

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Putnam v. Putnam, 2014 NSSC 8

**Date:** 20140103

**Docket:** S. T. No. 1207-003906(086916)

**Registry:** Truro

**Between:**

Heather Putnam

Petitioner

v.

Dennis Putnam

Respondent

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**DECISION**

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**Judge:** The Honourable Justice E. Van den Eynden

**Heard:** December 3, 2013, in Truro, Nova Scotia

**Written Decision:** January 3, 2014

**Counsel:** Peggy Power, Solicitor for the Petitioner  
Ann Levangie, Solicitor for the Respondent

**By the Court:**

**Introduction**

[1] This is a motion by the Petitioner for interim relief. The Petitioner seeks an interim order for joint custody with primary care; interim child and spousal support and exclusive possession of the matrimonial home.

[2] Although primary care is in issue the parties agree upon joint custody. On an interim and without prejudice basis, the Respondent consents to the Petitioner having exclusive possession of the matrimonial home; however, the Respondent requests access to the garage for work purposes.

[3] The parties filed detailed affidavits and Statements of Income, Expenses and Property. The parties provided limited direct evidence and were subject to cross examination. Both counsel provided helpful submissions on the contested issues.

**Overview of Evidence**

[4] The parties were married on September 2, 1995 and separated on January 3, 2013. There are four children of the marriage currently age 10, 12, 14 and 16.

[5] In addition to their matrimonial home, the parties have a loft apartment above the garage on the matrimonial property and a cottage. Post separation at different times and for various reasons the parties occupied (separately) the matrimonial home and the loft apartment. After the initial shuffling the Petitioner has occupied the family home since mid-July 2013. The Respondent resided in the family cottage over the summer and then secured a two bedroom apartment from which the children can catch a bus from school when they stay over. This is intended to be a shorter term arrangement; with the Respondent hoping to secure an alternate home in the summer of 2014.

[6] As noted, interim exclusive possession in favour of the Petitioner is agreed. The Respondent requests access to the garage for the purposes of his contracting business. Post the Petitioner's occupation in July 2013 the Respondent has been attending the garage when needed without restriction. He requests the right to continue to do so. The Petitioner left the determination of this issue in the Courts discretion.

[7] The Respondent is self-employed. He operates a contracting business. Although there is some dispute about the start and end of his work season and length of work day, it appears that typically the work season runs from April to

December. This might vary depending on work load and weather. Work hours are typically 7 a.m. to 5 p.m. with some later evenings when work requires. Weekends are primarily kept free for family time.

[8] In addition to his contracting business the Respondent has an interest in a gravel pit and receives royalties on the sale of gravel. For the purposes of this interim hearing the parties agree the Respondent's gross annual income from both his contracting business and gravel royalties should be deemed to be \$85,000.00.

[9] The Respondent runs a number of his personal expenses through his contracting business and also does some projects for cash. For the purposes of determining any interim support the annual gross income of \$85,000.00 is the working number; however, this may ultimately be somewhat conservative.

[10] Apart from providing child care in her home for other children, the Petitioner's employment history is limited. With the exception of working in the Respondent's family business years ago, the Petitioner did not work outside the family home until approximately two years prior to separation. In particular, she has worked as a cook and providing catering services earning less than \$12.00 per hour (without gratuities). Her current gross annual

employment income is projected to be under \$12,000.00. The Petitioner currently receives a Child Tax Benefit in the amount of \$929.00 per month. Subsequent to her occupation of the matrimonial home in July 2013, the Petitioner was able to rent out the loft apartment for \$650.00 per month. This was a short term rental (two months). It appears this could be a continued source of income if pursued.

[11] Both parents are and have been actively involved in their children's lives. The Respondent's employment is seasonal in nature and during his off season he has more available time to parent. Post separation the parenting arrangements have been worked out mainly by agreement and have been somewhat fluid. Although there are periods when the Respondent spends more parenting time with one or more of the children, it appears, based on the limited evidence before the Court, the Petitioner has, for the most part, been fulfilling the role of primary caregiver both pre and post separation.

[12] The children are heavily involved in sports/extra-curricular activities. The range includes competitive hockey, volleyball, soccer and softball. Both parents also serve as a coach in some of their sporting activities. The continued participation of the children requires cooperation and co-ordination in addition

to financial support. The parties have been and remain committed to ensuring the children continue to participate in their chosen sports. Although there is some variance between what the parties estimate the total annual costs of the children's extra-curricular and related expenses are – they are significant. In the approximate range of \$2,000.00 plus per month.

[13] The Petitioner prepares a weekly schedule of the children's activities and provides this to the Respondent to facilitate sharing of the responsibility of getting the children to their activities. The Respondent also acknowledged the Petitioner is flexible when it comes to scheduling his parenting time; this includes consideration of his work schedule. The Respondent acknowledged the current interim parenting arrangement is working well.

[14] Although there were some rough spots in their interactions post separation and some obvious regrettable incidents, both parents appear to have landed in a spot where they are functioning well and appear to be supportive of one another in their respective parenting roles.

[15] Post separation the Respondent has not provided any spousal or child support per se. Instead he has covered a number of reoccurring and non-reoccurring monthly expenses for the benefit of the Petitioner and the children.

Although there is some disagreement between the parties on minor expenses and who covers what, the Respondent (either directly or through his business) has been covering the following expenses post separation:

- Family medical/dental plan \$260.61 per month;
- RESP payment of \$60.00 per month;
- Petitioner's disability insurance \$76.32 per month;
- Mortgage \$1,492.48 per month (includes taxes);
- Maintaining interest payments on joint lines of credit approximately \$500.00 per month; and
- Maintaining minimum monthly payments on credit cards.

[16] The parties' overall asset and debt situation is as outlined in their respective Statement of Property. For the purposes of this interim application the parties have focused on their monthly debt service needs. The Respondent also reports an outstanding (2012) tax liability owing to Revenue Canada which he will have to contend with at some point.

### **Issues**

[17] The following are the issues:

1. What should the appropriate interim parenting arrangements be at this time?

2. What should the interim arrangements for child support and section 7 expenses be at this time?
3. Should there be an interim order for spousal support and if so for what amount?
4. Given the Petitioner has interim exclusive possession of the matrimonial home and related real property by consent, should the Respondent have access to the garage and if so under what terms?

### **Position of the Parties**

#### **Interim Parenting Arrangements**

[18] The Petitioner asserts the pre and post separation arrangement has essentially been that of the Petitioner fulfilling a fairly traditional primary care role. She asserts this continued status quo arrangement is in the best interest of the children. The Petitioner is supportive of the Respondent's parenting role and will facilitate his parenting time with the children having regard to his work schedule. The Petitioner noted the Respondent acknowledged her efforts in this regard and he conceded the current parenting arrangement is working well.

[19] The Petitioner's counsel referred to the considerations set out in the case of **Webber v. Webber**, (1989), 90 NSR (2d) 55 respecting the determination of interim custody arrangements. When applying those considerations to these circumstances the Petitioner asserts an order for joint custody with primary care



to the Petitioner and liberal and generous parenting time to the Respondent is in the children's best interest.

[20] The Respondent asserts the parenting arrangement has been fluid post separation and an order for joint custody is appropriate; however, there is no need at this time (based on the best interests of the children and/or for the purposes of determining child support) for the Court to make a formal determination of primary care. In fact to do so might in essence punish the Respondent for making the decision to voluntarily leave the matrimonial home in July of 2013 to allow the Petitioner to reside there with the children. The Respondent resists the description of the Petitioner playing a primary care role and asserts both pre and post separation the arrangement was one of shared parenting. That point was argued more strenuously by the Respondent through his pre hearing brief than it was during submissions post evidence.

### **Interim Child Support/Section 7 expenses**

[21] The Petitioner seeks an order for interim child support based on the Respondent's current projected income of \$85,000.00 and a sharing of section 7 extra-curricular expenses for the children to be paid proportionate to the parties' income. The parties have supported a certain level of extra-curricular activities

pre and post separation. At least on an interim basis, these activities should continue to be supported by both parents and financially shared proportionately.

[22] The Respondent prefers a status quo arrangement where he pays expenses in lieu of direct child support. Should this not be acceptable to the Court and he is required to pay child support pursuant to the applicable Table, the Respondent requests the Petitioner pay one half of the debt payments, all the household expenses, all the expenses related to the children, with the exception of any agreed upon extracurricular expenses for the children. The Respondent agrees these latter expenses should be shared proportionately.

### **Interim Spousal Support**

[23] On a without prejudice basis the Petitioner requests an interim order for spousal support in the amount of \$600.00 per month. She also requests the Respondent maintain coverage for her (and the children) under his medical/dental plan. If child and spousal support is awarded as requested by the Petitioner, she is willing to pay the mortgage and operating expenses of the home including insurance as well as assuming coverage for her own credit card.

[24] The Petitioner asserts she is entitled to both compensatory and non-compensatory support. She is dependent upon the Respondent and has been throughout their marriage. She is not self-sufficient at this time and requires and is entitled to spousal support.

[25] The focus of the Petitioner's submissions was on entitlement and need; not so much on the Respondent's ability to pay. Neither party submitted any calculations or made any representations respecting the relevancy or use of the spousal support advisory guidelines.

[26] The Respondent asserts that when the family debts and child support payments are considered he has no ability to pay spousal support. In addition he asserts that on an interim application the test for spousal support is more of a means and needs analysis and at present the Petitioner's needs are being met.

**Exclusive Possession/access to the garage**

[27] As noted the Respondent concedes interim possession of the matrimonial home to the Petitioner. This includes the garage and loft; however the Respondent requests access to the garage as he needs without restriction. The Respondent asserts he has been freely coming and going without difficulty and

this should continue. The Petitioner left the determination of access to the garage in my discretion.

### **Decision**

[28] I have considered the evidence, submissions of the parties, the applicable provisions of the **Divorce Act** and the relevant case law submitted by the parties and referenced in more detail in the parties pre hearing briefs.

[29] My decision respecting the interim matters before me on this application is as follows:

### **Interim Parenting Arrangements**

[30] Although the parenting arrangements have been somewhat fluid post separation and based on the limited evidence before me at this time, the Petitioner appears to have fulfilled the role of primary care giver both post and pre separation. At least for material periods. The Respondent acknowledged the status quo arrangements are working well. He also acknowledged the Petitioner was flexible and supportive when it came to scheduling his parenting time with the children.

[31] Despite a few hurdles the parties have been able to demonstrate an ability to successfully cooperate on the interim parenting arrangements for the children. At this time there is no apparent or pressing need to formalize an interim order for primary care of the children aged 10, 12, 14 and 16. If there was a need and based on the evidence presented, I would have no hesitation in making an interim order for primary care in favour of the Petitioner. In this family dynamic, ensuring there are adequate and predictable housing and financial arrangements in place which limit the opportunity for increased stress or conflict between the parties appears to be the core interim need.

[32] Accordingly, the parties will continue to share joint custody of the children and child support will be payable by the Respondent as ordered herein. In the event the parenting arrangements between the parties breakdown and/or if the needs and best interests of the children require, either party is free to seek a review of these interim parenting arrangements.

**Interim Child Support/Section 7 expenses**

[33] The Respondent's request to pay child support in lieu is denied. The Respondent shall pay child support to the Petitioner in the amount of \$1,815.00 per month, commencing in January, 2014 and continued each month thereafter,

unless otherwise varied by a court of competent jurisdiction. If the parties are unable to agree upon a fixed payment date per month, I retain jurisdiction to do so.

[34] The parties will share the extra-curricular expenses of the children proportionate to their respective incomes. Unless otherwise agreed to by the parties, the children will be maintained at a level consistent with their status quo involvement.

### **Interim Spousal Support**

[35] No award for interim periodic spousal support is being made at this time. My interim decision does not limit or detract the Petitioner from pursuing support relief in the future. This is an interim application only. Given the priority of child support under the **Divorce Act**, the extensive section 7 expenses for extra-curricular activities (which both parties supported and which the Respondent will bear the far greater share), his living expenses and the debts he is expected to continue to cover on an interim basis, I find he has little or no ability to pay spousal support. I note the Respondent's gross annual income requires further clarification, as projected income of \$85,000.00 may be conservative. That determination is for another day as the parties have agreed

that for the purpose of this interim hearing support should be determined based on a projected income of \$85,000.00.

[36] Although no spousal support is being ordered, on an interim basis and while she has exclusive occupation of the premises, the Petitioner is free to rent the loft apartment and she shall keep the rent proceeds for her sole use.

[37] My decision not to award interim spousal support is determined in part upon the Respondent continuing to maintain coverage of certain expenses and debts on an interim basis. In particular, those expenses set out in paragraph 15 herein save and excepting the mortgage payment and interest on the Petitioner's credit card.

**Exclusive Possession/access to the garage**

[38] By agreement the Petitioner has exclusive interim possession of the Matrimonial home which includes the garage and loft; however, her possession shall be subject to the Respondent having reasonable access to the garage for the purpose of his contracting business. His access shall not be invasive or disruptive. If the Petitioner requests reasonable advance notice and/or specific reasonable times to be set, the Respondent shall comply with her request.

[39] While the Petitioner has exclusive occupation she shall be responsible to pay the mortgage (inclusive of taxes), insurance, and utilities associated with the home. She shall also be responsible for her personal visa payment.

[40] **Costs**

Cost shall be in the cause.

Justice E. Van den Eynden