

NOVA SCOTIA COURT OF APPEAL

Citation: *H.A.N. v. Nova Scotia (Community Services)*, 2013 NSCA 44

Date: 20130410

Docket: CA 408964

Registry: Halifax

Between:

H.A.N.

Appellant

v.

Minister of Community Services, C.N. and A.V.

Respondents

Restriction on Publication: Pursuant to s. 94(1) of the *Children and Family Service Act*

Judge: The Honourable Justice Joel E. Fichaud

Appeal Heard: March 25, 2013, in Halifax, Nova Scotia

Subject: *Children and Family Services Act* - permanent care and custody
- consideration of plan for care by child's grandfather.

Summary: A Judge of the Family Court ordered that A.N., aged two and a half, enter the permanent care and custody of the Minister of Community Services under the *Children and Family Services Act*. The child's mother did not seek care. The child's grandfather had submitted a plan for care that the judge determined to be not reasonable. The grandfather H.A.N. appealed to the Court of Appeal.

Issue: Did the judge err in law or commit a palpable and overriding error of fact? H.A.N. submitted that the judge erred by accepting the evidence of the parental capacity assessor, whom H.A.N. said was not independent, by ruling that the child was at risk, and by not considering less intrusive measures to promote family integrity.

Result:

The Court of Appeal dismissed the appeal. The parental capacity assessor was independent and qualified and was not associated with either party. There was evidence, accepted by the judge, that the child was at risk before her apprehension by the Department of Community Services, and that she would be at risk in the future under the plan submitted by H.A.N.. The judge made no palpable or overriding error in his assessment of the evidence. The judge gave consideration to family integrity, but properly applied the determinative factor of promoting the child's best interests, as required by the *Children and Family Services Act*.

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 20 pages.