

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** P.J. F. v. J.R. F., 2003 NSCA 6

**Date:** 20030114

**Docket:** CA 183598

**Registry:** Halifax

**In the Matter of:**

**an application for the appointment of a guardian of the person and estate of T. R. F. under the *Incompetent Persons Act*, R.S.N.S. 1989, c. 218, as amended**

**Between:**

P. J. F.

Appellant

v.

J. R. F.

Respondent

**Revised Judgment:** The text of the judgment has been corrected according to the erratum released January 20, 2003.

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

**Appeal Heard:** January 14, 2003, in Halifax, Nova Scotia

**Written Judgment:** January 16, 2003

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

**Counsel:** Robert Carter, for the appellant, P. J. F.  
Keith MacKay, for the respondent, J. R. F.  
Aleta Cromwell for the Minister of Health

Reasons for judgment: (Orally)

- [1] P. J. F. has appealed from the June 26, 2002 order of Justice John M. Davison of the Supreme Court of Nova Scotia appointing the appellant's brother J. R. F. guardian of the person and estate of their mother T. R. F. pursuant to the *Incompetent Persons Act*, R.S.N.S. 1989, c. 218 as amended.
- [2] Mrs. F., born in 1926, was admitted to hospital September 28, 2001, in a physically frail and filthy condition. A diabetic, she had not seen her family doctor for two years and was not receiving medication. She had been living in her home at ... C. S., (*editorial note- removed to protect identity*) Halifax, with her daughter M. A. F.. She improved with several months of hospital care. She was found to be mentally incompetent and an adult in need of protection under the *Adult Protection Act*, R.S.N.S. 1989 c. 2 in an order of the Supreme Court of Nova Scotia, Family Division, dated December 11, 2001. She was released from hospital December 12, 2001, to return to her home where the Department of Health, acting pursuant to the order, had arranged for around-the-clock health care to be paid for from her estate, which in May, 2002, included an RRSP valued at \$162,521.83 and \$2,451.53 cash. A *guardian ad litem* was appointed for her and the Public Trustee looked after her funds.
- [3] The respondent, who had been chosen by Mrs. F.'s four children to represent them in dealings with the Department of Health, applied May 31, 2002, to be appointed guardian at a hearing scheduled for June 20, 2002. His application was supported by consents of the Minister of Health and F. F., the fourth sibling; the affidavit of Donna Pettipas of the Department of Health, Mrs. F.'s Adult Protection Worker; and affidavits of two doctors who had examined Mrs. F. and who confirmed she was incompetent. The mother's *guardian ad litem* supported his application at the hearing.
- [4] The appellant filed an affidavit dated June 18, 2002, objecting to the appointment of J. F. as guardian, without offering reasons for doing so, and applying to be appointed himself. He accepted that his mother was incompetent but M. F., who supported his attempt to be made guardian, sought to make incompetence an issue at the hearing. The appellant sought an adjournment to conduct discoveries, to permit cross-examination of the doctors who had found Mrs. F. incompetent, and permit him to "perfect and complete his application."

- [5] Justice Davison granted an adjournment from June 20 to June 26 but refused discoveries because they could serve no useful purpose. He refused to permit cross-examination of the doctors because there was abundant evidence of Mrs. F.'s incompetence and no issue on that point between J. and P. F.. He considered there was no application before him on behalf of P. F., only an affidavit incapable of raising an arguable issue against the *prima facie* case J. F. had presented. These interlocutory matters are raised as grounds in the notice of appeal.
- [6] Justice Davison found that the "evidence before me is overwhelming that the applicant is very well qualified to fill the role of guardian." He appointed J. F. guardian of the person and estate of T. R. F..
- [7] The standard of review applied in this Court in matters such as this has been stated in *Minkoff v. Poole and Lambert* (1991), 101 N.S.R. (2d) 143 and often repeated:

. . . [T]his court will not interfere with a discretionary order, especially an interlocutory one such as this, unless wrong principles of law have been applied or a patent injustice would result. The burden on the appellant is heavy.

- [8] In our view Justice Davison did not apply wrong principles of law. He had discretionary authority to decide as he did. The appellant has not satisfied us that a patent injustice would result. The appeal is dismissed with costs which we fix at \$2000 plus disbursements.

Freeman,

J.A.

Concurred in:

Glube, C.J.N.S.

Bateman, J.A.