FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (Community Services) v C.L.M., 2013 NSFC 32

Date: 2013-08-28
FKCFSA-081754
Registry: Kentville, N.S.

Between:

M.C.S.

Applicant

v.

C.L.M. & C.C.

Respondents

Editorial Notice:
Edited by Judge for grammar, punctuation & readability

Judge:	The Honourable Judge Marci Lin Melvin
Heard	July 22, 23 & 24, 2013, in Kentville, Nova Scotia
Final Written	August 28, 2013
Counsel:	Sanaz Gerami, for the Applicant, M.C.S. David Baker, for the Respondent, C.L.M.

By the Court:

[1] The child was taken into care at birth. The protection application was filed July 10, 2012, citing substantial risk of physical and emotional harm, pursuant to s. 22(2)(b) & (g) of the ***Children and Family Services Act.***

[2] The Respondent father, C.C., is not a resident of Canada, not in Canada and never part of these proceedings. The Respondent mother, C.L.M., consented at the 5 day stage and 30 day stage that there were reasonable and probable grounds to believe the child was in need of protective services. At pre-protection the Court was advised the Respondent mother consented to a parental capacity assessment. At protection, the Respondent mother consented to a finding the child was in need of protective services, and as well consented to a s. 96 application. The Minister has had temporary care throughout and the Respondent mother has had supervised parenting times.

[3] At disposition the Respondent mother agreed to the same terms, as she did at first review. At the first review hearing the Minister advised they were seeking permanent care. The Respondent mother did not consent and a review date was set.

[4] The order pursuant to s. 96 of the ***Children and Family Services Act*** provided the Court with historical evidence as to why the Respondent mother's four older children were placed in the permanent care of the Minister of Community Services in 2008.

[5] Should the child be placed in the permanent care of the Minister or would her best interests be better served if she were returned to the care of the Respondent mother?

[6] The evidence of the Minister included that of the following witnesses:

[7] Dr. D.K. Symons referred to the Respondent mother's gruff, demanding, negative, loud, abrupt, angry and authoritarian manner with the children, said she hadn't benefitted from any parenting courses, she was a poor candidate for future change, and she blamed everyone for her own behavior.

[8] Susan Squires conducted nine psychological tests and a parental capacity assessment and concluded the Respondent mother did not have the capacity to care for a child.

[9] Dr. Michael Wadden, the Respondent mother's family physician for fifteen years, testified that the Respondent mother was at a loss to know how to correct

her children, and discipline was often ineffective, and in 2008, all four of her children were suffering as a result of her lack of parental abilities, and had serious behavioural issues. He continues to see three of those children since they were taken permanently from the Respondent mother's care: "They are healthy and doing well ... they [are] very polite and very sweet."

[10] Debbie Reimer, Executive Director for the Kid's Action Program, testified that she had worked with the Respondent mother and her four oldest children for nine years. Ms. Reimer testified the Respondent mother yelled most of the time, was angry, and swore at the children, and in the nine years she worked with the Respondent mother, she saw no change in her parenting style. On cross examination, Ms. Reimer was clear in her position: the Respondent mother was not and cannot be a fit parent.

[11] Sarah Crisp, Executive Director for the Valley Child Development Association testified she saw one of the Respondent mother's children who "...had significant behavioural issues going on: hitting, shouting, biting," and the Respondent mother "seemed to be the trigger for the child's behaviours." The atmosphere around the Respondent mother was "extreme negativity," and that the

child's behaviour stemmed from constant rejection by her mother and who was incapable of providing any type of attachment or nurturing for her children.

[12] The Respondent mother had eight witnesses testify on her behalf, and testified on her own behalf.

[13] On cross examination the Respondent mother became confrontational, hostile, and was easily frustrated. She did not show tenderness, kindness, love or gentleness towards the child in her courtroom demeanor. She was abrupt, cold with a deportment of intimidation.

[14] The Court has considered all of the evidence of the Applicant and afforded it the weight the Court believes appropriate.

[15] The Respondent mother had nine years of abusively parenting four children, causing them to have serious behavioural difficulties. She had multiple services from numerous community agencies, resulting in no improvement in her parenting abilities.

[16] The Court is not "rehearing" a matter already determined - the children were placed in permanent care of the Minister of Community Services in 2008, after nine years of involvement with child welfare.

[17] Those findings are a matter of record and this Court adopts them. That decision was not appealed and evidence given by the witnesses who testified previously, including Dr. Symons, is consistent with much of the current evidence before this Court.

[18] In **M.(K.L.) v. Nova Scotia (Minister of Community Services,** 2007 NSCA 100, the appellant parents had history of involvement with child welfare authorities dating back to 1999, and the four children were placed in permanent care of the agency on consent in 2005. The parents had a fifth child in January 2006 and the child was taken into care at birth and eventually placed in permanent care. The parents appealed. The Court of Appeal dismissed the appeal. The trial judge, had relied on past parenting in reaching the determination to place the child in permanent care. The Court of Appeal upheld that decision.

[19] The Court noted at paragraph 28 and 29:

> “The evidence of the parents’ “past” parenting practices was highly relevant where, as here, the current child welfare proceeding overlapped with the former. The evidence supported the trial judge’s conclusion that the services offered by the Agency had been effectively rejected by the parents as a result of which the child protection risks continued.

[20] In spite of the witnesses who testified on behalf of the Respondent mother, the Court is not convinced that the Respondent mother who had four children taken into care in 2008, is any different to the Respondent mother whose child was taken into care in 2013.

[21] The Court has carefully reviewed every shred of evidence, written and oral, and has afforded the Respondent mother's testimony the greatest weight. She has advanced this case to regain custody of her child. The Court finds her evidence hollow and lacking. The Court carefully observed her and listened to her. The Court did not find her position that she could raise the child credible. She was hostile, by times raising her voice - clearly unable to control herself at this crucial time. If she is unable to control her hostility in a court room, how could she control herself with a small child?

[22] Ms. Reimer's evidence is that the Respondent mother is better with babies, but not good as the children grow.

[23] The Court is satisfied on the evidence that the services provided were not successful in addressing the protection concerns.

[24] The Respondent mother's counsel requested that the Court consider allowing the time limitations under the Act to run out to give his client more time.

[25] Section 42(4) of the ***Children and Family Services Act*** provides:

> 42(4) The Court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the Court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

[26] At a Review Hearing, such as the proceeding herein, s. 46(6) of the ***Children and Family Services Act*** offers guidance in the application of s. 42(4). Section 46(6) provides:

> 46(6) Where the Court reviews an order for temporary care and custody, the Court may make a further order for temporary care and custody unless the Court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

[27] In **Nova Scotia (Minister of Community Services) v. S.Z. et al.** (1999), 179 N.S.R. (2d) 240 (S.C.F.C.); upheld on appeal at (1999), 181 N.S.R. (2d) 99 (C.A.), Williams J. made the following comments respecting such time frames:

> [25] Should the Agency seek a permanent order where there is what seems like so much time left on the statutory clock? The Agency has a right, if not a duty, to do so where it believes it can satisfy the burden of proof put on it by the operation of the relevant statutory provisions which include ... [those] stated in ss. 2(1), (2) and 3(2) of the *Children and Family Services Act.*
>
> [26] The time limits set out in s. 45(1) are just that - limits. They are not goals. They are not waiting periods. Each case is different. Each case must be decided on its particular facts and circumstances. ...

[28] It is clear that the ***Act*** does not mandate the Court to delay making a permanent care order until the statutory guidelines have expired. It is clear that if a Court believes a Respondent parent is incapable of change, a child's life should not be held in limbo in the hopes the child's parent will have an epiphany and suddenly

become "Mother of the Year." This would make the legislation "parent-focussed" rather than "child focussed."

[29] The Court finds based on the evidence that the Respondent mother is incapable of change, that another five months will not make any difference in her life. It may, however, make a vast difference in the child's life.

[30] After considering all of the evidence, the Court is not prepared to extend the time lines.

[31] The Court is not convinced on a balance of probabilities, that the Respondent mother has changed in any way that would allow a Court to give serious consideration to ever returning the child to her care.

[32] Raising a child involves more than the capacity to hold, feed and change a diaper for an infant. Children grow emotionally, intellectually, psychologically, spiritually and of course, physically. A person must have the ability to nurture a child as the child grows in all of these ways. Is a parent able to nurture a curious and industrious two year old? An inquisitive pre-schooler? Fast forward to adolescence: does a person have the ability to emotionally nurture and psychologically nourish a child as that child grows toward adulthood. As noted

earlier, the historical evidence against the Respondent mother is clear that she did not have these abilities. The Court must be persuaded on a balance of probabilities that the Respondent mother has now changed and changed radically.

[33] The Court finds on a balance of probabilities that the Respondent mother has no ability to properly parent and nurture a child.

[34] It would not be in the child's bests interests to be placed in the Respondent mother's care. The Court is not prepared to gamble on the Respondent mother and "take a chance." The Respondent mother has not shown she has changed.

[35] The evidence on a balance of probabilities supports an Order for permanent care. The Court finds this to be in the child's best interests. There are no reasonable services from which the Respondent mother could benefit. I find, based on the evidence before the Court that the Respondent mother has no ability to safely parent the child from babyhood through to adulthood. Therefore, a permanent care Order is issued. There will be no order for parenting time.

Marci Lin Melvin, J.F.C.