NOVA SCOTIA COURT OF APPEAL
Citation: ***D.M.F. v. Nova Scotia (Community Services)*** ,
2005 NSCA 1

Date: 20050105
Docket: CA 228448
Registry: Halifax

Between:

D.M.F. and S.A.P.

Appellant

v.

Minister of Community Services

Respondent

Restriction on publication: s. 94(1) Children and Family Services Act

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge(s):	Bateman, Oland and Hamilton, JJ.A.
Appeal Heard:	December 10, 2004, in Halifax, Nova Scotia
Held:	Appeal dismissed, without costs, as per reasons of Hamilton, J.A., Bateman and Oland, JJ.A. concurring
Counsel:	Timothy D. Morse, for the Appellant, D.M.F. S.A.P., Appellant, self-represented Thilairani P. Pillay, for the Respondent

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

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 from the June 23, 2004 unreported decision and the July 20, 2004 order of Justice Douglas C. Campbell of the Supreme Court of Nova Scotia (Family Division) directing that three of the appellants' children, R.S.P., born October (*), 1997, S.A.F., born January (*), 1999 and B.M.F., born December (*), 1999, be placed in the permanent care and custody of the respondent, without access by the parents. (**Editor's note-dates removed to protect identity*)

[2] Central to this appeal is the fact that the judge made the order for permanent care before the expiration of the maximum time limits provided under s. 45 of the **Children and Family Services Act,** S.N.S. 1990, c.5, as amended. Pursuant to s. 45, where the court has made an order for temporary care and custody, as was the case here, the total duration of all disposition orders must not exceed 12 months for children under six years of age, and eighteen months for children between six and twelve years. At the time the judge ordered permanent care, five and one half months remained of the one year limit.

[3] Ms. F.'s counsel argued that the judge should have made another temporary care order providing for additional services to allow the appellants further time to remediate their parenting deficiencies. He argued the judge erred because he seriously misapprehended the evidence or made a palpable and overriding error in his appreciation of the evidence with respect to the duration and intensity of the services that were provided to the family by the respondent. During oral argument, he agreed there was no evidence before the judge indicating that the family's problems could have been resolved if additional services were provided for another five and one/half months. He also agreed Ms. F. had not sought any services that were not provided. He argued that it was not fair to Ms. F. that she was not given services for the full period of time that services can be provided under the time limits set out in the **Act**.

[4] Mr. P. argued that the appeal should be allowed because it was not fair or just that the children be taken from them when they had not physically abused the children or neglected them. He argued they had ensured that the children were fed and kept clean.

[5] The standard for appellate review in cases such as this was stated by this Court in **Family and Children's Services of Annapolis County v. J. D.** [2004] N.S.J. No. 302 (C.A.):

> ¶ 32 To set aside the decision in a child protection case, the Court of Appeal would have to find that the trial judge made an error in law or a material error, a serious misapprehension of the evidence or a palpable and overriding error in his appreciation of the evidence. (**Minister of Community Services v. B.F.** [2003] N.S.J. No. 405 (N.S.C.A.) leave to appeal denied February 26, 2004, [2003] S.C.C.A. No. 531, (SCC #30075) para 44-45 and cases there cited.) If the appeal court finds there is an error of law then the court may review the trial evidence "to determine if the trial judge ignored or misdirected himself with respect to relevant evidence." (**Van de Perre v. Edwards**, [2001] 2 S.C.R. 1014, para 15.) . . .

[6] The judge's decision makes it clear he felt the appellants were not able to provide for the emotional, cognitive or social needs of the children despite the services that had been provided to them, not on the basis that their purely physical needs were not being met.

[7] The judge considered the possibility of providing additional services to the appellants as they requested at the hearing, but concluded this would be inadequate to protect the children:

> [48] Under section 42(2) of the Act, the court is directed not to remove children from the care of a parent unless the court is satisfied that less intrusive alternatives, including services, have been attempted and have failed, have been refused by the parent or guardian or would be inadequate to protect the child.
>
> [49] The services to the family in this case have been intensive, both in terms of variety, quantity and duration over a long period of time.
>
> [50] Based on all the evidence, I accept the opinions expressed by Ms. Eakin as to the extreme inappropriateness of the home environment for these children and as to the extent of the psychological and emotional harm already caused. As well, I accept the evidence of various witnesses including Ms. MacQuarrie that progress in improving the parenting skills had been poor.
>
> [51] Accordingly, I find that alternatives less intrusive than Agency care have been attempted and have failed and would be inadequate to protect the children.

[8] There was substantial evidence before the judge to support his conclusion. One example was the evidence of Suzanne Eakin, a clinical psychologist. She testified and her assessment report was in evidence. It provided:

> . . . Provision of further services will not resolve the issues. The parents seem unable to even conceptualize the pervasive and fundamental deficits in their parenting practices and as such, attempts at intervention have been met with

> resistance, and only minimal, transitory improvements in the children's situation have been achievable.

[9] Another example was the evidence of Andrea Boyce, a social worker with the long term care unit of the respondent. She testified:

> . . . I've worked with Suzanne Eakin on a number of occasions and seen a number of her assessments. And this is the first time I have ever seen an assessment where it was felt that there weren't any other services that could be provided, which is very unusual. I've never seen that happen.
>
> However, I believe that the reason that this happened is because every service has been provided to the family with the exception of, as I said, a service that I'm not aware of that would be somebody in the home 24 hours a day.

[10] The judge did not err in ordering permanent care rather than additional services before the statutory period for the temporary care and custody order expired in light of the evidence before him that past services had had little effect on helping to ensure the protection of the children. Their protection is the paramount consideration. Indeed, pursuant to s. 46(6) the judge could not make a further order for temporary care unless he was satisfied that the circumstances justifying the earlier order were likely to change within the maximum time limits. There was no evidence before the judge of any prospect that the parenting deficiencies which had already resulted in harm to the children and put them at further risk of harm could be remediated within the time limits, or at all.

[11] Having reviewed the substantial written materials filed by the parties and heard oral argument; and having specifically considered the evidence that was before the trial judge as to the services provided to the family over three years, Ms. F.'s resistance to the services, and the lack of measurable success these services had achieved as far as protecting the children, I am satisfied the trial judge clearly focussed on the best interests of the children as he was required to do and did not misapprehend the evidence or make a palpable or overriding error in his appreciation of the evidence in reaching his decision.

[12] The respondent sought an order requiring the appellant to contribute to the cost of the transcript, $2,214.27. The parties did not address s. 49(4) of the **Act** and its possible effect on the request for contribution to the cost of the transcript. Assuming without deciding, that we have the authority to grant the Minister's request, on the facts of this case I am not satisfied the appellants should be ordered to pay this disbursement.

[13] Accordingly I would dismiss the appeal without costs.

Hamilton, J. A.

Concurred in:

Bateman, J.A.

Oland, J.A.