

Date: 20020130
Docket: CA 171094

NOVA SCOTIA COURT OF APPEAL
[Cite as: K.A.M. v. L.J.M., 2002 NSCA 19]

Roscoe, Chipman and Saunders, JJ.A.

BETWEEN:

K. A. M.

Appellant

- and -

L. J. M.

Respondent

REASONS FOR JUDGMENT

Counsel: Tanya G. Nicholson for the Appellant
Brian J. Hebert for the Respondent

Appeal Heard: January 30, 2002

Judgment Delivered: January 30, 2002

THE COURT: The appeal is dismissed without costs as per oral reasons for judgment of Roscoe, J.A.; Chipman and Saunders, JJ.A., concurring.

ROSCOE, J.A.: (Orally)

[1] After an 11 day trial of an application by the respondent father to enforce access, and an application to terminate access made by the appellant mother, Justice Moira Legere of the Supreme Court (Family Division), in a decision reported as **L.J.M. v. K.A.M.** (2001), 193 N.S.R. (2d) 66, ordered that access be reinstated. The order provides that a therapist supervise the access during the period of gradual re-introduction of the eight year old child to her father.

[2] The appellant alleged that the respondent had sexually abused the daughter during access and she therefore terminated visits with him after July, 1997. Justice Legere, in her well-reasoned and thorough decision, reviewed the expert evidence and that of the parties, and concluded that the evidence did not support a finding of any sexually inappropriate behavior by the father.

[3] The appellant submits that the trial judge interfered with the conduct of her case, acted upon wrong principles, misapprehended the evidence and disregarded material evidence in ordering that access be reinstated.

[4] In **Gorham v. Gorham** (1994), 131 N.S.R. (2d) 7 (N.S.C.A.), Matthews J. A. said the following at p. 8:

The question of custody is one which lies particularly within the discretion of the trial judge. That discretion should not be disturbed unless the trial judge clearly acted upon some wrong principle or disregarded material evidence. An appellate court does not have the advantage given a trial judge of seeing the parties, hearing them and evaluating the character of each . . .

(See also **Routledge v. Routledge** (1987), 75 N.S.R. (2d) 103 (N.S.C.A.) per Clarke, C.J.N.S. at pp. 104-105).

[5] Those statements are equally applicable to questions of access to children. We are of the unanimous opinion that Justice Legere made no reviewable error in

either her assessment of the evidence or in reaching the conclusion that it was in the best interests of the child that access to her father be reinstated. Her scepticism of the merit of the expert evidence presented by the appellant's witnesses was well founded and her findings of fact are amply supported by the evidence. The appellant's counsel, despite her able argument, has not persuaded us that the trial judge acted upon any wrong principle or disregarded any material evidence. There is no basis upon which the order for access should be disturbed by this Court.

[6] The appeal is therefore dismissed without costs.

Roscoe, J.A.

Concurred in:

Chipman, J.A.

Saunders, J.A.