

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v. S.R.A. L., 2008 NSSC 400

Date: 20090116

Docket: SFHCFSA-061200

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

S. R. A. L. and G. A. M.

Respondents

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Judge: The Honourable Justice Leslie J. Dellapinna

Heard: November 20, 2008 in Halifax, Nova Scotia

Oral Decision: November 20, 2008

Written Decision: January 16, 2009

Counsel: **J. Underhill counsel for the Minister**
P. Katsihtis counsel for S. L.

Subject: Oral decision at the conclusion of a contested interim hearing pursuant to section 39 of the *Children and Family Services Act*.

Summary: After the Respondents' three children were taken into care the Minister sought an Order pursuant to sub-section 39 (4)(e) of the *Children and Family Services Act* requiring that two of the children remain in the care and custody of the Agency while a third child would remain in the care and custody of a family member pursuant to subsection 39 (4) (d) of the *Act*. The Respondent mother sought the return of the children to her care under a Supervision Order or alternatively sought that all of the children be placed with family members rather than be placed in foster care. She also sought the permission of the Court to reside with the family member with whom the children were placed.

Issue: Whether there were reasonable and probable grounds to believe that there was a substantial risk to the children's health or safety and that the children could not be protected adequately by an Order pursuant to subsections 39(4)(a)(b), or (c) under which the children would be returned to the Respondent mother. Further, if the Court made such a finding the issue was whether two of the children should be in the care and custody of the Minister or if they could be placed in the care of a family member under a Supervision Order.

Result: The Court concluded that there were reasonable and probable grounds to believe that the children were in need of protective services and that there would be a substantial risk to the children's health or safety and to believe that they could not be protected adequately if the children were returned to the care of their mother. The Court also concluded that the children could be adequately protected and cared for if placed with family members so it was ordered that the oldest child would remain in the care and custody of her paternal grand-mother (with whom she was residing at the time of the hearing) under a Supervision Order and it was ordered that the two younger children would be placed in the care and custody of a maternal aunt, also under the supervision of the Agency. Conditions were attached to the Order including that the mother was not to reside with the children but was to have access to the children on such terms and conditions as may be arranged by the Agency in consultation with the grand-mother and the aunt. The oldest child and the two younger children would have access to each other also on terms to be determined by the Minister in consultation with their care providers.

The Respondent father did not take part in the hearing as he was incarcerated at the time.

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