



The reasons for judgment of the Court were delivered orally by:

FREEMAN, J.A.:

This is an appeal by the Minister of Community Services from a disposition order by Associate Chief Judge Comeau of the Family Court dismissing the appellant's application for permanent care and custody of a male child born March \*, 1985, and a female child born October \*, 1986 and returning them to their biological father.

The children had been placed in care of their maternal grandparents after the breakup of their parents' common law relationship. They were found in need of protective services again when their grandparents were financially no longer able to care for them and placed in foster care pending the disposition hearing July 30, 1996.

In granting custody to the father, Judge Comeau declined to follow recommendations in a court-ordered study by a social worker, Ms. Haste, that they be placed in the permanent care of the Agency.

The appellant's concern was that Judge Comeau dismissed the Agency's application, awarded custody of the children to the father, and retained jurisdiction for further review, which he scheduled for November 14, 1996. The review was adjourned to April 10, 1997, as a result of the appeal. The appellant argues that there was no application for custody before the Family Court judge under the **Family Maintenance Act**, and that s. 42(1) of the **Children and Family Services Act** did not provide authority for the orders which were made.

The section provides in part:

42(1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

- (a) dismiss the matter;

(b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

The appellant's position is that only one order, not multiple orders, can be made. This Court, however, would have jurisdiction to make an order under s. 42(1)(b). Counsel for the father and the Agency agreed in the course of the hearing that was what this Court should do. They have agreed to an order containing the following provisions:

The appeal is allowed to the extent that the order dismissing the proceeding pursuant to s. 42(1)(a) is struck out and in substitution for that order, an order pursuant to s. 42(1)(b) is made which provides that the children remain in the care and custody of their father, D. C., subject to the supervision of the Agency, until April 10, 1997 at which time there will be a review by Family Court Associate Chief Judge Comeau, provided however that either party may bring an application for an earlier review in the event of any change of circumstances. It is further ordered that a report dated October 25, 1996 by Bill MacLean be updated for the review. We decline to order an update of the Hastey report.

A preliminary motion to quash was disposed of as follows:

The respondent brought a motion to quash on the basis that the notice of appeal should have been filed within thirty days of the hearing, not of the order. Section 49(1) of the **Children and Family Services Act** S.N.S. 1990, c. 5 provides for an appeal by notice within 30 days of the order. Section 41(1) requires the disposition hearing and order within 90 days of the protection order. The protection order was dated May 24, 1996, so both the disposition hearing, which concluded with Judge Comeau's decision, and the written order, were within the 90 day time frame. The notice of appeal was brought within 30 days

of the order, and the order was made within jurisdiction. The motion to quash is dismissed.

Freeman, J.A.

Concurred in:

Hart, J.A.

Roscoe, J.A.

C.A. No.131268

NOVA SCOTIA COURT OF APPEAL

**BETWEEN:**

MINISTER OF COMMUNITY  
SERVICES

- and -

Appellant

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REASONS FOR  
JUDGMENT BY:

