

**CASE NO.**

**VOLUME**

**PAGE**

Cite as: L.M. v. Children's Aid Society of Cape Breton, 1999 NSCA 101

L.M. and B.M.

CHILDREN'S AID SOCIETY OF CAPE BRETON

- and -

(Appellants)

(Respondent)

C.A. No. 153318

Halifax, N.S.

Flinn, J.A.

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**APPEAL HEARD:**

April 16, 1999

**JUDGMENT DELIVERED:**

July 2, 1999

**SUBJECT:**

**CHILDREN and FAMILY SERVICES ACT - Notice of proposed adoption of a child subject to a permanent care order - application to terminate permanent care order.**

**SUMMARY:**

The child E.H. was the subject of a permanent care order. The trial judge decided that access to the parents to E.H. was not in E.H.'s best interests, and that a permanent placement by way of adoption was in E.H.'s best interests.

The parents, unsuccessfully, appealed the permanent care order. The father then applied for leave to extend the time to file a notice of appeal from the original protection order. Shortly after that application failed, the parents applied to terminate the permanent care order, without obtaining leave to make that application as mandated by s. 48(6)(c)(iii) of the **Act**.

The parents also applied to vary the permanent care order in respect of access to E.H. Before the Family Court gave any consideration to these applications, an adoption place was found for E.H. and the adopting parents gave a notice of proposed adoption which complied with all of the prerequisites of s. 76 of the **Act**. The Family Court judge decided that he had no jurisdiction to hear the application sentence the parents appealed.

**RESULT:**

Appeal dismissed.

1. Section 47(2)(a) of the **Act** prevents the court from making an order for access where, in this case, a permanent placement of the child in a family setting had been planned and implemented.

2. The parents never requested, nor obtained, leave to make an application to terminate the permanent care order prior to the notice of proposed adoption having been given. That being the case, the parents are prevented, by statute, from making an application to terminate the permanent care order. The trial judge was correct, therefore, to refuse to consider the application which the parents filed.

**This information sheet does not form part of the Court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 29 pages.**