SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *TW v. GS*, 2023 NSSC 179

Date: 20230609
Docket: *Sydney* No. 112640
Registry: Sydney

Between:

TW

Applicant

v.

GS

Respondent

Judge:	The Honourable Justice Lee Anne MacLeod-Archer
Heard:	April 27, April 28, and May 17, 2023, in Sydney, Nova Scotia
Written Release:	June 09, 2023
Counsel:	Heidi Fahie for TW Alan Stanwick for GS

By the Court:

[1] This is a decision on parenting. The parties are former common law partners. They had a 23-year relationship, during which time they had two children, ALS born September, 2012 and AGS born February, 2015.

BACKGROUND

[2] The parties separated in 2017 after TW reported to police that she found child pornography on GS's computer. The separation lasted only a short time while police investigated. When no charges were laid, the parties reunited. However, several months later, TW again found child pornography on GS's computer. She reported it to police again, and this time GS was charged with possession of child pornography.

[3] Police made a referral to child protection services (CPS) on both occasions. The first referral wasn't substantiated, because GS disposed of the computer before police could seize it. The second investigation was substantiated after GS admitted to a CPS worker that he'd viewed child pornography on his computer. CPS closed its file after recommending to TW that GS's parenting time with the boys be supervised.

[4] The criminal charges against GS were dismissed without a trial in 2019. TW allowed GS to exercise unsupervised parenting time with the boys for several months afterwards. However, after GS transported the children without appropriate cars seats, TW contacted CPS and was advised that the recommendation for supervised parenting time was still in effect. Thereafter, she reinstated the requirement for supervision. The parties were able to agree on GS's mother, and later his partner, TT, to supervise GS's parenting time.

[5] GS and TW communicated well until late 2020. However, since then their relationship has devolved into "high conflict". There have been numerous referrals to CPS, police involvement, inappropriate text exchanges, and each parent has involved the children in the conflict.

POSITION OF THE PARTIES

[6] TW seeks primary care of the children with supervised parenting time for GS every second weekend.

[7] GS does not agree that his parenting time should be supervised. He seeks a return to the shared parenting arrangement the parties followed between 2019 – 2020.

ISSUES

[8] The issues to be determined are:

1. Decision-making and parenting time;
2. Determination of income;
3. Child support (prospective and arrears);

ISSUE #1: Decision-making and parenting time

[9] Section 18 of the ***Parenting and Support Act*** 2015, c. 44 (***PSA***) provides:

> 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 a parenting order respecting
>
> (a) decision-making responsibility;
>
> (b) parenting time;
>
> (c) a parenting arrangement dealing with any of the areas set out in subsection 17A(3);
>
> (d) a parenting plan made under Section 17A; and
>
> (e) any other matter the court considers appropriate18(2)(2)
>
> …
>
> (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.

[10] I must assess the evidence and determine the most appropriate parenting arrangements in accordance with the best interests of the children, through the lens of the factors enumerated in s.18(6):

> (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, including the child's aboriginal upbringing and heritage, if applicable;
>
> (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;
>
> (ia) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child; and 12 parenting and support R.S., c. 160 APRIL 1, 2022
>
> (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.

[11] In **MacNutt v. MacNutt**, 2013 NSSC 267, O'Neil, A.C.J. discussed when a shared parenting arrangement is appropriate:

> Jurisprudence on the issue of whether shared parenting should be ordered is very fact specific. I agree with the comments of Wright, J. in **Hackett v. Hackett** [2009] N.S.J. No. 178, 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.

[12] It is TW's position that a shared parenting arrangement is not in the best interests of the children. She analyzes the ***PSA*** s.18 factors as follows:

- Physical, emotional, social and educational needs – Both parties are able to feed and clothe the children. However, TW has several concerns regarding the children's needs while in GS's care: 1) The oldest child has been diagnosed with ADHD and has been prescribed medication. GS refuses to medicate the child while he is in his care; 2) The children's attendance at hockey is not consistent while in their father's care; 3) The children were sleeping on the floor in the living room until recently when GS renovated the home. It is TW's position that the children need a stable home life, they should regularly attend extracurricular events and be administered the medication they require as prescribed by their doctor;

- Supporting the relationship with the other parent – TW supports the children spending supervised time with their father;

- Historical care of the children – The children have essentially always been in the primary care of TW;

- Cultural and religious upbringing – The parties are not religious;

- Preference of the child – the children in this matter are too young to participate in a Voice of the Child Report;

- Nature and strength of the relationship between the child and parent – The parents and children have a strong bond;

- Extended family relationships – There is a strong relationship between the children and their paternal grandparents. There is also a strong relationship between the children and TW's partner, DK;

- Communication between the parents – At this point, all communication between the parties is conducted through GS's mother, LS;
- Civil or criminal proceedings – GS was charged with possession of child pornography, but the charges were dismissed. Child protection remains of the position that GS's time with the children should remain supervised; and
- Family Violence – this is not an issue in this matter.

[13] GS did not analyze the s.18 factors individually, but he says:

- The parties successfully shared parenting for about a year between 2019–2020;
- The conciliation record indicates that they had agreed on shared parenting and child support in 2019, which shows a good level of cooperation;
- Conflict only arose after TW imposed supervised parenting time for GS;
- TW unilaterally imposed that requirement;
- CPS did not dictate that GS's parenting time had to be supervised, it was a recommendation only;
- During the period of time they shared parenting, there were no CPS referrals;
- Although CPS recommended that he be supervised around TT's children (who are of a similar age to ALS and AGS) he's had unsupervised contact with them since 2020 with no referrals to CPS and no evidence of harm to them;
- The criminal charges were dismissed so there's no finding of guilt;
- The CPS worker misunderstood what he told her about the incidents reported by TW; he denies that he sought out and watched child pornography; and
- CPS assessed the risk as low (page 44, Exhibit 1).

[14] In addition to the concerns outlined in her s.18(6) analysis, TW says that GS poses a risk to the children because she says:

1. He presents a risk of sexual harm to the boys arising from his interest in child pornography;

2. His angry behaviours create risk of emotional harm to the boys. She cites an incident at the hockey rink and his "interviews" of the children in December, 2022 as evidence of this risk; and

3. GS is a heavy marijuana user who's been intoxicated when picking up the children.

[15] In relation to the risk of sexual harm, TW notes that dismissal of the criminal charges does not equate to a finding of not guilty. She argues that this court must determine whether there's evidence to support the risks alleged, irrespective of whether there's a criminal conviction.

[16] GS argues that CPS did not mandate supervised parenting for him. However, TW says that CPS told her in 2020 that she must ensure that GS exercised only supervised parenting time; otherwise, the children could be removed from her care. Although GS disputes that, the CPS notes confirm that he was told the same thing on August 11, 2020 (Exhibit 1, page 45).

[17] The social workers were questioned and confirmed that CPS made a recommendation for supervised parenting time. However, they confirmed that CPS did not, and could not, order such a condition. They also confirmed that CPS told TW that the children could be removed from her care if she didn't act to protect them (by ensuring that GS's parenting time was supervised).

[18] The CPS file was entered as Exhibit 1. Counsel agreed to tender this as a business record by consent, both for authenticity and the truth of the contents. The exception to the latter agreement applied in the case of entries made by the two social workers subpoenaed to answer questions. This is important, because the social worker who recorded the entries in 2017 was not called to testify. I have considered her notes as evidence of true and accurate interactions with the parties.

[19] I reviewed the CPS file in detail. It presents an objective history which supplements the evidence offered by the parties. The relevant portions are summarized in Schedule "A" to this decision.

CREDIBILITY

[20] I've carefully considered the evidence of both parties and their witnesses. Credibility plays a large role in assessing and weighing evidence, particularly in cases where allegations of risk to a child are at play.

[21] In **Baker-Warren v. Denault**, 2009 NSSC 59, Forgeron, J. said:

> **18** For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" **R. v. Gagnon** 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" **R. v. R.E.M.** 2008 SCC 51, para. 49.
>
> **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 (S.C.);
> >
> > b) Did the witness have an interest in the outcome or was he/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/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 find reasonable given the particular place and conditions: **Faryna v. Chorney** [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 straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
> >
> > i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?
>
> **20** I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: **R v. Norman**, (1993) 16 O.R. (3d) 295 (C.A.) at para.55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in **Re: Novak Estate**, *supra*, at para 37:
>
> > There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may

> believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See **R. v. D.R.**, [1996] 2 S.C.R. 291 at 93 and **R. v. J.H.**, [2005] O.J. No. 39, *supra*).

[22] TW presented her evidence in a candid manner, though she became argumentative when questioned about her decision to withhold parenting time in the absence of a mutually agreeable supervisor, and in relation to the incident at the rink. Despite that, her evidence was generally consistent and credible. Cross-examination did not significantly diminish her credibility.

[23] GS initially presented as candid and calm, but he became argumentative and evasive during cross-examination. He also refused to make concessions against interest. In addition, his interpretation of events appears to be distorted by his belief that everyone is working against him. This is highlighted by his call to CPS about the appointment with ALS's pediatrician. The social worker's note on what she heard on that recording is significantly different (and much more innocuous) than what he relayed to her.

[24] Of greater concern is that GS portrays the events of 2017 differently now than he did initially. For example, the CPS notes indicate that when the social worker met with the parties in January, 2017 (after the first report by TW that she'd found child pornography on GS's computer), they reported that GS apologized to TW and told her he needed help. The notes then indicate that GS reached out to get that help. On January 16, 2017 GS told the social worker that he'd been referred to psychiatrist Dr. Christians. Yet in testimony, he said that he connected with his psychiatrist over the stress of the criminal charges laid in July, 2017 (the second report). It appears that GS's narrative has changed to reflect his persecution mindset and/or to suit his case for shared parenting.

[25] TW had her own issues with credibility. The CPS notes indicate that she misled social workers in 2017 during their investigation into the first report TW made to police. She told them GS was living with his sister, when in fact he'd moved back into the home with TW and ALS. I am also aware from the CPS file that TW initially told social workers that she didn't believe that GS posed a risk to their children. Her position now is that he does pose a risk.

[26] I can accept all, some, or none of a witness's evidence. I have carefully assessed the credibility of both parties and I find that, although there are some problems with her evidence, TW is the more credible of the two parents. For that reason, I accept TW's evidence where it differs from GS's evidence.

ONUS OF PROOF

[27] In **Baker-Warren** (*supra*), Forgeron, J noted:

> **14** In **F.H. v. McDougall**, 2008 SCC 53, Rothstein, J. confirmed that there are no degrees of probability within the civil standard. In every civil case, a judge should take into account the seriousness of the allegations or consequences, or inherent improbabilities; however, these considerations do not alter the standard of proof. In all cases, the court must scrutinize the evidence when deciding whether it is more likely than not that an alleged event occurred…
>
> **15** The court must assess the impact of inconsistencies on questions of credibility and reliability which relate to the core issues. It is not necessary for a judge to deal with every inconsistency, but rather a judge must address in a general way the arguments advanced by the parties: **F.H. v. McDougall**, *supra*, paras. 40, and 45 to 49.

[28] I have applied the standard of proof after considering the evidence as a whole.

SUPERVISION

[29] The onus is on TW to satisfy me that her parenting plan is in the best interests of the children. In particular, she must meet the onus of showing that supervised parenting time for GS is necessary and in the best interests of the children.

[30] In **R.F. v. K.F.**, 2022 NSSC 194, Marche, J. stated:

> **26** Whether parenting time should be supervised must also be considered within the framework of what is in a child's best interest. Justice Forgeron in **D.S. v. R.T.S.**, 2017 NSSC 155, laid out legal principles of restricting parenting time:
>
> - The burden of proof lies with the party who alleges that access should be denied or restricted, although proof of harm need not be shown.
> - Proof of harm is but one factor to consider in the best interests test.
> - The right of the child to know and to be exposed to the influence of each parent is subordinate in principle to the child's best interests.
> - The best interests test is a positive and flexible legal test which encompasses a wide variety of factors, including the desirability of maximizing contact between the child and each parent, provided such contact is in the child's best interests.

- The court must be slow to extinguish or restrict access. Examples where courts have extinguished access include cases where access would place the child at risk of physical or emotional harm, or where access was found to be contrary to the child's best interests.
- An order for supervised access is seldom seen as an indefinite or long-term solution.
- Access is the right of the child; it is not the right of a parent.
- There are no cookie-cutter solutions. Courts must examine the unique needs of each child and craft an order that protects and enhances that child's best interests.

27 In paragraph 30 of **D.S. v. R.T.S.**, supra, Justice Forgeron reviewed circumstances in which the Court may impose supervision as a condition to parenting time:

- Where the child requires protection from physical, sexual, or emotional abuse.
- Where the child is being introduced or reintroduced into the life of a parent after a significant absence.
- Where there are substance abuse issues.
- Where there are clinical issues involving the access parent.
- Supervised access is not appropriate if its sole purpose is to provide comfort to the custodial parent.

[31] TW acknowledged in testimony that there's no evidence that GS ever abused either of their sons. However, she believes there's evidence to support risk of sexual and emotional abuse.

[32] GS testified that he's never harmed the boys and that if there's risk, it's from TW and her partner.

[33] In addition to the findings which follow, I find that both parties lack insight into the impact their conflict has on their sons. In particular, GS lacks insight into his actions and the risks they could pose to the children. Some examples are:

(a) He claims that not being convicted of accessing child pornography (and the charges being dropped) means that he's not guilty. Yet GS did not expressly deny an interest in child pornography. He simply says that he has no criminal record and that he's an "innocent man".

(b) He says that TW caused a scene at the rink which created emotional harm for the boys, yet he created a similar scene at the rink in late 2022 with the children present.

(c) He says that TW shouldn't interrogate the boys, but he recorded "interviews" of the children which he shared with CPS.

(d) He was asked if he thought his conversation with the boys (as reflected in the recording presented to CPS) was appropriate and he responded by asking counsel to point out to him where it was inappropriate; then when some of the questions were read to him, GS replied that "maybe the wording wasn't the best", which misses the point altogether. The issue isn't whether he worded the questions appropriately, but rather whether interrogating the boys while recording them was appropriate. GS seems to think it was. It wasn't.

[34] I make the following findings, based on my review of the evidence, which is sufficiently clear, convincing, and cogent to satisfy me on a balance of probabilities that:

1. GS accessed child pornography online at least once, and probably more than once;
2. GS has not been assessed by a qualified medical practitioner for his interest in child pornography and the risk it poses to children in his care;
3. GS exposed the children to adult discussions and conflict by interviewing and recording them;
4. TW exposed the children to the parents' conflict by encouraging them to record GS during a visit;
5. GS escalated a situation at the rink in late 2022 which could have been de-escalated by him leaving;
6. GS's frustration and anger have affected his ability to manage conflict with TW and her partner;
7. ALS has medical needs that GS has not met because he doesn't accept the pediatrician's diagnosis and course of treatment;
8. TW has challenges managing the boys' behaviours, particularly after they spend time with GS;
9. TW's frustration with the boys' behaviours has led her to use inappropriate methods of controlling those behaviours;

10. TW sought out appropriate services to address the boys' medical and behavioural needs;
11. The parties shared parenting for about a year between 2019-2020, with GS taking the boys up to three days per week;
12. GS invites me to consider the conciliation record, although it wasn't tendered in evidence. He says that it demonstrates that the parties were able to cooperate and agree on parenting back in 2020, but TW denies that they ever agreed on parenting arrangements. Whether or not that's true, I find that the parties' ability to agree on parenting three years ago is of limited relevance in any event, given the heightened conflict since then;
13. There is no evidence to prove GS's allegation that TW is withholding the boys for financial reasons;
14. Lack of financial support from GS has added to TW's frustration;
15. TW's offer to pay for a neutral third party to supervise GS's parenting time with the boys after she discontinued supervision by his partner was a genuine effort to manage the parenting impasse;
16. There is insufficient evidence to prove TW's allegation that GS has retrieved the boys while intoxicated with marijuana;
17. There is insufficient evidence to support GS's allegations that TW's partner hit one of the boys;
18. The fact that there have been no referrals or allegations of abuse with TT's children is not determinative of whether GS poses a risk to his own children;
19. The fact that GS watched child pornography involving pre-teen females (and possibly transgender pre-teen females) doesn't exclude the possibility that he poses a risk to pre-teen male children.
20. There is no evidence that TW and GS have sought out therapeutic supports for the conflict they've encountered since 2020.

[35] Based on these findings, I am satisfied that the children's best interests are served by remaining in TW's primary care. She will exercise decision-making responsibility, as the parents cannot cooperate at this point to make joint decisions. GS will have parenting time through the Department of Justice supervised parenting and exchange program (SAE) twice per week, for 4 hours

each visit if the program can accommodate visits that long. Otherwise, GS will have 8 hours of parenting time each week, broken down as determined by SAE in its discretion, pending receipt of the report I've outlined below.

[36] GS will also have a video call with the boys (on an App or other electronic platform both parents can access) on Wednesday evenings at 7 pm, to last no more than 30 minutes and initiated by TW. TW will supervise that call, but she may not participate.

[37] GS is not permitted to discuss adult matters (including this and other court proceedings or financial issues) with the boys during his visits. He must not question the boys about what happens in their mother's home, about her partner, or about issues related to any court proceeding.

[38] Neither party will speak negatively to (or in front of) the boys about the other parent or their partners, and the parents will ensure that nobody speaks negatively about the other parent in the presence of the boys.

[39] GS will be entitled to obtain information from third parties about the boys' health (medical, dental, and therapeutic or remedial services), education, and extracurricular activities without the need for TW's authorization.

[40] GS must not consume or be under the influence of any non-prescription (even if legal) drugs, including marijuana and alcohol, for 24 hours prior to or during his parenting time (in-person or virtual).

[41] Both TW and GS will enroll in, and complete, individual (not group) anger management therapy and they must each complete a high-conflict parenting program.

[42] TW will immediately notify GS should either child encounter a medical emergency, and she must keep him advised of the child's treatment and outcome in such a situation.

[43] The parties will communicate by text in case of emergency only. All other communication shall be via a communications App that they will both install and share the cost of acquiring.

REPORT

[44] Pursuant to s.32E & F of the ***Judicature Act***, R.S.N.S. 1989, c.240, I have authority to order an assessment of GS. I therefore direct that, if he wishes to exercise unsupervised parenting time with his children, GS must cooperate with CPS in having an assessment completed by a forensic psychiatrist. CPS offered that type of assessment when GS requested it, but after it was arranged, he declined to participate.

[45] The psychiatrist will be asked to assess whether GS's interest in child pornography poses a risk to children in his care. For purposes of the assessment, the psychiatrist will be provided with the affidavits filed in this proceeding, as well as the CPS file (Exhibit 1) and a copy of this decision. GS must cooperate fully with the assessment, including: 1) attending all scheduled appointments; 2) making information (such as the Crown sheet, police file, and related materials from the 2017 charges) available to the assessor or by signing a consent for the assessor to obtain that information, and; 3) complying with any testing requested by the assessor.

[46] If the psychiatrist cannot complete the report for any reason, GS must arrange, attend, and pay for psychotherapy with a licensed professional working in the specialized area of child sexual exploitation. He must follow all recommendations made by that professional, and after 6 therapy sessions (excluding intake) he must obtain a report from the therapist outlining his progress and treatment plan, which must be shared with TW.

[47] I will set a court date to review the status of GS's parenting time upon receipt of the report, to determine whether changes to the parenting arrangements are warranted. GS and TW must file a one-page summary of their position on GS's parenting time one week in advance of that date. Written confirmation from their service providers of completion of therapeutic services (per par. 41) should accompany their summaries.

ISSUE #2: Determination of income

[48] GS is off work, collecting CPP disability benefits. He presented no medical evidence to support his claim that he cannot work. Instead, he asks the court to infer from the fact that he was approved for CPP benefits that he's disabled.

[49] TW asks me to impute income to GS. She points out that his income disclosure was filed only a week before the hearing, and is incomplete, despite him being ordered to appear and disclose in 2019, and being directed by the court

several times since then to file his income information. She relies on s.24(b) of the ***Provincial Child Support Guidelines* (*CSG*),** which states:

> **Failure to comply with court order**
>
> **24** Where a parent fails to comply with an order issued on the basis of an application under clause 22(1)(b) or (c), the court may
>
> …
>
> (b) strike out any of the parent's pleadings;

[50] Although she cites s.24(b), TW did not ask the court to strike GS's pleadings. Rather she asks that GS's income disclosure filed on April 19, 2023 be excluded and that income be imputed. She relies on s.19 of the ***CGS*** which reads:

> **Imputing income**
>
> 19 (1) The court may impute such amount of income to a parent as it considers appropriate in the circumstances, which circumstances include the following:
>
> (a) the parent is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child to whom the order relates or any child under the age of majority or by the reasonable educational or health needs of the parent;
>
> …
>
> (f) the parent has failed to provide income information when under a legal obligation to do so;

[51] TW says that the GS bears the onus of proving that he is unable to earn the same income he earned historically.

[52] On this basis, and relying on **Syms v Syms**, 2017 NSSC 243, TW asks me to impute income to GS in the amount of $74,319.00 per annum, reflecting his "history of high paying employment as a red seal pipefitter." She calculates that figure by averaging the last two years of income disclosed by GS (2015 & T4s for 2016).

[53] TW also relies on the decision in **Behm v Hansen,** 2022 ABQB 430 to support her argument that approval for CPP disability benefits does not, in itself, prove disability.

[54] GS responds that: 1) **Behm** is not law in Nova Scotia; and 2) I can take judicial notice of the fact that the test to obtain CPP disability benefits is "a severe and prolonged disability".

[55] The test for judicial notice was stated by McLachlin, C.J. in **R v Find,** [2001] 1 SCR 863 as:

> … the threshold for judicial notice is strict: a court may properly take judicial notice of facts that are either: (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy [citations omitted].

[56] The eligibility test for CPP disability benefits is stated on the Government of Canada website as: "… a severe and prolonged disability that prevents you from regularly working." Clearly, the test is not something a reasonable person would debate, and the test is capable of immediate and accurate demonstration through readily accessible sources of indisputable accuracy.

[57] However, while I can take judicial notice of the **test** for CPP disability benefits, I cannot infer from the fact that GS met the test at some point in the past, that he continues to meet the test and further to that, that he is currently disabled. I have no evidence from GS to show:

- when he was approved for benefits;
- on what medical evidence he was approved; and
- whether he's been medically assessed since his initial approval to determine his ongoing eligibility.

[58] The only other evidence GS advanced in support of a disability was his testimony that he has been under the care of a psychiatrist since 2017. He didn't tender a physician's report or treating physician's narrative pursuant to ***Civil Procedure Rule*** 55.

[59] The evidence falls far short of proving, on a balance of probabilities that GS is unable by reason of disability, to work as a pipefitter or otherwise work to earn income in the range he earned in 2015 - 2016. As such, I find that he is intentionally unemployed.

[60] I further find that GS failed to provide income information he was legally required to disclose. I do not consider his late filing of incomplete income information a week before the hearing to be adequate or timely disclosure. I therefore find that it's appropriate in the circumstances of this case to impute annual income to GS in the amount of $74,319.00. That figure is imputed for the years 2019 to 2023 inclusive.

ISSUE #3: Child support (prospective and arrears)

[61] GS must pay child support under the Nova Scotia table for two children, based on an imputed income of $74,319.00 effective June 1, 2023 and continuing monthly until further order of the court.

[62] GS's child support obligation under the interim order was set at $252.00 per month based on an imputed income of $18,352.00 per annum. The record of payments tendered by TW shows that he was in arrears as of April 19, 2023 in the amount of $1,008.00. To that must be added the shortfall for the table amount he should have paid after TW filed her application.

[63] TW only seeks child support payable from the date of her filing (December 12, 2018). I do not consider that to be retroactive support. If she'd claimed for the period after separation to the date of her filing, I would analyse her claim under **DBS**. I need not do so in these circumstances, but I note that GS exhibited blameworthy conduct that would justify such an order. He was put on notice when he was served with TW's application, yet he failed to pay any child support until the interim order was issued in 2022. Even then, his income disclosure was deficient. That's blameworthy conduct. GS is presumed to know that he has a legal obligation to support his children.

[64] Neither party made arguments or submitted calculations to support a **Contino** analysis for the 12 month period when the parties shared parenting. I will therefore take GS's suggested approach and set off the child support payable by GS against the support TW would owe him. Her income for purposes of that calculation is set at $35,785.00 (based on her 2019 notice of assessment). I accept TW's calculation of child support owing by GS back to 2018, subject to an adjustment for the set-off amount for those 12 months in 2019.

[65] TW also asks that I direct GS to reimburse her for the children's portion of his CPP disability benefits that he's received since 2018. She calculates that sum at $14,813.69 (28 X $529.06/m). That claim was not advanced in her pleadings

and was not addressed by GS in his submissions. I therefore decline to award reimbursement of that sum, and I make no order as it relates to future payments. That is an issue for TW to address through CPP administration.

CONCLUSION

[66] GS must cooperate with the report I've ordered if he wishes to exercise unsupervised parenting time. Pending that report he will have parenting time through the SAE program. He will pay child support based on an imputed income prospectively and dating back to January 1, 2018.

[67] Ms. Fahie will prepare the order to reflect this decision. If the parties cannot agree on costs, submissions are due from TW within 30 days and GS within a further 30 days of that filing.

MacLeod-Archer, J.

Schedule "A"

- January 1, 2017: Police report that TW called about finding child pornography on GS's computer. She told police a similar incident was reported to police in Ontario 10 years prior, but no charges were laid, as others were living in the home and police couldn't confirm who accessed the child pornography sites.

- January 3, 2017: a social worker met with both parents. ALS is then 23 months old. GS acknowledges watching pornography, but he says the ages varied, with most videos of college age women, but sometimes videos of younger females pop up; he didn't search for the videos of younger females, but he watched them. He denies ever harming a child. TW says that GS is living with his sister, but CPS met with the sister previously, who said GS moved home; TW apologizes for lying about that, but says she has no concerns with GS parenting and when she didn't hear from police, she let GS move back in. CPS suggested he look into counselling and asked that GS be supervised while CPS determined next steps.

- January 16, 2017: CPS met again with both parents. GS confirms that her got a referral to a psychiatrist. When asked why he got rid of his computer if he did nothing wrong, he replied that he didn't want to go through the hell he'd gone through in Ontario.

- February 6, 2017: CPS met with TW. There was a new computer in the home. No police charges. CPS advises it will close its file but strongly recommend that GS follow through with a psychiatrist appointment.

- March 28, 2017: police report another call from TW who said she found images of a pre-pubescent girl on the family computer and kicked GS out of the home. She reiterated to police that she didn't think GS would harm their children, but she would not permit him back in the home.

- April 3, 2017: TW tells CPS that GS admitted to looking at child pornography and apologized and said he needed help;

- April 27, 2017: TW was reluctant to inform GS's family of the reason GS's access had to be supervised; the social worker told her to make sure they understood the risk if they were chosen to supervise;

- June 14, 2017: police call CPS to report they found images of young females ranging from 5 years of age to teens on the computer and they were trying to confirm the user who accessed the photos;

- June 15, 2017: CPS substantiate risk based on police information about child pornography found on the computer taken from the home;

- July 18, 2017: police call CPS to advise that charges will be laid against GS;

- February 26, 2019: TW advises CPS that the charges have been dropped and GS is no longer on conditions; TW expresses concern that GS will now believe he can have the children in his care unsupervised; they are sharing parenting on a 50/50 basis with GS's parents or sister supervising;

- CPS reiterate the recommendation that GS be supervised around the children;

- May 7, 2020: TW calls CPS with concerns GS is having unsupervised parenting time; she also alleges use of marijuana during access, transporting the boys without a booster seat, and saying inappropriate things to the boys; she denies that he has ever harmed the boys;

- CPS investigates and confirms that GS hasn't always been supervised when caring for the boys; he isn't supervised around his girlfriend's children; GS tells the social worker he's seeing a psychiatrist due to the stress of the criminal charges which were dropped; he tells the worker he didn't admit to looking at child pornography when they met in 2017; CPS tells him to come up with a plan for supervision around the boys;

- CPS concludes that they cannot offer services to GS where he denies the allegations;

- July 22, 2020: it is the Minister's understanding that GS viewed child pornography involving non-biological females, ranging in age from 5 – teens;

- August 11, 2020: GS asks why supervised access is necessary if the charges were dismissed and the social worker explained the difference in the CPS test (reasonable and probable grounds) and criminal test (proof beyond a reasonable doubt). CPS told him that if his access wasn't being supervised, they might have to take the children into care;

- Both parents start reporting allegations about the other to CPS; three referrals in 2021 were not investigated but after a review of the file CPS decided to re-activate the file to assess risk; CPS will offer an assessment to determine what level of risk GS poses to children and what services might reduce the identified risks;

- CPS suggest psych assessment to indicate likelihood of risk to boys arising from interest in child pornography but never done;

- June 28, 2021: police call CPS regarding a verbal and physical altercation in front of the boys at TW's home; her boyfriend is not charged despite admitting that he pushed GS, who then challenged him to a fight; GS alleges the boyfriend wasn't charged because he knows the police officers.

- June 29, 2021: CPS agrees with TW's suggestion that GS not be present for exchanges;

- June 29, 2021: CPS agrees to arrange and fund an assessment of GS by a forensic psychologist regarding any risk of sexual harm to children posed by GS;

- July 7, 2021: GS refuses to participate in the assessment that he requested; CPS cautions GS not to have adult conversations with the boys;

- August 25, 2021: CPS interviews both boys, who say they feel safe at GS's home and that they felt "not so good and sad" after witnessing/hearing the altercation between GS and TW's partner;

- August 30, 2021: CPS send a letter to GS's partner TT to recommend that he be supervised around her children;

- May 12, 2022: GS calls CPS with allegations that TW's partner harmed the boys in two incidents weeks prior; he reported that he disagrees with the pediatrician about the medications for ALS; CPS cautions again not to discuss adult matters with the children;

- December 20, 2021: CPS receives bench referral after GS filed an *ex parte* application which was not deemed an emergency;

- December 21, 2022: TW delivers recordings to CPS made by the boys during parenting time with their father; she alleges that GS's partner is not properly supervising;

- December 21, 2022: CPS opens investigation into recent referrals;

- Feb 9, 2022: GS forwards an email to CPS that he sent to TW about access and other concerns in which he says "I don't think they [boys] should be interrogated about these things."; he also says "This has been a conflict for long enough and the kids seem to be very negatively affected."; GS accuses TW of making a scene "in front of our kids" at the rink; he again takes issue with the medications prescribed by the pediatrician;

- January 5, 2023: GS emails CPS about a pediatrician appointment he attended for ALS; he says "I am an innocent man, I can and will get a police check clearing me to work with children."; he says it "has been six years since recommendations were made without incident"; the social worker listens to the recording, which is cut off when the physician realizes that GS is recording the discussion;

- January 5, 2023: GS makes allegations against TW, including "violence and emotional abuse"; he alleges that TW's partner hit one of the boys and that TW punched ALS in the nose and locked the children outside at night; he also infers sexual abuse but says he has no evidence;

- January 12, 2023: GS alleges that TW's partner slaps, hits, and threatens boys since 2021 and that he pushed AGS down the stairs;

- January 17, 2023: TW advises CPS that she is willing to pay for a neutral third party to supervise GS's parenting time; she reports an incident with GS at ALS's hockey game during which AGS hid under a table;

- January 17, 2023: CPS investigates GS's allegations and TW admits that she grabbed ALS's sweater but never physically hurt him; AGS says that his brother was locked outside at night in December, 2022 after misbehaving; ALS reports that TW bumped his nose by accident; both boys report feeling safe at home;

- January 23, 2023: police and CPS conduct a joint protocol interview with the boys, but no disclosure of abuse by TW's partner is made;

- January 24, 2023: TW asks CPS to follow up on an earlier referral for counselling for the boys, whose behaviours TW reports are escalating and unmanageable;

- January 30, 2023: GS email CPS to advise that TW refused to allow the boys to attend his father's funeral and is withholding the children from him; he alleges her motivation is to obtain the children's portion of his CPP disability benefit;

- February 10, 2023: GS calls CPS with complaints about TW; he says that CPS told him there was only "some risk" years ago, so there should no risk now;

- February 16, 2023: TW calls CPS with complaints of nasty emails from GS's cousin; she reports an incident at ALS's hockey game where the coaches asked GS to leave the dressing room and he caused a scene;

- March 27, 2023: GS tells CPS that the recommendation for supervised parenting time is ruining his life and that he never had a problem with parenting time until he his new partner entered the picture.