FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. W.R.*, 2014 NSFC 30

Date: 2014-02-17
Docket: FWCFSA-084067
Registry: Kentville, N.S.

Between:

M.C.S.

Applicant

v.

W.R. & L.C.

Respondents

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

Judge:	The Honourable Judge Marci Lin Melvin
Heard	February 12, 13 & 17, 2014 in Kentville, Nova Scotia

Counsel:	Angela Swantee, for the Applicant, M.C.S. Donald Fraser, for the Respondent, W.R. Kathryn Dumke, for the Respondent,, L.C.

By the Court:

[1] This is an Application by the M.C.S. to terminate their involvement with this family in favour of the Respondent, L.C. having primary care of the child.

[2] It is also an Application under the ***Maintenance and Custody Act*** for custody of the child of the parties, which – as this Court often refers to it – "tailgates" the **Children & Family Services** application.

[3] The parties agreed that rather than present what would amount to the same evidence twice, the Court could use the evidence adduced at the **Children & Family Services** hearing for the ***Maintenance and Custody Act*** matter.

[4] I would like to touch on the human component of this case:

[5] L.C. is a brave and courageous human being. This Court cannot imagine how difficult her life must have been leading up to her decision to transition; how much courage it took to evolve from one gender to another.

[6] And while she was going through this the circumstances of her child's life changed, in that it was no longer possible for the child to live with her biological mother, and L.C. – somewhat seamlessly it seems – took over the responsibility of raising their child.

[7] This strength, and sense of self, is remarkable.

[8] But L.C. isn't the only heroine here.

[9] W.R. is also a very courageous human being. She happened to fall in love with a man, have a relationship with him, have a child with him, and recognize, at some point that this man believed his gender was an issue between them. In spite of this, or perhaps because of this, what is remarkable is neither party focused on L.C.'s transition in this hearing.

[10] Excluding the **Children & Family Services** application, this was simply a matter between two parents who loved their child, and conducted their cases with the restraint and delicacy a Court always hopes to hear, both clearly more focused on the best interests of their child.

[11] I would like to commend counsel for the Respondents, for the excellent presentation of their client's respective positions.

[12] It is clear to the Court that the child has the good fortune of having two strong and caring mothers.

[13] Ms. Swantee, for the Minister, also presented an excellent case and argued for termination of this Court order, as is in the best interests of the child, the least intrusive option, promoting the integrity of the family, and that while the child is with L.C. and is not a child in need of protection.

[14] The Court has reviewed all of the evidence before it, and terminates Ministerial involvement for all of the reasons above noted pursuant to the **Children & Family Services Act.**

[15] The Court has also reviewed all of the same evidence in light of the **Maintenance and Custody Act.**

[16] The Court orders as follows:

[17] The child will be in the joint custody of L.C. and W.R.

[18] That both parents will take the parent education program offered by the Court.

[19] That both parents will communicate kindly and respectfully with one another at all times, especially in the child's presence.

[20] That the parents will keep a parenting time journal – writing "Dear Mommy" letters, and this journal will be kind, civilized and respectful and be passed back and forth as the parents exercise their parenting time with this child. Please remember that someday in the future these journals will be an important keepsake for your child.

[21] The parents will keep the other informed of any event, illness, medical emergency, school issues, school events, or extra-curricular activity or event while the child is in their care.

[22] L.C. will have primary care of the child.

[23] W.R. will have supervised parenting time with the Access and Exchange program – for the specified 22 hours. The Court believes this will transition into bi-weekly weekend access minimum between W.R. and the child but would prefer more evidence that this is in the child's best interest. The Court very impressed with W.R.'s evidence and finds W.R. has come a long way, has dealt with a lot of emotional/psychological issues but there is still some evidence that the Court found concerning with respect to W.R.'s ability to cope somewhat with the children. The Court requires more evidence that W.R. has gotten past that, before unsupervised access is ordered, but unsupervised access is definitely foremost in the Court's thoughts. I want a report with respect to the Supervised Access and Exchange program.

[24] The Court is also going to order a stand-alone children's wish assessment. I know that the child is only five but I want to know what she thinks about her life in the times spent with W.R. and what she feels about what times she would like to have with W.R. Not that a child's wish assessment is a very big piece of the puzzle but it is a piece of the puzzle and in spite of the child's age, the Court's main focus is what is in the best interest of the child and the Court wants to hear the voice of the child whenever possible. The Court waives the cost of this report to the respondents. It will be paid for by the Province of Nova Scotia.

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Marci Lin Melvin, J.F.C.