

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

**Citation:** *C.L. v. J.L.*, 2018 NSSC 32

**Date:** 2018-03-06

**Docket:** *Halifax* No. 1201-067745

**Registry:** Halifax

**Between:**

C.L.

Petitioner

v.

J.L.

Respondent

**Judge:** The Honourable Justice C. LouAnn Chiasson

**Heard:** July 4 & October 2, 2017, in Halifax, Nova Scotia

**Counsel:** Raymond Jacquard for the Petitioner  
Kim Johnson for the Respondent

**By the Court:**

[1] The parties have two children: R.L. and A.L.. The original divorce trial of this matter was heard in May 2015 and an oral decision was rendered in August 2015. The Corollary Relief Order provided that the parties had joint and shared parenting of their children. At that time, the parties had a schedule of four days on and four days off premised on the work schedule of the father. The oral decision provided that this matter could come before the court for review in 6 months time to examine the progress in the parenting arrangement to a shared parenting arrangement. The parties were scheduled to return to court in the spring of 2016 to address the parenting schedule.

[2] A number of factors changed in the intervening time since the initial order and, as a result, the mother brought a Notice of Motion to address the requested changes in June 2016. There was an interim hearing held in December, 2016, to address issues of Christmas parenting time and to confirm the current shared parenting schedule of the parties (being a week on/ week off arrangement).

[3] The father's position at the time of this proceeding was that the parenting schedule should return to the four on/ four off schedule. He did not dispute the shared parenting schedule but merely the schedule of parenting time. The mother's position was that the week on/ week off schedule should remain.

**POSITION OF THE PARTIES**

[4] The mother has also requested various other issues be addressed by the court:

- a) She requested that the parenting arrangement be a parallel parenting arrangement. She wanted to minimize the contact and communication between herself and the father. The father does not agree with the parallel parenting arrangement.
- b) She also sought "consequences to be imposed on C.L. for his continuing and intentional refusal to follow [the] court order." (Reference paragraph 84 of Exhibit 3)

[5] The father has requested the following:

- a) The parenting schedule to return to four days on/ four days off.

- b) There would be no restrictions on either parent's contact with the children when it was not their schedule parenting time (i.e. that the arrangement would not be a parallel parenting arrangement).
- c) There would be no consequences on him for any alleged failure to comply with the Court orders. His evidence was that he has never withheld R.L. from visiting with his mother and he encouraged R.L. to attend for the mother's parenting time.

## **BACKGROUND**

[6] The documentation filed and the viva voce testimony provided at the time of the hearing confirmed the high conflict nature of this proceeding. Rather than the distrust between the parties lessening, it has continued unabated. Rather than the communication between the parties improving, it continues to be conflictual and fractured. Rather than the conflict between the parties decreasing, it has continued. All of these things have negatively impacted the children. Despite all these difficulties, neither party sought primary care of the children. Both were prepared to continue the sharing of parental time. The issue before the court was merely one of scheduling.

[7] After these hearings, I am less optimistic about the ability of these parents to set aside their differences for the sake of the children. The children, unfortunately, will be the victims of their parents' conflict. If the undeniable love that both of these people have for their children cannot make them realize the negative effect of their relationship on them, I doubt any words in a court decision will affect that. Childhood is short and these children have witnessed enough conflict and tension between their parents. Perhaps they will re-adjust the trajectory of their children's experiences. If not, their children may pay a price for their decisions.

[8] Adjudication on parenting issues involves an objective analysis of the evidence within the appropriate legal framework. It is an examination of the "appropriate" parenting arrangements given the evidence provided by the parties. Although statutes and common law provide a framework, each case is unique.

## **ISSUE 1: CONSEQUENCES RE: ALLEGATIONS OF CONTEMPT**

[9] I will first deal with the issue of the mother's allegation of contempt and her request for consequences as against the father. I am not prepared to impose consequences on the father for a number of reasons:

- 1) There has been no formal application for contempt by the mother.
- 2) The legal tests applicable in contempt application differ from other types of applications in this court. The alleged contemnor has the right to remain silent, the court can impose penal consequences as a result of a finding of contempt, and the burden of proof is beyond a reasonable doubt.
- 3) Although some of the actions of the father have caused concern, I am not prepared to find contempt in the absence of a formal application. In the absence of a finding of contempt, I am not prepared to impose consequences on the father which may arise as a result of such a finding.

## **ISSUE 2: PARENTING SCHEDULE**

[10] I now turn to the remaining issues: the parenting schedule, and the conditions (if any) to be imposed on the parenting arrangements. In relation to the parenting schedule, I am not prepared to revert the schedule back to a four days on/ four days off schedule. The schedule will remain a week on/ week off schedule.

[11] Without notification to the mother, the father stopped working within a few months of the initial hearing. When the mother asked about the father's work schedule, he advised her that it was none of her business. This despite the fact that the parenting schedule had originally been based on his work schedule. The father did not work from approximately August 2015 to February/ March 2016. He was then off work again (without details provided) from May, 2016 to May 2017.

[12] At paragraph 3 of the father's affidavit sworn June 6, 2016, he stated:

“I do not feel that my medical issues and my return to work schedule is the concern of Ms. [L.]’s and I have been following the Court ordered shared parenting arrangement of four days on and four days off...”

[13] The father provided no details about his “medical issues”. He provided no details as to whether the situation has been resolved or whether the issues may arise again. The schedule of parenting time was premised on an employment schedule which may or may not be appropriate on a go forward basis.

[14] Given the level of conflict, a week on/ week off arrangement will minimize transitions. In a four on/ four off schedule there would be 91 transitions between the parents over a year. If there is a weekly transition, this number is reduced to 52 on an annual basis.

[15] The employment schedule of the father has varied to such an extent that planning parenting around his work is no longer reasonable. The father was off work for over eighteen months with little to no explanation as to why or whether this will be a recurring issue in the future. Transitions between the parties has been difficult in the past and minimizing the number of transitions may lessen the conflict for the children.

[16] The father is concerned that a week on/ week off schedule will result in the mother having the children at times which coincide with her partner's children being in the household. The transition will occur on a weekday such that the transitions can occur at the school. The parties may agree on the weekday for the transition. The transition time chosen must be such that A.L. and R.L. have a minimum of two days of the seven days in the care of their mother when her partner's children are not in the home.

### **ISSUE #3: CONDITIONS, IF ANY, ON PARENTING**

[17] I then turn to the sole remaining issue- whether the parenting arrangements should include conditions to minimize contact between the parties. In the particular circumstances of this case, I believe some conditions should be imposed. Conflict for these children must be minimized to the extent possible.

[18] I will highlight some of the evidence which has led me to this conclusion:

- The parties could not cooperate to ensure that the mother had the children in her care on Mother's Day. The Corollary Relief Order specified the contact between the mother and the children on Mother's Day. The father indicated confusion resulting from the Interim Order which dictated the timing of Christmas access. I do not accept his evidence on this point. He indicated that he was not in town with the children and could not have facilitated the transition as a result. On cross examination, however, he conceded that his partner was in town at one point in the day and could have facilitated the transition.
- The father said that he would follow the recommendations of the R.L.'s therapist in encouraging R.L. to spend time with his mother. However evidence disclosed that when the mother tried to make arrangements to see R.L. in June 2017, the father would not agree indicating that he had plans with the children. The plan he made was to go for ice cream.

- The father has not imposed any consequences on R. L. for his refusal to attend parenting time with the mother. Although he has taken away R.L.'s phone for other behavioural issues, the father has refused to impose any negative consequences on R.L. for not spending time with his mother.
- The father testified that he believes R.L. should be able to decide whether he spends time with his mother. The father gave evidence that, since the age of nine, R.L. should have decision making ability as to whether he spent time with his mother.
- The father has alleged safety concerns related to the mother's parenting ability. The difficulty with these allegations is that the father is prepared to continue with a shared parenting arrangement. Further, the father has not provided any admissible evidence of concerns related to safety issues.
- Counsel for the father suggested that the children should be able to see both parents at their extra-curricular activities. If the children saw their parents at the same venue and were comfortable with each other, then this could be a positive experience for the children. The difficulty is that the evidence discloses the opposite. Having both parents at their activities has led to tension and conflict. In particular, situations of both parents being present during hockey games and practices has led to problems.
- The mother has had a difficult relationship with R.L. and some of her actions are not assisting in repairing that relationship. She refused a request from her son, R.L., to be Facebook friends worrying about him having access to her Facebook account. The focus of the mother, however, should be on building her relationship with her son and opening up all possible lines of communication.

[19] I have considered the totality of the evidence before me and have concluded that a parallel parenting arrangement will be in the children's best interests. A number of cases have imposed a parallel parenting regime in appropriate circumstances. In this regard I refer to the cases of *Cooke v. Cooke*, 2012 NSSC 73, *Denninger v. Ross* 2013 NSSC 237, and *MacDonald v. Ross*, 2013 NSSC 117.

[20] The order will therefore contain provisions such that contact between either parent on their off time with the children will be limited. During a parent's scheduled week, the other parent is not at liberty to attend activities, appointments, school, etc.. The exception to this rule will be for special occasions such as a championship game, a graduation, a school concert. The ordinary events and activities in the children's lives will unfortunately not be able to be shared between these conflictual parents. It will only lead to further opportunities for discord.

[21] A parent without the care of the children at any particular time will not initiate communication with the children but I will not prohibit the children from communicating with either parent when they see fit. The children are not the initiators of the conflict and should feel free to speak with either of their parents. In case of emergency, a parent may contact the other parent, regardless of who has care of the children.

[22] The provisions in the Interim Order related to exchange and transportation will form part of this Variation Order. With the exception of paragraphs 7-11, the remaining terms of the Corollary Relief Order shall remain valid.

Chiasson, J.