NOVA SCOTIA COURT OF APPEAL

Citation: *R.S. and J.L. v. Nova Scotia (Minister of Community Services)*, 2024 NSCA 75

Date: 20240801
Docket: CA 531164
Registry: Halifax

Between:

R.S. and J.L.

Appellants

v.

Minister of Community Services

Respondent

Judge:	The Honourable Justice Elizabeth Van den Eynden
Appeal Heard:	July 24, 2024, in Halifax, Nova Scotia
Subject:	*Children and Family Services Act*; order for permanent care and custody; misapprehension of evidence; bias
Summary:	On appeal, the appellants sought to set aside a permanent care and custody order regarding **their four children. They** claimed the judge made evidentiary errors (including alteration of evidence) and was biased towards them. They also wanted to introduce fresh evidence on appeal.
Issues:	(1) Should the fresh evidence be admitted? (2) Did the judge misapprehend or deliberately alter the evidence? (3) Did the judge demonstrate bias towards the appellants?
Result:	Motion to adduce fresh evidence dismissed. It failed to meet the admissibility test. Appeal dismissed because the appellants did not establish the judge erred nor was there any merit to the allegation of judicial bias.

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 49 paragraphs.

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

Judges:	Van den Eynden, Beaton, Gogan, JJ.A.
Appeal Heard:	July 24, 2024, in Halifax, Nova Scotia
Held:	Motion for fresh evidence and appeal dismissed per reasons for judgment of Van den Eynden, J.A.; Beaton and Gogan, JJ.A., concurring
Counsel:	Appellants - self represented Sarah Lennerton for the Respondent

Restriction on publication: Pursuant to s. 94(1) *Children and Family Services Act*, S.N.S. 1990, c. 5.

Publishers of this case please take note that s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

SECTION 94(1) PROVIDES:

> 94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

Reasons for judgment:

Overview

[1] The appellants have a long history with child protection services, dating back to 2016 when their first child was born.

[2] In the most recent protection proceedings their four children (ages 8, 7 and twins just under 2 years of age) were found to be in need of protective services under s. 22 (g) of the *Children and Family Services Act*[1] (*CFSA*). The section provides:

> Child is in need of protective services
>
> 22 (1) In this Section, "substantial risk" means a real chance of danger that is apparent on the evidence.
>
> (2) A child is in need of protective services where
>
> …
>
> (g) there is substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the abuse;

[3] Following a contested final disposition hearing, all four children were placed in the permanent care and custody of the respondent Minister.

[4] The presiding judge (Justice Cindy G. Cormier of the Nova Scotia Supreme Court (Family Division)) determined the children continued to be at substantial risk of harm if returned to their parents' care and the level of risk was unlikely to change before the statutory timelines set out in the *CFSA* expired. The trial judge's decision is reported as 2023 NSSC 330.

[5] The appellants request this Court set aside the permanent care disposition, claiming the judge erred in her apprehension and/or treatment of the evidence and was biased towards them. They also seek to introduce fresh evidence on appeal.

[6] The appellants' lengthy written and oral submissions warrant the important caution that an appeal is not a retrial. It is well established that an appeal is not an

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[1] S.N.S. 1990, c. 5.

opportunity for an appellate court to re-weigh the evidence or a chance to second guess the judge's exercise of discretion to arrive at a different outcome.[2]

[7] I would not admit the fresh evidence because it fails to meet the test for admissibility. I would dismiss the appeal as the appellants have not established the judge erred nor does the record support their bias allegation.

[8] I explain my reasons for these determinations below, beginning with a review of relevant background for context, followed by a framing of the issues and my analysis.

Background

[9] As noted, the appellants have four children who the judge identified in her decision as "MA", "MI", and the twins "S" and "J". The judge referred to the appellant mother as "Ms. S" and the appellant father as "Mr. L".

[10] At trial, the appellants sought return of the children to their care. No alternate plan was advanced by the appellants such as, for example, placement with extended family.

[11] The judge identified the issues she was required to grapple with:

> [2] The issues that will determine whether the children are returned to Ms. S and Mr. L are:
>
> > (a) Whether returning the children to Ms. S and Mr. L is the least intrusive alternative that's in the children's best interests under clause 46(4)(c) of the *Children and Family Services Act*; and
> >
> > (b) Whether the circumstances that justify a permanent care order for MA and MI under section 46(6) of the *Act* are unlikely to change before October 19, 2023[3]; and
> >
> > (c) Whether the circumstances that justify a permanent care order for S and J under subsection 46(6) of the *Act* are unlikely to change before February 22, 2024[4].

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[2] C.*F. v. Nova Scotia (Minister of Community Services)*, 2017 NSCA 56, at paras. 56 – 57.
[3] The statutory end date for the protection proceedings involving these two children.
[4] The statutory end date for the protection proceedings involving the twins. (The twins were born after the protection proceeding were commenced for the two older children and thus separate proceedings were commenced for the twins; however, the final disposition for all four children was heard together).

[12] The judge was mindful of the legal framework that guides the assessment of these issues. She said:

> **Law**
>
> [225] As the matter before the Court is a Disposition Review, the Court confirms that all previous orders on file were correctly made on the consent of or with no opposition by the parties.
>
> [226] The Court has but two options: dismiss or make an order for Permanent Care.
>
> [227] Section 42(1) of the *Children and Family Services Act* sets out:
>
> > At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:
> >
> > (a) dismiss the matter; …
> >
> > (f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.
> >
> > …
>
> [229] The Court must determine whether the circumstances that allowed the Court to find the children in need of protective services still exist, or whether changes or new circumstances have arisen, which may allow the Court to find that MA or MI or S or J, are no longer a child in need of protective services.
>
> [230] In all matters involving the welfare of a child, the Court must be mindful of the best interests of the child at all times using a child-centric approach. This is set out in section 2(2) of the *Children and Family Services Act*.
>
> [231] The Court is also mindful of other legislative factors which highlight the best interest of the child, as set out in section 2(1) of the *Act* and include protecting children from harm, and promoting the integrity of the family.
>
> **Least Intrusive Measures**
>
> [232] I am aware I may not make an order removing the child from the care of a parent or guardian unless I am satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13:
>
> (a) have been attempted and have failed;
>
> (b) have been refused by the parent or guardian; or
>
> (c) would be inadequate to protect the child.
>
> …
>
> [245] There is no time left for further temporary care orders in relation to MA and MI. I must either dismiss the matter and return the children to Mr. L and Ms. S or order that MA and MI be placed in the permanent care and custody of the Minister of Community Services. …

> [246] With respect to S and J, I may make further temporary care orders only if I am satisfied that the circumstances which justified the earlier orders "are unlikely to change" before the final disposition deadline of February 22, 2024.
>
> [247] The Minister is not required to wait until the absolute final deadline to bring their application for permanent care: *LLP and RFP v. Nova Scotia (Minister of Community Services)*, 2003 NSCA [1].

[13] Turning to the appellants' protection history, the record established that before their involvement with child protection services in Nova Scotia, they were involved with child protection services in Newfoundland. The judge explained:

> [3] On or about November 10, 2021, the Nova Scotia Minister of Community Services – Child Protection (Nova Scotia agency), became involved with the parties and their two eldest children after they received information from the Department of Children, Seniors, and Social Development in Newfoundland (Newfoundland agency). The Newfoundland agency advised they had had involvement with Ms. S and Mr. L beginning after MA's birth in 2016.
>
> [*sic*] The Newfoundland agency advised the Nova Scotia agency they were concerned that Ms. S and the children had left Newfoundland during an open child protection investigation with many services still pending, that Ms. S had been referred to in-home support services, and there was an expectation Ms. S would follow up on referrals for the child(ren) to speech language pathology, and to an autism specialist.
>
> [4] The Newfoundland agency had identified concerns while involved with the family, including: family violence; substance abuse; unfit living conditions; parental mental health; and inappropriate discipline of the children. The agency reported there were allegations of: emotional abuse and neglect; unsafe and unsanitary conditions of the home including food being left around and bugs in the home; risk of Ms. S becoming physical with the children; and the possibility Ms. S was experiencing suicidal ideation.
>
> [5] The Newfoundland agency specified they were also concerned that Ms. S had stated she had been diagnosed with Castleman's disease and she was experiencing chronic pain. The Newfoundland agency reported that Ms. S had advised them she was moving to Halifax, Nova Scotia for treatment and for support from the children's paternal grandmother, Mr. L's mother.
>
> [6] The Newfoundland agency advised they had informed Ms. S they would be referring her matter on to the Nova Scotia agency. They advised the Nova Scotia agency that they had returned the children to Ms. S's care with the understanding that Mr. L had left Newfoundland and he had moved to Nova Scotia in or around April 15th, 2018, and the parties understood they could not have contact in the presence of the children, and Mr. L could not be left unsupervised with the children.

[14] The record sets out the extensive involvement the appellants had with child protective services in Nova Scotia since November 2021 and what led to the children being taken into temporary care and the Minister's eventual development of Plans of Care[5] seeking permanent care.

[15] There is no need to review the various stages of the protection proceedings as the focus is on the decision rendered by the judge following the final disposition hearing held on October 3 – 6, 2023.

[16] The Plans of Care presented at the final disposition hearing summarized the Minister's view of the child protection risks and that neither parent was likely to remedy the concerns prior to the statutory end date. The following Plan excerpt illustrates:

> Their [the parents] lack of insight into the outstanding child protection concerns, continued hostility with persons providing support and service to their children and family, and resistance to work cooperatively with the Agency for the safety and well-being of their children, remains a barrier for the Agency to work towards safely returning the children to their care within any reasonable time frame.

[17] The judge heard *viva voce* evidence from numerous witnesses called by the Minister. These included, case workers, social workers, family and access support workers employed by the Minister, as well as several third-party professionals who also worked with the children and/or the appellants. The appellants testified. The judge also had the benefit of numerous exhibits filed with the court.

[18] The judge extensively reviewed the evidentiary record before her at paras. 7 to 224 of her decision. For the purposes of addressing the grounds of appeal, I reference the following key findings made by the judge:

> [194] … Based on the children's demonstrated needs, Mr. L is not able to provide the level of parenting support required to assist the children or to assist Ms. S in assisting the children. I find that Mr. L is likely to have great difficulty not intervening when Ms. S attempts to do so. In his own words, not reacting would be impossible for him as he has a "reaction disorder diagnosis."
>
> …
>
> [202] At times Ms. S's testimony has shown she lacks the ability to resist being influenced by her own interest in recalling events; there are inconsistencies with respect to what information she provides to whom. I find her evidence regarding

[5] A Plan of Care was developed for the two older children and a separate but similar Plan for the twins.

hers and Mr. L's relationship, and in particular her claim there is no ongoing conflict or disputes, is improbable or unlikely.

…

[207] It appears that Ms. S … would be the primary parent to administer discipline and that if there was violence or safety concerns she would leave or call 911. Again, I do not accept that Mr. L will allow Ms. S to administer discipline to the children or to contact 911 for that matter if he was the cause of her concern.

…

[211] I find Mr. L's views on parenting practices as they relate to the children are highly unlikely to change and if he is involved in the care of the children MA or MI, their emotional distress will most likely increase over time and their level of positive functioning will decrease, losing the gains made thus far.

[212] I also find it is highly likely that with Mr. L involved in the care of S or J, they are likely to be exposed to maltreatment and conflict and to also then present with symptoms of emotional distress mostly or in large part attributable [to] both Ms. S's and Mr. L's, actions, inactions, reactions, and their choices.

…

[215] Mr. L initially refused to participate in services, then indicated he would only participate in community services, then complained about how long it had taken the Minister to provide him with services. I do not believe he has benefited to any great extent from any services (which he identified himself at one point), and I do not believe he has a very good understanding of why the services are being offered to him. He has failed to focus on important goals and instead focussed on issues such as MI's dog bite and others. Although at times he has stated he needs therapy and he should follow through, Mr. L did not provide evidence that any therapy had any positive impact on his views or ability to parent effectively.

…

[235] After the two eldest children were brought into care, their needs were determined to be great. …

[236] Although S and J do not present with any special needs, I find that exposing them to Mr. L's preferred parenting practices, which I find to be maladaptive, would more than likely result in S and J being negatively impacted in a similar way as MA and MI have been. Mr. L has not shown he can implement any of the information he reviewed or the parenting tools discussed with Ms. West.

[237] Mr. L has blamed the agency for the lack of opportunity to prove he can parent in an effective way. I find his argument to be an attempt to deflect his own responsibility for failing to immediately engage in a meaningful way in services. Regardless, I have found that his beliefs about parenting are not amenable to change in any event.

…

[243] There is clear evidence of the very strong likelihood that MA and MI are suffering serious effects of exposure to maltreatment and domestic violence and neither party has convinced me they intend or are able to implement a plan that allows Ms. S to implement all discipline in the home. In addition, I am not convinced Ms. S will protect MA, MI, S, or J from Mr. L or any future partner who inflicts similar maltreatment or engages in domestic violence. The services already offered were insufficient to address the risk of ongoing and future physical and emotional harm to the children.

…

[248] Based on the history of harm to MA and MI and based on Mr. L's and Ms. S's plan, I find the risk of ongoing and future physical and emotional harm to MA and MI, due to the real and substantial risk of maltreatment or domestic violence is clear, and I also find the risk of future physical and emotional harm to S and J, due to the real and substantial risk of maltreatment or domestic violence is also very clear.

[249] Because of the uncertainty all the children are experiencing, it's in their best interests that there is a resolution and a proceeding not be prolonged any longer than absolutely necessary: *TH v. Minister of Community Services and RW*, 2013 NSCA 83 at paragraph 87.

[250] I am satisfied that the circumstances which justified the earlier orders "are unlikely to change" before February 22, 2024. There has been too little progress to date to expect that these circumstances can change by February 22, 2024.

[19] And in her concluding reasons the judge found:

[252] …the agency has proven on balance of probabilities that since MA and MI's births, both MA and MI have most likely experienced repeated exposures to "instances of maltreatment, attachment breaches, parental / caregiver drug and substance abuse, and domestic violence."

[253] In addition, the agency has proven on balance of probabilities that both MA and MI are "experiencing significant mental health difficulties as a result of what they have been exposed to" while residing with Ms. S and/or Ms. S and Mr. L. Despite services being offered to Ms. S, and at times to Mr. L by both the Newfoundland and the Nova Scotia agencies between 2016 and 2023, both MA and MI have been harmed, at times physically, and they have been harmed emotionally.

[254] That the Minister's evidence proves on balance of probabilities that the circumstances creating the risk are very unlikely to change within the mandated time period or at all, ever. Therefore, there is a serious ongoing and future risk of significant physical and emotional harm to MA, MI, S, and J should the matter be

> dismissed and any of the children, MA, MI, S, or J, be returned to Ms. S and Mr. L's care and custody.
>
> [255] The ongoing and future risk is due to Ms. S's and Mr. L's lack of insight into MA's, MI's, S's and J's needs, and resulting reluctance, inability, or unwillingness to do what is necessary to meet the children's needs rather than prioritize their own needs. Given the history of this matter including the ongoing and serious risks present over an extended period between 2016 and 2023, the risks to S and J are also significant and undeniable.
>
> [256] Ms. S has diligently attended most appointments and the evidence suggests that during access visits Ms. S is able to provide adequate hands on care for the children and she is most often able to respond to their emotional needs, in particular when Mr. L isn't physically present. However, Ms. S has never been able to make the one decision she needs to make to keep the children safe and to remain a part of her children's lives.

[20] These findings led the judge to these inescapable determinations:

> [233] On review of the evidence, I am satisfied that less intrusive alternatives to promote the integrity of the family have been attempted and failed, and further, would be inadequate to protect the [children].
>
> …
>
> [257] I place the children into the Minister's permanent care and custody.

Issues:

[21] In the Notice of Appeal, the numerous complaints of judicial error pertain to the judge's appreciation and use of the evidence before her. The appellants assert the judge omitted/failed to consider and/or altered trial evidence; made false claims against them; and she did so to favour the Minister.

[22] In the Minister's factum the grounds are reframed under two themes:

1. Did the judge misapprehend or deliberately alter the evidence?
2. Did the judge demonstrate bias towards the appellants?

[23] This reframing captures the appellants' complaints of error. I discuss the standard of review engaged by these two grounds in my analysis.

[24] The remaining issue to be determined is whether the appellants' motion to adduce fresh evidence should be granted. I will address the fresh evidence motion first.

Analysis

Should the proposed fresh evidence be admitted?

[25] Section 49(5) of the *CFSA* provides*:*

> Appeal and stay
>
> …
>
> (5) On an appeal pursuant to this Section, the Court of Appeal may in its discretion receive further evidence relating to events after the appealed order.

[26] *Civil Procedure Rule* 90.47(1) permits this Court to admit fresh evidence where there are "special grounds". In *Armoyan v. Armoyan*, 2013 NSCA 99, leave to appeal to S.C.C. refused, 35611 (6 February 2014) the test for "special grounds" was explained:

> [131] … The test for "special grounds" stems from *Palmer v. The Queen*, [1980] 1 S.C.R. 759, at p. 775. Under *Palmer*, the admission is governed by: (1) whether there was due diligence in the effort to adduce the evidence at trial, (2) relevance of the fresh evidence, (3) credibility of the fresh evidence, and (4) whether the fresh evidence could reasonably have affected the result. Further, the fresh evidence must be in admissible form. …

[27] In *Barendregt v. Grebliunas*, 2022 SCC 22, the Supreme Court of Canada re-affirmed the application of the *Palmer* test in the family law context.

[28] Further, relating specifically to child protection proceedings and the consideration of the best interests of children, this Court stated in *K.B. v. Nova Scotia (Community Services)* 2013 NSCA 32:

> [18] Section 49(5) of the [*CFSA*] permits the Court of Appeal to receive "... further evidence relating to events after the appealed order." *Nova Scotia Civil Procedure Rule* 90.47 allows the court to receive evidence on "special grounds" on "any question as it directs." In considering a fresh evidence motion in a child protection appeal, this Court will apply the *R. v. Palmer*, [1980] 1 S.C.R. 759 criteria but modified to ensure that the Court of Appeal has current evidence that would bear on a child's best interests: [citations omitted]

[29] On this appeal, the proposed fresh evidence is comprised of the appellants' joint affidavit with attached exhibits in excess of 1100 pages and a USB stick containing some video and audio recordings. The written materials primarily consist of the appellants' commentary on reproduced evidence that was before the

lower court. In other words, the bulk of the materials is not fresh evidence at all. Instead, they are submissions about why the evidence should have led to dismissal of the Minister's motion for permanent care and return of the children to the appellants' care.

[30] The few proposed exhibits that were fresh (not tendered at trial) were available to the appellants at the time of trial but not offered as evidence. These were photographs of dog bite marks on one child as well as video and audio recordings of parental interactions with the children.

[31] In my view, the proposed evidence fails to meet the test for admissibility in several ways. As noted, the bulk of it is not fresh evidence at all and the little that is could have been adduced at trial but was not. Further, the new evidence is dated, and is not relevant nor decisive to the task before us on appeal. Consequently, I would dismiss the motion to adduce fresh evidence.

[32] Although I would dismiss the fresh evidence motion, the panel considered the appellants' commentary on the evidentiary record (contained in the fresh evidence materials) as submissions on the merits of the appeal.

Did the judge misapprehend or deliberately alter the evidence?

[33] To warrant our intervention the appellants must establish the judge erred and that error impacted the result. As explained in *A.M. v. Children's Aid Society of Cape Breton-Victoria*, 2005 NSCA 58:

> [26] …This Court is to intervene only if the trial judge erred in legal principle or made a palpable and overriding error in finding the facts. The advantages of the trial judge in appreciating the nuances of the evidence and in weighing the many dimensions of the relevant statutory considerations mean that [the judge's] decision deserves considerable appellate deference except in the presence of clear and material error: [Citations omitted]

[34] Errors in law are reviewed on the correctness standard (see *Housen v Nikolaisen*, 2002 SCC 33, at para. 8). The appellants have not identified any error in the judge's articulation or application of the governing legal principles.

[35] Factual findings are reviewed on the standard of palpable and overriding error. As explained in *Nova Scotia (Community Services) v. A.S.*, 2007 NSCA 82:

> [7] The law is now clear that we may interfere with findings of fact only if the judge made a "palpable and overriding error", that is, an error which is clear and

> affected the result. This standard of review applies to all findings of fact. It applies whether or not the findings are based on the judge's assessment of credibility. It applies to inferences which the judge draws from the evidence: … It applies to review of facts in cases involving child custody and a child's best interests: …[citations omitted]
>
> [8] Where it is alleged that the judge failed to consider relevant factors or misapprehended the evidence, the appellate court's task is to determine if there has been a material error. The Supreme Court explained this in **Van de Perre**, para. 15:
>
> > ... appellate review requires an indication of a material error. ... [O]missions in the reasons will not necessarily mean that the appellate court has jurisdiction to review the evidence heard at trial. ... [A]n omission is only a material error if it gives rise to the reasoned belief that the trial judge must have forgotten, ignored or misconceived the evidence in a way that affected his conclusion. Without this reasoned belief, the appellate court cannot reconsider the evidence.
>
> [9] The fundamental point is that absent clear and determinative errors of fact or material errors of reasoning, the trial judge's decision stands.

[36] The appellants did not identify any palpable and overriding error in the judge's factual findings, nor any misapprehension of the evidence, failure to consider relevant evidence, or alteration of evidence by the judge. Having reviewed the record, no such errors or alterations are discernible.

[37] With respect, the appellants' submissions focus on and encourage that which we are not permitted to do – simply reweigh the evidence and arrive at a conclusion they understandably desire. That being, to reassess the child protection risks more favourably and return the children to their care.

[38] As explained, retrials are not the function of this Court. The judge made crucial findings of fact as set out in paras. 18 and 19 above. Those findings were clearly available to her on this record. In turn, these findings underpinned her conclusion that the children remained at substantial risk of harm and an order for permanent care and custody was required and in their best interests.

[39] There is no need to review the appellants' submissions in any further detail. It is sufficient to observe their submissions do not undermine the judge's critical findings in any way.

[40] This ground of appeal lacks any substance and I would dismiss it.

Did the judge demonstrate bias towards the appellants?

[41] The issue of bias is raised for the first time on appeal. No concerns of bias were addressed in the permanent care hearing—the allegations only surfaced after the appellants received the judge's decision.

[42] Judicial bias was mostly recently reviewed by this Court in *R. v. Nevin*, 2024 NSCA 64. The meaning of bias was explained:

> [47] Bias has been defined as "a predisposition to decide an issue or a cause in a certain way which does not leave the judicial mind perfectly open to persuasion or conviction". …

[43] The test to assess whether a reasonable apprehension of bias claim has been established was also explained in *Nevin*:

> [47] …The test for establishing a reasonable apprehension of bias has been consistently applied by Canadian courts of all levels since the case of *Committee for Justice and Liberty v. Canada (National Energy Board)*[6]:
>
> > [...] the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. [...] that test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the trier of fact], whether consciously or unconsciously, would not decide fairly."
>
> [48] The notion of fairness in the context of reasonable apprehension of bias was further commented on by the Supreme Court of Canada in *R. v. R.D.S*[7]:
>
> > [94] [...] Fairness and impartiality must be both subjectively present and objectively demonstrated to the informed and reasonable observer. If the words or actions of the presiding judge give rise to a reasonable apprehension of bias to the informed and reasonable observer, this will render the trial unfair.

[44] The burden on a party claiming a reasonable apprehension of bias or actual bias on the part of a judge is onerous. There is a strong presumption of judicial impartiality that must be overcome by a claimant. The inquiry is fact-specific and requires clear evidence of serious grounds (see *Wewaykum Indian Band v. Canada*, 2003 SCC 45 at paras. 76-77 and *R. v. Teskey*, 2007 SCC 25 at para. 21).

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[6] [1978] 1 S.C.R. 369, at pages 394 - 395.
[7] [1997] 3 S.C.R. 484, at para. 94.

[45] Applying these principles to the submissions advanced by the appellants permits a summary dismissal of this ground of appeal.

[46] Apart from simply stating their belief the judge acted in a manner that was partial to the Minister's position, the appellants have not identified anything in the record that could support such an allegation. And upon my review of the record, I saw nothing indicating the judge was biased in her decision making.

[47] Placing the children in the permanent care and custody of the Minister was not the outcome the appellants sought. However, an unfavorable decision in and of itself, is no indication of bias. As the authorities make clear, much more is required.

[48] As established earlier, the judge made solid factual findings respecting; (1) the risks to the children if returned to the care of their parents; and (2) the unlikelihood of sustained change sufficient to resolve the protection concerns within the statutory timelines. These findings made the determination of permanent care and custody inevitable. No further analysis of this complaint is required. I would dismiss this ground of appeal.

Disposition

[49] I would dismiss the motion to adduce fresh evidence because it fails to meet the admissibility test. I would dismiss the appeal as the appellants did not establish the judge erred. Further, there is no merit to the allegation of judicial bias. I would not order costs.

Van den Eynden, J.A.

Concurred in:

Beaton, J.A.

Gogan, J.A.