

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** *Nova Scotia (Community Services) v. R.R.*, 2016 NSFC 40

**Date:** 2016-08-15

**Docket:** FKCFSA-100120

**Registry:** Kentville, N.S.

**Between:**

Minister of Community Services

Applicant

v.

R.R. & J.R.

Respondents

Editorial Notice:

Edited by Judge for grammar, punctuation & readability

Judge: The Honourable Judge Marci Lin Melvin

Heard August 15, 2016, in Kentville, Nova Scotia

Oral Decision: August 15, 2016

Counsel: Angela Swantee, for the Applicant, M.C.S.  
Darlene Lamey, for the Respondent, R.R.  
Donald Fraser, for the Respondent, J.R.

**By the Court:**

[1] At the conclusion of a protection hearing pursuant to s. 40(4) the Court shall determine on a balance of probabilities whether a child is in need of protective services citing the Court's findings of facts and the reasons for those findings.

[2] Counsel, you all know this, but for the benefit of the Respondents present today, this matter will be determined on a balance of probabilities and I will explain what that means.

[3] There is a civil standard of proof of common law in Canada and that is proof on a balance of probabilities. It is perhaps a difficult concept for some people to conceptualize but I think of it this way: picture scales of Justice. The Court puts the evidence of each party on each side of the scale, and then the Court checks whose evidence has more weight and whose evidence has more truth or more is probable. That balance is a finely weighted balance and it is for the Court to determine based on the evidence, what that balance might be. Hence the term "balance of probabilities."

[4] R.R., by his own evidence, is a grandfather who has put his heart on the line and his life on hold to care for a very traumatized and damaged child. And the child, the Court finds, IS damaged and traumatized. There is no lack of evidence to support that. However, as Ms. Swantee said - I will paraphrase it – whether she is the most traumatized child on the planet or if she is an angel, she deserves that her best interest be looked out for as all children deserve kindness, gentle treatment and respect.

[5] On March 27, 2016, R.R., by his own evidence and admission, had essentially reached the end of his rope, and in his frustration he went into his bedroom, grabbed a belt because the child was going out of the window, and hit the end of the child's bed while the child was on a higher part of the bed.

[6] The Court found some discrepancy in that. There was no indication as to how the child was going out the window. He goes into his bedroom to grab the

belt, comes back and all of a sudden the child was on the bed. If she were going out the window she would have gone out the window.

[7] R.R. said he hit the bed to “scare” the child and the Minister’s evidence is that the child reported that R.R. hit her with the belt. Constable Marshall testified as to that as did agent Trina Warren.

[8] This is what I find perplexing. There is no evidence of a welt or belt mark. If a person is struck with something like a belt wouldn’t there be evidence of a welt or a mark on the skin?

[9] In matters pursuant to s. 22(2)(a) where the child has suffered physical harm with the child self-reporting literally on the day of the alleged offence, the Court is usually inundated with photographs of bruises and welts and other indicia of abuse. The child is generally taken to a medical doctor to be examined and the medical doctor testifies it is evident that the child was slapped with a hand because there is evidence of five fingerprints on the buttocks of the child, or there is evidence that the child was hit with a stick because there is evidence of a bruise on the child’s shin which meets the size of the stick that she said was used.

[10] Yet there is no photographic evidence before the Court in this matter. I find that to be an interesting hole in the evidence.

[11] This child is clearly troubled. This child – it is the evidence of the Minister – was singing and screaming and talking to herself while she was being interviewed by the agent, while she was interviewed by the R.C.M.P, while she was being spoken with or waiting to be spoken with. This child, by the evidence of the Minister, lies and misleads people.

[12] However, that R.R. felt he had to use the belt to scare the child is as bad as using the belt on the child, when one considers the psychological affect that may cause a child.

[13] Based on the evidence, the Court is going to find that the child is in need of protective services, based on the evidence, pursuant to s. 22(2)(b), that

“there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a)”

because I am not sure that R.R. could recognize that at some point he might become so frustrated or he has become so frustrated that something could happen, and further pursuant to (f), that:

“the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child’s parent or guardian does not provide, or refuses or is unavailable or unable to consent to services or treatment to remedy or alleviate the harm;”

and (g)

“there is a substantial risk” of the above.

[14] The Court finds regarding J.R., that she consents to a finding pursuant to s. 22(2)(g). Is that correct Ms. Swantee?

[15] The Court reserves the right to provide reasons in writing.

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Marci Lin Melvin, JFC