

NOVA SCOTIA COURT OF APPEAL

Citation: *A.M. v. Nova Scotia (Community Services)*, 2014 NSCA 97

Date: 20141024

Docket: CA 430111

Registry: Halifax

Between:

A.M. and J.W.

Appellant

v.

Minister of Community Services

Respondent

Restriction on Publication: pursuant to 94(1) of the Children and Family Services Act

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: October 8, 2014, in Halifax, Nova Scotia

Subject: **Children and Family Services Act, S.N.S. 1990, c. 5, ss. 48(3),(8) and (10). Change in Circumstances Warranting Termination of a Permanent Care Order. Bias on the Part of the Motions Judge.**

Summary: The appellants' twin daughters were the subject of a permanent care order. The appellants made an application pursuant to s. 48(3) of the **CFSA** to terminate the order on the basis that there had been a change in circumstances justifying setting aside the order. The Minister then made a motion for summary judgment to dispose of the appellants' application. At the hearing of the summary judgment motion the appellants argued that the judge was biased and should not hear the motion. The motions judge refused to recuse herself. She went on to

find that there had not been a change in circumstances which would warrant setting aside the permanent care order. The motions judge granted summary judgment to the Minister and dismissed the appellants' application to terminate the permanent care order.

The appellants appeal alleging that the motions judge erred in failing to find a change in circumstances which warranted setting aside the permanent care order. They also argue the motions judge was biased and ought not to have heard the application.

- Issues:**
- (1) Did the motions judge err in dismissing the application to terminate the permanent care order?
 - (2) Was there a reasonable apprehension of bias that required the motions judge to recuse herself?

Result:

Appeal dismissed. The motions judge correctly stated and applied the test with respect to change in circumstances. She found there was no change in circumstances that warranted setting aside the permanent care order. In doing so she did not commit any error.

The appellants' allegation of bias was without merit. The motions judge had previously presided over a pretrial which involved one of the appellants. The fact that she had done so did not give rise to a reasonable apprehension of bias.

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.