

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Pretty v. Pretty, 2011 NSSC 296

Date: 20110708
Docket: 1206-5188
Registry: Sydney

Between:

Gary James Pretty

Applicant/Respondent

v.

Kathleen Joyce Pretty

Respondent/Applicant

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Judge: The Honourable Justice Theresa M. Forgeron

Heard: April 5, 2011 in Port Hawkesbury, Nova Scotia; and
June 6, 2011 in Sydney, Nova Scotia

Oral Decision: July 8, 2011

Written Decision: July 18, 2011

Subject: Family Law

Issues: Variation of Custody and Maintenance; Imputation of Income; Undue Hardship.

Result: a) Custody variation not granted. The court held that despite the sixteen year old's stated wish to live with his mother, such a move was not in his best interests. The sixteen year old had Aspergers. His ability to reason, weigh consequences, and make sound judgements was on par with those of an eight year old. The father, who provided primary care for the past three years, continued to offer the best parenting plan for the child. The father intended to continue the child's education at the small school which had provided excellent services to date. In contrast, the mother planned to move the child to a large city school and had insufficient child care arrangements in place. Both parties were required to participate in counseling, individually, and in therapy with the child.

b) Income imputed to the father where he was not working to his capacity. His income was determined to be approximately \$35,000 per annum which was similar to that earned by the mother.

c) The undue hardship claims of both parties were dismissed.

d) Because of the split custody arrangement, and the fact that the parties had equal incomes, no periodic child support was ordered. Section 7 expenses relating to joint therapy and child care were to be shared equally between the parents. Access costs were also to be equally shared.

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