

FAMILY COURT OF NOVA SCOTIA

Citation: R.E. v. Nova Scotia (Community Services), 2011 NSFC 11

Date: 20110510

Docket: FAN CFSA 073062

Registry: Yarmouth

Between:

R.E. and S.E.

Applicants

v.

Minister of Community Services and
J.R. and S.D.

Respondents

Restriction on publication:

Publishers of this case please take note that **Section 94(1)** of the **Children and Family Services Act** applies and may require editing of this judgment or its heading before publication. **Section 94** provides:

- 94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or a guardian, a foster parent or a relative of the child.

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge:

The Honourable Judge John D. Comeau,
Judge of the Family Court of Nova Scotia

Heard:

At Yarmouth, Nova Scotia, by Affidavit and Argument

Decision Date:

May 12, 2011, in Comeauville, Nova Scotia

Counsel:

Matthew Fraser, Esq., for Applicants, R.E. and S.E.
Donald Urquhart, Esq, for the Respondent Minister
Oliver Janson, Esq., for Respondent, J.R.
Colin Fraser, Esq. for Respondent, S.D.

INTERLOCUTORY DECISION

By the Court:

The Application:

[1] The Applicants ask to be joined as parties to the proceeding involving the Respondents at the disposition stage under the **Children and Family Services Act**.

The Facts:

[2] The Applicant S.E. is the great-aunt of the children C., L. and L.. R.E. is her husband. The children are the subject of a Protection Hearing.

[3] The Applicant's connection to the children is stated in R.E.'s Affidavit as follows:

THAT myself and my said wife, S.E., have significant experience in providing care for the children, particularly when the three children lived at our matrimonial residence ... for a 4 month period, from Nov. 2009 to March 2010. Myself and my wife also cared for L. and C. during the summers of 2008 and 2009.

[4] The deponent goes on to say they are financially stable and capable of caring to the children's needs including education. They are familiar with the children's routines and care very much for them.

[5] They have come forward because they believe the children should be kept together and their home has the capacity and environment that would be in their best interest. It is the Applicant's opinion that the mother J.R. and the father S.D. are not capable of maintaining the children and they fear for their physical well-being in the custody of the parents.

[6] The parents and the Minister are opposed to the Applicants being joined as parties and they want the children returned to them. The Minister is asking for permanent care and custody.

Issue:

[7] Whether the Applicants should be joined as parties to the proceeding (disposition stage) involving protective services with respect to the Minister of Community Services versus the parents J.R. and S.D.?

The Law:

[8] A party is as designated in Section 36(1) of the **C.F.S.A.**:

36(1) The parties to a proceeding pursuant to Sections 32 to 49 are

- (a) the agency;
- (b) the child's parent or guardian;
- (c) the child, where the child is sixteen years of age or more, unless the Court otherwise orders pursuant to Subsection (1) of Section 37;
- (d) the child, where the child is twelve years of age or more, is so ordered by the Court pursuant to Subsection (2) of Section 37;
- (e) the child, if so ordered by the Court pursuant to Subsection (3) of Section 37; and
- (f) any other person added as a party at any stage in the proceeding pursuant to the Family Court Rules.

[9] The relevant Nova Scotia **Family Court Rule** is R. 5.09, which provides:

5.09 Any person may, with leave of the Court and subject to enactments respecting confidentiality, intervene in a proceeding and become a party thereto where such person

- (a) claims, and to the satisfaction of the Court by the filing of an Affidavit containing the grounds for the intervention, can show a direct interest in the subject matter of the proceeding concerning the enforcement of the judgment therein; or
- (b) has a right to intervene under an enactment or Rule.

[10] The decision of the Nova Scotia Court of Appeal in **Children's Aid Society of Shelburne County v. C. (L.)**, 2001 NSCA 108 (Can LII), indicates that the most appropriate stage of a proceeding to join third parties or foster parents is at the time of reviewing a Permanent Care and Custody Order. The rationale is that at the disposition stage the Court's duty is to investigate the long term best interests of the children within the context of the least intrusive alternative which is designed to promote the integrity of the family. The family in this context is the biological parents. If this family unit is terminated by a Permanent Care and Custody Order a third party has the opportunity to apply for standing at that time. Consideration would then be given to the factors set out in **Gray v. Gray** (1995) 137 N.S.R. (2nd) 161. One of which is whether there is sufficient connection to the children (see also **C.A.S. of Halifax v. T.C. and C.L.** (1996) 152 N.S.R. (2d) 277 at p. 281).

Conclusion/Decision:

[11] Considering the fact that there is minimal connection between the Applicants and the children it would be contrary to their (the children's) best interest to join R.E. and S.E. as parties at this stage. Their involvement would be a contest between them and the parents and the state. Such a contest at this time would be contrary to the intent of the **Act** to promote the integrity of the family, which is the biological parents and the children. That family can only be eliminated by a Permanent Care and Custody Order. The parents must have an opportunity to present their case without being opposed by third parties. This is so where they do not agree to the third party intervention.

[12] Permanent care and custody is also not available to third parties under the **C.F.S.A.** Supervision (Placement) Orders are for twelve or eighteen months depending on the age of the children.

[13] The **M.C.A.** is the proper legislation for long term custody and placement with third parties. This is common where the Minister consents to abandon the **C.F.S.A.** proceeding and consent to a certain pre-determined placement.

[14] In the final analysis the parents should have an opportunity to promote the integrity of their family (This is the Minister's duty as well but in this case the state feels there is no least intrusive alternative) without a non-state third party contesting that. If the parents fail the third parties may seek party status on review. (see M.C.S. v. I.C. supra).

[15] This application is dismissed.

[16] The Court will remain open and public pursuant to Section 93 of the C.F.S.A. and the Applicants are free to attend.

John D. Comeau
Judge of the Family Court of Nova Scotia