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Cite as: B.D. v. Family and Children Services of Kings County, 1999 NSCA 180

B.D. - and - FAMILY AND CHILDREN SERVICES OF KINGS COUNTY

(Appellant) (Respondent)

C.A. 154825 Halifax, N.S. CROMWELL, J.A.

Editorial Notice

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APPEAL HEARD: June 14, 1999

JUDGMENT DELIVERED: June 23, 1999

SUBJECT: **Child Protection - Order for Permanent Care and Custody - Requirement to Explore Family and Community Placement**

SUMMARY: This was an appeal from an order for permanent care and custody without access of children aged 3 and 2. The matter had been before the Family Court for nearly two years. The children had been taken into care in mid 1997, returned to the appellant father in August of 1998 and reapprehended in the late autumn of 1998. They were found to be at substantial risk of physical harm.

On the morning of the third day of a three day hearing, the father, for the first time and without notice, advanced a new plan based on placement of the children with the father's biological father. The record before the judge up to that point contained virtually no information with respect to this proposed placement. The judge declined to hear the evidence of the new plan and then made an order for permanent care and custody without access.

RESULT: Appeal dismissed. The judge was concerned that the long delay in achieving a stable, permanent arrangement for the children was contrary to their best interests. He noted that the disposition order made in August of 1998 which returned the children to the father had itself been made well outside the time frame provided for in the **Act** and that the matter had been before the Court for more than the

maximum total allotted time provided for in the **Act**. He observed that the children were very young and that ".... each passing day made it harder to justify the continuing lack of resolution and permanency in their lives." The record before him contained virtually no information about the proposed plan. The judge decided that in order to justify the inevitable delay caused by the last minute proposal, he would require some basis, in fact, to believe that the potential benefit of arresting the process to consider the evidence would outweigh the harm done to the children's best interests by the delay. He found no such evidence.

Section 42(3) of the **Act** is mandatory and places an obligation on the Agency and the Court to see to it that reasonable family or community options are considered. The **Act** also requires the consideration of the least intrusive option. These provisions, however, must be interpreted and applied in the context of the **Act** as a whole and in light of its paramount purpose. They must also be interpreted in a way that recognizes that the **Act** must be applied through a process of adjudication in a Court which, while flexible, requires due regard for fair and orderly procedure. Faced with the potential for a considerable period of further uncertainty and lack of stability for the children, and virtually no information about the proposed plan, what was required of the judge was a judgment call giving due weight to the numerous relevant considerations under the **Act** in light of the particular circumstances of the case. The judge applied proper principles and fully grasped the evidence before him in attempting to balance the numerous considerations relevant to the particular circumstances of the case before him. There was no error justifying appellate intervention.