

SUPREME COURT OF NOVA SCOTIA
Citation: *Jones v. Cavanaugh*, 2015 NSSC 139

Date: 2015-05-07
Docket: Tru No. 1201-66032
Registry: Truro

Between:

Leah May Jones

Applicant

v.

Marc Corey Cavanaugh

Respondent

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Judge: The Honourable Justice Peter Rosinski

Heard: March 11, April 28 and April 30, 2015 in Truro, Nova Scotia

Oral Decision: April 30, 2015

Subject: Application for Variation of Custody and Access – Section 17 of the *Divorce Act*

Summary: After a trial in May 2012, and oral decision by the Court in June 2012, a Corollary Relief Judgment ultimately issued April 4, 2013, which granted joint custody of their 8.5 year old child to the parties with primary custody to Mr. Cavanaugh, who was living in the Truro area. Ms. Jones was then living in Halifax. On July 24, 2013, Ms. Jones filed her application and sought custody of the child. She had remained living in Halifax and was living with a new partner since December 2012. Mr. Cavanaugh had also been living with his new partner in Truro since the spring of 2013. The child was now 10.5 years old and had some difficulties adjusting to the circumstances in Truro, and the effects of the protracted litigation herein.

Issues: (1) Has the applicant demonstrated there has been a material

change in circumstances as envisaged by the court in *Gordon v. Goertz*, [1996] 2 SCR 27?

(2) If so, what adjustments if any should be made to the existing custody/access order?

Result:

There had been a material change in circumstances such that the “material change places the original order in question”. The evidence revealed that Ms. Jones’ circumstances and ability to parent the child are certainly comparable with that of Mr. Cavanaugh. However, because the parents live sufficiently far from each other, a shared custody arrangement would not be in the best interests of the child. Moreover, given the condition, needs means, or circumstances of the child, on balance the court concluded that it is more in the child’s best interest to remain in Truro with his father, than to accede to his mother’s proposal that she be the primary custodial parent.

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