

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** *K.E.D. v. G.R.D.*, 2014 NSFC 7

**Date:** 2014 05 12

**Docket:** FLBMCA No. 083829

**Registry:** Bridgewater

**Between:**

K. E. D.

Applicant

v.

G. R. D.

Respondent

**Editorial Notice:** Identifying information has been removed from this electronic version of the judgment.

**Judge:** The Honourable Judge William J. Dyer

**Heard:** October 9<sup>th</sup> and 10<sup>th</sup>, 2013, in Bridgewater, Nova Scotia

**Memorandum** December 12, 2013

**Counsel:** Stephen D. Hiscock, for the Applicant  
Rubin Dexter, for the Respondent

**By the Court:**

[1] K. D. (“the mother”) and G. D. (“the father”) are the married parents of two year old G. (“the child”). Proceedings under the **Maintenance and Custody Act (MCA)** and **Child Maintenance Guidelines (CMG)** were started in late 2012 to address the parenting and financial support arrangements for the child.

[2] In early 2013, it was thought that the issues would be resolved by a consent order or separation agreement. However, events overtook the parties. The father assumed *de facto* primary care of the child and balked at parenting by the mother. By early August, 2013 interim parenting arrangements for the mother were in place under the auspices of the local Supervised Access and Exchange Program. The matter was set for hearing. (The parents were represented by different lawyers than at the outset.)

[3] It was intended that a truncated release by Memorandum with the outcome would be followed with full reasons. Inadvertently, the following was not released before now. The initial release and directions given constituted an order of the court pursuant to the **Family Court Rules**. (The substance of the earlier release is incorporated, as need be, for ease of understanding.)

[4] The parents agreed that a shared parenting arrangement should be authorized, but they could not agree on location, scheduling (i.e., week-about versus half week-about) and other terms and conditions (including supervision) which might attach to the mother’s parenting.

[5] The father sought some form of supervision or monitoring of the mother’s parenting based on evidence regarding her drug use and mental health state. Indefinite supervision was not sought. So, in essence, the father’s request was for an interim regime and review. He proposed that his parenting would continue at his residence under his personal supervision or that of his child care provider (if he is working, etcetera). He was amenable to the mother exercising her parenting time at his residence under the supervision of the same individual.

[6] Alternatively, the father posited (albeit with some hesitation) that the mother’s parenting could occur at the residence of, and be under the supervision of, the maternal grandmother (M.B.). Incidental to the latter scheme, he suggested a condition that the mother continues to live with the grandmother until the mother’s

circumstances stabilize and there is an opportunity for further review by the court. And he sought a 3.5 day “rotation” between the homes.

[7] The mother opposed supervision - interim or otherwise; and she opposed court sanctioned drug use prohibitions (also proposed by the father). She wanted week-about (7-day) shared parenting to be enshrined in a final order with no provision for review.

[8] Having considered the evidence as a whole and the submissions of counsel, in the best interests of the child, I ordered:

1. There shall be a return to the consensual parenting regime as it was before mid-July, 2013 such that the mother and father shall have equal, shared parenting time - with a 3.5 day rotation and the transitions to occur on Thursday and Sunday each week, unless otherwise agreed. Little evidence was directed to past or proposed transition/transportation details, so they were not be specified.
2. The mother’s parenting times are conditional on her maintaining primary residence at the home of the maternal grandmother.
3. The grandmother may temporarily assume responsibility for the child’s care (during the mother’s parenting time) should the mother be absent for employment or other good cause. Should the grandmother be unwilling or unable to assume care in those circumstances, the mother shall offer a parenting opportunity to the father before making alternate care arrangements.
4. While parenting the child, the mother shall not be under the influence of non-medically prescribed drugs - including, but not limited to, marijuana.
5. The mother shall self-refer to Addictions Services for assessment and treatment (if recommended) in relation to her admitted use of non-medically prescribed marijuana. The mother shall obtain a written report from the service provider, file it with the court and provide a copy to

- counsel for the father, at least four weeks before the next court appearance.
6. The mother shall self-refer to her personal physician and obtain a written medical report from the physician regarding the current state of her physical and mental health, including reference to all prescription medications which have been authorized. The medical report shall be filed and served at least four weeks before the next court appearance.
  7. By agreement, the parents may vary the frequency and duration of their parenting times having regard to employment and personal commitments or involvements, and unforeseen circumstances beyond their control (such as illness, weather, etcetera).
  8. Unless otherwise agreed, transportation and transition arrangements shall be made directly between the parents - not through family members or third parties - and shared equally. The parents are also equally responsible for transportation safety (including car seats). Neither parent shall transport the child while under the influence of alcoholic beverages or non-medically prescribed drugs.
  9. No evidence was directed to the past or proposed parenting arrangements for special occasions and holidays (such as Christmas, Easter, statutory holidays, birthdays, etcetera) and there were no submissions on the topic. So, they are not specified. However, by agreement, the parents may modify and specify parenting arrangements for such occasions and holidays.

[9] Both parties sought a “joint custody” order. But, given the palpable distrust between the parents, their poor communications and minimal cooperation, final decision of the issue is deferred pending the review. At the request of counsel, the issue of child maintenance is left open for settlement by negotiation or by later court decision.

[10] There were no submissions regarding court costs. No order is made at this time. The order is interim.

[11] The matter shall be reviewed before the end of June, 2014 - starting with a docket appearance to be established by a Family Court Officer in consultation with counsel.

[12] The parents and counsel are reminded that conciliation services continue to be available to the parties pending the review.

[13] The findings which underpin the order follow.

[14] In a brief affidavit, the father wrote that the parties were married in late June, 2009 and separated in mid-September, 2012. Their son, G., is now two years old. The father lives in an apartment in a rural community directly above a restaurant which he operates. Before the separation, both considered the apartment as their matrimonial residence.

[15] He wrote that the mother lives with her mother, M.B., in a nearby rural community. Before then, he said that she had been living in a rental accommodation in Halifax.

[16] The father wrote the couple had been co-parenting G. - on a half-week on / half-week off basis. He said that his son was picked up and dropped off at the residence by the grandmother and that the mother has rarely been present for the transitions.

[17] According to him, shortly before the marriage, the mother informed him that she had been diagnosed with bipolar disorder and that she had a history of self-destruction. He claimed that she disclosed an incident which occurred in or about 2002 when her then husband , upon returning home, rescued her - fully clothed and in a delirious state - swimming out to the middle of a lake. He said she disclosed that as a result of the incident she was hospitalized. The disclosures did not stand in the way of the parties' marriage.

[18] The father wrote that during the marriage, at least on three distinct occasions, his spouse's mental state deteriorated so badly that she was both "delirious, unable even to maintain a conversation or undertake even the most routine tasks". He said the episodes were so bad that she would arrive at their apartment, pack up her bags, and remove herself to her mother's home where she would remain for periods of time lasting variously from one week up to one month.

[19] According to the father, when he attempted to approach his mother-in-law to discuss his concerns about what he perceived to be his wife's mental health issues, and a need for psychiatric help, she would respond that her daughter simply needed respite for a period of time and to be under her own mother's care.

[20] The father asserted that his spouse has "always used drugs", but he wrote that during the last several months preceding the separation, she began to consume marijuana and sleeping pills in increasing amounts. He asserted that she often smoked marijuana in the presence of their son and while he was under the mother's care. When confronted by him, he said that she would complain that she needed to consume marijuana to help her sleep. His version of events is that the more she consumed drugs, the more emotionally unstable she became. He referred to wild mood swings - from deliriously happy to abject depression.

[21] The father also wrote that in the run up to the separation, his spouse's mental state appeared to progressively deteriorate to the point where she increasingly withdrew from life and that she slept through large parts of the day. He claimed she often did not eat and sometimes did not bathe or change her clothes. He characterized her as being "often incoherent and appeared always to be high on one drug or another". He further claimed that almost daily she came to the restaurant and took whatever cash was in the register and disappeared, sometimes with G., and returned hours later, often after a shopping spree. He alleged that her constant "raiding of cash" caused his business to falter.

[22] The father painted an unflattering picture of the grandmother which implied she was running interference against needed mental health intervention to help his spouse and that she may have been enabling his spouse's drug use.

[23] Eventually, he hired a nanny to come to the apartment and care for G. while he worked. During this time, he thought his spouse was incapable of looking after their son and was very concerned about his safety if G. should be under his mother's care.

[24] After the separation, the father said there were discussions about co-parenting in which the principle players were himself and his mother-in-law - not his wife. He said that he was assured that his spouse was improving and was more stable and better functioning. He also said that his mother-in-law informed him that his wife had stopped consuming marijuana and other drugs, and that she was under appropriate medical care. He stated that he accepted assurances that there

would be no further episodes of so-called backsliding by the mother or abuse/non-compliance with prescriptions.

[25] The father alleged that his mother-in-law “threatened” him that if he did not agree to a co-parenting arrangement that “things would go hard for me” and that she would do everything in her power to keep G. from him.

[26] During testimony, the father reiterated that it was the grandmother who routinely picked G. up and dropped him off at the restaurant during agreed co-parenting. When he pressed for information regarding his wife’s progress, he claimed that the grandmother informed him “it’s none of your business”.

[27] Despite this tortuous (from his perspective) background, the father said that he continued with the shared parenting regime until disclosures made to him by his brother-in-law, R.B.. After the disclosures were made, he refused to release G. from his care to the mother without ongoing supervision by a responsible third party.

[28] R.B. is married to the father’s sister. He wrote that he was introduced to the mother several years ago. About one month before the D.’ separation, without the knowledge of the father or his own wife, he and the mother started an extra-marital relationship which lasted for about nine months. He and the mother spent a great deal of time together and had frequent telephone and text messaging contact. He said they met personally very frequently - some times as many as five times weekly. He wrote that they spent time together at her rental accommodations in Halifax and other places including the grandmother’s home and occasionally (when his wife and children were not there) at his own home.

[29] When he was with the mother at the grandmother’s home, B. said that G. was generally cared for by the grandmother. He said that the mother would sometimes relieve the grandmother for short periods of time, but he noted that the child was never left alone with the mother. He generally asserted that the grandmother always kept the mother and child under close scrutiny.

[30] B. gave considerable elaboration on the frequency and duration of their personal contacts - which he said averaged as many as five times per week. They also maintained contact by telephone, through text messages, etcetera. B. estimated that he attended at the grandmother’s residence about 20 times over the course of

nine months and recounted their various activities, including intimate contact at the home.

[31] B. stated that daily routines and activities (such as feeding G., changing his diapers, bathing, playing, etcetera) were generally carried out by the grandmother. He said that G. usually slept in her bedroom. He made a serious allegation that the mother informed him several times that if she had to do it over again, she would never have had G..

[32] B. also wrote that the mother disclosed to him on multiple occasions that the grandmother was (in reality) primarily caring for G. when he was supposedly under the mother's care. He alleged that she told him that "under no circumstances was I ever to inform G. of this". On those occasions when the father telephoned the mother in the evening with a view to speaking to G., he claimed the mother lied and told the father that G. was already asleep. He added that she volunteered to him that she did not want her son with her more than a couple of days per week and characterized herself as a "career woman who enjoys travelling".

[33] B. asserted that he was privy to a number of conversations between the mother and grandmother "in which they plotted ways to provoke G. into losing his temper and creating a confrontation during M.'s pick up and drop off of G. at G.'s residence so that they could use it as a basis for denying G. custody of G.". He broadly alleged that during his extra-marital relationship with the mother she was "always" stoned on marijuana and various other drugs, including sleeping pills. He characterized the mother as an avid user of marijuana, sleeping pills and other drugs. And, he claimed that "there was never a time when I was with her that K. was not stoned or looking to get stoned on one drug or another, including when G. was in her care". Adding to the seriousness, B. went on to allege that the mother had stated to him that she takes three times the normal dosage of sleeping pills because she was becoming immune to their effect.

[34] B. wrote that when the mother ran out of marijuana she used marijuana oil, small vials of which she placed under her tongue. He said that she informed him that marijuana oil gave her an "instant stone". He said that she disclosed to him that the oil was supplied to her by one L.H.[sic] who was described as a family friend and a member of the church attended by the mother and grandmother.

[35] B. claimed that he once saw the mother driving her motor vehicle with G. as a passenger at a time when she had told him that she was returning from visiting a



sister and that she was “stoned” because she had smoked marijuana while at the sister’s.

[36] B. alleged the mother was using a drug prescribed by a doctor whom she had not seen for several years. According to him, she disclosed that she had given the doctor a “sob story” to get a prescription and that the drug she was consuming “knocks me out” and that “when I get up, I can barely walk for hours”.

[37] B. wrote that at least once the grandmother informed him that she was well aware of her daughter’s marijuana use but it was consumed for “medicinal purposes”.

[38] B. mentioned an incident at his own residence when both the mother and child were present. He said that he could smell a strong odour of marijuana coming from a bedroom. When he entered the bedroom, he said he asked the mother what she was doing; she replied she was “taking her medicine”. He observed G. to be asleep on a nearby bed.

[39] B. wrote that in early March, 2013 the mother telephoned him in the morning while he was at work and threatened to commit suicide by taking sleeping pills. A few moments later, he said the grandmother phoned him and asked if he could check on the mother at her Halifax residence because she was fearful the mother might follow through with a suicide threat - thereby implying that the grandmother was also alerted to the risk. B. cited the grandmother as having disclosed that the mother had 160 sleeping pills in her possession around this time which the grandmother had delivered to her daughter. B. elaborated in paragraph 19 of his affidavit. He said he was en route to Halifax when he received the call from the mother who said words to the effect that she was sorry, that he should tell her son that she loved him, etcetera. He said she did not ask him to do anything else. As noted already, he said the grandmother called him directly and expressed her own fears about what was going on. B. went to check on her and eventually satisfied himself that she was not attempting suicide or other serious harm.

[40] B. wrote that the mother repeatedly told him that her husband must never find out about their affair or her use of drugs because she would “lose G.”.

[41] B. claimed that he became increasingly concerned about the mother’s mental stability and her perceived mood swings. He referred to her episodic shopping sprees during which she allegedly purchased luxury personal items.

[42] As noted elsewhere, B. is the father's brother-in-law. He has three relatively young children. His extra-marital relationship with the mother ended in May, 2013 when he broadly asserted that "things got weird". He claimed that she lapsed into manic episodes when she became incoherent, did not make any sense, and appeared to have a distorted sense of reality. He provided some elaboration and examples. He also claimed that she episodically embarked on religious rants during which he often claimed she wanted to "get back with God".

[43] He testified that he and the mother co-signed a three year residential lease for a townhouse in HRM. He said this was done at a time when he was ill and that he was not certain if he actually signed the original lease. However, he conceded that he subsequently did sign or initial something. He claimed that he entered into the lease as a result of pressure from the mother whom he described as forceful and manipulating. He said she moved into the premises; but she abandoned them and went back home when the relationship ended.

[44] During cross-examination, B. reasserted that he did not want to live in [...] (HRM) with the mother. He went along with her wishes and "for the ride". He acknowledged that he accompanied her to viewings of other potential residences in the preceding months. However, he asserted that he never intended to cohabitate, never did move in with her, and eventually returned to his own wife. He freely admitted that, "I lied to my wife" and, in terms of her knowledge of his affair, he stated, "She pretty well knows".

[45] B. was presented with Exhibit 1 which is a small metallic box, the contents of which include marijuana cigarette remains and some paraphernalia. He said that he last saw the exhibit when it was taken by the mother from her purse in his motor vehicle. He said it was left in his vehicle along with her scarf and a Bible. His evidence was that he had kept possession of the Exhibit and ensured its integrity. He clarified that the exhibit contained "four roaches". He said that there was a second can or canister in the mother's purse that contained marijuana joints the last time he observed it and on many occasions previously. He broadly alleged that she frequently, if not daily, smoked marijuana in his presence at various times throughout the day.

[46] Regarding his assertions of a scheme to provoke the father into misconducting himself, B. back-tracked and conceded that he had not directly overheard the grandmother in inappropriate conversation but insisted that he directly overheard the mother trying to provoke him on the telephone.

[47] B. is an admitted cigarette smoker, but vehemently denied that he smoked marijuana with the mother on any occasion.

[48] M.B., the maternal grandmother, wrote that her daughter has been living at her home since early May, 2013. (This predates the father's arbitrary suspension of the mother's access to G.) She wrote that nothing has occurred in the home that would place G. at risk or in danger. She wrote that she works at home and spends almost all of her time there. Accordingly, she said she is available to help her daughter with any child care responsibilities, if the need should arise. She said she occasionally babysat G. before access was suspended.

[49] Despite the marriage breakdown and the conflict over access, the grandmother claimed none of the events have brought on "manic or depressed episodes". She acknowledged her daughter uses "a small amount of marijuana some nights just prior to going to bed to help with her sleeping". However, she said when she does she usually goes outside about 20 minutes before bedtime and only stays outside about five minutes.

[50] The grandmother insisted that the mother does not use marijuana while she is caring for G. and that she has never observed her daughter caring for G. while impaired or when G. is in her presence. She also wrote that she has never witnessed her daughter using marijuana during the day. She insisted use always occurs at night as a sleeping aid.

[51] The grandmother stated her daughter does not drink alcohol but noted her daughter is currently taking Seroquel which she understands is a prescription medication geared to help sleeping.

[52] The grandmother said she is available to care for G. in the unlikely event her daughter is temporarily incapable of caring for G. due to impairment or a manic episode. She claimed her daughter was taken off her medication for bipolar disorder several years ago and has managed the disorder without special medications since then.

[53] The grandmother wrote that she raised three daughters in her home and that as a mother she has no concerns over her daughter's ability to parent G. during scheduled access or otherwise.

[54] In her testimony, the grandmother corrected her evidence by indicating that her daughter has lived with her since April, 2013 (not May). She insisted she has never actually observed K. smoking marijuana - rather she has smelled what she believes to be marijuana smoke. (That is because the consumption occurs outside the residence.) She reiterated that she has never seen her daughter in any state in which she appears to be impaired. If she did think her daughter was impaired, she said she would remove G. immediately and, albeit hesitatingly, stated she would contact the father.

[55] The grandmother recounted events in September or October, 2002 when she said her daughter was delusional and went to a hospital. She said she had difficulty understanding her daughter and was quite concerned. She said the hospital stay was relatively brief and that she was admitted on the orders of an emergency physician. Against this background, she said that if there is any repetition of such a breakdown she would contact medical officials and the father. Again I observe that she hesitated, and appeared reluctant, when she stated she would contact the father so that he could resume care should something along these lines happen.

[56] The grandmother admitted that there were so-called family discussions around the time the parents separated but, contrary to his version, she said it was the father – not her – who was very controlling and arbitrary at the time. She went on to deny any scheming between her and her daughter to try to provoke the father so as to thwart his parenting efforts. Contrary to his evidence, she insisted there were no direct discussions between them about her daughter's marijuana use and that they only discussed her state of mental health once in or about March, 2013 during which she said it was made clear that her daughter needed his support to deal with her problems.

[57] The grandmother acknowledged that her daughter was under considerable financial pressure and that she personally provided financial assistance. This is on the heels of B.'s broken promises (according to her) that he would take care of her (which never came to pass). Asked about the frequency of B.'s visits to her residence between August, 2012 and May, 2013, she stated it was only four or five times. She said that each visit was less than an hour.

[58] The grandmother conceded that she and the father did not get along very well - although she thought they did when his relationship with her daughter started. She weakly expressed some hope there would be healing and some restoration of the relationship between the parents.

[59] Sarah Pearson is a child protection worker at the Lunenburg District Office. She introduced a small volume of case recording reports spanning June 10th, 2013 to August 8th, 2013. During her testimony, Pearson conceded the agency largely relied on the mother's self-disclosures, and acknowledged she and her colleagues made no independent investigations beyond those revealed in the agency's case notes. As it happens, those notes went into evidence without serious objection, on the understanding that the weight to be assigned would be for the court's determination. With that in mind, a summary of the agency's involvement follows.

[60] Several social workers have been involved with the file (Sarah Pearson, Tiffany Smith, Tracey Sayer, and Terry Chaytor). Only Ms. Pearson offered any evidence. The original referral was from the father. He was generally concerned about the mother and specifically concerned about G. while in the mother's care. The concerns (about the mother) touched on prescription drug use, bipolar disorder allegedly causing "ongoing and frequent" periods of mental instability, G. being dirty and having a severe diaper rash, the mother's excessive marijuana use generally and use in G.'s presence, and about her home not being "baby proofed". The referral included reference to the maternal grandmother's use of herbal remedies and allegations the grandmother was acting as G.'s primary caregiver. The father provided typed emails/other written communication between the parents. No additional child protection concerns were identified.

[61] A second referral came from R. B. who was having an affair with the mother. B.'s concerns were the mother's prescription drug use, her marijuana use, claims she was not attending to G.'s diaper changes when needed, the mother's frustrations with G. and her lack of affection for her son.

[62] Both the father and B. expressed concerns about the maternal grandmother's age and health that would prevent or interfere with G.'s care.

[63] There was an unannounced home visit with the mother who reportedly denied smoking marijuana in G.'s presence. She claimed she only smoked marijuana when her son was not in her care and usually only smoked marijuana at night to help her sleep. The mother committed to marijuana abstinence in G.'s presence and to always have a sober caregiver for G.. Regarding her mental health, the mother disclosed she was prescribed Seroquel and Lamotrigine, denied she had also ingested "over the counter sleeping pills", and claimed she was managing her health in natural ways (i.e., with bee pollen, udo's oil, water with lemon and a healthy diet and exercise). The mother asserted she gave G. his needed medication,

as prescribed; and denied over-medicating and/or under-medicating him. The mother admitted she was experiencing a significant amount of stress in her life towards the end of her relationship with the father.

[64] To investigators, the mother's parents identified no concerns about her ability to care for G.. Both denied that they had witnessed their daughter smoking marijuana in G.'s presence. The grandmother advised the agency she knew sleep was important for her daughter's her mental health and therefore often let her sleep. Agency representatives reportedly observed no age-related issues that might be relevant to the grandmother's care of G..

[65] When contacted, the mother's physician expressed no concerns about her mental health or parenting. He confirmed "mood stabilizer" prescription (Seroquel) for sleeping and reportedly advised he did not believe "bipolar" was a current issue. He was aware of the parents' separation and that the mother had experienced one bipolar episode, years ago. In the same vein, the doctor's nurse practitioner expressed no concerns about G. and disclosed she had observed no signs of abuse or neglect. (She informed the father that there was no observed evidence to support his claims.)

[66] "Family friend" L.H. [sic] reportedly spoke very positively of the mother and her family. He denied observing the mother smoking marijuana around G. or that she was addicted to the drug. He claimed he spent time with the maternal family 4-5 times per week.

[67] Social worker Pearson observed no concerns between the mother and G.. She described K. as affectionate and attentive; and stated G. appeared happy and healthy. She reported no concerns about the state of the home. She observed baby gates present in the home, covers on the majority of the outlets and saw no black mold.

[68] The agency determined the father's substance abuse allegations could not be substantiated. It concluded the referral sources' specific incident complaints were "historical in nature (August 2012 and September 2012) and neither Mr. D. or Mr. B. reported concerns at the time or shortly thereafter". Also, on both of those occasions it was said that another adult was present, that the person was not under the influence of substances, and "presumably would have been equally responsible to ensure G.'s safety and wellbeing". Moreover, according to the agency records, the collateral sources who were contacted did not support the referral allegations,

and the mother was committed to not using marijuana in her son's presence and to ensuring a sober caregiver would be present to care for G. at all times. The agency also concluded the mental health issues were unsubstantiated in the sense that there were no professional concerns and there was some evidence that the mother was controlling any mental health issues through her prescribed medications, diet, exercise and some natural remedies.

[69] In brief, the agency decided there was no actual harm and no substantial risk of harm to the child, and that the file would be closed. In an editorial note, the agency added the father appeared to be genuinely concerned about his son's care but "he most likely did not have a clear picture of G.'s care while in the home of the B.", that the parents have "different opinions regarding lifestyle decisions for G.", and that there was "a significant amount of custody/access related conflict".

[70] I note there was some discrepancy between the case notes and Ms. Pearson's testimony about the extent of the mother's marijuana use and its justification (i.e., only as a sleep aid before going to bed or for other reasons) and whether the mother admitted (or did not admit) she still has a bipolar condition which impacts her sleeping or other behaviours). Some confusion was added when Pearson attributed a disclosure to the mother that she is still taking at least two prescription medications (one of which was loosely described as a mood stabilizer) while simultaneously insisting her condition could be "controlled through diet, exercise, and other natural methods" and that she no longer needed prescription medication for "anxiety".

[71] Surprisingly, I find, it seems the agency did not question where or how the mother was obtaining marijuana, how she was financing procurement, whether her physician was aware of the drug use, or whether (medically or legally) it was appropriate for her to be "self-medicating" for the medical benefits she claimed the drug gives.

[72] Pearson was aware of B.'s allegations - because they came in a written statement and from an interview. However, when confronted with the full spectrum of his knowledge and concerns (as presented in court), it became obvious that she and her colleagues likely did not fully appreciate how intimate his relationship with the mother was (i.e., it was not casual or fleeting), or the import of the depth and breadth of B.'s detailed knowledge and observations, or the significance of the referral allegations about her drug use and mental health.

[73] K. D. submitted an affidavit and testified. She briefly reviewed the legal history and the events leading up to the father's suspension of her parenting time, referrals to the local child protection agency, etcetera. In her response, she admitted she uses "a small quantity of marijuana prior to bed time to help me sleep" - but claimed she has never been impaired while caring for her son. She freely admitted the amount of marijuana she consumes before bedtime is "between one-half to one joint". (I took from that declaration that she must believe regular drug ingestion by her before her own bedtime would not affect her ability to respond to an emergency or other unexpected event while her son is sleeping at her residence.) The mother wrote that she does not drink alcohol or abuse prescription drugs, but conceded that she is taking prescription Seroquel. She stated that this drug is also "a sleeping aid".

[74] The mother said she was diagnosed with "bipolar disorder" in 2002, but asserted she has not been admitted to any hospital for the disorder since the initial diagnosis. She claimed that her mental health has been "good for several years". She admitted she had been taking another prescription drug, Zyprexa, for the bipolar disorder but stated that the prescription ended over six years ago. (As mentioned, this seems to be at odds with disclosures to Pearson.)

[75] As of late August, 2013 the mother said she was living with her mother and father in a three bedroom home in a nearby rural community. The home was characterized as well maintained and safe. She started a new full time job with a local employer that month and expected to be working from 7:00 a.m. until 3:30 p.m., Monday through Friday. She described her employment hours as predictable - so she will be able to spend a considerable amount of time each day with her son.

[76] The mother said she has the support of family members, particularly her mother and father. She described the family as "close knit". (I note that neither the maternal grandfather nor any other maternal family members submitted affidavits or testified, except for the grandmother).

[77] The mother said her mother conducts a small business from the residence and sees clients regularly at that site. According to her, her mother spends a lot of time at home and on the surrounding property when not working. She said her mother is a willing caregiver who is available to assist with child care responsibilities when needed.



[78] The mother posited that it is in G.'s best interests to have as much contact with both of his parents as is possible and that was occurring before the father suspended her contact with her son. Her parenting proposals are discussed elsewhere.

[79] The mother enhanced her affidavit evidence with rapid-fire answers to questions from both lawyers about the interim parenting arrangements as at hearing (which had been established by negotiation). She spoke about her current prescription drug regime - but there were no prescriptions or medical reports introduced to corroborate the purpose, dosages, frequency, side effects, etcetera. In the same vein, she introduced no medical reports regarding her past or current mental health (although she candidly admitted to a bipolar disorder). She did mention that insomnia was a major symptom at the time of the initial diagnosis and that she experienced manic episodes. However, according to her, the one and only hospital admission was just two days; and there have been no admissions to hospital since 2002. When discussing her mental health history, she refuted the father's version of the triggering incident back in 2002 and provided her own version.

[80] She, like the father, devoted considerable evidence to the couple's personal and employment circumstances predating the separation. I find it unnecessary to recapitulate that portion of the history.

[81] During testimony, the mother reiterated her use of Seroquel as a sleep aid and that she also smokes some marijuana outside the residence as a sleep aid. (I hasten to add there is no medical evidence that marijuana is a recognized treatment for that purpose.) Otherwise, she broadly denied any illicit drug use. To that end, she variously denied or downplayed B.'s testimony about her drug use. She qualified her evidence by admitting to past use of "hash oil" - but denied current use. More generally, the mother painted a relatively benign picture of her relationship with B. and, while admitting to non-prescription drug consumption "only a few times" in B.'s presence, she insisted her son was never around.

[82] The mother's eagerness to minimize and downplay past events included her version of what was perceived by B. and her own mother as a suicide threat (described elsewhere). She admitted that she had a significant quantity of pills in her possession at the time, that she did call B., etcetera, but rationalized this as a ploy to induce B. to join her in a shared property rental in HRM - that is, she was only intending to garner his sympathy and induce him to make a firm commitment

to their relationship and a decision on residency. As noted elsewhere, if it was a ploy, it did not work and her relationship with B. ended. The mother's evidence was that she had sensed her relationship with B. in the final months was fragile, at best. She testified that she caught him "in lies", but did not elaborate. She said she was under great financial stress and under tremendous pressure on several fronts. Indeed, she recognized her extra-marital relationship with B. was "wrong" and that she "talked to God about it". She said she was certainly aware that B. was lying to his wife. In any event, things continued to unravel and therefore (she said) she ended the relationship (not him).

[83] When confronted with physical evidence of marijuana and drug paraphernalia, the mother continued to deny the extent of her drug use as portrayed to the court by B.. She was careful not to disclose where she has been obtaining marijuana or how she has been paying for the drug. However, in one telling admission, she said "a friend gave her pot oil". This individual is apparently not only a close friend of her mother and the family, but he also figures prominently in the church they attend.

### **Discussion/Decision**

[84] Under the **MCA**, the father and mother of a child are joint guardians and equally entitled to the care and custody of the child unless otherwise ordered or provided by statute. When deciding upon parenting arrangements, the court must give paramount consideration to the best interests of the child. In determining the child's best interests, the court must consider all relative circumstances including, but not limited to, those factors set out in section 18 (6) of the **MCA**. I am mindful the court must give effect to the principle that a child must have as much contact with each parent as is consistent with the child's best interests. I do not propose to revisit the evidence with a view to touching on each of the relevant factors. However, they have received my attention while I summarized the evidence and reached my conclusions.

[85] Neither parent opposes joint custody with co-parenting but, unfortunately, they have been unable to find common ground on how that will be accomplished. The acrimony and distrust between the parents was palpable within the courtroom and echoed through the evidence. Unless there is a change in attitudes and conduct, I find joint custody will not be viable. The concept presupposes a level of

communication, cooperation and trust that will ensure non-acrimonious joint decision making on major issues such as education, religious faith, non-emergency medical care, etcetera. Joint custody may be distinguished from day-to-day care and parenting - that is, where and with whom the child will reside. The upshot is that I am not prepared to authorize joint legal custody at this time.

[86] With respect to the child's care, it is common ground that the parents had been enjoying shared parenting on an agreed schedule that they believed was meeting the child's needs and which also largely reflected their own preferences. In the wake of recent events, the parents are now at odds regarding the shared parenting cycle. Chances are the issue would have been resolved before now it were not for the undercurrents of the mother's mental health and drug use.

[87] I am mindful that a child protection agency received referrals and made investigations as to whether the child was at risk as contemplated by various sections of the **Children and Family Services Act (CFSA)**. The agency was unable to substantiate the allegations it received to a standard that would warrant formal intervention. With respect, it is not my role to "second guess" the agency's work - with the advantage of hindsight and evidence before me that may not have been available to the agency. Additionally, there was no evidence at the hearing about any new referrals from any impartial sources.

[88] That said, I note Mr. Dexter's submission on behalf of the father that this case might be just another difficult "he said; she said" scenario - were it not for B.'s evidence and several crucial admissions by the mother.

[89] Of course, B.'s personal morality is not on trial; nor should it be. However, I agree with the submission that B. was as close as to an independent (and perhaps indifferent) witness as there was in the courtroom. He had little, if anything, to gain at this stage; and he risks further embarrassment and harm to his own marriage with his wide-ranging and intimate disclosures. Mr. Dexter's characterization of B. as an individual "not without his flaws" and "not a paragon of virtue" was certainly an understatement - but I assess his evidence as generally credible and trustworthy in the circumstances.

[90] I conclude that B.'s evidence, taken together with all the other evidence before the court, has sufficiently identified areas of legitimate concern centering on the mother's mental health and drug use to warrant further attention. Without intending disrespect, the mother's tendency to deny, dismiss, minimize, and deflect

most, if not all, of the evidence that was adduced to be quite unhelpful and I have received her evidence with considerable caution.

[91] For his part, the father has been unable or unwilling to accept the findings of the child protection agency and, perhaps not surprisingly, reluctant to accept assurances from the maternal family that they are ready, willing and able to protect and intercede on the child's behalf, if need be. I am satisfied, as was the agency, that the father is well-intentioned and understandably concerned about his son's welfare. However, his courtroom demeanor and some of his evidence suggest a very emotional person who may easily slip into histrionics when things do not go his way or if others do not share his perceptions and opinions.

[92] On the evidence, I do find the father reasonably wants assurances that the mental health and drug use issues are in check and, some objective evidence that the mother's health and lifestyle pose no risk to his young son. In the end, I believe the father will accept the reality that the maternal family, more likely than not, can and will provide an adequate level of supervision or monitoring of mother and child - at least so long as they are under the same roof. It is hoped that the carefully crafted terms and conditions which accompany my order will generate some independent and objective evidence which will either substantiate the father's ongoing concerns or dispel them, in whole or in part.

[93] I accept the submission on behalf of the father that he is not seeking long term or indefinite monitoring of the mother's parenting - rather, modest assurances which will allow both parents to move ahead in the child's best interests.

[94] As stated elsewhere, I conclude that a return to the prevailing shared parenting arrangement would be in the best interests of the child at this time - provided it is accompanied with appropriate terms and conditions to address the identified concerns. The mother will be given a reasonable opportunity to meet those terms and conditions, after which a review would be appropriate.

[95] Implicit in the outcome is my finding that the father's concerns or fears are not exaggerated, stale-dated or overplayed and that it would be inappropriate for the court to approve a final order at this time.

**Dyer, J.F.C**