

IN THE FAMILY COURT OF NOVA SCOTIA

Citation: Joudrey v. Joudrey, 2006 NSFC 34

Date: September 8, 2006

Docket: FTMCA-041067

Registry: Truro

Between:

Marisa Suzanne Joudrey

Applicant

and

H. Scott Joudrey

Respondent

Judge: The Honourable Judge Jamie S. Campbell, JFC

Heard: May 31, 2006; July 19, 2006; August 15, 2006 and September 6, 2006

Oral Decision: September 8, 2006 in Truro, Nova Scotia

Written Decision: Released on September 12, 2006.

**Counsel: Doug Lloy, counsel for the Applicant
Brian Church, Q.C., counsel for the Respondent**

Application to Vary

TAKE NOTICE that an application is hereby made by the undersigned to the Judge presiding at the Family Court, 540 Prince Street, Truro, Nova Scotia, [Courtroom # 3] on Tuesday, the 14th day of March, 2006 at the hour of 10:00 o'clock in the forenoon or so soon thereafter as the application can be heard for a hearing of the Order dated October 12, 2005 on file herein.

AND FURTHER TAKE NOTICE that this application for a hearing of the proceedings for a variation of the said Order is made for the following reasons:

I make application to vary support for the child; Ryan Scott Joudrey, (DOB March 3, 2002), with the quantum of support to be in accordance with Child Support Guideline Table Amounts, pursuant to Section 37 of the *Maintenance and Custody Act*.

By the Court

Introduction

- [1] Judges strive to make decisions that are “right”. Right in that sense means that they apply the relevant law correctly and right also means that they do what is fair and just. We have to acknowledge that the choice is not always between a right answer and a wrong answer. Sometimes there is no right answer. No decision will make things right for Ryan and his family and no decision will repair the damage that has already been done.
- [2] This decision will be heartbreaking for some of the people involved. Whatever happens, some very legitimate hopes and expectations will not be met. Everyone involved wants what is best for Ryan.
- [3] Scott Joudrey wants to be able to continue to have a real parental relationship with his son. His parents Hugh and Gayle Joudrey want to be able to continue to play an active role in the life of their grandchild. Those are legitimate expectations. They are legitimate for Mr. Joudrey, for his parents and for Ryan.
- [4] Marisa Joudrey wants to be able to return home to Nebraska where she can work and make a life for herself. Otherwise, if she is to retain custody of Ryan, she is essentially kept against her will in a country that is not her home and where her short term economic prospects are dismal. Her expectations for herself and for Ryan are also legitimate.
- [5] There is no way in which those competing hopes and expectations can be reconciled. Given that impossibility, the question is which of the available options is best for Ryan, or perhaps which is least unattractive of those options.

Legal Context:

- [6] This is an application for variation of custody and access provisions brought under s. 37 of the *Maintenance and Custody Act*.
- [7] The Supreme Court of Canada, in *Gordon v. Goertz*, [1996] 2 S.C.R. 27 provided a summary of the law as it is to be applied to cases involving relocation. First, the parent applying for a change in custody or access must meet the threshold requirement of demonstrating a material change in circumstances. Here, Ms. Joudrey's proposed move to Nebraska clearly satisfies that requirement. That much has been agreed.
- [8] The Supreme Court goes on to state that once that test is met the judge must enter into a fresh inquiry as to the best interests of the child. Each case turns on its own unique circumstances. The judge must however, consider the existing custody and access arrangements, the desirability of maximizing contact between the child and both parents, the views of the child, the parent's reason for moving in those exceptional cases where it is relevant to the person's ability to meet the needs of the child, the disruption to the child of a change in custody and the disruption consequent on a removal of the child from family, schools and the community he has come to know.
- [9] There is no legal presumption in favour of the custodial parent, but the views of that parent are entitled to great respect and serious consideration.
- [10] It would be convenient to have set out in law a list of factors with the weight to be accorded each. That would provide a level of predictability that is not found in the law right now. The convenience of predictability however is outweighed by the importance of fairness, or "the best interests of the child". The best interests of even one child should not be sacrificed to provide for predictability.
- [11] The law essentially requires that judges apply common sense, not as the term is

sometimes used to justify what is simplistic or supposedly self evident. It is a much more complex process of considering relevant factors and applying a degree of prudence and humility to prevent one factor from overwhelming consideration of the others. It is tempting to seize on the factor which presents the equivalent of the “smoking gun”, but the law and common sense caution us not to be so self assured as to assume that the factor we have chosen should be the determining one. It is equally tempting, from a logical standpoint to cancel factors off against each other, until one is left which decides the case. That too is not in keeping with the common sense approach that the law requires.

[12] For example, the law requires the court to consider the wishes of the primary care giver. Those wishes cannot be a governing factor however.

[13] Similarly, the question is not whether the reasons for a parent’s decision to relocate are legitimate, though that can be a factor in determining the issue of the child’s best interests.

[14] The case cannot be about weighing the parents’ past behaviour, though that too can reflect on the central issue. The court must bear in mind the importance of seeing through the fog of litigation, which like the fog of war, makes it difficult at times to see the larger picture.

[15] This is not a question of mobility rights or of weighing the competing rights of the parents, one to access and the other to mobility. The parents have legitimate hopes and expectations but those are not the focus of the matter.

[16] The court must consider the importance of having contact with both parents, though once again, that cannot be the sole deciding factor.

[17] The parents’ abilities as parents and their personal circumstances must be considered as

they relate to the central issue.

- [18] The court must avoid an overly linear and mechanical reasoning process. There is no list that can capture every aspect of the full context that has to be considered and there is no factor that in every case trumps another.
- [19] A listing of factors, while providing some form of intellectual tidiness or convenience in communication may be misunderstood to suggest that the issues involved can somehow be neatly compartmentalized. Life is not organized that way. For example a parent's motivation for relocating may well be an issue or a factor for consideration. That factor however cannot be entirely separated from the behaviour of the two parents during the course of their relationship. Issues cannot be placed in such neat silos.
- [20] The law requires a court to consider the full context and apply reasoning that properly considers that full context, as a whole, not merely as a set of independent and unrelated factors. There is no decision matrix that can be applied.
- [21] Family law cases pose difficulties regarding evidence, particularly so in cases involving custody and access. Unlike cases that involve a discrete incident that takes place in a limited period of time, the requirement for a full consideration of the context, requires reaching conclusions that are much broader in their scope.
- [22] Inevitably the parties seek to portray each other in caricature and the complexities of family life are recounted in court almost as an unfunny pantomime. Based on those representations of the parties lives together and their personalities the court is left to consider the full context and make a decision.
- [23] Because the legal test is the best interests of the child, counsel have little direction as to what is or is not relevant. Considerable effort is expended on proving or disproving incidents on which the parties themselves place great significance. Incidents are put forth

as being indicative of a pattern of behaviour. Sometimes they are indicative of a pattern and sometimes they are not.

[24] The court's task is to avoid becoming buried in the minutiae but to see a more comprehensive picture. It must avoid reaching arbitrary conclusions based on competing versions of events yet cannot rely on some of the evidentiary presumptions that are at the foundation of the criminal trial. The court is left to consider the context based on a combination of facts on which there has been agreement, evidence that has not been challenged, allegations that have been contested and proven all with an array of unproven allegations swirling in the background.

Facts:

[25] The basic history of the family relationship can be agreed upon. Scott Joudrey is 36. Marisa Joudrey is 29. They met in Nebraska when he was driving a long haul trucking route. They were married in 2001 and she moved to Canada with him. She has not worked outside the home since that time. After a number of job changes, the couple returned to Scott Joudrey's home in Nova Scotia.

[26] Ryan was born on March 3, 2002. Marisa Joudrey remained at home with him. Scott Joudrey continued to work, again primarily in the trucking industry.

[27] The parties separated some time around July 1, 2005. That was particularly rancorous. Marisa Joudrey left the home and Scott Joudrey remained with Ryan for about ten days. Ms. Joudrey moved in with the Marshall family who lived next door. She remains there.

[28] Arrangements were made for Ryan to return to her day to day care and control with access to be exercised by Mr. Joudrey. Access has taken place amidst accusations and counter accusations. The parents exist in a state of full blown conflict in houses that are separated only by an adjoining yard. Whatever positive relationship that existed between

Marisa Joudrey and her in-laws appears to have disappeared and Scott Joudrey's relationship with his neighbours, the Marshalls is openly hostile. In short, the current living situation is a recipe for tension and the further deterioration of an already apparently dysfunctional relationship between Ryan's parents.

[29] In the middle is 4 year old Ryan Joudrey, about whom the court knows remarkably little. There are no reports as to how he has responded to the breakup of his family. There are no expert reports as to his needs or indicating how he will be able to respond to the changes that will take place in his life. Ryan is the subject of this case, not the merely the object through which his parents actions are to be assessed.

[30] Marisa and Scott Joudrey appear to have little respect left for each other, as people or as parents. Each is prepared to grudgingly mouth the words acknowledging that the other parent "loves" Ryan, knowing full well that this is expected of them, then each has gone to great lengths to show how the other puts his or her own interests before Ryan's.

[31] Marisa Joudrey's picture of Scott Joudrey is not at all complimentary. Her evidence paints a picture of a man who was jealous and controlling, temperamental, abusive, demanding, authoritarian, a habitual heavy drinker and gambler, a father who was not actively participating in the life of his son, and one who was prepared to manipulate his son's emotions. Scott Joudrey has a seven year old daughter from a previous relationship who he has not seen in five years. He has not provided support for that child and has not made serious efforts to develop a relationship with her. Based on Marisa Joudrey's evidence, Scott Joudrey appears to be self absorbed and immature.

[32] As for Scott Joudrey, his portrayal of Marisa Joudrey is equally uncomplimentary. She is described as being manipulative and controlling, having intentionally not applied for working status in Canada in order to be able to exercise the threat to leave the country. She is described as not caring for Ryan's well being, missing appointments with a speech pathologist, allowing him to be burned with a cigarette and ignoring the issue of his

allergies and other health issues. Scott Joudrey suggested that Marisa Joudrey was capable of being physically abusive, accusing her of having intentionally run over his foot with the car. She is described as impulsive and significantly as a liar, particularly with regard to her allegations of spousal abuse on Scott Joudrey's part.

[33] One is left to ponder what cruel fate brought these people together in a bar in North Platte Nebraska.. It would do the parties well to remember that the focus of their lives, Ryan, would not exist had it not been for that meeting and for the other parent. In this little boy are elements of each of them, both biologically and psychologically. If they love him, in any active way, they will each learn how to treat the other with respect, regardless of their own assessments as to whether the other is deserving of that respect in his or her own right.

[34] The court is left with very negative evidence regarding each of the parents and an obligation to sort it out. Are these people as bad as each adamantly urges me to believe?

[35] In sifting through the evidence it is critical that the court not be unduly swayed by impressions based on demeanor or manner, whether while a person is giving evidence or by how they conducted themselves in the courtroom in general.

[36] Similarly, the court must be careful not to make sweeping generalizations based on incidents which may not necessarily be indicative of a pattern of behaviour or of a particular disposition. As the parties hurl invective back and forth, by affidavit and in the evidence given on the witness stand, the court must find a way both to see it and to see through it. Unlike in criminal cases there are no presumptions upon which to rely. Often there are merely competing allegations and opposing versions of events with not enough evidence to conclude which one is to be preferred.

The Snider family:

- [37] Marisa Joudrey's family, the Sniders appear to be a favourable example of the modern mid-western American family. Her father, Darryl Snider has been an employee of Union Pacific Railroad for 29 years and is now a supervisor with that company. He and Cathy, his wife of seven years, live in Maywood, Nebraska, an agricultural village of about 250 people. The community is about 35 miles from the larger centre of North Platte.
- [38] Mr. Snider describes a small town with one store and a restaurant, and a home to close knit families. His description of his own family was as one of those, with the added frank assessment that like most families there were the occasional squabbles. Mr. Snider was divorced from Ms. Joudrey's mother 13 years ago, but they maintain a positive relationship and share some social occasions with their children.
- [39] The Sniders have maintained contact with Marisa Joudrey throughout her marriage and subsequent relocation to Nova Scotia. They had contact with Ryan soon after his birth in March of 2002, when they began personal visits which they have continued. Ryan knows his mother's family and they are certainly not strangers to him.
- [40] Darryl Snider has made arrangements for Ryan and Marisa Joudrey to come to Nebraska. There is a two bedroom apartment available for them until Marisa Joudrey is able to get on her own feet financially. Arrangements have been made for Ms. Joudrey to obtain a job with the Maywood Insurance Company, where Cathy Snider is the manager. The job is one that appears to have some scope for upward mobility within that small company.
- [41] Darryl Snider appears to be a sincere man. Despite the accusations made regarding him and his wife, Mr. Snider had no unkind words to say about Scott Joudrey. Mr. Snider does not appear to be one who is inclined to hyperbole and if anything tends toward quiet understatement. What he did not say about Mr. Joudrey, spoke as much about Mr. Snider as anything he could say himself.
- [42] Ms. Joudrey's brother John Snider is 27 years old. He is clearly devoted to his sister and

is genuinely concerned for her welfare and that of Ryan. His connection with Ryan is not based on novelty. He loves his nephew and regardless of whether he is living in Nebraska or Nova Scotia, his uncle John will be there for Ryan. John Snider is the one person of whom both Scott Joudrey and Marisa Joudrey spoke in glowing terms. He, like his father, did not speak ill of Scott Joudrey, despite the level of rancor between his sister and her estranged husband.

[43] Marisa Joudrey, at 29 is now living in a foreign country, miles from her family and the support they represent. She has not worked outside the home while in Canada. Her social supports are limited to her geographically removed family, her church and the Marshall family, who took her in at the time of the separation. Her ability to personally thrive in these circumstances is severely compromised and her ability to survive emotionally is a tribute to her resilience and determination and perhaps a testament to her stubbornness as well.

The Joudrey family:

[44] Mr. Joudrey's parents, Hugh and Gayle Joudrey have offered to help their daughter-in-law financially. As Hugh Joudrey testified, he bears her no ill will. He was anxious to help her and offered both money and groceries. His offers of help have been for the most part refused. Hugh Joudrey most certainly means well. His offers of help are not intended to compromise Marisa Joudrey's legal position or to try to win her back. He wants what is best for his grandson. Yet, the circumstances of this case have bred suspicion on both sides. The Joudrey's no longer trust Marisa Joudrey and she mistrusts them to the point of seeing even good faith offers of help as potential traps.

[45] If Marisa Joudrey were to remain in Canada, there is no doubt that the Joudrey family would be there to assist, if not for her sake then for Ryan's.

[46] If that were the case, it would take about two years for Marisa Joudrey to obtain

authorization to work in Canada. During that time, she would be financially dependant on Scott Joudrey and to some extent on his parents. That would do little to relieve the sense of mistrust that the breakdown of this marriage and ensuring difficult separation have helped to spawn.

[47] Scott Joudrey clearly loves his son a great deal and no one seriously disputes that. There is no more reason to doubt that he is capable of looking after Ryan's physical needs than there is to believe that Marisa Joudrey fed Ryan a more or less constant diet of hot dogs and day time television, as was intimated.

[48] Mr. Joudrey has the support of his family who clearly have a close and positive relationship with Ryan. As Hugh Joudrey very aptly said in his testimony, "We should all remember why we're here. It's about a four year old boy".

[49] Hugh Joudrey and his son Scott have had some physical altercations which the elder Mr. Joudrey stated were not of great concern to him. He noted that he grew up in an environment where physical confrontations of a relatively minor nature were simply a part of life. Hugh Joudrey gave evidence that his son would normally hit him on the shoulder. On cross examination he admitted that he had been struck in the head by Scott Joudrey and dropped to one knee to count to ten so that he would not hit back. Hugh Joudrey could not recall what had given rise to that incident.

[50] It is clear as well that Scott Joudrey's parents recommended to him that he seek counselling for anger management issues. This was at a point when in Hugh Joudrey's view, his son appeared to be depressed.

[51] While Scott and Marisa Joudrey may be entirely incompatible, their families are remarkably similar. Both families appear to be honest, decent, hard working people, devoted to Ryan and his welfare. This is not a contest about who loves Ryan more, or which extended family cares more about him. On any measure Ryan will benefit from

regular contact with both families. Neither “outloves” the other and neither is more stable or functional than the other.

- [52] A contemplated move to Nebraska would bring Ryan closer to his mother’s family and farther from his father’s family in Nova Scotia. The Sniders are not strangers to him. This is not a move to a strange environment for either Marisa Joudrey or in large part for Ryan. The physical arrangements would be different, but the family environment would not be foreign to Ryan. Ryan would undoubtedly miss his father and the Joudrey family. He would see his Nebraska relatives more frequently however.
- [53] A move to Nebraska would not involve a move into an environment in which Scott Joudrey is held in total contempt. Similarly, while the Joudrey family has been closer to the site of the dispute, they are not poisoned against Marisa Joudrey to the point where they would be a negative influence, either with respect to Ryan or with respect to Scott Joudrey’s willingness to encourage a strong bond between Ryan and his mother.
- [54] The physical arrangements for Ryan in both locations are satisfactory. In either Maywood or Truro he would have proper schools, care during the work day, play areas and health care. While there may be measurements upon which one community may be seen as being more desirable than the other, those pale in comparison to other considerations. There may be circumstances in which the physical environment into which a child is proposed to be placed will be significant. This is not one of those circumstances.
- [55] It is tempting to check off the geographic relocation and the presence of extended families as a neutral issue. That mechanical process however would not be in accord with the requirement to consider the matter as a whole. The considerations regarding the two families must form part of the context in which the decision is made.

Reasons for Proposed Move:

- [56] Marisa Joudrey's proposed move to Nebraska is not one that comes about from a professional opportunity. This is not a situation in which the custodial parent has, after some time of separation, been presented with either a required transfer or a chance for professional advancement. She has actively sought this move.
- [57] On the other hand however, Ms. Joudrey's options while remaining in Canada are limited. It could take two years for her to obtain permission to work in Canada. During that time, she would remain dependant on Mr. Joudrey and his limited resources.
- [58] There is an allegation that Marisa Joudrey has intentionally not sought a working visa in order to maintain the threat of returning to the United States. She explained that the application could not be completed until Mr. Joudrey filed his income tax returns. She asserted that Scott Joudrey ripped up some of the information needed to file her forms and did not file his own income tax returns. Mr. Joudrey denies having destroyed any of her paperwork or paperwork pertaining to Ryan and instead says that Marisa Joudrey is trying to manipulate the situation for her benefit.
- [59] Marisa Joudrey's reasons for wanting to leave Nova Scotia appear to be a combination of wanting to return home, achieving some level of independence through work, and getting away from a bad relationship. The latter reason could suggest an element of attempting to avoid access or to remove Ryan from his father's influence. Had that been a prime motivating factor for her, she would have attempted to leave at the first opportunity. She did not.
- [60] Motives are not always clear, either from the point of view of those observing the situation or from the perspective of those immersed in it. Motives are often not pure. They are as complicated as the people who have them and the situations they face. Attributing clearly defined motives to one who may be operating on a combination of motives, which they themselves may not fully appreciate, may not be entirely helpful. I am satisfied here, that Ms. Joudrey's motivations for leaving are not such that they

should be a significant factor in the determination.

Wishes of Custodial Parent:

[61] The wishes of the custodial parent are normally entitled to considerable respect, not as a presumption but because that person is in close touch with the needs and circumstances of the child involved. While Ms. Joudrey's wishes must be considered, it must also be noted that this is not a case in which a long term custodial parent has decided to move. The parties have been separated for only about a year. Ms. Joudrey's knowledge of Ryan's needs is not significantly greater than Mr. Joudrey's. The fact that circumstances have resulted in her having day to day care and control of Ryan at the time of the application should not be seen as giving her position greater strength than his.

The Parties as Parents:

[62] The parties personalities, attitudes, aptitudes and past behaviours are relevant insofar as they reflect upon their parenting of Ryan. They all form part of the relevant context.

[63] The process of family law litigation results almost inevitably in a cataloguing of past sins, some of which are indicative of a pattern and some of which are not. Courts are well suited to making findings of fact and determining whether the probability weighs for or against a certain thing having taken place. The process is less well suited to getting the measure of the person, whether as a person or as a parent. The court is left with competing allegations and counter allegations, which, if they were required to be resolved, would require findings of fact or credibility based on the bare allegations themselves.

[64] The real question is the extent to which the parties actions, to the extent that they can be determined at all without being entirely arbitrary, are indicative of what they are like as

parents.

- [65] Marisa Joudrey does not have a great deal of respect for Scott Joudrey. Her views on access and what would constitute reasonable access for Scott Joudrey confirm this view. She proposes minimal access for Mr. Joudrey should she relocate. This raises the spectre of her denying access should she relocate and forcing him to resort to enforcement in a foreign jurisdiction.
- [66] Ms. Joudrey can be demanding. She has not always been accommodating, whether with regard to access or in the marriage itself. Marisa Joudrey does not see the world in shades of grey. She is determined and it might be said headstrong. After some altercations with Mr. Joudrey she has taken her position, staked her ground and announced her determination to hold it. She remains calm, resolute and immovable.
- [67] Mr. Joudrey presented evidence that Ryan was burned by a cigarette held by someone in the household. He took Ryan to the hospital. Child welfare authorities were alerted. The RCMP became involved. The Emergency Record was entered as Exhibit #21. That report notes that Ryan had reported that "Linda" had burned his hand and had hurt his shoulder before that. The matter was referred to Children's Aid by the hospital.
- [68] Mr. Joudrey testified that Ryan had reported running into a lit cigarette.
- [69] Ms. Joudrey denied that Ryan had been burned in that way. She has not been contacted either by the police or the Children's Aid Society, with respect to the incident which occurred on June 2, 2006.
- [70] In this matter, each parent has looked for anything he or she can to cast doubt on the motives or parenting abilities of the other. If Ryan was burned by accident, either by Ms. Joudrey's coffee or Linda Marshall's cigarette, it was an accident. Accidents happen, even when the very best care givers are involved. The fact that this incident was escalated

to a child welfare matter is indicative more of the level of distrust and animosity between the parents than of any child welfare concern. Honest communication would have resolved the situation. Instead of being an accident involving Ryan, it became “evidence”.

[71] It is hard to imagine a more volatile pairing than Scott and Marisa Joudrey. Scott Joudrey is a man who shows his emotions, for better or worse. He is impetuous. His emotional nature and Ms. Joudrey’s often more passive yet equally firm response fed each other. His emotional reactions led to her becoming more resolute, which simply contributed to his raising the level of his emotional reaction.

[72] Scott Joudrey has had a number of jobs and a number of job changes. Whether that is blameworthy of course depends on how the change in each case is characterized, but from April 2001 until April 2005 he had ten jobs, though sometimes going back to the same company. In each case his reasons may have been explainable or attributable to financial issues but the number of changes itself speaks for itself.

[73] Mr Joudrey is now embarking on yet another career as a carpenter.

[74] Mr. Joudrey has another daughter, Chelsea, who is now seven years old. He has not seen Chelsea since she was two, following a dispute involving her mother. That dispute involved a criminal conviction for harassment. Mr. Joudrey denies that the charge had any substance and that he was convinced by his lawyer to plead guilty to it. There may have been extenuating circumstances as Mr. Joudrey contends and he is now engaged in the process of trying to reintroduce himself to his daughter. The fact remains however, there are criminal convictions entered. His conviction and his five year estrangement from his daughter are not determinative of anything but are part of the context that must be considered.

[75] Mr. Joudrey’s relationship with the Marshall family may never be entirely understood.

The families started out as neighbours and friends. At one point Mr. Joudrey accused the Marshall's teenaged daughter Jennifer, who was babysitting Ryan of stealing \$200 from him. He was so exorcized about the issue that he wrote "Jen is a thief" in marker on the kitchen wall. The wall was being repapered in any event and the act was not one where physical damage was done to the family's property. Again, it is not a particularly damning piece of evidence. It does provide some insight into Mr. Joudrey's emotional and sometimes volatile nature.

[76] Mr. Joudrey and his father, as noted , have had physical altercations. Neither placed great significance on these. Hugh Joudrey frankly acknowledged that at one point he believed his son needed anger management counselling. Again, this uncontroverted evidence is consistent with the picture of Scott Joudrey. Mr. Joudrey, for his part, said that his hand might have hit his father's shoulder but that this was not done in anger. While Hugh and Scott Joudrey were not involved in a fist fight, it is impossible not to conclude that Scott Joudrey struck his father in the course of one or more disagreements. Scott Joudrey could not bring himself to acknowledge that.

[77] Mr. Joudrey was charged with assaulting Marisa Joudrey. Those charges were dropped by the Crown in December 2003, after receipt of a letter from Marisa Joudrey recanting the statement she gave to police on February 10, 2003. Marisa Joudrey maintained at trial that the statement given to the police was true and that she had been coerced into signing the letter recanting it. Mr. Joudrey adamantly denies any coercion.

[78] Abused spouses often resile from their statements made to police. That happens for a number of reasons, including fear of the consequences of a conviction, the economic and social uncertainty, forgiveness and reconsideration in calmer circumstances. There is no way to know why Ms. Joudrey signed a letter urging that the charges be dropped.

[79] It is clear however that Ms. Joudrey was under some not entirely subtle pressure from Mr. Joudrey. His father, Hugh Joudrey acknowledged that he had spoken to her about it

and discussed the possible ramifications of a conviction including the potential for involvement by the child welfare authorities.

[80] Scott Joudrey wrote her an intensely emotional note about the situation. Some might describe the note as crossing over into emotional blackmail. It falls short of making threats but again, provides some insight into Scott Joudrey's nature. "I'm not having anyone tell me I can't talk to my wife and I'm not having you keep my son from me". Ms. Joudrey was told, in that note, that if she did not tell the police that she had lied, he would leave and could not say where he was going. Yet, in the note he professes his love for Ryan, for Ms. Joudrey and for his other daughter Chelsea.

[81] Marisa Joudrey did not write the letter unprompted. The pressure on her may have fallen short of coercion. Mr. Joudrey may not have dictated the letter and Hugh Joudrey may not have proofread it, but Marisa Joudrey was acting under some pressure, exerted by Scott Joudrey and his family.

[82] Mr. Joudrey deals in extremes. At the time of separation he made repeated telephone calls to the Marshall house when he was not granted access to Ryan. While the calls might have begun as legitimate requests for access they became expressions of his own frustration.

[83] Mr. Joudrey recounted instances where Ryan has wanted to "stay with daddy" and not go with his mother. Mr. Joudrey asserts that when his son is with him he does not want to leave and has to be talked into going with his mother. Mr. Joudrey's belief in this regard may well be correct. That reaction is not entirely unusual for children. The more Mr. Joudrey tries to comfort Ryan the greater an issue it becomes. His manner of comforting his son appears to be a confirmation of Ryan's fears rather than an affirmation of the importance of going back to his mother.

[84] Scott Joudrey is a man of intense emotions. One of those is love for his son. He acts on

those emotions, sometimes for better and sometimes for worse. He is not a bad person, nor a foolish one. He is a complex one however. He appears to be driven by a combination of an intense love for his son, a strong dislike for the Marshalls, a sense of abandonment and betrayal by Marisa Joudrey and an overwhelming fear that he will lose his son.

[85] In his evidence he showed a remarkable ability to bridge from a question to what he believed to be his own key message for the trial. Each question would be acknowledged, and sometimes answered, but then would often be turned into an opportunity to present some unflattering comment about Ms. Joudrey or an affirmation of his own sterling qualities as a father.

[86] When asked about anger management, he used this as a chance to note that he had suggested that Ms. Joudrey attend for counselling to deal with her anger issues.

[87] When answering questions about the family's food buying habits, he managed to insert that Marisa Joudrey liked to go to Burger King and that she cooked hot dogs for Ryan and didn't even want to prepare a salad for herself. He also noted that when dealing with family finances she was able to keep her fitness club membership and Avon bills paid.

[88] When asked about pawning Marisa Joudrey's jewelry he was able to bridge to a story about how she had accused the people in her church of stealing it.

[89] Dealing with the issue of his daughter from another relationship he added that the nonpayment of maintenance was in part Ms. Joudrey's fault because he assumed she was paying it.

[90] On the issue of how his schedule when driving trucks resulted in his demanding that Ryan be kept up late at night, rather than simply deny the allegation, he added parenthetically, that Marisa Joudrey did not get up until 10:00 a.m. or 10:30 a.m. and

scheduled Ryan's naps and bedtime around her favourite television programs.

- [91] When asked about his allegation that Darryl Snider has a gambling problem, he was able to insert that not only did Mr. Snider gamble on line, but that Mr. Snider had said that he and his wife were too old to be looking after grandchildren.
- [92] When asked about mood swings, Mr. Joudrey segued into a tearful and emotional statement about how much he loved and missed Ryan.
- [93] He was shown a copy of a burned picture of Ms. Joudrey and her brother and was asked whether he had destroyed it. He used this as the opportunity to note that Ms. Joudrey suffered from having a split personality. The answer had little to do with the question, but Mr. Joudrey was deftly able to lead from the question to his statement.
- [94] Scott Joudrey's evidence was such that even ignoring Marisa Joudrey's characterizations of him, it would be difficult not to conclude that his practiced earnestness belies the skills of a manipulator. He is an emotional man and has the ability to use that trait to achieve his ends.
- [95] Both parents would be able to provide for Ryan's physical care. Neither one presents a danger to him in any physical sense.
- [96] Marisa Joudrey represents a source of emotional stability in Ryan's life. I am satisfied that she is a concerned, caring, capable and stable parent. While there were allegations made to suggest that she is otherwise, those allegations did not fit within any consistent negative pattern of behavior. Her actions, when questionable, have been the result of fear, suspicion and her precarious circumstances.
- [97] Scott Joudrey is also concerned and caring. He loves Ryan and the time he spends with him is very important for Ryan. The mental image of a four year old boy holding tight to

his dad is both touching and important. There is no denying the bond that is clearly there.

[98] In fact, Scott Joudrey appears to connect well with all children. He is a minor hockey coach and goes beyond the call in that regard.

[99] Scott Joudrey is impetuous, highly emotional and to some extent manipulative. He says that he would encourage contact between Ryan and his mother should he be granted day to day care and control of Ryan. His overwhelmingly negative comments about her serve to call that stated commitment into question. His sense of loss and betrayal may move him in other directions if given the opportunity. With Ms. Joudrey and Ryan living in the same community with him, and he having day to day care and control of Ryan, the potential that he would continue to exert emotional pressure is significant, and not in Ryan's interest.

Decision summary:

[100] It will be in Ryans's best interests to remain with his mother, as his primary care giver, as she has been for almost all of his life.

[101] Her move to Nebraska does not change that. There she will have resources to draw on that she would be deprived of in Nova Scotia. She will be able to start work and will be able to have regular and close contact with her family.

[102] Requiring her to remain in Nova Scotia would maintain her in a dependant state, which would have both financial and emotional consequences for her. Having his mother in that condition would not be in Ryan's best interests. He needs her at her very best.

[103] Requiring Marisa Joudrey to remain in Nova Scotia would have the incidental effect of encouraging the short range bickering to continue on a daily basis and would affect both

her ability to provide the physical and emotional care that Ryan needs and Scott Joudrey's ability to have a meaningful roll in his son's life.

[104] Regular and frequent access is a very import consideration in matters of this kind. In this case that is true as well. It would be a matter of ignoring the elephant in the room if the court did not acknowledge that as between Scott and Marisa Joudrey, frequent access arrangements have not lived up to their theoretical potential. They have become a source of discord and a weapon for both sides. Where either parent sees an opening to press the advantage he or she will take it, as they have, on an almost daily basis. That does not suggest that access is a bad thing. On the contrary, it is vital to Ryan's best interests. The party's attitudes and the circumstances in which access has taken place have become part of the ongoing problem. It is not the fault of one person.

[105] It is of considerable concern that Ms. Joudrey proposed access for Scott Joudrey that was entirely insufficient to meet Ryan's needs. I am satisfied however that with the influence of her family, and out of what has become the immediate theatre of battle, she will abide by access provisions. Equally, I am concerned that Mr. Joudrey, if granted custody, would continue to press the advantage.

[106] Marisa Joudrey is not leaving Nova Scotia to avoid that unpleasant situation. Her motives are mixed but do not include giving vent to vindictiveness. She is not running away from Nova Scotia as much as she is going home. She was prepared to remain in Nova Scotia however if that were what it would take to have day to day care and control of Ryan, or if Mr. Joudrey were to be the parent with day to day care and control. Ms. Joudrey's move is not a tactic.

[107] Ryan will not be deprived of extended family. He will have his mother's family nearby. He will miss the Joudrey's and they will certainly miss him. At his age, he will recover much more quickly that will his grandparents.

- [108] Ryan is not being uprooted from established schools and a community he has come to know. At the age of four, there is no doubt that he will be able to fit into the day to day life in Nebraska in a very short time.
- [109] Ryan needs the emotional stability that Marisa Joudrey can provide. She is not perfect and has not claimed to be. There is no pattern of behaviour that shows her to be reckless or uncaring as to Ryan's well-being or to be unfocused in any way with respect to providing for him either physically or emotionally. The role of a single parent is not easy, even when parents cooperate. There will be times when the parent with whom Ryan lives will be tried and tested. The tests are of both physical and mental stamina. Marisa Joudrey has shown that she is more likely to be able to stand up under that pressure.
- [110] For all of those reasons, custody will be ordered to be with Marisa Joudrey with access to Scott Joudrey. Distance and animosity dictate that joint custody is not a practical option in this case.

Access:

- [111] As has been noted, it is critical that Ryan and Mr. Joudrey have an opportunity to develop and maintain a real parental relationship as Ryan grows older. That can only be done if contact is substantial and in circumstances that are not artificial. Geographic separation is a problem, not a challenge. It is not a problem that can be solved and can only be dealt with as well as circumstances will allow.
- [112] Mr. Jourdey should have Ryan with him for one 30 day period during the summer. The month will be chosen by Mr. Joudrey. He will be required to notify Ms. Joudrey in writing, of his choice, prior to May 15 of each year. If he does not provide notification of the 30 day period, the choice will be Ms. Joudrey's, and she will notify him by June 15 of the 30 day period that Ryan will be spending with him.

[113] Ryan will spend alternating school breaks and Easter vacations with Mr. Joudrey. Until Ryan enters the school system the break periods will be determined based on the school schedule in the area in which he resides. Following that, the breaks will be those of the school in which he is registered. He will spend school spring breaks with Mr. Joudrey in odd numbered years, beginning with 2007 and Easter breaks in even numbered years beginning in 2006. The access period will begin at 5:00 p.m. on the last day of school before the break and end at 7:00 p.m. on the day immediately preceding the resumption of school.

[114] Mr. Joudrey will have the option of spending either Canadian or American Thanksgiving weekends with Ryan. He will notify Ms. Joudrey of his decision 30 days before the proposed access.

[115] With respect to any of these times, Mr. Joudrey may either bring Ryan to Nova Scotia or go to Nebraska for access there. If he chooses to bring Ryan to Nova Scotia, he will advise Ms. Joudrey of the travel arrangements within 14 days of the proposed travel.

[116] If travel is to be by air, Ryan will be accompanied by an adult until he is old enough to travel as an unaccompanied minor with an escort provided by the airline, and in accordance with the regulations of the airline or airlines involved. Ms. Joudrey is to ensure that Ryan has appropriate travel documentation.

[117] The cost of all travel is to be paid by Mr. Joudrey.

[118] If Mr. Joudrey chooses to visit Ryan in Nebraska for any of these periods, he must advise Ms. Joudrey of the arrangements, including where he will be staying with Ryan. If Ryan is to remain at home with daytime visits by Mr. Joudrey, he will pick Ryan up at 9:00 a.m. and return him home by 7:00 p.m. unless other times are agreed upon.

[119] Mr. Joudrey will have telephone access to Ryan each Sunday evening at 10:00 p.m.

Atlantic Time. The cost of the call will be paid by Mr. Joudrey. If Ryan will not be available at the scheduled time, due to another activity, Ms. Joudrey will contact Mr. Joudrey by telephone or email at least 10 hours before that time, and arrange to a call to be made, with 48 hours of that time. Ms. Joudrey will bear the cost of her call to Mr. Joudrey and the cost of the rescheduled telephone access to a maximum of 15 minutes. The parties will advise each other of their respective telephone numbers and of any changes to those numbers.

[120] Mr. Joudrey will have unlimited access to contact Ryan by mail or e-mail and Ms. Joudrey will provide a home email address as soon as she has one. Ms. Joudrey will read e-mails to Ryan from his father and will type e-mails dictated by Ryan to his father until Ryan is able to read and write on his own.

[121] Ms. Joudrey will provide Mr. Joudrey with current information regarding Ryan's school and extracurricular activities, as well as medical and other personal information.

[122] Given Mr. Joudrey's current circumstances and the significant costs associated with exercising access, it is not appropriate that regular monthly child support be ordered.

[123] Mr. Joudrey's current income is approximately \$30,000 per year. Child maintenance would normally be in the order of \$268 per month or \$3,216 per year. He will provide Ms. Joudrey by September 1, of each year with a copy of his income tax assessment form for the previous year, and with a copy of all receipts related to travel for purposes of exercising access during that taxation year. He will pay as child support for that year the amount by which the amount spent on access related travel is less than \$3,216. That amount will be payable on or before September first.

[124] For the remainder of 2007 the amounts will be prorated.

[125] Access related travel costs include the costs of airline or other travel for Ryan and an

accompanying adult if required by airline regulations. Access related costs do not include costs incurred for accommodations, food or entertainment in Nova Scotia. If Mr. Joudrey drives to Nebraska to pick Ryan up, or to exercise access there, access related travel costs will include the cost of gas, lodging to a maximum of \$125 Cdn. each day for Mr. Joudrey and Ryan and food to a maximum of \$60 each for Ryan and Mr. Joudrey. Those costs will be applicable for travel to and from Nebraska and while Mr. Joudrey is visiting Ryan in Nebraska.

[126] Each party will bear his or her own costs.

[127] It is important in this case that any transition be handled fairly with respect for the process. While Ms. Joudrey is no doubt anxious to go home, and to get her new life underway, the court process and Mr. Joudrey's rights must be respected. Ryan should not be whisked away. Ms. Joudrey will not be permitted to relocate with Ryan, or to remove him from the Province of Nova Scotia until on or after October 10, 2006. This will give Mr. Joudrey an opportunity to appeal this decision and to seek a stay should he wish to do so.

[128] Custody matters take a toll on the parties and their families. That toll is both financial and emotional. These are not easy matters for counsel either. As I indicated to the parties at the conclusion of argument and before a decision was made in this case, the trial was conducted with the utmost of professional skill and courtesy on the part of both counsel. They are to be commended for the professional, humane and dignified way in which they have dealt with each other, the court and the opposing party.

[129] A written version of these reasons will be made available in due course.