

CASE NO.

VOLUME

PAGE

Cite as: McKay v. McKay, 1997 NSCA 188

WILLIAM MURRAY MCKAY

ALISON GRETA MCKAY

- and -

(Appellant)

(Respondent)

C.A. No. 140123

Halifax, N.S.

Clarke, C.J.N.S.
(orally)

APPEAL HEARD:

November 27, 1997

JUDGMENT DELIVERED:

November 27, 1997

WRITTEN RELEASE OF ORAL:

December 2, 1997

SUBJECT: **DIVORCE** - Corollary Relief - Application to adduce fresh evidence.

SUMMARY: The parties were divorced. The mother was granted custody of the child of the marriage and the father was given access. All of this was set forth in a detailed agreement to which both the mother and father consented. It was agreed the mother could take the child and move to Texas where she had obtained gainful employment.

The father filed an appeal seeking a new trial on the issues of custody and access. He sought to introduce fresh evidence to establish that unknown to the trial judge, the mother had entered a common law relationship in Texas and had not made appropriate travelling arrangements for the child to return to Nova Scotia to visit her father. He contended these non disclosures prevented the trial judge from making informed and considered opinions on these issues, thus constituting error and requiring a new trial.

ISSUE: Should fresh evidence be admitted at the appeal level? Did the non disclosures constitute error on the part of the trial judge?

RESULT: The Court dismissed the application to adduce fresh evidence. It concluded the application did not satisfy the fourth ground for admission as set forth by the Supreme Court of Canada in **Palmer v. Palmer**, [1980] 1 S.C.R. 759 at p. 775. The Court also referred to **Thies v. Thies** (1992), 110 N.S.R. (2d) 177 at p. 179, para. 12. The Court dismissed the appeal.

This information sheet does not form part of the Court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 2 pages.