

**NOVA SCOTIA COURT OF APPEAL**

**Citation: Muir v. Sabean, 2003 NSCA 99**

**Date: 20030926**

**Docket: CA 194270**

**Registry: Halifax**

**Between:**

Bobbi-Jo Natasha Muir

Appellant

v.

Gerald Wayne Sabean

Respondent

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**Judges:** Glube, C.J.N.S.; Freeman and Saunders, JJ.A.

**Appeal Heard:** September 18, 2003

**Written Judgment:** September 26, 2003

**Subject:** Custody. Access. Plan to move out of jurisdiction. Deference owed to “custodial” parent. Alleged bias on part of trial judge.

**Summary:** The appellant mother appealed the trial judge’s decision that denied her application to vary an earlier Family Court order and instead allowed the respondent’s cross application awarding him custody of the two children with reasonable access to the mother during the school year and summer vacation. She claimed that the trial judge erred by ignoring, misunderstanding or misapplying the evidence; failing to give proper weight to her proposed plan and her wishes as the “custodial” parent; and because the trial judge’s interventions raised a reasonable apprehension of bias.

**Held:** Appeal dismissed with costs to the respondent. The record confirmed that the trial judge carefully considered all relevant factors before deciding which parenting plan would be in the best interests of the two children. The appellant lived with just one of the children since the other child had resided with a grandmother for more than a year prior to trial. Accordingly, the appellant mother's situation could hardly be compared to that of the custodial parent in **Gordon v. Goertz**, [1996] 2 S.C.R. 27. In any event, the trial judge engaged in a thorough review of the best interests of the two children as the law required. He also made critical credibility findings favouring the respondent and his proposal for looking after the two children. The daughter showed signs of poor socialization and inappropriate behaviour, factors which weighed heavily in the trial judge's finding that brother and sister ought to be reunited and living together with their father. The trial judge's questioning and interventions, on balance, ought not be seen as critical of the appellant's attitude but rather a legitimate attempt to choose which of the competing parenting plans was truly in the children's best interests.

**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.**