

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Kanasevich v. Robinson*, 2014 NSSC 96

Date: 2014-03-17

Docket: SFHMCA-085279

Registry: Halifax

Between:

Michael John Kanasevich

Applicant

v.

Alexandra Robinson

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: January 29 and 30, 2014, in Halifax, Nova Scotia

Counsel: D. Brian Newton, Q.C., for Mike Kanasevich
Alexandra Robinson, on her own

By the Court:

Introduction

[1] These are competing applications under the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160 for custody, access and child maintenance for Oakley, the twenty-two month old son of Mike Kanasevich and Alexandra (also called Ali or Alex) Robinson. Significantly, Ms. Robinson wants to relocate Oakley to Vancouver where she says she has family support and the prospect of better employment.

[2] In a two day hearing, I heard from Mr. Kanasevich, his aunt Gail Young, Mike Power, Laura Hare, Ms. Robinson and her mother Stacey Robinson. Mr. Kanasevich was represented by counsel while Ms. Robinson was not.

[3] Mr. Kanasevich wants Oakley to be in his primary care. He proposes that he and Ms. Robinson would have joint custody and she would have access, wherever she was living. He asks that I “consider psychological counselling” for him and Ms. Robinson and asks that once I have made a decision about parenting, there be an opportunity for his lawyer to address the issue of child maintenance.

[4] Ms. Robinson wants Oakley in her primary care with Mr. Kanasevich to have access, permission to move Oakley to British Columbia and child maintenance.

Family history

[5] Ms. Robinson is twenty-two years old. She didn't complete high school in the usual way, but has passed the General Education Development (G.E.D.) test, indicating she has a high school education equivalency, through Vancouver Island University. She has no formal post-secondary education and moved out on her own just before she turned nineteen. She works as a server in a sports bar. While her employment has been commensurate with her education, it has not been commensurate with her intelligence. She is bright and articulate. She would prefer other work but said it has been difficult to find work.

[6] Mr. Kanasevich is thirty-four. He completed a commerce degree at Saint Mary's University and maintains a number of business interests. He works at

Trans-World Distributing Ltd., a business owned by his family. Through a numbered company, he is a contractor in the telecommunications industry.

[7] According to Mr. Kanasevich, he hurt his back in a dirt bike accident and has a doctor's prescription for medical marijuana. He said that in 2011 he began to grow marijuana for himself and four others who were "licensed". He said that he didn't derive any financial benefit from this and was motivated to assist the others, who shared in the cost of this operation, "due to the fact that [he] believed that in the near future the use of marihuana would either be decriminalized or legalized and [his] experience and expertise would be of great value." Regulation of the medical marijuana industry is changing and Mr. Kanasevich's license expires at the end of this month. He intends to apply for a license under the new regulatory regime, but said that the chances of being licensed are "relatively slim". He said that he has dismantled the grow operation that was located in the garage adjacent to his home and has provided photographs showing a very large empty garage.

[8] The couple met in British Columbia roughly six years ago when Mr. Kanasevich had a home and clothing store in downtown Nanaimo. He had family in British Columbia: his mother and half-brother lived in Nanaimo and his grandmother lived in Sidney. Mr. Kanasevich returned to Nova Scotia in 2009. The couple developed a long-distance relationship at the beginning of 2011, talking on the phone and by Skype. Their relationship progressed quickly and they decided that Ms. Robinson would move to Nova Scotia for the summer.

[9] Ms. Robinson came to Nova Scotia in May 2011 and moved directly into Mr. Kanasevich's home. The relationship became more serious. By August 2011 she was pregnant. Their son, Oakley, was born in May 2012.

[10] The parties' relationship has been difficult. Ms. Robinson said she became depressed and felt betrayed by Mr. Kanasevich. She came to resent him, feeling that she'd been lied to and manipulated into staying in Nova Scotia. She said that Mr. Kanasevich responded to this by withdrawing from their relationship which worsened the situation. Mr. Kanasevich said that from September 2011 - just one month after Ms. Robinson became pregnant - until February 2013, he and Ms. Robinson were constantly arguing.

[11] According to Mr. Kanasevich's application and intake form, the relationship had ended by the beginning of December 2012. The parents attempted to reconcile in 2013 after this court proceeding was started.

[12] The parties' difficulties did not end when they separated. In the spring of 2013, Mr. Kanasevich was charged with assault and uttering threats. These charges were dismissed in September 2013 when Ms. Robinson told the prosecutor she didn't want to proceed with them. At the time the parties were trying to reconcile. In November 2013, Ms. Robinson told the police that she was under duress when, in September, she said she didn't want to go ahead with the charges. Mr. Kanasevich was then charged with uttering threats and obstructing justice. Mr. Kanasevich said that Ms. Robinson went to the police in November because he was refusing to return Oakley to her.

[13] Ms. Robinson has been charged with theft over \$5,000.00, relating to Mr. Kanasevich's property.

[14] Each has denied the criminal charges and claimed the other is involving the police to gain an advantage in claiming custody. Orders for no contact have been imposed.

[15] The parents' post-separation contact with Oakley has been problematic. There have been three interim motions in the Family Division in a nine month period. Their conflict is such that, one year ago when Oakley went to the IWK Health Centre's emergency department, he and his parents met with the doctor - in the presence of two police officers.

[16] Ms. Robinson was involved with Mike Power for a few months beginning in June 2013. She and Oakley spent considerable time at Mr. Power's home. In the months of September, October and November, Ms. Robinson was spending time with both Mr. Power and Mr. Kanasevich. She had intercourse with both and became pregnant. This pregnancy did not go to term.

[17] In November 2013, after his relationship with Ms. Robinson had ended, Mr. Power and Ms. Hare, his friend and neighbour, approached Mr. Kanasevich with information about Ms. Robinson.

[18] As a result of the information from Mr. Power and Ms. Hare, Mr. Kanasevich disobeyed the court order requiring him to return Oakley to Ms. Robinson. It was at this time that Ms. Robinson spoke to the police about the charges that had been dismissed in September.

[19] Ms. Robinson applied to this court for an order placing Oakley in her primary care, compelling Mr. Kanasevich to respect the existing access schedule and permitting her to take Oakley to British Columbia for a visit over the Christmas holidays. In response, Mr. Kanasevich asked the court to vary the interim order so that Oakley would be in his primary care. An emergency interim hearing was held. The terms of Mr. Kanasevich's access were not varied, though Justice Dellapinna did impose restrictions on each parent's use of drugs and alcohol.

[20] Mike Power and Laura Hare were called as witnesses by Mr. Kanasevich. They gave evidence that Ms. Robinson's parenting was poor. They observed that Oakley didn't have regular bedtimes or mealtimes and he shared a bed with Ms. Robinson and Mr. Power. There were occasions when Ms. Robinson was without appropriate supplies for Oakley, who lived amidst the party environment of Mr. Power's home and, by times, Ms. Robinson drank alcohol or used cocaine.

[21] Ms. Robinson said that she used cocaine on one occasion before Oakley was weaned and two times after she stopped nursing. She was adamant that she spoke with a doctor at a walk-in clinic and exceeded the doctor's advice about how long she should wait between drinking alcohol or using drugs and nursing Oakley. According to Mr. Kanasevich, Ms. Power said that Ms. Robinson didn't use cocaine while Oakley was in her care. Mr. Power offered no evidence about what time elapsed between Ms. Robinson's drinking or drug use and Oakley's nursing.

[22] Ms. Robinson minimized the other information, saying that Oakley shared a bed with her and Mr. Power only after Oakley was familiar with Mr. Power, and that she was without a diaper for Oakley only one time. She said Oakley wasn't present when there were parties. Mr. Kanasevich said he kept a calendar noting the time that Oakley spent with him. He provided a summary of this calendar but not the actual calendar. According to Mr. Kanasevich's summary, Oakley was with him between forty-four and forty-eight percent of the time in June, July and August 2013. If I accept his evidence, then Oakley's exposure to the "constant parties" at Mr. Power's home was less than was being suggested. The lack of schedule is consistent with Ms. Robinson's approach to parenting which focuses on meeting Oakley's needs as they arise (he eats when he's hungry, sleeps when he's tired), rather than imposing a schedule on him.

[23] This is an appropriate juncture to address the issue of Ms. Robinson's credibility.

[24] In her evidence Ms. Robinson challenged Mr. Kanasevich as a good and involved parent and she challenged Mr. Power's motivation in testifying against her. I've been shown copies of cards, letters and text messages that she has sent to each man, expressing very different sentiments. Ms. Robinson says that sending these complimentary notes was "the way [she] was brought up" and that she was trying to bolster Mr. Power's spirits after their breakup so that he wouldn't harm himself. She said that she tried to placate matters with Mr. Kanasevich while they were attempting to reconcile or to keep matters from becoming inflamed (these are my words, not hers). There were inconsistencies in her evidence, such as her testimony around Mr. Kanasevich's employment at Trans World Distributing, the amount of time she spent with Mr. Kanasevich in the fall of 2013 and exactly when that time was.

[25] On various occasions, the Supreme Court of Canada has commented on the difficulty of assessing credibility (at paragraph 20 in *R. v. Gagnon*, 2006 SCC 17 and paragraph 49 in *R. v. R.E.M.*, 2008 SCC 51).

[26] At paragraphs 18 to 20 in *Baker-Warren v. Denault*, 2009 NSSC 59, Justice Forgeron listed factors she balanced in assessing credibility. Her list included, among other considerations, identifying the inconsistencies and weaknesses in the witness's evidence; the witness's interest in the outcome and motive to deceive; the witness's ability to observe the subject matter of her testimony; the witness's power of accurate recollection; whether there was an internal consistency within the evidence; the witness's demeanour in testifying (candid, evasive, tentative or strategic); and whether the witness was self-serving or willing to admit to matters that were against her interest.

[27] I heard from Ms. Robinson as a witness and I saw her questioning Mr. Kanasevich, his witnesses and her own mother. Since she began representing herself, she has filed three affidavits and one brief. One of her affidavits is more than 140 paragraphs long and another is more than 170 paragraphs long. Their tone and language are not those of a lawyer.

[28] Her words and language are imprecise and casual. Ms. Robinson admitted that there were inconsistencies between evidence in her affidavits. In cases where parties have filed multiple affidavits, it is unusual that there are no inconsistencies. For example, in his first affidavit, Mr. Kanasevich said that he had "been off work" since January 1, 2013. He said, "It was really slow at Trans-World and my uncle asked me to take some time off. There was a lot going on in my personal life so I

agreed.” In response to questioning by Ms. Robinson at the hearing, he said that his difficulties with Ms. Robinson meant his work was suffering and his uncle told him to take time off.

[29] Ms. Robinson freely admitted to negative matters such as her use of cocaine, for example. She admitted that she was not truthful where this would harm the prospect of reconciliation. She said she curbed her negative evidence about Mr. Kanasevich because she “didn’t want to take it there”, she wasn’t “sure how serious he was taking things” and was “trying to protect” Mr. Kanasevich. I understand these remarks to mean that Ms. Robinson avoided making negative comments so that conflict wouldn’t escalate or Mr. Kanasevich wouldn’t be hurt. She said that her current evidence is truthful and she has decided that she “need[s] to be honest and tell the truth without worrying about the implications.”

[30] Ms. Robinson has been selective about the truth, choosing what to say based on her assessment of its consequences. She has not done this throughout her testimony and, as I’ve indicated, she has made admissions against her own interest. The fact that she has not always been truthful means that I have been careful in relying on her evidence, looking for evidence which confirms or contradicts it, before relying on it.

[31] Almost two, Oakley has no identified special needs or delays in his development. Ms. Robinson said that he has surpassed every milestone. He nursed until August or September, 2013, and this was supplemented with bottle-feeding as she didn’t pump milk for Oakley while he was with his father.

[32] The prevailing interim parenting order provides that Oakley is with his father each week for seven hours on Tuesday and Thursday and from noon on Saturday until noon on Sunday. Additionally, he is with Mr. Kanasevich at all other times that the parents agree. The parents disagreed about the amount of additional time Oakley has spent with Mr. Kanasevich. Mr. Kanasevich says that Oakley was with him more than half the time.

Legal context for parenting application

[33] As an original determination of a parenting arrangement where mobility is in issue, I’m first to determine the parenting arrangement that’s in Oakley’s best interests. In *Burgoyne v. Kenny*, 2009 NSCA 34, Justice Bateman said that the principles which govern mobility applications, stated by then-Justice McLachlin at

paragraph 49 in *Gordon v. Goertz*, 1996 CanLII 191 (SCC), are applicable in determining a child's best interest and are applicable in cases like this: original applications that aren't under the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3.

[34] The factors listed at paragraph 49 in *Gordon v. Goertz*, 1996 CanLII 191 (SCC), modified for an original application and a child of Oakley's age, are:

1. The only issue is the best interest of the child in the particular circumstances of the case.
2. The focus is on the best interest of the child, not the interests and rights of the parents.
3. I should consider:
 - a. the existing custody arrangement and relationship between Oakley and each parent;
 - b. the desirability of maximizing contact between Oakley and both parents;
 - c. Ms. Robinson's reason for moving, only in the exceptional case where it is relevant to her ability to meet Oakley's needs;
 - d. the disruption to Oakley of a change in custody;
 - e. the disruption to Oakley consequent on removal from family, schools, and the community he's come to know.

[35] The statutory context for the competing applications before me is section 18 of the *Maintenance and Custody Act*. According to subsection 18(5), my paramount consideration in determining Oakley's parenting arrangement is his best interest. This is consistent with the factors stated in paragraph 49 in *Gordon v. Goertz*, 1996 CanLII 191 (SCC).

[36] In determining Oakley's best interest, I am required to consider those factors outlined in subsection 18(6) of the *Maintenance and Custody Act*. This means considering his physical, emotional, social and educational needs, including his need for stability and safety, his age and stage of development. I am also to consider each parent's willingness to support the development and maintenance of Oakley's relationship with the other parent, and the history of his care. I am to

consider the plans each parent offers and Oakley's cultural, linguistic, religious and spiritual upbringing and heritage. I am to consider the nature, strength and stability of the relationship between Oakley and each of his parents, his grandparents and other significant individuals in his life. I am to consider each parent's ability to communicate and cooperate on issues affecting Oakley and the impact of family violence, abuse or intimidation.

[37] Many of the factors specified in subsections 18(6), (7) and (8) of the *Maintenance and Custody Act* fall within the more general considerations identified in paragraph 49 of *Gordon v. Goertz*, 1996 CanLII 191 (SCC).

[38] I have been given no information which suggests Oakley's stage of development is either particularly advanced or delayed for his age. No plans have been identified regarding his cultural, linguistic, religious, spiritual upbringing and heritage. Accordingly, there is nothing to consider having regard to clause 18(6)(e).

The existing custody arrangement in the relationship between Oakley and each parent

[39] Oakley was born in May 2012.

[40] I don't propose to dissect the evidence to determine where Oakley spent each day. Mr. Kanasevich was employed until at least January 2013 while the couple cohabited and Ms. Robinson was primarily responsible for Oakley. Since the separation, Mr. Kanasevich has been entitled to spend thirty-eight hours each week with Oakley. I understand from his evidence that Mr. Kanasevich's salary was maintained by his uncle at Trans World Distributing throughout 2013, though Mr. Kanasevich was not working.

[41] According to Mr. Kanasevich, when Ms. Robinson went to British Columbia in November 2012, she said she was not returning. She did later return to Nova Scotia but their relationship never recovered. They ceased cohabiting in March 2013 when Oakley was less than one year old, though there were attempts to reconcile after that date.

[42] The first interim order was granted in April 2013. Over the course of approximately one month, from April 6 to May 12, Mr. Kanasevich was allowed access with Oakley for five or seven hours on every other week day and every

weekend day. Starting on the weekend of May 11, a pattern began where Mr. Kanasevich had access for seven hours on Tuesday and Thursday and from noon on Saturday until noon on Sunday. These terms were continued in an order of December 2013. Mr. Kanasevich said that there were “many weeks when [he] had Oakley in [his] care over 50 percent of the time.” Ms. Robinson disputed this.

[43] Mr. Kanasevich said that he’s been primarily responsible for Oakley during his access. I also have the evidence of Gail Young that she was living with Mr. Kanasevich for a portion of 2013. She said she was involved in feeding, changing and looking after Oakley “when Mr. Kanasevich had to work”, and putting Oakley to bed. As well, she was heavily involved in other activities ancillary to child care, such as preparing meals, cleaning the house and washing the laundry. Mr. Kanasevich said that Ms. Young was at his home to attend to housekeeping tasks (cleaning, laundry, meals), so that Mr. Kanasevich could spend his time playing with Oakley.

[44] In contrast, because Ms. Robinson did not have the assistance of her family, she carried the burden of parenting Oakley on her own when he was with her. On occasion, she’s relied on Mr. Kanasevich or his family to assist her, but she limited this, feeling that it was being used against her.

[45] Mr. Kanasevich had various complaints of Ms. Robinson’s parenting. He said that she used cocaine and drank excessively while nursing. He said she refused to have Oakley treated by conventional medical doctors and refused to have him vaccinated. He said that Oakley became ill, underweight and had “very severe diaper rashes”. He complained that Ms. Robinson began a relationship with Michael Power and had Oakley sleep in the bed she shared with Mr. Power on a number of occasions, that she stole from him and that she is unable to maintain a valid driver’s licence.

[46] Ms. Robinson was emphatic that at any time when she was drinking or using drugs, she was not nursing. There is no evidence to the contrary from Mr. Power or Ms. Hare who are the witnesses to her drinking and drug use.

[47] The parents have different parenting styles. Ms. Robinson has adopted a parenting style that is very flexible and based on Oakley’s needs. His needs dictate when Oakley eats, sleeps, and what sort of medical attention he receives. Ms. Robinson says that while Oakley is healthy, he receives care from a naturopath and when he is sick he sees a medical doctor.

[48] Photographs of Oakley do not show him to be underweight. Mr. Kanasevich claimed that he's twice had to obtain prescriptions for Oakley's diaper rash. Mr. Kanasevich said that they occur when Oakley was in his mother's care. Oakley was with his mother exclusively on Monday, Wednesday and Friday of each week. He spent time with both his parents on Tuesday, Thursday, Saturday and Sunday. While diaper rashes are common occurrences, I question the suggestion that a "very severe" rash would arise in less than forty-eight hours, from the conclusion of one visit until the beginning of the next.

[49] Some of Mr. Kanasevich's complaints about Ms. Robinson are not directly relevant to her parenting: his concerns that she stole from him and that she doesn't have a driver's license.

[50] Mr. Kanasevich has relied heavily on Gail Young for assistance. She cooks, cleans, does the laundry, and cares for Oakley. Ms. Young and Mr. Kanasevich have focused on routine and a fixed schedule for Oakley. Mr. Kanasevich's parenting has been facilitated by Ms. Young's involvement and he intends that this will continue. The evidence doesn't disclose any extended period when Mr. Kanasevich has been solely responsible for Oakley.

[51] The current arrangement allows Oakley to spend frequent time with both his parents. Each parent described a close and loving relationship with Oakley. Mr. Kanasevich is less involved with Oakley's care than Ms. Robinson because he has delegated household and parenting tasks to Ms. Young.

[52] Oakley's closer parenting relationship is with his mother, but both parents have a satisfactory relationship with him that is a stable foundation for an ongoing relationship.

[53] Oakley is familiar with members of his paternal family in Nova Scotia.

[54] Oakley has visited his maternal family in British Columbia. His maternal grandmother has visited him in Nova Scotia and has frequent contact with him by phone and Skype. Ms. Robinson's half-sister has visited once. By virtue of his age and the infrequency of these visits, Oakley's relationship with his extended maternal family is not as strong and stable as his relationship with his extended paternal family in Nova Scotia.

The desirability of maximizing contact between Oakley and both parents

[55] Subsection 18(8) of the *Maintenance and Custody Act* demands that I give effect to the principle that “a child should have as much contact with each parent **as is consistent with the best interests of the child**”. The emphasis is mine. Maximum contact is not the goal: the goal is as much contact as is in Oakley’s best interest.

[56] Considerations that are relevant include each parent’s willingness to support Oakley’s relationship with the other parent, each parent’s ability to communicate and cooperate on matters relating to Oakley’s best interest and the impact of family violence, abuse or intimidation. These are outlined in clauses 18(6)(b), (i) and (j).

[57] In the months following Oakley’s birth, Ms. Robinson visited her family in British Columbia. Mr. Kanasevich said that Ms. Robinson threatened to remain in British Columbia with Oakley. They returned to Nova Scotia. When she said that she and Oakley were going to British Columbia in March 2013, he filed this application.

[58] I’ve been provided with pages of argumentative, insulting and antagonistic text messages between the parents. No contact orders make communication between the parents impossible. They have not found a suitable intermediary.

[59] At his age, Oakley should not go for long periods without contact with either of his parents. This time should include a range of activities (bedtime and waking rituals, responding to night time awakenings, soothing, feeding, toileting, play and limit setting) that promote Oakley’s confidence in each of his parents as a safe and capable care-giver. I also need to consider shielding Oakley from the conflict between his parents.

Ms. Robinson’s reason for moving, only where relevant to her ability to meet Oakley’s needs

[60] Ms. Robinson’s plan is that she and Oakley will move to British Columbia. They will live with her mother in Langley, which is approximately thirty minutes from Vancouver. Stacey Robinson works on a full-time basis at Kwantlen Polytechnic University. She has been cohabiting with her new partner for approximately ten months.

[61] In Halifax Ms. Robinson works evening shifts at a bar, saying the shifts are “the only time that there is money to be made.” She said the only option she has for child care for Oakley in the evening is Mr. Kanasevich. She has no vehicle and the bus that travels past her home stops running at 11:00 p.m. A cab home costs between twenty-five and thirty dollars.

[62] She said she was looking for other daytime work that would allow her greater financial freedom and the ability to use traditional daycare for Oakley. She said she looked for work from May 6, 2011 until she learned she was pregnant in August 2011. This search involved opening an account on a job searching website and unsuccessfully applying for various administrative positions. She said that she resumed her job search in May 2013 and was not able to find any job that she could do during the day. She provided no evidence of job applications or job interviews. She did not say how many applications she made nor did she specify the type of work she was seeking.

[63] Ms. Robinson said her emotional well-being is very important for Oakley and that she has been battling depression since the middle of her pregnancy. She said she has no sources of support in Nova Scotia and has been extremely lonely here, even while she and Mr. Kanasevich were cohabiting.

[64] Ms. Robinson said that she can work for Maureen Webb who runs a casting company in Vancouver. Ms. Webb is a relative of Ms. Robinson’s.

[65] Ms. Robinson worked for Ms. Webb on a part-time basis for more than two years. She answered telephones, organized auditions, typed memoranda and contracts, filed paperwork and organized the office. Ms. Robinson didn’t know what she was paid during the years when she worked for Ms. Webb and she didn’t recall filing tax returns.

[66] Ms. Robinson said she could work for Ms. Webb from home, working over the phone. In her March 2013 affidavit, she said that working for Ms. Webb is “largely done through the phone and email.” She denied that she would be able to do this job from Nova Scotia, saying she would need Ms. Webb’s signature on documents. She also mentioned that there were differing time zones.

[67] The fact that documents require Maureen Webb’s signature does not mean that Ms. Robinson must be in British Columbia, only that the documents must be

there. Where documents are prepared on a computer, they can be transmitted electronically to Ms. Webb for her signature.

[68] Different time zones can be accommodated. Right now Ms. Robinson works evenings at a sports bar, saying this is the best time to make money. So, she is with Oakley during the day and away from him in the evening as the result of her current job. If Ms. Robinson needed to work in the evening to accommodate the time difference between Nova Scotia and British Columbia, it would be preferable if she worked for Ms. Webb: she would be working while Oakley was in bed without needing a babysitter or transportation, as she currently does. While she would be working during the day (which she doesn't do now), she would be at home.

[69] I do not accept that Ms. Robinson must move in order to meet Oakley's needs. The employment she seeks in British Columbia may be available to her in Nova Scotia, especially if Ms. Webb is willing to support her through adapting the tasks so that they can be performed electronically.

[70] Ms. Robinson's mother, Stacey Robinson, testified at the trial. She has visited her daughter in Nova Scotia on multiple occasions.

[71] In addition to her mother, Ms. Robinson said that in British Columbia she would be supported by her grandparents, her aunts Kim Holman, Maureen Webb and Rachel Robinson. None provided affidavits and no arrangements were made to have any of them testify by video link.

[72] As Ms. Robinson described her circumstances in Nova Scotia, they have been difficult: she became pregnant within months of arriving, she had difficulty finding work, she said that Mr. Kanasevich's behavior caused problems with her mental health, she faces a criminal charge and Mr. Kanasevich was charged with assaulting her and uttering threats. Regardless of all of these events and circumstances, there was no indication that any of Ms. Robinson's family members provided assistance to her in Nova Scotia. In the absence of family support in these circumstances, I am not confident that support would be available when the need may appear to be less pressing.

[73] I do not accept that Ms. Robinson's reasons for her proposed move further her ability to care for Oakley.

Disruption to Oakley of a change in his custody

[74] Ms. Robinson has not suggested that she will return to British Columbia alone if Oakley is not permitted to relocate, so I need not consider the disruption of a change to his current arrangement.

Disruption to Oakley consequent on removal from family, schools, and the community he's come to know

[75] Oakley's world is comprised of his family. In Nova Scotia this includes Mr. Kanasevich's uncle, his aunts, and his father, all of whom are said to be supportive of Oakley staying in Nova Scotia. They have all spent time with Oakley. Of these extended family members, Gail Young has the greatest involvement with Oakley.

[76] I've earlier described Ms. Young's extensive support for Mr. Kanasevich's parenting. While Ms. Young loves Oakley, her involvement has not been salutary. Ms. Young offered a number of opinions about Ms. Robinson's parenting based on her own experience as the mother of three children. Ms. Young's children are aged between twenty-three and twenty-eight: the oldest was born when Ms. Young was thirty-one. This is in contrast with Ms. Robinson, who was twenty when Oakley was born.

[77] Ms. Young said that she has offered her opinions to Ms. Robinson about how she nurses Oakley, the health decisions she has made for him, and the circumstances of his meals and sleeping.

[78] Ms. Young repeated these opinions in her evidence and, as well, said that Ms. Robinson is immature. Ms. Young said that she speaks "very directly" to Ms. Robinson because Ms. Robinson "is immature and needs a mature adult to give her positive guidance". She denied that she has been abusive to Ms. Robinson and said that Ms. Robinson needs to earn her respect.

[79] Ms. Robinson has been described as impetuous and immature because she moved from British Columbia to pursue a relationship with someone she didn't know well and she became pregnant in these circumstances. Mr. Kanasevich might equally be described with the same words, with the distinction that he was thirty-one, while Ms. Robinson was twenty.

[80] Ms. Young said that Oakley has been underweight. Ms. Robinson denied this. Neither has told me how much Oakley has weighed any particular time. Ms. Robinson is slender, and Mr. Kanasevich has a medium build. I have been provided with photographs of Oakley. In some he is not wearing a shirt or is only wearing a diaper. He does not appear to be underweight.

[81] Ms. Young claimed that Oakley didn't want to talk with his mother when Ms. Robinson telephoned and that after two to three minutes on the phone with her, Oakley would drop the phone and go to play with his toys. These observations were made when Oakley was eighteen months old and I find nothing unusual about a toddler behaving this way. Oakley is still only twenty-two months old and I would not expect this to have changed.

[82] Ms. Young said that after visits with his mother, it's difficult to settle Oakley into a routine. Again, I find nothing unusual about this. Oakley is less than two years old and is ping-ponging back and forth between two households with very different parenting styles: in one household, the schedule is dictated by Oakley's needs and in the other, there is a fixed schedule. Ms. Young offered evidence about trying to "reinforce rules and boundaries" with Oakley. At Oakley's age, I would not expect him to adapt easily to differences between his parents' homes.

[83] Ms. Young said that when she is involved in transferring Oakley at the beginning or end of visit, she would take a witness, a tape recorder and a camcorder. She said she did this to avoid any disputes about what occurred during the transfers. Regardless, when conflicts arose between her evidence and Ms. Robinson's, these witnesses and recordings were not presented. Similarly, there were circumstances where Ms. Young said that Oakley was "out of whack", "a nutcase", "out of control" and "spinning". These observations are not supported by the evidence Ms. Young says she has and they are denied by Ms. Robinson. After one episode Oakley was taken to the doctor where nothing remarkable was observed.

[84] To the extent that Mr. Kanasevich has either intentionally placed Ms. Young in the position where she deals with Ms. Robinson or allowed Ms. Young to assume this position, he has contributed to a negative situation.

[85] In her affidavit Ms. Young detailed **her** telephone calls to Mr. Kanasevich's lawyer, to the RCMP and to the Department of Community Services in matters relating to the parents and Oakley, and questioning Ms. Robinson's neighbours

about information contained in affidavits. She says that she has “always offered support to Ms. Robinson **regardless of my personal feelings towards her.**” I have added emphasis to Ms. Young’s comment: it’s clear that Ms. Young doesn’t have positive feelings toward Ms. Robinson. She is not a neutral intermediary, but a partisan participant. She says that she has “not created problems between Ms. Robinson and Mr. Kanasevich. They are adults who create problems on their own.” While the parents have created problems on their own, Ms. Young has contributed to those problems and created additional ones. Her continued involvement as a significant caregiver for Oakley is not constructive.

[86] In British Columbia, Ms. Robinson has her mother and other family members. They have offered their support if Ms. Robinson relocates to British Columbia. Ms. Robinson has visited her mother in British Columbia and her mother has visited with Oakley in Nova Scotia. There are weekly visits between Stacey Robinson and Oakley by Skype.

[87] From Oakley’s perspective, the family he knows best is his family in Nova Scotia.

[88] Mr. Kanasevich’s mother presently lives in British Columbia. I’m given to understand that she is likely returning to Nova Scotia. For some period of time she and her son were not close, but I’m told that that has changed. In any event, she does not have a close relationship with Oakley.

[89] The distance to British Columbia means that if Oakley was relocated, it would significantly diminish his relationship with the closest members of his family. Visits could not be frequent and they would be expensive. At his age, all of Oakley’s contact with his father would require his mother’s assistance.

[90] *Gordon v. Goertz*, 1996 CanLII 191 (SCC) refers to the desirability of maximizing contact between a child and its parents. This principle is also found in subsection 18(8) of the *Maintenance and Custody Act*. There’s no evidence that Ms. Robinson’s desire to move is motivated by a desire to diminish Oakley’s relationship with his father but it cannot help but happen that Oakley’s time with his father will be dramatically diminished and their relationship will be undermined.

[91] Contact by Skype, webcam or phone isn’t something Oakley can initiate or respond to on his own. It requires the assistance of someone else. Telephone calls,

Skype and web camera sessions will not provide the frequent, direct contact that Oakley should have with his father. They will not allow Mr. Kanasevich to participate in parenting Oakley.

[92] There is no presumption in favour of either parent in determining custody. According to subsection 18(4) of the *Maintenance and Custody Act*, the parents are joint guardians and equally entitled to Oakley's care and custody. None of the interim orders speak to the issue of custody, they only address the allocation of his time. In any event, as Justice Bateman wrote at paragraph 22 in *Burgoyne v. Kenny*, 2009 NSCA 34, "interim orders [. . .] do not bestow the status of custodial parent."

Parenting time

[93] Currently, the order provides that Oakley sees his father for seven hours on Tuesday and Thursday and from noon on Saturday until noon on Sunday. This schedule means that there are six transitions for Oakley each week.

[94] Mr. Kanasevich is an entrepreneur. In his March 2013 Parenting Statement he said that his work hours were "flexible". He testified that his uncle reduced his hours of work so that he could deal with personal matters, since he was pre-occupied with them. In one of her affidavits, Ms. Robinson referred to Mr. Kanasevich as being "laid off" because in his initial affidavit Mr. Kanasevich said that work was "really slow" and his uncle "asked [him] to take some time off". Ms. Robinson currently works on an hourly basis. With Maureen Webb's support, she would be able to work from home.

[95] To continue the parenting with which Oakley is most familiar, I order that he continue to be in his mother's primary care.

[96] I acknowledge that Mr. Kanasevich has spent more time with Oakley than specified in the court orders. Taking his evidence with Ms. Young's, I understand that he has not been primarily responsible for parenting Oakley during this time.

[97] Both parents have made numerous allegations about the other. In determining parenting, I have done my utmost to focus on Oakley, rather than on the parents' accusations about each other, particularly where many of the accusations (that the Kanasevich family business is laundering drug money, that Ms. Robinson is a psychopath) are offered with nothing or little to support them.

[98] It is in Oakley's interest to be parented consistently. I've described the differences between Ms. Robinson's flexible approach to parenting and the structured approach of Mr. Kanasevich and Ms. Young. These are very different regimes for Oakley, who is not yet two. Consistent parenting means that Oakley should have a consistent environment with a limited number of transitions each week.

[99] The existing schedule was established when Oakley was one. Contact on alternate days allowed him to become familiar with his father without spending too much time away from his mother. With that frequency, consistency was lost. At this point, consistency can replace frequency. Oakley will be with his father from 5 p.m. on Wednesday until noon on Thursday every week. His weekend schedule will alternate so that on one weekend he will be with his father from Friday at noon until Saturday at noon and on the next weekend he will be with his father from Friday at noon until Sunday at noon.

[100] Either parent may travel with Oakley outside Nova Scotia, with the written permission of the other. When requesting permission, the travelling parent shall provide the other with an itinerary showing the dates of travel, the details of travel (such as flight numbers) and the destination. An address and telephone number at the destination shall be provided. On any day when Mr. Kanasevich would have access with Oakley in Nova Scotia, he is entitled to have contact by Skype or phone contact while Oakley is outside Nova Scotia. Similarly, when Oakley would be with Ms. Robinson, she may have contact with him by Skype or by phone. Neither parent shall unreasonably deny the other consent to travel with Oakley outside the province.

[101] Neither parent has provided me with any proposed schedules for addressing Christmas or other special occasions. If either parent is not scheduled to have time with Oakley on his or her "day" (Father's Day or Mother's Day), access shall be modified so that Oakley will be with that parent from 9 a.m. until 5 p.m.

[102] I am not addressing Christmas at this time. If this cannot be resolved, the parties should bring the issue back to me before the end of November 2014. I am prepared to decide the schedule, but I do not want to do it without hearing each party's position.

[103] Ms. Robinson and Mr. Kanasevich may modify this schedule by agreement.

Decision-making

[104] In *Rivers*, 1994 CanLII 4318 (NS SC) at paragraphs 50 to 53, Justice Stewart identified a series of questions to be considered in determining whether joint custody is in a child's best interests. Her decision was in the context of a corollary relief proceeding under the *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3, but I believe that the same considerations are relevant to a determination under the *Maintenance and Custody Act*. I've re-stated Justice Stewart's questions below.

- (a) Has each parent maintained a meaningful relationship with the child?
- (b) Does each parent have the parenting capabilities that are adequate to meeting the child's needs?
- (c) Will the parents be able to make decisions together about the child?
- (d) Are the parents able to co-parent despite any conflict between themselves, isolating their feelings about each other as former partners from their relationship as parents and their child's needs?
- (e) Will the child be involved in conflict between the adults?
- (f) Will a joint custody arrangement cause disruption and discontinuity to the child's developmental needs?

[105] The parents each have an existing relationship with Oakley and an ability to care for him. However, the extent of their conflict is too great for them to share decision-making. Oakley has repeatedly been drawn into their dispute, through over-holding access, referrals to the police and the Department of Community Services and multiple trips to various doctors.

[106] Mr. Kanasevich overstated Ms. Robinson's views with regard to vaccinations, saying that she is opposed to them. In contrast, she says that she favours considering delayed vaccinations and avoiding vaccinations for diseases that he cannot contract. Ms. Robinson has a naturopath and a family doctor who see Oakley.

[107] Joint custody would provide an environment for conflict harmful to Oakley.

[108] The parties are currently restrained from contact with each other. Samples of their communication by text message were provided. These are argumentative, insulting and inflammatory. The parties are unable to communicate in a manner consistent with Oakley's best interests.

[109] Ms. Robinson shall make decisions with regard to Oakley.

[110] Mr. Kanasevich is entitled to communicate directly with Oakley's health care providers and all others involved with Oakley.

Other conditions on parenting

[111] Mr. Kanasevich asks that I consider psychological counselling for the parents. Counselling is frequently ordered in child protection proceedings under the *Children and Family Services Act*, S.N.S. 1990, c. 5 and parents sometimes consent to such a requirement. Subsection 18(2) of the *Maintenance and Custody Act* permits me to make an order as to the child's residence and "respecting access and visiting privileges". Under the aegis of clause 18(2)(b) conditions can be imposed on access, such as supervision and prohibitions on drug and alcohol consumption. I don't interpret subsection 18(2) as empowering me to compel psychological counselling and I've been directed to no authority that supports this interpretation. Justice Williams viewed the situation similarly at paragraph 44 in *Anderson*, 2011 NSSC 504, a corollary relief proceeding under the *Divorce Act*.

[112] I continue the requirements of Justice Dellapinna's order that neither parent shall be under the influence of alcohol or any drug while Oakley is in his or her care and that neither shall possess, use or consume cocaine while Oakley is in his or her care. Each parent may use prescribed drugs only as prescribed by his or her physician while caring for Oakley.

[113] Mr. Kanasevich has a vehicle. He shall be responsible for Oakley's transportation to and from his visits. This must be managed in a way that respects the no contact order. I am confident that Ms. Young loves Oakley but she is a source of conflict and tension and Oakley must be spared this. Gail Young shall not be involved in transporting Oakley.

Child maintenance

[114] Mr. Kanasevich has asked to address child maintenance following the release of my decision. I will direct the scheduling office to contact the parties to determine the amount of time needed to do this so an appearance may be scheduled on my docket. Each parent shall file a new Statement of Income three weeks before the adjourned date. They must provide three recent paystubs, completed copies of their 2013 tax returns (including all schedules and attachments) and all 2013 T4 statements. If a notice of assessment has been received from the Canada Revenue Agency, this must also be provided.

[115] Until I have decided what maintenance should be paid, the child maintenance provision of Justice Campbell's order of May 31, 2013 shall continue.

Conclusion

[116] Oakley shall be in Ms. Robinson's primary care and sole custody. She may not move him to British Columbia.

[117] Oakley will be with his father from 5 p.m. on Wednesday until noon on Thursday every week. His weekend schedule will alternate so that on one weekend he will be with his father from Friday at noon until Saturday at noon and on the next weekend he will be with his father from Friday at noon until Sunday at noon. The weekend schedule shall be modified to provide time with Ms. Robinson on Mother's Day and with Mr. Kanasevich on Father's Day. Mr. Kanasevich shall arrange the transportation. Ms. Young shall not be involved in this.

[118] Either parent may travel outside Nova Scotia with Oakley, with the written permission of the other, which permission shall not be unreasonably withheld. An itinerary must be provided. On any day when a parent is outside of Nova Scotia with Oakley and, but for Oakley's absence from Nova Scotia, the other parent would have had access with Oakley, the parent who is not travelling with Oakley is entitled to have contact by Skype or telephone with Oakley while he is outside Nova Scotia.

[119] A discrete order may be prepared authorizing third parties to discuss matters relating to Oakley with Mr. Kanasevich.

[120] Mr. Kanasevich's counsel will prepare the order. The order will be formalized according to the procedure outlined in Civil Procedure Rule 78.04(3).

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia