

Date: 20011210
Docket No.: CA 172980

NOVA SCOTIA COURT OF APPEAL

[Cite as: Ryan v. Ryan 2001 NSCA 182]

Oland, Chipman and Hamilton, JJ.A.

BETWEEN:

JOANNE HELEN RYAN

Appellant

- and -

THEODORE AUGUSTINE RYAN

Respondent

REASONS FOR JUDGMENT

Counsel: Lawrence W. Scaravelli for the appellant
Richard G. Arab for the respondent

Appeal Heard: December 10, 2001

Judgment Delivered: December 10, 2001

THE COURT: Appeal dismissed per oral reasons for judgment of Oland,
J.A.; Chipman and Hamilton, JJ.A. concurring.

OLAND, J.A. (Orally):

[1] The appellant appeals a decision of the Honourable Justice Suzanne M. Hood dated June 26, 2001 and a Corollary Relief Order dated September 28, 2001 which awarded custody of the child of the marriage of the appellant and the respondent to the respondent and access to the appellant.

[2] This court has noted that the question of custody is one which lies particularly within the discretion of the trial judge. Unless the trial judge clearly acted upon some wrong principle or disregarded material evidence, an appellate court should not intervene: **Gorham v. Gorham** (1994), 131 N.S.R. (2d) 7 (N.S.C.A.) at p. 8. The Supreme Court of Canada in **Van de Perre v. Edwards**, [2001] S.C.J. No. 60 has reiterated the narrow scope of appellate review and stated that the approach to appellate review requires an indication of a material error.

[3] We have reviewed the decision of the trial judge and the evidence before her. We have also considered the thorough written submissions on behalf of the appellant and the oral submissions in supplement thereto, and the written submissions on behalf of the respondent. It is our unanimous view that the trial judge did not err in law. Moreover, we are not persuaded that she committed any material error in her appreciation of the evidence.

[4] The appeal is dismissed. The respondent is awarded costs of \$1200 inclusive of disbursements for the appeal and for responding to the appellant's earlier unsuccessful Chambers application for a stay.

Oland, J.A.

Concurred in:

Chipman, J.A.

Hamilton, J.A.