

Date: 19981124

Docket: C.A. 146072

NOVA SCOTIA COURT OF APPEAL
Cite as: K.F.C. v. W.G.C., 1998 NSCA 198
Chipman, Hallett and Flinn, JJ.A.

BETWEEN:

K. F. C.	)	Lloyd I. Berliner
	)	for the Appellant
)	
- and -)	
	)	Ralph W. Ripley
	)	for the Respondent
W. G. C.)	
)	
Respondent	)	Appeal Heard:
	)	November 24, 1998
)	
)	
	)	Judgment Delivered:
	)	November 24, 1998
)	

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Revised Decision: The original text of the decision has been corrected according to the attached erratum.

THE COURT: Appeal allowed per oral reasons for judgment of Flinn, J.A.; Hallett and Chipman, JJ.A. concurring.

FLINN, J.A.: (Orally)

We are of the unanimous opinion that this appeal should be allowed, and that the respondent's application for a variation of access rights, dated August 22nd, 1997, should be remitted to the Supreme Court for rehearing before a different judge.

In the hearing of this application, Justice Hood, wrongly, refused to permit the appellant to give evidence concerning allegations of abuse of one or more of the children by the respondent. Further, after refusing to permit one of the children to testify at the hearing, and refusing to admit into evidence that same child's affidavit, Justice Hood made reference in her decision to the affidavit of that child; and, in so doing, drew negative inferences against the appellant.

This matter concerns custody and access to young children. Intertwined in the dispute between the parents, are allegations that the father has abused one or more of the children. These allegations, which have been outstanding for some time, and which are at the root of the mother's concern with respect to access, have not been adjudicated upon on their merits. In conjunction with the rehearing of the respondent's application, evidence can be adduced, and findings can be made, with respect to these allegations.

The appeal is, therefore, allowed. The decision and order of Justice

Hood are set aside. The appellant will have her costs of this appeal which are fixed at \$750.00 plus disbursements. The costs of the hearing before Justice Hood will be determined at the rehearing.

Flinn, J.A.

Concurred in:

Hallett, J.A.

Chipman, J.A.

19981124
CA 146072

NOVA SCOTIA COURT OF APPEAL
Cite as: Curry v. Curry, 1998 NSCA 198
Chipman, Hallett and Flinn, JJ.A.

BETWEEN:

KATHLEEN FRANCES CURRY	)	Lloyd I. Berliner
	)	for the appellant
Appellant)	
)	
- and -)	
)	
WILLIAM GREGORY CURRY	)	Ralph W. Ripley
	)	for the respondent
Respondent)	
)	
)	
	)	Appeal heard:
	)	November 24, 1998
)	
	)	Judgment delivered:

) November 24, 1998
)
)

ERRATUM

Please note, the CA No. shown on this case (**Curry v. Curry**) should read CA 146072