NOVA SCOTIA COURT OF APPEAL
Citation: ***C.B. v. T.M.***, 2013 NSCA 53

Date: 20130501
Docket: CA 390624
Registry: Halifax

Between:

C.B.

Appellant

v.

T.M.

Respondent

Judge(s): Oland, Fichaud, Farrar, JJ.A.

Appeal Heard: March 28, 2013, in Halifax, Nova Scotia

Held: Appeal dismissed with disbursement costs, per reasons for judgment of Oland, J.A.; Fichaud and Farrar, JJ.A. concurring

Counsel: Robert Sutherland, for the appellant
Elizabeth A. Newton, for the respondent

Reasons for judgment:

[1] Both the parties to this appeal want the best for their daughter, C., now seven years old. Sadly, they do not agree whether the father should have access. The respondent father, T.M., has not seen nor communicated with his child for two years.

[2] The appellant mother, C.B., appeals the Order of Judge Jean DeWolfe of the Family Court of Nova Scotia issued March 8, 2012. It followed her decision dated December 15, 2011 (unreported transcript of an oral decision). Among other things, the judge ordered that Mr. M. have access, transitioning from supervised to unsupervised access. The mother appeals.

[3] For the reasons which follow, I would dismiss the appeal.

Background

[4] The parties tried unsuccessfully to maintain a relationship. They were together from January 2005 to March 2005. They reunited in August 2005, a few months before C. was born in November. However, they separated in May 2006.

[5] In 2007, the father applied for access pursuant to the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160. That November, an interim consent order issued provided that he was to have access at certain times upon certain terms.

[6] A full hearing was held the following February. In his decision dated March 7, 2008 (2008 NSSC 62), Ferguson, A.C.J. observed that Mr. M. who is from Zimbabwe, was then 23 years of age and preparing to graduate from university that spring. He was living in Sydney. Ms. B., then 27 years old, had moved from Sydney in December 2007 and was living and working in Truro. She was caring for their daughter, and her son by a previous relationship. The judge found that it was in C.'s best interest that she reside with her mother, whom he described as "clearly" capable. He ordered joint custody, and that the father have access on certain terms.

[7] In September 2010, the parties got back together. However, they separated again on January 29, 2011. The following month, Ms. B. applied to vary the March 2008 order from joint custody to sole custody, and to deny Mr. M. access to C. In March 2011, he filed a request to enforce access which he had been denied

since the couple separated. That same month, she applied unsuccessfully for a peace bond.

[8] Following an interim hearing in April 2011 before Judge DeWolfe, the parties agreed that the father would have supervised access every Saturday commencing April 16, 2011 until the parties returned to court on May 30th. He had two supervised access visits before the mother again denied access. On May 16, 2011, Ms. B. made an emergency application (*ex parte*) to suspend access on the basis that Mr. M. had sexually abused their daughter. Her allegations were supported by Dianna Robichaud-Smith, a registered social worker and counsellor who had been seeing the girl since March 7, 2011. As the parties were already scheduled for a docket appearance before Judge DeWolfe on May 30, 2011, Judge Gabriel suspended access for the intervening weekend.

[9] At the interim hearing on June 9, 2011, Ms. Robichaud-Smith submitted a report describing disturbing behaviours, including aggressive play, nightmares, overeating, and sexualized comments and behaviour, by C. during therapy. Judge DeWolfe heard evidence given by her and the parents. She suspended access until an independent assessment could be done and the final variation hearing completed. The judge subsequently appointed Dr. S. Gerald Hann, a clinical psychologist, to perform that assessment.

[10] The final variation hearing was held over two days in September 2011 and two days in November 2011. Both parents filed affidavits and were cross-examined. Ms. Robichaud-Smith filed counselling reports dated May 26 and August 25, 2011, testified and was cross-examined. Dr. Hann filed his psychological assessement dated August 1, 2011, testified and was cross-examined. The judge also received the evidence of Ms. B.'s pastor, C.'s former babysitter, and a friend who supervised an access visit.

[11] In her oral decision delivered on December 15, 2011, Judge DeWolfe explained why she had credibility concerns with Ms. B.'s evidence. She reviewed and described the evidence concerning C. given by the witnesses. The judge concluded that there were unusual behaviours and statements by the child that were heightened in April and May 2011 following the father's supervised access visits. Some were continuing but the girl had improved significantly.

[12] Dr. Hann, whom the court qualified as an expert in the diagnosis of child abuse, child development and psychology, and child psychopathology and the role of parents in psychopathology of children, warned against "illusory correlations".

He gave possible explanations for C.'s concerning behaviours other than sexual abuse. Ms. Robichaud-Smith thought there was enough content in both specific sexual and non-sexual behaviour that made sexual abuse "pretty conclusive" from her perspective. She had made no investigation regarding other causes as that was not part of her role as a therapist. The judge also heard the views of Ms. Robichaud-Smith and Dr. Hann regarding the positions taken by the other.

[13] In her decision, the judge concluded:

> . . . having considered all of the evidence I find that Ms. [B.] has not proven that access is not in the child's best interest on the balance of probability, basing this on a number of findings in the context of the evidence that I've just reviewed. As I indicated I have concerns with Ms. [B.]'s credibility. I also find that Mr. [M.] has not been physically abusive to the children and I find that it has not been proven that he's actually assaulted [C.]. I find Ms. [B.]'s evidence is not credible in many respects and I have concern that Ms. Robichaud-Smith, as to her part and partially [*sic*] and expertise in making the recommendation for no access. Dr. Hann has indicated other possible explanations, he in his expert opinion does not believe [C.] has been sexually abused. And I find also that Mr. [M.] was a credible witness whose testimony was straightforward and believable.

She later continued:

> In this case I'm satisfied that [C.] enjoyed her access visits, that Mr. [M.] is committed to access, he took the bus for a year and a half, two years to come see her on a regular basis. He's made two applications in Sydney and here to get access to his daughter. He has a lot to offer, he has background culturally and I believe that is important for [C.] as well. He is half of her heritage. . . . I do find that given what has happened in the last 10 months, it is appropriate to make a transitional order and to vary the terms of the March 2008 order accordingly.

The judge ordered supervised access on alternative Saturdays commencing in January 2011 for six months, followed by unsupervised access the first weekend of each month. Later in my decision I will describe other parts of her order which Ms. B. has appealed.

[14] The mother's motion to Court of Appeal Chambers for a stay pending the hearing of her appeal failed. Nevertheless, the appellant has not complied with the December 15, 2011 order granting the father access. At the hearing of her appeal, the panel was advised that contempt proceedings were underway.

Issues

[15] The appellant consolidated the grounds in her Notice of Appeal into three. How the judge dealt with the qualifications and evidence of Dianna Robichaud-Smith figures heavily in all grounds of appeal:

> (1) First, the learned trial judge made a material error or an error in law in refusing at trial to qualify Dianna Robichaud-Smith as an expert in diagnosing sexual abuse in children when she has already qualified her as such in the interim hearing. . . .
>
> (2) Second, the learned trial judge made an error in law (exceeding her jurisdiction) by creating a reasonable apprehension of bias. This was done primarily through her words and conduct which involved (a) a preconception that this case was merely a parental alienation case where the Appellant was exaggerating, (b) a refusal to qualify Dianna Robichaud-Smith as an expert in diagnosing sexual abuse in children when she has already qualified her as such in the interim hearing and (c) a delegation of judicial authority to Dr. Gerald Hand [*sic*] to determine what witnesses should be in the courtroom when testimony was given and to assess that testimony. . . .
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> (3) Third, the learned trial judge seriously misapprehended the evidence (a) in finding that the Respondent was not a risk to his daughter, (b) in neglecting to take into account the evidence of Dianna Robichaud-Smith with respect to disclosures made by the child [C.], (c) in refusing to order that the child be permitted to continue counselling with the counsellor with whom she had a well established relationship and in giving the Respondent a veto over what counsellor [C.] could see which thereby gave the Respondent a veto over any further application to vary the Appellant might make on a material change in circumstance because such further application would require a counsellor to assess [C.] before it could be made and (d) in ordering that the Appellant not be permitted to apply to vary the order until completion of a psychological assessment on her where the assessor would have to be provided with a copy of Dr. Gerald Hand's [*sic*] report . . . .

Standard of Review

[16] The disparate grounds of appeal attract different standards of review. Here I will set out the standard for custody and access matters. Those pertaining to particular grounds of appeal will be addressed later with my analysis of those submissions.

[17] In *C.H.D. v. C.H.*, [2007] N.S.J. No. 2 (C.A.) (Q.L.), Hamilton J.A., for the court emphasized:

> **14** This Court has a narrow scope of review in custody cases such as this. It is not for us to retry the case. We may only intervene in the decision of the judge if there is material error, a serious misapprehension of the evidence or an error in law, **Hickey v.**

Hickey, [1999] 2 S.C.R. 518, paras. 10 and 11 and **Van de Perre v. Edwards**, [2001] 2 S.C.R. 1014:

> [11] In reviewing the decisions of trial judges in all cases, including family law cases involving custody, it is important that the appellate court remind itself of the narrow scope of appellate review. L'Heureux-Dubé J. stated in *Hickey v. Hickey*, [1999] 2 S.C.R. 518, at paras. 10 and 12:
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> > [Trial judges] must balance the objectives and factors set out in the *Divorce Act* or in provincial support statutes with an appreciation of the particular facts of the case. It is a difficult but important determination, which is critical to the lives of the parties and to their children. Because of its fact-based and discretionary nature, trial judges must be given considerable deference by appellate courts when such decisions are reviewed.
> >
> > ...
> >
> > There are strong reasons for the significant deference that must be given to trial judges in relation to support orders. This standard of appellate review recognizes that the discretion involved in making a support order is best exercised by the judge who has heard the parties directly. It avoids giving parties an incentive to appeal judgments and incur added expenses in the hope that the appeal court will have a different appreciation of the relevant factors and evidence. This approach promotes finality in family law litigation and recognizes the importance of the appreciation of the facts by the trial judge. **Though an appeal court must intervene when there is a material error, a serious misapprehension of the evidence, or an error in law, it is not entitled to overturn a support order simply because it would have made a different decision or balanced the factors differently**. [Emphasis added] [Bolding is court's]
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> [12] *Hickey* involved the appellate review of support orders, but the principles related to appellate review discussed therein are equally applicable to orders concerning child custody.

The principles related to appellate review of custody orders are equally applicable to orders concerning child access.

Analysis

Qualification of Ms. Robichaud-Smith

[18] As mentioned earlier, the appellant's *ex parte* motion which led to the suspension of access pending a court ordered assessment and the final hearing, relied on the evidence of Ms. Robichaud-Smith. On March 7, 2011 C. had started counselling sessions with her. Ms. Robichaud-Smith testified that the girl showed

disturbing behaviours from the outset. However, she saw a spike or increase in them during their sessions on April 18, 2011 (two days after the first supervised visit) and on April 25 and May 2, 2011 (before and after the second supervised visit on April 30, 2011.) According to the therapist, the girl was exhibiting symptoms of having experienced trauma consistent with physical and sexual abuse. There was no physical evidence of either form of abuse nor had C. disclosed any to her. Ms. Robichaud-Smith based her conclusions on psychosocial indicators of having been abused, mainly sexualized behaviors and other odd behaviours. While she could not say "100 percent" that her father had sexually abused his daughter, she believed that something happened between them. Her view was that to prevent deterioration of C.'s functioning, there should be no access whatsoever. She thought that over time, C. could make that decision for herself.

[19] According to the appellant, the evidence of Ms. Robichaud-Smith was of critical importance. In her factum, she stated:

> 22. The factual and legal significance of the evidence in this case turns on the nature of the testimony of Dianna Robichaud-Smith and weight that attaches to it.

At the hearing of the appeal, counsel for the mother stated that "everything" turns on how the judge qualified or refused to qualify the therapist, and how she dealt with her evidence. The appellant argues that where the judge had already qualified Ms. Robichaud-Smith as an expert in diagnosing sexual abuse in children at the interim hearing, she made a material error or an error in law in refusing to do so at the final hearing.

[20] It is necessary to take a close look at what happened at the interim and final hearings regarding the qualification of Ms. Robichaud-Smith. At the interim hearing on June 9, 2011, she testified that she had an undergraduate degree in psychology, a master's degree in social work, and a certificate in criminology. She also described her interest in mental health and child development and pathology and her work with children who perpetrated aggression, sexual aggression and children who were victimized. She had been qualified to testify in court previously with Children's Aid cases, custody, access and parental capacities.

[21] After Ms. Robichaud-Smith gave this evidence, the mother's counsel moved that:

> Ms. Robichaud-Smith should be qualified as an expert in the area of clinical social work with an expertise in assessing children and assessing sexual either victimization or aggression in children.

The father's counsel consented, and the judge so qualified Ms. Robichaud-Smith.

[22] At the interim hearing, Ms. Robichaud-Smith was asked whether she could offer a professional opinion on whether or not C. had been sexually abused. She replied that she knew that the girl had been victimized, and that there was definite trauma. She described various behaviours that were concerning, including "very sexualized behaviour for a little girl who's five who normally knows what the boundaries are and so, right."

[23] At the final hearing several months later, Ms. Robichaud-Smith described herself as a clinical social worker. Her *curriculum vitae* was entered as an exhibit and she was examined on her qualifications. She explained that she was trained in mental health treatment and, as a family mental health worker, she had worked with a number of children who had experienced child abuse. She had been doing mental health assessments of children, adolescents, and adults for a number of years and was comfortable diagnosing mental health disorders. She had also done child and family needs assessments, potential capacity assessments, family mediation and counselling, and individual treatment .

[24] The mother's counsel moved that Ms. Robichaud-Smith be qualified as:

> … an expert in the area of assessing and diagnosing mental health disorders in both children and adults, and that she does have some special expertise with respect to child sexual abuse, …

Discussion ensued as to the extent of her expertise. The judge observed that Ms. Robichaud-Smith was capable of "treating" victims of sexual abuse, not "diagnosing" them as victims of sexual abuse. The father's counsel refused to consent to her being qualified as an "expert in diagnosing sexual abuse" .

[25] At the hearing on September 15, 2011 the judge qualified Ms. Robichaud-Smith as a "registered social worker… qualified as an expert in assessing, diagnosing and treating mental health disorders in children and adults". During the second day of her testimony on November 21, 2011 the judge qualified her as an "[e]xpert in assessing, diagnosing and treatment of mental health disorders in adults and children with additional special expertise in treating victims of sexual abuse". As there had been little discussion about the nature of Ms. Robichaud-Smith's qualifications at the interim hearing which followed on the heels of the

mother's *ex parte* motion to deny access, the judge did not consider herself bound by any prior ruling as to her qualifications.

[26] According to the mother, the judge had qualified Ms. Robichaud-Smith as an expert in diagnosing sexual abuse at the interim hearing. She submits that at the final hearing, the judge had the same witness with the same qualifications, but reversed herself regarding that person's expertise. This "stunning reversal", says the appellant, was an error warranting this court's intervention. With respect, I cannot accept this argument.

[27] First, a careful examination of the record shows that the judge did not qualify Ms. Robichaud-Smith as an expert in diagnosing sexual abuse at the interim hearing. What the judge did then was simply qualify her as a clinical social worker with expertise in "assessing children and assessing sexual abuse either victimization or aggression." Quite simply, the wording of the qualification does not support the appellant's argument that the judge had accepted her as an expert in diagnosing sexual abuse. There was no mention of diagnosis in the wording of the qualification, and there was very little in the therapist's evidence about having worked with children who had been victims of abuse that would have supported any claim of such diagnostic expertise.

[28] The judge's qualification of Ms. Robichaud-Smith at the final hearing, after she was examined on her training and employment history, was appropriate. The witness herself agreed that she did not have a special expertise in regard to sexual abuse; rather, "[i]t's part of the milieu" or a part of her general practice. The judge qualified her as an expert on, among other things, diagnosing mental health disorders in children with additional expertise in treating victims of sexual abuse.

[29] I do not accept that the judge reversed herself at the final hearing. Even if she had, I am not of the view that she would have erred. After all, the judge had information regarding this witness that had not been available to her at the interim hearing. That hearing was held quickly after the mother's emergency *ex parte* motion to deny access, which included serious allegations of sexual abuse. The interim hearing considered the narrow question of whether access should be suspended pending the final hearing, and the therapist was the only witness other than the parties. There was no full examination of Ms. Robichaud-Smith's professional qualifications and experience at that time. In such circumstances, a judge would not be bound by an earlier ruling with regard to the expertise of a witness.

Reasonable Apprehension of Bias

[30] The appellant submits that the judge's words and conduct created a reasonable apprehension of bias. This ground of appeal contained several aspects. I will first set out the test and the standard of review, before dealing with her arguments.

[31] If a reasonable apprehension of bias arises from a judge's words or conduct, then the judge has exceeded his or her jurisdiction and erred in law: *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484 at ¶ 99. In *C.H.D.* at ¶ 25, Hamilton J.A., for this court set out the test for reasonable apprehension of bias:

> **25** The test for a reasonable apprehension of bias is set out in **R. v. R.D.S.**, [1997] 3 S.C.R. 484:
>
> > [31] The test for reasonable apprehension of bias is that set out by de Grandpré J. in Committee for Justice and Liberty v. National Energy Board, [1978] 1 S.C.R. 369. Though he wrote dissenting reasons, de Grandpré J.'s articulation of the test for bias was adopted by the majority of the Court, and has been consistently endorsed by this Court in the intervening two decades: see, for example, *Valente v. The Queen*, [1985] 2 S.C.R. 673; *R. v. Lippé*, [1991] 2 S.C.R. 114; *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267. De Grandpré J. stated, at pp. 394-95:
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> > > ... the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information ... [T]hat test is "what would an informed person, viewing the matter realistically and practically and having thought the matter through conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."
> >
> > The grounds for this apprehension must, however, be substantial and I ... refus[e] to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience". [Emphasis added]

[32] In *S. (R.D.)* at ¶ 35, the Supreme Court of Canada observed that according to its Commentaries on Judicial Conduct (1991), the Canadian Judicial Council stated at p. 12:

> True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind.

[33] According to *S. (R.D.)*, to successfully assert that a judge might be partial, one must demonstrate that the beliefs, opinions, or biases held by the judge prevent him or her from setting aside any preconceptions and reaching a decision based only on the evidence:

> 113 Regardless of the precise words used to describe the test, the object of the different formulations is to emphasize that the threshold for a finding of real or perceived bias is high. It is a finding that must be carefully considered since it calls into question an element of judicial integrity. Indeed an allegation of reasonable apprehension of bias calls into question not simply the personal integrity of the judge, but the integrity of the entire administration of justice. See *Stark, supra*, at paras. 19-20. Where reasonable grounds to make such an allegation arise, counsel must be free to fearlessly raise such allegations. Yet, this is a serious step that should not be undertaken lightly. [Emphasis added]

[34] I now turn to the appellant's arguments on reasonable apprehension of bias.

(a) Refusal to Qualify Ms. Robichaud-Smith

The appellant submits that the judge's refusal to qualify Ms. Robichaud-Smith as an expert in diagnosing sexual abuse when she had done so previously is strong evidence of reasonable apprehension of bias. I have explained that there is no basis for this argument as such a qualification had never been made at the interim hearing. Accordingly, this ground fails.

(b) Preconception

[35] According to the appellant, the record suggests a prejudgment of the case as "just" a parental alienation case. She says that on several occasions when the parties attended before the judge prior to the final hearing, the judge commented on the possibility that parental alienation was an underlying reason for the difficulties with access. The mother's argument is based on the following:

(a) At the first appearance before her following the filing of her *ex parte* motion to deny access and Judge Gabriel's suspension of access for a week, the judge stated: "I'm very concerned about saying no access when nothing is proven" and "[W]e don't know what, you know, what influence if any Ms. B. has had on her opinion. [Dianna Robichaud-Smith's assessment]"

(b) On August 8, 2011 between the interim and final hearings, the judge stated: "I continue to have concerns as I've had from the beginning that this child has not been seeing her father" and that she had concerns about her behaviours

and did not yet have Dr. Hann's report that would go a "fair way in addressing some of those issues." The appellant says that "those issues" refers to parental alienation.

[36] The two impugned statements in (a) above are single sentences or parts of sentences lifted out of context. As to the first, the judge spoke of the desirability of having a full assessment and psychological testing for the final hearing, the possibility of the father and Ms. Robichaud-Smith talking, and what might be possible for access with safeguards. She continued:

> … I'm very concerned about saying no access when nothing is proven and, you know, you've got, but we've got to look out for the best of the child and I mean that's sort of falling on your [*sic*] to this point Ms. Robichaud-Smith, right, but we'll have to have a hearing if that's what it takes but I would like for you to talk to Mr. [M.] and not automatically there's not going to be access but maybe how we could structure something that wouldn't be harmful. … [Emphasis added]

It is apparent from the entire quotation that the judge properly kept the best interests of the child as her priority. Nothing in this passage indicates that she had already made up her mind about parental alienation on the part of the mother, was trying to force access, was resistant to a hearing, or was not open to full argument then.

[37] As to the second sentence, what the judge said in encouraging the parties to discuss access was this:

> And so what I'd like for you [Counsel for the Respondent], I mean, you certainly should have a discussion with Ms. Robichaud-Smith as well and make sure she's got all the information and, you know, but I mean she's not being asked to assess the situation, she's just reporting on what she's seeing at this point in time and we don't know what, you know, what influence if any Ms. [B.] has had on her opinion. Although a lot of what I'm concerned about is what she observed [Emphasis added]

She made it clear in the last sentence that she was not discounting what Ms. Robichaud-Smith was reporting because of any influence by the mother on the therapist. Rather, what Ms. Robichaud-Smith herself had observed was concerning to the judge. When the entire passage is reviewed, it does not sustain the argument of reasonable apprehension of bias.

[38] As to these and the other impugned statements as a whole, what I see is a judge who was conscious that the father had had to apply for access more than once, the mother had denied access and any communications earlier and then, in

seeking court approval for continued denial of access, had made serious allegations of sexual abuse against the father, and a little girl had not seen her father for some months, with the final hearing not possible for some months yet. Her concern that parental alienation may be in play was not unreasonable in the circumstances in my opinion. Nor does the fact that it may have crossed her mind, on the record before me, give rise to a reasonable apprehension of bias.

(c) Delegation of Judicial Authority

[39] After Dr. Hann was qualified, the mother's counsel asked if Ms. Robichaud-Smith could remain in the courtroom to hear his testimony so she could testify in response. The father's counsel did not object. The judge then asked if the psychologist had any view and, after hearing from him, excluded Ms. Robichaud-Smith from the courtroom while Dr. Hann was testifying.

[40] The mother argues that in seeking the psychologist's comments and excluding Ms. Robichaud-Smith during Dr. Hann's testimony for the father, the judge made a "strange delegation of judicial authority" and showed an apprehension of bias. However, her characterization of Dr. Hann as a witness testifying for and, as a result, favouring the other parent is mistaken. He was a court-appointed, independent assessor. The fact that the judge made an inquiry of this impartial expert's views on having another expert in the courtroom, is not sufficient in itself to support an allegation of reasonable apprehension of bias.

[41] Further, a judge has the authority to exclude any witness. *Civil Procedure Rule 51.09(1)* reads:

> **51.09** (1) A presiding judge may order that a witness who is not a party, a designated manager of a party, or an officer of a party be excluded from the courtroom until called, and the judge may extend the exclusion after the witness has testified if there is a likelihood the witness will be recalled.

[42] I would dismiss the ground of appeal based on reasonable apprehension of bias.

Misapprehension of the Evidence

[43] The appellant argues that the judge misapprehended the evidence in several ways.

(a) Whether the father was a risk

[44] According to the appellant, in finding that the respondent was not a risk to his daughter and in neglecting to take into account the evidence of Ms. Robichaud-Smith regarding C., the judge seriously misapprehended the evidence. The mother says that the finding as to risk resulted from the judge's refusal to qualify Ms. Robichaud-Smith as an expert in diagnosing sexual abuse which led to the judge's exclusion of her evidence linking C.'s unusual behaviours with the supervised access visits with her father.

[45] This argument has no merit. It is apparent from her decision that the judge carefully considered all the evidence at trial. Her conclusions were based on her factual finding that the father's evidence was more credible than the mother's and her preference for the evidence of Dr. Hann over that of Ms. Robichaud-Smith. Findings of credibility, findings of fact and inferences based on findings of fact are the purview of trial judges, and are accorded great deference by this court.

(b) Failure to take into account the evidence of Dianna Robichaud-Smith

[46] This argument is also without merit. There was no misapprehension by the judge of this witness' evidence. It is apparent from her decision that the judge understood the therapist's concerns and reasons for them. However, she decided to give more weight to the evidence of Dr. Hann. Again, this is the responsibility of the trial judge and was not unreasonable.

(c) Future counselling for C

(d) Future application to vary

[47] The judge's March 8, 2012 order included these provisions:

> 7. The Applicant [C.B.] and the Respondent [T.M.] shall agree upon the appropriate person to provide counselling for [C.].
>
> 14. Ms. [B.] shall, prior to making any application to vary, provide a psychological assessment on [C.]. It is also expected that Ms. [B.] would be assessed by a psychologist or psychiatrist. A copy of Dr. Hann's report will be provided to the assessor.

[48] The mother characterizes the provision regarding C.'s future counselling as "particularly troubling". She submits that Ms. Robichaud-Smith had been the child's counsellor since March 2011, continued treatment by her was clearly in the best interests of the child, and there was no evidence to the contrary. She argues that giving the father "a veto" was contrary to those interests. With respect, I see

no misapprehension of the evidence. The judge was aware that although all the father's visits had been supervised and there was no evidence of him abusing his child, Ms. Robichaud-Smith recommended no access until C. was old enough to ask to see him. The judge's decision to ensure that the respondent could participate equally in selecting a person to counsel his daughter, including during her transition back to access with him, was reasonable and based on her findings of fact.

[49] The appellant then contends that there exists no factual basis for the provision requiring an assessment of her daughter as part of any future application she should make to vary the terms of access, an assessment of the appellant herself and the provision of Dr. Hann's report to the assessor. She says these requirements show that the judge is attempting to affect any future application by her to vary, again giving rise to a reasonable apprehension of bias on the part of the judge. She adds that the preparation of such assessments could unreasonably delay any such application.

[50] In her decision, the judge recounted the several unilateral denials of access by the mother for reasons which changed over time. In my view, this provision also flows from factual findings made by the judge. The appellant has not shown any misapprehension of the evidence.

[51] I would dismiss this ground of appeal.

Disposition

[52] The appellant has not demonstrated any material error, reasonable apprehension of bias, serious misapprehension of the evidence, or error in law that would warrant appellate intervention. I would dismiss the appeal. Normally, substantial costs would be ordered. But, in the particular circumstances of this case, that might cause some hardship to the child whose interests should prevail. Accordingly, I would award the respondent disbursements only, quantified at $500.00.

Oland, J.A.

Concurred in: Fichaud, J.A.

Farrar, J.A.