IN THE SUPREME COURT OF NOVA SCOTIA
Citation: W.R.V. v. S.L.V., 2007 NSSC 251

Date: 20070828
Docket: SBW No. 1203-001812
Registry: Bridgewater

Between:

W.R.V.

Petitioner/Respondent

v.

S.L.V.

Respondent/Applicant

Judge:	The Honourable Justice A. David MacAdam
Heard:	May 2 & 28; August 7 & 8, 2007, in Bridgewater, Nova Scotia
Final Submissions:	August 8, 2007
Written Decision:	August 28, 2007
Counsel:	Michael K. Power, for the Petitioner/Respondent Shawn M. O'Hara, for the Respondent/Applicant

By the Court:

Background

[1] The parties were divorced by divorce judgment dated March 25, 2004. The corollary relief judgment, of the same date, provided that the parties "... shall have joint custody of the child of the marriage, ..." , J.V., born September 27, 1993 and now almost 14 years of age. The judgment also provided that W.V., the father, "... shall have day to day care, custody and control of the child of the marriage ... and the Husband shall retain the ultimate decision with regards to the daily care, custody and control of ... J.V.."

[2] Undisputed, on the evidence, is that at the time of the divorce, and for some time preceding the divorce, her mother, S.V., as a result of a number of stresses in her life, was experiencing "anxiety and panic attacks", and periods of depression, and was consuming alcohol to such an extent that she was attending Addiction Services on a regular basis for counselling and treatment. It is further undisputed that at the time it was appropriate for day-to-day care, custody and control to be granted to the father of J.V..

[3] Sandra Ellicott, a Registered Social Worker, with a Masters in Social Work and extensive experience in dealing with addictions and related issues, testified about her knowledge of S.V. from August 1999 until March 2005. She briefly described some of the issues in S.V.'s life, the addiction services and treatment that she attended and her struggles to cope with stress and alcohol addiction. She noted that in 2003, S.V. was charged with driving while impaired, following which she began keeping regular outpatient appointments, as well as group attendances. She also noted that between the Fall of 2004 and her last visit in March 2005 S.V. had maintained "... a challenging and demanding job while assuming an increased responsibility for her daughter." In her affidavits, she deposed that S.V."... has learned to handle stress in healthy ways and learned to react in a positive manner." She indicated that since January 2006, S.V. has continued to be involved with Addiction Services and to deal with a nicotine addiction. Ms. Ellicott further deposed:

> I am involved with the facilitation of both the above groups and I have observed S.V.'s ongoing growth and progress in dealing with her alcohol dependency and related difficulties. S.V. has made necessary attitudinal and life style changes

> needed to support and maintain sobriety. S.V. has made exceptional changes in her abilities to cope with and handle stress. These changes form the foundation for her continued recovery from alcohol dependence. S.V. has rebuilt trust in relationships with her family in particular and most importantly with her daughter, J.V.;
>
> The S.V. I met in August 1999 was struggling to deal with numerous life stresses and alcohol had become her primary coping mechanism. The S.V. that attends continuing support groups today shows evidence of being self confident, stable and capable of dealing with life stresses in a mature and positive manner;
>
> In 2001, S.V. was at the beginning stages of her recovery. At that time I expressed concerns regarding S.V.'s ability to be a primary caregiver to her daughter, J.V.. S.V. has made exceptional efforts towards recovery. Her current stability have alleviated those concerns. S.V. now appears to have the stability in her life and the ability needed to be a primary caregiver to her daughter.

[4] In testifying Ms. Ellicott restated her view that in 2001 S.V. was in the beginning stages of her recovery and she had concerns about her ability to be the primary caregiver of her daughter. She re-affirmed, however, that she now is of the view that S.V. has stability in her life and the necessary ability to be the primary caregiver for her daughter.

[5] S.V. testified. She acknowledged her addiction and recognized that at the time of the divorce and the corollary relief judgment, she was not capable of providing the appropriate care and support for her daughter. However, she says that over time she has worked to overcome her addiction, and to re-establish her life such that she feels confident she is able to provide support and guidance to her daughter.

[6] W.V., in addition to filing a number of affidavits, testified on his concerns about the ability of S.V. to even now cope with the stresses involved in providing guidance and support for a 13 year old. He described incidents both preceding and following the divorce which he said reflects the effects of the addiction on S.V. and her consequent inability to properly care for her daughter. He recounts incidents of smelling alcohol on her breath and conduct that obviously was the result of her addiction. He said he continues to have concerns about S.V.'s ability to cope under stress. He acknowledged that although he has seen some improvement, he has not been in sufficiently close contact to be able to measure the extent of her improvement.

[7] Clearly, W.V. is skeptical as to whether S.V. has her addiction sufficiently under control to be able to cope with the day-to-day care and responsibility for their daughter.

[8] It appears that following the divorce, and gradually over time the daughter began spending more time with S.V. until during the period between June 2006 and the second week of September 2006, she "... spent all of her time in my care with the exception of one week during her father's holidays, as well as a total of four or five overnight stays with her father." During this period her father was having difficulties with J.V. and arranged for her to reside with S.V. It is difficult to reconcile W.V.'s concern about the ongoing addiction of S.V. with his decision to allow J.V. to spend the majority of the summer of 2006 with her. In her affidavit of January 31, 2007, S.V. deposes:

> Near the end of the summer of 2006 J.V. began to express her wish to remain at my residence full time. J.V. is 13 years of age... . J.V. is well rounded and mature. On or about August 28th, 2006 there was a family meeting with W.V., J.V. and myself. At the meeting, J.V. told her father that she wanted to live with me full time. W.V. resisted J.V.'s request but agreed to a one week on, one week off arrangement. This arrangement was tried for a few weeks but J.V. remained unhappy. At a second family meeting on or about October 3rd, 2006 with W.V., J.V. and myself, J.V. expressed once again her desire to live with me full time and continue to visit her father on a casual basis. W.V. refused this request and suggested instead that we go to Court to have the matter settled;
>
> After communications between our lawyers in early fall, 2006 in an effort to vary the arrangements by consent, W.V. informed myself and J.V. that he was unilaterally returning to and enforcing the original parenting time arrangements contained in the Corollary Relief Judgment of every Tuesday and Thursday between 5:30 and 8:00 p.m. as well as every second weekend access for myself;
>
> Since November of 2006, parenting time has unilaterally been returned to the original custody arrangement with the exception that J.V. stays overnight on Tuesday, Thursdays and every second Sunday. In addition, J.V. and I often spend time together after she finishes school until 5:00 or 5:30 p.m. most evenings. J.V. has been coping with the arrangements with hope that they can be changed through the Court process. J.V.'s stated position is that she seeks to reside with me;

[9] It appears the child has on a number of occasions expressed the wish that the primary residence be granted to her mother. Consequently, she was interviewed by Elaine Boyd, M.Sc., a Psychologist, regarding her wishes in this regard. Ms. Boyd concluded her report by indicating that J.V. had three wishes:

1. To live with her mother and keep contact with her dad.

2. For her mother's and father's health to be good.

3. To do well in life.

Ms. Boyd stated that throughout the interview, J.V. consistently maintained that the initiation of this application by her mother was in support of her wish for changes in the existing court order relating to the location of her primary residence.

[10] In response to Ms. Boyd, J.V. also stated her three worries:

1. That her dad will remain angry with her and not speak to her.

2. That the living arrangements will remain the same (i.e. as in the existing Order).

3. That things will not go back to "normal" between she and her father.

[11] Clearly, W.V. was not satisfied and believed S.V. had manipulated their daughter to request the change in primary residence. As a consequence he retained Richard Nichols, to conduct confidential counselling to ascertain whether the request was that of J.V. or was being manipulated by her mother. In his conclusion, Mr. Nichols stated:

> ... If there is no current or potential substance abuse issue, then it is believed that the wishes of J.V. should be dominant in any decision. She is a wonderful, intelligent and capable young lady of 13 years.

[12] Consistent in the evidence of the witnesses, with some exceptions from W.V., is the opinion that J.V. is a bright, intelligent young lady, who has shown maturity beyond her age.

Issues

[13] The issues are the following:

1) Day-to-day care, custody and control of J.V.;

2) Child support;

3) Control and access to certain trust accounts held on behalf of J.V..

Issue No. 1 Day-to-day care, custody and control of J.V.

The Law

[14] The *Divorce Act*, R.S. 1985, c.3 (Second Supp.) provides:

> **Order for variation, rescission or suspension**
>
> 17.(1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,
>
> (a) a support order or any provision thereof on application by either or both former spouses; or
>
> (b) a custody order or any provision thereof on application by either or both former spouses or by any other person.
>
> ...
>
> **Terms and conditions**
>
> (3) The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.
>
> **Factors for child support order**

> (4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.
>
> ...
>
> **Factors for custody order**
>
> (5) Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.
>
> ...
>
> **Guidelines apply**
>
> (6.1) A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines.
>
> ...
>
> **Maximum contact**
>
> (9) In making a variation order varying a custody order, the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the court shall take into consideration the willingness of that person to facilitate such contact.

[15] In considering an application for variation of custody or access, the comments of McLachlin, J. (as she then was) in *Gordon v. Goertz*, [1996] 2 S.C.R. 27, must be considered. Although they were made in the context of an application by the non-custodial parent to restrain the custodial parent from moving from

Saskatoon, Saskatchewan to Australia, nevertheless, the comments of Justice McLachlin are relevant in this proceeding. At para. 13 she comments:

> 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.

[16] At para. 49, Justice McLachlin observes:

> The law can be summarized as follows:
>
> 1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
>
> 2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
>
> 3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
>
> 4. The inquiry does not begin with the legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
>
> 5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
>
> 6. The focus is on the best interests of the child, not the interests and rights of the parents.
>
> 7. More particularly the judge should consider, *inter alia*:
>
> > (a) the existing custody arrangement and relationship between the child and the custodial parent;

> (b) the existing access arrangement and the relationship between the child and the access parent;
>
> (c) the desirability of maximizing contact between the child and both parents;
>
> (d) the views of the child;
>
> (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
>
> (f) disruption to the child of a change in custody;
>
> (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.
>
> In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

[17] Subs. 17(5) mandates a two-stage inquiry. The nature of the inquiry was outlined by Vancise, J.A. in *Talbot v. Henry* (1990), 25 R.F.L. (3d) 415 (Sask. C.A.), at 427:

> Thus there is a two-stage inquiry: (1) The reviewing judge must determine whether there has been a change in the condition, means, needs or other circumstances of the children. In determining whether there has been a change, substantially different considerations apply. The parties are not in pari passu, and the person seeking to vary the order bears the onus as described above of demonstrating a material change which will adversely affect the needs of the children. If there has been no material change, the inquiry ends there and the order remains. (2) If the applicant has demonstrated a material change in the conditions, means, needs or other circumstances of the child, the court must decide whether the material change is such that the best interests of the child require a variation of the order. In other words, if there has been a material change, then the only consideration with reference to that change is the best interests of the child.

[18] Although, they were made in the context of circumstances very different from those in the present matter, I reiterate that the factors outlined by Justice McLachlin are, with necessary modifications, relevant to this application.

Change in Circumstances

[19] At the time of the divorce J.V. was 10 years old. She is now 13, almost 14, and was described by Ms. Boyd and Mr. Nichols as an intelligent young lady. In similar circumstances, M-E. Wright, J. of the Saskatchewan Court of Queen's Bench, in *Wiegers v. Gray* 2007 SKQB 13, 2007 CarswellSask 30, considered whether a young child's development from toddler to young girl amounted to a change in circumstances that would warrant a successful application for a change in access. After referencing Justice Vancise in *Talbot v. Henry* (1990), *supra*, at para. 16, she commented:

> At the threshold stage of the inquiry, it is presumed that the original order is correct. The person applying to vary that order must accordingly show, on a balance of probabilities, that there has been a change in the condition, means or circumstances of the child, or in the ability of the parents to meet the needs of the child. It must be a material change, and one which was neither foreseen nor could reasonably have been contemplated by the judge who made the original order. A material change has been described as a change of "such an extent that it directly affects both the short and the long-term best interests of the child": *P. (B.) v. C. (C.)* (1999), 90 A.C.W.S. (3d) 425 (N.B. Q.B.) at para. 17. Mere change alone is not sufficient.

[20] She continued, at para. 20:

> I do not need social science literature, nor any expert opinion, to conclude that in five years, as Morgan has developed and matured from a toddler to a young girl, that there has been a change in her circumstances that may warrant a change in the way that her parents share the parenting of her. This is simply common sense. A baby needs different things from his or her parents, as does an adolescent, a teenager, or a young adult. To suggest that the maturing of a child does not constitute a change in the circumstances of that child belies rational explanation. I say this in the context that in this application, the petitioner is seeking increased parenting time - - not necessarily a change in the fundamental custody arrangement that has existed since Morgan was a baby. This common sense approach is supported by the jurisprudence.

> For example, in *Elliott v. Loewen* (1993), 44 R.F.L. (3d) 445 (Man. C.A.), Helper J.A. for the court said at para. 6:
>
> > The needs of a child in relation to each of his parents change frequently over the years from infancy to adulthood. No court order can be crafted to address those ever-changing needs and the concerns of separated parents as they relate to their child; thus, the need for variation ...

[21] In respect to J.V., it is equally clear that the maturing of J.V. from age 10 to almost 14 is, in itself, such a change in circumstance as to warrant an examination as to whether the arrangements for her "day-to-day care, custody and control" are now appropriate.

[22] The material changes in J.V.'s circumstances warrant consideration of a stage two inquiry as to whether the existing order should be varied.

Best Interests of the Child

[23] Much has been written about the phrase "best interest of child". In *Gordon v. Goertz, supra*, at paras. 18 -20, Justice McLachin observed:

> ... In order to determine the child's best interest, the judge must consider how the change impacts on all aspects of the child's life. To put it another way, the material change places the original order in question; all factors relevant to that order fall to be considered in light of the new circumstances.
>
> What principles should guide the judge on this fresh review of the situation? This inquiry takes us to the last clause of s. 17(5) of the *Divorce Act*: "... in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change". The amendments to the *Divorce Act* in 1986 (S.C. 1986, c.4 (now R.S.C., 1985, c.3 (2nd Supp.)) elevated the best interests of the child from a "paramount" consideration, to the "only" relevant issue.
>
> The best interests of the child test has been characterized as "indeterminate" and "more useful as legal aspiration than as legal analysis": *per* Abella J.A. in *MacGyver v. Richards* (1995), 11 R.F.L. (4th) 432 (Ont. C.A.), at p. 443. Nevertheless, it stands as an eloquent expression of Parliament's view that the ultimate and only issue when it comes to custody and access is the welfare of the child whose future is at stake. The multitude of factors that may impinge on the child's best interest make a measure of indeterminacy inevitable. A more

> precise test would risk sacrificing the child's best interests to expediency and certainty. Moreover, Parliament has offered assistance by providing two specific directions - one relating to the conduct of the parents, the other to the ideal of maximizing beneficial contact between the child and both parents.

[24] In much of the evidence advanced by W.V., reference is made to S.V.'s alcoholism and her ongoing battle with the demons it brought about. Integral to these battles was her obvious failure to provide for her daughter, thereby justifying the decision to grant day-to-day care, custody and control to W.V. However, Parliament has stipulated that apart from any relevance to the ability of the person to act as a parent, past conduct is not relevant in an application in which the best interests of a child are being considered. Justice McLachlin, at para. 21, commented:

> In s. 16(9), Parliament has stipulated that the judge "shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child". This instruction is effectively incorporated into a variation proceeding by virtue of s. 17(6). Parental conduct, however meritorious or however reprehensible, does not enter the analysis unless it relates to the ability of the parent to meet the needs of the child.

[25] Considering the evidence it is obvious J.V. is now better able to relate to and communicate with her mother than her father. Although she is concerned with the impact of this application on her father, she nevertheless clearly wishes to reside with her mother on a day-to-day basis. As noted in the report of Mr. Nichols, when asked about the reason for wishing to be with her mother, J.V. replied "ease of conversation, mother/daughter talk flows easily".

[26] In the report of Ms. Boyd, the maturity demonstrated by J.V. is reflected in her responses to Ms. Boyd, which mirrors the court's view of the position of W.V.:

> When asked what she thought her father's concerns were about her living with her mother J.V. outlined the following:
>
> - That her mom will "screw up" again. He sometimes talks about her past and thinks that J.V. is covering up for her.
>
> - That she is trying to make up for time lost with her mother and will not disclose if her mother is drinking.

- That she is trying to look after her mother.

> J.V. claimed that these concerns are not legitimate because she does not need to look after her mother and there is nothing to cover up. She indicated that her father told her she was "not prepared" to make these kinds of decisions (i.e. about where she lives).

[27] Later, Ms. Boyd concludes:

> In summary J.V. indicated that she feels closer to her mother and wants to live with her. She was aware of her father's concerns about her mother's ability to care for her appropriately but discounted them. J.V. was very concerned about her father being angry with her and although she expressed a strong desire to live primarily with her mother she also expressed a clear desire to maintain a relationship with her father. In fact, she indicated that she wished her relationship with him was closer...

[28] In her report Ms. Boyd notes J.V. believes her father is upset with her wish to live primarily with her mother, and that this was the reason for the change from her living with her mother in the summer of 2006 to returning to the court -ordered provisions for access in the Fall. She understands she was placed in her father's primary care because of her mother's alcohol abuse and acknowledges that at times when she was with her mother during these occasions, she called her father to come and get her. She stated to Ms. Boyd that although her mother was not aggressive, she was not able to supervise her properly. She acknowledged that she had always felt safe with her father, but sometimes not with her mother, "in the past". She told Ms. Boyd that her mother no longer drinks and she has had no concern about this since the summer of 2006. The report of Ms. Boyd then continues:

> When asked why she wanted to live primarily at her mother's home J.V. said that she had a closer relationship with her mother who she feels listens to her, understands her better, takes her feelings into consideration, and tries to comfort her. She described her mother as being more involved in her activities and making an effort to know her friends. She denied that her mother had attempted to convince her to change the parenting arrangement and maintained that instead her mother checked in and asked if she was sure this was what she wanted. She indicated that if she decided she wanted to live with her father her mother would be disappointed but not angry with her. She denied that her mother speaks negatively about her father but indicated that she would vent to her mother about her frustrations and conflicts with her father.

> J.V. described her relationship with her father as “not as strong”. She indicated that he did not do many things with her and that his attention seems to be more on Joanne and Linden. J.V. said that she told her dad she wanted to spend more time with him and he agreed to work on that but things reverted back to the way they had been after a short period of change. She noted that she had been afraid to tell him that she wanted to live with her mother because she knew he would be upset. She said that he eventually came to her mother’s home and they talked about what she wanted. He said he was disappointed but she felt he was very angry with her.

[29] Although J.V. did not testify, the observations of her by her mother, and her father, together with Ms. Boyd and Mr. Nichols suggests, as I have previously alluded, a bright intelligent young lady, who has a sense of who she is, where she would like to live, and a concern about its impact on her relationship with her father.

[30] W.V. has expressed concerns that the problems encountered by S.V. will resurface. This, of course, belies the fact that in 2006 he was prepared, when experiencing some difficulties with J.V., to allow her to reside with her mother. Nevertheless, on the evidence, S.V. still, on occasion, takes a drink, and indeed, the court is concerned about her ability to withstand future pressures and stresses without resorting to the crutch of alcohol. Nevertheless, there is nothing, at present, to suggest that will be the case, and the strength of J.V.’s wish as measured by her responses to Ms. Boyd and Mr. Nichols suggests she understands and will respond appropriately in the event there is such a future mis-step.

[31] Following the initial hearing, S.V. applied to reopen the presentation of evidence. For the subsequent hearing, he provided affidavits and at the hearing testified to a concern about S.V.’s parenting skills as a result of J.V. posting photographs of herself on a website known as “Facebook”. He viewed S.V.’s handling of this as inadequate. He also deposed and testified to his lack of contact with his daughter since the initial hearing. S.V. responded that she spoke to J.V. about the Facebook postings and some of the photographs had been removed. She also confirmed the lack of contact by J.V. with her father, other than seeing and speaking to him a few times since the hearing. She says she has encouraged J.V. to speak to her father, but she does not wish to do so until this matter is concluded. S.V. says J.V. is upset that the legal proceedings have dragged on.

[32] S.V. says J.V. is upset that her father has changed the locks on his residence, without informing her, not allowed her to have her puppy visit with her at S.V.'s residence and in his cutting off her cell phone.

[33] For the re-opened hearing, Ms. Boyd again interviewed J.V. who indicated "she was frustrated that the issue concerning her primary residence had not yet been settled". Ms. Boyd states:

> According to J.V. her father has made some attempts to have her return to his home and to have contact with her but she (J.V.) said that she does not feel comfortable spending time with him because of what she described as his attempts to change her mind and make her feel guilty about her desire to live with her mother. She commented that when she had initially let her wishes be known her father acted like she was "doing something terrible" but now it is more like he is "heartbroken". She indicated that once the court matter was settled she would like to attempt to rebuild her relationship with her father and expressed the desire to see him and do things with him. She denied that S.V. influenced her to avoid her father saying that in fact her mother prompted her to call her father and stay in touch with him.

[34] Later she reports J.V. as saying: "she continues to maintain that she feels more comfortable in her mother's home and to deny that her mother is abusing alcohol in any way." Her report concludes:

> ... At this point J.V. wants her father to support her decision and to stop pressuring her. She indicated that she was upset that things were not settled after the last court date and is hopeful that they will be this time so she will not have to discuss it any further with her father or anyone else for that matter.

[35] W.V. testified as to why he changed the locks, why J.V. could not have her puppy at S.V.'s residence and why he cut off her cell phone. Nevertheless, he failed to recognize the obvious stress this proceeding has had on J.V.. His explanation lacked reasonableness and his failure to even acknowledge the stress this proceeding has had on J.V. confirms the need to accommodate J.V.'s wishes in this instance. If anything, the re-opened hearing re-emphasises the conclusion that the "best interest" of J.V., at this time, is for her day-to-day care, custody and control be granted to her mother.

[36] S.V. should be aware, however, that the "best interests of J.V." necessitates the resumption of contact with her father. J.V. has said, both to Ms. Boyd and

apparently to S.V. that once her day-to-day residence is settled, she will endeavour to re-establish contact and a relationship with her father. Hopefully, she will carry through on this intention. S.V. should be aware that her duties and responsibilities include the obligation to see that it does occur.

[37] Counsel for W.V., in a further submission, referencing *Webb v. Webb*, 135 N.S.R. (2d) 161; *J.W. v. D.W.*, 2005 N.S.S.F. 2, affirmed *D.L.W. v. J.J.M.W.*, 2005 N.S.C.A. 102; *Genereux v. Elruk*, 2005 N.S.S.C. 251 and *C.L.J. v. J.M.J.* 2006 N.S.S.C. 82 notes the importance of the custodial parent facilitating access for the non-custodial parent.

[38] S.V. says she has encouraged J.V. to contact her father, but she has resisted, indicating she does not wish to do so until this matter is concluded. Although "encouraging a child to have contact with the non-custodial parent" is a factor, and an important factor, in view of the position taken by W.V. on this application, the position of J.V. is "at least" understandable. As I have suggested, once the issue of her primary residence has been settled, I trust, and expect, J.V. will carry out her undertaking to re-establish contact and a relationship with her father.

[39] Although W.V.'s position has adversely affected his relationship with J.V., there is nothing to suggest he acted out of anything but concern for her. It is time for him to recognize his daughter's strong desire to live with her mother and to support her as she continues to grow as a person.

[40] In awarding day-to-day care, custody and control to S.V., I hastily add the caution that in the event she drinks to excess or in the presence of J.V., this will be immediate justification for the termination of this variation. J.V. has endured the past difficulties of her mother, and wishes to resume a healthy relationship with her. On the evidence, I am satisfied S.V. has a similar wish in reference to her daughter. However, that can only be permitted in an environment where her mother is able to provide her with the necessary support and guidance, which can only occur in the absence of alcohol.

Support

[41] S.V. is entitled to child support in accordance with the Federal Child Support Guidelines. On the evidence, W.V.'s total income for 2006 was $107,285.00 and based on that level of income, the base table child support would

be $895.00 per month. The applicant requests a declaration that in the event there are s. 7 expenses, they be shared in proportion of their respective incomes. Counsel advises there are no such expenses at present and therefore, asks for a general statement to this effect. I am not prepared to determine entitlement to or the proportionate sharing of add-on expenses in a vacuum. In the event such expenses are agreed to by the parties, and presumably having regard to the extensive case law in respect to such expenses, they should similarly have no difficulty in determining what would be the appropriate ratio to be shared by each of the parties. If they are alleged, but not agreed upon, then obviously recourse to the courts or some other form for dispute resolution will be required.

[42] S.V. also seeks retroactive child support for the period of June 2006 to November 2006, when J.V. was residing with her. I am not prepared to so award. To award retroactive child support for periods in which a child is temporarily residing with the non-custodial parent would invite applications for periods ranging from a week to a month, to in this case, six months. The parties would, of course, be bound by any arrangement they make. However, temporary accommodation relocations should not be the basis for applications for retroactive child support in the absence of an understanding between the parties at the time. There is no suggestion that such child support was agreed or requested at the time J.V. went to reside with S.V.

Moneys Held in Trust

[43] Evidence was provided of different accounts held in trust for J.V. and the request by each parent, as part of their applications, to obtain or retain control over such funds.

[44] These funds consist of two R.E.S.P. funds, one held by each of the parties. Apparently the initial R.E.S.P. was opened by W.V. and the second opened by S.V. The corollary relief judgment provided for S.V. to contribute $500.00 to the R.E.S.P. opened by W.V. and she did so until deciding to open her own R.E.S.P. on behalf of J.V.. Clearly the intent of the corollary relief judgment was that the R.E.S.P. would be, on behalf of J.V., controlled by W.V., nothing on this application warrants any change or variation other than a restatement of the obligation of W.V. to fully disclose to S.V., as the joint custodial parent of J.V., all activities in regard to the R.E.S.P.. The second R.E.S.P. shall, therefore, be rolled

into the R.E.S.P. opened by W.V. If permitted, the R.E.S.P. shall be joint, although the control of the fund shall be by W.V.

[45] Clause 5 of the corollary relief judgment provides that an investment fund held by S.V. was to be amended to her and W.V. jointly. If S.V. fails to take whatever steps are necessary to effect this change, then I will hear the parties as to what steps should be taken. However, after this investment fund is amended to be held jointly by the parties, the control of this fund shall be with S.V.

[46] The fourth fund is an investment fund held by the Executor and Trustee of S.V.'s father's estate in trust for J.V.. As joint custodial parents, each is entitled to disclosure of the activities in any fund held in trust for J.V.. Consequently, each is entitled, on behalf of J.V., to communicate with the Trustee of the fund to obtain particulars of the activities in this fund.

[47] Judgment accordingly.

MacAdam, J.