

NOVA SCOTIA COURT OF APPEAL

Citation: *Dorey v. MacMillan*, 2007 NSCA 47

Date: 20070425

Docket: CA 272185

Registry: Halifax

Between:

Stephanie Lyn MacMillan

Appellant

v.

Travis Lee Dorey

Respondent

Judge: The Honourable Justice Jamie W. S. Saunders

Appeal Heard: April 18, 2007

Subject: Joint custody. Primary care. Access. Mental health concerns. Alleged abuse of process. Best interests of the child. Standard of review.

Summary: The mother appealed a Family Court judge's decision and order granting the parents joint custody with the child remaining in the primary care of her father, but with generous access to the mother. She alleged that the respondent had provided a false and misleading affidavit in support of his application, and that the trial judge erred in relying upon the evidence, thereby giving the respondent the upper hand in creating a status quo which favoured his position. Further, she complained that the judge erred in concluding that she lacked initiative in enforcing access or pursuing her education, displayed a poor attitude towards money management, and disinterest in improving her skills in parenting.

Held: Appeal dismissed. The appellant's complaint with respect to the respondent's affidavit was overstated and misconceived. It was obvious that the judge accepted the respondent's explanation as to the source of his belief in swearing the contents of his affidavit, ultimately preferring the position advanced by the respondent as being in the best interests of their daughter. Further, it was certainly open to the trial judge to conclude that the appellant's serious mental health concerns would at times interfere with her ability to parent, and that she had demonstrated a lack of initiative and irresponsibility concerning the family's difficult financial circumstances. The appellant failed to show any reversible error in the judge's conclusion that their little girl ought to remain in her parents' joint custody, with primary care going to her father and liberal access extended to her mother.

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 6 pages.