FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (Community Services) v. States, 2014 NSFC 28

Date: 2014-06-30
FKCFSA--084379
Registry: Kentville, N.S.

Between:

Minister of Community Services

Applicant

v.

Adam States

Respondent

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

Judge:	The Honourable Judge Marci Lin Melvin
Heard	May 6, 7 & 8, 2014, in Kentville, Nova Scotia
Final Written	June 30, 2014
Counsel:	Sanaz Gerami, for the Applicant Donald Fraser, for Adam States

By the Court:

[1] This is an application made by the Minister of Community Services for a finding that the Respondent, Adam States, abused the child, A.P., as described in the ***Children and Family Services Act***, (hereinafter referred to as 'the Act'), s. 62(a), and that his name be entered on the Child Abuse Registry.

[2] The Respondent was in a relationship with J.P., mother of the deceased child, in 2010. The child was two years old. On a number of occasions the Respondent was alone with the child in a child-care capacity. During two of these occasions, the child sustained significant injuries. On the first occasion, there were injuries to his face and body, which the Respondent could not explain. On the second occasion, the child became ill and in pain subsequent to being in his care and died shortly thereafter. Medical Examiner, Dr. Matthew J. Bowes, testified the cause of death was blunt force trauma.

[3] By consent of the parties during the hearing, an agreed statement was submitted in lieu of watching the DVD statement of the Respondent. It is: "Adam States stated he kicked the child twice in the groin and stomach area. Adam States stated he kicked the child out of frustration because he peed himself. Adam States pointed to where he kicked the child on his own body, those being his lower

stomach area and inner thigh." The respondent was charged and tried in criminal court, but was acquitted.

[4] Has the Minister of Community Services proven on a balance of probabilities that the actions of Adam States amounted to abuse and caused the child to suffer physical harm either inflicted by the Respondent or caused by his failure to supervise and protect the child adequately.

[5] The Minister called numerous witnesses, including the child's mother, J.P., and Ms. Michelle Hiltz who both gave evidence they had left the child with the Respondent on the two occasions and when the child sustained injuries. They testified that in March 2010 they came home to find the child with injuries to his face and head. They further testified that in May 2010, they came home and the child was not feeling well, said his belly hurt, and threw up a few times. They testified he had no symptoms of illness when they left him with the Respondent.

[6] Further testifying for the Minister was Constable Davis who described the nature of holdback evidence as "…information of physical evidence that would only be known by the person responsible for the crime and a few key investigators involved in the investigation. It is the intimate details of the crime… [and] with respect to the death of the child, the holdback evidence was where the injury to the

child took place on his body…when the Medical Examiner explained the cause of death." The Minister submitted that the Respondent was aware of the holdback evidence when he made the above statement to the R.C.M.P.

[7] The Respondent did not call evidence, but his counsel spent considerable time cross-examining the witnesses for the Minister. The Court finds the Respondent did not dispel the testimony of the witnesses. Mr. Fraser submitted the decision of MacDonald, P.C.J., dated October 1, 2012, on the admissibility of the statement of the Respondent. The Court has read it with interest, however the standard is not the same in these proceedings. Although the burden of proof is on the Applicant Minister, the standard of proof is on a balance of probabilities, which differs from the criminal standard of proof beyond a reasonable doubt. Respondent counsel further argued there should be little weight attached to the Respondent's statement to the Police, in light of MacDonald, P.C.J.'s decision, and that the Minister of Community Services case was based on hearsay.

[8] The Court determined in **Family and Children's Services of Cumberland County v. S.D.H**., 2005, NSFC 17 (CanLii), "Before the Minister is required or permitted to enter the respondent's name on the child abuse register, the Court must find that the respondent has abused a child. The burden of proof is on the applicant agency. The respondent does not have to prove that he did not abuse a

child." And further: "This civil standard of proof is significant, although not as high as the standard of proof in a criminal case, where the judge or jury must be satisfied beyond a reasonable doubt that an alleged crime has been committed."

[9] There is only one civil standard of proof at common law and that is, as noted by the Supreme Court of Canada in **F.H. v. McDougall,** 2008 SCC 53, "…proof on balance of probabilities."

[10] In the case of the **Family and Children Services of Yarmouth County v. L.J.,** 2004 NSFC 6, Comeau, C.J.F.C., as he then was, considered the standard of proof in applications pursuant to section 63(3) of the **Act.** The learned Judge noted that the standard of proof elevated with the seriousness of the allegations and implications, but concluded in reaching his decision – to make a finding of abuse by the Respondent – the evidence showing abuse by the Respondent "…had more probability of truth than disbelief."

[11] The sections of the **Act** relied upon by the Minister are sections 62(a) and 63(3).

[12] The Minister has the authority pursuant to Section 63(3) to apply to the Court, with notice to the intended Respondent, for a finding on the balance of probabilities, that the person has abused a child. Section 62(a) defines abuse as

that the child has suffered physical harm which was inflicted by the person or caused by the person's failure to supervise and protect the child adequately.

[13] The Minister argued that the "…`grammatical and ordinary sense' of the expression, 'physical abuse', is itself still a matter of interpretation, requiring the Court to view the matter objectively, adopting the observation of a reasonable person in light of all the circumstances … [and] that doing so requires consideration of a degree of probability which is commensurate with the occasion."

[14] The Minister submitted that to interpret the relevant sections, the modern principle of statutory interpretation shall be applied: "The words of an Act are to be read in their entire context, that is to say, in their grammatical and ordinary sense, but harmoniously with: the scheme of the Act; the object of the Act; and the intention of Parliament. See Elmer A., Driedger, **Construction of Statutes** [1st edition][Toronto: Butterworths, 1974], and adopted by the Supreme Court of Canada in **Re Rizzo and Rizzo Shoes Ltd.,** [1998] S.C.J. No 2."

[15] Further argued by the Minister is that the scheme and statutory context of the Act include that children are entitled to protection from abuse and neglect, the purpose of the Act is to protect children from harm, the paramount consideration is

the best interest of the child, the term "child has suffered physical harm' is used in other provisions of the Act, the Child Abuse Register is confidential and disclosure is for specific purposes, and a person may apply to have their name removed from the Register.

[16] In **Children's Aid Society of Cape Breton – Victoria v. D.M.B.,** 2007 NSCA 20, Hamilton, J.A., held: "The purpose of the registration of a person's name in the Child Abuse Register (and hence the purpose of a finding) is to protect other children from a continuing source of potential harm by naming persons who have committed past child abuse."

[17] In **Family and Children's Services of Cumberland County v. S.D.H**., supra., the Court there are three circumstances in which a judicial finding of abuse against a person can be made: "First – by a finding that a child is in need of protective services as defined in Subsections 22(2)(a) to (c) of the **Children and Family Services Act**, during the course of a protection application; Second – by a conviction for any of the criminal offenses specified in the regulations under the Act, where the child is a victim of the offense; or Third – by a specific finding, on the balance of probabilities, pursuant to section 63(3) of the Act, that a person has abused a child."

[18] In the case before the Court, clearly the third circumstance applies: the Respondent was not subject to child protection proceedings with respect to the child, and he was acquitted at the criminal trial. Therefore, for the Applicant to succeed, the Court must find on a balance of probabilities that Adam States physically abused the child, or failed to supervise and protect the child adequately. The Court must view the facts objectively, adopting the observation of a reasonable person in light of all the circumstances with consideration of the degree of probability commensurate with the circumstances. And finally, to make a finding of abuse by the Respondent the evidence must have more probability of truth than disbelief. Even without the statement of the Respondent being made part of the evidence where he says he kicked the child in the groin area because he was frustrated the child had "peed" himself, it would still have been open to the Court to find that such an injury could not have occurred if the Respondent had been supervising and protecting the child adequately.

[19] In **FCSCC v. S.D.H.,** *supra*., Milner, J.F.C., stated: "Judges are expected to consider all of the evidence presented by all of the parties in any court proceeding. They are not, however, required to figure out everything that has happened outside the courtroom, and in most cases they would be unable to do so…Judges are only

required to decide whether they are satisfied, according to the applicable standard of proof, if what has been alleged has been proven."

[20] Having considered all of the evidence of the Applicant, and the submissions of both Applicant and Respondent counsel, this Court finds that the evidence of the Minister has more probability of truth than disbelief, and that the Minister of Community Services has proven on a balance of probabilities that the actions of Adam States amount to physical abuse and caused the child to suffer physical harm either inflicted by the Respondent or caused by his failure to supervise and protect the child adequately, causing death resulting in the child's death.

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Marci Lin Melvin, J.F.C.