

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Bezanson v. Dormiedy*, 2024 NSSC 187

Date: 20240607

Docket: FAMPSA-111736

Registry: Amherst

Between:

Tony Devin Bezanson

Applicant

v.

Carrie Anne Dormiedy

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Terrance G. Sheppard

Heard: May 27, 2024, in Amherst, Nova Scotia

Written Decision: June 24, 2023

Subject: Parenting arrangement for Tony Devin Bezanson

Summary: The Court addressed the Applicant's claim of wrongful denial of parenting time by the Respondent.

Issues: Has the mother denied the child parenting time with her father?
If so, was the denial of parenting time wrongful?

Result: The father's application for relief under s. 40 of the *Parenting and Support Act* is granted.

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Heard: May 27, 2024, in Amherst, Nova Scotia

Written Release: June 13, 2024

Counsel: Daniel F. Roper for the Applicant
Carrie Dormiedy on her own behalf

By the Court:

Introduction

[1] The Applicant, Mr. Bezanson, is the biological Father of the Child, PJHD, born August 15, 2017; and the Respondent, Ms. Dormiedy, is her biological Mother.

[2] The Father says that he has been wrongfully denied parenting time. He seeks various relief that he hopes will secure his parenting time with the Child in the future.

[3] The Mother says that she has not denied parenting time and, if she has, it has not been wrongful. She says the Father does not interact with the child during the parenting time and leaves early of his own free will.

Issues

1. Has the Mother denied the Child parenting time with her Father?
2. If so, was the denial of parenting time wrongful?
3. What is the appropriate remedy?

Background

[4] The parties attended a settlement with Judge James C. Wilson on May 7, 2019, and a Consent Order was issued June 6, 2019. The Consent Order provided very general language regarding the Child's parenting time with her Father and simply said that she would have parenting time each week at a date and time as agreed between the parents.

[5] The Father filed a Notice of Variation Application on September 20, 2021, and the matter proceeded to a second settlement conference on March 9, 2022, this time with Judge Timothy Daley. A Consent Variation Order was issued March 18th, 2022 that provided for the Child to have specified, gradually increasing parenting time with her Father in 5 phases culminating with alternating weekends from Friday at 5:00 PM until Sunday at 4:00 PM.

[6] The Father filed another Notice of Application on April 17, 2023, this time requesting relief under s. 40 of the *Parenting and Support Act*, R.S.N.S.1989, c. 160 (the "PSA") and the matter proceeded to a third settlement conference on

March 1, 2024 before Justice Robert Gregan. A second Consent Variation Order (and third consent order) was issued March 19, 2024 that provided for very specific and detailed parenting time for the Child with her Father in four phases, again culminating with alternating weekends from Friday at 5:00 PM until Sunday at 4:00 PM (the “Order”).

[7] The Father has partnered with Samantha Armsworthy. The Child is not only fortunate to have a stepmother, but also has two sisters, ages three and almost two.

[8] The Father had a somewhat complex shift schedule at work at the time of the second Order before Judge Daley but works for Truro Parks & Recreation as of May of 2023. He works regular hours from Monday to Friday, 7:00 AM until 3:00 PM, although his hours may change slightly in the winter.

[9] The Mother has partnered with Reade Primeau. The Child is not only fortunate to have a stepfather, but also has a brother and sister, twins, approximately five months old.

[10] The Mother states she is on social assistance, despite having resided with Mr. Primeau since June of 2021. Mr. Primeau serves our country as a member of the Canadian Forces. They resided together at her parents’ home until March of 2024, when immediately after the last settlement conference, she and Mr. Reade moved into their own home with their twins and the Child.

Positions of the Parties

[11] The Father says the following:

- In 2021, the Mother cut off all contact and prevented the Child from having any parenting time with him, despite the Order of Judge Wilson from May 7, 2019.
- After the settlement conference with Judge Daley in 2022 and the Consent Variation Order of March 18, 2022, the parenting time did not progress as ordered and the Mother did not cooperate. He provides a very detailed accounting from March of 2022 to March of 2023 of all the communication between him and the Mother related to the parenting schedule.
- After the settlement conference with Justice Gregan on March 1, 2024 and the Consent Order of March 19, 2024, the first two parenting times did not proceed. The Order specifically provided that it could be reviewed without

the need to show a change of circumstances, so the Father, through counsel, contacted the court and the hearing before me was scheduled. The Child has not had any parenting time since at least the March 1, 2024 settlement conference.

- He tried to contact the Mother about the other upcoming parenting times but received no response until April 10 when she proposed a make-up parenting time for April 20. When he texted the Mother on that day, she did not respond, and the parenting time did not take place.

[12] The Mother says the following:

- She has been solely responsible for the Child since birth.
- The father has cancelled most scheduled parenting times because of his “bad hips” or being “sick.”
- The Father would often end the parenting time after only 1 hour of his own free will.
- The parenting time has been inconsistent and there is no substantial relationship between the Child and her Father.
- The Father does not engage with the Child during parenting time. Rather, he “stands around and stares at her.”
- The Child said she does not want to see that “creepy man” (referring to her Father), cried and had extreme anxiety about the parenting time. No details were provided for this, for example, the date, frequency, or any explanation for why the reaction was so extreme.
- The Child has been diagnosed with celiac disease, ADHD and anxiety.
- Because of these issues, it is important that the Child feel comfortable when evacuating her bowels. She only feels comfortable with the Mother, the Mother’s parents and the stepfather.
- The Child has “great concern” about being referred to as “Sissy” by her two sisters with her Father. The child also continues to express “great concern” about her Father’s intention.

- There has not been a reintroduction phase yet. The Father has not met with the family doctor. And, the Father has not completed his parenting course.
- She has answered every message from the Father about the Child's parenting time with him.

[13] The Mother's common law partner/fiancée, Reade Primeau, also provided an unsworn affidavit. He confirmed much of the information provided by the Mother and goes on to say he has developed a relationship with the Child, who refers to him as "my dad Reade;" he helps with the Child's daily care, and he attends all professional appointments.

[14] The maternal grandfather, Steven Dormiedy, also provided an unsworn affidavit. He confirms much of the information in the Mother's affidavit. Mr. Dormiedy goes further than the other two affidavits and says the Child told the Father to stop staring at her and said, "can you go home now." Neither the Mother nor stepfather said this in their affidavits. The maternal grandfather refers to Mr. Primeau as the Child's father.

Applicable Law

[15] The denial of parenting time provisions, sometimes referred to as enforcement proceedings, under s. 40 of the *PSA* set out discrete steps to take in analysing these applications. First, a court must determine whether there has been a denial of parenting time. The parenting time must be pursuant to a court order or registered Agreement. The Applicant bears the onus of showing this on a balance of probabilities. **S.B. v. V.M.**, 2023 NSSC 73 para 87.

[16] Next, the court must determine whether the denial of parenting time was wrongful. The onus now shifts to the Respondent, again on a balance of probabilities, to show that it was not wrongful. **S.B. v. V.M.**, *supra*, para 88. In determining this, s. 40(3) sets out a non-exhaustive list of reasons why the denial of parenting time may be justifiable, and therefore, not wrongful.

[17] If the parenting time has been denied, but not wrongfully, s. 40(4) allows the Court to order compensatory time. I do not interpret the section to mean that only compensatory time can be ordered if the denial is not wrongful.

[18] If the Court finds that the parenting time has been denied wrongfully, a list of potential remedies is given in s. 40(5). If the Court finds that these remedies will

not be complied with, there are additional remedies provided for in s. 40(8). Also, s. 40(7) allows for a change in the parenting arrangements, including decision-making responsibility, if the denial has been wrongful, even if the applicant has not filed an application to vary.

[19] Finally, s. 41 of the *PSA* empowers the Court, on its own motion, to summon anyone who has failed to comply with an Order to explain their failure. The Court is empowered to:

“...make any additional order the court deems necessary to ensure the order of the court is complied with, including an order for contempt which may include imprisonment continuously or intermittently for not more than six months.”

[20] There are relatively few written decisions on s. 40 of the *PSA*, and even fewer where a finding of wrongful denial has been made:

- **Kulu v. Atuanya**, 2024 NSSC 2, Justice Forgeron quickly concluded that the Applicant was the author of his own lack of a relationship with his child and there was no wrongful denial [paras 16 and 19].
- **G.S. v. A.B.**, 2023 NSSC 228, Justice Forgeron sets out the three-part test required under s. 40. She finds that there had been a denial, but that the denial was not wrongful as the respondent proved that she held a reasonable belief that the daughter would suffer family violence, abuse, or intimidation if the parenting time was exercised [para 127].
- **Low v. Smith**, 2023 NSSC 195, Justice Cormier was not able to make the finding that the mother was wrongfully denying telephone calls. It was the father’s negative attitude that made the telephone calls problematic. It was the father who had alienated people that could have facilitated the parenting time and his partner had mocked the mother [paras 133-134].
- **S.B. v. V.M.**, 2023 NSSC 73, Justice Marche did find that there had been a wrongful denial of parenting and ordered the payment of \$3,000, at \$100 per month, under s. 40(5)(h) [paras 107 – 108].

- **S.T. v. B.L.**, 2021 NSSC 58, Justice Marche did find that there had been a wrongful denial of both parenting time and in failing to use the Our Family Wizard app, which related directly to the parenting time. The Applicant asked for there to be a reversal of primary care. While the Court found this would be a complete upheaval for the children, it did expand the Applicant's overnight parenting time with the children.

Decision

1. Has the Mother Denied the Child Parenting Time with the Father?

[21] I am mindful of s. 40(2) which requires an applicant to file within twelve months of the denial of parenting time. An applicant cannot sleep on their rights and bring an application under s. 40 years later. Generally speaking, the Court ought only to consider evidence of a denial of parenting time one year prior to the application.

[22] Here, the Applicant filed under s. 40 on April 17, 2023. The Order provides specifically for a review under paragraph 25 so when the Respondent continued to wrongfully deny parenting time, he wrote the Court to docket the matter for a review. My inquiry at this stage is focussed on the period of time from March 1, 2024 forward. That was the date of the last settlement conference. Other denials, wrongful or not, would have occurred prior to this and been dealt with by the Order.

[23] When turning to a remedy, however, I may need to consider evidence prior to March 1, 2024 in order to understand the context. As there were no findings made regarding the evidence put forward with the April 17, 2023 application, findings may need to be made here. That being said, I should limit my inquiry to events that occurred from April of 2022 forward, one year prior to the application being filed.

[24] While the Mother gives a blanket denial that she ever ignored any message from the Father, that cannot stand up to the detailed evidence provided by Exhibit #2, the Father's May 7, 2024 Affidavit.

[25] The first parenting time after the settlement conference was to take place on March 8, 2024. That was cancelled by the Mother due to road conditions. The Father did not agree that the road conditions were sufficiently poor to cancel the

parenting time; however, avoided the argument and suggested make-up parenting time the following weekend. The Mother simply ignored this message.

[26] The Order at paragraph 7 provides that any missed parenting time due to the Child's medical condition is made up the following weekend so that the Child does not miss any parenting time. This canceling of the parenting time was due to road conditions rather than medical issues; therefore, the Mother was not, strictly speaking, denying the make-up parenting time required under the Order. That being said, the complete lack of effort to ensure that the Child had parenting time with the Father, particularly the first one after the settlement conference, is very telling.

[27] If the Mother had cancelled the parenting time because of dangerous road conditions, I would have found that there had been no denial of parenting time, or at least no wrongful denial. It would have been reasonable for the Mother to cancel the parenting time in those circumstances and foolhardy for the Father to have insisted the parenting time go forward. However, I accept the Father's evidence that the road conditions were not so bad that it warranted cancelling the parenting time. Therefore, I find that there was a denial of parenting time on March 8, 2024.

[28] The second parenting time following the March 1, 2024 settlement conference was to be March 16, 2024. The Child did not show up at the agreed upon time of 10:00 AM so the Father texted the Mother at 10:36 AM politely inquiring about the parenting time. It was only then that the Mother responded advising that it was cancelled because it was a "bowel evacuation day" for the Child and she was unable to be far from the bathroom. This is clearly a parenting time that is being missed because of the Child's medical issues and needs to be made up the following weekend so that she does not lose parenting time with her Father.

[29] The Father provided make up times for this parenting time as well as the missed March 8 parenting time. The Mother's denied any make-up time with a text simply stating, "March 23 is the next scheduled visit." The Mother was somewhat incorrect about that. The next scheduled parenting time was March 22 for an overnight.

[30] In any event, the Child did not have parenting time with her Father on March 22 nor 23. The Father even texted the Mother on March 21 reminding her of the March 22 parenting time but there was no response to that text. Nothing further was heard from the Mother until April 10 offering April 20 for a make-up

parenting time. Which missed parenting time this was making up for was unclear. I note that the Mother only offered make-up parenting time after the matter had been set down for a hearing.

[31] The Father immediately agreed to the April 20 date and noted for the Mother that he was also available April 12 and 13, but the Mother said she was unavailable on those dates. She also stated that if the Child were in pain on April 20, the parenting time would be at her home. The Father correctly pointed out that the parenting time was to be at his home and, if cancelled for medical reasons, it was to be rescheduled to April 27.

[32] As has been her pattern, the Mother never responded. The parenting time on April 20 never took place.

[33] I find as a fact that the Child has been denied parenting time with her Father for all the parenting time contained in paragraphs 5 and 6 of the Order and any make-up time per paragraph 7. The Father has met the onus on him to show this on a balance of probabilities.

2. Was the denial of parenting time wrongful?

[34] The inquiry now turns to whether the denial of parenting time was wrongful, and the onus shifts to the Mother. I am reading into the Mother's evidence slightly, but I take her position to be that, while she never denied parenting time, if she did, it was not wrongful.

[35] I am directed by s. 40(3) of the *PSA* to consider "all relevant evidence" and then the section sets out four examples of what makes the denial rightful, none of which apply here and none of which are being alleged by the Mother.

[36] The parenting time for the Child with her Father on March 8 was denied by the Mother because of road conditions; however, I have found as a fact that I accept the Father's evidence that the road conditions were sufficient to safely transport the Child.

[37] The second parenting time on March 16 was canceled because it was the Child's "bowel evacuation day." I do not accept that this was a justifiable reason to cancel the parenting time. The child could have been transported the approximate 1 hour to the Father's home. There are opportunities along the route to stop at a public washroom if the Child needed. However, even if I am wrong about this, this would be considered a "medical reason" for the missed parenting time and the

Order requires the time be made up the very next weekend. The Mother did not make up the time and is this lack of make-up time is a wrongful denial.

[38] It is troubling that the Mother said both in her Affidavit and oral testimony that she would leave it up to the Child, who was 5 and 6 years old at the relevant times, whether she wanted to have parenting time with her Father. The Mother seems oblivious to the fact that the Child's answer may in large part be driven by what she perceives the Mother's opinion to be. And, in any event, the Mother has no recognition that it is completely inappropriate to allow a young child to determine whether the Order is obeyed or not.

[39] The Mother says the Father has cancelled most scheduled parenting times because of his "bad hips" or being "sick." I do not accept this. There are no details on exactly what parenting was cancelled by the Father. This is in sharp contrast with the detailed, date specific evidence provided by the Father with text messages to verify the information. While the Father may have canceled one or two parenting times because of his own medical issues, I cannot accept that any more than a handful of parenting times have been cancelled by the Father for legitimate reasons. In fact, in his own evidence, he admits when each time he has had to cancel parenting time.

[40] The Mother also says the Father would often end the parenting time after only 1 hour of his own free will and would not engage with the Child, but rather stood there and stared at her. I do not accept this. It stands in stark contrast to the significant efforts the Father has made in this Court for the Child to have extensive parenting time with him. Even if there is some truth to this, it must be kept in mind that the parenting time was held at the Mother's home, under her supervision with various members of her family present. It had to be an uncomfortable and awkward situation for the Father.

[41] The Mother says the Child does not want to see the Father and refers to him as creepy and is upset that she was referred to as "Sissy." This is more a reflection of how the Mother, and her family members, feel about the Father than the Child. Tellingly, the Mother does not say that she did anything to encourage the Child to have a positive relationship with her Father after these comments by the Child. In fact, her evidence seems to be that she too finds it inappropriate for the Child's sisters to refer to her as "Sissy."

[42] The Child has been diagnosed with celiac disease, ADHD and anxiety. No medical evidence, doctor's reports, hospital notes, etc. were provided to confirm

any of these diagnoses. Not even a handwritten note on a prescription pad from the family doctor was provided. Further, the Mother does not provide many specifics on these other than to say the child is anxious about bowel movements and is home schooled because of this. The Mother offers no rational why the Father could not readily learn about celiac, what foods to feed and not feed the Child, how to handle her bowel movements, etc. Unfortunately, this is a common ailment and support groups are available. The Father strikes me as very capable. He is gainfully employed in a responsible job, has the support of his spouse and is raising two other daughters.

[43] The Mother complains that the Father has not completed his parenting course. I could not find any reference to a parenting course in any of the previous orders. I note the Mother has not taken any parenting courses. Again, the Father is raising two other daughters with his partner.

[44] The Child will need time to feel comfortable with the Father and have bowel movements in his home on the weekends she is there. The Mother admits that it will not take long for the Child to be comfortable with her Father but does think it would take more time before she can have a bowel movement in his home. If the Child has not had this opportunity yet, it is entirely the doing of the Mother. But there is no reason provided why the Father would be incapable of fostering this positive, trusting relationship with his oldest daughter. The Mother does not point to any parenting deficits by the Father, mental health issues, lifestyle issues, etc. that would prevent this bond from occurring in short order.

[45] The Father also provides evidence of how comfortable the Child was with him during some of the parenting time; for example, asking to go home with him after parenting time at her Mother's home and on a separate occasion asking to go to his home for parenting time rather than her Mother's. Where this evidence contradicts the Mother's evidence of the Child not wanting to see her Father, I accept the Father's evidence.

[46] Even if I accepted all the Mother's evidence at face value, none it remotely amounts to a reason to breach not only one order, but routinely breach all orders that she has ever been subject to.

[47] The Order goes on to mandate parenting time on March 22, March 29, April 5, April 12, April 19, May 3, and May 17. None of this parenting time took place and the Mother offers no justification. She simply states she was waiting for the

hearing before allowing any further parenting time. These were all wrongful denials of parenting time.

3. *What is the appropriate remedy?*

[48] Now that I have found that there was a denial and that the denial was wrongful, the next inquiry is what remedy to order. I want to set out some guiding principles in assessing an appropriate remedy:

- The best interest of the child is the overarching consideration in all decisions on remedy. This guiding principle must not only be considered where there is a request to reverse the primary care of the child, but in every remedied fashioned under s. 40.
- The scope and nature of the wrongful denial of parenting time must be considered. Longer, more entrenched, wrongful denials may require different, more extensive, remedies than a singular wrongful denial. It may even be appropriate to order no remedy; for example, if there was a singular denial of parenting time and the respondent provides appropriate assurances that there will be no further wrongful denials.
- The parenting arrangements in current court orders are presumed to be in the best interest of the child unless there is an application to vary, and the court accepts the evidence on a balance of probabilities that the current parenting arrangements need to be varied.
- This is not a punitive exercise. It is not about punishing the parent for their wrongful denial, as much as the parent who has been denied parenting time may wish it to be. Any thought of punishment must be left to any future proceedings under s. 41. Rather, it is about fashioning a remedy that will best promote the respondent's compliance in following through with the parenting time in the future. Again, the parenting time in the current order is presumed to be in the best interests of the child unless shown otherwise.
- A holistic approach must be taken to the remedies. It is not a matter of going through the list of possible remedies under s. 40(5) and checking off the ones that apply. The remedies must work together to promote the fundamental goal of ensuring there will be no further wrongful denials of parenting time.
- "Failure to comply with court ordered parenting arrangements is a very serious matter": **S.B. v. V.M.**, supra, para 100. It is of fundamental

importance that Court orders are obeyed. Without a mechanism to ensure orders are obeyed, the administration of justice loses credibility, and this only encourages further wrongful denials of parenting time.

[49] As discussed earlier, when considering a remedy, I will consider the history, if any, of parenting denials from April of 2022 to March of 2024. This context is especially important in making a determination under s. 40(8) whether the remedies under s. 40(5) will be complied with. If there was a long history of uneventful parenting time with no interruptions, the remedy may be different than if there were a lengthy history of continuous denials with no justification. Unfortunately, this matter falls into the latter category.

[50] The parties put into evidence in this proceeding all the evidence from the Notice of Application filed on April 17, 2023 that led to the March 1, 2024 Settlement Conference and subsequent Order.

[51] The Father filed a detailed affidavit dated April 14, 2023 in which he catalogued how each parenting time went from March of 2022, when the settlement conference with Judge Daley occurred, until March of 2023. I accept this evidence in its entirety. It is fact specific, told in a straightforward manner, internally consistent and externally consistent with all the text messages attached to confirm the information. Further, the Father makes admissions against his own interests; for example, when he had to cancel the parenting time.

[52] Suffice it to say, the Father's evidence in his April 14, 2023 affidavit is replete with example after example of the Mother wrongfully denying parenting time. The Child's bowel issues were a frequent excuse, even though parenting time was scheduled for a short duration at the Mother's home. Sometimes, no excuse was provided; they were just not available. There were often excuses or flat denials for make-up parenting time as well. And, more often than not, the Mother simply ignored the Father. The Father would futilely, but politely, text and email trying to confirm a parenting time with no response. Further, the Mother was leaving it up to the then 5 or 6 year old Child whether to have parenting time with her Father.

[53] It is important to note that the Mother does not refute a single bit of this detailed evidence in the Father's affidavits, other than in generic terms ("I never failed to respond to a message"). The Mother had the Father's affidavit for 10 months by the time she and her family members responded, and they all chose not to address any of the specific information contained in his Affidavit. The Mother said vaguely on the witness stand that these were not all the text messages

(referring to the exhibits attached to the Father's Affidavits) but did not provide me with any other text message that would refute or explain any of the evidence of the Father.

[54] It is clear the Mother has wrongfully denied a great deal of the Child's parenting time with her Father. She places such low value on her daughter having any kind of bond with her Father that it trivializes that important relationship.

[55] In fact, the Mother has ignored even relatively mundane portions of the Order. For example, paragraph 16 provides that communication of important information regarding the Child would be done through a designated email address; however, the Mother admitted on cross-examination that she has not provided a designated email address as of the date of the hearing on May 27, 2024. Her rationale for not doing so seemed to be that the Father was not worthy of providing any important information to.

[56] The Mother is critical of the Father for not knowing about the Child's medical condition, but she has not shared with him a report from Heather Jacklin that she says diagnoses the Child with ADHD. The Mother keeps a detailed binder of medical information about the Child but never shared a copy of it with the Father. She rationalizes that it was there at her house, and he could have asked to see it anytime he was there for his parenting time.

[57] Turning now to the applicable remedies available under s. 40(5):

(a) Counselling

[58] The Mother does not understand how fundamental it is to the Child's well-being to have a meaningful, positive relationship with her Father. She prioritizes the stress the Child may feel about her bowel movements over months worth of parenting time with her Father. Therefore, I order her to attend a minimum of 6 sessions with a therapist or a parenting class with a minimum of 6 hours duration, or some combination of the two, approved by the Father. The aim of the counselling is to explain the negative effects on her Child of alienating her from her Father. The counselling is to be completed no later than December 31, 2024. The Mother is to pay for the counselling.

(b) Compensatory Parenting Time

[59] Given the vast amount of parenting time that the Child has been denied with her Father, it is appropriate that at least some of that parenting time be made up.

[60] At the conclusion of the hearing on May 27, 2024, I ordered that, starting that weekend, the Father was to have some parenting time each and every weekend. It was entirely at the Father's discretion if there was to be a gradual ramping up of the parenting time, but regardless, parenting time was to take place every weekend until my written decision was released. The maximum amount of weekend parenting time was to be Friday at 5:00 PM until Sunday at 4:00 PM.

[61] Now that I have completed the written decision, I order that the parenting time each weekend is to occur for 28 consecutive weekends, or for a total of 28 weekends if a weekend is missed because of, for example, inclement weather, the Father's unavailability or the Mother's denial.

[62] This approximately 3 months of additional parenting time (the Child would have had every other weekend for the next 6 months in any event) is far below the amount of time the Child's has missed with her Father since April of 2022 but will provide an opportunity to have contact with her Father each week for an extended period of time so that they can get to know each other, and she can feel more and more comfortable with him.

[63] To be clear, it is in the Father's absolute discretion what the weekend parenting time will be during this 28 week period and the Mother has no say whatsoever. I trust that the Father will act in the Child's best interest in deciding this parenting time far more than I trust the Mother's judgement. During that weekend parenting time, the Father can return the Child sooner than anticipated, or keep her longer than indicated, so long as he provides notice to the Mother, of course. This is subject to the parenting time being no longer than Friday at 5:00 PM to Sunday at 4:00 PM.

[64] Once the 28 weeks of weekly parenting time has concluded, the parenting time will move to every second weekend from Friday at 5:00 PM until Sunday at 4:00 PM.

[65] The Mother will transport the Child to and from the parenting time. She confirmed twice on the record that she had a vehicle to drive the Child but then shouted out that she did not have a vehicle when I ordered her to provide the transportation at the end of hearing. Of course, it is always at the Father's discretion if he decides, in his sole discretion, that he wants to pick up or drop off

the Child rather than forgo the parenting time because the Mother refuses to provide transportation.

(c) Reimburse Expenses

[66] Other than legal fees, the Father has not put forward any additional expenses he has incurred because of the denial of parenting time. This would be more applicable in cases where, for example, travel plans had been made and paid for and then there was a denial of the parenting time.

[67] Legal fees are an important expense to consider but are more appropriately considered under s. 40(f).

(f) Costs

[68] While a costs award will always be an issue after a hearing, this subsection of s. 40(5) specifically provides that costs can be awarded as a remedy. I do not take this to mean that costs are more likely to be awarded, or are awarded in higher amounts, for these applications. The standing caselaw and Rules on costs should be followed. But the costs award must fit into the overall remedy being fashioned under s. 40(5).

[69] I have reviewed Civil Procedure Rule 77 and the case law on costs awards in Nova Scotia, including the helpful list of principles enunciated by Justice MacDonald in **L. (N.D.) v. L. (M.S.)**, 2010 NSSC 159, **Gagnon v. Gagnon**, 2012 NSSC 137, and other cases.

[70] The Father has attached the Statements of Account from his lawyer to his Affidavit from January 17, 2023 until April 16, 2024. The total legal fees were \$8,025. There would also have been an additional charge for attending the hearing on May 27, 2024 of approximately 4 hours for an additional \$1,200. With HST, the total legal fees come to \$10,608.75. There were disbursements of \$294 for service of documents on the Mother and the application fee of \$43.60. This totals \$10,946.35.

[71] This was a half day hearing, but I must take note of all the court time expended on this matter, including the ½ day settlement conference that only reached a fictitious resolution of the matter as clearly the Mother had no intention to abide by the parenting schedule she had negotiated. Paragraph 26 of the Order deals directly with how costs are to be addressed if there is a subsequent denial of

parenting time and directs that the Court “shall consider costs at that time, including the costs related to past appearances.”

[72] The Civil Procedure Rules, and in particular Tariff A, are the first guide in determining a costs award [See **Moore v. Moore** 2013 NSSC 281 at para 14]. Determining an “amount involved” is always problematic in parenting matters. The “rule of thumb” approach equates each day to one rung on the “amount involved” ladder in Tariff A. This approach has been criticized and is not always appropriate, [See **Ward v. Murphy**, 2024 NSSC 117 at para. 20] but adopting it in this case and counting the matter as a full day, the costs award would be \$4,000 on Scale 2; however, I would increase this to \$5,000 on Scale 3 given the conduct of the Mother, including her lack of retaining counsel which unnecessarily increased the time involved. To this must be added the additional \$2,000 per day of trial for a total of \$7,000.

[73] The next step would be to consider whether this is a “substantial contribution” to the Father’s expenses. A substantial contribution is between two-thirds and three-quarters [See **Armoyan v. Armoyan**, 2013 NSCA 136]. A substantial contribution in this case would be no less than \$7,500.

[74] I am mindful that the Mother does not work and is on social assistance. However, her lack of employment is her own lifestyle choice because she resides with and is engaged to someone who is employed full time in the Canadian Forces. Further, as noted by Judge Dyer in **C. (M.Q.) v. T. (P.L.)**, 2005 NSFC 27 (N.S. Fam. Ct.):

Courts are also mindful that some litigants may consciously drag out court cases at little or no actual costs to themselves (because of public or third-party funding) but at a large expense to others who must "pay their own way". In such cases, fairness may dictate that the successful party's recovery of costs not be thwarted by later pleas of inability to pay.

[75] In taking a holistic approach to the possible remedies and given my ruling in relation to s. 40(h) below, I order that the Mother pay \$2,500 in costs to the Father forthwith.

(g) Appear for the Making of an Additional Order

[76] At the conclusion of the May 27, 2024 hearing, in an effort to encourage her to obey my Order for parenting time to commence immediately that weekend, I

explained to the Mother the provisions of s. 41(2) and that ultimately, if she did not obey, she could be held in contempt and punished, including being jailed. I indicated that I would be following up to ensure that the parenting time was occurring.

[77] The matter will be docketed for a 30 minute court appearance in approximately three months to see if the Mother has been obeying my Order from May 27, 2024 and this decision. If there is an accusation from the Father that the order has not been complied with and there have been further wrongful denials of parenting time, the matter may be set for a contempt hearing. If that becomes necessary, the Mother will be afforded all the procedural protection required by that quasi-criminal procedure and the matter will be determined in accordance with the jurisprudence from our Court of Appeal [See *Gaudet v. Soper*, 2011NSCA 11].

(h) Payment of No More Than \$5,000

[78] In addition to paying an applicant's expenses incurred in the denial of parenting time, and a cost award, s. 40(h) also provides for the further payment of up to \$5,000 to the Applicant by the Respondent. Each one of these monetary amounts should not be ordered in isolation from one other, but rather a comprehensive and integrated approach should be adopted.

[79] Justice Marche ordered the respondent in *S.B. v. V.M., supra*, to pay \$3,000 at \$100 per month.

[80] I also note that s. 40(8) permits the Court to Order the posting of security to the court by the Respondent if the Court is satisfied that an Order under s. 40(5) will not be obeyed. I have no difficulty making that finding. The Mother has flagrantly denied parenting time granted under three different orders going back practically to the Child's birth. The parenting time under the last Order was immediately denied and no parenting time was ever permitted by the Mother.

[81] Dovetailing these provisions together, and taking a holistic approach, I Order the Mother to pay to the Father \$4,956. The amount will be paid at \$236 per month, the same amount as the Father's current child support obligation, for the next 21 months. It will be paid on the first day of each month commencing July 1, 2024. If the Mother does not make this payment, it will be offset against the Father's monthly child support payment.

[82] If the Mother does not deny any parenting time in that month, the \$236 shall be reimbursed to her on the last day of the month. To be clear, if there is any parenting time denied during the month, the \$236 is forfeit and the Father shall retain it.

[83] This is all about trying to incentivize the Mother to allow the parenting time to occur. This will provide a fairly modest financial encouragement for the Mother to recognize the importance to her Child of having this parenting time. I am trying to avoid the contempt hearing under s. 41 by using the provisions of s. 40, which were enacted "... because quasi-criminal contempt proceedings are not well-suited to resolve nuanced parenting disputes which focus on the child's best interests." **G.S. v. A.B.**, *supra*, para 158.

[84] The Mother is particularly entrenched in her views, and it will take some significant inducements for her to be able to come to terms with allowing the relationship between her Child and the Father to develop.

[85] The Father has not asked me to exercise the power granted under s. 40(6) and (7) to vary the parenting arrangements and decision-making responsibility, which can be an effective way in some situations to address the wrongful denial. I would not be prepared to "flip custody" without a request from the Father. So, I have used the other provisions of the s. 40 to address the entrenched and wrongful denial of parenting time by the Mother.

[86] All of this must be accord with the paramount consideration of the best interests of the Child: s. 18(5). I note the parents themselves have agreed on two separate occasions that the Child being in her Father's care every second weekend from Friday at 5:00 PM until Sunday at 4:00 PM is in the Child's best interest. The parents have reviewed the factors outlined in s. 18(6) with the assistance of counsel and two experienced judges and come to that conclusion. I am not prepared to dislodge the views of both parents on this point that have already been accepted twice by other judges.

[87] The best interests of the child must also inform the decision on the remedies for the wrongful denial of parenting time. It is categorically not in the Child's best interest to allow the Mother to continue doing as she pleases and wrongfully denying parenting time at her whim. If that continues, the Child will be denied any opportunity to know her Father and his family including his partner and two children, and to be enriched by having a positive, meaningful relationship with that side of her family.

Summary of Findings

[88] After considering all the evidence, I grant the Father's application for relief under s. 40 of the *Parenting and Support Act* and grant the remedies detailed above and summarized below. The Mother is causing irreparable harm to her Child by obstinately frustrating any meaningful and sustained parenting time with the Child's Father.

Conclusion

[89] I have come to the following conclusions:

- There has been a denial of parenting time by the Mother.
- The denial of parenting time is wrongful.
- The appropriate remedy that meets the best interests of the Child is:
 - a) The Mother is to attend a minimum of six sessions with a therapist or a parenting class with a minimum of six hours duration, or some combination of these, approved by the Father. The aim of the counselling is to explain the negative effects on her Child of alienating her from her Father. The counselling is to be completed no later than December 31, 2024. The Mother is to pay for the counselling.
 - b) The Child have compensatory parenting time each weekend for 28 consecutive weekends, or for a total of 28 weekends if a weekend is missed. The Father is solely to decide the length of the parenting time, up to and including from Friday at 5:00 PM to Sunday at 4:00 PM. And he can solely decide what support, if any, he needs from the Mother during any of the parenting time.
 - c) The Mother shall pay costs to the Father in the amount of \$2,500 forthwith.
 - d) The matter will be docketed again in three months time to ensure there are no further wrongful denials of parenting time.

- e) The Mother is to pay to the Father \$4,956 at \$236 per month on the first day of each month starting July 1, 2024 for 21 months. If the Mother does not make this payment, it will be offset against the Father's monthly child support payment. If there is no denial of parenting time that month, the \$236 will be reimbursed to the Mother; and if there is a denial of any of the parenting time, the money will be forfeited to the Father.

[90] Counsel for the Applicant will draft the Order.

Sheppard, J.