NOVA SCOTIA COURT OF APPEAL

Citation: *S.S. v. Nova Scotia (Community Services)*, 2010 NSCA 11

Date: 20100219
Docket: CA 318446
Registry: Halifax

Between:

S.S.

Appellant

v.

Minister of Community Services
Children's Aid Society of Inverness-Richmond
D.S.

Respondents

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

Judges: MacDonald, C.J.N.S.; Bateman and Oland, J.A.

Appeal Heard: February 10, 2010, in Halifax, Nova Scotia

Held: Appeal dismissed per reasons for judgment of MacDonald, C.J.N.S.; Oland and Hamilton, JJ.A. concurring.

Counsel: Appellant in person
Peter C. McVey, for the respondent Minister of Community Services
Lindsay M. McDonald, for the respondent CAS
Coline Morrow, for the respondent D.S.

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.

Editorial Notice

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

Reasons for judgment:

[1] The appellant mother, whose children have been found to be in need of Agency protection, seeks to overturn a temporary disposition order that provides for the father to relocate with the children pending a final disposition hearing which is set for two weeks hence. For the reasons which follow, I would dismiss her appeal.

BACKGROUND

[2] The parents, S.S. and D.S., were married on July 21, 2001. They have two children, A.S. (d.o.b. September *, 2000) and V.S. (d.o.b. July *, 2002), both of whom are the subject of these proceedings. They separated on June 24, 2007. There existed prior to the separation, and continues to exist to this day, a high conflict environment between the parents and between the father and the maternal grandparents. This conflict has spilled over into the community.

[3] Divorce and custody proceedings commenced before the Supreme Court (Family Division) upon separation. The private custody proceedings were stayed at the onset of the child protection proceedings.

[4] The child protection history in this matter is complicated and spans several years with formal and informal involvement by the respondent Children's Aid Society of Inverness Richmond ("the Agency"). The full history of proceedings has been set out in the judge's reasons on the first disposition hearing reported as 2009 NSSC 155, and on the disposition review hearing reported as 2009 NSSC 288. However, a brief history of the child protection involvement would be helpful.

[5] The main source of the conflict in this case stems from the allegations that the father sexually and physically abused his children. These allegations began in 2005 and continued to 2008. They were investigated by the RCMP and the Agency. They have since been found to be unsubstantiated by the authorities and the judge.

[6] Yet the mother, a * teacher, and the maternal grandparents firmly believed in the father's guilt and, as of September 2009, this belief seems to have persisted (at

least with the grandparents). According to the judge, this belief caused an environment of high conflict for the children, contributed to the parents' inability to pursue a shared parenting agreement, and interfered with the proper investigation of the abuse complaints.

[7] On May 28, 2008, the Agency initiated a protection application due to the escalating conflict between the parents and the Agency's concern that the children were at a substantial risk of emotional harm. The court found the children in need of protection on August 20, 2008. The order issued pursuant to the protection hearing included a shared parenting agreement, with supervision of the father's time with the children. On December 14, 2008, therapeutic services were ordered for the children.

[8] The first disposition order was issued May 8, 2009, following a 29-day hearing spanning five months, commencing November 10, 2008 and ending April 9, 2009. In fact, the time line for the first disposition order was extended by the court on the basis that it was in the children's best interests for the court to hear further evidence. This disposition order kept the shared parenting agreement, ordering that the children, after appropriate transition, reside on an alternating basis with each of the parents. Further, the order lifted the supervision requirement on the father's contact with the children, imposed obligations on the parents to engage in educational and /or therapeutic counselling, and required the Agency to move the children forward in therapeutic services. Lastly and significantly, the order granted the Agency discretion to suspend placement with the mother and impose conditions on her access if, in the Agency's view, the mother failed to comply with or resisted the terms of the order. This order was reviewed and reconfirmed on June 1, 2009. It has never been appealed.

[9] In mid July 2009, the Agency felt that the mother was not complying with the counselling terms of the order and, thus, was not protecting the children from emotional harm arising from the high conflict situation nor moving forward with the required therapeutic services. The Agency, exercising its authority pursuant to the June 1, 2009 order, terminated the children's placement with their mother and imposed supervision on her access with the children. The Agency filed a review application on July 22, 2009, seeking a revised disposition order reflecting the new conditions and authorizing the relocation of the children with the respondent father some 100 kilometers away, and to the school in that location.

[10] A two-day contested disposition review hearing followed in September 2009. There, the mother successfully persuaded the judge to deny the Agency's request for continued supervision of her access. However, the judge felt compelled to order the relocation requested by the Agency. Thus, the father would relocate with the children from one small Nova Scotia community to another. However, to maintain the goal of joint parenting, the children would spend 3 ½ out of 4 weekends with their mother. The order also imposed additional service obligations on the Agency and the parents. In particular, the order requires that the mother engage in the required counselling services which the court felt would be critical in establishing the groundwork for a shared parenting agreement.

[11] The final disposition hearing has been provisionally set to be heard in March 2010, at which time the court will have to make a permanent and long term resolution with respect to the care and custody of these children.

[12] In the meantime the mother asks this court to overturn this "relocation" order. In doing so she seeks to introduce fresh evidence, being two letters from her counsellors summarizing her ongoing treatment which she asserts proves her efforts to cooperate and obtain the counselling as ordered.

THE GROUNDS OF APPEAL

[13] The mother lists fifteen grounds of appeal as follows:

> Issue 1: The trial judge erred in concluding that it was in the best interests of the children that they be removed from my custody and placed in the sole custody of [D.S.].
>
> Issue 2: The trial judge erred in concluding that the children would be harmed if left in their community.
>
> Issue 3: The trial judge erred in refusing to admit and failing to consider relevant evidence such as that of [J.V.K.] and others.
>
> Issue 4: The trial judge erred in admitting and considering evidence that was prior to the decision in May 2009 after specifying that evidence was not to be admitted.

> Issue 5: The trial judge erred in admitting evidence of expert witnesses who did not prepare reports or affidavits as requested by the judge and as is required according to Civil Procedure Rules.
>
> Issue 6: The trial judge erred in admitting evidence through affidavits which were not entered at the requested time.
>
> Issue 7: The trial judge erred in not reinforcing the same rules for all parties involved.
>
> Issue 8: The trial judge erred in drawing conclusions that were not supported by the evidence.
>
> Issue 9: The trial judge erred in not revealing in a timely manner that she may be in a conflict of interest.
>
> Issue 10: The trial judge erred in concluding that I had refused to engage in therapy.
>
> Issue 11: The trial judge erred in ordering the Divorce proceedings recommence during the Child Protection Proceedings after having previously ordering [sic] them stopped for that very reason.
>
> Issue 12: The trial judge erred in her interpretation of the evidence such as that of Dr. [M.].
>
> Issue 13: The trial judge erred in her assessment of the evidence on the issue of the abuse of the children.
>
> Issue 14: The judge erred in concluding that there has not been cooperation and participation in addressing the conflict by myself.
>
> Issue 15: The judge erred in failing to give appropriate weight to the significant efforts made by myself in complying with the provisions of the court order and the obligation of both parents to co-parent and reduce conflict.

[14] The mother was self-represented on appeal. She summed up her case on appeal in the following passage from her factum, which was repeated in oral argument. It is lengthy but addresses the issues in her own words and incorporates all grounds of appeal:

The Children's Aid Society removed my two children [A.] (9) and [V.] (7) from my joint custody while I was out of the country in July 2009 and placed them in the sole custody of their father [D.S.]. They ordered my contact with the children be supervised by Agency workers. Pending the review hearing, the father and the Agency sought to remove the children from the jurisdiction of [their] County and relocate them in [another] County to attend a new school an hour and 20 minutes from the only community and school they had ever known. The Agency took such action because they felt I resisted and didn't comply with the designation of the therapist they wanted me to see to gain insight and to aide me to co-parent with the father after the First Disposition hearing wherein the judge decided the father did not sexually and physically abuse his children as they alleged. I wanted the judge to examine the evidence and to decide whether or not the father continued to need supervision of his contact with the children. The Agency did not agree with my position and wanted me to agree to drop the supervision on the father before all the evidence was heard in the First Disposition trial. When I insisted due process be followed and the judge be the one to make that decision, they more aggressively accused me of alienating the father and changed their Plan of Care in February 2009, during the trial, and in it, requested that the judge remove the children from my care and have me supervised. The judge did not grant their plan of care at end of First Disposition, but instead dropped supervision of the father's contact with his children and granted a joint custody arrangement with two weeks on - two weeks off schedule to respect the father's upcoming seasonal work schedule. She also ordered that the maternal grandparents and mother seek counselling to gain insight into their role in the conflict and to aide the mother in co-parenting with the father. In subsequent hearings, she ordered the father seek counselling to aide him to co-parent with the mother as well. The judge kept the Agency involved to protect the children from the emotional harm related to the high conflict in the family but gave them the discretion to remove the children from my care if I resisted of [sic] didn't comply with their designation of therapists or the immediate and full resumption of the father's role in the children's lives. Despite my fears as expressed in my First Disposition testimony and Memorandum that the Agency would abuse this discretion and vindictively seek, at the first opportunity, to remove the children from my care, the judge left this clause in her May 8, 2009 decision. Despite not agreeing with her decision that the father had not sexually and physically abused the children and that I had alienated the father, I attempted to move on and chose to not appeal the first disposition decision. In that hearing, not all of the evidence was admitted and considered by the judge, such as three doctors' reports concerning abuse alleged by one of the children, the affidavit of Dr.[S.] to whom one of the children disclosed abuse by the father, the maternal uncle's testimony, tape recordings of police officer Boucher which would support the mother's testimony and contradict his, etc. My efforts to create a stable environment for the children and to promote a healthy relationship with the father as described in my Memorandum were largely ignored by the Judge. Counsel for the father and

for the Agency split the case and refused the admittance of certain pieces of evidence which counsel for the mother wanted to admit such as doctors' reports. Nevertheless, once the decision was rendered I attempted to move on and decided not to appeal. The case had been costly for me emotionally and financially as I was working full time as a teacher and was not eligible for Legal Aid as the father was. I made efforts to continue to co-parent as I had done since our separation and as referred to in my Memorandum. I continued therapy with my counsellor of 2 years, [F.R-C.] and thought I was addressing the co-parenting issue as the decision asked. The Agency wanted to ensure the therapy given by [F.R-C.] was adequate enough and sent a letter highlighting the significant reading, report and time in court required of [F.R-C.] should she decide to do the counselling as they described it. Though qualified, it was too demanding for her current position as *. This was communicated to me at the end of June. This evidence is my July 2009 affidavit evidence. Approximately two weeks later, the Agency approached me with a new form of therapy with a male therapist, Dr. [H.], which was intensive short term dynamic therapy lasting 3-6 hours at a time and which would be video taped. This seemed like an unwarranted escalation from the therapy the Agency sought with [F.R-C.] and no major change had occurred in the two weeks between. I asked for more information and a female counsellor. I agreed to a conference with the Agency upon my return from a pre-planned trip scheduled during the children's parenting time with the father. The agency knew before mid-June I was to be away at that time. They waited until the children were in the custody of the father a week later and used their discretion to remove the children from my care and have me supervised. This timing was purposeful and the access to the children was used as a coercive tool to effect compliance with their choice of counsellor. It is against the constitutional right of natural justice for me to be heard and for the children to have the benefit of both parents. The Agency removed the children from my care before the meeting I had agreed to at which I would explain the progress I had made in counselling, my efforts to co-parent and the insight I had gained. The Agency continued to treat me as an adversary after the First Disposition hearing and continually sided more favourably with [D.S.] when it came to parental attendance at extracurricular events and scheduling of parenting time. They listen to his complaints about the mother and appear to believe them without even checking with her. They even discuss on July 3rd according to Case Worker Warner's case note, the removal of the children from their mother's care after [D.S.] describes his contact with the mother at school some days earlier. When the children are removed from my care because they felt I was resisting therapy with Dr. [H.], they finally sent the information about the therapy he would be offering me. The websites in his letter to Warner describing therapy indicate this therapy can be 40 hrs in duration, and it's designed for people with mental illnesses, personality disorders, extreme depression and anxiety and a variety of other problems I was not diagnosed with. It was unreasonable of the Agency to choose this form of therapy for me given the fact that it is not the same as what the judge describes in her decision as the

counselling she requests I take. To offer such an extreme form of therapy was unreasonable, but I didn't refuse. The Agency indicated in a letter to counsel after they removed the children that even if I agreed to the therapy with [H.], they were still going to impose supervision of my contact with the children and continue placement with the father. The Agency did not facilitate mediation to resolve the matter outside of Court, they didn't begin the systems based approach to deal with the family's issues as recommended by Dr. [H.], the children's assessor, and they didn't provide the children with adequate counselling during the transition. In the trial, the judge refused to admit pertinent evidence by the mother which showed her engagement in therapy with social worker [J.V.K.]. She admitted evidence dating from before the First Disposition decision. She allowed the Agency to submit their affidavit late but didn't allow the maternal uncle to do this in First Disposition. She also determined that the children would be harmed if left in their community partly because members of the public showed up in Court for the public review application in July when the children were removed from my care and partly because a member of the community sent out a facebook message to 30 or 40 people basically indicating the father was a pedophile, the children shouldn't be with him and to show up for court in July to support the mother who lost her children. There was no evidence the children would be harmed in their community or school. The judge allowed [V.R.] to testify knowing she hadn't spoken to or assessed the parents in two years and had never spent more than one hour with the children in July 2007 when she spoke to, but did not even assess the children. She allows the Agency to continue to use this "expert" knowing her testimony routinely supports the Agency's position in this case and knowing her testimony is generally quite negative of the mother since her report was challenged by me in 2008. It is against Civil Procedure Rules for this "expert" to testify without a report or affidavit yet the judge permitted it. The judge allowed Counsel for [D.S.] to present witnesses at the last minute like [L.L.]. Three of [D.S.]'s witnesses had no affidavit but were permitted to testify even though the judge specifically said affidavits were required. The judge may be in a conflict of interest because she revealed after the First Disposition Hearing that she was a former classmate of Coline Morrow's, counsel for [D.S.]. This may explain why she seems more favourable to [D.S.]'s evidence and requests. The judge made conclusions not based on the evidence, such as that I was responsible for the facebook message, that the community was poisoned and put the children at risk of emotional harm and that I had not engaged in therapy. She recommenced Divorce proceedings in the middle [of] a Child Protection Hearing which she ordered stopped previously. She didn't interpret Dr. [M.]'s evidence appropriately and failed to see the contradicting statements in it. The judge also indicates that it is a lie that the father abused his children when she didn't admit all the evidence in the First Disposition and cannot be sure. The judge didn't give appropriate weight to the efforts I made to co-parent, to cooperate and to help the children in their transition to joint parenting after the First Disposition, but praises [D.S.] even though he has had less counselling, less time with the children's assessor, and has

> increased the conflict through his actions. The judge erred in finding that the children's best interests would be served by placing the children with [D.S.] in a different jurisdiction and a different school because this makes the goal of joint parenting at the end of Final Disposition more difficult to attain, it causes emotional harm to the children who have been assessed by [H.] in 2009 as having difficulty with change and it infringes on their right to be with their mother in a significant way.

ANALYSIS

[15] Having carefully reviewed the record and listened to the mother's passionate oral argument, respectfully, I see no merit to this appeal. In essence, her many grounds of appeal fall into the following three categories, none of which would allow interference by this court:

(A) First, she invites us, in effect, to meddle with the judge's factual findings despite the fact that they are clearly supported by the record. As I will later explain, that is simply not our role.

(B) Secondly, she challenges certain evidentiary rulings that are no more than discretionary trial management decisions which, even if wrong, would do nothing to change the outcome.

(C) Finally, without a proper basis, the mother alleges bias on the part of the trial judge.

[16] Let me now elaborate on each category.

Challenging the Judge's Findings of Fact

[17] I repeat those grounds of appeal which essentially challenge the judge's factual findings:

> Issue 1: The trial judge erred in concluding that it was in the best interests of the children that they be removed from my custody and placed in the sole custody of [D.S.].
>
> Issue 2: The trial judge erred in concluding that the children would be harmed if left in their community.

> Issue 8: The trial judge erred in drawing conclusions that were not supported by the evidence.
>
> Issue 10: The trial judge erred in concluding that I had refused to engage in therapy.
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> Issue 12: The trial judge erred in her interpretation of the evidence such as that of Dr. [M.].
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> Issue 13: The trial judge erred in her assessment of the evidence on the issue of the abuse of the children.
>
> Issue 14: The judge erred in concluding that there has not been cooperation and participation in addressing the conflict by myself.
>
> Issue 15: The judge erred in failing to give appropriate weight to the significant efforts made by myself in complying with the provisions of the court order and the obligation of both parents to co-parent and reduce conflict.

[18] All of these grounds deal with findings of fact made by the trial judge. Furthermore, the judge's decision to have the children relocate with their father rested entirely on important findings of fact. These findings included the judge's primary concern that the family's small community had become poisoned against the father due to swirling rumours that the unfounded allegations of sexual abuse were true. In fact, these rumours were fuelled by a troubling *Facebook* missive distributed by one of S.S.'s fellow teachers (and one of the *, no less). The judge was clearly concerned:

> ¶ 90 After the Agency decided to move the children from the mother to the father, the mother's close confident and friend, J.M., and supporters, including co-workers, colleagues and some parents , were urged to attend Court to show their support for the mother.
>
> ¶ 91 This is an open Court. While the Agency sought to exclude the public to protect the privacy of the parties and the children, the mother expressed no desire to have her colleagues excluded. That is her right.
>
> ¶ 92 J.M., a friend, who has occasionally presented herself in Court after the First Disposition, has not attended all of the Court proceedings, is a confident and sometimes babysitter of the children. She contacted L.G.L., who later (this year)

became one of the children's teachers, and asked her to get the message out to all her colleagues and friends to show support for the Respondent mother. Clearly, other members of the community and church were present as well.

¶ 93 The message on Facebook is dated July 27 at 11:10 a.m.:

> Just a little note to let you know that S.S. (identifies school) has lost custody of her children. D.S. (A. and V.) has them in (identifies out of province location). There is a court date on Thursday morning in PH at 10AM to fight to get these girls back. She was never allowed to tell the whole story about what happened, and now she is forced to share the truth so that people will help her get her girls home where they belong. The girls have told repeated stories of the sexual abuse they have suffered with their DAD. They SHOULD NOT be with him!!!!!!!!!!!!!!!! PLease do not spread this horrible news around in order to protect the girls but we felt we needed to tell you in order for you to understand the severity of this matter!! Please come to the courthouse on Thursday morning at 9:30 to help S.S. and show support for her and A. and V.. The need us now more then ever!!! Invite a friend who knows S.S. to come along...she needs us!

. . .

¶ 96 L.G.L. likely contravened the law and the requirement that there be no publication of any children's names, any parent's names or foster parent's names in this child protection proceeding.

¶ 97 In addition, the invitation to expand it exponentially means that there is no measurement of the numbers of people to whom it has been communicated that the father has abused the children.

¶ 98 When asked what efforts she (L.G.L.) made to verify her information and knowledge of the hearing, she testified that she accepted the gossip at face value. When asked whether she read the Decision or had any knowledge whatsoever of the Court process, she admitted that she did not. She acknowledged her error and acknowledged that is was an emotional and inappropriate response. She simply accepted the allegations against the father at face value. Her message has been disseminated and there is no way to find out or to correct the damage that is has caused.

¶ 99 The message is that the girls have suffered sexual abuse at the hands of their father and they should not be with him and that message is a lie.

> ¶ 100 There is no way we can determine what immeasurable effect this will have on the father's ability to parent in the community; to parent his children without a cloud of suspicion following him. He planned a birthday recently for his children and for whatever reason, no children were allowed to go.

[19] This, along with what the judge perceived as the mother's failure to appreciate the need to move beyond these sexual abuse allegations, prompted the relocation order. Thus the judge concluded:

> ¶ 113 It is my conclusion in this instance that the involvement of the community in this way; including J.D., the maternal grandmother's sister; the school; the teachers; those individuals I have named earlier that have contacted the Agency asking them not to send the children out of province; in supporting the mother, have perpetrated this lie. And this has the very real potential of undermining the success of the therapeutic strategy. It exacerbates the conflict and creates an environment of suspicion.
>
> ¶ 114 The best interest of the children requires that the Court continue to pursue the peaceful reintegration of the children with both parents significantly involved in their life, *if that is possible*.
>
> ¶ 115 The father has, by word and conduct, indicated an intent to follow the plan and access the services. The mother has more lately indicated, in word, her intent to comply. As of yet, there has not been significant conduct that would justify a conclusion that she is prepared to cooperate and participate in addressing this conflict.
>
> . . .
>
> ¶ 134 Having regard to the totality of the evidence, I have taken a less intrusive approach (than the Agency) while recognizing the significant damage that has been done to the possibility that the plan that was accepted in December would be workable if the children continued in their current community.
>
> ¶ 135 First, supervision of the mother's access to the children will be lifted.
>
> ¶ 136 The contents of this Order will be drafted by the Court. The Order will not vary any other terms and conditions of the existing Order but it will address very specifically the course that will be followed now.

> ¶ 137 The children will be withdrawn from their current school and enrolled as soon as possible in the school proposed by the Agency and father. The children shall not be bussed from one jurisdiction to another. My reason for that is the children should not have to bear the consequences of the adults inability to maintain a protective environment for them. I do not want these children being bussed for over an hour in winter weather.
>
> ¶ 138 I do not see the likelihood that the children will be returned to their current school in the near future, if ever.
>
> ¶ 139 The Respondent father has agreed to relocate to the area in proximity to the school and he shall do so as soon as possible and he shall be responsible for enrolling the children in the school in consultation with the Agency.

[20] As noted, these are findings of fact or inferences which, in my view, are supported by the evidence before the court. While the mother would like us to direct a different conclusion based on the evidence as she views it, this is beyond our mandate. Instead we are to accept the facts and inferences as determined by the trial judge unless they reflect "palpable and overriding" error. See: **Children's Aid of Halifax v. C.V.**, 2005 NSCA 87 at paras. 4-5, and **Nova Scotia (Minister of Community Services) v. B.F.**, 2003 NSCA 119 at paras. 44-45. Furthermore, to be "palpable", an error must be obvious. To be "overriding", it must be significant. I see no such error in this record. See **Waxman v. Waxman** (2004), 186 O.A.C. 201; [2004] O.J. No. 1765 (Q.C.).

[21] Furthermore, it must be remembered that the finding that these children are in need of protection remains and has not been appealed. As well, the order under appeal is temporary and subject to another full hearing on the merits in just a couple of weeks. The judge will then make her important final determination regarding the future of these children, based on the evidence presented at that time. In this light, I would dismiss all grounds of appeal under this category.

The Impugned Evidentiary Rulings

[22] Here are the grounds challenging the judge's impugned evidentiary rulings:

> Issue 3: The trial judge erred in refusing to admit and failing to consider relevant evidence such as that of [J.V.K.] and others.

> Issue 4: The trial judge erred in admitting and considering evidence that was prior to the decision in May 2009 after specifying that evidence was not to be admitted.
>
> Issue 5: The trial judge erred in admitting evidence of expert witnesses who did not prepare reports or affidavits as requested by the judge and as is required according to Civil Procedure Rules.
>
> Issue 6: The trial judge erred in admitting evidence through affidavits which were not entered at the requested time.
>
> Issue 11: The trial judge erred in ordering the Divorce proceedings recommence during the Child Protection Proceedings after having previously ordering [sic] them stopped for that very reason.

[23] These grounds essentially involve trial management issues that must also be placed in context. Specifically, in order to avoid prolonged uncertainty for the children, protection hearings such as these must be completed within prescribed time limits. This means that such matters are often scheduled on short notice and, often, there is a limited amount of time available to complete such hearings. This calls for flexibility when it comes to the handling of evidence. For example, evidence is often presented by affidavits (that are subject to cross examination) and, because the children are frequently in a state of transition, relevant information is often revealed at the "last minute". Thus, while operating within these constraints, the court must often make discretionary judgement calls that balance the search for the truth with the need to efficiently meet statutory time limits.

[24] Thus, the assertions made by the mother under this category involve discretionary judicial decisions designed to complete a process in a manner that is both efficient but, at the same, time fair to all. Therefore, with good reason, we will interfere only when such exercises of discretion reflect errors in legal principle, which do not exist here. See **K.L.M. v. Nova Scotia (Minister of Community Services)**, 2007 NSCA 100 at para. 18, and **M.S. v. Children's Aid Society of Inverness-Richmond,** 2005 NSCA 78 at para. 16.

[25] Placed in this context, I see no error in the judge's handling of these trial management issues. In fact, even had any of these decisions reflected error, they would have had no impact on the ultimate outcome. I say this because, as noted,

this outcome was essentially driven by the judge's concern over what she viewed as harmful rumours permeating a small community and a mother who had not yet realized the harm that these rumours would ultimately visit upon the children. Therefore, respectfully, there is no merit to any of these grounds of appeal.

Alleged Judicial Bias

[26] The remaining grounds of appeal fall under the category of alleged judicial bias. The relevant grounds are:

> Issue 7: The trial judge erred in not reinforcing the same rules for all parties involved.
>
> Issue 11: The trial judge erred in ordering the Divorce proceedings recommence during the Child Protection Proceedings after having previously ordering [sic] them stopped for that very reason.

[27] Here, the mother asserts that the judge was biased because the judge acknowledged going to school with the lawyer for the respondent father. There was also reference to the judge at one time being classmates with the mother's counsellor, Ms. F. R-C., and the parties' mediator, Mr A.D.

[28] However aside from these coincidences, there is nothing whatsoever to substantiate an allegation of judicial bias. To establish judicial bias, there must be more than a judge simply being classmates with some individuals involved in a matter. Instead, the test is whether a reasonable person in these circumstances would have a reasonable apprehension of bias. See **R. v. S.(R.D.)**, [1997] 3 S.C.R. 484 at para. 111. In this case, there is simply no basis for such a fear. Instead, in my respectful view, the mother's complaint under this heading appears to be based more on her understandable disappointment with the outcome.

The Fresh Evidence Application

[29] Finally, let me briefly address the mother's application to admit fresh evidence. As noted, the request includes our consideration of two letters that were not admitted at trial. Specifically, there is one from each of the mother's counsellors summarizing her treatment. I can dispose of this request by simply

saying this. Even if we were to accept this proposed evidence, in my view its admission would make no difference to the ultimate outcome of this appeal. I say this because the primary purpose of tendering these letters is to document the mother's therapy sessions. Yet this same information was essentially provided by the mother in her oral testimony and was not disputed. Again, this case did not turn on the number of the mother's counselling sessions. Instead, as noted, it turned on the judge's concern over the mother's apparent inability to move beyond the unsubstantiated sexual allegations against her husband which, by September 2009, the judge feared had permeated the children's small community.

DISPOSITION

[30] For all the above reasons, I would dismiss the appeal but, in the circumstances, without costs.

MacDonald, C.J.N.S.

Concurred in:

Bateman, J.A.

Oland, J.A.