C.A. No. 123464

NOVA SCOTIA COURT OF APPEAL
Cite as: A. W. v. Nova Scotia (Community Services), 1996 NSCA 90

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

BETWEEN:

A. W. and B. W.	)	Fiona Wotherspoon
	)	for the Appellants
Appellants	)	
- and -	)	
	)	Deborah I. Conrad
	)	for the Respondent
THE MINISTER OF COMMUNITY SERVICES	)	
	)	
Respondent	)	Appeal Heard:
	)	March 18, 1996
	)	
	)	
	)	Judgment Delivered:
	)	March 18, 1996
	)	
	)	
	)	

Editorial Notice

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

THE COURT: Appeal dismissed from orders of the Family Court placing two children in the permanent care and custody of the Minister, per oral reasons for judgment of Clarke, C.J.N.S., Matthews and Roscoe, JJ.A. concurring.

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

CLARKE, C.J.N.S.:

On November 24, 1994, a judge of the Family Court found that two male children of the appellants, CLAM, born November *, 1990, and TKW, born March *, 1992, were in need of protective services pursuant to the **Children and Family Services Act**, S.N.S. 1990, c. 5, s. 22(2)(b). On November 20, 1995, he issued orders placing each of them in the permanent care and custody of the respondent, the Minister of Community Services.

These orders followed months of lengthy and protracted proceedings during which interim orders for temporary care, multi-team disciplinary assessments including psycho-social and psychiatric assessments were conducted, with no positive results, and mediation was attempted and failed. Experts were consulted. They reported the prospects for the boys continuing in the care of the appellants were dismal and bleak. They concluded the appellants lacked the parenting skills to raise and nurture these two children. Many hearings were held in the Family Court. At the final hearing the judge observed there was "sufficient and abundant evidence that the children should be placed permanently in the care and custody of the Minister of Community Services".

The appellants are appealing his decision to this Court pursuant to s. 49(6). The principal thrust of this appeal is that the appellants alleged they were deprived of natural justice in that they were not given sufficient time to engage a lawyer or adequate time to prepare and present their case in the absence of a lawyer.

The record reveals that during most of the proceedings they had counsel in the person of Mr. Yeadon of Nova Scotia Legal Aid. He is a lawyer experienced in these matters. Upon the appellants terminating his services, they retained Ms. Tippett-Leary who is a private practitioner. That engagement ended about two weeks before the final hearing. Between that time and the last hearing, the appellants applied for further representation by Legal Aid and their application was refused.

Considering the length of time these proceedings had gone on and the need to bring some stability to the lives of these two children, the judge ordered the hearing, which led to the final orders, proceed as scheduled. This was not done without his first explaining to the appellants their right to participate in the proceeding with or without counsel.

We have examined the record in detail. We are satisfied the judge treated the appellants with sensitivity and understanding throughout. He, and the one other judge who stood in for one interim hearing, made every reasonable effort to make sure the appellants understood the proceedings and their rights. They were given every opportunity to speak, ask questions and participate.

Having reviewed the record we are satisfied that no procedural injustice was done to the appellants. Accordingly, we dismiss this and their related grounds of appeal. We find as did this Court in **D.(M.) v. Children's Aid Society of Halifax** (1992), 41 R.F.L. (3d) 338, that the appellants were not denied natural justice.

The appellant, A. W., has filed an affidavit with this Court, sworn March 14, 1996. We are asked, pursuant to s. 49(5) to consider it as evidence relating to events after the appealed order. She professes that she has undergone a change of attitude, is subject to less hostility and anger and that it is now appropriate to return the children to the care of the appellants but under continuing supervision and guidance.

In our opinion the affidavit evidence of A. W., standing alone and expressing her newly found feelings, runs entirely against the weight of the professional opinions of all the experts and the findings of the judge. Her affidavit evidence is not decisive in altering the events which, less than one year ago, were found not to be in the best interest of these two young boys. The fact that Ms. W. is still only permitted to visit her firstborn son, who is not a subject of these proceedings, every second weekend and then on a limited basis indicates that while she needs encouragement, her professed change of attitude and

circumstances cannot alter today what was decided in the Family Court four months ago.

Since s. 49(6) provides this Court may confirm, rescind or vary an existing order or make any order the Court could have made, we have studied the extensive record, the evidence and the exhibits that accumulated during the course of the proceedings in the Family Court. In our opinion the judge of the Family Court made no errors in law or fact. (See also **G.(S.) v. Children's Aid Society of Cape Breton** (1995), 14 R.F.L. (4th) 161, Freeman, J.A. at 146.)

Accordingly, the orders of the Family Court are confirmed. This appeal is dismissed, without costs.

C.J.N.S.

Concurred in:

Matthews, J.A.

Roscoe, J.A.