

IN THE FAMILY COURT OF NOVA SCOTIA

Citation: K.R.M.W. v. Nova Scotia (Community Services), 2010 NSFC 27

Date: 20101108

Docket: 09SB064844

Registry: Yarmouth

Between:

K.R.M.W.

Applicant

v.

Her Majesty the Queen in Right of the Province of Nova Scotia as represented by
the Minister of Community Services

Respondent

Revised Decision: The date of the decision in the top right corner has been corrected from October 8, 2010 to November 8, 2010 and this replaces the previously distributed decision.

Judge: The Honourable Judge John D. Comeau, Judge of the Family Court of Nova Scotia

Heard: Heard at Yarmouth, Nova Scotia the 27th day of October, 2010

Written Decision: November 8, 2010

Counsel: Timothy Landry, Esq, for the Applicant
Terry D. Potter, Esq., for the Respondent

THE APPLICATION:

[1] This is an application brought by K.R.M.W. (hereinafter referred to as K.W.) to have his name removed from the Child Abuse Register pursuant to Section 64 (2) of the Children and Family Services Act.

[2] The Applicant's statement of why he does not now pose a risk to children is as follows:

“ I do not now pose a risk to children, for the following reason: I have been successful in my attendance for supervision by my probation officer and, more particularly, I have attended for counseling with Joyce Morouney, MSW, RSW, and, as can be seen from her letter dated March 26th, 2009, a true copy of which is attached hereto and marked Exhibit “B” to this my affidavit. Ms. Morouney has confirmed her support for my application;

I therefore request an order that my name be removed from the Child Abuse Register;”

THE FACTS:

[3] The Respondent was convicted in 2007 of four offences under s. 271 (1)(a) of the **Criminal Code**.

[4] His mother and sister accused him of touching his sister's breasts over her clothing on four separate occasions. The Respondent denied this at trial and continues to indicate he did not commit the offences. Evidence of further specifics are referred to in the Report from the IWK Health Centre for Children, infra.

[5] He was placed on house arrest and probation and completed those successfully. He has also completed counselling.

[6] A report by Joyce Morouney, MSW, RSW, a clinical social worker forms part of the evidence. Her case notes have also been provided. She believes the Applicant has done well in the last two years.

[7] She supported the Applicant in his attempt to have his name removed from the Child Abuse Register. In a letter to the Applicant's counsel dated December this support was qualified:

“ I have recently spent some time talking with the psychologist from the Nova Scotia Initiative for Sexually Aggressive Youth Program, which is the program with which I was affiliated while counseling K.W. When they saw the closing summary of my work with K.W., they asked to meet with me via phone conference to discuss some of the statements I have made.

You are right to question my support of K.W.'s application, especially in reference to his ongoing denial. According to our psychologists, there are several offence-specific treatment goals that can not be addressed, as long as the youth denies the offence. Therefore, treatment is not complete. As well, because K.W. was found guilty in a court of law, I can not take sides in regard to his guilt or innocence: I was wrong to comment on that.

I feel K.W. has done extremely well in the past two year. He has met and exceeded expectations in the areas of education, employment, social connections, familial relationships (primarily grandparents), and attendance at counseling. There has been an updated risk assessment for reoffending, but K.W.'s initial risk rating was low, and he made gains in counseling.

I would recommend that K.W. continue in counseling at some point in the future to address any residual issues from his dysfunctional upbringing, if he feels this is necessary. I don't believe that he needs further offence-specific therapy.

I would not be able to say that K.W. is not a risk. I couldn't say that about anyone."

[8] The Applicant also participated in an assessment conducted by Harpreed Aulakh, PH.D., clinical psychologist at the IWK Health Centre for Children, Women and Families, following his conviction for sexual assault in 2007. The assessor set out the official version of current charges;

"Sometime in the month of December, 2005 the accused, K.W., entered the victim's bedroom in the middle of the night. The victim was asleep at the time. K.W. reportedly touched the victim's breasts over her sleeping clothes. This action woke up the victim and she told K.W. to leave and K.W. left.

K.W. repeated this action sometime after Christmas. K.W. entered the victim's room while she was dozing off. K.W. touched the victim's breasts and her vagina over her clothes with his hands. On this occasion, K.W. attempted to touch the victim underneath her pajamas as which point she stated that she would scream if K.W. did not leave the room. K.W. then left her bedroom.

In April, 2006, while the victim was sleeping on the living room sofa K.W. entered the living room and touched the victim's breasts and vagina with his hands underneath her clothes. The victim stated that if K.W. did not stop she would tell her mother. K.W. stopped and went back to his room. After K.W. returned to his room, the victim went to her bedroom and blocked the door with an object in her room.

The final incident occurred on June 3rd, 2006. The victim was sleeping in her room when K.W. entered the victim's room and began touching the victim's breast and vagina with his hand underneath her pajamas. K.W. then got onto the bed and placed his penis on the victim's leg (she was lying on her side facing the wall). K.W. attempted to turn the victim over but the victim resisted. At this point, K.W. heard his mother coming upstairs towards the bedroom and he got off the bed. His mother entered the room to find K.W. pulling his boxers shorts up and she noted that K.W. had an erection. His mother ordered K.W. out of the room and K.W. left and locked himself into the bathroom while the victim told her mother what had transpired.

On June 5th, 2006, his mother contacted Children and Family Services. On June 8th, K.W. was interviewed by the RCMP in the company of his father. Both K.W. and his father refused to answer any questions around what had occurred between K.W. and the victim."

"Analysis of Offence

In discussion with K.W. around the offences it was apparent that he was not being candid with this assessor. He naively attempted to minimize and deny knowledge of any actions: however, when information was provided to him, it was apparent that he knew more than he was sharing. Also, his view that the victim was simply envious of him was not convincing."

RISK OF SEXUAL RE-OFFENDING:

“ In considering K.W.’s risk in this area, his overall score reflect **LOW** risk for sexual re-offending. That being said, it would be important to provide K.W. with treatment targeting his problem sexual behaviours. It is apparent that K.W. is experiencing some degree of discomfort around sexual issues. As part of treatment, focusing on what is considered healthy sexuality would be important. Furthermore, given that K.W. has been exposed to domestic violence while growing up, assisting K.W. in understanding appropriate boundaries in male/female relationship and respect within relationship would likely prove to be valuable. Finally, potentially exploring his sexual victimization experience and how it may have impacted his views on sexuality may prove to be useful.”

[9] Counseling with Joyce Morouney was a follow-up to this recommendation.

[10] The Provincial Coordinator of Child Protection Services testified and provided an affidavit to the Court. Part of her responsibility is to manage the Child Abuse Register. She refers to both the assessment and the Applicant’s denial of the offences:

“ Given the seriousness of the offences which K.W. has been convicted of, the fact that he offended on a number of occasions, that he accepts no responsibility for his offences, has not completed offence specific treatment goals, and has not been taught skills during treatment that would reduce the likelihood of re-offending, I would suggest that there is sufficient evidence that K.W. currently poses a substantial risk of harm to children.

Furthermore K.W. was convicted of these offences in 2007 - only 2.5 years ago. It would be necessary to see a longer period of time with good behaviour, in order to feel confident that K.W. does not pose a risk to children. Possibly given more time and reflection, K.W. may be able to accept some responsibility for his

actions, and gain some understanding of the impact that the abuse he has perpetrated has had on his victim.”

THE LAW:

[11] Following his conviction for four counts of sexual assault the Applicant’s name was placed on the Child Abuse Register.

“ Child Abuse Register

63 (1) The Minister shall establish and maintain a Child Abuse Register.

(2) The minister shall enter the name of a person and such information as is prescribed by the regulations in the Child Abuse Register where

(b) the person is convicted of an offence against a child pursuant to the **Criminal Code (Canada)** as prescribed in the regulations; or

Notice of entry in and application to remove name from the Child Abuse Register.

64 (1) A person whose name is entered in the Child Abuse Register shall be given written notice of registration in the form prescribed by the regulations.

(2) A person whose names is entered on the Child Abuse Register may apply to the court at any time to have the person’s name removed from the Register and, if the court is satisfied by the person that the person does not pose a risk to children,

the court shall order that the person's name be removed from the Register. 1990, c.5, s. 64."

"The burden of proof is clearly on the Applicant, under this section to satisfy the Court that he does not pose a risk to children. (See **M.H. v. Minister of Community Services**, 1992 F.Y. 92Y0129, Milner, J.F.C., unreported and R.C.C. v. Minister of Community Services, 2008, NFFC8, Comeau, CJFC.

In **M.H. Supra**, Judge Milner dealt with what is meant by "risk to children."

"RISK TO CHILDREN"

The definitions of 'abuse' in section 62 of the **Act** coincide with some of the definitions in section 22 of what is meant for a child to be 'in need of protective services.'

There is no definition in section 64 of what is meant by 'risk to children'; therefore, I think the Legislature must have intended the meaning to be the same as the risk defined in section 22, i.e. 'Substantial risk', or "a real chance of danger that is apparent on the evidence.'

It would appear inconsistent to interpret 'risk', for example, as the; 'possibility' of harm. Such an interpretation would, in my view, place an unfair and excessive onus on an Applicant, and does not appear to be the intention of the Legislature."

"Following a conviction for sexual assault, the perpetrator's name is automatically entered on the Child Abuse Registry. If the Minister, in the absence of any criminal offence, asks the Court to make a finding that a person has abused a child, the burden of proof on the Minister is, on the balance of probabilities, the person has abused a child.

Judge Milner in **M.H.** (the Applicant was convicted of assault on a child), dealt with the burden of proof, under section 64(2).

“BURDEN OF PROOF:

Under section 63 (3) of the **Act**, the burden of proof on the Minister or an agency to establish abuse (resulting in entry on the Register) is ‘on the balance of probabilities.’ It would appear that the burden on an Applicant for removal, under section 64 (2), should be no heavier.

As to the standard of proof required, in cases such as these, I agree with the views expressed by Grant, J. in **H.P. v. H.** (1985), 72 N.S.R. (2d) 104 104 (N.S. Sup. Ct. - T.D.) at page 108:

‘It is a civil action in which proof is to be on the balance of probabilities or by a preponderance of evidence. Where the allegation is one involving the commission of a criminal offence, the standard of proof, although not required to be beyond a reasonable doubt, is by a strong balance of probabilities or a strong preponderance of evidence commensurate with the gravity of the offence or conduct alleged.’”

CONCLUSIONS/DECISION:

[12] The Applicant is 20 years old. He was 17 when he was sentenced concerning four offences for sexual assault against his sister who was fifteen years of age at the time.

[13] He successfully completed his deferred sentence of house arrest (4 months) and 24 months of probation. He has not received a pardon nor has the victim recanted. The Applicant has received counseling and was assessed by the IWK Center for Children, Women and families. Both the assessor and counsellor suggest further treatment the latter suggesting only if he required it.

[14] The issue is whether the Applicant poses a risk to children. His denial of the offences has been described by the IWK assessor as a concern. These have been emphasized by the Coordinator of Child Protection Services and deal with the risk of re-offending.

“K.W.’s sexual offences took place over a period of time and he offended on a number of occasions. Repeat offending and sexual offending behaviour that extends over longer periods of time have been associated with increased likelihood of sexual re-offending.”

“It appears that there was some degree of forethought and planning in K.W.’s offending behavior. More detail and forethought and planning the offences (versus highly impulsive, opportunistic offences), is linked to higher risks for re-offending.”

“K.W. has limited understanding of the factors associated with his sexual offending. He has not taken responsibility for what occurred between him and his victim. He has not had the benefit of being taught skills during treatment to reduce the likelihood of future offending. Adolescents who have little awareness of offence prevention strategies are at a heightened risk to re-offend sexually.”

[15] Proof that the Applicant does not pose a risk to children would be much easier to consider with the passage of time. The Applicant's request, therefore, is premature.

[16] Considering his denial of the offences and that the rehabilitative sentence has only been completed a short time ago the Court cannot, on a balance of probabilities, find that the Applicant does not pose a risk to children.

[17] Consequently his application is dismissed and his name will remain on the Child Abuse Registry.

[18] Counsel for the Minister will prepare the dismissal order.

John D. Comeau
the Family Court

Judge of