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IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA
[Cite as: Family and Children's Services of Kings County v. A.P., 2007 NSFC 18]

BETWEEN:
FAMILY AND CHILDREN'S SERVICES OF KINGS COUNTY
-APPLICANT
AND
A. P. & R. P.
-RESPONDENTS

BEFORE THE HONOURABLE JUDGE BOB LEVY

HEARD AT: KENTVILLE

DATE HEARD: MARCH 26, 2007

DECISION DATE: MARCH 30, 2007

APPEARANCES: DONALD MACMILLAN FOR THE APPLICANT
DONALD FRASER FOR THE RESPONDENT A. P.
DAVID THOMAS FOR THE RESPONDENT R. P.

DECISION

Issue: Application by agency with respect to a child in its permanent care and custody to terminate an access order in favour of natural parents to enable an adoption placement to proceed**.**

Result: Application granted. Absent compelling reasons an adoption takes precedence over continued parental access. Proceedings of this nature need to be expeditious to accommodate "child's sense of time".

For the Court:

1. On January 30, 2007 the Respondents consented to an order placing their son, K, then six months old, in the permanent care and custody of the Applicant. The child had been apprehended by the Applicant at birth and the protection order was founded on sections 22 (2) (d) and (k) of the Children and Family Services Act. The agency had made it clear that it would be seeking an adoptive home for the child. The court engaged the parents directly and was satisfied, per section 41 (4) of the Act and **Family and Children's Services of Lunenburg County v. G. D.** (1997), 160 N.S.R. (2d) 270 (C.A.), that the parents accepted that the Applicant had done all it could and that they understood the nature and consequences of what they were consenting to.

2. Counsel for the Applicant sought a brief adjournment to consult with his client as to whether it would agree to post permanent care and custody access. On the adjourned date all parties consented to an order granting the Respondents a right of access to the child. I elected, wisely or not, to accede to that agreement. Counsel for the Respondents stated that their clients understood and agreed that should there be an adoption opportunity for their son with parents who did not wish to adopt if there was an existing right of access to the natural parents, that their right of access would be terminated.

3. On March 19, 2007 the Applicant agency commenced this application to terminate the Respondents' access as it had found, in it's view, entirely suitable adoptive parents for K who were not willing to have parental access continue. Accompanying the Application was the affidavit of Elaine Sabine-Baird, casework

supervisor of the care and custody program of the Applicant and the individual specifically supervising K's adoption file. In brief Ms. Sabine-Baird's affidavit sets forth the following:

-a prospective adoption family has been approached, has been fully informed of K's circumstances, and wants to adopt K "as soon as possible"

-the family is an agency approved adoptive home that comes with "a very knowledgeable background of children with child welfare histories who have special needs"

-the proposed adoptive mother's parents were foster parents and she has therefore "spent the majority of her life being part of this experience"

-she has adoptive siblings with special needs

-the family has already adopted a child with special needs and that child has done "extremely well" in the home

-the family is familiar with and connected to child resources available in the community and have a "good understanding' of their roles and services

-this family had been asked and are not open to access for K's natural parents

4. Counsel for the Respondents indicated that their clients, now that it had come to the crunch, were not, after all, still prepared to consent to the agency's application. They argued that the application was premature in that, per section 47 (8) of the Act, that the Minister might be expected to wait until 30 days prior to

actually giving consent to the adoption, and that as these things go that would probably be quite some time down the road. The parents, they argued, should not be deprived of their right of access before it was absolutely necessary to do so. Additionally it was argued that whereas there was an order allowing for parental access there was an obligation on the agency to canvas all prospective adoptive parents to see if anyone would agree to the maintenance of the access right, and that there was no indication that the agency had done so.

5. I gave a decision from the bench granting the agency's application. This written decision is an attempt to say the same thing but more succinctly and clearly.

ANALYSIS

6. The Respondents are relatively young; the mother is 20 and the father approximately 26. There are a total of five professional assessments of one or the other of the Respondents. In general terms and among other things the reported information and opinions identify them as having significant intellectual deficits which would impede their being able to understand and address their child's needs, as potentially being unable to put their child's needs before their own, as each lacking the skills for independent living, and questioning their capacity to bond with the child. Neither of the parents have a solid social or reliable family support network or backup. Mr. P. is reported as having, or at least as bragging about having, an undue affinity for alcohol and marijuana. As a youth he had some five charges of sexual assault or interference with children, (of both genders, and with

two of the charges occurring after he was on probation for the earlier offences). Although he is seen now as having a "low to moderate" risk to recidivate it is also reported that he is unable "to remember anything about his relapse prevention treatment" that he was obliged to take after his convictions. Ms. P. is seen as having "significant memory problems" and that, in the opinion of her own foster mother, after she took up with Mr. P. she was given to lying, partying and alcohol consumption.

7. I should say that much is made in Ms. Sabine-Baird's affidavit about the familiarity the proposed family has with children with "special needs". K may indeed have 'special needs' but there is no evidence before me of that. I am not prepared to conclude as a fact that he has "special needs" just because his parents have intellectual deficits. The only evidence touching on K's health or development is to be found in the affidavit of agent Jackie Legere dated January 4, 2007, that there was a time when the child was once seen as not gaining the weight that he should, but that as of mid-November, 2006 he was then gaining weight although he continued to suffer from acid reflux.

8. Even if K does not have 'special needs' the proposed family sounds excellent. Without meaning to sound unkind, it is difficult to see the benefits to K of his parents' continued access as anything but slight and somewhat tenuous and certainly not of sufficient magnitude to override the chances for this adoption placement to go through.

9. Having due regard to the "sense of time', particularly of a child this age, it is

important that a decision be made as soon as possible. The adoption process begins with the placement in the proposed adoptive home. For K this can happen right away in an approved home but only if the access right is terminated. The agency is not proposing anything that wasn't known and agreed to by the Respondents less than two months ago. I am not aware of anything in their lives and parenting capacity that has changed. No issue is taken with the agency's positive assessment and portrayal of the proposed adoptive home. A chance as good as this appears to be will not likely come along every day with or without an agreement to parental access.

10. I do not accept that an order granting post permanent care parental access puts the agency under the obligation to canvas every possible potential adoptive home to see if someone would accept access by the natural parents. That would be but one factor for the agency to bear in mind. The overwhelming obligation of course is for the agency is to try to come up with a placement that as closely as possible honours all that contributes to a child's best interests, this particular child's best interests, and to do so in a timely manner. In this instance the agency seems to have found a superlative home, a home which, regrettably for the Respondents, declined continued parental access. The agency has done its duty.

11. It is necessary, I think, to make one particular point. In this instance the agency agreed to the post permanent care and custody access. If in situations such as this the agency then has to fight tooth and nail and possibly over a long period of time to have the access revoked so that a placement may proceed, it is safe to conclude that agencies will never agree again to access. Courts too may be

reluctant to grant it. Any policy whereby agencies as matter of course oppose all post permanent care and custody access is both short sighted and a potential disservice to the child whose interests they are obliged to serve. It would also be, with respect, an attempt to eviscerate the recent legislative amendments which liberalized adoption law.

12. That being said, it is imperative that absent compelling reasons to the contrary adoption takes precedence over continued parental access and that proceedings to terminate access cannot be allowed to be protracted. Many good proposed homes will simply not wait and the lapse of time will exact too high a price from children in care.

DECISION

13. The application of the agency is granted. The right of parental access is terminated.

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Bob Levy, J.F.C.