

**SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Waugh v. Waugh*, 2016 NSSC 375**

ENDORSEMENT

November 22, 2016

Ryan Grant Waugh and Kathryn Jeanne Underhill (Waugh)
SFH 1201-068149 (092756)

Pavel Boubnov on behalf of Ryan Grant Waugh

Cathy Logan on behalf of Kathryn Jeanne Underhill (Waugh)

[1] To be determined: Will the children , Grace Waugh born January [...], 2010 and Nolan Waugh born December [...], 2011:

1. continue to attend Lorne Park Elementary School until the end of the 2016 / 2017 school year and then move to River Oaks Elementary School; or
2. remain at Lorne Park Elementary School for the remainder of the 2016 school term and then move to River Oaks Elementary School in January 2017 to finish out their school year .

Decision:

[2] I find it is in the best interests of the children to remain at Lorne Park Elementary School until the end of the 2016/2017 school year.

Reasons:

[3] Provision of previous order(s) still applicable.

- a. On May 7, 2015 a Consent Order was issued by the Honourable Associate Chief Justice Lawrence O’Neil following a settlement conference. The issue of parenting time is addressed in that Consent Order and re-affirmed by decision rendered by the Honourable Justice Legere Sers on August 27, 2015. Both Orders are still in force except as varied by my decision rendered October 5 and 7, 2016.
- b. Specifically Justice Moira Legere-Sers confirms at paragraph 4:

It is the express intention of the Court that, in the event the mother also relocates to Ontario, that such relocation will reaffirm the parties' intention to work toward a shared parenting arrangement by June 2016, as previously stated at paragraph 28 of the existing Consent Order. (granted by Associate Chief Justice O'Neil on May 7, 2015).

At paragraph 9:

The parties shall also continue to have joint custody in regard to major decision making, including, but not necessarily limited to, all major decisions affecting the physical, mental, educational, spiritual or emotional well-being of the children.

At paragraph 10:

The father shall consult with the mother with respect to all major decisions, before any decision is made concerning the children's welfare.

At paragraph 11:

It is the parents' joint responsibility to achieve consensus on major decisions affecting the children.

At paragraph 13:

Each parent agrees to keep the other parent informed, in a timely manner, as to all matters relating to the children's health, welfare and education, and to discuss such matters in a respectful and child-focussed manner.

At paragraph 16

The residence of the children in the Greater Toronto Area shall not be changed without prior notice to, and consent of, the mother.

[4] In her Affidavit sworn August 22, 2016 Ms. Waugh indicated the following:

- a. At paragraph 8, her intention to relocate to Ontario "within three months" of receiving her payment from the division of assets after accounting for matrimonial debt.
- b. At paragraph 14, Ms. Waugh stated that "in order for her to sign a lease to rent accommodations in the children's school area" she needed "confirmation that their school district would not change for the 2016 /2017 and 2017/2018 school years."

- c. At paragraph 21, Ms. Waugh specified she was seeking an Order that the children do not change their school district in either 2016/2017 or 2017/2018 school years.

[5] A decision with regard to child support, spousal support and division of matrimonial assets was rendered on October 5, 2016 (with follow up comments and corrections on October 7, 2016).

- a. Clarification of reasons and correction of exact amounts to be paid to each party from the sale of the home and division of assets, assignment of matrimonial debt was provided on the record on October 7, 2016. Follow up discussions with counsel took place on the record on November 8, 2016 and an audio copy of the Court's updated reasons and corrections which were delivered on October 7, 2016 was provided to counsel on November 8, 2016.

[6] On October 5, 2016 the Court was advised Ryan Waugh had purchased a house and would be moving with the children from his parent's home at [...], Mississauga, which is located in the Peel School District in early December 2016. Mr. Waugh's counsel was unable to provide the address where Mr. Waugh would be moving with the children. Mr. Waugh was directed by me to provide his and the children's new address to Ms. Waugh within twenty-four hours .

[7] On October 16, 2016 Ms. Waugh signed a one year lease for a new residence at [...], Mississauga Ontario which is in the Peel School District.

[8] On October 17, 2016 Mr. Waugh advised Ms. Waugh he would be moving with the children to [...] in Oakville Ontario, which I believe is in the Halton School District. Mr. Waugh did not consult with Ms. Waugh, nor did he obtain her consent to move the children.

[9] Consultation and consent were both contemplated in existing Court orders. I find it hard to believe the timing of Mr. Waugh's communication regarding his move was a coincidence. I believe that on a balance of probabilities Mr. Waugh was attempting to make it difficult for Ms. Waugh to plan her move in a manner to be as close to the children's school as possible.

[10] The requirement to consult and to obtain Ms. Waugh 's consent about any move with the children were conditions included in Court Orders to ensure the best interests of the children. It was contemplated that Mr. Waugh and Ms. Waugh would move to a shared custody arrangement once she moved to Mississauga and it would be necessary for them to work together to make any new arrangement work.

[11] I find the children have been subjected to many changes over the past few years.

- a. Most recently, their father planned to move the children from their grandfather's home to a new home with his new partner and her two children (move was planned the first of December 2016).
- b. Their mother has recently moved to a residence which is close to their current school, Lorne Park Elementary School and to their grandfather's home (who had been providing some child care).

[12] Although it is unusual not to allow the primary caregiver to make decisions related to school placement, these issues were canvassed previously. It was always contemplated that if Ms. Waugh satisfied the expectations set out for her (which it appears she has), these parents would be moving toward a shared custody arrangement.

[13] I find it is in the children's best interest to maintain some stability in their relationships (with teachers, friends) while they are adjusting to many other changes around them. I find it is in both children's best interest to remain in their current school until the end of the 2016/2017 school year.

[14] I reserve the right to issue fuller reasons in the form of a judgment.

Directions:

[15] Counsel for Ms. Waugh should draft the Order for my endorsement.

Costs:

[16] Counsel should file written submissions regarding costs by January 9, 2017. If I have not received any submissions by that time I will conclude no costs are sought in this matter.

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