

NOVA SCOTIA COURT OF APPEAL

Citation: *M.O. v. Nova Scotia (Community Services)*, 2015 NSCA 26

Date: 20150311

Docket: CA 432344

Registry: Halifax

Between:

M.O.

Appellant

v.

Minister of Community Services, C.D., C.H., and K.H.

Respondents

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

Judge: The Honourable Justice Cindy A. Bourgeois

Appeal Heard: February 11, 2015, in Halifax, Nova Scotia

Subject: Child protection – ineffective assistance of counsel – consent

Summary: This appeal involves two children, removed from the care of their mother, the appellant, in 2002. They were placed in the permanent care and custody of the Minister of Community Services in 2005, with continued access ordered. The appellant exercised regular supervised access with the children.

The Minister brought an application to terminate access, as the children's long term foster parents wanted to adopt them, but would not do so should court-ordered access continue. The appellant was represented by legal counsel at the hearing of the above application, who, in her presence, indicated her consent to the order sought. The court granted the order,

varying the permanent care order to remove access.

Issues:

- (1) Was the appellant's consent to the order terminating access vitiated due to the ineffective representation of her counsel?
- (2) Did the family court judge err by failing to confirm directly with the appellant her consent to the order terminating access?
- (3) Do procedural irregularities raised by the appellant justify this Court setting aside the order terminating access?

Result:

The Court of Appeal dismissed the appeal. Fresh evidence relating to the allegation of the ineffectiveness of counsel was allowed. Counsel was not ineffective. He provided appropriate and insightful advice, which the appellant chose to follow. Her consent to the order terminating access was validly given.

There was no statutory duty on the family court judge, in the circumstances before him, to inquire directly with the appellant as to the nature of her consent.

None of the "irregularities" raised by the appellant were such that appellate intervention would be justified.

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 12 pages.