SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)
Citation*: AM v. KG*, 2021 NSSC 167

Date: 20210513
Docket: SFH 1201-73001 SFHPSA-116694
Registry: Halifax

Between:

AM

Applicant

v.

KG

Respondent

Judge:	The Honourable Justice Samuel C.G. Moreau
Heard:	February 16 and 17, 2021 in Halifax, Nova Scotia
Written Decision:	May 13, 2021
Counsel:	Lloyd Berliner and Cassandra Armsworthy, counsel with AM Christopher Robinson, counsel with KG

By the Court:

BACKGROUND

[1] The parties began a relationship in British Columbia in 2012, where both resided at the time. KG (the mother) is originally from Mexico and AM (the father), Nova Scotia.

[2] They married on July 26, 2014, in Mexico and separated on November 6, 2019.

[3] The parties moved to Nova Scotia in 2013, purchasing a home in Bedford.

[4] There is one child of the marriage, a daughter, M, born in April 2016. The mother has had primary care and residence of M since separation.

[5] Upon moving to Nova Scotia, the mother established a wedding planning business, The Wedding Vogue.

[6] The father has had a series of jobs and is currently unemployed.

[7] As a result of an incident, post separation (November 11, 2019), the father was charged with assaulting the mother contrary to Section 266 of the *Criminal Code*. He initially pled guilty to the charge and a Pre-Sentence Report was

prepared. He later withdrew his guilty plea and the matter was scheduled to proceed to trial in Provincial Court in March 2021.

Legal History

[8] The father commenced an application under the *Parenting and Support Act,* RSNS, 1989, c. 160, on November 26, 2019. To date, five Interim Orders have been issued by this Court. Subsequent to counsel's summations on the final day of trial, the parties agreed to the terms of a further Interim Order providing the father with unsupervised parenting time pending this decision.

[9] On November 17, 2020, the father filed a Petition for Divorce. The parties agreed to proceed with the divorce during this hearing together with the *Parenting and Support Act* application and address the other issues (division of matrimonial property) on a later date. As such, two orders will flow from this Decision; the order with respect to the *Parenting and Support Act* application and the Divorce Order. The divorce proceeding will be considered as an uncontested proceeding separate and apart from the corollary relief proceeding. All corollary relief claimed by the father, including claim(s)under the *Matrimonial Property Act* is reserved. The Divorce Order will indicate that the divorce proceeding has been severed from the corollary relief proceeding: *Newman v Seaman*, 1994 CanLII 4210 (NSSC).

[10] As agreed, the evidence offered during the trial on February 16 and 17, 2021, shall be considered when deciding issues under the *Parenting and Support Act*.

[11] The Court heard from seven witnesses in total. All direct evidence was presented by way of affidavits, save for the first witness, Dr. E.M. Rosenburg. Other witnesses included the father's parents; FM and BM, friends of the mother; AC and DA and the parties themselves.

Issues

[12] 1. Divorce;

[13] 2. Parenting arrangements – Primary care v shared parenting;

[14] 3. Child support (flowing from the parenting arrangement ordered); and

[15] 4. Decision making.

Divorce

[16] I find the jurisdictional requirements to grant a Divorce Order pursuant to the *Divorce Act*, R.S.C 1985, c.3(2nd supp.), have been established and no bars to the issuance of the Order exist.

[17] I therefore grant a Divorce Order.

Parenting

[18] The father requests a shared parenting arrangement with each parent having week about care of the child. The mother wishes to maintain the *status quo* with M remaining in her primary care and residence, and parenting time with the father every second weekend from Thursday to Sunday.

The Evidence

Dr. E.M. Rosenburg

[19] Dr. E.M. Rosenburg was qualified as an expert by consent in the area of adult psychiatry. Dr. Rosenburg authored a report dated November 2, 2020, found at Exhibit 2, Tab 14. Dr. Rosenburg was retained by the father.

[20] The salient issues addressed by Dr. Rosenburg are the father's anger management and addiction/substance use and/or abuse. Dr. Rosenburg notes the father is seen in regular clinic follow-up by psychologist, Ms. Keufler, and intermittently by his family physician, Dr. McNab. Neither Ms. Keufler nor Dr. McNab were called as witnesses in this trial. A letter from Ms. Keufler is presented in the father's affidavit evidence at Exhibit 2, Tab 3. I assign no weight to Ms. Keufler's letter as she was not called for the purpose of cross-examination and the content of her brief correspondence is of little assistance to my task here.

[21] Counsel for the mother references the case *R v. Lavallee*, [1990] 1 S.C.R. 852, specifically the test as articulated at paragraph 95:

> 95 *Abbey* has been roundly criticized: see, e.g., Schiff, *Evidence in the Litigation Process*, vol. 1 (3rd ed. 1988), at pp. 473-76; and Delisle, *Evidence: Principles and Problems* (2nd ed. 1989), at pp. 477-79. The essence of the criticism is that *Abbey* sets out more restrictive conditions for the use of expert evidence than did previous decisions of this Court (i.e., *City of St. John v. Irving Oil Co.*, [1966] S.C.R. 581; *Wilband v. The Queen*, [1967] S.C.R. 14; and *R. v. Lupien*, [1970] S.C.R. 263). Upon reflection, it seems to me that the very special facts in *Abbey*, and the decision required on those facts, have contributed to the development of a principle concerning the admissibility and weight of expert opinion evidence that is self-contradictory. The contradiction is apparent in the four principles set out by Wilson J. in the present case, at pp. 000, which I reproduce here for the sake of convenience:
>
> > 1. An expert opinion is admissible if relevant, even if it is based on second-hand evidence.
> >
> > 2. This second-hand evidence (hearsay) is admissible to show the information on which the expert opinion is based, not as evidence going to the existence of the facts on which the opinion is based.
> >
> > 3. Where the psychiatric evidence is comprised of hearsay evidence, the problem is the weight to be attributed to the opinion.
> >
> > 4. Before any weight can be given to an expert's opinion, the facts upon which the opinion is based must be found to exist.
>
> 96 The combined effect of numbers 1, 3 and 4 is that an expert opinion relevant in the abstract to a material issue in a trial but based entirely on unproven hearsay (e.g., from the mouth of the accused, as in *Abbey*) is admissible but entitled to no weight whatsoever. The question that arises is how any evidence can be admissible and yet entitled to no weight. As one commentator has pointed out, an expert opinion based *entirely* on unproven hearsay must, if anything, be inadmissible by reason of irrelevance, since the facts underlying the expert opinion are the only connection between the opinion and the case: see Wardle, "*R. v. Abbey* and Psychiatric Opinion Evidence: Requiring the Accused to Testify" (1984), 17 *Ottawa L. Rev.* 116, at pp. 122-23.
>
> 99 Where, however, the information upon which an expert forms his or her opinion comes from the mouth of a party to the litigation, or from any other source that is inherently suspect, a court ought to require independent proof of that information. The lack of such proof will, consistent with *Abbey*, have a direct

> effect on the weight to be given to the opinion, perhaps to the vanishing point. But it must be recognized that it will only be very rarely that an expert's opinion is entirely based upon such information, with no independent proof of any of it. Where an expert's opinion is based in part upon suspect information and in part upon either admitted facts or facts sought to be proved, the matter is purely one of weight. In this respect, I agree with the statement of Wilson J. at p. 35, as applied to circumstances such as those in the present case:
>
> > ... as long as there is some admissible evidence to establish the foundation for the expert's opinion, the trial judge cannot subsequently instruct the jury to completely ignore the testimony. The judge must, of course, warn the jury that the more the expert relies on facts not proved in evidence the less weight the jury may attribute to the opinion.

[22] In *R. v J-L.J.*, [2000] 2 S.C.R.600, Justice Binnie states at paragraph 59:

> 59 Before any weight at all can be given to an expert's opinion, the facts upon which the opinion is based must be found to exist.

[23] In *Marchand (litigation Guardian of) v. Public General Hospital Society of Chatham*, 2000 Carswell Ont 4362, Justice Sopinka of the Ontario Court of Appeal states at paragraph 64:

> [64] It is clear from the Supreme Court's decision in Lavallee that proof of foundational facts goes to the weight to be accorded to the opinion rather than its admissibility…

[24] In *Klein v Wolbeck*, 2016 ABQB 28, Renke J. of the Alberta Court of Queen's Bench states at paragraph 185:

> [185] An expert's opinion must identify the bases for the opinion, so its weight can be assessed. If no bases for the opinion are identified, the weight of the opinion cannot be assessed. If the weight of the opinion cannot be assessed, it has no recognizable probative value. I rely on the fourth proposition described by Justice Wilson in *Lavallee* respecting the admissibility of expert evidence.

[25] It is clearly established by the case law that the facts upon which Dr. Rosenberg based his opinions with respect to the father's substance use and anger management must be found to exist before any weight can be afforded the opinion. Unrefuted evidence was provided regarding the father's use of cannabis, incidents of property damage and what can best be described as immature behaviour.

[26] Counsel for the mother cross-examined the father on his use of cannabis. I found his responses to be evasive and self-serving. The father's recall of occurrences in Mexico and Montreal in which the mother facilitated the purchase of cannabis for him was less than convincing.

[27] The father's evidence in totality as relates to his use of cannabis references past use. He did not address current use in any substantive manner.

[28] Dr. Rosenberg indicates the father's current consumption of THC related substances (the psychoactive ingredient in cannabis) is limited to a compound containing CBD oil.

[29] Dr. Rosenburg's other reference to cannabis use is at pages 4-5, where he states:

> … His use of addictive substances has been largely limited to cannabis, previously these substances with a THC component, which he acknowledged

> gave him a pleasurable feeling. It should be noted, however, that he has not experienced any symptoms of cannabis withdrawal.

[30] In her affidavit evidence, the mother makes direct reference and comments on the father's use of cannabis, including his use of cannabis as relates to parenting. The father's response, or non-response as it were, to this very relevant issue merits concern and certainly gives rise to the issue of credibility.

[31] Given the fact the father seeks a shared parenting arrangement with week about care of a four-year-old child, I suggest it is not unreasonable to presume a more robust response than those provided by him, in his affidavit evidence and on cross-examination.

[32] The mother's affidavit evidence references incidents of property damage and untoward behaviour by the father of which he was questioned. The incidents include the father's removal/destruction of decals on a panel truck the mother used for business purposes, the damaging of the mother's vehicle key, the unnecessary bridge crossings using the mother's MacPass linked to her business MacPass account (29 crossings during a 2-day period; with 21 crossings during one day), his stalking behaviour toward the mother and his disappearance for five days, a period during which he was scheduled to have parenting time.

[33] I accept the mother's evidence as relates to the father's use of cannabis, anger management and emotional instability. It is unrefuted.

[34] The father acknowledged the incidents of property damage and untoward behaviour and characterized his behaviour as "stupid". These incidents all occurred prior to the formulation of Dr. Rosenberg's report. There is no mention (and therefore no analysis) of any of these behaviours in Dr. Rosenberg's report or Ms. Keufler's correspondence.

[35] Viewed individually these incidents can be seen as indeed a stupid or immature reaction to an emotional separation. Taken collectively I suggest these incidents raise concerns as to impulsivity, short temper and judgment.

[36] At page four of his report, Dr. Rosenburg states:

> Concerns regarding Mr. [M]'s possible difficulties with anger management and addiction/substance abuse have been raised by legal counsel for his wife. My understanding from Mr. [M] is that his level of irritability has always been contained, and he has not encountered difficulties because of aggressive behaviour.

[37] Based on the content of the report and his *viva voce* evidence, I conclude Dr. Rosenberg contemplated no other considerations than those of the father.

[38] The report contains no independent proof as to the information stated and opinions offered. I note all the Interim Orders issued by this Court prior to the formulation of Dr. Rosenburg's report contain a provision whereby the father is to participate in counselling for issues that may include substance use and/or anger management.

[39] I further conclude the report lacks any form of critical or in-depth analysis given the information available.

[40] Counsel for the father argues no expert evidence exists to support the conclusion that the father had/has a substance use issue and anger management issues. I question whether the professionals (Dr. Rosenberg and Ms. Keufler) were provided with the available information and if provided, why relevant and significant issues were not seemingly considered.

[41] Based on the totality of the evidence, I am led to the conclusion that the father's present use of cannabis is more regular than he suggests. I am satisfied he was not forthcoming regarding his previous and current use of cannabis. I am also led to the conclusion that the father's management of his anger is not as contained as he suggests.

[42] In assessing the father's request for a week about shared parenting arrangement, I pose the following:

- What has been the father's consumption pattern as relates to cannabis, post-separation?
    - Is he a casual or infrequent user?
    - If he consumes daily, in what amount and when?
    - Does his consumption have any effect on his sleep patterns?

- Has the father's use of cannabis contributed to his seeming lack of employment?

[43] I am left with more questions than answers in relation to the issues which led to the involvement of Dr. Rosenburg and Ms. Keufler. I am not satisfied this is simply a case of a frustrated parent acting out or allowing his emotions to get the better of him. At the least, Dr. Rosenberg's report is incomplete and of little assistance. It is not reliable. After reviewing the sum of the evidence, I am satisfied the facts upon which Dr. Rosenburg based his opinions are at best, inexact.

[44] My frank conclusions are quite pertinent in this circumstance as I am called upon to consider the parenting responsibilities in the best interests of a four-year-old-child, including a week about care arrangement.

[45] The onus is on the father to prove, on a balance of probabilities, that Dr. Rosenburg's report and expert evidence is sufficiently reliable for court purposes;

Nova Scotia (Community Services) v C.R., 2016 NSSC 46. After a careful review of the evidence and case law, I find the father has not discharged that burden.

[46] I assign no weight to Dr. Rosenberg's report.

The Grandparents

[47] FM and BM provided affidavit evidence. Both were cross-examined by the mother's counsel.

[48] FM and BM are supportive and loving grandparents and want the best for their granddaughter.

[49] Since the parties' separation they have been very helpful in facilitating the father's parenting time, including transporting M and providing supervision.

[50] FM and BM are involved grandparents and a positive influence in M's life. Prior to separation it appears the mother had a good if not close relationship with FM and BM. I believe she continues to have tremendous respect for them. I suggest that sentiment has more of a mutual grounding than the evidence of FM and BM offers.

[51] During the marriage FM and BM loaned the mother $10,000.00 to help start her business.

[52] The father has not resided with his parents for at least 15 years. On cross-examination they both testified to having a close relationship with their son, including being aware of the father's consumption of cannabis. The father does not consume cannabis in their presence or at their home. Both were unable to provide any categorical evidence as to the level or amount of the father's cannabis consumption.

[53] I am left with the impression that the grandparents have and continue to play more of a parenting role during the father's parenting time than they or the father would care to admit. In a shared parenting arrangement as requested I have no reason to doubt that this dynamic would be unchanged.

[54] FM and BM are fully supportive of their son's request for a week about shared parenting arrangement. I conclude their evidence was so crafted. Their responses on cross-examination supports this conclusion.

AC and DA

[55] AC and DA provided evidence in support of the mother.

[56] AC has been friends with the mother for approximately 20 years, having attended the same university in Mexico. They were housemates for a period of time in Vancouver and upon moving to Halifax in December 2018, AC and his

spouse stayed at the parties' home for one month. AC's evidence largely bolsters the mother's evidence with respect to the father's consumption of cannabis and disposition when under the influence and not. His responses on cross-examination were unscripted and forthright.

[57] I accept AC's evidence.

[58] DA's evidence largely focused on her observations of particular interactions between the parties. DA and the mother have been friends for approximately five years, having met through a mutual acquaintance. DA's affidavit evidence speaks to the mother's business acumen and also about the November 11, 2019 incident, which led to the father being charged with assaulting the mother. DA's evidence offers some insight (albeit limited) into the dynamics of the parties' relationship.

Credibility

[59] The father's credibility is a relevant issue and therefore merits discussion. In the case *Salah v Salah*, 2013 NSSC 308, Justice Beaton provides a very helpful synopsis of what I must consider when assessing the credibility of a witness. Paragraphs 21 through to 24 state:

> [21] Much has been written in the case law about the exercise of assessing credibility. I could go on at some length about what Courts have had to say and how credibility assessment has, by times, been described as more of an art than a

science. But for the purposes of this hearing, I will explain to the parties that I am cognizant of discussions about credibility which are found in any number of Court of Appeal decisions in this province, not the least of which would be the discussion by Justice Cromwell in *R. v. Mah,* 2002 NSCA 99. It's a criminal case, but the discussion about the legal analysis of the credibility finding or credibility determination exercise as it relates to the burden of proof is one which is entirely apropos in the family law context, as well.

[22] Counsel for the Applicant had also referred me to the Court of Appeal decision in *Hurst v. Gill*, 2011 NSCA 100 which cites with approval from a decision of my colleague, Justice Forgeron in *Baker-Warren v. Denault* which is a 2009 decision reported at NSSC 59. I'm also cognizant of the case ... it's probably best described as the "old chesnut," *Faryna v Chorney* 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354. It's discussed in *Baker-Warren v. Denault*. *Faryna v Chorney,* goes back to 1952 and the principle enunciated there is still good law and still applies with respect to whether the evidence is in harmony with the preponderance of probabilities that a reasonable and informed person might expect in the circumstances.

[23] It may be helpful to the parties to reference a very succinct but useful list of factors taken into account when balancing credibility as enumerated by Justice Forgeron in *Baker-Warren v. Denault*. That list is found at paragraph 19 of the decision, wherein Justice Forgeron wrote:

> 19. With these caveats in mind, the following are some of the factors which were balanced when the Court assessed credibility:
>
> (a) What were the inconsistencies and weaknesses in the witness' evidence which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the documentary evidence and the testimony of other witnesses? *Re Novak Estate*, 2008 NSSC 283;
>
> (b) Did the witness have an interest in the outcome or was he or she personally connected to either party;
>
> (c) Did the witness have a motive to deceive;
>
> (d) Did the witness have the ability to observe the factual matters about which he or she testified;
>
> (e) Did the witness have a sufficient power of recollection to provide the Court with an accurate account;
>
> (f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would recognize ... pardon me, would find reasonable, given the particular place and conditions? *Faryna v. Chorney* 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354;

> (g) Was there an internal consistency and logical flow to the evidence;
>
> (h) Was the evidence provided in a candid and straightforward manner or was the witness evasive, strategic, hesitant, or biassed, and;
>
> (i) Where appropriate, was the witness capable of making an admission against interest or was the witness self serving?

> [24] So this is a list of factors. It's not intended to be an exhaustive list, at least in my view, but it is certainly a helpful list when the Court is required to conduct a credibility assessment. I have employed these factors and others related to or similar to this list in assessing the evidence of the witnesses.

[60] In addition to the apparent lack of information regarding Dr. Rosenberg's evidence, of which I have commented, other aspects of the father's evidence are, in my view, inconsistent.

[61] The father initially pled guilty to the assault charge. As such, a Pre-Sentence Report was prepared, a copy of which can be found at Exhibit 3, Tab 1, Exhibit B.

[62] Information provided to the author of the Pre-Sentence Report contradicts information provided to Dr. Rosenberg regarding FM and BM. The information contained in the Pre-Sentence Report also contradicts the father and BM's evidence.

[63] In the Pre-Sentence Report the author states at page 3:

> … He added there was past confirmation of thoughts of suicide; but at the present time, there is no indication of this…

[64] The above information provided by the father appears not to have been provided to Dr. Rosenberg, based on the commentary in his report.

[65] The father informed Dr. Rosenberg that the reason or action that led to the parties' separation was his purchase of a couch, which the mother did not like. This is neither commented on nor stated elsewhere in the father's or the mother's evidence.

[66] In June 2020, the father removed the decals off a truck the mother used for her business. At Exhibit 2, Tab 6, the father asserts ownership of the truck and also indicates "I had planned to use it for my next business, and had taken the decals off shortly after taking possession of the truck and was planning to update them." On cross-examination, the father indicated he is currently unemployed and is conducting research into starting a business, importing motorcycles from Japan. He could offer no information (concrete or otherwise) on when this business would be put into operation.

[67] Among the most disconcerting of the inconsistencies in the father's evidence is the matter of the Canada Child Benefit allowance. The father has been collecting one half of the Canada Child Benefit allowance. On cross-examination when questioned on the specific information he provided to the relevant government

agency in order to qualify to receive this benefit, I found his response to be ambiguous and evasive.

[68] In order for a parent to properly qualify to receive one half of the Canada Child Benefit, a shared custody regime must exist whereby the child spends their time equally between both parents. Each parent would then receive 50% of the amount they would have received had they had full custody.

[69] Since separation, the father and the mother have never exercised a shared parenting arrangement. M has been in the primary care of the mother. I find this particularly troubling as the father's deceitful action directly deprived the primary parent of a benefit she is legally entitled to and thereby, deprived the child.

[70] There is no evidence that the father has provided any form of financial support to the mother post-separation.

Best Interest Factors

[71] Sections 18(5) and 18(6) of the *Parenting and Support Act* stipulates the factors which I must consider in determining the parenting arrangement in M's best interest. Sections 18(5) and 18(6) provides:

(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;

(e) the child's cultural, linguistic, religious and spiritual upbringing and heritage;

(f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can reasonably be ascertained;

(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; and

(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.

Assessment of the Best Interest Factors

[72] Each family law case revolves around its own unique facts. Associate Chief Justice O'Neil's comments at paragraph 18 of *Dorey v MacNutt*, 2013 NSSC 267 are befitting:

> [18] Jurisprudence on the issue of whether shared parenting should be ordered is very fact specific. I agree with the comments of Justice Wright in *Hackett v Hackett* [2009] N.S.J. 179, at paragraph 13:
>
> > 13. It is all well and good to look at other cases to see how these principles have been applied, but the outcome in other cases is really of little guidance. Every case must be decided on a fact specific basis and nowhere is this to be more emphasized than in custody/access/parenting plan cases. To state the obvious, no two family situations are ever the same.

[73] Given the present fact situation and M's age and stage of development, the diversity of factors set out in the legislation and in *Foley v Foley*, 1993 NSR (2d) 198 (NSSC), the most pertinent to this case are those set out at s. 18(6) (a)(b)(c)(d)(g)(h)(i) and (j) of the *Parenting and Support Act*.

Environment

[74] In my comments regarding Dr. Rosenburg's report and evidence, I voiced concerns regarding the father's use of cannabis and the lack of information I consider necessary to properly assess whether a shared parenting arrangement is in M's best interests. Without same information and a fulsome analysis of the father's management of anger (based on the evidence), the *status quo* remains essential to

the child's physical, emotional, social and educational needs. At four years of age, M is unable to self-protect, which amplifies the need for satisfaction of my queries.

Willingness of a Parent to Facilitate Contact and Develop and Maintain a Relationship with the Other Parent

[75] The mother's behaviour with respect to the facilitation of the father's parenting time subsequent to the November 11, 2019 incident calls for stern disapproval. The mother effectively denied the father parenting time for considerable periods. The mother attributes this to acting in M's best interests, given some of the behaviours displayed by the father.

[76] To date the Court has issued five Interim Orders in this matter. All but the last (Interim Order issued March 11, 2021) required the father to participate in counselling for issues that may include substance use and/or anger management. All but the August 19, 2020 Interim Order required the involvement of the father's parents during his parenting time, whether facilitating transportation, directly supporting or supervising.

[77] The involvement of the grandparents adds that layer of comfort which should go towards mitigating concerns with respect to the father's behaviour. The

mother must continue to support the father's parenting time with M and foster a positive relationship.

History of Care of the Child

[78] I am satisfied the evidence establishes the mother was the child's primary care giver prior to separation and certainly subsequent.

Proposed Plans

[79] Each parent has provided viable plans of care. As alluded to earlier, I believe the grandparents would have a substantial role in parenting M if a shared parenting regime were to be instituted.

The Relationship Between the Child and Each Parent

[80] M has a strong relationship with the primary parent, the mother. The relationship is stable. As mentioned above, M's relationship with her father must continue to be facilitated and fostered in a positive manner. The periods of non-contact were not in keeping with M's best interest and put the interests of a parent before that of the child's.

[81] I have no doubt the father has a deep affection for M. Each parent must sideline their animus toward the other and focus on encouraging a positive and healthy relationship with the child.

The Support of Extended Family – The Paternal Grandparents

[82] FM and BM are loving and supportive grandparents and have been invaluable in facilitating the father's parenting time. During the marriage, the mother had a positive relationship with her in-laws, and continues to trust them. The grandparents are a positive role model for M. A strong and stable relationship exists between M and her grandparents. This positive feature enhances the father's relationship with M. Also, the evidence suggests M's relationship with her grandparents fosters the relationship between M and her cousins.

The Parents' Ability to Consult and Cooperate

[83] Since the November 11, 2019 incident, consultation and cooperation between the mother and the father regarding M has been little to non-existent. It appears any trust the mother had in the father dissipated after that incident. The mother must strive to ensure the father is provided the opportunity to build back that trust. The father must strive to ensure his behaviour (management of his temper and judgment) is not and does not become an impediment to the rebuilding

of that trust. I shall not make this a provision of the order which flows from this decision, however, these parents may consider participating in some form of co-parent counselling.

The Impact of any Family Violence

[84] As stated, the assault charge against the father eroded the relationship between the parents and as such, had an adverse effect on M regarding her relationship with her father.

Conclusion

[85] I have carefully considered the evidence, applicable legislation, case law, including the factors enunciated in *Foley v Foley* and counsel's arguments. I have provided reasons for my ruling on the expert's report and evidence. I confirm the issue of child support (including imputation of income) was not pleaded.

[86] I have determined it is in the best interest of the child, M, born April 2016, that she remain in the primary care of the mother. The father shall continue to have parenting time every second weekend from Thursday at 1:00 p.m. to Sunday at 1:00 p.m. The Order shall also contain a clause stating that the father will have any other parenting time mutually agreed to between the parties. As he is currently

unemployed and without an income, the father shall not be ordered to pay child support. Other clauses include:

- The parties shall consult with respect to any major decisions involving the child. If consensus cannot be reached, a professional opinion shall be sought and if consensus still cannot be reached, the professional opinion shall be final.
- If the decision involves an issue in which a professional opinion is not warranted and the parties are unable to reach consensus, the mother shall have final say.
- Neither party shall be under the influence of any intoxicating substance when caring for the child.
- Each parent shall have telephone access and/or virtual access (Facetime, Skype) when the child is in the other parent's care.
- The driveway of the mother's home shall be clear during parenting time pick-up and drop-off.
- FM and/or BM shall facilitate transport of the child with respect to the father's parenting time.
- M shall not be removed from the province of Nova Scotia without the written consent of the father and the mother or by order of the Court.
- The father shall cease collection of one-half of the Canada Child Benefit allowance forthwith.
- The father shall provide to the mother on or before June 1st of each year, commencing June, 2021, a complete copy of his Income Tax Return with all attachments and copies of his Notices of Assessment and/or Reassessment received from the Canada Revenue Agency.
- Enforcement clauses

[87] Counsel for the mother shall prepare the Orders.

[88] Written submissions regarding costs may be made subsequent to the issuance of the Order.

Samuel C. G. Moreau