

LEGAL BULLETIN

Issue No. 40

Best interests of the child trumps a parent's unfavored outcome on appeal

Introduction

This bulletin considers the case of ***T.T.-W. v. A.D.*, 2025 NBCA 27**, on appeal from the Court of King's Bench (***A.D.D. v T.T.W.*, 2023 NBKB 97**). T.T.-W. (father) appealed the trial judge's decision to award sole decision-making responsibilities and sole parenting time, of their son, to A.D. (mother).

The trial court's analysis of the best interests of the child was largely influenced by the father's serious preoccupations with COVID-19 restrictions over his child's needs, the "potential impact of family violence on [the child]", and his "uncontrollable and unpredictable behaviour", including his belief that he is "not bound by the laws of the province" (paras 41-42, 50, 2023 NBKB 97). These concerns were further considered by the court as being inconducive to a co-parenting arrangement.



Among the several grounds of appeal, T.T.-W. alleged that the trial judge did not base their decisions on facts proven at trial, regarding the best interest of the child analysis, pursuant to s. 50 of the *Family Law Act* and regarding the calculation of child support owed.

Case Background

A.D and T.T.-W. were in a relationship since 2009 and had a son in 2012. They separated around the time of their son's first birthday, in 2013. A.D worked full-time. T.T.-W. retired from the Canadian Armed Forces in 2016. T.T.-W. suffers from PTSD and is unable to work. A.D alleged that alcohol and anger issues were key factors for the separation. In 2014, an interim order for equal parenting time was ordered. In 2020, T.T.-W. filed a motion for a reduction of child support obligations; "it was the father's contention that motions filed by the mother from that point forward were a direct result of his efforts to reduce his child support obligations" (2025 NBCA 27). T.T.-W. ceased all child support payments as of September 2020.

In December 2020, there was a court hearing on an

urgent basis when T.T.-W. planned to take the child out of the province, despite COVID-19 related travel restrictions that would require unfeasible subsequent isolation. A.D. submits that it was around this time when T.T.-W.'s mental health significantly declined.

In June 2021, A.D filed a motion to vary the interim order, and was awarded, sole decision-making responsibility regarding their son's health and well-being. The cause for this motion reflected ongoing contentions regarding T.T.-W.'s refusal to abide by COVID-19 related regulations. T.T.-W. continued to have parenting time with his son.

In September 2021, there was an incident at their son's hockey game at the University of New

Brunswick campus. T.T.-W. and their son were not wearing a mask, despite masking being required at the rink. After a physical altercation with the son's maternal grandfather, UNB security advised T.T.-W. that he was no longer permitted on campus. Fredericton City Police were later involved.

Persisting issues with abiding COVID regulations brought the parents back to court in October 2021 when T.T.-W. refused to allow the child to be vaccinated or participate in activities that required vaccination. At this time, A.D. was granted an interim order for sole decision-making responsibilities and sole physical parenting time.

During a case management call in 2022, T.T.-W. expressed that he was not bound by the laws of the province and was a free man. Given continued behavioural concerns, a psychiatric evaluation of

T.T.-W. was ordered by the court. T.T.-W. did not undergo this assessment, nor did he provide the court with any medical documentation. He retorted that he should not be required to undergo such an evaluation because of his strong views regarding the government's handling of the pandemic. Following the case management call, T.T.-W. repeatedly sent harassing notes to A.D., as well as to the trial judge and stenographer. In March 2022, T.T.-W. was arrested for criminal harassment of A.D. T.T.-W. refused to comply with the conditions for his release and was held in jail until March 28, 2022.

At trial, in 2023, A.D. was awarded sole parenting time and sole decision-making responsibilities. A.D. was further awarded costs in the amount of \$6,000, given that it had been an "acrimonious trial rendered difficult and lengthy as a result of the Respondent's behaviour" (2023 NBKB 97, para 64). T.T.-W. appealed.

***T.T.-W. v. A.D., 2025 NBCA 27* Ruling and Reasoning**

As a preliminary motion, T.T.-W. attempted to adduce six pieces of "fresh evidence," including an affidavit, three "affidavits" from family members that were not sworn, video surveillance regarding the incident at UNB in 2021, and a letter from his doctor. None of the evidence presented on appeal met the *Palmer* test.

The ground of appeal alleging that the trial judge did not base their decisions on facts proven at trial, regarding the best interest of the child analysis, is addressed at length by the Court of Appeal. The Court of Appeal cites large portions of the trial judge's decision and expresses that the trial judge had a "unwavering focus on what she considered to be in the child's best interests." Notably, the trial judge acknowledged that parents with unusual viewpoints or mental health challenges can be excellent parents; however, the facts before the court did not demonstrate that this was the case. Specifically, the trial court concluded that T.T.-W. was unable to put his child's needs above his own and was concerned more with the COVID-19 restrictions than the needs of his child. Furthermore, the court acknowledged that there was a risk of family violence, and that

T.T.-W. was exhibiting unpredictable behaviour, including his assertion that he is "not bound by the laws of the province" (para 50, 2023 NBKB 97). There was no reviewable error on appeal.

Regarding the child support calculation, the Court of Appeal also found no reviewable error in the calculations made by the trial judge.

Overall, the Court of Appeal characterized the basis of the appeal as more accurately reflecting the father's disapproval of the outcome of the trial. Ultimately, deference is owed to the decision of the trial judge absent any "material error, a serious misapprehension of the law or an error of law" (*M.S.(P.) v. K.S.*, 2024 NBCA 143, para 19). While a decision to award sole decision-making responsibilities and sole parenting time of a child to one parent may be an atypical judgement, the trial judge determined this to be in the best interests of the child, which was respected by the Court of Appeal.

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