

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: C. D. M. Z v. R. E. H.- Z. 2013 NSSC 242

Date: 20130726

Docket: 1201-066542, SFHD-083189

Registry: Halifax

Between:

C. D. M. Z

Petitioner

v.

R. E. H.- Z.

Respondent

Judge:

The Honourable Justice Beryl MacDonald

Heard:

June 7, 2013

Counsel:

Michelle Rogers, counsel for the Petitioner
Nicole Figueira, counsel for the Respondent

By the Court:

[1] This is a divorce proceeding. The parties separated in August 2012 and therefore the required one year period of separation has not yet occurred. However the parties did want to resolve all issues relating to the corollary relief, resulting in this hearing. They will file the necessary documentation to conclude the divorce after the one year of separation is concluded. The parties understand this decision, about the outstanding issues, is to be implemented notwithstanding the delay in issuing the Corollary Relief Order.

[2] The parties were married in 1994. There is one child of the marriage who is now 13 years old. As a result of an Interim Order this child is in the primary care of the Father. The child is in the Mother's care every weekend from after school until the child is returned to school on the following Monday morning or on a Tuesday morning in the event of a long weekend. The Interim Order provided the parties the opportunity to agree upon further parenting time between the Mother and the child. It also gave exclusive possession of the matrimonial home to the Father.

Division of Property

[3] The parties do not have significant assets. They have had difficulty categorizing many items of personal property. They have attempted to understand the payout of the Mother's pension benefits without assistance from a professional. This may have prevented them from reaching a settlement that would have precluded my hearing counsel's submissions on each of their contradictory interpretations of the letter received from the Mother's employer entered as Tab FF to Exhibit 3. Nevertheless it now appears that a division of the Mother's pension would provide the Father with enough money to purchase the Mother's interest in the matrimonial home, pay her share of marital debt and purchase her interest in some of the personal possessions he wishes to keep. The Father's valuation of the Mother's pension includes a deduction for pension accruals from the date of separation. In addition the Father is prepared to deduct \$45,000.00 from his share of the Mother's pension "to purchase" her interest in the matrimonial home and to become solely responsible for significant marital debt. The Father is prepared to assume financial responsibility for a visa debt in the approximate amount of \$9,500.00 and a debt due to the Halifax Regional Municipality for paving costs in the amount of \$4,500.00. The Mother's equity in the matrimonial home is \$35,544.00. The Father's proposal results in an unequal division of matrimonial property in the Mother's favor. The Father suggests his RPP is either be divided by way of a spousal rollover or is to be valued and set off against his remaining share in the Mother's pension. Materials submitted by the Mother suggest the value of the RPP is \$4,236.00. The Father has not confirmed this valuation. Finally the Father suggested the Mother keep the vehicles in her possession with any associated debt and he keep the vehicle in his possession with its associated debt.

[4] The parties arranged to have the household contents appraised. The Mother was to bring two cameras in her possession to the home on the day when the appraiser was conducting the

appraisal. She arrived late and those items were not appraised. By the time she arrived the appraiser, having completed the appraisal, had left the matrimonial home.

[5] The appraisal included everything in the matrimonial home but there is a dispute about whether the guitars are matrimonial property or the personal possessions of the Father and there is a disagreement about the value of the record and CD collection consisting of music from the 1970s and early 1980s including rock 'n roll, heavy metal, punk, country-western, pop etc. The appraiser suggested the record collection should be valued at \$1,120.00. The Mother believes the collection is more valuable and complains the Father would not make the necessary arrangements to have this collection appraised by a professional in the field. Because the parties could not come to an agreement about this record collection my order will provide that the record and CD collection are to be physically divided between the parties with each having an alternating choice beginning with the Mother until the entire collection is divided.

[6] Because the Mother believed the guitars had been undervalued by the appraiser they were taken to the Folklore Center for further appraisal. That appraisal suggested the guitars and cases were worth \$2,900.00. The Father suggests one of the guitars belongs to the child and he deducted the \$125.00 value for that guitar. The Mother does not admit this is the child's guitar. In his proposal the Father did not argue that the guitars are personal to him although he is the only one who uses these instruments and he occasionally appears in public performances. Given their value I have decided they are a matrimonial asset. With the exception of the son's guitar I have included their value in the matrimonial property division. The Mother's request for the division of matrimonial property is not substantially different from the Father's. The difference relates to the value of the Mother's pension.

[7] The Mother has already chosen to take the commuted value of her pension as a result of her loss of employment. The employer has informed her the commuted value is \$241,522.06; \$119,237.31 will be transferred into a locked in plan and \$122,284.75 will be paid to her as a taxable lump sum. Counsel's submissions did not discuss the reduction of the entire commuted value for tax, a required calculation. Usually a tax rate of 30% has been applied to taxable assets for division purposes. I have used this percentage in preparing this decision. Without professional advice I cannot suggest this is correct and I retain jurisdiction to change the matrimonial property division if the parties receive professional advice that indicates my approach is incorrect. They will have three weeks from my decision to inform me whether further evidence and submissions on this point are required. If neither makes this request this decision will determine the issue.

[8] The value of the pre-separation commuted value of the pension after tax is \$165,483.00. The Father's share is $\$82,742.00$ less $\$45,000.00 = \$37,742$.

[9] The Father's RPP had a value at separation of \$8,500. (Exhibit #3 Tab BB). Discounted for tax at 30% its value is \$5,950.00. Given the passage of time I have decided a buy out is the most appropriate means to divide this asset. As a result the Father will pay the Mother \$2,975.00.

[10] The value of the household contents after deducting the value of the guitars, the record and CD collection is \$3,568.50. The Father estimates the value of the 2 cameras to be \$250.00; the Mother suggests \$300.00. I have chosen to use the value estimate provided by the Father. The total value of household contents is \$3,818.50. The Mother's share of that value is \$1,909.25 of which she possesses contents valued at \$465.00. The Father therefore will owe the Mother \$1,444.25 to retain the household contents not in possession of the Mother.

[11] The value of the guitars less the value of the son's guitar is \$2,775.00. The Father will owe the Mother \$1,387.50 to retain these guitars.

[12] The Mother has a stock option with Bell Alliant. The Mother values this asset at \$199.20, the Father at \$112.13. I do not know how the Father valued this asset but I have used his number and so the Mother would owe him \$56.00.

[13] Presuming my valuation of the Mother's pension is reasonable the results of the division of matrimonial property are as follows:

Father's share of Mother's Pension	\$82,742.00
Less offer to purchase Mother's equity in matrimonial home	\$45,000.00
Less Mother's share of household contents	\$ 1,444.25
Less Mother's share of guitar value	\$ 1,387.50
Less Mother's share of RPP	\$ 2,975.00
Plus Father's share of Mother's stock option	\$ 56.00
Mother to pay Father to equalize assets	\$31,199.25

[14] The parties are to retain the vehicles in their possession and are to be solely responsible for paying the debt associated with those vehicles.

[15] The Father is to be solely responsible for paying the Scotia Bank Visa debt, now in collection, and the debt due to HRM for paving.

Custody and Parenting Plan

[16] Each of these parents is requesting primary care of their 13-year-old child. At an interim hearing, held in August 2012, the Father was granted primary care of this child and exclusive possession of the matrimonial home. At that time it was not considered in the child's best interest to move him to a new community where he would attend an unfamiliar school. The Father was able to attend to the child's essential needs until this matter could come before the court at a final hearing. The Father was granted exclusive possession of the matrimonial home because he did not have adequate housing available to him in the Halifax Regional Municipality and he was operating a private business from the home. The Mother had suitable housing with her Mother.

[17] Both parents are now requesting primary care of the child under a joint custody order.

[18] The sole and guiding principle to follow when adjudicating custody and access disputes, including the appropriate residential parenting arrangement, is to determine what is in the best interest of the child involved. Several cases provide guidance to the court in applying this principle: See for instance *Foley v. Foley* (1993) 124 N.S.R. (2d) 198 (N.S.S.C); *Abdo v. Abdo* (1993) 126 N.S.R. (2d)1 (N.S.C.A). Particularly useful is the discussion about this principle found in *Dixon v. Hinsley* (2001) 22 R.F.L. (5th) 55 (ONT. C.J), p. 72:

the "best interests" of the child is regarded as an all embracing concept. It encompasses the physical, emotional, intellectual, and moral well being of the child. The court must look not only at the child's day to day needs but also to his or her longer term growth and development ...

[19] What is in the child's best interests must be approached from the perspective of the child's need with an examination of the ability and willingness of each parent to meet those needs. Each parent's plan for the child must be reviewed, not in respect to what the parent wants or needs, (parents have many wants and needs in relation to their child), but in respect to what the child requires to become an independent, healthy, educated, and socially able human being.

[20] Conflict between parents does not necessarily mean they cannot be awarded joint custody. Joint custody may continue to be appropriate if there is sufficient indication of their ability to place the needs of the child before personal needs and to cooperate on issues of vital importance to the child. The role of the court is not to determine which parent is better but to decide which plan for the child's care will best meet the child's developmental, educational, health and social needs. (*Gillis v. Gillis* (1995) Carswell N.S. 517)

[21] Section 16 (10) of the *Divorce Act* requires a child to have:

...as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[22] In *Young v. Young*, [1993] 4 S.C.R. 3, Justice McLachlin when reviewing this section stated:

[18] This is significant. It stands as the only specific factor which Parliament has seen fit to single out as being something which the judge must consider. By mentioning this factor, Parliament has expressed its opinion that contact with each parent is valuable, and that the judge should ensure that this contact is maximized. The modifying phrase “as is consistent with the best interests of the child” means that the goal of maximum contact of each parent with the child is not absolute. To the extent that contact conflicts with the best interests of the child, it may be restricted, but only to that extent.

[23] A review of many of the decisions in which judges have attempted to determine what is in the child’s best interest reveal a preference to continue children in the care of the person who is determined to be their “primary care parent”. This has led to much discussion about how a court can determine the identity of this person. In *Burns v. Burns* 2000 NSCA 1, the Court of Appeal did provide some guidance and Justice Roscoe stated:

29...the actual period of time spent with the children is not the only determinant. More importantly, in my opinion, is which parent has taken primary responsibility for all the important decisions concerning the health, safety, education, and overall welfare of the children, since the parties separated.....

30 In addition to the major matters, the primary caregiver is the parent who deals with the countless less significant, but nonetheless obligatory, daily arrangements for the children’s clothing, haircuts, hygiene, extracurricular activities and everyday mundane affairs. Who would buy a present for them to take to a school friend’s birthday party? Who makes the appointments and takes them to the dentist? Which parent is keeping the record of their vaccinations, and fills their prescriptions? Who goes to the parent-teacher interviews? Who chose the pre-school?...

[24] The decisions and activities described by Justice Roscoe are critical to a child’s well being and may be overlooked by the parent who has never had these responsibilities. However, because the primary care parent in a relationship frequently was the female partner, this analysis has come under attack particularly from Fathers. The division of labour within a family generally evolves to place the female partner in the role of primary care parent. It is easier to have one person attending to many of the above described parenting functions. But these are functions the other parent can learn to perform. It may be more important to examine the nature and quality of the child’s relationship with each of his or her parents than it is to merely add up the number of parenting tasks performed by each and assume the parent who performs more of these tasks is the

“primary care parent” who should therefore have day to day care of the child. More illuminating might be answers to questions like these:

- What does the parent know about child development and is there evidence indicating what is suggested to be “known” has been or will be put into practice?
- Is there a good temperamental match between the child and the parent? A freewheeling, risk taking child may not thrive well in the primary care of a fearful, restrictive parent.
- Can the parent set boundaries for the child and does the child accept those restrictions without the need for the parent to resort to harsh discipline.
- Does the child respond to the parent’s attempts to comfort or guide the child when the child is unhappy, hurt, lonely, anxious, or afraid? How does that parent give comfort and guidance to the child?
- Is the parent emphatic toward the child? Does the parent enjoy and understand the child as an individual or is the parent primarily seeking gratification of his or her own personal needs through the child?
- Can the parent examine the proposed parenting plan through the child’s eyes and reflect what aspects of that plan may cause problems for, or be resisted by, the child?
- Has the parent made changes in his or her life or behaviour to meet the child’s needs, or is he or she prepared to do so for the welfare of the child?

[25] Unfortunately in this case, as in many others, very little evidence was provided to answer these questions.

The Mother considers the child’s best interest is to be in her primary care because:

- The Father has been abusive of her and has caused her to suffer from anxiety and depression.
- The Father is a habitual user of marijuana and is addicted to that drug.
- The Father abuses alcohol.
- The Father has a gambling addiction.
- The Mother has always been the primary caregiver.

- The child's academic achievement has deteriorated since he has been in the primary care of the Father.
- The child has requested that he spend more time with her than is the case under the present arrangement.

[26] The Father considers the child's best interest is to be in his primary care because:

- The Mother suffers from anxiety and depression that has caused her to commit acts of self harm that upset the child.
- The Mother has inadequate housing.
- The Mother has difficulty setting boundaries allowing the child to sleep with her even at the age of 12 and 13.

Father's Abuse of Mother

[27] The Mother has suffered, since her adolescence, from anxiety and depression. This has caused her to commit minor, but distressing, forms of self abuse. The evidence suggests she has never been completely free from these mental disorders but I have no doubt that any stress she suffered while living with the Father would not have helped her management of these disorders. The Father admits he and the Mother have had an "acrimonious relationship". They frequently had "many loud verbal arguments". He says he has never demeaned the Mother in front of the child. However, he admits their arguments could be overheard by the child and he admits he may have called the Mother lazy and dumb. No doubt these statements may also have been heard by the child although this is not acknowledged by the Father. In addition the Father wrote notes for the Mother, the content of which was completely unacceptable. This was abusive behaviour as was the name calling. There is never an excuse for abusive behaviour but context can be important in determining the effect this behaviour should have on a parenting plan.

[28] The Mother has suffered from anxiety and depression for many years. I accept the Father's evidence that, "... she often goes through stages where she has difficulty keeping up with her regular life and the obligations that go along with it. She stops being as active in the household. She would not clean or organize her things. She was not active in cooking, eating with me (and the child once he came along), or doing dishes afterward. She would not keep her things tidy, leaving most of her clothes in heaps on the floor of our bedroom. She would stay in bed until she had to go to work and returned to bed once she arrived at home. Some days she would call in sick simply because she could not get out of bed in the morning."

[29] While the Father may have exaggerated the effect the Mother's disorders had upon her functioning, I am satisfied there were significant periods of time when she would lie in bed and be unable to cope with the routines of daily living. Support for my conclusion is evidenced by the

condition of the home and the child's bedroom on occasions when the Father returned to the home during the time when the Mother had exclusive possession. He testified that there were dirty dishes with hardened food in the kitchen and living room. The pictures attached as Exhibit "A" to the Father's affidavit attached as Tab "Y" of Exhibit #3 certainly gives support to the Father's contention that the Mother was unconcerned about household tasks and did not ensure the child had a respect for cleanliness. The disarray and disorder depicted in the pictures of the child's bedroom is quite in excess of the usual untidiness parents permit.

[30] The Father suggests that many of the arguments with the Mother were about her inability to function within the home and I suspect this may be true. No doubt the Mother was seeking empathy and support from the Father which was not forthcoming and he likely did not understand the nature and extent of her mental disorders. Nevertheless I cannot draw the conclusion that he in any way "caused" her to suffer from anxiety and depression although the nature of their relationship would likely have worsened her condition at times. The parties separation will not necessarily result in her complete recovery. In fact there is a significant likelihood that the stress of separation, the loss of her employment and the need to forge a new life may aggravate these mental disorders.

Fathers Use of Marijuana

[31] The Father has admitted he at one time smoked marijuana on a regular weekly basis. He testified he has not done so for approximately 6 months because he recognizes this does not provide a good example for the child. He suggests he never did smoke in front of the child at any time.

[32] The Mother herself was once identified as a person who may have a marijuana dependence although she testified she does not smoke marijuana. Given this report of marijuana dependence came from an expert report she supplied her denial may only apply to recent usage.

[33] Neither party has proven on a balance of probabilities that the other continues to use or has an addiction to marijuana.

Father's Abuse of Alcohol

[34] The Father testified he once did have a drinking problem but he has not consumed alcohol since 2002. He did attend addiction counseling in 2009 at the time of the first separation between these parties. He described this as a self- referral to obtain confirmation that he had no addictions. In any event this is an allegation that must be proven by the Mother and she has not done so on a balance of probabilities.

Fathers Gambling Addiction

[35] The Mother has provided no evidence of any kind to support this allegation.

The Mother as Primary Care Parent

[36] I have no doubt the Mother was the primary care parent when the parties lived together. However, the Father, since the parties separated, has shown himself to be a capable and involved parent. He has arranged his work schedule to be home when the child's school day is over. He has kept in touch with the child's teachers and is attempting to keep him on task with homework. He has attempted, through e-mail communication to keep the Mother informed of the child's progress and to seek her input into decisions. The Mother did not respond to most of these communications. She testified she did not do so because "these were just telling me e-mails".

[37] The child is an adolescent. The fact that the Mother could be considered the primary care parent at one point in this child's life is not, in and of itself, a reason to conclude it is in the child's best interest to now be in her primary care.

Child's Academic Achievement

[38] The Mother testified the child formerly received "A's" and "B's" but this is no longer the case. The Father has admitted the child has struggled somewhat this year but appears to attribute this to his inclusion in the French immersion program. He has worked closely with the child's teachers to improve the situation and the Mother herself testified that she would look to the child's teachers to provide direction about how she could support this child academically. Neither parent provided any school report cards for this child. I am not prepared on the evidence before me to "blame" the Father for the child's less than spectacular academic performance. There may be several reasons why this is happened including the parties separation, the child's inclusion in the French immersion program and an increasing level of difficulty in the subject matter taught causing the child to lose focus and motivation.

[39] The Mother has also complained that the Father did not inform her about meetings he had with the child's teachers so that she might also attend. However, the Mother could have contacted the child's teachers to speak with them herself should she have wished to do so.

The Child's Requests

[40] A "Wishes of the Child Report" was prepared in this proceeding. I quote from portions of that report:

(The child) had a very good understanding of the purpose of our meeting and expressed a willingness to continue, recognizing that his parents would receive a copy of my report. (The child) stated that he has wanted to talk to someone for some time, and welcomed this opportunity....

(The child) suggested that the time with his Father went well but they did tend to argue about certain issues. (The Father) has altered his work schedule to ensure that he has been

home when (the child) returns from school. (The child) commented that he does not share many of the same interests as his Father, and most of their time revolves around homework.

When asked about his wish, (the child) stated the following: “ I want to live one week with my Mom and one week with my Dad, just like two of my friends. The weekend with my Mom, is just not enough. Mom knows that I want to do this schedule, Dad also knows. Dad agreed that it would be good.” (The child) went on to explain that in the past his Father always worked a great deal leaving him and Mom to spend the majority of time together. He described a close bond with his Mother and has found the present schedule difficult since he has less time with his Mother.

[41] While the child does want to spend more time with his Mother he has not suggested a primary care arrangement for either of his parents. The assessor described the child as a “well-balanced 13-year-old who had no difficulty answering my questions and providing a clear statement of his wishes. He denied any coaching insisting that his parents told him to tell the truth.” Perhaps this child was merely trying to please both parents and did not avail himself of the opportunity to tell the assessor he wanted to be parented primarily by his Mother. However, that is speculation and the assessor was not subject to cross-examination. As a result the child’s “wishes” do not assist me in analyzing competing claims for primary care other than to recognize the child would appear to favor a shared parenting arrangement.

The Mothers Anxiety and Depression and Inability to Set Boundaries

[42] The Mother has testified that, on the advice of her physician, she has informed the child about her self harming behaviors so “he could help her”. She testified he will “ hold her hand” when she was picking at her skin or engaging in other such behaviors and he would remind her to stop this behaviour. She also testified she would permit the child to sleep with her when she had separated from the Father so that they could “comfort each other”. At the time the child would have been nine years of age. Children of this age, when distressed, often do want to sleep with a parent but most parents consider this inappropriate and gently guide the child back to his or her bed attempting to soothe the child and possibly even reading a story together until the child falls asleep. It is concerning if a child is sleeping with a parent in order to make the parent feel better. When this occurs the child becomes “ a parent to the parent” in a role that is not appropriate for children. I find this problem is further exemplified by the testimony of the Mother confirming that the child slept with her in her parents home even though there was a couch in the basement he could have slept on. In oral testimony she said the child was sleeping with her because “he wanted to”. The child was 12 years old at the time. The Father’s concern is justified.

Inadequate Housing

[43] Unfortunately shortly after this court granted an interim order, providing the Father with exclusive possession of the matrimonial home, the Mother lost her employment of approximately 20 years due to reorganization. This has made her search for housing more complicated than it was expected to be. However, she did receive a full year severance package which included career counseling services that she has not yet accessed nor has she submitted any resumes to other potential employers. She suggests she is not looking for alternate employment because her present package prevents her from working in her area of expertise for a full year. I do not accept that this should prevent her from making necessary inquiries about potential alternate employment to determine whether there may be employers prepared to set her start date at the end of the non-competition period. Nor is she prevented from working with a career counselor to identify potential new employment opportunities.

[44] The Mother testified she rented a one bedroom furnished apartment because of the uncertainty about her employment situation and ultimate resolution about ownership of the matrimonial home. The child sleeps on the couch when he is in the care of the Mother. The Mother did not explain why she did not continue to live with her parents but it is likely because she had found a boyfriend in November/December and wanted to live with him. I say this because the apartment was rented in January 2013 when the Mother and her boyfriend moved into that apartment together. The boyfriend has two teenage daughters who stay with him in this apartment every second weekend. The child is also present at this time. The boyfriend's daughters are 13 and 15 years of age and they sleep on the floor in the living room while the child sleeps on the couch. At the date of the hearing the Mother did not have alternate accommodation. She testified she planned on finding a house or other larger accommodation once the matrimonial assets were divided.

[45] I must consider the child's present residential situation when he is in his Mother's care. I find that arrangement unacceptable. It is barely acceptable for weekend parental care. Sleeping on a couch will not provide this child with a good night's sleep during the week. Given the child's academic difficulties he will need to arrive at school fresh and rested every morning.

[46] The Father has several weaknesses as a parent, some of which I have already described. He has behaved, occasionally, in a very petty manner toward the Mother and in saying this I am referencing his failure to discuss the up-grade of a cell phone plan with the Mother to permit her to take over payment of the account. Nevertheless, at the present time, he has shown himself capable of taking on the parental role and he has suitable housing. No doubt the fact that he will have the opportunity to become the sole owner of the matrimonial home is an aggravating factor for the Mother who would have preferred to have been in his position. The reality is, after an 18 year marriage, the Father has a right to an equal division of her workplace pension and has requested the division be set off against her share of the equity in the matrimonial home. Because of the Mother's present economic status her financial ability to purchase the Father's interest in

the matrimonial home was questionable. I certainly empathize with the situation in which she has found herself but I must focus on the best interest of the child.

[47] The parties are to continue to have joint custody of the child under terms that are attached as Schedule "A" to this decision. The Father is to have primary care. The Mother is to have the child in her care the first three weekends of every month from Friday after school during the school year and from 10:00 am (if she is not working) until Sunday at 7:30 pm. The Father is to have the child in his care the last weekend of every month. If a long weekend falls on a weekend when the child is in the Mother's care he is to continue in her care for the Monday involved until 7:30 pm. In a month that has more than four weekends, the child is to be in the care of the Mother for that extra weekend.

[48] The Mother is to have the child in her care every Wednesday from after school during the school year and from 10:00 am (if she is not employed) during the summer school break until 7:30 pm when he is to be returned to the Father's residence.

[49] The Mother is to be responsible for all transportation required to pick up and return the child during her parenting time unless the parties agree otherwise.

[50] Only the Mother provided proposals about parenting during holidays, vacations and special occasions. I have adopted many of the provisions of that plan because the Father proposed no alternatives. That parenting plan is attached as Schedule "B" to this decision.

[51] A change in the Mothers housing circumstances that will provide the child with a bedroom and continue his relationship with present friends and attendance at his present school will constitute a material change at which time serious consideration should be given by the parties to change to a shared parenting plan. In addition, the Mother must find employment and that may result in a material change to her financial situation. Rather than require these parties to go through the expense of filing a variation application they are to return for a review to be scheduled before me six months from the date of this decision.

Child Support

[52] Because of the Mother's severance package she has had income available to her since the parties separation. The Father has been paying the household expenses since September 1, 2012 without contribution from the Mother. The Mother has argued the Interim Arrangement in fact placed the child in her care at least 40% of the time and as a result section 9 of the child support guidelines is relevant. The Interim Order placed the child in his Mother's care from Friday after school until Monday morning. This could be extended to Tuesday morning in the event of a long weekend. Eventually the Mother began to return the child on Sunday evening and often she picked the child up from the Father's home some time after school had ended. The Father was responsible for the child for most of Monday and Friday and all of Tuesday, Wednesday, and Thursday. The Mother did not care for this child 40% or more of the time. The Father was

entitled to receive child support from September 2012. The analysis required by *DBS v. SRG, LJW v. TAR, Henry v. Henry, Hiemstra v. Hiemstra*, 2006 SCC 37 is not relevant under these circumstances. The Father has requested child support since the date of the Interim Order. The Mother has ability to pay. If *DBS* applies she is the person who has engaged in blameworthy conduct by failing to pay child support.

[53] The Mother's income in 2012, for the purpose of the Child Wishes Assessment, was agreed to be \$54,528.00. The severance package continued this income for 2013. The table guideline amount required by the child support guidelines is \$459.00. Payment of this amount from September 1, 2012 until July 31, 2013 results in a retroactive claim for \$5,049.00. This is to be paid by the Mother in installments of \$200.00 per month commencing August 1, 2013. Prospective child support is to begin August 1, 2013 in the amount of \$459.00 per month.

[54] If either party requests costs written submissions are to be provided by Father no later than August 12, 2013. The Mother's submissions are to be provided no later than August 26, 2013. If the Mother has raised an issue in her submissions not considered in the Father's submissions he may file a further submission no later than September 3, 2013.

Beryl MacDonald, J.S.C.

Schedule “A”

Joint Custody

The Father and the Mother shall have joint custody of the child meaning that both parents must, for those decisions that have significant or long lasting implications for the child or that impose responsibilities on a parent, make those decisions together, they must agree - for example, about decisions concerning physical or mental health, dental care; counseling; education; and enrollment in recreational activities.

Right to be Informed

Each parent must inform the other about any significant changes, problems or recommendations relating to the child’s physical and mental health, dental care, physical and social development, and education, and is to provide copies of all written reports received from service providers about these changes, problems or recommendations.

Right to contact Third Parties

Both parents are entitled and are expected to directly contact the child’s doctors, therapists, teachers, and other third party service providers to request and receive information and consult about the child.

Contact Information About Service Providers

The Father must provide the Mother with the name, address and telephone number, or other contact information for the persons or institutions providing services to the child for example, the child’s physician, dentist, therapist, teacher, and recreational provider and he must update her if there are any changes.

Parties’ Addresses/ Contact Information

The parents must provide each other, and continue to provide each other, current addresses, telephone numbers, cell phone numbers, and e-mail addresses.

Communication

All communication between the parents shall be respectful, to the point, and as brief as possible.

Schedule "B"

Parenting Plan

Mothers Day/Fathers Day

Regardless of the parenting schedule, the child shall be in the Mother's care every Mother's Day from Sunday morning at 10:00 a.m. until Monday when he is to be returned either to his school or to the Father's residence. The child shall be in the Father's care on Sunday, Father's Day from 10:00 a.m. if the child is in the care of the Mother on that weekend.

Summer Vacation

Each parent shall have two consecutive weeks exclusive parenting time during the child's summer school break.

In 2013 and in every subsequent odd year the Father shall have first choice of his exclusive two week summer parenting time provided he informs the Mother of his choice no later than June 1 in that year.

In 2014 and in every subsequent even year the Mother shall have first choice of her exclusive two week summer parenting time provided she informs the Father of her choice no later than June 1 in that year.

Easter

In 2014 and in every subsequent even year the Father shall have the child in his care for the Easter long weekend beginning after school on Thursday until the beginning of school on Tuesday morning.

In 2015 and in every subsequent odd year the Mother shall have the child in her care for the Easter long weekend beginning after school on Thursday until the beginning of school on Tuesday morning.

Christmas

In 2013 and in every subsequent odd year the Mother shall have the child in her care from after school (approximately 3:30 p.m.) at the beginning of the Christmas School Break until December 26 at 12:00 p.m. The Father shall have the child in his care from 12:00 p.m. on December 26 until the end of the Christmas School Break in January.

In 2014 and in every subsequent even year the Father shall have the child in his care from after school (approximately 3:30 p.m.) at the beginning of the Christmas School Break until December 26 at 12:00 p.m. The Mother shall have the child in her care from 12:00 p.m. on December 26 until January 1 at 3:00 p.m. when the child is to return to the Father's care.

School Spring Break

In 2014 and in every subsequent even year the Father shall have the child in his care from Monday to Friday of the spring break.

In 2015 and in every subsequent odd year the Mother shall have the child in her care from Monday to Friday of the spring break.

The parties will continue the regular parenting schedule on the weekend before and after the spring break.

Changes to Parenting Plan

Changes to the parenting plan may be made upon agreement of the parties in writing and for that purpose an agreement reached as a result of an e-mail exchange is an "agreement in writing".