

NOVA SCOTIA COURT OF APPEAL

Citation: *C.V. v. Children's Aid Society of Halifax*, 2005 NSCA 113

Date: 20050729

Docket: CA 250275

Registry: Halifax

Between:

C.V. and L.F.

Applicants/Appellants

v.

Children's Aid Society of Halifax, Attorney General of
Nova Scotia and Minister of Community Services

Respondents

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

Judge: Justice Linda Lee Oland

Application Heard: July 28, 2005, in Halifax, Nova Scotia

Held: Directions given on (a) completion and filing of appellants' grounds of appeal; (b) contents of appeal books; (c) certain named respondent continuing to be a party to appeal; and (d) appointment of *amicus curiae*.

Counsel: Applicants/Appellants in person via telephone conference call
Elizabeth Whelton for the respondent, Children's Aid Society
of Halifax
Jacqueline Scott for the respondents, Attorney General of
Nova Scotia and Minister of Community Services
Walter Yeadon for the Nova Scotia Legal Aid Commission

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.

Decision:

- [1] On June 22, 2005 Smith, A.C.J. of the Nova Scotia Supreme Court, Family Division issued a Final Disposition Order which placed M.C.F., the child of the appellants C.V. and L.F., in the permanent care and custody of the Children's Aid Society of Halifax ("CAS") with no access to either parent. The appellants filed a notice of appeal dated June 29, 2005. Although the Attorney General of Nova Scotia and the Minister of Community Services had not been parties to the proceeding earlier, the notice named them as respondents together with the CAS. The appellants' notice included a request for directions.
- [2] The matter came before MacDonald, C.J. in Chambers on July 7, 2005. In his Amended Order dated July 18, 2005 he ordered the CAS to prepare and file the appeal book on or before July 28, 2005 and the appellants to complete their grounds of appeal on or before that same date. He also set down the appeal for hearing on October 14, 2005 and gave filing dates. The Amended Order continued:

This Chambers matter stands adjourned until July 28, 2005 at 11:00 a.m. to deal with the following issues:

- (a) any further documentation that may form part of the record,
- (b) whether all the named respondents shall continue as parties, and
- (c) whether legal counsel shall be retained either for the appellants or as *amicus curiae*.

At the continuation of that Chambers hearing which was held yesterday, C.V. indicated that L.F. spoke for her. Counsel for the CAS and L.F. reported on the status of the appeal books and grounds of appeal respectively and I heard submissions on the issues set out above. I will deal with these in turn.

Filing of The Appeal Books

- [3] The preparation and filing of the appeal books is usually the responsibility of the appellants in an appeal. The Chief Justice ordered the CAS to do so and it prepared and filed appeal books within the time directed by the Chief

Justice. It provided affidavits of service relating to delivery of that material to each of L.F. and C.V. Both L.F. and C.V. confirmed that they had been received.

The Grounds of Appeal

- [4] The grounds of appeal in the notice of appeal as filed reads in its entirety: “A Miscarage of Justice. Both Courts.” The Amended Order of the Chief Justice ordered the appellants to complete and file more particular grounds of appeal by yesterday. Without these, the others involved in this appeal cannot prepare for the court the written facts which respond to the grounds of appeal. Specific grounds of appeal would also be an aid to the appellants in preparing their facts and oral submissions.
- [5] L.F. advised that he had been ill and indeed hospitalized for a couple of days. Moreover, he was only able to access certain documents that he stated were necessary to prepare the grounds of appeal as of July 27th.
- [6] It is most regrettable that the grounds of appeal are not yet available, particularly where the appeal is to be heard on October 14, 2005. The circumstances being what they are, I will extend the time for the appellants to complete and file their grounds of appeal to Friday, August 5, 2005. L.F. confirmed that he has commenced formulating those grounds and has agreed to file them, or whatever he has completed by that date, on Friday August 5, 2005. If no grounds should be filed on or before that extended date, a telephone conference call can be arranged with the Chambers judge to deal with the matter.

The Content of the Appeal Books

- [7] The appellants and the CAS do not agree as to the materials which should be before the panel hearing the appeal.
- [8] The appeal books filed by the CAS set out the decision and Final Disposition Order of Smith, ACJ dated June 22, 2005 as the decision and order appealed from. The material in those volumes includes copies of all decisions and orders from January 15, 2004 (Interim Order) to November 26, 2004 (Review Order). The volumes of transcripts which form part of the appeal books commence with a January 10, 2005 pre-trial and continue to June 8, 2005.
- [9] The appeal books also contain a copy of the decision of this court (2005 NSCA 87) on June 3, 2005 on the appeal of the November 26, 2004 Review

Order. The CAS advises that the materials filed for this appeal contain all documents and transcripts of hearings from the end of the hearing of the last decision appealed to this court; that is, since late November 2004. It also added material with respect to various interlocutory applications made by the appellants in case C.V. and L.F. should include them in their detailed grounds of appeal. The CAS stated that all documents and transcripts of hearings pertaining to this child protection matter before that date had been contained in the appeal books filed with the court on the appeal of the Review Order.

- [10] According to L.F., the appeal books filed by the CAS are not sufficient for the appeal. In particular, he urges that the panel hearing the appeal should have all transcripts of the hearings and all documents since the first court proceedings, namely the interim hearing of January 15, 2004. While passionate, his submissions on this issue were rather disjointed. I gather that in his view, the matter is being compartmentalized. L.F. also stated that he wanted “to package it all up and to get it to the Supreme Court of Canada.”
- [11] More detailed grounds of appeal would have been helpful in appreciating and considering the arguments on this issue. However, as earlier indicated, these are not yet available.
- [12] The disagreement between the CAS and the appellants on the contents of the appeal book comes down to this: according to the CAS, the decision and order under appeal are those dated June 22, 2005 of Smith, A.C.J. whereas according to C.V. and L.F., their appeal involves all of that judge’s decisions and orders from January 15, 2004 to and including those dated June 22, 2005 in the child protection proceeding. It appears that the appellants are not appealing the earlier decisions as such; rather the earlier proceedings may form part of their argument on appeal. Their notice of appeal also refers to files identified as pertaining to matters before this court.
- [13] The circumstances here are most unusual. While the appellants have filed a notice of appeal, their particular grounds of appeal are as yet unknown. Both appellants have chosen to proceed on their appeal without legal counsel. Almost all of the additional materials they seek to be filed for this appeal was prepared, compiled and filed earlier for the appeal of the review hearing. L.F. indicated that he still had those appeal books and transcripts. At least one other copy of those appeal books and transcripts exists so what

would be required is photocopying, binding, and filing. While the CAS commenced the materials it filed with matters following the review hearing, I was provided with no authority that the appeal of the review hearing precludes this court from considering anything in the child protection proceeding prior to its decision on the appeal of the review hearing. Furthermore, the statutory timelines set out in the *Act* for the hearing of the appeal must be met and the time frames in this case are narrow. Finally, the Final Disposition Order which was the culmination of the child protection proceedings deals with the permanent care and custody of a young child and her best interests.

- [14] This combination of circumstances persuades me that materials pertaining to the hearings before Smith, A.C.J. commencing January 15, 2004 ought to be available for use of the court as it should deem appropriate on the appeal.
- [15] I fully recognize the considerable effort, time and cost required in having this material made available. The second volume of the appeal book from the appeal of the review hearing need not be reproduced and filed since that material is contained in “Part III(6) of Appeal Book Volume I” filed for this appeal. However, copies of all the other volumes are to be filed. The court will require four rather than five copies. No copy needs to be delivered to L.F. who has his copy from the appeal of the review hearing. Where L.F. now has a copy of the materials and transcripts of the entire proceeding, and where the time for him to file the appellants’ completed grounds of appeal has been extended, the materials from January 15, 2004 to late November 2004 could be filed on or before August 10, 2005.
- [16] The notice of appeal also refers to three files before this court. Without the grounds of appeal which have yet to be filed, it is difficult to understand how these may be relevant to the appeal of the Final Disposition Order. Moreover it is not clear what materials the appellants are seeking or if any of that may be readily available. In addition, any appeals of those matters could not be heard by this court. These circumstances are very different from those recounted previously. On the material presently before me, I am unable to direct inclusion in the appeal books.
- [17] Counsel for the CAS indicated yesterday that were I to so decide, she had no instructions from her client to prepare and provide that material. I would ask her to immediately seek those instructions and advise in writing forthwith. Should, in her view, there be any need to discuss this further

with the Chambers judge, counsel should advise the Registrar so that arrangements for a telephone conference call can be made quickly.

Parties to the Appeal

- [18] Counsel for the Attorney General and the Minister of Community Services had indicated at the earlier Chambers hearing that the Minister should not appear as a party on the appeal. At the adjourned hearing today, their counsel addressed the appropriateness of the involvement of both the Attorney General and the Minister as parties to the appeal.
- [19] The participation of the Attorney General in the hearing which led to the Final Disposition Order of Smith, A.C.J. was limited to constitutional challenges raised by C.V. and L.F. Her decision which culminated in that Order dealt with those constitutional issues. In Chambers yesterday the Attorney General, through its counsel, advised his intention to participate in the appeal, should the appellants' grounds of appeal include the constitutional issues. It no longer sought to be removed as a party to the appeal and accordingly will remain as such.
- [20] However the Minister of Community Services asked to be removed as a party to the appeal. L.F. agreed to this request. The Minister of Community Services will cease to be a party to this appeal.

Legal Representation and *Amicus Curiae*

- [21] Neither of C.V. or L.F. is represented by counsel. At the adjourned hearing L.F. was forcefully adamant when stating that he and C.V. do not want counsel for the appeal. He made it clear that they will be representing themselves in making their written and their oral submissions. An individual who has not been declared unfit to stand trial has a right to self-representation: *R. v. Mian*, [1998] N.S.J. No. 398 (C.A.) and that principle also applies to civil matters.
- [22] Nor are the appellants in favour of the appointment of *amicus curiae*, a possibility the Chief Justice raised during the earlier Chambers hearing. They oppose any argument being made on appeal which either is made on their behalf or which is made by anyone other than the CAS and themselves. Moreover, in their view, any submission by an *amicus curiae* is unnecessary because the panel hearing the appeal should be capable of dealing with all issues on appeal without such assistance. They also feel that the court

would use those submissions and disregard the arguments that the appellants will raise.

- [23] With respect, I cannot agree with the position taken by the appellants and would appoint an *amicus curiae* to assist the court.
- [24] This appeal is from an order placing a young child in the permanent care and custody of the CAS. Her parents, the appellants, want her to be returned to them. L.F. has repeatedly stated that they will be conducting this appeal and that they do not want legal counsel nor any counsel making submissions on their behalf. It is evident that the situation is emotional and frustrating for them. Court decisions have made reference to psychological traits and to chaotic and aggressive courtroom conduct.
- [25] In *L.F. v. Children's Aid Society of Halifax*, 2005 NSCA 49 Fichaud, J.A. appointed an *amicus curiae* for the appeal of the review hearing. At that time there was an indication that the appellants were interested in legal representation for that appeal. That *amicus* delivered his submissions to the appellants who filed them with the court. It does not appear that they also filed written submissions of their own.
- [26] On this appeal the appellants are clear in their rejection of legal counsel. The appointment of an *amicus curiae* is intended to give the panel hearing the appeal the fullest argument possible on any arguable ground of appeal. The appellants will make their own written and oral submissions to the court. The submissions of the *amicus curiae* are not being made on the appellants' behalf. They will not first be delivered to the appellants, who may or may not file them, but rather will be filed by the *amicus curiae* directly with the court. They are not intended to supersede or to replace the written and oral submissions of the appellants. Rather, they will be additional to the appellants' arguments.
- [27] I am advised by Walter Yeadon, Director of Nova Scotia Legal Aid, that Terrance Sheppard is prepared to serve as *amicus curiae* for this proceeding before the court and that the Commission is prepared to pay this counsel to act as *amicus*. He is so appointed. The functions of the *amicus* would be to use reasonable efforts: (1) to review the appeal books and decision under appeal; (2) to prepare a factum which would make submissions in support of any arguable grounds of appeal; (3) to serve that factum to the parties to this appeal and to file it with the court by August 31, 2005; (4) to appear in court on the scheduled date of this hearing and, in the panel's discretion, to make oral presentations and respond to questions from the court.

[28] I appreciate that the *amicus* and all parties to this appeal will be making every effort to meet the filing deadlines that has been set. Where however completed grounds of appeal have not yet been received and the materials for review are considerable, the *amicus curiae* may have difficulty completing his factum within the time given. If so, he should apply to the Chambers judge for an extension of the time.

Oland, J.A.