

FAMILY COURT OF NOVA SCOTIA

Citation: *D.T. v. S.W.*, 2019 NSFC 3

Date: 2019-01-24

Docket: FPICMCA-041945

Registry: Pictou

Between:

D.T.

Applicant

v.

S.W.

Respondent

DECISION

Judge: The Honourable Judge Timothy Daley

Heard: January 23, 2019

Oral Decision: January 24, 2019

Counsel Ellen Burke for Applicant
S.W. Self Representing

Introduction

[1] This decision is about D.J.T., a 13 year old boy, and what parenting arrangement will address his best interests. His parents, S.W. and D.T., have different views of what that parenting arrangement should be.

[2] The father asks the court to order a shared parenting arrangement with D.J.T. spending time with his parents on a week about basis. He also requests that there be a sharing of parenting time for other special occasions throughout the year including Christmas, Easter, school spring break, Mother's Day, Father's Day, the birthdays of the parents and D.J.T., and for the summer school break.

[3] The mother requests that she be granted sole custody and primary care of D.J.T. and that S.W. be given parenting time with him every second weekend on Saturdays and Sundays from noon to 6 PM each day. She requests that the exchange of parenting time take place through the Supervised Access and Exchange Program ("SAEP") at the Pictou County Wellness Centre or through a third party, as agreed. She also requests an order that there be specific parenting time for S.W. at Christmas, Easter and Father's Day. If S.W. cancels the first two consecutive visits without explanation she asks for permission to suspend parenting time. She also says that S.W. should ensure D.J.T. attend his scheduled activities during parenting time.

[4] D.T. asks that the order contain a provision that the parenting schedule be followed without change with S.W. advising her and the exchange facilitator 24 hours in advance of any cancellation. She requests that the order contain a provision that S.W. disclose financial information on an ongoing basis and be required to pay child support should he become employed. Finally, she seeks costs.

Procedural History

[5] The procedural history of this matter is of some importance. These parents have been involved in litigation before this court for many years which has resulted in multiple orders over time.

[6] This particular hearing commenced with an application by S.W. on December 15, 2017 seeking to vary an order of the court and that the court order shared parenting of D.J.T.

[7] The order that S.W. sought to vary was one issued after a judicial settlement conference which occurred in June 2017. That order was not fully settled until January 2018.

[8] That order provided for joint custody of D.J.T., the mother having primary care and prohibited the mother's other son, T., from residing in the residence with the child. It also prohibited T. from being left alone and unsupervised with D.J.T.

[9] The father was granted parenting time on a reasonable basis including every second weekend for Friday at 4 PM to Sunday at 5 PM, every second Wednesday from after school to Thursday morning, and at other times as agreed. It allowed for variation of the parenting time by agreement.

[10] The father was to be responsible for all transportation for parenting time.

[11] There was a specific provision for summer parenting time, allowing the father one week of block parenting time in July and two weeks in August, ensuring the child was returned to the mother one week prior to the commencement of the school year. That summer schedule was to apply for the summer of 2017. In the summer of 2018, the parties were to enjoy shared parenting on a week-about basis for the summer break.

[12] There are also specific provisions for parenting time for the father at Christmas, March break and Easter, sharing the time equally.

[13] The father was, and still is, in receipt of the Canada pension plan disability benefit, and the child portion of the benefit of \$237.69 per month was ordered to be paid by him to the mother until she received that portion of the CPP disability benefit directly from the program. Retroactive support was calculated and ordered to be paid if and when the father received a settlement from his former employer or, if such settlement was not received, he would make a monthly payment as agreed between the parties towards discharge of those arrears.

[14] Upon S.W. filing his application to vary, D.T. filed a response to the variation application on February 9, 2018. As the matter moved forward by way of several appearances before this court and interim orders, S.W. ultimately withdrew his application by correspondence to the court dated September 19, 2018. He confirmed this withdrawal on the record at subsequent appearances. That left D.T.'s response to application as the only application before the court and the matter continued on that basis.

[15] It is important to note that S.W. has only asked to introduce one affidavit in this matter, which contained one paragraph with his financial information attached as well as an irrelevant partial transcript of the decision respecting his termination from employment as an EMT. He has therefore not provided any response by way of affidavit to the application of D.T. throughout this proceeding.

[16] When he gave his evidence at the hearing, S.W. provided very limited direct evidence and was not cross-examined by counsel for D.T. There is, therefore, virtually nothing before the court from S.W. setting out his own evidence or responding to or challenging the evidence of D.T. He did conduct a limited cross-examination of D.T. and the process server, but his cross-examination of D.T. largely supported her positions as opposed to challenging them.

Summary of Evidence

[17] As noted, when the father filed his application, there were many appearances for the court to address organizational issues as well as on-going parenting issues for which interim orders were granted.

[18] The court granted an interim order allowing D.T. to travel with the child for vacation and change schools when required for his education.

[19] As well, the parties agree that the parenting time arrangement arrived at in the settlement conference broke down very quickly thereafter. The mother says that, for example, the father kept D.J.T. for additional time in the summer, kept him from day camp during that time, began to cancel parenting time with D.J.T. in August and September 2017, and that, after beginning school in September 2017, D.J.T. only stayed one time overnight with his father. She says this was due to S.W. cancelling or being unavailable for his scheduled parenting time.

[20] The mother says that there were many times that she inquired of the father his availability for parenting time but there was no response. Much of the communication was through S.W.'s brother who has been very helpful to the family in attempting to facilitate communication and parenting time in this difficult situation.

[21] The mother goes on to say that there were several times when the father did not respond to her inquiries about parenting time but rather showed up without notice, honking the horn of his vehicle in her driveway. She noted that the

cancellation of parenting time is particularly difficult during the week as it disrupts the school routine.

[22] On several occasions in her four affidavits before the court D.T. describes feeling threatened and unsafe as a result of S.W.'s behavior. S.W. that he has been the subject of three Peace Bonds over the last few years prohibiting contact with D.T. A few years ago he was convicted of uttering a threat to kill D.T. for which he was sentenced to a period of probation.

[23] In further describing the difficulties arising after the settlement conference D.T. says that S.W. has yelled at her, called her offensive and derogatory names, and left offensive voice mail messages on several occasions.

[24] She says that S.W. frequently parked his vehicle outside her home and stared inside, has driven back and forth by her home very slowly, and that she has called the police on many occasions to report the harassment, intimidation and stalking behavior which she experienced.

[25] D.T. described several incidents in November, 2017 that made her feel threatened and uncomfortable, including when she thought she saw S.W. at D.J.T.'s school when she picked him up one day. She stopped at work briefly and when she came out of the office, S.W. was there. He began to argue with her in front of D.J.T. about parenting time and she explained that, because she had not heard from him and his failure to follow the schedule, she had made other plans. S.W. was upset and began laughing at her. D.J.T. witnessed this interaction.

[26] A few days later she saw S.W. again at the school when picking up D.J.T. and he sent her numerous text messages and left nasty voice messages that same day, including at her place of work. She also saw S.W. drive by her house several times that evening.

[27] A few days later, D.J.T. was at a friend's home and D.T. was out running errands. When she returned, S.W. was parked at the end of the driveway, got out of his car, and began walking towards her while taking a video of her. She described his behaviour as strange and that she felt intimidated and threatened by him. She pulled out of the driveway and fled. She then called the police to report what had happened.

[28] D.T. later learned that S.W. had called the police, reporting that she tried to run him over with her vehicle. The police officer refused to lay a charge against her, and S.W. filed a complaint against the officer.

[29] D.T. describes that in November of the same year when picking up D.J.T. at school for his first band concert, S.W. arrived and parked next to her vehicle. She found his behaviour to be so unnerving that she felt afraid for her safety. D.J.T. was not with her when she left. She was so distraught that she drove down a one-way street in the wrong direction.

[30] D.J.T. called her and said he was at Kids First to meet her, and when she arrived S.W. was already there. She entered the building and called the police. S.W. remained in the parking lot for approximately 40 minutes. The police escorted her and D.J.T. from the building and followed them home, staying outside for a period of time.

[31] In her affidavit dated April 30, 2018, D.T. describes further troubling behaviour by S.W., including his driving in front of her home when D.J.T. was outside. D.T. says that she made many efforts to provide alternate arrangements for parenting time through her lawyer and S.W. has refused each arrangement. In that affidavit, she proposed an arrangement of parenting time every second weekend from Friday to Sunday facilitated through the SAEP and the same family and friends were proposed for that pickup and drop-off.

[32] She described incidents where plans were made for D.J.T. to spend time with his father and his family to celebrate S.W.'s and his twin brother's birthday. The mother agreed, but S.W. contacted D.T. just before the event to indicate he would not be attending. D.J.T. attended but was upset when he returned home.

[33] D.T. says throughout her affidavits that she wishes S.W. to spend time with D.J.T. notwithstanding the many problems arising in the parenting arrangement.

[34] D.T. says in her affidavit of April 30, 2018 that D.J.T. had not spent any parenting time with S.W. in four months. She noted that if the parenting arrangement could not be made between that date and the expiration of the current Peace Bond, it would be almost 8 months with no parenting time.

[35] She expressed significant concern that the week-about parenting time arrangement for the summer could not work based on S.W. cancelling parenting time or not showing up, and that she would be left to scramble to provide care for

D.J.T. She was also concerned that S.W. would not allow D.J.T. to participate in any planned recreational programs for the summer.

[36] To address the difficulties in facilitating parenting time for S.W., this court granted an Interim Order which provided parenting time for S.W. with D.J.T. every Wednesday from 5 PM to 7:30 PM and Fridays, at, or shortly after 5 PM to Sunday at 5 PM every second weekend. The exchange of D.J.T. between the parents would take place through the SAEP and, because of the Peace Bond, it provided for four alternative family members or friends who could facilitate the pick-up and drop-off. That order was issued on May 17, 2018.

[37] There was a missed visit on May 9, 2018 due to some communication difficulties with the SAEP. D.T. acknowledges that visit should have gone ahead as scheduled. She said she tried to rectify the matter through counsel to ensure makeup parenting time at a later date.

[38] An initial proposal for makeup time was rejected by S.W. D.T. offered a second proposal that a friend facilitate the pick-up and drop-off at the Wellness Centre which was agreed to by exchange of emails between counsel and S.W.

[39] For that visit, the facilitator took D.J.T. to the Wellness Centre for pick up at 5 PM, however, S.W. did not arrive. They left at about 5:25 PM. D.J.T. was upset by this missed visit. In an exchange of emails with counsel about the missed visit, S.W. stated that "there will be no visits until this is settled".

[40] Despite this statement, there was a visit facilitated through SAEP in June. Shortly thereafter, S.W.'s brother attempted to arrange an alternate pickup at school, contrary to the order, and this did not happen.

[41] At another visit facilitated through the SAEP, D.T. arrived and another person was present to pick up D.J.T. That person was not listed in the order. In D.J.T.'s best interest, D.T. allowed the visit to go ahead.

[42] Another visit was sought on Father's Day. There was nothing in the order providing for the special parenting time on Mother's Day or Father's Day. D.T. made other arrangements to go camping and did not receive any advanced request for parenting time on that day from S.W. She did receive a voicemail from a man around mid-afternoon saying that S.W. was at the Wellness Centre waiting to see D.J.T. She received a text from S.W.'s brother at 4:32 PM saying he understood

there was to be a visit that day. As regrettable as it was, there was no special arrangement nor advanced request made for parenting time on Father's Day.

[43] S.W. sent an email to counsel for D.T. on June 18, 2018, indicating he was upset with missing a visit on Father's Day. Counsel's reply explained there was no provision in the order for Father's Day and no advance agreement.

[44] After this incident, things began to break down again. There was an exchange of emails between counsel for D.T. and S.W. in which S.W. stated repeatedly that he would keep D.J.T. for a full week rather than abide by the terms of the Interim Order. At one point, S.W. indicated he did not want any more emails sent and would consider them harassment if they continued.

[45] Despite her misgivings, D.T. brought D.J.T. to the Wellness Centre to be picked up on June 22, 2018, as scheduled. She parked where all other exchanges had occurred in the past, and D.J.T. went inside the building twice to see if anyone was there to pick him up. They drove completely around the building and couldn't find anyone there. They left approximately half an hour after arriving.

[46] Upon arriving home, she received a voicemail from one of the exchange facilitators advising she was at the Wellness Centre and to call her back if they were going to drop D.J.T. off. D.J.T. was upset by missing the visit.

[47] Unusually in such a matter, counsel for D.T. filed copies of email exchanges between her and S.W. as part of the proceeding. I find them admissible, as these exchanges do not contain communication that is privileged. I do so having reviewed the decision in *K(R) v. K(S)*, 2005 ABQB 672 and the decision of *R.F. and O.B. and N.S.-R. and B.R.* 2006 SKQB 496.

[48] Those exchanges of emails indicate that S.W.'s emotional state was escalating in 2018. The contents of S.W.'s emails to D.T.'s counsel can be summarized as insulting, demeaning and completely inappropriate. Counsel's replies to S.W. were measured, professional and appropriate. I see these communications as part of the mosaic of evidence that S.W. was escalating his behaviour throughout this time.

[49] The challenges respecting parenting time continued. Many of these challenges were the result S.W. making requests for additional parenting time which could not be accommodated by D.T. There was, as described earlier, some confusion in missed visits, one of which was the responsibility of D.T., and many

more which were the responsibility of S.W. Throughout that time, D.T. says S.W. continued his harassing and intimidating behaviour and she continued to fear him.

[50] In her affidavit of November 22, 2018, D.T. continues to describe difficulties with parenting time. For example, on July 20, 2018 she attended with D.J.T. for pick up at the Wellness Centre but the SAEP was not available. When those occasions occurred in the past, exchanges still took place with the assistance of the other facilitators. She waited for 30 minutes, but no one showed. She received a call from the RCMP later claiming S.W. contacted them complaining she didn't show up for the exchange. That same evening S.W.'s vehicle was parked outside her home. She contacted the police to do a drive-by.

[51] D.T. attended Provincial Court on July 30, 2018, to request a Peace Bond against S.W. The order was granted.

[52] There were other visits and exchanges in August that went reasonably well through the SAEP or otherwise. There was dispute in mid-August about S.W.'s request that he have D.J.T. for a longer period of time than scheduled. D.T. refused. These types of disputes continued on throughout the fall. This included another statement by S.W. in an email to counsel that he would be keeping D.J.T. for a full week, contrary to the order.

[53] For the visit scheduled for August 17, 2018, it is clear in retrospect that S.W. notified counsel for D.T. by email to make alternate arrangements. I accept the evidence that counsel was not in the office to receive the correspondence and D.T., therefore, did not receive that information. She took D.J.T. to the Wellness Centre and was present when one of the facilitators, who had been used in the past as an approved facilitator, picked him up. She left D.J.T. with that facilitator, but approximately 30 minutes later he was returned home with another person. That person indicated S.W. was not available for weekend parenting time that week.

[54] Subsequently, it was revealed in correspondence between counsel for D.T. and S.W. that he blamed counsel and D.T. for this miscommunication, without taking into account that counsel was not in the office or available to respond to that email and did not communicate with D.T. in time.

[55] The visit for August 22, 2018 was cancelled approximately two hours before pick up as S.W. was in Halifax. For a visit on August 29th S.W. emailed counsel asking if D.J.T. could be dropped off at his home and counsel replied that, because

of the Peace Bond, this was not possible. S.W.'s response, including some vulgarity, accused D.T. of playing games.

[56] When counsel followed up to see if he was going to make arrangements for pick up at the Wellness Centre that evening, S.W.'s response was vague and unclear. As a result, D.T. attended with D.J.T. but S.W. cancelled the visit as he said he was having car issues.

[57] Another visit went ahead on August 31, 2018 as planned but another on September 5, 2018 was missed by S.W., and D.J.T. was not picked up as scheduled. His mother says he was upset. Another visit went ahead as scheduled on September 12, 2018.

[58] I note that D.T.'s affidavits are consistent in saying that, for almost all of the visits, when D.J.T. is returned, he is filthy, wearing the same clothes as when he left, his teeth are not brushed and he is exhausted and cranky. She is concerned about S.W.'s ability to maintain a parenting arrangement due to these concerns.

[59] The next significant event was the decision by S.W. to cancel the SAEP service on September 19, 2018. Since that date, D.J.T. has not had any parenting time with S.W. despite offers for interim parenting time by D.T. through counsel.

[60] In order to try to move the matter forward in the face of S.W.'s refusal to spend any parenting time with D.J.T. on the terms set out in the Interim Order, this court granted a consent Interim Order on November 7, 2018 which was issued on December 21, 2018 in which S.W. was granted two telephone calls per week with D.J.T. These calls were to be initiated by D.J.T. S.W. complains that those calls have not gone ahead. It is D.T.'s evidence that there were several calls after the initial order was issued that went extremely well, lasting 20 minutes or more, in which D.J.T. was laughing and enjoying his time on the phone with S.W.

[61] D.T. says that, unfortunately, D.J.T. continued calling and S.W. did not pick up the phone. After many attempts to do so, D.J.T. became frustrated and threw the phone down and refused to call S.W. again.

[62] Also of relevance is the evidence of Barry McIntosh, a process server retained to serve S.W. with correspondence relevant to this matter. In his affidavit of November 21, 2018, he says he attended at S.W.'s home on November 16, 2018 to serve him. S.W. was in his vehicle parked in the driveway, facing out towards the road. Mr. McIntosh pulled into the driveway in front of S.W.'s vehicle and

observed him sitting in the front seat alone. He knows S.W., having served him many times over the years. Upon approach, S.W. was hostile, telling Mr. McIntosh to get off the property and refusing to receive the document. He was described as extremely angry and aggressive. Not wanting to escalate the situation, Mr. McIntosh placed the document under the windshield of S.W.'s vehicle. He proceeded to walk away while S.W. continued cursing at him.

[63] Mr. McIntosh then heard S.W.'s vehicle begin to move, turned around and observed it reversing. S.W. stopped the vehicle and looked at Mr. McIntosh. He then accelerated towards Mr. McIntosh, swerving his vehicle directly at him. Mr. McIntosh says he froze and S.W. stopped the vehicle a few feet in front of him. Mr. McIntosh says that when this occurred, he was not in S.W.'s path to the road or any obvious direction of travel. It was clear to him that S.W. was coming directly towards him. As soon as the truck stopped, Mr. MacIntosh fled to his vehicle and contacted the RCMP. S.W. continued to curse at him as he drove by, and Mr. MacIntosh says that he is uncomfortable returning to S.W.'s residence.

[64] Despite efforts by S.W. in cross examination, I do not accept the proposition of S.W. that Mr. McIntosh was confused as to what happened. His evidence is quite clear, credible and largely uncontroverted.

[65] In her direct evidence, D.T. testified that D.J.T. has not had any parenting time with his father since December 24, 2017, up to the date of the Voice of Child Report and she notes that the Report by Devin Rankin states that D.J.T. had seen his father up to March 2018. D.T. says that this occurred when D.J.T. saw his father driving by and they waved at one another. In other words, there has been no true parenting time since Christmas Eve of 2017. The Voice of Child Report was filed with the court on June 4, 2018. The evidence is that further visits took place after that date.

[66] D.T. goes on to say in her direct evidence that the last visit between D.J.T. and his father was September 14, 2018. S.W. did not agree to any parenting time since then despite a "with prejudice" offer contained in correspondence from counsel sent to S.W.

[67] Regarding the order permitting telephone contact, D.T. says that she did not have the father's current number initially, but when she received it through the court documents she gave it to her son and, as noted earlier, and they had 10 or more excellent conversations of 30 to 40 minutes each.

[68] As noted thereafter, D.J.T. made several attempts on several occasions to reach his father, sometimes several times each day without success. D.J.T. has consistently refused to call him since, simply saying “maybe later”.

[69] D.T. testified that on December 21, 2018, she received an email from S.W.’s brother indicating that S.W. wanted to see D.J.T. at Christmas. D.T. says she proposed a Christmas visit from 2:30 PM to 6:30 PM and that she would drop D.J.T. off at his brother’s home. The reply from his brother on December 22 was that this sounded great and he would let her know.

[70] D.T. testified that on December 23, 2018, she followed up with S.W.’s brother and received a text from him saying he was trying to work it out. He said that S.W. wanted D.J.T. from 1 PM to 5 PM and she indicated that would not work. She said she received a final text on December 25th from S.W.’s brother but didn't see it until after 4 PM, and it was too late for a visit to be organized. There has been no parenting time since.

[71] As noted earlier, there is a Voice of Child Report from Devin Rankin filed June 4, 2018 before the court. This report makes very clear D.J.T.’s wish to spend three days with his father and three days with his mother on a rotating basis and that they split the holidays. He says that he feels very safe in both homes and wants equal time with each parent. He wants the judge to know that he misses his father. He says there is nothing that would change his mind about this.

The Law

[72] In order to decide the parenting arrangement that will serve D.J.T.’s best interests, I must consider the law respecting this issue. The governing legislation in this circumstance is the *Parenting and Support Act*. 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.

[73] 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.

[74] In determining what I should consider in assessing what is in D.J.T.'s best interests, Section 18(6) sets out some of the relevant considerations to be considered, though this list is not exhaustive. The relevant considerations under this subsection include the following:

- (a) the children'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 having regard to the child's physical, emotional, social and educational needs;
- (d) the plans proposed for the child's care and upbringing having regard to the child's physical, emotional, social and educational needs;
- ...
- (f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age and stage of development and if the views and preferences can be reasonably ascertained;
- (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 other's significant other person in the child's life;
- (i) the ability of each parent... or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child....

[75] In this matter, there are allegations of family violence, and as a result, I must consider section 18(6)(j) as follows:

- (j) the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on
 - (i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[76] Family violence is defined in Section 2(da), and without reviewing each provision individually, it is sufficient to indicate that I find that the evidence is clear that there is history of family violence in this matter and I must consider the issue of family violence in this case.

[77] The analysis of D.J.T.'s best interests, however, does not end with the factors set out in 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 the *Act*, and the factors contained in section 18(6) but I do find that the so-called "Foley factors" have been largely subsumed by these amendments but remains a helpful analysis of the test of best interests. I will not, at this time, review all of the factors set out in the *Foley* decision, but I take them into account in this decision.

[78] Because there is an existing order that this is a variation application, it is D.T.'s burden to prove, on a balance of probabilities, that there has been a material change in circumstances since the granting of that order in 2017. If she can do so, I must then embark on a fresh inquiry into what is in the child's best interests today.

[79] The leading decision on what constitutes material change in circumstance is the Supreme Court of Canada decision in *Gordon v. Goertz*, [1996] 2 SCR 27, 1996 CanLII 191 (SCC).

12 What suffices to establish a material change in the circumstances of the child? Change alone is not enough; the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way... The question is whether the previous order might have been different had the circumstances now existing prevailed earlier.... Moreover, the change should represent a distinct departure from what the court could reasonably have anticipated in making the previous order. ...

13 It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not

foreseen or could not have been reasonably contemplated by the judge who made the initial order.

[80] As with most matters, credibility is an issue. A leading decision respecting assessment of credibility in civil matters is that of *Baker-Warren v. Denault* 2009 NSSC 5, a decision of Justice Forgeron. While I will not review all of the factors she identifies which are helpful in assessing credibility in civil matters, I do remind myself of them and take them into account in this matter.

Material Change In Circumstances

[81] I am satisfied there has been a material change in circumstances since the issuance of the last order granted in 2017. For various reasons, the parties have been unable to abide by that order, communication has completely broken down between them, the father has refused any parenting time for many months and has refused to even speak to his son by phone for several months. There is no question that these changes have altered the needs of D.J.T. and the ability of the parents to meet those needs in a fundamental way. I further accept that the previous order would have been different had the circumstances now existing prevailed earlier. These changes could likewise not have been reasonably anticipated in making the previous order. I, therefore, find the test of material change has been met by D.T.

Best Interests

[82] I now turn to the factors to be considered in determining what is in D.J.T.'s best interests.

[83] I must first consider D.J.T.'s physical, emotional, social and educational needs, including his need for stability and safety, taking into account his age and stage of development. He is 13 years old and, by all accounts, is bright and doing well at school. I am satisfied that D.T. is able to meet D.J.T.'s needs and that she has demonstrated this for many years. I accept her evidence that she was the primary care parent since D.J.T.'s birth and D.J.T. seems to have thrived in her care, both when she and S.W. were together and for the years after their separation. There is no evidence before me to suggest that D.J.T. is compromised or suffering as a result of any actions by D.T. with the exception of some of the difficulties around parenting time, which I will discuss later.

[84] I accept that S.W. is a good parent when he spends time with D.J.T. D.T. has been very clear that she does not dispute this. Her concern centers around

S.W.'s behaviour towards her and the effect that it has had and will have on D.J.T. and his relationship with each parent. I do share D.T.'s concern respecting her evidence that D.J.T. returns from parenting time with his father in a filthy and tired state. This was uncontradicted by S.W. and I accept that this has been a consistent and ongoing concern. It, therefore, raises in this court's mind the question of whether S.W. is capable of meeting D.J.T.'s physical, social, emotional and educational needs, at least, for the limited time that he spends with him. If D.J.T. is not sleeping well, not changing his clothes, not brushing his teeth, and returns home to D.T.'s residence cranky, and, at least on one occasion, having to miss school the next day, that is a significant issue. That said, both parents agree that D.J.T. should spend time with his father.

[85] I have no immediate concerns for D.J.T.'s safety in his father's or mother's care. I do, however, have some indirect concerns about the impact on D.J.T. of S.W.'s behaviours toward D.T. that will be discussed when reviewing family violence.

[86] When examining each parent's willingness to support the development and maintenance of D.J.T.'s relationship with the other parent, there are challenges for both parties. For D.T., there have been visits missed through oversight or error on her part. That said, I am satisfied that, overall, D.T. has consistently wished to maintain the relationship between S.W. and D.J.T. I also find that D.T. has taken many meaningful steps to ensure that occurs. Even after parenting times have broken down from time to time, it is she who has proposed remedies and, even today, she proposes parenting time be reinstated notwithstanding the refusal of S.W. to engage with parenting time or even telephone calls with his son. I am satisfied that she does support the development and maintenance of D.J.T.'s relationship with S.W.

[87] As to S.W., I see nothing in the evidence to suggest that he is attempting to directly sabotage the relationship between D.J.T. and his mother. There is no indication that he is speaking negatively about her when he has D.J.T. with him or otherwise attempting to directly undermine the relationship. There are concerns, as noted, respecting his behaviour towards D.T., but they do not seem directed at attempting to interfere with the development and maintenance of D.J.T.'s relationship with his mother.

[88] As to the history of care having regard to D.J.T.'s physical, emotional, social and educational needs, the uncontroverted evidence is that D.T. has been looking

after D.J.T. as the primary parent since birth and certainly since separation. That is reflected in the various orders. The order that arose out of the settlement conference in 2017 did provide for meaningful parenting time for the father but even that arrangement broke down quickly thereafter.

[89] While there is not a great deal of evidence of the history of care, it is clear from the overall evidence that D.T. has been providing the bulk of the care for D.J.T., particularly after separation, and in doing so, meets his physical, emotional social and educational needs. He is doing very well in school and there are no significant behavioural issues noted other than D.J.T.'s frustration and anger over not having contact with his father.

[90] This is not to say that S.W. has not had a history of care for D.J.T.. He has provided parenting when D.J.T. has been with him. On the other hand, for reasons that are somewhat unclear, S.W. has chosen to refuse parenting time with D.J.T. for months at a time, and, more recently, has gone an extended period without even speaking to him by phone. I accept D.T.'s evidence that D.J.T. has made contact with his father on many occasions by phone and these were quite successful but after 10 or so calls, S.W. did not pick up on subsequent attempts by D.J.T. These unilateral decisions by S.W. to refuse parenting time and telephone contact with D.J.T. for long periods of time lead me to conclude that the history of care of D.J.T. favours D.T.'s evidence over his own.

[91] Respecting the nature, strength and stability of the relationship between D.J.T. and each parent, all of the evidence before me points to a very stable, loving and appropriate relationship between D.J.T. and D.T. There is nothing to suggest that this is other than a very normal and healthy relationship. She has been the stable person in his life since birth and throughout all of the upset and turmoil that has brought these parents before this the years. There is no evidence to suggest that D.J.T. does not thrive in D.T.'s care. He is doing well in school and there is no evidence that he is struggling in any part of his life other than in his relationship with his father.

[92] On the other hand, I also accept that S.W. loves D.J.T. and D.J.T. loves his father. Unfortunately, the nature of that relationship is, to put it mildly, strained and dysfunctional. S.W. has chosen to terminate his parenting time with his son without any explanation. Likewise, he has even terminated his telephone contact with his son without any real explanation. His only explanation to the court for this is a statement that "somebody had to take a stand". I don't know how that

factors into S.W.'s thinking about his relationship with his son but I conclude that it has damaged that relationship. I certainly hope it can be repaired and expect that it can, but not without some significant work. As frustrating as the experience has been for S.W. since separation, that frustration does not provide an answer as to why he would not see or speak to his son for months at a time. Again, I hope that relationship can be repaired. Prior to these events it had been healthy. But there is no doubt that D.T. has provided a more stable and stronger relationship and home environment for D.J.T. in which to thrive.

[93] When considering the ability of each parent to communicate and co-operate on issues affecting D.J.T., this is one of the most difficult issues for this family. D.T. has said consistently said that she is fearful of being in the presence of and feels intimidated by S.W. She has successfully obtained three Peace Bonds against him. He admits to being convicted of uttering a threat of death against her some years ago. There is evidence before the court of his communication with counsel for D.T. that is extremely troubling. His emotional dysregulation exhibited by the behaviours described by D.T. in stalking her, being verbally aggressive and insulting towards her, both in the presence of D.J.T. and not, his aggressive and threatening behaviours towards Mr. McIntosh, and his communication with counsel leads me to conclude that it is almost impossible for S.W. to communicate with D.T. even after the expiration of any Peace Bond in a way that would be appropriate and healthy to arrive at decisions regarding D.J.T. There is little evidence to suggest that he can do this and much evidence to indicate that he cannot.

[94] D.T., however, seems to demonstrate a greater ability to look for that communication and carry it out. That said, she is not entirely without responsibility for such poor communication. Based on her evidence, I take no issue with her belief that S.W. has been threatening and intimidating towards her and that she has a legitimate fear of him. She is attempting to communicate with him directly and through his brother and others to facilitate parenting time and contact between D.J.T. and S.W. On the other hand, it seems unlikely that that direct communication, even after the expiration of the Peace Bond, will improve based on her concerns respecting S.W. and his history of behaviour towards her.

[95] The ability to appropriately communicate in a calm, respectful and businesslike fashion which focuses on the child's best interests is critical to any co-parenting relationship, particularly one that involves shared parenting or joint custody. These arrangements require the parents to be able to communicate

regularly and appropriately on a range of issues that concern the best interests of the child and particularly the child's health, educational and social needs. There seems little hope for that level of co-operation and respectful communication to take place between these parties.

[96] On the issue of the nature, strength and stability of D.J.T.'s relationship with other significant adults or persons in his life, there is little or no evidence of this and I cannot conclude anything regarding this issue.

[97] In considering the allegations of family violence, it is clear to me that the various behaviours of S.W. as described in the affidavits and evidence of D.T. constitute family violence, abuse and intimidation. S.W.'s behaviour of verbally abusing D.T. in his communication, driving by and watching her at her home for no reason, his verbal aggression in communication with her counsel and the other allegations of his behaviour made against him along with the existence of his three Peace Bonds and his prior conviction for a death threat against D.T. lead me to conclude that these series of acts form a pattern of abuse that are causing, or attempting to cause, psychological or emotional abuse and this constitutes a pattern of attempted coercion or control of D.T.

[98] Fortunately, it appears that D.J.T. has been largely shielded by each parent from these acts. That said, D.T.'s uncontroverted evidence is that on occasion D.J.T. has been present when S.W. has been verbally abusive towards her.

[99] I am satisfied that, for a limited period of time, S.W. can provide care and meet the needs of D.J.T. I am also satisfied that an appropriate parenting arrangement can be ordered which will minimize communication and co-operation between the parents, and will, therefore, minimize the risk of any further family violence.

[100] Regarding D.J.T.'s views and preferences, there is a Voice of Child Report in which he makes clear that he, at least at the time of the Report, wanted to spend equal time with each parent. These reports are important. Family courts want children's voices be heard in such proceeding. In Nova Scotia we use Voice of Child Reports to accomplish this. D.J.T.'s wishes and preferences are certainly heard loud and clear by this court through that Report.

[101] That said, such reports are not binding upon the court nor should they be. A child of 13 years should not make final decisions about parenting arrangements any more than the child should decide whether they should go to school or to the

doctor. Sometimes the views of the child are informative to the parents and helpful to the court, and other times the court must make decisions contrary to the wishes of the child to take into account all the evidence available.

[102] In this case, while I am pleased to have D.J.T.'s voice before the court, I cannot accept that his wishes are appropriate for him. As I will explain shortly, I cannot find that a shared parenting arrangement is in his best interests despite his wishes.

[103] I also conclude that it is probable that D.J.T. might have a different view since that Report was filed given that there have been extended periods of no contact with his father and that telephone contact ended months ago. That said, I do not have his current view, and based on his wishes at the time of the Report, I conclude they do not reflect what is in his best interest.

[104] That ties into the next factor that I must consider which is the plans proposed for D.J.T.'s care and upbringing having regard to his physical, emotional, social, and educational needs. S.W. says that a shared parenting arrangement is in D.J.T.'s best interest. I disagree.

[105] Shared parenting may well be in a child's best interests in the right circumstances. But shared parenting at minimum requires that the parents are able to communicate in an effective, respectful, and child- focused manner. With the child spending equal time in each home, there must be a consistency of homework, activities, bedtimes, meals, and other routines that support and reinforce the wellness and stability of the child in each home. Likewise, parents must be able to cooperate on issues of discipline and make ongoing decisions regarding health and education needs and, where appropriate, religious education and involvement, in a way that serves the best interests of the child.

[106] This form of communication is simply not present, and has not been present, between D.T. and S.W. for a very long time. The existence of three Peace Bonds, the criminal conviction, the intimidating and harassing behaviour of S.W. towards D.T., the inability of S.W. to communicate, even through counsel, in an effective manner with D.T., and their inability to arrive at decisions regarding parenting time all leads me to conclude that the communication required and co-operation necessary for a shared parenting arrangement to be effective is simply not present. The fact that the consent order agreed to at the settlement conference quickly fell apart is further evidence that they are unable to co-operate in any meaningful way.

[107] Based on this conclusion alone, I find that a shared parenting arrangement is not in D.J.T.'s best interests.

[108] Similarly, in deciding whether a joint custodial order is appropriate, communication is the key in this case. Joint custody, as with share parenting, requires appropriate and ongoing communication between parents that effectively addresses the best interests of the child. For reasons that I have set out above, I conclude there is no opportunity for that in this case. D.T. has demonstrated over many years the ability to meet the needs of D.J.T.. D.J.T. resides with her and she has looked after him throughout this time. S.W. has had parenting time when he chooses with D.J.T. and I have no issue with that going forward. That said, it is apparent to me that the history of parenting and the nature of the dysfunction of the relationship between the parents requires that D.J.T. reside primarily with his mother in a sole custodial arrangement in order to minimize the communication required and, therefore, the conflict between the parents.

[109] Likewise, the parenting arrangements for S.W. must be simplified and made as clear and non-negotiable as possible. This is because of the barriers to communication brought on by the Peace Bond, and the history of dysfunctional communication between the parents. They cannot effectively communicate and co-operate on changing parenting time in a way that one might hope would be possible. Therefore, I think it in D.J.T.'s best interest to minimize any back-and-forth between them and to create a simple, straightforward and consistent schedule for parenting time as is possible.

[110] Therefore, there will be an order as follows:

1. D.T. will have sole custody and primary residence and care of D.J.T.. She will make all major decisions concerning D.J.T.. She will keep S.W. informed of any major issues concerning D.J.T.'s health, education, his general well-being and will continue to keep him informed of any major developments as they occur.
2. Each parent is authorized to obtain emergency medical services for D.J.T. and shall notify the other parent as soon as possible of that circumstance.
3. S.W. will have parenting time with D.J.T. every second weekend from Saturday at 10 AM until Sunday at 4 PM commencing Saturday, January 26, 2019.

4. For such parenting time, D.T. shall drop D.J.T. off at the home of S.W.'s brother or J.P. as agreed between the parties. If there is no agreement, the drop-off will be at the home of S.W.'s brother. D.T. will take D.J.T. to the appropriate home 15 minutes before the start of the parenting time and will pick D.J.T. up at the same home at the end of the parenting time.
5. D.J.T. may have reasonable telephone contact with S.W. at D.J.T.'s discretion.
6. Each parent is to notify the other as soon as reasonably possible of any urgent or emergency circumstance that will interfere with parenting time as scheduled. If the delay or cancellation of parenting time is due to a circumstance of S.W., there will be no makeup parenting time provided. If the delay or cancellation of parenting time is as a result of circumstance by D.T., the parties will agree to an equivalent amount of makeup parenting time for the father as soon thereafter as possible.
7. If S.W. cancels or fails to attend for two consecutive parenting time visits without explanation, D.T. will have authority to suspend any further parenting time until the matter may be brought before the court upon application of either parent for further review.
8. During his parenting time with D.J.T., S.W. shall ensure that D.J.T. attend any scheduled activities.
9. The parenting time described above shall be suspended for special parenting time arrangements that are set out below:
 - For Christmas, S.W. will have parenting time with D.J.T. from December 25 at 4 PM until December 26 at 4 PM each year.
 - For Easter, S.W. will have parenting time with D.J.T. from Good Friday at noon until Easter Saturday at 5 PM.
 - For Father's Day and Mother's Day, the respective parent whose day is being celebrated will have D.J.T. with him or her from 9 AM to 5 PM on that Sunday.
 - There will be no special parenting time for school spring break, summer school break, D.J.T.'s birthday or the birthday of either parent.

10. The parents may make variations to this parenting schedule from time to time but only by agreement, and if no such agreement is reached, this parenting schedule will apply.
11. All communication between the parties will be conducted in a polite, respectful, businesslike and child-focused manner. All such communication shall be conducted through and with the assistance of S.W.'s brother or other third parties mutually acceptable to the parents from time to time.
12. Each parent is prohibited from making any negative or derogatory comments about the other parent or the other parent's family or discussing these proceedings at any time that that parent has care of the child, whether the child is present with the parent or not. The parent shall ensure that no other person makes any negative or derogatory comments about the other parent or the other parent's family or is discussing these proceedings at any time that parent has care of the child. If any other person makes such comments, the parent who has care of the child shall ensure such comments cease immediately or ensure that that person leaves the child's vicinity or the child is removed from the vicinity of that person.
13. Neither party shall permanently remove the child from the County of Pictou, Province of Nova Scotia without the written consent of the other party or a further order of a court of competent jurisdiction.
14. D.T. may travel with the D.J.T. outside Canada for vacation from time to time. She is authorized to obtain a passport for D.J.T. without the written consent of S.W. and may travel without further authorization by S.W. D.T. shall provide to S.W. reasonable notice of such travel and a general itinerary and contact phone number for such travel.
15. No child support will be payable by S.W. to D.T. based on S.W.'s current income which is below the threshold for payment of child support.
16. S.W. will immediately inform D.T. of any change or increase to his income including details of the source of that income and the commencement date of the change.
17. S.W. will provide to D.T. a copy of his complete income tax return with all attachments, whether filed or not, each year by June 1.

18. Counsel for D.T. shall draw this order.

Daley, J.F.C.