

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

**Citation:** *BL v. TD*, 2019 NSSC 262

**Date:** 2019-09-03

**Docket:** SFHPSA 112484

**Registry:** Halifax

**Between:**

B.L.

Applicant

v.

T.D.

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Theresa Marie Forgeron

**Heard:** August 20 and 21; and September 3, 2019 in Halifax, Nova Scotia

**Oral Decision:** September 3, 2019

**Written Decision:** September 12, 2019

**Subject:** Family Law; Interim Parenting; Best Interests; Preservation of Status Quo; Choice of School; Child Support.

**Summary:** [1] Following a 2017 separation, the father and the mother loosely followed a joint and shared parenting arrangement. That arrangement was disputed by the father because of safety concerns flowing from the mother's mental health issues, alleged drug abuse and domestic violence.

[2] The court held that the father's concerns were no longer an issue. An interim joint and shared parenting plan was ordered as being the most supportive and most protective of the child on an interim basis. The child would attend the school near her mother's home and near both of the parties'

places of work. The school was also located near the daycare that the child had attended. The parties were directed to provide further submissions on child support given their erroneous assumption concerning the CCB.

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**Counsel:** Peter D. Crowther for the Applicant  
Lisanne Jacklin for the Respondent

## **By the Court:**

### **Introduction**

[1] Five-year-old M is a bubbly, bright, intelligent and happy little girl. She is much loved by her father, BL, and her mother, TD. M is a fortunate child.

[2] The child's life, however, is not entirely without complication because her parents were not able to resolve interim parenting and support issues. Initially, following their 2017 separation, the father and the mother loosely followed a joint and shared parenting arrangement. That arrangement is now in dispute.

[3] The father wants to change the parenting plan. In his July 2019 affidavit, the father said that the parenting arrangement was no longer in the child's best interests because of safety concerns arising from the mother's mental health challenges, drug use and her relationship with Mr. Crouse. As a result, the father asked for interim sole decision making; primary care and custody; the right to enroll the child in the school near his Dartmouth home; and child support. The father suggested that the mother have parenting time every second Friday to Monday.

[4] In contrast, the mother denied the allegations put forth by the father. Although the mother acknowledged that she is receiving mental health treatment and that she was involved with a man who was violent, she states that these issues did not affect the child. The mother states that the child is always safe, loved and nurtured in her care.

[5] For her part, the mother is willing to continue a joint and shared parenting arrangement but wants the child to attend the school near her home in the north end of Halifax. She also seeks interim child support given the significant financial disparity between the two households.

### **Issues**

[6] In order to resolve this dispute, I will answer the following four questions:

- What general principles apply to interim parenting decisions?
- What interim parenting plan is in the child's best interests?
- What school should the child attend?

- What is the appropriate interim child support order?

### **Background**

[7] Beginning in 2012, the father and the mother were involved in a long-term relationship. They began to share one residence in June 2014, about one month before the child was born. The parties separated around February 2015. They then reconciled between December 2015 and January 2016. Their final separation occurred in June 2017.

[8] After the June 2017 separation, the father and the mother continued their relationship. They had sexual relations until the end of 2017. The mother hoped that the parties would eventually reconcile; the father did not.

[9] The father arranged to have a separation agreement drafted by a lawyer. The mother did not sign the agreement because she disagreed with some of the terms. The parties nonetheless loosely followed the shared parenting plan contained in the separation agreement.

[10] The shared parenting plan revolved around the father's work schedule. The child would be in her father's care during his days off, to a maximum of 50% of the time. The child was to be in her mother's care during the father's scheduled shifts of work and during the time when the father was required to work overtime.

[11] In the early months of 2018, the mother learned that the father had a girlfriend. She reacted inappropriately to this news. The mother had difficulty accepting that her relationship with the father was over.

[12] The father's relationship with his first girlfriend ended; he then commenced another relationship. The father, and his new partner, live together in a home in Dartmouth which the father purchased.

[13] After separation, the mother became involved with Mr. Crouse. Mr. Crouse abused the mother. The mother states that she is no longer involved with Mr. Crouse.

[14] After being contacted, child protection authorities investigated. In addition to domestic violence, child protection authorities also investigated other concerns raised by the parties. The father raised concerns about the mother's mental health and drug use. The mother raised concerns of inappropriate touching between children while in the father's care. After conducting their investigations, the

protection file was closed. From the perspective of CPS, there are no child protection concerns outstanding.

[15] In the fall of 2018, the father filed an application with the Family Division. In July 2019, he filed an interim motion. This motion was scheduled on an urgent basis because the motion included a dispute over the child's school.

[16] The interim hearing was held over two days on August 20 and 21, 2019. The parties and four witnesses testified; lengthy affidavits and exhibits were tendered. Since the matter was not concluded within the allocated time, the parties opted to file written closing submissions – the father on August 27 and the mother on August 29, 2019.

[17] In his August 27 written submissions, the father discussed the evidence and reviewed his three requests. First, the father appeared to recognize that the shared parenting schedule contained in the Separation Agreement “will continue until the final hearing”. However, in his closing submissions, the father also asked the court “to consider and refer to our previous written submissions ...,” during which he sought primary care and sole decision-making. Second, the father confirmed that he wanted the child to attend the school in his Dartmouth neighbourhood. Third, he said that he was no longer seeking child support but was willing to pay the set-off amount to the mother.

[18] In her written submissions, the mother sought to continue the shared parenting arrangement; to register the child in the school in her Halifax neighbourhood; and to obtain the table amount of support. The mother's request for the table amount of child support is not what was requested in her evidence and prehearing brief. In her prehearing brief filed on August 8, 2019, the mother stated that “... she effectively has the child 60% of the time and should be permitted to keep the Child Tax Benefit and receive the set off amount of child support in the amount of \$268 per month ...”

[19] My oral decision was rendered on September 3, 2019.

### **Analysis**

**[20] What general principles apply to interim parenting decisions?**

[21] The court is mandated to apply the best interests principle in all parenting decisions as noted in s. 18(5) of the *Parenting and Support Act*. The best interests principle is described as one which has an inherent indeterminacy and elasticity: *MacGyver v. Richards* (1995), 22 O.R. (3d) 481 (Ont. C.A.), paras. 27 to 29. The test is a fluid concept that encompasses all aspects of a child, including the child's physical, emotional, intellectual and social well-being.

[22] This motion is framed as an interim motion, and not a final hearing. There are significant differences in the purpose of each of these hearings. During an interim hearing, the court is making a decision that will operate for a short time. During a final hearing, the court will determine the parenting plan that will operate for an indefinite period. The focus of each type of hearing must always be on the child's best interest, but each viewed from a different perspective.

[23] Basically, for an interim hearing, the court targets the temporary parenting arrangement that will be the least disruptive, and the most supportive of the child: *Pye v. Pye*, [1992] N.S.J. No. 133 (N.S. T.D.); *Stubson v. Stubson*, [1991] N.S.J. No. 210 (N.S. T.D.); *Foley v. Foley*, [1993] N.S.J. No. 347 (N.S. S.C.); *M.(A.) v. Y.(A.)*, [2012] N.S.J. No. 33 (N.S. S.C.); and *Horton v. Marsh*, 2008 NSSC 224 (N.S.S.C.). The focus of an interim hearing is thus on the preservation of the status quo, unless the status quo is no longer in the child's best interests.

[24] What does status quo mean in this context? The status quo is the parenting arrangement that the parties followed without reference to the unilateral conduct of one parent: *Kimpton v. Kimpton*, [2002] O.J. No. 5367 (Ont. S.C.J.), and provided that it is not contrary to the child's best interests.

[25] The status quo, however, is not the only factor to be considered when fashioning an interim parenting arrangement. In s. 18, the *Act* enumerates other factors which the court must balance, including the following:

- The child's physical, emotional, social and educational needs.
- The parent's willingness to foster a relationship with the other parent.
- The child's cultural, linguistic, religious and spiritual heritage.
- The child's views and preferences.

- The history of the parent's care of the child.
- The nature, strength and stability of the relationship between the child and each parent.
- The parent's ability to communicate and cooperate on issues affecting the child.
- The nature, strength and stability of the relationship between the child and other significant family members.
- The impact of any family violence, abuse or intimidation, regardless of whether the child was directly exposed to the violence.

[26] In making a parenting order, I am also directed to employ the maximum contact principle within the context of the child's best interests.

**[27] What interim parenting plan is in the child's best interests?**

[28] I find that it is in the child's best interests to remain in the interim joint and shared parenting of the father and mother. I make this finding for several reasons and despite the three specific concerns raised by the father. Before reviewing my reasons, I will confirm why the father's concerns are not an impediment to an interim shared and joint parenting plan. The three issues raised by the father are violence, mental health and drugs.

*Violence*

[29] The father was rightly concerned about the violence in the relationship between the mother and Mr. Crouse. Mr. Crouse has no redeeming features. He was violent with the mother on more than one occasion, even breaking the mother's wrist. The mother failed to appreciate the harm and safety concerns arising from her relationship with Mr. Crouse.

[30] Despite these findings, I accept that violence is not presently a concern for the following four reasons:

- The mother was involved in counselling and gained some insight as to why she remained friends with Mr. Crouse after he first abused her. The mother is beginning to appreciate the role that self-esteem plays. The mother better understands the dynamics of domestic violence.



- The mother is no longer in a relationship with Mr. Crouse. The order will confirm that the mother must have no contact with Mr. Crouse.
- The mother better appreciates the safety concerns arising in relationships that are abusive. The mother will not expose herself to similar relationships again.

[31] Out of an abundance of caution, I nevertheless direct that the mother must attend further counselling to obtain additional education and skills training in the following areas:

- How to navigate to the dynamics of abusive relationships.
- How to recognize and avoid abusive partners.
- How to improve self-esteem and combat barriers that prevent the formation of healthy adult relationships.
- How to recognize and protect against the direct and indirect impact of domestic violence on children.

[32] The mother must file a letter confirming when she completes this education and skills training, noting the therapist, the dates of attendance and the matters discussed.

### *Mental Health*

[33] The father was concerned about the mother's mental health because of the way she communicated and presented. At times, the mother reacted inappropriately and impulsively after the parties separated. This likely occurred for two reasons. First, the mother and the father held different views of their relationship. The mother was hoping for reconciliation. The father was not. The mother viewed the sexual nature of their post-separation relationship as indicative of potential reconciliation. The father did not. Second, the mother's illnesses were not being properly managed at the time.

[34] Despite these findings, I conclude that the mother's illnesses do not act as an impediment to an interim joint and shared parenting regime for the following reasons:

- The mother's mental illnesses did not affect her parenting. The mother's mental health problems are long standing. The mother was

the child's primary care parent. The child is a happy, healthy and well-adjusted child who has a positive and nurturing relationship with her mother. The child is likewise able to form happy, healthy relationships with other people. The child is not delayed emotionally, socially or educationally. All of the child's physical, emotional, social, medical and educational needs were met while in the mother's primary care. I infer from these facts that the mother's illnesses do not negatively impact her parenting of the child.

- CPS investigated whether the mother's mental health problems created protection concerns. CPS concluded that they did not.
- Most of the father's specific concerns were addressed with CPS and were considered as part of their investigation.
- On April 18, 2018, when first contacted by CPS, the father stated that the mother was a good mother and that the child was a happy child who would present differently if something was wrong.
- The mother is currently receiving treatment for her illnesses and is following the treatment plan. She is compliant with medication. The symptoms associated with the mother's illnesses are significantly improved, including impulsivity and reactivity.
- The parties currently communicate via email and texts. There are few in-person discussions. Such communication was relatively stable for the last while.

[35] Out of a sense of caution and to improve co-parenting communication, the interim order will include the following provisions:

- The mother must continue with mental health treatment and must be compliant with medication. Proof of treatment and medication compliance must be filed with the court and the father about every two to three months.
- Both parties must participate in individual counselling/therapy to obtain education and skills training on the dynamics of parental conflict, its impact on children, and techniques to improve their co-parenting communication. Proof of completion of this counselling/therapy must be filed with the court and each other.

*Drug Abuse*

[36] The father's concerns about the mother's abuse of drugs is currently unfounded. The evidence suggests past, not current cannabis over use. The order will direct that neither party will be under the influence of illegal drugs, cannabis or alcohol while caring for the child.

*Reasons for Interim Joint and Shared Parenting*

[37] I will now review my reasons why an interim joint and shared parenting plan is in the child's best interests. My reasons are as follows:

- Although the parties were edging closer to an equal sharing of parenting time since the summer of 2019, the mother was the child's primary care parent both before and after separation.
- Although the father was not the primary care parent, he is a hands-on parent who was substantially and positively involved in the child's care and upbringing.
- Because of the nature and extent of the parental involvement, the child developed strong, stable and supportive relationships with both of her parents. It is not in the child's best interests to displace either parent's involvement during this interim stage. The child flourished while in the care of both parties.
- Each parent has a healthy relationship with the child. Their parental relationships are different given the parties' dissimilar personalities. Despite their differences, each parent connects emotionally with the child. The child needs both of her parents to continue to play a meaningful and important role in her life. The child would be devastated if that did not occur.
- Neither party has a superior parenting style. The father is somewhat more regimented than is the mother. The father's parenting would benefit from a little less structure. The child needs time to relax and not always be on the go. Similarly, the mother's parenting time would profit by more structure. The child needs both structure and flexibility. The child will benefit from both parenting approaches, and both parties are encouraged to find balance.
- Although the child requires structured age appropriate activities, these activities should not impact on the child's ability to live a healthy and balanced life. The frequency and number of structured activities should be

established based on the child's circumstances, including the fact that she has two, not one, household. The child requires time for school, and the continued development of her relationships with family and friends. The order will indicate that absent agreement, each party may enroll the child in one extra-curricular activity during each school term. The parent who is exercising care of the child must ensure the child's attendance at her activities.

- Both parents are capable of meeting the child's emotional needs. Both parties have, for the most part, sheltered the child from the parental conflict. As stated previously, I am nevertheless ordering both parties to participate in individual counselling and education to address the dynamics of parental conflict and healthy communication skills to ensure the child is protected in the future.
- Both parents meet the child's social and educational needs. The child is intelligent and does not have any social or development delays. She plays with other children at day care, in her neighbourhoods and during "play dates" which the parties arrange with other parents. From all reports, the child is happy and well-adjusted.
- Both parents have appropriate homes for the child and can and do meet her physical needs. The child will be nutritionally fed, well-rested, cleaned and properly clothed when she is in the care of each of her parents.
- The shared parenting plan is in keeping with the maximum contact principle. The mother's plan of shared parenting achieves that objective.
- The child has a strong and loving relationship with her maternal grandparents. The child also developed a loving relationship with the father's partner. This extended family support is beneficial to the child and is encouraged. These secondary roles must not, however, assume priority over to the parent-child relationship.

### *Summary*

[38] A joint and shared parenting arrangement supports the child's best interests in the interim. A shared parenting plan will be the most protective and the least disruptive to the child. Shared parenting will ensure substantive parental involvement and the continuation of the child's healthy development pending the final hearing.

[39] The parenting plan will provide for a regular schedule and a holiday/special occasion schedule.

*Regular Schedule*

[40] During the regular schedule, the child will be in her mother's care for four days and then in her father's care for four days. Transitions will be at 9:00 am and will occur by dropping the child off at school or if there is no school at the other parent's home. The regular schedule will not be varied unless both parties consent to the variation in writing.

[41] This consistent four-day rotating schedule will provide stability to the child and will reduce the potential for the type of scheduling conflicts that have arisen because of the father's fluctuating work schedule.

*Special Occasions and Holidays:*

[42] The regular schedule is suspended at the following times, and is replaced with the following parenting schedule, unless the parties reach an alternative arrangement and provided such arrangement is placed in writing and signed by both parties:

- *Christmas:* Christmas is deemed to cover the period from 2:00 p.m. on December 23 until 2:00 p.m. on January 2. The child will be in the care of her mother from 2:00 p.m. on December 23 until 2:00 p.m. on December 25; and from 2:00 p.m. on December 27 until 2:00 p.m. on December 30. The child will be in the care of her father from 2:00 p.m. on December 25 until 2:00 p.m. on December 27; and from 2:00 p.m. on December 30 until 2:00 p.m. on January 2.
- *Easter:* Easter is deemed to cover the period from 9:00 a.m. on Easter Saturday until 6:00 p.m. Easter Monday. The child will be in the care of the father from 9:00 a.m. on Easter Saturday until 2:00 p.m. on Easter Sunday. The child will be in the care of the mother from 2:00 p.m. Easter Sunday until 6:00 p.m. Easter Monday.
- *March Break:* The regular rotation will be followed absent agreement.

- *Mother's Day*: The child will be in the care of the mother from 6:00 p.m. on the Saturday before Mother's Day until 6:00 p.m. on Mother's Day.
- *Father's Day*: The child will be in the care of the father from 6:00 p.m. on the Saturday before Father's Day until 6:00 p.m. on Father's Day.
- *Child's Birthday*: The parent who is not ordinarily scheduled to have the child on her birthday will be provided two hours of block parenting time between the hours of 10:00 a.m. and 6:00 p.m. to be determined based upon the parties' employment schedules.
- *Father's Birthday*: In the event the child is not scheduled to be with her father on his birthday, September 15, the father will be provided two hours of block parenting time between the hours of 10:00 a.m. and 6:00 p.m., to be determined based upon the parties' employment schedules.
- *Mother's Birthday*: In the event the child is not scheduled to be with her mother on her birthday, December 1, the mother will be provided two hours of block parenting time between the hours of 10:00 a.m. and 6:00 p.m., to be determined based upon the parties' employment schedules.
- *Summer Vacation*: Each party will have ten block days of summer vacation with the child. The mother will advise of her block by May 1. The father will have second choice and will advise of his block by May 15.
- *Family Events*: The parties will use their best efforts to accommodate any special family reunion, wedding or other event, that is scheduled at a time when the child is in the care of the other party. Written notice will be provided, well in advance of the scheduled event, to determine if the regular schedule can be altered to permit the child's attendance at the special function. The parties will be as flexible as possible in such circumstances, however, no change in the schedule will occur without the written authorization of the party in whose care the child is scheduled to be at the

time of the special family function. If accommodation cannot be made, the party refusing must provide the other party with written reasons for the refusal. Make-up time will be provided to the party who agrees to rearrange the schedule as that party requests.

*Other Terms and Conditions*

[43] *Travel*: Each party will notify the other of travel plans involving the child. Notice will include dates of travel, the address and telephone number where the child can be reached, and applicable flight details. Each party will cooperate in the acquisition of a passport for the child, and will also sign any necessary letter to permit travel outside of Canada. Any long distance telephone charges will be paid by the party initiating the telephone call.

[44] *Telephone Contact*: Each party will have reasonable telephone contact with the child while she is in the care of the other party.

[45] *Decision-Making*: Decision-making is based upon the following provisions:

- *Routine Decisions*: Each party will have day-to-day decision making authority and control when the child is in their care.
- *Childcare*: Each party will be solely responsible for making childcare arrangements in the event they are unavailable or unable to care for the child during their designated parenting time. The choice of the child care provider will be the sole determination of the parent who is exercising care of the child.
- *Medical Emergency*: In the event of a medical emergency, the party having care of the child will make decisions necessary to alleviate the emergency, and will notify the other parent, as soon as possible, as to the nature of the emergency and as to the nature of the emergency treatment. Both parties are entitled to attend the emergency treatment on behalf of the child if time is available.
- *Communication between the Parties*: Each party will notify the other by email of the following routine decisions while the child is in their care: particulars of illnesses and any medical issues, particulars of homework, projects and tests; particulars involving activities, practices and games; and particulars relating to significant social, education and general welfare matters. All such notifications must be

child focussed, respectful, and timely and must provide sufficient detail to enable the other's attendance at appointments, games, practices and functions.

- *Medical Appointments:* Both parties are permitted to attend all appointments which are scheduled for the child and the party who scheduled the appointment will provide timely notice to the other party.
- *Structured Activities:* The father and mother are each permitted to enroll the child in one structured extracurricular activity during each term of the school year. The party who has care of the child is responsible, personally or through a third party, for the child's transportation to and from her activities.
- *Medical, Dental, Health Cards, Insurance Forms:* Both parties will have access to the child's health card number, and each will share particulars and forms of any health plan that covers the child.
- *Access to Records:* Both parties have the right to communicate with all professionals involved in the child's care; each has the right to obtain information and documentation respecting the child from all medical professionals, educators, health professionals and social welfare professionals, without the further consent of the other party.

**[46] What school should the child attend?**

[47] The father wants the child to attend a Dartmouth school in his neighbourhood for several reasons including the following:

- During the parties' relationship and until May 2018, the parties discussed the child's schooling. They concluded that two options were viable – either Springvale Elementary School or Portland Estates Elementary School.
- The father bought a home in Portland Estates so the child could attend that school.
- Neither party lives in the Springvale catchment area.



- St. Stephen's Elementary School was never on the parties' radar.
- Portland Estates has a higher ranking than does St. Stephens.
- The child knows the children in her Dartmouth neighbourhood who will be attending Portland Estates. The neighbourhood children are friendly and the child is close to these children.
- The child's best friends from preschool are not attending St. Stephen's.
- Portland Estates is close to the child's maternal relatives and the father's home. His partner can provide support if necessary because she works from home. Further, the father is only 15 minutes away from his place of work should there be an emergency.

[48] The mother wants the child to attend St. Stephens Elementary for reasons including the following:

- St. Stephens is located across the street from the child's daycare. The child is familiar with the neighbourhood. St. Stephen's will provide a seamless transition.
- Many of the children who attended the daycare will be attending St. Stephens. The child will be familiar with many of her peers.
- St. Stephens is located near the parties' workplaces, making St. Stephens a convenient drop-off location for school and excel.
- The mother does not reside in Dartmouth and cannot afford to do so as a single parent earning significantly less than the father.
- Earlier discussions around schools were had when the parties were a couple.

[49] I find that it is in the child's best interests to attend St. Stephen's Elementary School during this interim period for the following reasons:

- This is an interim and not final proceeding with emphasis on the status quo.

- The child attended daycare in the north end of Halifax. Some of the children who attended day care will be attending St. Stephen's Elementary.
- St. Stephen's school more closely mirrors the status quo than does the Portland Estate's school.
- St. Stephens is more convenient to both parties for transfers and transitions. Both parties are employed in buildings situate in the north end of Halifax and the mother lives near St. Stephens.
- The child is an intelligent child who will prosper educationally no matter what school she attends in grade primary.

**[50] What is the appropriate interim child support order?**

[51] The parties' position on interim child support was evolving. The father originally sought the table amount of support from the mother. The mother originally asked for the set-off amount of child support. In his final submissions, the father accepts that he should pay the set-off amount. The mother then asked for the table amount of support.

[52] Each of the parties' position was premised on the erroneous assumption that they were permitted to barter the Canada Child Benefit such that the mother would continue receiving it. With the implementation of the joint and shared parenting regime, the mother no longer has primary care.

[53] CCB is a government benefit. The government, and not the parties or the court, will determine how the benefit is distributed. According to government policy, the CCB will be paid to both parties given the shared parenting regime. Each party will receive 50% of the portion that they would otherwise have received had they had primary care. Because of his income, the father will receive little and the mother will only receive half of what she currently receives. The result is that the mother will be in a worse financial position than either party envisioned, while the father's financial position will not be substantially improved.

[54] Because the parties' basic premise was erroneous, they will supply further submissions, based on the evidence, and in conformity with the required *Cantino* analysis. In the meantime, the father will pay the mother, interim child support in the set-off amount, together with his proportional share of the s.7 expenses.

**Conclusion**

[55] The interim order will provide for a joint and shared parenting arrangement in keeping with the child's best interests and according to the specific provisions stated in this decision. The child will attend grade primary at St. Stephen's Elementary School in Halifax. The father will pay child support to the mother and the parties will provide further submissions on the appropriate amount given the confusion surrounding the CCB issue.

[56] Costs will be discussed once a final decision is made on the child support issue.

[57] The parties are encouraged to use ADR to resolve the outstanding issues on a final basis.

Forgeron, J.