C.A. Nos. 137984 & 137993

NOVA SCOTIA COURT OF APPEAL
Cite as: H.C. v. Children's Aid Society for County of Cape Breton, 1997 NSCA 143

Clarke, C.J.N.S.; Chipman and Roscoe, JJ.A.

BETWEEN:	)	
	)	
H.C., S.C. and J.C.	)	Gerald B. MacDonald
	)	for the Appellants,
Appellants	)	H.C. and S.C.
	)	
- and -	)	Marian Mancini
	)	for the Appellant J.C.
CHILDREN'S AID SOCIETY FOR THE COUNTY OF CAPE BRETON	)	
	)	
	)	
Respondent	)	Robert M. Crosby, Q.C.
	)	for the Respondent
	)	
	)	
	)	Appeal Heard:
	)	September 15, 1997
	)	
	)	
	)	Judgment Delivered:
	)	September 15, 1997

THE COURT: The appeal is dismissed as per oral reasons for judgment of Roscoe, J.A.; Clarke, C.J.N.S. and Chipman, J.A.

ROSCOE, J.A.:

[1] This is an appeal from a decision of Judge Vernon MacDonald of the Family Court dated April 1, 1997, in which it was ordered that two children, now aged two and four, be committed to the permanent care and custody of the respondent agency pursuant to the **Children and Family Services Act**, S.N.S. 1990, c. 5, s. 42(1)(f). The appellants are the mother and maternal grandparents of the children.

[2] The children were first taken into care November 9, 1995. On February 6, 1996, the parties consented to an order that the children were in need of protective services pursuant to s.22(2)(b) of the **Act**. On March 29, 1996, the first of a series of temporary orders provided that the male child, although in the care of the agency, reside with the appellant grandparents. The female child remained in foster care. The appellant mother had access to the children. After a hearing evidence from Dr. Carol Pye, who had conducted a psychological assessment of the appellants, at a hearing in May, 1996, the male child was removed from the care of the grandparents and placed with another relative. After numerous adjournments and further temporary orders, another assessment was performed by psychologist Sharon Cruikshank who testified at a hearing held on January 24, 1997. Four days of other evidence called by the parties was completed on March 21, 1997 and the matter was adjourned to April 1, 1997 for delivery of Judge MacDonald's oral decision.

[3] The trial judge indicated that as a result of s.45(1) of the **Act** ,which states that the total duration of temporary disposition orders should not exceed twelve months, a final decision was required. The mother, as result of her numerous difficulties including major substance abuse, and psychological disorders and emotional trauma arising from a history of sexual abuse, did not present a plan of her own but did support her father's application for custody. Judge MacDonald referred to the differences in opinion between the two psychologists respecting the appellant grandfather's parenting capacity: Dr. Pye expressed grave reservations that he had the capacity to meet the emotional needs of the children, whereas Ms. Cruikshank was of the opinion that he could be a nurturing parent, if he received further professional help. Judge MacDonald concluded that the best interests of the children required that they be placed in the permanent care of the agency.

He said:

> I find these children continue to need and require State intervention. Especially so if placed with Mr. [C.]. Even Mrs. Sharon Cruikshank recognized this. The services required would enhance the parenting ability of the Respondent, Mr. [C.], and diminish risk of emotional harm to the children over the long term. These services in my judgement would be essential to avoid the type of upbringing [J.], the children's mother was exposed to. ...
>
> In light of the background set out in both reports insofar as the home environment of Mr. [C.] and Mrs. [C.] is concerned and their individual needs as set out in both reports I reach the conclusion I cannot have any confidence that without court ordered intervention the parenting ability of Mr. [C.] would be upgraded as recommended. I cannot place the children with him in these circumstances. A risk situation exists and the concerns raised have not been addressed by either Mr. [C.] or his spouse and the statutory time has run out, insofar as the provision of services is concerned. There is just too much dysfunction in the home between themselves, between themselves and their daughter [M.] and between [J.] and themselves.

[4] The sole ground of appeal is:

> The Learned Trial Judge, in his application of Section 46(5) of the **Children and Family Services Act** failed to comply with the principles and provisions of the legislation.

[5] The appellants submit that the trial judge erred by focussing on the time limits to such an extent that he did not give sufficient consideration to the viability of the appellants' plan because it included further services being provided to the family, which in turn, would necessitate further supervisory or temporary orders. Furthermore, they submit that the children were no longer at risk, despite the fact that further services were recommended.

[6] The appellants refer to the decision of this Court in **C.A.S of Colchester County v. H.W. et al.** (1996), 155 N.S.R. (2d) 334 in support of their position that the trial judge should not have been so concerned with the time limitations contained in the **Act**. The issue in **H.W.** was whether a Family Court judge lost jurisdiction when proceedings extended beyond the allowable time limitations. There, the trial judge specifically found that it was in the best interest of the children that the matter continue. In this case, on the other hand, the trial judge specifically found that the best interests of the children demanded that the case not be prolonged any further.

[7] We have reviewed the evidence and considered the written and oral submissions of counsel. It is our unanimous opinion that Judge MacDonald correctly instructed himself on the applicable law and properly applied it to the findings of fact he made, for which there was substantial evidence in support. We do not agree that the trial

judge's attention to the time limitations contained in the **Act** improperly overshadowed the principle that the best interests of the children be the predominant consideration.

[8] The appeal is therefore dismissed.

Roscoe, J.A.

Concurred in:

Clarke, C.J.N.S.

Chipman, J.A.