

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Family and Children's Services of Yarmouth County v. E.A.*,  
2004 NSCA 96

**Date:** 20040805

**Docket:** CA 218121

**Registry:** Halifax

**Between:**

Family & Children's Services of Yarmouth County

Appellant

v.

E. A. and S. D.

Respondents

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

**Editorial Notice**

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

**Judge:** Oland, J.A.

**Appeal Heard:** June 18, 2004

**Subject:** *Children and Family Services Act, s. 42(2). Access by parent during temporary care by agency.*

**Summary:** E.A. is the mother of five children who were taken into care following allegations of abuse. Criminal charges were laid against E.A. and against S.D. who is the father of one of those children, J.A. The four children other than J.A. were placed, with consent, in the permanent care and custody of the appellant agency. At the disposition hearing concerning J.A., the trial judge had affidavit evidence, assessment reports, and oral testimony. The agency plan proposed J.A.'s placement in a foster home with a view to adoption

while S.D.'s plan proposed that he have care and custody of J.A. The agency had not offered S.D. any counseling or other services while J.A. was in the temporary care of the agency. On his own, S.D. sought out services and commenced some counseling. The trial judge ordered that J.A. be placed in the care of the agency for six months and that his father, S.D., continue to have access. He also ordered that the agency assist S.D. to take parenting courses, to provide other services that would assist S.D. in parenting, and that the court be notified if S.D. should be convicted of any of the child related criminal charges against him.

**Issues:**

1. Whether the trial judge erred in law, in the circumstances of this case, by ordering the agency to fund and provide services to S.D.
2. Whether he made a palpable and overriding error in this appreciation of the evidence when he determined that S.D. should have access to J.A. despite the evidence of abuse accepted by the trial judge.

**Result:**

Appeal dismissed. The trial judge neither acted upon a wrong principle of law nor made an obvious and critical error in appreciating or applying the evidence. The agency did not raise any issue concerning the authority of a trial judge to order the provision of services. Assuming without deciding that such judges have such authority, in the circumstances of this case the trial judge did not err in making the order he did. While there are serious allegations of abuse by S.D. of E.A.'s other children, there was no evidence that S.D. had physically harmed his own son, J.A. There was evidence that S.D.'s relationship with J.A. was significantly different than that with E.A.'s other children. In deciding to allow S.D. access to J.A. while the boy is in the temporary care of the agency, the trial judge did not make any error in appreciating or applying the evidence which requires appellate interference.

**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 10 pages.**