

IN THE SUPREME COURT OF NOVA SCOTIA
(Family Division)

Citation: Children's Aid Society of Halifax v. C. O., 2004 NSFC 15

Date: November 5, 2004

Docket: S.F.H. No. C29020

Registry: Halifax

Between:

Children's Aid Society of Halifax

Applicant

v.

C. O. and M. A. and S. S.

Respondents

Publication restriction: Publishers of this case please take note that **Section 94(1)** of the **Children and Family Services Act** applies and may require editing of this judgment or its heading before publication. **Section 94** provides:

94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or a guardian, a foster parent or a relative of the child.

Judge: The Honourable Judge John D. Comeau, Chief Judge of the Family Court

Heard: November 3, 2004, in Yarmouth, Nova Scotia

Written Decision: November 5, 2004

By the Court:

THE ISSUE:

- [2] The matter before the Court raises the issue of whether the Family Court has jurisdiction to and /or will take jurisdiction over the file that has been transferred to this court from the Family Division of the Supreme Court of Nova Scotia. This is a matter where notice to the parties is not required under **Family Court Rule 19**.

FACTS:

- [3] By decision rendered on September 17, 2004, and dated October 21, 2004.

Justice Campbell made the following order:

It Is Further Ordered pursuant to **Civil Procedure** 69.04(3) that the proceeding herein shall be transferred to the Family Court for the Province of Nova Scotia at Yarmouth, Nova Scotia.

- [4] This Order formed part of a review of a Supervision Order made by Justice Campbell under S. 46 of the **Children and Family Services Act**. The file indicates that Justice Campbell dealt with this matter at the Interim and Protection Hearings. He conducted the Disposition Hearing and made the Supervision Order referred to earlier which Order would be reviewed on a

date fixed by the Deputy Prothonotary. The Review Order rendered September 17, 2004, and dated October 21, 2004, contained this same provision for getting court dates for review. In this Order as well supervision is transferred from the Children's Aid of Halifax to Family and Children's of Yarmouth County. [Section 46(2) CFS Act]

THE LAW:

[5] The **Civil Procedure Rules of Nova Scotia** are applicable. Justice Campbell's order to transfer this proceeding to the Family Court of Nova Scotia refers to **Civil Procedure Rule 69.04(3)** as follows:

Upon application by a party or upon the court's own motion, a proceeding under this rule may be transferred to another judicial district or to another location where the court of the Family Court for the Province of Nova Scotia sits.

[6] Although **Civil Procedure Rule 69.04(3)** provides for a transfer of a protection proceeding **Civil Procedure Rule 69.10(2)** qualifies that as to timing.

Subject to Rule 39.03, a judge of the court who conducts the Protection Hearing and determines that a child is in need of protective services shall conduct the Disposition Hearing and any subsequent reviews respecting that child.

[7] Consequently **Civil Procedure Rule 39.03** is applicable.

Exercise of one judge's jurisdiction by another

39.03(1) Where an application ought to be made to, or any jurisdiction exercised by, a judge of the Supreme Court of Nova Scotia by whom a proceeding has been heard or tried in whole or in part, and the judge dies, retires or ceases for any reason to be a judge of that court, or for any other reason it is impossible or inconvenient for the judge to act in the proceeding, the Chief Justice of the Supreme Court of Nova Scotia may, either by a special order in the proceeding, or by a general order applicable to any class of proceeding, nominate another judge to whom the application may be made or by whom the jurisdiction may be exercised. [E. 4/8]

39.03(2) A judge nominated under paragraph (1) may make an order or render a judgment in a proceeding on the evidence already adduced or may take further evidence before doing so. [Amend. 20/6/94]

CONCLUSIONS/DECISION:

- [8] Justice Campbell made the transfer order following a review of a disposition he had made in this protection proceeding. The use of **Civil Procedure Rule 69.04(3)** is time controlled because of **Civil Procedure Rule 69.10(2)** which makes **Civil Procedure Rule 39.03** applicable to the transfer of this proceeding to the Family Court of Nova Scotia.
- [9] In other words, **Civil Procedure Rule 69.04(3)** provides for transfer of a protection proceeding before the justice becomes seized with it. Once a justice conducts a Protection Hearing the justice is seized with the matter

from then through to the Disposition Hearing and all subsequent reviews thereafter. The only way out of this, so to speak, is provided for in **Civil Procedure Rule 39.03** which has not been invoked and does not appear to be applicable in this particular case.

- [10] Justice Campbell's Order rendered September 17, 2004, and dated the 21st day of October, 2004, does not confer jurisdiction on the Family Court of Nova Scotia or a judge thereof over this particular Protection Hearing .
- [11] The Family Court Officer is directed to return the file to the Deputy Prothonotary of the Supreme Court Family Division at Halifax, Nova Scotia.

John D. Comeau
Chief Judge of the Family Court of
Nova Scotia