FAMILY COURT OF NOVA SCOTIA

Citation: G.S. v. C.H., 2011 NSFC 19

Date: 2011 08 15
Docket: FLBMCA-051601
Registry: Bridgewater

Between:

G. S.

Applicant

v.

C. H.

Respondent

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge: The Honourable Judge William J. Dyer

Heard: April 28, 2011 at Bridewater, Nova Scotia

Counsel: Franceen Romney, for the Applicant
Rubin Dexter, for the Respondent

By the Court:

[1] C. H. ("H.") and G. S. ("S." or "G.", as the context requires) are the parents of five year old N.. The parties' legal history in the Family Court goes back to early 2007. Under the **Maintenance and Custody Act** (**MCA**), S. seeks to vary the last of a series of orders touching on the parenting arrangements for N..

History

[2] In early 2007, on their own initiative, the parties executed a simple, private agreement whereby H. was to pay child support to S. for N.'s benefit. Nothing was said about parenting.

[3] Soon after, H. started proceedings. Both parties had lawyers when they presented an Interim Consent Order. They agreed neither would consume or be under the influence of alcohol and/or nonprescription drugs while N. was in their care and under their parental responsibility. The Order also prohibited any third parties from being under the influence while in the child's presence.

[4] In late April, 2007 another Consent Order was presented and approved. The parents agreed to joint custody on the understanding that S. would have the day to day care and control of the child. Reasonable and liberal parenting times were provided to H. including specified access during holidays, special occasions, etcetera. The Order reiterated the prohibition regarding alcohol and/or nonprescription drugs and applied to both parents. There was elaboration on the concept of joint custody [paragraphs 7 and 8]. Child support (payable by H.) was continued.

[5] In S.'s absence (after notice), an Interim Variation Order was approved in mid-November, 2007. The recitals to the Order reflect that S. had been involved in a motor vehicle accident in mid-August, 2007, had sustained serious personal injuries, and that she was unable to look after N. on a day to day basis. It was mentioned that N. had been living with and had been in H.'s daily care since the accident. Joint custody was reaffirmed; but primary care was awarded to H.. S. was granted reasonable access, upon reasonable notice, at reasonable times. There was repetition of the so-called non-consumption clause. Child support payments payable by H. were terminated.

[6] Yet another Interim Order was approved in early December, 2007. Essentially, it repeated the terms and conditions of the previous Order.

[7] Both parties were before the court in mid June, 2008. Both were represented by legal counsel. The parties reaffirmed the joint custody regime and vested primary care of N. in his father. The ensuing Consent Order gave specified access to S. on the understanding that her contact would be supervised by her mother, P. S., or another adult agreed upon by the parties.

Access was to take place at P. S.'s residence or at another agreed location. There was a new clause to the effect that the parties would ensure that when N. was with either parent, that he would not be in the company of persons who had been arrested, charged or were parties to any civil or criminal proceedings alleging deviant behaviour, such as assault or drug offences [to use their words]. For the first time, there was a directive that S. would ensure that one I. C. had no contact under any circumstances with N., directly or indirectly. Again there was repetition of the non-consumption clause. There was provision for review of access should S. breach any of the clauses which bound her.

[8] Importantly, counsel informed the court at the mid-June, 2008 appearance that S.'s medical circumstances were evolving and that it was anticipated that medical evidence might be forthcoming on the question of her ability to care for N.. But, by mid-August, 2008, S.'s medical circumstances had not been resolved. So, the parties agreed to continue their discussions and the review process. The same thing happened in mid September, 2008.

[9] By the end of September, 2008 S. was pressing for conclusion of the matter, by way of a hearing, if necessary. Both parties continued to be represented by legal counsel.

[10] It was known by mid October, 2008 that the main outstanding issue was whether or not S.'s parenting time needed ongoing supervision. In early November, 2008 it was learned that H. had changed lawyers.

[11] The matter was set down for a contested hearing but, in late January, 2009, it was learned that the parties had reached a settlement. A Consent Order was approved in mid February, 2009 which reaffirmed joint custody and principal residence of N. with his father. Specified parenting times were granted to S., provided that contact would be at the residence of, and in the presence of S.'s mother, or at another agreed location. There was repetition of the non-consumption clause and a clause directed to both parents regarding the child's non-association with persons deemed to be inappropriate.

[12] There was no further activity until S.'s application to vary which was launched in mid-December, 2010.

[13] In mid-February, 2011, pending the final hearing, the parties presented another Interim Consent Order which changed the frequency and duration of S.'s parenting times, but continued the requirement for supervision and the other mutual prohibitions and constraints. The parenting times spelled out for S. in this order were comprehensive and forward-looking into 2012. The basic scheme was for alternate weekends, plus alternate Tuesdays and specified times for holidays, special occasions, etcetera.

[14] Neither party disclosed any significant problems since February, 2011. However, N. starts school in September; and this will render S.'s weekday parenting obsolete. Although not clearly articulated, a corollary is that some additional time for S. ought to be considered. Also, S. would like some block parenting opportunities coincidental with her annual vacation. In

principal, H. does not oppose the latter, but is reluctant to concede, for example, two consecutive weeks.

S.'s Circumstances

[15] S. was involved in a motor vehicle accident in August, 2007 and sustained substantial injuries. As a result, she said that she conceded N.'s care to H.. She had several surgeries, the last of which occurred in August, 2009. Currently, she professes to have no physical disabilities or challenges.

[16] She wrote that H. lives with his parents who provide care for the child when he is not in daycare and asserted that the paternal grandparents actually share decision making with H.. That said, she has no issues regarding the quality of care provided by the paternal grandparents.

[17] S. admitted to past "difficulty" with substance abuse which led to the no consumption, etcetera, clauses mentioned previously. S. alleged that H. had similar problems himself and therefore he too agreed to the various prohibitions and conditions found in the court orders. S. said that she has asked for more parenting time but her past drug abuse has repeatedly been cited in H.'s refusals.

[18] S. said that she arranged for drug testing *via* her family physician for the period of June 17th through to August 20th, 2010 and that the results support her assertions she has been drug-free. (Introduction of the test reports was not opposed.)

[19] S. has lived in a common law relationship with I. C. since mid-September, 2009. She is employed at a * where she works shifts. This has some impact on parenting schedules as reflected in past court orders. She claimed that H. refuses to discuss scheduling practicalities with her and he is inflexible in what he is prepared to allow. As a result, she said that much of the communication has been through lawyers.

[20] S. reminded the court that the parties are supposed to enjoy a joint custody arrangement. Despite the elaborate clauses in past orders regarding this regime, according to S., H. does not discuss major decisions with her. For example, he has not shared health care information about N..

[21] Regarding I. C., S. admitted he was addicted to cocaine in 2004 and that he was charged with drug trafficking in April, 2007. However, she asserted he has been "rehabilitated" since 2008. She acknowledged that he was incarcerated for several months starting in mid January, 2009, released on parole, and that he is now employed locally, full time.

[22] S. stated she agreed to the "no contact" clause regarding C. in February, 2009 because of concerns expressed by H.. But she believes that C. poses no current risk to N. flowing from past drug use or abuse, or lifestyle.

[23] S. wants the no-contact clause ended. She seeks removal of the access supervision requirement. And, she put forward parenting proposals, most of which reflect the current regime.

[24] Given H.'s stance on adhering to the agreed joint custody regime, S. would also like court reinforcement of her rights and H.'s responsibilities.

P. S.

[25] P. S. ("the grandmother") is G. S.'s mother and N.'s maternal grandmother. She resides with her husband in the local area. She is a registered nurse who has a significant employment history in *. She last worked in the * unit at a local hospital until she retired in October, 2008. She impressed me as a candid and credible witness.

[26] Her evidence was that G. lived with her until she was about 17 years old. She left to join H., but later moved back. She stayed with her parents during most of her pregnancy.

[27] The grandmother recalled that H. and G. ended their relationship in December, 2006 but N. continued in G.'s care. She confirmed her daughter's involvement in a serious motor vehicle accident and significant injuries which resulted in G.'s inability to fully care for her son. She corroborated several weeks of hospitalization and extensive physiotherapy and rehabilitation.

[28] The grandmother said that during her daughter's recuperation she observed her under the apparent influence of marijuana. She thought it was being used for pain relief. When G. became involved with I. C., the grandmother was not pleased and said as much to her daughter. At the time, the main concerns or displeasure was C.'s admitted use of drugs and prison sentence, plus the age difference between the parties. That said, since C.'s last contact with the criminal justice system in April, 2007 the grandmother has not observed and has no knowledge or indication of drug use by either her daughter or her partner.

[29] The grandmother stated that G.'s parenting occurs under her supervision at her residence. She has not observed any physical limitation in relation to her daughter's care for N. since August, 2008. She stated that to the best of her knowledge G. does not consume alcohol in her grandson's presence. She believes that G. has not been consuming non-medically prescribed drugs for at least two years.

[30] The grandmother's evidence was that she normally sees C. briefly when she's picking her daughter up or dropping her off. She provides all of her daughter's transportation, including that associated with parenting time with N..

[31] The grandmother volunteered her belief that her daughter has matured and that her life has stabilized. She asserted that G. remains in a healthy positive relationship with C.. She confirmed that both individuals are gainfully employed and financially self-sufficient. She

corroborated that they are renting a house in the * area which she has visited and which she described as clean, well kept and tidy. (There was no evidence to contradict these aspects of her testimony.)

[32] The grandmother said that communication between S. and H. is "virtually nonexistent". Indeed, she personally attempted direct communications with R. and G. H. (the paternal grandparents) in June, 2010 and again in August, 2010. At the time, she was trying to assist G. with negotiations on scheduling for parenting times. In her words, "unfortunately the meeting in my belief was totally unproductive and neither R. or G. were open to any alterations to the current schedule, nor more importantly to the granting of any additional parenting time to G.". The paternal grandparents did not testify.

[33] The grandmother described the activities and involvements when N. is with her and her mother. She has no concerns regarding G.'s capacity or parenting abilities. More broadly, given the progress she has seen her daughter and her companion make in the past three years, P. S. has no concerns regarding her grandson being in her daughter's care at her own residence and she has no concerns about N. being in the presence of C..

T. C.

[34] T. C. was subpoenaed to testify on behalf of H.. She lived with I. C. for about 13 years. She left him in 1990 when she alleged she was violently assaulted by him. According to her, he struck her with sufficient force to require significant facial surgery. She alleged that some assaults had occurred in the presence of their two sons. The sons are now in their twenties. T. C. also alleged that in 1999 after she had moved to an apartment in the local area that he went once to her residence and by surprise struck her perhaps in the presence of the children.

[35] Ms. C. was visibly nervous and upset during direct examination and was vague and uncertain regarding many of the details. It was not until cross-examination that she disclosed that they started to cohabit in 1980, that they married in 1983, that they separated in 1990 (when the children were two and seven years old respectively) and that they divorced four years later. After 1990 the only contact the two parents have had was by intermittent telephone discussions and incidental to access.

[36] T. C. said that there were no interventions by child protection officials during the period of cohabitation and marriage. She also disclosed that as far as she knows there were no third party referrals to the agency.

[37] In testimony, she admitted that the first of the assaults occurred about 28 years ago.

[38] Incidental to legal proceedings, T. C. achieved custody of both of her sons and her spouse was granted access. Apparently his access included weekends, at first, and then was extended to include overnight visits and sometimes block access (for example, during the summer months).

Ms. C. disclosed that it was not a condition of access that it be supervised and she admitted that she had no concern about his care for the boys at any material time. The last occasion that she spoke to I. C. was about six years ago.

B.B.

[39] B.B. is a former parole officer employed by Correctional Services of Canada. She is now retired. However, while employed she was responsible for supervising I. C.'s day parole, starting in July, 2009.

[40] She characterized C. as a first-time, non-violent Federal offender who was serving a two year sentence for drug trafficking. As such, he was eligible for an accelerated release. She said that at the time of the offence for which he was convicted, C. was addicted to cocaine. Her evidence was that he successfully completed a drug treatment program, followed by maintenance in the community while on day parole.

[41] According to B., parole supervision went without incident. Her evidence was that C. had completed a day parole program to the St. Leonard's Society Halfway House in Halifax - from July, 2009 to September, 2009. He was released with special conditions to abstain from the use of drugs and not to associate with individuals reasonably known by him to be involved in criminal activity. B. picked up supervision when C. relocated from the Halifax metro area.

[42] B. also reported that at no time throughout his incarceration or release was there any suspicion of drug use by C.. According to her urinalysis test results during his day parole were also negative for drugs. B. wrote that regular contact with police officials confirmed that the police had no concerns regarding C.'s activities in the community. B. also confirmed that C. was currently employed full time in the local area and that given his current so-called pro-social lifestyle and reduction in risk she was able to reduce parole supervision from bi-weekly to monthly.

[43] She said that G. S. was present during supervision interviews. She characterized the relationship between the two of them as very positive. In testimony, B. added that the parole supervision expiry date was January 14, 2011. The only two special conditions incidental to parole were the ones previously mentioned, i.e. abstention from drugs and non-association with criminals.

[44] Asked if there had been any infractions during the parole period, B. said that five months into his parole that C. was found to be driving without a licence. Otherwise, there were no difficulties.

I. C.

[45] In his affidavit, C. wrote that he struggled with a cocaine addiction starting in 2004 and that he was charged with possession with intent to traffic in late April, 2007. He said this offence was a direct consequence of his addiction and a need to supply himself with the drug. He said he is now rehabilitated, but acknowledged that he does have an addiction and that he must maintain sobriety.

[46] C. was released from a Federal Institution in July, 2009 and returned to the local area in mid September, 2009. He wrote that he has been steadily employed with a * since April, 2010 and confirmed that he is in a common law relationship with S..

[47] C. is aware that S. has agreed to participate in voluntary drug testing in relation to the present case. He said that he has also made inquiries about participating in such a program but because of his work schedule he said that he does not have the ability to attend at a local hospital on a regular basis. However, he said that he knows the hospital will not process urine samples which he provides because of concerns over the source. As a result of that information, C. said that he contacted another service provider with a view to establishing the routine and the cost of obtaining urine samples or hair follicle testing.

[48] C. said that in regard to possible hair follicle testing, the estimated cost on each occasion would be over $360, inclusive of separate tests for marijuana and cocaine, return travel to Halifax, courier fees, nursing fees, etcetera. In relation to urinalysis, he said that his understanding is that the cost would exceed $281 on each occasion. I accept his evidence in this regard.

[49] C. said that he has a limited income and could not afford to participate in those processes. He added that one of the service providers requires payment in advance. He was alerted to the fact that if there was any dispute over the test results, he may also be responsible for covering the fees of the professionals for court attendance. I also accept his evidence on these points.

[50] C. wrote that while it is his position that he does not require testing, i.e. because he is clean, he has attempted to do so in order to assist S. with her application and in particular to satisfy H. that he is not a threat or concern in relation to contact with N.. He stated he is not opposed to participating in a voluntary drug testing regime if his financial circumstances and employment circumstances permit.

[51] C. has not had a driver's licence for some time but by the time this decision is released he was expected to have his licence reinstated.

[52] Additionally, during testimony, C. disclosed that he is about 49 years old and that he has cohabited with S. for about two years. He confirmed that his day parole ended in September, 2009 which is when cohabitation started. He clarified that his period of incarceration ran from mid January, 2009 until mid July, 2009 and that he was at the Halfway House in Halifax for about two months before relocating to the local area.

[53] Regarding his current employment, he confirmed that he started to work seasonally in early April, 2010. During the winter months he draws employment insurance benefits. C. also has some pension income but did not disclose the amount.

[54] C. briefly recapped his criminal history. As noted, he was charged in 2007 with cocaine possession for the purposes of trafficking. He was also charged with illegal possession of cigarettes in 2007 as well as a breach of court undertaking and other charges. Apparently these were consolidated before he was sentenced to serve time in a federal penitentiary. In short, all of the cigarette and drug related charges were connected to the principal charge of trafficking. C. said he actually turned himself into the police at the time. He mentioned that a number of weapons had been seized but that no charges were laid in this regard.

[55] As noted by Ms. B., he was charged once with driving without a licence and pled guilty. There was no impact on his parole duration or conditions.

[56] C. also admitted that in 1990 he was charged with assaulting his former spouse and pled guilty. There was another similar charge in February, 1991 to which he also entered a guilty plea. In relation to the particulars of the offences alleged by his former wife, C. shrugged off some of the details as possibly being true, but also suggested that other parts of her testimony were not. He did not elaborate.

[57] As mentioned, he and T. C. were divorced in 1994. He remarried in 2001 but separated from that individual in October, 2009. Three years later, as mentioned, he became involved with S..

[58] C. stated that his sons are now 29 and 24 years old, respectively. He denied that one of the assaults had occurred in front of one of them. However, he did admit committing the most serious offence - breaking of his spouse's nose which required surgery to repair. C. denied other allegations suggested by counsel in the course of questioning but which had not been clearly identified by T. C. or anyone else during testimony. And, he denied other allegations put to him regarding particulars of assaults on his former spouse which, as mentioned, she had not advanced while testifying, in any event.

[59] Regardless of the history of domestic violence, C. said that he was permitted to have ongoing parenting time with both of his sons. He said that his own mother assisted with transportation at one point. His evidence was that his access would be permitted so long as there were no conflicts with the children's activities and that no supervision condition was imposed.

[60] C. also asserted that there were no interventions by child protection agency officials in the family and no referrals or investigations of the family circumstances, as far as he knows.

[61] C. claimed that he is now on good terms with both of his sons. He also said that T. C. never denied him access to his sons and indeed permitted generous access, including overnight

visits, as time went on. Regarding any suggestion or implication that he may have been physically violent toward his sons, C. reasserted that there were no formal allegations and no police investigations regarding such an issue.

[62] C.'s evidence regarding actual harm, or risk of harm, to his own children was not contradicted or diminished by his former spouse or any other witness.

[63] C. also clarified that his relationship with S. started after he committed the offences in 2007 at a time when criminal proceedings against him were still outstanding. And, at the hearing, he confirmed that his licence had been reinstated, as anticipated.

H.'s Circumstances

[64] H.'s brief affidavit evidence was to the effect that the parties had lived in a common law relationship for only about one and a half years, i.e. February, 2004 until May, 2005. He said they continued to have a relationship after their separation.

[65] H.'s immediate concerns are S.'s "use of elicit drugs and substance abuse" and potential contact between N. and I. C..

[66] H.'s position is that there is an ongoing need for supervision to ensure that alcohol and drug consumption does not occur; and he does not want the child to have any contact with C. whom H. perceives to be an unsavory character.

[67] During testimony, H. reaffirmed his concerns about I. C.. But, when asked if he had ever asked to meet C., he said that he had not. He said that he does not want to sit down with C. at a "round table" to discuss his concerns. He also admitted that he has never asked to go to S.'s residence to personally observe her living circumstances.

[68] Despite the fact that the parties are supposedly operating under a joint custody regime, H. claimed that the parties have had no opportunity since December, 2010 to try to talk things out. He did not seriously challenge S.'s assertions that she has not been consulted on major parenting issues. Regarding this aspect of the case, I find it more likely than not that H. has made deliberate choices not to keep S. fully informed and that he has not been motivated to reestablish open communication and cooperation with her - despite confirmation of joint custody terms and conditions in multiple orders.

[69] H. also acknowledged that the January, 2009 order - insofar as it dealt with alcohol and nonprescription drug consumption and non-association with individuals with a criminal record - applied equally to both parents.

[70] Since he has not spoken to C. directly, H. also admitted that what he does (or does not) know about C. is gleaned from others, including a private investigator he hired and instructed at one stage.

[71] H. conceded in cross-examination that his only real current issue is with C. and that if C. was not in the picture, “we probably wouldn’t be here”.

[72] Assuming that S. and C. are in a long term relationship, H. was asked to specify how long he thought it might take before his current concern would dissipate. He stated this might take five to ten years. While that declaration may reflect H.’s preferences, and underline his feelings toward C., I find it be incredibly unreasonable and unrealistic in the circumstances.

[73] Assuming C.’s affidavit evidence and courtroom testimony to have been candid and forthright, H. stated his concerns were not lessened. He stated they were actually “worse”.

[74] Referring to paragraph 23 of S.’s affidavit, H.’s evidence was that the access arrangements set out there were going well. He also said that he would be amenable to summer access, including one full week with the mother, provided that he had some contact during that time frame. Although not opposed to block summer access, he would prefer that if more than one week is granted, that they not be consecutive.

[75] H. mentioned that the child starts school in the Fall but that the parties have had no discussions about the implications for possible needed changes to the mother’s access, keeping in mind her employment schedule.

[76] Asked directly whether he was prepared to communicate and cooperate in the spirit of the original joint custody agreement, H. stated that he would try.

Discussion/Decision

[77] Under the **MCA**, the child’s best interests are paramount when the court has to make decisions regarding custody, access and related issues.

[78] Section 37 of the statute is relevant. It authorizes the court to may make an order “varying, rescinding or suspending, prospectively or retroactively, a maintenance order or an order respecting custody and access where there has been a change in circumstances since the making of the order or the last variation order”.

[79] In the present case, against the background of an existing joint custody agreement, the parents agreed to change primary care from the mother to the father when she was seriously injured in an accident. Thereafter, concerns about the mother’s drug use and associations were such that conditions or restrictions were placed on her contact N.. Although not spelled out on

the record, there were obviously (also) concerns about the father's lifestyle which I find explain the mutual commitments and prohibitions that repeatedly found their way into court orders.

[80] As the presiding judge on multiple occasions since 2007, I was not left with the impression by the submissions of counsel (who were then involved) that the agreed terms and conditions were cemented in stone or final. Indeed, my understanding was that the mother's circumstances were expected to evolve and improve with the passage of time, such that specified access provisions would no longer be necessary and that her parenting times would increase in frequency and duration and return to something resembling normalcy, even if primary care was not restored to her.

[81] I am satisfied the present case does not fall into the "revolving door" category which most jurists dread and struggle (with mixed success) to cap. I have concluded the application is bona fide and timely; and that it should be addressed on the merits.

[82] **MCA** variation applications, when contested, usually have two steps. Firstly, the applicant must prove a change in circumstances. (The statute does not specify the change must be "material"; but the case law supports the proposition that trivial, fleeting, and frivolous, etcetera changes will not meet the threshold.) Secondly, she/he must establish that as a result of the change(s), the last order no longer reflects the best interests of the child.

[83] The requisite steps need not be dramatic. For example, **Cooperman v. Cooperman**, 2008 ONCJ 119 (C.J.) was a case in which a father was precluded by court order from letting his child associate with his new girlfriend who was already in the picture, so to speak. He subsequently moved in with her - which arguably was foreseeable when the prohibition was imposed and therefore was not a material change that warranted variation when it occurred. But, the prohibition was deleted upon his variation request.

[84] The requirements are not assessed in a vacuum. All the circumstances surrounding the order sought to be varied and the prevailing circumstances must be considered. With that in mind, on the evidence as a whole, I am satisfied that S. has met the two-fold test or standard.

[85] I conclude that favourable consideration of her application is not barred or precluded because she consented to an order in February, 2009 which prohibited contact with C.. I find this is so despite evidence at the present hearing that C. was by 2009 already asserting to the world that he had completed substance abuse rehabilitation, was drug free, and posed no risk to the child. I accept S.'s evidence that she agreed to the stipulation in 2009 to help restore and enhance trust with H. and that her agreement was a prelude to further changes, if things went as hoped and planned.

[86] Indeed, leaving aside C., I conclude the parties are on the expected path - to the point where frequency and duration of S.'s parenting times have increased measurably since the unfortunate beginnings in 2007.

[87] On a balance of probabilities, I find S. has demonstrated she is currently not using non-prescription drugs or otherwise substance-dependant. I accept C.'s evidence to the same effect insofar as substance use is concerned.

[88] Regarding the allegations of past spousal abuse leveled against C., this was not an identified concern or issue when the last consent order was endorsed. Although there was evidence to support the allegations of past misconduct, there was no evidence that C. has ever harmed or posed a risk of harm to his own children or to any other child. Without minimizing the harm inflicted on his former wife, the evidence was that the abuse occurred about two decades ago; and there is no evidence of abuse, actual or alleged, against any other person, including, in particular, S.. Moreover, there was no evidence implicating C. in any child protection referrals or proceedings, past or present.

[89] There was evidence from the maternal grandmother, whom H. has repeatedly endorsed as an appropriate access supervisor, that there are no parenting issues surrounding S.'s care and no concerns about substance abuse or dependency by S. or C..

[90] Broadly speaking, a parent's conduct and lifestyle (past and present) is relevant if it impacts on her/his ability to meet her/his child's needs and best interests. On the health front, when a parent's problematic mental or physical health demonstrably affects ability to care for a child and poses a risk, custody and access may also be influenced - as was the case here. However, should the concerns be resolved - as was the case here - there is no basis to continue restrictions (for those reasons alone).

[91] **D. (M.K.) v. I. (A.J.)**, 2008 ABQB 199 (Q.B.) is an example of a situation in which a father's access was ordered to be supervised because of his mental health but varied to remove the condition when it was shown to the court's satisfaction that his health had improved and that supervision was unnecessary to protect and advance the child's best interests.

[92] And, one does not have to look too far to find examples of parents who have had a history of substance abuse but who have changed their lifestyle and who have been granted unsupervised contact with very young children. [See **T. (M.) v. G.(M.)**, 2010 NSSC 89 (S.C.), for example.]

[93] Restricted and/or supervised parenting regimes are supposed to be exceptional - not the norm. They may be imposed, by agreement or by court decision, if necessary to protect a child or where there are concerns about capacity or ability to parent. However, long-term or indefinite "restrictive" court orders are anything but routine, in my experience. The onus remains on the parent who wants to impose limits to prove, on a balance of probabilities, that what is proposed is in the child's best interests.

[94] I conclude that the circumstances which led to access supervision requirement have abated to the point where it may be terminated and I will so order. This result flows from S.'s

proactive demonstration of the changes and progress made by her, coupled with H.'s failure to demonstrate the need for ongoing supervision in the child's best interests.

[95] Further, against this background, I am satisfied that the terms of the last order providing for alternate weekend and holidays, special occasions, etcetera parenting times should continue but the Tuesday (daytime) parenting for S. should end when school starts. In substitution, S. should have at least one weekday parenting opportunity, after school until mid-evening time, at her option. Given the lack of precise evidence about school and employment schedules, N.'s bedtime routine and activities, etcetera I will leave the fine detail to the parents to work out, failing which further directions may be sought. (I would suggest that they commit to scheduling at least two weeks in advance, if possible.)

[96] S.'s request for block vacation parenting time is not unreasonable. I will authorize a minimum of two, non-consecutive weeks, annually, starting in 2012. Such block access need not be confined to the summer months. For example, Christmas and Spring school breaks (in addition to regular times) should be considered. H. may have reasonable telephone contact with N. during the blocks. For 2011, there shall be one week of block parenting time before December 31st which may be satisfied by the scheduling of seven (7) mutually convenient, non-consecutive days, if S. agrees. Again, I will leave the details to the parents who may seek further directions from the court, if need be.

[97] With respect, the importance and implications of the joint custody scheme may have been lost on H., despite the involvement of experienced legal counsel over the years. I am confident he will now appreciate that he must adhere to the plain words used in 2007 to give life to the scheme. However, it would be prudent to re-incorporate them in the new order. With respect, H. must strive harder to put aside his resentment, misgivings and distrust of S. and her partner in favour of full cooperation and communication. Otherwise, he may face legal action for review of the joint custody framework and N.'s care.

[98] The ban regarding the child's contact with C. is somewhat problematic, but not for the reasons advanced by H.. I find that he poses no demonstrable risk of physical or emotional harm to the child, assuming sobriety if and when there is contact. Subject as follows, I order that the ban directed specifically at C. shall be rescinded. The wider "third party" ban which found its way into previous orders may continue on the understanding that C. is exempt.

[99] S. did not direct any evidence to the issues of how she intends to introduce her son to her partner (who is a complete stranger), how the relationship will be explained (if it has not been already), how she sees the new relationship developing, how she will address her son's concerns or worries (if any), the practicalities of sleeping and other household arrangements to ensure the child's emotional security, etcetera. In my experience, in most cases where a child needs to be introduced to a new spouse or partner - or reintroduced to a parent - thought is given to "transitional" or "phasing-in" plans or arrangements. Such plans often raise the comfort level of parents who may have been in conflict but, more importantly, recognize that many children need

time to adjust and adapt to change and to new circumstances. To their credit, more and more parents seek professional help during transitions - for the child and for themselves.

[100] Allowing there is an element of rough justice to the requirement, I order that for the next six months S. shall personally care for and supervise N. during her parenting times and that she shall not permit C. to have unsupervised care , supervision or contact with her son. In a nutshell, N. is not to be left alone with C. during this time frame. In making this decision, I am mindful that S. and C. live under the same roof. Accordingly, should it be necessary in S.'s temporary absence (for example, for employment) S. shall make child care and/or supervision arrangements by responsible adults, other than C.. (The maternal grandmother comes to mind.) Barring something unforeseen, these terms and conditions shall lapse in six months.

[101] The mutual prohibitions regarding alcohol and drugs during parenting times shall continue; so too will the third party prohibition. Because S. has offered to continue drug testing, I will order it. (How long this requirement is needed will be left for another day or discussion/agreement between the parents.)

[102] The parties should get into a routine of exchanging their work schedules (as soon as they are known) if they are going to take advantage of the flexibility afforded by the outcome of this case; and I will so order.

[103] There were no submissions regarding costs. I am not inclined to make an award, but counsel will have three weeks to make written submissions if the issue needs to be addressed.

[104] S.'s counsel shall prepare and submit an order.

Dyer, J.F.C.