NOVA SCOTIA COURT OF APPEAL
Citation: ***F.J.R. v. Nova Scotia (Community Services)***,
2014 NSCA 30

Date: 20140327
Docket: CA 420788
Registry: Halifax

Between:

F.J.R.

Appellant

v.

Minister of Community Services,
K.J.M., L.L. and
N.B. (by Neil Kennedy, his Guardian Ad Litem)

Respondents

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

Revised Decision:	The text of the original decision has been corrected according to the attached erratum dated April 8, 2014.
Judges:	Beveridge, Bryson and Scanlan, JJ.A.
Appeal Heard:	February 5, 2014, in Halifax, Nova Scotia
Held:	Appeal dismissed, per reasons for judgment of Beveridge, J.A.; Bryson and Scanlan, JJ.A. concurring.
Counsel:	Michael V. Coyle, for the appellant Peter C. McVey and Sanaz Gerami, for the respondent Minister of Community Services Brock Beazley, for the respondent K.J.M. Anita Hudak, for the respondent L.L. Marion Hill, for the respondent N.B.

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:

INTRODUCTION

[1] On October 2, 2013, a Family Court Judge heard an application by the Minister to vary a Supervision order with respect to three children. There were four respondents. Three did not contest the application; the father did. The Judge granted the order. The father appealed, claiming that the judge applied the wrong test, and thereby committed reversible error.

[2] With all due respect, the appeal, from a practical and legal point of view, had no merit. At the conclusion of the hearing on February 5, 2014, it was dismissed, with reasons to follow. These are they.

[3] I need to set out the procedural history to provide context.

PROCEDURAL HISTORY

[4] As is typical of child protection cases that end up in this Court, the record consists of many lengthy affidavits that describe the reasons for Agency intervention, and its efforts to try to resolve risk to the children of physical, emotional and psychological harm.

[5] The Department of Community Services had extensive involvement with the appellant and his on-again, off-again relationship with K.M. Since 2008 there were four substantiated incidents of domestic violence, three with risk of physical harm. The appellant has struggled with substance abuse for many years.

[6] K.M. has two children, J.M.-R. and J.M. (aged 3 and 11 as of the date the application was heard). The appellant is the biological father of the younger child. The appellant has a teen-age son, N.B., from his first marriage.

[7] There were two breaks in Agency involvement: firstly during the spring of 2010 for a few months; and secondly, in the summer of 2012. In the latter, the appellant and K.M. again parted ways. The appellant and K.M. claimed that they were not seeking to reconcile. The appellant had consistently tested negative for alcohol consumption. The Agency asked that the proceedings in Family Court be dismissed on the signing of a Memorandum of Understanding.

[8] The Memorandum stipulated that the appellant and K.M. were not to be together in the presence of any of the children pending reports from therapists that risk of harm had been alleviated. Third parties would facilitate child access.

[9] K.M. called the Agency in January 2013. She expressed concerns. The appellant was drinking again. Arguments and physical interactions had occurred—some in the presence of one or more of the children. An investigation led to a Protection Application on the grounds that the children were in need of protective services under the *Children and Family Services Act*, 1990 S.N.S., c. 5. The Application was returnable February 13, 2013. It was supported by a lengthy affidavit sworn by Agent Annette Davidson on February 12, 2013. The affidavit set out the history of this couple, and the Minister's involvement.

[10] The Application proposed that: N.B., then 12 years of age, be in the care of his maternal grandmother, L.L.; J.M. and J.M.-R. would remain in the care and custody of K.M., subject to supervision of the Minister. The appellant would have supervised access with all of the children.

[11] The judge throughout these proceedings was The Honourable Judge Marci Lin Melvin of the Family Court. On February 13, 2013, L.L. and K.M. both consented to the proposed finding of reasonable and probable grounds for the need for protective services. The appellant did not. The Application was adjourned to February 19, 2013, to permit service to be effected on N.B., and for the appellant to file affidavit evidence.

[12] On February 19, 2013, the Minister suggested that a guardian *ad litem* be appointed for N.B. She proposed Neil Kennedy. The other parties, all represented by counsel, agreed.

[13] Counsel for the appellant repeated his opposition to a finding that reasonable and probable grounds had been made out that N.B. was a child in need of protective services. With respect to J.M.-R. and J.M, he consented to a finding of reasonable and probable grounds.

[14] Judge Melvin gave an oral decision. It is unreported. She referred to the applicable statutory criteria she needed to address at that stage of the proceeding. They are found in ss. 39 and 22(2) of the *Act*. It is commonly referred to as the five-day stage hearing. This assumes importance later, because the appellant urged us to conclude that the judge used the wrong test on October 2, 2013, borrowed from the one that is appropriate at the five-day stage hearing.

[15] At this hearing, the judge found, based on uncontested affidavit evidence, that the appellant and K.M. are a toxic mix; while they appear unable to stay away from one another, the children would continue to be at risk of harm until significant counselling abates that risk. The judge concluded that there were reasonable and probable grounds to believe the children were in need of protective services. She set a date for completion of the interim hearing, which was required to be complete within 30 days.

[16] The Order that encapsulated the decision is dated April 18, 2013. There are two provisions that are of particular importance. The first was the requirement that the appellant and K.M. have no contact with each other, in any way, in the presence of the children. The formal wording was as follows:

> 6. The Respondents, K.M. and F.R., shall not have any contact with one another in the presence of the children, J.M.-R., J.M. and N.B., whether direct or indirect, or via any form of telecommunication device.

[17] The second was that, in the event of non-compliance with any of the terms and conditions of the Order, the Agency would be entitled to take N.B. into care and bring proceedings before the Family Court:

> 2(c) In the event of non-compliance by the Respondent, L.L. and the Respondents, K.M. and F.R., with any of the terms and conditions of this Order, the Applicant shall be entitled to take the child, N.B., into care and bring the matter before this Honourable Court pursuant to Section 39(5) of the *Children and Family Services Act*.

[18] An identical provision covered the taking into care of J.M. and J.M.-R. in the event of non-compliance.

[19] The interim hearing took place on March 13, 2013. Additional affidavits were filed. Of note is the appellant's affidavit, sworn that day. In it, he did not "disagree" with the description of his four year relationship with K.M. as "toxic", and not always healthy for the children. He swore it was his hope and expectation that he and K.M. would now lead separate lives.

[20] All parties, with the assistance of counsel, consented to a finding at the interim hearing of reasonable and probable grounds—and a continuance of the *status quo*. The same provisions about no-contact and the consequences of a breach of any of the terms and conditions were re-iterated. The Protection Hearing was set for May 9, 2013.

[21] An appearance on May 1, 2013 served as the Protection Hearing. It confirmed that the parties were receiving services offered to them by the Agency and were abiding by the terms and conditions of the Protection Order. All parties again consented to the making of a further finding of the need for protective services. July 17, 2013 was the date set for the Disposition Hearing. A Protection Order was duly issued with the same terms and conditions.

[22] The Minister filed her Plan for the Children's Care and Application for a Disposition Order on July 8, 2013. For J.M.-R. and J.M., it was essentially the same: they would remain in the care and custody of K.M. subject to supervision. Counselling and other services would be provided for J.M. and K.M.; access would be facilitated through a third party.

[23] With respect to N.B., he would be returned to the care of the appellant, subject to supervision by the Minister. Counselling was to be offered to N.B. The Minister reported that K.M. and the appellant had expressed an interest in again resuming their relationship. The Minister insisted that they not be together in the presence of the children given the history of their relationship. This stipulation would continue until both K.M. and the appellant demonstrated through professional reports that the issues that create risk of harm to the children had been alleviated. Other conditions were suggested.

[24] The minimum period of supervision proposed was three months, after which time, the plan would be reviewed to determine what progress had been made and what, if any, changes or adaptations would be appropriate.

[25] On July 17, 2013, the Minister submitted to the Court her concerns and the justification for the proposed terms and conditions. The appellant consented, as did the other parties to the Minister's proposed Plan of Care. A Supervision Order pursuant to s. 43 of the *Act* was duly issued. It encapsulated the Minister's Plan of Care. Counselling was mandated for N.B., with an obligation on the appellant to ensure attendance.

[26] As with the previous orders, K.M. and the appellant were prohibited from having contact with one another in the presence of the children.

[27] Section 43 of the *Act* sets out the Court's ability to impose reasonable terms and conditions in a supervision order. In addition, it permits a Court to provide that non-compliance with such may entitle the agency to take children into care. If the agency does so, the *Act* mandates a strict timeline of five working days to bring

the matter to Court for a review and potential variation of the supervision order. Section 43(3) provides as follows:

> (3) As a term of the supervision order, the court may provide that non-compliance with any specific term or condition of the order may entitle the agency to take the child into care and, where the agency takes the child into care pursuant to this subsection or Section 33, as soon as is practicable, but in any event within five working days after the child is taken into care, the agency shall bring the matter before the court and the court may review and vary the order pursuant to Section 46.

[28] Pursuant to this statutory authority, the Supervision Order stipulated that in the event of non-compliance by the appellant, K.M. and L.L., the Minister would be entitled to take N.B. into care and bring the matter back to court. The Order referred to s. 43(3) of the *Act*.

[29] A Review Hearing was scheduled for October 9, 2013. It was not held. The need for it was superseded by the events that triggered the Minister taking the children into care, and the consequent review of the Supervision Order on October 2, 2013.

[30] An Application to vary, dated September 27, 2013 was filed by the Minister. It was supported by an affidavit of the same date, sworn by Annette Davidson. Her affidavit set out the manner in which the Agency discovered that the appellant spent at least two weekends with K.M., and all three children. Arguments had occurred in the children's presence. The children were taken into care. N.B. was again placed with his maternal grandmother, L.L., subject to the supervision of the Agency, and J.M and J.M.-R. were placed with a foster family.

[31] Ms. Davidson swore her belief, as Agent of the Minister, that the children were in need of protective services within the meaning of s. 22(2) of the *Act*.

[32] The Application set the date for hearing for October 2, 2013. It gave notice that the Minister would be seeking an order to place N.B. in the care and custody of L.L., subject to the supervision of the Minister, and to place J.M-R. and J.M. in the temporary care and custody of the Minister.

[33] All parties appeared on October 2, 2013. There was no request for cross-examination. They filed no affidavits to contradict, clarify or put forward any other plan. There was no request for an adjournment.

[34] K.M., N.B., through his guardian *ad litem*, and L.L. all consented to the requested variation. The appellant did not. He made submissions as to why the requested variation should not be granted with respect to N.B. With respect to J.M-R. and J.M., he consented.

[35] Judge Melvin granted the requested variation. I will refer to her reasons and the exchanges with counsel for the appellant later. To give further context to that discussion, it is necessary to set out the complaint by the appellant.

ISSUES

[36] Initially, the appellant advanced eight discrete grounds of appeal. There is no need to set them out. In his factum, they were reduced to one complaint:

> Does the *Children and Family Services Act* permit the Court to apply the same procedural and evidentiary standards to an application to vary a Supervision Order brought pursuant to s. 46(5)(a) as it would to an application brought pursuant to s. 39(1)?

[37] The Respondent Minister addressed this ground and all of the original ones in her factum. At the hearing, the appellant confirmed that his sole complaint of error was as set out above. However, during oral argument appellant claimed that he had been taken by surprise—that he did not know he was having a hearing on October 2, 2013; there would be some further hearing with the Minister calling witnesses in support of the application to vary. This claim was not identified in his Notice of Appeal, nor in his factum. It has no merit.

ANALYSIS

Standard of Review

[38] A party to proceedings under the *Act* may appeal any order made pursuant to ss. 32 to 48 to this Court. Section 49(1) of the *Act* provides:

> 49 (1) An order of the court pursuant to any of Sections 32 to 48 may be appealed by a party to the Nova Scotia Court of Appeal by filing a notice of appeal with the Registrar of the Court within thirty days of the order.

[39] I need not delve deeply into delicate questions about the different standards of review that may be engaged by appeals from the myriad of orders that may be appealed. It is sufficient to say that the order here under appeal was an

interlocutory, discretionary order. Absent error in principle or manifest injustice we will not intervene (see: *A.B. v. Bragg Communications Inc.*, 2011 NSCA 26; *Aliant Inc. v. Ellph.com Solutions Inc*., 2012 NSCA 89).

[40] It is settled law that use of the wrong test is an error of law. No deference is owed to such an issue.

Did the judge use the wrong test?

[41] The complaint by the appellant is that the judge failed to follow the statutory requirements for a variation application mandated by s. 46 of the *Act*. Section 46 is the provision directed by s. 43(3) to guide reviews, and possible variations of supervision orders.

[42] The relevant provisions for our discussion are ss. 46(4) and (5). Section 46(5) gives the court the discretion, in accordance with the child's best interests, to vary or terminate an order or any term or condition, set a termination date or make a further or other order, subject to the mandated time lines of the *Act*.

[43] Section 46(4) provides that before a court makes an order under ss.(5), it shall consider a number of things. They are:

> (a) whether the circumstances have changed since the previous disposition order was made;
>
> (b) whether the plan for the child's care that the court applied in its decision is being carried out;
>
> (c) what is the least intrusive alternative that is in the child's best interests; and
>
> (d) whether the requirements of subsection (6) have been met.

[44] It is para. (c) that the appellant emphasizes (para.(d) has no relevance). In addition, he suggests that these specific and detailed requirements can only be met by the judge hearing evidence, and making the requisite findings based on that evidence.

[45] I see no error by the judge that would permit our intervention. At the hearing of October 2, 2013, the judge had before her the uncontested affidavit of Annette Davidson sworn September 27, 2013. The appellant did not seek to cross-examine the affiant. He filed no affidavit in response, nor did he seek an adjournment to do so. He simply made submissions that opposed the application by the Minister.

[46] Ms. Davidson's affidavit clearly established that the plan for the care of the children was not being carried out. It was implicit that the terms and conditions of that plan, encapsulated in the Supervision Order consented to by the parties in July 2013, were in the best interests of the children. The appellant did not suggest otherwise to the application judge, nor to this Court.

[47] With respect to procedure, the application judge noted the similarity between a review or variation hearing and a five-day stage hearing. She said to counsel for the respondent K.M. :

> So at this stage in the proceedings, of course, with the variation application it's similar to when a proceeding is commenced and the Court has to make a finding based on that similar to the five-day stage.

[48] As noted earlier, K.M. consented to the proposed order set out in the application to vary.

[49] Not only did the appellant not take issue with the judge's reference to the similarity between the variation application and the five-day stage hearing, he agreed.

[50] The appellant argued to the application judge that there had only been a "technical violation of the court order", and that no "harm" had come to the children; therefore, there was no basis for the Minister to take the children into care. During these submissions, the following exchange appears:

> THE COURT: Mr. Coyle, I appreciate your submissions, but this is similar to a five-day stage proceeding which is ...
>
> MR. COYLE: **It is.**
>
> THE COURT: ... by way of affidavit.
>
> MR. COYLE: **It is**.
>
> THE COURT: And what you're essentially doing now is giving the Court evidence.
>
> [emphasis added]

[51] Counsel for the appellant continued his argument that the children had not actually suffered any harm as a result of the breach of the terms and conditions of the Supervision Order:

> With respect, I don't see that the Minister has been able on the strength of this affidavit to provide you with grounds that you would require to make the finding that the Minister wants you to make, **which is essentially as you point out the finding that you would have to make at the five-day hearing.**
>
> [emphasis added]

[52] The Minister argued in reply that the breach of the Supervision Order needed to be assessed in the context of the history of domestic violence between the parents. The concern of the Minister was not just actual harm, but risk of harm. The appellant had not only breached the clear prohibition against contact with the other parent in the presence of the children, the evidence demonstrated that he had also failed to live up to his responsibility to ensure N.B. attended counselling.

[53] The appellant failed to identify how the judge is said to have erred by her reference to the similarity between the review hearing and the five-day stage hearing. None of the parties cited any case law that has considered the statutory criteria mandated by s. 46. In light of the circumstances, this is hardly the case that mandates a detailed comparison of what is involved in a five-day hearing under s. 39 as compared to a hearing under s. 46.

[54] It is obvious there are differences. But the judge did not say they were the same—simply that they were similar. However, quite apart from the concession by the appellant to the application judge that this was the case, there are similarities, both in the abstract, and in the particular circumstances of this case.

[55] They are: (1) it is the risk of harm to the children that animates the actions of the Minister taking children into care under s. 33 or seeking to change an order under s. 46; (2) the Minister, whether acting pursuant to the statutory mandate of s. 33, or pursuant to a term of the Supervision Order under s. 43(3), must bring the matter before the court within five working days; (3) absent reasonable and probable grounds that a child is in need of protective services, the Minister has no role to play, whether pursuant s. 39 or at a review hearing under s. 46 (see: *Catholic Children's Aid Society of Metropolitan Toronto v. M.(C.),* [1994] 2 S.C.R. 165); (4) while s. 46 mandates that the court shall consider the least intrusive alternative that is in the child's best interests, consideration of the child's best interests is implicit in all matters where the state is compelled to intervene (see: the *Act's* Preamble, s. 13, and ss. 39(7) (8)).

[56] In terms of process, the Family Court Rules provide more specific guidance for the five-day stage hearing under s. 39, than for a review hearing triggered by an

agency taking a child into care. The relevant provisions of the Rules for s. 39 are as follows:

> 21.05(1) A protection proceeding shall be commenced by the agency filing a protection application in Form 21.05A, supported by an affidavit setting out the reasonable and probable grounds relied upon by the agency for a finding that the child is in need of protective services and the contents of the interim order requested.
>
> 21.08(5) In determining whether there are reasonable and probable grounds to believe that the child is in need of protective services pursuant to Section 39(2) and (3), the court shall decide the question solely upon any affidavits filed by any party, unless leave of the court is granted to hear *viva voce* evidence.

[57] The Rules for Review Hearings envisage two types of review hearings: one in the normal course of events; the other, triggered by an agency taking a child into care. The provisions are:

> Reviews
>
> 21.13 (1) A party applying for a review of a disposition order pursuant to Section 46 shall file with the court and serve upon the other parties, no later than ten clear days before the commencement of the review hearing a review application in Form 21.13A, along with any supporting affidavit, and a revised plan for the child's care in Form 21.12B shall be filed by the agency before the hearing.
>
> (2) Where a child has been taken into care by an agency after the making of a supervision order, the agency shall as soon as practicable file with the court and serve the review application upon the other parties not less than two days prior to the review hearing, unless service is waived by the party or the court before or at the review hearing.
>
> (3) Where no party has applied for a review prior to the expiry of a disposition order and no date for a review hearing has been fixed in the disposition order, the agency shall obtain a date for a review hearing to take place prior to the expiry of the order and file and serve a review application in accordance with subrule (1).
>
> (4) Where a review application has been filed and the court has commenced a review hearing prior to the expiry of the order in question, with the consent of all parties or upon the order of the court in the child's best interests, the review hearing may be adjourned and a further disposition order, other than an order for permanent care and custody, may be made until the review hearing can be justly and expeditiously completed, subject to the time limits set out in Sections 43(4) and 45(1).

[58] This Review Hearing was one triggered by the Agency taking the children into care. In these circumstances, I see no merit in the complaint that the judge failed to follow the proper procedure by relying on affidavit evidence.

[59] If the appellant wanted to challenge the affidavit evidence relied upon by the Minister, he had several options. He could have requested: leave to cross-examine; submitted affidavits to contradict or clarify what had occurred; sought an adjournment to marshal such evidence, or suggested other plans that may have persuaded the judge that the requested relief was not appropriate. He did none of these things.

[60] Counsel for the appellant says he did not know he was even having a hearing that day. I cannot agree. It is obvious that the appellant was well aware that the judge was dealing with the Minister's application on October 2, 2013. Counsel for the Minister specifically stated that she was asking the judge to make an order *that day* for: N.B. to be in the care of L.L., subject to the supervision of the Minister; and J.M and J.M-R. to remain in the care of the Minister. K.M. consented, as did counsel for L.L., and N.B.'s guardian *ad litem*.

[61] The judge heard submissions from the appellant as to why the Minister had not made out the requisite grounds. The judge even permitted counsel for the appellant to make surreply submissions. There is not one hint in the record of any misunderstanding of what was at stake that day.

[62] Following submissions, the judge delivered short oral reasons. She voiced her frustration that the parties had breached the Supervision Order. She said that her concern was about the risk of harm. She referred to the terms and conditions of the Supervision Order, consented to by all of the parties, which were designed to protect against the risk of harm. She then concluded:

> And so the Court has no choice but to find in the best interests of these children that there are reasonable and probable grounds to believe they're in need of protection, again. That said, Ms. Gerami, Counsel, I hope you will be fair with respect to this case conference this afternoon with respect to what is in these children's best interests.

[63] The appellant makes no specific complaint about this language. In isolation, with respect, it is not the best expression of the appropriate test. However, taken in context of all of the circumstances, it is clear that the application judge, during the hearing, and in the course of her short oral decision, was acutely aware of the need

to examine what was in the children's best interests. In her decision, she colourfully referred to it as the star on the top of the Christmas tree:

> Now the children are being put in this position as a result of the parents' actions, not as a result of what the Court's going to do. The Court doesn't punish children because of the actions of the parents.
>
> The Court looks at what's in the best interests of the children. Always. That's the star on the top of the Christmas tree - the best interests of these children.

[64] In addition, she also referenced the statutory authority for the application, s. 46(5)(a), which says:

> (5) On the hearing of an application for review, the court may, in the child's best interests,
>
> (a) vary or terminate the disposition order made pursuant to subsection (1) of Section 42, including any term or condition that is part of that order;

[65] The application judge, theoretically had a choice in determining whether the children were in the need of protective services, and what order would be the least intrusive alternative that is in the child's best interests. But from a practical point of view, any other outcome seems farfetched. The parties had already consented in July 2013 that: N.B. was in need of protective services; it was in his best interests, and to protect against the risk of future harm that there be no contact between the parents in the presence of the children.

[66] The parents plainly breached that condition. The court could no longer rely on an order entrusting the appellant to protect N.B. and to assure his best interests. The appellant did not suggest to the application judge, or to this Court for that matter, any other alternative to placing N.B. in the care of L.L. She was the natural and most appropriate choice to care for N.B.

[67] L.L. is his maternal grandmother. The uncontested evidence was that she and N.B. had a very close relationship. N.B. viewed her residence as a second home. He had lived there from time to time. By a consent order of the Family Court, dated July 16, 2008, L.L. and the appellant have joint custody of N.B.

[68] I mentioned earlier that this appeal was without merit from either a legal or practical point of view. I have explained why, in my opinion, it is legally without merit. I turn to the practical.

[69] Assume that the appellant was correct, the application judge erred in law by not applying the criteria mandated by s. 46 of the *Act*. What would be the remedy? Pursuant to s. 49 of the *Act*, this Court has the power to confirm, vary or rescind the order appealed from, or make any order the court appealed from could have made.

[70] First of all, based on the record before the learned applications judge, the resulting order is the outcome I would have arrived at. A court hearing a review application is required by s. 46(4) to consider: if circumstances have changed; if the plan for the care is being carried out; and what is the least intrusive alternative in the child's best interests.

[71] The material before the application judge plainly established that the circumstances had changed and the plan of care was not being carried out. The proposed placement of N.B. with his maternal grandmother, someone who had cared for N.B., is not an intrusive alternative. The appellant did not argue there was another option—except the *status quo*. Furthermore, the proposed plan of the Minister was supported by K.M., and by N.B.'s guardian *ad litem*.

[72] The appellant suggests in his Notice of Appeal that the judgment should be rescinded, and the matter remitted to a differently composed Family Court for continuation. What would be determined at such a hearing?

[73] N.B. had been taken into care by the Minister. It was never disputed by the appellant that the July 2013 Supervision Order was not being carried out. What is left? A determination of the least intrusive alternative that is in the child's best interests.

[74] If there were such alternatives, or if N.B. was no longer in need of protective services, the appellant was at liberty to bring a review application at any time. Indeed, there was a further Review Hearing held on December 18, 2013 to return J.M.-R. and J.M. to the care and custody of K.M., subject to the supervision of the Minister. The appellant remained silent with respect to N.B.

[75] Furthermore, we were advised at the hearing of this appeal that another Review Hearing, this time with respect to N.B., was scheduled to be heard in Family Court on February 24 - 26, 2014. The presiding judge in that hearing, with current information and input from all of the parties, would be in the best position to determine if protective services are still needed, and if so, what is in the best

interests of the children. This would make a direction from this Court to reconsider a review hearing moot.

[76] The appeal is dismissed. Costs were not sought by any party. None are ordered.

Beveridge, J.A.

Concurred in:

Bryson, J.A.

Scanlan, J.A.

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Counsel:	Michael V. Coyle, for the appellant Peter C. McVey and Sanaz Gerami, for the respondent Minister of Community Services Brock Beazley, for the respondent K.J.M. Anita Hudack, for the respondent L.L. Marion Hill, for the respondent N.B.

Erratum:

[1] The spelling of counsel's name for the respondent, L.L. should be changed to "Anita Hudak" instead of "Anita Hudack".