

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: K.M. v. K.M.G., 2018 NSSC 159

Date: 20180628

Docket: SFHMCA 097903

Registry: Halifax

Between:

K. M.

Applicant

and

K. M. G.

Respondent

Judge: Justice Beryl A. MacDonald

Heard: May 7, 8, 9 and 10, 2018

Counsel: Eugene Tan, Counsel for K. M.
Morgan Manzer, Counsel for K. M. G.

By the Court:

Introduction/Overview

[1] The Mother and Father were childhood sweethearts. Their son was born on September 20, 2010 when she was 17 and he was 18. At that time, the Mother lived with her parents. The Father was living in his own apartment. They did live together from August 2013 until May 2015 but their relationship was punctuated by periods of separation and discord.

[2] The Mother's explanation for their separation is that she was fleeing a violent partner who continued his abuse of her into the present. The Father's explanation is that the Mother was angry about his relationships with other women. He denies he ever physically abused her and he minimizes the implications arising from his guilty

plea to a charge about "uttering threats" and his plea admitting breaches of a probation order and no contact order.

[3] In this proceeding the Mother requests custody, primary care and child support. She asks the court to deny parenting time to the Father. She, their son and her family are afraid of him. She does not believe the child will be safe in his care. The Mother is concerned the Father will use his parenting time to continue to harass her. She believes he is enamored by, and attempts to live, the gangster lifestyle as portrayed in movies and television shows. He is an inappropriate role model and will seek to undermine her efforts to raise the child to be respectful of others and to solve problems without using aggression and intimidation.

[4] The Father dismisses the concerns expressed by the Mother and her family. He watched a lot of movies about gangsters but is not enamored by that lifestyle. He has a new partner and a daughter who is now a year old. He was charged with a lot of offences in the past but he was only convicted of those to which he plead guilty. He has reformed and has not been charged with any criminal offences since February 2016. The Mother and her family like "drama". He has never slashed tires or thrown rocks through windows. He has never hit, harassed, intimidated or stalked the Mother.

[5] To place the evidence provided by the parties in context, I have prepared a timeline for the events that occurred in their lives beginning with their cohabitation in August 2013. I will comment upon, where relevant, what the parties have said about those events.

[6] The timeline may have date inaccuracies. The exact date when each charge against the Father was made is unclear. The exact date when he entered a plea to each charge is unclear. However, even if some dates I have chosen are incorrect the overall experience of this family will not change and it is that experience that is most relevant.

[7] The Father has repeatedly been charged with offences relating to the Mother and her family. Most of the charges against the Father have not resulted in convictions. I fully understand the mere fact a person has been charged with an offense does not mean they have committed the offense. However, I am also aware that the standard of proof in criminal matters requires a finding "beyond a

reasonable doubt". In this proceeding I am to make my findings based upon a balance of probabilities. This means I must examine the testimony of all the witnesses and decide whether an event is more likely than not to have occurred and whether a person, more likely than not, was involved.

[8] This decision contains profanity and disturbing content. To fully explain the circumstances of the Mother, the child and extended family, I considered it important to record what they have seen, heard and experienced.

Credibility

[9] Credibility is always an issue in these proceedings. I have considered Justice Warner's decision in *Novak Estate, Re*, 2008 NSSC 283 and in particular his comment that credibility assessment requires "The ability to assess whether the witness' testimony is plausible or, as stated by the British Columbia Court of Appeal in *Faryna v. Chorny*, 1951 CarswellBC 133, is 'in harmony with the preponderance of probabilities which a practical [and] informed person would readily recognize as reasonable in that place and in those conditions". I recognize I am "not to rely on false or frail assumptions about human behavior". Also, "In assessing credibility there is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part of, or all a witness's evidence, and may attach different weight to different parts of a witness's evidence". (*Novak* at para. 37)

[10] While there are some frailties in their testimony, my overall assessment is that the evidence provided by the Mother and her witnesses, on relevant issues, is credible. The evidence provided on those same issues by the Father and his witnesses is not.

[11] At the commencement of the hearing the Father raised objection to many of the statements in the affidavits filed by the Mother and her witnesses. He raised objection to the introduction of the child's statements and a *voir dire* was required in respect to statements that appeared in Dr. Kelly's notes. Those statements essentially summarized information the child had provided to her. I did admit those statements but they have not influenced my decision except as confirmation that this child has suffered from anxiety and lack of focus that may be related to witnessing domestic violence or ADHD or both. No definitive diagnosis has been made. Given the circumstances under which this child has lived and the effect it has had on his

caregivers, the fact that he has suffered from anxiety should come as no surprise.

[12] The Father objected to the hearsay contained in the affidavits filed by the Mother and her witnesses. I understand the hearsay objection and I have not relied on any hearsay statements except for those that may be admitted under an exception or those that were not provided as proof of content.

[13] The decision I am required to make must be focused on the child's best interest. Several cases have attempted to provide guidance to the court in applying the best interest principle: See for instance *Foley v. Foley* (1993) 124 N.S.R. (2d) 198 (N.S.S.C); *Abdo v. Abdo* (1993) 126 N.S.R. (2d) 1 (N.S.C.A).

[14] The factors applied in these cases have been repeated in section 18(6) of the *Parenting and Support Act*. Domestic violence has been added as a factor to ensure that it will be given the focus it deserves. However, the process of determining a child's best interest involves more than just reviewing a list of factors. In *Dixon v. Hinsley* (2001) 22 R.F.L. (5th) 55 (ONT. C.J), at para. 46 the following appears:

The "best interests" of the child is regarded as an all-embracing concept. It encompasses the physical, emotional, intellectual, and moral well-being of the child. The court must look not only at the child's day to day needs but also to his or her longer-term growth and development...

Timeline

[15] In August 2013, the parties moved into an apartment with the child. The Mother was working at a call centre. The Father was not regularly employed.

[16] While the Father may have provided some care for the child, the Mother was the primary caregiver.

[17] The Mother and the child frequently returned to her parents' home at times when she and the Father were not getting along. The Mother's mother noted bruises on her daughter's chest, breasts and legs. The Mother did acknowledge the Father would have violent outbursts, would poke at her, would throw things, and on one occasion had hit her with a broom stick. She told her mother she continued living with the Father because he had threatened her and the rest of her family if she left him; he told her if she ever left:

- he will go after her family;
- he would hurt her by hurting the ones she loved most;
- he would have someone destroy her parents' home so they would have no choice but to move;
- he would have someone go into her 80-year-old grandmother's home, wrap her up in the shower curtain and drown her in the bathtub;
- he would make her life a living hell and would make her wish she was dead;
- he made a comment about her 1-year-old niece suggesting it would be a shame if something ever happened to her.

[18] In early 2014, the child began to have outbursts, some of which were aggressive and violent. These were noted at his daycare facility and by the Mother. A recommendation was made to the IWK Health Centre. The Mother was advised to participate in the Strongest Families Program. The Mother participated; the Father did not.

[19] In October 2014, the police raided the parties' apartment. Six police officers arrived at their door with a search warrant. The child was in his pajamas and ready to go to bed. He was immediately in the Mother's arms squeezing her and crying. The Father was arrested but later released.

[20] In October 2014, someone fired bullets into the Father's vehicle. The Father may have been in the vehicle. He testified he was not but the Mother understood from her conversation with him that he was. The Mother and the child moved in with her parents for approximately a week but then she returned to the apartment she shared with the Father.

[21] In November 2014, the Father agreed their apartment may not be safe and the Mother moved to another apartment rented by the Father. He had a key and a room in the new apartment but he often stayed elsewhere. He provided some childcare but it was sporadic. He had relationships with other women.

[22] In February 2015, the Mother told the Father the only reason she was staying in the apartment was because she was being forced to. She testified the Father went into a rage which the child witnessed. He grabbed her, pushed her and spit in her face. She ran into the bathroom. She locked the door and told the Father she would call 911. She called her parents extremely upset explaining that she and the child

wanted to get away from the Father. At the same time the Father contacted the Mother's father on his cell phone and told him "if (the Mother) calls 911 she will be dead before the police get there". The Mother's parents kept her on the phone. Eventually the Father left the apartment. The Mother got out of the apartment and into her car. She arrived at her parents' home with the child. She stayed there for approximately one week but did return to her former apartment. The Father had threatened suicide if she left him. He said his life was worthless without her. He begged her to come back. He promised to get help with anger management. She was afraid of him and was concerned she could not safely leave him.

[23] In May 2015, the Mother and the child once again moved in with her parents. She explained her relationship with the Father was over. However, the Father's threats caused her to move into a hotel for a period of time because, once again, she feared for her safety. He was angry her parents would not tell him where she was. He was contacting her friends trying to find her.

[24] At the end of May 2015, the Mother moved into her own apartment. She did not tell the Father the location but he eventually did find her.

[25] On June 14, 2015, Halifax Regional Police stopped the Father's vehicle. When questioned about the baseball bat in the rear of the vehicle he said: "I got shot at thousand times, so carrying a baseball bat should be reasonable." He provided an Alberta Driver's License and advised he worked there. The statements made by the Father were admitted under the "business records exemption" to the hearsay rule. He denied making the statement about getting shot at. I do not believe him.

[26] The Father did admit he has not been in Alberta since 2013. He went there for one month to take a truck driving course. He did not complete it. He "got cold feet" about driving. The job was "scary".

[27] In June 2015, the Mother was granted an Emergency Protection Order because the Father was "stalking" her. Because of this there was to be no contact between the Mother and the Father. The Mother's parents did arrange for the Father to have contact with the child at their home. However, their relationship deteriorated and the Father began sending them harassing telephone messages.

[28] On June 28, 2015, the Father called the child's daycare provider indicating he

would arrive to pick up the child. The provider informed him he was not on the pickup list. The Father texted the Mother saying, "are you going to change that pickup list". She told him she would not.

[29] On June 29, 2015 three of the tires on the Mother's vehicle were slashed. It was parked in front of her apartment. That same morning the child's daycare provider informed her some of the windows in their facility had been smashed. Shortly after, the front entrance window and the side entrance doors of the Mother's apartment building were smashed.

[30] The Mother started moving her car to different locations every day.

[31] In July 2015, when the Mother was picking up some groceries, the Father drove up to her car while she was putting groceries in the trunk. He reached into the car and "grabbed the child out of his car seat". When she confronted him to give the child to her, he spit in her face, pushed her and kicked her car causing damage. He did this while the child was in his arms. He put the child in his car, without a car seat, and sped away. The Mother immediately called police. The police attended the Father's residence to pick up the child. The Father had a different version of events.

[32] Because the police had not seen the event the only charge they were prepared to recommend was "driving with a minor without a seatbelt". The Mother did not lay that complaint. The police did report the incident to the Minister of Community Services. The child was interviewed. The interview notes indicate the child made 2 statements. He said he "missed his father" and "dad is rude to mom". I accept the 1st statement under the "state of mind exception". The 2nd may also fit this criterion because it does express the child's feelings about how his Father treated his Mother. The statement cannot be used to confirm, as a fact, the Father was rude to the Mother.

[33] In July 2015, the Mother's parents received what they and I consider to be threatening messages from the Father.

[34] On August 15, 2015, the Mother's parents were driving to the Spryfield Wave Pool to attend their granddaughter's second birthday party. They noticed the Father following them in his car. He pulled up beside them once they parked and demanded to see the child in the near future. He screamed threats at them. He:

- threatened the vehicles in the parking lots, most of which were vehicles of our extended family;
- threatened to smash the windows in their home;
- threatened to run the Mother over with his car;
- threatened to damage the Mother's father's fishing boat.

[35] This incident was reported to the police.

[36] The Father was charged with an offence under 264.1 (1) (a) and (b) of the Criminal Code of Canada:

264.1 (1) Everyone commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

- (a) to cause death or bodily harm to any person;
- (b) to burn, destroy or damage real or personal property

On August 16, 2015, the Mother received a text message that said:

You and ur FAM got twenty-four hours to get the charges dropped period.

[37] The police investigated and determined the phone from which this message was sent belonged to a person who knew the Father. That person was arrested. The message had come from his phone. He entered into a peace bond.

[38] In August 2015, the Mother obtained another Emergency Protection Order. A file was opened by the General Investigation unit of the Halifax Regional Police. The Mother was referred to Victim Services and given a "Devers alarm". When activated that alarm would quickly bring the police to her location with back-up.

[39] In August and October 2015, the Mother's brother had his vehicle tires slashed.

[40] Between October 2015 and February 2016, the Mother's parents had the tires on their vehicle slashed multiple times and had several windows of their home smashed.

[41] On November 17, 2015, the Father admitted his offence under 264.1(1)(b)

and the charge under 264.1(1)(a) was withdrawn. When he entered a guilty plea for uttering threats he was ordered to have no contact with the Mother, their child or any member of the Mother's immediate family except as ordered by the Supreme Court Family Division.

[42] Whether the Father uttered a threat to cause death or bodily harm was not the subject of a hearing. Merely because the Crown was content to withdraw this charge does not prevent this court from looking at the evidence about the events leading to that charge. Nor does it preclude a finding by this court that there is proof, on a balance of probabilities, that the threat was made. I make the same comment in respect to the various mischief charges that were not pursued by the Crown. There is significant direct evidence before me that the Father did make threats to harm the Mother and others including their property.

[43] There is circumstantial evidence to support a conclusion that the Father was directly or indirectly involved in the slashing of tires and breaking of windows. The timing of events forms a nexus between an adverse event in the Father's life and received threats, slashed tires and broken windows. These events were not coincidental. It would be unreasonable to suggest they were. In addition, no evidence has been provided to suggest the Mother and her extended family had a common or any enemy or person who was resentful of them and likely to cause harm. The Mother and her family drew the obvious conclusion and were afraid. There fear was real. They have not come to this court pretending to be afraid. They were and still are afraid of the Father.

[44] In November 2015, the Father filed an Interim Motion requesting access with the child. He asked for his request to be processed as an emergency so his access could be resolved before Christmas. On or about December 15 he was advised his Motion was not an emergency and would follow the usual procedural filing deadlines. He posted this on social media:

How can a judge say it's not an emergency to see my son when I haven't seen him in 4 months and Christmas is around the corner? I hope you get cancer and your old lady gets ass fucked and gang banged u old mutt.

[45] Later he posted:

2015's over, new year new me, I've come to the conclusion I don't have any kid, and family doesn't mean shit, my only wish for 2016 is that the entire (Mother's) family gets cancer

from their assholes to their brains. And I hope a cop comes home from work to find his bullied kid hanging from a rope in the basement, that it all. Happy 2016 everyone

[46] On December 26, 2015, while the Mother and the child were at her parents' home, a rock was thrown through their living room picture window. The child was downstairs in the family room. No one was injured.

[47] On March 15, 2016, after a court appearance during which the Father was denied access with the child, the Mother left the courthouse, after the Father had left, to discover three of her tires were slashed. Her vehicle was parked in the Devonshire arena parking lot across from the courthouse.

[48] On October 22, 2016, while the child and the maternal grandfather were exiting the locker room at a hockey rink where the child played, two of the Father's friends approached the child. One friend took a cell phone out of his pocket. The Father was on the screen using the app FaceTime. The Mother's father testified the child tried to get away from the friend who tried to grab hold of the child's hand. Eventually the child got away. The child was visibly scared and crying. This resulted in a charge against the Father for breaching the condition that he was not to directly or indirectly contact the child. When the police went to check on the Father after this event was reported, he was not at home. This was in further breach of conditions. He was under house arrest.

[49] The applicant was arrested in respect to these breaches and was held in a correctional facility until December 14, 2016.

[50] The principle of the school, attended by the child until September 2017, testified the child, on a few occasions, came to her office and wanted reassurance that "no one was going to take him". I accepted this testimony as evidence of the child's "state of mind". I recognize the Father considers the child's fears to have been created and reinforced by the Mother. I also note there is evidence that the child at times has said he is not afraid of his Father. None of the child's statements are reliable indicators of his understanding about what was happening in his life. Nor have they, given his age, influenced my decision.

[51] In October 2017, the child's pediatrician requested an urgent consult at the IWK Health Centre to assess the child for trauma resulting from witnessing domestic violence between his parents and being approached by friends of the

Father requesting he communicate with the Father who was on the friend's phone. The information about these events came from the Mother but the child's school had requested a physio-educational assessment because of the child's inability to focus, anxiety and acting out behaviours. That assessment has not been completed.

Analysis

[52] The timeline provides a picture about what was happening in the lives of these parties. The slashing of tires and the breaking of windows occurred contemporaneously with significant events involving the Father. It is not surprising the Mother and her extended family linked these events to the Father. I consider the circumstantial evidence to be strong enough to form the conclusion that the Father was involved in these events whether personally or by encouraging others to act on his behalf. Even if I am incorrect in reaching this conclusion I am satisfied that there is enough connection to support my finding that the Mother and her extended family genuinely feared the Father and believed he would harm them and their property. Their fear is not fanciful nor contrived nor made up merely to prevent the Father from having parenting time with the child. It is not surprising the child would be sensitive to his families' anxiety and the reason for it. Children do not live in a vacuum. This child's sense of security would understandably be eroded over years while these events unfolded.

[53] The Father did have an attraction to gangster characters. His Instagram username was the name of a Mexican drug lord who headed a criminal organization. At one time the last name of his username on Facebook was the last name of a member of the gangster mob popularized on the television show "The Sopranos". He posted, on Instagram, a photo of his son's arm with the words MOB drawn on it. He testified that meant "Mother Over Boys". I do not believe him. That word has an obvious meaning, especially when posted by a user who has the name of a Mexican drug lord.

[54] The Father testified the Mother knew he had posted this picture and she did not complain. He said she was angry because she had to remove the "tattoo" from the child's arm. He suggested the number on the upper right hand corner of the photo, "number 81w" somehow indicated important information about that post. It was unclear whether the post was made 81 weeks ago or that the photo of the post was taken 81 weeks ago. I attach no relevancy to that testimony other than the fact that the Mother had to remove this "tattoo" from their son's arm. I do not accept that

she consented to what the Father had done and I find his action totally inappropriate.

[55] The Father also posted, on Instagram, a photo of their son wearing a long heavy gold necklace, (very similar to the one often worn by the Father), holding several banknotes in his hand. The top note is a \$100 bill. The child's body is thrust forward and his face is contorted into a threatening pose.

[56] The Father has posted other messages on Instagram. He acknowledges he has done so. He did so because he was "just being stupid". The dates for these posts are not evident on the copies of the posts that have been entered as exhibits in these proceedings. The Mother wrote on the post entered as Exhibit #11, "(The Father) posted December 26, 2015". The content of that post is:

LIFE IS TOO SHORT TO HOLD A GRUDGE SLASH SOME TIRES AND CALL IT
EVEN

[57] The Father also liked to post pictures of hundred dollar bills, many, many hundred dollar bills. He testified this was not his money but the implication any viewer would draw from his posts would suggest otherwise.

[58] On his Facebook post, also undated, entered as Exhibit #25 the following appears - a person holding a gun pointed at an unseen person with a third cowering in the background. The caption is:

I DON'T FUCK WIT RATS! NOT IN MY CIRCLE
GQ gangsta quote

[59] The next post is a meme:

I will kidnap you, raise you, then return you to your family so they can bury you.

Sincerely

The Streets

[60] The Father testified the meme about the streets was not his way of expressing what he would do. My analysis of his answer is that the meme is a metaphor for what can happen to people who live on the street, the homeless, the left behind, the mentally ill. I expect that is correct but not all those reading this post would interpret

it in this way. It has a sinister aspect.

[61] The Father says he respects women but he acknowledged posting the following on Facebook:

(The Mother) and (a woman with whom he was having a relationship) are both rats, they talk to/have sex with /get paid by police lol go sit down for another dinner mutts.

[62] The Father says he has respect for the police but later acknowledged he has posted disparaging statements about them. He calls them "rats".

[63] During his relationship with the Mother he was injecting steroids he purchased on the internet. He took them for his own "personal satisfaction". They made him bigger. He took pills to avoid the side effects.

[64] The testimony I have heard and read convinces me the Father was a perpetrator of domestic violence against the Mother. I accept her evidence that he hit her, threatened her and her extended family.

[65] The Father intimidated people. He wanted to intimidate people. The Father says he is now reformed. He is more mature. He has a loving relationship with his present partner and their child. However, I find it ominous that his present partner testified, when they have arguments, they are "all her fault". This is a concerning sign in a relationship.

[66] One might ask why does the Father's past behaviour matter? He has never threatened to harm the child. He loves the child. That is the same argument often made about those who perpetuate domestic abuse.

[67] In *N.D.L. v M.S.L.*, 2010 NSSC 68 I took judicial notice about the effect of domestic violence on children. I said:

[35] Children are harmed emotionally and psychologically when living in a home where there is domestic violence whether they directly witness the violence or not. Exposure to domestic violence is not in the best interests of children and those who are the perpetrators of domestic violence, who remain untreated and who remain in denial are not good role models for their children. The fact that there is no evidence the perpetrator has actually harmed the child is an insufficient reason to conclude the perpetrator presents no risk to his or her child. One risk is that the perpetrator will continue to use violence in intimate

relationships to which the child will be exposed in the future. Another is that the child may model aggressive and controlling behaviour in his or her relationships with others. There are many other risks and these are summarized on the Department of Justice website. Assessing and containing those risks will be the job of the court in determining what contact with the perpetrator is in the best interest of the child.

[68] Children who are placed in a position to know or become aware of one parent's propensity to demean, belittle, dominate and control the other parent are placed in an unhealthy situation and this can undermine the child's respect for the victim parent.

[69] Access to the child is access to the victim. Access often provides an opportunity for further abuse. Children can be used as emotional weapons. Issues relating to the children's care can be used to harass, threaten, annoy, punish and dominate a previous partner.

[70] Another question that is often asked, in an attempt to minimize or refute a victim's testimony, is why, if she was being abused, did it take the Mother so long to separate from the Father. The Mother was not specifically asked this question but the implications contained in cross examination and submissions raise this issue. Her testimony gives an explanation. She was afraid the Father would harm her or her family. He was manipulative and she knew it. She may not be believed. He would call her a liar. His testimony has confirmed this. He wants me to believe his story - not her story. I believe he had created this fear to control her but she eventually found the strength to break free of this abusive relationship.

[71] In *Neill v. Best*, (1995), 147 N.S.R. (2d) 54 Judge Daley commented that:

[27]Access is not a reward for parenting or for not having custody. It is an active, productive, positive relationship that requires security, knowledgeable care, communication and understanding ... Access law should not encourage risk taking and experimentation with the emotional and physical growth of an infant child. It should look for benefits to the child, not neutral or potentially negative relationships.

[72] In this case, the Father:

- has no respect for the Mother or her family;
- has minimized the effect of his behaviour upon the Mother and her family;
- has minimal parenting experience;

- has projected the child as a "gangster" on social media;
- has denied he has committed acts of domestic violence;
- has denied threatening and harassing the Mother and her family accusing them of creating "drama" and making false allegations;
- has little respect for police or persons in positions of authority;
- has provided no evidence about what of value he will bring into the child's life other than his presence;
- may attempt to alienate the child against the Mother because of his anger and resentment toward her;
- may use parenting time as a means to continue his harassment of the Mother and her family.

[73] These are not the attributes of a parent who will have value to offer in a relationship with a child.

[74] In *Abdo v. Abdo*, (1993), 126 N.S.R. (2d) 1 (N.S.C.A.) Pugsley J.A. noted there is no presumption that it is in the best interests of children to have contact with both parents. The consideration, and only consideration, is the best interests of the children. Justice Pugsley stated at paragraph 67 that, "While contact with each parent will usually promote the balanced development of the child, it is a consideration that must be subordinate to the determination of the best interests of the child".

[75] Justice Pugsley also referenced *King v. Low*, [1985] 1 S.C.R. 87; he said:

70 This subordination is clearly recognized by McIntyre J., on behalf of the court, in *King v. Low*, [1985] 1 S.C.R. 87, at p. 101:

I would therefore hold that in the case at bar the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. ... Parental claims must not be lightly set aside, and they are entitled to serious consideration in reaching any conclusion. Where it is clear that the welfare of the child requires it, however, they must be set aside.

[76] The *Parenting and Support Act* R.S.N.S. 1989, c. 160 continues the focus on the best interest of the child.

[77] The Father suggests his parenting time should begin with supervised contact that would eventually grow into more normalized parenting time. This completely

ignores how afraid both the Mother and her family are about any contact with him. Their fear is real and it is not fanciful. They must eventually have contact with him if he is to have normalized parenting time. Supervision cannot go on forever. The Father has suggested nothing that would cause them to eventually trust him. His "good behaviour" since February 2016 may relate more to his desire to avoid any further periods of incarceration than to a genuine personality metamorphosis.

[78] A risk of harm is not a condition precedent for limitations on access. (*Young v. Young* (1993), 160 N.R. 1 (S.C.C.)).

[79] In this case, I have found there is a risk of harm to this child if there is contact with his Father. The Mother's fear about contact will affect the child and already has. The domestic violence between his parents may have affected him. The Father has not suggested any programs or therapy he is prepared to complete to understand how his behaviour has affected the Mother, child and extended family. He continues to deny there was domestic violence.

[80] The Mother must have custody and primary care. She will not be required to communicate with the Father. The Father will not have parenting time. A future request for parenting time should only be considered when:

- the child is older, has fewer symptoms of anxiety and has learned strategies to control his anxiety;
- the Father has continued to be of good behaviour;
- the Father has enrolled in and completed programs and therapy to address his anger and provide him with an understanding about domestic violence, how it affects victims and children, and how it is to be avoided.

Child Support

[81] The Father has never filed a financial statement. His testimony is that he has an annual income ranging from \$17,000.00 to \$25,000.00. For the purpose of paying Provincial table guideline child support his annual income is \$25,000.00. The monthly amount to be paid is \$190.00.

[82] The Mother did give evidence about recreational expenses but neither party discussed the criteria justifying an order for these expenses pursuant to section 7 of the Provincial Child Support Guidelines. I know nothing about their "necessity" and

"reasonableness". I decline to make an order requiring the Father to contribute toward these expenses.

Costs

[83] If the Mother is seeking costs she is to provide written submissions. They are to be filed with the court and delivered to the Father on or before July 30, 2018. His written response is to be filed with the court and delivered to the Mother on or before August 30, 2018.

Beryl A. MacDonald, J.