



The reasons for judgment of the Court were delivered orally by:

**CLARKE, C.J.N.S.:**

The appellant is the maternal grandmother of two children, D., born November \*, 1990, and T., born June \*, 1994. Following several proceedings in the Family Court during 1994 and 1995, the Minister of Community Services, pursuant to the **Children and Family Services Act**, S.N.S. 1990, c. 5, applied for an order for the permanent care and custody of the two children.

The appellant contested the application with respect to both grandchildren and later limited it to the elder one. The hearing was scheduled for five days in the Family Court beginning November 6, 1995. Acting on instructions that the appellant would not go through with the hearing, her counsel informed the Court accordingly. After hearing counsel for both parties, the Judge of the Family Court granted an order giving the Minister the permanent care and custody of both children.

Pursuant to **Civil Procedure Rule 15.08**, the appellant applied to set aside the order with respect to her elder grandson, D., on the ground that she was not competent to give instructions to her counsel at times material to the hearing of the application she was contesting in the Family Court.

After hearing evidence and taking time to consider, Judge Legere of the Family Court rendered a comprehensive decision on July 18, 1996 and issued an order on July 31, 1996 by which she dismissed the appellant's application. It is from the order of Judge Legere that the appellant now appeals. The principal issues are that Judge Legere erred in law in the test she applied to determine whether the appellant was competent to instruct her lawyer and whether she erred in making findings of fact without evidence in support.

We have studied and reviewed the record before the Court and considered the written and oral submissions of counsel. It is our unanimous opinion that Judge Legere properly instructed herself on the applicable law. She applied it to the findings of fact she made for which there was ample evidence in support.

Concluding, as we do, that Judge Legere did not err, the appeal is dismissed and her order issued July 31, 1996 is confirmed.

C.J.N.S.

Concurred in:

Matthews, J.A.

Pugsley, J.A.