

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *J.B. v. D.H.*, 2024 NSSC 152

Date: 20240627

Docket: SFHPSA-127451

Registry: Halifax

Between:

J.B.

Applicant

v.

D.H.

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Samuel Moreau

Heard: February 13, 2024, in Halifax, Nova Scotia

Written: June 27, 2024

Decision:

Subject: Parenting arrangements, shared parenting, child support, special or extraordinary expenses, decision making, housing co-op.

Summary: The father sought a shared parenting arrangement for a child approximately 1.5 years old. The mother requested that she retain primary care.

Issues:

- (1) Parenting arrangements best for the child;
- (2) Decision making responsibilities;
- (3) Child support and section 7 expenses.

Result: The Court found it is in the child's best interests that the status quo continue with the mother maintaining primary care and residence. Both parents were assigned as decision makers.

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SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *J.B. v. D.H.*, 2024 NSSC 152

Date: 20240516

Docket: SFHPSA-127451

Registry: Halifax

Between:

J.B.

Applicant

v.

D.H.

Respondent

Judge: The Honourable Justice Samuel C.G. Moreau

Heard: February 13, 2024, in Halifax, Nova Scotia

Released to Parties: May 16, 2024

Counsel: Brent Adams and Patience Faubert for the Applicant, J.B.
Jacob Leon for the Respondent, D.H.

By the Court:

Overview

[1] This decision concerns L., born in 2022. He is the son of J.B. and D. H.

[2] The Applicant, J.B., (the father) and Respondent, D.H., (the mother) were in a brief intimate relationship between the fall months of 2021, and early 2022.

[3] The parties disagree as to the duration of their relationship. Ultimately the duration of their relationship does not prove to be a significant factor in the outcome of this case.

Background

[4] In 2021 the mother separated from her common law partner, N.H. During the mother's relationship with the father, she and N.H. continued to work together within the same enterprise. The mother is a professional Body Piercer and N.H., a professional Tattoo Artist.

[5] After the parties' brief relationship ended, the mother and N.H. reconciled and were married in June, 2022.

[6] Upon learning of the mother's pregnancy, the father was uncertain on his role as a parent and his potential involvement in the child's life. In February, 2022, the parties ceased communication.

[7] In late May, 2022, N.H. made a social media posting to the effect that he and the mother were expecting a baby. It appears the father took offence to N.H.'s social media posting(s).

[8] The father countered with social media posts of his own in relation to L.'s paternity.

[9] The mother says it would have been clear to the parties' social media community that N.H. is not L.'s biological parent as he is openly transgender.

[10] The mother says N.H. subsequently removed the social media posts which appeared to have caused discomfort to the father and he (N.H.) "has tried to avoid causing further friction" over L.'s paternity, with the father.

[11] The mother maintains the father continued to make social media postings relating to L.'s future parenting (co-parenting), without first consulting her.

[12] The mother gave birth to L. in the early fall of 2022. Initially she was reluctant for the father to have unsupervised parenting time with a newborn due to his lack of experience as a parent.

[13] The father's parenting time has progressed from a few hours of supervised contact (supervised by his mother, L.'s paternal grandmother) to 3 - 4 hours unsupervised, to the current schedule, every Saturday and Sunday from 11:00 am to 6:00 pm. There was an overnight visit on December 24, 2023, hosted by the paternal grandmother which both parties agree went well. Also, the parties report that the father had an unsupervised overnight visit with L. in early February, 2024, which also went well.

[14] The Application currently before the Court proceeded to trial on February 13, 2024. A.R. and A. H. provided Affidavit evidence in support of the father. Both were cross examined by the mother's Legal Counsel. The mother did not call any other witnesses.

[15] During the preliminary stage of the trial, I excluded and struck from the evidence portions of A.R.'s Affidavit, as same was clearly hearsay and did not fall under any of the exceptions to the hearsay rule.

Positions of the Parties

[16] The father advocates for a shared parenting arrangement. He suggests a graduated schedule, (over a period of two months) culminating in a 2-2-3-2-2-3 shared parenting arrangement.

[17] The mother requests that she be granted primary care of L., that the father's parenting time continue as per the status quo (each Saturday and Sunday from 11:00 am to 6:00 pm) and that she be afforded the discretion on managing the expansion of the father's parenting time.

Issues

- The parenting arrangement best for L.; and
- The appropriate child support obligation flowing from the parenting arrangement ordered.

Parenting Arrangements

[18] An analysis of the parenting arrangement best for L. engages Section 18(6) of the *Parenting and Support Act*, which sets out a diversity of factors to be considered.

[19] In *D.A.M. v. C.J.B.*, 2017 NSCA 91, our Court of Appeal directs that I employ a comparative and balanced approach to my analysis. I shall examine and comment on the factors pertinent to the evidence.

Best Interests Criteria

L.'s needs consistent with his age and stage of development.

[20] L. is at the sensorimotor stage of development. He requires an environment which would permit him the flexibility to be self determined yet managed as he grows into the toddler stage.

[21] The father resides in a co-operative housing arrangement. He shares a house with three other individuals. Two of the father's housemates, A.R. and A.H., were witnesses for him. The third housemate, A.J., resides in the basement of the home, which has a separate entrance. The father occupies his room and rents a second room within the house which he has converted into a nursery for L. The nursery is self-contained with a crib and a bed, enabling the father to sleep in the same room as L. during overnight parenting time visits.

[22] The father testified that L.'s movements within the house is regulated as he is conscious of the amount of "screentime" L. consumes. As such the child's access

to the living room (which has the television) is strictly monitored. L.'s movements are restricted to the nursery, the father's room or the kitchen during meal times.

[23] The father says that he has "begun the process of baby-proofing the home" as L.'s mobility increases. He maintains that the co-op is a good place to raise a child. L. has met other children within that co-op community.

[24] A.R. and A.H. are employed professionals. A.R. testified that he typically works 60% to 70% of the time at home, usually between the hours of 5:30 am to 6:00 pm. The nature of A.H.'s employment demands that he be at his job site.

[25] Both housemates testified that they rarely have guests over. I infer from the evidence of the father and his housemates that the preponderance of their social interactions takes place outside of their home.

[26] Both housemates have met L. and interacted with him.

[27] Since L.'s birth the father has switched career paths going from a graduate academic program into a plumbing trade. He says he made the switch in order to better provide for L.'s future. Currently he is employed working full time hours and also has school commitments related to his trade. He says both his employment and educational program offer a great deal of flexibility with regard to scheduling.

[28] The mother and N.H. reside in a newly purchased four bedroom home with a finished basement. In addition to L., the mother has primary care of F., her daughter from a previous relationship. F.'s father plays an active role in her life. F. is 7 years old. The mother and N.H. have arranged their work schedules so that a third party childcare provider is not required.

The parents willingness to support the development of L.'s relationship with the other:

[29] I am satisfied both parents view this factor as being important and central to L.'s development. Since L.'s birth the mother has been progressive in her approach on the father's contact and parenting time. She has been appropriately measured given L.'s stage of development.

History of Care

L. has been in the mother's primary care since his birth.

The strength and stability of L.'s relationship with each parent, sibling and other significant persons

[30] L. has strong and stable relationships with both parents, N.H. and his sister, F. The evidence also suggests a strong and stable relationship with the paternal grandmother.

The ability of the mother and the father to communicate on issues pertinent to L.

[31] Communication between parents is a fundamental factor in any co-parenting endeavor. Often in family court cases communication is poor and at the root of many disputes. Refreshingly, the parties are able to communicate effectively on issues pertaining to L. I am satisfied they are largely able to set aside their differences in L.'s best interests.

Case Authorities

[32] The Supreme Court (Family Division) has produced a wealth of decisions which address the issue of shared parenting.

[33] The father references *Clarke-Boudreau v. Boudreau*, 2013 NSSC 173, and *Einsfeld v. Anthony*, 2019 NSSC 227, among other cases and the mother relies on *Hammond v. Nelson*, 2012, NSSC 27., and *Gibney v. Conohan*, 2011 NSSC 268 inter alia.

[34] In *Murphy v. Hancock*, 2011 NSSC 197, A.C.J. O'Neil contemplates the issue of shared parenting and at paragraph 50 sets out several factors to be considered in a best interests assessment:

[50] Within the assessment of the best interests of a child when shared parenting is proposed a number of factors frequently prove important. They are refinements to the best interests analysis discussed earlier. The factors are the following:

1. The proximity of the two proposed homes to each other is an important factor to consider. This is relevant to assessing how shared parenting will impact on all aspects of a child's life, including what school the child will attend, what recreational or social relationships will be disrupted or preserved and how available each parent will be to the other should shared parenting be ordered;
2. The availability of each parent to the child on a daily basis and the availability of step-parents is an important consideration. A court should also consider the availability of members of the respective extended families and whether a shared parenting arrangement impacts negatively or positively on a child's relationship with the extended family;
3. The motivation and capability of each parent to realize their parenting opportunity for the best interests of the child;
4. Whether a reduction in transitions between households can be achieved by a shared parenting arrangement. This is particularly important when transitions frequently give rise to conflict between the parents;
5. Whether mid-week parenting time or contact with the other parent can be structured without disrupting the child. This contact might be after school or after supper time, for example, the objective being the elimination of extended periods without contact between the child (ren) and a parent;
6. The opportunity, if any, that shared parenting provides for each parent to be involved in decisions pertaining to the health, educational and recreational needs of the child; the level of interest each parent has in participating in decision making in these areas is relevant to this assessment;
7. The responsibility that shared parenting imposes on each parent to share the parenting burden and to be involved in decisions pertaining to the health, educational and recreational activities of the child and an assessment of each parent's willingness to assume their share of that responsibility after entrusted with it;
8. The employment and career benefits that may accrue to each parent as a result of a shared parenting arrangement and a more equal sharing of the parental responsibilities;

9. Whether improvements in the standard of living in either or both households may accrue as a consequence of a shared parenting arrangement;
10. The willingness and availability of parents to access professional advice on the issue of successful shared parenting;
11. The extent to which primary care by a parent and more limited access time by the other parent will give rise to conflict in the parenting arrangement. The “elephant in the room” in many custody disputes has three aspects (a) the child support consequences that flow from a shared parenting arrangement or the alternative and (b) the manner in which a primary care parent can use his/her position to have power and control of parenting and (c) whether a parent will abuse the parenting opportunity by doing so. Shared parenting is often not ordered because the parties are too conflictual, notwithstanding that the conflict may result from a power imbalance in the parents’ relationship flowing from the parenting arrangement in place. Courts must be cognizant of this dynamic;
12. An assessment of the parenting styles. That assessment should address/answer the questions posed by Justice MacDonald in *C.(J.R.) V. C.(S.J.)* 2010 NSSC 85, at paragraph 12:
 - What does the parent know about child development and is there evidence indicating what is suggested to be "known" has been or will be put into practice?
 - Is there a good temperamental match between the child and the parent? A freewheeling, risk taking child may not thrive well in the primary care of a fearful, restrictive parent.
 - Can the parent set boundaries for the child and does the child accept those restrictions without the need for the parent to resort to harsh discipline?
 - Does the child respond to the parent's attempts to comfort or guide the child when the child is unhappy, hurt, lonely, anxious, or afraid? How does that parent give comfort and guidance to the child?
 - Is the parent emphatic [empathetic ?] toward the child? Does the parent enjoy and understand the child as an individual or is the parent primarily seeking gratification of his or her own personal needs through the child?

- Can the parent examine the proposed parenting plan through the child's eyes and reflect what aspects of that plan may cause problems for, or be resisted by, the child?
- Has the parent made changes in his or her life or behaviour to meet the child's needs, or is he or she prepared to do so for the welfare of the child?

[35] Additionally, the factors articulated by Justice Goodfellow in *Foley v. Foley*, 1993 CanLII 3400 (NSSC) are salient:

Nevertheless, there has emerged a number of areas of parenting that bear consideration in most cases including in no particular order the following:

1. Statutory direction Divorce Act 16(8) and 16(9), 17(5) and 17(6);
2. Physical environment;
3. Discipline;
4. Role model;
5. Wishes of the children if, at the time of the hearing such are ascertainable and, to the extent they are ascertainable, such wishes are but one factor which may carry a great deal of weight in some cases and little, if any, in others. The weight to be attached is to be determined in the context of answering the question with whom would the best interests and welfare of the child be most likely achieved. That question requires the weighing of all the relevant factors and an analysis of the circumstances in which there may have been some indication or, expression by the child of a preference;
6. Religious and spiritual guidance;
7. Assistance of experts, such as social workers, psychologists, psychiatrists, etcetera;
8. Time availability of a parent for a child;
9. The cultural development of a child;
10. The physical and character development of the child by such things as participation in sports;

11. The emotional support to assist in a child developing self esteem and confidence;
12. The financial contribution to the welfare of a child.
13. The support of an extended family, uncle's, aunt's, grandparent's, etcetera;
14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. The Divorce Act s. 16(10) and s. 17(9);
15. The interim and long range plan for the welfare of the children.
16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and
17. Any other relevant factors.

The duty, of the court in any custody application is to consider all of the relevant factors so as to answer the question.

Analysis

[36] These parents are able to work co-operatively on issues pertaining to L.

They place the child at the forefront of their considerations. The father's efforts (not an exhaustive list) demonstrates his commitment to L.:

- His change of career paths;
- Creation of a room within his home dedicated to L. (the nursery);
- Attendance at various groups and counselling in an effort to improve the quality of his parenting.

[37] Often in matters such as the present case where a parent seeks a shared arrangement, the specter of financial motivation lurks in the background. In this matter I am pleasantly left with the impression that financial motivation is not a factor and immaterial to the position adopted by either parent. I am convinced both are genuine in their convictions.

[38] In deciding on the appropriate parenting arrangement, the comment of Justice Wright in *Hackett v. Hackett*, 2009 NSSC 131, holds true:

[13] It is all well and good to look at other cases to see how these principles have been applied, but the outcome in other cases is really of little guidance. Every case must be decided on a fact specific basis and nowhere is this to be more emphasized than in custody /access/parenting plan cases. To state the obvious, no two family situations are ever the same.

[39] My concern with the father's plan is twofold:

- I am not convinced that his living environment is conducive to the raising of a 16 month old child, notwithstanding the support of A.R. and A.H. L.'s need for mobility will be more pronounced as he grows into the toddler stage. I consider it unrealistic to expect that with an increase in mobility L. will confine his movements to the parameters currently set out by the father. The fact that the father resides within a co-op housing initiative is not at issue. As he points out there are neighboring households within the co-op community with children. However his living arrangement is more amenable to the lifestyle of individual adults rather than a parent and infant child.
- The father testified that his current employment and educational commitments offer a great deal of flexibility. He is in the midst of attempting to secure third party childcare arrangements should I decide

that a shared parenting arrangement be ordered. While there are several potential benefits to L. attending a daycare, the mother's current arrangement meets the child's best interests. L.'s relationship with his older sister is important and a factor in his development. I am not suggesting that the sibling relationship is or should be superior to the father's time with L. However, given the choice between a daycare and being in the care of the mother or N.H. (and interacting with his sibling), the preferred option involves the opportunity to grow the sibling relationship.

[40] To a lesser extent the proximity of the parties' residences is a factor in this analysis. Their homes are approximately 24 kms apart (20 minutes by car).

However the parties ability to communicate effectively should be sufficient to offset any difficulties which may arise as a result of the distance between their homes.

Decision on Parenting

[41] I find it is in L.'s best interests that he be in the primary care and residence of the mother. The father shall have parenting time every second weekend from Friday to Sunday. During the weeks in which the father does not have weekend parenting time, he shall have parenting time on a weekday and time to be determined by the parties in accordance with their respective schedules.

[42] The father shall have any other parenting time as mutually agreed on by the parties. I am satisfied the parties level of communication and cooperation is such

that they are able to arrange parenting time schedules for holidays and special occasions without the Court's intervention.

Decision Making

[43] Likewise, I am satisfied joint decision making is workable in this case. Pursuant to Section 17A (2) of the *Parenting and Support Act*, I assign joint decision making authority to the parents.

Child Support and Special or Extraordinary Expenses

[44] Based on an annual income of \$53,159.80, the father shall pay child support to the mother in the guideline amount of \$451.28 per month commencing on June 1st, 2024.

[45] The order will also contain the disclosure provision whereby the father shall provide the mother with a copy of his income tax return and notice of assessment and/or reassessment from the Canada Revenue Agency on or before June 1st of each year.

[46] The parties contributions to Section 7 expenses shall be proportional to their incomes. Based on the father's income of \$53,159.80 and the mother's of

\$33,801.97, their respective contributions to Section 7 expenses shall be 61% and 39%.

Conclusion

[47] I take this opportunity to commend the parents on their child focused approach to the issues in this matter.

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

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

Samuel C. G. Moreau, J.