

**FAMILY COURT OF NOVA SCOTIA**

Citation: *M.K. v. E.G.*, 2020 NSFC 11

**Date:** 20200831

**Docket:** FATMCA-101298

**Registry:** Antigonish

**Between:**

M.K.

Applicant

v.

E.G.

Respondent

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**AMENDED DECISION**

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**Editorial Note:** Identifying Information has been removed from this electronic version of the judgment.

**Judge:** The Honourable Judge Timothy G. Daley

**Heard:** July 21, 22 and 24, 2020

**Final Written:** August 31, 2020

**Counsel:** Daniel F. Roper, for the Applicant, M.K.  
Andrea L. Pierce, for the Respondent, E.G.

## **Introduction**

[1] This decision is about a little boy, J.K., who is five years old and what parenting arrangement will be in his best interest. Specifically, his mother, E.G. says that the child should live with her on Prince Edward Island where he has spent approximately half of his time of the last few years in her care. The father, M.K., says that he should live with him in Nova Scotia where he has likewise spent approximately half of his time at over the last few years. Depending on the living arrangement, each parent seeks child support from the other, including the table amount of support and contribution to section 7 expenses.

## **Background – Prior Decision**

[2] The parties were before the court in 2017 for a contested hearing. The parents were also arguing that the child should reside with him or her in their respective provinces as the mother had relocated to Prince Edward Island to be closer to her extended family.

[3] In my decision, I granted a shared parenting arrangement whereby the child would spend one week with each parent when the ferry between Prince Edward Island and Nova Scotia was running and two weeks in the mother's care and one week in the father's care when the ferry was not running. There were various other provisions of parenting arrangements for special occasions included in the order.

[4] I also made clear that the matter would have to be revisited once J.K. reached school age. That time has arrived.

## **Summary of Positions**

[5] The mother says that J.K. would be best served by being in her primary care on Prince Edward Island. There is evidence before the court that she has a deep and wide extended family network to support both her and the child in that province. It is clear that there is adequate schooling and provisions for childcare.

[6] Her circumstances have also changed since the first hearing. She is now married and she has changed careers. She and her husband, T.G., fish lobster during May and June each year. For the rest of the year, they collect Employment Insurance and are available to care for J.K. full time.

[7] The mother says that J.K. has a good relationship with T.G. and the child has an excellent relationship with his extended family on Prince Edward Island.

[8] The father says that J.K. would be best served by being in his primary care in Nova Scotia. He maintains that he has done a good job parenting him over the last few years. He is now employed full-time at a local University and has a good and stable living arrangement for J.K..

[9] He also says that he has support in the community, though that is somewhat different than the mother. He has a limited family in the area, including a sister with whom he has no relationship, though he does have a network of supportive friends to assist. His family lives out west and his mother, for example, can only visit for a few weeks each year in Nova Scotia.

[10] The father also says that he is the one who has maintained a relationship between the child and the maternal grandparents and great grandparents since the hearing in 2016 up until the fall of 2019 and he did so despite the mother's objects in order to benefit J.K. He says that it was best for J.K. to have those relationships continue and he did so by visiting with the great grandparents frequently on Prince Edward Island during his parenting time to ensure those contacts were maintained and deepened.

## **The Law**

[11] As in every matter concerning the best interests of child, it is appropriate to review the law applicable to the family and the decision being made. In this matter, the application legislation is the *Parenting and Support Act* (the *Act*) and the provisions of section 18. Before setting out the relevant provisions, I will address one preliminary issue first.

### **Is This A Relocation Matter?**

[12] Before conducting a review of the issues, applicable law and evidence in this matter, it is important to determine what this case is not about. The question of whether this is a relocation application by either or both parents, such that it would engage the provisions of the *Act* respecting relocation, must be addressed. Counsel for both parties confirmed they do not believe this is a relocation matter and did not argue this issue in submission.

[13] The *Act* defines the question of what constitutes a relocation in section 18E as follows:

**Relocation**

**18E (1)** In this Section and Sections 18F to 18H,

(a) “person planning to relocate” means

(i) a person who is planning a change of that person’s place of residence and is a parent or guardian or a person who has an order for contact time with the child,

(ii) a parent or guardian who is planning a change of both that person’s and the child’s place of residence, and

(iii) a parent or guardian who is planning a change of the child’s place of residence;

(b) “relocation” means a change to the place of residence of

(i) a parent or guardian,

(ii) a person who has an order for contact time with the child, or

(iii) a child,

that can reasonably be expected to significantly impact the child’s relationship with a parent, a guardian or a person who has an order for contact time with the child.

[14] On review of the circumstances in place at the time of this application and the positions of the parties, it is clear to me that this is not a relocation matter. The child currently resides in both provinces and each parent requests an order that the child reside with each in their home Province. Thus, a change in parenting arrangements is required which will reduce parenting time for one and increase parenting time for the other.

[15] But given that the child enjoyed a shared parenting arrangement at the time of the application and each parent is proposing they remain where they are, it cannot be said that either parent is proposing to change the residence of the child to be with them. The child has a foot planted firmly in each Province and in each home. Each parent is seeking that a primary residence be chosen, not that the child be relocated away from that residence.

[16] I find this matter does not fall within the provisions of the *Act* respecting relocation and those provisions will not be applied.

### **Applicable Provision of the Act**

[17] The beginning point in any analysis under the *Act* is s.18(5) which directs that:

In any proceeding under this Act concerning custody, parenting arrangements, parenting time, contact time or interaction in relation to a child, the court shall give paramount consideration to the best interests of the child.

[18] Section 18(8) further directs that:

In making an order concerning custody, parenting arrangements or parenting time 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., the determination of which, for greater certainty, includes a consideration of the impact of any family violence, abuse or intimidation as set out in clause (6)(j).

[19] In determining what I should consider in assessing what is in J.K.'s best interest, s.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 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 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;
- (e) the child's cultural, linguistic, religious and spiritual upbringing and heritage;
- ...

(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... or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child...

[20] When considering these factors under the *Act*, I will be brief respecting some.

### **Relationship with Each Parent**

[21] It is clear that J.K. has a deep love for, and an excellent relationship with, each parent and I find that these relationships provide him with a great deal of stability. There is nothing in the evidence to suggest that J.K. is struggling in any way. He has an active life in each home and community and is well loved and supported by each of them. It is to the credit of his parents that they have each maintained a good home and that his extended family and friends have been supportive of that environment over these last few years.

### **Linguistic and Religious Upbringing**

[22] Respecting J.K.'s linguistic and religious upbringing and heritage, he is a Roman Catholic and it appears that both parents have no difficulty in maintaining that faith for J.K. Neither parent made much of this issue and there appears to be a reasonable level of cooperation and understanding between them respecting J.K.'s faith upbringing.

[23] Respecting language, the father does say that he has plans to enroll J.K. in a local French language school, which will provide him the advantage of becoming bilingual. There is no comparable education available to him in the mother's care on Prince Edward Island though she plans on enrolling him in a bilingual preschool. Both plans have some merit. There is evidence of a French and Acadian family history for the father but there is no evidence that French is a language spoken in either home. While J.K. will benefit by any exposure to and education in French, there is no evidence that the father or mother is actively engaged with French or Acadian history or culture with J.K.. Thus, this is of limited weight in my analysis.

## Main Factors in Dispute

[24] The core of the dispute and the evidence in this matter includes a contest respecting each parent's willingness to support the development and maintenance of J.K.'s relationship with the other parent and, in particular, the circumstances of J.K.'s relationship with his maternal grandparents and great grandparents.

[25] The evidence respecting the grandparents and great grandparents impacts in two ways. First, the father says he maintained that relationship when the mother would not. The mother replies that there were good reasons that she resisted allowing J.K. to see his maternal grandparents and great grandparents and the father refused to respect her wishes.

[26] Second, the nature, strength, and stability of J.K.'s relationship with those grandparents and great grandparents, the extended family for both parents and other persons in the child's life are at issue. There is extensive evidence of these relationships, both close and more distant, which do merit attention.

[27] The other focus of evidence is the ability of the parents to cooperate respecting parenting decisions for J.K., including decisions about his contact with his maternal grandparents and great grandparents but also including changes to parenting arrangements and cooperation respecting those changes that arose from time to time.

[28] On the latter issue, the evidence is clear, broadly speaking, that the parents have been very cooperative with each other. This is evidenced by the limited number of instances of contention between them respecting changes to parenting arrangements in special circumstances.

[29] It is also reflected in the significant number of texts before the court by way of a book of text messages introduced as an exhibit in this matter. Though I was directed to examples evidencing difficulties between the parties, it is also relevant to note that the vast majority of the texts reflect cooperation and reasonable communication. That communication is generally business-like and child focused and goes no further. But that is all that is necessary and reflects well on both parents.

## **Relationship with Maternal Grandparents and Great Grandparents**

[30] One of the main focuses at the hearing was the mother's relationship with her parents and grandparents (J.K.'s maternal grandparents and great grandparents) and her reluctance to allow contact between J.K. and those relatives for an extended period after the completion of the hearing in 2016. Contrary to her wishes, the father maintained that contact, particularly with maternal great grandparents, by visiting them and either staying with J.K. at their home or leaving J.K. with them for periods of time.

[31] The context of this dynamic is of some importance. In her affidavit and viva voce evidence, the mother made clear that she had experienced significant abuse at the hands of her parents as a child. While she does not provide detail respecting the allegations, I accept that she believes that she was abused, and it certainly was her concern respecting contact between J.K. and her parents after separation.

[32] Both in her evidence and in the evidence of the father on cross-examination, it was clear that she had told him when they were together that she had been abused. The father maintained that she did not provide sufficient detail for him to be satisfied that it was in fact true. He repeated this position at the hearing, saying that, after the shared parenting arrangement was put in place, he continued to visit the home of the great-grandparents and in doing so allowed contact from time to time between the grandparents and the child contrary to the wishes of the mother.

[33] The fact that the mother had expressed this concern to the father is clear on the evidence. It is found in the text messages exchanged between the parents and in both the evidence of the mother and father in affidavits and on cross-examination. There is simply no doubt that the father was aware of the mother's description of a history of abuse. The father replied that, though he was made aware of these concerns and the history of the mother, based on his own experience with the grandparents, he could not be satisfied as to the truthfulness of the mother's allegations, particularly when she did not provide much detail respecting that history.

[34] The other complicating factor was that the grandparents were called at the hearing in 2016 to provide rebuttal evidence. The mother says that she was surprised and happy to see her parents at the late stages of that hearing, assuming that they were there support her. Instead, she discovered that they were being called to give rebuttal evidence which challenged her credibility. The mother says



that she was in shock and did not provide any further evidence at the hearing to contest the evidence of her parents.

[35] Thus, at the completion of the hearing in 2016 the mother was estranged from the maternal grandparents. She blamed the great-grandparents for being involved in the decision for her parents to testify in rebuttal and she was estranged from them as well. Up to that point, she had had a good relationship with the child's great-grandparents but that failed for an extended period.

[36] Over the next few years, the father and mother continued their parenting arrangement under the new order. On many occasions, the father took J.K. to Prince Edward Island to stay with the great-grandparents. It is his evidence that he did so to maintain that relationship and to allow J.K.'s grandparents to see him as well.

[37] It is important to note there is no evidence whatsoever before me that the child came to any harm during any of these visits or at any time that he was in the care of either of his parents or any family member. It is also clear that, despite her repeated objections, the mother did not take steps to interfere with the father's parenting time for this reason.

[38] In reviewing this portion of the evidence, I am troubled by the response of the father to the mother's explanation to him of the history of abuse at the hands of her parents and how dismissive he was of that concern. It was clear in both the affidavit and viva voce evidence that he believed that, in order for that concern to be taken seriously and for him to take it into account in assessing what was best for J.K., he would need to be persuaded by medical reports or police reports that the abuse had in fact occurred. He gave no credence to the mother's concerns. For example, in one text she made clear that there were only two people in the world that she had any concern about J.K. spending time with - her parents. He ignored this.

[39] While it is true there is no evidence of J.K. was ever abused by anyone who had care of him or had contact with him, the fact that the father ignored the expressed concerns of the mother raised with him, both during and after the relationships and during his parenting time with J.K. on Prince Edward Island is of concern. This is not to say that the court makes finding that the abuse occurred, but rather it goes to a question of the judgement of the father in setting an arbitrary standard of proof for the mother to meet in order for her expressed history to be

taken seriously, particularly when it intertwined with possible risk to J.K.. There is no evidence of making any accommodation or acknowledging the possibility that this abuse may have been real or that, if it were real, it could pose a risk to J.K. His lack of openness to the possibility and his failure to consider the mother's perspective is of some concern.

[40] At the hearing of this matter, S.M., the maternal great-grandmother of J.K., gave evidence by affidavit and viva voce. She is married to L.M. and they are J.K.'s great-grandparents. She confirmed a good relationship with the mother up until the completion of the hearing in 2016. She said she was left confused as to why her relationship with the mother broke down at that time, but later learned that the mother's parents, T.M. and L.M., gave evidence in rebuttal against her.

[41] She went on to describe that after the hearing in August 2016, the father and J.K. began spending time with her and her husband at their home on Prince Edward Island. There is undisputed evidence of a calendar provided by the mother which identifies the time spent there.

[42] While S.M. was critical of the father as a guest in her home, criticizing his lack of help around the house such as cleaning up after himself, and the like, I do not find these to be relevant to the assessment of the best interests of J.K..

[43] On the other hand, there are several important findings arising from her evidence and the evidence of others respecting these visits.

[44] First, the continuation of that contact with the child's maternal great-grandparents did maintain that important relationship despite the objections of the mother. I do not find fault with the mother's position that contact between J.K. and his maternal grandparents should have been limited based on her history with them and I can understand why she did not want to continue a relationship with the child's great-grandparents for some time based on what happened at the hearing. That said, I find it is to the credit of the father that he did maintain that relationship, including allowing some contact between the child and the maternal grandparents under the supervision of himself or S.M. and L.M..

[45] On the other hand, the evidence is clear and undisputed that the mother resolved her estrangement from J.K.'s great-grandparents in the spring of 2019. By the fall, the father was told by L.M. that he was not to come to their home anymore and from that point forward, the father had no more visits at the home of

the great-grandparents with J.K. Thus, he played no further direct role in maintaining that relationship and it fell to the mother to do so thereafter. It is the evidence before the court that that relationship continues, and it is been beneficial for J.K.

[46] It is suggested by the father that the reconciliation and request that the father not attend at that home was a strategic ploy by the mother in preparation for the hearing, distancing him from the mother's family and ending his involvement in J.K.'s contact with them. I find that it is possible that this decision was influenced by the up coming hearing but I find that it was more likely motivated by her desire to repair an important relationship which would benefit her and J.K.

[47] Also relevant is the evidence of S.M. that the father spent little time with J.K. when in their care and often left the home for days with little advance notice. While it is clear they did not object to this, it is of some significance that the father took parenting time allotted to him and provided it to the child's great-grandparents in his absence. While he contests how often this occurred, I accept the evidence of S.M. in that regard.

[48] It is also relevant that S.M. says that the father brought J.K. to her to care for several days during an emergency and did not offer the opportunity to the mother which upset the mother greatly. The mother says she was available. This goes to the issue of co-operation on parenting and an ability to work together for J.K.

[49] Another highly relevant factor for consideration is the plan of each parent going forward. Each has proposed that they have primary care of J.K. in a joint custodial arrangement and that the other parent have parenting time on weekends and special occasions. There is little distinction between their plans except which parent will have primary care of J.K..

[50] Where the plans differ is in the level of support each parent has available to them in J.K. in their communities. The mother filed extensive affidavit evidence from family members, including D.M., the maternal grandmother of the mother, who says she has an excellent relationship with the mother. She says that her daughter, T.M., resided with her after the birth of E.G. and E.G. remained with them after T.M. went to university. D.M. said that she and her husband raised E.G. as their own child. This changed when E.G. was four or five years old and her mother took her to live with her on Prince Edward Island, which he described as "bad years" for E.G. They continued to care for E.G. in their home on weekends.

[51] D.M.'s husband died when E.G. was approximately 12 years old and E.G. came to live with D.M. when E.G. was 15 or 16 years old, graduating high school from that home.

[52] What is clear from this evidence is that D.M. has a deep and abiding relationship with the mother and has been supportive of her, often in a parenting role, for most of her life. That relationship continued after the birth of J.K. while the mother and father continued in their relationship.

[53] In her evidence, D.M. says that she observed the father have angry outbursts on several occasions which she details in her affidavit. In cross-examination, it was put to her that she had sworn an affidavit in the prior proceeding and made little or no mention of these behaviours by the father at that time. In considering this evidence, I have some concern regarding the weight to be put upon the evidence of D.M. respecting the behaviours of the father during the relationship and after separation, but I do accept that there were occasions when the father misbehaved and exhibited anger and frustration in her presence. That said, I do not find that this evidence to have much weight in determining the question of the best interests of J.K.

[54] I do accept the further evidence of D.M. that she has a close relationship with J.K. She says that she sees him frequently when he is on Prince Edward Island though less in the winter due to weather.

[55] Importantly, D.M. says over the last three years when the mother and her husband, T.G., fish lobster in May and June, she has cared for J.K. during the day and overnights on Sunday until Saturday afternoon when they are fishing. J.K. spent time with his mother and stepfather in their home when they were finished fishing for the day or have a day off.

[56] Accompanying her affidavit are photographs of J.K. with her and her family on Prince Edward Island. Similar photographs are adduced by other witnesses, including the mother, which make clear the extensive network J.K. has to support him and his mother.

[57] Finally, D.M. indicates that she has been asked to move into the home of the mother and stepfather, and she has agreed to do so. This will obviously both reinforce the bond between her and J.K. and more fully support his care in that home when his mother and stepfather are fishing.

[58] E.G.'s mother-in-law, D.G., described knowing the mother for many years before her relationship began with T.G.. She described the extended family in T.G.'s life which have embraced both the mother and J.K.. She gave evidence of the time spent by J.K. with her and her family and describes the close relationship that has developed between J.K. and T.G.. She attached extensive photographs showing moments in that family's life with J.K..

[59] T.G. described knowing the mother for a long time prior to their marriage. His evidence is that he has developed a very deep and strong love for J.K. and J.K. for him. He describes what they do together and the fun they have. It is clear that T.G. has been, and will continue to be, an important part of J.K.'s life and is very supportive of him and his mother.

[60] T.G. described purchasing a new home with the mother which is more than adequate for the family. He confirms that D.M. will be living with them, and that J.K. was excited to hear this.

[61] T.G. gives details of his family in the area, including his parents, his brother, sister-in-law, a grand uncle and grand aunt and cousins who live in and around the area and spend time with this family.

[62] Finally, T.G.'s brother briefly confirms his support of the mother and J.K. in their relationship with his brother and his family.

[63] From all of this, I conclude that J.K. has benefit of an extensive support network on Prince Edward Island while in the care of his mother. It is clear that the family spends time together, to one extent or another, and that J.K. has an active life with his family there.

[64] In the father's evidence, he sets out the people with whom he has a relationship and who interact with J.K. on a regular basis in Nova Scotia. He notes, to his credit, that he had maintained the relationship between J.K. and his maternal grandparents and great grandparents on Prince Edward Island as described earlier until the mother's reconciliation with great-grandparents in the spring of 2019.

[65] As to his family and network of support in Nova Scotia, that evidence is more limited. But there is no question that his family loves J.K..

[66] L.B., the father's stepmother, confirmed that while her common law partner, J.K.'s paternal grandfather, is now deceased, she considers J.K. to be her grandson.

[67] She describes an emotionally close, but physically distant relationship between the father and the grandfather until his death in Saskatchewan in late 2019. These included video and phone calls between the grandfather and J.K.

[68] L.B. describes continuing that relationship with the father via telephone, text and video chats which frequently include J.K.

[69] She says that, because she is currently employed, she travels to Nova Scotia in the summer for 3 to 4 weeks at a time and hopes to increase that as she moves towards retirement. She describes a good home environment for J.K. based on her ability to observe over that time.

[70] In her affidavit, she sets out three examples in which she says the mother was not cooperative with the father in making short-term parenting arrangements for J.K. arising from various emergency circumstances. In cross-examination, she corrected this to say there were only two such occasions. On careful review of the text message exchanges between the parents, it is clear to me that several of the instances claimed as problematic by both the father and L.B. were not accurately represented. Several of the text exchanges confirm that the mother did what was reasonable to cooperate with the father respecting various emergency circumstances, including family illness and death, and was cooperative in changing parenting arrangements when requested.

[71] M.M., a friend of the father who has resided with her husband next door to the father's family for 30 years, said she observed the father and his sister grow up and had a good relationship with them.

[72] More recently, the father has had J.K. in their yard to play and she described the father as a good parent who can call on them for assistance.

[73] T.M., a friend of the father, gave limited evidence of her contact with J.K. and there is little to indicate that she would be anything other than an occasional friend to the father and of limited support to him and J.K..

[74] C.S., a friend of the father, said they have known one another since they were in high school and maintained a connection thereafter. She described

discussing parenting with him after the birth of their respective children and several "quick social interactions" between her, the father and J.K.. She also described longer interactions, including a swim class, soccer lessons and skating evenings. She said she and her husband are ready to assist.

[75] B.B.D, a friend of the father, said she met him in July 2017 through friends. She said they became close, their bond being their children and that she is someone on whom he can depend for support.

[76] Her observations of the father's parenting are entirely positive, and it appears she is an important support for him and J.K.. In cross-examination she admitted that the description of some difficulty in arranging for care for J.K. when the father had to fly out West after his father's passing may have been misrepresented by the father in their conversation. When presented with the text exchange between the parents for that time, she admitted that that there appeared to be no difficulties in that regard.

[77] Similarly, A.G. gave evidence as a friend of the father, having met him, approximately four years ago through her partner and has spent time at the father's home. She is complimentary of the father's parenting and J.K.'s relationship with his father and describes herself as a support for him.

[78] M.D. gave similar evidence, saying she is a friend of the father and has known him for 15 years. She described the relationship is close and says that he is an exceptional father. She describes herself as part of the father support system.

[79] When assessing the issue of the nature of the relationship of J.K. with his extended family and support network of friends in each community, I find that the mother's support network, particularly among family, both immediate and extended, is far deeper and wider than that of the father. That is not to say the father does not have support, but his support from family is extremely limited due to their location in the West and my review of the evidence of his various friends in the community leads me to conclude that they are there to support from time to time, but not in the same way that the mother's family has and continues to support her and J.K.

[80] I find this is a highly relevant consideration in this case. J.K. not only has benefit of his mother's family on Prince Edward Island but now the support and love of his stepfather and his family. The description of those relationships, which

was essentially unchallenged, paints a rich picture of family life in a small community.

[81] The father is a good parent and has been so since J.K.'s birth. He certainly has the love of family and friends both locally and out West. That said, the day-to-day involvement of family that J.K. experiences on Prince Edward Island is simply deeper and richer than that which he experiences in Nova Scotia.

[82] I also take into consideration the time available for each parent to spend with J.K.. I recognize that the child is about to enter school and will be occupied for the school year, from Monday to Friday with the exceptions of long weekends, spring and Christmas breaks and the summer holidays. There is some weight to be given to the fact that the mother and her husband do not work for the bulk of the year and are occupied during the May to June fishing season, during which time D.M. will be available to care for J.K.. D.M. will also be there for the rest of the year.

[83] The father works full time at the local university and has a typical work week with some flexibility for family issues. This means that he is usually not available to the J.K. until later in each afternoon during the week.

[84] That said, I do not place much weight on this factor given the priority of school for J.K. over the next many years.

[85] I also acknowledge there were several other arguments made through the evidence and in submission that include allegations that the father did not properly treat J.K.'s eye infection before coming back to the mother's care and that he allowed the child to play an adult videogame and later denied same. There is evidence of the father's reaction to J.K. referring to T.G. as "dad" and that he objected to this on two occasions. The father also claims mother did not keep them him up to date on her current address though he had her tax return with the address on it as part of the annual disclosure.

[86] When assessing each of these and other similar issues in the evidence, I do not find them to have much weight or relevance. I accept the father's evidence that the eye infection was not apparent to him until the child is returned to the mother. I accept that the father objected to the use of "dad" on two occasions, but it did not pursue it further and that does not reflect poorly on either parent. While it is possible the child was exposed to an adult videogame, there appears to be no consequence from that, and it does not come into my assessment of the best



interests of the child. On the question of the mother's change of address, I accept that the father would have been aware of it, if not immediately then sometime thereafter through the tax return or other means.

[87] Finally, there was argument that many of the witness were biased in favour of one party or the other and that I should give limited weight to that evidence. Yet it would be a rare day in the Family Court that most witnesses are not in some way connected to one of the parties and therefore have at least an unconscious bias. Courts are aware of the balance that has to be struck in reviewing their evidence. I am satisfied that the evidence that I have accepted as relevant in this matter is not tainted by bias and I have been mindful throughout this matter of the issue of the relationships among the various parties and witnesses.

## **Decision**

[88] In this matter there is much to be said in favour of both parents. In the years between the hearing in 2016 and this decision, the parents have, in general, done an excellent job parenting J.K.. There is no evidence that he is compromised or adversely affected by the behaviours of either parent or anyone else. Quite to the contrary, he seems to be thriving in both homes and communities. The parents are to be commended for that.

[89] There have been communication challenges over the years, and I have reviewed those. In general, the parents have been able to communicate in an effective manner with the noted exceptions and challenges from time to time. It would be surprising if there were not such challenges that would arise. The question is how they are dealt with and I find that the parents have been able to work their way through them.

[90] Respecting the support of each parent's relationship with the other, I find that generally they have done well. There have been some challenges from time to time that largely centred around parenting time and the logistics of that issue, but I see no evidence that either parent is attempting to denigrate, criticize, interfere with or otherwise adversely impact the relationship of J.K. with the other parent.

[91] While it is true that the father has the view that his parenting time is his and the mother should have no say in it, that is not an unreasonable position for a parent to take so long as it is tempered with an understanding that circumstances will change from time to time. The father has already experienced that through

various family emergencies and having to seek accommodation from the mother respecting his parenting time.

[92] In assessing J.K.'s spiritual and religious needs, he is a Roman Catholic and both parents support his attendance at Mass. There seems little to choose between them on that issue as they appear to both support that experience as well.

[93] This decision is far more about the future than the past. I have some concern arising from the decision of the father to ignore the allegations of childhood abuse by her parents. I have already expressed my view that the father set an unreasonable standard of proof for the mother to meet to take those concerns seriously.

[94] On the other hand, his decision to maintain the contact between J.K. and his great-grandparents and, to a lesser extent, his grandparents have benefited the child and would not have occurred if the mother had her way.

[95] Looking forward, I must now therefore determine which parenting arrangement will best meet J.K.'s needs. Given that I find there is no evidence that either parent is attempting to undermine or interfere in the relationship between J.K. and the other parent, and that the parenting arrangement over the last number of years have gone reasonably well, despite the significant logistical challenges and emotional turmoil around the relationship between J.K. and his grandparents, this matter largely reduces to the question of which plan is more appropriate for J.K.

[96] I find that each parent has more than adequate housing and can certainly meet all the needs of J.K.. It is not been an issue to date, and I expect will not be an issue going forward.

[97] They can communicate at a level that is sufficient to meet these needs, with a few exceptions that were discussed earlier, and I would expect that to continue as well.

[98] There is little to choose between the education available to J.K. in Nova Scotia or Prince Edward Island, with the exception that the father's plan affords him the opportunity to become bilingual while the mother's plan provides that opportunity at a daycare. There is some evidence of a history of French and

Acadian roots for the father, but no evidence that he is pursued that history or language with his son in the past.

[99] I am, however, persuaded that the plan of the mother has greater merit than the plan of the father. She has a far wider and deeper network of support available to her within the community on Prince Edward Island. This includes her family and that of her husband. She and J.K. had been welcomed into that new family and I accept that they all love J.K. and her deeply and will support them. The relationship of T.G. with J.K. and the unique circumstance of D.G. residing with them is important.

[100] This is not to say the father does not love J.K., nor is it to say that his support network of friends and his mother do not love him as well. It is to say that the father's network of support is more limited and the evidence of the richness of experience for J.K. on Prince Edward Island is more persuasive than that offered for Nova Scotia.

[101] It is also relevant that the mother has reconciled with J.K.'s great-grandparents, which permits him to continue that relationship on Prince Edward Island. As well, she permits contact between J.K. and his maternal grandparents, though supervised by his great-grandparents. This has also some benefit to him while ensuring his safety. The father is no longer involved in that dynamic thus, when looking forward, the mother's plan clearly addresses these relationships for J.K. in a way that meets his best interests.

[102] The father asks the court to examine her motivation for doing so, including why he was asked to cease visits to the great grandparents' home. I find it is not necessary to do so in this case as, from J.K.'s perspective, the most important fact is that he will be able to continue those relationships.

[103] Therefore, J.K. will primarily reside with his mother in a joint custodial arrangement and the father will have parenting time with him.

[104] The significant challenge that arises in this case is the logistics of travel for J.K. between the homes of the father and the mother. This is not a problem when the ferry between Nova Scotia and Prince Edward Island is running but becomes a significant challenge when it is not. The only method of travel between the Provinces in that case is the Confederation Bridge in New Brunswick.

[105] Acknowledging this challenge, the order will provide father with parenting time every second weekend when the ferry is running and reasonable parenting time to a maximum of every second weekend when the ferry is not running. This will be subject to his discretion respecting weather and the time taken to travel to and from the bridge for both he and J.K.. It is incumbent upon him to consider J.K.'s safety and the concerns of the mother raised respecting conditions on Prince Edward Island before making such a decision.

[106] To accommodate the fact that J.K. will likely spend less time with his father when the ferries are not in service between the provinces, this order will incorporate some additional time during the summer for J.K. to enjoy with his father.

[107] As well, this will mean that electronic communication via videoconferencing, telephone and other electronic means, which will change as J.K. gets older and is able to use social media and texting, will be an important consideration in this matter to maintain the relationship between J.K. and his father as well as the father's family and friends.

### **Child Support**

[108] There are two components to child support to be considered. Respecting the table amount of support, the father's Statement of Income sworn February 10, 2020 confirms an annual income of \$59,637.84. No objection was raised to this amount and I accepted it.

[109] The applicable table, given the father's residence, is Nova Scotia and the table amount of child support is therefore \$508.87 per month commencing on the first day of September, and continuing on the first of each month thereafter until varied. The parents may agree to amend the payment to a biweekly amount which may be included in the order.

[110] Respecting child support for special or extraordinary expenses, the mother's Statement of Special or Extraordinary expenses was sworn on July 13, 2020 makes claim for hockey registration for the 2019-2020 the year in the amount of \$350. Her income disclosed in her Statement of Income sworn July 13, 2020, and uncontested by the father, is \$39,661. I am prepared find that this is an extraordinary expense for an extracurricular activity.

[111] Given the parent's incomes, the father's proportional contribution will be 60% of the cost totaling \$210 per year. This amount will be paid monthly in the amount of \$17.50 in addition to the table amount of child support unless the parties agree that it can be paid annually by the father to the mother.

[112] Though not addressed specifically by either party, the costs for ferry and bridge services for parenting time will be shared equally between them.

## **Order**

[113] There will be an order of this court as follows:

1. The parties will enjoy joint custody of J.K. They will jointly make decisions regarding major matters affecting J.K.'s well-being, including matters of health, education and religion.
2. The parties will have equal access to, and be entitled to communication with all service providers for J.K. including, but not limited to, doctors, dentists, daycare, childcare providers, schools and teachers and each will have full access to any information, records or materials from any such service providers.
3. The parties will communicate in a child focused, business-like and polite manner at all times.
4. The parties are prohibited from making any derogatory comments respecting each other at any time that they have care of J.K. Further, each party shall ensure that no one else makes such derogatory comments about either party in such circumstances and if the other person does not immediately cease such comments, the party in care of J.K. shall remove him from that circumstance or ensure that the other person is removed.
5. The mother shall have primary care and residence of the child on Prince Edward Island.
6. The father shall have parenting time as follows:

- a. Each year, commencing the first weekend that ferry service is operating between Nova Scotia and Prince Edward Island, at reasonable times every second weekend from Friday until Sunday. The times for transition shall be agreed to by the parents and shall generally maximize J.K.'s parenting time with the father.
  - b. Each year, commencing when the ferry service ceases operating between Nova Scotia and Prince Edward Island, at reasonable times which may be every second weekend from Friday until Sunday. The father shall consider weather and any other relevant factors in deciding this parenting time and shall meaningfully consult with the mother in deciding these parenting times.
  - c. The father's parenting time shall be extended to include any in-service days on Fridays or statutory holidays on Mondays or both that arise during his parenting time weekends.
  - d. The father shall have reasonable and generous interaction time with J.K. via video calls and, if necessary, telephone calls. All such interaction will be facilitated by the parents in a cooperative fashion.
  - e. The mother shall have reasonable and generous interaction time with J.K. via video calls and, if necessary, telephone calls when J.K. is in the care of his father for extended periods of parenting time including school summer break, school spring break, Easter and Christmas. All such interaction will be facilitated by the parents in a cooperative fashion.
7. The parties may adapt and adjust the schedule from time to time by agreement. The schedule will be subject to the schedule of the ferry and to weather conditions including whether the Confederation Bridge is open and operating during the time the ferry is not in operation.
  8. The parents will reasonably accommodate each other for any lost parenting time due to circumstances beyond their control, including the ferry schedule, the bridge conditions and the weather and will

exercise reasonable judgment to ensure the safety of J.K. in all such circumstances.

9. When the ferry is operating, and unless otherwise agreed, the father will travel on the ferry to Prince Edward Island to pick up J.K. at the beginning of his parenting time and the mother will travel on the ferry to Nova Scotia to pick up J.K. at the end of that parenting time. The parties will equally share the cost of the ferry for each access period and will bear their own costs in travelling to and from the exchange location.
10. When the ferry is not running, the parties shall meet for exchange of J.K. at a mutually acceptable location on the Nova Scotia side of the Confederation Bridge. The parties will share equally in the cost of the shuttle and tolls for the Confederation Bridge and will bear their own costs in travelling to and from the exchange location.
11. Notwithstanding this parenting time schedule, the following special parenting time schedule shall apply:
  - a. Christmas – Unless otherwise agreed, one parent shall have J.K. for parenting time from the last day of school commencing the school Christmas break until December 26 at approximately noon and the other parent shall have J.K. for parenting time from December 26 at approximately noon until the day before school recommences. In even numbered years, the father shall have the first block of parenting time and in odd numbered years, the mother shall have the first block of parenting time.
  - b. Easter – Unless otherwise agreed, the parent who has J.K. on the normal access schedule for the Easter weekend will keep J.K. for that time.
  - c. Mother's Day and Father's Day – Unless otherwise agreed, there will be no special parenting time on Mother's Day or Father's Day except that J.K. will have a video call with the respective parent if he is not in that parent's care on that day.

- d. School Spring Break – Unless otherwise agreed, the father shall have J.K. with him for the school spring break in even numbered years and the mother shall have him with her in odd numbered years.
  - e. School Summer Break – Unless otherwise agreed, during the school summer break the father shall have block parenting time for two week commencing the first weekend after the end of school and the mother shall have one week of block parenting time. This pattern of parenting time shall continue until the end of the summer school break. J.K. shall be in his mother’s care at least two days prior to the commencement of school.
12. The father shall pay child support to the mother commencing the first day of September, 2020, as follows:
- a. Table amount of support of \$508.97 based on an annual income of \$59,637 and the Nova Scotia table;
  - b. Contribution to special or extraordinary expenses of \$210 per year payable at \$17.50 per month, unless otherwise agreed, based on a hockey expense of \$350 per year and the father’s income of \$59,637 (60% contribution) and the mother’s income of \$3,9661 (40% contribution).

[114] If either party wishes to be heard on costs, they must each make written submissions within 30 days.

[115] Counsel for the mother shall draft the order.

Daley, J.