

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

CLARKE, C.J.N.S.:

The Minister of Community Services (appellant) applied to the Family Court for a finding that the four children of the respondents are in need of protective services pursuant to the **Children and Family Services Act**, S.N.S. 1990, c. 5, s. 22(2)(b), (c), (h), (ja).

The children range in age from three to eight years. They were taken into care on May 14, 1997. The protection hearing concluded on October 14, 1997. The decision was delivered and the order of the judge was issued on November 18, 1997.

The following is a summary of the interim orders which were granted by the judge of the Family Court.

- May 20, 1997 (order issued June 3, 1997) - Temporary care and custody was granted to the Agency with access to the respondent mother two times per week as specified by the Agency.
- June 17, 1997 - The order issued June 3, 1997 was continued.
- August 28, 1997 - The interim order was continued and access was amended

- to provide the respondent mother with one day per week at her residence.
- September 16, 1997 - The interim order was continued and access was amended to provide the respondent mother with three hours on one day per week at the mother's residence with one of those hours to be supervised by the Agency.
 - October 23, 1997 - the previous orders of the Court were continued pending the decision of the Court on the protection hearing.

In his decision and order of November 18, 1997, the judge found the children in need of protection but ordered that the four children be returned to the respondent mother "at such time as she advises she is prepared to accept them" and that the Agency continue to supervise the family unit. Pending the disposition hearing scheduled for January 27, 1998, he ordered the mother to attend various counselling sessions, ensure the children attend school and tend to their medical, psychological and educational needs. The children continue in foster care pending the disposition of this appeal.

The Minister appeals alleging that the trial judge erred by,

1. ordering changes to the placement and access of the children without counsel having an opportunity to present evidence and make submissions on the subject; and
2. placing the children back with their mother without considering the needs of

the children as specified by the preamble and other relevant sections of the **Act.**

In our opinion, the first of these two grounds is determinative of the result of this appeal. The focus of this proceeding is whether these four children are in need of protection. The judge said that is the issue. He also said and found that the continuation of the protective services of the Agency are required for these children.

Returning the children to the respondent mother represents a substantial change from all the earlier interim orders in the proceeding. It is a placement that was neither requested nor adequately addressed by counsel before the order was issued.

In view of the evidence which we have examined in detail, we conclude that if the judge contemplated placing the children with their mother, as he obviously did, he should have given counsel the opportunity to speak to that possibility and call such further evidence on that subject as they may have seen fit.

Counsel for the respondent mother submits that was not necessary. The Court, however, is required to determine that which is in the best interests of these children. Where placement of four troubled children who had been living in a fragmented family setting is in issue, a full hearing is required. We agree with the appellant on this issue. It is a fundamental principle of natural justice that the appellant had the right to be heard on placement and access before the children were returned to the respondent mother in the manner provided in the order of the judge on November

18, 1997. In our opinion the judge erred in law by failing to provide counsel with that opportunity.

Disposition

We allow the appeal, without costs, and order:

1. we confirm the finding of the judge that the four children are in need of protective services;
2. excepting the adjournment of the matter to January 27, 1998 for disposition, the remaining paragraphs of the order issued November 18, 1997 are set aside; and
3. until such time as the Family Court hears and disposes of the issues of placement and access, the order issued June 3, 1997, confirmed as amended by the order of October 23, 1997, will continue.

Clarke, C.J.N.S.

Concurred in:

Roscoe, J.A.

Bateman, J.A.