

WARNING

**THIS IS AN APPEAL UNDER THE
*CHILD AND FAMILY SERVICES ACT***

AND IS SUBJECT TO S. 45 OF THE ACT WHICH PROVIDES:

- 45. (7)** The court may make an order,
- (a) excluding a particular media representative from all or part of a hearing;
 - (b) excluding all media representatives from all or a part of a hearing; or
 - (c) prohibiting the publication of a report of the hearing or a specified part of the hearing,

where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding.

45. (8) 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, or the child's parent or foster parent or a member of the child's family.

45. (9) The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

CITATION: Children's Aid Society of Brant v. J.W., 2011 ONCA 838
DATE: 20111223
DOCKET: C54343

COURT OF APPEAL FOR ONTARIO

Sharpe, Blair and Rouleau JJ.A.

BETWEEN

The Children's Aid Society of Brant

Appellant (Respondent in Appeal)

and

J.W.

Respondent (Respondent in Appeal)

and

D.L.

Respondent (Appellant)

Birkin Culp and Cristina Delion-Culp, for D.L.

Vanessa Kaljaste, for Children's Aid Society of Brant

Catherine Bellinger, for the Office of the Children's Lawyer

Heard & released orally: December 21, 2011

On appeal from the order of Justice Jane Milanetti of the Superior Court of Justice dated August 19, 2011.

ENDORSEMENT

[1] This is an appeal from an order dismissing on grounds of delay the appellant's appeal to the Superior Court from a decision of the Ontario Court of Justice granting the Children's Aid Society permanent wardship of the appellant's two children.

[2] The children were apprehended in May 2008. The younger child, a boy now five years old, is in a home awaiting completion of permanent wardship proceedings to permit adoption by that family. The older child, a girl now 12, has special needs and is presently in a facility meeting her needs.

[3] The appellant has not perfected his appeal because no transcripts have been prepared. The Children Aid Society brought two motions to dismiss for delay. Those motions led to directions to the appellant regarding the transcripts, but due to a combination of insufficient action on the part of the appellant and his counsel and a regrettable level of apparent confusion on the part of Court Services, we are still without any progress in the preparation of the transcripts.

[4] We are now well beyond the statutory limit for temporary wardship. While we agree that the appellant is not solely responsible for the delay, we are not prepared to interfere with the motion judge's finding that, given the paramount concern of the interest of these children and the need for stability and permanency in their lives, his appeal was not prosecuted with adequate dispatch.

[5] Of particular concern to us in this case is that the appeal has virtually no prospect of success. The first two grounds relate to the fact that the trial judge conducted a

settlement conference in 2002 in an earlier Child Protection Proceeding and that the trial judge sentenced the appellant in a criminal matter in 2008. The appellant did not raise these objections before the trial judge at trial. In any event, we see no merit in the argument that the trial judge's prior involvement with the appellant in different proceedings resulted in any prejudice to him in this proceeding. Trial judges frequently encounter repeat litigants. We see nothing in this record to indicate that the actions complained of deprived the appellant of a fair or unbiased trial.

[6] There is no evidence to support the ground of appeal relating inadequate assistance of counsel.

[7] Finally, the appellant attacks the factual findings of the trial judge on the ground that he misunderstood or failed to heed the evidence of Dr. Sharma. The trial judge's reasons indicate that he did consider Dr. Sharma's evidence and that he recognized that with treatment, the appellant was controlling his behaviour. Moreover, even if the appellant's illness is in remission, as he submits, the findings of the trial judge that he has inadequate parenting skills and an inadequate parenting plan are fatal. Those findings are not attacked as having been made without support in the evidence and make success on this appeal virtually impossible.

[8] Accordingly, the appeal is dismissed.

“Robert J. Sharpe J.A.”

“R.A. Blair J.A.”

“Paul Rouleau J.A.”