

NOVA SCOTIA COURT OF APPEAL

Cite as Hatcher v. Gravelle, 1995 NSCA 3

BETWEEN:

ELIZABETH ALICE HATCHER
Appellant

- and -

TIMOTHY DARREN GRAVELLE
Respondent

)
) Katherine Ross Anderson
) for the Appellant
)

)
) Andrew Pavey
) for the Respondent
)

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) Application Heard:
) June 1, 1995
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) Decision Delivered:
) June 1, 1995
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**BEFORE THE HONOURABLE JUSTICE J. DOANE HALLETT,
IN CHAMBERS**

HALLETT, J.A.: (in Chambers)

This is an application for a stay pending the hearing of an appeal from a decision and order of Justice Hall made following an application to him by the mother of two children to vary their father's access as provided for in a corollary relief judgment issued on October 26, 1993, when the parties were divorced. Justice Hall's order reduced the access rights of the father. The mother's position is that there should be no access and she has appealed.

I have reviewed the grounds of appeal and am aware of the additional grounds to be put forward on an application to amend the notice of appeal. I have reviewed the decision of Justice Hall, the two affidavits filed by the appellant and the two affidavits filed by the respondent.

On the appeal the question whether any access should have been granted will be in issue.

In the hearing before Justice Hall the child Brandy denied her father had sexually abused her as she had previously alleged. Justice Hall accepted her testimony. Justice Hall, however, found that the respondent father's practices in physically disciplining the children were inappropriate. Justice Hall varied the order by eliminating overnight access and by ordering that the access rights of the respondent take place at the residence of the respondent's mother.

In his decision, rendered March 31, 1995, Justice Hall stated at p. 10:

"The order shall provide that Mr. Gravelle undertake appropriate counselling in conjunction with the children with respect to anger management and parenting, possibly through the Atlantic Child Guidance Centre, if that is available. This order will be reviewed after six months."

The order was not taken out until May 10, 1995 and it provided as follows:

" UPON reading the application and all other documents on file herein;

AND UPON hearing Katherine Ross Anderson, and Robert Stuart, solicitors for the applicant, Elizabeth Alice Hatcher;

AND UPON hearing Andrew Pavey, solicitor for the

respondent, Timothy Darren Gravelle;

IT IS ORDERED THAT

Provision 3.01, 3.02(a), (b), (c), (d), of the corollary relief judgment, dated the 26th day of October, 1993 are hereby varied as follows:

The respondent, Timothy Darren Gravelle shall have access to the children of the marriage, Brandy Selene Alice Gravelle, born April 26, 1986 and Timothy Darren Gravelle Junior, born February 28, 1988 as follows:

- a) two Saturdays per month from approximately 9:00 a.m. to 5:00 p.m.; and
- b) access is to be exercised exclusively at the home of the respondent's mother; and
- c) two weeks notice of the proposed dates for access is to be provided to the petitioner in writing; and
- d) the respondent shall arrange to have anger management counselling. In addition, he shall arrange a course of counselling/parenting education with the children, said counselling/parenting education to take place during access visits.

This order is to be reviewed by the Court in six months time."

It is implicit in the order that the father's access to the children will be supervised by their grandmother, Mrs. Gravelle.

In an affidavit dated May 31, 1995 Mr. Gravelle states that he has arranged counselling for anger management. It is a reasonable inference that he has not yet had counselling in this respect. Two months have gone by since Justice Hall gave his decision and his direction that Mr. Gravelle was to take such counselling. I am satisfied that as a judge of this Court while sitting in Chambers, I have jurisdiction to order a suspension of access if it is in the best interests of the children to do so. (See **Beson and Beson v. Director of Child Welfare for Province of Newfoundland and Jones and Jones (intervenants) and Christopher, an infant by his counsel, David C. Day, Q.C.** (1982), 44 N.R. 602.)

Mr. Gravelle has not yet had counselling with respect to anger management. I cannot, in good conscience, considering the best interests of the children and given the findings of Justice Hall that Mr. Gravelle requires counselling in anger management, do anything but exercise the inherent jurisdiction of this Court to protect the best interests of the children.

Accordingly, I will grant an order today suspending access pending the hearing of the appeal on September 25, 1995 subject, however, to the right of Mr. Gravelle to apply to me in Chambers on July 6, 1995 at 11:00 o'clock for an order either lifting the suspension or varying it. The application will have to be supported by affidavit evidence that will satisfy me that he has taken counselling and satisfy me that the risk to the children as identified by Justice Hall has been eliminated.

In the meantime, it is, of course, open to the parties to reach an agreement on access that would accommodate the concerns of the children's mother and the Court. If such an agreement were made and upon review I was satisfied to permit access pending appeal, I would grant an appropriate order.

J.A.