

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: A.A.M. v. M.M.M. 2007 NSSC 228

Date: 20070608

Docket: 1202-001455 (036259)

Registry: Amherst

Between:

A. A. M.

Applicant

v.

M. M. M.

Respondent

Editorial Notice

Identifying information has been removed from this unofficial electronic version of the judgment.

Judge: The Honourable Justice J.E. Scanlan

Heard: 08 June, 2007, in Amherst, Nova Scotia

Written Decision: 26 July 2007

Counsel: Anthony J. Morley, Q.C., for the applicant
Stephanie Hillson, for the respondent

By the Court:

[1] This is an application wherein the parties request a change in the access arrangement that was established pursuant to a court order granted on the 18th of January 2007. The issue relates to the access and custody arrangements in relation to two children: M. M., born February *, 1998 and M. M., born March *, 1999. The order of January 18th severely restricted the access granted to Ms. M., changing from a shared parenting arrangement to a situation where Ms. M. could only have supervised access with the children at designated times as set out in the order, together with telephone access.

[2] There have been a fair number of applications before the court. It is clear from the affidavits on file in relation to some of the earlier applications there are a number of concerns related to Ms. M., and the situation as between both her and Mr. M., and the situation that she has in relation to the children. One of the earlier concerns was the number of times she was moving. It is clear that she had moved on a number of occasions. Even in the last few months she moved from the home that was owned by Mr. M. where he was the landlord and she was the tenant. She moved to another apartment where she now lives. She indicates to the court that she's going to move yet again, just down the street to another house. In other words, the moving hasn't really stopped. I'm not sure that I have a clear explanation as to why even the most recent moves occurred. She suggests she was concerned with Mr. M. coming into her house uninvited, unannounced when he was the landlord. I'm not necessarily satisfied that was the situation. Mr. M. gave his version of the events and said he went there at her request to do things for her. It's not clear to me that he necessarily behaved himself as much as he might suggest to the court when he was there. In other words he had, at least on one occasion, been asked to leave and asked to leave repeatedly. But he was not there unexpectedly. On the many, many other occasions he went there, I accept his evidence that he went because he was asked to go, or he was going at scheduled times to pick up the children. Mr. M., if and when you get to see Ms. M. again, if you're asked to leave, you leave the first time you are asked. I don't know where the rule comes from that you have to be asked three times to leave before you have to leave, but if you're asked once, you leave.

[3] As regards Ms. M., the requirement for supervision I'm satisfied was justified in January. It was part of the interim consent order. As I listened to the facts of this case here today I still have a number of concerns in relation to Ms. M..

She explained that she actually cut herself on a lock or a hasp or a screw or a nail, or something that was put on the door by her new partner. She told her new partner that it was Mr. M. that cut her. As a result of that the police were contacted. She explains that lie was the result of all the stress that has arisen from the verbal abuse that Mr. M. inflicted upon her during the marriage. I'm not so sure that is the case, because the first big lie that we're aware of was when Ms. M. was going to school in Moncton and landed her in jail. At that time she misled the police in relation to a sexual assault. She was just getting into a relationship with Mr. M. at that time, yet she comes here to court today and says, "Well I only lied because of all the abuse that Mr. M. inflicted upon me and the stress that results therefrom". Well, I'm not so sure that that's the case.

[4] Then she explains away the treatment of the children, in terms of slapping and soap in the mouth and all those things and says, "Well I didn't really do that, even though I told Mr. M. that I did". She said, "I never slap my children, I never hit my children, I never use inappropriate language in relation to my children." I'm not sure that Ms. M. even knows when she does lie anymore. I'm certainly satisfied that she lied here today in court when she told the court that she never spoke to her daughter as Ms. E. M. suggested she did. In other words I am satisfied the cursing and demeaning of her daughter did occur. I believe the evidence of Ms. E. M.. She said she heard that and Ms. M. would not have been aware she was listening when it was said.

[5] As to whether or not she slapped M. or used soap in his mouth, I suspect she was probably telling the truth the first time when she told Mr. M. that she did that. She came to court today and denied ever doing it. In terms of credibility, Ms. M. leaves this court today with almost no credibility.

[6] Mr. M.'s referred to an incident, and it's been basically confirmed by Ms. M., where M. had suggested that Mr. M. slapped her in the face. I suspect it was almost with glee that Ms. M. and her new partner thought, well here's a crack in the armour of Mr. M.. We have a daughter who is coming home saying "Papa" slapped her in the face because she was crying about a boy in school. There was no real inquiry as to what happened, what was going on. They just saw what they thought was a chink in the armour and called the R.C.M.P. right away and got children's services involved. In the end what was the complaint in relation to the slapping of the daughter all about? At best it was a lie, according to Ms. M. now. One of the concerns I have relates to the question of whether this was a learning

behaviour. Is it a situation where the daughter is copying what Mom does? Where Mom, when she doesn't get her way or she wants something and she wants to make somebody look bad, she makes up a story. Things like saying, "Somebody raped me" or "Mr. M. cut me" or "he abused me all the time and that's why I do everything that I do". I have a concern, like I said, in terms of M.. The fact that she would have even suggested this concerns me, because like I said, I ask if this is a learned behaviour where she sees Mom making up stories. If it works for Mom and gets everybody's attention, maybe it will work for me. So Mom, you better stop making up stories.

[7] I now move on to the next issue. It's incredible that in the face of an order which prohibited smoking in the presence of these children and knowing full well that these children are susceptible to injury as a result of second hand smoke, that Ms. M. would come to this court and say, "I have stopped smoking in the presence of the children today. I did it when I got up this morning". This is absolutely unbelievable. I'm not talking about credibility. I don't know what that's supposed to do in terms of convincing the court that Ms. M. takes the health of her children seriously. What it tells me is that not only did she ignore the court order, knowing full well that it was there, knowing full well that her children were perhaps more susceptible to second hand smoke than others because they were premature babies. Then comes to court and says, "Well I stopped this morning when I got up". It doesn't do anything for your case, Ms. M.. It is a little too late to see the light.

[8] Mr. M. says these children are now better behaved, especially M., because M. seems to have been a handful, for Ms. M. and to a certain extent Mr. M.. I assume he is better behaved for the teachers as well, because of the blue notes that are coming home. So he's been a handful. But Mr. M. says it's getting better. He suggested that the number of blue notes is less frequent than it used to be. I'm not sure if that means the teachers are getting tired of sending the blue notes home or if he actually is getting better at school, because his teacher comes here today and says, "I haven't noticed a big difference". But let's at least give M. the benefit of the doubt. Maybe he is getting along a little bit better in school. One thing is for sure, and that is I accept the evidence of Mr. M. that his son is much better around home. That is true of the situation around his mother's house as well. He is much better there as well. I don't necessarily attribute all of that to Mr. M., but it's more than sheer coincidence that this improvement started in January when Mr. M. became the primary caregiver.

[9] There has been a little more stability in the children's lives, in terms of where they live. Even the access Ms. M. has with the children has been supervised since January. Like I said, in terms of Ms. M., when there's nobody around, I really don't know what's going on in Ms. M.'s house or in her life. I say that because there's not much of what she says that I believe. In fact I believe almost nothing she says unless it's confirmed by somebody else. But certainly I give her credit for saying that M. is better behaved since January, because I am satisfied he is.

[10] I'm satisfied that better behaviour is reflective of the increased intervention by Mr. M. in these children's lives. He has taken some very drastic steps to accommodate the caregiving role that he has assumed in relation to these children. I refer, for example, to the fact that he quit his production facility job and is now working at home as a translator. It allows him to make about the same amount of money with a lot less work, in other words 30 hours per week as opposed to 50, if you count transportation time. He says his hours are flexible. He gets to work, he does it on his own time, and he can leave to participate with the children in the activities as they require. He can take them to and from school and provide other parenting functions for the children as well.

[11] I compare this to Ms. M. who, as I said, wasn't even able to stop smoking in the house with the children until this morning. So Mr. M. has done a lot to facilitate the needs of the children, and I'm certainly impressed by the steps that he's taken. I'm impressed by his evidence as well in terms of his approach to parenting. I had heard nothing from his evidence that I thought inappropriate, in terms of what he's done since January.

[12] The one thing that does concern me is in relation to where the children go to school now. The order which said the children had to stay in the school that they were in, in January, reflected the fact that they had been moved from school to school, shuttled around the province repeatedly, never being in the same school for very long. I think it was, if I recall correctly, six moves in three school terms, or three school years. I may be wrong in that, but they moved a lot, in any event. Ms. M. is right when she observes that one of the problems for the children is that they now live in one community and go to school in another. If they're going to be living with Dad, which they are going to be, then they might want to go in some school that's closer, so that their friends are in the same community where they have the primary caregiving arrangement. Because of that I'm not going to

continue with the order which says that they have to go to school in A.. Mr. M., if you decide that's where they should go, then I will allow you to continue that, but it will be your choice, because you will be the primary caregiver.

[13] Mr. M. says he's satisfied the requirement for supervised access can be eliminated. He says he's satisfied these children can, in fact, be with Ms. M. without the requirement for supervision at this point in time. I am going to say to Mr. M. however; if there is something that concerns you in relation to what's going on when Ms. M. is alone with the children, you will be the custodial parent. I'm not making you both judge and juror, in other words being able to decide this with any finality. But if something comes up which concerns you, I'm actually going to give you permission to require supervision until the matter gets back to court. If you're going to impose a requirement for supervision, then it will have to come back to court. In other words, I'm leaving that up to you, Mr. M., because you will be having more direct contact or more direct reporting from the children back to you as regards what's going on in that house.

[14] As regards the access, I'm satisfied that, especially given the distances as between the communities where the parties live, and the other activities that the children are involved in, that it is more important to have longer blocks of access. These children are getting older and time isn't as crucial to them as it is when they're younger. That's not to suggest they're adults. They're only children yet. But I am satisfied that it would be in the children's best interest that the week not be interrupted by a Wednesday night access. I'm satisfied that during the school year access should start on a Friday after school, at a convenient time, in other words 2:30, 4:30, 6:30, whatever it is that's most convenient for Ms. M. to arrange to pick the children up or for Mr. M. to deliver them. I'm not sure what the arrangement is, but whatever that arrangement is. As regards the return they go back to Mr. M. or to school on Monday morning, as opposed to going home.

[15] As regards to summer, I'm satisfied that should be block access. Just to see how it works I'm satisfied that in the month of July it should be for one week, then there would be at least a one week separation, so it's not going to be one week and then a second block access. In the month of August Ms. M. will be entitled to have the children for ten days. I would hope that as things improve and Ms. M. doesn't run into any difficulties with the law or otherwise, that by next summer it could be increased so there's two weeks in July and two weeks in August for her. I would encourage that for next year.

[16] In addition to the every second weekend access, Ms. M. will be entitled to extended access for a period such as long weekends, March break and Christmas vacation, Easter holidays. She is to get some extended access during those periods. For example, if her weekend is on a weekend that there's a Friday or a Monday off school, she would get the children on a Thursday night after school instead of a Friday, or she'd take them back to school on a Tuesday morning as opposed to Monday morning. It hopefully will work out so that those weekends are basically shared. I don't expect she will get all the long weekends, nor does he get all the long weekends. You might have to adjust the weekends once in a while to ensure that it's fair back and forth as between the two of you. As regards the Christmas and March break, I'm not sure if you're going to be able to work it out. If you can't, I suggest that they be split so that the first half of March break goes to one parent, the other half goes to the second parent. The same with Christmas. I suggest that the first half of the Christmas vacation, starting after school is out through to Boxing Day at 11:00 in the morning goes to one parent, and then from 11:00 in the morning to the end of the Christmas vacation goes to the other parent, so that you basically share that Christmas vacation period.

[17] If one party or the other decides that they want to take the children with them on an extended vacation out of province or out of country, then you should give ample notice. Be prepared to make that time up at some other time. In other words, I'm encouraging you both to co-operate in making sure that you give up some time for the children so they can enjoy things like an extended vacation, but only on the understanding that it will be made up some other time. That is because it would be in the best interests of the children.

[18] As regards extra-curricular activities, I'm going to direct that Mr. M. be entitled to take the children with him to things such as hockey or gymnastics even if they fall on Ms. M.'s weekend. Her indication is to the court she can't afford to do those things, but Mr. M. has paid most of the expenses for it. If he's prepared to accommodate the children in making sure that happens, then he can do it. But Mr. M., be alert to what your children really want as well. If they decide they don't want to go to hockey or to ballet or to karate, they're the ones that make the final decision in that regard. They are just little people who are going to, more and more, impose their wishes on both of you. As they do that, listen to their concerns, listen to their logic. If there is a logic and reason to it, other than just they want to finish watching T.V., that's not a very good excuse to miss karate or miss hockey,

and maybe you say catch it later or catch the next show. But if it's, "I don't like karate anymore and I haven't liked it for the last six months", that might be a good reason to stop it. Be alert to what they're telling you. They'll be sending you messages, and they get louder and clearer. If you don't start listening to them, all of a sudden they'll lower the boom on you down the road, so both parents should listen to these children.

[19] As regards the one, two, three approach Ms. M., I would alert you to a concern that I have as you gave your evidence. That is that one, two, three, strike is a great system, but there has to be a measured response when you apply sanctions. Just be careful that you just don't get to strike three and say these are the consequences no matter what got you here. It may be that there was a minor infraction that got M. to strike three. In terms of consequence you're telling him he can't do anything for three days or four days or two days. You might gauge it a little bit more based on what the offence was in the first place, just so that he comes to understand that the most serious offence invokes the most serious consequences, the least serious offence gets the least serious consequences. Don't just automatically get to strike three and say you're out and you're locked up. Just use a little bit of reason and understanding, and understand that he is a young child that is a unique human being. He might not always be reined in the way you'd like him to be, but if you rein him in too much, you will break his spirit, and you don't want to break his spirit. You already said to me today here in court that you just started to get a little bit of your own self esteem back. Well don't try and break M., because if you break him, you might break him forever. Better to let him have a little bit of his own spirit than to break him forever. That doesn't mean you can't be a parent.

[20] Ms. M., if you ever want to ensure that you don't lose more ground in this custody arrangement, or if you want to improve your situation down the road, you won't ever lie to anybody about any of this stuff again. Like I said, as you leave here today, I'm satisfied that you were prepared to lie about just about everything, and it will never help you. Mr. Morley, any questions in terms of the order?

MR. MORLEY: The only question I had, My Lord, Ms. M. has indicated that she is now employed. I would respectfully ask for the requirement, or the voluntary payment of I think it was \$150, that that be lifted. As regards child support, what I suggest is that my friend provide me with information concerning her income, and

after looking at that then I think we should apply the tables. I think it's her responsibility to pay child support, if she has the income to do that.

[21] Well, I'm going to let her have a few months to get her feet underneath her.

MR. MORLEY: I don't think that's something that we need to be too concerned about at this time, but I think again it's the issue of responsibility, and that that information could be provided in due course.

[22] This is early June. By September she'll give the information over as regards what her income is, and then there can be an assessment in terms of her ability to pay. Keep in mind Mr. Morley, and Mr. M. as well, that I expect working at T. she may not be making an awful lot of money, and she will have some expenses related to access. I'm certainly prepared to eliminate the need on Mr. M.'s behalf as regards the payment of the maintenance to subsidize the access costs. You should have a good hard look as to what she can afford in terms of facilitating access. I have no doubt that both these parents love the children with all their hearts, and as Mr. M. said, the children love you unconditionally as well. I encourage you to do whatever you can do to arrange and continue with the access. That is most important right now. Ms. M. is obliged to provide the information by the first of September as regards what her income is, and then you can assess it. If you can't agree it will have to come back to court. I'm not prepared to say at this point in time that it's automatic table amount, because I'm not sure what her access costs will be. A lot of that will depend on what Mr. M. decides to do, for example, next year in relation to school, and how much he's prepared to transport the children. Anything else?

MR. MORLEY: No. I will have a go at drafting the order and I will provide my draft to my friend for her review, and hopefully we'll have that before the court in due course.

[23] I hope for the children's sake and for the parties' sake that this continues to improve. There has actually been some improvement for the children since January. I hope the parties can get their heads around it so that it improves for them as well down the road. You can have a very fulfilling relationship, quality relationship with your children even if you're not there full time. Good luck.

J.