

IN THE FAMILY COURT OF NOVA SCOTIA
Citation: J.F. v. K.H., 2011 NSFC 25

Date: 2011 11 03
Docket: FLBMCA-069716
Registry: Bridgewater

Between:

J.F.

Applicant

v.

K.H.

Respondent

Judge: The Honourable Judge William J. Dyer

Heard: August 23 and 24, 2011 at in Bridgewater, Nova Scotia

Oral decision: November 3, 2011

**Written Release
of Oral Decision:** February 10, 2012

Revised Decision: The text of the decision has been revised to protect the identity of certain parties. This revised version is released on February 23, 2012.

Counsel: Johnette Royer, for the Applicant
Susan Mullins, for the Respondent

By the Court (orally):

[1] In mid-April 2010 J.F. started proceedings under the **Maintenance and Custody Act (MCA)** against K.H. to deal with parenting issues, and also to address child support under the **Child Maintenance Guidelines (CMG)** in regard to their child A. who was then about two years old. By mid-May both parties had lawyers.

[2] K.H. questioned paternity, apparently after hearing rumours or gossip that he may not be the father. The case was delayed pending genetic testing which ultimately established K.H. as A.'s biological father. K.H. blamed one of his former lawyers for pressing the issue.

[3] By early August an access schedule was in place and confirmed by a consent order. The order was refined in early September, 2010. But, K.H.'s financial disclosure was incomplete and his employment status was uncertain. Child support was not being paid.

[4] K.H. filed a brief nine paragraph affidavit in May, 2010. Thereafter, he submitted nothing in affidavit form.

[5] I should mention that the very first consent order in August required both parents to provide their addresses and telephone numbers to the other. This was repeated in the September 7, 2010 Order. There was evidence, discussed later, that K.H. did not comply with the requirement.

[6] It was learned in late November that the local child protection agency had become involved with the family. The access schedule was interrupted pending completion of agency investigations. And, K.H. changed lawyers.

[7] Soon after, the parties agreed to further amend the access schedule, including arrangements for the Christmas/New Year's time frame.

[8] Child support was still outstanding but K.H. agreed on the record to pay \$40 monthly starting on December 15, 2010 - on a without prejudice voluntary basis.

[9] By late January 2011, there were still outstanding disclosure issues surrounding K.H.'s income. On the record, counsel for J.F. gave notice that her client was still seeking a child support award going back to the start of the proceedings. Once again, the parties agreed to refinements in access.

[10] In mid February, it was disclosed that K.H. and his second lawyer would be parting ways. Routine income disclosure by him was still incomplete prompting me, not for the first time, to caution K.H. about the implications of not providing court-ordered financial disclosure.

[11] In early March, K.H. was having problems with legal representation but did submit some financial information, albeit incomplete.

[12] In late March the case was scheduled for hearing. By then K.H. had been denied legal aid funded representation. He unsuccessfully appealed the decision.

[13] K.H. declared he would be seeking sole custody although he had not filed any formal application along these lines. All pre-hearing documents on behalf of the parties were to be filed by mid-June.

[14] K.H. engaged Ms. Mullins just before the hearing was slated to start in late August. I refused to adjourn the matter when requested on K.H.'s behalf. I heard testimony and submissions on behalf of the parties. Ms. Mullins had her work cut out for her, mainly because of K.H.'s failure to come to grips with things far sooner than he did.

[15] Post-hearing filings and submissions regarding income and related issues were allowed, by agreement of counsel. The last income tax disclosures on behalf of K.H. did not reach the court file until October 14th. My decision was delayed pending receipt of that information. Ms. Mullins also submitted a legal memorandum in letter form.

[16] The case has now been outstanding for about 18 months.

The Evidence

[17] The issues to be decided were relatively narrow but a large volume of evidence was introduced at the hearing. My review of the evidence is therefore more detailed than usual.

[18] K.H. expressed a preference for an oral decision, rather than one in written form. I am honouring that request.

J.F.

[19] J.F. submitted two affidavits and testified.

[20] She recounted that the parties lived in a common law relationship from early August 2007 until mid January, 2010 when they separated. She alleged that K.H. mentally abused her during their relationship. She gave examples of his offensive conduct going back several years.

[21] Central to the conflict, according to J.F., more often than not, was the paternal grandmother, L.H., and a paternal aunt, M.H.. [See for example paragraphs 7, 8, 9, 10 and 11 of Exhibit 1]

[22] Similar territory is covered elsewhere in my discussion of the paternal grandmother's evidence.

[23] After the separation, J.F. claimed K.H. made little or no serious attempt to establish access arrangements for a couple of months. When he did express interest, J.F. was worried about contact with members of K.H.'s family because of their past conduct toward her, in private and in public.

[24] Early on, J.F. also expressed concern about their child's exposure to cigarette smoking by several members of the K.H. family and alleged that her concerns were always minimized or disregarded.

[25] Regarding A.'s hearing problems, in Exhibit 1 J.F. wrote about investigation and treatment under the auspices of the IWK Health Centre in Halifax and the need for hearing aids to assist the child with diagnosed moderate hearing loss.

[26] According to J.F., the K.H. family balked at the assessments. Indeed, J.F.'s evidence was that the paternal grandmother said on one occasion if hearing aids

were sent with A. on his visits that they would not be used and would not be coming back “in one piece” or words to that effect. In the same vein, J.F. said the father told her that hearing aids would not be used.

[27] J.F. also asserted that before and after the separation K.H. repeatedly threatened to take A. and not return him. The mother continues to harbour some fears in this regard despite the passage of many months.

[28] To further exemplify K.H.’s unpredictable and irresponsible behaviour, J.F. cited an incident in mid-April, 2010 when he harassed her and their child using a motor vehicle. [See paragraph 17, Exhibit 1]

[29] As mentioned, after J.F. started proceedings in mid-April, 2010 K.H. decided to challenge paternity. After he was confirmed as the father, there were negotiations in aid of settlement. And, as already noted, J.F. agreed to an interim access order by early August, 2010. By then, K.H. had not seen the child for about eight months. Therefore, a series of introductory supervised visits were arranged. Access was then expanded to unsupervised day visits - despite the mother’s concerns about where access was occurring, who was present during the visits, etcetera.

[30] However, J.F. stated that unsupervised access eventually brought a bundle of new issues described at some length in Exhibit 2 starting at paragraph 8.

[31] In late August, 2010 there was a very unfortunate incident at a local hospital where K.H. and his mother had taken the child for examination without J.F.’s knowledge or consent.

[32] In mid-September, 2010 after an access visit, the mother noticed what she described as an “unusual mark” on the top of one of A.’s legs. This prompted her to seek a medical examination, to take photographs, to arrange a follow-up exam, etcetera. She also made a referral to the local child protection agency - the implication being that the child had suffered deliberate harm while under the care of the father and his family.

[33] According to J.F., agency representatives advised her to suspend access pending the outcome of their investigations. Apparently there was a collateral referral to the IWK Child Abuse Team. By October, the mother knew the agency

could not conclusively establish the cause of the mark. The agency closed its file soon after.

[34] Around this time, K.H. decided to change lawyers and soon after his access was restored to every second weekend from Friday to Sunday and, in the off week, one overnight visit from Friday night until Saturday morning.

[35] Not surprisingly, the mother's child protection referral caused more strains and stresses on the access visits. The mother, for example, gives her version of problematic Christmas access in Exhibit 1 at paragraphs 15 and 16. According to her, the paternal grandmother was (once again) an unhelpful intervener.

[36] Not to be outdone, K.H. or members of his family made referrals to the agency in February, March and April, 2011. J.F.'s version of the events appears in Exhibit 2, paragraphs 17 - 19. The upshot appears to be that any concerns were not substantiated by the agency.

[37] J.F. gave evidence of an understanding that only K.H.'s brother Jeremy would be present for access transitions but claimed that others have repeatedly shown up without her approval. On one occasion during the summer she said K.H.'s sister unleashed a volley of name-calling and inappropriate language at her. According to J.F., K.H. did not intercede or put a stop to the childish and ignorant conduct exhibited by his sister.

[38] On the subject of communication between the parents, J.F. wrote they are unable to do so civilly or cooperatively. She elaborated on this starting at paragraph 21 of Exhibit 2. In testimony, she claimed K.H. stubbornly refuses to talk to her and tends to limit his conversation to brief answers or comments, at best. Recently, there were attempts at communication by a journal or notes which she claims were conceived and authored by K.H.'s mother - not him - although he signed them.

[39] Regarding A.'s current state of health, J.F. summarized his current needs at paragraph 25 of Exhibit 2 and expressed, not for this first time, health concerns incidental to access at paragraph 27. She rounded out her evidence by summarizing supports and services she taps into *via* the Early Beginnings Program, and in-home services through the local Hearing and Speech Clinic. K.H. is not

engaged in the services and, as mentioned elsewhere, has generally not been copied with professional reports.

[40] The mother claimed K.H. has never officially disclosed his permanent address or home telephone number to service providers.

[41] Regarding child support, J.F. stated she received \$160 once from K.H. but nothing else. Admittedly, as at the hearing, she had not checked with the Maintenance Enforcement Program (MEP) to see if other money had been paid but not disbursed.

[42] Although A.'s hearing aids cost about \$576 plus tax every six months or so, the mother said the IWK has underwritten this expense, so far. However, new ear moulds are needed every couple of months at a cost of \$100 each time. The mother said she covers the cost - so far without contribution from K.H.

[43] In testimony, she added that batteries are needed for the hearing units. The annual cost is \$40 - \$60. The hearing aids have a life-span of three to six years.

[44] Uninsured medication expenses for ear infections, etcetera were said to attract an estimated cost of \$20 to \$30 annually. No receipts or other proof of payment were entered into evidence.

[45] On the issue of A.'s exposure to first and second hand cigarette smoke, the mother cites odour of smoke on her son's clothing when he returns from visits with K.H.. However, she conceded that K.H. personally is not a smoker and that she is. She claimed she only smokes outside her residence.

[46] During testimony, the mother also conceded that she has not provided the father with copies of what is likely an extensive collection of medical and related reports about A.'s hearing loss and treatment. I find she did not offer any reasonable explanation for this failure. She acknowledged requests for copies of various reports have been made by K.H.'s lawyer.

D.F.

[47] D.F. is A.'s maternal grandmother. Her affidavit spans over nine pages and was complimented by her testimony. I find it unnecessary to recap the minutia of

her evidence but find that she presented as a straightforward and credible witness - despite the obvious alliance with her daughter's cause. I will mention some of the highlights.

[48] She recounted the history of the parties' relationship from her perspective. During the months that J.F. and K.H. lived under her roof, she became concerned about their relationship. She cited his frequent rudeness and nastiness to her daughter; and she characterized him as controlling, at the time. She did not think he was highly motivated to secure and maintain full time employment. Unbeknownst to the young couple, she once overheard K.H. during an argument threaten to take the then baby and never return him to J.F.

[49] She corroborated that K.H. was injured in a motor vehicle collision in November, 2005, was hospitalized, and then returned to his own parents' home to recuperate.

[50] Conflict between the J.F. and K.H. families arose after the 2009 accident - somehow connected to or sparked by rumours and innuendo about the motor vehicle accident itself. Issues between the grandparents affected the parents' relationship and the father's contact with his son.

[51] This was not the first time that members of the K.H. family reportedly acted badly toward J.F. and her family. There had been another motor vehicle accident in November, 2008 which precipitated an unfortunate incident on D.F.'s property. According to her, the instigators were members of K.H.'s family.

[52] Returning to 2009, as things began to deteriorate, J.F. stated that members of the K.H. family often phoned late at night regarding access/parenting issues. L.H. reportedly played a lead role, much of the time, and effectively took on the role of an advocate for and protector of her son who retreated into a more passive role.

[53] Conflict between family members spilled into public view on at least one occasion when there was a conflagration at a local grocery store. The paternal grandmother was cited as the instigator - aided and abetted by one of K.H.'s sisters on that occasion.

[54] D.F. corroborated her daughter's version of events which occurred at a local hospital to which K.H. and his mother had taken the child, during an access visit

for medical examination without the mother's knowledge or consent. There was a tempest in a teapot over the J.F.'s treatment of an ear infection. Much of the conflict that day appears to have occurred in public areas of the hospital. Once again the paternal grandmother played a lead role in the conflict. Importantly, for our purposes, the paternal grandmother reportedly vehemently disputed the assessment and treatment of the child's recurring ear infections and hearing loss by a cross-section of medical professionals who were, by then involved, or were scheduled to become involved.

[55] Regarding K.H.'s role as a parent before the separation, D.F. stated he rarely took responsibility and believed many routine duties such as feeding, diaper changing, etcetera were women's work.

[56] She characterized her daughter as A.'s primary caregiver throughout. She said K.H. balked at attending medical appointments, including those at the IWK to deal with the child's hearing loss which was suspected by the time the baby was six months old.

[57] D.F. said she and her husband helped with her daughter's finances as need be, both before and after the young couple separated.

[58] At present, the D.F. and J.F. have regular, frequent contact. The grandmother continues to be supportive and provides periodic childcare.

[59] Generally speaking, the grandmother believes her daughter is providing adequate care and supervision for A. and, importantly, that she is meeting the many special needs that the child has now and will likely have for the rest of his life. Elaboration on this score appears in paragraphs 35 to 39 in her affidavit.

[60] Interpersonal conflict between the families continued into late 2010 when a child protection referral, sourced to the K.H. family, sparked investigation by police and child protection officials who temporarily sanctioned A.'s stay with the maternal grandparents. After three weeks, no child protection issues were substantiated and A. returned to his mother's care. These events further deepened the gulf between the families.

[61] In courtroom testimony, J.F. elaborated on A.'s behaviours (such as tantrums) which she believes are connected, in many ways, to his disability. She

described her daughter's methods of addressing the challenges. And, in her observation, the methods employed are appropriate and necessarily have been adopted by her as the grandmother, as need be.

[62] Poor or nonexistent cooperation and communication between the families was acknowledged. The witness said that despite her own best efforts no progress has been made. She elaborated on those efforts which, in her view, have been stymied - particularly by the paternal grandmother whom she believes is controlling or orchestrating much, if not most, of what K.H. says and does.

J.S.

[63] J.S. is the mother of three children under the age of five years who lives and works in a local area. She has known J.F. for about five years and has been a close friend for about three years. She and J.F. attended prenatal classes together. J.F.'s child and J.S.'s children visit and play together several times each week, usually at J.S.'s larger residence. J.S. regularly visits J.F.'s residence and she has observed no obvious health, safety or security concerns.

[64] J.S. knows A. is hearing impaired and that he has significant speech delays. She described how he communicates and, like the maternal grandmother, has observed how difficult he can be to manage, from time to time. She relates this and his challenges in communicating his own needs and making himself understood by others.

[65] J.S. corroborated parenting styles and techniques as recounted by the mother and by the maternal grandmother at paragraphs eight to 14 of her own affidavit. She has no concerns about J.F.'s parenting capacity or skills; and elaborated on a wide span of appropriate activities and involvements for the child. She described the love and affection displayed by mother and son toward each other.

[66] J.S. (at paragraph 7 of her affidavit) corroborated J.F.'s involvements at the local Family Support Centre and to the subject areas canvassed in various education sessions.

[67] J.S. does not have any significant contact with K.H.. However, she recalled that on several occasions she has been present for A.'s access transition. She said that K.H. was either unable or unwilling to speak with J.F. on those occasions and

that a couple of times the paternal grandfather was present contrary to the last court order. On those occasions, she said J.F. tried to communicate with the sullen K.H. but was thwarted. At the time, she observed J.F. was polite and pleasant.

[68] Importantly for our purposes, J.S. twice observed K.H. simply toss A.'s hearing aids aside on his car dashboard when given them during transitions.

[69] J.S. has never observed any apparent physical injuries, save and accept for normal bumps and bruises incidental to a three year olds' play and activities.

[70] J.S. also observed that while under J.F.'s care A. normally has his hearing aids in his ears - unless he is going outside when they are apparently not recommended.

[71] Post-access behaviours as observed by J.S. included reference to abnormal hyper-activity and unresponsiveness to J.F.'s directions. However, J.S. said J.F. copes with these situations and deals with them appropriately when they occur.

S.E.

[72] S.E.'s evidence was that her 22 year old daughter C. has been in a relationship with K.H. for about one and a half years. As a witness called on behalf of K.H., she stated that she sees the couple frequently and that she has seen K.H. and A. together once or twice a month over the past year, sometimes at her home, but mostly at the couple's residence.

[73] S.E. said she has no concerns about A.'s health or safety or general well being while under K.H.'s care. She said the couple has appropriate games, toys, etcetera and that food and nutrition are not issues. She also said the child seems to be happy when visiting his father.

[74] S.E. described the child as shy and awkward with her. She has never seen him misbehave; nor has she seen any of the temper tantrums referred to by other witnesses.

[75] S.E. said that A. does not speak to her, grunts and points to his father when he wants something and/or is trying to communicate. She did not elaborate on whether she thought this was unusual for A.'s age and stage of life.

[76] S.E. confirmed that the couple has a six month old baby and that both parents help with the infant's care.

[77] Surprisingly, S.E. stated she did not know A. is hearing impaired and stated she has never observed the child's hearing aids which he is supposed to wear most of the time. She vaguely recalled, however, K.H. mentioning hearing aids at some point to her.

[78] The evidence was even more outstanding when she disclosed the visits (during which she has observed and interacted with A.) last two to three hours on average. She agreed with the suggestion, in cross-examination, that had the child been wearing hearing aids she would likely have noticed them. She said she did not initiate any discussion about hearing aids because she never saw them in place. Looking at the photograph of A. (Ex. 7), it would be an understatement to say that a hearing aid is highly visible when worn.

[79] S.E. has never made any referrals to child protection representatives about A. or the newborn and she professed to be unaware of any referrals made by any other individuals.

[80] S.E. has had contact with K.H.'s parents only once. She did not elaborate on this point.

K.H.

[81] K.H. testified on his own behalf. He adopted his brief affidavit and reiterated that he and J.F. shared parenting of their son before their relationship ended.

[82] He elaborated on a motor vehicle accident, his extensive injuries, treatment and recovery but provided no medical reports. He admitted he was heavily medicated during much of his recovery and proffered little memory of the back-and-forth over the parenting issues. He recapped the most recent access schedule.

[83] K.H. said he and J.F. lived together for about 2 ½ years before they separated in June, 2010.

[84] K.H. disclosed that he returned to full-time employment in June, 2011. He works 7 a.m. until 4 p.m. in the Tantallon area, Monday to Friday. He leaves as early as 6 a.m. and returns around 5 p.m. He does not work on weekends. He has no overtime work.

[85] He also disclosed he is in a new relationship with "C.". As at the hearing in August, 2011 the couple already had a six-month old son and were cohabiting in the Chester Basin area.

[86] C. did not testify or submit an affidavit. However, according to K.H., she is actively involved with A.'s care during his visits. He described some of their typical routines and activities.

[87] K.H. claimed that A. uses his hearing aids - unless prevented from doing so, because of infections or other good cause. He defensively suggested that if any other witness did not observe hearing aids it must have been when his son had an infection or the witness simply did not notice. Given the size of the appliance as shown in a photograph in evidence, the latter suggestion is frankly preposterous.

[88] K.H. admitted that when he was first told about A.'s hearing problem he did not believe it. He still claims the hearing loss is "only slight" despite professional opinions that it is significant. He said he would like more information and education about the condition. He claimed he has asked his lawyer(s) to request the same from opposing counsel but was vague on the particulars. Aside from lawyers, he admitted he personally did not take any initiatives through his own doctor or otherwise.

[89] During testimony K.H. said he would like to get involved with the medical professionals, including home visits if they can be arranged. He admitted he did not ask to attend appointments when A.'s condition was revealed. At one point in his testimony he said, "I don't like doctors".

[90] K.H. was unfamiliar with some programs in the local area intended to assist parents with very young children - such as the Early Beginnings Program.

[91] K.H. asserted that he has paid interim support as ordered - at first directly to J.F. and then through MEP. In testimony, he said he would pay child support as per the Nova Scotia Tables. He admitted that he was behind in his payments at one stage but, as of the hearing, said his interim payments were up to date.

[92] To his credit, K.H. undertook to enrol A. under any group medical, dental, drug, etcetera, coverage which may be available through his employment.

[93] Exhibit 6 is a notebook or journal which contains a recent series of notes from himself to J.F. He said it is intended to improve communications between the parents and believes it is a useful and practical way to improve communications.

[94] In the course of testimony, it was disclosed that K.H. has problems with literacy. This explains, for example why the notebook entries are actually in his mother's handwriting. He insisted he told his mother what to write.

[95] When pressed on the need for a journal, K.H. candidly stated that he and J.F. cannot talk civilly to each other at this time. He went as far as to suggest that it could take about 1 ½ years before their communications might return to normal.

[96] Having said the two of them "cannot talk in person" - he was at a loss to explain how they would or could co-parent under a joint custody arrangement.

[97] K.H. challenged D.F.'s detailed evidence regarding his past parenting role by suggesting she was not always around. He countered her evidence with examples of things which he said he routinely did.

[98] Regarding child protection agency involvement, K.H. denied that he personally made any referrals about J.F.'s care of A.. He claimed that hospital officials did so, once, after he and his mother took the child for a medical examination. Oddly, he went on to volunteer that he thinks child protection workers are "no good" in any event.

[99] As far as his own role as a father is concerned, he firmly stated that he has never intentionally hurt his son or put him in harm's way.

[100] Regarding access transitions, K.H. claimed there is a need for at least one third party to be present - as a witness - apparently - so that false or misleading accusations won't be made against him in the future. Unfortunately, outside of his own family, he had no suggestions as to who might perform this duty.

[101] K.H. admitted that most of the current access visits do not occur at his residence - rather at his mother's residence. This is his preferred access site - despite the fact that he has been living independently since February, 2011. He conceded that his mother and father are usually there for the visits, plus one of his younger brothers.

[102] Asked why access is not occurring at his own residence, K.H. feebly responded that he thought J.F.'s preference was to leave things the way they were.

[103] The current access regime is that A. is picked up at 6 p.m. Friday and returned at 6 p.m. Sunday with access occurring at his parents' home. Although his parents have a four bedroom home, the family is large, as mentioned. He admitted that he and A. therefore usually sleep on a pull-out couch or sofa. Sometimes his partner C. and their newborn are also there, but K.H. did not elaborate.

[104] By comparison, his usual place of residence is a two bedroom home with the recreation room being used as a third bedroom, if need be. Previously, K.H. had lived in a small one bedroom apartment - much too small to accommodate visits by A.

[105] K.H.'s evidence was that he is a non-smoker and that his mother is also a non-smoker. His father smokes cigarettes - but outside the residence according to K.H.

[106] K.H. mentioned that he had no telephone until recently and claimed his parents are still the conduit for all of his mail. Why he did not set up an independent mailing address and telephone service when he moved into his new home is difficult to fathom. He is 24 years old.

Discussion/Decision

[107] Under section 18 (4) of the **MCA**, the father and the mother of a child are the joint guardians and equally entitled to the care and custody of the child unless otherwise provided by statute or ordered by a court.

[108] The court must apply the principle that the welfare of the child is the paramount consideration.

[109] In the present case, the father has ultimately conceded A.'s day-to-day care to the mother but wants a joint custody order.

[110] In my opinion the essence of joint custody is shared decision making, regardless of where a child resides.

[111] It is not uncommon to find cases where, for example, a child lives primarily with his father or his mother but both parents have agreed on, or been ordered to, share decision-making in major areas such as schooling, medical care, religious faith, etcetera. In such cases, there is usually a finding by the court that both parents are capable of meeting the child's needs - regardless of any personal differences, lingering animosity, etc. And in such cases, there is usually evidence of enough cooperation and communication to make the regime work. Otherwise, in my experience, an award of joint custody is a recipe for disaster.

[112] Courts occasionally award joint custody over the opposition of one parent, and even in high conflict cases such as the present one - but there should be very strong reasons stated on the record which support joint custody being in the child's best interests. When joint custody is imposed in high conflict cases, court orders tend to include very detailed terms and conditions usually designed to reduce conflict and enhance cooperation.

[113] Unfortunately, in the present case, the history of interpersonal conflict is not offset by any evidence that the parents can, if and when they want to, set aside their differences and can jointly decide on important matters regarding A.'s care and upbringing. Indeed, the father's own evidence about the dismal prospects for positive changes only served to weaken his case, in my opinion.

[114] The father's deep-seated resentment and hostility directed to the mother and maternal family show no real signs of abating - other than for his assurances which have not been tested.

[115] Some of the foregoing may be related to the father's upbringing. Some may be related to poor literacy skills which may hamper clear and civil communications even at the best of times. More likely, I find K.H. has been highly dependent on his mother - some might say overly dependent - and, more importantly, highly influenced by her when it comes to parenting A. and when it comes to interaction with J.F. and the maternal family. One could easily get the impression that the paternal grandmother has orchestrated and managed much of K.H.'s life, even into adulthood, at a time when he is now the father of two children.

[116] Regrettably, K.H.'s mother has provided no written or oral evidence since the case began many months ago. The net result is that the portrait of this key player as painted by J.F. and witnesses on her behalf stands largely uncontradicted.

[117] For reasons that were unstated, even K.H.'s new partner did not testify on his behalf to offset or reduce the impact of assertions made by J.F. regarding his parenting skills, his attitude about medical matters, his communication skills, etcetera and, of course, the influence of his family on what is transpiring week-in, week-out.

[118] Again, for reasons which defy explanation, K.H. continues to insist that his access visits occur at his parents' home rather than at his new residence. Access should be primarily for the benefit of A. and his father. Contact with extended family may be valuable and important, but should not be the main focus. K.H.'s routine and preferences suggest that his loyalties are with his parents and other family members, first and foremost, and that he wants and perhaps needs to protect them and maintain their involvement. That these priorities may be running interference with A.'s needs and best interests, which are paramount, seems to be lost on him.

[119] Nonetheless, J.F. is prepared to abide by the current access schedule subject to some possible minor refinements or changes regarding the transition times.

[120] I agree with the submission on J.F.'s behalf that at the present time there is no reason to expand or otherwise alter access.

[121] And I agree that the evidence as a whole inevitably points to sole- not joint - custody, care and control by J.F.. And I will so order.

[122] K.H. made some strong promises and commitments to improve his knowledge of A.'s hearing condition and to work with J.F. and various service providers. Given his employment situation and other responsibilities at home, it was anything but clear how he intends to accomplish this.

[123] J.F. should be providing K.H. with timely copies of medical and other professional reports, and I will so order. She should also provide him with a complete list of all the involved professionals and notice of appointments when they are scheduled, and I will so order.

[124] If she wants K.H. to be more helpful and supportive, J.F. has a responsibility to keep K.H. fully informed. If he is unable or unwilling to take advantage of the information, the onus will then be on him to explain his conduct.

[125] In the meantime, a new order shall include a specific clause requiring K.H. to comply with all directions and recommendations of the medical and hearing specialists, and other service providers, regarding A.'s use of hearing aids during access visits, whether the visits occur at his home or elsewhere. If J.F. has any written reports or pamphlets regarding the hearing aids, she shall provide copies to K.H. immediately.

[126] So that there is no doubt or question, I order each parent to provide the other, in writing, with their current telephone numbers and their civic and mailing addresses. Emergency contact information should be routinely exchanged.

[127] During his access visits, I order that K.H. shall ensure to the best of his ability that A. is not exposed to cigarette smoke at any residence or other place he may visit, or in any motor vehicle in which A. may travel.

[128] I will not order but will encourage both parents to find ways to make the travel and transition arrangements for A.'s visits as pleasant and smooth as possible. To that end I would suggest that extended family members not be involved and that if one or both parents would prefer that third parties be involved that they be individuals each trust and are comfortable with.

Child Support

[129] Notices of Income Tax Assessments filed with the court as recent as October 14th disclose that K.H.'s Line 150 income for **CMG** purposes was as follows:

2008 - \$3,984

2009 - \$9,760

2010 - \$16,486 - of which \$5,758 was from employment and \$10,728 was from e.i. benefits.

[130] Sample pay stubs from late July and early August, 2011 disclose a pay rate of \$10.62 and "effective" pay rates between \$11.80 and \$12.15 hourly. K.H. receives holiday pay and production bonuses which he did not mention in court.

[131] The 2010 figure of \$16,486 is actually higher than stipulated by Ms. Royer in her calculations for that year. The Nova Scotia Table amount for that income for one child is \$110 monthly. For the months of April 1st to December 31st, 2010 inclusive the amount due and payable is $9 \times 110 = \$990$.

[132] Ms. Royer postulated K.H.'s 2011 income to be in the range of \$17,000. As an estimate, it is reasonable based on last year's income and the limited information available so far for the 2011 calendar year. The Table amount for that income is \$144 monthly. The amount due from January 1st to October 31st, 2011 (10 months) is \$1,440.

[133] The total child support due and payable to J.F. for 2010 and 2011 to the end of October, 2011 is therefore \$2,430. Current support shall continue to be due and payable at the rate of \$144 monthly effective November 1st, 2011 and continue to be due and payable on the first day of each and every month thereafter.

[134] K.H. shall receive credit for all payments made by him directly to J.F. (as may be evidenced by receipts) PLUS all payments made by him through MEP as evidenced by their records.

[135] There is insufficient evidence to determine the net amount due and payable as at the end of October. MEP will update their records upon receipt of a copy of the new order.

[136] With insufficient evidence, I am unable to structure a repayment plan for the amount likely due as a result of my decision. Under the **Maintenance Enforcement Act**, the Director has the authority to facilitate discussions between payors and recipients regarding the payment of arrears and to approve agreements if reached. Failing agreement, the Director may, of course, take whatever enforcement measures she or he deems appropriate.

[137] In the circumstances, I will leave enforcement to the Director and encourage the parties to work on a consensual resolution as soon as possible.

[138] Under section 6 of the **CMG**, I order that K.H. acquire and maintain group medical, dental and related insurance for A.'s benefit which, according to the evidence, is available to the father through his employer.

[139] In reviewing the Exhibits and testimony, I noted that J.F. did not submit any detailed income disclosure and no receipts for expenses related to the child's medical needs, actually paid or pending. She simply said she is receiving public assistance benefits and gave estimates regarding some costs. In the circumstance I cannot make any further payment orders under s.7 of the **CMG** with any precision. Accordingly, I shall order that the parties share the net cost of any uninsured medical, dental, and medication costs for their son in proportion to their respective Line 150 incomes.

[140] All payments of child support are to be made through the MEP. K.H. shall be obliged to make the usual annual disclosure of personal income tax returns and assessment notices from the Canada Revenue agency by June 1st each year, starting in 2012.

[141] Ms. Royer shall prepare an order capturing the results of this Decision.

Dyer, J.F.C.