

NOVA SCOTIA COURT OF APPEAL

Citation: *T.B. v. Nova Scotia (Community Services)*,
2004 NSCA 111

Date: 20040921

Docket: CA 220803

Registry: Halifax

Between:

T.B.

Appellant

v.

The Minister of Community Services

Respondent

Restriction on publication: Pursuant to s. 94(1) of the **Children and Family Services Act**

Judges: Glube, C.J.N.S.; Freeman and Bateman, J.J.A.

Appeal Heard: September 14, 2004, in Halifax, Nova Scotia

Held: **Appeal dismissed per reasons for judgment of Bateman, J.A.; Glube, C.J.N.S. and Freeman, J.J.A. concurring.**

Counsel: Daniel MacIsaac, for the appellant
Lorne MacDowell, Q.C. and Lindsay McDonald, for the respondent

PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT s. 94(1) OF THE CHILDREN AND FAMILY SERVICES ACT APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION.

SECTION 94(1) PROVIDES:

94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

Reasons for judgment:

[1] This is an appeal by T.B. from two permanent care orders dated February 27, 2004 placing each of the children, K.B.D.D. and D.R.B., in the permanent care of the respondent Minister of Community Services. T.B. is the children's mother. Judge James Wilson of the Family Court for the Province of Nova Scotia presided at the hearing.

[2] The orders are the culmination of protection proceedings which have been ongoing since the original application in relation to K.B.D.D. on August 31, 2000. The sole issue on appeal as framed by T.B. is: "Was the decision of the Learned Family Court Judge in the best interest of the children, . . .?"

[3] This Court's role on such an appeal is a limited one. In **Children's Aid Society of Halifax v. S.G.** (2001), 193 N.S.R. (2d) 273 (CA), Cromwell, J.A. said, writing for the Court:

[4] In approaching the appeal, it is essential to bear in mind the role of this Court on appeal as compared to the role of the trial judge. The role of this Court is to determine whether there was any error on the part of the trial judge, not to review the written record and substitute our view for hers. As has been said many times, the trial judge's decision in a child protection matter should not be set aside on appeal unless a wrong principle of law has been applied or there has been a palpable and overriding error in the appreciation of the evidence: see **Family and Children's Services of Kings County v. B.D.** (1999) 177 N.S.R. (2d) 169; 542 A.P.R. 169 (C.A.) at §24. The overriding concern is that the legislation must be applied in accordance with the best interests of the children. This is a multi-faceted endeavour which the trial judge is in a much better position than this Court to undertake. As Chipman, J.A., said in **Family and Children's Services of Kings County v. D.R. et al.** (1992), 118 N.S.R. (2d) 1; 327 A.P.R. 1(C.A.), the trial judge is "... best suited to strike the delicate balance between competing claims to the best interests of the child".

[4] In his detailed reasons for judgment, Wilson, J.F.C. demonstrated a clear grasp of the issues before him and of the applicable law. He neither applied a wrong principle of law nor did he make a palpable or overriding evidentiary error.

[5] Accordingly, the appeal is dismissed, but without costs.

Bateman, J.A.

Concurred in:

Glube, C.J.N.S.

Freeman, J.A.