

NOVA SCOTIA COURT OF APPEAL

Freeman, Hart and Jones, JJ.A.

Cite as: McCarthy v. Bedford, 1995 NSCA 210

BETWEEN:

DAVID PAUL McCARTHY

Appellant

- and -

**DIANNE MARGARET BEDFORD
and ROBERT WILLIAM BEDFORD**

Respondents

) Lonny J. Queripel

) for the Appellant

) Howard E. Crosby, Q.C. and
) Richard A. Murtha

) for the Respondents

) Appeal Heard:
) November 21, 1995

) Judgment Delivered:
) November 21, 1995

THE COURT: Appeal dismissed, per oral reasons for judgment of
Freeman, J.A., Hart and Jones, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by:

FREEMAN, J.A.:

This appeal is from a judgment granting the custody of three young children, whose mother was murdered, to a maternal aunt and uncle.

The appellant, father of the children, is charged with murder in his wife's death. He is free on bail, awaiting trial in 1996. He is presumed innocent, but the charges against him make him liable, on conviction, to life imprisonment — a factor to be considered in assessing his role in arrangements for the welfare of the children.

For about two years prior to her death, at her home in Port Coquitlam, British Columbia, on July 3, 1994, the mother, Margaret Rose McCarthy, had been separated from the appellant. She had custody and he had access, and paid support.

Following her death, Janet Noseworthy, of Corner Brook, Newfoundland, one of Mrs. McCarthy's numerous brothers and sisters, went to British Columbia and was granted interim custody to bring the children back to Newfoundland with her, although she was not necessarily seeking long-term custody. Competing interests surfaced in a family meeting on her return. The upshot, after a period of disagreement among family members, was an order of Justice Roberts of the Supreme Court of Newfoundland. Justice Roberts transferred custody, under the order of the Supreme Court of British Columbia, to the respondents, Dianne Margaret Bedford and Robert William Bedford, and jurisdiction to the courts of Nova Scotia. Mrs. Noseworthy and the other siblings are no longer involved in the proceedings.

The Newfoundland order called for a hearing in Nova Scotia on January 10, 1995; the order was adopted and continued to May 1, 1995. The hearing was adjourned to May 24, 1995, to permit notice to the appellant. He was represented by counsel when Justice Goodfellow dealt with the matter on that date as follows:

This is an application with inherent jurisdiction of the Court to deal with the issue of custody of the children. The application was set down

and adjourned to provide adequate notice to the father of the children, and the father now seeks an additional adjournment. The application for adjournment is denied.

It seems to me there have been substantial proceedings already, including proceedings in which he was involved in British Columbia. That in all the circumstances, with the priority being the welfare of the children, the Court should exercise its discretion in finalizing the matter to the stability required by the children. An order will go forward granting custody to the applicants of the children. The issue of maintenance will be reserved without day. . . .

The grounds of appeal allege the chambers judge erred in refusing the adjournment to give the appellant an opportunity to bring evidence, in granting the custody order on the evidence before him, and in not providing an opportunity to cross-examine deponents on affidavits filed on behalf of the Bedfords.

While Justice Goodfellow referred to *parens patriae* jurisdiction, he was also enforcing and giving effect to custody orders made in British Columbia and Newfoundland, which he was required to do under s. 3 of the **Reciprocal Enforcement of Custody Orders Act**, R.S.N.S. 1989, c. 387.

The appellant had been heard in the matter in British Columbia and he had been at least generally aware of the custody proceedings in Newfoundland and Nova Scotia prior to receiving specific notice. An adjournment had been granted to give him specific notice of the hearing date. In British Columbia and Newfoundland, voluminous affidavit evidence was placed before the court and that was where the deponents should have been cross-examined.

It is noteworthy that nowhere does the appellant suggest that the Bedford home is not a suitable one for the children, that they are at the slightest risk of harm, or that the rights sought by the appellant would promote their best interests.

Justice Goodfellow committed no error in giving the best interests of the children, and in particular their need for stability, priority over the father's efforts to exercise the procedural rights he claimed.

The appeal is dismissed with costs on the appeal which are fixed at \$ 1,500.

J.A.

Concurred in:

Hart, J.A.

Jones, J.A.

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REASONS FOR
JUDGMENT BY:
FREEMAN, J.A.
(orally)