

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *J.M. v. Nova Scotia (Community Services)*, 2012 NSCA 72

**Date:** 20120710

**Docket:** CA 384102

**Registry:** Halifax

**Between:**

J.M.

Appellant

v.

The Minister of Community Services

Respondent

**Restriction on publication:** Section 94(1) of the *Children and Family Services Act*

**Judge:** The Honourable Justice Peter M.S. Bryson

**Appeal Heard:** June 15, 2012

**Subject:** **Child Protection - Children and Family Services Act, S.N.S. 1990, c. 5. Permanent Care Order.**

**Summary:** The appellant appealed an order placing her children in the permanent custody and care of the Minister. The children were previously found in need of protective services. The judge found that J.M.'s limited ability to problem solve and make choices placed her children at risk. J.M. appealed alleging that the trial judge erred by giving inappropriate weight to the fact that her therapeutic counseling had not been concluded. J.M. also alleged that the trial judge made an error of fact in finding that the stepfather with whom she stayed recently was the same stepfather who was violent with her when she was young.

- Issues:**
1. Did the trial judge give inappropriate weight to the fact that J.M.'s therapeutic counseling had not been concluded?
  2. Did the trial judge make an error of fact in finding that the person with whom J.M. stayed in 2011 was violent with her when she was young?

**Result:** Appeal dismissed. J.M.'s progress, in particular, that she had not completed therapeutic counseling – was not a criterion under the *Act*. The question was whether the children remained in need of protective services (s. 41(1) of the *Act*). That need includes whether there is a “substantial risk” that a child will suffer physical harm due to the failure of a parent to supervise and protect the child adequately (s. 22(2)(a) and (b)). The judge so found and there was ample evidence supporting that finding.

With respect to issue #2, it was not clear that the trial judge had made any error. In any event, in view of the legal issues, any alleged error was not material.

<p><b>This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 10 pages.</b></p>
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