FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. C.C*, 2015 NSFC 15

Date: 2015-08-18
Docket: FTCFSA No. 096097
Registry: Truro

Between:

Minister of Community Services

Applicant

v.

C.C, T.C and B.H

Respondents

Restriction on Publication: Pursuant to s. 94(1) of the *Children and Family Services Act*, S.N.S. 1190, c.5.

Editorial Notice:	Identifying information has been removed from this electronic version of the judgment.
Judge:	The Honourable Judge Jean Dewolfe
Heard:	August 18, 2015, in Truro, Nova Scotia
Written Decision:	September 15, 2015
Counsel:	Sarah Lennerton, for the Applicant Rob Sutherland, for the Respondent, C.C Ian (Sandy) MacKay for the Respondent, T.C

By the Court:

Introduction

[1] This is an application by the Minister of Community Services to find that the child J.M.C-H ("J") is a child in need of protective services. J is almost 10 years old.

Background

[2] From January 2014 to May 15, 2015 J lived with the Respondent, C.C ("C.C"), whom he identifies as his aunt. Prior to January 2014 J had lived with his mother, the Respondent T.C ("T.C").

[3] The Respondent R.H is J's father, but he is not involved in J's life and has not participated in this proceeding.

[4] T.C had been a Respondent in a previous child protection application with respect to J in 2013-2014. At that time J was removed from her care due to concerns regarding drug and alcohol use and a chaotic lifestyle. The Minister placed J with C.C. Subsequent to the Agency's involvement T.C sought custody of J. On August 25, 2014 the Family Court in Pictou ordered that C.C would have custody of J pursuant to a *Maintenance and Custody Act* order.

The Current Proceeding

[5] The Agency received a referral from J's school principal on April 30, 2015 with regards to J's reports of increasingly severe punishment by C.C. On May 15, 2015 workers interviewed J at C.C's home and subsequently with police. J disclosed at both interviews that C.C had spanked him. The interview with police was videotaped (and entered as an exhibit). At the police station J showed workers his buttocks which were heavily bruised (photo entered as an exhibit). J also disclosed harsh verbal comments and non-physical discipline by C.C which he clearly found upsetting.

[6] J was removed from C.C's care, was initially placed in a foster home, and subsequently was placed with his mother, T.C, under supervision. C.C has been charged criminally with assault.

[7] The Minister seeks a protection finding pursuant to s.22(2)(a), (b), (f), and (g) of the *Children and Family Services Act* ("the Act").

[8] The Respondent, T.C consents to the finding.

[9] The Respondent, C.C seeks to have the proceeding dismissed and to have J returned to her care.

Evidence

[10] The Minister submitted affidavit evidence of three workers, Agency case recordings, and reports from Dr. Deanna Fields, M.D., and Lorraine Logan-Smith, psychologist. In addition, the Agency pleadings and expert reports from the previous child protection proceeding in 2013-2014 were admitted pursuant to s.96(3)(b) of the *Act*.

[11] Pursuant to s.96(3)(b) of the *Act*, The Minister has applied to admit J's out of court statements from the police interview (transcripts and video), as well as statements he has made to workers and his therapist, as set out in the affidavits of Heidi Melanson, Micah MacIsaac and the reports of Lorraine Logan-Smith.

[12] C.C opposes the admission of this evidence, and seeks to have J testify.

[13] S.96(3) of the *Act* provides that a Court may:

> "having regards to the best interests of the child and the reliability of the statements of the child, make such order concerning the receipt of the child's evidence as the Court considers appropriate and just, including…
>
> (b) the admission into evidence of out-of-court statements made by the child."

[14] I find that it would not be in the child's best interests to testify before this Court. I accept the expert evidence of Lorraine Logan-Smith that J is emotionally vulnerable and that testifying in Court could be intimidating for him.

[15] I also find that J's out of Court statements are reliable. There is no question that C.C spanked J on May 15, 2015. C.C herself admits to this. J is an intelligent, articulate child who essentially told the same version of events in two separate interviews. For some reason he gave an incorrect street name, and was confused as to whether he was hit with an implement. However, his statements were detailed and consistent with the bruising on his buttocks. I accept the uncontroverted expert evidence of Dr. Fields that his buttocks bruising was consistent with having been caused by spanking.

[16] J's interview at the police station was conducted using the "Step-Wise" process which does not use leading questions, and is the recommended method for interviewing children in alleged abuse cases. This interview was also recorded, and his statements were made to public officials who recorded the statements. These factors enhance the reliability of a statement: Paciocco and Stuesser, Law of Evidence (6^{th}) 2011 at p.125 (as cited in the applicant's brief).

[17] Therefore this Court admits J's out-of-court statements as evidence pursuant to s.96(3) of the *Act*.

Issue

[18] The issue then, is does the evidence before this Court support a protection finding?

Law

[19] Sections 22(1) and 22(2)(a),(b),(f), and (g) of the *Act* provides as follows:

> "Child is in need of protective services
>
> 22(1) In this Section, "substantial risk" means a real chance of danger that is apparent on the evidence.
>
> (2) A child is in need of protective services where
>
> (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;
>
> (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);
>
> …
>
> (f) the child has suffered emotional harm, demonstrated by sever 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;
>
> (g) there is 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 remedy or alleviate the harm; …"

[20] This Court finds on a balance of probabilities, that J has suffered physical harm inflicted by his guardian, C.C. J has described, and C.C has admitted to spanking J on May 15, 2015. In his first interview he indicated that C.C had used a stick. In his second interview he said C.C told him that she hadn't used a stick, and he says he must have been mistaken. C.C testified that the spanking was with her hand only and could not have caused the bruising on J's buttocks. She surmised that maybe he injured himself in between his two interviews.

[21] This supposition is contrary to Dr. Fields' evidence. In the circumstances, the only reasonable conclusion to draw is that the bruising was caused by C.C's spanking.

[22] Parents and guardians are permitted to spank as reasonable corrective discipline: Canadian Foundation for Children, Youth and The Law v. Canada (A.G), 2004 SCC 4. However, the SCC limits physical discipline to reasonable measures. Blows with an object are not "reasonable". They must be "…corrective, which rules out conduct stemming from the caregiver's frustration, loss of temper or abusive personality…"

[23] In this case I find that the corrective force used by C.C was excessive, and caused J physical harm. I also find that the spanking was administered out of

frustration. C.C's evidence is that J was disrespectful and uncooperative after his return from his mother's home five days earlier. I do not accept C.C's evidence that J asked for the spanking, and that she remained calm in the face of disrespectful comments by J. Her evidence is self-serving and not credible.

[24] C.C has not admitted wrongdoing. Her circumstances are unchanged since May 15, 2015. I find that J would remain at substantial risk of physical harm if returned to C.C's care. I therefore find that J meets the definition of a child in need of protection pursuant to s. 21(1) and s.22(2)(a) and (b) of the *Act*.

[25] The Court also finds that J is at substantial risk of emotional harm as defined by s. 22(1) and s.22(2)(f) and (g) of the *Act*.

[26] J disclosed that C.C accused him of lying, yelled at him so that she "hurt (his) heart" and made him cry. She would find things for him to do beyond his regular chores. She made him stand with his nose to the wall for repetitive nine minute intervals. Her attempts at forcing him to complete homework left him feeling that he could not do anything right.

[27] The Agency in the previous child protection proceeding identified concerns as to C.C's rigidity. While C.C cites the need for routine and structure in J's life, it

appears that her overly rigid approach has been emotionally damaging to J, according to therapist Lorraine Logan-Smith.

[28] I therefore find that there is a substantial risk that J will be emotionally harmed in accordance with s.22(2)(f) and (g) if he is returned to C.C's care.

[29] Therefore the Court finds that the child, J, is a child in need of protective services.

Jean Dewolfe, JFC