SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *E.A.M. v. J.P.P.*, 2020 NSSC 112

Date: 20200324
Docket: SFH-PSA 106799
Registry: Halifax

Between:

E.A.M

Applicant

v.

J.P.P

Respondent

Judge: The Honourable Justice Cindy G. Cormier

Heard: March 16 and 17, 2020

Counsel: Kevin Reardon for the Applicant
Janice Beaton for the Respondent

By the Court:

Introduction

1. The parties, E.M and J.P experienced conflict while they resided together between June 2016 and August 2016, prior to their son's, D's birth on January 3, 2017.

2. Upon D's birth E.M experienced difficulties developing a plan to care for D, and the parties' experienced significant difficulties co-parenting.

3. J.P presented a plan for D and he provided for D's needs while E.M took advantage of services available in the community, and services provided by the Minister of Community Services – Child Welfare. The services were put in place to assist E.M to develop a plan for D, and to support both E.M and J.P to come up with a plan to co-parent their then newborn child, D.

4. Despite the interventions and services provided, conflict between E.M and J.P persists to this day. D is now over three years old.

5. E.M suggests D is unaware of any conflict between the parties, and he is therefore not affected by it. E.M suggests the parties should continue making major decisions together, except that she should be entrusted to make medical decisions. E.M believes a shared parenting arrangement should be finalized.

6. J.P argues that the conflict does have an impact on D, and that it is caused by E.M. To minimize any risk of harm to D, J.P has asked the court to find it is in D's best interest that he be entrusted to make major decisions for D, except that E.M make decisions about D's religious upbringing. J.P has asked the Court to place D in his primary care.

Issues

7. I must determine the following:

    a. Should either parent be granted final decision-making authority in areas of the child's care, supervision and development, (areas outlined in Section (17A(3) of the *Parenting and Support Act*)?

    b. What parenting arrangement would best meet D's needs? Primary care vs. shared care and / or parallel parenting?

        i. Would a parenting plan with each parent having significant decision-making, and child-care responsibilities, with a clear division of responsibilities, provide enough structure for a shared parenting arrangement despite the conflict?

c. What amount of child support should be paid?

    i. Table amount?
        1. Retroactive award?

    ii. Special or Extraordinary Expenses?
        1. Retroactive award?

    iii. Lying in Expenses?

d. Costs

Facts

8. The parties' relationship began in May 2015.

9. In May 2016 E.M advised J.P she was pregnant. E.M moved into J.P's residence with him, in or around June 2016.

10. On August 12, 2016, E.M alleged J.P assaulted her. J.P was charged with one count of "summary assault", following which J.P signed an Undertaking not to have contact with E.M. The parties communicated through third parties.

11. E.M applied for, and she was granted an Emergency Protection Order. J.P left his home while E.M remained in J.P's home. The Order gave E.M possession of J.P's residence until September 12, 2016.

12. In early September 2016 J.P's legal counsel wrote to E.M to ask that she vacate J.P's residence by September 30, 2016, allowing her additional time to find alternate accommodations.

13. In early October 2016 J.P arranged through a third party to advise E.M of his desire to end his romantic involvement with her, and to advise her of his request for all future contact with her to be for the purpose of co-parenting the child they were expecting.

14. Despite J.P's requests made through his legal counsel, E.M failed to vacate his home by September 30, 2016. E.M remained in his home between August 12, 2016 until after the birth of their child on January 3, 2017.

15. Although J.P did not live in his home with E.M after the middle of August 2016, J.P did continue to pay the household expenses including the mortgage, utilities and taxes. J.P also provided money to E.M for food in the amount of $100.00 per week.

16. In late October 2016 J.P became involved in a new relationship. J.P's new partner testified and she stated that although she has never had any communication, directly or indirectly, with E.M, that E.M has attempted to "damage her reputation, her career, and her relationship with J.P".

17. E.M was on parental leave from her employer beginning in December 2016, and was initially scheduled to return to her job on December 28, 2017. However, E.M extended her leave until February 2018.

18. J.P initiated an Application to have E.M ordered to vacate his residence. The parties negotiated an Agreement through their lawyers, and E.M left J.P's home.

19. In or around February 2017 E.M lived with her parents.

Involvement of the Minister of Community Services – Child Welfare

20. The business records of the Minister of Community Services – Child Welfare, were not entered as an exhibit at trial. Various portions of the court file were attached as Exhibits to the parties' Affidavits, including but not limited to court orders and the Agency Plan of Care.

21. J.P testified that prior to their child's birth, E.M advised him she was considering placing the child for adoption. That in December 2016 he contacted the Minister of Community Services – Child Welfare, to advise the Minister that he would not consent to an adoption. He stated, and I accept, that a representative of the Minister of Community Services-Child

Welfare, confirmed with him that they were already involved with E.M at that time.

22. J.P's account of the chronology of Agency involvement is logically consistent when considered in conjunction with the documents available on file. I accept J.P's representation that the Minister of Community Services-Child Welfare, became involved with E.M (possibly, but not necessarily on a voluntary basis), in or around November 2016, CFSA 103786.

23. D was born on January 3, 2017.

24. J.P and his mother attended at the hospital hoping to meet D upon his birth on January 3, 2017. E.M did not allow J.P or his mother to have contact with D.

25. Due to concerns expressed by hospital staff, and by the Minister of Community Services – Child Welfare, regarding E.M's "mental health" and "lack of parenting skills", D was taken from E.M's care at the hospital, by the Minister of Community Services – Child Welfare.

    a. Specifically, upon the birth of their child, D on January 3, 2017, IWK staff observed E.M did not have a plan for D.

26. E.M was either unable or unwilling to identify any other support persons in her life who could provide care for D until she developed her own plan. There is no evidence to suggest E.M considered a plan whereby D would be placed with her parents, her sister, his future god-parent D.A. E.M opposed placement with J.P.

27. The parties' child, D was placed in a foster home.

28. J.P's first opportunity to meet his son D was on or after January 11, 2017. J.P was only able to meet him after he had been taken into the care and custody of the Minister of Community Services – Child Welfare.

29. The Minister of Community Services – Child Welfare, made an Application to the Court pursuant to the *Children and Family Service's Act*.

a. On January 13, 2017, the Court found there were reasonable and probable grounds to believe D was at risk. Both parents were restricted from having contact with D except as arranged by the Agency.

30. J.P completed a paternity test and was determined to be D's biological father. J.P also met with an Agency of the Minister of Community Services – Child Welfare. The Agency assessed J.P's circumstances and supported D being placed with J.P.

31. E.M did not support the Agency's plan to place D with J.P.

32. On Jan 27, 2017 a contested hearing was held. Pursuant to the *Children and Family Services Act*, The Court granted an Order, pursuant to the *Children and Family Services Act*, placing D in J.P's care and custody subject to the supervision of the Agency. E.M continued to have parenting time arranged through the Agency.

a. J.P and E.M continued to communicate through legal counsel, and also began communicating through a parenting log-book (journal).

b. E.M was ordered to participate in family support services as arranged by the Minister. (E.M also participated voluntarily in services through Victim Services and through the Family Services Association).

c. The order pursuant to the *Children and Family Services Act* was continued in April 2017 and in July 2017.

The Agency's Plan of Care

33. The Agency Plan for the Child's Care dated August 18, 2017, is attached as an Exhibit to E.M's Affidavit sworn October 12, 2017.

Parenting

34. The Agency indicated they had initially identified a concern in relation to E.M's parenting. E.M's basic parenting skills and specifically in relation to E.M's ability to read cues and respond to D's needs.

    i. E.M received services through the Parenting Journey Home Visiting Program, counseling through Victim Services, and services through the family support services program offered by the Department of Community Services.

    ii. By August 18, 2017 the Agency determined E.M had "improved her parenting skills, coping strategies", and that she had been provided resources regarding co-parenting.

b. The Agency noted that there had been no further referrals regarding E.M, and no further concerns identified.

c. The Agency did not identify any concerns related to J.P's parenting.

Communication and co-parenting

35. The Agency had also identified a concern related to E.M's, and J.P's ability to communicate in order to co-parent with D's best interests in mind:

    a. The Agency had recommended and by August 18, 2017 the Agency created a schedule to allow the parties to share equal time with the child, including overnights;

    b. The parties were encouraged to "develop a long-term parenting schedule, to continue to develop their co-parenting skills, and to continue to make use of their communication book (journal) to ensure D's needs were met"; and

    c. The Agency expectation was that the parties would engage in voluntary services following the termination of the Agency's involvement. The Minister recommended "supportive counseling, community-based family support, or any other resources to support them in their roles as D's parents".

D's history of care

36. J.P cared for D primarily in his own home. He did so with the assistance of his parents, his new partner, his brother, and others.

    a. J.P's mother, W.P provided child-care for D while J.P was working. W.P testified at trial, confirming she would be available to care for D at any time. She explained that her employer would accommodate evening, or weekend hours as necessary.

    b. J.P applied for benefits, taking time off from his job to care for D.

    c. J.P's new partner, assisted J.P in caring for D. J.P's fiancé testified at trial, stating that J.P has always done most of the parenting for D, but that she is also involved in D's parenting routine. As noted previously, J.P became involved with his new partner in October 2016 (before D's birth). They are now engaged, and they began living together in his home in mid-May 2019.

37. Between January 2017 and August 2017, E.M's access was arranged by the Minister of Community Services – Child Welfare. Through the Minister, E.M arranged for her parents to provide supervision for her parenting time at their home.

38. E.M initially resided with her parents. E.M secured her own accommodations starting in June 2017.

39. The Agency was involved with the parties in developing a schedule for E.M's parenting time which gradually increased, including being expanded from supervised parenting time in her parents' home, to unsupervised parenting time and a shared parenting arrangement in her own home by August 2017, through to September 3, 2017. The parties were then expected to work together to develop a parenting schedule.

40. E.M indicated that by September 4, 2017 she and J.P, were not able to reach an agreement regarding an interim parenting schedule.

41. E.M had expressed concerns about parenting arrangements for the Labour Day long weekend 2017. E.M objected to J.P having D in his care for four consecutive days to attend a yearly family celebration at Summerville beach. E.M wanted to share the long weekend. The Agency became involved and directed the parties to share the weekend as requested by E.M, each having parenting time for 48 hours.

42. Upon D's return from Summerville beach to E.M's care, she expressed concern in the parenting log (journal), and subsequently in her Affidavit evidence, that D was experiencing "night terrors".

E.M's Application Pursuant to the Parenting and Support Act

43. On August 31, 2017 E.M filed a Notice of Application, with supporting documents including a Statement of Contact Time and Interaction, and a Parenting Statement completed August 28, 2017, both filed August 31, 2017, seeking an Order granting the following relief:

    a. Specific, shared decision- making responsibility allowing E.M to make decisions regarding D's healthcare, and his education, while sharing decision making with J.P in relation to D's religion, culture, and any extracurricular activities;

    b. primary care of D, with J.P's regular parenting time being reduced to every second weekend from Saturday 8:00 a.m., to Monday 8:00 a.m;

    c. According to her Statement of Contact Time and Interaction, E.M was also suggesting J.P would have "at least one full parenting day through the week, depending on his work schedule"; and

    d. to divide the Labour Day long weekend.

44. Despite the history of care, where J.P had been D's primary caregiver beginning at the end of January 2017 until E.M's parenting time moved from her parent's home, to her own home in early August 2017, despite the Agency's recommendation, and despite the parties' efforts to negotiate a shared parenting arrangement, E.M made an application to the court seeking

primary care and primary decision making in relation to healthcare and education.

45. E.M filed an Affidavit sworn October 12, 2017, wherein she indicated "The domestic assault matter (August 2016) is still before the Provincial Court", explaining:

> I state it at this point to illustrate the reason why the Respondent and I cannot have direct contact at this time.

46. She goes on to say that her focus was:

> making sure that D is in the care of a parent and that his best interests are therefore served appropriate to his developmental stage… He has not been, and will not be, placed in the care of grandparents/extended family members, friends, hired babysitters, current/future relationship partners or daycare / childcare providers for extended periods. The exception to this is/will be brief periods in the care of his maternal grandparents and/or childcare providers for court appearances, engagements and appointments where bringing an infant is inappropriate or unsafe, and then only on occasion. I believe that, at this developmental stage, it is best for D to be cared for by a parent.

47. Further stating:

> I have no personal interest in how the Respondent spends his time – I am solely concerned with D and his mental, social and physical developmental needs.

48. E.M stated that she was concerned D was being cared for by others while J.P was working. In her Affidavit filed February 24, 2020, E.M claims that "since July 2017 to present, I am both the parent and caregiver who has D the most in my direct care".

49. E.M indicated she was applying to the Court to maximize the parenting time available to her with D while she was on parental leave, pending any agreement to a long-term parenting arrangement pursuant to the *Parenting and Support Act*.

50. In October 2017 E.M appeared to also have a concern about transferring D to and from J.P's care, suggesting transitions would:

> work fine if everyone acts like an adult – there is no need for discussion. Discussions take place in the parenting journal. We should just be handing D back and forth.

51. In response, in October 2017, J.P suggested a two-week cycle whereby the parties would alternate days / overnights, and in addition, during the two-week cycle each would have two consecutive days.

52. The parties reached an interim agreement, adopting a shared parenting arrangement, per Consent Order October 24, 2017.

53. A further Consent Interim Order, providing for shared parenting, was agreed to in January 30, 2018, issued August 2018.

54. In February 2018 E.M registered D in day care (February 6, 2018), coinciding with her return to work, where she indicated she is a "permanent unionized employee". E.M indicated that her:

> current part-time position is customized such that D is nearly 100% in my personal care during my shared custody time, with the sole exception of two Wednesdays / month….

E.M explained that previously she had worked two part-time positions for a total of approximately 30-35 hours per week. She stated that she reduced her work hours to 15 hours after D's birth.

55. After reducing her work obligations E.M claimed:

> I have no need of childcare beyond that provided by daycare for both parents while D is in custody transit between myself and J.P, on the 2-2-3 parenting schedule.

Interim Relief sought by E.M in July 2018

56. In July 2018 E.M filed a Notice of Motion for Interim Relief, and a new Parenting Statement was filed July 20, 2018 (no comment about decision making, or parenting schedule, but requests related "Additional Schedules", including the Labour Day long weekend, Easter, parent's birthdays, .

57. On August 7, 2018 E.M filed a Notice of Intention to Act on Own's Own.

58. On August 15, 2018 E.M filed an Affidavit sworn August 15, 2018, wherein she once again raised the issue of the alleged assault by J.P (August 2016). E.M raised this issue knowing that in January 2018 J.P was acquitted (found not guilty), of E.M's allegation against him (an assault alleged to have occurred in August 2016, prior to the child's birth in January 2017).

59. According to her Affidavit filed in August 2018, E.M was seeking to deal with certain concerns she had regarding holiday parenting time. E.M raised concerns regarding the following:

    a. Labour Day weekend 2017, requesting a Court Order specifying parenting time for Labour Day weekend in 2018;
    b. Christmas 2017 holiday parenting time;
    c. Easter 2018 parenting time;
    d. Not dealing with March break (child is a baby); and
    e. Mother's Day, and Father's Day 2018 parenting time.

    With a significant focus on resolving the issue of Labour Day weekend.

60. E.M appeared to have the expectation that J.P should comply with her requests for parenting time changes to accommodate holidays. The Interim Orders (October 2017 / January 2018) were silent with respect to sharing holidays. The parties were expected to continue the regular parenting schedule until a final order was in place, or of course it was open to the parties to reach agreement for an interim arrangement regarding holidays. It appears E.M felt the matter should return to court.

61. After reviewing this evidence, and J.P's responses, I do not have any concerns about the positions taken by J.P when negotiating and / or considering E.M's requests to accommodate holidays. Including for instance, that E.M's request to change parenting time on the Easter weekend 2018 came just prior to the weekend and when he had already made plans, and therefore he could not fully accommodate her.

62. In E.M's Affidavit filed in July 2018, there is no mention of significant problems she later raised at trial while referencing the parenting log

(journal). Including alleged problems with J.P's mother facilitating exchanges, with D having a bruise following a visit with J.P in January 2018, or with J.P's response to D's illness in March 2018.

63. The parties appeared for a court conference in October 2018.

    a. E.M advised the Court of her intention to provide the Court with video surveillance of J.P which was taken by a private investigator (this information was never filed with the Court but is believed to be in relation to a go-fund-me fundraiser).

    b. An Interim Consent Order dealing with child support was consented to on October 30, 2018, and issued December 20, 2018. J.P agreed to pay E.M child support.

    c. The Court cautioned E.M about her decision not to return to full-time employment (two part-time jobs), suggesting income was likely to be imputed to her in future.

    d. The Court noted that although E.M may argue she was and or continues to be the parent most available to provide parenting to D, she appeared to be underemployed by choice (based on her employment history/skills). The court noted that E.M's availability was somewhat of an illusion and it was unclear how she expected to cover her expenses and provide for Ds' needs without returning to work full-time (2 part-time jobs, with equivalent of about 35 hours per week), rather than working only 15 hours per week with one part-time job.

E.M's change of position regarding parenting in early 2019

64. In or around January 2019 E.M advised the court she wished to resolve the parenting issue by continuing the shared parenting arrangement, that she was no longer seeking an order granting her primary care of D (per Notice August 2017).

65. In February 2019 J.P suggested the possibility of "parallel parenting". J.P agreed to participate in a judicial settlement with the understanding that the parties would be discussing a shared parenting arrangement. E.M agreed.

66. Prior to the settlement conference, E.M's counsel filed a motion to be removed as solicitor of record. Subsequently E.M failed to attend the settlement conference scheduled in July 2019.

67. I find, based on two affidavits of attempted service filed in relation to services on E.M, that E.M was attempting to avoid service of documents around that time, or shortly thereafter.

E.M's evidence per Affidavit filed in February 2020

68. E.M stated that since July 2017 (July 31), she has encouraged D's emotional and physical development through the following parenting techniques or involvement in activities:

    a. co-sleeping (room sharing), bed-sharing starting between ages 13 months and 2.5 years, weaning to his own bed and room over the summer of 2019;

    b. enrolled him in mom and baby yoga between 8 and 12 months, then tot yoga and dance classes;

    c. taken him swimming;

    d. enrolled him in baby gymnastics "in response to his frustration to being unable to crawl at 10 months"…resulting in him being able to crawl after 4 weeks of class (presumably once per week for less than an hour);

    e. taught D sign language;

    f. exposed D to the French language;

    g. participated in events available through her work;

h. attended markets and breakfasts with him; and

i. attended local shops.

69. Stating that she enrolled D:

> in activities already pursued prior to a 2019 amendment to the current order between counsel, which stipulates agreement from other parent in addition to not imposing on the other parent's parenting time.

Law

Parenting

70. Pursuant to the *Parenting and Support Act*, R.S.N.S. 1989, c. 160, on application by a parent or guardian, the court may make an order respecting custody, parenting time, a parenting arrangement dealing with any of the areas set out in subsection 17A(3), which deals with parenting plans, including:

    a. the child's living arrangements including where the child will reside and with whom the child will reside and associate;
    b. parenting time;
    c. emergency, medical, dental and other health-related treatments including all preventative-care treatments for the child;
    d. the giving, refusing, or withdrawing of consent for treatments referred to in clause c;
    e. the child's education and participation in extracurricular activities;
    f. the child's culture, language and heritage;
    g. the child's religious and spiritual upbringing;
    h. travel with the child;
    i. the relocation of the child;
    j. obtaining information from third parties regarding health, education, or other information about the child;
    k. communication between the parents and guardians, as the case may be, regarding the child; and
    l. a preferred dispute-resolution process for any non-emergency dispute regarding parenting arrangements.

    Section 18(5) states:

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

Section 18(6), outlines relevant circumstances the court shall consider:

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. contact with the other parent (and willingness to support);

c. history of child's care;

d. plans proposed;

e. culture, language and heritage;

f. the child's views and preferences (age / ascertainable);

g. the child's relationship with each parent;

h. the child's relationship with other significant individuals;

i. the parent's ability to communicate and co-parent on child issues;

j. the impact of any family violence, abuse or intimidation, [see in ss 18(7)] regardless of whether the child has been directly exposed, including any impact on
(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and
(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person

Section 18(6A)

In determining the best interests of the child on an application for contact time or interaction by a grandparent, the court shall also consider

a. when appropriate, the willingness of each parent or guardian to facilitate contact time or interaction between the child and the grandparent; and

b. the necessity of making an order to facilitate contact time or interaction between the child and the grandparent.

Section 18(7)

When determining the impact of any family violence, abuse or intimidation, the court shall consider:

a. the nature of the family violence, abuse or intimidation;

b. how recently the family violence, abuse or intimidation occurred;

c. the frequency of the family violence, abuse or intimidation;

d. the harm caused to the child by the family violence, abuse or intimidation;

e. any steps the person causing the family violence, abuse or intimidation has taken to prevent further family violence, abuse or intimidation from occurring; and

f. all other matters the court considers relevant.

71. E.M alleged an incident of domestic violence took place in August 2016, before D's birth in January 2017. J.P was charged with "summary assault" in relation to that incident, and he was later acquitted (found not guilty).

72. There is no evidence regarding the nature of the alleged assault, or the nature of any family violence, abuse or intimidation, or what harm any behavior may have caused to. I reject E.M's comments about J.P's mother behaving in an intimidating manner toward her, or that any of J.P's entries in the parenting log (journal), were anything but "concise, focused and polite", as J.P suggested.

Section 18(8)
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). R.S., c.160, s. 18; 1990, c. 5, s. 107; 2012, c. 7, s. 2; 2012, c. 25, s.2; 2014, c. 19, s.1; 2015, c.44, s. 19. MAY 26, 2017

Child Support as duty of parent or guardian

73. Section 8 A of the *Parenting and Support Act* indicates that "a parent or guardian of a child who is under the age of majority is under a legal duty to provide for the reasonable needs of the child except where there is lawful excuse for not providing them."

> Section 9
> Upon application, a court may make an order, including an interim order, requiring a parent or guardian to pay support for a dependent child.

Section 10 (1) indicates that "when determining the amount of support to be paid for a dependent child or for a child under Section 11, the court shall do so in accordance with the Guidelines."

> 10 (2) The court may make an order pursuant to subsection (1), including an interim order, for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as the court thinks fit and just.
>
> (3) A court may award an amount that is different from the amount that would be determined in accordance with the Guidelines if the court is satisfied that
>
> > (a) special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property, directly or indirectly benefit a child, or special provisions have otherwise been made for the benefit of a child; and
> >
> > (b) the application of the Guidelines would result in an amount of child support that is inequitable given those special provisions.
>
> (4) Where the court awards, pursuant to subsection (3), an amount that is different from the amount that would be determined in accordance with the Guidelines, the court shall record its reasons for doing so.
>
> (5) Notwithstanding subsection (1), a court may award an amount that is different from the amount that would be determined in accordance with the Guidelines on the consent of the parents or guardians if satisfied that reasonable arrangements have been made for the support of the child to whom the order relates.
>
> (6) For the purpose of subsection (5), in determining whether reasonable arrangements have been made for the support of a child, the court shall have

regard to the Guidelines, but the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the Guidelines. 1997 (2nd Sess.), c. 3, s. 4; 2000, c. 29, s.8; 2015, c. 44, s. 12. MAY 26, 2017

Section 11 (1) Upon application during the pregnancy of a woman or after a woman gives birth to a child, or at any adjournment thereof, a court may order the possible father or the woman or both of them to pay;

(a) towards the expenses incidental to the lying-in, support of the mother during lying-in and expenses of the birth of the child;

(b) towards the support of the child for so long as the child is a dependent child;

…

(2) Where there are two or more possible fathers, a court may order each of them to make payments in accordance with subsection (1).

Agreement by father to maintain

Section 13 (1) Where a man admits the paternity of the child and enters into an agreement, to which the Minister or an agency under the Children and Family Services Act is a party, to provide adequately for the support of the child, either by lump sum or periodic payments or a combination thereof, and to pay other expenses he might be ordered to pay under this Act, no proceedings shall be instituted or continued against him in that regard while he is carrying out the terms of the agreement.

(2) A copy of every agreement made pursuant to subsection (1), or any amendment to that agreement, shall be filed with the Minister and, with the consent of the parties, may be registered with a judge.

(3) An agreement, including amendments, registered pursuant to this Section shall for all purposes have the effect of an order for support made under this Act. R.S., c. 160, s. 13; 2015, c.44, s. 14. 14 repealed 2015, c. 44, s. 15.

Analysis

Parenting issues:

I. Should either parent be granted final decision-making authority?

E.M's position

74. E.M argued that it would be in D's best interests for the parties to discuss major decisions in relation to education, healthcare, religion, culture, and extracurricular activities jointly, but if there was a dispute, she should have final decision-making authority regarding medical decisions.

75. In her Affidavit sworn February 24, 2020, E.M suggests J.P has been unresponsive to D's needs, and that she has taken the lead in ensuring D's needs are met in various areas, and particularly regarding his medical care.

76. E.M arranged for D's flu shot in 2017. She states J.P was unresponsive when she advised him that she had made the arrangements. She subsequently arranged immunizations for 2018/2019, and 2019/2020.

77. E.M has refused to allow J.P to attend any of the appointments she arranges for and attends with D on her time.

78. E.M arranged for D's dental care, and optometry care. With respect to the arrangements for D's dentist:

    a. J.P was initially not provided with the name or location for D's dentist as arranged by E.M, and when he was provided with the name of the clinic, he called the clinic and they would not provide him with information per E.M's instructions.

    b. At the very least, E.M told the clinic not to allow J.P to cancel any appointments.

    c. After learning that E.M directed the clinic not to comply with his certain instructions from him, he felt uncomfortable dealing with the clinic. Fortunately, the dentist in question moved to a new clinic and J.P was able to meet with the dentist and he is satisfied with the care being provided to D.

79. E.M originally registered D on a wait list for a family doctor. A pediatrician was identified, and D began attending at that office. In addition, E.M requested that if the pediatrician was unavailable, and if there were other concerns, that either parent should attend at the community care clinic in Sackville.

80. Other examples E.M has given regarding arrangements she has made for D's health care include:

    i. A referral to the IWK chest clinic;
    ii. an appointment with a specialist regarding his breathing; and
    iii. an appointment to follow up with D's vaccinations.

81. There is no doubt E.M has arranged for D to be seen by appropriate health care professionals.

82. E.M stated that she experienced problems in her relationship with the child's pediatrician (identifying concerns about delayed vaccinations, and the pediatrician's response to her concerns about the child's breathing), J.P does not have any concerns about D's pediatrician or the care provided to D.

83. E.M advised D's pediatrician she would no longer be attending any appointments with D at the pediatrician's office. J.P has continued to take D to see his pediatrician on his own parenting time.

84. Subsequently, E.M arranged for D to be accepted as a patient with a nurse practitioner, and then another primary care physician for appointments during her parenting time.

85. E.M felt she was not being heard by D's primary health provider (affidavit) or by J.P (parenting log / journal), regarding D's breathing difficulties.

    a. There is no evidence before the court to suggest D's pediatrician was negligent or was anything but well intentioned, having D's best interests in mind. I find that based on the evidence as a whole it is more likely that E.M's insistence on not having J.P present during any of the medical appointments she arranged and attended with D, her

refusal to attend appointments that J.P arranged and attended, and then her refusal to continue with the first primary care physician, most likely contributed to any problem sharing vital information (if any) / contributed to any misunderstanding (if any) / or contributed to any scheduling problem with D's primary care provider and / or J.P (if any).

b. J.P acknowledged he has received directions from D's health provider(s), regarding D's exposure to smoke from a wood stove. I am satisfied that J.P has followed the advice of any health care provider and he has taken the necessary precautions.

c. There is no medical evidence, or any other evidence before the court to suggest D has ever been at risk while in J.P's care.

86. E.M continues to refuse to allow J.P to attend any appointments (dental, optometry, medical), she has arranged and attends with D on her own time (including with the new family physician arranged by her), and she refuses to attend appointments arranged and attended by J.P on his time (dental, optometry, and with the pediatrician initially arranged by her).

87. It is unclear whether the parents still make use of the community care clinic in Sackville if their preferred primary care physician is unavailable.

88. D has two primary physicians. E.M does not see a problem with this arrangement. J.P feels it is in D's best interest to have one primary care physician, and for both parents to attend all appointments when possible, or to have an alternate attend any appointments on their behalf.

89. When asked about whether D's relationship with his primary care physician (pediatrician / or alternate family physician arranged by E.M), was affected by her position, E.M did not recognize or she refused to acknowledge the importance of D seeing the same primary care physician on a consistent basis. E.M did not acknowledge it may be important for a primary care physician to hear from both parents together if possible or that it may be important for both parents to be able to ask the physician questions in person, especially given they live in separate households.

90. I am not satisfied E.M has an appreciation that it is in D's best interests for both parents to set aside any differences in the interests of both parents receiving the same, at times possibly critical health care information. E.M's expectation that every health care professional is or should be amenable or available, to meet with parents separately or to respond to a parent's telephone call after D's appointments, is unreasonable.

91. I find it is not in D's best interests that either parent be forced to rely on the report from the other parent regarding what the health care professional said or recommended. Unless there is a very good reason why not, then both parents should be entitled to provide input and to ask the health care professional questions directly while the child is seen. There was no evidence of a "good reason why not".

92. I find it is in D's best interest to have only one primary care physician, and that his primary care physician should be the pediatrician who has had involvement with him since his birth, if she is prepared to continue to see D. I find it is in D's best interest to make final decisions related to D's medical care.

93. E.M expressed concern about J.P terminating medical insurance (December 2018). J.P has acknowledged he should have advised E.M of the change in his circumstances. J.P ended his previous employment in favour of working as an independent contractor and paying out of pocket for any of D's prescriptions. J.P has agreed to make inquiries about having D included on his fiancé's medical and dental health plans. I direct that J.P immediately arrange coverage through his fiance's medical plan, or that he secure private medical insurance for D.

II. What parenting arrangement would best meet D's needs? Shared decision making, specified decision making, shared parenting or primary care of the child to J.P.

E.M's position

94. E.M indicated she was seeking that the parties' shared custodial arrangement continue, and specifically a minimum of 50% parenting time in a 2-2-3

arrangement, or a shared custodial arrangement with 60% parenting time for her.

95. E.M expressed the following concerns regarding J.P's request for the Court to award him primary care of D:

    a. If J.P was granted primary care, D would miss out on "invaluable opportunities to socialize with his peers at Becky's daycare"; and

    b. J.P.'s arranged play dates were "not ideal as they were with the same children each time', and less frequent.

96. D has been the subject of a court proceeding (*CFSA* and then *PSA*), since shortly after his birth.

97. When cross-examined E.M conceded that "outside any settlement conference proposals", she had failed to respond to letters from J.P's counsel suggesting co-parenting counseling in October 2018, and in April 2019. In addition, E.M failed to file written submissions in advance of, and to attend a settlement conference in July 2019.

98. I find that E.M has a misconception about real world resources, and that her expectations of others, including service providers, her own family, J.P and his family, and other support persons in his or her life, are not realistic.

99. E.M has a history of attributing blame to others, and then limiting her contact with them. She appears to be able to accept some very limited responsibility for her role in any ongoing conflict, but there is no evidence she has been able to change her behavior and or reconsider her perceptions. E.M argued that "the conflict", apparently referring to conflict with some or all of the key individuals in D's life (Mr. P., W. P., Mr. P.'s fiancé, E.M's parents, E.M's sister, D's pediatrician), does not or will not have any direct impact on D.

100. Despite all the services E.M has taken advantage of over more than a three-year period, and despite her concerns about J.P, his fiancé, J.P's mother, E.M's parents, E.M's sister, and D's pediatrician, not being

supported by any credible evidence before this court, E.M is still asking the court to place restrictions on them. There is no evidence E.M has considered she may be wrong and that her position may affect D's best interests.

Night terrors and co-sleeping

101. In August 2017 E.M made an application to the court to ask the court to order the parents to share the Labour Day long weekend.

102. As part of her application E.M suggested it might be difficult for D to spend "four full days with J.P over the Labour Day long weekend. She took this position after J.P acted as D's primary caregiver between January 2017 – and into July 2017, until a shared parenting arrangement was in place in July 2017. She appealed to the Agency and they negotiated an agreement, splitting the weekend such that both parents had 48 hours.

103. Subsequently, after the Labour Day long weekend in September 2017, E.M alleged D was experiencing "night-terrors" at her home following visits to J.P's home (around the Labour Day weekend, and again after he returned to her care over the holiday season). E.M provided no medical evidence of any "night terrors". E.M apparently diagnosed D with "night terrors", and attributed D's discomfort to J.P's parenting.

104. It does not appear that E.M considered that perhaps D was having some difficulty adjusting to spending additional time in her care (overnights), and specifically that an increase in her parenting time (from J.P having primary care), to shared parenting and overnights in her new home as of early August 2017, might be having an impact on D.

105. In addition, E.M appears to have assumed that a move to co-sleeping with D at age 13 months through to beyond his second birthday, which was not consistent with the practice in J.P's home, would not have caused D any confusion or upset either.

106. J.P had his mother (who lived close by), and his partner who spent considerable time with D (moved in with him May 2019), supporting him to provide a home for D. J.P has stated, and I accept that D had no trouble

sleeping in his home, and D easily transitioned to a bed at an age appropriate time.

E.M's use of the Parenting log (journal), and then at trial in March 2020

107. E.M raised various concerns in the parties' parenting log (journal).

108. At trial E.M referenced various entries made in the parenting log (journal), suggesting J.P failed to respond to certain of her concerns, to her requests, to her inquiries, and / or to her directions, in a timely way.

Bruise on the child's face

109. E.M raised a concern regarding an alleged bruise on D's face in or around early January 2018. The parties acknowledge D had a bruise on his face (January 2018). E.M was not satisfied with the explanation that the child fell forward, suggesting she attended gymnastics with the child regularly and she had not observed him falling forward generally, and therefore there must have been a lack of supervision, tantamount to abuse.

110. E.M appeared to attribute the perceived lack of supervision to both J.P, or more pointedly to his partner, suggesting physical abuse of D. There is no evidence of lack of supervision, neglect, or abuse of any kind by J.P, W.P or J.P's partner.

The child's temperature and attendance at the emergency department

111. E.M raised a concern regarding J.P's, and his partner's response to D having a temperature in March 2018.

112. D was showing symptoms of illness (March 2018) when E.M dropped him with J.P and his partner. E.M noted that she had entered comments about D's symptoms in the parenting log (journal).

113. Upon D transitioning to J.P's care, he and his partner proceeded with D to meet with family. Later they ended up at the emergency department with D. E.M suggested that J.P, and his partner neglected to notice her entry in the parenting log, and as a result they delayed seeking medical attention

for D. E.M provided no medical evidence to support her suggestion that J.P or his partner had either knowingly, or unintentionally placed D at any risk.

114. I am not prepared to attribute blame to E.M, who did not take the child to be seen before dropping D off, or to J.P and his partner, for not taking D to seek medical care when E.M believes they should have. No medical evidence was offered.

"non-crucial" information

115. I am concerned about E.M's position regarding the parenting log (journal), and her tendency to include "non-crucial" information in the parenting log. It is fair to say that E.M's entries are difficult to read, and it would not be easy to take a quick look and determine what if any information may be "crucial", in terms of providing immediate care or a response to D's needs.

116. As noted above, E.M's position has been that transitions would be fine if:

> if everyone acts like an adult – there is no need for discussion. Discussions take place in the parenting journal. We should just be handing D back and forth.

117. J.P expressed the following concerns regarding communication, and the parenting log (journal) specifically:

a. E.M has used the log to communicate about legal issues, and to direct him to do certain things without prior negotiated agreement. This is inappropriate and must stop. The parties should follow the terms of the final order arising from this decision.

    i. On a go forward basis the Family Wizard program (or a similar program) shall be used to discuss child related issues only, not to negotiate any changes to the parenting arrangements / or expectations of the other;

ii. The original parenting journal shall not be shown to D, it shall be considered a court document; and
iii. Neither parent shall discuss any information related to these proceedings with D.

b. J.P found there was often too much detail in the log, and as a result the log was hard to read, and it was difficult to identify the more important information "crucial" information, included in the parenting log;

i. The parties' entries in the Family Wizard program shall be adjusted with a focus on highlighting important / crucial information each parent requires in order to meet D's day to day needs.

c. J.P does not feel it is necessary to communicate about things such as:

i. play time activities (he just asks D what he'd like to do);
ii. snacks (no longer as crucial when exchanging in the morning and given D's age, he just asks D what he would like to eat);
iii. diapering/ toileting (given the child's age, and because the child is being dropped off at a daycare in the morning);
iv. he does not use the behavioural guidance box;
v. he does not require details about daily activities, cuddling, bath time; and
vi. it is not necessary to log food unless a new food is introduced, and the quantity the child ate can be left out entirely;

I find J.P's observations are reasonable and E.M should consider them.

Toilet learning

118. E.M developed a "Toilet Learning Plan", for review and agreement between the parties. The parties agreed to the plan and I find it was well underway in April 2019.

119. E.M and J.P both advocated consistency and agreed to work along with D's daycare with D's "toilet learning" – however, I would note that E.M was opposed to D being provided treats or rewards despite this being included as part of the day care approach being used with D and his peers.

120. In May 2019, after toilet learning started per their agreement, E.M demanded J.P cease providing D with opportunities to use the "potty".

121. Under cross-examination E.M stated she had not yet started the toilet learning plan with D in her home. That she had purchased a "potty" for D but had not shown it to him. She denied stopping the toilet learning program while it was in progress. I do not accept her testimony in this regard.

122. Despite D's interest and perceived readiness to start toilet learning at day care / and at J.P's home, E.M felt there had been too many significant changes in D's life. The changes E.M indicated she was most concerned about were J.P's partner moving in with him in May 2019, and E.M's efforts to transition D to his own bed over the summer of 2019. E.M maintained her position until September 2019.

123. E.M, accused J.P's mother of "forcing" D to toilet train. E.M told D is was not right for his father and grandmother to ask him to or allow him to toilet train as both she and J.P had to come to an agreement before he could learn how to use the toilet. J.P indicated that following the parties' reaching an agreement in April 2019, D was permitted to use the potty in his home if D requested it.

124. At trial, E.M agreed she still occasionally put D in pull ups/ training pants as she has determined he is fearful of public washrooms, and specifically auto flush toilets / hand dryers. She stated that D becomes "overwhelmed by fear".

125. J.P argued that E.M prevented D from progressing through the "normal stages of his development". He argued that E.M was not responding to D's needs when she demanded that J.P, and to some extent that the daycare, no longer provide D with opportunities to learn, along with his peers, to toilet train. He argued that E.M's behavior around D's toilet

learning was a striking example of E.M placing her needs ahead of D's needs. I agree.

Interfering in J.P's relationships

126. E.M attempted to monitor the time J.P's fiancé spent at his home, and she asked others to also monitor J.P. I find that at E.M's request, did take observe, and at times took pictures of J.P's home and yard, to document J.P's fiancé's car in J.P's driveway. E.M hired a private investigator to investigate J.P, and his family shortly after D's birth. Advising the court that she would be filing video surveillance information at trial. She did not file any video surveillance information.

127. J.P has stated that E.M has accused his fiancé of abusing D, and of interfering with the previous *Children and Family Services Act*' matter involving the parties. J.P further alleged that E.M wrote to the Newfoundland Barrister's Society to make complaints or comment about his fiancé's past work and volunteer history, and that E.M has contacted the Nova Scotia Legal Aid Society to make allegations about J.P, and to suggest his fiancé is ethically unfit to practice law. I find that on the balance of probabilities J.P's allegations are true.

128. I have reviewed several letters, reportedly written on E.M's behalf by members of her family and forwarded to J.P's fiancé's parents, and to a professional support person. The letters are entirely inappropriate (exhibit 10, tab 6 (n), tab 8 (b); and exhibit 12 – October 2018), and I do find that on the balance of probabilities E.M drafted and sent, or had a hand in drafting and sending the letters.

Gender expression

129. At the time this trial was heard, D was three years and two months old.

130. E.M has stated that D has expressed to her a desire to have a dress to wear to and / or at J.P's home. E.M has raised the issue with J.P in the parenting log (journal). She has expressed concern that J.P has not

responded, and she is uncertain whether he has or will comply with her request.

131. E.M has interfered with and she has prevented J.P from having parenting time with D and she has not provided any credible evidence for doing so. In fact, I find she has lied about the "toilet learning", to try to control D's circumstances and to meet her own needs.

132. Although I do not find it unusual for children to have gender variant expressions, I do find this is a complicated area. More complicated because it is not clear to me that J.P has observed the same behavior from D. In the context of this litigation, I am not prepared to rely on E.M's observations and assessment of D's needs in this regard. In this case, I do find that neither parent should be directly enforcing their gender views on D.

133. It is widely accepted that gender development usually begins during the toddler years. Children start to identify as a boy or as a girl, and that process is often referred to as gender labelling. Children then develop an understanding that gender continues, and it is understood that they develop gender stability around ages four or five. During this period children may not understand that gender continues despite superficial changes (wearing a dress), they may not yet grasp the idea of gender constancy.

134. When children present with conflicting histories from two parents, especially parents going through a contested hearing involving parenting, there is definitely good cause to proceed with caution. A desire for some stereotypical female gender expression (<u>if in fact there has been any expression from D himself</u>), does not equate a desire to change to a female identity.

135. I find D should be allowed a variety of ways of expressing himself, and that both E.M and J.P should avoid giving D the message that there is one way of expressing himself given his gender, or for any gender. For instance, parents are often given the recommendation to avoid generalizing "pink" as only a "girl thing", and blue as a "boy thing".

136. I find it is not in D's best interest for either parent to begin "socially transitioning" D, including dressing him as a girl and posting images of him, or using female pronouns or names for him. Neither parent should make any assumptions as gender variant preferences do not automatically indicate a need for a change of identity and for social transitioning. Neither party should take unilateral action with respect to D's gender.

137. I find that the ongoing conflict between the parents and any disagreement between the parents regarding D's gender expressions creates a risk of emotional harm. E.M has suggested that D is aware of a difference between his parents and their view about his gender expression (reportedly asking her to ask his father to have dresses available at his home). I do not accept E.M's testimony. I have serious concerns about E.M's credibility and therefore I am reluctant to say more on the topic of D's gender preference.

138. I find that on a balance of probabilities E.M has misperceived, exaggerated, or made false statements about J.P's, and about W.P's allegedly intimidating behaviors. I find E.M has allowed her emotions, and her desire to control everything in D's life, to provide support for a conspiracy theory about J.P's fiancé's involvement with J.P, and with D. I find E.M has difficulty accepting other people's view of the world, and other people's limitations or weaknesses. I find that as a result, she has been unable to find a way to include certain people in D's life. Overall, I have concerns about E.M's credibility, and / or her ability to work cooperatively with anyone who challenges her view of the world or her beliefs.

139. I have determined it will be up to J.P to monitor D's needs with respect to his gender development and to respond to those needs whatever they may be. I am satisfied that regardless of D's gender expressions to him, that J.P will respond appropriately.

140. I further find that D is too young to be socially transitioned (including having pictures posted on any public / online forum), in girl clothing. His concept of gender is not fully developed, and it is generally understood that gender variant preferences do not automatically indicate issues with gender identity or a need for social transition. I find it is in D's best interests for a gender-neutral approach to be used until it is determined whether

professional guidance should be sought. J.P will make the decision regarding the need for professional assessment.

141. D has the right to express himself, and it is hoped that each parent will accept, and respect and support D as he develops, in whatever way he develops. However, neither party shall unilaterally dress D as a girl or force D to take on certain gender roles. Both parents shall ensure D is involved with playgroups, and or with playmates, and in settings that support his interests.

142. It is not unusual for children to have gender variant expressions. Neither party presented any expert evidence in relation to the matter.

Family supports available for E.M

143. As noted previously, E.M had arranged to live with her parents in or around February 2017, and for them to act as supervisors for her parenting time with D until she was granted fully unsupervised overnight parenting in August 2017.

144. E.M acknowledged that after she returned to work her parents had been caring for D bi-weekly for 4 – 6 hours in the evenings, and that her parents had assisted with travel to exchanges with J.P beginning in the summer of 2017 through to February 2018 (when E.M returned to work and D was placed in daycare).

145. E.M stated that her parents would also see D at her home, attend activities, have communication with him on the telephone and participate in video calls with D perhaps more than once per week. When asked about any harm that may have come to D when spending time with her mother E.M stated that D was "not physically harmed".

146. When cross-examined E.M stated that she had concerns about her parents for several years. Specifically, E.M has stated a concern about her mother's use of medication (since 2018 or before), and her level of cognition. At trial in March 2020, E.M confirmed she had not arranged for

D to see her parents since November 2019. J.P stated that E.M had previously described her parents as abusive

147. Per message from E.M dated January 28, 2020, E.M objected to J.P meeting with her parents (at E.M's sister's request), to arrange to give D Christmas presents in December 2019.

148. E.M alleged the meeting and the present exchange was in contradiction to the direction she provided to J.P in a parenting log entry dated November 13, 2019. E.M accused J.P of "disregarding the terms of their court order re: agreement on the major upbringing decisions around our co-parenting D", objecting to him allowing D to see her parents, stating:

    i. she has advised her parents to retain a lawyer, and regardless, that they must fill out an application with the court pursuant to Section 18, Contact Time for Grandparents, *Parenting and Support Act*, if they wish to have contact with D.

b. E.M also took exception to J.P allowing D to have contact with her sister at the same time he met with her parents, indicating that her sister has behaved in an aggressive way toward E.M and that he placed D at risk.

c. E.M testified that as of March 2020, she had not arranged for D to see her parents since November 2019.

d. E.M's parents and her sister did not testify at trial.

149. E.M initially had the support of her parents and her sister.

150. E.M mentioned Mr. A as a support person. He did testify at trial.

a. E.M indicated she was introduced to Mr. A through his association with J.P's family (he lives close to J.P / and his parents). E.M stated that she met Mr. A in 2015, after becoming acquainted with J.P.

b. Mr. A testified at trial. He confirmed he is 56 years old, that he has not been employed outside the home "for years", as he was the full-time caregiver for his parents until they passed in 2019. Mr. A was previously employed as an attendant at a local golf course.

c. Mr. A indicated he has been a support to E.M. E.M stated that Mr. A is D's god-parent, that he has assisted her financially, and by caring for D. Mr. A indicated that on two occasions, sometime after D learned to crawl, he cared for D for up to five hours.

New partner / end of relationship

151. E.M gave evidence in cross examination that she was involved in a new intimate partner relationship between June of 2019 and February of 2020, explaining she had a pregnancy loss during that time.

152. E.M indicated that her partner had been introduced to D in August 2019 and would often join her and D for social activities, indicating approximately once per week. She explained that their relationship was on "hiatus" since "last month" (February 2020). Her previous partner did not testify at trial.

E.M's position

153. E.M seeks to continue a shared parenting arrangement, and she has the following expectations:

a. That J.P not attend D's extracurricular activities on "her" time;

b. That J.P not attend exchanges to or from her parenting time;

c. That J.P's mother not attend exchanges to and from J.P's parenting time / without police oversight;

d. That J.P's mother not go into the Tim Horton's Restaurant if W.P is dropping D off to or picking D up from E.M at Tim Horton's;

i. E.M would agree to have B.P, P.P, J.P, anyone from the F family drop D off. E.M sees no problem associated with expecting others to drop D off at his day care as early as 7:30 am, to accommodate her preferences, stated problem with J.P and his mother;

e. That J.P not attend any of D's medical / dental appointments or other health related appointments with her, and she has expressed that she would not attend any health related appointments for D with J.P.

154. The case law reminds me that I must be cautious when considering the evidence regarding the presence of "conflict" between the parties, as it is often used as the basis for an argument by one parent to deprive the other parent of any form of shared residential care.

155. In this case I find J.P was prepared to work with E.M to have a shared parenting plan in place, and that he attempted to do so between September 2017 and January 2019). I find it was E.M who has continued to create conflict, resulting in J.P deciding it was in D's best interests for him to request primary care of D. J.P has made the request to protect D, and his family, from E.M.

156. Courts recognize that some degree of conflict occurs in most, if not all families regarding child rearing issues. However, I find that in this case, the evidence clearly indicates E.M is responsible for the ongoing conflict, and she has no intention of letting go of any perceived slights by J.P, his fiancé, his mother, her parents, her sister, the counselor, or D's initial primary care physician.

157. I find J.P remained polite and supportive in his comments about E.M's parenting, and that he tried to address any disagreement through legal counsel. In his affidavit filed March 3, 2020 he describes E.M as "an enthusiastic mother" stating "it is evident she cares for D". He also indicates "E.M takes D to my extracurricular activities, which I believe is well-intentioned".

158. Courts have often found it is not in the best interests of young children to have an equal access schedule, in this case two successive interim orders granting shared parenting were in place for over two years. I find that due to the ongoing conflict, the current shared parenting must end. The courts have regularly found that ongoing conflict can have devastating effects on a child's overall emotional health and wellbeing, and that conflict can create imbalance to the child's parenting schedule. I find it is in D's best interests to have J.P be D's primary decision maker and for D to reside primarily with J.P.

Other relief sought:

159. E.M has asked the court to order the parties to do the following:

a. attend co-parenting counseling in separate sessions;
b. create a detailed parenting plan to be filed with the Court;
c. learn new communication strategies;
d. plan options in the event of a dispute; and
e. "create and place boundaries around the roles of non-parents and of non-custodial family members in D's life, to avoid ongoing conflict in the co-parenting relationship".

160. E.M suggested the mandatory co-parenting counseling should be arranged with a counselor who would monitor their communication, and that the counselor would be expected to advise the parents with respect to what is appropriate or not. E.M has not presented any information about the existence of the resources she has suggested are needed on a go forward basis. She has not commented about how any related costs to the parties would be covered.

161. E.M's "detailed parenting plan", "new communication strategies", "options in the event of a dispute", "communication about boundaries", and her ability to consider what should and what should not be included in a parenting journal should have been presented to this court at trial in March 2020. After three years of litigation (E.M having been represented by three different lawyers), and E.M having participated in programming with

multiple service providers, she should have been able to determine and acknowledge what changes she needed to make.

162. Should either parent seek further counseling services or other professional services from health professionals, the health professional / counselor should be provided with a copy of this decision for review.

J.P's position 2020 – specific shared decision making and primary care

163. J.P is self-employed, and he has arranged for his parents provide any necessary child-care for D while he is working.

164. J.P is seeking an Order granting:

a. Specific shared decision making. He has asked the court to grant an order allowing him to make decisions about D's healthcare, education, culture, and extracurricular activities. He has suggested E.M would make decisions related to D's religion; I find it is in D's best interests for J.P to make major decisions in relation to D's healthcare, education, culture, extracurricular activities, and his religion.

b. He has asked the court to grant an order allowing D to live with J.P most of the time. Suggesting D would have parenting time with E.M every second weekend Friday 3:00 pm – Monday 7:30 am, and on the alternate week – one day parenting time 8:30 am – 5:00 pm; I find it is in D's best interests that he return to the primary care of J.P starting April 1, 2020. I find J.P has an appropriate support system in place which provides consistency, security, stability and continuity for D.

c. E.M would have extended parenting time on long-weekends;

i. For the sake of clarity: I understand J.P's request to mean that, if E.M's weekend falls on a holiday long weekend (which are: Family Day, Victoria Day, Canada Day, Natal Day, Labour Day, Thanksgiving Day, Remembrance Day, long weekends), with E.M's first weekend being Friday April 3, 2020 at 3:00pm until Monday April 6, 2020 at 7:30 am, then she would have D for the extra day, the Friday or the Monday; or when D is going

to school and there is an professional development day on the Friday before or the Monday after her regularly scheduled parenting weekend, that her weekend would be extended.

d. The parties would alternate and split the Christmas holidays. He would have odd years;

    i. Once the child is in school this would extend to include a sharing of the usual two-week period children usually have off at that time.

e. The parties would split and alternate the Easter holiday. He would have odd years;

f. J.P did not request any order with respect to March break.

    i. I find it is in the child's best interests for an order to be in place. Therefore, once the child starts attending primary school, the parties will share March break, they may choose to split and alternate it. J.P will decide in odd years, E.M will decide in even years.

g. J.P did not make any specific requests for the summer.

    i. I find it is in the child's best interests for an order to be in place. The parenting schedule shall continue with the exception that E.M shall start her parenting time on a Thursday at 10:00am or earlier as agreed between the parties (rather than Friday at 3:00pm through to Monday). The summer schedule shall begin the first Thursday after public school is scheduled to end in June (after grading day), with the parents splitting the Labour Day weekend at the end of the summer.

h. J.P did not make any specific requests for Mother's Day, or for Father's Day.

i. If D is not in the care of E.M on Mother's Day, she shall be entitled to have time with D between 2:00 pm and 6:00 pm on that date.

ii. If D is not in the care of J.P on Father's Day, he shall be entitled to have time with D between 2:00 pm and 6:00 pm on that date.

i. The child shall spend his birthday in the care of the person who has day to day care.

j. Each parent is entitled to have a three-hour block parenting time with the child on that parent's birthday.

k. Additional parenting time - E.M shall be limited to one request, one day per month (not an overnight).

i. E.M must advise J.P at least two weeks in advance, but preferably one month in advance. If J.P is not able to accommodate E.M's request, he shall suggest an alternative day that month. If E.M is unwilling to accept the alternative, the matter comes to an end.

ii. Once D starts school the additional parenting time may be limited to an extra three hours of block parenting time, once per month, depending on D's needs at that time.

l. All Exchanges shall be at a neutral location.

i. J.P may facilitate the exchange, or he may have an alternate do so.

ii. E.M may facilitate the exchange, however, if J.P or Ms. P. will be present for the exchange, whenever possible the exchange should take place inside a Tim Horton's Restaurant, or a school or daycare facility. E.M does not have the right to request that

the exchange not take place in the presence of others, because she feels uncomfortable.

iii. E.M must arrange for a support person known to D to be with her if she is uncomfortable, or she must arrange for an alternate person to make the exchange (the police should not be used as substitute support person). An alternative may be for E.M to arrange for the exchange at Veith House, with J.P as the primary parent dropping the child off at a time convenient to him. Any expense would be covered by E.M.

iv. Once D starts school it is anticipated the exchange will take place at school.

m. Should E.M arrive late to pick up D (as she recently did at daycare, with a 5:00 pm pick up time, picking the child up between 6:30 – 7:00pm), whomever has care of D (school or other caregiver), shall contact J.P and E.M shall arrange to pick D up from an alternate location identified by J.P (which can include his or his mother's home).

n. J.P has requested he be permitted to attend D's extracurricular activities.

i. I am granting an order allowing both parties to attend programs D is enrolled in once he starts school, or as the parties agree. J.P shall develop and provide E.M with a schedule of D's extra-curricular activities.

ii. At no time shall either parent speak negatively about the other parent in D's presence, with the parents of D's friends or classmates (or online through social media). At all times each parent shall maintain respectful communication with each other, and they shall ensure that anyone caring for D does not speak negatively about either parent in his presence (or online through social media).

Child Support

Prospective child support

165. D has been placed in J.P's primary care.

166. Pursuant to section 19 of the Child Support Guidelines, an annual income for child support purposes of $35,000.00 shall be imputed to E.M. As of April 1, 2020 E.M shall pay $299 per month to J.P.

E.M's requests for child support after her application in August 2017

167. E.M initially requested the Court deal with what she defined as "arrears" of child support and (later suggesting she intended to make a claim for special or extraordinary expenses).

168. E.M filed her Notice of Application in August 2017, therefore any child support owed after August 2017 can be considered by this court.

169. E.M asked this court to consider child support she believed was owing to her from J.P between July 2017 and October 31, 2018, (until the parties reached a consent agreement through court regarding J.P paying interim child support to E.M), while a shared parenting arrangement was in place.

a. The following issues were raised by J.P regarding E.M's "retroactive" claim for child support:

i. She did not file a Statement of Income;
ii. She did not file any Income Tax Information; and
iii. She has not filed a Statement of Expenses.

170. E.M was reminded to provide financial information, she had ample time to provide the information, and she has failed to provide financial disclosure to allow this court to determine an appropriate amount of child support (if any) owing, taking into account the shared parenting arrangement which existed for the period August 2017 – October 2018, and J.P's payments per the Consent Order. I dismiss E.M's application for child support from J.P for the period between August 2017 and October 2018.

Special or extraordinary expenses

171. E.M requested this court order J.P to pay, "retroactively", a portion of daycare fees owing after subsidy, from February 2018 to present (March 2020). E.M's initial position was that D would never be placed in a daycare. E.M placed D in the daycare of her choice in February 2018, advising J.P after the arrangements were in place. He subsequently visited the daycare and did not oppose the arrangements.

172. On March 2, 2020, prior to trial, the court reminded E.M she must file the necessary documents regarding any "retroactive" day care expenses. E.M failed to file a Statement of Special or Extraordinary Expenses with any supporting documentation. I dismiss E.M's application to have J.P share in any "retroactive" day care expenses (whatever they may have been), between February 2018 and March 2020; and

Lying in expenses

173. E.M requested the court order J.P to pay lying in expenses. Given the totality of the circumstances, with J.P leaving his home in August 2016 while E.M resided in J.P's home from August 2016 until after the birth of their child on January 3, 2017, (with J.P paying the household expenses mortgage, taxes, utilities, and paying E.M $100 per week for groceries), I find J.P has fulfilled his obligation to E.M in that regard.

Conclusion

174. Ms. Beaton will draft the final order. The decision is effective as of the date of the publication of this decision, and / or receipt by way of email of the decision by the parties' legal counsel.

175. The parties must file their submissions on costs within one month of receipt of this decision.

Cindy G. Cormier, J.S.C. (F.D.)