SUPREME COURT OF CANADA

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Case in Brief: *B.J.T. v. J.D.*

Judgment of December 2, 2021 (written reasons issued June 3, 2022) | On appeal from the Prince Edward Island Court of Appeal
Neutral citation: 2022 SCC 24

The Supreme Court rules a grandmother should have custody over a child despite the father's closer biological tie.

The father and mother were married in 2012 in Alberta. They separated less than a year later when the mother moved to Prince Edward Island (P.E.I.). The father was unaware the mother was pregnant when she left. Shortly after the child was born in 2013, the maternal grandmother went to reside with the mother and child to help support them. When the child was four years old, the mother refused to allow the grandmother further contact with him. The child was then apprehended by the Director of Child Protection, as he was found to be needing protection. He was eventually placed in the grandmother's care. The Director subsequently alerted the father of the child's existence. The father and the grandmother applied for permanent custody separately from each other.

The hearing judge held it was in the child's best interests for the grandmother to have custody. The father appealed to the Court of Appeal of P.E.I., which gave him custody. The grandmother then appealed to the Supreme Court of Canada.

The Supreme Court has said the grandmother should have custody.

The standard of review to be applied by appeal courts in child protection cases

Writing for a unanimous Supreme Court, Justice Sheilah Martin said the grandmother should have custody. The Court of Appeal should have deferred to the hearing judge's decision in this regard, Justice Martin explained.

The most important consideration in a child custody case is the best interests of the child. A judge's ruling on a child custody matter is owed deference when reviewed by an appeal court. An appeal court may only change a ruling if there was a material error, a serious misapprehension of the evidence, or an error in law. The same standard applies in custody cases involving child protection, unless there is legislation to the contrary. Nothing in P.E.I.'s *Child Protection Act* suggests a different standard.

In this case, the Supreme Court found no error in the hearing judge's assessment of the best interests of the child. The hearing judge based her analysis on an extensive review of the evidence, and was not compelled to decide in favour of the father simply due to a closer biological tie.

Biological ties carry minimal weight in the assessment of a child's best interests

A parent's biological tie is simply one factor among many that may be relevant to a child's best interest, Justice Martin said. Judges are not required to treat biology as a tie-breaker when two prospective custodial applicants are otherwise equal. Placing too great an emphasis on a biological tie could lead some judges to give effect to the parent's claim over the child's best interests. Parental preferences should not prevail over the child's best interests. "While biological ties may be relevant in a given case, they will generally carry minimal weight in the assessment of a child's best interests", Justice Martin wrote.

Breakdown of the decision: *Unanimous*: Justice Martin allowed the appeal (Chief Justice Wagner and Justices Moldaver, Karakatsanis, Côté, Brown, Rowe, Kasirer and Jamal agreed)

More information (case # 39558): Decision | Case information | Webcast of hearing

Lower court rulings: judgment (Supreme Court of Prince Edward Island) | appeal (Prince Edward Island Court of Appeal)
