

NOVA SCOTIA COURT OF APPEAL
Citation: *R.B.N. v. M.J.N.*, 2003 NSCA 65

Date: 20030611
Docket: CA 188819
Registry: Halifax

Between:

R.B.N.

Appellant

v.

M.J.N.

Respondent

JUDGE: BATEMAN, J.A.

APPEAL HEARD: June 4, 2003

JUDGMENT DELIVERED: June 11, 2003

SUBJECT: Divorce - Appeal from emergency interim access order.

SUMMARY: Mother had *de facto* custody of the 2 children of the marriage. Mother genuinely believed father had sexually abused daughter and physically abused son during access. By agreement access had been supervised. Experts inconclusive on whether abuse had occurred. Mother unilaterally moved to United States with children without prior notice to father. Father applied for return of children. Matter heard on an interim emergency basis. Supervision of block access impracticable and beyond means of father. Judge declined to order return of the children but, after finding that there was a low risk of harm to the children, held that supervision of access was no longer required.

ISSUE: Did the judge err in permitting unsupervised access?

RESULT: The appellant alleges a number of errors in process and result. Where the order is of an emergency interim nature, as is the case here, the argument in favour of appellate restraint is compelling. We are not free, absent error, to substitute our own assessment of risk to the children for that of the trial judge. There is nothing in the thorough and thoughtful decision(s) of the trial judge reflective of error. He was fully cognizant of the conflicting expert evidence. The matter should have been set for a further hearing in the Family Division. The appellate court is not the appropriate forum in which to resolve the ongoing issues surrounding access. Leave granted but appeal dismissed with costs.

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 7 pages.