the summer.

[31] The Father did file a Parenting Statement on July 30, 2015, as well as letters on June 13, 2016, and December 30, 2016. In those letters, he advised that while he would not be participating in the hearing, he was fully supportive of the Grandmother having access with K.

He stated, amongst other things, the following:

"I would like the court to know and understand that not only do I not have any issue with my mother...having visitation with my son K... I simply encourage it because I believe the bond & relationship between a grand-mother and grand-son is important & strong. My mother...is a very family orientated woman and deeply believes in the strength and love of family, not only does she have the best interests in mind for K, I believe she will be a very positive influence and role-model in his life, as a grand-mother & strong woman. Not only do I believe my mother should be granted visitation rights to K, I believe it would be in [the] best interest for K as well. And I believe we all want the best for K & have his best interest in mind." [Letter filed on June 13, 2016]

"I will not be attending this court date but I am in full support of my mother receiving visitation of my son K. I feel that my mother and K being in contact with each other is in the best interest for my son." [Letter filed December 30, 2016]

[32] Counsel for the Grandmother and the Mother agreed that I could consider the Father's letters as statements of his position with respect to the Grandmother's application notwithstanding the fact that the Father was not present during the hearing. I have therefore considered them for that limited purpose.

Assertions of the Parties:

a) The Grandmother

[33] In support of her request for access with K, the Grandmother makes a number of assertions including, but not limited to, the following:

- She had daily contact with K during the first 2 ½ years of his life part of which time the Mother lived next door at her own mother's house. She claims that the Mother and K frequently spent time at her home and that the two families had a very close relationship.
- When he was younger, K had been well-acquainted with the Grandmother's family, including her sisters, as well as her close friends. K still sees her sister, V, and she believes that K refers to her sister as "Aunt V". She says that her nephew's wife is also close with the Mother.
- She loves K very much and wants to be part of his life. He is her only grandchild and she would not do or say anything which would harm him. She really misses K and feels saddened by the amount of time which has passed.
- She does not support the criminal activity which led to the Father's incarcerations. With respect to the weapons-related offences he committed when K was a baby, the Grandmother says that she was unaware that he had hidden unloaded guns in the basement of her home.
- After the Father was incarcerated for the weapons-related offences, the Mother did not permit visits as frequently as she began a new relationship with T. Notwithstanding this, the Mother continued to facilitate visits even when the Father was incarcerated. It was only after the Mother became pregnant with T's child that she stopped taking the Grandmother's calls or visiting with K.
- The Mother moved to British Columbia in July 2012 with no notice to her or the Father. As a result, the Grandmother lost all contact with K.
- When she spent time with K at her niece's wedding in August 2014, things went well. While K did not recognize her as his grandmother, he and his little brother danced with her and she took K to meet her family members. The Grandmother purchased two drinks for the Mother at the wedding and the Mother later asked her if K could sit with the Grandmother again at K's request. The Grandmother agreed and said that K subsequently sat with her, her family, and friends for more than an hour. She said that K was very affectionate and sat on her lap without prompting.

- She respects the Mother and has always thought that the Mother was a good parent. She says the Mother puts her children first even though she had her children when she was very young.
- The Grandmother says she is also a responsible parent and has been employed at a local hotel for 11 years as the lead laundry hand, with several employees working under her.
- If granted access to K, she is prepared to respect the Mother's wishes around the visits and agree to conditions which would give the Mother comfort. This would include not having any access in her home if the Mother was not comfortable with same.
- There is no court order in place between the Mother and the Father and the Mother has refused to allow her to have any access with K. She therefore feels she needs to have a court order in place to ensure she will have access with K in the future.

b) The Mother

[34] In support of her position that the Grandmother's request for access with K should be denied, the Mother makes a number of assertions including, but not limited to, the following:

- During the first year of K's life, she had concerns related to the cleanliness of the Grandmother's home and the Grandmother smoking in K's room.
- On some occasions when she brought K over to the Grandmother's home, the Grandmother and her friends were consuming alcohol.
- The Father went to prison for the first time in July 2011 when the police raided the Grandmother's home and seized weapons. He also subsequently served time for drug-related offences. She says that the Father was abusive to her during their relationship and that she currently fears him.
- One day shortly after the Father went to prison, she was locked out of her mother's home and encountered the Grandmother who was living next door. She claims that the Grandmother had been drinking heavily and began to curse at her and said she would have the Father "deal with" her.
- When the Father was incarcerated, she received some calls from the Grandmother which she characterized as being "abusive". As a result, she stopped taking calls from the Grandmother.
- K does not remember the Father or his extended family.
- She does not believe K would be safe with the Grandmother due to her "alcoholism" and the "drug activity" in her home.

- She has worked hard to develop a strong bond with K who is very happy and content with his life. The Mother questions whether the Grandmother will be a consistent figure in K's life and one who will provide a healthy and safe environment for him. She questions whether the Grandmother will simply leave him after being reintroduced into his life and does not trust the Grandmother based on their past interactions.

[35] In response to the Mother's assertions, the Grandmother stated:

- She categorically denies that she is an alcoholic. Rather, she says that she is a responsible and hard-working parent who does not consume alcohol on days before she has to work although she does consume alcohol on evenings when she does not have to work the next day. She acknowledged that she may have been having a few drinks with friends at times when the Mother dropped in with K as a baby but claims that there never was a problem with alcohol consumption and that nobody was ever abusive to the Mother. She is willing to agree to a condition that she will not consume alcohol during or prior to visits with K.
- The Mother never expressed any concerns about the cleanliness of her home. K was always clean and well cared for in her home and she bathed him and provided him with a safe environment. While she is not a "neat freak", she cleans her house every day, washes her dishes, makes the beds, and sweeps and vacuums.
- The frequency of her visits with K never changed prior to the Mother's move to British Columbia and she had almost daily contact with K prior to the move. The Mother continued to bring K over to her home even after the Father was incarcerated which shows that she and the Mother were able to cooperate on facilitating visits.
- She never smoked in her home when K was present. If she knew K was coming for a visit, she would air out the house and smoked outside prior to the visit. If the Mother came to the house with the baby unannounced, the Grandmother would immediately put out her cigarette and open the windows.
- She would never permit the Father to be abusive to the Mother or to any woman. If the Father was abusive to the Mother, she never knew about it.
- She had numerous visits with the Mother and K after the Father's incarceration. The Mother never appeared frightened of her in any way. She never threatened the Mother in any way.
- She denied making "abusive" calls to the Mother or using foul language towards her. She admitted that the one exception was the incident the Mother referenced when the Mother was locked out of her mother's home after the Father was incarcerated. While the Grandmother could not recall the specific details of the incident, she recalled both

she and the Mother being upset, and her swearing at the Mother. She apologized in court for the incident saying that this was her mistake and that the Mother did not deserve it. She said she regrets the incident and will agree to a condition that she will not speak ill of the Mother or any of her family.

- The Mother only stopped taking her calls or visiting with K after she became pregnant with T's child.
- The Grandmother's proposed access for K is not being advanced on behalf of the Father who will need to pursue his own visitation schedule separately should he wish. She will not discuss the Father with K or press that relationship. She said she recognizes that any reintroduction by K to the Father should be within the Mother's purview and on the Mother's terms.
- She will abide by any terms that are laid out for her when exercising visits with K.

Agreements of the Parties:

[36] The parties agreed to the following conditions in the event I ordered access:

- There should be an initial period of reintroduction between K and the Grandmother. During this time, no visits would take place in the Grandmother's home and there would be no overnight visits.
- The Grandmother would not consume alcohol during visits with K or within 24 hours prior to any visits;
- The Grandmother would not smoke in K's presence during visits;
- The Father would not be present during any visits with K unless the parties agreed;
- The Grandmother would not discuss the Father with K; and
- Neither party would make any negative comments about the other party to K;

ISSUE:

Is it in K's best interests to have access with the Grandmother?

THE LAW:

a) Legislation

[37] The Grandmother's application is brought under s. 18(2)(A) of the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160, as amended. ("MCA"). This section resulted from a legislative reform to the MCA in 2014 which allows grandparents, unlike other family members and third parties, to apply for access to a child without first obtaining leave of the court.

[38] Under s. 18(5) of the MCA, the paramount consideration for me is K's best interests and, in determining same, I am required to consider all relevant circumstances, particularly those ten circumstances outlined in subsection 18(6).

[39] I don't propose to list all of those ten circumstances but have considered all of them to the extent they are relevant to my decision.

[40] Also, since this is a grandparent access case, under subsection 18(6A) of the MCA, I must consider, when appropriate, the willingness of each parent to facilitate access by and visiting of K with the Grandmother and also the necessity of making an order to facilitate access and visiting between K and the Grandmother.

b. Case Law

[41] In Nova Scotia, the leading case on grandparent access is *Simmons v. Simmons*, 2016 NSCA 86. Our Court of Appeal provides very helpful guidance on the approach to be taken in grandparent access cases. I summarize the key principles as follows:

1. The paramount consideration is the best interests of the child;
2. A grandparent is not required to show that access to the child has been denied or restricted, but that access with the grandparent is in the child's best interests (para. 43);
3. There are two predominant approaches to grandparent access – the parental autonomy approach and the pro contact approach. The parental autonomy approach is based on the premise that parents have the right to make decisions with respect to with whom their child should associate and, absent a finding of parental unfitness, or harm flowing from the lack of access, courts should not interfere with parents' decisions. The pro contact approach is based on the

premise that generally, contact between a child and his or her grandparent and should not be denied unless it can be shown to be harmful. (para. 27)

4. There is nothing in the *MCA* or the case law of this province which requires a judge to prefer one approach over another. What approach to apply depends on the unique context and facts of a given case (para. 35-37).
5. Parental decisions and views are entitled to a level of deference. However, judicial deference to parental authority can be tempered by the court's willingness to recognize benefits that extended family can bring to a child. Again, the overarching test is whether or not access is in the child's best interests (paras. 41, 53 and 54).

ANALYSIS:

a) Review of Evidence

[42] I see little to be gained by embarking into a detailed examination of the evidence or a step by step analysis of each applicable best interests factor under the *MCA* or the case law. Rather, I will simply state that I have considered and weighed all the evidence in relation to the relevant best interests factors. Also, in the areas where the parties' evidence differs, I have made assessments of credibility in deciding what evidence I ultimately accept keeping in mind the approach suggested in cases such as *Novak Estate, Re*, 2008 NSSC 283.

[43] After doing this exercise, I conclude that the evidence establishes the following:

1. The Mother is an excellent parent to K. Despite having K at a young age, she has done a very commendable job in meeting his needs. In resisting the Grandmother's request for access, the Mother is not motivated by malice or vindictiveness. Rather, she has genuine concerns about whether or not access at this time between K and the Grandmother is in his best interests.
2. The Grandmother genuinely desires to have a relationship with K, her only grandchild. In advancing this application, she is not seeking to undermine the Mother's relationship with K or her parental role. She appropriately acknowledges that the Mother is an excellent parent.
3. From the time K was born until the Mother moved to British Columbia in July 2012, the Grandmother was very much involved in K's life. Even if I accept the Mother's evidence that the contact was not "almost daily" as claimed by the Grandmother, I conclude that the Grandmother had very meaningful contact with K and was a significant presence in his life during that period. This included being trusted by the Mother to be in a caregiving role for K even when he was an infant.
4. The evidence does not establish, on a balance of probabilities, that the Grandmother is an alcoholic, or that the state of her home raises concerns about its "cleanliness". Furthermore, the

evidence fails to establish that the Grandmother is not a responsible adult who should be deprived of the ability to spend time with K due to safety reasons.

Indeed, it is noteworthy to me that, despite having these concerns, the Mother trusted the Grandmother to look after K alone on various occasions including Mondays when the Mother attempted to return to school in September 2009.

5. While there have been some difficulties in the relationship between the Mother and the Grandmother in the past, there also appears to be a number of positive interactions between them as evidenced by the fact that the Mother spent significant time in the Grandmother's home and that their respective families had been on friendly terms.

Furthermore, even if I accept the Mother's evidence that there were past difficulties in their relationship, I do not find that they presently give rise to the level of conflict which would be detrimental to K having some limited access with the Grandmother. For example, the Grandmother's evidence about her interaction with the Mother at the wedding in August 2014, was largely unchallenged by the Mother. As noted earlier, the Grandmother testified that she purchased two drinks for the Mother and that, later in the evening, the Mother asked the Grandmother if K could sit with the Grandmother again at K's request. In my view, this does not support a finding that, absent this litigation, the parties are currently in a highly conflictual relationship.

To the extent this litigation may have fueled some conflict, this is not unusual in adversarial family litigation where the best interests of a child are at issue. Indeed, as suggested in *Simmons*, sometimes court-ordered access can help parties avoid conflict by providing predictability and certainty regarding access visits (paras. 55-60).

6. The Grandmother's limited involvement in K's life since July 2012 is not due to any lack of desire on her part to be involved in his life. Rather, without prior notice, the Mother moved away to British Columbia in July 2012 and did not return permanently to Nova Scotia until the Summer of 2014. The Grandmother was not given any contact information for her.

After the Mother returned to Nova Scotia, the Grandmother unsuccessfully attempted to voluntarily secure access with K. It was only after the Mother made it clear that she would not facilitate any access that the Grandmother brought the current proceeding in May 2015, seeking court-ordered access. Since that time, the Grandmother has reasonably pursued this matter.

While it is unfortunate that this matter was not heard until March 2017, part of the delay in having this matter heard was due to the parties' initial agreement to participate in a settlement conference (which agreement was subsequently withdrawn by the Mother) and the hearing being adjourned at the Mother's request to allow her more time to secure new counsel.

7. I am convinced that, if access is to be facilitated between the Grandmother and K, it is necessary that there be a court order. Again, the Grandmother has unsuccessfully sought voluntary access to K from the Mother since the wedding in August 2014. The Father, while

supportive of the Grandmother having access with K does not currently have access with him so the Grandmother cannot realistically spend time with K through her son.

8. Despite her primary litigation position being that no access should be ordered, I do not conclude that the Mother is flatly opposed to the Grandmother having any access with K. Rather based on her own evidence, and my unique position to observe her in court, she strikes me as a loving parent who is unsure as to what do with her understandable concerns about the Grandmother and the Father being part of K's life, and what could happen should access be ordered. Despite this, the Mother appears to recognize that some limited access with the Grandmother could be beneficial if ordered under strict conditions designed to address her concerns. I say this for the following reasons:

- In her Parenting Statement filed on August 20, 2015, the Mother indicated that the visiting arrangements she wanted was for the Grandmother to have supervised access once a month for two hours on a weekend day outside of the Grandmother's home at a child friendly location.

The Mother's position that the Grandmother should have some access, albeit supervised, never changed when both parties appeared with counsel before me for the motion for directions on June 13, 2016.

It was only on January 10, 2017, (i.e. the original date for the hearing) that the Mother indicated that she felt that the Grandmother should have no access but "at the very most", she would be agreeable to supervised access.

In the Mother's Affidavit filed on February 9, 2017 (Exhibit 3), she proposed conditions for any access which is ordered which included that it occur once per month in a supervised setting.

- The Grandmother's evidence was that there were times after the Mother returned to Nova Scotia in August 2014, when the Mother appeared open to her spending time with K. For example, both at the wedding of August 2014, and the encounter at the bus stop in September 2014, the Grandmother indicated that she was interested in spending time with K and that it appeared to her that the Mother was receptive to at least considering same. Furthermore, the Grandmother indicated that there was another occasion where she and the Mother were at a baby shower at which time the Mother agreed that the Grandmother could purchase Theodore Tugboat Ride tickets for both of the Mother's boys. The Grandmother indicated that the Mother subsequently called back several weeks later to advise that she was no longer agreeable to this.

The Grandmother's evidence on these points was largely not challenged or contradicted by the Mother. For example, the Mother indicated that, following the interaction with the Grandmother at the wedding in August 2014, she spent several weeks reflecting on whether she felt it was in K's best interest to allow the Grandmother to be part of his life given what she knew about the Grandmother's "drinking". She eventually decided

against any visits and called the Grandmother and left a voice-mail advising that she did not feel that the Grandmother should be involved with K at this time but that when she felt he was able to know her, she would let her know. (Exhibit 3, Para. 67-69).

- At the hearing, the Mother acknowledged that many of her concerns about K having access with the Grandmother could be addressed by placing certain conditions on her access. She had a friend of hers present in the courtroom, J, who the Mother indicated was willing to act as a supervisor and was someone with whom K was comfortable with. The Mother indicated that she would feel somewhat comforted if J were present during the Grandmother's visits with K because J could ensure that the Grandmother was not consuming alcohol or saying things to K about the Father.
- The Mother testified that she knows that the "day is coming" when K will ask about who his biological father is since he has recently noticed that he has a different last name than his brother. The Mother acknowledged that K will need to know who his biological father is although she is unsure whether or not K will want to have a relationship with the Father. She indicated that she is currently participating in therapy to assist her with how to broach the subject of his biological father with K.
- In response to my questioning, the Mother indicated that while she currently does not believe the Grandmother should have access with K, she really does want the Grandmother to be involved in K's life down the road if the Grandmother can make her feel that she is not going to be "attacked" by the Grandmother or the Father. When I asked her what she would be looking for from the Grandmother to reach that level of comfort, the Mother's response was, "I honestly don't know, that is why we are here". She agreed that putting conditions on the Grandmother's access would help.
- In closing submissions, the Mother's counsel indicated that the Mother had concerns about the Grandmother following through with her promises and that currently, the Mother did not have a sufficient level of trust in the Grandmother that she will as she commits to do. Thus, while the Mother's primary position is that there should be no access, her counsel acknowledged that perhaps trust could be built up and earned and that an alternative way to address the situation was to order access on a limited basis which would include conditions and come back for a review in 3-6 months to see if the Grandmother was "genuine and sincere" in her commitment.

b) Conclusion on K's best interests

[44] In determining whether I should order access between K and the Grandmother, I must focus on his best interests as opposed to the preferences or positions of the parties. Viewing this case through that lens, I have considered all the relevant circumstances including, but not limited to, K's age, stage of development, need for stability and safety, and whether or not the evidence establishes that the parties have a level of tension and mistrust that would be detrimental to K having access with the Grandmother. I have also considered the need to give deference to the Mother's wishes as his mother, while also considering the potential benefits of K having some

access with the Grandmother. Finally, I have considered the Mother's legitimate concerns about the Father getting involved in K's life at this time given the history of the Mother's and Father's relationship, and the Father's past criminal involvement.

[45] When I weigh all the evidence and consider what I am obliged to do under the law, I find that the Grandmother has established that it is in K's best interests that she be granted some limited access to him. As outlined earlier, I conclude that the Grandmother is genuinely committed to re-establishing her relationship with K without undermining his relationship with the Mother. I also conclude that she loves K and, if given the opportunity to reconnect with him, can be a positive extended family member in his life. However, I also believe that K's best interests warrants me taking a much more cautious approach than suggested by the Grandmother which more appropriately balances the benefits of K reconnecting with his paternal grandmother, while recognizing the Mother's concerns of potentially creating instability for him at this stage of his life. Furthermore, while the Grandmother seeks weekend access given that she works during the week, I have taken into consideration that K already splits every other weekend between the Mother and his step-father, T. Thus, I do not want to create a schedule which would potentially deprive K from spending any weekend time with the Mother simply to accommodate the Grandmother's work schedule. Again, K's best interests must outweigh the convenience or inconvenience of the parties.

[46] I therefore order that the Grandmother's access occur on the following schedule and conditions:

1. Beginning Saturday, June 10, 2017, and every fourth Saturday thereafter (i.e. the next visit being on July 8, 2017), the Grandmother will have access with K for a period of two hours;
2. Beginning on Saturday, September 2, 2017, the Grandmother's visits will be extended to four hours long;
3. All visits will be held in a neutral public location and at no time will any part of the visits occur in the Grandmother's home;
4. The Mother's friend, J, or another individual agreed to by the parties shall be present during the visits;
5. The Grandmother shall not consume any alcohol during the visits or within a 24 hour period prior to the visits;
6. The Grandmother will not smoke in K's presence during visits;
7. The Father would not be present during any visits with K nor would the Grandmother discuss the Father with K;

8. Neither the Grandmother or the Mother will make any negative comments about the other party to K; and
9. The parties can agree in writing to such other access or terms of access as they deem appropriate in K's best interests.

[47] I also order that should the Grandmother not abide by any of the above conditions, the Mother will be entitled to request that an emergency motion be scheduled before me seeking to terminate the Grandmother's access on 3 clear days' notice to the Grandmother.

[48] Finally, as Associate Chief Justice O'Neil did in the *Simmons* case, I order that this matter be set down for a review. In doing so, I am conscious of the Supreme Court of Canada's direction in *Leskun v. Leskun*, 2006 SCC 24 that reviews should be "tightly circumscribed" to avoid being seen as an invitation to parties to simply reargue their cases. However, in the present case, I believe that a review is appropriate for the following reasons:

1. Both parties agree that, if access was ordered, there needs to be a period of reintroduction of the Grandmother to K. How K will adapt to this reintroduction is unknown so, if the access arrangements are to be changed in the future, I do not believe that either party should be required to bear the burden of proving a material change of circumstances;
2. Given that I have ordered that the Grandmother's access is to be supervised, I believe this requirement should be reviewed since supervision is generally seen as a temporary and time-limited measure;
3. I acknowledge that one of the Mother's primary concerns is whether the Grandmother will be committed to consistently providing K with a healthy and safe environment, or if she will simply abandon him after being reintroduced in his life. I agree with the Mother's counsel that one way to build up and earn trust to address this concern is through a review which gives the parties and the court an opportunity to assess whether the Grandmother has demonstrated that she was true to her word in being a consistent and positive figure in K's life.

[49] Thus, I am directing that the parties contact our Scheduling Office to book a one hour review on my docket for early December. The purpose of this review will be to determine whether the Grandmother's access with K should be changed in any way including whether, if access is to continue, the requirement for supervision should remain in place.

[50] In preparation for the review each party must file an updated affidavit no later than two weeks in advance outlining how access has progressed and what, if any, changes are being sought. Each party may also file a reply affidavit a week prior to the review date.

[51] Finally, I direct that counsel for the Grandmother to prepare a form of Order which reflects my decision which should be consented to as to form by both counsel. I also encourage the parties to attempt to resolve the issue of costs recognizing that neither party's primary

position was accepted by me. In the event the parties cannot agree on costs, counsel should send me written submissions on same no later than three weeks from today.

JESUDASON, J.