

2006 CarswellOnt 2281
Ontario Court of Appeal

Maceus-Agyekum v. Agyekum

2006 CarswellOnt 2281, [2006] W.D.F.L. 2441, [2006] W.D.F.L. 2442, [2006] W.D.F.L. 2444, [2006] W.D.F.L. 2446, [2006] W.D.F.L. 2486, [2006] W.D.F.L. 2491, [2006] W.D.F.L. 2498, [2006] W.D.F.L. 2516, [2006] O.J. No. 1510

MAGALIE MACEUS AGYEKUM (Applicant / Appellant) and BERNARD AGYEKUM (Respondent)

Doherty J.A., Labrosse J.A., and Rouleau J.A.

Heard: April 11, 2006
Judgment: April 11, 2006
Docket: CA C43459

Proceedings: affirming *Maceus-Agyekum v. Agyekum* (2005), 2005 CarswellOnt 1311 (Ont. S.C.J.)

Counsel: Katrina A. Prystupa for Appellant
Jack E. Pantalone for Respondent

Subject: Family

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Family law

IV Support

- IV.1 Spousal support under Divorce Act and provincial statutes**
- IV.1.g Retroactivity of order**

Family law

IV Support

- IV.3 Child support under federal and provincial guidelines**
- IV.3.b Determination of award amount**
- IV.3.b.vii Extraordinary expenses**
- IV.3.b.vii.B Necessity and reasonableness**

Family law

IV Support

- IV.3 Child support under federal and provincial guidelines**
- IV.3.c Determination of spouse's annual income**
- IV.3.c.iii Imputed income**
- IV.3.c.iii.L Miscellaneous**

Family law

IV Support

- IV.3 Child support under federal and provincial guidelines**
- IV.3.h Retroactive award**

[IV.3.h.xi](#) Miscellaneous

Family law

[IX](#) Custody and access

[IX.2](#) Factors to be considered in custody award

[IX.2.g](#) Conduct of parent

[IX.2.g.i](#) General principles

Family law

[IX](#) Custody and access

[IX.6](#) Joint custody

[IX.6.c](#) Factors to be considered

[IX.6.c.xii](#) Miscellaneous

Family law

[IX](#) Custody and access

[IX.11](#) Evidence

Family law

[IX](#) Custody and access

[IX.12](#) Appeals

[IX.12.a](#) General principles

Headnote

Family law --- Custody and access — Appeals — General principles

Parties separated after ten years of marriage and father was granted joint custody of three children — Mother appealed — Appeal dismissed — No basis to interfere with trial judge's disposition — Trial judge dealt with all relevant factors, and in particular recognized that issue should be dealt with on basis of best interests of children.

Family law --- Custody and access — Evidence

Admission of fresh evidence — Parties separated after ten years of marriage and father was granted joint custody of three children — Mother appealed and brought motion for admission of fresh evidence — Motion dismissed — Trial judge heard several days of evidence dealing with relationship between parties and their involvement with children — Trial judge remained seized of custody issue, and would be in better position to deal with fresh evidence.

Table of Authorities

Regulations considered:

Family Law Act, R.S.O. 1990, c. F.3

Child Support Guidelines, O. Reg. 391/97

s. 7 — referred to

APPEAL by mother from judgment reported at *Maceus-Agyekum v. Agyekum* (2005), 2005 CarswellOnt 1311 (Ont. S.C.J.) granting father joint custody of children and dealing with spousal support issues.

Per Curiam:

1 The mother appeals the judgment of Metivier J., which granted the father joint custody of the children of the marriage and dealt with other support-related issues.

2 With respect to custody, the trial judge dealt with all the factors that are relevant to this issue, including the evidence related to the children, the access exercised by the father, and the respective situations of the parties. In particular, she recognized that she had to deal with the issue solely on the basis of the best interests of the children. She also noted that, notwithstanding conflicts that related primarily to financial matters, the parties had been able to agree on substantial sharing of time with the children.

3 The trial judge was concerned that the mother's wish to have sole custody would not provide adequately for the needs of the children. She concluded that the parties would share the joint custody of the children and the mother was to be the primary residential parent and have primary care and control of them. She remained seized of the issue of custody for a period of one year. We see no basis to interfere with the trial judge's disposition of the issue of custody.

4 As to the other issues, they essentially relate to the alleged failure of the trial judge to impute an income to the father in excess of his actual salary and to the expenses under s. 7 of the *Child Support Guidelines*, O. Reg. 391/97..

5 The trial judge went through the respective financial situations of the parties in considerable detail. In our view, the disposition of these issues by the trial judge is appropriate and does not justify interference by this court. There must be ongoing disclosure and, if the circumstances justify it, a variation can be applied for.

6 The mother brings a motion for the admission of fresh evidence. The trial judge heard several days of evidence dealing with all aspects of the relationship between the parties and their involvement with the children. More importantly, as stated above, the trial judge remained seized of the issue of custody for one year. If the parties feel compelled to pursue the complaints raised in the fresh evidence, the trial judge would be in a far better position to deal with this information than this court. The motion is dismissed.

7 Accordingly, the appeal is dismissed with costs fixed at \$7,000 inclusive of disbursements and GST.

Appeal dismissed.

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