

NOVA SCOTIA COURT OF APPEAL

Citation: *Simmons v. Simmons*, 2016 NSCA 86

Date: 20161209

Docket: CA 452333

Registry: Halifax

Between:

Nicole Simmons

Appellant

v.

Ronald Simmons and Laurina Simmons

Respondents

Judge:

The Honourable Justice Linda Lee Oland

Appeal Heard:

November 8, 2016, in Halifax, Nova Scotia

Subject:

Grandparent Access – Parental Autonomy Paradigm –
Maintenance and Custody Act, s. 18(2A), 18(5), 18(6), and
18(6A)

Summary:

The mother of a little boy appealed an order granting access to his paternal grandparents. The child's father had passed away. The child was two when the grandparents' motion was heard. The mother was concerned for his safety if access were granted, and the relationship between her and her late husband's parents had become more difficult. She maintained that, absent a finding of unfitness, she as the child's mother was entitled to determine his best interests where contact with third parties, including grandparents, is concerned.

Issues:

- (1) Whether the trial judge failed to give proper deference to the mother's decision-making authority regarding access to the child; and
- (2) Whether he made his order based on hope and

speculation without an evidentiary basis and without considering the risks to the child if he were wrong.

Result:

Appeal dismissed. There is no requirement that a grandparent access case proceed from the parental autonomy paradigm. The judge's findings that the grandparents did not pose any safety risk to the child and the mother supports the child having a relationship with those grandparents were based on the evidence. In determining the best interests of the child, he considered several factors, including deference to the decision-making authority of parents. The judge did not err by making an order based on hope and speculation that the tension between the parties could be resolved and a relationship created between the child and the grandparents.

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 24 pages.