

NOVA SCOTIA COURT OF APPEAL

Citation: *Hill v. Davis*, 2005 NSCA 104

Date: 20050630

Docket: CA 238220

Registry: Halifax

Between:

Gilbert Roland Hill

Appellant

v.

Pamela Davis

Respondent

Judge: The Honourable Justice Nancy J. Bateman

Appeal Heard: May 19, 2005

Subject: *Custody and Maintenance Act - support for "dependent child" over age of majority*

Summary: Son of unmarried parties, who had graduated from high school, was working part time, living with his mother and had not made a final decision on a further course of study, sustained a serious brain injury just a few months after his 19th birthday. He required extensive rehabilitation and would not regain his pre-accident physical and intellectual capacity. Mother applied for reinstatement of child support which had been discontinued by consent, pre-accident, while son resided with his father. The mother had not applied for a resumption of the support in the brief period before the accident when the son had resumed living with her. Son was upgrading his high school marks at the time of the hearing and hoped to be admitted to the community college para-legal program.

Issue: Whether the son, having attained the age of majority before the accident, continued to be a “dependent child” under the **Maintenance and Custody Act** immediately before the accident? Did the judge err in ignoring the son’s provincial income assistance in awarding support in the **Guideline** amount?

Result: Appeal dismissed with costs. Contrary to the submission of the appellant father, the judge’s decision to award support was not premised upon a finding that, pre-accident, the son had made a clear decision to pursue a further course of study. The judge found that the son intended to further his education and had not withdrawn from parental charge at the time of the accident. He did not err in so finding. Section 30 of the **Act** prohibits the consideration of public income assistance when fixing child support. There was no evidence that support in the usual **Guideline** amount was “inappropriate” (s. 3(2)(b)). Given the uncertainty about the son’s future, this was not an appropriate case for a time-limited order.

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 11 pages.