NOVA SCOTIA COURT OF APPEAL

Citation: *C.C. v. Nova Scotia (Community Services),* 2015 NSCA 67

Date: 20150707
Docket: CA 436477
Registry: Halifax

Between:

C.C. and G.C.

Appellants

v.

Minister of Community Services

Respondent

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

Judge:	The Honourable Justice Cindy A. Bourgeois
Appeal Heard:	June 19, 2015, in Halifax, Nova Scotia
Subject:	Child protection; *Children and Family Services Act*, s. 41(4); consent to permanent care order; ineffectiveness of counsel
Summary:	At a disposition hearing, two parents consented through their legal counsel to a permanent care and custody order in relation to their young daughter. On appeal, the mother argued her consent was not valid due to the ineffective representation of her counsel, and sought the introduction of fresh evidence. Both appellants argued the Family Court judge failed to comply with section 41(4)(c) of the *Children and Family Services Act*, in that she did not confirm with them directly they were consenting to the permanent care order. As such,

they argue the order should be set aside. They also raise a number of "concerns" with respect to the proceeding in the court below, which they assert should also cause this Court to set aside the permanent care order.

Issues:

(1) Was C.C. ineffectively represented by her counsel, resulting in a miscarriage of justice?

(2) Did the Family Court judge fail to abide by the statutory duty contained in s. 41(4)(c) of the *Act*?

(3) Do any of the host of other concerns raised by the appellants justify appellate intervention?

Result:

Ineffective assistance of counsel is an available ground of appeal in the context of child protection matters. Fresh evidence was admitted. There was no ineffective assistance of counsel established. To the contrary, C.C.'s former counsel provided prudent advice.

The Family Court judge did not directly confirm with the appellants that they were providing informed and voluntary consent to the permanent care order. She should have. However, in the circumstances where the parties freely consented, understanding the consequences of doing so, the lack of a direct inquiry did not constitute reversible error.

None of the other "concerns" raised by the appellants had merit.

The appeal was dismissed.