

DOROTHY ELLEN RAFUSE - and - ANTHONY HARTFORD HANDSPIKER

(Appellant)

(Respondent)

CA165298

Halifax, N.S.

Oland, J.A.

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[Cite as: Handspiker v. Rafuse, 2001 NSCA 1]

**APPEAL HEARD:** December 8, 2000

**JUDGMENT DELIVERED:** January 3, 2001

**SUBJECT:** Custody and Access; Mobility; Family Maintenance Act s. 18(5)

**SUMMARY:** The appellant had had the day-to-day care of her child with the respondent since the child's birth in 1992. In 1993, the parties had agreed that the appellant would have custody and the respondent reasonable access. Custody proceedings commenced after the appellant told the respondent in early 2000 of her intention to move to Lunenburg County where her husband had a job opportunity. The trial judge granted the parties joint custody with the respondent to have primary care and the appellant generous access.

**ISSUE:** Whether the trial judge committed any error in principle.

**RESULT:** Appeal allowed. The trial judge failed to recognize and apply a principle and several factors set out in **Gordon v. Goertz**, [1996] 2 S.C.R. 27 which are to be considered in a case in which the custodial parent proposes to move with the child resulting in a material change in circumstances. He also erred in making conclusions which were not supported by the evidence. The matter was remitted to the Family Court for a rehearing.

<p><b>This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 14 pages.</b></p>
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