

IN THE FAMILY COURT OF NOVA SCOTIA
Citation: M.D. v. C.A.K., 2004 NSFC 16

Date: November 15, 2004
Docket: 04D031769
Registry: Yarmouth

Between:

M.D.

APPLICANT
/RESPONDENT

v.

C.A.K.

RESPONDENT
/APPLICANT

Editorial Notice

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

Judge: The Honourable Chief Judge John D. Comeau

Heard: September 21, 2004, in Digby, Nova Scotia

Written Decision: November 15, 2004

Counsel: Corinne R. Corbett, Q.C., for the Applicant
Martin J. Pink, Q.C., for the Respondent

THE APPLICATION:

[1] This is an interlocutory application to determine whether the court will be dealing with this proceeding as an initial application or an application to vary which would require proof of a change in circumstances.

ISSUE:

[2] Whether the parties, during their representations to the court on July 13th, 2004, entered into a binding agreement that formed a court order.

FACTS:

[3] The court has had the benefit of reviewing the audio tape of the proceedings held on July 13th, 2004. Ms. Reardon, counsel for M.D., and Mr. Pink, counsel for C.K., were both present. Ms. Reardon was to prepare the court order and have Mr. Pink review it. Mr. Pink said, "What we want to do is prepare an order making the applicant (C.K.) primary caregiver." He also referred to child support and

conditions of access. The order was never issued by the court because the Respondent, M.D., did not agree to some of the terms incorporated in the draft.

THE LAW:

[4] The **Maintenance and Custody Act** sets out how agreements between parties may be dealt with:

31 In proceedings under this Act, a court may consider the terms of any agreement respecting maintenance payable for a party or respecting custody of or access to a child but the court is not bound by the agreement if the court is of the opinion that the terms of the agreement are not in the best interest of a party or the child. R.S., c. 160, s.31.

CONCLUSIONS/DECISION:

[5] The parties set out the terms of an agreement with respect to custody, access and child support on the record. Once the order was prepared to be issued, the Respondent, M.D., refused to instruct his counsel to confirm (sign) the order for

issuance. This was due to the fact that the Respondent, M.D., who is the natural father of the child, the subject of the proceeding, did not agree to joint custody between the Applicant, C. K., her husband and himself.

[6] The court finds that an agreement between the parties is not binding. In particular, the Respondent, M.D., through counsel, has indicated he feels the terms of the agreement are not in his best interests. The court does not have enough evidence to determine whether it is not in the child's best interest.

[7] Consequently, the continuation of this proceeding will be on an initial application and not as an application to vary. For court purposes, there is no binding agreement.

Judge John D. Comeau
Chief Judge for the Province of Nova Scotia