NOVA SCOTIA COURT OF APPEAL

Citation: *WM v. Nova Scotia (Minister of Opportunities and Social Development)*, 2025 NSCA 51

Date: 20250620
Docket: CA 541914
Registry: Halifax

Between:

WM

Appellant

v.

Minister of Opportunities and Social Development
Delton McDonald (Guardian *ad litem* for child, AM)

Respondents

Judges:	Farrar, Fichaud and Beaton, JJ.A.
Appeal Heard:	June 19, 2025, in Halifax, Nova Scotia
Facts:	The case involves a child, AM, who has been the subject of multiple child protection proceedings due to concerns about her parents' substance abuse and inability to provide a safe environment. AM was initially taken into care at birth and has since been involved in several proceedings, with custody shifting between family members and the Minister of Opportunities and Social Development. The latest incident involved AM's father, WM, being arrested after firing a pellet gun from her bedroom window, leading to the current proceedings for permanent care by the Minister (paras 1-15).
Procedural History:	• 2015 NSSC 145: The Minister's motion for permanent care and custody of AM was dismissed, and

AM was placed in the custody of WM with conditions for supervised access by her mother.

- Nova Scotia (Community Services) v. NL, WM, 2022 NSSC 45: The Court found AM in need of protective services.

- Nova Scotia (Community Services) v. NL, WM, 2023 NSSC 185: AM was placed in the permanent care and custody of the Minister.

- WM, NL v. Nova Scotia (Community Services), 2024 NSCA 7: The appeal was allowed due to the death of NL, removing the basis for specific protection concerns.

- Nova Scotia (Opportunities and Social Development) v. WM, 2025 NSSC 30: AM was found to be in need of protective services, and it was in her best interests to be placed in the permanent care and custody of the Minister.

Parties' Submissions:

- Appellant: WM argued against the credibility of the expert and social workers involved in the case and sought to introduce fresh evidence to challenge the findings of substance abuse and the need for permanent care (paras 19-20).

- Respondent: The Minister sought to introduce fresh evidence to support the decision for permanent care, emphasizing the best interests of AM and the credibility of the expert and social workers (paras 17-18, 27-29).

Legal Issues:

- Should WM's fresh evidence be admitted?
- Should the Minister's fresh evidence be admitted?
- Did the hearing judge err in accepting the evidence of Dr. Nassar, Mr. McDonald, and Ms. Aucoin as credible?

Disposition:

- WM's motion to introduce fresh evidence was dismissed.
- The Minister's motion to introduce fresh evidence was allowed.
- The appeal was dismissed without costs (headnotes, para 18).

Reasons:

Per Farrar J.A. (Fichaud and Beaton JJ.A. concurring):

The Court found that WM's fresh evidence did not meet the criteria for admission as it did not relate to events after the appealed order and was merely a reiteration of previous evidence (paras 21-26). The Minister's fresh evidence was admitted as it was relevant, credible, and related to events after the decision on appeal (paras 27-29). The hearing judge's credibility findings regarding Dr. Nassar, Mr. McDonald, and Ms. Aucoin were upheld, as there was no clear error in the factual findings that materially affected the result (paras 30-39). The Court emphasized that AM's best interests were served by remaining in the permanent care of the Minister, given her stable living situation and her expressed wishes (paras 40-45).

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

Judges:	Farrar, Fichaud and Beaton, JJ.A.
Appeal Heard:	June 19, 2025, in Halifax, Nova Scotia
Written Release:	June 20, 2025
Held:	Appeal dismissed, without costs, per reasons for judgment of Farrar, J.A.; Fichaud and Beaton, JJ.A. concurring
Counsel:	WM, appellant in person, assisted by CM Megan Roberts and Alison Campbell, for the respondent the Minister of Opportunities and Social Development Brianna Renou, for the respondent Delton McDonald

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:

Background

[1] The child who is the subject matter of this proceeding, AM, is almost 15 years old. This is the fifth child protection proceeding concerning her. I will briefly review the history of child protection involvement.[1]

[2] AM was first taken into care upon her birth in September 2010. That protection proceeding was terminated in January 2012 in favour of her paternal grandmother BM having custody of her.

[3] AM was taken into care again on July 16, 2013 due to ongoing concerns with substance abuse by NL (her mother). There were also concerns that NL, WM (her father and the appellant in these proceedings) and BM were not abiding by the terms of a supervision order concerning another child of NL and WM (also in BM's care at that time under a supervision order).

[4] The Minister filed a plan seeking permanent care and custody of AM. After a contested hearing in 2015, Justice Theresa M. Forgeron dismissed the Minister's motion for permanent care and custody and placed AM in the custody of WM, with strict conditions for her mother's supervised access.[2]

[5] The Minister filed another child protection proceeding involving AM in October 2019 due to concerns about substance use by WM and incidents of violence with other individuals.

[6] AM was placed in the care of her adult stepsister MD under a supervision order, but MD wished to become a kinship foster placement, so AM was subsequently taken into care, but remained with MD.

[7] In February 2021, AM was returned to the care of NL and WM under a supervision order, as they were then residing together and presenting as a couple. The proceeding was terminated in April 2021. By that time WM had taken AM to reside once again at the home of BM.

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[1] The Minister of Opportunities and Social Development was formerly known as the Minister of Community Services in earlier proceedings involving AM. I will simply refer to "the Minister" in all of the proceedings.
[2] 2015 NSSC 145.

[8] The fourth proceeding began on August 30, 2021. The Minister became involved again after receiving a referral on July 21, 2021, alleging WM was heavily medicated and was not looking after himself or AM, NL was abusing drugs and had recently overdosed, and the child was now back with her stepsister MD.

[9] On February 29, 2022, following a protection hearing which was contested by NL and WM, the Court found that AM was in need of protective services.[3]

[10] On March 31, 2022, the Minister sought permanent care and custody of AM. NL and WM contested the permanent care motion. A contested hearing was held on March 28 - 30, 2023.

[11] On June 8, 2023, the Court placed the child in the permanent care and custody of the Minister.[4]

[12] In September, 2023, WM and NL filed an appeal of the permanent care. In November, 2023, before the appeal was heard, NL died. On January 12, 2024, this Court allowed the appeal because NL's death removed the basis for the specific protection concerns identified by the hearing judge.[5]

[13] In January 2024, AM was returned to the care of WM.

[14] On February 27, 2024, AM was awoken in the early morning hours by her father shooting a pellet gun from her bedroom window.

[15] AM texted her adult sister who alerted the police. The police arrested WM and contacted social workers, who took AM into their care, giving rise to the fifth protection proceeding.

[16] Once again, the Minister sought to have AM placed in permanent care. The permanent care motion was contested by WM and heard by Justice Pamela Marche on December 18 and 19, 2024. By decision dated January 27, 2025,[6] the hearing judge found AM was a child who remained in need of protective services and it was in her best interests to be placed in the permanent care and custody of the Minister.[7]

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[3] *Nova Scotia (Community Services) v. NL, WM*, 2022 NSSC 45.
[4] *Nova Scotia (Community Services) v. NL, WM*, 2023 NSSC 185.
[5] *WM, NL v. Nova Scotia (Community Services)*, 2024 NSCA 7, at para. 23.
[6] Reported *Nova Scotia* (*Opportunities and Social Development) v. WM,* 2025 NSSC 30.
[7] Para. 97.

[17] It is from that decision WM appeals. He is self-represented on this appeal and was assisted at the hearing by CM. He seeks to introduce fresh evidence. The Minister also seeks to introduce fresh evidence.

[18] For the reasons that follow, I would dismiss WM's motion to introduce fresh evidence, allow the Minister's motion to introduce fresh evidence, and dismiss the appeal.

Issues

[19] WM has not articulated his grounds of appeal with any specificity. In his notice of appeal he questions the credibility of Dr. (who I assume to be Dr. Bassam Nassar), Delton McDonald, the guardian ad litem for AM and Marcie Aucoin, a social worker for AM who was employed by the Minister.

[20] At the December 2024 hearing, Dr. Nassar was qualified as an expert in the field of clinical and analytical toxicology. He filed an expert's report and gave evidence at the hearing. Both Ms. Aucoin and Mr. McDonald filed affidavits and gave evidence in the proceeding. Therefore, I will frame the issues as follows:

1. Should WM's fresh evidence be admitted?
2. Should the Minister's fresh evidence be admitted?
3. Did the hearing judge err in accepting the evidence of Dr. Nassar, Mr. McDonald and Ms. Aucoin as credible?

Analysis

1. Should WM's fresh evidence be admitted?

[21] Section 49(5) of the *Children and Family Services Act*[8] provides:

> (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.

[22] Although WM did not file a motion, he did file an affidavit which he seeks to have admitted into evidence. The test for the introduction of fresh evidence was addressed in *K.B. v. Nova Scotia (Community Services)*[9] as follows:

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[8] 1990 c. 5 s. 1.
[9] 2013 NSCA 32, at para. 18.

> [18] Section 49(5) of the *Act* 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 […]
>
> […]
>
> [Authorities omitted]

[23] The *Palmer* criteria were referenced in *Armoyan v. Armoyan*,[10] where this Court explained:

> [131] Rule 90.47(1) permits the Court of Appeal to admit fresh evidence on "special grounds". 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. *Nova Scotia (Community Services) v. T.G.*, 2012 NSCA 43, paras 77-79, leave to appeal denied [2012] S.C.C.A. 237, and authorities there cited. *McIntyre v. Nova Scotia (Community Services)*, 2012 NSCA 106, para 30.

[24] The purpose of admitting fresh evidence in cases such as this is to give the Court more recent information that might affect the Court's assessment of the best interests of AM.[11]

[25] Despite the wide latitude given to this Court to admit fresh evidence, I would decline to admit WM's affidavit for the following reasons:

1. It does not relate to events occurring after the appealed order. (s 49(5) *CFSA*);
2. WM swore two affidavits for the permanent care hearing, one dated May 22, 2024, and the other dated December 12, 2024. He also gave oral evidence at the hearing. The fresh evidence he seeks to introduce is simply a reiteration of that affidavit and hearing evidence;

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[10] 2013 NSCA 99 (leave to appeal to SCC denied).
[11] *K.B.*, at para. 20.

3. WM's fresh evidence does not provide any additional information or anything that would impact on the best interests of AM; and
4. The affidavit contains argument that is inappropriate for a fresh evidence motion.

[26] For these reasons I would dismiss WM's motion to introduce fresh evidence.

2. Should the Minister's fresh evidence motion be admitted?

[27] On its fresh evidence motion, the Minister filed the affidavit of Frank Bettens, AM's Children in Care Social Worker. His role is to monitor AM's placement, ensure her needs are met and meet with her and her caregiver on an ongoing basis.

[28] I am satisfied Mr. Betten's affidavit should be admitted. His evidence offered by the Minister to inform us on considerations related to AM's best interest.

[29] The affidavit relates to events which took place after the decision on appeal. It is relevant, credible,[12] and is in an admissible form.

3. Did the hearing judge err in accepting the evidence of Dr. Nassar, Mr. McDonald and Ms. Aucoin as credible?

[30] In *K.B. v. Nova Scotia (Community Services)*[13] this Court set out the standard of review where an appellant challenges a judge's credibility findings:

> [14] The Court's role on an appeal from a trial judge's decision is not to embark upon a fresh assessment of the evidence or substitute its own exercise of discretion for that of the trial judge. This Court may only intervene if the trial judge erred in legal principle or is shown to have made a clear error with respect to a factual finding that has materially affected the result (**Children's Aid Society of Cape Breton v. A.M.**, 2005 NSCA 58, ¶ 26). This standard applies whether the findings are based on the judge's assessment of credibility or whether it applies to inferences which the judge draws from the evidence (**A.S. v. Nova Scotia (Minister of Community Services)**, 2007 NSCA 82, ¶ 7).

[12] *Palmer v. Queen* [1980] 1 SCR 759.
[13] 2010 NSCA 75.

[31] The hearing judge found Dr. Nassar, Mr. McDonald (the Guardian) and Ms. Aucoin (the social worker) to be credible. She also commented negatively on WM's credibility:

> [46] WM's evidence was not always credible. He was often argumentative and pedantic in his answers. At times, he cited difficulty with recall. When challenged during cross examination, he tended to resort to attacking the veracity and integrity of CPS workers. As a result, I approach WM's testimony with caution and prefer the testimony of CPS workers, the Guardian, and expert witness Dr. Nassar, all of whom I found to be impartial and credible witnesses.

[32] Dr. Nassar was briefly cross-examined by WM's counsel at the hearing. In his post-hearing submission, WM questioned Dr. Nassar's conclusions with respect to substance abuse as follows:

> 30 It is submitted that there is no clear, convincing or cogent evidence to substantiate that the Respondent has a substance abuse problem vis-à-vis alcohol;
>
> 31 It is further submitted that even if the Court accepts the evidence of Dr. Nassar, the positive tests for cocaine are consistent with cocaine use, but not consistent with the conclusion of cocaine abuse and a substance abuse problem vis-à-vis cocaine;
>
> 32 The positive tests for cocaine are fairly dated. They date from April and May, 2024;

[33] Despite the cross-examination and these arguments, the hearing judge unequivocally accepted the evidence of Dr. Nassar and rejected WM's denial of cocaine use:

> [57] I accept entirely the evidence of Dr. Nassar. His evidence was clear and unequivocal. His explanation of the testing process, including methods of confirmation testing, assure me the test results were accurate and reliable. His testimony was fair and balanced. He gave WM the benefit of any uncertainty in his interpretation of the tests. For example, he was careful to clarify when positive test results could have been the result of WM's prior consumption of cocaine and not necessarily indicative of ongoing use.
>
> [58] I find WM has substance abuse issues with drugs and alcohol. When admitted to hospital in February 2024, cocaine was detected in WM's urine. I find that WM tested positive for unprescribed clonazepam in random drug tests arranged by the Minister. I also find cocaine metabolite levels in April 29 and May 5, 2024, test results demonstrate active cocaine use by WM. I accept Dr.

> Nassar's evidence that the positive test result of May 5, 2024, represents a significant degree of cocaine consumption. Dr. Nassar testified:
>
> > Undoubtedly, cocaine was taken, and it's not passive. It's not accidental. Somebody deliberately took a good amount of cocaine.
>
> [59] Despite Dr. Nassar's testimony, WM continued to deny cocaine use. WM suggested he tested positive due to passive exposure (having been evicted from his home, WM was without housing for a time after his discharge from hospital and was staying at a place where there was active drug use by others). WM claimed the May 5, 2024, test result was so high because there were multiple drug users around him at the time. WM's explanation clearly contradicted the evidence of Dr. Nassar, whose evidence I prefer.

[34] There was ample evidence before the hearing judge to support her findings. I see no reason to interfere with her credibility finding with respect to Dr. Nassar.

[35] WM also takes issue with the credibility findings with respect to Ms. Aucoin and Mr. McDonald.

[36] As stated earlier, both Ms. Aucoin and Mr. McDonald filed affidavits. Both gave evidence at the permanent care hearing.

[37] Both of Mr. McDonald's affidavits (May 14, 2024 and October 21, 2024) were admitted in direct examination. He was not cross-examined by WM's counsel on either affidavit. As a result, his evidence was not contested or contradicted in any way. In his October 21, 2024 affidavit, he gave evidence that AM told him she did not wish to have contact with WM. AM also told Mr. McDonald it was her decision to cease contact with WM, and she was not influenced by anyone else.[14]

[38] With respect to Ms. Aucoin, she was cross-examined by WM's counsel on her October 23, 2024 affidavit. However, in post-hearing submissions filed by WM's counsel on January 17, 2025, no issue is taken with the credibility nor the evidence of Ms. Aucoin.

[39] Neither in his submissions before this Court nor his oral argument has WM identified any issues with respect to the credibility of these witnesses. There is no basis upon which this Court could interfere with the hearing judge's credibility findings.

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[14] Affidavit sworn October 21, 2024 at paras. 9, 14, 27.

[40] Even if I could have identified some merit in WM's appeal, it would not be in the best interest of AM to set aside the permanent care order.

[41] At the December hearing, WM's plan for AM was to relocate her to Bridgewater, Nova Scotia where he was living in the downstairs bedroom of an individual's home (D).[15] He proposed to have AM live with him and D.

[42] AM has never lived in Bridgewater, she has no contacts and no family there. There was no indication of what school she would attend or what accommodations are available for her to reside in D's home.

[43] Mr. Betten's affidavit sets out the circumstances in which AM is presently living. I will not review his affidavit in detail but simply summarize his evidence:

- AM is residing in a kinship foster placement with her paternal half-sister MKM since being taken into care in February 2024 and wishes to remain living with her;
- She has had contact with several extended family members including MD, with whom she had previously resided, and two full siblings and three half-siblings;
- She is in grade 9 and doing well, with a mean average of 83.5% as of April 2025;
- She has a close group of friends;
- She attends church with MD;
- She does not wish to have contact with her father.

[44] At the hearing before us, WM's chief complaint was his inability to have contact with AM. He suggested she may be influenced by others to not speak with him. The evidence before the hearing judge and before us indicates it is AM's choice, and hers alone, not to have contact with her father. It is beyond the scope of this appeal to order AM to have contact with her father.

[45] It is apparent that AM is doing very well in her placement with her half-sister. Even if we were satisfied that there may be some merit to the grounds of

[15] Affidavit sworn December 17, 2024, at para. 20.

appeal raised by WM, they would not have a material effect on the trial result. It is clear it is in the best interests of AM to be in the permanent care of the Minister.

Conclusion

[46] The appeal is dismissed without costs to any party.

Farrar, J.A.

Concurred in:

Fichaud, J.A.

Beaton, J.A.