

NOVA SCOTIA COURT OF APPEAL

Citation: *D.A.M. v. C.J.B.*, 2017 NSCA 91

Date: 20171213

Docket: CA 466666

Registry: Halifax

Between:

D.A.M.

Appellant

v.

C.J.B.

Respondent

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

Judge: Hamilton, Farrar and Bryson, JJ.A.

Appeal Heard: November 28, 2017, in Halifax, Nova Scotia

Subject: Family law. Shared parenting. Relocation. Best interests of the child.

Summary: Mother wished to relocate ten-year-old child from Pictou County to Toronto where she lives and works. She had been studying in Ontario for four years while the child resided with her father and his wife in Pictou County. Mother had maintained shared parenting and the child spent most of her summers with her mother. Both parents were from Pictou County and their extended families, who were very involved with the child, all resided there. The application judge ordered that the child move to Toronto to be with her mother. Father appealed arguing that judge failed to do a balanced analysis when deciding what was in the child's best interests.

Issues:

- (1) Did the judge err in his application/consideration of the relevant factors in the *Parenting and Support Act*, R.S.N.S. 1989, c. 160?
- (2) Did the judge err in not considering the principle of maximum parental contact?
- (3) Did the judge err in deciding the child should move in the absence of evidence or factual findings that would support the move as in the child's best interests?

Result:

Appeal allowed. The judge failed to conduct a balanced analysis, comparing the advantages and disadvantages of residing respectively in Nova Scotia or Toronto. He also ignored the maximum contact principle. The mother had the burden of establishing that relocation was in the child's best interests. The judge was complimentary about both parents. The child had been doing very well in Nova Scotia, living with her father with frequent parenting time with her mother when she came to Nova Scotia and supported by her extended family—both paternal and maternal. All the statutory factors but one favoured no change. Owing to their respective work schedules, the mother would have more time with the child in Toronto than would the father in Pictou County. But the judge failed to balance that advantage with mother, against the loss of family, school, friends, community in Pictou, and time with father. The child was to live with her father, but the mother was entitled to parent the child in Pictou County at her own mother's, every third week, which her work schedule permitted. Although the mother earned substantially more than the father, no child support was requested or ordered. The mother was to pay her own costs of travelling to and from Nova Scotia.

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 22 pages.