

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *W.W. v. L.I.*, 2021 NSSC 42

Date: 20210209

No. 80078

Registry: Sydney

Between:

W.W.

Applicant

v.

L.I.

Respondent

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: November 16 & 17, 2020, in Sydney, Nova Scotia

Written Submissions: Steven Jamael – November 24, 2020
Alan Stanwick – November 30, 2020

Written Release: February 9, 2021

Counsel: Steven Jamael for the Applicant
Alan Stanwick for the Respondent

By the Court:

INTRODUCTION

[1] The parties are the parents of one child, J.J.W., who is presently 11 years of age. They have been separated for nine years and until recently operated under an interim order issued on October 19, 2012, which grants them joint custody of the child, with L.I. having primary care and residence.

[2] W.W. was granted parenting time (as it is now known) on weekdays from 3:30 p.m. to 8:00 p.m. and every second weekend from 8:00 a.m. to 4:00 p.m. on Saturday and Sunday. That parenting time was to expand through the full weekend from 8:00 p.m. on Friday to Sunday at 4:00 p.m. once W.W. obtained his own residence. He has since done so, and now exercises parenting time from Friday at 5:00 P.M. until Sunday at 5:00 p.m. every second weekend.

[3] The parties agreed that J.J.W. would attend school closest to the residence of L.I., so he is enrolled in a school near her home.

[4] The Order required W.W. to pay child support in the amount of \$172.00 per month based on the application table, plus \$109.00 per month towards childcare and health insurance premiums. At the time, he was earning \$22,800.00 per annum, while L.I. was earning \$28,000.00 per annum.

[5] The child, J.J.W. has some learning challenges. He struggles with math and reading, but he has good social skills. He plays hockey and other sports, and he enjoys time with friends and teammates, as well as extended family.

CURRENT PROCEEDING

[6] W.W. filed this variation application on April 4, 2018. However, the earlier proceeding which gave rise to the 2012 interim order was never finalized, so I have treated this as a final hearing.

[7] W.W. seeks maximum involvement in his child's life, while recognizing that J.J.W. has a routine in his mother's care. He initially proposed a parenting schedule which was based on his work as a long-haul truck driver. His situation changed in the month prior to the hearing, so W.W. now requests a schedule in

which he has the child in his care every second weekend from after school Friday until Monday morning at school, as well as an overnight on the alternate week.

[8] L.I. opposes this schedule, although it is not much different than what is currently in place. She feels it is in the child's best interest to maintain the *status quo*, because she says J.J.W. does not respond well to change. Her evidence in that respect wasn't challenged.

[9] In her response filed May 8, 2018, L.I. made several requests, including that "neither party shall introduce any new intimate partners to the child until six months after the commencement of the relationship".

[10] That request pinpoints the crux of the hostility between the parties. L.I. and W.W. have long had a conflictual relationship, but that was heightened when W.W. re-partnered.

[11] L.I. strongly disagrees with W.W.'s decision to introduce G.W. to J.J.W. in the early days of their relationship. That has led to conflict between her and W.W., as well as between her and G.W. The conflict has escalated to the point where police and child protective services have been involved on numerous occasions, and extended family have been drawn into the fray.

ISSUES

1. What parenting time should W.W. have with the child?
2. What ancillary orders are appropriate?
3. What child support should W.W. pay, including any retroactive adjustment?
4. What section 7 special or extraordinary expenses should W.W. contribute to, and in what amounts?

THE LEGISLATION

[12] The legislation which guides me in determining the most appropriate parenting arrangements for the child is the *Parenting and Support Act*, R.S.N.S. 1989, c. 160. The relevant sections are:

Powers of court

18(1) On application by a parent or guardian or, with leave of the court, on application by a grandparent or other person, the court may make an order respecting

...

(b) parenting time;

...

(5) In any proceeding under this Act concerning custody, parenting arrangements, parenting time, contact time or interaction in relation to a child, the court shall give paramount consideration to the best interests of the child.

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

(a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;

(b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

(c) the history of care for the child, having regard to the child's physical, emotional, social and educational needs;

(d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social and educational needs;

(g) the nature, strength and stability of the relationship between the child and each parent or guardian;

(h) the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;

(i) the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child;

...

(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). R.S., c. 160, s. 18; 1990, c. 5, s. 107; 2012, c. 7, s. 2; 2012, c. 25, s. 2; 2014, c. 19, s. 1; 2015, c. 44, s.

Issue 1: What parenting time should W.W. have with the child?

[13] I will not address the factors set out above individually, though I have considered the factors that are relevant to this case.

[14] The child is in L.I.'s primary care, and W.W. does not dispute that. And order will issue to confirm this.

[15] J.J.W. has a routine in his mother's home, and he attends school nearby. L.I. encourages him to engage in sports, and she works with J.J.W.'s school to address his learning challenges. J.J.W. is in his father's care on weekends, from Friday at 5 p.m. until Sunday at 5 p.m. L.I. is concerned that changes to the parenting arrangement would unnecessarily disrupt the child's schedule.

[16] W.W.'s proposed schedule would remove the need for contact between the parties. His proposal would see J.J.W. in his care from Friday after school until Monday morning, when he'd drop J.J.W. off at school.

[17] L.I. says that she recognizes the importance of W.W. having a meaningful relationship with the child, and that she's prepared to work with the Applicant **alone** to "facilitate and foster this relationship". But her position highlights the conflict between L.I. and G.W.

[18] L.I. says that G.W. has inappropriately inserted herself into the parental relationship between her and W.W. She objects to G.W. referencing her relationship with J.J.W., or making comments about him, on social media. She objects to G.W. calling herself J.J.W.'s stepmother, and she objects to G.W. referring to J.J.W. as her stepson.

[19] It's clear from the evidence, particularly the tone and demeanor of both witnesses giving their evidence, that L.I.'s dislike of G.W. is mutual. G.W. presented as a soft-spoken, non-confrontational person in court, but her messages and social media posts show a different side. She denies that her post on the "Step Mamma Mafia" Facebook page was directed at L.I., but I reject that claim. She is well aware of the impact of her posts, and she engages in hostile exchanges with L.I. regularly. The conflict is so pervasive that even G.W.'s family members have become involved.

[20] While I accept that G.W. has acted inappropriately, I recognize that she has also tried to be a supportive stepmother to J.J.W. L.I. fails to understand that in rebuffing G.W.'s efforts in this respect, and treating her as an intrusive third party, she's jeopardizing the relationship between W.W. and their son. Hostility amongst

the adults in his life will damage the father-son relationship by eroding J.J.W.'s comfort in G.W.'s presence. That will, in turn, negatively affect his relationship with W.W.

[21] Further, L.I.'s constant references to J.J.W. as "my son" underline the proprietary approach she takes to parenting. The reality is that she and W.W. are **both** the parents of this child. J.J.W. has the right to spend quality time with **both** parents. He is also entitled to enjoy time with G.W. as his father's new wife.

[22] That's the other reality. G.W. is married to W.W. She is the child's stepmother, as much as L.I. resists that notion. L.I. suggests that any attempt by G.W. to identify herself as the child's stepmother is inappropriate. Her attitude is unfortunate, because G.W. is another family member who can provide support to J.J.W. He could benefit from that support.

[23] The level of conflict between the adults, the lack of civil communication, and the lack of regard for J.J.W.'s feelings is not just disappointing. It is unhealthy and damaging. It must stop.

[24] Both W.W. and L.I. have a strong, loving bond with the child. However, the level of conflict which is evident throughout the affidavits and testimony suggests that the child's bond with his father is at risk.

[25] L.I. testified that there are occasions where the child has refused to go with his father. This is a worrisome sign. J.J.W. is caught in the middle of a high conflict contest between the two most important people in his life. He wants to see his father, but he also wants to please his mother. It is a heavy weight for an 11-year-old boy to carry.

[26] A voice of the child report prepared by Cathy MacDougall and dated December 27, 2018 was tendered. The fact that J.J.W. was reluctant to speak with the assessor illustrates the intense pressure he's under as a result of the parental conflict. According to the report, J.J.W. voiced a desire to live with his mother, but he was open to spending more time with his father.

[27] J.J.W. likes being close to his friends and his maternal grandmother, so W.W. will have to consider that in his parenting plans. He occasionally takes one of J.J.W.'s friends for a sleep-over, which is one way of addressing the lost time with friends. W.W. is motivated to consider other ways to accommodate J.J.W.'s wishes, given his desire to spend more time together. Both parents will have to

remember that J.J.W. is on the cusp of adolescence, and that he will have changing needs in the coming years. His interests may change (as W.W. suggests is now the case with hockey) so they must be attuned to, and respect, those changing needs and interests.

[28] All adults in J.J.W.'s life must also work to make J.J.W. more comfortable with visits to his father's home. They must all ensure that he's not exposed to conflict, and that he's not made to feel guilty for preferring one home to the other from time to time.

[29] Having considered the evidence as a whole, the legislation, and the submissions of counsel, I find that the parenting arrangement that meets the best interests of the child is as follows:

1. Parenting will follow a two-week rotation. Week #1 starts on Sunday, February 14, 2021; week #2 starts on Sunday, February 21, 2021.
2. In week #1, W.W. will have parenting time from Friday after school until Sunday at 6 p.m. This reduces contact between the parties but still allows J.J.W. time on Sunday evening in his mother's home to settle back in and get ready for the school week; however, if this weekend is a long weekend that includes a holiday Monday, then W.W. shall keep J.J.W. until Monday at 6 p.m.
3. In week #2, W.W. will have parenting time from after school on Thursday to Friday when the school day begins. W.W. will ensure that J.J.W. attends any practices or games scheduled for Thursday after school or evening, and that J.J.W. completes any homework or assignments given on Thursday that are due the following day.
4. Holiday and special occasion parenting time will replace the regular schedule as follows:
 - W.W. will have parenting time with J.J.W. from noon on December 25th through to noon on December 29th in odd numbered years starting in 2021, and from noon on December 21st, through to December 25th at noon in even numbered years, starting in 2022;
 - W.W. will have parenting time with J.J.W. on Easter weekend (if Easter doesn't fall on week #1) from Thursday after school until noon on Easter Monday in odd numbered years, starting in 2021;

- W.W. will have parenting time with J.J.W. on March break from the Friday after school when March break starts until the Sunday when March break ends at 6 p.m. in odd numbered years, starting in 2021; L.I. will have J.J.W. in her care exclusively during the same March break period in even numbered years.
- W.W. will have parenting time with J.J.W. on Father's Day (if it doesn't fall on week #1) from noon until 6 p.m.
- If Mother's Day falls on week #1, W.W. will return the child on Saturday at 6 p.m. instead of Sunday at 6 p.m. that weekend only, so that J.J.W. can spend Mother's Day with L.I.
- W.W. will have parenting time with J.J.W. for a week of summer holidays every year. He must communicate his choice of week no later than May 15th each year to L.I. If he fails to communicate his choice by that date, he will be presumed to have chosen the last full calendar week of July. The week will run from Sunday at noon to the following Sunday at noon.

Issue 2: What ancillary orders are appropriate?

[30] Given the high level of conflict, some other terms are appropriate:

1. The parent who will be taking the child into their care will be responsible for transportation. Either parent may arrange for a driver known to J.J.W. Drivers and any passengers who retrieve the child will not exit the vehicle, they will not engage in any inappropriate conversation, and will they not make any inappropriate gestures during exchanges.
2. Either parent may travel with J.J.W. within Nova Scotia during their parenting time without notice to the other.
3. If either parent plans to travel outside of Nova Scotia with the child, but within Canada, they must provide a week's notice to the other parent, as well as a return date, and contact information for the child for the duration of the trip.
4. Neither parent will unreasonably withhold consent for the other parent to travel with the child internationally. The parent not travelling with the child will provide a letter of consent, in the form recommended by Canada Border Services, to the parent travelling with the child, provided that details of the travel have been given to the non-traveling

- parent in advance. Details of the travel shall include departure and return dates, flight numbers and carrier if available, an address while out of the country, and contact information for the duration of the trip.
5. In the event that either L.I. or W.W. request the other parent sign a passport application or other documentation for the child, the documentation shall be signed without unreasonable delay.
 6. The child's documents, which will include but not be limited to health cards, birth certificates and passports, will be provided to W.W. upon request, and will be returned when they are no longer needed. W.W. may keep copies of all of the child's documents.
 7. Both parents and their respective partners are permitted to attend the child's school and extracurricular activities, regardless of whose scheduled time it is with the child. There must be no conflict between the parents and their partners at such venues, and the parents and partners will keep a reasonable distance between themselves and the other parent and partner at all times. There will be no inappropriate comments or gestures made, and no inappropriate comments made to (or within hearing of) the child.
 8. Both L.I. and W.W. shall be entitled to speak directly to all service providers involved with the children, including but not limited to teachers, doctors, dentists, counsellors and coaches. Both L.I. and W.W. may make inquiries directly of the service providers and be provided with documents and information, without the need for the other parent to provide consent.
 9. W.W. (or a delegate other than G.W.) shall communicate with L.I. through her mother with respect to issues concerning the care of the child. Routine communication shall be through text message or email. In the event of an emergency involving the child, contact with the other parent or their partner must be made as soon as possible by phone.
 10. All communication must be done in a polite and respectful manner, and must be child-focused at all times.
 11. There will be no adult discussions surrounding this legal proceeding, the order, parenting arrangements, child support, etc. with J.J.W. or within his hearing. Both parents will ensure that others refrain from doing so as well.

12. Neither parent will speak disparagingly about the other to J.J.W. or within J.J.W.'s hearing and will ensure that others refrain as well.
13. G.W. is not a party to these proceedings, so I can't grant an order prohibiting contact between her and L.I. as requested. However, I do caution that inappropriate social media posts and communications do not serve the best interests of J.J.W. G.W. must recognize that her actions can have a direct and negative impact on J.J.W.

Issue 3: What child support should W.W. pay, including any retroactive adjustment?

[31] The 2012 order requires W.W. to pay monthly child support of \$172.00, based on an annual income of \$22,800.00. That figure hasn't been adjusted since 2012.

[32] Since 2015, W.W. has reported income to Revenue Canada as follows:

Year	Type of Income	Amount
2015	Employment Income/WCB (gross)	\$31,000.00
2016	Employment Income	\$32,093.91
2017	Employment Income	\$34,062.38
2018	Employment Income	\$40,010.09
2019	Employment Income	\$49,592.32

[33] L.I. claims a retroactive adjustment of child support in the total amount of \$11,419.00. She says that W.W. has underpaid child support since 2015 based on the above income.

[34] W.W. did not provide his updated income information to L.I. until she filed her application. He was obliged to do so under the terms of the 2012 order.

[35] L.I. did not explain why she waited until 2018 to file her application, but had there been less conflict about parenting, she may never have sought an adjustment. Irrespective of her motivation, she was entitled to receive child support based on W.W.'s income, and without that income information, she had no way of knowing that he was underpaying. I do not find that she unreasonably delayed seeking a retroactive adjustment.

[36] W.W. left his old job and started a new one shortly before the hearing. I don't have current income information from him. However, he's doing a similar job, so he should be earning income in the same range. Provided he's given a reasonable period to pay the retroactive adjustment, there should be no hardship for him to pay.

[37] I therefore direct that W.W. pay a retroactive adjustment of child support in the total amount of \$11,419.00, representing his underpayment since 2015. This sum is payable in monthly installments of \$200.00, starting March 1, 2021 and continuing monthly until the full sum is paid.

[38] W.W. earned \$49,592.32 in 2019. As indicated, I don't have his 2020 income information. However, I'm satisfied that using his 2019 income to set the table amount of child support is appropriate. The Nova Scotia table amount for one child, based on an income of \$49,592.32, is \$422.00. W.W. will pay that sum monthly, starting December 1, 2020.

Issue 4: What section 7 special or extraordinary expenses should W.W. contribute to, and in what amounts?

[39] J.J.W. requires a tutor because of his learning challenges. L.I. tendered a statement of special or extraordinary expenses in which she claims the amount of \$37.00 per session, or \$160.21 per month. This is a necessary and reasonable expense, and I am prepared to direct W.W. to pay \$80.10 per month toward the tutoring expense.

[40] L.I. also claims the cost of prescriptions at \$33.33 per month. Attached to her statement of special or extraordinary expenses is a printout from her pharmacy which shows that insurance pays a significant contribution towards J.J.W.'s prescription expenses. The printout covers 105 months, during which the total amount paid by L.I. was \$445.16, while insurance paid \$1,103.95.

[41] These figures do not support L.I.'s claim of prescription costs of \$33.33 per month. Instead, it shows that the uninsured amount paid by L.I. annually falls below the \$100.00 threshold set out in s.7(1)(c) of the *Child Support Guidelines*. I am therefore not prepared to include prescription costs as a special expense towards which W.W. must contribute.

[42] L.I. also claims a contribution towards new glasses for J.J.W. of \$41.66 per month. In her statement of special or extraordinary expenses, she claims \$500.00

annually. The documentation attached to her statement shows that she bought glasses for J.J.W. in 2014 at a cost of \$104.00. Two years later, in 2016, she bought him new glasses at a cost of \$225.00. In 2017, another pair of glasses was purchased at a cost of \$378.00, and only three months later, she bought J.J.W. another pair of glasses at a cost of \$239.00. It's not clear why another pair was needed so soon.

[43] L.I.'s insurance paid the cost of the last pair of glasses and contributed towards the cost of the earlier ones. However, L.I. did not advance evidence with respect to her health coverage and what amounts are paid towards eyeglasses at what intervals. Her claim was made without reference to insurance coverage altogether.

[44] I am prepared to allow a claim for a contribution towards new glasses for J.J.W. every two years, as they are a necessary expense. However, W.W. will only be required to contribute 50 percent of any uninsured balance after L.I.'s health plan pays its contribution. L.I. must forward to W.W. a copy of her claims statement from the insurance carrier once it has paid its contribution, along with a copy of the original invoice. W.W. must reimburse L.I. his share within seven days of receipt of those documents.

[45] In the event that J.J.W. requires braces in future, W.W. must contribute 50% of the uninsured portion of the braces and related fees. W.W. must establish separate accounts with the orthodontist to facilitate direct payment of his share.

[46] I'll deal next with extraordinary expenses for sports activities. L.I. seeks a contribution towards J.J.W.'s hockey and soccer expenses. W.W. agrees that J.J.W. benefits from his involvement in sports, but he suggests that J.J.W. has lost interest in hockey. He suggests that he should be registered for soccer and baseball instead. In the alternative, he suggests that if J.J.W. is registered for hockey, then if either parent enrolls him in another sport, that parent should be responsible for the cost.

[47] I accept that the social aspects of organized sports benefit J.J.W. However, there is a limit to what any parent can pay for extracurricular activities for a child, especially when there are special expenses to cover. L.I. seeks a monthly contribution to J.J.W.'s soccer expense of \$61.50 per month, plus a contribution of \$324.44 per month for hockey expenses, including travel. The total claimed is \$385.94 per month, which is not reasonable, given the parties' incomes and the amount of child support and special expenses W.W. must pay.

[48] I direct W.W. to contribute \$750.00 annually towards J.J.W.'s sports activities, including registration, fees, travel, and necessary equipment. He will pay \$62.50 per month towards that total, starting March 1, 2021. L.I. will determine what sports J.J.W. wishes to play. She will register and equip him and advise W.W. of the choice made. W.W. will then be entitled to confirm J.J.W.'s registration. If J.J.W. is not registered for any sports for a period of twelve months, then W.W.'s contribution will cease on the anniversary date of J.J.W.'s last registration.

[49] In addition, W.W. must contribute \$300.00 toward J.J.W.'s 2019 hockey registration expenses, which L.I. paid in full. That amount is due within 60 days.

[50] I make no further order for a contribution toward sports or extra expenses, as W.W. will already be paying the above amounts.

COSTS

[51] Success has been divided, so unless either party served the other with an offer that should be considered, I direct that each party bear their own costs.

[52] Counsel for the applicant should prepare the order for review by the respondent's counsel, after which it can be filed with the court.

MacLeod-Archer, J.