

FAMILY COURT OF NOVA SCOTIA

Citation: K.B. v. Nova Scotia (Community Services), 2013 NSFC 5

Date: 20130130

Docket: 10Y073241

Registry: Yarmouth

Between:

K.B.

Applicant

v.

Minister of Community Services

Respondent

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Publication restriction:

Publishers of this case please take note that Section 94(1) of the Children and Family Services Act applies and may require editing of this judgment or its heading before publication.

Section 94 provides:

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

Judge:

The Honourable Judge John D. Comeau

Heard: December 5, 2012 and January 2, 2013 at Yarmouth,
Nova Scotia

Counsel: Sara Allen Esq. for the Applicant
Martin J. Pink, Q.C., for the Respondent

The Application / Introduction

[1] This is an application to terminate an order for permanent care and custody pursuant to section 48 of the *Children and Family Services Act*. The Applicant is the mother of L., born June *, 2000, S., born January *, 2002, and A., born February *, 2004. By court order issued on September 19, 2011, the children were placed in the permanent care and custody of the Minister of Community Services. The decision considered the parenting abilities (lack thereof) of the parents and found that they could not change within the period of time prescribed by the *Act* (one year). This was supported by a parental assessment which indicated they would need “consistent ongoing support in order to provide for both stability in the home and needed parental strategies to enable the children to develop and grow to their potential” and further the assessor indicated “the fact that the children have responded so positively in a short period of time in temporary foster care is indicative of the deprivation they have experienced from home”.

Issue: Whether permanent care and custody should be terminated

The Facts

Historical

[2] The children referred to above have been in permanent care since September 19, 2011. Part of the reasons have been referred to in the introduction. Evidence at the protection hearing referred to at disposition included concern over the parents' ability to supervise the children in light of their cognitive functioning. There were reported several incidents of domestic violence with the children present and that the father was abusive towards the children. There was evidence that the oldest child did not want to go to school. Reports were made the children were running around the neighbourhood saying they were hungry and the children were left alone with the oldest child in charge (10 years old at the time). Their home was observed to be disgusting and the mother had no bedroom for herself and slept on the couch.

Present

[3] The Applicant and her husband J.B. are living separate and apart. She says they only have a friendly relationship, something which is disputed by the Minister, indicating that a pattern of evidence would tend to show they are in a relationship. They spend time together and are seen at Tim Horton's. A relationship between the two would be a negative aspect to the return of the children because of the history of domestic violence when they were together.

[4] Changes the Applicant describes to her life have been made because she has been proactive in improving her life and parenting skills. She has taken a ten week program at Parent's Place, has dealt with mental health and self-care. She is attending upgrading at the Nova Scotia Community College. There has been participation in the home service program and she has had counselling at the women's center on how to parent better.

[5] The skills she has learned evolve around dealing with children and the focus is on setting structure and routine. These courses have made her feel a lot better about herself, about grounding and talking herself through things to solve problems.

[6] Her relationship with the father of the children is a friendly one. She does not intend to get back with him because she understands the “detrimental effect he had on me and the kids”.

[7] Financially she is on social assistance but works part time at [...]ives on [...] with two dogs and a cat.

[8] Child discipline has been proposed to her and she understands 123 Magic. She describes her understanding of the special diet required by A.. As to the children’s past behaviour, she did not understand the severity of it. Extended family support comes from her mother. S. is with her sister, but her and the latter do not have a good relationship. She has access to the children once a month for one hour, although no access was ordered.

[9] Her transition plan for the return of the children would be a gradual one, starting on weekends to fall reintegration. Access to the foster parents would be provided. The Tri-County Women’s Center has been assisting the Applicant. They have counselled her about parenting and problems with her husband. She has had

an unprecedented commitment to the program and as a result, she is more self-confident and positive about going back to school.

[10] The Applicant was a foster child starting at the time she was eighteen years of age. Her foster mother sees her every day, indicating that five years ago the Applicant's parenting was very slack. The children were neglected and the house was dirty. Last year she noticed a change. The house was clean and she is doing well. This witness offered to help the Applicant anyway she could, including transportation and financially going so far as to make a joint custody arrangement if necessary.

[11] The sister of the father of the children testified that the Applicant and the father of the children came to her house together in the last twelve months about four times a week. Last time they came was last Thursday. The Applicant goes to Tim Horton's every night with the father of the children. They arrive together and leave together, but she does not know if they live together.

Professional Evidence

[12] Olga Komissarova, a registered psychologist who was given a referral by counsel for the Applicant, was qualified to give opinion evidence concerning family dynamics, including the children and parenting. She conducted a thorough assessment, including psychological testing on the Applicant mother and the children.

[13] Her conclusions are as follows:

“K.B.’s counselling and support

1. K.B.’s personality features reflect long-term history of developed traits that are likely to have persisted for several years prior to the present assessment and require individual counselling and social/community support. She may be very well aware that she has been labelled, therefore supportive and short-term therapy is the major initial vehicles for helping K.B. to counteract her tendency to feel overwhelmed by problematic situations.
2. Being in disadvantage as parent in many living aspects (being a single parent, facing reduced employability, having limited income, raising children with learning and behavioural challenges) K.B. will need help in utilizing respite services in order to rejuvenate and to recharge.
3. K.B. may be sufficiently well-guarded and self-assured, however, to intellectualize distressing confrontations with authorities may take away the energy that she would need for parenting. With respect to parenting, cognitive reorientation methods geared to reframing assumptions about her and the expectations of others may be used gradually and with discretion.

In appreciation of all of the issues discussed the following recommendations are made:

1. K.B. appeared to be capable to parent S. and L., as Dr. Chandler, psychiatrist, has noticed improvement in L.'s mental health status.
2. Due to objective reason that is a combination of A.'s medical condition and his mental health traits, this assessor consider very challenging for K.B. to care of A., as it requires close monitoring, multiple calculations and insulin adjustments in order not to put his life in danger.
3. It is recommended that K.B. will continue counselling to address multiple issues with a primary focus on relationship with the father of her children.
4. It is recommended that K.B.'s access to her children will be increased gradually in order for S.'s to finish a term in [...] should she return to K.B.'s care.
5. It is recommended that K.B. will be given the opportunity to communicate with her children's schools and counsellors in order to learn strategies that work for S. and L..
6. It is recommended that K.B. reinforce structure, house rules and limit setting should children return to her care.
7. It is recommended that K.B. maintains consistency in care of her children should they return into her care.
8. It is recommended that all efforts will be made to help K.B., S. and L. to stay connected with A. should separation occur.

9. It is recommended to help K.B. to receive community support and to provide empowering opportunities for her to give back to the community.

10. It is recommended that provided resources will be utilized to improve L.'s, S.'s and A.'s reading and math skills.”

Dr. D. Couture

[14] The witness has been a pediatrician for twenty years. He knows and has seen all the children and sees A. regularly (minimum of three months). He says the two boys, the subject of this proceeding, are extremely challenging. When he saw A. (since they have been in care) he went through [...] testing and is less aggressive. L. is aggressive and (still) a problem to treat. S. is described as calm, well behaved, normal, cooperative. Very good in his office. He believes she is a resilient child who does well in circumstances that are not ideal. She would be easier to parent.

[15] The boys have improved even before medication (only 10% of the cure) due to collateral resources namely, school and foster parents.

The children

[16] In addition to what has been offered by Dr. Couture above, the assessor interviewed the children and her observations provide an insight into the challenges parenting them.

“Children’s Needs

The research confirms that poor readers have significantly higher scores on depression and anxiety. In addition some students with poor reading skills display poor attention and increased aggression. Reading problems influence negatively a child’s self-esteem, causing a child to feel inferior in comparison to same age peers. Study reported that the majority of adolescents with reading problems associate their first 6 years of school with feelings of being “damn and stupid”. Therefore L., S. and A. would benefit from one-on-one support for reading and for acquisition of new learning concepts.

Deficit in social skills have been found to exist in high rates among children with reading problems. They may exhibit elevated anxiety, anger, aggression, withdrawal and depression, therefore counseling and therapy becomes an important part of a whole remediation process. K.B.’s children require ongoing counseling and therapy sessions to resolve emotional difficulties resulting from academic failure.

It was reported to this assessor that L. was diagnosed with Amblyopia that is associated with partial deficit within the right visual field. Children with Amblyopia have reduced sensitivity to forms, color, and light. Even after patching with 20/20 vision they continue experiencing reading problems, such as effortful single word reading with no letter-to-letter strategy. To emphasize significant difficulty in reading this condition is often called Amblyopic Dyslexia. As students with unilateral brain activity, amblyopic children learn better using multisensory strategy and from exercises that equally stimulate suffered brain hemisphere.

Research has shown that multiple areas of academic performance are affected in children with undeveloped reading skills. For instance, in June 2012 it was reported that S. reads on grade 2 level moving to Grade 4. This school year math concepts became more comprehensive and the question was raised whether S. needs Individual Program Plan for math. With A. being on behavioral Individual Program Plan and receiving [...] care at school, the adaptations in a classroom does not seem to be enough to improve his reading. L. is repeating grade 6 this year, because school feels that development of social skills would be more beneficial for him and he started feeling more comfortable in a classroom and on the playground.

S. has many good qualities and according to Dr. Couture, children's pediatrician, is developing as an average child. At the same time, her therapist would like to see more of her emotional development. There are also some reports about S.'s premature sexual curiosity that needs to be satisfied by appropriate way. S. is very loyal when it comes choosing between her aunt J. and her (mother). The presence of filters in her responses suggests that she was asked and prompted to choose several times. On a positive note, S. put her family including extended one first, but sometimes taking on adult role which may lead to early maturation."

[17] Considering all the children, S. stands out, as Dr. Couture pointed out, "easier to parent". The Minister has recognized this, providing the Court with an assessment from Joan Reeves, a counsellor with South Shore Assessment and Counselling Services (dated October 25, 2012).

[18] S. has been residing with the Applicant's sister, her two children and husband since placement in foster care. She has regular access to her brothers.

[19] She has had regular and extensive counselling sessions. The goal of these sessions was and continues to be, to help her develop and demonstrate positive coping strategies in her foster home, school and community.

“That is to help her identify and express her feelings, and learn to regulate her emotions by using strategies such as assertiveness, communication and relaxation skills. Structured and unstructured play, games, art and other activities were utilized to accomplish these outcomes.”

[20] It is indicated she has made moderate progress toward this goal.

[21] Conclusion of the assessor reflect positive change:

“The greatest change in S. over the last year has been the vast improvement in her self esteem and confidence. Under the care of the N. ’s and the consistent love, attention, safety and security offered to S. by their family, she has grown to recognize and appreciate her strengths and abilities. She now presents as happy, relaxed, carefree and capable. S. talks open and with pride about her friends and activities.

...

In regard to the possibility of returning home to live with her mother, S. displayed a high degree of ambivalence. She stated ‘it doesn’t matter either way’, to stay with the N. ’s or live with her mother. When describing what she would look forward to if she returned to live with her mother, S. commented that she would see her older half sister and her nephews. She not offer anything specific to her mother. **For her to feel comfortable returning home, S. stated that her mother needed to have enough food for her and her brothers and not leave them**

alone. She added that her father would not be allowed to drink and hurt her brothers. S. wondered and hoped that she would still be able to attend counselling sessions.

...

The amount of ambivalence S. demonstrated surrounding the possibility of returning to live with her mother is concerning, possibly indicating a lack of secure attachment in that primary relationship. She rarely speaks of her mother and certainly not in a loving, caring manner. In fact, S. showed much greater enthusiasm and excitement around the possibility of being adopted than returning to live with her mother.”

The foster mother

[22] This lady has been a foster mother for twenty years. She presently has L. and A. residing at her home. When they arrived they were out of control, used foul language and overly sexualized. With respect to the children’s school, during the first year it was “nuts - called me all the time”. Now they are doing well in school. S. sees her brothers every second weekend. One weekend at her place and the other at the home where S. lives, the residence of the Applicant’s sister.

[23] At one point, the Applicant had set up facebook accounts for each child but the foster mother refused to let them go on it and they were deleted.

[24] The foster mother further advised that when the children arrived, their teeth were rotten (this was taken care of). L. was determined to be [...] and services are now in place for him.

[25] An agent for the Minister serving at the Shelburne District Office testified there are adoption plans in place for the children. It is anticipated S. may be adopted by the Applicant's sister and her husband.

[26] This agent's job is to work with children in care and she observes that L., A. and S. have made phenomenal progress. They have tutors and other services in place.

[27] With respect to the Applicant and the father of the children, the agent says the Applicant told her they are in a relationship but wants to see how things will go. She has seen them together.

The Law

[28] An application to terminate permanent care and custody is governed by s. 48 of the *Children and Family Services Act*, more particularly subsection (3).

“(3) A party to a proceeding may apply to terminate an order for permanent care and custody or to vary access under such an order, in accordance with this Section, including the child where the child is sixteen years of age or more at the time of application for termination or variation of access.

(8) On the hearing of an application to terminate an order for permanent care and custody, the court may

(a) dismiss the application;

(b) adjourn the hearing of the application for a period not to exceed ninety days and refer the child, parent or guardian or other person seeking care and custody of the child for psychiatric, medical or other examination or assessment;

(c) adjourn the hearing of the application for a period not to exceed six months and place the child in the care and custody of a parent or guardian, subject to the supervision of the agency;

(d) adjourn the hearing of the application for a period not to exceed six months and place the child in care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency; or

(e) terminate the order for permanent care and custody and order the return of the child to the care and custody of a parent or guardian or other person.

(9) Where the court makes a supervision order pursuant to clause (c) or (d) of subsection (8), subsections (1), (2) and (3) of Section 43 and subsection (1) of Section 46 apply.

(10) Before making an order pursuant to subsection (8), the court shall consider

(a) whether the circumstances have changed since the making of the order for permanent care and custody; and

(b) the child's best interests."

[29] The Nova Scotia Court of Appeal in *M.D. v. Children's and Society of Halifax*, [1994] N.S.J. No. 191 (CA) referred to and confirmed the statement of the trial judge:

"If there is no change of the circumstances of the person applying for termination or change of the circumstances of the child, then there are no grounds for terminating the permanent order. The change must be significant, relevant and a positive benefit for the welfare of the child to result in a termination order ... section 48(1) is a two-step process. First is the proof of a change in circumstances. This requirement is based on the assumption that the original order was made on proper grounds and was made in the best interests of the child, and should not be interfered with, except by appeal, unless the circumstances have changed. The second step is the application of the child's best interest rule to the change of circumstances. If it can be proven that the child has, or will have a positive effect on the child, then the requirements have been met for the Court to make an appropriate order. It is my view that a [termination] order requires proof of a change of circumstances before applying the best interests test."

[30] In the case of *S.G. v. Children'S Aid Society of Cape Breton* [1996] N.S.J. No. 180 (CA) at paragraph 37, the Court made reference to the gains of the parent.

“The Appellant has focused substantially upon the gains that she has made as a parent. That is but one part of the equation. The emphasis upon J.G.’s (the child) best interests, taking into account his current circumstances which result from the Appellant’s past mistakes. The task is not one of assigning blame, but rather recognizing the reality of J.G.’s situation as it now exists”.

Conclusion / Decision

[31] There has been evidence of a change in the Applicant’s circumstances. She says that her and her husband do not have a relationship, although evidence has been presented that might contradict that. It is clear they do not live together, but do spend a lot of time together and communicating over the phone. The Applicant does indicate she understands that when they were together with the children their domestic disputes which were violent were contrary to the children’s best interests.

[32] The Applicant has been proactive in changing her life. She has dealt with learning more about proper parenting and dealt with mental health and self-care issues. Upgrading her education has been very satisfying to her and has

contributed to elevating her self esteem. Counselling and courses at the women's center have taught her about dealing with children, imposing structure and routine.

[33] At the present time, she is on social assistance and works part time. She lives in an apartment with two dogs and a cat. Because she has had access for one hour a month, a transition would be necessary if the children were to be returned to her.

[34] The children have been described as thriving in the foster homes where they have been placed. The boys require much attention and have special needs. S. is described by Dr. Couture as calm, well behaved, normal and cooperative. There was some evidence that she is the type of child that feels responsible for the adults in her life and she could, in her own mind, assume a responsibility that would be contrary to her best interests.

[35] Professional evidence in the form of an assessment indicates the Applicant "appeared to be capable to parent S. and L. as Dr. Chandler, psychiatrist, has noticed improvement in L.'s mental health status". The assessor has some reluctance as to the Applicant's ability to parent A. because of a combination of

his medical condition and his mental health traits that require close monitoring, multiple calculations and [...] adjustments in order not to put his life in danger.

[36] Notwithstanding a vague recommendation that the Applicant is capable of parenting, the assessor recommends continued services which would require the Minister to provide supervision. These items have been detailed earlier in this decision. They are similar to those set out on page seventeen and eighteen of decision of this Court ordering permanent care on August 23, 2011. In that decision the Court found that the *Act* did not contemplate on-going services but services to allow for adequate parenting without supervision within a reasonable period of time. The Court found there was not enough time under the *Act* for the parents to achieve adequate parenting skills.

[37] The Court's consideration is a two step process. Has there been a significant change in circumstances of the Applicant parent or the children and if there has, what is in the best interests of the children.

[38] Considering the recommendations of the assessor, section 48(8)(c) would have to be relied on. This is a six month supervision period during which the

Court would have to be satisfied no more services would be required by the parent. It is conceded that the Applicant had made progress but considering the evidence of her relationship with the father of the children and the further requirement of services suggested by the assessor, there is no significant change in circumstances to warrant termination of the permanent care and custody order. As in the past six months, provided by section 48(8(c) of the *Act*, is not enough time to achieve adequate parenting. It may require a lifetime.

[39] The *Act* is child centered and returning the children to the Applicant would, in light of the evidence, be only for the benefit of the Applicant.

[40] The children have progressed well in foster care and they are happy and content. It would be contrary to their best interests to terminate the order for permanent care and custody.

[41] The Application is dismissed.

JOHN D. COMEAU
JUDGE OF THE FAMILY COURT

OF NOVA SCOTIA