NOVA SCOTIA COURT OF APPEAL

Citation: *A.C. v. Nova Scotia (Community Services)*, 2017 NSCA 1

Date: 20170104
Docket: CA 453246
Registry: Halifax

Between:

A.C.

Appellant

v.

The Minister of Community Services, R.R., and L.O.

Respondents

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

Judge:	The Honourable Justice Cindy A. Bourgeois
Appeal Heard:	November 25, 2016, in Halifax, Nova Scotia
Subject:	Child protection; access after permanent care
Summary:	After a lengthy trial, three children were placed in the permanent care of the Minister of Community Services. The trial judge concluded that, although the respondent mother and R.R. had made some improvements, the children remained in need of protective services. The permanent care order did not provide for access.
Issues:	1. Did the learned trial judge make a palpable and overriding error in failing to appreciate the evidence before her fully and correctly in relation to the risk to the children if placed in A.C.'s care? 2. Did the learned trial judge err in law in failing to consider to the extent required of her, the principle

emphasizing the integrity of the family as set out in the *CFSA*?

3. Did the learned trial judge err in not ordering access after permanent care?

4. Did the learned trial judge err in not ordering the Minister to give notice to the biological father of the child T.C.?

Result: Appeal dismissed without costs. The trial judge made no palpable and overriding errors justifying appellate intervention; nor was the Court satisfied that she failed to properly consider the integrity of the family. The trial judge made no apparent error in law or fact in declining to grant access following the permanent care orders. Nor did she commit an error in failing to provide notice of the proceedings to a purported biological father.

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The Minister of Community Services, R.R., and L.O.

Respondents

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

Judges:	Farrar, Hamilton and Bourgeois, JJ.A.
Appeal Heard:	November 25, 2016, in Halifax, Nova Scotia
Held:	Appeal dismissed without costs, per reasons for judgment of Bourgeois, J.A.; Farrar and Hamilton, JJ.A. concurring
Counsel:	Coline Morrow, for the appellant Adam Neal, for the respondent Minister Vincent Gillis QC, for the respondent R.R.

Restriction on publication: Pursuant to s. 94(1) *Children and Family Services Act*, S.N.S. 1990, c. 5.

PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT s. 94(1) OF THE CHILDREN AND FAMILY SERVICES ACT APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION.

SECTION 94(1) PROVIDES:

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

Reasons for judgment:

[1] After a 12 day trial, Justice Lee Anne MacLeod-Archer placed three children, ages 11, 9 and 8, in the permanent care and custody of the Minister of Community Services. Their mother, A.C., filed a Notice of Appeal alleging significant errors on the part of the trial judge. The respondent R.R., the mother's partner and father of the youngest child, actively participated both at trial and at the hearing of this appeal. He supports the position advanced by the appellant mother. The father of the oldest child, the respondent L.O., has never participated in the proceedings. As will be discussed below, there is a question raised on appeal as to the identity of the middle child's biological father.

Background and decision under appeal

[2] Although the present proceeding arose out of a referral made in April 2014, much time was spent at the hearing documenting the Minister's previous involvement with the appellant, and to a lesser extent, R.R. The trial judge described the history as follows:

> [3] A.C. was placed in the care of Children's Aid as a child, and she grew up in the child welfare system. After she became a mother, the Minister (formerly the Agency) received and investigated referral information on a number of occasions, leading to several court applications. The history of the Minister's involvement is as follows:
>
> > 1. In 2005 after W.C. was born, referral concerns included inadequate food and supplies for the infant, as well as poor partner choices.
> >
> > 2. In early 2006, the Minister received information about a physical altercation between A.C. and a neighbour, with W.C. present. Services were implemented.
> >
> > 3. In August, 2006 A.C. reported that her brother locked her and the child W.C. in the basement of her home and then kidnapped the child. Instead of calling police, she called R.R., who got into a physical altercation with her brother. The Minister sought a Supervision Order and put remedial services in place for her and the child, who was then displaying behavioural problems.
> >
> > 4. In January, 2007 W.C. was taken into care. At that time, A.C. was pregnant with T.C. He was taken into care at birth. Remedial services for A.C. and the children continued. R.R. agreed to take services as well.

> 5. Access was expanded in the fall of 2007; the children were gradually reintegrated into the home in the spring of 2008. W.C. went home first. T.C. was transitioned into A.C.'s care later, to avoid overwhelming A.C. Both were home by August, 2008.
>
> 6. The Agency asked the court to discontinue the protection proceedings. By that time, H.C. had been born, so there were three children in the home. A.C. agreed to continue family support services through the Minister on a voluntary basis after the court proceedings ended in 2008.
>
> 7. In 2009, the Minister received several referrals relating concerns of inappropriate parenting and discipline, as well as incidents of domestic violence between A.C. and R.R. The Minister reopened its file to offer voluntary services, which were accepted by A.C. and R.R.

[3] The circumstances giving rise to the proceeding before her were also described by the trial judge:

> [4] This proceeding arises from a referral received from R.R. on April 8, 2014. He expressed concerns for the safety of the children in A.C.'s care. He audio-recorded an incident where A.C. lost her temper with W.C., yelling and swearing at her, calling her a bitch and threatening to beat her. In addition, he reported constant chaos in the home with the children's behaviours. He expressed high anxiety in dealing with the situation, and told workers that he had his own residence; the only reason he spent time at A.C.'s home was to see the children.
>
> [5] The file was opened for investigation, and a decision was made to place the children in R.R.'s care under the Minister's supervision. A.C. was to have supervised access. However, the day after this decision was made, R.R. advised workers he could not care for the children, as he was too stressed. A.C. had been hounding him through the night for information about the children, and he could not handle her demands.
>
> [6] Although the following day R.R. changed his mind and asked to keep the children, the Minister had taken the children into care and placed them in foster homes in the meantime. Given R.R.'s state of mind, the decision was made not to return the children to his care. The foster placement was considered the safer and least disruptive option for the children.

[4] It is helpful to briefly review the procedural history of the present matter. It was commenced by way of a Notice of Child Protection Application dated April 16, 2014, supported by the affidavit of child protection worker Amy Donovan. It was alleged that the children were in need of protective services pursuant to Sections 22(2)(b) and (g) of the *Children and Family Services Act*, S.N.S. 1990, c. 5 (*CFSA*). Those provisions state:

> 22(2) A child is in need of protective services where
>
> (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a); [*(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;*] …
>
> (g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm; [*(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;*]

[5] Section 22(1) defines "substantial risk" as "a real chance of danger that is apparent on the evidence."

[6] The first Interim hearing was held on April 17, 2014, at which time Haley, J. found that there were reasonable and probable grounds to believe the children were in need of protective services. The court ordered that the children remain in the temporary care of the Minister, with A.C. and R.R. being granted supervised access. In addition, the following terms were ordered:

- A.C. and R.R. were to abstain from the use of alcohol or drugs except for those drugs for which they had a valid prescription, and provided that those drugs were taken as prescribed;
- A.C. and R.R. were to provide a safe, drug/violence free environment, to ensure there was no drug paraphernalia in their home, abstain from illegal activity and to have no contact with individuals who had criminal charges or convictions;
- A.C. and R.R. were to ensure there were no individuals under the influence of drugs in their home.

Although other conditions were added in subsequent orders, the above terms remained until the children were placed in permanent care.

[7] The Protection hearing was held on July 11, 2014. On the basis of the uncontested affidavit evidence on file with the Court, the children were found to be in need of protective services, as defined above.

[8] The first disposition hearing was held on October 1, 2014, and decided again, on the basis of uncontested affidavit evidence. An order was issued continuing the earlier terms. Several hearings to review the disposition order were held; the children remained in the Minister's care, with supervised access to A.C. and R.R.

[9] The final disposition hearing was scheduled to commence in November 2015. The Minister had filed a Plan of Care in July 2015 advising she would, at the hearing, be seeking orders for permanent care. The hearing commenced November 24, and proceeded over 11 days of evidence, extending into January 2016. Final oral submissions were made by the parties on February 24, with the trial judge releasing her written reasons on May 19, 2016.

[10] Over the course of the final hearing, evidence was adduced from a number of witnesses including service providers who had worked with A.C. and R.R., either individually or as a couple, and access facilitators. The court also had the benefit of evidence from Dr. Reginald Landry, a psychologist who had undertaken a parental capacity assessment in relation to A.C. and R.R. Both the appellant and R.R. testified.

[11] At the conclusion of the hearing, the Minister submitted the children remained in need of protective services. Given the statutory timeframe had passed, the Minister submitted the trial judge's only option was to place the children in permanent care. A.C. and R.R. strenuously disagreed. They asserted that they had made significant progress in addressing the concerns which prompted ministerial involvement and, as such, the risk to the children should they be returned home was minimal. They advocated for a dismissal of the application with the children being returned to A.C.'s care or, alternatively, to the care of R.R.

[12] The trial judge concluded as follows:

> [47] I make the following findings based on the evidence:
>
> 1. I find A.C. has not overcome her life-long anger issues despite numerous interventions and services since 2005.
>
> 2. I find that R.R.'s anger issues have not resolved despite numerous interventions and services since 2008.
>
> 3. I find the potential for ongoing conflict between A.C. and R.R. is high.

> 4. I find the potential for future conflict with neighbours and family members remains high, given the personalities and history of the parties.
>
> 5. I find A.C. and R.R. lack the necessary insight and emotional resources to effect meaningful changes in their lives and manage the risk of harm to the children from exposure to conflict and violence.
>
> 6. I find that despite years of remedial services and the Minister's support, A.C. and R.R. have been unable to implement effective parenting strategies, to safely parent and mitigate the risk to the children.
>
> 7. I find that A.C. and R.R. continue to use marijuana for stress relief, a maladaptive form of coping which can exacerbate their situation and create further risk to the children.
>
> 8. I find these parents struggled during two hour access visits to control the children, and that the chance of them being able to successfully and safely parent the children without risk, on a 24/7 basis, is poor.
>
> [48] In conclusion, I find the children are still in need of protective services from risks apparent on the evidence.

And further:

> [58] I find A.C. and R.R.'s plan to parent the children together is not viable, given their cognitive limitations, maladaptive coping, anger issues, ongoing drug use, history of conflict and violence, and the history of chaos in the home and at access. It is not in the children's best interests to be returned to a situation that has not changed sufficiently to reduce the risk.
>
> [59] I also reject the alternative proposed by R.R. that H.C. be placed in his care, while the two older children should be returned to A.C.'s care. The parties have not demonstrated they have the ability to co-parent in a parallel parenting regime any better than in a single family unit. In fact, that scenario would pose its own challenges which I find the parties are unable to overcome. R.R. was unable to cope with A.C.'s calls and demands the night of April 14, 2014 when the children were taken into care. It is highly unlikely he would be able to manage access between A.C. and H.C., given that incident and A.C.'s dominant personality.

[13] The trial judge placed the children in permanent care, with no access to A.C. or R.R.

Issues

[14] In her Factum, the appellant refined the issues she raises on appeal from those originally articulated in the Notice of Appeal. Given that both the Minister

and R.R. structured their arguments around the grounds as stated in the appellant's Factum, I will do the same.

[15] The appellant poses the following issues:

1. Did the learned trial judge make a palpable and overriding error in failing to appreciate the evidence before her fully and correctly in relation to the risk to the children if placed in A.C.'s care?
2. Did the learned trial judge err in law in failing to consider to the extent required of her, the principle emphasizing the integrity of the family as set out in the *CFSA*?
3. Did the learned trial judge err in not ordering access after permanent care?
4. Did the learned trial judge err in not ordering the Minister to give notice to the biological father of the child T.C.?

Standard of Review

[16] The standard of review of a trial judge's decision on a child protection matter is well-settled. The Court may only intervene if the trial judge erred in law or has made a palpable and overriding error in her appreciation of the evidence. In *Mi'kmaw Family and Children's Services of Nova Scotia v. H.O.*, 2013 NSCA 141 Saunders, J.A. wrote:

> [26] Questions of law are assessed on a standard of correctness. Questions of fact, or inferences drawn from fact, or questions of mixed law and fact are reviewed on a standard of palpable and overriding error. As Justice Bateman observed in *Hendrickson v. Hendrickson*, 2005 NSCA 67 at ¶6:
>
> > [6] ... Findings of fact and inferences from facts are immune from review save for palpable and overriding error. Questions of law are subject to a standard of correctness. A question of mixed fact and law involves the application of a legal standard to a set of facts and is subject to a standard of palpable and overriding error unless it is clear that the trial judge made some extricable error in principle with respect to the characterization of the standard or its application, in which case the error may amount to an error of law, subject to a standard of correctness. ...
>
> [27] Experienced trial judges who see and hear the witnesses have a distinct advantage in applying the appropriate legislation to the facts before them and deciding which particular outcome will better achieve and protect the best

> interests of the children. That is why deference is paid when their rulings and decisions become the subject of appellate review. Justice Cromwell put it this way in *Children's Aid Society of Halifax v. S.G.* (2001), 193 N.S.R. (2d) 273 (C.A.):
>
> > [4] In approaching the appeal, it is essential to bear in mind the role of this Court on appeal as compared to the role of the trial judge. The role of this Court is to determine whether there was any error on the part of the trial judge, not to review the written record and substitute our view for hers. As has been said many times, the trial judge's decision in a child protection matter should not be set aside on appeal unless a wrong principle of law has been applied or there has been a palpable and overriding error in the appreciation of the evidence: see **Family and Children Services of Kings County v. B.D.** (1999), 177 N.S.R. (2d) 169 at ss. 24. The overriding concern is that the legislation must be applied in accordance with the best interests of the children. This is a multi-faceted endeavour which the trial judge is in a much better position than this Court to undertake. As Chipman, J.A. said in **Family and Children Services of Kings County v. D.R. et al.** (1992), 118 N.S.R. (2d) 1, the trial judge is "... best suited to strike the delicate balance between competing claims to the best interests of the child."

[17] To justify appellate intervention, a palpable error must be material. That is, it is not only clear and obvious from the evidentiary record, but it gives rise to a reasoned belief that the error affected the trial judge's conclusion (see *Van de Perre v. Edwards*, 2001 SCC 60 at para. 13; *H.A.N. v. Nova Scotia (Community Services)*, 2013 NSCA 44 at para. 32).

Analysis

Did the learned trial judge make a palpable and overriding error in failing to appreciate the evidence before her fully and correctly in relation to the risk to the children if placed in A.C.'s care?

[18] The appellant says the trial judge's conclusion that the children remained in need of protective services is undermined by a series of errors apparent on the evidence. These errors, it is submitted, led the trial judge to not appreciate evidence favourable to the appellant; in particular, her ability to safely parent the children.

[19] In both her written and oral submissions, the appellant expends significant effort highlighting purported factual errors in the trial judge's decision. In doing

so she references discrete portions of the evidentiary record which she says demonstrates the trial judge's misapprehensions.

[20] In response, the Minister asserts that all but one of the appellant's alleged errors are not, upon a fulsome review of the record, errors at all. Rather, they are supportable conclusions based upon the entirety of the evidence. Conceding the trial judge was mistaken on one occasion, the Minister asserts that the error was not a material one.

[21] I do not intend to review the specific errors alleged by the appellant. The appellant has attempted to dissect the trial judge's reasons and compare same to isolated portions of the record. I am satisfied that the findings reached by the trial judge were amply supported by the evidence before her, or were reasonable inferences drawn therefrom. The trial judge's purported errors, other than the one discussed below, are the appellant's attempt to have this Court re-evaluate the evidence and reach different conclusions. That is not our function.

[22] I am, however, satisfied that the trial judge clearly was mistaken when she wrote:

> [26] R.R. is 45 years of age and has been A.C.'s partner for approximately nine years. R.R. was also articulate, and used many of the ideas and phrases heard from therapists and social workers. For example, he described himself as a "crumpled piece of paper" whose wrinkles never heal.

[23] R.R. did use the phrase "a crumpled piece of paper." However, he was not referencing himself. Rather, he was explaining the effects of verbal abuse on others – that those exposed to it, were like a "crumpled piece of paper". The appellant asserts that this error demonstrates that the trial judge not only misunderstood the evidence, but failed to appreciate that R.R. had gained insight from the services he had undertaken.

[24] I am not satisfied that the above error is one which materially affected the trial judge's conclusion. The trial judge did recognize that R.R. had gained insight, but it was inadequate to alleviate risk. The passage in question was utilized by the trial judge as an example of how R.R. was able to use the terminology of services, but it did not translate into meaningful change in his life. There was ample evidence to support that particular conclusion, as well as the other findings made by the trial judge as set out in para. [12] above.

[25] I would dismiss this ground of appeal.

Did the learned trial judge err in law in failing to consider to the extent required of her, the principle emphasizing the integrity of the family as set out in the CFSA?

[26] The entirety of the appellant's argument in relation to the above ground is contained in a single paragraph in her Factum:

> 28. It is submitted, that most likely because of the errors above, the learned trial judge never considered the integrity of the family as required by the *Act*, and once again failed to weigh the best interests of the children.

[27] A review of the trial judge's decision demonstrates that she was well aware of the importance of the integrity of the family and a child's relationship with parents and other family members. She cited relevant provisions of the *CFSA* including s. 3(2) and s. 42(2). The trial judge correctly pointed out, however, that it is the best interests of the child which takes priority over all other considerations.

[28] The appellant has not identified any error on the trial judge's part, other than the bald assertion contained in her Factum. I see no error of law, nor a palpable and overriding error of fact in the trial judge's reasoning and, as such, I would dismiss this ground of appeal.

Did the learned trial judge err in not ordering access after permanent care?

[29] The granting of access following a permanent care order is governed by s. 47(2) of the *CFSA*. It provides:

> (2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that
>
> (a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement;
>
> (b) the child is at least twelve years of age and wishes to maintain contact with that person;
>
> (c) the child has been or will be placed with a person who does not wish to adopt the child; or
>
> (d) some other special circumstance justifies making an order for access.

[30] In the July 2015 Plan of Care, the Minister made known her intent to seek permanent care with the plan to have the children placed for adoption. Further, the Minister advised of her intent to oppose access in the event a permanent care finding was made. Witnesses called by the Minister at trial confirmed that adoption placement remained the plan, with it being the intention to place the children as a sibling group. Although not extensive, the court heard evidence that there are, within the Province, approved adoptive placements seeking sibling groups.

[31] The trial judge, having determined that permanent care would be ordered, determined that the onus then shifted to A.C. and R.R. to establish access was warranted. She determined that they failed to meet this burden. Although acknowledging the existence of a bond between the children and A.C. and R.R., the trial judge determined that such did not, in and of itself, create a special circumstance justifying an access order. The trial judge concluded that it was in the best interests of the children that the permanent care order have no provision for access.

[32] In her written submissions, the appellant submits that there was ample evidence before the court to establish "special circumstances" as contemplated in s. 47(2)(d). She points to the evidence of Dr. Landry who opined that a permanent separation from their parents would give rise to grief for the children, noting their parental attachment. In her oral submissions, the appellant expands upon her argument, submitting that the extensive amount of access which was permitted to continue during the life of the proceeding also informed the existence of "special circumstances". Finally, the appellant argues that, contrary to the approach taken by the trial judge, s. 47(2) did not serve to shift a burden upon the responding parents to justify continued access; rather, such shifting only occurred in "exceptional circumstances". This is not, according to the appellant, such a case.

[33] I will start my analysis with the appellant's view of s. 47(2) and, in particular, her assertion that the Minister retained the burden to establish that access should not be granted. The appellant provides no authority for her interpretation of s. 47(2), nor any guidance with respect to what would be considered an "exceptional circumstance". Her view with respect to the obligations under the section are, in my opinion, directly contrary to that articulated by this Court.

[34] A comprehensive analysis of the operation of s. 47(1) and (2) and the legislative intent informing the provisions was set out by MacDonald, C.J.N.S. in *Children and Family Services of Colchester County v. K.T.*, 2010 NSCA 72:

> [36] The *CFSA* comprehensively details the various specific options available to meet a child's best interests. These options vary with each stage in the process from initial agency involvement up to and including third party adoptions. In **T.H.**, my colleague Fichaud, J.A. examined the various stages and how the legislative priorities changed with each. I will not repeat his comprehensive analysis except to highlight the Legislature's shift in priority when it comes to access.
>
> [37] Before the issuance of a permanent care order, the legislative focus is on preserving the family unit. This would understandably mean that when the children are in temporary Agency care, parental access is to be encouraged so as to hopefully rehabilitate the family. However, with a permanent care order, the focus shifts. Any hope of preserving the family within the legislated time limits is presumably lost and the focus becomes a stable alternate plan. Thus, upon securing a permanent care order, the Agency under the *CFSA* effectively becomes the parent:
>
> > 47 (1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.
>
> [38] This provision suggests the termination of the natural parents' relationship with the children. However, in special circumstances, post-permanent care access is possible although given the stark change in focus, such circumstances are rare and limited to those that would not jeopardize the new focus, namely an alternate stable placement. Thus, it is not surprising that the provision allowing for such access is highly restrictive:
>
> > 47 (2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that
> >
> > > (a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement;
> > >
> > > (b) the child is at least twelve years of age and wishes to maintain contact with that person;

> (c) the child has been or will be placed with a person who does not wish to adopt the child; or
>
> (d) some other special circumstance justifies making an order for access.

> [39] Therefore, from my reading of s. 47, three conclusions relevant to this appeal are clear. First, the Agency effectively replaces the natural parents. This puts the onus on the natural parents (or guardian) to establish a special circumstance that would justify continued access. Second, by virtue of ss. 47(2)(a) and (b), an access order must not impair permanent placement opportunities for children under 12. Section 47(2)(c) is consistent with this. It provides that if no adoption is planned then access will be available. This highlights the importance of adoption as the new goal and the risk that access may pose to adoption. Third, for children under 12, the "some other special circumstance" contemplated in s. 47(2)(d), must be one that will not impair permanent placement opportunities.

[35] I am satisfied that the trial judge did not err in finding that s. 47(2) placed the burden on A.C. and R.R. to justify an order for access. Further, I am not convinced that the existence of an attachment, or the sense of grief to be experienced by the children at the termination of access, would, on the evidence before the court, constitute special circumstances. In his testimony, Dr. Landry noted that it is not at all uncommon for there to be attachment between children and their caregivers and, understandably, a sense of loss when that connection is severed. From my review of the record, there is nothing out of the ordinary in terms of these particular children's actual or potential emotional reactions to the permanent removal from their family of origin.

[36] In *K.T.*, similar arguments regarding bonding and attachment, in particular with children who were 9 and 7 years of age, grounded the trial judge's order for access following permanent care. This Court found the trial judge erred in his approach, and set aside the access provisions. I would dismiss this ground of appeal.

Did the learned trial judge err in not ordering the Minister to give notice to the biological father of the child T.C.?

[37] In her Factum, the appellant asserts:

> 31. It is submitted that the Minister had an obligation to notify [T.'s] father of the proceedings. This did not happen. Permanent care is a drastic remedy. It is submitted he should have been notified.

[38] The appellant's submissions focus on what the Minister, in her view, had an obligation to do. She does not, however, articulate how it is that the trial judge erred. She asserts that because the child T.'s purported biological father, A.P., was not provided with notice, that the permanent care order ought to be set aside, and the children returned to her care.

[39] In the circumstances of this case, there is no validity to the concern now raised by the appellant on appeal. This Court is not being asked to determine the duty of the Minister to notify biological or purported biological fathers of protection proceedings commenced under the *CFSA*. This decision, accordingly, does not purport to do so. The sole focus here is to identify whether the trial judge erred in failing to direct notice be given to A.P., as alleged by the appellant. Upon a careful review of the record, I can find no such error on the trial judge's part.

[40] It is clear from the trial judge's reasons that she was of the understanding that the respondent L.O. was the biological father of the two oldest children, with the respondent R.R. being the father of the youngest. She states such in the opening paragraphs of the decision. It is equally clear that she was never asked to consider whether A.P. was entitled to notice.

[41] The appellant was represented by counsel throughout the proceedings in the court below. Despite numerous court appearances before Justice Haley and the trial judge, the appellant never raised a concern regarding the identity of a third purported biological father, or the lack of notice to him. There is no indication in the record that the appellant made the court aware that someone other than the named respondents L.O. and R.R. should be notified of the proceedings. In fact, the appellant in an early court appearance asked the court to waive notice to L.O. She did not take the opportunity at that time to identify another possible biological father.

[42] It is clear that early in the proceedings, the court and the parties had turned their minds to whether notice ought to be provided to L.O., it being ultimately determined by Haley, J. that notice to him was not required. I note that in the order arising from the Protection hearing held July 11, 2014, Haley, J. made the following finding:

> The persons entitled to notice of this proceeding have been notified.

[43] That same finding was repeated in subsequent orders arising from hearings held on October 1, 2014, November 18, 2014, January 20, 2015, April 15, 2015, April 29, 2015, May 20, 2015, and June 9, 2015. The appellant did not challenge Haley, J.'s initial finding. Nor did she challenge it on any of the multiple occasions when it was repeated. Not once did she raise a red flag that a purported biological father had been overlooked.

[44] In my view, the appellant had ample opportunity in the court below to identify a purported biological father and request that he be provided with notice. She chose not to do so. Instead, she was content to remain silent, letting the proceedings unfold. Having received an unfavourable outcome, she now seeks to raise this issue on appeal, casting an unwarranted assertion of error on the trial judge.

[45] Based on the above, I am satisfied that this ground of appeal ought to be dismissed. In addition, there is, in my view, inadequate evidence to identify A.P. as a possible biological father. T.C.'s birth certificate does not name a father. Nowhere in the trial record does the appellant provide direct evidence as to the identity of T.'s biological father. There is brief reference in the testimony of a social worker at the final hearing that the appellant had advised her that one "J.P." was T.'s biological father. There is no evidence adduced on this appeal to supplement the record, either from A.C. or from the purported biological father. There is nothing offered that would assist this Court in concluding that the individual now identified, A.P., was entitled to notice, would have been interested in participating in the proceeding, or if he chose to do so, such would have materially affected the outcome.

Disposition

[46] I would dismiss the appeal, without costs.

Bourgeois, J.A.

Concurred in:

Farrar, J.A.

Hamilton, J.A.