SUPREME COURT OF NOVA SCOTIA
Citation: *Matthews v. Matthews*, 2017 NSSC 335

Date: 20171228
Docket: 1204-006649 (SKD 106637)
Registry: Kentville

Between:

Lindsay Andrea Matthews

Petitioner

v.

Troy Lloyd Vernon Matthews

Respondent

Decision

Judge: The Honourable Justice Michael J. Wood

Heard: December 18, 2017, in Kentville, Nova Scotia

Counsel: Shawn A. Scott, for the Petitioner
Sean Smith, for the Respondent

By the Court:

[1] Lindsay and Troy Matthews were married on August 8, 2008. They have two young daughters who are now six and eight years old. In May 2017 the parties separated, however both continued to live in the family home until August 2017 when Mr. Matthews moved out.

[2] According to Mr. Matthews the reason that he stayed in the home after separation was to maintain contact with, and care for, his daughters. Since August 2017 the children have spent alternate weeks with each parent, with the transition taking place on Wednesday. Ms. Matthews says that this parenting arrangement was imposed on her by Mr. Matthews and she did not agree with it. Mr. Matthews acknowledges that she told him she would prefer the girls to be in her primary care with him having periodic access. He denies that he unilaterally imposed the alternating week schedule on Ms. Matthews.

[3] On August 21, 2017, Ms. Matthews initiated divorce proceedings. Both parties are seeking custody of the children and payment of child support by the other. The divorce trial is scheduled for September 2018.

[4] In September 2017 Mr. Matthews brought a motion for an interim order granting him sole custody of the children, payment of child support and setting a schedule for Ms. Matthews' access. Ms. Matthews' response to the motion was to request primary care of the children and child support with access for Mr. Matthews on alternate weekends and every other Wednesday night.

[5] Both parties filed detailed affidavits setting out their position as to why the children should be with them and not the other parent. A preliminary hearing was held on November 23, 2017, to deal with objections to portions of the affidavit evidence. I advised both counsel that several of the affidavits included inadmissible hearsay and opinion evidence. I identified the offending portions and said I would not consider them in determining the issue of interim parenting.

[6] On December 18, 2017, the motion was heard. Each party was cross-examined on their affidavits. I made an interim ruling on a parenting schedule for Christmas and reserved decision on the balance of the parenting and child support issues.

Legal Principles Applicable to Interim Parenting

[7] The jurisdiction to make an interim parenting order is found in s. 16 of the *Divorce Act*. Subsection 8 requires the court to consider only the best interests of the child in making such an order. Subsection 10 directs the court to give effect to the principle that a child should have as much contact with each parent as is consistent with their best interests.

[8] Because of the nature of an interim hearing it is usually in the best interest of the children to try and maintain the *status quo* as much as possible until a final determination can be made at trial. This philosophy is described by Justice Beryl MacDonald in *Hewitt v. McGrath*, 2010 NSSC 275, as follows:

> 1 This is an interim proceeding and, as is the case with all proceedings involving children, I must decide what is in the best interest of this particular child. However, the determination of this child's best interest is made understanding that an interim order is intended to be of short duration and is to deal with the immediate problem of where a child should live and what role each of the parents should play until a court has an opportunity to conduct a full investigation into the best interests of the child at a later hearing.
>
> 2 In *Marshall v. Marshall*, [1998] N.S.J. No. 172, 1998 CarswellNS 183 (N.S.C.A.), the Court of Appeal gave approval to a finding that it can be considered to be in a child's best interest to continue in the care arrangements put in place prior to the interim application, in other words, to maintain the status quo. The "existing situation", often referred to as the status quo, is generally the parenting arrangement in place while the parents were living together and not any short-term or strategic arrangement made after separation unless those parenting arrangements had previously been agreed upon or had existed for significant periods of time or were otherwise considered to be in the child's best interest.
>
> 3 There are many reasons why the status quo should be maintained. Interim hearings do not provide the quality or volume of evidence that is provided at a final hearing. To change the child's living arrangements on the evidence usually presented during an interim hearing requires clear and convincing evidence that maintaining the child's status quo would not be in the child's best interest.

[9] It is obvious that in light of the summary nature of interim hearings they are not well suited for making determinations with respect to the quality of parenting offered by the parties in most cases. Those issues should be dealt with after a full hearing at trial. An interim order should ensure that the circumstances of the children are maintained as much as possible until that time.

Analysis

[10] The parties positions on interim parenting are essentially mirror images of each other. The common aspects of their positions are as follows:

- They seek primary care of the children with access by the other parent.
- They seek table child support.
- They will be assisted in their parenting by family members and in particular their mothers (the children's grandmothers).
- They had a larger portion of the parenting responsibilities during the period up to August 2017.
- The other parent is unable to communicate appropriately with respect to the welfare of the children, which makes shared parenting unworkable.
- The other parent engages in behaviour which negatively affects the children and makes parenting decisions which are inappropriate and potentially harmful.

[11] Not surprisingly, both parents dispute many of the allegations made against them. Each maintains that they have nothing but the best interest of the children at heart and offer the best parenting situation for them. Having reviewed the affidavits in detail and listened to the cross-examination, I am satisfied that the reality of the situation lies somewhere between the polarized positions of the parties. Neither is without fault nor are they inherently bad parents who risk harming their children.

[12] Despite the parties' stated positions that effective communication was not possible, there are a number of objective indicators that the situation may not be as bad as the affidavits suggest. Firstly, the alternating weeks of parenting have been taking place for the last four months without disruption. The week before the December 18th hearing the parties made a one-day adjustment to the schedule to accommodate Mr. Matthews' absence from the province. According to the cross-examination, the problems with parental communication with the children when in the custody of the other parent are diminishing. With respect to a Christmas schedule the parties agreed on many aspects, which indicated a willingness to be

considerate of each other's wishes. All of these demonstrate an ability to cooperate and communicate if required.

[13] When I consider the desirability of maintaining some sort of *status quo* for the children, I note they have had significant contact with both parents for a long time. Even after separation in May 2017, the family continued to reside together under the same roof, which would have meant daily interaction. After Mr. Matthews moved out the children have spent equal time with both parents and their families. I do not think it would be in the children's best interest to change that arrangement and have them reside with one of their parents and only spend every second weekend with the other.

Conclusion

[14] I am satisfied that the shared parenting arrangement whereby the children spend alternating weeks with each parent should continue until the divorce trial in September 2018. During submissions counsel for Ms. Matthews suggested that it might be better to shift the day for transition between households to Monday from Wednesday. I do not know Mr. Matthews' position on that question, however I trust the parties can reach a consensus on what is the most convenient day for the transfer. If not, I am prepared to receive written submissions on that question. Similarly, the parties appeared to have a consensus on how to deal with March Break and summer vacation, however if I am mistaken I will receive written submissions on those issues as well.

[15] In light of my decision on parenting, there will be no order for table child support to be paid by either parent. The only potential s. 7 expense relates to childcare costs incurred by Ms. Matthews. Mr. Matthews has no such expenses when the children are with him, because his mother provides the care. In the circumstances I believe it is reasonable for Mr. Matthews to pay one-half of Ms. Matthews' after school childcare costs as a s. 7 expense.

[16] I would ask Mr. Smith to prepare an order reflecting this decision and send it to Mr. Scott for his consent as to form.

Wood, J.