

FAMILY COURT OF NOVA SCOTIA

Citation: *C.F. v. M.C.*, 2016 NSFC 29

Date: 2016-06-15

Docket: Pictou No. 99510

Registry: Pictou

Between:

C.F.

Applicant

v.

M.C.

Respondent

Judge: The Honourable Judge Timothy G. Daley

Heard: June 9, 2016, in Pictou, Nova Scotia

Oral Decision: June 15, 2016

Written Decision: November 16, 2016

Counsel: Hector J. MacIsaac, for the Applicant
Ellen Burke, for the Respondent

Introduction and Summary of Positions

[1] This case and my decision is focused solely and exclusively on a young child, S.C., born 29 November 2011. More specifically, I must decide whether it is in her best interests that she be permitted to relocate with her mother, C.F., to Greenwood in the Annapolis Valley ('the Valley') or whether she should remain with her mother in Pictou County. The mother wishes to relocate with the child to Greenwood to begin a new life with her fiancé and to begin a new business with her parents, thereby providing for and improving S.C.'s financial circumstances. It would permit the mother and S.C. an opportunity to spend time with extended family in the valley area.

[2] The father, M.C., says that S.C. should remain in Pictou County. He says that any move to Greenwood would negatively impact his relationship with his daughter. It would reduce time his with her, diminish her relationship with his extended family, including his parents and that the proposed plan for the relocation is premature, incomplete and leaves S.C. vulnerable in the event that the mother's relationship with her fiancé does not survive or the business planned does not succeed.

Issues for Determination

[3] The issues that I must determine in this case are as follows:

1. Is it in S.C.'s best interests that she be permitted to relocate with her mother to reside in Greenwood?
2. If so, what are the appropriate parenting arrangements for S.C., including parenting time with her father?
3. If not, what are the appropriate parenting arrangements for S.C. in Pictou County, including parenting time with her father?

Issues Not In Dispute

[4] Having set out what this case is generally about and the positions of the parties, it is important to note that this case is not about who loves S.C. more. I accept that both the father and the mother love S.C. deeply. I also accept that both the mother's and the father's extended families love S.C. deeply as well. In fact, this child is blessed in many ways, not the least of which is the fact that she is

surrounded by people who love and support her in her life and, from all the evidence before me, she is a well-adjusted and happy child.

[5] It is also important to note that this case is not about who will provide primary residence and primary care for S.C. The evidence in the matter is clear that both parties accept that S.C. has resided primarily with her mother since the parties separated in October 2013. The father has had access on a regular basis and has clearly been involved in parenting S.C. but the evidence is clear, I find, that the mother has been the custodial parent for S.C. since separation and this will continue by agreement.

[6] It is also important to note that there is no existing order in place with respect to this family. Therefore this is an original application filed by the mother seeking joint custody of S.C. with the father, primary residence and care of S.C. with the mother, access for the father and, fundamentally, permission to relocate S.C. with the mother to Greenwood, Nova Scotia. Therefore I must review all of the evidence and determine what is in S.C.'s best interests in light of the options put forward by the parties. Again, what is not in dispute is that S.C. will primarily reside with her mother. Her mother will have primary residence and care and control of her in a joint custodial arrangement and the father will have access.

Legal Framework

[7] In order to properly assess the evidence in this matter, it is important to review the applicable law, including the applicable legislation and case law.

Maintenance and Custody Act

[8] The governing legislation in this circumstance is the Maintenance and Custody Act 1989 RSNS c.160 as amended. The beginning point in any analysis under that Act is Section 18 (5) which directs that

In any proceeding under this act concerning the care and custody or access and visiting privileges in relation to a child, the court shall give paramount consideration to the best interests of the child.

[9] Section 18 (8) further directs that

In making an order concerning the care and custody or access and visiting privileges in relation to a child, the court shall give effect to the principle that a

child should have as much contact with each parent as is consistent with the best interests of the child.

[10] In determining what I should consider in assessing what is in S.C.'s best interests, Section 18 (6) sets out some of the relevant considerations to be taken into account, though this list is not exhaustive. The relevant considerations under this subsection include the following:

- (a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;
- (b) each parent's... willingness to support the development and maintenance of the child's relationship with the other parent...;
- (c) the history of care for the child...;
- (d) the plans proposed for the child's care and upbringing...;
- ...
- (g) the nature, strength and stability of the relationship between the child and each parent...;
- (h) the nature, strength and stability of the relationship between the child and each... grandparent and other significant person in the child's life;
- (i) the ability of each parent... to communicate and cooperate on issues affecting the child

[11] There are other factors listed in this subsection, such as reference to family violence, cultural, linguistic, religious and spiritual upbringing, heritage and the views and preferences of the child, all of which I find inapplicable in this circumstance and I will not consider them.

Case Law

[12] The analysis of S.C.'s best interests, however, does not end with the factors set out under Section 18 of the Act. I must also look to what other courts have said in relation to the determination of a child's best interest. The leading decision in Nova Scotia respecting that analysis is *Foley v. Foley* 1993 CanLII 3400 (NSSC), a decision of Goodfellow J. I note that this decision predates amendments to the Act which set out the factors contained in section 18 (6) and I find that the so-called "Foley factors" have been largely subsumed by those amendments. That said,

Foley supra remains a helpful analysis of the test of best interests. The following are a list of those factors which are relevant to this case:

15 ... In determining the best interests and welfare of a child the court must consider all the relevant factors. The diversity that flows from human nature is such that any attempt to compile an exhaustive list of factors that could be relevant is virtually impossible.

16 Nevertheless, there has emerged a number of areas of parenting that bear consideration in most cases including in no particular order the following:

1. Statutory direction ...;
2. Physical environment;
3. Discipline;
4. Role model;
- ...
8. Time availability of a parent for a child;
- ...
11. The emotional support to assist in a child developing self esteem and confidence;
12. The financial contribution to the welfare of a child.
13. The support of an extended family, uncles, aunts, grandparents, etcetera;
14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. ...;
15. The interim and long range plan for the welfare of the children.
16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and
17. Any other relevant factors.

17 The duty of the court in any custody application is to consider all of the relevant factors so as to answer the question.

With whom would the best interest and welfare of the child be most likely achieved?

18 The weight to be attached to any particular factor would vary from case to case as each factor must be considered in relation to all the other factors that are relevant in a particular case.

19 Nevertheless, some of the factors generally do not carry too much, if any, weight. For example, number 12, the financial contribution to the child. In many

cases one parent is the vital bread winner, without which the welfare of the child would be severely limited. However, in making this important financial contribution that parent may be required to work long hours or be absent for long periods, such as a member of the Merchant Navy, so that as important as the financial contribution is to the welfare of that child, there would not likely be any real appreciation of such until long after the maturity of the child makes the question of custody mute.

20 On the other hand, underlying many of the other relevant factors is the parent making herself or, himself available to the child. The act of being there is often crucial to the development and welfare of the child.

Mobility

[13] In this case, there is also the specific issue of mobility, that is, the mother's request to relocate S.C. to Greenwood that requires consideration of the case law applicable to such matters. The leading decision on mobility is the Supreme Court of Canada decision in *Gordon v. Goertz*, [1996] 2 SCR 27, 1996 CanLII 191 (SCC). In paragraph 49 of that decision the court sets out the factors which must be considered when the parent has applied to relocate a child. Many of these factors, which I set out below, are very similar or identical to the provisions of Section 18 (6) of the Act though there are some that are unique to mobility decision such as this.

[14] The Supreme Court said at paragraph 49 the following:

The law can be summarized as follows:

1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.

6. The focus is on the best interests of the child, not the interests and rights of the parents.
7. More particularly the judge should consider, *inter alia*:
 - (a) the existing custody arrangement and relationship between the child and the custodial parent;
 - (b) the existing access arrangement and the relationship between the child and the access parent;
 - (c) the desirability of maximizing contact between the child and both parents;
 - (d) the views of the child;
 - (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
 - (f) disruption to the child of a change in custody;
 - (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.
8. In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: What is in the best interest of the child in all the circumstances, old as well as new?

Preliminary Issues

[15] Before moving on to the specifics of this particular matter, it is important to note that four preliminary issues arise out of the analysis in the *Gordon v Goertz* decision in this particular matter. The first is the reference in that decision to the fact that there is no legal presumption in favour of the custodial parent although the custodial parent's views are entitled to great respect. On one hand, the court has clearly said that there is no presumption in favour of either party. On the other hand, the inclusion of the phrase, "the custodial parent's views are entitled to great respect", requires that where a custodial parent can be identified, I must consider carefully that parent's views respecting what is in the child's best interests. In doing so, I find I must be mindful that the custodial parent's views of the child's best interests may well be affected by that parent's view of his or her own personal interests.

[16] In this case, as noted, there is no existing order which identifies a custodial parent. As well, there is agreement that the parties will parent S.C. in a joint custodial arrangement and that primary care will remain with the mother. For clarity, I therefore find that based upon the history of parenting of S.C. since the parties separated in October of 2013, the mother has been the custodial parent in the sense that she has primary residence of S.C. with her, has been responsible for most of her day-to-day care, including her health and general well-being and that she has shouldered most of the responsibility for S.C. since separation.

[17] This is not to suggest that the father has not been a loving, caring and involved father. But the evidence before me is that he is away for work a great deal of the time; has seasons of work that are much busier than others; has exercised access but has, of necessity, deferred to the mother in decisions regarding the day-to-day parenting of the child and caring for the child in most respects. I am quite sure he would wish it could be different but on the evidence it is clear to me that the mother is the custodial parent for the purposes of the *Gordon v Goertz* analysis.

[18] The second preliminary issue is the direction in *Gordon v Goertz* that I should consider the custodial parent's reasons for moving only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child. On first reading, this appears to restrict my consideration of any evidence brought forward by the mother as to why she is moving as a factor in considering the child's best interests. The Supreme Court, however, did leave the door open for me to consider such reasons in exceptional cases.

[19] As well, while I am restricted in considering the custodial parent's reason for moving, there is case law to support consideration of the economic impact of the custodial parent's decision to move with the child in assessing that child's best interests. In other words, while I should not consider the mother's reason for moving, I find it reasonable and necessary that I should consider what the likely economic impact will be on S.C. if I approve her relocation to Greenwood. I find support for this analysis in the decision of *Woodhouse and Woodhouse* [1996] O.J. No. 1975.

[20] The third preliminary issue is that *Gordon v Goertz* supra presumed that there is an existing order of custody in place and, as set out in the first factor listed at paragraph 14 of that decision, I must consider whether there has been a material change in circumstances. In this case there is no existing order and I find, therefore that I must conduct the analysis based solely on the test of S.C.'s best interests.

[21] The fourth preliminary issue is that though the *Gordon v Goertz* decision contemplates two options available to the court on the unique circumstances of that decision, there are in fact three options available to any court in mobility cases. On the facts in *Gordon v Goertz* the court had the option of permitting the relocation of the child with the mother to Australia or, given that the mother was already residing in Australia and would remain no matter what, the court had the second option of a change in custody and primary care with the child remaining with the father in Canada.

[22] As noted by Jollimore J. of the Nova Scotia Supreme Court Family Division in the decision of *Kanasevich v. Robinson* 2014 NSSC 96 there is a third option available to the court whereby I could order that the *status quo* remain in place and that the child therefore remain in the county in the care of her mother. Jollimore J. reviewed the decision of *Woodhouse and Woodhouse* supra in support of that proposition. I say that I find that this is a common sense third option so long as the parent in question makes it clear that he or she would remain with the child if the child is not permitted to move. In this particular case, the mother has made it clear that she will remain in Pictou County if the child is ordered to remain here and will not relocate without S.C. The father is not seeking to change the primary care of S.C. in any event.

[23] As a result, on the facts of this case, I am left with two options: First, I could permit S.C. to move with her mother to Greenwood; Second I could refuse to permit S.C. to move and the effect would be to have the mother remain with the child in her care in Pictou County. Therefore it will be these two options that I will consider in my decision.

The Evidence

[24] Moving to the evidence, the mother says that the parties separated in October 2013. She says the father resides in Moose River, Nova Scotia and has a girlfriend in Bedford. His employer is also based in Bedford. His evidence is that he works on a road crew and spends much of his work travelling. His busy season is the spring and his slow time is the winter.

[25] The mother and S.C. currently reside with her parents and have since the separation. She works in her mother's dog grooming business, though the evidence is that she does not earn much in that role and does not work full-time hours. The evidence is that the business is not doing well as a result of increased competition.

[26] Her father, R.F., is a department manager at the local Walmart store. He says that he is able to transfer to a Walmart store in the Valley.

[27] The mother says that she is in a relationship with R.R. They have known each other for approximately 15 years, began dating in June 2015, became exclusive in September 2015 and have since become engaged.

[28] R.R. says that he sees C.F. every weekend but has yet to spend much time with S.C. He has spent time with her on weekends and spent one week with S.C. in Pictou County. R.R. says that he knows S.C. as well as you need to know a four-year-old and he knows who she is.

[29] R.R. is employed with the Royal Canadian Air Force in Greenwood on a full-time basis and while he can move to Pictou County, C.F. says it would be better if S.C. could relocate with her to Greenwood to continue that relationship.

[30] R.R. lives on the base in Greenwood in a three-bedroom townhouse. R.R. earns approximately \$60,000 per year and says that his income and employment are stable. He explains that he could leave the military immediately and relocate to Pictou County but that he would have to pay the cost of moving. If he waits until January 2018 to leave the military and relocate, the military will pay his costs of that move. If he relocates to Pictou County at any time, of course, he will lose his employment and income from the military and have to find work in Pictou County.

[31] Both the mother and R.R. described the relationship as solid with a good future. R.R. says that he is not trying to replace the father in S.C.'s life and that he will fit into her and her mother's life.

[32] R.R. has a daughter who resides with her mother in Greenwood and he visits with her regularly. She and S.C. have met but have not spent much time together.

[33] C.F. explains that she has family in Greenwood and that her parents are planning to relocate to Greenwood. Her father will transfer to a Walmart store there and her mother will set up another dog grooming business in Greenwood. It was both her and R.R.'s testimony that there is good opportunity for such a business based on their research of the local market as compared to the market in Pictou County. The evidence, however imprecise, is that there is an oversaturation of dog grooming businesses in Pictou County that has taken business away from

C.F.'s mother, L.F. and there are only four such businesses in the Greenwood area and this presents an opportunity.

[34] L.F. and R.F. have already explored a location for the business and if S.C. and her mother relocate, L.F. will travel to the valley with C.F. immediately and set up that business. The plan is that C.F. will work in the business and derive income from it.

[35] R.F. says, with respect to the business, that they have "feelers out" and that the business "is in motion". It is clear that they have an intent to open a business but it is also clear that there are no concrete plans put in place and they will not move forward until they have a decision of this court regarding mobility. If relocation is permitted, R.F. will remain in Pictou County, do work on the family home to prepare it for sale and place it on the market in the spring of 2017. He will remain in Pictou County until the home is sold and then relocate to Greenwood.

[36] L.F. says she will move to Greenwood and stay with R.R., C.F. and S.C. When R.F. relocates after the sale of the home they will find a new home to reside in. When asked what might happen to that plan if R.R. and C.F. do not stay together, L.F. is somewhat vague and suggested she would have to find somewhere else to live.

[37] The evidence is that both maternal grandparents are very close with S.C., as one might expect, given that S.C. and her mother live with them. While the grandparents initially said that they would relocate to the Valley regardless of the decision of this Court, they did sway somewhat in their evidence to indicate they may not relocate unless S.C. and her mother do.

[38] As part of the plan for relocation, the mother says that she has confirmed daycare on the military base for S.C. and has lined up a family physician and dentist for herself and S.C. She says the elementary school for S.C., who will attend school next year, is located across the street from the base where they will reside. She says there are plenty of children on or near the base to socialize with.

[39] The mother says that she acknowledges it is important to maintain the relationship between the father and S.C. and she will support this. She says that though they may disagree on how much and when the father exercises access, they do cooperate in making sure it occurs.

[40] In her second affidavit filed in the matter, the mother says that the father had S.C. in his care for 17 days in January and eight days in February of 2016. She also says that during certain times of the year he had access every weekend, with one weekend having one overnight visit and on the second weekend having two overnight visits. She also says the father missed 12 of his access weekends in 2015.

[41] The father disagrees with some of this, saying he exercised more access than the mother claims. In the end, the evidence is somewhat mixed on this, I am satisfied that the father, when available, spent regular access with S.C. and it was more frequent than every second weekend. Though the mother suggests that the father occasionally refused access, I do find that he was an involved, loving and consistent father in her life. This is reinforced by the mother's third affidavit in which she describes the father as communicating via facetime with S.C. every night and that she proposed that this continue even if they relocate to Greenwood.

[42] The evidence of R.R. and the father is that they have never spoken other than perfunctory acknowledgements when S.C. is coming and going from the parents' care. Both men are significant figures in S.C.'s life. The fact that neither one of them has chosen to initiate a relationship with the other, however minimal, is a concern for this court. Whatever my decision, I wish to make clear that for S.C.'s sake a relationship and communication should begin, should be polite, courteous and child centred at all times.

[43] There was some evidence about the amount of time S.C. would spend in a bus in order to reach school and back if she remained in Pictou County versus if she relocated. This was comparative to the amount of travel time that would be spent in a car for access if she relocated with her mother to the Valley. I do not find this evidence to be particularly compelling. Children in rural Nova Scotia frequently travel on the bus for significant amounts of time. That is part of their lives. Likewise travelling for access is a fact of life for many children, even those who live on opposite sides of Halifax or Toronto. The difference may be that when travelling for access the child is with a parent and some quality time can be extracted from that experience.

[44] Moreover, as with access time, it is a false analysis to count hours, minutes or trips. It is the overall effect that staying or leaving would have on S.C. that is relevant.

[45] The father's concern, not surprisingly, is that any relocation for S.C. would significantly impact his relationship with her and would not be in her best interests.

[46] His evidence is that he and the mother were able to co-parent fairly effectively since separation. He says his regular parenting time since separation in October 2013 has been on the basis of a two week schedule. On the first weekend he says he picks S.C. up from daycare on Friday and has her in his care until Saturday evening. On the second week he picks her up after daycare on Friday and she remains with him until Sunday evening at 6 PM. He speaks to her every night via Facetime when he is on the road.

[47] He maintains that he has parenting time with her on Christmas, and New Year's Day, as well as times when he has unscheduled time off. During the winter months, when he is not working on the road, he has more time with S.C. than in the summer. His evidence is that he had S.C. for 21 days in January and 11 days in February. This is somewhat different from the mother's evidence but there is common ground that he spent significant amounts of time with S.C. in the winter months.

[48] The father works in road construction, the fall is the busy season for him and he is required work extended over time. As a result, he works between seven and eight weekends per year. If he is unavailable on an access weekend, S.C. usually spends it with his parents.

[49] The father describes S.C.'s extended family to include aunts and uncles, a number of cousins close to her age and, of course, his parents. The evidence is that S.C.'s paternal grandparents are very close with her and that he often spends his access time with S.C. at his parents' home. He says they participate in camping, swimming, coasting and skating.

[50] The father's evidence, and I have no doubt of this, is that S.C. has a well-established life in Pictou County. She attends daycare, has a family doctor and dentist in place and takes part in various activities.

[51] There was evidence from the father's brother, C.C., who has known S.C. her entire life. He says that he and his family, including his two children, have been close with S.C. He describes spending time with S.C. and her father and that his children and S.C. have grown up together and spend time regularly with each other. He also describes extended family time in the summers at a cottage and on special occasions.

[52] The paternal grandmother, I.C., also testified. She says that before the parties separated, they lived close to her and her husband and they saw the parents almost every day. They also saw S.C. almost daily for the first 3 to 4 months of her life. She says they played a major role in a S.C.'s life. This included providing daily childcare for S.C. when her mother went back to work and continued even when S.C. began attending daycare.

[53] After separation, their time with S.C. decreased. Given that S.C.'s father resides in their home, they spend time with her when he has S.C. As noted, he travels for work but there are times when they have S.C. in his absence including approximately 5 to 6 weekends per year.

[54] The closeness of the extended family of the father is clear also from the evidence of his cousin, H.C. I will not review her evidence in detail except to say that it is consistent with that of the rest of the family.

[55] She said in cross-examination that while she did not initially fully be supportive of the relocation plan, she does concede that if the plan is to set up a business, this would be good for S.C. in providing a better income and lifestyle.

[56] The positions of the parents are, as expected, diametrically opposed. The mother seeks permission to relocate S.C. with her to the valley. She says that she will work in her mother's grooming business and generate income which will benefit S.C. She will begin a new life with her fiancé, R.R., in a stable nuclear family. His income is good. He has stable living conditions and stable work. She says that the arrangements have been confirmed for preschool and school, physician and dentist that there are plenty children to socialize with.

[57] Her plan includes her parents relocating to Greenwood, her mother first and her father after the sale of their home. She and S.C. are very close to them and live with them. Their relocation would keep that continuity and would provide support for her and S.C.

[58] She says that despite the concern about the stability relationship with R.R., it is stable and has future.

[59] Regarding access for the father, she says that this is important and that he needs to maintain a relationship with S.C. for her sake. The evidence is that she has never denied access to him and it has been cooperative over the years. She says

that the father's family has a lot of time with S.C. because the father resides with his parents and the family spends time together.

[60] She maintains that if she is permitted to relocate S.C. with her, the father's total access will not change at all. Her plan is that S.C. will spend each weekend with her father. On the first weekend she will be with him from Friday at 5 PM until Sunday at 5 PM and the second weekend she will be with him from Saturday at noon to Sunday at 5 PM. She proposes that she will deliver the child to the father in Pictou County and retrieve her at the end of the visit on each occasion.

[61] She says that for Christmas the father can have S.C. for two weeks and in one year the father would have S.C. with him from Christmas Eve to Christmas Day at lunch and the next year from Christmas Day at lunch to Boxing Day at 5 PM.

[62] She says that he can have S.C. during the school spring break if he is available or if his parents are available. This would include both weekends of that break.

[63] For summer, she proposes three consecutive or nonconsecutive weeks of access to the father.

[64] For Easter, she proposes that they split the weekend and switch that arrangement each year. She proposes that for each of Mother's Day and Father's Day, S.C. spend that day with the respective parent regardless of the other access arrangements. Finally, she proposes that the father have Facetime access with S.C. each day.

[65] She says that the overall amount of time the father will have with S.C. will be equivalent to what he has now.

[66] The father sees it differently. He believes that if the relocation is permitted, it would not be in S.C.'s best interests. He is concerned, understandably so, that his access will not be as easy or as smooth as the mother suggests. There is a significant distance between the communities. Nova Scotia weather is unpredictable, particularly in the winter, and would present challenges and perhaps cause delays or cancellations of access to S.C.'s disadvantage.

[67] He says that the relocation would also reduce the opportunity for his parents and extended family to spend time with S.C. He notes that he does not get much

time off in the summer and would not have much chance to exercise the summer access as proposed though his parents could have that time if he cannot exercise it.

[68] He questions the stability and longevity of the relationship between the mother and R.R. It is a relatively new relationship. The application was filed a few months after they became exclusive. Though they are engaged, he suggests that they should wait at least a year before considering relocation. In the alternative, he proposes that R.R. move to Pictou County and notes that R.R.'s evidence is that he could do so immediately so long as he pays the cost of the move. The alternative is that R.R. remained in the Valley and move in 2018 when the military will pay the cost. He says this is a preferable alternative to relocating the child and disrupting her life.

[69] The father says that even if they meet in the middle by exchanging S.C. in Bedford, he doesn't usually work there and it would still be the same amount of travel time for S.C. in a vehicle.

[70] As summarized by his counsel, it is his position that any change of this sort is premature. He notes that the mother has no job waiting, it is a new relationship, the child will be away from extended family including the maternal grandfather until the home is sold, and there is the option of R.R. relocating to Pictou County. He says that the fact that R.R. has no relationship with the him is concerning. It is his position that there is great uncertainty in the plan which puts S.C.'s best interests at risk.

Analysis and Decision

[71] In arriving at a decision in this mater, I must examine all of the evidence and determine what is in S.C.'s best interests having regard to all relevant circumstances.

[72] In this circumstance, and taking into account all of the evidence, I am prepared to grant the application of the mother to permit S.C. to relocate with her to Greenwood on certain conditions. I do so for several reasons.

[73] First, I take into account that the current custody and access arrangement is in place with the mother having primary care and control of the child and the father having regular and generous access. I find that the plan proposed by the mother, which I will modify somewhat, provides the father with a continuity of access, albeit with some risks associated with it due to weather and distance. I find that

this is consistent with the principle in the Act of maximizing contact between the child and both parents in a way that is consistent with the child's best interests.

[74] I find that the move will have several benefits for S.C. It will allow her to benefit from the financial security of R.R. and any financial benefit the mother obtains by the opening of a dog grooming business in the Valley as planned by the family. It will allow S.C. to continue her relationship with her maternal grandparents, albeit with a delay in the maternal grandfather arriving permanently in the valley. It will provide stability in her home life in a nuclear family and that has merit.

[75] S.C. will also maintain the benefit of an ongoing, regular and strong relationship with her father. In doing so, and given that he resides with his own parents and they spent a great deal of time with the extended family, she will benefit from the continuity of those relationship as well. I note this is important because the father's extended family has access with S.C. when he does. This will continue.

[76] I do acknowledge that the relationship between R.R. and the mother is somewhat new but they have become engaged and on the evidence I am satisfied that there is a real prospect for that relationship to succeed. One never knows what the future will bring but that can be said of anything in life including relationships.

[77] I keep in mind that this will cause a disruption in S.C.'s life. She will be taken from her current home to a new location. She will have to adapt to a new community, to living with R.R. and to her maternal grandfather being away from her for some time. She will have to adapt to the travel to have access with her father. She will, as every child does, have to adapt to a new school.

[78] That said, all the evidence is that S.C. has a very close and loving family on both sides. They are very supportive of her and I am satisfied that she will adapt well as children often have to due to moves. It is not unusual for children to relocate with their parents, or at least one of them, from time to time. What is important is how the child is supported during the transition.

[79] I also note that S.C. is about to leave preschool and according to the evidence of C.F., will lose contact with most, if not all, of the children in pre-school. Therefore that social transition will be no different in the Valley versus this county.

[80] These decisions are never easy to hear. I am sure the father is disappointed and I acknowledge that he has been a good, supportive, loving and involved father for S.C. I also believe that this move will not interfere with his ability to continue in that role in her life.

[81] The mother will therefore be permitted to relocate S.C. with her to live in Greenwood, Nova Scotia.

[82] There will be a joint custody order in this matter. The mother shall have primary residence and care and control of the child.

[83] The parents will keep each other fully informed with respect to all major matters concerning the best interests and well-being of the child. The father will be entitled to obtain information and fully communicate with any third party service providers for the child including, but not limited to, physicians, dentists, preschool and daycare providers, teachers, and schools. The mother will provide the father with full contact information for her and all such third party service providers and will ensure he is notified of any changes in her or those service providers' contact information. She likewise must keep him fully informed with respect to any ongoing major issues concerning S.C., her health, education or her general well-being.

[84] The parties will meaningfully consult in all major issues concerning the child and if they cannot agree on any such issue, either may make an application to court for determination of that matter. The father shall have access with the child on the following basis:

1. Weekend One - From Friday at 5 PM to Sunday at 5 PM. If an in-service day or statutory holiday falls on the Friday or Monday of that weekend his access shall be extended to begin on Thursday or end on Monday or both.
2. Weekend Two - Saturday at noon to Sunday at 5 PM. If an in-service day or statutory holiday falls on the Monday of that weekend his access shall be extended to end on Monday.
3. Any access time which is lost due to weather shall be made up as soon as possible, preferably on the next access weekend.

4. The father shall have additional access if he is able to be in Greenwood on reasonable notice to the mother including overnights in Greenwood or the surrounding area.
5. The father will have the following special access time which shall take priority over the access time set out above as follows:
 - a) For Christmas, he shall have S.C. for a total of two weeks during the school Christmas break. Within that time one parent shall have S.C. from Christmas Eve at noon until Christmas Day at 2 PM and the other parent shall have S.C. from Christmas Day at 2 PM until Boxing Day at 5 PM unless otherwise agreed between the parties. The father shall have S.C. with him from Christmas Eve through to Christmas Day in 2016 and every even-numbered year thereafter and the mother shall have the child with her from Christmas Eve through to Christmas Day in odd-numbered years.
 - b) The father shall have S.C. with him during each school spring break, including both weekends of that break.
 - c) The father shall have three consecutive or nonconsecutive weeks of block access with S.C. each summer. He shall notify the mother of which weeks he wishes to have by May 1 each year and if he does so, he will have those weeks. If he fails to notify her by that date, they will discuss which weeks he wishes to have but the mother will have final authority over which weeks apply.
 - d) For Easter, the mother will have S.C. with her from Thursday at 5 PM until Easter Saturday at 2 PM and the father will have S.C. with him from Easter Saturday at 2 PM through to Easter Monday at 5 PM in 2017. The parties will rotate that schedule each year thereafter. These times will apply unless otherwise agreed between the parties.
 - e) For Mother's Day the mother will have S.C. with her from 10 AM to 5 PM. For Father's Day the father will have S.C. with him from 10 AM to 5 PM.
6. Each parent will be entitled to have access via Facetime with S.C. each day that S.C. is with the other parent.

7. For any access time that the father is entitled to but is unable to exercise, he may choose to have his parents exercise that access time.
8. For transportation, the mother will take S.C. to and from the father's home for access on the weekend he has her from Friday to Sunday. The parties will meet at a location in Halifax Regional Municipality mutually acceptable to them at the beginning and end of the father's access period when he has S.C. with him from Saturday to Sunday. The parties may change this travel arrangement by consent at any time. Each shall bear their own costs for such transportation.
9. For all special access time, the mother shall transport S.C. to and from such access at her expense unless otherwise agreed between the parties.

[85] Respecting child maintenance there was an agreement put on record on March 21, 2016 that the father's income is \$106,000 and he will pay child maintenance of \$884 per month payable at the rate of \$408 bi-weekly. The current information from his 2015 tax return confirms his income in 2015 was \$107,648. child maintenance will therefore be set at \$899.65 per month payable at the rate of \$415.22 commencing on the date of his first pay in July of 2016 and continuing every two weeks thereafter.

[86] Respecting childcare expenses, there is evidence before me from the mother in cross examination that the father has paid more than twice the cost of day care to the mother in the past. I will therefore not order any retroactive child care expenses in this matter.

[87] In terms of ongoing child care expenses, since I have approved the move of the child, these costs are unknown at this time. I therefore decline to order any such contribution at this time.

Daley, J.