



Samira Zayid, counsel for T.D.R.

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This decision is in the matter of the Children's Aid Society of Halifax and S.L.D. and T.D.R..

The parties were married in 1989 and separated in or around May of 1994. They have one child, J., who was [born in 1990]. At the time the Petition for Divorce was signed by S.L.D. in 1997, the child was in the custody of her mother. T.D.R. filed an Answer and Counter-Petition and part of the relief he was seeking at that time was joint custody with primary care to the mother.

Since the parties filed their respective Petition, Answer and Counter-Petition and Reply, there have been ongoing issues with respect to custody, which have involved the Department of Community Services or child protection agencies. J. was taken into care on October 30, 2000 by the Children's Aid Society of Halifax. The details leading up to that are outlined in the protection application and affidavit sworn the 6<sup>th</sup> of November 2000.

Beyond the protection issues, there were ongoing custody issues between the parents, which culminated eventually in the taking into care in October, when the mother had gone out and it was determined that she had done so without making adequate provision for the child's care. As a result, J. went with her father. There was before then, and continued to be thereafter, ongoing extreme conflict between the parents with respect to the care of J. and her movement between the two households.

Some of the issues of concern to the Agency above and beyond the conflict between the parents was the concern that the relationship between J. and her mother

was more of a parentified or peer relationship. There was considerable lack of structure and uncertainty for J.. There were concerns that her mother engaged J. in discussions about adult issues and there was failure to fulfill her parental role by discerning the line between parent and child as opposed to a sibling type of relationship. There was also a concern on the part of the Agency with respect to the failure of the mother to comply with any regularity or sincerity in drug screening.

Professionals were engaged to conduct assessments into this situation in October of 2000 and again in February of 2001. I am not going to go extensively into the details of what those assessments concluded. It is fair to say though that the conclusions of Joan Newman were that J. suffered as a result of mixed loyalties to her parents and that they have had a significant and damaging impact upon her. Ongoing concerns with respect to that had the potential to impair her emotional growth into adulthood.

The Agency is before the Court today, the matter having been before the Court now for some year and one half, seeking to terminate its involvement in this family on the basis that it is in J.'s best interests now to be in the custody of her father with access to the mother.

The Court has heard considerable oral evidence in this matter and has received extensive documentary evidence. Protection services in one form or another have been in and out of this family's life since J. was born. When the family was living in Ontario, drug issues and resulting neglect or inadequate care or provision for the child were presenting concerns and continued to be so throughout the ensuing years.

One of the significant issues that has been of concern is the need to minimize conflict for J. between the parents and to give her some stability and normalcy in her

childhood life. There are ongoing disagreements between the mother and father with regard to what is best for J.. Presently, the conflict is in terms of which school she will attend. Her mother thinks it would be in her best interest to go to [name of school changed], which she considers to be a better school. Her dad's view is that she should go to [name of school changed], which is where she wants to go, which is where her friends are, and which would represent some continuity in her life.

The Court heard evidence not only from Ms. Eakin but also Ms. Beaton, who is a therapist who has been involved with J.. One of the significant concerns on the part of Ms. Beaton was the fact that J. has been drawn into the conflict between the parents. It was her view that at the present time things seemed to have improved and that J. herself has said that her parents have changed and that much of the conflict that used to exist seems to not be as significant. Ms. Beaton was of the view that the existing arrangement the parents now have seems to work well for the child. What is of significant concern to all of the professionals who have been involved in this matter is that there needs to be one parent to be the decision maker. Ms. Beaton's view also was that in her assessment J. would have permission to be herself, to be a child, if she were in the primary care of her father.

Ms. Eakin's concerns, and I will just highlight a few of them, were that J. had been involved in discussing adult issues and the mother had difficulty in observing parent/child boundaries in the relationship. It was interesting to note however, that Ms. Haylock, another therapist, said that this was not an uncommon situation in female, single-parent relationships and that peer relationships are something that a child can and does adapt to. Parental conflict did continue though to be of significant concern. It is important to note that in addressing that, the father got help from Charlie Casselman and he has attempted to use strategies that were taught to him to try to minimize that conflict. The assessment of Joan Newman was seen by him to be a "wake up call" as

to the detrimental effect of the parents' behaviour and he is actively engaged in assistance to try to minimize that.

By contrast, the evidence suggests that Mom continues to be caustic and demeaning about the father and "puts him down". She now recognizes that this is hurtful and detrimental to the child. It does appear throughout the evidence that while Dad was working on trying to address those issues, mother continued to be caustic and demeaning about the father.

In Ms. Eakin's opinion, a situation of co-parenting and joint decision making in this extreme situation would be a recipe for disaster and would not be in the best interests of the child.

The evidence before the Court is that J. is a very intelligent child. She is very well adjusted in spite of all of the conflict and all that she has gone through, much to the surprise of the professionals. The evidence is that she will continue to do well but if certain issues are not addressed then she is in jeopardy of bearing the burden of those issues which she has experienced throughout her childhood. It was also noted in the evidence that her friends are very important to her and that in a situation such as this, the importance of friends is something that has to be recognized and encouraged, particularly where she has lived in a world of considerable conflict between her parents.

It was clear from all of the evidence that this is a couple who cannot really agree on anything, even with Agency intervention and a number of professionals involved in working with them. That was underlined by Mr. Labecki who indicated that in working with this family it was clear that they could not agree on the most minor things, that hours were spent discussing the minutiae of access and other issues. There were professionals involved and yet even at the end of the day what was thought to have been decided turned out to be changed after the fact.

The mother takes issue particularly with the emphasis that has been placed on some of the issues that have been of concern both to the Agency and to the father. There is no question in the evidence before me that the mother is highly intelligent and self-motivated and that she has a lot to offer this child. Her role in this child's life is critical to the child's development and it is important for that to be recognized and encouraged.

One of the issues about which there was considerable discussion was drug use. I am just going to take a moment to discuss that issue. First, I want to emphasize that the drug issue in and of itself is not something on which the Court's decision is turning. There are implications arising from it, the drug issue is not in and of itself the basis or the foundation for the Court's decision.

I have listened carefully to the evidence in this matter and in particular some of what S.L.D. has had to say with respect to that. I would not disagree with her in her suggestion that their drug experiences, that is hers and T.D.R., have been different and that perhaps his concern with respect to her drug usage is borne out of his own experience and that perhaps there is some difficulty in separating his own addiction issues from hers. I say that not to minimize the concern, but to emphasize that this is not the main issue on which this decision is being based. The concerns with respect to the drugs are not so much the actual use of marijuana, and if one wants to put on one's more liberal thinking cap, this may well be that which assists the mother in functioning. It does appear that she is a highly energetic person and that is something that helps to slow her down. It may be something that keeps her away from being involved in some of the more dangerous drugs. It may be that it is not all a bad thing. There does not seem to be a whole lot of evidence to suggest that it jeopardizes her actual parenting. Certainly the Court is mindful of the fact that prescription, legal drugs can compromise

one's parenting as well. Hers is not, as she has testified, a lifestyle that is consistent with somebody who is addicted to heroin or cocaine or something of that nature. She is holding down a full-time job. She is paying her bills and she is keeping a home. My decision does not turn on this issue.

What my decision does turn on in terms of the whole drug issue is the following: First of all, J. is aware of the drug issue and she has actually verbalized and rationalized to some of the professionals her mother's use of drugs. That is certainly of significant concern to the Court. As well, there are implications for what this means in terms of how the Agency views its involvement. It was well put by counsel for the Agency when she spoke of the reasons why S.L.D. did not pursue a drug assessment and the reasons why she did not participate wholeheartedly in drug screening. The bottom line for which there is no explanation is the following: that either S.L.D. does have a problem with non-prescription drugs and she cannot stop the use of them without professional help, or alternatively she doesn't actually have a problem with drugs but her own attitude towards the process that was being imposed upon her, that is going for an assessment and participating in the drug screening was such that she said, "I am going to do what I want to do and to heck with the system" which in itself is a negative thing because it does indicate that she has put her own views and her own attitudes towards what she is doing above the issue of J.. This was of concern and merely required compliance in order to give the Agency the assurance that this was not a problem.

As I have indicated, the history of their usage according to the mother, was that she engaged in experimentation with drugs after she had already established herself in life and education and she wasn't entrenched in the drug scene as T.D.R. was. That may well have been the case. However if that is the case, it should not have been any problem for her to want to prove that to those people who were in the decision making

role of determining what was in J.'s best interests. If her goal was to prove to the world that this was not an issue, then why was it so difficult or why was there a refusal to comply with these requirements? If it was not an issue, it would have been easy to comply. Therefore, the Court is left to conclude that it is more of a problem than she has indicated. Alternatively, her own needs, her own pride, her own principles overrode the need to do whatever was necessary to prove that this was not a problem, for the child's benefit. This is the basis for the Court's concern about drug usage.

It is clear that at this point this is no longer a child protection issue. The circumstances which gave rise to the taking into care no longer exist for the child as long as she is in a stable and predictable situation. If she is not in a stable and predictable situation, then many of the concerns that gave rise to the child being taken into the care are going to continue.

The overwhelming evidence before me is that T.D.R. is more able to put J.'s interests over and above his own and there is more predictability in the parenting style, arrangements and security that he can provide for the child. There is a defined parental role in his relationship. He acknowledges his weaknesses and he is willing to address them and to make changes, and that is manifested in what he has done over the last few years. There is no question that the history for both of these parents is a dismal one but it is very clear from the evidence before me that T.D.R. has made great strides in changing his lifestyle and devoting himself to providing as best he can, a stable and secure environment for his child.

There were concerns about the fact that he has had numerous relationships in the past but it would appear that this is not a present concern. He has embarked on parenting the child on his own but he acknowledges fully the assistance that he has had from the other people in his life who have had more experience.



One of the issues that is of significance here and I have already touched on it is the whole question of how the child has been drawn into the conflict and has been confided in with regard to adult issues. There is no question that the history of the child being used to discuss and arrange access in the past is something that is not to be repeated. She is however a 12-year old child and she is going to have her own wishes and desires with respect to things that will happen and that should not be squelched. It is important at least in the initial stages for the parties to leave her out of those issues. If there are going to be any changes to be made the parents are going to have to confer with each other to make those changes. It is also abundantly clear that it is necessary for there to be very clear and delineated access provisions that will not be subject to change unless the parents themselves engage in discussions about them and agree to those changes. These are two parents who should be striving towards a joint custodial arrangement. At the present time, however, I conclude that is not workable.

There is considerable case law wherein a court will impose joint custody where the parents do not agree, but this is a conflict that has been so extreme that it has involved the Children's Aid Society and this is a situation where I cannot conclude that an order imposing joint custody on these parents and more particularly on this child, would be in the child's best interests. It is very clear that the mother needs to have input into the child's education and her involvement in activities in her life.

In reality when I look at all of the evidence I have heard with respect to this matter, these parents actually complement each other. It would be wonderful if they could recognize that, especially S.L.D.. I think T.D.R. does recognize the important role that the mother has to play. In fact he has always said that he thinks if circumstances were different, it would be appropriate for her to be in the primary care of her mother. He has fulfilled his role and is acting as primary care giver. He has

done so in an exemplary manner. It is clear from all I have read and all I have heard that these are two parents who complement each other. Each parent brings to the parenting role different strengths and J. is fortunate to have the benefit of that. She has a mother who is bright and energetic and stimulating. Although she may be considered to be egocentric, she is very self-confident and self-confidence is a good thing to instill in a child. The father has been through some rough times and he has matured; he has stabilized; he is hardworking; he is solid and he is nurturing. He is more unassuming in his role as a parent and he is very child focused.

Both of these parents seem to have changed over the years from the way they were in the mid-mineties. There are still ongoing issues which need to be resolved and they cannot be resolved by having a co-parenting arrangement wherein the danger of ongoing conflict is very apparent. Even the evidence with respect to what happened over the most recent Christmas/New Year's holiday is evident of how things can still go astray if there is no clarity in the parenting arrangements and the decision making role.

I am therefore prepared, on the basis of the evidence before me, to dismiss the Agency's application upon an order being entered into providing for the child to be in the custody of T.D.R.. I am also prepared to continue the access that is currently in effect, being every other week from Wednesday after school to Monday morning. I am doing that because it is less disruptive. It is very predictable and it minimizes the opportunity for conflict between the parents. It also minimizes the opportunity for there to be misunderstandings or disagreement.

I would however suggest that the order include "such other access as may be agreed upon between the parties from time to time" which would enable there to be flexibility for other access to take place between those alternating extended access periods. I would suggest that a midweek after school access on Wednesday and

Thursday, perhaps picking the child up after school and going for supper and returning the child home for eight o'clock or something of that nature, be considered if it does not conflict with extracurricular activities. Again that is something that will have to be arranged between the adults and will not involve the child.

The access that is fixed is the access from alternating Wednesdays after school until Monday morning and such other access as may be agreed upon between the parties from time to time.

I would also suggest, and this does not have to go into the order, that it is very important for J. to be involved in extracurricular activities. It is imperative for her to attend her flute class and she should be encouraged to participate in school activities and sporting activities because clearly she has the ability and the skills and she is going to have a lot of energy coming into her adolescent years. She is excelling in school and she has talent and ability that ought to be funneled into constructive and organized activities.

There is also concern expressed about cigarette smoke and I am not going to put this in any order but I think that it is appropriate and reasonable to emphasize that it is not in the child's best interest to be smoking around her in her residence, in her presence and her right to be in a smoke-free environment ought to be respected. Again, I am not putting that in an order, but by the same token as we are concerned about the mother's drug use, it is clear that the dangers of cigarette smoke, although it is a legal drug, are as significant for the child as any other.

The mother has the right under the *Divorce Act*, and it shall go into the Corollary Relief Judgment, to confer with and have access to health and education authorities and information with respect to her health and education.

If the parties are not able to agree on holiday and special access between themselves, then they will submit their respective proposals by March 31, 2002 and the Court will impose an access regime that will cover the access above and beyond the access that has been spelled out here.

The Petition for Divorce as I have indicated was filed in January 1997 and Answer and Counter-Petition was filed in July of 1997. A Reply was filed in December of 1999. Unless there are other issues with respect to the divorce, it appears from what I have reviewed that the assets have been divided and the remaining issue is that of custody. I am prepared to sign a Corollary Relief Judgment providing for the father to have custody with access to the Petitioner as outlined. I am not going to make any order for child support at this time as there has not really been any evidence before me sufficient to make an order to that effect. I would certainly be prepared to hear submissions on that at some point but I am not going to include it in my decision today.

Deborah Gass, J.