

FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v D.S.*, 2016 NSFC 30

Date: 2016-11-17

Docket: FTCFSA No. 094857

Registry: Truro

Between:

Minister of Community Services

Applicant

v.

D.S. and C.R.

Respondents

Restriction on Publication: Pursuant to s. 94(1) of the *Child and Family Services Act, S.N.S. 1190., c.5.*

Judge: The Honourable Judge Jean Dewolfé

Heard July 21, 2016, August 11, 2016 and Nov 1, 2016, in Truro,
Nova Scotia

Counsel: Andrew Melvin, for the Applicant
Damian Penny, for the Respondent, C.R.
D.S., on her own behalf

By the Court:

[1] The Minister of Community Services (“the Minister) seeks to place a two year old child, D., in the permanent care of the Minister pursuant to the *Children and Family Services Act*, (“the Act”). The Respondent D. S. (“Ms. S.”) is D.’s mother; the Respondent, C. R. (“Mr. R.”) is her father. Mr. R. seeks to have D. placed in his care, and in the alternative that D. be placed in his sister’s care. Ms. S. supports Mr. R.’s plan for the child.

The current proceeding

[2] This protection application began with a referral on February 6, 2015 to Mi’kmaw Family and Children Services, (“the Mi’Kmaq Agency”). As a result, Ms. S. left the home. D. and two other children who resided with Ms. S. and Mr. R. (*ie.* Ms. S.’s son, T., who was 11 at the time, and Mr. R.’s son, C., who was 10 at the time) were placed with Mr. R. on an interim basis.

[3] On April 20, 2015 the Court made a protection finding pursuant to s. 22(2) (b) (g) and (ja) of the Act, to which the respondents consented on a reservation of rights basis. Ms. S. moved back into the home with Mr. R. and the three children were placed with both parties under a supervision order.

[4] On July 23, 2015, on disposition, the children C. and D. were placed in Mr. R.'s care under supervision, and Ms. S.'s son, T., was placed with his uncle under supervision. The parties continued to reside together.

[5] The matter was transferred to the Minister in September 2015 after the parties moved and no longer resided at a First Nations Community.

[6] In November 2015 the parties separated and Mr. R. and C. moved out. In January 2016, D. was placed in Ms. S.'s care subject to supervision. T. remained with his uncle. This arrangement continued until May 11, 2016, when D. was placed with her uncle (and brother T.). This placement for D. broke down shortly thereafter and D. has been in temporary care since that time.

[7] In August, 2016, Mr. R.'s sister, M. R., a teacher in Saskatchewan, visited with Mr. R. and D. She testified that she was willing to have D. reside with her indefinitely if her brother was unsuccessful in regaining custody. M. R. did not contact the Agency thereafter, and did not file a *Maintenance and Custody Act* ("MCA") application as anticipated.

[8] Ms. S. fired her lawyer in October, 2016 and represented herself thereafter.

Evidence

The Minister:

1. Business Records:

Case Recordings and access facilitator notes were entered by consent.

2. Drug testing

Random urinalysis testing for both Respondents from February 2015 to June 2015 were entered by consent. Ms. S initially tested positive for substances. Mr. R.'s tests consistently showed the presence of cannabis.

3. Expert Evidence:

Dr. Risk Kronfli

[9] A psychiatric assessment of Ms. S. by psychiatrist, Dr. Kronfli dated June 2015 was entered by consent.

[10] Dr. Kronfli's report summarizes information provided to him by Mr. S. with respect to a chaotic, abusive childhood and significant mental health issues dating back to her early teenage years. Ms. S. revealed that she had been diagnosed as bipolar and as having borderline personality disorder. She also suffered from

anxiety, very poor concentration, and had experienced anorexia, bulimia and substance abuse. Ms. S. admitted to drug and alcohol abuse. She indicated that she had attended Detox/Rehab programs on several occasions. She also described inconsistent use of medications in the past which had enhanced mood swings and emotional dysregulation. She recounted domestic violence in previous relationships, and in her relationship with Mr. R.

[11] Dr. Kronfli diagnosed ADHD and borderline personality traits and emotional dysregulation. Dr. Kronfli recommended that Ms. S. stabilize her ADHD with medication, and then engage in therapy to address “her longstanding personality issues and emotional dysregulation”.

Carolyn Scott

[12] Ms. Scott, a registered psychologist, provided therapy to Mr. S. from March to June 2015. She and Mr. R.’s counsellor, Edith Verheuvall, conducted four sessions of couples counselling, and Mr. Scott also conducted one therapy session with Ms. S. and her son, T. Ms. Scott’s therapy reports were entered by consent.

[13] Ms. S. revealed numerous addictions issues and previous attendance at several Detox/Rehab centres. Ms. Scott indicated that Ms. S. was initially open to Dialectic Behavior Therapy (DBT), and attending Alcoholics Anonymous or

another recovery group. However, after Ms. Scott's July therapy report (in which she stated her opinion that Ms. S. was at a high risk to relapse) Ms. S. stopped attending therapy, having made very little progress.

Edith Verheuvél

[14] Ms. Verheuvél is a registered social worker who provided therapy to Mr. R. from March to November 2015. Her reports were entered by consent. Mr. R. reported to Ms. Verheuvél that he was having difficulty in coping with Ms. S.'s severe mood swings, which he described as "horrible" in July 2015 when Ms. S. switched medication. He also described Ms. S.'s history of not taking medication consistently.

[15] Ms. Verheuvél was of the opinion that Mr. R. was committed to providing a healthy home environment for his children, but needed help in understanding Ms. S.'s issues, and in coping with her behaviours. She also noted that Mr. R. had brought D. to two counselling sessions and she had observed that he was attentive to her needs, and there was affection between them.

[16] Ms. Verheuvél recommended ongoing counselling for Mr. R. She noted that his employment made it challenging for him to attend.

Minister's Employees:

Shalyn Murphy

[17] The affidavit of adoption worker, Shalyn Murphy, was entered by consent. Ms. Murphy's evidence is that the Minister's plan for this child is adoption, and that the permanency which adoption provides is in a child's best interests. Also in her experience, an access order limits the adoption pool for children who are placed in permanent care. She indicated that there were currently 5 homes in N. S. which would be open to adopting a child of D.'s race, gender and age.

Karen Hunter, Alecia Archibald, Stacey Paupin, Jennifer Hutt

[18] These social workers provided the background and narrative of this proceeding.

[19] **Karen Hunter** is an employee of the Mi'Kmaq Agency. She provided an affidavit and testified as to the Mi'Kmaq Agency's involvement with the respondents and their children from February to September 2015.

[20] She recounted the historic involvement of the Mi'Kmaq Agency involving Ms. S. and T. starting in 2010. She described substantiated concerns of parent substance abuse, parent mental health issues, exposure to domestic violence,

substantial risk of physical harm to T., and child sexualized behavior in T. Ms. S. had attended Detox and had tested positive for numerous illegal drugs as well as marijuana and alcohol. T. was placed in the care of Ms. S.'s mother.

[21] Ms. Hunter also described two referrals to the child welfare agency in Prince Albert, Saskatchewan in 2013 after Ms. S. and T. had moved to that city. These referrals involved physical abuse to T. and domestic violence between Ms. S. and Mr. R. Also Ms. S. complained that Mr. R. was emotionally abusive and abusing drugs. Mr. R. tested positive for marijuana and his son C. was taken into care because of neglect for a short period of time.

[22] Ms. Hunter indicated that the current proceeding commenced as a result of a telephone call in February 2015 from T., then 11 years of age. He reported that Ms. S. was drunk, had hit and yelled at him and had now locked herself in her bedroom with D (who was 6 months old). When police and social workers arrived at the home of Ms. S. she was intoxicated and reported that she had not taken her bi-polar medication for a week. When interviewed, Mr. R.'s son, C. said that Ms. S. had hit Mr. R. and yelled at everyone, scaring baby D. C. also reported that the previous night he had tried to wake up Mr. R. because D. was crying, but that he was unable to do so, and had had to go downstairs to have his uncle come and settle the baby. Mr. R. was present and admitted he had used alcohol and

marijuana the previous evening and that he regularly smoked marijuana, but promised to stop.

[23] The Mi'Kmaq Agency arranged for therapy for both Respondents. They contacted Saskatoon Family and Children Services and local RCMP and discovered that Mr. R. had outstanding warrants in Saskatchewan for uttering threats and assault, which could only be exercised in Saskatchewan.

[24] In April 2015 the parties resumed cohabitation and the Mi'Kmaq Agency agreed to a supervision order in favor of both parents. In May 2015 the respondents separated and C. and D. were placed with Mr. R. The parties reconciled shortly thereafter. In July 2015, T. was placed with his uncle under a Third Party Supervision Order.

Stacey Paupin / Jennifer Hutt

[25] Social worker, Stacey Paupin, confirmed the contents of an Affidavit of her caseworker supervisor, Jennifer Hutt, who did not testify. Several Affidavits of Ms. Paupin were entered. Ms. Paupin confirmed their contents and testified. Ms. Paupin became the long term social worker for the R.'s after the file was transferred to the Minister in October 2015. At that time the parties were residing together.

[26] In November 2015, the Minister learned that Mr. R. and Ms. S. had separated and Mr. R. had taken C. but had left D. with Ms. S. He indicated to Ms. Paupin that he had no concerns about Ms. S.'s ability to care for D., and denied he was using substances. D. was placed in Ms. S.'s care under supervision.

[27] On May 11, 2016, Ms. Paupin was informed by Family Support worker, Colleen Reddy, that Ms. S. appeared unable to care for D. Ms. S. was very unfocused and could not complete her thoughts. She acknowledged she did not feel well and indicated that she had stopped taking her ADHD medication a few days previous. She admitted she could not care for D. D. was placed with Ms. S.'s brother (where T. was residing). This placement later broke down due to Ms. S.'s behavior and that of her mother and sister. On June 10, 2016, D. was taken into temporary care. Ms. Paupin indicated that in July 2016 she learned that Ms. S. had attempted suicide.

[28] In July, 2016 Ms. S. expressed concerns that Mr. R. was abusing alcohol and marijuana again. Mr. R. admitted using marijuana on a daily basis at the time. Ms. S. reported that Mr. R. had been abusive throughout the time when the Mi'Kmaq Agency was involved, but indicated she has not divulged this for fear that C. and D. would be removed from the home.

[29] Ms. Paupin reported that Ms. S. has not had access with D. since July 2016. Ms. S. has said she is attending school full time. She has expressed her belief that the reason D. is in care is because the Minister erroneously believes she is “addicted”.

[30] Mr. R has had regular access at his home. Ms. Paupin reports concerns with lack of supervision during his access, when he has left D. to go outside to smoke and to do laundry. He also does not usually plan activities for his access visits. However, is affectionate with D. and she is comfortable with him.

Colleen Reddy

[31] Ms. Reddy is employed by the Minister as a family support worker. She provided family support work to Ms. S. from November 2015 to July 2016. She also supervised visits from May to July 2016. Her reports were entered and she confirmed their contents and testified. She described Ms. S. as having difficulty focusing and being agitated and defensive. Ms. S. had difficulty understanding the need to interact with D. and stimulate her. Her attendance was sporadic at times, the home was not well maintained and there were often small items in areas where D. could reach them. Ms. Reddy also noted that D.’s speech was very limited, and Ms. S. had inappropriate expectations for D.

[32] Ms. Reddy described a visit to Ms. S.'s home on May 11, 2016 where she believed Ms. S. was under the influence of a substance. She had glossy eyes, her mood shifted quickly and she could not hold a conversation. Ms. Reddy called Ms. Paupin and eventually Ms. S. agreed to have D. go to her brother's home.

Alecia Archibald

[33] Ms. Archibald is D.'s child in care worker. She described significant improvements in D.'s speech since coming into temporary care. She is still aggressive towards other children in her foster home, and is non selective with whom she shows affection. D. is not in a Mi'Kmaq or culturally sensitive foster home as none were in close proximity.

Mr. R.'s Evidence

M. R.

[34] Mr. R.'s sister, M. R., testified and provided an affidavit to the Court. She is a teacher in Saskatchewan and a single mother of three children. She testified she has cared for her sister's children as well. She admitted recreational use of marijuana. She had not met D. until her visit, but was willing to provide a long

term home if Mr. R. was unsuccessful. She indicated she would be making an application for custody, but no application was received from her.

[35] Ms. Paupin testified that the Saskatoon Child Welfare Agency had no child welfare record for M. R. They failed to assist the Minister by attending at M. R.'s home and reporting back to the Minister.

Mr. R.

[36] Mr. R. testified and provided an affidavit.

[37] He indicated that he and Ms. S. continue to live separately and that he has "little regular contact" with her. However, on cross examination he admitted that he and Ms. S. had been sexually intimate approximately two weeks before. He said that he had assumed that Ms. S.'s mental health issues would be resolved during the child protection proceeding, but now realizes she still needs mental health and addictions help before she can care for D. without supervision. He spoke favorably as to Ms. S.'s parenting abilities and potential.

[38] He admitted that except for an approximately two month period in early 2015 that he has been a daily user of marijuana, in the 2 gram a day range. He has

also periodically abused alcohol. He has not used opiates or other drugs except for a brief period of cocaine use over 10 years ago.

[39] Mr. R. testified that he self-referred to Addiction Services and has been attending regularly for the past approximately one month. He has been receiving acupuncture and “wellness” counselling as well through this service. As a result, he testified that he has been able to reduce his marijuana use to approximately 1 gram per week.

[40] Mr. R. also testified that he has continued to be employed as a chef, and has become close friends with several co-workers. He currently resides in a three bedroom house with C. and a co-worker who has recently separated from his partner. However, that roommate would move out if Mr. R. is successful in having D. returned to him. He testified that D. has a bedroom in that home. On cross examination by Ms. S., he indicated that Ms. S. had provided him with D.’s crib and other items.

[41] His employer is prepared for Mr. R. to work daytime hours and he has investigated enrolling D. in daycares which are within walking distance. He indicates that he has a good relationship with Ms. S.’s family and believes that they

would assist him with her care as needed, and would also be a valuable support in exposing her to Mi'Kmaw traditions and activities.

[42] Mr. R. describes his son C. as doing well in school, and as enjoying his little sister's company. Mr. R. testified that he has raised C. since he was very young, but admitted he received support from his family in Saskatchewan.

[43] The Minister cross examined Mr. R. with respect to his lack of planning and supervision for access visits. Mr. R. appeared not to see the need to plan activities during access. He expressed that he thought he was not allowed to take D. outside during access (with the access supervisor). He also did not feel the need to communicate his intentions to go outside to smoke or across the hall to do laundry. He indicated that he expected D. to follow him because she was used to doing that (and indeed she did). His response to criticism that he did not remove choking hazards from D. was that he was about to do so but the access supervisor did it first.

[44] Mr. R. still cares for Ms. S., but expressed that he was unsure as to whether they would reconcile. While he said that he supported supervised access for Ms. S. to D., he clearly had no plan as to how that could work, except to propose himself or her family as supervisors.

[45] He admitted to drinking to excess and engaging in a physical fight with Ms. S. on their wedding night. He also acknowledged he had been charged with assaulting and threatening a former girlfriend in Saskatchewan.

[46] When asked by Ms. S., he agreed that he and Ms. S. had “a plan” that she would go to Detox, and that she could assist him by driving him places, as he does not have his license.

Issue

[47] It was agreed that C. will remain in Mr. R.’s care, and T. will remain with his uncle pursuant to an MCA Order. Therefore this Court is left with determining whether D. should be placed in Mr. R.’s care, or in the alternative, in M. R.’s care.

The Law

[48] This application is made pursuant to the *Act*.

[49] The Court is required to make a disposition that is in the child’s “best interests”: S. 42(1). The factors which the Court must address in reaching this determination are set out in S. 3(2):

“Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests

of a child, the person shall consider those of the following circumstances that are relevant:

- (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of the family;
- (b) the child's relationships with relatives;
- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- (d) the bonding that exists between the child and the child's parent or guardian;
- (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- (f) the child's physical, mental and emotional level of development;
- (g) the child's cultural, racial and linguistic heritage;
- (h) the religious faith, if any, in which the child is being raised;
- (I) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
- (j) the child's views and wishes, if they can be reasonably ascertained;
- (k) the effect on the child of delay in the disposition of the case;
- (l) the risk that the child may suffer harm through being removed, kept away from, returned to or allowed to remain in the care of a parent or guardian;
- (m) the degree of risk, if any, that justified the finding that the child is in need of protective services;
- (n) any other relevant circumstance."

S. 42(2) provides:

"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 failed;
- (b) have been refused by the parent or guardian; or
- (c) would be inadequate to protect the child."

S. 42(3) states that:

“Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child’s community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.”

S. 42(4) provides that:

“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 on 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. *1990, c.5, s. 42.*”

[50] The Minister must prove on a balance of probabilities that there continues to be a substantial risk that the children will suffer harm as per Section 22(2) of the Act.

[51] The test which must be applied is not whether other plans for the child will provide the best parenting, but rather whether a parent can provide “good enough” parenting without subjecting the children to a substantial risk of harm.

Analysis

Mr. R.'s plan

[52] Mr. R. has been present in his daughter's life since birth. He has at times failed to protect her from her mother's substance abuse and mental health issues. He appeared to have lacked insight into the risks posed to D. by Ms. S.'s behavior and conflict between him and Ms. S. He has not always been truthful with the Minister as to the extent of his drug use. He stopped attending counselling, apparently due to work demands. His attendance at Addiction Services is a recent, untested, development.

[53] Moreover, Mr. R. has a history of domestic violence with Ms. S. and previous partners. This has not been fully addressed in counselling. While he does not have a partner at this time, he is still in contact with Ms. S. This Court is concerned that Mr. R. would have difficulty in protecting D. from conflict between her parents. This Court also is not convinced that Mr. R. has sufficient insight into D.'s needs and Ms. S.'s issues. This could result in his failure to recognize the change which would have to occur in Ms. S. before she could have access to D. without supervision.

[54] This Court accepts Mr. R.'s explanation's regarding his supervision of D. during access visits. Upon reviewing the Access Notes, the Court concludes that Mr. R.'s visits demonstrate a close connection and level of comfort between Mr. R. and D.

[55] On the positive side, the Court was impressed by Mr. R.'s commitment to C. who appears to be a well-adjusted 11 year old. He has also committed to his employment, which he appears to enjoy and value. He has obtained suitable housing. The Court accepts his representations that he has the support of his employer and co-workers, and has a good relationship with members of Ms. S.'s family. Mr. R. is Metis and wishes to share and promote both his heritage and her mother's Mi'kmaw heritage with D.

Decision

[56] The Court finds, on a balance of probability the Minister has not shown that D. continues to be at significant risk of harm or neglect should she return to Mr. R.'s care. Mr. R. is committed to providing a healthy home for D. and protecting her and as such I am confident he will follow the direction of the Court and the Minister with respect to Ms. S.

[57] I find that Mr. R. can provide adequate care for D. provided he is not residing with Ms. S. Therefore D. is to be returned to Mr. R.'s care. Ms. S. needs to address her serious and longstanding mental health/medication compliance issues as well as her substance abuse issues before she is able to have unsupervised access to D. Given her history, this is likely to change in the near future. Given the domestically violent and conflicted history of the Respondents Mr. R. must not supervise Ms. S.'s access without the approval of the Minister. It will be Ms. S.'s responsibility to find suitable individuals to supervise her access, perhaps through the Millbrook Wellness Centre or appropriate family members.

[58] Mr. R. appears to be open to voluntarily accessing services. He should continue to access Addiction and Wellness services through Addiction Services. He is not to be under the influence of marijuana and/or alcohol while D. is in his care. In addition, he should attend at Bridges or another counselling service to gain insight into his domestically violent behaviour in the past, and to prevent exposure of his children to domestic violence in the future.

Jean Dewolfe/JFC