

**SUPREME COURT OF NOVA SCOTIA**

**(Family Division)**

Citation: *MacDonald v. Padelt-Robinson*, 2021 NSSC 258

**Date:** 20210824

**Docket:** SFPAPSA 108210

**Registry:** Port Hawkesbury

**Between:**

Derek Joseph Daniel MacDonald

Applicant

and

Ashley Christina Padelt-Robinson

Respondent

**LIBRARY HEADING**

**Judge:** The Honourable Associate Chief Justice Lawrence I. O’Neil

**Hearing:** August 6 & 9, 2021 in Port Hawkesbury, Nova Scotia

**Issue:** Relocation of three children

**Summary:** The parties lived separate and apart in the Margaree area. They were both heavily involved in the parenting of the children. The mother wished to relocate to Sydney to pursue an educational program. The father opposed the relocation of the children. The Court held it was in the best interests of the children to not be relocated. The children had achieved a stable life in Margaree and were doing well and had daily contact with extended family. In addition, the mother’s plan was uncertain in terms of financial feasibility

and the educational objective could be achieved without the mother or the children moving.

**Keywords:** Extended family; stability, educational program

**Legislation:** *Parenting and Support Act*, R.S.N.S. 1989, c.160

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**Counsel:** James MacIntosh and Mealey MacDonald, Counsel for Derek MacDonald  
Andrea Rizzato, Counsel for Ashley Padelt-Robinson

**Overview**

[1] The parties began their relationship in August 2009; married July 5, 2014 in Nova Scotia and separated on December 18, 2017. They have three daughters born in the years 2010, 2012 and 2017.

[2] Their parenting relationship is currently governed by a consent order flowing from a settlement conference held on March 29, 2018 and continued April 25, 2018. The mother has primary care and residence for the children and a schedule for the parenting time of the father is outlined. The father agreed to pay \$1,800 per month as child support. The parties further agreed that he would pay

50% of the cost of childcare.

[3] Over the course of their relationship, the parties lived in Moncton (2010-2011), Bedford (2016 -2017), Fort McMurray (2012, 2014–2016) and in the Margaree area of Cape Breton (2012, 2017-present). Most recently, the mother has been seasonally employed in the tourism sector and the father has, since 2019, been employed at a local automobile service station owned by his father. The issues in this proceeding are governed by the provisions of the *Parenting and Support Act* 'PSA', R.S.N.S. 1989, c.160. No Petition for Divorce has been filed.

[4] The parties returned to Court as a result of the father's application to vary their 2018 *Parenting and Support Act* 'PSA' order. He seeks to increase his parenting time. In response, the mother filed an application to relocate the children to Sydney from the Margaree area in September 2021. Initially, she proposed that the father's parenting time would be converted to every second weekend during the school year and to a week on, week off parenting schedule during the summer. In her oral evidence however, she proposed that after her relocation, the father's weekend parenting time would be every weekend during the school year. In her affidavit (exhibit 9) the mother says, in reality, the children have been with their father every weekend beginning Friday at 3:00 p.m. to Sunday at 3:00 p.m. over the summer.

[5] She wishes to begin a two-year education course at the community college in Sydney.

[6] The father is opposed to the relocation of the children.

## **Evidence**

[7] Evidence in this matter was received on August 6 and 9, 2021. The Court heard from the parents of both parties who are the grandparents of the children and from James MacKinnon, the boyfriend of the mother, who lives in the Sydney area.

[8] The parties' relationship has been characterized by instability. Both parties have abused substances, gambled excessively and managed mental health issues. Mr. Derek MacDonald complains that since separation, Ms. Padelt-Robinson has

had numerous short-term romantic relationships and she has exposed the children to these relationships. He says this has been unhealthy for the children given the short durations of the relationships and the character of one or more of the men Ms. Padelt-Robinson became involved with.

[9] Over the past decade, at various times, the father was employed in Fort McMurray and made a very good income as a tradesman. For part of his employment term he lived in Alberta with his family and for other periods he commuted from their home in the Margaree area.

[10] In 2016 when fire engulfed the city of Fort McMurray, the parties and their children fled the city safely. There is reference in the evidence to this experience having resulted in members of their family suffering from PTSD. After leaving the city, the family travelled to Saskatchewan. The mother and the children returned to Nova Scotia by air and the father drove the family vehicle to Nova Scotia.

[11] The father has been diagnosed with PTSD. In 2015-2016, Derek MacDonald attended a clinic in the Halifax region. He says it was to treat his PTSD, but Ms. Padelt-Robinson says it was to treat a substance abuse problem. The family lived in Bedford at the time.

[12] It was a period of financial stress for the parties.

[13] The father testified that he currently pays child support in excess of what is required so that the children and their mother may remain in the former matrimonial home in Margaree. The father earns approximately \$60,000 and pays child support that reflects an income of approximately \$100,000. The mother earns approximately \$30,000 working seasonally. The children have been attending a school in the Margaree area.

[14] Mr. MacKinnon is identified as a prospective partner of the mother when she relocates to Sydney. She indicates she will have her own residence for herself and the children. Mr. MacKinnon indicated that they have not made plans to live together.

[15] I am satisfied that Mr. MacKinnon and the mother are in the early stages of

a relationship. Mr. MacKinnon has had limited opportunities to become acquainted with the children or their mother and it would appear he has spent only short periods with her as well. He indicated they put their relationship on hold in early January 2021 and only resumed spending time together in July 2021. They had limited time together over the fall of 2020 having commenced dating in late September.

[16] Whether the father is romantically involved is not known by the Court. He lives with his parents. He explained that he cannot afford separate accommodation given the level of support he provides to his estranged wife for the benefit of the children. He does not complain that he cannot afford independent accommodation.

[17] Ms. Gaby MacDonald and her husband Cyril MacDonald testified as to their significant involvement in the lives of the children. They are the paternal grandparents with whom Derek MacDonald lives and it is in this home that the father hosts his children.

[18] Gaby MacDonald is a retired office worker who held responsible jobs for the regional credit union. Over the years, she has travelled on a daily basis to local communities such as Baddeck and Mabou in the course of her employment.

[19] She impressed the court as intelligent, well read, hard-working and honest. There is no question that she is totally committed to her family including these grandchildren.

[20] Cyril MacDonald is also retired. Most recently, he completed sixteen (16) years of service as a manager of a fuel delivery business in the Sydney area. Most days he commuted to Sydney to meet his employment obligations. Occasionally, he would stay over with family or friends. Prior to this period of employment, Mr. MacDonald managed a fuel delivery business in the Inverness area.

[21] He is also closely involved in the lives of his grandchildren. He testified that he and Gaby frequently provide childcare services to the children. The evidence establishes they have served as after school childcare providers and met this responsibility over the summer when the parents were working. Mr. Cyril

MacDonald testified that he gave the family \$1,000 each month for approximately 18 months while his son and his family lived *inter alia* in Bedford in the period 2016-2017.

[22] Cyril MacDonald acknowledged he and his daughter in law had an unpleasant exchange wherein she asked him to not interfere in her personal life. The exchange arose in the context of Mr. MacDonald expressing concerns about men his daughter-in-law was dating and concern about these persons being around the grandchildren.

[23] Mr. Cyril MacDonald explained that he owns the local service station where his son works. He said he bought the station because he was interested in the business enterprise and had some background in the petroleum industry and also because it was a good fit for his son who needed employment and who had some expertise working around automobiles. Cyril MacDonald indicated that he does not draw a salary from the business, and it does not currently make a profit. He is hopeful that will change.

[24] Clearly Cyril MacDonald is a dedicated grandparent and parent and like his wife Gaby, is a significant positive force for his son and the three grandchildren. They have been a stable and loving influence in the lives of the children, and they continue to be a central part of the children's lives.

[25] The court also heard from Johanna Padelt, the maternal grandmother. Ms. Padelt has not enjoyed frequent access with the children. Although she lives nearby, her personal circumstances have made that difficult. She testified that she has lost two partners over recent years.

[26] She impressed the court as intelligent, generally informed, honest and fair-minded. She attributed problems her daughter had with gambling and substance abuse to the influence of her husband, Derek MacDonald.

[27] Similarly, Daniel Robinson, the former husband of Johanna and the father of Christina testified. His contact with the family has also been limited in recent years. He lives in Northern Victoria County, approximately 90 minutes from the children. He impressed the Court as fair-minded, thoughtful and as a supportive

parent and grandparent. He did not offer negative commentary based on his direct observations of either party. He expressed support for his daughter and disappointment with Derek MacDonald and his family based on what he has been told about the parties' marital history.

[28] As stated, Johanna Padelt and Daniel Robinson have not had the level of involvement in the lives of the parties and their grandchildren that has been enjoyed by Gaby and Cyril MacDonald.

### **Legal Principles**

[29] The *Parenting and Support Act*, R.S.N.S. c.160 as amended in recent years provides a statutory regime when a parent or guardian plans to change a child's place of residence (s.18D).

[30] The law requires that notice be given to any other parent (as defined by s.2(i)). The presumptive notice period is sixty (60) days (s.18D(5)).

[31] Similar provisions govern when the plan is for the parent to relocate.

[32] Ultimately when a proposed relocation of a child is before the Court, the following applies:

18H (1) When a proposed relocation of a child is before the court, the court shall be guided by the following in making an order:

(a) that the relocation of the child is in the best interests of the child if the primary caregiver requests the order and any person opposing the relocation is not substantially involved in the care of the child, unless the person opposing the relocation can show that the relocation would not be in the best interests of the child;

(b) that the relocation of the child is not in the best interests of the child if the person requesting the order and any person opposing the relocation have a substantially shared parenting arrangement, unless the person seeking to relocate can show that the relocation would be in the best interests of the child;

(c) for situations other than those set out in clauses (a) and (b), all parties to the application have the burden of showing what is in the best interests of the child.

(2) Unless the court otherwise orders, only a person entitled to receive notification under Section 18E may oppose a relocation.

(3) In applying this Section, the court shall determine the parenting arrangements in place at the time the application is heard by examining

- (a) the actual time the parent or guardian spends with the child;
- (b) the day-to-day care-giving responsibilities for the child; and
- (c) the ordinary decision-making responsibilities for the child.

(4) In determining the best interests of the child under this Section, the court shall consider all relevant circumstances, including

- (a) the circumstances listed in subsection 18(6);
- (b) the reasons for the relocation;
- (c) the effect on the child of changed parenting time and contact time due to the relocation;
- (d) the effect on the child of the child's removal from family, school, and community due to the relocation;
- (e) the appropriateness of changing the parenting arrangements;
- (f) compliance with previous court orders and agreements by the parties to the application;
- (g) any restrictions placed on relocation in previous court orders and agreements;
- (h) any additional expenses that may be incurred by the parties due to the relocation;
- (i) the transportation options available to reach the new location; and
- (j) whether the person planning to relocate has given notice as required under this Act and has proposed new parenting time and contact time schedules, as applicable, for the child following relocation.

(5) Upon being satisfied that the child's needs or circumstances have been changed because of the order granted under subsection 18G(2), the court may vary a previous order granted under Section 18 or 37.

[33] Section 18(5)-(8) require that the best interests of children be the guiding principle when parenting arrangements are being ruled upon and enumerates relevant circumstances for the Court to consider:

18(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;

(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.

(6A) In determining the best interests of the child on an application for contact time or interaction by a grandparent, the court shall also consider

- (a) when appropriate, the willingness of each parent or guardian to facilitate contact time or interaction between the child and the grandparent; and
- (b) the necessity of making an order to facilitate contact time or interaction between the child and the grandparent.

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

- (a) the nature of the family violence, abuse or intimidation;
- (b) how recently the family violence, abuse, or intimidation occurred;
- (c) the frequency of the family violence, abuse or intimidation;
- (d) the harm caused to the child by the family violence, abuse or intimidation;
- (e) any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse, or intimidation from occurring; and
- (f) all other matters the court considers relevant.

(8) In making an order concerning custody, parenting arrangements or parenting time in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j).

## **Conclusion**

[34] I am satisfied Mr. Derek MacDonald has met any evidentiary burden that rests with him and has established on a balance of probabilities that it is in the best interests of the parties' children to remain in his care in Margaree as an alternative to their relocation to Sydney.

[35] Both parents have been closely involved in the care of their children in recent years with each having almost daily contact with them and contributing to their care and upbringing including decision making.

[36] The children have a stable secure life in the Margaree area. Their extended family on their father's side lives there and the children are clearly attached to them. They are settled in the school system and have established friendships. These children are happy and adjusted to the Margaree community. For these children, the stability of recent years is a change from the instability they experienced until 2017.

[37] They have been exposed to the struggles of their parents and unavoidably impacted by them.

[38] The paternal grandparents are a stable and loving influence in their lives, perhaps the most stable adult influences the children have enjoyed. Similarly, the maternal grandparents can be called upon to assist and to support the family.

[39] The plan to move the children does not reflect an ambition on the part of the mother to offer them a better childhood. These children have access to a wide range of extracurricular activities where they currently live. As testified, parents in this community have always ensured their children have enriching childhoods. The suggestion that this is not so reveals the weakness of the plan put forth by Ms. Padelt-Robinson.

[40] The plan to relocate the children is vague, unconfirmed, and hastily put together.

[41] At its core, it is a plan for Ms. Padelt-Robinson to leave a rural community for a more urban life in Sydney because she prefers a larger centre. Given the unconfirmed details for funding the educational program she wishes to complete

in Sydney, it is unclear whether her educational plan is feasible. She faced many unanswered questions about how she proposed to pay for the program.

[42] The evidence is also clear that Ms. Padelt-Robinson does not need to relocate to pursue the program.

[43] Currently the in-person part of the two-year program will be 2-3 days each week for 8-9 months each year. There will be a work term to perform over this period and apparently, this can be done in the Margaree-Cheticamp area.

[44] As already pointed out in the case of both Cyril and Gaby MacDonald, the paternal grandparents it is not uncommon for local residents to commute long distances on a daily basis to work. Ms. Padelt-Robinson confirms this acceptance of the need to travel when she proposes that the children travel each Friday to Margaree to spend the week end with their father after she gets settled with them in Sydney.

[45] Should Ms. Padelt-Robinson complete the program as proposed by her, she will need to obtain employment. Not surprisingly, she could not offer any assurances in that respect. That uncertainty confirms the possibility that once relocated to Sydney, the children might need to be moved again.

[46] On behalf of Mr. Derek MacDonald, the children's father, counsel recommends that Ms. Padelt-Robinson move to Sydney without the children to pursue a different life than the one available to her in Margaree. The point being that she is clearly unhappy, does not want to be in Margaree and this unhappiness will continue to create tension between the parties, with the paternal grandparents and negatively impact the children.

[47] In the event she completes an education plan and secures stable employment, she can seek an opportunity to place a more stable plan for the children before the Court assuming she establishes a change of circumstances which would confer upon the Court jurisdiction to reconsider a plan to relocate one or more of the children. That preliminary question is one best left for the Court to decide at that time.

**ACJ**