

**SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

Citation: *Williams v Power*, 2021 NSSC 356

Date: 2021-12-20

Docket: SFHPSA-112829

Registry: Halifax

BETWEEN:

Daniel Williams

Applicant

and

Tina Power

Respondent

Judge: The Honourable Justice LouAnn Chiasson

Final Submissions Made: December 21, 2021

Counsel: Patrick Eagan, counsel for Daniel Williams
Matthew Conrad, counsel for Tina Power

By the Court:

1. Ms. Power filed a request for an emergency hearing addressing her Christmas parenting time. The current order is a shared parenting arrangement with Mr. Williams. Despite the existing order, Ms. Power has not had parenting time alone with the children since September 2021.
2. The court was unable to accommodate an emergency hearing but was prepared to adjudicate on the very narrow issue of Christmas parenting time based on the written submissions of the parties. The scheduling of hearings, given the current pandemic circumstances, was set out in the Notice from Chief Justice Smith on December 17, 2021.
3. No objection was forwarded on behalf of counsel for Mr. Williams to proceed by way of written submissions only. There are significant issues to be addressed by the parties. These issues will be addressed after appropriate evidence is tendered and cross examination is conducted. The issue of Christmas parenting

time, however, cannot wait and a determination must be made on very limited evidence and in an abridged fashion given the lateness.

4. With respect to the filing of this emergency, it should be noted that counsel for Mr. Williams was contacted on December 3, 2020, Ms. Power requested a response to her request for parenting time over the Christmas holiday. A substantive response was not received from counsel for Mr. Power until December 20, 2021.

5. There are two little boys at the heart of this matter: Chase and Lucas. Chase is 9 and Lucas is 8. Particularly at this time of year, children may be anxious about knowing where they will be for Christmas. Will Santa know where they are? If the plans change at the last minute will Santa go to the wrong house? Who will they be with to celebrate this very special time?

6. In the past, the parties alternated Christmas Eve and Christmas morning. 2021 should be the year for Ms. Power to have the children in her care Christmas eve and Christmas morning. In early 2020, the parties continued to acknowledge the importance of each parent in the children's lives and consented to an Interim Order which continued the shared parenting arrangement for these young boys. The court needs to balance the parents' sense of fairness in having Christmas Eve alternate each year with the children's current circumstances.

7. All decisions in these matters are based on the unique set of circumstances for the children. The children's best interests are the paramount concern for the court. As noted in the *Parenting and Support Act*, all other considerations are subservient to the principle of the child's best interests. This principle has been enunciated in the Supreme Court of Canada case of *Young v. Young*, [1993] S.C.J. No. 112, para 202, and in countless cases since that time. The preferences and rights of the parents are not a consideration before the court.

8. In this case, Mr. Williams had the children in his care Christmas Eve last year. Were the shared parenting arrangement continuing, Ms. Power should have the children in her care this year. The difficulty in the present case is that Mr. Williams has unilaterally imposed supervised parenting for Ms. Power and has drastically restricted her parenting time.

9. I have reviewed the affidavit filed by Ms. Power on December 10 and the affidavit filed by Mr. Williams on December 20, 2021. I have not considered the "transcription" of the alleged recording of the police officer. I am unaware if the officer consented to the recording and am unaware if the recording is accurate.

10. The affidavits do not disclose any necessity for the parenting time of Ms. Power to be supervised. She will have parenting time with the children without any necessity for supervision. Who is present during her parenting time will be up to her. If she wishes to have her parents with her for a portion of her parenting time, she will be the one to make that decision.

11. If I were simply looking at the circumstances objectively and clinically, Ms. Power should have the children in her care December 24th overnight. This case is anything but simple and a clinical analysis would do a disservice to these young boys. I must consider what is best for them.

12. I am concerned about the reaction of Mr. Williams and his spouse and what statements will be made to Chase and Lucas. I am extremely concerned about the children placed in the middle of the conflict between the parents. I am also concerned that these very young children will believe that they are the ones making such significant decisions as to whether they will see their mother at Christmas, for how long and under what circumstances.

13. Exposure to conflict between the parents will be minimized. As such, the transitions will occur between third parties at a neutral location. My suggestion would be that the transition be through the parents of Ms. Power and an appropriate designate for Mr. Williams. The person bringing the children to the access must exit their vehicle and await the children transitioning to the care of their grandparents.

14. Chase and Lucas will be brought for Christmas parenting time with Ms. Power commencing at noon on December 25th. They will be returned to Mr. Williams December 26 at 5 pm. Neither Mr. Williams nor his spouse will contact Chase or Lucas during this 29-hour period. Chase and Lucas will be at liberty to contact Mr. Williams if such contact is reasonable in the circumstance.

Justice LouAnn Chiasson

Halifax, Nova Scotia