

FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (Community Services) v. F.C.D.N., 2012 NSFC 17

Date: 20120918

Docket: F.N. 11SB077214

Registry: Yarmouth

Between:

The Minister of Community Services

Applicant

v.

C.D.N. (F), E.S., A.N. and A.V.

Respondents

Restriction on publication:

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.

Editorial Notice

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

Judge:

The Honourable Judge John D. Comeau, JFC

Heard:

August 13, 2012 and August 23, 2012
at Shelburne, Nova Scotia

Counsel:

Donald C. Harding, Q.C. for the Applicant

C.D.N. (F) - unrepresented - present

E.S. - unrepresented - not present, not participating

A.N. - unrepresented - present

Wayne Rideout, Esq. for A.V.

Introduction/Application:

[1] This is a disposition under section 42(1) of the *Children and Family Services Act* following a hearing under section 41 of the *Act*.

[2] The hearing involves two children K., born March *, 2011 and A., born April *,2010. The Respondent C.D.N. (F) is the mother of both children. E.S. is the father of A. and A.V. is the father of K. and A.N. is the maternal grandfather.

[3] The relevant parties have consented to K. being placed with her father A.V., subject to the supervision of the Minister of Community Services. Review of this disposition is set for November 5, 2012 at 10:00 a.m.

[4] A Protection Order was made following a hearing dated November 28, 2011 and the evidence at the five day hearing provided the facts for finding the children in need of protective services. The disposition hearing was set for January 30, 2012.

[5] By order dated February 2, 2012, the Minister agreed to join A.N., the maternal grandfather, as a party to the proceeding for the purpose of disposition. The Respondent mother, C.D.N. (F) is not asking for the return of A., but supports her father's long term Plan of Care, which will be discussed in more detail. There have been a number of extension of times (statutory) for the disposition hearing by consent of the parties and in the best interests of the children.

The Facts:

Evidence at the Protection Hearing

[6] The children were apprehended on the 31st of August, 2011 because of the circumstances of the mother. There was a complaint made about the mother moving back and forth between Yarmouth and Barrington, sometimes with the children and other times without. Evidence was the RCMP had responded to a domestic assault involving the mother and her boyfriend, whereby she had been choked, pushed and locked in a room. Charges were laid against him. The child K. was present during this incident.

[7] Many of the complaints concerning the mother's behaviour came from her father A.N. who is now a party to this proceeding. He described two other domestic violence incidents involving the same boyfriend. He described her as going from house to house to house, sponging off anyone who would have her. This was after she had A.. She refused to live with her father.

[8] The Respondent mother's absenteeism as a parent was expressed by one T.S. who was taking care of K.. She was concerned because she did not know when the mother was returning to pick up K. and she had medical concerns about the infant, but no way to contact the mother, and no information to take to the child's doctor.

[9] On August 9, 2011 the Minister's agent met with the mother who admitted leaving the children for periods of time (described as 1.5 weeks) with several different caregivers, but did not see this as a concern.

[10] On August 19, 2011 a Risk Management Conference was held by the Minister's agents and evidence was the children were at risk of emotional harm and physical harm as a result of the mother's neglect. The decision was to seek a Supervision Order.

Issue: Long term Plan of Care that is in the best interests of the child

The Minister's Plan of Care (A.)

[11] The Minister filed (not marked as an exhibit) a Plan of Care on February 27, 2012 which dealt with A. and K.. Since then, on August 7, 2012 a Plan of Care for K. was filed (not marked as an exhibit). An order has been issued placing her in the care of her father under supervision. This was done by consent of the parties. The plan of February 27, 2012 is as follows:

“Disposition Order sought:

The Applicant is seeking an Order pursuant to Section 42(1) of the *Children and Family Services Act* that the children A., born April [...] 2010 and K., born March [...], 2011, shall be placed in the temporary care and custody of the Applicant, the Minister of Community Services.”

[12] An updated and revised plan dated June 1, 2012 for A. has been filed as follows:

“Disposition Order sought:

The Applicant is seeking an Order pursuant to Section 42(1) of the *Children and Family services Act* that the child A., born April [...], 2012, be placed in the permanent care and custody of the Applicant, the Minister of Community Services.”

[13] Explanation of why the child cannot be adequately protected while in care of the parent or guardian:

“Given the continuing personal instability of the Respondent C.D.N. (F), including not residing at one stable residence, financial instability, lack of attendance at visits with her daughters, not attending appointments with the Family Support Worker, resistance to participating in the Parental Capacity Assessment, not participating in counselling and unresolved personal and relationship issues, it is the position of the Agency that A. cannot be adequately protected while in the care of C.D.N. (F).”

The Respondent A.N.’s final Plan of Care

[14] The grandfather A.N., with the agreement of his daughter C.D.N. (F), has filed a long term Plan of Care for the child A.. This plan is summarized as follows:

“A. will return to my home if the Judge grants me custody. My home has been assessed on two occasions and has been deemed appropriate for A.. I have been the only father figure in A.’s life up until she was apprehended by the Agency. I know for a fact that I will be a good father figure to her and will see to it that she has every opportunity to succeed in life as she grows.

I will be the sole care provider to A. except for those people I will mention further down in my plan. While C.D.N. (F) will not have an active role in raising A., she will be allowed visits.

I have set up daycare.... A. will learn social skills interacting with other children and learn routines as well as various other activities that will enhance her life.

I have a confirmed job.... no less than five days a week. This will give me financial security allow me to enroll A. in various other activities in the community as she gets older such as recreational activities and other programs that I believe will benefit her.”

[15] The plan indicates he would provide for all health care needs.

“I believe that most parents will play an active role in their child’s life up until they hit their teen years and I will surely be doing this knowing where she is, who she is with and so on.”

[16] This plan further sets out the Respondent A.N.’s willingness to participate in counselling and to plan a proper diet for A. (initially in consultations with the foster home.) He will actively participate in her schooling when she reaches that level. There will be interaction with extended family, including his older daughter A., who will help out with babysitting.

Professional Report

Parental Capacity Assessment

[17] This report was prepared by Susan J. Hastey, Ph.D. and intended to be an assessment on the parenting of the Respondent mother C.D.N. (F). She is not asking for return of the child to her. The report is relevant in that she was parented by her father A.N. since she was nine years old. He is asking for custody of A. in a long term Plan of Care and he indicates it would allow his daughter an involvement with the children.

[18] The assessor makes reference to the grandfather and the mother's parenting and attitudes on pages 51 to 63 inclusive.

“A.N. is stating that C.D.N. (F) will assist him in the parenting of both children should they be placed in his day-to-day care and custody. C.D.N. (F) has reported to this Assessor that she expects to perform the role of parent to her daughter and be in her father's home in “the same way as I always have”. When asked what expectations her father had of her; what expectations they had discussed pertaining to her role as well as his role in the parenting of the children since her return to the A.N. home; C.D.N. (F)'s response to this Assessor was “I will do some cooking, I have to keep my room clean and pick up my things off the bathroom floor”. In this Assessor's opinion, these are a parent's expectations of a teenager and not of an involved parent of two children, aged 1 and 2.

In clinical interviews with A.N. and C.D.N. (F), neither individual took an appropriate level of responsibility for events and issues preceding the apprehension of the two children. Both have stated that they had no responsibility for the

children being reported as having lice, when they entered foster care, nor do they take responsibility for subsequent incidents of lice being found on one of the children after access visits in which their mother was involved.

This pattern of minimization and denial was evidence in both the parenting capacity assessment results of A.N. and C.D.N. (F) and yet many of the characteristics of chronic neglect are evidenced in this Assessor's opinion throughout the documentation of this case, throughout the assessment conducted by this Assessor in this case and in observations of A.N. and C.D.N. (F) during an access visit with the children and in access reports reviewed by this Assessor.

Neither A.N. or C.D.N. (F) have an understanding of the 'attachment' concerns raised by the Applicant Agency and without the acceptance of attachment issues being a concern and without their taking an appropriate level of responsibility for this concern, this Assessor believes the parenting attitudes and lifestyles of both A.N. and C.D.N. (F) will continue to reinforce a home environment that will continue to place the children at risk of chronic emotional, social and physical neglect.

Assessment results of C.D.N. (F) indicate that she has a low tolerance to frustration, an inability to establish appropriate adult boundaries, an inability to place her children's needs as a priority and an inability to commit to a stable and responsible lifestyle for herself and her children.

A.N. can verbalize several positive parenting attitudes and he can verbalize the importance of appropriate parenting behaviours but his own parenting experiences in regard to his parenting of his daughter C.D.N. (F) from the age of 9, do not evidence the application of many of these parenting attitudes or behaviours. This Assessor notes that C.D.N. (F) left school at age 14, has lived a nomadic life for the past several years, been in high risk relationships with male partners and has not taken appropriate levels of parenting responsibility for her two children. In this Assessor's opinion, A.N. has not been able to appropriately parent nor has he actively and appropriately supervised his daughter C.D.N. (F) during her teenage years. He reports that he and C.D.N. (F) have a positive relationship and yet C.D.N. (F) has not been able to model and transfer his reportedly positive parenting behaviours and attitudes to the parenting and parental supervision of her own two children. A.N. assessment results indicate he has great difficulty in admitting to errors in judgment or in his making mistakes in general. This does not

bode well for his cooperation in future services intended to address personal and parenting deficits.

A.N.'s Plan of Care for his two granddaughters is vague; particularly as it relates to his own role, should he gain employment which he states he is actively seeking.

Without a significant period of intense intervention with C.D.N. (F) and significant intervention with A.N., it is unlikely that their attitude toward parenting, C.D.N. (F)'s attitude toward herself and other adults and their attitude and beliefs toward the needs of children, will change. Even given these concerns, this Assessor notes that A.N. has clearly stated during the course of his assessment of parenting capacity that his ultimate goal is to eventually see both children being parented and living with their mother, C.D.N. (F) on a full time basis."

The Law:

"THE LAW:

Children and Family Services Act

Disposition Hearing

41(1) Where the Court finds the child is in need of protective services, the Court shall, not later than ninety days after so finding, hold a disposition hearing and make a disposition order, pursuant to Section 42.

Evidence

(2) The evidence taken on the protection hearing shall be considered by the Court in making a disposition order.

Plan for child

(3) The Court shall, before making a disposition order, obtain and consider a plan for the child's care, prepared in writing by the Agency and including

(a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of protective services;

(b) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of protective services;

(c) an estimate of the time required to achieve the purpose of the Agency's interventions;

(d) where the Agency proposes to remove the child from the care of a parent or guardian,

(i) an explanation of why the child cannot be adequately protected while in the care of the parent or guardian, and a description of any past efforts to do so, and,

(ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and

(e) where the Agency proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long term stable placement;

Consequences of Consent Order

(4) Where a parent or guardian consents to a disposition order being made pursuant to Section 42 that would remove the children from the parent or guardian's care and custody, the Court shall

(a) ask whether the Agency has offered the parent or guardian services that would enable the child to remain with the parent or guardian;

(b) ask whether the parent or guardian has consulted and, where the child is twelve years of age or more, whether the child has consulted independent legal counsel in connection with the consent; and

(c) satisfy itself that the parent or guardian understands and, where the child is twelve years of age or older, that the child understands the nature and consequences of the consent and consents to the order being sought and every consent is voluntary.

The child, the subject of this proceeding, has retained counsel. No guardian ad item has been appointed.

Disposition Order

42(1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

(a) dismiss the matter;

(b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(c) the child shall remain in or be placed in the 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, for a specified period, in accordance with Section 43;

(d) the child shall be placed in the temporary care and custody of the Agency for a specified period, in accordance with Sections 44 and 45;

(e) the child shall be placed in the temporary care and custody of the Agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;

(f) the child shall be placed in the permanent care and custody of the Agency, in accordance with Section 47.

Restriction on Removal of Child

(2) The Court shall not make an order removing the child from the care of a parent or guardian unless the Court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

(a) have been attempted and have failed;

(b) have been refused by the parent or guardian; or

(c) would be inadequate to protect the child.”

[19] The intent of the *CFS Act* is to take the least intrusive alternative, which means making services available, so that the family may be reunited. The circumstances of the parent or parents is the relevant consideration.

[20] In the case before the Court, the mother has indicated she is unable to care for the child. She defers to her father, who has filed a long-term plan for the child A..

[21] In essence, the mother has shifted the definition of family in this particular case.

[22] In *C.A.S. (Halifax) v. Fairn* (not reported) 1992 F.H. (CSA/CAS)(Daley, J.F.C.) discussed the *Act*.

“The purpose of the C.F.S.A. is the protection of children. As a result, with the exception of protective services, the welfare of the child is the top priority. See RE: *Sarty* (1974), 4 N.S.R. (2d) 93 and *Children’s Aid Society of Halifax v. Lake* (1987), 4 N.S.R. (2d) 361 (N.S.C.A.). The C.F.S.A. promotes the integrity of the family but only in circumstances which will protect the child. When the child

cannot be protected as outlined in the C.F.S.A. within the family, no matter how well meaning the family is, then, if its welfare requires it, the child is to be protected outside the family.”

[23] The circumstances of the grandfather are the relevant factors in this case.

Conclusions/Decision:

[24] The Respondent mother’s circumstances are such that she is unable to care for the child. Most of this appears to be because of immaturity and she is transient in nature and financially unable to provide for the child’s needs. She is presently expecting another child. It follows that the question is, can the man who raised the mother since she was nine years old, care for another child, given his parenting abilities to date, as manifested in the type of person his daughter has become, relative to parenting children.

[25] The Respondent grandfather has provided the Court with an extensive long term parenting plan for A.. He has indicated the child’s mother would have access. He has dedicated himself to be a full time parent, although he has to work. There is an indication he would work with the Minister’s agents and accept services that would be provided; services the mother rejected.

[26] The Respondent's argument is that his daughter (the Respondent mother) was (is) a teenager out of control and he could do little with her. He is the one who made complaints to the Minister's agents about her lifestyle. He wants to preserve his family, wants A. to know him and extended family. He believes it is in her best interests.

[27] The Minister's long term plan does not make reference as to why the Respondent grandfather cannot provide for protection and needs of the children. This plan deals with the mother's instability and inability to parent. Discussion of the Respondent grandfather's parenting abilities is contained in the Parental Capacity Assessment prepared by Susan Hastey. She believes:

“Neither A.N. (the grandfather) or C.D.N. (F) (the mother) have an understanding of the attachment concerns raised by the Applicant Agency and without acceptance of attachment issues being a concern and without their taking an appropriate level of responsibility for this concern, the Assessor believes the parenting attitudes and lifestyles of both A.N. and C.D.N. (F) will continue to reinforce a home environment that will continue to place children at risk of chronic emotional, social and physical neglect”.

[28] The grandfather is very articulate in verbalising positive parenting attitudes. He knows what to do, or says he does, but the evidence of “his own parenting

experience in regard to his parenting of his daughter C.D.N. (F) from the age of 9 do not evidence the application of many of these parenting attitudes or behaviours”.

[29] The Respondent grandfather’s offer to take A. is admirable. He truly believes that he has the appropriate parenting abilities to care for her and guide her into childhood. Although age is not the major concern here, he is fifty-four and has had trouble caring for a teenager. He will be some eleven years older when A. becomes a teenager. Evidence is that it was difficult for him to properly parent his daughter now. Eleven more years would make it much more difficult. This is just one minor aspect of why his plan for long term care would not be in the child’s best interest. The major concern is attitude and parenting ability as described by the Parental Capacity Assessment.

[30] The Respondent grandfather’s ability to parent has been observed by the problems his daughter has with her lifestyle and parenting. There is no evidence that he would do any better with his grandchild.

[31] The Court had the benefit of presiding over an interlocutory placement hearing where the grandfather supported the return of A. (and her sister) to the mother, indicating she had changed in a week or two. This is the same person who had made complaints to the Minister's agents about his concern over his daughter's parenting. He has put family honor (keeping children out of the hands of the state) over what is in the best interests of A. and the paramount consideration does not lean towards custody to him.

[32] He is asking for a Supervision Order but the Court is of the opinion that the time line in the *Act* for such an order would not change the situation. That is to say, his parenting style and ability would not be corrected.

[33] In this context, his plan is not reasonable, sound, sensible or well conceived (see *T.B.* and *Children's Aid Society of Halifax* and *S.M.R. and B.*, 2001 NSCA 909).

[34] The Court finds that it is in the best interests of the child A. that she be placed in the permanent care and custody of the Minister without access.

[35] Order accordingly.

JOHN D. COMEAU
JUDGE OF THE FAMILY COURT OF
NOVA SCOTIA