SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *A.C. v. G.B.*, 2019 NSSC 133

Date: 20190426
Docket: SFHMCA-068644
Registry: Halifax

Between:

A.C.

Applicant

v.

G.B.

Respondent

Judge: The Honourable Justice C. LouAnn Chiasson

Heard: March 15, 18, 19 & 20, 2019, in Halifax, Nova Scotia

Counsel: Kelsey Hudson for the Applicant
Linda Tippett-Leary for the Respondent

By the Court:

[1] A.C. and G.B. are the parents of I.B. I.B. is, by all accounts, a wonderful 9-year-old boy. He is dearly loved by both his parents and has the benefit of the love and support of relationships with extended family and friends. This application has been brought by A.C. requesting the ability to move with I.B. to Ontario with herself, her new spouse, and I.B.'s step sibling. G.B. opposes I.B.'s relocation. G.B. is seeking that I.B. be placed in his primary care, or alternatively in a parallel parenting arrangement.

ISSUES:

1. What is the appropriate parenting plan for I.B.?
2. Once the parenting arrangement has been determined, what is the appropriate level of child support payable for I.B.?

BACKGROUND

[2] The parties lived together from 2009 until February 2010. They have one child together, I.B., born January 2010. The parties separated shortly thereafter in approximately February 2010.

[3] G.B. has two children from a previous relationship. During the time the parties resided together, the children of G.B. resided primarily with them. The children are now approximately 17 and 19 years of age.

[4] From the time of separation until the current proceeding I.B. has been in the primary care of A.C.. A.C. testified that I.B. disclosed that his father had hit him in January 2014. At the time I.B. would have been four (4) years old. There was a Department of Community Services Investigation.

[5] From January through May 2014 G.B. did not have parenting time with I.B. In May 2014 the parties retained Dr. Deborah Bird to offer suggestions as to the re-introduction of G.B.'s parenting time. It was a number of months before G.B.'s parenting time resumed to the schedule in place prior to the allegations being made.

[6] There has been police involvement with these parties from the time of separation up to January 2014. A.C. has been the party contacting the police the majority of the time, although G.B. has also contacted the police. G.B. was

criminally charged following an incident with A.C. in June 2010. G.B. was on probation for a period of time and participated in anger management counselling.

[7] G.B. concedes that his life is significantly better than it was in 2010- he is married, has a stable, loving home life, is involved in the church, and is employed as a commercial photographer. Since 2014, G.B. has regular, consistent parenting time with I.B.. G.B. indicated that he wanted to increase his time with I.B. but that A.C. was resistant to increasing his time. Currently the schedule of G.B.'s parenting time is every second weekend and one evening per week. G.B. testified that he did not have a full week of parenting time with I.B. until August 2016.

[8] In March 2018, A.C.'s spouse, C.F., received a posting message to advise him that he was posted to Ontario. This posting was to be effective as of July 2018. C.F. was able to secure a compassionate posting in Nova Scotia and delayed his posting to Ontario to be effective July 2019. As a result, A.C. made application to this court in April 2018 requesting permission to move with I.B. to Ontario.

[9] The court did not inquire as to whether A.C. was or was not prepared to relocate without I.B. Rather, A.C. offered to the court her position that she was adamant that she would not relocate without I.B.. Either the court approved the move of her entire family (A.C., I.B., her spouse, C.F., and their other son E.F) or her spouse would move without the family.

[10] The court had the benefit of hearing from various witnesses during the course of the hearing (in addition to the parties):

1. Neil Kennedy- court appointed assessor
2. L. Whitman- former teacher of I.B.
3. C. Pettipas
4. I. Skeete
5. C.F- spouse of A.C
6. S.C- mother of A.C.
7. M. King- friend of A.C. (Ms. King filed an affidavit and cross examination was waived by counsel for G.B.)
8. R.B- spouse of G.B.

ASSESSMENT- Neil Kennedy

[11] Neil Kennedy was contracted by the Court to conduct a custody, parenting time and interaction assessment. The date of the Order was May 8, 2018. Mr. Kennedy notes that he was requested to conduct the assessment on November 1, 2018 (ref. p. 1 of the assessment). The assessment report was submitted on February 27, 2019.

[12] The Order of May 8, 2018 provides at paragraph 2(a):

> "The assessor is to conduct the assessment and provide an opinion about:
>
> > (a) Which parenting plan would be in the best interests of the child taking into account his circumstances; and, in particular, the proposed move with the mother and stepfather to the province of Ontario."

[13] Mr. Kennedy reviewed various documentation in preparing his report which was outlined at page 1 of the assessment. He interviewed the parties, reviewed the file with the Department of Community Services and reports of the Halifax Regional Police. He did not interview the child and he did not contact the child's therapist.

[14] Mr. Kennedy recommended that permission not be granted for I.B. to relocate to Ontario. He went on to recommend that the existing parenting arrangement remain in place with I.B. in A.C.'s primary care and spending every second weekend and one evening per week with G.B..

[15] On cross examination, Mr. Kennedy confirmed that he met with both parties in their respective homes with their current partners. He confirmed that he attended the home of A.C. on three occasions. I.B. was present on only one occasion. Mr. Kennedy testified that he was at the home of A.C. when I.B. was present for a period of ten minutes to a maximum of twenty minutes.

[16] During that 10-20 minute visit, the family of A.C. was preparing to go to a Christmas tree lighting event. The children were getting dressed in appropriate clothing and the family was getting ready to leave for their event. The opportunity to view the interaction between I.B. and A.C., her spouse and I.B.'s step brother was minimal at best. I.B. was in his room changing, the parties were readying themselves for an event and Mr. Kennedy spent a maximum of twenty minutes in the home.

[17] In contrast, Mr. Kennedy spent significant time with G.B. when I.B. was in his care. He indicated that he visited G.B.'s home four times and that I.B. was

present on two of those occasions. Mr. Kennedy confirmed that he spent more time observing the parent/ child interaction in the house of G.B. because of A.C.'s concerns about G.B.'s parenting. Mr. Kennedy estimated that he would have spent approximately 3-3 ½ hours in G.B.'s home (over two visits) observing G.B.'s interaction with I.B..

[18] The role of the court appointed assessor is to provide the court with information about the child's relationship with each of his parents and the home environments of each of the parties. The court appointed assessor is to be objective and to provide recommendations to the court related to parenting arrangements based on their observations.

[19] The decision of whether to accept the recommendations of the assessor or to reject them is wholly within the purview of the trial judge (ref. *B. (R.W.). v B. (D.C.)*, 2015 NSSC 254; H. *(P.R.) v. L. (M.E.)*, 2009 NBCA 18; *Johnson v. Cleroux*, 156 O.A.C. 197 (Ont. C.A.); and *Snoddon v. Snoddon*, [2004] O.J. No. 1987, 2004 ONCJ 39 (Ont. C.J.).

[20] The assessment is of limited utility to the court. It would be impossible to address the impact on I.B. of his separation from C.F. without appropriate observations of their relationship. It would be impossible to address the family dynamic of A.C. if C.F. is forced to move without the family. The observations of I.B. with the family of A.C. were as important as observations of I.B. with the family of G.B.. Unfortunately, the assessor chose to limit the vast majority of his observations to one family- that of G.B..

WITNESSES

L. Whitman

[21] Ms. Whitman was I.B.'s teacher previously. She testified that she became concerned about I.B.'s behaviour in that he would become upset to the point of sobbing and that he would sometimes lose his temper. She indicated that both of these things were out of character for I.B. who she described as warm, friendly, kind, empathetic and a good strong student.

[22] She testified that he had an emotional breakdown on April 11, 2017. She sent a letter to G.B. the day following the incident outlining some of her concerns. She did not, however, advise A.C. of the incident until her parent/ teacher appointment approximately two weeks later.

[23] In the letter to G.B., Ms. Whitman discusses some concerns related to I.B. which dated back to the fall of 2017. These concerns, however, were not brought to the attention of A.C. until her appointment in late April 2018. The letter to G.B. was not copied to A.C.. It is contained in the affidavit of G.B. (Exhibit 8, tab j).

[24] The letter notes observations in relation to interactions between I.B. and A.C.. First, that I.B. was upset that he had to move or his Dad would lose his job. Second, she noted that during the first term parent teacher interviews, A.C. asked if G.B. had an appointment with her and said that G.B. did not need to know anything. Third, she indicated that when Christmas concert tickets came out, A.C. told Ms. Whitman to give her both tickets and that G.B. did not need to attend.

[25] It is of concern that A.C. would minimize the involvement and the importance of G.B. as a parent. It is of concern that A.C. would not want G.B. to be able to experience memorable moments such as a Christmas concert. Even if the comment regarding the Christmas concert tickets was made in jest (as asserted by Ms. Whitman) it was made in the presence of I.B.

[26] Ms. Whitman testified about a homework package that was prepared for I.B. when he travelled with G.B. to the States for a few days. Ms. Whitman was asked by A.C. to prepare the homework package, which she did. She then communicated with G.B. and again did not copy A.C.. Ms. Whitman advised G.B. that she was not concerned if the homework was not completed by I.B.. Such gaps in communication only served to exacerbate the problems between G.B. and A.C..

[27] There was an issue in relation to G.B. picking I.B. up from school. Ms. Whitman indicated that she deferred to school administration on these issues. A.C. testified that a note was required by anyone (including her) if they were going to pick I.B. up directly from the school. The school required the note so that they would be aware of which students were being put on the bus at the end of the school day. Again, the lack of cooperative communication between these parties exacerbated this issue.

C. Pettipas

[28] Mr. Pettipas was I.B.'s taekwondo instructor. A.C. had enrolled I.B. in taekwondo. Mr. Pettipas testified that he began teaching I.B. in January 2017. He testified that I.B. would miss his taekwondo lessons on the days he was in the care of G.B..

[29] Mr. Pettipas testified that I.B. initially enjoyed his lessons and that he excelled. This changed in the fall of 2017 when I.B. would become visibly upset during taekwondo tournaments. Mr. Pettipas advised A.C. that he was prepared to meet with G.B. to discuss the taekwondo classes and to provide him with information about the activity. G.B. did not meet with Mr. Pettipas.

[30] A.C. advised C. Pettipas that I.B. would participate in the lessons but would not be participating in tournaments or matches against other students. This was to accommodate G.B.'s objection on religious grounds to the element of fighting.

I. Skeete

[31] I. Skeete has been a friend of G.B.'s since 2005. He testified that three families, including G.B. and R.B., started a new church in 2012. He indicated that I.B. joins in church activities when he is with G.B.. Mr. Skeete indicated that G.B. plays an important role in the church and is "the kids favorite [sic]". When I.B. was a baby, Mr. Skeete accompanied G.B. on occasion when he had parenting time with I.B.. He indicated that he has had many opportunities to witness I.B. and G.B. together and that everything he has witnessed "has been very positive."

C.F. - spouse of A.C.

[32] C.F. is the spouse of A.C. and they have one son together, E. aged 5. C.F. and A.C. began dating in 2012 and married in 2015. The evidence is uncontroverted that the relationship between C.F. and I.B. is close. He indicated that he has been in I.B.'s life since I.B. was two years old. C.F. testified that he has never witnessed A.C. say anything negative about G.B. in I.B.'s presence.

[33] C.F. testified that I.B. and E. have a strong bond. He indicated that there is four-year age difference and so there is the occasional argument but that they are bonded as brothers. He testified that they do family outings frequently.

[34] He confirmed that his posting to Ontario has been delayed until July 2019. His retirement date is September 2021 and he intends to retire at that time and return to Nova Scotia. C.F. provided information of the proposed move in his affidavit. He provided information in relation to the school, the family members and friends who live in the community and the plans for extended family to spend time with I.B. if the move is allowed.

[35] C.F. testified that he has always tried to treat G.B. with respect. This evidence was echoed by G.B. who confirmed that C.F. was sometimes the communication link between the parties. C.F. indicated that he does not want to interfere with G.B.'s father time with I.B. and provided examples of stepping aside to allow G.B. to have father/son time with I.B.. Although the C.F. and G.B. never argued, G.B. did advise C.F. that if he was a good man he "would not be married to [A.C.]".

S.C. - mother of A.C.

[36] S.C. testified at the hearing. Much of her evidence in relation to G.B. was historic. She has had little contact with him since the time of separation. She provided evidence to the court about the proposed plans made to ensure contact of I.B. with extended family if the move is approved.

M. King - friend of A.C.

[37] M. King was a friend of A.C. and also worked in the daycare I.B. attended when he was younger. Although an affidavit was filed, cross examination was waived by counsel for G.B. Much of Ms. King's affidavit evidence contained hearsay from I.B.. Some of the hearsay evidence relates to I.B. appearing scared and anxious about religious beliefs and incidents with G.B..

[38] Neither counsel provided any detailed analysis as to the admissibility of these hearsay statements of I.B.. Counsel for G.B. acknowledges that both parties provided hearsay evidence of I.B. and stated "..it is important that some of the things the child says, to teacher and parents, bear some consideration- as pointed out in all affidavits from both sides" (reference submissions p.13).

R.B. - spouse of G.B.

[39] R.B. and G.B. were married in September 2012. They are expecting their first child together. They are also in the process of adopting other children but do not know how long the process will take. They have met two young children who may be able to be adopted but there is no formal process underway to adopt those children. Although R.B. indicated in her affidavit that they were "in the process of adoption", G.B. provided evidence at the hearing that the process of adoption was put on hold days prior to the commencement of the hearing commencing.

[40] R.B. and C.F. have never had a face to face conversation. They have only exchanged brief text messages. R.B. has been an integral part of G.B.'s parenting time with I.B.. She testified to her relationship with I.B. and her participation in I.B.'s care - medical care, education, religion, etc..

[41] R.B. also testified to the difficulties in dealing with A.C. over parenting time with I.B.. She indicated that, although A.C. allowed I.B. to attend the wedding ceremony of R.B. and G.B., she arranged for him to be picked up shortly thereafter. As a result, I.B. is not in any of the family wedding photos.

[42] On another occasion, R.B. was celebrating a significant event related to her employment. Family and friends were invited to attend and A.C. permitted I.B. to attend the event but would not allow I.B. to stay and have a celebratory supper with R.B. and G.B.. It is concerning that A.C. minimized the importance of these events. It is concerning that she did not make appropriate accommodations to the parenting time of G.B. so that I.B. could participate more fully.

[43] The evidence of the parties themselves will be reviewed more fully in conjunction with the analytical section set out below.

LAW & ANALYSIS

[44] The starting point in cases involving mobility is the seminal case of *Gordon v. Goertz*, [1996] 2 S.C.R. 27. At paragraphs 49 and 50, the court held:

> " The law can be summarized as follows:
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> 1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
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> 2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
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> 3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
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> 4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
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> 5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.

> 6. The focus is on the best interests of the child, not the interests and rights of the parents.
>
> 7. More particularly the judge should consider, inter alia:
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> (a) the existing custody arrangement and relationship between the child and the custodial parent;
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> (b) the existing access arrangement and the relationship between the child and the access parent;
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> (c) the desirability of maximizing contact between the child and both parents;
>
> (d) the views of the child;
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> (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
>
> (f) disruption to the child of a change in custody;
>
> (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.
>
> 50 In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?"

[45] The first step of the *Gordon v Goertz*, *supra*, analysis has been conceded by both parties. G.B. did not argue that the posting of C.F. to Ontario is not a material change in circumstances. In reviewing the evidence and submissions of G.B., he is seeking to vary the current order regardless of the posting. He is seeking to increase his time with I.B.- he has requested primary care of I.B., or alternatively that there be a parallel parenting arrangement.

[46] Once a change in circumstances has been established the court must then address what parenting arrangement is in I.B.'s best interests. His mother indicates that relocation with his maternal family to Ontario is in his best interests. His father indicates that residing primarily with him, or in a parallel parenting arrangement while living in Nova Scotia is in his best interests.

[47] *H. (P.R.) v. L. (M.E.)*, 2009 NBCA 18 the court stated at paragraph 30:

> "In Van de Perre, Bastarache J. noted that in preparing reasons in custody cases, a trial judge is expected to consider each of the factors outlined in Gordon v.

> Goertz. However, he went on to state it would be unreasonable to require a judge to discuss every piece of evidence when explaining his or her reasons. Thus, while a trial judge is not compelled by Van de Perre to discuss each of the factors enumerated in Gordon v. Goertz when evaluating the best interests of the child in a custody or mobility case, it nevertheless remains prudent to refer to the relevant criteria. In Karpodinis v. Kantas, 227 B.C.A.C. 192, 2006 BCCA 272 (B.C. C.A.) at para. 26, the Court observed that mobility cases vary infinitely in their fact patterns and no case can provide a complete template for another. Furthermore, in custody cases, wherein the governing consideration is the best interests of the child, the judicial inquiry is heavily fact-dependent and the decision is ultimately discretionary, the scope of appellate review is strictly limited…"

[48] The issue of relocation was recently dealt with in our Court of Appeal in *D.A.M. v C.J.B.*, 2017 NSCA 91. The court referenced the balanced approach that must be taken by a trial judge in deciding cases of mobility. In assessing whether a move with a child should be allowed, the court must examine the disruption of the proposed move balanced as against the benefits if the move were allowed.

[49] The Court of Appeal in *D.A.M., supra*, held at paragraph 34:

> [34] The approach in the case before us was not balanced. It focused on C.J.B.'s circumstances to the detriment of C.'s relationships in Nova Scotia. As the British Columbia Court of Appeal observed in Hejzlar v. Mitchell-Hejzlar, 2011 BCCA 230 (CanLII):
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> > [46] . . . While this is a different case, this case required at least consideration of the potential effect of refusing the move upon the relationship between the child and the moving parent, assuming the move will occur. In other words, it is consideration of the possibilities in the round, and not from one perspective only, that is required. The subtle, and troublesome, consequence of approaching the question with preference for the status quo is that the fully rounded analysis does not occur. In my respectful view, this is what happened here. The narrow ambit of the factors considered by the judge in assessing the alternative, in my view, reflects a material error in principle.

[50] Section 18 of the *Parenting and Support Act*, R.S.N.S. 1989, c. 160 ("PSA") explicitly sets out presumptions related to mobility. There is a presumption in favour of the relocation of the child with the primary caregiver if the "person opposing the relocation is not substantially involved in the care of the child…" (s. 18H (1) (a)). There is a presumption against relocation if there is a "substantially shared parenting arrangement…" (s. 18H (1) (b).

[51] Neither counsel argued that the presumptions in s.18H (1) (a) and (b) apply to the present case. Neither A.C. nor G.B. argued that G.B. was "not substantially involved" nor was there an argument that there was a "substantially shared parenting arrangement." Rather, the determination pursuant to s. 18H (1)(c) relies on both parties having the burden of showing what is in the best interests of the child, I.B.

[52] Section 18H (4) sets out the factors to be considered in examining the best interests of a child in mobility cases. I will review the factors as well as the evidence pertaining to those factors:

s.18H(4)(a)-The circumstances listed in subsection 18(6)

[53] The factors to be considered by the court pursuant to section 18(6) are similar to the factors enunciated in the decision of *Foley v. Foley*, 1993 N.S.J. 347 (N.S.S.C.). Prior to the legislative codification, these factors were often referred to as the Foley factors.

s.18(6)(a)- "the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development"

[54] Both parties confirm that I.B. had digestive issues as a child which do not appear to be a significant concern at present. I.B. does have anxiety issues and is currently seeing his guidance counsellor as well as a therapist. Both parties point to the other as the reason for the child's anxiety.

[55] A.C. indicates that I.B. is anxious because of issues related to G.B.'s parenting. She testified that I.B. loved taekwondo but felt incredibly torn and anxious because his father was vehemently opposed to his participation in an activity he liked. A.C. advised G.B. that I.B. wanted to participate in taekwondo in the fall of 2016. G.B. denied that he knew of this activity until a belting ceremony in May 2017. The evidence, however, confirmed that A.C. had advised G.B. in the fall of 2016 of I.B.'s interest.

[56] I.B. was so conflicted about taekwondo that he withdrew for a period of time. G.B. testified that he told I.B. he was proud of him for making the decision on his own based on the desire not to fight. The difficulty is that I.B. enjoyed taekwondo and when he asked to re-enroll after a period of time he asked A.C. not to tell G.B.. A.C. advised I.B. she would have to tell G.B.

[57] Placing I.B. even further into the middle of this conflict, G.B. showed I.B. a video of his cousin who is a seventh-degree black belt. G.B. denies this was a violent video. He acknowledged in cross examination, however, that the video depicts his cousin in his middle forties engaged in a taekwondo match wherein one of the persons in the match had broken ribs. I.B. was 8 years old. It was not in I.B.'s best interests to be showing him such a video.

[58] A.C. also indicated that I.B. has some anxiety related to the conflict with G.B. and in particular the pressure she believes he exerts on I.B. to remain in Nova Scotia.

[59] G.B. indicates that I.B. is anxious because of the proposed move to Ontario. G.B. suggested utilizing a counsellor that had been the counsellor to the children from his previous relationship. G.B. also confirmed that he saw this counsellor as well in the past. A.C. objected and indicated that she wanted I.B. to have an independent counsellor.

[60] The parties eventually set up counselling for I.B.. He also speaks regularly to the guidance counsellor. Given the evidence, it is quite plausible that I.B. is anxious because of the uncertainty of what will happen. It is hoped this decision will address that uncertainty in his mind.

[61] A.C. has argued that she has been primarily responsible for I.B.'s needs since his birth. She has been the parent primarily responsible for all medical appointments. She has also been the parent to register I.B. in school and has been an involved parent at I.B.'s school.

[62] G.B. argues that he is capable of providing for I.B.'s needs including medical and educational needs. G.B. stated that A.C. seeks to exclude him from these responsibilities and that is why she has taken the lead in such matters. There is no evidence before me that G.B. is incapable of meeting I.B.'s medical and educational needs.

[63] A.C. has argued that stability for I.B. will be fore him to relocate to Ontario with his primary care family. A.C. argues that the loss of C. F. from the family unit would lead to far more instability than the proposed relocation. G.B. states that stability for I.B. will be accomplished by staying in Nova Scotia and moving to a parallel or primary care arrangement with him.

s. 18(6)(b)- "each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian"

[64] G.B. has expressed concern in relation to A.C.'s willingness to support his relationship with I.B.. The evidence of Ms. Whitman confirmed incidents of A.C. minimizing G.B.'s role as a parent. G.B. confirmed that even for special occasions in his family (i.e. his wedding, his birthday) A.C. was not very cooperative in allowing much more additional time.

[65] Evidence of A.C., confirmed that she had occasionally offered some additional parenting time to G.B.. She also rearranged parenting time to have make up time for G.B. on occasion. Overall, the evidence confirmed that A.C. was not very flexible in accommodating additional time with G.B.

s. 18(6)(c)- "the history of care for the child, having regard to the child's physical, emotional, social and educational needs"

[66] A.C. has been I.B.'s primary care parent from birth. As such she has had the primary responsibility for his care. G.B. testified that was not without effort on his part to be involved in the decisions. He further testified that he continued to request that his parenting time increase but that was often met by resistance from A.C..

s. 18(6)(d)- "the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs"

[67] The plan of A.C. if the move to Ontario is sanctioned is detailed and laid out in her affidavit filed on December 17, 2018. The community, the school, the family and friends in the area are all specified by A.C. She has testified that child care will not be necessary for I.B. with the move as herself or CF can provide after school care.

[68] The plan of G.B. if primary care is awarded to him may also include a change of school for I.B.. He indicated that he may be prepared to leave I.B. in his current school for this year but he was unsure if he would be looking to register I.B. in another school the following year.

[69] G.B. confirmed that he toured New Bridge Academy with I.B.. He testified that New Bridge is a school which combines sports and education. The children

participate in four hours of physical activity (i.e. soccer) and 3 ½ hours of school per day. G.B. did not consult with A.C. prior to touring New Bridge despite asking I.B. if he would be interested in attending there next year.

[70] G.B. and R.B. are excitedly awaiting the birth of their first child. Although the adoption process had been put on hold mere days before the hearing, it is not known how one or more children may impact G.B.'s plan of care. There is no question that increasing the size of G.B.'s family may well bring many positive impacts to I.B.'s life, but there has been no evidence in relation to the logistical challenges involved. What will be the time available to I.B.? Where will he sleep? Will they need to move to accommodate their growing family? All of these questions remain unanswered.

***s.18(6)(e)*- "the child's cultural, linguistic, religious and spiritual upbringing and heritage"**

[71] Religion is a significant aspect in G.B.'s life. He has educated and fostered religious beliefs in I.B. which are important to him. A.C. has indicated that, while she does not always agree with G.B.'s religious teachings, she has not impeded G.B. instilling such values in I.B..

[72] There was evidence of G.B. that he wished to attend a family religious event in Colorado with R.B. and I.B.. It would mean that I.B. would miss three days of school. A.C. refused to consent to the trip and a court application had to be brought. Prior to the application, A.C. consented to I.B. attending the event with G.B..

[73] It was troublesome to note that A.C. advised I.B. prior to going on the trip that there were no gun laws in the States and that there were church shootings. Advising I.B. of this would only lead to anxiety for him and would be contrary to his best interests.

***s.18(6)(f)*- "the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained**

[74] Both parties have provided hearsay evidence of I.B. in relation to his views. The assessor chose not to interview I.B.. Although Mr. Kennedy was not requested to do a Voice of the Child Report, it is unknown if I.B. would have

expressed any desire or preference if an interview had taken place. I have no reliable evidence upon which to determine the views and preferences of I.B..

***s. 18(6)(g)*- "the nature, strength and stability of the relationship between the child and each parent or guardian"**

[75] It is clear that I.B. has a close and loving relationship with both of his parents. A.C. asserts that she has a stronger, more stable bond with I.B. as his primary caregiver. I.B.'s attachment to G.B. is clear and uncontroverted. He loves his father dearly and enjoys his time with him.

***s. 18(6)(h)*- "the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life"**

[76] I have evidence from A.C. and C.F. about the close sibling relationship between I.B. and E. It is unfortunate that this relationship is not addressed in any significant way in the assessment of Mr. Kennedy. I also have evidence from S.C., I.B.'s maternal grandmother about her close relationship with I.B. and her active involvement throughout his life. S.C. also provided evidence about her plans to continue to regularly visit I.B. if the move to Ontario is allowed.

[77] I have evidence from A.C. and C.F. about the relationship between I.B. and C.F.. It is clear that there is a bond between C.F. and I.B.. He has been in I.B.'s life since I.B. was two years of age. C.F. has ensured that he is respectful of G.B.'s role as father.

[78] I.B.'s primary residence is and has always been with A.C.. When E., the son of A.C. and C.F. began to refer to C.F. as "dad" it would not be unusual for I.B. to also refer to C.F. as "dad" on occasion. C.F. clearly stated that he had no intention of undermining the relationship of I.B. with his father and he supported and respected G.B. as I.B.'s father.

[79] I have evidence of R.B. related to her relationship with I.B.. I.B. was 1 ½ when G.B. and R.B. began dating. R.B. has provided evidence of the loving care she has provided to I.B. since he was a baby. She also testified to the relationship that I.B. has with R.B.'s extended family and the strong community support through their church.

***s. 18(6)(i)*- "the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child**

[80] Both parties conceded their difficulties in relation to communication. The evidence of Ms. Whitman highlighted the difficulties for I.B. when communication to both parties is not shared. Although there is evidence of their ability to communicate, in practice, that ability is not borne out by their actions. Both have sent communications which are neither respectful nor child focussed. Each have accused the other of failings in relation to their ability to parent I.B..

[81] There is evidence of the lack of cooperation between the parties. A.C. has shown her unwillingness to cooperate in ensuring I.B. can attend special events with G.B. without unreasonable restriction. G.B. has shown his unwillingness to cooperate in refusing to meet with the taekwondo instructor to determine for himself the parameters of the taekwondo lessons and to see if there is any reasonable prospect for compromise on the issue. Instead both A.C. and G.B. have placed I.B. in the middle of their conflict.

***s. 18(6)(j)*- "the impact of any family violence"**

[82] G.B. was charged with assault and uttering threats as against A.C. in June 2010. Since that time he has participated in anger management counselling. There is ample evidence that his life is significantly altered from where it was in 2010. Although incidents of domestic violence are not to be minimized, the evidence before the court is that there have been no incidents of domestic violence since that time. In June 2010 I.B. was a few months old but for the vast majority of his lifetime has not been witness to any incident of domestic violence.

s.18(4)(b)- The reasons for the relocation

[83] C.F. has been posted to Ontario effective July 2019. C.F. testified that he is obligated to move. Although he sought alternatives to remain here, his efforts have not been successful. C.F. will be relocating in July 2019. A.C. will not relocate without I.B..

s.18(4)(c)- The effect on the child of changed parenting time and contact time due to the relocation

[84] Currently G.B. has I.B. in his care 96 days per calendar year, 60 of which are school days. A.C. is suggesting block parenting time for G.B. amounting to 49 non-school days. She has also suggested communication by skype, Facetime, telephone, and additional time as arranged between the parties.

s.18(4)(d)- The effect on the child of the child's removal from family, school and community due to the relocation

[85] There is no dispute that a relocation to Ontario would mean that I.B. would be removed from his current school and community. If the move is not approved by the court, I.B. will be removed from C.F. as will the rest of the family.

[86] There is also no dispute that a relocation would mean I.B. would be removed from the regular parenting time with G.B. and R.B.. G.B. does not have a relationship with his extended family, and so this would not impact I.B.. I.B. does, however, have regular contact with G.B.'s extended church family and friends. Under G.B.'s proposal for primary care or shared parenting, I.B. will experience a loss of school and community from the current arrangement. As noted above, G.B. may change I.B.'s school and relocation to G.B.'s community will mean an adjustment for I.B..

s.18(4)(e)- The appropriateness of changing the parenting arrangements

[87] Both parties wish to change the parenting arrangements. G.B. argues that the parenting arrangement should be altered to a parallel parenting arrangement or with him having primary care regardless of the request for mobility.

s. 18(4)(f)- Compliance with previous court orders and agreement by the parties to the application

[88] G.B. testified that A.C. was not in compliance with the court ordered parenting arrangement when she denied him parenting time in 2014. The previous order was a Consent Order issued on November 19, 2013. It provided in part for specified parenting time to G.B. every second weekend as well as specified holiday parenting time.

[89] On January 10, 2014, G.B. attended to pick up I.B. for his scheduled parenting time. He was advised by A.C. that he was not having parenting time as I.B. disclosed to her that he was hit by G.B.. G.B. contacted the police to enforce

the terms of the order and was advised that they would not enforce the order in the circumstances.

[90] A.C. then contacted the Department of Community Services who conducted an investigation. I.B. was interviewed. Although G.B. vehemently denies the allegations, I.B. did disclose in his interview to a social worker and to the police that G.B. had hit him. Counsel for G.B. objects to the utilization of the DCS records as business records. G.B.'s counsel did, however, indicate that the reports of Dr. Bird could be considered for the truth of their contents by consent of both parties. It should be noted that when I.B. was in counselling with Dr. Bird, I.B. disclosed that G.B. had hit him.

[91] The Department of Community Services closed their file following an investigation. No court application was made by DCS and no conditions were placed on G.B.'s parenting time. G.B. indicated that A.C. should never have restricted his parenting time.

[92] A.C. indicated that she was awaiting the conclusion of the DCS investigation before reinstating G.B.'s court ordered parenting time. She also indicated her willingness to have any lost parenting time made up by G.B. once the investigation was over. Had G.B. brought a court application prior to the completion of the DCS investigation to enforce his parenting time, the court may have awaited the results of an active DCS investigation prior to determining the matter. G.B. received notification in April 2014 that the file would be closed and the allegation was unsubstantiated.

[93] Despite the allegation and the ongoing DCS investigation, G.B. wanted immediate reinstatement of the court ordered access. He initiated a contempt application. Through discussion between the parties, they agreed that I.B. would see a counsellor and that they would follow the recommendations of the counsellor in relation to G.B.'s parenting time.

[94] Dr. Bird was retained for this purpose. Her re-introduction schedule between I.B. and G.B. was slower than G.B. anticipated and it took months before he returned to the schedule he had prior to the allegation. He cannot now fault A.C. for the delay in the re-introduction schedule when it was Dr. Bird's recommendation. Further, he agreed to abide by the schedule of Dr. Bird. It is also worthy of note that A.C. offered a re-introduction schedule to G.B. prior to retaining Dr. Bird which would have escalated the re-introduction process much faster but G.B. declined that offer.

s.18(4)(g)- Any restrictions placed on relocation in previous court orders and agreements

[95] This provision is inapplicable to this matter.

s.18(4)(h)- Any additional expenses that may be incurred by the parties due to the relocation

[96] There will be additional expense incurred if the relocation is allowed. A.C. has indicated that she is agreeable to a reduction in the child support payable by G.B.. Counsel for A.C. also indicated that she is agreeable to assisting with the travel costs. None of the particulars of the financial proposal of A.C. are known to the court.

s.18(4)(i)- The transportation options available to reach the new location

[97] A.C. has indicated that she can provide transportation of I.B. to Nova Scotia when she returns to visit family. A.C. does not support I.B. travelling to Nova Scotia as an unaccompanied minor through the airlines. Given his age, she would want to accompany him if transportation was by way of airplane between Ontario and Nova Scotia.

s. 18(4)(j)- Whether the person planning to relocate has given notice as required under this Act and has proposed new parenting time and contact time schedules, as applicable, for the child following relocation

[98] A.C. provided evidence to confirm her compliance with the notification provisions as set out herein.

CONCLUSION

[99] I must consider all the evidence presented to balance the disruption of the proposed move as against the benefits if the move were allowed. This is a fact specific exercise and each case will turn on the evidence before the court. I have considered all admissible evidence although this decision provides a review of the most salient points. Based on the totality of the evidence I find that it is in I.B.'s best interests that he be able to relocate with A.C. to Ontario.

[100] I.B. has been in A.C.'s primary care since birth. She has been the parent primarily responsible for attending to I.B.'s care throughout his life. I.B. has spent

the majority of life with his step father, C.F., and his step brother E. The first full week I.B. spent with G.B. did not occur until 2016. The impact of splintering A.C.'s family between two provinces is not in I.B.'s best interests.

[101] There will be disruption from the move including a change of schools and community. These changes, however, are part of G.B.'s plan as well. G.B. is considering a change of schools for I.B.. There are a number of changes that will happen in G.B.'s home soon with the addition of a sibling (or more) for I.B.. A large loving extended family is a wonderful gift for a child. But along with a growing family comes a number of changes and adjustments. There are a number of unknown variables in the plan of G.B..

[102] The parenting plans of G.B. to have primary care or alternatively a shared (parallel) parenting arrangement are not in I.B.'s best interests. A change in I.B.'s primary residence is not warranted given the history of parenting to date. The evidence in this hearing disclosed difficulties in the parents' abilities to communicate and cooperate.

[103] There will be disruption in relation to the weekly parenting time of G.B. with the relocation of I.B.. Although not equivalent in scope, G.B.'s non-school time with I.B. will be greatly expanded. The blocks of parenting time for G.B. will likewise be expanded such that he will have a guaranteed minimum of 62 days per year of non- school time. The communication and cooperation between the parties will be such that specific parenting time will be set for G.B..

[104] The parenting time of G.B. will be as follows:

1. During the summer of 2019, G.B. will have I.B. in his care from Friday July 5, 2019 to Friday, August 15, 2019.
2. During the summers of 2020 and 2021, G.B. will have I.B. in his care for six weeks during the summer. G.B must provide notice to A.C. by April 1st of each year as to his choice of six weeks.
3. During the Christmas holiday period, G.B. will have I.B. in his care from December 20th to December 27th every odd numbered year. In even numbered years, G.B. will have I.B. in his care from December 27th to Jan. 3rd.
4. During March Break, G.B. will have I.B. in his care from the Friday at the commencement of March Break to the Sunday at the end of March Break.

5. G.B. will have care of I.B. every Easter from Thursday after school until Tuesday evening.

6. G.B. will have the option of having I.B. in his care for the long weekend in February from Friday until Monday evening. He must provide notice to A.C. if he intends to exercise this parenting time by January 1st each year.

7. G.B. will have the option of having I.B. in his care for the long weekend over Thanksgiving from Friday until Monday evening. He must provide notice to A.C. if he intends to exercise his parenting time by September 1st each year.

8. G.B. may telephone, skype, or Facetime with I.B. every second night at 6 pm (Atlantic time). If I.B. is unable to take the call, A.C. will notify G.B. at least four hours in advance. If an alternate time can be arranged for that day best efforts will be made by A.C. to accommodate the alternate time. If the call cannot happen one day, it will be made up the following day. I.B. will be free to communicate with G.B. as he wishes.

9. If A.C. is returning to Nova Scotia for a visit, she must provide G.B. with a minimum two weeks notice. A.C. is obligated to provide G.B. with reasonable parenting time during her Nova Scotia visit.

10. If G.B. is travelling to Ontario, he must provide A.C. with a minimum two weeks notice. A.C. is obligated to provide G.B. parenting time during his stay conditional upon the following: G.B. would ensure that I.B. did not miss more than two days of school, that the visit would be for a maximum of seven days, that the number of visits in Ontario would not exceed four visits per year.

11. Such other parenting time for G.B. as can be agreed upon by the parties.

[105] The parties will retain joint custody and the following terms will apply:

1. Each party will meaningfully consult with the other on all major decisions including decision related to health, education and religion.

2. In an emergency, the parent with care of I.B. can authorize emergency medical care and shall notify the other party as soon is it is practical to do so.

3. Each party can make inquiries and receive information from I.B.'s educators, counselors, care-givers, healthcare providers and religious leaders.

4. A. C. shall ensure that G.B is provided documentation related to I.B. in a timely way. This will include: I.B.'s school report cards, medical reports, dental reports, specialist report, and information regarding I.B.'s recreational activities.

5. A.C. shall ensure that G.B. is provided information related to I.B. in a timely way. This includes information related to teachers, school personnel, health professionals, recreation providers, and any other service provider for I.B..

6. Both parties are entitled to attend appointments for I.B. with health care providers and school personnel.

7. Both parties are entitled to attend activities for I.B. including but not limited to concerts, games, practices, recreational activities, and birthday parties.

8. Neither party will speak negatively to, or about the other party or permit others to do so in the presence of I.B..

9. At all times, the parties will encourage I.B. to have a positive and respectful relationship with the other party and members of the other party's family and household.

10. Neither party will discuss adult matters with I.B. with him or in his presence.

11. The communication of the parties will be respectful, and child focussed.

[106] The issue of transportation, including the responsibility for transporting the child and the cost associated with travel has not been addressed. Neither party has provided a detailed plan in relation to transportation for I.B.. Counsel for both parties have two weeks from the date of this decision to prepare written arguments in relation to this issue. Thereafter a supplemental decision will be rendered.

[107] Furthermore, A.C. indicated an intention to consider a reduction of child support payable if she were allowed to relocate to Ontario. Again, the court was not provided with any details related to the financial consequences or costs of the relocation plan and the incidental access costs. Again, I will allow the parties a

period of two weeks to have further discussion between them and to forward submissions to the court on this issue.

[108] The Supreme Court of Nova Scotia (Family Division) retains jurisdiction to deal with this matter. The decision is based in part on the time limited effect of this relocation. A.C. has attorned to this jurisdiction and has confirmed that I.B. will be returning to Nova Scotia in September 2021 when C.F. retires. I.B. will be enrolled in school in Nova Scotia for the term commencing September 2021. The matter will therefore return to this court for a review of the parenting time for each party on or before June 2021.

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Chiasson, J.