

NOVA SCOTIA COURT OF APPEAL
Citation: *MacLearn v. Thomson*, 2004 NSCA 34

Date: 20040220
Docket: CA 205971
Registry: Halifax

Between:

Carol J. MacLearn

Appellant

v.

Angela Thomson and Howard Albert O'Brien

Respondents

Judge: Hamilton, J.A.

Appeal Heard: February 4, 2004

Subject: *Family law, Custody and Maintenance Act, Custody dispute between father and maternal grandmother*

Summary: Parents of a four year old child were unmarried. Mother had sole custody and father had access pursuant to a consent order. Father diligent in exercising access on a regular basis. With consent of mother, but unknown to father, child began living with maternal grandmother full time. Father applied for variation of custody to give him custody of the child. Grandmother filed counter application seeking custody for herself, with the approval of the mother. Trial judge awarded custody to the father.

Issue: Did the trial judge err by applying the wrong test, namely did he consider the rights of the father instead of the best interests of the child? If he considered the right test, did he err in applying it to the evidence before him?

Result: Appeal dismissed. Trial judge considered the best interests of the child test and there was evidence before him to support his findings of fact and credibility.

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 11 pages.