

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *R.H. v. A.L.S.*, 2023 NSSC 171

Date: 20230718

Docket: Halifax No. SFHPSA-123144

Registry: Halifax

Between:

R.H.

Applicant

v.

A.L.S.

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Samuel Moreau

Heard: February 2, 2023, in Halifax, Nova Scotia

Released to the Parties: May 31, 2023

Subject: Parenting, primary care, shared arrangement, parenting time, decision making, credibility, travel.

Summary: The father requested the child remain in his primary care. The mother requested a shared custody arrangement (50/50). The father sought to reduce the mother's parenting time with the child. Both parents sought to be the child's sole decision maker.

Issues:

- (1) What parenting arrangement is in the child's best interest (primary versus shared arrangement), and the appropriate schedule of parenting time flowing from the court's decision on parenting.
- (2) Which parent is better positioned to be the child's decision maker?

Result:

The Court ordered that it was in the child's best interest to remain in the father's primary care. The father was assigned as the child's decision maker. The mother's parenting time was not as restrictive as requested by the father.

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Counsel: Shelley Hounsell-Gray KC, for the Applicant
A.L.S., Self-represented

By the Court:

Introduction and Background Information

[1] The Applicant, father, R.H. and Respondent, mother, A.L.S., are the parents of B., born in 2012. They began cohabiting in December, 2003, were married on September 9, 2007, and separated on August 30, 2020. Their separation has been highly acrimonious.

[2] The parties and B. resided as a family in Toronto until moving to Nova Scotia in July, 2020. The father is originally from Nova Scotia. His parents reside in the South Shore area. The mother's immediate family are in Ontario.

[3] Subsequent to August 30, 2020, the parties rented separate homes in the South Shore area of Nova Scotia. Currently the father and B. reside within the Halifax Regional Municipality (H.R.M.) and the mother in the outskirts of the city.

[4] This case has been marked with conflict and rancor. The mother was charged with a number of criminal code offences, including, assaulting the father, criminal harassment and several breaches of her conditions of release. Based on the information provided to me on February 2nd, 2023, it appears the charges

against the mother have been resolved by way of a 12 month peace bond between the parties. They may contact each other only by email and for the purpose(s) of issues and arrangements pertaining to B.

[5] On December 8, 2021, the parties participated in a Settlement Conference before Justice MacKeigan. The provisions of the Interim Consent Order issued December 14, 2021, include that during the school year, B. is to reside with the father on week days and 3 weekends per month from Friday after school to drop off at school on Monday morning(s) with the mother; decision making responsibility would be shared jointly; they agreed “in principle” that B. would be vaccinated (Covid 19); B. would attend the ____ school in Halifax; and they would keep each other informed of any changes to their respective addresses.

[6] During the trial held on February 2nd, 2023, both parties were cross examined. They called no other witnesses.

Issues

[7] The issues to be addressed are as follows:

1. Parenting arrangements (primary care versus a shared arrangement) and the resulting parenting time schedule;
2. Decision making responsibility;

3. Communication between the parties; and
4. The ability to travel with B. outside Nova Scotia.

Parenting

Positions of the Parties

[8] The father requests that he have primary care and residence of B. He proposes the mother's parenting time take place twice per month from Saturday at 4:00 pm to Sunday at 4:00 pm.

[9] The mother requests a shared (50/50 parenting time) parenting arrangement.

The Law

[10] In his Notice of Application filed August 27, 2021, the father sought relief under the *Parenting and Support Act*. Notwithstanding the parties' marital status my analysis of the issues related to B.'s parenting shall be considered as per the relevant provisions of that legislation. Neither party objected to proceeding under the *Parenting and Support Act*.

[11] Section 18(5) of the *Parenting and Support Act* directs as follows:

(5) In any proceeding under this Act concerning decision-making responsibility, 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.

Section 18(6) sets out the factors I am to consider in determining B.'s best interests:

(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
- (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.

[12] In *Desrosiers v. Pastuck*, 2016 NSSC 308, Justice Forgeron concisely summarized the burden of proof I must apply in a best interest analysis. At paragraph 7 she writes:

[7] All court decisions involving children must be based on their best interests. In determining best interests, the court applies the civil standard of proof. In **C. (R.) v. McDougall**, [2008 SCC 53](#)(S.C.C.), Rothstein, J. confirmed that there is only one standard of proof in civil cases - proof on a balance of probabilities. The evidence, in its totality, must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.

Analysis

[13] I shall now consider B.'s best interests within the framework of Section 18(6).

- (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;

[14] B. is 10 years old. Since moving to their current location, the father has provided him with an environment rooted in stability and tranquility, factors I consider to be important given B.'s age and stage of development. The father

has attempted to shield B. from the acrimony which has pervaded the parent's interactions since separation.

[15] The ____ school is a private school. B. started attending the ____ school in March, 2021. The smaller class sizes is an important factor in B.'s academic development. The father says B. is doing well socially. I accept B. is comfortably settled into his current academic environment.

[16] The parties separated soon after moving to Nova Scotia. They attempted to co-parent. The dynamic which existed within their relationship impacted their ability to reach consensus on any number of issues pertaining to B. At certain points the mother withdrew from interacting with B. in regard to his academic activities. This withdrawal may have been out of frustration flowing from disagreement(s) with the father on parenting practices (diet, screentime etc.) The mother may have overreacted.

[17] The evidence confirms that these parties approach parenting with differing philosophies, and as a result, differing practices. Some of the mother's practices can be viewed as unconventional and harmful to B. (i.e. coffee and salt water enemas and cold water plunges in the ocean).

(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;

[18] I am satisfied of the willingness of both parents to support the development and maintenance of B.'s relationship with the other. The father's efforts are pronounced and the mother's implicit. None the less, both parents recognize the importance of B. having a loving and consistent relationship with the other.

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

[19] Since separation B. has spent more time in the father's care. The primary reasons include the father's stability in relation to housing and conditions imposed on the mother as a result of the charges against her.

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

[20] The father requests that B. remain in his primary care and residence, and the mother seeks a shared parenting arrangement. The mother's evidence focused considerably on her perception of the father's actions and interactions between them (including their move to Nova Scotia and the incident(s) which led to her being charged) rather than setting out a plan or course of action consistent with B.'s current circumstances and considering his best interests. The father's plan is clear and focuses on the factors of stability and consistency.

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

[21] The evidence does not suggest that the cultural and/or religious origins of either parent are salient factors in relation to B.'s upbringing.

(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;

[22] B.'s views and preferences have not been raised as a factor to be contemplated. Age wise, B. is on the cusp of the range in which a Court may consider a report/assessment as to his views and preferences. I do not consider such a report/assessment necessary.

(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;

[23] The evidence demonstrates that B. has strong and stable relationships with the principal adults in his life; notably the father and mother, paternal grandparents, maternal grandfather (the maternal grandmother passed away) and maternal aunt. B.'s relationship with the mother has been impacted by her circumstances, including the charges against her. Unfortunately it appears the mother's relationship with her father and sister (maternal aunt) has been and

remains fractious. B.'s contact with the mother's immediate family is facilitated by the father.

- (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;

[24] Communication is an important factor in any situation where parents are called upon to co-parent. The parties herein are clearly unable to communicate in a civil manner on a consistent basis regarding issues pertaining to B. Both hold the other accountable for these difficulties. It is evident that both parents have a deep love and affection for B. but also have differing philosophical approaches to fundamental parenting practices. I conclude that these differing approaches are rooted in the difficulties the parties experience in attempting to communicate on issues pertaining to B.

[25] It became clear to me that the mother holds resentment towards the father in relation to their move to Nova Scotia. She feels he tricked her into moving then separated soon after. This resentment has permeated all aspects of their relationship including parenting and communication.

[26] Based on the sum of the evidence the father has been the parent more likely to employ a conciliatory approach when communicating. Above all he considers B.'s best interests as primary.

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.

[27] The parties relationship was marred by “conflict and yelling” prior and subsequent to separation. Unfortunately B. witnessed several of these negative interactions and according to the father caused the child stress and anxiety. As stated the mother was charged with a number of criminal code offences involving the father, including assault and criminal harassment. The father says one of the incidents occurred while he was holding B.

[28] Section 18(7) of the *Parenting and Support Act* directs that when determining the impact of any family violence, I consider the nature, timing, frequency of the violence, abuse or intimidation, and harm caused to the child by those behaviours. I am also to consider any steps the person causing the family violence has taken to prevent future episodes from occurring.

[29] I was not provided with any evidence which would lead me to conclude that the mother has or intends to take any meaningful steps in addressing her prior behaviours. From my perspective she has not yet gained insight (at least as expressed in the evidence) as to the impact of her behaviour on B. I am satisfied the mother's behaviours may have impacted B. in an adverse manner.

Credibility

[30] As with many matters before the Supreme Court (Family Division), the evidence of the parties conflict on a number of issues. As such it is essential I address the issue of credibility.

[31] In *Desrosiers v, Pastuck*, supra, Justice Forgeron sets out the principles to be considered when assessing the credibility and reliability of witnesses evidence:

Credibility and Reliability Assessment

[8] When crafting decisions, courts often make assessments about reliability and credibility. Guidelines applicable to credibility assessment were canvassed by this court in paras. 18 to 21 of **Baker-Warren v. Denault**, [2009 NSSC 59](#), as approved in **Hurst v. Gill**, [2011 NSCA 100](#), which guidelines include the following:

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. c. Gagnon**, [2006 SCC 17](#) (S.C.C.), para.20. ... "[A]ssessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" **R. v. M. (R.E.)**, [2008 SCC 51](#) (S.C.C.), para. 49.

There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety: **Novak Estate, Re**, [2008 NSSC 283](#) (N.S.S.C.). 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, **Novak Estate, Re**, *supra*.

Demeanor is not a good indicator of credibility: **R. v. Norman** (1993), [1993 CanLII 3387 \(ON CA\)](#), 16 O.R. (3d) 295 (Ont. C.A.) at para. [55](#).

Questions which should be addressed when assessing credibility include:

- 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: **Novak Estate, Re**, *supra*;
- b) Did the witness have an interest in the outcome or were they 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 they 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. Chorny**, [1951 CanLII 252 \(BC CA\)](#), [1952] 2 D.L.R. 354 (B.C.C.A.);
- 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?

[32] Where the evidence conflicts, I accept the father's version(s) for the following reasons:

- The self serving nature of several features of the mother's viva voce and Affidavit evidence;
- The mother's lack of insight regarding the impact of her behaviour on B; and
- The focus of the mother's evidence centered on the impact of the parties' separation on her rather than B.'s circumstances.

Decision on Parenting

[33] There is no singular universally considered "right way" to parent. Each case must be evaluated on its own unique set of facts and circumstances. In this case, conventional wisdom and reasonableness dictate that some of the mother's practices may have impacted B. in an adverse manner.

[34] The mother's viva voce evidence was scattered as was her cross examination of the father. Both provided me with minimal to zero information, helpful to her request for a shared parenting arrangement.

[35] After considering the factors as set out in section 18(6) of the *Parenting and Support Act*, I conclude that this is not an appropriate case in which to order a shared parenting arrangement. As noted by Justice Legere-Sers in *Griggs v. Brooks* 2016 NSSC 268, shared parenting requires an ability to consult,

cooperate and arrive at consensus. The evidence substantiates that those rudimentary components are not present in this case. I find it is in the best interests of B. that he remain in the primary care and residence of the father.

The Mother's parenting time

[36] The current Order (Interim Consent Order issued December 14, 2021)

provides that the mother have parenting time during three weekends each month from Friday after school to drop off at school on Monday morning. The father requests that the mother's parenting time be reduced to twice per month from Saturday at 4pm to Sunday at 4:00 pm. The father's rationale is grounded in the belief that the mother continually denigrates him to B. or in the presence of B., and so curbing her contact would seemingly limit her opportunities and the impact of these negative actions on the child. The mother denies these behaviours and asserts that the father is attempting to alienate B. from her. I am not convinced that decreasing B.'s contact with the mother as proposed by the father would be beneficial to the child. In some high conflict parenting situations, the smallest of windows could provide a parent an opportunity to attempt to further his/her agenda. The focus must be on B. and his needs. It is essential that B. develop the skills necessary to manage and navigate his environment.

[37] A provision of the order flowing from this decision will provide that B. be enrolled in a counselling program (with a qualified professional). The father will be responsible for ensuring that B. is enrolled and participates in same service.

[38] The mother will have parenting time with B. every second weekend from Saturday morning at 9:00 am to Sunday afternoon at 4:00 pm. The mother's parenting time during holidays and special occasions will be addressed later in this decision. The mother will be responsible for all pick ups and drops offs when exercising parenting time with B.

Decision making Responsibility

[39] Each parent requests that they be assigned as B.'s decision maker. At paragraphs 79 and 80 of his Affidavit sworn January 4, 2023, the father states:

79. I seek to be responsible for the major decisions that have to be made for B. I will notify A. when a major decision has to be made by email. I will review feedback I receive in an email from A. If there is a disagreement between us, then I will consult with third party professionals and after considering their input I will make the decision for B. I will keep A. informed by way of email.

80. I seek to be solely responsible for all emergency, medical, dental and other health related treatments including all preventative-care treatments (eg, counselling) for B.

[40] Likewise in her Affidavit evidence the mother states:

I seek to be responsible for the major decisions that have to be made for B. I will notify R. when a major decision has to be made by email. I will review feedback I receive in an email from R. If there is a disagreement between us, I will consult with third party professionals and after considering their input I will make the decision for B. I will inform R. via email.

I seek to be solely responsible for all emergency medical, dental, and other health related treatment including all preventative care treatments for B.

[41] Section 17A(2) of the *Parenting and Support Act* directs that I may assign one or both parents as the child's decision maker. In *K.G. v. H.G.*, 2021 NSSC 43, Justice Forgeron's analysis at paragraph 99 addresses decision making in a high conflict environment:

Decision-Making

[99] Ordinarily, joint decision-making is preferred because children generally benefit from the contributions and perspectives of two motivated and loving parents. Where, however, parental relationships are defined by mistrust, disrespect, and poor communication, and where there is no reasonable expectation that such a situation will improve, joint custody is not appropriate: **Roy v. Roy**, 2006 CanLII 15619 (ON CA), [2006] O.J. No. 1872 (C.A.) and **Godfrey-Smith v. Godfrey-Smith**, (1997) 1997 CanLII 26086 (NS SC), 165 N.S.R. (2d) 245 (S.C.).

[100] Unfortunately, joint custody is unworkable in this case. The parties share opposing views about the children's emotional and mental health needs. Parental conflict and mistrust have reached a critical level. The father is argumentative with the mother and many of the professionals who challenge his views. The father is not reasonable when he is not in control of the narrative.

[101] Because joint custody is not viable, I must appoint a decision-maker. I find that the mother is better positioned to make decisions in the best interests of the children. Decision-making is therefore assigned to her. In addition, I will not require the mother to consult with the father before making important decisions given the level of conflict, their divergent views, and the father's inability to accept no as an answer.

[42] Earlier I commented on the parties divergent approaches to parenting. Their differing philosophies extend to the issue of decision making responsibility, affirming that joint decision making is not a practical alternative.

[43] I am satisfied joint decision making is “unworkable” in this case. I find it is in B.’s best interest that the father be appointed as his decision maker.

Communication

[44] The parties inability to communicate on a civil level on issues pertaining to B. has been documented.

[45] Currently their communication is subject to a court order (Peace bond) from Provincial Court. There is no evidence to suggest that upon expiry of the peace bond, the circumstances and correspondingly communication between them may change or improve.

[46] Upon expiry of the peace bond, I am satisfied it is in B.’s best interest that the parties continue to communicate in writing only (via email) and in emergency situations via text message.

[47] The parties may wish to consider utilizing a communication application such as the Our Family Wizard app.

Travel

[48] Either parent may travel with B. outside the Province of Nova Scotia, including international travel. The travelling parent shall provide the non travelling parent with at least 60 days notice of their intention to travel outside of Nova Scotia with B. The obvious exception relates to emergency situations, especially family emergencies.

[49] The travelling parent shall provide the non travelling parent with the following information:

- Date of travel;
- Date of expected return;
- Method of travel (if by air name of the travel provider and flight numbers);
- Location where B. will be staying, including the civic address;
- The name(s) of any other individual(s) expected to be at the same civic address as B. during his stay; and
- A telephone number that can be used to contact B.

Conclusion

[50] I confirm the issues of child support and special or extraordinary expenses (including imputation of income) were not pleaded. The mother indicates a claim for “financial compensation” from the father for “lost income” due to the move from Ontario and the assault charges against her. The mother provided no evidence as to a spousal support claim nor any other claim involving financial or asset compensation. If she wishes to pursue such claim(s) in the Supreme Court (Family Division) the necessary application will have to be made.

[51] I have carefully considered the Affidavit and viva voce evidence of both parties as well as their oral arguments. I have also considered the relevant legislation and case authorities.

[52] I have determined it is in the best interests of B. that he remain in the father’s primary care and residence. The other provisions of the order are as follows:

- The father is assigned as B.’s decision maker in all matters. The father may consult the mother regarding major decisions. The mother’s consent is not required.

- The mother shall have parenting time with B. every second weekend from Saturday at 9:00 am to Sunday at 4:00 pm.
- The March break holiday will be divided such that the mother will have parenting time with B. for the first half (Friday from 4:00 pm to Tuesday at 4:00 pm) and the father will have parenting time with B. for the second half (Tuesday at 4:00 pm to the commencement of school) during odd numbered years. This schedule shall alternate from year to year with the father having parenting time during the first half and the mother the second half during even numbered years.
- During the Easter holiday the father shall have parenting time from Holy Thursday to Easter Saturday at 4:00 pm and the mother from 4:00pm on Easter Saturday to 4:00 pm on Easter Monday during odd numbered years. This schedule shall alternate from year to year with the mother having parenting time from Holy Thursday to Easter Saturday and the father from Easter Saturday to Easter Monday during even numbered years.
- Mother's Day- B. shall be in the mother's care, regardless if it is her regularly scheduled parenting time. If B. is scheduled to be in the father's care on Mother's day he shall provide B. to the mother by 4:00 pm on the

Saturday evening immediately prior to Mother's day and B. shall be returned to the father's care by 4:00 pm the following day.

- Father's day – B. shall be in the father's care, regardless if it is his regularly scheduled parenting time. If B. is scheduled to be in the mother's care on Father's day, she shall provide B. to the father by 4:00 pm on the Saturday evening immediately prior to Father's day.
- Christmas – Commencing in 2023 and during all odd numbered years, B. shall be in the father's care from the start of the school holiday to December 27th at 4:00 pm, and in the mother's care from December 27th at 4:00 pm to 12 noon the day before the return to school in January. In even numbered years commencing in 2024, the mother shall have parenting time from the start of the school holiday at 4:00 pm to December 27th at 4:00 pm and the father from December 27th at 4:00 pm to the resumption of school.
- B.'s birthday – Each parent shall be permitted to spend at least 2 hours with B. on his birthday, the particulars of which shall be arranged by the parents.
- The mother may have any other parenting time with B. as mutually agreed between the parties.

- The mother shall be responsible for all pick ups and drop offs during her parenting time.
- The father will ensure that B. is enrolled and fully participates in a counselling program, conducted by a qualified professional in that field.
- The parents shall communicate via email and text message (emergencies). Their communications shall be respectful and child focused.
- Neither parent will denigrate or speak negatively about the other parent to or in the presence of B.
- Neither parent will discuss the conflict between them directly with or in the presence of B.
- Neither parent will discuss adult issues (including issues pertaining to this or any future Court matters) directly with or in the presence of B.
- Either parent may travel outside the province of Nova Scotia with B., including international travel. The travelling parent shall provide the non travelling parent with at least 60 days notice of their intention to travel outside of Nova Scotia with B. The traveling parent shall also provide the non travelling parent with the following information:

Date of travel;

Date of expected return;

Method of travel (if by air name of the travel provider and flight numbers);

Location where B. will be staying, including the civic address;

The name(s) of any other individual(s) expected to be at the same civic address as B. during his stay; and

A telephone number that can be used to contact B.

- Enforcement Clauses

[53] Counsel for the father will draft the Order.

[54] I note that Counsel for the father made reference to the issue of costs in her pre-trial written submissions. The parties may make any further submissions on costs, in writing, within 30 days following the order being issued.

Samuel C. G. Moreau J.