NOVA SCOTIA COURT OF APPEAL
Citation: *Stanton v. Inglis*, 2022 NSCA 60

Date: 20221018
Docket: CA 510624
Registry: Halifax

Between:

Gale Stanton

Appellant

v.

Kaitlin (Stanton) Inglis and
Reginald Jordan Leavitt

Respondents

Judge:	The Honourable Justice Carole A. Beaton
Appeal Heard:	October 11, 2022, in Halifax, Nova Scotia
Legislation:	*Parenting and Support Act*, R.S.N.S. 1989, c. 160, s. 18(1)
Cases Considered:	*Hurley* v. *Hurley*, 2012 NSCA 32; *Nova Scotia (Community Services)* v. *T.G.*, 2012 NSCA 43; *R.* v. *Potter*, 2022 NSCA 9; *Ward* v. *Murphy*, 2022 NSCA 20; *A.M.* v. *Children's Aid Society of Cape Breton-Victoria*, 2005 NSCA 58; *D.A.M.* v. *C.J.B.*, 2017 NSCA 91; *Boone* v. *Luedee*, 2018 NSCA 55; *Reid* v. *Faubert*, 2019 NSCA 42; *L.C.* v. *K.T.*, 2018 NSCA 92; *Titus* v. *Kynock*, 2022 NSCA 35
Subject:	Family – Application for leave to apply for custody; Family – custody of children; Family – grandparents' leave to seek custody
Summary:	The appellant grandmother sought to overturn the judge's decision to refuse her leave to apply for custody of her grandchildren.
Issues:	Did the judge demonstrate bias?

Result: The record did not support, and the appellant could not meet the heavy onus to establish any misapprehension of bias on the part of the judge. The appeal was dismissed with costs of $500 in favor of each of the respondents, for a total of $1,000 inclusive of disbursements.

NOVA SCOTIA COURT OF APPEAL
Citation: *Stanton v. Inglis*, 2022 NSCA 60

Date: 20221018
Docket: CA 510624
Registry: Halifax

Between:

Gale Stanton

Appellant

v.

Kaitlin (Stanton) Inglis and
Reginald Jordan Leavitt

Respondents

Judges:	Bryson, Fichaud and Beaton, JJ.A.
Appeal Heard:	October 11, 2022, in Halifax, Nova Scotia
Written Release	October 18, 2022
Held:	Appeal dismissed with costs, per reasons for judgment of Beaton, J.A.; Bryson and Fichaud, JJ.A. concurring
Counsel:	Gale Stanton, self-represented Rachel Taylor, for the respondent Inglis David Baker, for the respondent Leavitt

Reasons for judgment:

[1] The appellant Gale Stanton appeals from a decision of Justice Jean Dewolfe of the Nova Scotia Supreme Court – Family Division ("the judge"). The judge denied Ms. Stanton's application seeking leave to apply for primary parenting of her three grandchildren. The respondents are the parents of those children. The children reside with Ms. Inglis and have parenting time with Mr. Leavitt.

[2] The judge had before her the evidence of all three parties and the submissions of counsel. In her consideration of s.18(1) of the *Parenting and Support Act*, RSNS 1989, c.160, she exercised her discretion to determine it was not in the best interests of the children to permit Ms. Stanton leave. The judge concluded that based on the history of the "divisive" dynamics among the parties, to permit Ms. Stanton leave would ultimately have a negative and "harmful" impact upon the children.

[3] Ms. Stanton asks us to intervene, and to not only grant her the leave she was refused in the court below, but also to grant her primary care of the children, with specific parenting time for Ms. Inglis and Mr. Leavitt. It is not within our jurisdiction on this appeal to grant the primary care she requests.

[4] Ms. Stanton's lone ground of appeal asserts a reasonable apprehension of bias on the part of the judge, constituting a miscarriage of justice. As set out in *Hurley* v. *Hurley*, 2012 NSCA 32 at para. 13, the burden rests with Ms. Stanton to persuade this court:

> …whether a reasonable person would think the trial judge's conduct demonstrated a pre-judgment of the issues and/or a bias against one of the parties such that the trial was unfair. […]

(See also *Nova Scotia (Community Services)* v. *T.G.*, 2012 NSCA 43 at para. 178-79; *R.* v. *Potter*, 2020 NSCA 9 at para. 741-42; *Ward* v. *Murphy*, 2022 NSCA 20 at para. 88).

[5] The entirety of Ms. Stanton's argument, both written and oral, seeks to now re-litigate the application that was before the judge. Family law litigants have been reminded repeatedly in decisions of this and other appellate courts that such is not our function. As Cromwell, J.A (as he then was) stated almost two decades ago in *A.M.* v. *Children's Aid Society of Cape Breton-Victoria*, 2005 NSCA 58 at para. 26, the trial judge is well positioned to appreciate "the nuances of the

evidence" and to weigh "the many dimensions of the relevant statutory considerations". As a matter of law, this court must apply a high standard of deference to judges' decisions in custody matters, absent material error or a misapprehension of evidence. (See *D.A.M.* v. *C.J.B.*, 2017 NSCA 91 at para. 28; *Boone* v. *Luedee*, 2018 NSCA 55 at para. 25; *L.C.* v. *K.T.*, 2018 NSCA 92 at para. 16; *Reid* v. *Faubert*, 2019 NSCA 42 at para. 16; *Titus* v. *Kynock*, 2022 NSCA 35 at para. 10).

[6] There is no basis upon which to second-guess, much less interfere with the judge's decision. Ms. Stanton has not discharged her burden. The record before us does not demonstrate any error of law or misapprehension of evidence, nor can it support a conclusion of judicial bias.

[7] The appeal is dismissed. Ms. Stanton shall pay costs of $500 to each of the respondents, totalling $1,000 inclusive of disbursements.

Beaton, J.A.

Concurred in:

Bryson, J.A.

Fichaud, J.A.