

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** *S.L.J. v. T.D.*, 2023 NSSC 343

**Date:** 20231027

**Docket:** SFHPSA-123402

**Registry:** Halifax

**Between:**

S.L.J.

Applicant

v.

T.D.

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Samuel Moreau

**Heard:** May 29 and May 30, 2023, in Halifax, Nova Scotia

**Written Decision:** November 10, 2023

**Subject:** Credibility, parenting time, access, custody, domestic violence, intimate partner violence, supervision, decision making, passport.

**Issues:**

- (1) Determination of the father's parenting time
- (2) Determination of decision-making responsibility
- (3) The mother's ability to travel with the children in Canada and internationally
- (4) The mother's ability to obtain passports for the children, independent of the father

**Result:** The Court found that the father's evidence relating to the perpetration of intimate partner violence on the mother and his efforts to see the children during the past 2 years

were neither credible nor reliable. The father was granted access to be facilitated by a supervised access program. The mother was assigned the role as the children's sole decision maker. The mother can travel with the children both within Canada and internationally without having to obtain the father's consent to do so. She must provide him with notice of international travel. The mother may apply for passports for the children without having to obtain the father's consent and/or signature.

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Heard: May 29 and May 30, 2023, in Halifax, Nova Scotia

Released to  
The Parties: October 27, 2023

Counsel: Nicholaus Fitch for the Applicant  
Zoe Busuttil for the Respondent

**By the Court:**

**Introduction**

[1] This decision concerns the children, T., born in 2013 and N., born in 2017.

[2] The mother, T.D., and father, S.L.J., were in an on and off relationship for approximately 4 years from 2012 to 2016. The mother was 15 and the father 20 years old when the relationship began.

[3] Both parties are originally from Nova Scotia. They lived in Ontario for approximately 2 years. The mother moved back to Nova Scotia in 2015 after the father was charged and incarcerated for assaulting her.

[4] The father filed a Notice of Application on September 20, 2021, addressing the issues of custody and parenting arrangements, paternity testing, preventing the relocation of a child, registration of an agreement or parenting plan and the denial of time or interaction with a child. The mother's Response to the Application filed March 8, 2022, also addressed custody and parenting arrangements, relocation and additionally child support.

[5] The mother has been the children's primary care provider throughout their lives.

## The Trial

[6] The trial commenced on May 29<sup>th</sup> and concluded on May 30<sup>th</sup>, 2023. In addition to the parties, the Court heard *viva voce* evidence by way of cross examination from the children's maternal grandmother, K.B.R. and a former partner of the father, K.B. The father and K.B. are the parents of the child, K., born in 2013. K.B. has primary care and residence of K. The Affidavit evidence of the paternal grandmother, M.L. and the father's partner, L.L., were tendered by consent without the need for cross examination.

[7] The mother and K.B. experienced simultaneous pregnancies and both gave birth in 2013. The father and K.B. were involved in a Supreme Court (Family Division) proceeding in 2019. The written decision from that proceeding is cited as *S.L.J. v. K.B.*, 2019 NSSC 268. The issues addressed by the Court in *S.L.J. v. K.B.*, *supra*, bear many similarities to the issues I shall address in this decision.

[8] I emphasize that any conclusions and findings made in the present case are based on the evidence adduced by the parties.

[9] During the preliminary stage of the trial on May 29<sup>th</sup>, 2023, Counsel confirmed the parties' agreement on the issues of prospective and retroactive

child support. The specifics of the agreement are provided at the conclusion of this decision.

## **Issues**

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

1. Credibility;
2. Custody and Parenting;
  - Care of the children
  - Decision making
  - The father's parenting time
  - Third party information order
3. The mother's ability to apply and to obtain passports for the children without having to secure the father's consent to do so; and
4. The mother's ability to travel with the children in Canada and internationally without having to secure the father's consent.

## **Credibility**

[11] The evidence of the parties conflicted so I will first address the issue of credibility.

[12] As with many cases before the Supreme Court (Family Division) the credibility of the witnesses is material to the substantive issues and my analysis of the evidence.

[13] Central to my commentary on the issue of credibility is the evidence of the parties in relation to the following:

- The father's perpetration of intimate partner violence on the mother;
- Allegations of violent behaviour by the father towards other intimate partners (separate and apart from his record of convictions); and
- The father's efforts to have parenting time with the children subsequent to September , 2021.

### *Domestic Violence*

[14] The mother describes the father as a “known pimp.” She says when they were in a relationship he “pimped” her out in Ontario and Nova Scotia. In Nova Scotia he would transport her to Moncton for those purposes.

[15] The father counters that the mother was an “exotic dancer” in Ontario and Moncton and he is not a pimp. I infer from the father's evidence his assertion that the mother was voluntarily employed as an exotic dancer.

[16] The mother maintains that during their relationship the father was physically and emotionally abusive towards her. She cites several incidents of physical and emotional abuse perpetrated by the father. I reference Court Exhibit 1, Tab 11. Paragraphs 76 to 85 of the mother's Affidavit sworn May 1<sup>st</sup>, 2023, are reproduced below:

76. Mr. L.J. was emotionally and physically abusive throughout our relationship. The abuse started when I became pregnant with T.

77. He had choked me to the point that I almost blacked out when I was 14 weeks pregnant.

78. When I was 7 months pregnant, we had an argument through text message, once he was calm, he asked if I would go for a drive with him so we could talk. He drove out to the Bedford highway, stopped the car, physically removed me, and told me to "have fun getting home" and then he drove off. A police officer happened to be driving by and seen me walking along the highway and drove me home.

79. Multiple times during my pregnancy he told me to have fun raising my son by myself. He would choke me and threaten to kill himself if I left.

80. He would beat me in front of T. and was convicted for assaulting me in front of him when he was 4 months old. See attached as **Exhibit "E"** a police report from when Mr. L.J. hit me while I was holding T. who was 4 months old.

81. He once used my[sic] one of our sons' heavy toys and hit me over the head with it.

82. He beat me up so bad one day that I passed out, when I woke up the next day my face was unrecognizable.

83. He would whip me with extension cords, and when I'd cry, he would record me while saying "look at her everyone, she's crazy." See attached **Exhibit "F"** of messages from Mr. L.J. threatening to beat me and whip me when he returned home.

84. One night he beat me up and cut out parts of my hair, the police arrived, and he was arrested.

85. Mr. L.J. was controlling and coercive throughout our relationship. If I did not want to have sex with him, he would make me feel as though I had no choice and would become extremely mad if I refused. He would inspect my private areas to



see if I was having sex with someone else. He did this on many occasions, including while I was pregnant with N.

[17] The mother's Affidavit evidence contains exhibits which were disclosed consistent with an Order for Production issued July 5, 2022, to the Halifax Regional Police and Royal Canadian Mounted Police. I shall not provide an exhaustive review of the materials disclosed from the Orders for Production as they are not conclusive to my finding(s) on the issue of credibility. The materials do however provide insight about the father and his prior behaviour toward former intimate partners.

[18] Court Exhibit 1, Tab 11, exhibit "D" includes a summary of the father's criminal convictions. His last conviction was in 2015. The summary also includes criminal allegations against the father involving assault, uttering threats and mischief which were dismissed, as recent as 2021. The father has 4 assault convictions. One of the assault convictions involved the mother as the victim/complainant. It is unclear to me whether any of the other assault allegations involves the mother.

[19] The father denies he was abusive towards the mother. He admits pleading guilty to assaulting her, but says he only did so in order to be released from jail.

He says he was untruthful (in admitting to assaulting the mother) because the arrangement made met his interests of not remaining incarcerated.

[20] When questioned as to allegations of domestic violence against him involving other intimate partners the father also denied those allegations and highlighted that his last criminal conviction was in 2015. The evidence discloses that there have been allegations of intimate partner violence against the father involving at least 4 women (including the mother).

[21] In *S.L.J. v. K.B.*, supra, the Court confirmed convictions against the father; for assaulting K.B. ( on 3 occasions), failing to comply with a court ordered condition, uttering death threats, breach of probation, and procuring the sexual services of a person 18 years of age. The Court in that matter also accepted that the father had assaulted K.B. on several other occasions where the police were not called.

### *Parenting Time*

[22] The father's last parenting time visit with the children was approximately 2 years ago. The mother says the father has not attempted to see the children as he is unable to control when and where he sees them. The evidence suggests that

the father had difficulty in adhering to a set parenting time schedule. He preferred to see the children at his convenience with short notice to the mother.

[23] The father says he has attempted to schedule parenting time with the children since September, 2021, but the mother has not complied. He says he asked L.L. to contact the maternal grandmother, K.B.R., to make the arrangements. K.B.R. says the last communication she had from L.L. was in June, 2022. She did not respond to L.L. Prior to that they communicated during Christmas, 2021.

[24] The father asserts the mother unilaterally ended his parenting time with the children in August/September, 2021. I do not accept this assertion. The evidence established that the father was displeased upon learning that his step-mother and father may have facilitated contact between the children and their half sibling, K. The evidence suggests the father has little regard for his father (the children's paternal grandfather). Also, during previous visits the father did not meaningfully engage with the children. The mother says he favoured parenting time with T. over N.

[25] I conclude the father's realization that he could not control the children's external contacts and when and where he exercised his parenting time, led him

to withdraw from attempting to see them. In addition the father did not acknowledge the mother's request for his parenting time to be supervised because of concerns relating to his circumstances and lifestyle. The mother maintains the father indicated he would rather not see the children than have supervised parenting time.

[26] Given the nuances of their relationship, the mother did not seek to engage with the father as to his parenting time. The context and present circumstances of the father's contact with the children is one of his own making.

#### *Case Authorities*

[27] In *K.B. v. A.T.*, 2023 NSSC 125, Justice Forgeron's synopsis on the making of credibility assessments is instructive:

[20] When making a credibility assessment, I note three points. First, this is a civil proceeding which requires proof on the balance of probabilities. There is no presumption of innocence in civil cases: *FH v McDougall*, 2008 SCC 53, para 42. To reach a factual conclusion, I must scrutinize the evidence to decide whether it is more likely than not that an event occurred. I must determine whether the evidence is sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test: *FH v McDougall*, paras 44 to 46. There is no heightened burden on any party. Therefore, the absence of a criminal conviction does not determine the issue.

[21] Second, there is no tactical advantage flowing from the fact that the interim order requires that the father's parenting be supervised. An interim order is not determinative of the final parenting plan: *Marshall v Marshall*, 1998 CanLii 3191 (NSCA).

[22] Third, when making credibility determinations, I applied the law reviewed in *Baker-Warren v Denault*, 2009 NSSC 59, as approved in *Gill v Hurst*, 2011 NSCA 100. In addition, I made inferences in keeping with the comments of Saunders, JA in *Jacques Home Town Dry Cleaners v Nova Scotia (Attorney General)*, 2013 NSCA 4.

[23] I must now turn to the definition of violence as stated in s. 2 (da) of the PSA:

(da) “family violence, abuse or intimidation” means deliberate and purposeful violence, abuse or intimidation perpetrated by a person against another member of that person’s family in a single act or a series of acts forming a pattern of abuse, and includes

(i) causing or attempting to cause physical or sexual abuse, including forced confinement or deprivation of the necessities of life, or

(ii) causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour including, but not limited to,

(A) engaging in intimidation, harassment or threats, including threats to harm a family member, other persons, pets or property,

(B) placing unreasonable restrictions on, or preventing the exercise of, a family member’s financial or personal autonomy,

(C) stalking, or

(D) intentionally damaging property,

but does not include acts of self-protection or protection of another person;

[28] In *Baker-Warren v. Denault*, 2009 NSSC 59, Justice Forgeron writes:

[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 1951 CanLII 252 (BC CA)**, [1952] 2 D.L.R 354;
- g) Was there an internal consistency and logical flow to the evidence;
- h) Was the evidence provided in a candid and 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) 1993 CanLii 3387 (ON CA), 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.**, [1966] 2 S.C.R. 291 at 93 and **R. v. J.H. supra**).

*Concluding comments on the issue of credibility*

[29] After carefully reviewing the totality of the evidence, I find on a balance of probabilities that the father was physically and emotionally abusive towards the mother. The mother's *viva voce* evidence was candid and consistent. She was not evasive nor strategic. In contrast credibility issues were readily apparent with the father's evidence. His responses to Counsel's questions during cross-examination as to his reasons for pleading guilty to assaulting the mother (while also claiming that he never assaulted her) were ill conceived and lacked credibility. Likewise his responses/denials of intimate partner violence towards the mother on other occasions and his responses/denials regarding similar allegations involving other intimate partners also lacked credibility.

[30] Further, evidence of the father's violent behaviour towards the mother is corroborated by K.B.R. who testified to observing bruising on her daughter (the mother) including a "busted lip", after interactions with the father.

[31] I consider the father's denials to be self serving and motivated by his intention to have unsupervised parenting time.

[32] The Court's conclusions on the father's violent behaviour toward K.B. in *S.L.J. v. K.B.*, *supra*, are consistent with my conclusions here with respect to the mother. I do not accept the father's evidence as it pertains to the issues of

intimate partner violence towards the mother and his attempts to have parenting time with the children after September, 2021. I find his evidence on those issues are neither credible nor reliable. I therefore assign no weight to the father's evidence with respect to those issues.

## **Parenting**

### *Care of the children*

[33] There is no dispute that the mother has always been the children's primary caregiver. The order flowing from this decision shall confirm this.

### *Decision Making*

[34] The mother requests that she be assigned as the children's decision maker. The father says that following the parties' separation, they were able to consult on major decisions and to make those decisions jointly. He requests shared decision making on major issues.

[35] Currently, T. is 10 years old and N. is 6. The father has not had contact with the children since September, 2021, and consequently has had no involvement in their lives since that time. Additionally the parties do not communicate with each other. I accept the circumstances of their relationship after separation



(amplified by the fact that K.B.R. and not the mother, was making arrangements with the father for his parenting time) was such that they could not communicate effectively as it related to the children.

[36] Section 17A(2) of the *Parenting and Support Act* mandates that I may assign either or both parents as the children's decision maker. In *R.H. v. A.L.S.*, 2023 NSSC 171, I addressed the issue of decision making in a high conflict parenting situation. I referenced Justice Forgeron's synopsis offered at paragraph 99 of *K.G. v. H.G.*, 2021 NSSC 43:

#### 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 CanLii15619 (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.

[37] From a practical perspective the father has had no up to date or current information on issues important to the children, such as information on third party service providers, including; medical care givers, teachers, child care providers, etc. Hence, at present he is unable to contribute to and/or make informed decisions pertaining to major issues in the lives of the children.

[38] Also, there is a clear mistrust between the parties. The mother's frame of reference is borne out of her experiences at the hands of the father during their relationship (both literally and figuratively). The father's outlook stems from a belief that the mother is deliberately keeping the children from him, and allowing her view of him to permeate her decisions pertaining to the children.

[39] Clearly joint decision making is unworkable in this case. The parties inability to communicate, the father's non contact with the children for almost 2 years and his lack of knowledge as to their current circumstances underpins my conclusions here.

[40] I find it is in the best interests of T. and N. that the mother be assigned the role of their decision maker.

[41] I shall grant the issuing of a separate order providing the father with the ability to independently obtain information about the children from third party service providers.

*The Father's Parenting Time*

[42] The father seeks parenting time with the children every weekend from Friday afternoon to Monday morning and a specified schedule during the summer months and holidays. He requests that his partner, L.L., supervise his parenting time if I find supervision to be necessary. The mother asks that the father's parenting time be facilitated through the Veith House supervised access program.

[43] My primary consideration when designating the father's parenting time is the best interests of the children. Section 18(6) of the *Parenting and Support Act* sets out the legislated factors I am to consider in a best interests analysis. Of the range of factors offered in section 18(6), subsections (a)(b)(c)(d)(g)(h)(i) and (j) are most relevant to this case.

(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;

[44] Given their ages (10 and 6), T. and N. are not at the age and stage of emotional development which would enable them to fully comprehend the circumstances surrounding the father's absence from their lives for almost 2 years. In particular, N. was 4 when she last had contact with the father. The children (especially N.) will have to become reacquainted with the father in an environment accounting for their age and stage of development and conducive to the nuances of this case.

(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;

[45] I am satisfied both parents recognize the importance of this factor. The greater issue from a practical standpoint is the manner in which the father's relationship with the children is re-established, considering their ages and stages of development.

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

[46] The mother has had primary care of the children since birth. The father has not had contact with them in almost 2 years.

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

[47] Despite the fact that the father has not had contact with the children for a considerable period, he seeks parenting time akin to a situation in which there has been regular and consistent contact.

[48] I submit it is reasonable to conclude that the father has not considered his proposed parenting time plan from a child centric perspective. A child's comprehension on the passage of time is different to an adult's. Where an adult may be able to rationalize and understand the reasons for the absence of a significant figure, I find it reasonable to deduce that most 10 and 6 year olds do not have the emotional intelligence and/or experience to do so.

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

[49] The children have a strong and stable relationship with the mother. As discussed their relationship with the father requires the re-establishment of contact in a manner consistent with their best interests.

(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;

[50] I am satisfied the children have strong and stable relationships with the maternal grandmother, K.B.R., and the mother's partner, M.C. The paternal grandmother, M.L., provided Affidavit evidence in support of the father. M.L.

indicates she has not had contact with the children since the father last saw them.

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

[51] I consider this to be an important factor in family law cases in which any aspect pertaining to parenting is contemplated. The parties do not communicate. Earlier in this decision I commented on the reasons for their lack of communication. Frankly, I do not envision improvement in this area. The degree of mistrust leads me to conclude that communication between these parents will only improve with the intervention of qualified professionals in the field of counselling. The sum of the evidence suggests the father currently lacks insight as to the value of participation in such a service.

(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.

[52] The father has been convicted of assaulting the mother. I am satisfied the evidence establishes that the father physically assaulted the mother on several other occasions which were not reported to the police. Some of these assaults

occurred in the presence of the child, T. and also in the presence of the paternal grandmother, M.L. As aforementioned, I assign no weight to the father's evidence on the issue of intimate partner violence. At paragraph 101 of her Affidavit sworn May 1<sup>st</sup>, 2023, the mother states:

101. His mother was also in attendance on multiple occasions when Mr. L.J. would beat me and did nothing to stop it.

[53] In response, M.L. states at paragraph 7 of her Affidavit sworn May 22, 2023:

“7. In reply to paragraph 101, I have witnessed the father and mother get into arguments and fights which I have tried to stop. I did this by telling the mother to leave which she would refuse to do. I would have to repeatedly tell her to leave and not scream and even offer her a drive home.”

[54] I accept the mother's evidence that she was assaulted by the father in the presence of M.L., and M.L. did not stop the assault(s) or did little to intervene.

[55] Section 18(7) of the *Parenting and Support Act* sets out the factors I am to consider when determining the impact of domestic violence:

(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

[56] I find that the intimate partner violence perpetrated by the father on the mother has had a significant impact on their relationship and consequently the relationship between the father and the children. I earlier concluded that the mother's mistrust of the father is borne out of these occurrences. In addition to the physical suffering experienced, I am satisfied the father's violent behaviour toward the mother has caused her emotional harm.

[57] The father denies ever assaulting the mother. Hence the evidence does not disclose any steps taken by the father to address his prior behaviour. Clearly he lacks insight as to the impact of his behaviour on the mother and the children.

#### *Decision on the Father's Parenting Time*

[58] I am satisfied the best interests analysis affirms that the parenting time plan put forward by the father is not appropriate. In *D.S. v. R.T.S.* 2017 NSSC 155, Justice Forgeron reviewed the principles to be considered in a supervised access analysis:

[29] In my decision, I also have considered the following legal principles which have emerged from case law, including the decisions of **Young v. Young**, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3 (S.C.C.); **Abdo v. Abdo** (1993), 1993



CanLII 3124 (NS CA), 126 N.S.R. (2d) 1 (N.S. C.A.); **Bellefontaine v. Slawter**, 2012 NSCA 48 (N.S. C.A.); and **Doncaster v. Field**, 2014 NSCA 39 (N.S.C.A.):

- 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.

[30] In **Lewis v. Lewis**, 2005 NSSC 256, as approved in **Bellefontaine v. Slawter**, supra, this court reviewed circumstances which may lead to the imposition of supervised access at para 24, which include the following:

- 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.

[59] I am satisfied the principles enunciated in the case authorities direct that the father's parenting time be supervised. I find there is insufficient evidence to consider L.L. as a potential supervisor.

[60] I find the circumstances present dictate that the father's parenting time be facilitated through the Veith House supervised access program.

### **Passports**

[61] The evidence in this case supports the mother's request that she have the authority to obtain passports for the children without having to secure the father's consent. As documented, the parties do not communicate. The father has not had contact with the children in almost 2 years.

[62] The Order shall include a provision providing the mother with final signing authority and the right to apply for passports for the children without the need to obtain the father's consent and/or signature.

### **Travel**

[63] The Order shall also include a provision confirming the mother's ability to travel with the children within Canada, without having to obtain the father's consent. I emphasize that this provision does not pertain to any potential

intended relocation of the children. Should the mother wish to relocate the residence of the children from the current jurisdiction, she is still subject to the mandates contained in the governing legislation.

[64] A term of the Order shall indicate that the mother may travel internationally with the children, without having to obtain the father's consent to do so. Prior to any international travel, the mother shall provide the father (in writing) with the following:

- The dates of departure and expected return;
- the destination, including the country and specific city or town to be visited; and
- the mode of transport.

### **Conclusion**

[65] On May 29<sup>th</sup>, 2023, Counsel confirmed the parties reached agreement on the issues of prospective and retroactive child support as follows:

- Based on an annual income of \$29,000.00 the father shall pay child support to the mother in the guideline amount of \$441.00 per month;

- The father owes retroactive child support to the mother in the amount of \$5000.00, to be paid at the rate of \$50.00 per month;
- The father's prospective and retroactive child support obligation shall be paid on the 1<sup>st</sup> and 15<sup>th</sup> days of each month, commencing June 1<sup>st</sup>, 2023.

[66] In reaching the conclusions and findings herein, I carefully considered the parties' arguments, evidence (Affidavit and viva voce), the relevant legislation and case authorities.

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

[68] The parties may make written submissions on costs, within 30 days of the Order being issued.

Samuel C. G. Moreau, J.