

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

**Citation:** *Tobin v. Tobin*, 2020 NSSC 55

**Date:** 2020/02/18

**Docket:** 1201-061396/SFHD - 050880

**Registry:** Halifax

**Between:**

Kevin Mark Tobin

Petitioner

v.

Anne Claire Tobin

Respondent

**Judge:** The Honourable Justice Elizabeth Jollimore

**Heard:** September 25, 26 and 27, 2019.

**Counsel:** Kenzie MacKinnon, Q.C. for Kevin Tobin  
 Judith Schoen for Claire Tobin

**By the Court:**

**Introduction**

[1] Kevin and Claire Tobin are the parents of two sons, Grant and Mark. Both sons had their primary home with their mother until July 27, 2017, when Grant moved to his father's home where he remains.

[2] Mr. Tobin applied to vary the existing parenting order to address custody, parenting time and child support. Ms. Tobin didn't file a response to the variation application. I've released an endorsement resolving child support: *Tobin*, 2019 NSSC 314.

[3] Grant was 14 when he moved to his father's home. He's now 17. He's had no face-to-face contact with his mother in over two years. Grant and his mother last spoke to each other, by phone, in September 2019.

[4] Grant's move to his father's home and his lack of contact with his mother is a material change in circumstances giving me jurisdiction to consider, anew, what parenting and custodial arrangements are in Grant's best interests: *Divorce Act*, R.S.C. 1985, c. 3 (2<sup>nd</sup> Supp.), subsection 17(5).

### **The Voice of the Child Report**

[5] It seems that Grant and his parents all believed that Grant's parenting would work itself out after he moved to his father's home and Grant would end up in a shared parenting arrangement. However, weeks passed without any rapprochement between Grant and his mother.

[6] A few months after Grant's move, each parent saw Martin Whitzman, individually and with Grant. With Mr. Whitzman, they worked out a plan to increase contact between Grant and his mother beyond weekly phone calls. Grant backed away from his commitment to the plan almost immediately. Grant had a brief lunch with Ms. Tobin: he said the lunch went poorly, with Ms. Tobin refusing to forget the past.

[7] On Mr. Tobin's motion at a case management conference, Associate Chief Justice O'Neil ordered that Grant participate in the preparation of a Voice of the Child Report by Martin Whitzman.

[8] The Report was prepared shortly after Grant turned 15. According to it, Grant, at 14, wanted a shared parenting arrangement. Grant said his mother opposed this and opposed him spending any more time with his father. Grant moved to his father's home after a series of disagreements with his mother. The disagreements, about how much time he could spend with his father and whether he'd see a doctor after a small bike accident, created tension between Grant and Ms. Tobin and Grant left her home, not wanting to "spend the summer like this." Grant claimed Ms. Tobin had disconnected his phone and internet.

[9] Grant has come to believe that his mother is stuck in being angry at him. Ms. Tobin believes that Mr. Tobin has abdicated his parental responsibility to ensure that Grant has a relationship with her.

### **Grant's custody and parenting arrangements**

[10] My sole consideration in deciding Grant's parenting and custodial arrangements is Grant's best interests: *Divorce Act*, R.S.C. 1985, c. 3 (2<sup>nd</sup> Supp.), subsection 17(5).

[11] Both parents say they want Grant's relationship with his mother to be restored. Each complains the other has not done enough, or has not done the right things, to make this happen.

[12] Though he applied to vary custody, Mr. Tobin did not pursue any change from the existing joint custody arrangement at the hearing.

[13] Mr. Tobin wants an order which places Grant in his primary care, reflecting the *status quo*. He does not want Grant's parenting time with Ms. Tobin to be defined, but to be left to Grant and Ms. Tobin to work out.

[14] At the hearing, Ms. Tobin sought sole custody and primary care of Grant. She said she needed this because Mr. Tobin had alienated Grant from her, and this would enable her to ensure Grant's engagement with a person who is qualified to assist her and Grant in restoring their relationship. She says that Mr. Tobin won't make Grant take part.

[15] To give Grant's custody and care to Ms. Tobin requires me to accept that Ms. Tobin is the only parent who can ensure Grant will participate.

[16] Ms. Tobin offered two plans. First, she and Grant and his siblings would attend the Family Bridges Program. Alternately, she proposed the involvement of Dr. Gary Kneier, a clinical psychologist in Alberta.

[17] Ms. Tobin provided a printout of information from the Family Bridges' Program website. It says, in part: the program "helps unreasonably alienated children and adolescents adjust to living with a parent they claim to hate or fear". It is not intended for "children whose rejection is reasonable, proportionate to and warranted by the history of the child's relationship with the rejected parent." I acknowledge that the information from the website is not a professional or therapeutic recommendation, but these words are relevant to my decision.

[18] Ms. Tobin also offered an article printed from Dr. Kneier's website: "How Judges and Therapists Might Work Together". Dr. Kneier didn't testify. There is nothing in the article which suggests that Dr. Kneier is uniquely or exclusively able to assist or that I must transfer Grant's care and custody to his mother to restore their relationship.

[19] At the pre-trial conference on July 28, 2018 and in the corresponding memorandum, Ms. Tobin was advised to present expert evidence to support her claim that Grant had been alienated. She has not.

[20] I don't accept Ms. Tobin's view that Grant has been alienated. The evidence doesn't show that Grant demonstrates the typical behaviours of an alienated child.

[21] The research of Fidler, Bala, Birnbaum and Kavassalis, "Child Custody Assessments, Recommendations, and Judicial Remedies Regarding Alienated Children" in *Challenging Issues in Child Custody Disputes: A Guide for Legal and Mental Health Professionals* (Toronto: Carswell Thomson, 2008) provides a convenient summary of generally known and accepted observations relating to alienation.

[22] Fidler, Bala, Birnbaum and Kavassalis identify 14 typical behaviours of alienated children. In general, alienated children have one-dimensional views of each parent: one is idealized and the other is vilified. The child's hatred of the vilified parent is not tempered by any ambivalence, guilt or reason. The child may openly display and express their hatred for the vilified parent. This is not the way Grant treats his mother.

[23] Though Grant doesn't see his mother, in speaking to Mr. Whitzman about her, he "didn't describe large issues [with his mother] beyond small arguments." According to Mr. Whitzman, "Grant had no difficulty expressing love for both of his parents". Grant had fond memories of family trips with his mother to British Columbia. Grant is not entirely critical of Ms. Tobin as an alienated child would be. He has one concern about her. He feels she is still upset with him about his move to Mr. Tobin's.

[24] Ms. Tobin believes Grant's feelings are not genuine but are the result of his father's manipulation. I heard evidence that after the first day of this variation hearing, Ms. Tobin and her new partner telephoned Grant. During the conversation, Grant was asked if he was drunk, high or gay. Upset by this, he ended the call. Grant's reaction was not manipulated but entirely the result of the questions he was asked.

[25] Grant's views and preferences about his relationship with his mother are focused and specific: he does not want her to be angry about his increased time with his father.

[26] Grant does not hate or fear his mother. His rejection of *time with* his mother (and I stress this is a rejection of spending time with her, not a rejection of her) has endured because he sees her continuing to be angry with him about his spending more time with his father. His assessment is correct: Ms. Tobin still has strong negative emotions about this.

[27] I find that Ms. Tobin's plan is not one which will resolve the fracture between her and Grant. Because this is the basis for her request for custody and care, I reject her claim for sole custody and primary care of Grant.

[28] Grant wishes to live with his father. He has acted on this view consistently for over 2 ½ years. At 17, he is of an age where I respect his view. The parents will continue to share decision-making but Grant's primary home will be with his father.

[29] The passage of time has become an obstacle to the restoration of Grant's relationship with Ms. Tobin. Grant remains open to re-establishing this relationship. According to the Report, Grant wants to resume his relationship with his mother with phone calls, extending – hopefully – with actual visits.

[30] I order that Mr. Tobin and Grant identify 3-5 professionals (counsellors, therapists, psychologists or other qualified people) who Grant is willing to work with to restore his relationship with Ms. Tobin. If Grant wishes, and Mr. Whitzman is willing, this may include Mr. Whitzman. The list of Grant's chosen professionals must be given to Ms. Tobin by March 20, 2020. She will then have until April 17, 2020 to identify the person she is willing to work with. From there, Grant, his mother and his father, will follow the professional's direction with regard to meetings and other steps to restore Grant's relationship with his mother. This may include meetings between the professional and the parents, individually or jointly.

[31] Mr. Tobin must take Grant to all scheduled appointments. Both parents must attend appointments where their attendance is requested.

### **Return of Grant's personal items**

[32] In his variation application, Mr. Tobin asked for Grant's computer, sneakers and personal belongings (including his health card and social insurance card) to be provided. The computer was provided but its password was not. The health and social insurance cards were provided. The wrong sneakers were provided.

[33] Mr. Tobin no longer seeks the return of the sneakers and personal belongings. He does want the computer password. Ms. Tobin is ordered to provide the computer password by February 29, 2020.

[34] Mr. MacKinnon will prepare the order. Counsel may write to me for direction if there is any issue on costs.

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Elizabeth Jollimore, J.S.C.(F.D.)

Halifax, Nova Scotia