FAMILY COURT OF NOVA SCOTIA

Citation: *L.F. v. H.F.*, 2013 NSFC 31

Date: 2013-08-28
Docket: FKMCA-083717
Registry: Kentville, N.S.

Between:

L.F.

Applicant

v.

H.F.

Respondent

Editorial Notice:
Edited by Judge for grammar, punctuation & readability

Revised Decision: The text of the original decision has been corrected on August 31, 2017.

Judge:	The Honourable Judge Marci Lin Melvin
Heard	August 28, 2013, in Kentville, Nova Scotia
Decision:	August 28 2013
Counsel:	Sharon Cochrane, on behalf of the Applicant Anita Hudak, on behalf of the Respondent

By the Court:

[1] The Applicant mother applied for custody and primary care of two young children. She seeks supervised parenting times for the Respondent father, and child support pursuant to the guidelines.

[2] The parties entered into an interim consent order sharing joint custody with the Applicant having primary care. The Respondent had supervised parenting times and was to pay child support in the table amount based on his income in 2011 of $30,511.00.

[3] The parties returned to Court two months later, and the Applicant was seeking supervised parenting time continue. The Respondent wished to contest and the matter was subsequently heard.

[4] Should the Respondent father's parenting time continue to be supervised?

[5] The evidence of the Applicant mother is that the Respondent father is a sexual deviant, convicted of one count of voyeurism and one of attempted voyeurism. He is registered under the Sex Offender Information Registration Act for a period of ten years.

[6] The offenses were committed while the youngest child of the parties was in his care. One act of attempted voyeurism was against the 15 year old daughter of the Respondent's former employer. The other was against an unknown woman. His ***modus operandi*** was to affix a camera to a pole facing a bedroom window, leave the on button "on" and take pictures/video recordings.

[7] The Applicant alludes to concerns that the Respondent may also have sexually abused their two-year-old daughter. He was also online-involved in a sexual rape fantasy.

[8] A.A. (Sandy) MacIntosh testified on behalf of the Applicant. His evidence was that the Department of Community Services had determined that the Respondent father was a risk to his children and the agency wanted a complete assessment done with an approved facilitator.

[9] The Agency is not involved in this matter and according to the evidence of Mr. MacIntosh, the agency has closed its file because the children are being

protected by their mother and having supervised parenting time with the Respondent father.

[10] On cross-examination Mr. MacIntosh testified the agency recommended supervised parenting time based on the factual situation: the Respondent father pled guilty to voyeurism against a young teenage girl, left his baby unattended for 20-40 minutes while he committed the offence and had the baby with him while he committed another offence.

[11] The Applicant mother testified to her belief that the Respondent father knew he was attempting to photograph the 15 year old girl through her bedroom window, frequently went for walks in the dark with the baby, doesn't think he's of sound mind, discussed his online rape fantasy game, and that he'd filmed an unidentified woman undressing through her window.

[12] She further testified their three year old daughter is involved with mental health and child development for behaviours the child has been exhibiting since September 2012. The Applicant mother's evidence is the child is not potty trained, sucks her fingers, puts things in her mouth, refuses to lay down with the Respondent father, screams "No Daddy!" when he tries to lie down with her, saying her bum and vagina hurt and has a vaginal infection.

[13] The Court qualified Dr. Ronald Lehr as an expert in human sexuality and risk of harm. Dr. Lehr noted he saw the Respondent father eleven times. In his opinion, the Respondent father did not pose a risk of harm to his children.

[14] On cross-examination, it was clear the Respondent father had not advised Dr. Lehr of his pornographic internet involvement with a site called "The Experience Project" or that he was following a rape fantasy.

[15] Further, Dr. Lehr did not do any psychological testing with respect to the Respondent father's sexual deviance rather basing his determination on clinical experience.

[16] Dr. Lehr testified his client's acts of voyeurism weren't sexual but a cry for help because his marriage had broken down and he found it difficult to stand up to the Applicant. Dr. Lehr testified that there was no correlation that he was aware of between voyeurism and paedophilia.

[17] The Respondent father testified that the voyeurism wasn't sexual in nature he didn't leave his six month old baby alone for 20-40 minutes in the dark on an evening in October – saying: "I don't know exactly. No longer than 15 minutes, one time."

[18] When asked by his counsel: "[The Applicant mother] said you were not of sound mind," the Respondent father opined:

"*I think my mind has the most clarity it ever has … I had to change everything in my life … it was a hard lesson but a good lesson … I have faced the deepest darkest places of my humanity and I have come out and discovered what was indestructible … I am implementing tools within myself so I can have more self-awareness … I've begun to forgive myself for what I did…"*

[19] On cross-examination, however, the Respondent father was evasive and played word games with counsel for the Applicant. He was flippant and acted glib.

[20] He was cross-examined on taking a video through the window of an unknown woman undressing and he said it wasn't sexual he just wanted to experience her life. (Which leaves the Court to ponder why he didn't then focus on the kitchen window and watch her mopping the floor).

[21] His testimony regarding propping a pole in his employer's yard with a camera taped to the top and the camera "on", was that he didn't know it was his employer's minor daughter's bedroom window. The child's father came out and caught him, fired him and ordered him off the property immediately. That is why the charge was "attempt voyeurism."

[22] While it is true that it is the child's right to know both parents and not the parents to know the child, this must be tempered with serious consideration to whether it is in the child's best interests to know both parents. In cases where there is a potential for a child to be harmed in any manner whatsoever, a Court must consider whether the child would be better off not knowing a parent than – for instance – becoming an innocent and unknowing victim of a parent's sexual, physical or emotional abuse.

[23] The Respondent father is a sexual offender. Ms. Hudak for the Respondent father, tried to convince the Court that the Respondent father only committed the act of voyeurism once. The Court finds this difficult to believe. Certainly he was only *caught* once. Ms. Hudak also tried to convince the Court that an act of

attempted voyeurism is not voyeurism. The Court finds it is only "not" a conviction of voyeurism because the child victim's father caught the Respondent father putting a pole with a camera on it, up to his 15 year old daughter's bedroom window. I find he knew it was her bedroom window. His evidence that he didn't know whose window it was is not credible.

[24] The Respondent father's evidence is that he wasn't doing these acts as sexual acts but rather as a cry for help because he was no longer interested in his wife, didn't want to be married and if he did something completely outrageous his wife would end the marriage. The Court finds this not even remotely credible.

[25] The Respondent father's counsel argues that the Respondent father did not involve his six month old baby in the commission of the offences: "The infant was asleep and thus unaware and oblivious. He was not harmed in any way." This is a telling comment, showing the Court how completely irresponsible the Respondent father is. It is a totally unacceptable justification. He was so focussed on his own deviant gratification he gave no thought to the child.

[26] He left a defenceless infant alone, once in a care, while he committed the offences. He has no idea if the infant was awake or asleep. And that something did not happen to the child while alone is pure luck.

[27] The evidence of the Applicant mother is compelling and the Court finds she is not trying to control the Respondent. She is trying to cope with the betrayal of being married to a sexual deviant and protect her children.

[28] The Applicant mother is clearly concerned about the welfare of her children. The Court found her to be a credible witness. She was understandably naïve and in shock when she found out what the Respondent father had done, and her actions reflect that.

[29] Her testimony was clear and concise, non-judgmental, but evidenced her great concern that the children would be at risk if left in the unsupervised care of the Respondent father.

[30] The Court did not find the Respondent father to be a credible witness.

[31] Supervised parenting time is neither a punishment to the parent nor a "parent focused" remedy. It is a "child focused" remedy, and only used if a child's best interests warrant it. Supervised parenting time may be used by the Court if a child

may be at risk of physical, psychological, emotional or sexual harm, and if the evidence supports the concern of that risk.

[32] Supervised parenting time is not to be seen as being indefinite. It is a solution that allows a child to know or continue to know the other parent in a safe and secure setting.

[33] The Court must look at a child's best interests, and when risk of harm is a factor when considering what is in the child's best interest, the risk of harm must be given due weight.

[34] A child has the right to know both parents, but not at the risk of being harmed.

[35] What is best for a child must be determined on a balance of probabilities.

[36] Jorgeron, J., in **Lewis v. Lewis,** 2005 NSSC 256 (Can Lii) wrote:

> :Supervised access is an exceptional remedy. A child is entitled to share in the daily life of his/her parents unless such is not in the child's best interests to do so. Access is the right of the child and not the parents. There is no presumption that contact with both parents is in the best interests of the child…"

[37] In **Slawter v. Bellefontaine**, 2012 NSCA 48 (Can Lii), Beveridge, J.A. noted that supervised parenting time is appropriate in specific situations including where a child requires protection from physical, sexual or emotional abuse.

[38] In the case presently before the Court, there is concern of all of the above: physical – the Respondent father left his six month old child unattended in the dark and cold for anywhere from 20 – 40 minutes; sexual – there are too many unanswered questions regarding the Respondent father's sexual deviancy and his three year old daughter's behaviours before he left the home; and emotional.

[39] The Respondent father's application for unsupervised parenting time is premature. The Court is not convinced to any extent that the children would be safe in his unsupervised care. There is too much at stake to gamble on the lives of these innocent children.

[40] Not only is the Respondent father a sexual deviant under the SIORA for 10 years, there is no definitive evidence before the Court that he is NOT a risk to his own children. Although Dr. Lehr testified on his behalf, as an expert witness on

the risk of harm to the children, the evidence was incomplete. The Court determines on a balance of probabilities, based on the evidence before the Court, that it is not in the best interests for the Respondent father to have unsupervised parenting time with his children.

[41] The Court orders as follows:

(1) The Respondent father shall continue to have supervised parenting time for the next three months;

(2) The Respondent father shall undergo a psychological assessment for sexual deviancy as it pertains to and relates to a risk of harm to his children;

(3) The Respondent father may have supervised parenting time 3-4 times a week for 2-3 hours at a time, at a neutral location by a neutral supervisor mutually agreed upon by counsel for the parties. If there is no agreement, and if Ms. Reimer or her staff can do it – in spite of Ms. Reimer's obvious closeness to the Respondent father – she is a professional and will not allow the children to be harmed.

[42] The Court reserves the right to render a more complete written decision.

[43] Given the premature nature of this application, the Court would have considered costs if they had been requested. The Court will keep that in mind if the matter proceeds again without all of the information required before the Court.

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Marci Lin Melvin, J.F.C.