NOVA SCOTIA COURT OF APPEAL

Citation: *CT v Nova Scotia (Community Services),* 2022 NSCA 81

Date: 20221216
Docket: CA 516896
Registry: Halifax

Between:

CT

Appellant

v.

Minister of Community Services

Respondent

Judge:	The Honourable Justices Elizabeth Van den Eynden, Carole Beaton and J.E. (Ted) Scanlan for the Court
Appeal Heard:	December 8, 2022, in Halifax, Nova Scotia
Subject:	*Children and Family Services Act* - permanent care and custody- timelines under s. 45 of the *FSA* best interests of the children.
Summary:	The children's father (CT) appeals a decision that placed his two children in the permanent care and custody of the respondent Minister. At the contested disposition hearing the judge found the children remained in need of protection because they were at substantial risk of emotional abuse, physical harm, and neglect. The judge determined the circumstances were unlikely to change before the expiry of the statutory time limit and CT's plan of care was inadequate to address the protection concerns. On appeal, CT asserts he was not treated fairly by the judge and the evidence did not support the judge's finding of substantial risk and that the children continued to be in need

of protection. Further, the plan of care he submitted was sufficient to address the protection concerns.

Issues:

1. Was CT treated fairly and equally in his Permanent Care Hearing?
2. Was the finding of risk of substantial emotional abuse, physical harm and neglect backed by evidence?

Result: Appeal dismissed. The judge correctly identified the legal principles that governed her analysis. Her findings of fact are solidly supported in the record. The judge's application of law to the facts, as she properly found them, demonstrate no error. Further there is no substance to CT's complaints of unfair or unequal treatment.

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Restriction on Publication: Pursuant to s.94(1)
Children and Family Services Act

Judges:	Van den Eynden, Scanlan, Beaton, JJ.A.
Appeal Heard:	December 8, 2022, in Halifax, Nova Scotia
Written Release	December 16, 2022
Held:	Appeal dismissed per reasons of the Court.
Counsel:	Appellant self-represented, assisted by agent Alison Campbell and Kate Goodwin for the respondent

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:

Introduction

[1] CT appeals from a decision that placed his two children (now aged 10 and 3) in the permanent care and custody of the respondent Minister of Community Services (Minister).

[2] For the following reasons, we are unanimously of the opinion there is no basis for our intervention and the appeal is dismissed.

Judgment

[3] Justice Theresa M. Forgeron of the Nova Scotia Supreme Court, Family Division presided over the contested disposition hearing. In her thorough decision, reported *MCS v CT,* 2022 NSSC 188, she explained why she placed the children in the permanent care and custody of the Minister pursuant to the provisions of the *Children and Family Services Act*, SNS 1990, c 5 (CFSA).

[4] The family came to the attention of the Minister in the weeks following the death of CT's partner, the children's mother. Both children have special needs. The older child has learning disorders and the younger child has complex medical needs.

[5] The judge determined that at the time of the disposition hearing, the children continued to be in need of protection because they were at substantial risk of emotional abuse, physical harm, and neglect.

[6] As to the risk of emotional abuse the judge concluded:

> [56] I find that the children remain at a substantial risk of emotional abuse in their father's care. I further find that the father has failed to co-operate with the provision of services and treatment to remedy or alleviate the emotional abuse, and that this failure will continue.
>
> …
>
> [66] I find that the children will be at a substantial risk of emotional abuse in their father's care because the father is unable to identify and prioritize the children's emotional needs, and he has not undertaken services to alleviate or mitigate the emotional abuse. The father's conduct seriously interferes with the children's healthy development, emotional functioning, and attachment to others, from both an objective and subjective perspective. The father opted not to

participate in services until recently. His current counselling is in its early stages. The s. 22 (2)(g) protection finding has not been resolved or mitigated.

[7] Regarding the risk of physical harm, she held:

> [67] In addition, I find that the children will be at a substantial risk of physical harm if I return them to their father's care. I reach this conclusion for three reasons – the failure to meet the children's medical needs, to recognize the need for medical assistance, or to seek help.

[8] With respect to the risk of neglect, the judge reasoned:

> [76] I find that the children will be placed at a substantial risk of neglect in their father's care, and that the father did not and will not co-operate in the provision of services to alleviate the harm. Neglect is defined in s. 3 (p) as the chronic and serious failure to provide adequate food, clothing or shelter; or adequate supervision; or affection and cognitive stimulation; or any other similar failure.
>
> [77] The Minister proved substantial risk of neglect as demonstrated by the following examples:
>
> - The father's inability to prioritize the needs of the children because of his rigid views on vaccinations and autonomy will likely lead to a failure to provide the children with adequate supervision and medical treatment.
> - The father's failure to treat his own mental health issues will likely prolong the father's inability and failure to provide the children with adequate supervision or affection and cognitive stimulation.
> - The father, likely together with the mother, failed to provide the older child with appropriate cognitive stimulation, causing him to experience serious development issues. Since coming into care and receiving a stable homelife and professional supports, the older child has made considerable progress. On a balance of probabilities, the father will not be able to provide either child with the cognitive stimulation or supports that they need.
>
> [78] Further, the father did not participate in the services offered to him to address his parenting deficits and to alleviate or mitigate the outstanding protection concerns. The Minister offered the father the opportunity to participate in services. The father would not. The Minister exhausted all avenues to motivate the father's participation.

[9] Section 45 of the *CFSA* sets out a maximum statutory time limit for completion of a protection proceeding. At the end of the statutory limit a judge must either dismiss the proceeding or order permanent care and custody. In this case, at the time of trial, there were approximately two months remaining before

expiry. However, the Minister asked for a permanent care order asserting the father would not be able to mitigate the protection risks within the statutory time limit.

[10] Section 42(4) restricts a judge from making an order for permanent care and custody unless satisfied "that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child".

[11] The judge determined the circumstances were unlikely to change within a reasonably foreseeable time not exceeding the time limit which in this case was June 18, 2022.

[12] The judge reasoned:

> [86] Even though this family did not intersect with child protection services prior to the mother's unexpected death, I nevertheless find that the Minister has met the burden of proof for the following reasons:
>
> - Since February 10, 2021, the children have been in the temporary care and custody of the Minister.
> - The father did not exercise access for many months.
> - The father lacks meaningful insight into the protection concerns and the issues that gave rise to the protection findings. He denies many of the concerns and deflects blame on protection social workers.
> - The father lacks the parenting skills required to meet the needs of the children.
> - The father refused agency services and did not affect the positive lifestyle changes necessary to address the protection concerns.
> - The father only recently commenced trauma counselling. Given the many issues, and the father's lack of insight, it is not probable that the father can or would gain insight to affect the necessary changes by June 18, 2022.
>
> …
>
> [89] … I am satisfied that the circumstances justifying the earlier temporary care order are unlikely to change within a reasonably foreseeable time not exceeding June 18, 2022.

[13] The father did put forward a plan of care to have the children returned to him; however, the judge found it fell short of what was required to address the protection concerns. Justice Forgeron said:

> [88] Regrettably, the father's plan of care is inadequate because of the outstanding protection risks. Further, although encouraged, neither friends nor family members put forth a plan of care. Given the circumstances, I appreciate and understand the inability of friends or family to offer a viable placement.
>
> …
>
> [90] It is in the children's best interests to be placed in the permanent care and custody of the Minister.

[14] The appellant father raises the following issues on appeal:

1. Was he treated fairly and equally in his Permanent Care Hearing?

2. Was the finding of risk of substantial emotional abuse backed by evidence?

3. Was the finding of risk of substantial physical harm backed by any evidence?

4. Was the finding of risk of substantial neglect backed by any evidence?

[15] On appeal, CT asserts he was not treated with a fair and even hand by the judge. Additionally, he claims there was an insufficient evidentiary basis for the judge's finding that the children continued to be in need of protection because they were at substantial risk of emotional abuse, physical harm, and neglect. Further, he contends that his plan of care to have the children returned to him was sufficient to address the protection concerns.

[16] It is helpful to refer to the appellate standard of review we must apply to our assessment of CT's complaints of error.

> In *A.M. v Children's Aid Society of Cape Breton-Victoria*, 2005 NSCA 58 Justice Cromwell, as he then was, articulated the appellate standards of review in child protection appeals as follows:
>
> > ¶ 26 This is an appeal. It is not a retrial on the written record or a chance to second guess the judge's exercise of discretion. The appellate court is not, therefore, to act on the basis of its own fresh assessment of the evidence or to substitute its own exercise of discretion for that of the judge at first instance. This Court is to intervene only if the trial judge erred in legal principle or made a palpable and overriding error in finding the facts. The advantages of the trial judge in appreciating the nuances of the evidence and in weighing the many dimensions of the relevant statutory

> considerations mean that his decision deserves considerable appellate deference except in the presence of clear and material error. [citations omitted]

[17] Having reviewed the record and considered the submissions of CT and the Minister we are satisfied the judge correctly identified the legal principles that govern her analysis. Her findings of fact are solidly supported in the record. The judge's application of law to the facts, as she properly found them, demonstrate no error. Further there is no substance to CT's complaints of unfair or unequal treatment.

[18] In conclusion and with respect, considering the record and the judge's reasons, CT has not established any cause for appellate intervention. We dismiss the appeal.

Van den Eynden, J.A.

Scanlan, J. A.

Beaton, J.A.