FAMILY COURT OF NOVA SCOTIA

Citation: *Mi'kmaw Family and Children Services of Nova Scotia v. N.K.*, 2017 NSFC 27

Date: 2017-12-14
Docket: FBWCFSA-107095
Registry: Bridgewater

Between:

Mi'kmaw Family and Children Services

Applicant

v.

N.K. and A.K.

Respondents

Judge:	The Honourable Judge Marci Lin Melvin
Heard	October 30, 2017, in Bridgewater, Nova Scotia
Counsel:	Paul Morris, for the Applicant David Hirtle, for the Respondent N.K. Claire Levasseur for the Respondent A.K.

By the Court:

[1] Let me say at the outset that the Court reserves the right to provide reasons in writing.

[2] This is a protection application brought by the Agency and filed on October 6, 2017. The Agency seeks a finding that there are reasonable and probable grounds that the three children of the Respondent Parents are in need of protective services pursuant to section 22(2), paragraphs (b), (i) and (k). Further, the Agency seeks an Order placing the two oldest children with a family member pursuant to section 39(4) (da) of the Act, and the youngest child in the temporary care and custody of the Applicant, as well as a Parental Capacity Assessment pursuant to s. 39(4)(g), co-parenting counselling, support services, with supervised parenting, and other conditions.

[3] The Respondent Father takes no position with respect to a finding or placement. The Respondent Mother has filed an affidavit seeking the children be returned to her care, or placed with a family member.

[4] This is the completion of the interim hearing, otherwise known as the 30-day stage. At this stage the Court is tasked with determining if, based on the evidence,

there are reasonable and probable grounds to believe the children are in need of protective services. The Court has to find not only that there are reasonable and probable grounds to believe the children are in need of protective services, but there is a substantial risk that harm will occur.

[5] Pursuant to section 39(7), the Court shall not make an order effectively removing a child from the care of the parents as set out in s. 39(4)(d) and (e), unless the Court is satisfied that there are reasonable and probable grounds to believe that there is a substantial risk to the child's health or safety and that the child cannot be adequately protected by an order pursuant to clauses (a), (b), or (c).

[6] "Substantial risk" pursuant to section 22 of the Act means "a real chance of danger that is apparent on the evidence."

[7] Section 39(11) makes note that the Court may admit or act on evidence that the Court considers credible and trustworthy in the circumstances.

[8] This is not the first time that these parents have been before the court pursuant to an application under the Children and Family Services Act. The latest two applications were in fact terminated by the Court on the consent of all parties on September 25, 2017. The Court was advised at that time that the Agency sought to terminate and the Respondents had agreed to enter into an early intervention

agreement for continued services and counselling and family support, and were ready to co-parent.

[9] Three days after the terminations, a referral was received by the emergency duty worker from an RCMP officer in the Chester detachment. The RCMP attended the home of the Respondent Parents on that date for a domestic violence incident after being contacted by the Respondent Mother.

[10] According to the Respondent Father, the Respondent Mother had hit him while he was holding one of the children. All three children were present for the altercation.

[11] The Respondent Mother confirmed that an altercation had taken place but her evidence was she did not hit the Respondent Father while he was holding one of the children but the children were present.

[12] On September 29, 2017, the Agency worker spoke with a family member who advised the worker that she had heard about the fight the Respondents had had the night before.

[13] She further advised that two weeks previous she had been told that the Respondent Mother had pushed or shoved the Respondent Father while he was holding the child and knocked the child out of his arms.

[14] This is disturbing as this happened just prior to the matter being terminated by the Court.

[15] In the latest altercation, the Respondent Father was alleging that the Respondent Mother hit him twice in the face and then she bit him.

[16] In the Respondent Mother‘s affidavit she says that they weren’t having a fight. She goes on to say that the Respondent Father was holding her in a headlock, and she bit him so he would let go of her, she was afraid and needed to be out of the headlock to attend to her children and leave the home.

[17] It is disturbing to the Court that the Respondent Mother would say that they were not having a fight. What other word would describe what happened? This lack of ability to accept responsibility, or call an egg an egg, is troubling.

[18] There is also evidence in the Respondent Mother’s affidavit that the parties had been fighting over jealousy issues.

[19] The Agent for Mi’kmaw and Family Services filed a subsequent affidavit addressing the statements in the Respondent Mother’s affidavit.

[20] The Court notes at paragraph 10 when the agent met with the Respondent Father in October 25, 2017, he said he was having a very difficult time with no contact with the Respondent Mother as they had spent seven years together.

[21] The Court accepts the evidence of Agency, which purports to come from the Respondent Father, and is contained in the protection application affidavit, that he was struck by the Respondent Mother while holding a child.

[22] Based on the affidavit evidence of both the Applicant, and the Respondent Mother, it is clear to the Court and the Court so finds that these parents were involved in a violent physical fight with one another. The Court finds that the children were exposed to this fight. The Court finds that whether or not the child was in the Respondent Father's arms, or playing on the floor as suggested in the Respondent Mother's affidavit, given the sheer degree of physical violence, there is a substantial risk that any of the children could have suffered physical harm.

[23] The Court finds that these parents who are only just released from court proceedings involving the Applicant, should have known better than to allow their anger and jealousy and whatever else that triggered this physical display of violence, to get the better of them. They should have put their children's best interests first. They did not.

[24] Counsel for the Respondent Mother argued that the children should not be separated. Counsel further argued that her client had done exactly what was expected of her, taking the children to a safe place after a physical altercation in front of the children.

[25] The Court does acknowledge, as did counsel for the Minister, that the Respondent Mother‘s actions were a positive. However, the Court finds that these actions as well meaning as they were after the fact, does not hinder the Court’s opinion of substantial risk of harm to these children.

[26] These parents had only had the children with them for three or four days. These children were supposed to be the star on their Christmas tree. And yet, these parents could not control their tempers.

[27] For these parents to have a consent termination of not one but two applications under the Children and Family Services Act was a gift. They got their children back. The Court finds that these parents squandered that gift.

[28] The Court is not convinced based on the evidence that these parents can stay away from one another and not put their children at risk.

[29] The Court finds there are reasonable and probable grounds to believe that the children are in need of protective services pursuant to section 22(2) (b) of the

Children and Family Services Act. The Court finds that there is a substantial risk of harm should the children be returned to the care of either one of these parents.

[30] Furthermore, the Court is keenly aware that the children are indigenous children. And it would be preferable if all children could be kept together, and could be in care where the foster parents are aware of the cultural needs of these children. Ultimately, the Court has no authority to order placement.

[31] However, the Court strongly urges the Agency to find appropriate care for these children where they can be together and where their cultural needs are met.

[32] If the Court had found a way to return these children to the Respondent Mother, the Court would have. For now, it is the Court's view that the parents need to show that they can be away from one another, because clearly they do not function well when they are together and their horribly dysfunctional relationship is what has caused the lives of these children to be thrown into disarray.

[33] The Court orders that the two oldest children be place with a family member pursuant to s. 39(4) (da) of the Act, and the youngest child be placed in the temporary care and custody of the Applicant.

[34] A Parental Capacity Assessment pursuant to s. 39(4)(g) with either a cultural component or a Parental Capacity Assessment and a further Cultural Assessment are ordered, as agreed upon by counsel.

[35] The Court further orders services as sought in the Agency's application.

[36] The Respondent Mother is to have parenting time with the youngest child three times a week and the oldest children (with or without the youngest child) two to five times, for a total of five times a week.

Marci Lin Melvin, JFC