

NOVA SCOTIA COURT OF APPEAL

**Cite as: M.E.K. v. Nova Scotia (Community Services), 1996 NSCA 46**

**Freeman, Roscoe and Pugsley, JJ.A.**

**BETWEEN:**

M. E. K.

Appellant

)  
)  
) Janet Morris  
for the Appellant

- and -

MINISTER OF COMMUNITY SERVICES  
and M. T. K.

Respondents

)  
)  
) Gordon R. Kelly  
for the Respondent,  
Minister of Community  
Services

)  
)  
) Appeal Heard:  
February 15, 1996

)  
)  
) Judgment Delivered:  
February 15, 1996

Editorial Notice

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

**THE COURT:**

The appeal is dismissed without costs as per oral reasons for judgment of Roscoe, J.A.; Freeman and Pugsley, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by

**ROSCOE, J.A.:**

The appellant alleges that she was not competent to give instructions to her counsel on a matter involving her grandchildren before the Family Court pursuant to the **Children and Family Services Act**.

Her former counsel appeared in her absence on the first day scheduled for the trial and did not oppose the Minister's plan for permanent care and custody of the children.

She appeals to this Court to rescind the order of the Family Court granting permanent care of the children to the Minister on the grounds that it is a nullity, and has filed three affidavits in support of an application to present new evidence to this Court. No affidavit of her former counsel was filed.

Having read the affidavits of the appellant, her sister and her psychiatrist, the record before us, and the factums, and having heard the submissions of counsel, we agree with the respondents' submission that the proper forum for the consideration of this matter is the Family Court pursuant to Rule 15.08 of the **Civil Procedure Rules** which is as follows:

15.08 Where a party is entitled to,

- (a) maintain a proceeding for the reversal or variation of an order upon the ground of a matter arising or discovered subsequent to the making of the order;
- (b) impeach an order on the ground of fraud;
- (c) suspend the operation of an order;
- (d) carry an order into operation;
- (e) any further or other relief than that originally granted;

he may apply in the proceeding for the relief claimed.

Counsel for the respondent, Minister of Community Services, advises this Court he would not object to the jurisdiction of the Family Court to consider an

application under **Civil Procedure Rule** 15.08, so long as it is made within 30 days.

We would therefore dismiss the appeal without costs.

Roscoe, J.A.

Concurred in:

Freeman, J.A.

Pugsley, J.A.