

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *D.B. v. S.D.*, 2024 NSSC 151

Date: 20240627

Docket: SFHPSA-122182

Registry: Halifax

Between:

D.B.

Applicant

v.

S.D.

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Samuel Moreau

Heard: January 8 and 9, 2024 in Halifax, Nova Scotia

Written June 27, 2024

Decision:

Subject: Change in circumstances, parenting arrangements, decision making responsibility, credibility, child support, special or extraordinary expenses, parental alienation, best interests, P.T.S.D.

Summary: Both parents sought primary care of a 5-year-old child. They were subject to an order which specified a shared parenting arrangement.

Issues:

- (1) Change in circumstances;
- (2) Parenting arrangements;
- (3) Decision making responsibilities;
- (4) Credibility;
- (5) Child support and section 7 expenses.

Result: The Court found that the father alienated the child from the mother. It is in the child's best interests to be in the primary care of the mother.

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SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *D.B. v. S.D.*, 2024 NSSC 151

Date: 20240516

Docket: SFHPSA-122182

Registry: Halifax

Between:

D.B.

Applicant

v.

S.D.

Respondent

Judge: The Honourable Justice Samuel Moreau

Heard: January 8 and 9, 2024, in Halifax, Nova Scotia

Released to the Parties: May 16, 2024

Written Release: June 27, 2024

Counsel: Tess Panzarasa for the Applicant, D.B.
The Respondent, S.D., Self-represented

By the Court:

Introduction

[1] This decision concerns E., the five-year-old son of D.B. and S.D. On August 18, 2022, “The mother”, D.B. filed a Notice of Variation Application requesting changes to the Consent Order issued on May 16, 2022.

[2] The current Orders (Consent Order issued on May 16, 2022, and Interim Consent Variation Order issued December 9, 2022) stipulate a shared parenting arrangement. Each parent now seeks primary care and residence of E.

Background Information

[3] The parties were in a relationship from 2017 to August, 2020. During their initial period of cohabitation, they resided in Cape Breton. In August, 2019, they moved to the Halifax Regional Municipality (HRM).

[4] The father was the family’s main breadwinner while the mother primarily cared for E. and her older child from a previous relationship, E. J.

[5] The parties separation was contentious. Because of the mother's dire financial circumstances and her inability to secure adequate housing, E. and E. J., resided with their respective fathers.

[6] Subsequent to September, 2020, the mother's contact with E. was limited.

[7] In November, 2020, the father and E. moved into a residence with H. G. H.G. was a housemate of the parties upon their move to the HRM. Ostensibly the father and H. G. were in a relationship after the parties' separation.

[8] The mother's initial Court Application was made in June, 2021, after a lengthy process of attempting to and eventually obtaining legal counsel.

[9] In March/April, 2022, the parties agreed to the terms of a Consent Order, issued on May 16, 2022 and which each party now seeks to vary.

[10] The father failed to abide by the terms of the Consent Order, which led to the present application. The mother was denied contact with E. from mid May, 2022, to late October, 2022.

[11] In November, 2022, the parties agreed to the terms of an Interim Consent Variation Order, issued on December 9, 2022. The provisions of the Interim Order

established the mother's gradual re-introduction to E. culminating in the shared (week about) parenting arrangement that has existed since January, 2023.

The Current Application

[12] The trial was heard on January 8 and 9, 2024. In addition to herself the following persons provided evidence on behalf of the mother:

- V.M., a registered clinical psychologist, who provides counselling services to the mother. V. M. was qualified as an expert in the field of psychology, specifically with respect to the mother's psychological functioning;
- R.M., the mother's sister;
- T.B., the mother's partner;
- B.B., currently employed at a daycare attended by E. The child is now in the daycare's before school and after school program;
- J.B., the director of a daycare previously attended by E.

[13] E.C. appeared as a witness for the father. She was a mutual acquaintance of the parties when they were together.

[14] I find it imperative to remark on the manner in which the father chose to conduct his case. He posed no questions to T.B. (the mother's partner) and the mother on cross examination. T.B. and the mother provided fulsome and detailed Affidavit evidence. Throughout the trial, the father left me with the impression of being an intelligent and capable individual, which made his choice not to cross examine these witnesses all the more puzzling.

Agreed Statement of Facts

[15] During the preliminary stage of the trial, Counsel for the mother put the following Agreed Statement of Facts on the Court record:

- Representative(s)/Employee(s) of the Minister of Community
Services have advised the father once or more than once to act as a protective parent in relation to E.;
- Representative(s)/Employee(s) of the Minister of Community
Services have advised the mother once or more then once to act as a protective parent in relation to E.; and
- Representative(s)/Employee(s) of the Minister of Community
Services have not provided either parent with any other specific

direction with respect to the issue of primary care and/or custody of E.

[16] As the parties agreed to the above statements, they also agreed there would be no requirement to compel evidence from a representative/employee of the Minister of Community Services.

Issues

- Has there been a change in circumstances since the making of the May 16, 2022, Consent Order; if so,
- What parenting arrangement is in E.'s best interests;
- What is the appropriate decision-making regime for E.;
- Credibility;
- The appropriate prospective child support obligation flowing from the parenting arrangement ordered; and
- Each party's contribution(s) to special or extraordinary expenses.

Change in Circumstances

[17] Before considering the positions of the parties, I must be satisfied that there has been a material change in the circumstances of either party and/or the child, since the making of the last order.

[18] This initial consideration is in accordance with Section 37(1) of the *Parenting and Support Act*. In *Burke v. Gouthro*, 2023 NSSC 55, Justice Forgeron comments on the jurisprudence in this area of family law:

Law

[32] Section 37 of the *PSA* provides me with the authority to vary a court order based on a change in circumstances. In *Barendregt v Grebliunas*, [2022 SCC 22](#), the Supreme Court of Canada reviewed basic variation principles:

[76] In a variation proceeding, “[t]he court cannot retry the case, substituting its discretion for that of the original judge; it must assume the correctness of the decision”: *Gordon*, at para. 11. The applicant bears the burden of proving that a child’s best interests differ from those determined in the original decision because the circumstances on which that decision was based have materially changed since trial.

[33] In *Gordon v Goertz*, *supra*, the Supreme Court of Canada defined a material change in circumstances:

12 What suffices to establish a material change in the circumstances of the child? Change alone is not enough; **the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way**: *Watson v. Watson* (1991), [1991 CanLII 839 \(BC SC\)](#), 35 R.F.L. (3d) 169 (B.C.S.C.). The question is **whether the previous order might have been different had the circumstances now existing prevailed earlier**: *MacCallum v. MacCallum* (1976), 30 R.F.L. 32 (P.E.I.S.C.). Moreover, the change should represent **a distinct departure from what the court could reasonably have anticipated in making the previous order**. "What the court is seeking to isolate are those factors which were not likely to occur at the time the proceedings took place": J. G. McLeod, *Child Custody Law and Practice* (1992), at p. 11-5.

13 It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) **a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the**

child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

Decision

[34] I find that Mr. Burke proved a material change in circumstances since the granting of the 2019 consent order. My conclusion rests on two factors – the reduction in Mr. Burke’s parenting time and Carsen’s educational needs. Each of these factors independently prove a material change in circumstances. I will now examine each factor in detail.

[19] Subsequent to the issuing of the May 16, 2022, Consent Order, the father denied the mother contact with E. for approximately 6 months. The father's actions resulted in the filing of the August 18, 2022, Notice of Variation Application and eventually, this trial.

[20] I find the actions of the father caused a material change in circumstances since the making of the May 16, 2022, Consent Order. Given this finding I shall now embark on a fresh inquiry into the parenting arrangement best for E.

Best Interests Analysis

[21] Section 18(6) of the *Parenting and Support Act* sets out the statutory factors

I shall consider in this fresh inquiry:

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;
- (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.

E.'s Needs

[22] Consistent with E.'s age (5 years old) and stage of development, he is wholly dependent on his caregivers for having his needs met. In my view the

parties approach parenting from differing philosophical perspectives. From the time of separation to late October/November, 2022, E. was in the primary care of the father. This arrangement was not as a result of any bilateral agreement(s) between the parties.

[23] The mother's Affidavit evidence details a number of concerns in relation to the child's needs/welfare while in the father's primary care:

- The behaviour of the child – E. has exhibited disruptive and dysregulated behaviours at school and with his mother. The father says E. shows no signs of those behaviours when in his care.
- The father's moves – the evidence substantiates that since separation, the father has lived in 6 different residences with E.
- E.'s dental care – while in the father's primary care the child developed several cavities which has resulted in seven metal caps being placed on his teeth.
- Therapy/Counselling sessions for E. – the father does not support E.'s attendance at this service and views same as unnecessary. During his cross

examination he reiterated his stance on this topic and also stated his belief on co-parenting counselling, as being unnecessary.

The willingness of the parents to support the development and maintenance of E.'s relationship with each other.

[24] The undisputed evidence confirms that this factor is of considerable significance. I shall address the facts and circumstances relevant to this factor in the subsequent section, titled, Parental Alienation.

The History of E.'s Care

[25] Since the parties separation in August, 2020, E. was in the primary care of the father until October/November, 2022. The current parenting arrangement flows from the terms of the Interim Consent Variation Order issued on December 9, 2022.

The Proposed Plans of Care

[26] Both parents seek primary care and residence of E. with the other having parenting time every second weekend. The mother employs a holistic approach to parenting, seeing much value from E.'s participation in professional services. The father appears to view parenting through a more traditional lens.

The Child's Heritage/Background

[27] Both parents are of Aboriginal heritage. The mother embraces her cultural background and seeks the same for E.

[28] The father did not address this factor in his evidence. The mother suggests that the father views the child's Aboriginal heritage/status as being immaterial and an issue which E. himself can decide on when he gets older.

E's Views and Preferences

[29] This factor is not relevant to my analysis given the child's age and stage of development.

E's relationship with each parent, sibling and other significant person

[30] The evidence substantiates E.'s bond with both parents and his older brother, E.J.

Communication and Cooperation Between the Parents

[31] I consider this factor to be primary in any analysis which contemplates a scenario where parents are called upon to co-parent. R.H. v. A.L.S., 2023 NSSC 171.

[32] The sum of the evidence leads me to the conclusion that the parties difficulties in communicating about E. stems from the circumstances of their

separation and the fathers unilateral actions and unsupported views of the mothers deficiencies, specifically relating to her mental health.

[33] The father's viva voce evidence left me with the impression of his resolute belief as to his parenting approach and exclusion of the mother from virtually all facets of E.'s life, subsequent to separation and during the period from the child's birthday in 2022, to late October, 2022.

[34] The mother advocates for and is a proponent of co-parenting counselling. The father sees no value from participation in this service.

[35] I am satisfied the mother does and will continue to employ a more conciliatory approach on parenting and issues affecting E.

The Impact of Any Family Violence

[36] The evidence does not substantiate this factor as bearing relevance to this analysis. I note the incident at the library (the agreed upon supervised visit for the father during an investigation by the Department of Community Services-Child Protection) involved police intervention. No charges were laid against either party or the individuals who accompanied them. Unfortunately, E. was present during the incident and more than likely witnessed behaviours by the adults which he

should not have been subject to. However, in my view, the facts do not meet the definition of or translate to family violence, abuse or intimidation.

Parental Alienation

[37] From the onset of their separation the father sought to and succeeded in limiting the mother's contact with E. As directed by the legislation and case authorities, I shall focus on the period subsequent to the granting of the May 16, 2022, Consent Order.

[38] Paragraphs 27 to 30 of the Consent Order reads:

27. Birthday- D.B. shall have E. in her care for his birthday in 2022 from 9:00 am to 6:00 pm picking him up from day care and returning him to S.D.

a. Every year thereafter the parties shall ensure that both parents enjoy parenting time with E. on his birthday, having a birthday visit for the parent who does not have him in their care on that day for after day care until 6:00 pm.

28. Mother's Day- E. shall be in the care of D.B.

29. Father's Day- E. shall be in the care of S.D.

30. Thanksgiving- the parties shall alternate Thanksgiving each year from Friday after daycare or school until Tuesday morning returning the child to school or day care. D.B. shall have even numbered years and S.D. shall have odd numbered years.

[39] J. B. testified that on E.'s Birthday in 2022, the mother attended at the daycare to pick up the child. Upon her arrival the mother discovered that the child

had already been picked up. J.B. could not recall who picked up E. on that day.

However, a co-worker (the Assistant Director) and her took particular note of E.'s pickup on that day as it was earlier than usual.

[40] Subsequent to that day the father kept E. in his sole care. He denied the mother all contact with the child until late October, 2022.

[41] Prior to the issuing of the May 16, 2022, Consent Order the father registered E. in J.B.'s daycare without any consultation from the mother.

[42] Upon her attendance at the daycare on the child's birthday the mother learned that she was not listed as an emergency contact. She also discovered that H.G. was listed as a contact and regularly picked up the child.

[43] J.B. testified she was under the impression that the mother was not involved in E.'s life. Also, J.B. was not aware a court order existed until she was contacted by Counsel for the mother prior to this trial. She says that prior to the mother's attendance at the daycare on the child's birthday in 2022, she did enquire with the father about the existence of a court order but was told there was "none available".

[44] B.B. is an employee of the daycare E. currently attends. As he has begun attending school, E. participates in the daycare's before and afterschool program. B.B. anticipates E. started attending her daycare in August, 2022. He was

registered by the father. B.B. was not aware of the existence of a court order during and after the registration process. She became aware of the May 16, 2022, Consent Order upon being contacted by the mother in late September, 2022, and subsequently being provided with a copy of same.

[45] During his cross-examination, the father maintained his stance on limiting E.'s contact with the mother subsequent to their separation and in particular denying her contact with the child after his birthday in 2022. He confirmed he picked up E. from the daycare earlier than usual on that date and never updated the daycare staff as to the existence of the court order, and particularly the provision (paragraph 27) that the mother would be attending to pick up E. on the child's birthday.

[46] The father testified that J.B., and her Assistant had a "certain level of concern" regarding the mother's attendance at the daycare on E.'s birthday. He says he was informed that J.B. had statements from staff at the daycare with respect to the mother's behaviour on that day. No such statements were tendered by any witness in this trial.

[47] J.B. testified that the mother was speaking loudly after learning that the child had already been picked up but was not yelling. I infer from J.B.'s viva voce

evidence that the mother's behaviour on that date did not cause an elevated level of concern.

[48] The father testified that he acted correctly in denying the mother contact with E. in 2022. His rationale for limiting the mother's contact subsequent to separation and cutting her off completely after the child's birthday, is his belief that the mother is mentally unstable.

[49] At a younger age, the mother was prescribed medication for depression, anxiety and post traumatic stress disorder. In October, 2021, the mother experienced a suicide attempt (described as such in the evidence from the police records- Court Exhibit 1, Tab D). The mother says that was a very difficult period in her life. She was depressed as the father had "completely alienated" her from E. One night in October, 2021, she suffered a "blackout" after drinking alcohol and awoke in the hospital.

[50] V.M., provides psychological services to the mother in the form of counselling and has done so since February, 2021. V.M., testified that the events of October, 2021, were surprising to her (V.M.), and subsequently the mother was proactive in her response.

[51] V.M. further testified she did not/has not observed psychosis or any other mental health issue in relation to the mother. V.M. has no reason to believe the mother is mentally unstable.

[52] V.M. identified the suicide attempt as an “isolated incident”.

[53] The mother says she has been diagnosed with having ADHD and takes Wellbutrin and Vyvanse as prescribed.

The Library Visit

[54] The mother recounts an incident from November, 2023.

[55] In late 2022, the parties agreed to the terms of the Interim Order (Interim Consent Variation Order issued December 9, 2022).

[56] By February, 2023, the parenting arrangement had progressed to a week on/week off schedule.

[57] In early November, 2023, the mother observed bruising on E.’s back. From her perspective the bruising appeared to be in the form of a handprint. This concerned her as the father previously used spanking as a disciplinary measure. She made a report to the police and a child protection investigation ensued. E. was interviewed by the police and made no disclosures.

[58] In early December, 2023, E. made a disclosure to the mother that the father had held the child's head under water. The mother reported this disclosure to the Child Protection Worker.

[59] During the period of the investigation the mother kept E. in her care, ostensibly at the behest of the Child Protection authorities and Police.

[60] In early December she arranged for the father to have a supervised visit at a local Library. What can be described as a confrontation between the parties transpired during the visit.

[61] T.B. attended the visit as a support for the mother. The father attended with his own support person.

[62] The mother says the father acted inappropriately in E.'s presence by talking about court proceedings and child protection involvement. She also recounted that the father repeatedly asked E. if he wished to go home with him.

[63] Eventually the police intervened (apparently contacted by the library staff). The mother says the father implied to the police officer(s) that he had custody of E. and the parties were working towards a shared arrangement.

[64] During his cross examination the father testified he agreed to the supervised visit at the library but had intended to take E. home to his residence after the visit. He acknowledged asking the child if he wished to go to his home. He says E. was upset to leave him. He faults the mother and T.B., for escalating the incident.

Defining Parental Alienation

[65] A thorough review of the evidence reveals that the father had no justifiable reason for denying the mother's visit with E. on his birthday, and terminating her contact from that date to late October.

[66] In *Williams v. Power*, 2022 NSSC 156, Justice Chiasson provides a helpful synopsis of case authorities which address the issue of parental alienation, explored at paragraphs 72 to 74:

[72] The following definition of parental alienation was set out in *L.M.A.N. v C.P.M.*, [2011 MBQB 46](#) (Man. Q.B.), at paragraph 98:

“Early in his testimony before the court Dr. Stambrook was asked to offer his definition of “parental alienation”, and he provided the following response:

It is a descriptive term that refers to a process. It is not a diagnostic label. It doesn't appear in any nomenclature about mental health disorders. It is a descriptive term that refers to a process where there is a systematic devaluation, minimization, discreditation of the role of, typically the other parent in a parental dyad. One parent systematically, through a variety of physical, emotional, verbal, contextual, relational set of maneuvers systematically reduces the value, love, commitment, relationship, involvement of the other parent by minimizing, criticizing, devaluing that parent's role. It can involve children having their sense of history being “re-written” by a parent's redefinition of history, reframing

things, repetitively talking about things. **It can involve sometimes very subtle and sometimes not so subtle suasion, coercion, direction, misrepresentation and so on.**

It is an abusive practice. It is child abuse when it occurs. It's emotionally abusive. It cripples and stunts children's development because the reality they knew at one point is undermined by this process. It is dangerous for the development because in [an] ideal situation, children should feel free to love and interact with the adults who are important in their lives, unencumbered by twisted turns of relational loyalties that are, unfortunately misplaced in this situation.

So parental alienation is a process, an interactional process where systematically one parent's role in, for the children is eroded over the course of time. (bolding added).”

[73] This definition has been accepted in *Radley v McClean* [2020 ONSC 4396](#) (Ont. S.C.), and *Bors v Beleuta*, [2019 ONSC 2128](#) (Ont. S.C.), *M.S. v K.A.*, [2021 ONSC 7853](#) (Ont. S.C.).

[74] A finding of parental alienation is a finding of fact which does not require expert evidence (*A.M. v. C.H.*, [2019 ONCA 764](#), 32 RFL (8th) 1 (Ont. C.A.)). Such findings are exceptional and based on the unique facts of each case.

[67] In the article, *The Problem of Alienation*, authored by Dr. Arthur Leonoff, 25th Annual Institute of Family Law, April 2016, he writes at page 2:

Blame, scapegoating and extreme exclusionary behavior become the currency of an alienating dynamic with one parent often seen as beyond reproach while the other is never free of it. Alienation is peculiar for its lack of proportion, reasoning or fairness.

Permitting a brief digression into psychoanalysis, I am reminded that very early in his career, Freud (1893) had described conditions in which there was a dearth of mental processing or symbolization. He referred to this category as “actual neurosis” in contrast to “psychoneurosis.” He intended to describe disorders such as panic or neurasthenia (vague, chronic un-wellness) in which there is almost no mental processing or higher-order thinking. If we replace the body with the family unit then we might hypothesize that child alienation is the “actual” pathology of divorce. As such, raw emotional forces are turned inwards upon the family envelope in the form of abandoning and exclusionary behaviour. The forces unleashed break the family unit in what amounts to parental amputation.

The cardinal signs in the preferred parent are lack of balance or perspective, no awareness of the consequences of what is said or done, and absence of sadness, concern,

guilt or empathy for the targeted parent. As to the children of alienation, they are almost always empowered, totalistic and extreme in their willingness to discard someone obviously once meaningful to them. They too lack empathy or concern to an astonishing degree.

Finding of Parental Alienation

[68] I accept the mother's evidence regarding the father's conduct during the library visit. Specifically, his inappropriate conversation with E. (including about court proceedings) emphasizes his "lack of balance or perspective" and total indifference to the consequences of his actions on the mother and more importantly, on E.

[69] I find the facts in relation to the father's actions during the period after the child's birthday in 2022 to late October, 2022, are consistent with the practice of parental alienation as articulated in the jurisprudence and academic literature.

[70] I am satisfied the evidence substantiates a finding that the father alienated E. from the mother during the period immediately following the issuing of the May 16, 2022, Consent Order to late October, 2022.

Decision on Parenting Arrangements

[71] In *A.N v. J.Z.*, 2018 NSSC 146, Justice Beaton's analysis of the relevant considerations when contemplating a shared parenting arrangement is instructive:

[9] Over the past ten years, the Court has produced a number of decisions identifying the conditions needed to support the implementation of a shared parenting regime. Reflecting the circumstances of many different families, these decisions, whether approving or rejecting in any given case the sought-after shared parenting construct, have recognized the importance of key characteristics: a shared parenting arrangement requires the Court to be confident that the parents are committed to, have demonstrated and will be able to continue with a high degree of integration, cooperation, respect and flexibility in and for their respective parenting styles. The parents' approaches need to leave the Court confident that the application of the requirements of [section 16](#) of the [Divorce Act, supra](#), and the so-called "Foley factors" ([Foley v. Foley, 1993 CanLII 3400 \(NS SC\)](#), 1993 N.S.J. No. 347) to the particular circumstances, along with the ultimate assessment of what is in the best interests of the child(ren), can lead to a conclusion that a shared parenting arrangement is reasonable, realistic and workable.

[10] Central to the question of whether shared parenting will be ordered is a consideration of the parties' ability to communicate in a timely, meaningful and respectful way, an ingredient which is the backbone of the key characteristics referred to above, and crucial to their operation in a manner that best suits the needs of the child(ren). Courts are not looking for shared parenting arrangements of perfection – as borne out in decisions such as [Gibney v. Conohan 2011 NSSC 268](#) and [Clarke-Boudreau v. Boudreau 2013 NSSC 173](#) – however parents do need to satisfy the Court that it is realistic to expect they can put the child(ren)'s needs first and foremost in their communication and decision-making.

[72] I am satisfied that the undisputed evidence of the mother and T.B. and my findings and conclusions in the previous sections of this decision supports that a shared parenting arrangement is not in E.'s best interests.

[73] I do not accept E.C.'s evidence as it relates to the mother's parenting. Additionally, E.C.'s evidence addresses the period prior to the formation and issuing of the current order.

[74] The father's argument centers on the mother's mental stability or from his perspective, the lack there of. The totality of the evidence does not substantiate his

position, nor does it call into question the mother's mental stability or mental health.

[75] I accept V.M.'s expert evidence that the mother's suicide attempt in October, 2021, was an isolated incident, primarily triggered by her exclusion (as a result of the father's unilateral actions) from E.'s life.

[76] I am satisfied the father's usage of the mother's suicide attempt (and his perception as to the status of her mental health) is strategic. The father's unjustifiable and unreasonable actions since separation and in particular between the child's birthday and late October, 2022, were consciously undertaken to further his interests in maintaining primary care of E. and contrary to their then agreement encapsulated in the May 16, 2022, Consent Order.

[77] I have made the finding that the father alienated E. from the mother. Further, I consider it important to E.'s continued growth and development that his sibling relationship with E.J., be maintained and fostered. I am not confident the father views this relationship as a priority and in the child's best interests.

[78] I find it is in E.'s best interests that he be in the primary care and residence of the mother. The father shall have parenting time with E. every other weekend from after school/daycare on Fridays to 4pm on Sundays. At the conclusion of this

decision, I shall offer further comment on the parties parenting time during holidays and special occasions.

Decision Making

[79] The mother requests the parties have joint decision-making authority with consultation on all major decisions. She seeks final decision-making responsibility in the event that the parties are unable to reach consensus.

[80] The father did not provide a stated position on this issue. I infer from the sum of his evidence (specifically his view of the mother's mental status) that he also requests final say on issues affecting E.

[81] Justice Forgeron's synopsis in *K.G v. H.G.* 2021 NSSC 43, paragraphs 99 to 101, and referenced by this court in *K.H vs K.N.*, 2022, NSSC 305, *R.H. v. A.L.S.* 2023 NSSC 171 and *S.L.J. v. T.D.*, 2023 NSSC 343, remains an essential precedent when evaluating decision making responsibilities in high conflict parenting scenarios:

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.

[82] Despite the mother's seeming conciliatory stance on the element of consultation, I am not satisfied joint decision making is workable in this case. I highlight the following:

- The father's unilateral decision to limit and deny the mother's contact with E;
- The father's unilateral decision regarding E.'s enrollment in 2 daycares without informing the mother and not informing either daycare of the existence of a court order nor the mother as a contact;
- The father's unilateral decisions regarding E.'s dental care;
- The father not providing the mother with his contact information and /or the child's location during several of his moves;

- The father's complete disregard for the provisions of the Consent Order issued May 16, 2022; and
- The father's viva voce evidence on the decisions he made in regard to the above and his adamant belief that his unilateral actions were in the child's best interests.

[83] I find it is in E.'s best interests that the mother have decision making authority. She may choose to consult the father on major decisions, however consultation is not ordered.

Credibility

[84] Credibility emerged as an issue in this matter.

[85] I reference the oft cited test set out by Justice Forgeron in *Baker-Warren v. Denault*, 2009 NSSC 59 at paragraphs 18 to 20:

[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).

[86] Where the evidence conflicts, I accept the mother's evidence.

[87] Regarding the father's evidence, I highlight two issues; the father's position on the mother's mental health and his comments regarding the mother's attendance at the daycare on the child's birthday, in 2022. These issues are not exhaustive of the conflicts within the parties' respective presentations.

[88] The father's discourse on the mother's mental health is central to his argument for primary care of E. He maintains E. is not safe in the mother's care. As I earlier opined, the father's position on the mother's mental health is strategic and unsupported by the evidence. His motive is obvious. The father's evidence as stated in paragraph 31 of his Affidavit sworn December 19, 2023 (Court Exhibit 8) is not supported by the evidence of J.M. J.M., indicates that the mother was loud but not yelling when attending to pick up E. on his birthday in 2022.

[89] There is no evidence to support the father's statement that the mother "harassed" the daycare workers, caused "a scene" or that her behaviour led to "a lock down mode" "for the safety of everyone in the building".

[90] I find the father's evidence on these issues lacks credibility and is unsupported and self serving.

Child Support and Special or Extraordinary Expenses

[91] Consistent with the finding related to E.'s parenting arrangements, the father shall pay child support to the mother in the guideline amount as per the Nova Scotia tables. Court Exhibit 6, The father's unsworn statement of income filed January 2, 2024, indicates an annual income of \$71,115.72. Attached to his Statement of Income is a copy of his paycheck stub for the period ending December 9, 2023, which indicates a year-to-date income of \$69,405.57.

[92] Based on an annual income of \$71,115.72 the father shall pay child support to the mother in the amount of \$608.97 per month commencing on June 1st, 2024, and continuing on the first day of each month thereafter.

[93] Based on an annual income of \$29,412.00, the mother's contribution to any special or extraordinary expenses shall be 29% and the father's, 71%.

Conclusion

[94] After a thorough review of the evidence, the parties written and oral arguments and the relevant legislation and case authorities, I am satisfied that the following shall form the provisions of the varied order flowing from this decision:

- The mother shall have primary care and residence of E.

- The mother shall have decision making authority with respect to E.
- The father shall have parenting time with E. every second weekend from Friday afterschool or daycare until Sunday at 4:00 p.m. and every second Wednesday from after school or daycare until 7:00 p.m.
- Regarding travel with E. and holiday parenting time, the parties agree that paragraphs 21-30 of the Consent Order issued on May 16, 2022, shall remain in force and effect.
- The parties agree that regardless of the parenting schedule, the mother shall have parenting time with E. on May 5th (Cinco de Mayo), of each year from after school or daycare until 7:00 p.m., or if there is no school, from 3:30 p.m. to 7:00 p.m., if May 5th falls during the father's scheduled parenting time.
- Neither party shall speak negatively about the other parent in the presence of E. and shall remove the child from any situation in which a third party is speaking ill of the other parent.
- Based on an annual income of \$71,115.72, the father shall pay child support to the mother in the guideline amount of \$608.97 per month commencing June 1st, 2024, and continuing on the first day of each month thereafter.
- The parties shall contribute to special or extraordinary expenses in an amount proportionate to their incomes. The mother's contribution is calculated based on an annual income of \$29,412.00. The father's contribution is calculated based on an annual income of \$71,115.72. The mother's contribution is 29% and the father's, 71%.
- The father shall provide to the mother on or before June 1st of each year, commencing June 1st, 2024, a complete copy of his income tax return with all attachments and complete copies of his notices of assessment and or re-assessment received from the Canada Revenue Agency.

- All child support payments will be made payable to the mother. The payments will be sent by the father to the Maintenance Enforcement Program, P.O. Box 803, Halifax, Nova Scotia B3J 2V2, while the order is filed for enforcement with the Director.
- A court officer will send the parties' current designated addresses and a copy of this order to the Maintenance Enforcement Program as required by section 9 of the Maintenance Enforcement Act.
- Each party will advise the Maintenance Enforcement Program of every change to their address, within 10 days of the date of the change, as required by section 42(1) of the Maintenance Enforcement Act.
- The father will advise the Maintenance Enforcement Program of every change in the location, address and place of his employment, including the start or end of employment, within 10 days of the date of the change, as required by section 42(2) of the Maintenance Enforcement Act. A requirement to pay money under this order, that is not enforced under the Maintenance Enforcement Act, may be enforced by execution order, or periodic execution order.
- The sheriff must do such things as are necessary to enforce this order and, to do so, may exercise any power of a sheriff permitted in a recovery order or an execution order.
- All constables and peace officers are to do all such acts as may be necessary to enforce the terms of this order and they have full power and authority to enter upon any lands and premises to enforce this order.

[95] Counsel for the mother shall draft the order.

[96] The parties may file written submissions on costs 30 days following the issuing of the order.

Samuel C.G. Moreau, J.