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File 1201-45827
SFHD8502

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
[Cite as: Fredericks v. Parsons, 2001 NSSF33]**

BETWEEN:

JUSTINE M. FREDERICKS

- PETITIONER

- and -

WINSTON P. PARSONS

- RESPONDENT

DECISION

Heard By The Honourable Justice Moira C. Legere on the 5th and 6th day of
November, 2001 at Halifax, Nova Scotia

DECISION: December 6, 2001

**COUNSEL: Tanya Jones - for the Petitioner
Richard Arab - for the Respondent**

Legere, J.

The Applicant is the mother of the child, Devin Michael Shane Parsons, born [...], 1991. The Respondent is the father and current custodial parent.

The mother seeks to enforce the recommendations of a therapist provided in an updated custody and access assessment dated July 22, 1999. The father has opposed reinstatement of any process which may lead to access.

The parents were married on August 3, 1990. The father went to prison in November 1991 when the child was 4½ months old. The parents were divorced on February 15, 1993. The mother was granted primary care. This continued until 1998. The child spent the first five years of his life in the care of his mother and his maternal grandmother. The father spent the first

five years of this child's life in and out of jail. When he was released from jail he was allowed supervised access. In February 1997 the father made application to the court and was granted unsupervised access. It is not unreasonable that a parent, having spent the best part of five years in prison, would have supervised access on their re-entry to a visitation schedule with their child.

The father admitted that he started out with the mother, living with her family and during the course of their relationship he suggests they were actively doing drugs, alcohol and crime. He advised that in December 1993 he gave up drugs, alcohol and crime and began to turn his life around. He sought individual counselling and drug rehabilitation. He attended AA and NA. He studied the bible and attended many chapel programs. He improved his education and entered a relationship with his current wife and her three children from a previous relationship. On November 20, 1996 he married Dorothy Parsons.

In 1997 the father had concerns about the care of his son. The complete list of his concerns is found in his affidavit dated August 21, 1998

and restated in his affidavit of November 2, 2001. His evidence when compared with the totality of evidence from the assessors, the school and the therapists tends towards an exaggeration of past events.

The grandmother indicated that his version of events as later retold after he had custody of Devin did not resemble accurately her recollection. She tended to minimize the past. However, she was in a better position to recall the history as she lived it. Mr. Parsons was in a better position to recall his own perspective of events from prison and after but he was not in a position to accurately recount from first hand information the child's life.

I do not intend to minimize the mother's lack of attention to her son's needs. Nor is it appropriate to ignore the father's absence for the first five years of this child's life and the considerable efforts he made to reform himself. These are important factors. However, after hearing the father's testimony and reading the affidavits, in light of his testimony I find that there is an excessive embellishment of the past misdeeds of the mother. As one small example, his interpretation of Dr. Evans' recommendation as stated in Paragraph 8 does not reflect the recommendations in Dr. Evans' oral

testimony. Yet when the father heard Dr. Evans testify he was convinced that Dr. Evans supported his position.

It is entirely possible, after reflecting on the totality of the evidence, that the father became embittered while in prison. He remembers being alienated from his son and believes that he was not allowed to be a significant figure in his son's life. He blames the mother and her family. There is credible evidence to indicate that the child was brought to the prison to see him and there is credible evidence that he was remembered to his son by the grandmother, sister and the mother.

Having noted that caution about the father's recollection of past events, there was evidence in the past hearing that supported some of his concerns. He was concerned about the mother yelling at his son and possible physical abuse, about the child taking Ritalin along with other medication the mother was administering to Devin and about the influence of the mother's partner. Certainly the mother's partner was a concern as was the mother's emotional abuse and possible neglect. I have not seen sufficient evidence to confirm that physical abuse took place. Administering

Ritalin was by doctor's orders and there is insufficient evidence to question the application of this medication to the child. There is no medical evidence to support the father's concern in this regard.

At that previous custody hearing the father listed a number of comments allegedly made by the mother as recounted by the son to the father and step- mother. One such allegation related to a time when the child lived with his mother. The child alleged that his mother told him that harm would come to him while he was with his father and that someone would steal him from his father's home. The mother denied this at the time.

One of the present concerns the father has relates to his perception that the child is fearful of any contact with the mother, fearful that he will be removed from his father's home. This statement allegedly made by the mother to the son, if true (and I cannot make that finding), may form part of the source of the child's alleged fear. If she did say these things or if the child has some impression that she did the mother may want to clarify for certainty that he is going to remain in his father's home without fear or trauma from some unknown source. This may have to be addressed by a

therapist in order to establish in the child's mind that he is secure in his own environment and need not have any residual fears associated with these lingering statements. The mother may want to be part of the process with the therapist when this is addressed. Again, I can make no conclusions about the truth of these allegations. Nonetheless they have to be dealt with.

Some of the father's concerns about the child's care and the mother's lack of focus while she was involved in an "abusive" relationship were confirmed in a previous hearing by affidavits submitted by the mother's mother and sister. These affidavits were very damaging.

They supported the father's application for custody in the hearing which resulted in a change of custody. They echoed the father's concerns about the mother yelling at Devin and threatening to leave him, concern about his nutrition, the teasing and verbal abuse the child received from the mother's partner and her lifestyle choices that did not address her son's need for solid nurturing.

The maternal grandmother and sister now speak on behalf of the

mother indicating they see great changes in her behaviour and support her application for access. She is no longer involved in the relationship that concerned others and has taken counselling to address the reason for her poor choice of partners. The mother now has another young child in her custody and has effected many of the same changes in her life as has the father.

There is something to be said for the veracity of these witnesses when they have the courage to stand against their family member to ensure the proper care of Devin and now testify to the efforts the mother has made and the improvement they have noted.

As a result of an order issued on June 19, 1998 granting the father interim custody, a parenting capacity assessment was ordered to address parenting and access issues. The September 22, 1998 report of Mr. Nau contains much of the parental history.

Mr. Nau recommended that the child should remain in the care of his father and step-mother. He saw no reason to require long term supervised

access for the mother. He indicated that despite the mistakes in parenting the mother had made the child was positively attached to his mother. He predicted that the mother and child could have an appropriate relationship.

He recommended a three month period of access supervised by an agreed upon third party. If the parents could not agree he recommended Veith House or the North End Community Centre. After that three months he recommended a reassessment and barring any difficulties the beginning of weekend access. He recommended against any involvement between the child and the mother's then current common-law partner.

He also urged both parents to agree to recognize the significant relationship each party has to play in their child's life. While he suggested mediation he doubted the viability of this given the then current atmosphere of anger and distrust. He noted that it was the custodial parent's responsibility to assist the child in normalizing their parent -child relationship.

Based on my own observations of the father I doubt whether he has

the capacity to forgive the mother or to facilitate an appropriate discussion on the subject matter of the mother's connection to the child. In this regard the mother's family have consistently exhibited a better understanding of the child's need to be in contact with the father.

At the time of these recommendations the mother was living on the Acadian Shore and the child with his father in Halifax. The mother was living in what is now described as an abusive relationship with Mr. Comeau. The mother agreed that Mr. Comeau was emotionally abusive to her and their son but she denied that he was ever physically abusive towards her son. Ms. Fredericks did have a child as a result of this relationship. Mr. Comeau plays no part in this child's life and is no longer involved with the mother.

Ms. Fredericks admits that access did not proceed immediately after this report and that the failure to follow through rests with her. She left Mr. Comeau on November 18, 1998 and returned to this area to live with her mother. Two months after the recommendations were scheduled to start, she made efforts to reinstate access. One such visit was arranged through

Veith House for December 14, 1998. The father did not show up with the child. He did allow a ten minute telephone access on Wednesday evenings commencing February 17, 1999 and he terminated this access in March 1999.

The father sought the advice of his own counsellor and his doctor to justify the termination of access. I will deal with their letters later. Other delays were incurred in setting the matter down for trial that were outside the influence of both parents.

The mother then requested from the court a reassessment to enforce contact with her son. Mr. Whitzman conducted that update by report dated July 23, 1999. Mr. Whitzman noted the changes the mother had made in her life. She attended a parenting course and individual therapy. Mr. Whitzman spoke to the mother's therapist. He was told that the purpose of therapy was to assist the mother around the stress of her personal issues and her lack of contact with her son. They also explored the past abusive relationships in her life. The therapist reported to Mr. Whitzman that the mother had made significant progress. She presented to the therapist as

highly motivated, insightful, organized and resourceful. He observed the mother with her second child and noted she was a caring and thoughtful mother.

Mr. Whitzman then made the following conclusions respecting access:

“It is my opinion that Devin does not trust or like his mother based on past experiences which occurred when he lived with his mother. He is an anxious child who focuses on specific memories which continue to reinforce his fear of his mother. He has experienced a much calmer relationship with his father and is resistant to allowing his mother back into the picture. Resuming telephone access or phone contact will do absolutely nothing to change Devin’s view of his mother or his feelings or lack of trust.”

Mr. Whitzman recommended a therapeutic process be followed which would accomplish the following:

1. Devin receive individual counselling to deal with his fears, reduce the level of anxiety, provide him with a sense of comfort, security, and safety as he begins to explore the idea of a relationship with his mother.
2. When Devin is ready, introduce his mother to the therapy process by phone or office meeting. This would allow Devin to ask his mother the questions which require answers.
3. Proceed with access in accordance with Devin’s schedule.

Mr. Whitzman indicated that he would be prepared to engage in the counselling.

In this proceeding Mr. Whitzman was called to give an opinion on his recommendations then and now. He has had no recent contact with the family and hesitated to give an opinion without knowing of the child's current circumstances. He was concerned about the lapse of time between his last report and the hearing and the absence of any contact. He was concerned, hypothetically, about the effect of reinstating access now given the lapse of time without contact. He recommended the mother commence by writing letters on a monthly basis which should be delivered by the father or his partner to the child. He suggested leaving the decision up to the child whether to open, read and/or respond. He recommended the mother continue with the letters in any event to establish a record of consistent contact for many obvious reasons.

In this proceeding the father submitted a letter from Dr. Evans, a psychiatrist with the IWK Grace Health Centre. Dr. Evans saw Devin on three occasions - October 18, 1998, November 2 and 23, 1999. He said,

“during the course of my contact with Devin it became clear that the minor behavioural difficulties that Devin demonstrated at the point of referral has subsided quite readily with simple parenting suggestions.”

His letter is short and to the point. There was no evidence of the behavioural difficulties experienced by the father and step-mother at the time of referral. There was no significant clinical issue that required his attention.

Dr. Evans did not interview the mother and was not aware of all of the surrounding details of the situation at the time of the referral. He did not have Mr. Nau’s report at the time. He had access to Mr. Whitzman’s report. Notably, Mr. Whitzman’s report relies on Mr. Nau’s report to set out the historical information.

The father presented Dr. Evans with certain information and asked Dr. Evans to address the issue of access. Dr. Evans questioned the child to determine whether there was any suggestion of fear or influence associated with the child’s position against access. He satisfied himself that the child

was not exhibiting fear of his mother or any clinically significant anxiety associated with his mother. He expressed to Dr. Evans that he simply did not want to see his mother.

Dr. Evans made it clear that his assignment with the child did not warrant counselling respecting access as there was no significant clinical issue evident with the child. He indicated that his association did not typically act on the part of one parent in a court procedure unless there was a clinically significant issue and there was none in this case. He was not knowledgeable of the facts of this case and was not making an opinion on access for this proceeding. He did not engage in discussions around access except to determine whether the child was suffering from fear or under undue influence from his father.

In court he recommended that the father address the reasons why the child is so adamant about no contact indicating, as did the other two professionals, that this is an issue that will, in all probability, have to be dealt with now or at a later stage in his son's emotional development. He noted it was unusual to have a child take that position particularly when the

father's evidence discloses that he believes the child has never mentioned the mother. He opined that in situations where the child has made a decision against access usually there is some expression of negativity or bitterness about the mother. The absolute lack of mention causes him to conclude it may well be an underlying issue with the child.

The father reads Dr. Evans' report as confirmation that access should not be pursued. He takes this opinion as verification of his adamant position that it is solely the child's wish that no access take place. He has indicated to professionals and to the court that he believes that access/phone contact with the mother has caused the child to be fearful and that it causes his behaviour to regress.

According to the father's and step-mother's report Devin was experiencing behavioural difficulties, some nightmares and fear that his mother would take him away. He was said to be lying to his father and he had allegedly stolen something from his step-sister (in his father's home).

At the time the child saw Dr. Evans, some of the described behavioural difficulties had dissipated and he observed that the child was

not under any undue distress. He offered an opinion that what may have been observed was the result of adjustment problems seen in children in similar circumstances when a child is adjusting to a new (his father's) environment. By the second visit the problems had terminated. There was no indication of a clinically significant problem.

He also testified that the child's presentation differed from the history he received from the custodial parents. He said that what he saw (ref: the child's behaviour) was not consistent with what he was told. He noted no indication of anxiety around seeing his mother.

He did offer some interesting comments about what he would propose be done. He advised it was appropriate to pursue the question of why the child does not mention his mother. To have a child not acknowledge his mother is a very unusual situation and he wondered whether this is an issue that ought to be dealt with now or whether steps ought to be taken to pave the way for the child to deal with this later without adding further trauma. He reinforced that it was not the mandate of a publicly funded agency to do court ordered therapy. He would typically refer

this matter to someone skilled in the area, like Mr. Whitzman or Mr. Nau, to work with the child and parents to move towards resolution. He did not believe this child needed psychiatric intervention. He suggested that those already familiar with the child and the circumstances would be the better place to start on this work. My conclusion is that he endorsed the process of therapeutic intervention that was already in process through Mr. Nau and Mr. Whitzman.

He also offered wise advice. He suggested that the process of therapeutic intervention may be more focussed on the parents rather than the child, because the behaviours respecting access may be a function of their positions. He suggested that the therapist be an objective person who can approach these issues “unloaded”.

The Child

From the child’s perspective he was primarily connected to his mother

and her family for the first five years of his life. His father was not a significant person in his life. He neither contributed financially or emotionally to his care.

The child was put on Ritalin when he was in school. There is a report from Jane Kawchuk from the Development Clinic on February 11, 1998. At that time when he was seen in the clinic (January 27, 1998) he was 6 years and 7 months old. Both mother and maternal grandmother attended this appointment. This was before the order of Justice Goodfellow of June 19, 1998 when the child's custody was changed from mother to father.

The assessor concluded that academically he was doing very well and there was no report of behavioural difficulties. The assessor noted that he missed his Ritalin on two occasions and the teacher called his mother to advise of the difference in his behaviour. The teacher noted that without Ritalin the child was very active and inattentive in school. At the time the mother noted he was sleeping well. The assessor also heard from the father. His report as of January was that as of early January he has not noticed or reported any aggression.

This assessor saw the child again on January 25, 1999. She concluded that he had responded well to a Ritalin-placebo medication and was currently off Ritalin. At the time of this assessment the child had been living with his father and step-mother since May of 1998. He was doing well. He was described by his teacher as doing well in math and eager to learn. His teacher estimated he may be one year behind academically. His work habits were described as good.

In this report the assessor referred to some nightmares that Devin had in the past and although they still occasionally occur they were less in frequency. There were no general health concerns. He reportedly eats well and sleeps well. The quality of his printing had improved and he had progressed well in all three academic areas from last year although his standard scores were higher the first time she tested him. The father reported that he was doing well at home and at school. She did not conclude that the change in his school performance for the better was a reflection of previous poor reporting.

There is a January 1999 note from Paul Cashin. He has counselled

the father and his current wife on a regular basis for the past three years. As a result of the reporting of the father and step-mother he offered advice on terminating telephone access. There is no evidence that he saw the child, knew the circumstances or knew the mother. Given the discrepancies in interpretation with the other reports I am cautious about drawing any firm conclusions regarding the letter from Paul Cashin. Such a blanket recommendation has obvious frailties and of limited long term utility and I place no weight on this recommendation. He did recommend the parents have the child see a specialist at the IWK. It is important to note in that the father and step-parent were the persons who described the nature and extent of what they perceived to be the child's difficulties.

The father's doctor, Dr. Scovil, wrote a brief note on March 22, 1999. In that he noted that the child had been recently seen by him on March 18, 1999. The child was concerned about the possibility that his mother may come and remove him from his father's home. He recommended that all conversations be monitored. Dr. Scovil refers to a conversation the child had with his mother on March 21, 1999. As I review the evidence I note the step-mother's affidavit contains the transcript of conversations between the

child and his mother for the dates February 17, 1999; February 24, 1999 and March 3, 1999. That affidavit is signed March 12, 1999. I have no transcript of the conversation alluded to by Dr. Scovil. It may be that the last telephone conversation occurred on March 3rd.

I have reviewed these conversations. Other than one occasion when the mother suggested that Devin might hold her new baby and her suggestion that they must sit down someday and make a list of the things he might teach his younger step-brother there is nothing in the conversations that could be said to be inappropriate or suggestive that someone might come and take him away. That fear, if it existed at all, could not reasonably be said to originate from these conversations. In the most difficult of circumstances the mother attempted to engage her son in very innocent conversation. He resisted her inquiries. If there was a fear that pre-existed these conversations, a fear that did not exist when Dr. Evans saw this child, it had to be formed by his previous experience and/or the father's predisposition to the mother that was very evident in his testimony.

The mother has also indicated a willingness to address the father's concern that the mother has an alcohol addiction. She has agreed to attend at Drug Dependency for an assessment and is prepared to follow their recommendations, if any.

The father's testimony was a compelling testament to his obstinate adherence to an opinion about the mother and her family that will likely never change. The father does not appear to be influenced by professional advice other than as it supports his position. He admits his previous lifestyle and absence from his son, but pays less than lip service to the effect his absence in the child's life may have had in the child's formative years. He appears to have no insight into the effects of his re-entry into the child's life and the abandonment issues relating to the loss of the mother to the child when the child went to live with the father and his new partner. Considering what this child has been through he appears to be a survivor in spite of both of his parents' limitations.

The father remembers bitterly the difficulties he perceived he had in obtaining access to the child when he left prison. While he is intimately

familiar with the concept that a person can change their lifestyle choices he cannot conceive of such a possibility of change in the mother's behaviour. As a direct result of his testimony I am convinced that he will not be open to her involvement in the child's life under any circumstances.

As I conclude this I recognize that the father is genuinely concerned about his son and has conquered his own demons. He cares about his current family and obviously credits his current partner with creating a stable and nurturing environment for he and his son. I was not satisfied that he was able to understand the significance of his own behaviour or the likely impact it has on his current partner and his son. After hearing him I am drawn to the conclusion that his refusal to facilitate any kind of access has to do with more than the mother's previous circumstances. The depth of his disdain and his lack of respect for her position in the child's life speaks to the likelihood that his emotional position is implied in his interaction with the child and professionals. He appeared to want to completely divorce himself and his son from any possibility of contact and did not appear to have the capacity to integrate her in any way into his current life plans for himself or his son.

The father's approach to this issue is clear yet uncomplicated with any insight into the behavioural and psychological implications of absolute termination of contact. I question whether he has the capacity to understand the significance of this issue.

The child did not display fear but he did display a need to know, a need to have answers and a residual lack of clarity about the possibility that his mother might disturb his current home.

The father was clear that the child's mother was the step-mother. His evidence indicated that the biological mother was permanently replaced. He appeared not to see the difficulty this might present and the denial of any role for the natural mother who was significantly connected to this child. He had no respect for her and paid her none. He does not evidence any understanding regarding any part he might have played in the child's decision not to visit his mother, his repetition of his desire not to engage in any contact despite the clinical absence of indicia of fear, and the child's need to have answers from his mother.

Why has this child survived this turmoil and by all appearances done well? In his life, while his father and mother floundered, he had a grandmother and a maternal aunt care for him in the first five years of his life. Now he has what objective assessors describe as a very nurturing environment provided largely by his step-mother, a woman who has raised her own three children. I did not hear this person testify or stand the test of cross-examination. However the assessors describe his step-mother as the primary parent, the nurturer and the caretaker who has provided a safe home for Devin. Devin responds well to her love and support. The father admits she is largely responsible for all child care issues and he is the provider.

The father is not convinced either by the two therapists' previous recommendations respecting the reintroduction of access, the parenting courses and the mother's counsellor's report as to her progress. There is nothing she could do to convince this father of her value. Moving this child through his father's obstinate beliefs and the history of the parents' care is the major obstacle to reintroducing access.

The time delay and its effect on the child, the child's current perceptions of the past , the parental difficulty noted above and the historical conflict is the reason that supervised access and the reintroduction of contact needs third party involvement. It is not a situation that merits a supervised access order other than to negotiate these troubled waters. I do believe that the attempts of the mother and her family to have contact with Devin have caused the father and his wife significant anxiety and it is they who need to come to terms with the child's right to contact with each parent and the difficulties he may face if they do not deal with this alienation appropriately. Getting them to a point where they can positively participate and appropriately assist Devin may be an impossible expectation.

The mother must be committed to a therapeutic plan of contact in accordance with the recommendations of Mr. Whitzman or such other qualified therapist. She must be consistent, abide by the child's sense of timing and must first address with the child any uncertainty he has over the possibility that she might try to take him away.

Should she miss any prescribed opportunity for any reason other than medical emergency her opportunity for contact with this child while he is in his father's care, other than as instituted by the child himself, should be terminated. Simply put, at this stage, she has not had an appropriate opportunity to engage in contact and the child's needs respecting this contact have not been appropriately explored.

The totality of the evidence and the recommendations of the professionals, together with the assessor's observations of the child while in the custody of the mother, do not reflect a situation that would cause this court to terminate a child's entitlement to access to a parent and a parent's right to be significantly connected to their child. It does not even come close to that conclusion.

The evidence before me does not contain any reason arising out of the mother's current situation which would create a need for supervised access.

The mother shall follow the suggestion offered by Mr. Whitzman to

write to the child to reestablish contact. The father shall provide the child with these letters. The mother is entitled to continue to send these letters on a monthly basis.

The mother is entitled to engage a therapist such as those already involved to assist in facilitating this contact. The father will assist by ensuring the child attends as and when directed by the therapist. The father has indicated he is prepared to pay for a restricted number of sessions. Both mother and father should assist in payment.

It was suggested that the child be seen at some point in the future to address either the receipt of the letters or for an opportunity to facilitate a process that will answer some of the child's questions about the mother's absence in his life and to address any residual fear that may impede access.

The mother and father shall agree upon an appropriate method of having the mother's letters viewed by a professional agreed upon to ensure the content is appropriate. The parents ought to require the provision of a

report in order to allow them to make decisions about future access.

The parents are reminded that their own attitudes about access have been identified as an obstacle and that the child may well profit if each parent, including the step-mother, would participate in a process that addresses their own fears and anxieties about access to enhance their understanding of the short and long term needs of this child.

By way of this order the mother shall be entitled to receive educational reports about her son on a regular basis. She shall be entitled to medical updates and a yearly photo provided by the father.

I will require her to provide the certificates of completion for her course with a description of the course or courses' content and a letter from her therapist advising of the issues addressed in therapy.

Failing an agreement on a strategy for introducing future access the matter may be reviewed in six months by either party.

Moira C. Legere, J.