

IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA
[Citation: **Family and Children's Services of Cumberland County v. S.K.F. ,**
2006 NSFC 4]

Date: 20060313
Docket: FAMCFSA-038553
Registry: Amherst

BETWEEN:

Family and Children's Services of Cumberland County

Applicant

- and -

S.K.F. and W.E.L.

Respondents

Restriction on Publication: Pursuant to Section 94(1) of the Children and Family Services Act

HEARD BEFORE: The Honourable Judge David A. Milner, a Judge of the Family Court for the Province of Nova Scotia

HEARING DATES: January 24, 25, 26, 27, 31, and February 2, 13, and 14, 2006.

DECISION DATE: March 13, 2006

COUNSEL: Cindy A. Bourgeois, LL.B., for the Applicant

Robert M. Gregan, LL.B., and François Chassé, LL.B. (articled clerk) for the Respondent, S.K.F.

Mary Ellen Nurse, LL.B., and Alex Embree, LL.B. (articled clerk) for the Respondent, W.E.L.

TO 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 HEADINGS 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.

INTRODUCTION

[1] A child protection agency is concerned enough about the ability of a mother to effectively parent her four-year-old son, that it is seeking a court order for permanent custody of the child and plans to have him adopted.

[2] The mother is single, has a grade nine education, has two older children living in the custody of others, has never had a steady job, is living on social assistance, has an acknowledged addiction to marihuana and alcohol, has been previously involved in violent domestic relationships, has already been the subject of other child protection court proceedings, and is presently thirty-four years old.

[3] The agency has involved the mother in two previous court proceedings where family services were provided for her. These proceedings were each discontinued by the agency: the first after an older child was placed in the custody of his father; and the second after it became apparent that the mother had successfully dealt with her addictions issues.

[4] Around the end of the second proceeding, the agency made it clear to the mother, that if she continued to use marihuana, it would bring a new court proceeding to seek permanent care and custody of the youngest child - and that is exactly what has happened.

[5] At issue is whether the mother *is now*, or - realistically, within the legislated time limits - *can become*, an effective parent for this young child.

NATURE OF THE PROCEEDINGS AND POSITION OF THE PARTIES

[6] This is an application brought by F.C.S.C.C. (“the agency”) under the Children and Family Services Act of Nova Scotia (“the Act”, or “the CFSA”) against two parents, S.K.F. (“the mother”) and W.E.L. (“the father”) in relation to their son, A.M.W.L-F. (“the child”.)

[7] This decision completes the disposition hearing under Section 41 of Act and will result in the only disposition order thus far in the proceeding. The maximum

duration of all disposition orders in this proceeding, according to Section 45, is twelve months.

[8] The father has been marginally involved in the court process. He is not asking that the child be placed in his custody or that he be given any visitation rights. He has, however, engaged counsel to represent him in the proceeding. He did not call any witnesses or introduce any other evidence at the disposition hearing. His counsel cross-examined witnesses who were called by the other parties, and made submissions on the father's behalf.

[9] According to the mother's evidence, she and the father are living separately and are no longer involved in a relationship.

[10] The father supports the mother's plan for the child's future. He argues that the mother can be an effective parent, and can provide a safe and stable home environment for the child. He maintains that she should be permitted to resume her parenting responsibilities - without agency involvement.

[11] The mother's position is that she has been receiving services in the community, as recommended by the agency to deal with its concerns, and she intends to continue.

[12] The mother is seeking to have the court return the child to her care, either conditionally -under terms of a supervision order - or unconditionally, by a dismissal of the proceeding.

[13] The mother and the agency were able to agree on what should happen in court at each stage of the this proceeding under the CFSA, until the disposition hearing. They agreed to: a finding of reasonable and probable grounds; an interim order for temporary care and custody to the agency; access, to be supervised by the agency; and a finding that the child was in need of protective services.

[14] Early in this proceeding, the agency decided not to offer any services to the mother. Instead, she was made aware of the kind of services she might seek out elsewhere in the community to deal with the agency's concerns.

[15] The agency's rationale for not offering services, seems to be that most of the services which would benefit the mother are not offered directly by the agency, and

that the mother should be able to obtain the services elsewhere in the community on her own, without assistance from the agency. The agency also seems to consider that the services which the mother received during the last two proceedings were unsuccessful, and to try a third time would be futile.

[16] Because of the opportunities given to the mother during the earlier court proceedings, and the concerns which the agency continues to have, especially the mother's unresolved addictions issues, the agency has decided that the child should now be placed in its permanent care and custody.

[17] The agency's plan is to place the child for adoption - the sooner the better.

BACKGROUND AND COMMENTARY

Supervised Access:

[18] The only "service" which the agency has provided during this latest court proceeding is supervision of the mother's access while the child has been in the temporary custody of the agency and living in a foster home.

[19] Supervision of access from the agency's perspective seemed to be mainly an opportunity to gather evidence. This was done by the customary procedure of note-taking.

[20] Supervisors take notes to preserve observations and impressions of parent-children visits. Social workers then have access to the notes to see what supervisors have seen fit to record, and thereby form their own impressions about the how parents and children have interacted during the visits. Their impressions are then used in case conferences or team meetings to help make decisions, which in turn become plans of care of the agency.

[21] Note-taking is probably a useful procedure as part of supervising access visits; however, it depends on the subjective judgment of the supervisor and the degree of impartiality which the note-taker is able bring to the note-taking process.

Reading the notes, either in an agency file or in a courtroom, can never be the same as being there.

[22] It seems to me that supervised access should be looked on more as a means to ensure the safety of a child during temporary care-giving by a parent than as a chance to gather evidence. If gathering evidence is to be the aim, it could probably be accomplished more reliably by video taping the visit.

[23] Supervised access often took place at a family room at the agency's offices; however, it also happened in less structured settings such as parks, playgrounds and public beaches. The agency's representatives, were thus able to observe the mother and the child together under different circumstances. Some of these occasions were the subject of court testimony.

[24] Agency witnesses related how the child sometimes showed anxiety surrounding visits with his mother. While living in the foster home, the child sometimes had nightmares, which it was assumed might have been caused by visits or prospects of visits with the mother.

[25] There was, however, evidence from a respite foster parent that the child had become sick and didn't seem to want to return to the regular foster home, after staying for several days in respite care. There was also evidence that the child had told the respite foster parent that the regular foster parents spanked him when he messed his pants. Despite this information, the agency didn't seem to think the child's nightmares or anxiety might be related to the child's absence from the mother, or unhappiness with foster care.

[26] Sometimes, while supervising visits, the case aide brought along her dog. The mother thought that the dog sometimes distracted the child's attention during the visits, or that the child was upset because the dog was sometimes present, or because the dog was not present for other visits. The case aide and a social worker theorized that bringing the dog provided a kind of therapeutic dimension to the visits.

[27] We heard how the mother and child fared during their first experiences of visiting the seashore: the sensations of a hot summer day, with hot sand and wet sand and tickle fish on bare feet; having to change to and from beach clothes in strange surroundings; the anxiety and excitement of seeing life forms peculiar to

the seashore; and walking hand in hand on the beach in a closeness which invites a child and a mother to say and hear “I love you mommy.”

[28] There were some specific episodes during the beach visits related by witnesses in court. On one occasion, the supervisors noted that the mother was prepared to allow the child to change clothes outside, rather than in the change house. On another occasion the supervisor noted that the mother had carried the child with one arm “like a football” over a stretch of sand, rather than in some more pleasing fashion. It also seems there was a concern that the child might have experienced trauma in seeing his mother’s reaction to a live crab and other beach life.

[29] While there are always concerns relating to the ocean, and those should be respected, the beach visits seem to have provided a safe and fulfilling experience for this child, and also for his mother.

[30] Like with the ocean, there are concerns which abound in other settings, including playgrounds and parks and streets that pass by with traffic. There was an occasion when the supervisor felt that the mother could have followed the supervisor and the child more closely as the child approached the street. While a more vigilant parent might have been “right there,” it would be hard to say that the child was in any imminent danger.

[31] The mother appeared a little nervous in court as she endured the process of trying to answer questions, and she explained her perceptions of supervised access. She did not seem to feel that it was an educational experience, with feedback from supervisors about her parenting skills; but rather more like being under surveillance and feeling that nothing she did would be good enough for the agency. As she expressed it herself in court several times, she felt “damned if I do and damned if I don’t”.

[32] There was considerable time spent in court relating to some access around Christmas time. One occasion was a supervised visit with the child, the mother and the mother’s parents (“the grandparents”) at their residence. It appeared to go quite well, except that the supervisor thought the mother allowed the grandparents to dominate and also that the visitors appeared to want to cut the visit short. On the other hand, the mother explained that she had decided to give the grandparents a place of prominence in the only Christmastime visit. The grandfather explained

that, because of his concerns about bad weather interfering with the supervisor's drive with the child, back to the community where the foster parents lived, he had assured the supervisor that if she decided to end the visit early, they would understand.

[33] There was also a supervised visit arranged for the mother at the Wal Mart store after Christmas. Unfortunately the visit went awry when the grandparents showed up at the store at the same time, expecting they might be able to see the child. They were not allowed.

Conflict Between the Agency and the Mother:

[34] My impression is that the role of child protection social worker must be among the most difficult of jobs.

[35] There would seem to be inevitable tensions: between encouraging and supporting adults in their difficult role as parents, and protecting their children from harm; between wanting to leave children in their homes to be nurtured by their parents, and removing children from their family homes to promote their safety. There is potential for frustration and disappointment on the one hand, or achievement and satisfaction on the other.

[36] There sometimes appears to be disrespect and hostility directed at social workers by parents, who feel threatened by the prospect of having their children taken away from them by the very persons who seem to be offering help. Some parents, of course, are more difficult than others.

[37] As challenging as the task might be, it would seem important for an agency to develop strategies to meet the challenges of dealing with its dual role of promoting the integrity of families, and protecting children from harm. It might be necessary for an agency to take innovative approaches, from within its own team or from elsewhere within the community.

[38] In the present case, poor communication and misunderstandings have contributed to conflict between the mother and some agency representatives. The mother displays an adverse attitude towards the agency's authority, and it appears that some agency personnel consider the mother to be disrespectful towards them.

[39] While the conflict does appear to be serious, I am confident that both sides would be capable of overcoming the conflict, if it becomes necessary because of the child's placement.

Substance Abuse and Addictions:

[40] At the very least, the use of alcohol and other non-prescription drugs could be a distraction from a mother's attention to her child's needs. The same could be said, however, about many other activities which do not involve the mother and the child together.

[41] Drinking alcohol or smoking marihuana does not necessarily prevent parents from adequately fulfilling their responsibilities towards their children. There is, however, a potential for both physical and emotional harm to children resulting from abuse of these substances.

[42] While there is little evidence in this case of either direct harm or risk of harm to the child caused by the mother's use of drugs, there is ample evidence that the mother has regularly used alcohol and marihuana.

[43] There is a suspicion that the mother has also been using other non-prescription drugs. The suspicion is partly based on anonymous referrals to the agency by persons who did not testify in court. The suspicion is also based on observations by agency workers during a visit to the mother's home. During the visit they noticed marks or bruising on the mother's arms and hands that looked like needle marks to one of the social workers who had once worked as a paramedic and had seen such marks before. It was the concern about the mother's use of intravenous drugs which prompted the agency to commence this latest court proceeding.

[44] The mother has provided results from blood and urine testing which show a continuing presence of marihuana in her body and also indication of the presence of opiates. The mother's evidence is that she has tried to stop using marihuana; however, that she has been unable to resist the urge to smoke it to relieve the stress which she has experienced, including the stress of losing the child to the temporary care and custody of the agency.

[45] She denies the use of intravenous drugs, and professes to abhor even the thought of needles. She explained the opiate reading on her drug tests as having probably been caused by taking a pain medication which included codeine. She supports this theory by observing that the opiate test readings disappeared once she stopped taking the pain medication.

[46] The mother testified that things are different now. She is serious about dealing with her problems with alcohol and drugs; more so now than she ever has been before. She attributes her change in attitude to the fact that the child has been removed from the care of the mother and her family, and she now realizes just how serious her situation is.

[47] The grandfather corroborated the mother's evidence when he said that he notices a different attitude, and a determination in the mother that he has not seen before.

[48] Despite a professed change in attitude, the mother has not been regular in providing the results of drug tests, and the tests are still indicating marihuana use.

Parenting Skills:

[49] During the earlier protection proceedings, the mother participated in family services aimed at improving her parenting abilities. Her participation then was irregular and less than enthusiastic.

[50] She has been participating in programs provided by a local family resource centre, including the parenting program known as "Nobody's Perfect". The program coordinator at the centre testified as to the mother's participation. She had seen the mother take part in services at the centre a few years earlier, and she indicated that there has been a marked improvement in the mother's attitude this time. The mother has been a more active and enthusiastic student than was the case previously.

A Safe Home:

[51] The agency has had concerns in the past about the mother's ability to provide proper supervision for the child.

[52] There was an incident, before the current court proceedings, when the child was found outside the mother's residence late at night without supervision. The mother was at home when the child somehow slipped outside unnoticed. With the assistance of a social worker from the agency, the mother purchased an alarm to warn the mother if the child left the house. This appears to have worked, because there is no indication of a repeat incident after the alarm was installed and while the child was living at home. The alarm system would still be available for the mother to use if the child returns to her care.

[53] The mother provided photographs of her new apartment. It appears bright and clean, and large enough. The photos showed safety hooks on the doors, located high enough that the child would not be able to leave the apartment without the mother's approval.

Domestic Violence:

[54] The mother has been involved in violent domestic relationships in the past, including her relationship with the father of the child. According to the mother, she is no longer in a relationship with the father.

[55] To address the issue of domestic violence as the agency has recommended, the mother has been participating in counselling services at a transition house to help her prevent future domestic violence.

[56] The mother provided little information about whether she has found the program helpful. Although she was sometimes accompanied in court by a representative of the transition house, no witnesses from transition house were called to give evidence about their involvement with the mother in programs.

[57] The father did not testify about his intentions concerning any future involvement with the mother or the child, or about whether he had taken any programs dealing with domestic violence, or whether he was willing to take such a program.

[58] The agency submits that adverse inferences can be drawn from this lack of evidence. It appears that the agency has already drawn such inferences and that domestic violence continues to be one of its concerns.

Anger Management:

[59] The mother, on the recommendation of the agency, located a course in the community to help her address issues surrounding anger management. She enrolled in the course. She understood that the agency was willing to pay for the course; however, when asked for payment of the registration fee, the agency refused.

[60] The mother was not able to take the course.

The Father's Plan:

[61] Because the father did not testify at the disposition hearing, there was not a lot of information about him. He has been incarcerated and for that reason, the beginning of the disposition hearing was delayed, with the consent of the other parties, to a time after he was scheduled to be released. [Time limits set by the CFSA can be exceeded by the court without losing jurisdiction. See: H.W. v. Children's Aid Society and Family Services of Colchester County, D.L. and B.S. (1996), 25 R.F.L. (4th) 82 (NSCA)]

[62] According to evidence of others, the father suffers from a heart condition which resulted in cardiac arrest some time ago, and from which he was revived by emergency medical procedures.

[63] During the disposition hearing the father attended all of the court appearances, although on one day the hearing had to be adjourned early when his counsel advised that the father was taken to hospital.

[64] Because the father did not testify, the agency has submitted that there should be adverse inferences drawn against him and the mother. Such inferences could include inferences that the father plans to continue a relationship with the mother and the child, that he has not taken any program to help alleviate the likelihood of

repeated domestic violence, and that he might disrupt the mother's efforts in addictions recovery.

[65] On the other hand, the father's counsel advised, in his presence, that he was putting forth no plan of his own for the child and did not seek to have the court grant him any custodial or access rights to the child, and that he has elected not to call any evidence. In these circumstances the court could just as justifiably draw favourable inferences based on the father's instructions to counsel.

[66] Through counsel the father submits that the court should favour the mother's plan as opposed to the agency's. He urges the return of the child to the mother's custody, without supervision by the agency.

The Mother's Plans:

[67] It was only a few words, of the thousands of words spoken and printed in this proceeding; however, I thought it to be significant that the mother, in passing, while concentrating along with everyone else on the shortcomings of her past, happened to mention the possibility of a different kind future.

[68] The mother acknowledged that she only had a grade 9 level of formal education; however she revealed her thoughts about getting high school equivalency through the GED's, and then possibly becoming a counsellor. It is not clear if she has ever taken steps to begin in that direction. If she is going to do that; now at age thirty-four, it is probably time she got started.

[69] Addictions can get in the way of such a plan, and addictions can interfere with effective parenting. Addiction Services, Alcoholics Anonymous, Narcotics Anonymous are all available in the community for the mother, at no cost.

[70] She has stated that she now recognizes and acknowledges that she is addicted. Her father has told her that she has to decide whether she is going to choose alcohol and drugs, or choose her son. She says she has chosen her son.

[71] If she is going to be working on her plan for the child, there would seem to be no good reason she could not start working on her plans for education and a career at the same time.

[72] Each plan could help provide her motivation for the other.

Mental Health Services:

[73] The mother appears to have been using marihuana to relieve stress or anxiety. There are concerns that she might mix prescription and non-prescription drugs and thereby cause herself harm. She has discontinued an anti-depressant medication which she had been prescribed by a family physician, because she heard it might be carcinogenic.

[74] At the suggestion of the agency, the mother asked her family doctor for a referral to the local mental health clinic for assessment and treatment, as necessary.

[75] The referral did not result in admission to the clinic. There seemed to be a problem because the referral was perceived as being for court purposes rather than for medical purposes, as though the two purposes would have been at odds with one another. Perhaps she would have been able to be assessed and treated appropriately, if the agency had chosen to advocate or intercede on her behalf.

[76] The mother's medical history includes two suicides in her family, and a possible suicide attempt herself some time ago. It would not seem unreasonable in these circumstances alone to expect that she might receive a mental health assessment. If she could not receive it locally, I expect it could have been received elsewhere in Nova Scotia, or perhaps in New Brunswick.

[77] Upon referral from her family physician, I expect that the cost would be covered by the public health system. If the mother needed financial assistance and the agency was to help with transportation costs, those would likely be recoverable as costs of taking the child into care in this proceeding, under Regulation 50(1)(e).

Family Services:

[78] Before I can incorporate the agency's plan for permanent care and custody in a disposition order I would have to be satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

have been attempted and failed; have been refused by the parent or guardian or would be inadequate to protect the child. [CFSA Section 42(2)]. I am not, however, satisfied that is the case.

[79] The court is about to make its first disposition order in this proceeding. The total duration of all disposition orders involving the child cannot exceed twelve months. [CFSA Section 45(1)(a)] If the proceeding is still in progress at the end of twelve months, the court would have to decide then either to dismiss the proceeding or place the child in the permanent custody of the agency, because services cannot be ordered beyond this statutory maximum time. [Minister of Community Services v. B.F., 2003 NSCA 119]

[80] In the meantime, if it is considered to be in the best interests of the child [See: directions in CFSA Section 3(2)] the court can use the available time to allow the mother to work on her plans and for services to be made available to her.

CONCLUSION

[81] The mother is serious about dealing with her addictions issues. Her acknowledgement that there is a problem could be the beginning of a successful recovery for her. Recovery will be a long term process. While there will be continuing concerns of others, the risks are manageable. Addictions issues, unfortunately, are common in families. Fortunately, however, families can still function effectively with the support of others.

[82] The mother has been participating in services as recommended by the agency, and she seems willing to continue seeking support in the community, including mental health services, addictions services, and parenting education programs.

[83] The mother is not involved in a relationship with the father, and the father is not seeking to have any access with the child.

[84] The mother appears able to provide a safe home environment for the child. They appear to have a bond with each other and I consider that it would be in the child's best interests that it be allowed to continue.

[85] At the same time, the child would be able to grow in the relationship with his older brother while he is visiting the home, and with the grandparents who will provide family support.

[86] Although there have been some personal conflict between the mother and the agency in the past, there has also been candour and cooperation shown by the mother at other times. I am confident that, with some effort on both sides, the problems can be overcome during the next stage in the proceedings.

DISPOSITION

[87] There will be a supervision order, with the following framework, as contemplated in CFSA Section 43.

[88] The child shall reside with the mother, in the mother's home and be under supervision by the agency. The changeover of the child's residence from foster care should take place smoothly, under the direction of the agency, within the remainder of this week.

[89] Representatives of the agency should visit the mother and the child in their residence at least twice monthly, but shall be permitted to visit more frequently, including occasional unannounced visits. The mother should cooperate with all agency representatives during the period of supervision and accept any services which the agency considers would help her in adjusting to the child's return home.

[90] The father is not to reside in the mother's home and, unless otherwise ordered by the court, is not to have any contact with the child. If the father intends in the future to resume any relationship with the mother, he should participate in a program dealing with the nature of domestic violence and its effect on children; and he should report on his participation and advise what his future intentions are, at a review hearing.

[91] The mother should regularly attend meetings of Narcotics Anonymous and Alcoholics Anonymous and she should also resume counselling with Addiction Services.

[92] The mother should continue to provide the results of her blood or urine drug-testing each calendar month, including March 2006. The test results should be provided to her own counsel, and promptly through his office, to counsel for the other parties in the proceeding. There will be no provision in the order for automatic entitlement by the agency to take the child into care for non-compliance, or for positive test results, under Section 43(3); however, the mother would be expected to explain any problems at a review hearing.

[93] The mother should begin the formal requirements for the GED's, and if she needs help in discovering how to begin the process, agency representatives should provide whatever assistance they can.

[94] The mother should try again through her family physician, and with agency assistance, to be assessed at the local mental health clinic. I am not asking for any report for the court purposes, although if one is provided it would certainly be considered. I simply intend that the mother will receive appropriate mental health care if she needs it, including any helpful non-addictive medication which might be prescribed. If it is not possible for the mother to receive assessment locally, and if treatment is available elsewhere, the reasonable transportation costs should be paid by the agency and considered part of the costs of taking into care, under CFSA Regulation 50(1)(e).

[95] The agency should, upon reasonable request by the mother, provide respite care for the child during the period of supervision, such as was available for the foster parents - perhaps even with the same person who provided respite care for them, if possible. Similarly, any reasonably necessary child care expenses paid by the mother while she is attending for services stipulated in the supervision order should be reimbursed by the agency after presentation by the mother of clear and specific receipts. Both the costs of respite care and child care should be considered costs of taking the child into care.

[96] The mother should attend an anger management program if one becomes available locally during the period of supervision. If there is a registration fee payable, it should be paid by the agency and considered a cost of taking the child into care.

[97] There should be a review in about six months, with a report from counsel for the parties at a brief docket day court appearance, to be arranged with counsel for

all parties with court administration staff. A more lengthy review hearing could be scheduled then if appropriate.

[98] I thank counsel for their assistance to this stage of the proceeding, and I ask that counsel for the mother take the lead in preparing an order to summarize the effect of this decision.

David A. Milner, A Judge Of The Family Court
For The Province of Nova Scotia