

IN THE SUPREME COURT OF NOVA SCOTIA

**Citation:** Anderson - Anderson, 2005NSSC86

**Date:** 20050420

**Docket:** SFHMCA036218

**Registry:** Halifax

**Between:**

Joanne Anderson

Applicant

v.

Todd Anderson

Respondent

**Judge:**

The Honourable Justice R. James Williams

**Heard:**

December 17, 2004, in Halifax, Nova Scotia

**Oral Decision:**

December 17, 2004

Transcribed and edited - April 20, 2005

**Counsel:**

B. Lynn Reiersen, for the Applicant

Kim A. Johnson, for the Respondent

**By the Court:**

[1] This is a matter that is brought under the *Maintenance and Custody* Act. It concerns the care and custodial arrangements for two children; Julie Sarah Alma Anderson, born June 2, 1997 and James Patrick Anderson, born May 26, 2002.

[2] The parties have filed a series of affidavits which I have reviewed essentially parallel affidavits from Ms. Bechard, an affidavit from Ms. Kitan, affidavits of December 8th, 15th and 17th from Joanne Anderson and affidavits of December 6th and 17th from Mr. Anderson, as well as the affidavit from his current partner, Ms. Humber.

[3] The matter has been brought on quickly on short notice. Undoubtedly one of the contexts of this hearing is the fact that we are eight days away from Christmas and the parties desire to deal with that.

[4] Counsel have made various submissions concerning status quo and the nature of interim orders. The concept of status quo in my view must be considered

from the children's point of view. From the children's point of view, the fact of the matter is that both parents have provided care to them.

[5] The dictionary meaning of "status quo" as I understand it, is the existing situation. The existing arrangement is one where the primary care has been with Mr. Anderson for a period of some five to six months. The evidence seems clear that prior to that they were in the primary care of their mother. While that period of their care is important I am not prepared to notionally ignore the last six months either. Whatever the agreement between these parents or intended agreement in June or July, 2004, it appears that the agreement was in its essence that Mr. Anderson would have the children for the summer or until Ms. Anderson got on her feet. I doubt, though I have not had the benefit of hearing viva voce evidence, whether Ms. Anderson would have contemplated in June when the transfer of the care of the children took place that they would be in Mr. Anderson's care until December, 2004. It may be that she would have.

[6] The quickness with which this has come on for hearing has brought a negative focus to the proceeding that is unfortunate in my view. There are a number of negative factors that were referred to in the affidavits -- the affidavits

go back and forth essentially expressing concerns of each of the parents. The core situation here, however, is one where it would be difficult, based on the information that I have available to me, to conclude that there is anything fundamentally wrong with the parenting of either of them. I am not prepared at this time to be as negative in my inference drawing concerning the events of the past two to three weeks as Ms. Reiersen is as it relates to Mr. Anderson. If the fullness of time proves that Ms. Reiersen's interpretations of the nature of Mr. Anderson's attitude to the care of these children is as limited and negative as Ms. Reiersen has suggested, I am sure that that will be pointed out to the Court.

[7] I am interpreting the status quo concerning these children as a status quo that involves (in the past six months), they being in the primary care of their father and Ms. Humber and that before that they were in the primary care of their mother, Ms. Anderson. The various concerns that have been put back and forth between the parties do not justify my elevation of them to the point that the contact with either parent should be restricted or that there is some obvious better choice between these two parents. I am interpreting the Court's responsibility on an interim hearing as attempting to deal or to create a situation that is first consistent with the best interests of the children. This should consider what

temporary living arrangements are the least disruptive, most supportive and most protective for the child. Part of that in my view must embrace and give the parties an opportunity to responsibly negotiate and consider alternative parenting arrangements. This is a situation where I would conclude that there has been little opportunity by the two parties to negotiate or focus on longer term living arrangements as a result in part of the acute circumstances and time of year that we are dealing with. Those acute circumstances are as follows:

[8] The first issue I must deal with in my view is the Christmas arrangements. Based on the material that is before me it appears evident that Ms. Anderson desires to share Christmas Day not only with her children, but also with extended family members – a brother and his children. I also understand that she is off effectively whether on vacation or leave from work to and including December 29th.

[9] The Order will provide that the children be in her care from 2:30 p.m. on December 25th to 5:00 p.m. on December 29th. In terms of the care of the children past that time frame the Order will provide that the children be in her care

for what amounts to extended weekends, each second weekend from Thursday at 5:00 p.m. to Tuesday morning.

[10] The matter will be, if counsel wish, set for a settlement conference prior to an organizational pre-trial. In my view, one of the purposes of an interim order is to not only accomplish the goals stated in the case law as they relate to least disruption and supportive arrangements, but to attempt to allow the legal process to move forward in a rational and reasonable way. In my view both parties have been so focussed on the immediate concerns that there has been little opportunity at least in the material before me to address longer term arrangements for these children. I have nothing before me to indicate anything but that both parties intend to remain in this area indefinitely in the future. I have nothing before me to indicate to me that a shared parenting arrangement should not be at least explored. Whether it is appropriate, given fuller evidence or as events transpire will be a matter for both trial and hearing but my view is that there should be at least an opportunity to discuss that.

[11] The Order will provide that the parties will have the shared care of the children, that they will be in the primary care of Mr. Anderson and in the care of Ms. Anderson as I have indicated.

J.