

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: MacDonald v. Blondeau, 2013 NSSC 337

Date: 20131018

Docket: SFHMCA087234

Registry: Halifax

Between:

Mark MacDonald

Applicant

v.

Melissa Blondeau

Respondent

Judge:

The Honourable Justice Moira C. Legere Sers

Heard:

September 6, 2013 in Halifax, Nova Scotia

Written Decision:

October 18, 2013

Counsel:

Bryen Mooney for the applicant Mark MacDonald
Shawn Scott for the respondent Melissa Blondeau

By the Court: (Orally)

[1] This is a matter that is brought before the Court on an emergency basis by Mark Christopher MacDonald, the father of the child who is the subject matter of this proceeding.

[2] He has been denied access to his child since approximately May of 2013.

[3] I have read the affidavit filed by Mr. MacDonald.

[4] I have allowed the late filing of the respondent's affidavit. By late I mean September 4th filing, this being September 6th.

[5] This has nothing to do with Mr. Scott who is representing Ms. Blondeau at this time. The respondent spoke with a number of lawyers, was not satisfied until she met with Mr. Scott and he has agreed to represent her today.

[6] Madeline is the child who is the subject matter of this proceeding. Her date of birth is December 9, 2010. She is a very young child.

[7] Mr. MacDonald's affidavit is extensive.

[8] The affidavit of Ms. Blondeau filed late in the day brought forward some serious allegations about Mr. MacDonald's behaviour, his temper and his ability to parent their child.

[9] Mr. MacDonald is twenty seven years old. He is earning approximately \$48,400.00 working Monday to Friday scheduled from 7:00 am to 6:00 pm.

[10] The respondent is twenty six years old, completed her grade twelve education and is employed working Monday to Friday from 9:30 am to 6:00 pm.

[11] This is their first child as I understand it.

[12] The relationship is obviously one that ought not to have happened. It was difficult before they got together, continued to be difficult and continues to be turbulent and conflictual, even after separation.

[13] Both parties have behaved in a clearly immature, inappropriate manner. This ought to stop immediately.

[14] They have, as a result, placed their child in the middle of conflict which has obviously caused this child some difficulties in the transition between mother and father.

[15] Having said that, I do not want to under emphasize how inappropriate the father's behaviour is when he is around the mother. He is not ready to leave the relationship.

[16] As a result he has behaved in an immature fashion and has failed to accept that the relationship is over and that he needs to get on with his life.

[17] If he wants to have a significant relationship with his daughter he needs to take that issue to his counsellor.

[18] He is going to counselling which is a very positive step on his part. His counsellor should work with him to deal with his issues of unresolved anger at the termination of the relationship and developing a more appropriate way to express his emotions than that which has been described in the affidavit of the mother.

[19] The mother is clearly part of the problem and has equally involved herself in disputes, inappropriately engaging in yelling matches with Mr. MacDonald with the child present. It is, as counsel has identified, the conflict between the parents that is causing the problem here.

[20] This child deserves better from both of you. Grow up and do it quickly because you have a young child who needs to have significant involvement with both of you, a child who needs to be supported and loved in a peaceful environment.

[21] If you are not able to manage this certainly Child Protection will get involved and referrals will be made. They will become a daily part of your life until you both take the counselling that is needed to find a better way to resolve the conflict that you have in your lives.

[22] The horrible language that you throw at each other is inappropriate. It is despicable and your child does not need to be a part of that.

[23] You may not be ready to accept, sir, that the relationship is over but you better get over it because your behaviour could have long-term negative effects if you do not find a better way to deal with this termination of the relationship.

[24] I do not accept in full the affidavit evidence of the mother because it is clearly exaggerated in some respects.

[25] I recognize that I have limited information and that Ms. Blondeau has filed late and that Mr. MacDonald has had limited opportunity to respond.

[26] Where he has responded, it is clear that this has been a two-way street. It is mutually abusive and unfortunately the child has become involved and is being now used as a tool.

[27] This interferes with her ability to build a peaceful relationship with her father and which obviously is causing her some distress.

[28] So as not to be confusing to you the language is not acceptable that you use with one another. Fighting is not acceptable in front of her or around her and using her as tool when you are angry with each other is clearly not acting in her best interests.

[29] I know that you have not attended Parent Information yet, but it is mandatory that you do attend. You do not attend together. I hope you listen very carefully to the information they give you and follow up on how parents are supposed to behave when the separate so as not to cause their children lifelong damage.

[30] I would expect before you come back to the Court that both of you will have filed with the Court a notice that you have attended Parent Information session and you have followed up.

[31] Before you come back I want the father to have filed with the Court a letter from his counsellor indicating that he has addressed the issues of anger management with respect to the dissolution of this relationship.

[32] Counselling ought to assist him in employing strategies which will ensure that he deals with that break-up such that the child is not affected in any way, shape or form by the difficulties between the mother and father. That counselling must be ongoing.

[33] The affidavit evidence does tell me that the father has had extensive time with the child and has done the day to day care that is required to meet a child's basic needs.

[34] The information also establishes that the father's parents have been significantly involved. In fact, I believe the paternal grandmother has been the daycare provider for a considerable period of time.

[35] The mother has decided to remove the child from her care due to the fact that she was terminating the relationship with the child's father and she was entering into a new relationship.

[36] That tells me that for a considerable period of time the grandmother was good enough to be the caretaker; that this mother obviously placed her child in a home in which she trusted that this child's best interests would be addressed and this child would be protected.

[37] That tells me that the grandmother's home would be a good place to re-institute contact between the father and the child.

[38] Supervised access is not intended to be a long-term solution. This is a volatile relationship that you are both involved in and you need to bring it to an end immediately.

[39] Mr. MacDonald, I am not certain if this is the way you deal with hardship in your life but you need to do something differently in order to deal with your emotions.

MR. MACDONALD: Can I say something?

THE COURT: No, you may not speak.

[40] So not only for your benefit and also for your child's benefit you need to find a way to express your sadness and your anger and your disappointment and your disillusionment in a way that allows you peaceably to parent your child. However you do that, just do it.

[41] I am going to reinstate contact on a more regular basis.

[42] Because of the mother's behaviour there has been a break in the contact. The father is concerned that when he attended with the child, the child did not want to see him.

[43] A child that age does not make those kinds of decisions about a parent. Likely, the child has been involved in the conflict, knows when her parents are together that something bad is happening and cannot extract herself from that conflict or feel safe.

[44] These parties have had access even after separation, the father has attended at the mother's home on a regular basis in the evenings as if they were still living together yet he returned home at night.

[45] Exercising parenting time in the home was probably not the best of ideas. That was a recipe for disaster because immediately when another relationship started then you had conflict and the child continues to live in this conflict.

[46] The father's contact has to happen outside of the mother's home. He needs to develop a relationship with his child separate from the mother because you are going to be living separately.

[47] The child has a right to be in a relationship with you both in a healthy and safe manner.

[48] When she is in the car she has a right to be transported safely and she has a right not to be present around you two due to your inability to deal with each other in a civil manner.

[49] I am going to restate this: Mr. MacDonald, this is short-term.

[50] It is short-term because there are allegations that you have not reached a point where you can withdraw from the relationship and totally focus on your child without a lot of emotional involvement.

[51] I am certain that you can deal with this with your counsellor and move yourself into a position where you can resolve the issues regarding your relationship.

[52] What I am going to do to reinstate your contact with your child. She is young, under five. There has been this period of turmoil. The goal is to put her in a place where she feels safe where she has been before so that you can re-establish, separate from the mother, that relationship with her, in your mother's home.

[53] Rather than the every second weekend at this point in time I am going to give you one day overnight every weekend. That, for a two and half - three-year-old, is probably a better length of time.

[54] She can grow into every second weekend. Her memory requires that you be in her presence on a weekly basis and every second weekend takes her away from mom too long and it also takes her away from you too long.

[55] What you want to do is stabilize her, make sure the transitions are peaceful, make sure she understands she is free to love each one of you and then you can grow into a schedule that better fits her life.

[56] I have adopted the two evenings per week but they will take place at the paternal grandmother's place if she is willing to do that.

[57] And the overnights will begin; I do not want to set you up for failure here because there has been a gap of a bit of time. I think what I would like to do is

establish two days next week when she is with you at supper with your mother and that way she can begin to feel safe again. And then start your Friday, next Friday.

[58] Where is the timing? After your work at six is that it? From six to six and that way she is back in mom's house every weekend, she has free time with mom and she has free time with dad during their time to be parents.

[59] This will continue. I am going to set this over. I can either set it over for a short term just so that we have a reporting letter we see how it goes, we see how comfortable things are and we see what kind of tweaking we have to do to the schedule.

[60] If things go really well then we can move it from the paternal grandmother's house to your house but we have to do that transition carefully because if I do it too quickly then that reaction that you got at Tim Horton's is what you are going to get.

[61] We want her to smoothly move in, have fun, which is what she is supposed to do, be protected, move back to mom's without contact between you two and know that she is comfortable in both places.

[62] Eventually we will have the report from your doctor that you have dealt with these things and then we can move you into back to the contact that you are used to having with her.

[63] Your child is not a possession; she is not a tool. You need to separate out what your difficulties are with each other and focus on what is necessary.

[64] What is necessary you need to learn by going to Parent Information, you need to understand how critical it is for children to have both their parents in a healthy way in their lives, how it affects their whole life.

[65] You need to know that so that you will be in a better position to facilitate peaceful contact.

[66] Mr. MacDonald, I know your lawyer is going to have a nice talk with you after this. How well this goes based on what you do is how well it will go in the future. Your conduct will be a measure of your success or otherwise.

[67] If you do not understand anything that I have said I want you to know that if it is me that you come back to or if it is another judge, they are going to base their decision not on what you two say; they are going to base their decision on your conduct because that is the most reliable sign of your future behaviour.

[68] It is not what you say but what you do.

[69] For Christmas, just in case you do not get back, the Christmas will be a schedule from noon on the 24th to the 25th and the 25th to the 26th, alternating each year. Last year if it was mom, this year it is dad; next year it is mom. Then the regular schedule goes forward.

[70] I am not going to let you go until Christmas; I am going to bring you back in and I suggest we not proceed to trial at this point in time. It may be a settlement conference you want.

[71] We will need to see how it goes at mom's place and the paternal grandmother's place.

[72] I am presuming the grandmother's here and I am presuming she is consenting to this. Okay.

[73] The transitions will not be with you two together. The transitions will be the pick-up and drop-off by a family member. Alright? If the grandmother, I do not know if mom has a car or the grandmother has a car, so if the grandmother has a car or mom has a car, I do not want the parents together. They need time.

[74] You are entitled to have your life; you are entitled to have your life and you are not together. Period.

[75] This cannot work all the time, you cannot have your family on a 24/7 chain because you two cannot get along but a little bit of time would not hurt.

[76] It is probably best that mom's mom deliver, if she will, and dad's mom return or it can go the other way.

[77] What we want is your child to feel she is going from one protective person, grandma, to another and back so we can distance her from the hostility that the two parents are exhibiting.

[78] I am going to tell you transition is hard on kids. It is very hard if they have sensed conflict. You do not have to talk conflict, they sense it in their heart. If the grandmothers can step back and focus probably better on the child then the parents can at this point in time, it is a smooth transition, might take a few days but it will work so that we do not have a problem. So we are going to do that for a little bit.

[79] You will put the clause in about the child support and his salary.

[80] Put in the amount of the income plus the monthly payments. And Mr. Scott, are you coming back on this?

MR SCOTT: I believe so My Lady.

THE COURT: Okay.

[81] So what I suggest is, counselling, I want that to go on for a bit. If we bring you back maybe in December, would that be a good? For fifteen minutes. You may by that time decide to have a four way meeting, settle down and talk about it. But if that is not possible you want a judicial settlement conference.

[82] I want a letter from the counsellor saying these issues are being addressed. I want to know that dad knows transport in a car and I want to know that they both attended Parent Information. Who is drafting the order?

MS. MOONEY: My Lady I can draft the order. I just seek a quick clarification. I do apologize, I missed the Saturday return time.

THE COURT: I think I; I thought I said 6 to 6. What time is the baby's bed time?

MS. MOONEY: It is my understanding it is around the 8:00 time which is why we had indicated the 8:00 o'clock return time.

THE COURT: Well, I'll do 6:00 to 6:00 right now just because it gives supper at dad's With dad and grandma, but also it gives mom time to settle the baby in before bedtime if bedtime is 8:00.

MS. MOONEY: The only other thing that my client had advised is that he is completed work on Friday at 4:00 pm. I am not sure if Your Ladyship would be able to change it to slightly earlier if he could pick up the child because one of the things we had requested is pick up the child from daycare so I am not sure if that would satisfy the no contact.

THE COURT: Well I would, do you have a comment on that? I just want make it easier for the child so to start off I would say the transition goes and then get to the daycare after these people have settled in so you are not bringing the conflict to the daycare. You do not want him going to the daycare and having the child have a tantrum. So I think if you can get the family doing it first and then when you are back into some peaceful thing then let the family go and start doing it from the daycare. That would be my recommendation.

MS. MOONEY: Okay, thank you. The only other thing, again just to clarify because you had indicated two days a week but I just want to confirm is this two days the Monday and Wednesday that we had proposed and originally had proposed the 6:00 pm to 8:00 pm so I just wanted to confirm the times.

THE COURT: I should say if the parties find because of their work schedule that two other days are better and they can agree on it through their counsel then substitute it. But it has to be agreed upon and it has to be in writing. Otherwise, I fix it as it is. Mr. Scott, did you have a question?

MR. SCOTT: No, My Lady.

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COURT REPORTER: Date set for December 10, 2013 at 9:45 in front of Justice Legere Sers.

MS. MOONEY: I do apologize I do have to quickly call my office.

THE COURT: Do you know, have they got their Parent Information dates?

MS. MOONEY: Yes, I believe both parties have been scheduled. The 18th of September; it is my client. I am not sure of the exact date of Ms. Blondeau.

THE COURT: Who will draft the order?

MS. MOONEY: I will draft the order My Lady.

Legere Sers, J.