

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Illingworth v. Illingworth*, 2020 NSSC 285

Date: 2020-10-09

Docket: 1201-71561

Registry: Halifax

Between:

Patricia Blaire Illingworth

Petitioner

v.

Douglas James Illingworth

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Theresa Forgeron

Heard: October 6, 7, and 9, 2020 in Sydney, Nova Scotia

Oral Decision: October 9, 2020

Written Decision: October 22, 2020

Subject: Family Law

Issues: Relocation; Parenting; Child Support; Debt Classification

Result: After separation, the parties agreed that the child would live with the wife in Cape Breton four days a week and with the husband in HRM for three days a week. The child started school so the interim parenting schedule was no longer feasible. The husband wanted the child to live in HRM. The wife wanted the child to live in Cape Breton. The wife was granted primary care and final decision-making in matters involving the child's health and education. The husband was granted liberal parenting time.

Retroactive and prospective child support awarded.

The RBC line of credit was not proven to be a matrimonial or family debt. The wife was not aware of the debt until after separation. The debt was the sole responsibility of the husband.

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Counsel: Jane Lenehan for the Petitioner, Patricia Blaire Illingworth
Douglas James Illingworth, Self-Represented

By the Court:

Introduction

[1] Doug and Blaire Illingworth are the separated parents of five-year-old Hunter. Hunter lives in two communities because Ms. Illingworth resides in Englishtown and Mr. Illingworth lives in Dartmouth. Under the current parenting schedule, Hunter spends four days with his mother and three days with his father. This schedule is no longer feasible because Hunter started school in September.

[2] The parties do not agree on where Hunter should live and attend school. They each presented a parenting plan in conjunction with a child support request. For his part, Mr. Illingworth wants Hunter to live and attend school in HRM. Mr. Illingworth states that if Ms. Illingworth returns to HRM, then the parties can exercise shared parenting and no child support would be payable. In the alternative, if Ms. Illingworth remains in Englishtown, then he should be granted primary care and child support, while Ms. Illingworth would have liberal parenting time.

[3] In contrast, Ms. Illingworth wants Hunter to remain with her in Englishtown and for him to continue to attend the local school. She seeks primary care with liberal parenting time to Mr. Illingworth. Ms. Illingworth also seeks child support on a retroactive and prospective basis.

[4] In addition to the unresolved parenting and child support issues, the parties do not agree on two matters. The first concerns the classification of a line of credit debt. The second concerns the disbursement of a portion of the proceeds from the sale of the matrimonial home. Mr. Illingworth states that the line of credit is a matrimonial or family debt which should be paid from the proceeds of sale. Ms. Illingworth disagrees. She states that the line of credit is Mr. Illingworth's sole responsibility. Ms. Illingworth states that the balance of the proceeds of sale should be equally divided between the parties.

Issues

[5] To resolve these issues, I will answer the following questions:

- What is the position of the parties on the parenting issues?
- What is the applicable legal test?
- Is it in Hunter's best interests to live in HRM or Englishtown?
- Who should have decision-making authority?

- What parenting schedule is in Hunter's best interests?
- What is the appropriate child support order?
- Should the line of credit debt be equally shared?
- How should the proceeds of sale be disbursed?

[6] Before addressing these issues, I will provide background information to provide context.

Background Information

[7] The parties started a relationship when Ms. Illingworth was 18 and Mr. Illingworth was 20 years old. They lived together soon after they met and married four years later on July 25, 2009. During the course of their relationship, the parties lived in Sydney, Englishtown, Baddeck, Edmonton, and HRM.

[8] Mr. and Ms. Illingworth are fortunate to have a child, Hunter James Illingworth who was born in March 2015. By the time Hunter was born, the parties were living in the matrimonial home in Timberlea. Ms. Illingworth was employed as an LPN while Mr. Illingworth worked in various capacities and in different provinces. In addition, the parties enjoyed a close and supportive relationship with Ms. Illingworth's parents, EmmyLou Wilson and Daniel MacIntyre, who live in Englishtown.

[9] The parties' thirteen-year relationship ended on June 17, 2018.

[10] Ms. Illingworth requested the separation. Mr. Illingworth reacted negatively to the news. Mr. Illingworth's emotional health deteriorated. Despite their strained relationship, the parties nonetheless continued to live together in the matrimonial home.

[11] On November 4, 2018, Ms. Illingworth contacted her parents who then travelled to Timberlea. During the evening, Mr. and Ms. Illingworth had a series of verbal confrontations, in person, via text and over the phone. Eventually, Ms. Illingworth left with her parents and Hunter to stay in a hotel. The next day, Hunter went with his grandparents to Englishtown. Ms. Illingworth joined them the following day. Ms. Illingworth felt that she had no other viable option than to relocate to Englishtown.

[12] About a month later, on December 7, 2018, the parties appeared at the Halifax Family Division for an emergency, interim hearing. In an oral decision, O'Neil, ACJ

granted shared parenting and directed that Ms. Illingworth have interim exclusive possession of the home. Mr. Illingworth was ordered to pay the mortgage in lieu of child support.

[13] Immediately after the interim decision was rendered, the parties negotiated an alternate arrangement. They agreed that Ms. Illingworth and Hunter would continue to live in Englishtown for four days of the week, while Mr. Illingworth would have Hunter for three days in HRM. In addition, they agreed that Mr. Illingworth would have interim possession of the home, and that he would pay the mortgage and household expenses in lieu of child support. The agreement was incorporated into an interim consent order.

[14] The parties were eventually able to resolve most of the property issues. They agreed to divide assets, sell their home, and pay out certain debt. Their agreement was incorporated into a consent order dated April 8, 2020. The only asset not divided is the \$10,000 held in trust from the net proceeds of sale. Mr. Illingworth wants this money to be used to pay out the RBC line of credit held in his name. Ms. Illingworth denies liability for the RBC debt and wants the net proceeds equally divided.

[15] The parties also agreed that neither party will pay the other spousal support.

[16] Mr. and Ms. Illingworth continue to follow the provisions of the interim parenting order. Hunter lives with Ms. Illingworth in Englishtown from Sunday until Thursday. Mr. Illingworth has Hunter from Thursday until Sunday.

[17] Last year, Hunter was enrolled in the pre-primary program at Baddeck Academy school. He missed every Friday because of the parenting schedule. This year, Hunter attends grade primary at the same school. He continues to miss school every Friday to accommodate the parenting schedule. Both parties recognize that this is not an appropriate long-term solution.

[18] The contested divorce trial was held in Sydney on October 6, 7 and 9, 2020. In addition to the parties, the following witnesses testified: Emmy Lou Wilson, Daniel MacIntyre, Donnette MacDonnell, and Brett MacIntyre.

Analysis

[19] **What is the position of the parties on the parenting issues?**

[20] Mr. Illingworth seeks to have Hunter live in HRM. He states that if Ms. Illingworth returns to HRM, then the shared parenting plan can be adopted.

Otherwise, Mr. Illingworth seeks primary care of Hunter. Mr. Illingworth relies on several factors, including the following as noted in his evidence and pretrial brief:

- He was an active and involved parent since Hunter was born, sharing all day-to-day activities and parenting decisions in an exemplary fashion. Hunter benefits from active involvement from both parents.
- Hunter is accustomed to spending a substantial amount of time with each of his parents. A shared parenting arrangement will only work if the parties reside in the same locale which should be HRM.
- HRM is where Hunter lived before separation.
- HRM is where the parties chose to live because it has excellent employment opportunities and is close to family. Further, HRM offers many cultural, educational, and recreational resources not available in Englishtown.
- Ms. Illingworth will be able to find suitable and gainful employment in HRM. She had a permanent full-time job in HRM previously. There are many employment opportunities in HRM.
- Ms. Illingworth fails to collaborate with him and fails to support his relationship with Hunter. For example, Ms. Illingworth did not extend his parenting time when he made reasonable requests so that Hunter could spend extra time with his mother and grandmother.
- Ms. Illingworth resists his suggestions and fails to meet Hunter's basic medical needs. Historically, Mr. Illingworth states that he has shown himself to be more capable of making correct decisions for Hunter. For example, Ms. Illingworth did not want to take Hunter to a speech language specialist, dentist, or doctor to deal with undiagnosed respiratory issues. Hunter suffered as a result. It was only through his actions that Hunter's medical needs were met.
- If Hunter is permitted to live in Englishtown, the father son relationship will be devastated because Hunter will no longer spend sufficient time with him or the paternal relatives.
- Ms. Illingworth failed to notify the court of her intention to relocate, despite planning to relocate well before the separation even occurred.
- During the emergency hearing, the judge found that it was in Hunter's best interests to return to HRM to live.
- There are additional costs associated with both parents living in different parts of the province, such as transportation expenses. Further, Hunter is

exposed to excessive, and at times, unsafe winter travel. These additional expenses and travel issues would be avoided if Hunter lived in HRM.

[21] In contrast, Ms. Illingworth states that it is in Hunter's best interests to remain with her in Englishtown for reasons which include the following:

- She was always Hunter's primary care parent who was highly involved in all decisions impacting Hunter. Hunter flourished under her primary care.
- Hunter is happy living in Englishtown and has been since he moved there almost two years ago. He has a loving and supportive relationship with his grandparents and uncle with whom he shares a home. He made excellent friends within the community. He enjoys his school and teachers.
- She cannot afford to live in HRM. Financial pressures are too great. Many of her expenses are currently reduced or eliminated because of the financial support provided by her parents.
- She does not want to live in HRM. She currently is employed and is attending school with a solid plan to further her education and employment opportunities. This plan is only possible with the support of her parents.
- Childcare was a consistent issue in HRM. The lack of appropriate childcare contributed to her taking employment related stress leave before separation. In contrast, her parents provide reliable, loving, superior, and free childcare in Englishtown.
- If she and Hunter are permitted to remain in Englishtown, they will enjoy an excellent quality of life, something that was lacking in HRM.
- If Hunter is permitted to remain in Englishtown, Ms. Illingworth will maintain Hunter's relationship with his father by providing liberal parenting time, including additional time during the summer and holidays. She demonstrated a willingness to facilitate parenting time between Hunter and Mr. Illingworth and will continue to do so.

[22] When I analyze the parties' parenting plans, I will make credibility and reliability determinations because of the factual discrepancies in the evidence. In so doing, I apply the law and factors outlined in **Baker-Warren v. Denault**, 2009 NSSC 59, as approved in **Gill v. Hurst**, 2011 NSCA 100. I carefully examined the evidence of both parties and their witnesses because all have a vested interest in the outcome and all lack objectivity because of the deeply personal nature of this proceeding.

[23] After reviewing the evidence, I find that Ms. Wilson, Mr. Daniel MacIntyre, and Mr. Brett MacIntyre were credible, straight-forward and accurate in their testimony. In addition, I prefer the evidence of Ms. Illingworth to that of Mr. Illingworth, although there were times when Ms. Illingworth wasn't entirely accurate as her memory was clouded by the stress and importance of this proceeding.

[24] In addition, I find that Mr. Illingworth's evidence suffered from a significant lack of candour, even when making allowance for the importance of outcome and stress surrounding this proceeding. To put it bluntly, Mr. Illingworth had no difficulty providing false and misleading information to the court when he felt that it was strategic to do so. The following three examples illustrate my conclusion:

- Mr. Illingworth swore and filed a false statement in 2018 and 2019 in which he failed to account for the unreported income which he earned working "under the table" while collecting EI benefits. Mr. Illingworth said that he did not disclose his "under the table" employment because he thought that the court would think his actions to be "a very bad thing".
- Mr. Illingworth swore and filed a false statement on September 29, 2020 in which he stated that his income was \$5,073 per month. When asked by the court if this statement was true, Mr. Illingworth stated that it was. When asked by the court if anything relevant happened after he signed his last affidavit, Mr. Illingworth said no. Yet, in reality, Mr. Illingworth had quit his job before September 29, 2020 and was receiving CERB which soon would be transitioned into EI. When confronted with his falsehood, Mr. Illingworth apologized and said that he did not think disclosure was important to the outcome. He confirmed that he asked his employer to lay him off because of the stress surrounding this proceeding and because he needed to attend court. He said that there was a good chance that he would be rehired.
- Mr. Illingworth provided contradictory evidence as to why he did not attend Hunter's medical appointments before separation. At one point, Mr. Illingworth stated that Ms. Illingworth did not allow him to attend. He later acknowledged during cross-examination that he previously stated that he didn't attend Hunter's appointments because he was working.

[25] As will become evident from my findings, where there is a conflict in the evidence between Mr. Illingworth and Ms. Illingworth, I generally prefer the evidence of Ms. Illingworth, Ms. Wilson, Mr. Daniel MacIntyre and Mr. Brett MacIntyre.

[26] **What is the applicable legal test?**

[27] Mr. Illingworth asked me to adopt the legal test outlined in the *Parenting and Support Act*, S.N.S. 2015, c. 44, and as reviewed in **J.E.W. v. W.E.D.**, 2019 NSSC 141. Ms. Illingworth suggests that I adopt the proposed divorce amendments regarding relocation cases. I will do neither.

[28] The law that I must apply is as set out in s.16 of the *Divorce Act*, R.S.C., 1985, c. 3, and as reviewed in caselaw, including the foundational decision of **Gordon v. Goertz**, [1996] 2 SCR 27.

[29] Sections 16(1) and (4) of the *Divorce Act* provide me with the jurisdiction to grant a parenting order. Section 16(8) states that I must apply the best interests of the child test as determined by the child's condition, means, needs and other circumstances. Section 16(9) states that past conduct is only relevant if it impacts parenting ability. Section 16(10) mandates the court to consider the maximum contact principle.

[30] In **Gordon v. Goertz**, *supra*, the Supreme Court of Canada listed the factors to be applied in *Divorce Act* relocation applications, at paras 49 and 50 which state, in part, as follows:

...

4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
5. Each case turns on its own unique circumstances. The only issue is the best interests of the child in the particular circumstances of the case.
6. The focus is on the best interests of the child, not the interests and rights of the parents.
7. More particularly the judge should consider, inter alia:
 - (a) the existing custody arrangement and relationship between the child and the custodial parent;
 - (b) the existing access arrangement and the relationship between the child and the access parent;
 - (c) the desirability of maximizing contact between the child and both parents;
 - (d) the views of the child;
 - (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
 - (f) disruption to the child of a change in custody;

(g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.

50 In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

[31] In **D.A.M. v. C.J.B.**, 2017 NSCA 91, the Court of Appeal directed courts to apply a balanced and comparative approach when deciding relocation and parenting cases. I will attempt to do so by reviewing the relevant relocation factors stated by the Supreme Court of Canada and by reviewing relevant best interests factors, often cited as the *Foley* factors. Specifically, the following are the headings which I will now address:

- Relationship between Hunter and each Parent
- Parental Contact and Maximum Contact Principle
- Hunter's Views
- Reasons for the Move
- Disruption if Hunter lives in Englishtown
- Disruption if Hunter lives in HRM
- Physical Needs
- Education Needs
- Health Needs
- Activities
- Availability
- Role Model and Moral Development
- Discipline

[32] Further, my analysis recognizes two unique features. First, Hunter has been living in both Englishtown and HRM by virtue of the consent, interim parenting arrangement for almost two years. This is not a case where either community is an unknown. Second, the current parenting arrangement is no longer feasible or in Hunter's best interests. Hunter must attend school five days a week, not four. In addition, the weekly commutes are taxing on Hunter and at times dangerous in winter weather. They cannot continue.

[33] I will now conduct my comparative analysis of the competing parenting plans to determine Hunter's primary residence.

[34] **Is it in Hunter's best interests to live in HRM or Englishtown?**

Relationship between Hunter and each Parent

[35] Hunter enjoys a positive, strong relationship with his mother because she was and is his primary care parent. In **Burns v. Burns**, 2000 NSCA 1, Roscoe, JA held that a custodial or primary care parent is one who assumes two distinct parenting functions. A custodial parent generally assumes primary responsibility for making important decisions about the child's health, safety, education and overall welfare. Second, the custodial parent generally assumes primary responsibility for the countless less significant, but obligatory, daily arrangements for the child, such as clothing, hygiene, activities, and other mundane affairs.

[36] Ms. Illingworth was and is Hunter's primary custodial parent before and after separation. Before separation, Mr. Illingworth worked outside HRM for large blocks of time to support the family. Ms. Illingworth therefore not only assumed primary care, but she at times provided exclusive care of Hunter. Before separation, Ms. Illingworth looked after Hunter's health, medical and day-to-day needs. She continues to do so after separation during the four days that Hunter is in her care.

[37] Ms. Illingworth provides consistent, dedicated, loving, and responsible parenting. Ms. Illingworth is diligent in prioritizing Hunter's needs in a planned and focused manner. Hunter is a happy, secure, and well-adjusted boy, in part because of the strong relationship that he has with his mother.

[38] Hunter also enjoys a positive relationship with his father even though Mr. Illingworth was not present for large blocks of time before separation. Mr. Illingworth made great efforts since separation to be involved in all aspects of Hunter's life. As a result, the father son relationship is strong and loving.

[39] Despite their bond, I find, however, that Mr. Illingworth's relationship with Hunter does not match the strength and maturity found in the relationship between Ms. Illingworth and Hunter. Mr. Illingworth does not always prioritize and focus on Hunter's needs. For example, despite being offered "make-up days", Mr. Illingworth refused to forgo his Friday parenting time so that Hunter could attend school. Mr. Illingworth insisted that he have Hunter on Fridays to conform with the parenting arrangement. Therefore, instead of attending school on Friday, Hunter was placed in the care of a babysitter at 6:30 am while Mr. Illingworth worked. By

adopting this approach, Mr. Illingworth gave priority to his own needs over the needs of Hunter.

[40] In summary, Ms. Illingworth was the primary care provider before and after separation. Ms. Illingworth always enjoyed a strong and healthy relationship with Hunter. Ms. Illingworth prioritizes Hunter's needs. For his part, since separation, Mr. Illingworth became a hands-on father who has a strong and positive relationship with Hunter. Unfortunately, Mr. Illingworth does not always prioritize Hunter's needs.

Parental Contact and Maximum Contact Principle

[41] Hunter will benefit from ongoing positive contact with both parents. Hunter loves both of his parents and they each deeply love him. Both parties are committed to ensuring liberal contact between Hunter and the other parent. Both parties have presented plans to this effect. In addition to in-person contact, Hunter is of an age where virtual contact is practical. Virtual contact, although not a substitute for in-person contact, will assist in the promotion of the maximum contact principle.

[42] Both parents are committed to facilitating contact with the other parent. I reject the submission that Ms. Illingworth failed to foster the father son relationship in the past. Further, I find that Ms. Illingworth will adhere to the court ordered parenting time access provisions. Indeed, she continues to follow the court order even though it means that Hunter is missing school every Friday.

[43] I find that both parties will promote parental contact between Hunter and the other parent. Both will follow court orders. Both will do so because they love Hunter.

Hunter's Views

[44] Hunter is only five years old. His wishes were not disclosed other than he loves his parents and his extended family.

Reasons for Move

[45] The reasons behind Ms. Illingworth's request to remain in Englishtown are not relevant because the move was not initiated to thwart Mr. Illingworth's parenting or for any other inappropriate reason. I reject Mr. Illingworth's suggestions to the contrary. The fact that Ms. Illingworth vented her feelings to her mother and friend in private conversations which Mr. Illingworth later hacked is not proof of inappropriate motive. To the contrary, Ms. Illingworth followed the shared parenting

provisions of a court order for almost two years. Within that time, she has encouraged and facilitated parental contact.

[46] Despite this finding, I accept that Ms. Illingworth wants to share her reasons. She wants to remain in Englishtown because she feels it is best for Hunter. She wants to further her education and improve her financial prospects while providing Hunter with a stable and loving home and community life. There is nothing nefarious associated with Ms. Illingworth's request to remain in Englishtown.

Disruption if Hunter Lives in Englishtown

[47] The disruption that Hunter will experience if I permit him to continue to live in Englishtown will not include the usual disruptions associated with establishing new friends, adjusting to a new school, or becoming part of a new community. Hunter will not experience such disruptions because he lived in Englishtown for almost two years.

[48] Hunter has an excellent and stable life in Englishtown. Hunter loves living with his mother, grandparents and Uncle Brett. He has his own room. He enjoys a strong and healthy bond with his extended family members. They care deeply for him. Hunter has a strong sense of family while living with his mother in Englishtown.

[49] Hunter is also very much connected to the wider community. His friends are in Englishtown. He attends birthday parties and social events. His friends often will schedule their birthday parties on the weekdays to accommodate Hunter's parenting schedule. Hunter has an active social life in Englishtown. Hunter also enjoys his school and teachers. He attended pre-primary and primary at the school in the Englishtown area.

[50] If Englishtown becomes Hunter's primary residence, Hunter will nevertheless experience disruption because he will see his father less. Mr. Illingworth is adamant that he will not move to Cape Breton. Hunter loves his father. Hunter also enjoys visits with his paternal relatives. Although Hunter's relationships with his extended paternal relatives were forged after separation, these relationships are nonetheless important and enjoyed by Hunter. The cessation of shared parenting will reduce the physical amount of time that Hunter will spend with his father and extended paternal relatives during the school year. This is a significant disruption.

Disruption if Hunter Lives In HRM

[51] If I order Hunter to live in HRM, Ms. Illingworth will likely move too. In such a case, the shared parenting regime could continue. This statement does not, however, resolve the residential issue for two reasons. First, Ms. Illingworth does not want to move HRM anymore than Mr. Illingworth wants to move to Cape Breton. It is unfair to force Ms. Illingworth to move, but not Mr. Illingworth. Second, and most importantly, moving Hunter to HRM will cause him considerable disruption for five reasons.

[52] First, Ms. Illingworth cannot afford to live in HRM. Indeed, the parties experienced financial insecurity when they lived together in HRM. Ms. Illingworth earns significantly less than Mr. Illingworth. Ms. Illingworth currently receives financial and emotional support from her parents. They do not charge for childcare. They do not charge rent. They assist as needed. These supports are not available to Ms. Illingworth in HRM. Hunter will therefore feel the negative effects of his mother's reduced lifestyle if they move to HRM. Housing, food, and financial insecurity will be a difficult burden for Hunter to bear.

[53] Second, although Mr. Illingworth has an income earning capacity of at least \$65,000, he is in no financial position, nor is he willing, to provide extra financial support to Ms. Illingworth so that she can afford to live in HRM.

[54] Third, the lack of affordable, quality, and reliable child care was an ongoing issue for Ms. Illingworth while she lived in HRM. Ms. Illingworth is employed in health care which generally requires shift work. Ms. Illingworth could not find appropriate childcare for her night shifts while living in HRM. Childcare will likely be an issue in the future in HRM. Despite his protests to the contrary, I find that Mr. Illingworth was not always available to provide childcare because of work or personal reasons in the past. I find he will not always be available in the future. Childcare is not an issue in Englishtown.

[55] Fourth, Hunter is not as connected to HRM as he is to Englishtown. Hunter does not have the friends in HRM that he has in Englishtown, although Hunter would likely make friends in HRM. Hunter is not familiar with the school in HRM, although he likely would be able to successfully transition. Hunter will see his maternal relatives less if he lives in HRM but will be able to maintain strong relationships through visits and virtual communication.

[56] Fifth, Hunter's life is not as stable in HRM as it is in Englishtown. Hunter's home has changed twice in HRM in two years. Mr. Illingworth is planning a third move once his finances are in order. Hunter's babysitters have changed while in Mr. Illingworth's care.

[57] In summary, although designating HRM as Hunter's place of residence would allow for the continuation of a shared parenting regime, such a designation would cause considerable disruption in Hunter's life.

Physical Needs

[58] I am satisfied that both parents will make all efforts to meet Hunter's physical needs by ensuring appropriate housing in safe neighbourhoods, healthy food, and clean clothing.

Education Needs

[59] Both parties appear to appreciate the value of an education. Both want Hunter to perform well in school. As stated previously, however, Mr. Illingworth did not assign priority to Hunter's educational needs when he refused to modify the parenting schedule to ensure Hunter attends school five days a week.

Health Needs

[60] Hunter's health needs are a source of parental conflict. Mr. Illingworth claims that Ms. Illingworth forbade his involvement in Hunter's regular health care before separation and refuses to take his concerns seriously post separation. Mr. Illingworth states that he has shown himself to be more capable of making the correct decisions than Ms. Illingworth.

[61] Ms. Illingworth disagrees. I accept Ms. Illingworth's evidence. Before separation, Ms. Illingworth almost exclusively provided for Hunter's health care. This occurred for several reasons. First, Ms. Illingworth was a dedicated primary care parent. Second, she is an LPN who has requisite knowledge. Third, Mr. Illingworth trusted Ms. Illingworth's abilities and so there was no need for him to miss work to attend doctor visits. Fourth, Mr. Illingworth lived away from HRM for a period of time before separation.

[62] After separation, Mr. Illingworth desperately wanted to gain a shared parenting regime. Days before the emergency court hearing, he made demands of Hunter's family doctor whom Mr. Illingworth had never seen before. The doctor confirmed that Hunter's vaccinations were up to date and all was in order.

[63] After speaking with his mother and sister, Mr. Illingworth made health care requests. Ms. Illingworth was not as concerned as Mr. Illingworth about the need for specialists for three reasons. First, the family doctor was not concerned. Second,

children develop at different rates. Hunter was only three years old. Third, all children are screened as part of the pre-primary assessment process. Despite these reservations, Ms. Illingworth nonetheless cooperated with additional health appointments. On his second dental visit, a cavity was discovered and fixed. Speech therapy was provided for a very brief period. A pediatric appointment was held where it was determined that Hunter did not have a respiratory illness, with a second appointment booked for an update in the event symptoms arose.

[64] I find that Mr. Illingworth's handling of Hunter's health issues created unnecessary problems. Mr. Illingworth overreacted in a bid to out-perform Ms. Illingworth. Ms. Illingworth is capable and will consistently meet Hunter's health needs. Mr. Illingworth's tendency to overreact may cause future problems.

Activities

[65] Ms. Illingworth ensures Hunter's involvement is a wide array of ad hoc social and recreational activities in Englishtown. She also enrolls Hunter in hockey which he enjoys. Mr. Illingworth watched one of Hunter's games. For his part, Mr. Illingworth takes Hunter to various social and recreational activities, including visits with family. He also enrolled Hunter in swimming.

[66] Both parties are capable of ensuring Hunter is exposed to activities that will develop his talents, confidence, independence, and team building skills.

Availability

[67] Ms. Illingworth developed a structured and workable routine for her parenting, employment, and education while in Englishtown. She prioritizes Hunter's needs and will ensure she is available for his care.

[68] Since separation, Mr. Illingworth maintained a home in HRM and is available to care for Hunter when he is not working. Unfortunately, Mr. Illingworth recently quit his job. He feels that he will be able to resume work with the same employer or another employer in the area. In the past, Mr. Illingworth had to leave the province to find work. It is hoped that he will not have to do so in the future. I make my decision on the assumption that Mr. Illingworth will find work within the province so that he is available to care for Hunter on a regular basis.

Role Model and Moral Development

[69] Both parties have strength and weaknesses. I am, however, deeply concerned about Mr. Illingworth's willingness to avoid the truth when he feels it is strategic to do so. Mr. Illingworth did not report his income when collecting EI or when filling out his tax forms. He received money to which he was not entitled. Mr. Illingworth misled the court about his income and conduct because he was concerned about the court's reaction. These are not the actions of a good role model.

[70] In addition, Mr. Illingworth expressed a desire to include Hunter in his religious formation. Ms. Illingworth questions Mr. Illingworth's motives given that neither party practiced their faith before separation. I accept that Mr. Illingworth found strength in his family and faith after separation. There is nothing preventing Mr. Illingworth from having Hunter participate in his faith while he is exercising parenting time: **Young v. Young**, [1993] SCJ No 112.

Discipline

[71] There is no evidence that either party disciplines Hunter in a negative or inappropriate fashion. Additionally, I reject the suggestion that Mr. Brett MacIntyre was inappropriate with Hunter. This allegation was strategically made and entirely without merit.

Conclusion on Relocation

[72] After considering the evidence, the law, and the balanced comparative analysis, I find that Ms. Illingworth proved that it is in Hunter's best interests to live primarily with her in Englishtown. I find that Hunter will experience a greater disruption if he relocates to HRM than if he lives with his mother in Englishtown.

[73] Ms. Illingworth proved that her plan is in Hunter's best interests. It provides Hunter with more stability. Further, Ms. Illingworth's plan can be implemented in a way that minimizes the disruption in the relationship between Hunter and Mr. Illingworth. Although my decision will end the current shared parenting regime, the father son bond will be maintained through in-person parenting time and virtual communication, including Skype, Face Time, and telephone calls.

[74] Who should have decision-making authority?

[75] Mr. Illingworth seeks decision-making authority on all important issues except extracurricular activities. He proposes that both he and Ms. Illingworth can determine Hunter's activities during the time that Hunter is in their respective care.

[76] Ms. Illingworth seeks joint decision-making in keeping with the current order. However, joint decision-making resulted in unnecessary conflict when Hunter's health needs were discussed. Further, joint decision-making created an unfortunate impasse when Hunter's school attendance was in issue.

[77] Therefore, although joint custody will continue, Ms. Illingworth is granted final decision-making authority for education and health issues. I also encourage each party to enroll in a parenting program or individual counselling focused on improving parental communication as more fully discussed during the oral decision.

[78] The order will include the following provisions related to decision-making, communication and relaying information:

- **Joint Custody Decision-Making:** Blaire Illingworth and Doug Illingworth will have joint custody of Hunter Illingworth, whose date of birth is ***, 2015. The parties will share decision-making about important matters affecting Hunter's health, education and general welfare by consulting with each other in a timely and meaningful way. If, after timely and meaningful consultation, the parties are unable to reach agreement, Blaire Illingworth will have final decision-making authority on matters related to Hunter's health and education. Nothing in this order prevents either party from enrolling Hunter in extracurricular and religious activities while Hunter is in their respective care without the consent of the other of them.
- **Emergency Medical Treatment:** Each party is authorized to seek emergency medical treatment for Hunter if an emergency arises and each must notify the other as soon as reasonably possible about the emergency and the emergency treatment.
- **Communication with Professionals:** Each party may attend appointments for Hunter's health, education and general welfare. Each party may communicate with all professionals involved in Hunter's care, and obtain information and documentation from all medical professionals, educators, social welfare professionals, and coaches involved with Hunter, without the prior consent of the other party. Blaire Illingworth must keep Doug Illingworth informed of the names, telephone numbers, and contact information of all professionals involved with Hunter, and any changes thereto.
- **Parental Communication:** The parties are to communicate with each other about matters related to Hunter's health, education and general

welfare. All communication must be timely, meaningful, respectful and child focused. Such communication will be primarily facilitated by e-mail. Each party must provide the other party with an up-to-date e-mail address where they can be reached. Each party must maintain internet access, and a current e-mail address, so that child focused communication can be facilitated. Each party must review their email on a regular basis, unless health, technology or other issues make regular access impossible. Telephone contact will be used in the event of an emergency.

- **Contact Information:** The parties must advise each other of their residential address, telephone numbers, and any changes on a timely basis.
- **Communication in Presence of Child:** Each party must speak respectfully of the other and of their extended family in Hunter's presence.
- **Health Card:** Blaire Illingworth will keep possession of Hunter's health card and will provide a copy to Doug Illingworth.

[79] **What parenting schedule is in Hunter's best interests?**

[80] The parenting schedule is as follows:

Regular Schedule

- Hunter will be in the care of Doug Illingworth two week-ends of every month from Friday at 5 pm until Sunday at 5 pm unless there is no school on either Friday or Monday. If there is no school on Friday, parenting time will begin at 5 pm on Thursday. If there is no school on Monday, parenting time will conclude at 5 pm on Monday. Doug Illingworth's week-ends will always include the statutory holiday in February, May, September and October and any other week-end when school attendance is not required on the Friday or Monday because of in-services or for other reasons. The parties are to review the school calendar to assist in planning the week-ends when Hunter will be in the care of Doug Illingworth.
- If Doug Illingworth is in the Englishtown area, he will have other reasonable parenting time with reasonable notice to Blaire Illingworth, provided such reasonable parenting time does not disrupt activities or plans previously scheduled.

- Hunter will be in the care of Blaire Illingworth at all other times during the school year.

Summer Vacation

- Summer vacation is from July 1 to August 31 of each year. Doug Illingworth will have Hunter in his care for six to seven weeks of the summer vacation. If he selects seven weeks, then Hunter will be in Blaire Illingworth's care for the first week of July and the last week of August. If he chooses six weeks, then Hunter will be in the care of Doug Illingworth for the first three weeks of July and the last three weeks of August. Hunter will be in the care of Blaire Illingworth for the middle three weeks in the summer.

Christmas Vacation

- The parties will equally share care of Hunter during the Christmas school vacation. The parties will work out a schedule for Hunter's care as soon as their work schedules are available for the holiday season, with each parent being entitled to care for Hunter for one-half of those days between the day after school breaks for Christmas vacation until the day before school commences in the New Year. The parties shall alternate every other year caring for Hunter on Christmas Eve and Christmas Day, with Doug Illingworth having Hunter with him for Christmas Eve and Christmas Day in 2020 and even-numbered years thereafter, and Blaire Illingworth having Hunter with her for Christmas Eve and Christmas Day in 2021 and odd-numbered years thereafter.

Easter

- The parties will alternate the Easter long weekend, with Doug Illingworth having Hunter with him for the Easter long weekend in 2021 and odd-numbered years thereafter and Blaire Illingworth having Hunter with her for the Easter long weekend in 2022 and even-numbered years thereafter.

March Break

- March break will follow a three year rotation. During year one and two, Hunter will be in the care of Doug Illingworth. During year three, Hunter will be in the care of Blaire Illingworth.

Transportation

- The parties will continue to share in the transportation of Hunter for parenting exchanges by meeting in New Glasgow.

Changes to Parenting Schedule

- The parties may change the parenting times stated in this order provided both have agreed, in writing, to an alternate arrangement.

[81] What is the appropriate child support order?

[82] Ms. Illingworth seeks only the table amount of child support on a retroactive and prospective basis. She is not seeking s.7 expenses because her parents provide free childcare and she pays no rent. The order is to reflect these facts in the preamble.

[83] Mr. Illingworth's income earning ability is agreed to be \$64,651 per annum. The table amount of monthly child support is \$552 and will be payable commencing October 1, 2020 and continuing every month thereafter unless varied by a court of competent jurisdiction. Child support is to be paid through the Maintenance Enforcement Program once the order is registered. The usual provisions apply to the maintenance order which include Mr. Illingworth reporting employment changes, addresses and providing Ms. Illingworth with a copy of his income tax return, with all attachments and notices of assessment and reassessment on an annual basis commencing June 1, 2021 and continuing yearly thereafter. Further Mr. Illingworth must report to Ms. Illingworth all income earned even if he continues to not report the income to CRA.

[84] The interim order stated that Mr. Illingworth did not have to pay child support while paying the mortgage and household expenses associated with the matrimonial home. The home sold during the first of October, 2019. Mr. Illingworth must therefore pay child support retroactively for the period between October 1, 2019 until September 31, 2020. The set off amount equates to a lump sum payment of \$1,956. The set off amount was used because neither party presented sufficient evidence to properly complete a *Cantino* s. 9 analysis.

[85] Should the line of credit debt be equally shared?

[86] Mr. Illingworth asks that the RBC line of credit debt be classified as a matrimonial or family debt, to be paid from the trust funds. He said that he used the RBC line of credit for family purposes.

[87] Ms. Illingworth strongly disagrees. She states that she had no knowledge of the debt until after separation. She states that Mr. Illingworth failed to provide proof

that the RBC was used for family purposes. She states that the RBC line of credit debt is held in the sole name of Mr. Illingworth and is his sole responsibility.

[88] The *Matrimonial Property Act*, R.S.N.S., c. 275, does not define matrimonial or family debt. Section 13(b) the *Act* authorizes the court to consider “the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred” as part of an unequal division claim. Despite the lack of statutory clarity, courts nonetheless routinely consider debt when equalizing the division of matrimonial property. To do otherwise would create a financial absurdity. Courts have also listed general rules to be applied, as for example, those reviewed by Legere-Sers, J. in *Cogswell v Wright*, 2014 NSSC 173, at paras. 209 to 215 which provide as follows:

[209] Our Court of Appeal has directed courts to ask certain questions when addressing the issue whether debts are matrimonial (*Ellis v. Ellis* (1999), 175 NSR (2d) 268; see also *Bailey v. Bailey* (1990), 98 NSR (2d) 9 (paragraph 23)).

[210] These questions include:

1. Were the debts incurred for the benefit of the family unit?
2. Were they ordinary household debts and if incurred after separation (as the orthodontic debts were) were they necessary to meet basic living expenses or preserve matrimonial assets? and
3. Were they reasonably incurred?

[211] While knowledge of a debt is not essential to its classification as matrimonial, in *Selbstaedt v. Selbstaedt*, 2004 NSSF 110, Dellapinna, J. at paragraph 45 noted “the non-disclosure of a significant debt by one of the parties may make the task of meeting the burden of proof more difficult to achieve.”

[212] The *Matrimonial Property Act* does not specifically deal with a division of debts. There is not a legislated presumption, as with assets, that debts are divided equally; therefore, each debt must be considered individually.

[213] A Court may consider, among other factors, the amount of the debt, the liability of the spouse, and the current balance.

[214] In order to consider whether there may need to be an unequal division of these debts, the Court also has to consider in this case section 13 of the *Matrimonial Property Act*, whether there was unreasonable impoverishment of the matrimonial assets by a spouse.

[215] The Court must also reflect on whether this debt was incurred solely for the benefit of one spouse.

[89] The burden is on the party seeking to include the debt in the equalization schedule to prove that it is appropriate to do so.

[90] I find that Mr. Illingworth did not meet the burden of proof for the following reasons:

- Ms. Illingworth did not know about the line of credit debt until after the separation.
- Ms. Illingworth requested disclosure to show where the funds from the line of credit debt were disbursed and spent. Mr. Illingworth did not provide proof. The May 2015 statement was tendered. It shows nothing more than the fact that \$3,200 was withdrawn between April 15 to May 1, 2015. This is not proof that the money was used for family purposes.
- Mr. Illingworth's oral testimony is insufficient given his lack of credibility.

[91] I find that there is insufficient evidence to prove that the RBC line of credit was used for family purposes or to pay ordinary household debt. There is insufficient evidence to prove that the RBC line of credit was reasonably incurred. There is insufficient evidence to prove that the RBC line of credit debt should be a shared financial responsibility. The RBC line of credit debt is the sole financial responsibility of Mr. Illingworth.

[92] **How should the proceeds of sale be disbursed?**

[93] The \$10,000 held in the solicitor's trust account will be equally divided. Mr. Illingworth must pay the retroactive child support order from his share together with any cost award that may be ordered.

Conclusion

[94] The following relief is granted:

- The parties' divorce based on marriage breakdown as evidenced by their separation of more than one year.
- Ms. Illingworth's change of name to her maiden name of MacIntyre;
- A parenting order designating Hunter's primary residence to be with Ms. Illingworth in Englishtown, Nova Scotia.
- A liberal parenting schedule to ensure Mr. Illingworth enjoys maximum contact with Hunter based on the circumstances.
- A parenting order centered on joint decision-making, except for health and education matters. For health and education matters, Ms. Illingworth must consult with Mr. Illingworth in a timely and meaningful fashion, but in the

event of disagreement, Ms. Illingworth will have final decision-making authority.

- An order requiring Mr. Illingworth to pay retroactive child support of \$1,956 and prospective child support of \$552 per month.
- An order directing Mr. Illingworth to be solely responsible for the payment of the RBC line of credit debt.
- An order directing an equal division of the \$10,000 held in trust, but subject to Mr. Illingworth using his share to pay the retroactive child support order and any cost award that may issue.

[95] Further, the parties are encouraged to attend programming or counselling to acquire skills to improve parenting communication following separation.

[96] Ms. Lenehan must prepare the order and forward to Mr. Illingworth for his comments as to form.

[97] Costs submissions are to be provided by Ms. Lenehan by October 30, 2020. Mr. Illingworth will have three weeks in which to provide his response.

Forgeron, J.