

CASE NO.

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WANDA CHERYL DOIRON

- and -

TIMOTHY LEITH MAHONEY

(Appellant)

(Respondent)

CA158602

Halifax, N.S.

PUGSLEY, J.A.

[Cite as: Doiron v. Mahoney, 2000 NSCA 4]

APPEAL HEARD:

December 8, 1999

JUDGMENT DELIVERED:

January 11, 2000

SUBJECT:

Family Law - change in circumstances - s. 37, s.18(5) of the Family Maintenance Act (1989) R.S.N.S. c.160

SUMMARY:

Appellant, birth mother of male child (now seven) moved from Antigonish County to Halifax in September, 1998, to take a business program. Child left with maternal grandparents from September, 1998, to completion of course in June of 1999. While in Halifax, appellant formed attachment. She determined her economic prospects were better in Halifax. Respondent, father, applied to Family Court to vary consent order of February 5, 1997, which provided for joint custody of child with *de facto* custody to the appellant. Family Court judge, after two-day trial, determined that day-to-day care should vest with the respondent.

RESULT:

Appeal dismissed.

The parties agreed at trial that the move by the appellant from Antigonish to Halifax constituted a material change in circumstances. The parties further agreed, on the appeal, that there was no material difference between the test to be applied under s. 18 (5) of the **Family Maintenance Act** and s. 17(5) of the **Divorce Act**, R.S.C. 1985, c.3 (2nd Supp.). Although the sections are dissimilar, the Court concluded that the difference in wording is not material for the purposes of the appeal.

The Family Court judge, in following **Gordon v. Goertz**, [1996] 2 S.C.R. 27, employed the test of the best interests of the child.

After thoroughly reviewing the plans submitted by both parties, the

Family Court judge concluded that the day-to-day care vested with the respondent, assisted by the extended family in Antigonish County, would be in the child's best interests.

The judge was an experienced Family Court judge who regularly dealt with cases of this kind. The deference to be paid to the findings of a trial judge in a case dealing with the best interests of a young child is arguably greater than that to be paid to the findings of a trial judge in any other type of case.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 23 pages.