

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Billard v. Billard*, 2014 NSSC 246

Date: 20140703

Docket: *SFSNMCA* No. 088990

Registry: Sydney

Between:

Kevin Billard

Applicant

v.

Barbara Billard

Respondent

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: June 16 and June 18, 2014, in Sydney, Nova Scotia

Written Release: July 3, 2014

Counsel: Alan Stanwick for the Applicant
Clara Gray for the Respondent

By the Court:

INTRODUCTION

[1] Kevin and Barbara Billard are the parents of Jeremy Billard, who is 4 years of age. They have been involved in a custody dispute, which in recent months has turned acrimonious.

ISSUE

[2] What interim parenting arrangement is in Jeremy's best interests?

BACKGROUND

[3] The parties were married on April 18, 2009, and separated on August 25, 2012. Their son Jeremy was born on May *, 2010.

[4] Ms. Billard filed an Application for custody on November 29, 2013. She also filed *ex parte* motions in November and December 2013, neither of which was deemed an emergency and no Orders were issued.

[5] On February 4, 2014, Mr. Billard filed an interim motion for shared custody under the *Divorce Act*, although no petition had been filed at that point. Ms. Billard filed a Petition for divorce on February 17, 2014.

[6] The matter was scheduled for hearing on March 17, 2014, but was adjourned, and an interim consent Order was issued on April 14, 2014. That interim Order granted the parties joint custody, with day to day care and control resting with Ms. Billard. Mr. Billard was granted specified access, though not overnight. This was a temporary arrangement pending completion of the interim hearing.

[7] The interim motion was heard on June 16 and 18, 2014. The hearing proceeded by way of cross examination on affidavits, although some *vive voce* evidence was permitted. The Court heard from Mr. Billard and his new partner Jolene Gouthro, as well as Ms. Billard and daycare provider, Jennifer Hall.

ANALYSIS

[8] After the parties separated, Ms. Billard moved in with her mother. Mr. Billard lived for a brief period in Port Hawkesbury with a female friend before moving to his mother's home in Sydney Mines. He initially exercised weekend access. After he moved to Sydney Mines, the parties agreed to a parenting schedule of 4 consecutive days on rotation with each parent. This arrangement did not last more than a few weeks because Jeremy did not adjust well to it. The parties then discussed and implemented a week about parenting arrangement, which continued for approximately 2 months.

[9] The parties disagree on whether Jeremy responded well to the weekly arrangement. They do agree that Jeremy does better with a structured routine.

[10] The parties had discussed and agreed to a slow introduction of new partners, and that Jeremy would not be taken overnight to a new partner's home. When Ms. Billard learned that Jeremy was spending time at Ms. Gouthro's home, she raised safety concerns about the presence of a large pit bull dog and a ball python. She also requested Ms. Gouthro's address, which was not provided.

[11] These simmering issues came to a head the night of November 23, 2013, when Ms. Billard removed Jeremy from the home of Mr. Billard's girlfriend, Jolene Gouthro. Ms. Gouthro was caring for Jeremy while Mr. Billard went out with friends.

[12] That incident significantly eroded the relationship between the parties. Access became difficult as a result. Through the efforts of counsel, a Christmas schedule was arranged under which Mr. Billard would have access on Christmas Eve for several hours. However, he did not return Jeremy on Christmas Eve as agreed; rather, he kept him overnight and returned him on Christmas day.

[13] The Christmas incident further exacerbated the situation. Thereafter, Ms. Billard refused to allow access unless Mr. Billard agreed to a specific return time,

which he would not do. Mr. Billard tried to see Jeremy on two occasions after Christmas, and on both occasions Ms. Billard phoned the police.

[14] Mr. Billard's position is as follows:

- The *status quo* to be considered is shared parenting on a weekly basis;
- The weekly access worked for Jeremy;
- The end to the shared parenting arrangement was imposed unilaterally by Ms. Billard;
- Ms. Billard's safety concerns were overstated and unjustified;
- He gradually introduced Jeremy to his new partner as agreed;
- Jeremy had an age-appropriate routine at his father's home;
- He regrets his decision to bring Jeremy to Ms. Gouthro's home overnight on November 23, 2013;
- He regrets his failure to advise Ms. Billard that he was keeping Jeremy overnight Christmas eve (but not the decision to keep him overnight);
- He was not provided with information about the I.W.K parenting program and was unable to access it;

- Jeremy has not been affected by the acrimony and is a resilient child;
- Ms. Billard was not justified in removing Jeremy from Ms. Gouthro's home on November 23, 2013; and
- He has not harassed Ms. Billard or the daycare provider over the issue of access.

[15] Ms. Billard's position can be summarized as follows:

- The *status quo* to be considered is primary care with her, and Mr. Billard having access;
- The weekly parenting arrangement did not work for Jeremy;
- Jeremy displayed behavioural issues after separation, which were exacerbated by the changes in parenting;
- Mr. Billard failed to acknowledge those issues and participate in programming to address Jeremy's behaviours;
- He failed to follow a regular schedule for Jeremy and did not respect Jeremy's food restrictions;
- He did not recognize the dangers posed by the dog and snake;

- He displayed poor judgment on several occasions, including November 23rd, at Christmas, and at the daycare; and
- He unreasonably refused all offers of access after Christmas.

THE LAW

[16] This is an interim hearing. Courts, in these circumstances, generally focus on the *status quo*. The legislation that applies to this motion is the ***Maintenance and Custody Act***, rather than the ***Divorce Act***, because when the motion was filed by Mr. Billard no petition had been filed.

[17] The ***Maintenance and Custody Act*** directs the Court to give paramount consideration to the best interests of the child in determining the appropriate parenting arrangements. It also sets out the relevant considerations when determining what is in the child's best interest. These include the need for safety and stability, the willingness of each parent to support a relationship with the other, the history of the child's care, and whether an arrangement that requires cooperation between parents is appropriate in the circumstances.

[18] The legislation also directs the Court to give effect to the principle of maximum contact with each parent, insofar as this is consistent with the best interests of the child.

[19] In support of her position, Ms. Billard relies on the case of **Bryden v. Bryden** 2005 NSSF 9, where the father sought equal parenting time with the 2 children, ages 2 and 5. Justice Coady, in that decision, expressed the view that shared parenting is the rare case, as it is “the rare parents and the rare children who can make week on, week off work in a way that is in the children’s best interest.”

[20] She also points to the case of **Hammond v. Nelson** 2012 NSSC 27, wherein the Court determined that imposing shared custody over the objection of one of the parents could result in a deterioration of their relationship, instability for the child, and possibly lead to future litigation.

[21] In the case before me, there has already been significant deterioration of the relationship between the parties. They communicate only by text. Mr. Billard has had limited contact with his son since Christmas. Ms. Billard obviously distrusts Mr. Billard, and he, in turn, feels she has been unfair with him. However, for a period of two months they shared parenting successfully.

[22] Mr. Billard relies on the case of **Gibney v. Conohan** 2011 NSSC 268, in which Associate Chief Justice O’Neil reviewed the case law on *status quo* and stated at paragraph 101:

I agree that the court must be vigilant to ensure a parent is not rewarded for unilaterally establishing a parenting regime and then asserting in the context of an interim hearing that the regime is the *status quo* which must be preserved.

[23] Although in **Gibney v. Conohan (supra)** O’Neil, A.C.J. agreed that the *status quo* to be considered is that which existed at the time of separation, he also noted that the more time that passes post separation, the more the Court will be required to give greater weight to the child’s current living arrangement. He accepted that the *status quo* can be a blend of the children’s pre and post separation living circumstances. However, the overriding consideration is the best interests of the child and the effect of disruption on them.

DECISION

[24] I find the *status quo* is a shared parenting arrangement, which by November 2013 had evolved to a week about parenting. It was this arrangement that was unilaterally terminated by Ms. Billard and which Mr. Billard seeks to reinstate.

[25] The weekly parenting schedule maximized the time both parents spent with Jeremy. It reflects the evolution of Mr. Billard’s availability to parent. It also

reflects the time both parents spent with Jeremy before separation, when both were working and helping to care for their son. It is unfortunate that it had to change a number of times due to the circumstances and agreement of the parties, and later through their unilateral actions.

[26] Mr. Billard does not recognize Jeremy's behaviours as a problem and says he did not observe the same issues described by Ms. Billard and Ms. Hall. He feels Ms. Billard is overstating things. As a result, he has not been proactive in learning to address those behaviours. He did not access the I.W.K. programming or seek out other assistance. While there was no expert evidence adduced, I accept the evidence of Ms. Billard and Ms. Hall that Jeremy did display negative behaviours and that the problems escalated through the fall of 2013, settling to some degree in the past few months.

[27] I accept that Jeremy thrives under a regular routine. He is only 4 years old and is confused by the changes to his schedule and the acrimony between his parents. I find it is in his best interests to have a regular and predictable schedule and routine.

[28] Ms. Billard asks the Court to order primary care to her, with access to Mr. Billard. She suggests Mr. Billard cannot exercise primary care of Jeremy under a shared parenting arrangement because of his work schedule and the distance

between his work and the daycare. I reject that suggestion. The evidence is clear that Jeremy has been in daycare since before the separation because both parents work outside the home. Mr. Billard works twenty minutes away from the daycare. He has family in Sydney Mines. In the event he is unable to respond to an emergency, he can call on others who can.

[29] Mr. Billard's evidence was presented in a candid and forthright manner. He acknowledged his mistakes. However, he refused to acknowledge that concerns expressed by Ms. Billard are valid, treating them instead as a mix of over-protectiveness, jealousy, and paranoia. He portrayed her actions in obtaining Ms. Gouthro's address as stalking, rather than the actions of a concerned mother who had not been provided with an address for her son while in Mr. Billard's care. He feels she has been unfair in her dealings with him and clearly chafes at any inquiries or information from her.

[30] Ms. Billard's evidence, while presented in a forthright manner, did display a level of anxiety and rigid thinking which colours her perception of events. For example, she testified Mr. Billard verbally attacked Ms. Hall and became aggressive towards her on two occasions. She also alleges he harassed Ms. Hall through repeated texts and calls about access with Jeremy. However, Ms. Hall testified that there was one incident outside the daycare where Mr. Billard was

upset and caused a scene, for which he apologized afterwards. On another occasion when he called to retrieve Jeremy and she asked him not to come to the daycare, he acceded to her request. She did not feel he was harassing her.

[31] This is not to say that Ms. Billard's concerns with respect to other issues are unjustified or exaggerated. Her concerns with the dog and snake were reasonable. Had Mr. Billard responded to her enquiry, and had she attended the home to review the arrangements, those concerns may have been assuaged. As it is, it took a court appearance for Mr. Billard to acknowledge that the snake should be removed. The Court also gave direction with respect to supervision of the child in the presence of the dog, Wizard.

[32] I find that both parties have on occasion since separation exercised poor judgement and shown a lack of insight into their child's needs. Both have acknowledged that Jeremy requires routine, and yet they have both interrupted that routine. Neither recognizes the impact of their own actions on Jeremy's adjustment. Mr. Billard, in particular, disliked access being dictated by Ms. Billard after November 23, 2013, and I find the Christmas incident was his response.

[33] Mr. Billard acknowledged that he should not have kept Jeremy overnight on Christmas Eve. The Christmas arrangements had been made through counsel and Ms. Billard expected them to be respected. They were not. It is a grave error in

judgement to have kept Jeremy longer than scheduled, particularly on such an important occasion. Ms. Billard was rightly upset that the Christmas schedule, which had been reached through counsel, was ignored.

[34] The interruption in access after November 23, 2013, and the Christmas incident are very unfortunate examples of the parties' lack of insight and judgment. Mr. Billard has acknowledged that he should not have broken his promise to Ms. Billard about overnights at his new partner's home. Nor did he provide Ms. Billard with the address where Jeremy was staying when in his care. Not unreasonably, she sought that information out herself when her inquiry was ignored.

[35] Ms. Billard has similarly displayed errors in judgement, starting with the incident of November 23, 2013. While she testified that Jeremy was sick, I find the real reason she retrieved Jeremy that night was because she felt Mr. Billard had broken his promise to not have Jeremy overnight at his girlfriend's home. Jeremy was extremely upset at being removed from Ms. Gouthro's home. Although Ms. Billard denies the possibility, I find it likely that Jeremy's asthma attack, which required medical attention the following morning, was precipitated by that incident.

[36] I should add that Ms. Gouthro inflamed the situation with her online posts about the November incident. Although she denied having identified anyone specific in her comments, it was apparent from her evidence and demeanor that she had posted negative comments about Ms. Billard.

[37] I find the fact that Jeremy's behaviours have settled somewhat is related to the Strongest Families Program completed by Ms. Billard. She attributes his improved behaviour to the stability of his living arrangements as well, though this is self-serving in that she imposed the current regime. I accept Mr. Billard's evidence that Jeremy responded well when access was reinstated after the April 14, 2014 Court Order.

[38] I also accept that the escalation in Jeremy's negative behaviours in the fall of 2013 relates to the disruption in his life after separation. He was directly involved in the incident of November 23, 2013, and has been exposed to significant parental conflict. I reject Mr. Billard's suggestion that Jeremy has not been affected by the acrimony. He is not as resilient as Mr. Billard believes.

[39] Both parents have at times lost sight of what is best for their son and have coached the dispute in terms of what is fair to each of them. However, it is clear they both love Jeremy and want what is best for him. It is also clear that each has the ability to provide a stable and loving home.

[40] I have considered the legislation, the principle of maximum contact, the need for a safe environment and stable parenting schedule, the ability of the parents to foster a relationship with the other, and Jeremy's right to a relationship with both parents, in assessing what is in his best interests. I conclude that joint custody with a shared parenting regime is best for Jeremy. The fact that both households are not mirror images of the other and may have different approaches to parenting does not preclude a shared parenting Order.

[41] The shared parenting will be implemented in stages to ensure a smooth transition for Jeremy as follows:

- Mr. Billard will have weekend parenting from noon on Saturday overnight until Sunday at noon, commencing immediately and continuing for 4 weeks;
- In week 5, Mr. Billard's weekend parenting time shall be expanded to Friday at 6:00 p.m. to Sunday at noon, continuing for a further 4 weeks;
- In week 9, the schedule shall revert to week about parenting, from Friday at 6:00 p.m. until the following Friday at 6:00 p.m.

[42] Access is being implemented in stages because Jeremy has had limited contact with his father over the past months. His negative behaviours have settled to some degree. While it is tempting to say that no changes should be made to the

current arrangement so as to avoid possible future upset, such a simplistic alternative would be to deny Jeremy a full relationship with his father and would, in effect, reward Ms. Billard for her unilateral actions.

[43] The terms of this interim parenting arrangement shall also include:

1. Mr. Billard shall immediately arrange to participate in the Strongest Family Program and shall complete the program according to the I.W.K. program schedule. In the event that he has not started the program by the time the expanded weekend parenting schedule commences in week 5, the expanded weekend parenting schedule shall be postponed until he has started the program. In the event Mr. Billard has not completed the program by the time the weekly parenting is to commence in week 9, the implementation of that schedule shall be postponed until completion. If the I.W.K. program is not available to start immediately, he may opt to complete it through a service provider in the local area approved by the I.W.K.
2. Mr. Billard shall have the dog, Wizard, and the pit bull puppy assessed by a qualified dog trainer to confirm their suitability as companions to pre-school aged children and follow up with training to ensure the dogs are kept under control around Jeremy. He shall continue to ensure that Jeremy's contact with all dogs in the home is supervised by a responsible adult at all times.

3. No new animals or pets shall be brought into the home where Mr. Billard resides.
4. In the event that Mr. Billard is required to be away for work unrelated to his regular schedule, or other reasons for longer than 6 hours, he shall provide Ms. Billard with the option of resuming Jeremy's care in his absence, for so long as he is unavailable.
5. Ms. Billard shall advise Mr. Billard of all appointments with Jeremy's pediatrician or other specialists and he shall be entitled to attend all appointments scheduled for Jeremy. Ms. Billard is to provide Mr. Billard with the date, time, and location of the appointment as soon as the appointment is scheduled.
6. The parties shall consult on decisions involving Jeremy's health but if, after meaningful consultation they cannot agree, Ms. Billard shall have final decision making on health issues.
7. The parties shall communicate issues and concerns regarding Jeremy's routine through a journal, to be exchanged with the child each week. Information respecting his health, activities, and daily routine shall be recorded by each

party in the journal so that the other parent is fully apprised of his situation upon resuming care.

8. There shall be phone access for the parent not having care, each evening for no more than 15 minutes, to be initiated by the parent who has care of Jeremy.
9. Both parties shall keep the other apprised of the civic address where Jeremy will be residing during the week in the other parent's care and shall provide the other with an updated cell phone or land line at all times. In the event Jeremy is taken out of the Cape Breton Regional Municipality during the week by either parent, that parent shall provide the other with an itinerary and contact information. Nightly phone access shall be at the expense of the parent taking Jeremy out of C.B.R.M.
10. Each parent shall immediately notify the other should Jeremy require emergency medical attention. Mr. Billard shall educate himself and his new partner on Jeremy's medical needs and food sensitivities. They shall also ensure that those who may provide care to Jeremy, or in whose company he spends time, are aware of and abide by any medical limitations placed on Jeremy by his physician. In case of an emergency where the parent having care of the child cannot respond, the other parent shall be contacted to respond.

11. Both parties shall ensure that any recommendations made by Jeremy's pediatrician are implemented and adhered to in both households, including sleep routines, behavioural techniques, and food sensitivities.

12. Both parties shall have shared time with Jeremy on special occasions, irrespective of which parent has care of him on those dates. Special occasions will include Halloween, the parents' birthdays, the child's birthday, Christmas Eve, and Christmas Day, as well as Easter Sunday. Should the parties be unable to agree on the sharing of time with Jeremy on those occasions, by default the schedule will be that the parent who has care of Jeremy under the regular schedule shall have care of him on the special occasion, with the other parent being entitled to have access as follows:

- Halloween: 5:00 p.m. – 6:15 p.m.
- Birthdays: 5:00 p.m. – 7:00 p.m.
- Christmas Eve: 2:00 p.m. – 6:00 p.m.
- Christmas day: 10:00 a.m. – 4:00 p.m.
- Easter Sunday: 10:00 a.m. – 4:00 p.m.

13. Jeremy is not to be removed from his current daycare unless the parties agree.

If either party is unable to retrieve him from daycare while the child is in their care, that party may opt to have a third party retrieve Jeremy from daycare.

14. Either party shall have the right to take Jeremy out of the Cape Breton

Regional Municipality during their regular weekly parenting schedule, but neither shall remove him from Nova Scotia without the prior approval of the other parent, not to be unreasonably withheld, in the case of trips or vacation plans. In the event such plans include travel outside of Canada, the parties shall cooperate in obtaining a passport and execution of travel authorizations.

15. The parties shall also share March break with Jeremy, with the parent having

care of Jeremy that week having him in their care from Friday at 6:00 p.m. until Thursday at 4:00 p.m. and the other parent having care of him for the remainder of the week and into their regularly scheduled week following March break. Should the parties prefer to alternate March break, they may agree to do so.

16. Both parties shall be entitled to access Jeremy's health, educational,

extracurricular, counselling, religious, and other records held by any third party, without the need for the other party's consent.

17. The Order shall include the standard clauses dealing with respectful communications between the parties and a prohibition on discussions of an adult nature in front of Jeremy.

[44] Both parties shall make financial disclosure to the other, including 2014 year to date income information, in order to assess whether child support should be paid by either. That determination shall be made by the Court hearing the custody matter. Disclosure shall be made in accordance with the *Civil Procedure Rules* or the direction of the Court at pretrial.

[45] Neither party requested costs so I therefore Order that each party shall bear their own costs of this interim proceeding.

MacLeod-Archer, J.