

NOVA SCOTIA COURT OF APPEAL

Citation: *M.W. v. Nova Scotia (Community Services)*, 2014 NSCA 103

Date: 20141118

Docket: CA 426855

Registry: Halifax

Between:

M.W

Appellant

v.

Minister of Community Services

Respondent

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

- Judge:** The Honourable Justice Cindy A. Bourgeois
- Appeal Heard:** September 26, 2014, in Halifax, Nova Scotia
- Subject:** Child protection, *Children and Family Services Act*, ss. 41 and 42; consent to permanent care and custody; ineffectiveness of counsel; failure to provide “reasonable” services
- Summary:** At a final disposition hearing, the appellant through her legal counsel indicated her consent to a permanent care and custody order. On appeal she argued that her consent was not valid due to the ineffective representation of her counsel, and sought the introduction of fresh evidence.
The appellant further argued that the respondent failed in its statutory duty to provide services, by not providing a 24 hour supervised living placement for her and her child. She further argued that the family court judge failed to comply with the statutory requirements contained in ss. 41 and 42 of the

Children and Family Services Act, and as such, the matter should be returned to the family court for a full disposition hearing.

Issues:

- (1) Was the appellant ineffectively assisted by her legal counsel, and if so, did this lead to a miscarriage of justice?
- (2) Did the respondent fail to provide the appellant and her child with a 24 hour supervised living placement, and as such breach its obligation to the appellant?
- (3) Did the family court judge fail to abide by his statutory duties prior to granting the permanent care and custody order?
- (4) If an error justifying appellate intervention is found, what is the appropriate remedy?

Result:

- (1) Ineffective assistance of counsel is an available ground of appeal in context of child protection matters. Fresh evidence was admitted. There was no ineffective assistance of counsel established. To the contrary, the appellant's former counsel provided thorough, thoughtful and insightful advice.
- (2) There was nothing before the Court to establish that the respondent had breached any duty by not providing the appellant with a supervised living placement.
- (3) The family court judge did not breach his statutory duties prior to granting the permanent care and custody order.
- (4) Having found no reason to justify appellate intervention, 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 28 pages.