

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Skinner v. Cullen, 2009 NSSC 200

**Date:** 20090713

**Docket:** SFHMCA-051510

**Registry:** Halifax

**Between:**

Daphne Skinner

Applicant

v.

Candis Cullen, Nathaniel Welsh and Michael Skinner

Respondent

**Judge:** The Honourable Justice Deborah Gass

**Heard:** June 25, 2009, in Halifax, Nova Scotia

**Counsel:** Daphne Skinner, self-represented  
Michael Skinner, self-represented

**By the Court:**

[1] This is an application for child support for Nashawn Ernest Cullen, born March 2, 2006. He is three years old and is in the custody of his paternal grandmother. She is married to, but separated from, the respondent, Michael Skinner. The respondent is not the biological grandfather of the child. The applicant and respondent had been together for about eight years when they took over responsibility for the care of Nashawn due to protection concerns for him, as his parents were not able to care for him, meet his needs and protect him from harm. They went through the process of becoming Nashawn's guardians to ensure that he did not go into the foster care system with strangers. They both engaged in the day to day care of the child and a strong emotional bond exists between Nashawn and both grandparents.

[2] Eighteen months after Nashawn came into their care, the applicant and the respondent separated. The applicant applied for child maintenance from the respondent.

[3] Both the applicant and the respondent are employed. The respondent's income was \$32,550.00 in 2008.

[4] The biological mother of the child is, to the best of the applicant's knowledge, employed with Tim Horton's and the biological father is unemployed and probably in jail. To her knowledge, there are a number of warrants for his arrest here in Nova Scotia and in Western Canada.

[5] The respondent's position is that of step grandfather who only lived with the child for 18 months and this should not be enough to result in a legal obligation to financially support this child through all his years of dependency. The applicant argues that she went through great effort along with him to gain custody of the child and he fulfilled a parental role alongside her throughout the 18 months he was with them both and in their care.

[6] The *Maintenance and Custody Act* R.S.N.S. 1989, c. 160 as amended is the legislative authority for this application. S. 8 and 9 provide that:

**Duty of parent or guardian**

**8** Every one

- (a) who is a parent of a child that is under the age of majority; or
- (b) who is a guardian of a child that is under the age of majority where the child is a member of the guardian's household,

is under a legal duty to provide reasonable needs for the child except where there is lawful excuse for not providing the same.

**Maintenance order**

**9** Upon application, a court may make an order, including an interim order, requiring a parent or guardian to pay maintenance for a dependent child.

[7] S. 2 defines guardian as including "...a head of a family and any other person who has in law or in fact the custody or care of a child".

[8] Although the decision of the Nova Scotia Court of Appeal in *Reed v. Smith* (1988), 86 N.S.R. (2d) 72 ruled that the support obligations under the provincial statute precluded step parents, it is significant to note that since then, s. 5 of the Provincial Child Maintenance Guidelines made under s. 55 of the *Maintenance and Custody Act* contemplate potential obligations for a person in place of a parent.

[9] The case law, however, tends to generally support the notion that a step parent is precluded from obligation as he/she is no longer in the household of the parent and the child is no longer in the care or custody of the step parent.

[10] In *Winford v. Dorton*, 2002 N.S.S.F. 14, Cambell, J. upheld the conclusion that the respondent was not obligated under the *Maintenance and Custody Act* to pay support because he was not a parent or guardian. However, in that case the parties were not married to each other either.

[11] This case, however, differs markedly from the usual step parent/in loco parentis matters which come before the court. Usually the "step parent" marries, or begins living with the custodial parent, after the role of custodial parent has been established, with or without a court order. In other words, the step parent comes in to a pre-existing relationship and then assumes certain "parental" roles as a result.

[12] Here, both the applicant and the respondent together applied for custody of Nashawn. Both the applicant and the respondent were granted custody. At no time did Michael Skinner withdraw his application for custody. Both grandparents were granted custody upon termination of the *Children and Family Services Act* proceedings.

[13] Following the parties' subsequent separation, the applicant applied for and was granted custody with the respondent being granted reasonable access pursuant to s. 37 of the *Maintenance and Custody Act*. The issue of child support was adjourned.

[14] Thus, even though the respondent Michael Skinner is a grandparent, he is of the same standing as a parent or guardian in that he stood with the child's grandmother, as one of two persons with legal custody. He did in law have custody. His position is no different than any other custodial parent who has now relinquished day to day care to one parent, but who still has legal rights and obligations incidental to that parental status.

[15] The style of cause names the biological mother and father as parties, but neither the applicant or the respondent appear to have taken steps to procure their response and attendance. It would be open to either the applicant or the respondent to pursue a contribution to support from the child's biological parents, but it does not absolve the respondent from his obligations under the *Maintenance and Custody Act*.

[16] The respondent's income in 2008 for child support purposes was \$32,550.00. The table amount is \$312.00 per month which shall be payable commencing July 1, 2009 and on or before the first day of each month thereafter through the Office of the Director of Maintenance Enforcement. The respondent shall provide his tax return and notice of assessment to the applicant on or before June 1 of each year hereafter.

J.