

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Farnell v. Farnell, 2002 NSSC 246

**Date:** 20021113

**Docket:** S.Am. 1202-001147

**Registry:** Amherst

**Between:**

Jason David Edward Farnell

Petitioner

v.

Maria Mathea Cornella Farnell

Respondent

Justice Walter R. E. Goodfellow

Amherst, NS

S.Am. 1202-001147

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**Judge:** The Honourable Justice Walter R. E. Goodfellow

**Heard:** November 6<sup>th</sup> and 7<sup>th</sup>, 2002 in Amherst, Nova Scotia

**Written Decision:** November 13<sup>th</sup>, 2002

**Subject:** DIVORCE - SHARED/JOINT CUSTODY-ACCESS-CHILD SUPPORT

**Summary:** Father, now 33, mother 31, cohabited approximately six years, two children, boy, now 3, daughter born post separation, now thirteen months. Mother registered nurse, resides in her late father's home in Fredericton. Father resides in home in Springhill on property owned by a member of his family. Multitude of differences arose within the marriage, primarily difference of opinion with respect to the position of father's mother in relation to oldest child. Father very attached to his mother and to the area of his home. Now taking paralegal course with anticipated graduation May, 2003, intends to limit his employment to the Truro, Springhill, Amherst, Moncton area and uncertainty of employment may well mean that he has to revert to his previous employment as a carpenter. Reviewed some of the factual considerations and concluded that father's proposed two week on two week off shared custody was unworkable and likely harmful to the stability of the children. Granted joint custody designation but clearly defined as in *Loughran v. Loughran* (2000), 182 N.S.R. (2d) 143. Spelled out specific access of the children to their father with recommendation that they superimpose it on a calendar and advise of any conflicts. Present every second weekend access running from Friday to Monday p.m. continued with

an indication that this will probably have to be adjusted when schooling enters the picture but then they can also make adjustment to take into account statutory holidays. With respect to child support, father although he had legal advice from the outset provided substantially less than child support guideline for extended period and the court commented:

The obligation to support one's child arises from being a parent and not from a demand or court order enforcing this pre-existing obligation. The existence of the child support guidelines has become very well known and I am satisfied that Mr. Farnell probably knew from the outset of his first engagement of legal counsel shortly after separation that his existing financial obligation to then Wyatt would likely be the child support guideline. There is absolutely no excuse or tolerance for a parent to not pay her or his reasonable share for the support of their child. The equity principle of coming to court with clean hands probably has more relevance when it comes to a parent's responsibility to a child than in any other litigation.

Child support based upon guidelines should be \$244.00 per month, however, as father fixed with total responsibility and expense for access, adjustment made to continue existing order of \$200.00 per month.

**Issue:** Custody, access, child support.

**Result:** Joint custody defined. *Loughran v. Loughran* (2000), 182 N.S.R. (2d) 143. Specific access spelled out.

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