

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: Kelly v. Harvey, 2014 NSSC 387

Date: 2014-10-30

Docket: SFSNMCA-043315

Registry: Sydney

Between:

ELISABETH KELLY

APPLICANT

v.

GEORGE WILLIAM HARVEY

RESPONDENT

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Judge: The Honourable Justice Theresa Forgeron

Heard: September 23, 2014 in Sydney, Nova Scotia

Oral Decision: October 20, 2014

Written Decision: October 30, 2014

Counsel: Candee McCarthy for the Applicant, Elisabeth Kelly
Carolyn Ann MacAulay for the Respondent, George W. Harvey

Topic: Family Law

Issues: Mobility and Retroactive Child Support

Result: The mother's request to relocate with her 14 and 10 year old sons was granted. The children's relationship with their mother was stronger than their relationship with their father. The mother's parenting skills were exemplary, while the father's ability to meet the children's educational and health needs was unknown. The father had no experience as a primary care parent. The children had educational challenges. The mother was proactive in ensuring educational resources were available. The father was not. The children did not spend many overnights with their father. The mother's relocation plan was not ill-conceived. Transitional difficulties would be mitigated because of the mother's due diligence. The father son relationship would be maintained through a joint custody order and frequent contact, including during March break, the summer, and Christmas. Air fare costs to be equally shared.

Retroactive support was granted. The children should not be penalized for the systematic delay in having the mother's 2005 application for child support processed. The father engaged in blameworthy conduct by failing to adjust maintenance as his income increased. The children would benefit from the payment of a retroactive order. No hardship proven as the father inherited significant assets and any financial difficulty was self induced.