

Services of Kings County on May 7, 1996. He was found in need of protection by Judge Robert C. Levy of Family Court under the provisions of the **Children and Family Services Act**, S.N.S. 1990 c. 5, on July 11, 1996.

Section 41(1) of that **Act** requires that the court shall hold a disposition hearing and make a disposition order not later than 90 days after the finding that the child is in need of protection. The 90 day period expired October 11, 1996.

At pre-disposition conferences on September 16 and 30, 1996, counsel for E.T.'s mother advised she did not agree with the agency's plan, necessitating a formal hearing. Sharon Cruikshank, the psychologist who had prepared an assessment of both the mother and child, was out of the country, according to the court's understanding, until October 31, 1996. Counsel for the mother and the agency refused to consent to an extension of the time frame. Judge Levy adjourned the disposition hearing date to a date in November which was to be specified after further consultation. In giving that oral decision Judge Levy requested that it be read in conjunction with his August 13, 1996, decision in **Family and Children's Services of Annapolis County v. A.M. and A.I.** in which he discussed the difficulties that result from conflicts between the time limits the **Act** imposes and the best interests of children.

Later on September 30 the agency contacted Ms. Cruikshank who advised she would be available October 3 and 4 or October 8 and 9, 1996. All concerned were notified by fax. The pre-disposition hearing conference was resumed by speaker phone on October 2, 1996. There is no transcript of those proceedings but the agreed statement of facts showed the earlier dates were considered impractical. Judge Levy had to be away October 8 and 9. He was asked to recuse himself in favour of another Family Court judge who was available to hear the matter on those dates, but counsel for the mother objected and Judge Levy refused to recuse himself. He scheduled the disposition hearing for November 29, 1996.

The appellant agency alleges that Judge Levy erred in setting the disposition hearing to November 29, beyond the statutory deadline, and lost jurisdiction over the proceeding. It also alleged he erred in failing to recuse himself so the court could preserve jurisdiction and hold the hearing within the period required. It asks that the judgment appealed from be rescinded because jurisdiction was lost on October 2, 1996, that orders made after October 2 be of no force and effect and proceedings convened subsequent to October 2, 1996 be a nullity.

Judge Levy's reasoning in declining to recuse himself is not before this Court. He was seized with jurisdiction as a result of finding the child in need of protection and closely associated with the case over many months. In my view, recusal is an extraordinary request for counsel to make of a judge who happens not to be available on a particular date. It was entirely within his discretion and not an error of law for him to refuse.

It was determined by this Court in **H. W. v. The Children's Aid Society and Family Services of Colchester County et al.** (C.A. No. 130325 - just released and unreported), that a Family Court judge is within his or her jurisdiction to extend the time period set out in s. 41(1) where there is a finding that the deadline is in conflict with the best interests of a child. That case applies to the present circumstances. It is clear from Judge Levy's reported remarks that his paramount concern was the best interests of the child, and that he reflected that concern in scheduling the disposition hearing for a date after the 90 day statutory time limit had expired. He may have made even more explicit findings to that effect during the course of the October 2nd conference which was not transcribed. I am satisfied that Judge Levy carefully canvassed all possibilities and his duty to the child was foremost in his mind when he extended the time limit. It would not be in the best interests of the child for this Court to interfere. The appeal is dismissed without costs.

Freeman, J.A.

Concurred in:

Hallett, J.A.

Flinn, J.A.