

NOVA SCOTIA COURT OF APPEAL

Citation: *K.B. v. Nova Scotia (Community Services)*, 2013 NSCA 69

Date: 20130607

Docket: CA 412854

Registry: Halifax

Between:

K.B.

Appellant

v.

Minister of Community Services

Respondent

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

Judges: MacDonald, C.J.N.S., Beveridge and Bryson, J.J.A.

Appeal Heard: May 23, 2013, in Halifax, Nova Scotia

Subject: **Family Law – Child Protection – Application for termination of order for permanent care and custody – s. 48, *Children and Family Services Act*, S.N.S. 1990, c.5**

Summary: A judge ordered the appellant's three children into the permanent care and custody of the Minister. She applied under s. 48 of the *Act* to terminate that order, arguing that there had been a significant change in circumstances such that a permanent care order was no longer necessary, nor in the children's best interests. The application was dismissed. The appellant appealed claiming legal error in the process by a failure to formally give notice to one of the children who turned 12 after the application to terminate was commenced, and errors by the judge in the findings he made.

Issues: Was there an error in the process; and did the judge otherwise commit reversible errors?

Result:

The appellant had counsel throughout the application. All of the participants in the hearing process were aware of the age of one of the children. There is no basis to say that the failure to give formal notice impacted on the fairness of the process or could have realistically affected the outcome. Assessment of evidence and findings of fact are for trial judges. An appeal court can only intervene where a trial judge applied the wrong legal principles, misapprehended the evidence or made findings tainted by palpable and overriding error. None of these were made out. Accordingly, the appeal was dismissed.

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 9 pages.