

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *S.L.J. v. K.B.*, 2019 NSSC 268

Date: 2019-09-13

Docket: SFHPSA 112949

Registry: Halifax

Between:

S.L.J.

Applicant

v.

K.B.

Respondent

Judge: The Honourable Justice Theresa Forgeron

Heard: August 26 and 27; and September 4, 2019 in Halifax, Nova Scotia

Oral Decision: September 4, 2019

Written Release: September 13, 2019

Counsel: Hannah Rubenstein for the Applicant
Shelley Hounsell-Gray, QC, for the Respondent

By the Court:

Introduction

[1] This decision concerns six-year-old K who is the son of the father, SLJ and the mother, KB. The father and the mother do not agree on three specific parenting issues. First, the mother wants to establish the child's home in Oshawa, Ontario, while the father wants the child to continue to live in the Halifax Regional Municipality. Second, the mother seeks access restrictions, including supervised visits. The father strenuously disagrees. Third, the father wants a liberal parenting plan while the mother seeks sole decision-making, primary care, and infrequent visits between the father and the child.

[2] Many of the issues in this decision arise because of the father's past criminal conduct. He has a significant history involving convictions for assault, breaches, threats and procurement. The father is currently on probation.

Issues

[3] To decide the parenting plan, I will address the following five issues:

- Does violence remain an outstanding problem?
- Should the relocation request be granted?
- Should there be restrictions placed on the father's parenting time?
- What parenting plan is in the child's best interests?
- Should costs be awarded?

Background

[4] When the mother was 16 years old, she began a relationship with the 20-year-old father. The mother soon became pregnant and gave birth to the child in February 2013. The parties never married, nor did they live together.

[5] The mother was always the child's primary care parent. She met all his needs. The father had limited involvement. The father was violent towards the mother throughout much of the child's life. The father did not provide financial support for the child.

[6] Child protection authorities became involved; services were offered on a voluntary basis. Domestic violence was the protection concern. The mother engaged in extensive therapy with a counsellor, Ms. Coward, who is skilled in domestic violence therapy. With Ms. Coward's help, the mother was able to break through the cycle of violence. The father did not participate in services.

[7] The father began to spend time in Ontario and eventually moved to a condo in the Toronto area. He ultimately was convicted of two counts of procuring the sexual services of a person 18 years of age. The father was incarcerated in Ontario while on remand from January 19, 2017 until June 22, 2018. Once the father was released from prison, he returned to Halifax. He continues to be on probation.

[8] For her part, the mother decided to pursue an education. She attended university and graduated with a BSc in Nursing. She is now an RN. The mother found work in Nova Scotia, but not a permanent position and not a job with work hours conducive to raising a young child as a single parent.

[9] The mother therefore began to look elsewhere. She found permanent employment with daytime hours at a medical center in Oshawa, Ontario. The mother will not have to work nights; the medical center is only open in the day.

[10] The mother wants to relocate to Ontario with the child. She wants the father to have supervised visits and to undergo therapy. The father objects to the mother's plan.

[11] This contested application was heard on August 26 and 27, 2019. Each party testified. In addition, other family members also presented evidence - the paternal grandmother and step-grandmother and the maternal aunt. Submissions were provided at the end of the hearing to supplement the parties' excellent briefs.

[12] The oral decision was given a week later on September 5, 2019. Costs submissions were invited, and an award of \$8,000 was granted to the mother.

Analysis

[13] **Does violence remain an outstanding problem?**

Position of the Parties

[14] The father stated that violence is no longer a relevant issue. He noted that his convictions are historical. He stated that he is no longer violent. As proof, the father confirmed that he has not been in trouble since he was released from prison

over a year ago. Finally, the father indicated that he had made significant progress, observing that he went from assaulting the mother, to threatening her, and now to only calling her names.

[15] In contrast, the mother does not share the father's account or optimism. She noted that the father shows little insight and that he has not made positive changes in his life. The mother is concerned that violence is an ongoing issue. She wants to protect the child from the father's lifestyle.

Legislation and Law

[16] The *Parenting and Support Act* states that violence is a relevant factor in the best interests analysis in s. 18(6)(j), 18(7) and 18(8) which provide as follows:

(6) In determining the best interests of the child, the court shall consider all relevant circumstances, including ...

(j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

(7) When determining the impact of any family violence, abuse or intimidation, the court shall consider

(a) the nature of the family violence, abuse or intimidation;

(b) how recently the family violence, abuse or intimidation occurred;

(c) the frequency of the family violence, abuse or intimidation;

(d) the harm caused to the child by the family violence, abuse or intimidation;

(e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and

(f) all other matters the court considers relevant.

(8) In making an order concerning custody, parenting arrangements or parenting time in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a

consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j).

[17] Family violence is defined in s.2(da) of the *Act*. The expansive definition states as follows:

(da) “family violence, abuse or intimidation” means deliberate and purposeful violence, abuse or intimidation perpetrated by a person against another member of that person’s family in a single act or a series of acts forming a pattern of abuse, and includes

- (i) causing or attempting to cause physical or sexual abuse, including forced confinement or deprivation of the necessities of life, or
- (ii) causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour including, but not limited to,
 - (a) engaging in intimidation, harassment or threats, including threats to harm a family member, other persons, pets or property,
 - (b) placing unreasonable restrictions on, or preventing the exercise of, a family member’s financial or personal autonomy,
 - (c) stalking, or
 - (d) intentionally damaging property, but does not include acts of self-protection or protection of another person;

[18] These legislative amendments were enacted in 2017 to confirm the connection between family violence and parenting. Courts, however, recognized this link well before the amendments were enacted. Some cases discussing violence, both before and after the 2017 amendment, will now be reviewed.

[19] In *Doncaster v. Field*, 2014 NSCA 39, Oland, JA, affirmed a trial decision which denied access between a father and his children. In so doing, the court held that a complete denial of access is an infrequent solution, but was nonetheless merited where access would place the children at risk of emotional or physical harm, or where access was otherwise not in the children’s best interests. The evidence confirmed that the father caused physical and emotional harm to the children when he reacted in a violent and unpredictable fashion towards or in the presence of the children. The children were angry, frustrated and humiliated by the father’s conduct. The father lacked insight.

[20] In *Werner v. Werner*, 2013 NSCA 6, Bryson, JA refused to disturb a trial judge’s decision to deny a father access because the father violently assaulted his wife and engaged in psychologically abusive and controlling behavior. The court held that although the trial judge’s denial was unusual, it was nonetheless justified

given the evidence. The court also noted that the denial was not necessarily permanent as the judge was prepared to review the access provisions after the father completed an assessment and counselling.

[21] In *Abdo v. Abdo*, 1993 NSCA 205, Pugsley, JA restored the Family Court's decision terminating the father's access. The father was a domineering, selfish, argumentative and cruel man, who was both unpredictable and uncontrollable. His lifestyle was at odds with his parental responsibilities. Access was terminated because the mother proved access was not in the best interests of the children. The mother did not have to prove that access would be harmful to the children.

[22] In *K.M. v. K.M.G.*, 2018 NSSC 159, MacDonald, J discussed the negative impact that family violence has on children. She noted that children are harmed when they live in a home where there is violence, even if they do not directly witness the violence. She noted that “[c]hildren who are placed in a position to know or become aware of one parent's propensity to demean, belittle, dominate and control the other parent are placed in an unhealthy situation ...” at para. 68. The court granted the mother sole custody, denied the father access, and held that the mother did not have to communicate or consult with the father. She held that an application to vary could be filed when the father made significant lifestyle changes by undertaking therapy and training.

[23] In *D.S. v. R.T.S.*, 2017 NSSC 155, this court confirmed that supervised access remained in the children's best interests because of the father's violence, volatility, impulsivity, and unpredictable and reactive behaviour towards the mother. Further despite taking anger management courses, the father lacked insight and did not make positive and permanent lifestyle changes. The court also described why violence is linked to the child's best interests at para. 28, which states as follows:

[28] Unlike its provincial counterpart, the *Divorce Act* does not specifically address the issue of family violence. This omission, however, does not mean that violence is not a relevant consideration when assessing best interests. It is. Family violence negatively affects children. Violence erodes confidence and self-esteem. Violence perverts a healthy family life. A child who is exposed to violence learns that violence is an acceptable way to resolve disputes. It is not. A child who is exposed to violence learns that violence is an acceptable way to express love. It is not. In my decision, I considered the issue of family violence and the impact that violence played on the children's development.

[24] In *Peters v. Reginato*, 2016 NSSC 345, this court held that family violence was a significant factor in determining the children's best interests where the father

was physically and emotionally abusive to the mother and where the father lacked insight and remorse. The father was ordered to participate in therapeutic counselling. Further, the mother's obligation to communicate with the father would terminate if the father became aggressive, or abusive or used inappropriate language when speaking with the mother. The mother was granted final decision-making authority in the event the parties reached an impasse on parenting decisions.

[25] In *Vaculik v. Vaculik*, 2015 NSSC 202, Lynch, J reduced the father's parenting time and placed restrictions on his access because of concerns surrounding violence. In particular, the court noted that the "father's vile, misogynistic and abusive emails, texts and phone calls to the mother defy logic": para. 28. The court further noted that "[n]o one should have to put up with the messages that the father has sent to the mother": para. 30. The court found that the father's conduct created a significant risk that the child would suffer emotional harm. The mother was released from her obligation to communicate with the father or to facilitate communication between the father and the child.

Decision

[26] The father chose to be violent to the mother and to others. Some of his historical violent conduct resulted in criminal convictions, which include the following:

- Convictions for assaulting the mother on March 27, 2013, June 19, 2013 and July 19, 2013.
- Conviction for failing to comply with a condition on July 20, 2013.
- Conviction for uttering death threats on November 26, 2015 and breaching probation on the same day.
- Conviction for two counts of procuring the sexual services of a person 18 years of age in 2015.

[27] In addition, I accept the mother's evidence that the father abused her on other occasions. The police were not called for these assaults. The father was not charged for these assaults.

[28] These examples of abuse are historical. I must now determine if violence continues to be an ongoing concern. I am permitted to examine past conduct when

assessing future risk. In *D.(S.A.) v. Nova Scotia (Minister of Community Services)*, 2014 NSCA 77, para. 82, a child protection case, Fichaud, JA held that although “[t]here is no legal principle that history is destiny”, past conduct is relevant as it may signal “the expectation of future risk”.

[29] Past violence, though relevant, does not necessarily determine current status. Most people have the capacity to effect positive and permanent lifestyle changes, even in the face of significant historical deficits. I must therefore examine the evidence to determine if, on a balance of probabilities, the father incorporated permanent lifestyle changes to ensure that violence is no longer an issue.

[30] Unfortunately, I find that he did not. Violence remains an ongoing problem for the following reasons:

- The father shows little insight. As an example, the father suggests that his conduct improved because he only calls the mother demeaning and degrading names as opposed to assaulting her or threatening to harm her. As another example, the father fails to recognize that the child is indirectly harmed when he acts violently towards the mother, including when he hurls insults at her. As another example, the father dismissed the relevance of his procurement conviction, instead appreciatively noting that many other similar charges were dismissed.
- The father displays little genuine remorse for his past conduct.
- The father continues to blame the mother when she does not immediately respond to his demands. The father continues to lash out at the mother through social media accounts. The father calls the mother vile names.
- The father is disrespectful of the mother and women in his social media accounts. He also was involved in the sex trade. Neither assists with the father’s submission that violence is no longer an issue.
- The father suggested that he would introduce the child to toy guns because he was concerned about the colour of the child’s pyjamas and his choice of extracurricular activities. The father believes that violent toys will enhance the child’s manhood.

- The father did not provide credible evidence that the anger management training that he undertook while incarcerated resulted in either positive or permanent lifestyle changes.

[31] In summary, violence remains a significant problem that impacts the parenting decision that I will make in the child's best interests.

[32] **Should the relocation request be granted?**

Position of the Parties

[33] The father does not want the child to relocate to Ontario. He expressed several concerns, including the following:

- The move is an attempt to separate the child from him and to limit his relationship with the child. The mother essentially cut the father out of the child's life; the father's lack of involvement was not his choice, but instead controlled by the mother's actions or his incarceration.
- The child will be unnecessarily uprooted from his school, church and friends if he moves. The child did well in French immersion last year and may not be able to continue if he moves to Ontario. The child attends church in Halifax. This community will not be available should the child move to Ontario. The child will lose his connection with his friends. Emotionally this will be difficult for the child.
- The child will be negatively affected by the move because he will lose physical contact with both sides of his family. The child shares a close bond with his maternal relatives who live in Nova Scotia. In addition, he has positive relationships with some of his paternal relatives and needs to develop stronger ties with the father and the father's other children. Familial relationships will suffer because Facetime and phone contact are poor substitutes to in-person contact.
- The mother does not foster the father-son relationship. Matters will only get worse should a move to Ontario be approved as demonstrated by the mother's plan to only return to Nova Scotia once per year for access.
- The move will not improve the mother's finances and will increase the cost of access.

- The move will not achieve the maximum contact principle which underpins the best interests analysis.

[34] For her part, the mother states that relocation is in the child's best interests because it will improve the quality of their life for financial and nonfinancial reasons. She acknowledges that the move will result in changes and transitions. However, from the mother's perspective, the child is well-adjusted and will flourish in their new home and community.

Decision on Presumption

[35] The parties agree that s. 18H (1) of the *PSA* is the governing presumption. This section states that relocation is presumed to be in a child's best interests if the primary caregiver requests the move and the other party is not substantially involved in the child's care. In such a case, the opposing party must prove why the relocation is not in the child's best interests.

[36] I agree that s. 18H(1) is the applicable presumption. The mother was and is the primary care parent. The father was not substantially involved in the child's care. The evidence confirms that the father spent little time with the child. The father was virtually absent from all decisions concerning the child's day-to-day care; he took no part in ordinary decisions affecting the child.

[37] I accept the chart found in para. 28 of the mother's second affidavit as an accurate summary of the limited contact between the father and the child since the child's birth. This chart confirms that the father was not an active, nurturing or positively involved parent. The father did not foster a deep and meaningful relationship with the child. Further, the father provided little financial support for the child. All these responsibilities were assumed by the mother.

Decision on Best Interests

[38] Although there is a presumption that the relocation is in the child's best interests, I must nonetheless examine the evidence in concert with the factors stated in ss. 18H(4) and 18(6) of the *PSA*. Such an analysis must be comparative and balanced: *D.A.M. v. C.J.B.*, 2017 NSCA 91. I further note that many s.18 factors are akin to the best interests factors discussed in *Gordon v. Goertz*, [1996] 2 S.C.R. 27 and in *Foley v. Foley*, 1993 N.S.J. No. 347.

[39] After applying these factors to the evidence, I find that the father did not rebut the presumption in favour of relocation. To the contrary, the evidence

overwhelming confirms that relocation is in the child's best interests for reasons discussed below.

Reasons for Relocation - s.18H(4)(b)

[40] I accept the mother's evidence as to her reasons for relocation. Simply stated, the mother found permanent employment at an Ontario clinic that does not require night shifts. In Ontario, the mother will not work gruelling 12-hour hospital shifts that includes nights. This is important because the mother is a single mom. The mother will have more time available for the child. In addition, she will have less need for expensive childcare. The mother was unable to find permanent employment in Nova Scotia which did not require night shifts.

[41] The mother's reasons for moving are focused on the child's needs and are in his best interests. Her reasons are reasonable and were made in good faith: ***Duggan v. White***, 2019 BCCA 200.

[42] I reject the father's submission that the move is designed to frustrate the development of a father son relationship. There is little credible evidence to support such a speculative conclusion.

Effect of Change in Parenting Time on Child - 18H(4)(c) and Appropriateness of Changing the Parenting Arrangement – 18H(4)(e)

[43] I find that the relocation will have a negligible impact on the child's parenting time with the father because the father has minimal contact with the child in any event.

[44] Further, I do not accept that the mother is responsible for the lack of contact. The father must accept responsibility for his own choices. The father adopted a lifestyle that was not compatible with his parenting responsibilities. That was his decision; it was not the decision of the mother. The father chose to be violent. The father chose to move to Ontario. The father chose to be involved in the sex trade. The father was incarcerated because of his choices. The mother was not responsible for the father's choices.

[45] The father did not and does not have frequent contact with the child. A relocation to Ontario will not negatively impact the father-son bond. Such a bond does not exist.

[46] In comparison, relocation will have a positive impact on the mother-child relationship. For the most part, the mother will be working when the child is in

school or in the early evenings. A move to Ontario, will therefor result in the mother and the child having more time together. The mother will be more available to the child.

Effect of Removal from Family, School and Community – s. 18H(d)

[47] A move from Nova Scotia to Ontario will involve significant changes in the child's life. The extended family will no longer be as physically available. The move will also disrupt the child's involvement with his current school, church, community and social supports.

[48] I find, however, that the child will adjust for two reasons. First, he is happy and resilient. Second, he will be with his mother, a mother who consistently ensured his best interests since he was a baby. A mother who is in tune with his needs. A mother who will oversee and ensure a seamless transition. A mother who will provide support, love and nurture. A mother who will ensure that the child is happy in his new school, with his new friends, and with his new community. The child is indeed in good hands.

[49] In contrast, if the child is placed in the father's care, the child will live in the HRM, but not in the same residence, and not with his mother. In addition, there is little evidence to suggest that the father will ensure the involvement of the maternal relatives given the father's animosity towards them. There is little evidence that the father will promote the child's education or that he will ensure the child's attendance at activities or that he will coordinate play dates. There is little evidence that the father's plan is viable or in the child's best interests. The child would not flourish if placed in the father's care.

Compliance with Previous Court Orders or Agreements – s. 18H(4)(f) &(g)

[50] There are no past parenting orders.

[51] I have no concerns about the mother complying with an order of this court.

[52] I do not have the same level of comfort about the father because he consistently disobeyed the law and Provincial Court orders in the past. The father ascribes little value to court orders or to the law.

Additional Expenses and Transportation Options– s.18H(4)(h) & (i)

[53] Relocation will result in additional transportation and access expenses. Such a finding is not particularly relevant given the absence of a strong relationship between the child and his father.

Notice and a Proposed Parenting Schedule – s. 18H(4)(j)

[54] The mother did not provide notice in keeping with the legislation. She did, however, make some attempt to notify the father about her plans. I waive strict compliance with notice in the circumstances of this case.

S. 18(6) Considerations - Physical Needs of the Child

[55] I have no concerns about the mother's ability to meet the child's physical needs. She has done so throughout his life, with negligible financial or emotional support from the father. I accept the mother's evidence on this issue. I find that the mother will continue to prepare healthy food, buy appropriate clothes, and properly manage her home. The mother will provide transportation and ensure that the child participates in structured and unstructured activities.

[56] In contrast, the father does not have his own residence. He stays with his mother in her two-bedroom apartment occupied by other family members. The father plans to have the child sleep in the grandmother's bedroom with him, while the grandmother sleeps on the couch. The father will rely upon his mother to meet many of the child's physical needs.

Emotional, Educational and Social Welfare Needs of the Child

[57] I have no concerns about the mother's ability to meet the child's emotional, educational and social welfare needs in Ontario. The mother has done an excellent job thus far. I infer that she will continue to use her superior parenting skills to do so in the future. I note that the mother selected a French immersion school in Ontario in keeping with the child's positive exposure to French in grade primary while attending school in HRM.

[58] In contrast, the father has no history of supporting and assisting the child educationally or emotionally or socially.

Moral and Spiritual Development / Role Model

[59] The mother assumed an active role in the child's spiritual and moral development. The mother is an excellent role model. I am confident that the mother will continue to be an excellent role model.

[60] In contrast, the father is not a good role model. He did not assist with the child's moral development. To the contrary, the father consistently engaged in destructive, violent and criminal conduct. At this point, he has little to offer the child.

Comparative Summary of Plans

[61] Applying a child centric and holistic approach, I find that the father did not prove that it is in the child's best interests to remain in Nova Scotia with him. To the contrary, I find it is in the child's best interest to relocate to Ontario with his mother. Ontario offers the mother a superior employment schedule and greater family stability. The child will flourish in Ontario because he is in the care and custody of his mother who prioritizes his needs.

[62] Further, the child will not flourish if placed in the care of the father. The father's plan is untested and fraught with difficulties, the most significant of which is the lack of relationship between the father and the child. The father's plan lacks stability, focus and structure. The court will not gamble with the child's happiness by accepting the father's plan.

[63] The relocation request is granted in the child's best interests.

[64] **Should restrictions be placed on Mr. LJ's parenting time?**

[65] The mother seeks restrictions on the father's parenting time because of issues related to violence. The father disagrees.

[66] Courts are directed to apply specific principles when determining whether access restrictions should be imposed, however, all within the context of the unique needs and circumstances of the child. The court's decision must enhance the child's best interests. The principles that I considered include the following:

- The best interests test is the only test; parental preferences and rights play no role: *Young v. Young*, para. 202.
- The court must give effect to the mandatory, maximum contact principle premised on the fact that contact with each parent is valuable. This principle, however, is modified by the child's best interests. The goal of maximum contact is therefore not absolute: *Young v. Young*, para. 204.

- Risk of harm to the child is not a condition precedent for limitations on access; the ultimate determination is the child's best interests, although risk of harm maybe a relevant factor: *Young v. Young*, para. 209.
- Where suggested restrictions affect the quality of access, the court should consider whether the offending conduct poses a risk of harm to the child that outweighs the benefits of a free and open relationship: *Young v. Young*, para. 210.
- Courts are hesitant to deny all access. Parental contact is seen as desirable. A complete denial of access is ordered infrequently, where parental conduct is extreme, and where access would place the child at risk of emotional or physical harm or where access is not in the child's best interests: *Doncaster v. Field*, para. 55.
- The burden is on the parent seeking access restrictions to prove that the restrictions are in the child's best interests: *Slawter v. Bellefontaine*, para. 20.
- Supervised access is seldom seen as an indefinite order or long-term solution, although in rare circumstances it may be appropriate: *Slawter v. Bellefontaine*, paras. 44 – 48.

[67] Circumstances where supervised access is an appropriate solution include the following:

- Where the child requires protection from physical, sexual or emotional abuse.
- Where the child is being introduced/reintroduced after a significant absence.
- Where there are substance abuse issues.
- Where there are clinical issues involving the access parent: *Lewis v. Lewis*, 2005 NSSC 256 as approved in *Slawter v. Bellefontaine* at para. 47.

[68] I find it is in the child's best interests to place restrictions on access for the following reasons:

- The father was and continues to display violent behaviour. In the past, he repeatedly assaulted the mother. He threatened to kill the mother. He now demeans the mother by calling her derogatory names.
- The father objectifies women. He uses manipulation, intimidation, threats and physical violence to gain control.
- The father lacks insight into his problems. He assumes little responsibility for his conduct.
- The father did not make permanent lifestyle changes to address his violent approach and criminal lifestyle.
- The father failed to meaningfully engage in services available to address issues of violence and the objectification of women.
- The father was virtually absent from the child's life.

[69] These findings confirm that the father's conduct poses a substantial risk of physical and emotional harm that outweighs any potential benefit arising from a free and open relationship. The father is a manipulative, violent, unpredictable man who objectifies women. His lifestyle is the antithesis of what is required from a loving and nurturing father.

[70] In such circumstances, the following restrictions are in the child's best interests:

- All contact between the father and the child must be supervised. In person contact may be supervised by either the paternal grandfather or step-grandmother or any other person acceptable to the mother. The mother can personally supervise or have a third party supervise all telephone or social media contact between the child and the father.
- The father must participate and successfully complete an intensive individual program on violence, with a trained therapist or counsellor, so that he can demonstrate that he has achieved the following stated goals:
 - Insight into what violence entails, including emotional, physical and sexual violence.

- Insight into the direct and indirect impact of violence on the child, regardless of whether the child was present for the abuse.
- Insight into the direct and indirect impact of violence on the mother.
- Insight into the direct and indirect impact of violence on himself.
- Assumption of personal responsibility for his own violent conduct.
- Acquisition of skills to permanently change his objectification of women as exemplified in his views and treatment of women.
- Acquisition of skills to develop healthy adult relationships.
- Acquisition of skills to develop a healthy and supportive parent child relationship.
- Acquisition of skills to problem-solve and manage anger and frustrations in a healthy and nonviolent fashion.

[71] Before making an application to vary these parenting restrictions, the father must show that he effected permanent lifestyle changes by completing the violence programming, by not engaging in any further criminal activity, and by either obtaining employment or continuing with his education, as promised in the past.

[72] In the event the father does not make the necessary lifestyle changes, then the mother may file an application to vary the parenting restrictions given that supervised access is not meant to be a long-term solution. In such a case, it may be that no further contact will be found to be in the child's best interests.

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

[74] The following parenting plan is in the best interests of the child:

- The child will be in the mother's care and custody. The mother's residence will be the primary residence of the child.
- The mother will have sole decision-making in respect of all matters impacting on the child including the child's residence, health,

education, religion and general welfare. The mother is not required to either consult with or advise the father about any decisions that she makes.

- The mother is permitted to apply for the child's passport, and any renewal, without the father's consent or authorization.
- The mother is permitted to travel with the child within Canada or internationally without the consent or authorization of the father.
- The father's parenting time with the child, whether in person or via telephone or social media, must be supervised and will be on terms and conditions established by the mother. The paternal grandfather or the paternal step-grandmother may act as supervisors. If they are unable or unwilling to supervise, the mother may designate another supervisor, in the mother's discretion, to supervise the father's parenting time.
- The mother will ensure that the child travels to Nova Scotia once per year to have parenting time with the father, the dates and times of which must be in keeping with the mother's schedule. All terms and conditions will be as stipulated by the mother. This provision is contingent on the father expressing an interest in seeing the child.
- The mother will provide the father with the name and address of the child's school, doctor and dentist. Both parties have the right to seek information and documentation about the child directly from these professionals.
- The mother is not required to communicate with the father.

[75] What is the appropriate order for costs?

[76] The mother sought costs of \$8,000 while the father wanted to avoid their payment because of his financial circumstances. I awarded costs of \$8,000 to do justice between the parties in keeping with Rule 77 and the principles stated in *Armoyan v. Armoyan*, 2013 NSCA 136.

[77] As this application was akin to a contested chambers motion, and because there was no amount involved, I applied Tariff C. According to Tariff C, costs would result in a base award between \$2,750 and \$3,000. The base award is

subject to a discretionary multiplier. I used a multiplier of about 3 in the circumstances of this case to arrive at an award of \$8,000, inclusive of disbursements, for the following reasons:

- The mother was wholly successful. The father was wholly unsuccessful. The father should not have objected to the child's relocation. The father should not have objected to the imposition of parenting restrictions.
- The mother's case was presented in an efficient and organized fashion. The quality of the materials was excellent.
- The focus of the hearing was the child's best interests. The parenting issues were important to the mother. The outcome was important to the child.
- The matter involved relocation and parenting restrictions. The application was not overly complex.
- The hearing was a full day together with an additional appearance of slightly more than an hour for the oral decision.

[78] I did not deny the mother costs because the father said he lacks the means to pay. If the father experiences financial difficulties, his circumstances are self-induced. There is little credible evidence to support his inability to work. I also note that the father did not apply to be exempt from costs pursuant to Rule 77.04.

[79] Further, this legal proceeding negatively impacts on the mother's ability to care for the child. The father does not pay child support. Other than the occasional gift, the mother was the child's sole provider. In the future, the mother will continue to assume this role. The mother had to use her limited resources to fund an unnecessary contested hearing. This will negatively impact on the mother's financial ability to care for the child. A cost order will reduce the impact.

[80] Finally, I did not deny the mother costs because the father was represented through a certificate from Nova Scotia Legal Aid. The father should not have contested the mother's relocation request nor the access restrictions. This is analogous to the Court of Appeal's conclusion in *Stubbart v. MacPherson*, 1996 NSCA 175.

Conclusion

[81] This contested parenting application resulted in the following orders in the child's best interests:

- The mother's relocation request is granted. She is permitted to move to Ontario with the child.
- The mother's request for sole decision-making is granted. In addition, the mother is not required to consult or communicate with the father.
- The mother's request for parenting time restrictions is granted. The father's parenting time is subject to supervision on terms and conditions stipulated by the mother and will include one visit per year in Nova Scotia. The father is also directed to participate in domestic violence therapy to obtain education, training and skills to assist him in making permanent lifestyle changes. The therapy must be successfully completed before the father files a variation application.
- The mother's request for costs is granted. Costs of \$8,000 are awarded.

[82] The mother's counsel will draft and circulate the order.

Forgeron, J.