

FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. J.R.*, 2018 NSFC 18

Date: 20180918

Docket: FKCFSA-100120

Registry: Kentville, N.S.

Between:

MINISTER OF COMMUNITY SERVICES

Applicant

v.

J.R. and R.R.

Defendants

**Restriction on Publication: 94 (1) of the *Children and Family Services Act*,
*S.M.S. 1990, c.5***

Judge: The Honourable Judge Jean Dewolfe

Heard: August 14, 2018 in Kentville, Nova Scotia

Decision: September 18, 2018 (Written)

Counsel: Ms. Angela Swantee, for the Applicant
Ms. Cheri Killam, for the Respondent, J.R.
Mr. Marc Charrier, for the Respondent, R.R.

By the Court:

[1] This is an application by the Minister of Community Services (“the Minister”) to place H., who is almost 12 years of age, in the permanent care of the Minister pursuant to the **Children & Family Services Act** (“the Act”), S.N.S. 1990, c.5.

[2] The Respondent, R.R. is H.’s maternal grandfather. H. resided with R.R. from 2012 to 2016.

[3] The Respondent, J.R. is H.’s mother.

[4] H.’s father has not been in her life, is not a party and has not participated in the proceeding.

[5] In February 2018, R.R. indicated on the record that he consented to H. being placed in the permanent care and custody of the Minister. He did not participate in the hearing, but was represented by counsel who appeared as a “watching brief.”

[6] On January 15, 2018, J.R. also consented to H. being placed in permanent care. However, on February 28, 2018 she revoked that consent and indicated she would be supporting a family placement with her mother, D.P. D.P. later withdrew

her placement plan, and J.R. put forward a plan for H. to reside with her and her partner, M.W.

[7] The Minister did not support placement with D.P. and does not support placement of H. with J.R. and M.W. The Minister continues to seek a permanent care and custody order.

BACKGROUND

[8] Pursuant to S. 96 of the Act, evidence of a previous child protection proceeding in which J.R., R.R. and M.W. were Respondents, which had commenced on October 15, 2013 and terminated on March 20, 2015 (“the previous proceeding”), was admitted as evidence in the current proceeding. This evidence consists of various applications, affidavits and orders, as well as a Psychoeducational Assessment of H., completed in March 2014.

[9] The Affidavits of the initial social worker in the previous proceeding, **Kristen Joy**, describe J.R.’s child protection history.

[10] H. was the subject of child protection proceedings in N.B. in 2010, as a result of allegations of lack of supervision and neglect by J.R. and excessive force being used by J.R.’s former partner, M.L., with respect to H. H. was placed with

J.R.'s mother, D.P. until J.R. and M.L. moved to N.S. in late 2010. H. was then placed with a great aunt and later with R.R.

[11] The Minister in N.S. received referrals in 2011 as to domestic violence between M.L. and J.R., and physical violence by M.L. In September 2011, M.L. and J.R. separated. H. remained in R.R.'s care except on weekends until December 2011, when she returned to J.R.'s care.

[12] In 2012, the Minister received several referrals regarding J.R. and her new partner, M.W. In October 2012, the Agency received a referral regarding an altercation between M.W. and neighbours. They requested that M.W. not reside with H. In October 2012, J.R. placed H. with R.R., and J.R. continued to live with M.W.

[13] In December 2012, H. reported to R.R. that M.W. had sexually touched her.

[14] Ms. Joy learned from Manitoba child welfare records and authorities that M.W. had been sexually abused as a child, had been diagnosed with ADHD and other mental health conditions, and had been treated at a facility for sex offenders. J.R. minimized the concerns arising from M.W.'s background. M.W. admitted having mental health treatment as a child, but denied knowledge of having mental health issues other than ADHD, or a history of sexual assault.

[15] The Affidavits of Ms. Joy and **Devin Ogilvie** (who became the parties long term social workers in early 2014) describe the Agency's efforts to encourage R.R., J.R. and M.W. to participate in services to address concerns, and their inconsistent engagement.

[16] Ms. Ogilvie reported that R.R. made progress in family support work in 2014 – 2015, in particular with respect to appropriate discipline. However, the Agency continued to have concerns that J.R. was allowing indirect contact for H. with M.W.

[17] In March 2015, the previous proceeding was terminated, with H. remaining in R.R.'s care, and with the Agency continuing to provide supervised access for J.R.

[18] On March 27, 2016, H. was taken into care. The Minister initiated the current proceeding following a report from J.R. that H. had told her that she had been hit by R.R. with his belt. R.R. initially admitted that he had done this, but later denied it. H. also disclosed that RR. had left her alone, often for lengthy periods of time or at night.

[19] H. has remained in temporary care since 2016. She has not had visits with R.R. since late 2017. H. did not have in person contact with J.R. until May, 2018, when J.R. and H. began joint counselling.

EVIDENCE

1. The Minister's Evidence

[20] **Sheila Bower-Jacquard**, psychologist, prepared a psychoeducational assessment for H. in 2014. At the time, H. was 7 years old and in Grade 2. Her teachers noted behavioural issues when she did not get her own way, and “she was noted to be oppositional and defiant”. Ms. Bower-Jacquard did not diagnose H. as having a learning disability, but noted that her deficits could be caused by lack of attention or behavioural/emotional control.

[21] Ms. Bower-Jacquard also prepared a Needs Assessment for H. dated September 2016, which was admitted by consent.

[22] Ms. Bower-Jacquard identified attachment and trauma issues as contributing factors to H.'s challenging behavioural issues and low level chronic depressive symptoms. She stated (at page 11):

“It is my sense that H. is using her moods and behavior to try to control her environment and when unsuccessful her beliefs of not being able to count on others is reinforced and strengthened so the unhealthy interactive patterns

continue. This can lead to poor attachment as H. likely feels repeatedly disappointed and feels she can't trust others to meet her needs. Thus, she often tries to control her environment to have her needs met. I suspect that she had too much freedom while living with her mother and grandfather and was not able to be a little girl with age appropriate limits who felt safe. If this is the case it is likely contributing to the above mentioned pattern of poor attachment.

H. is very distressed by having to leave her grandfather and not having contact with him; however she also acknowledges that his abuse was scary for her. H. has had a lot of uncertainty, disappointments, and abuse in her short life, which also interferes with healthy attachment. Her moods are rapidly changing which is confusing to her and others, particularly those caring for her. Their confusion results in further confirmation that she can't count on others and that they do not understand her. Her dysthymic presentation (low level chronic depressive symptoms) is likely seen the most often in her demanding irritability and bitter discontent. A low tolerance for frustration is notable, which also contributes to poor attachment and poor relationship dynamics. She has conflicting urges to act out and to curtail her resentment. Without significant intervention and or changes in her life, it is possible that H.'s issues will become more pronounced and her behaviours will become more delinquent in the future."

[23] Ms. Bower-Jacquard recommended that those caring for H. use a "trauma informed" approach, and that she needed a "safe, structured, calm and nurturing environment." She indicated that parenting H. would likely be "very draining", and that H.'s caregivers would require support and respite assistance.

[24] **BriAnna Simons**, clinical social worker, was qualified by consent as an expert to provide opinion evidence in the area of counselling and therapeutic services for children. Ms. Simons has provided counselling for H. from October 2013 to December 2015, and from May 2016 to present. She testified and identified five status reports which she had provided to the Minister between 2016 and 2018.

[25] Ms. Simons noted that connection to family is very important to H. and she has been grasping at this connection throughout her counselling. H.'s focus since February 2018 has been on connecting with J.R.

[26] Ms. Simons testified that H.'s attitude with respect to M.W. has changed over time. In 2013, H. had presented as being angry at and afraid of M.W. She had disclosed to R.R. and to Ms. Simons and others that M.W. had touched her vagina and hit her with a belt. Recently H. has said she lied about M.W. touching her vagina, but she maintains that he did hit her with a belt.

[27] Ms. Simons noted that rules were lacking for H. in both J.R.'s and R.R.'s care. She is susceptible to influence and wants to do what others want her to do in order to feel loved and part of a family. Ms. Simons noted that H. is aware of the negative relationship between J.R. and R.R., and it was clear that R.R. had shared adult issues and concerns with H.

[28] Since May 2018, Ms. Simons has facilitated joint sessions with H. and J.R. This has been very helpful for H. who was missing details of her childhood history, and needed answers about why J.R. had made certain choices. Ms. Simons noted that J.R. had been very cooperative and insightful. She has expressed regret for actions she took in the past and has acknowledged H's needs. J.R. and H. have

had fun together during their sessions, and H. has said she is happy when she is around her Mom.

[29] Ms. Simons expressed her deep concern that if H. does not have stability, this will “wreck” her emotionally. She desperately needs a sense of connection to someone.

[30] In Ms. Simons’ opinion, H.’s caregivers need the knowledge to work through H.’s challenges, and she felt that J.R. could do this with her help. Ms. Simons was very clear that joint counselling between H. and J.R. must continue regardless of the outcome of this hearing.

[31] Ms. Simons expressed that there was still a lot of work to do between H. and J.R. She had never been asked to do sessions with M.W. so she was unable to speak to his ability to support J.R. while H. is in her care, or H’s response to M.W. if she was residing with J.R.

[32] Affidavits of Social Workers **Trina Warren**, **Kathleen Archibald** and **Devin Ogilvie** were admitted by consent. Their affidavits chronicle the early months of this proceeding. Much of their evidence focused on concerns relating to R.R. and his lack of progress with services.

[33] The affidavit of **Constable Chris Marshall** dated July 30, 2016, was admitted by consent. Constable Marshall described attending at R.R.'s home on March 27, 2016 after receiving a report that H. had been hit by R.R. with a belt. He reported a conversation with R.R. in which R.R. admitted hitting H. with his belt "as discipline."

[34] **Lael Aucoin** has been the long term worker for the parties for approximately the past year. She provided four affidavits and was cross examined.

[35] She testified that the Agency will support ongoing therapeutic visits for H. and J.R. with BriAnna Simons, as long as Ms. Simons feels that is necessary for H.

[36] Ms. Aucoin reported on the "ups and downs" that H. has had in her foster home. Her behavior has often been challenging in the home and at school, including suicidal threats, sexualized behavior, self-harm, and oppositional, demanding behavior. She has changed her mind about wanting to stay in her current foster home several times since she was placed there in 2016. Ms. Aucoin testified that the uncertainty as to her future placement has caused H. much anxiety and led to negative behaviours.

[37] Ms. Aucoin reported on the Minister's decision to not support a family placement with D.P.

[38] She also noted H.'s concerns prior to re-establishing contact with J.R. in May 2018, that her Mom might not have "changed".

[39] **Loralee Smith**, child in care social worker has worked with H. for almost two and a half years and has seen her on average, once a month. Ms. Smith testified that H. "does better" when she does not have visits with R.R. or J.R. She also noted that H. does well academically and has improved in terms of peer relationships. She described H. as having difficulty with rules and said she likes to "call the shots." She noted that H. had "flip flopped" on whether she liked her current foster placement.

[40] Ms. Smith noted that H. has consistently maintained that R.R. hit her with a belt and that she was scared of M.W. when she was younger, because he had hit her. She acknowledged that H. had recently recanted her allegations that M.W. had sexually touched her.

[41] **Margaret MacMillan**, adoption social worker, filed an affidavit and was cross examined. She testified that there should not be a problem placing H. for adoption but that Court ordered access would limit the number of potential adoptive homes. She confirmed that the Minister has agreed that H. and J.R.

should continue to have joint counselling with Ms. Simons. However, access beyond that would be up to H.'s adoptive parents.

2. The Respondent J.R.'s evidence

[42] J.R. filed the affidavits of **Dr. Judith Puetz** and **Candy O'Brien**, which were admitted by consent.

[43] **Dr. Puetz** has been J.R.'s family doctor since 2012. She reported that J.R. has Type 2 diabetes (insulin dependent), hypertension, sleep apnea, chronic pain, gastroesophageal reflux disease, hypothyroidism, depression, anxiety and a smoking addiction. She also diagnosed J.R. as being "morbidly obese". She noted that J.R. is unable to perform personal care, such as bathing and relies on M.W. and VON nursing to do this for her. J.R. has lost some weight in the last year, but she still weighs over 200 kgs. She is on the waiting list for bariatric surgery, but would have to lose a lot of weight and stop smoking before she could have that surgery.

[44] Dr. Puetz indicated that J.R.'s only medical limit is her personal care which would not impact on the care of a 12 year old.

[45] **Candy O'Brien**, a housing support person with Canadian Mental Health Association, has worked with J.R. since 2012. She reported that J.R. and M.W. were homeless in 2012, but have made “great strides” in improving their living situation. She described J.R.’s home as neat and tidy and noted she is a great cook who seeks to eat healthy. She described J.R. as “lovely and intelligent”, as well as resilient and persistent, and indicated that J.R.’s mental health had improved significantly since 2012.

[46] **Rev. Dr. Steven Hopper** swore an affidavit, and was cross examined. He indicated that he has known J.R. and M.W. since early 2018. Since that time they have taken courses and attended worship services at his church.

[47] **J.R.** submitted an Affidavit dated March 21, 2017 in which she supported H.’s return to R.R.’s care. At that time she was not having any access with H.

[48] On July 11, 2018, J.R. filed a second affidavit and Plan of Care seeking to have H. placed in her care. Exhibit “8” to J.R.’s second affidavit was struck by consent.

[49] J.R. related that she had very little contact with R.R. when she was growing up. She described her contact with him as being negative and as unsupportive. She described the concerns she had had for H. while in R.R.’s care, and the

referrals she had made to the Agency as a result. She explained her continued support for H.'s return to R.R.'s care as follows:

“In April of 2017, in spite of my own problems with (R.R.), I supported (R.R.) resuming care of H. rather than having her placed in Foster Care because I was convinced H. needed and wanted to be connected with her family.”

[50] J.R. indicated that she has always wanted to re-establish her relationship with H., but she has respected H.'s wishes and the Agency's directions.

[51] She speaks positively about the therapeutic sessions with H. and Ms. Simons. She clearly loves H. and is happy to be rebuilding her relationship with her. She is willing to continue to engage in this counselling.

[52] J.R. attached photos of her two bedroom home, which was well maintained and appropriate for H. She plans to take H. to church, and expose her to the church youth group and camps.

[53] J.R. states that she is willing to participate in any recommended services, and that she and M.W. are registered to begin parenting classes and attachment therapy classes in the fall. They attended a brief presentation on children with anxiety this summer. She notes that she is committed to accepting “support and instruction” on boundary setting, and training on trauma informed parenting.

[54] J.R. describes her Mother, her church and the Kids Action Program as supports. She identified friends through church who are willing to provide respite care for H. as needed.

LAW

[55] The law in this matter is pursuant to the Act prior to its recent amendments.

The Court is required to make a disposition that is in the child's "best interest": 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; the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;**
- (e) the child's physical, mental and emotional level of development;**
- (f) the child's cultural, racial and linguistic heritage;**
- (g) the religious faith, if any, in which the child is being raised;**
- (h) the merits of a plan for the child's care proposed by an agency, including proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;**
- (i) the child's views and wishes, if they can be reasonably ascertained;**
- (j) the effect on the child of delay in the disposition of the care;**
- (k) 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;**
- (l) the degree of risk, if any, that justified the finding that the child is in need of protective services;**

- (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 asking 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.

[56] Past parenting history is relevant to the present circumstances: *N.S. Minister of Community Services v. L. (S.E.)* (2002 NSCA 55).

[57] The Minister must prove on the balance of probabilities that there continues to be a substantial risk that the child will suffer harm pursuant to s. 22(2) of the Act.

[58] The test 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 child to a substantial risk of harm.

DECISION

[59] The Minister has proven on a balance of probabilities that J.R.'s plan will subject H. to a substantial risk of physical and/or emotional harm.

[60] J.R. has not had H. in her care since 2012. She has had sporadic access since that time. Her current access is in the form of joint counselling sessions with H. While this has been beneficial and positive to H., it is very limited access in a controlled setting, and it began less than 5 months ago.

[61] J.R. exposed H. to an unsettled, chaotic life from 2010 to 2012. J.R.'s home life with both M.L. and M.W. exposed H. to conflict. H. was also exposed to M.W.'s behaviours and conflict with neighbours in 2012. H. had been placed with D.P., J.R.'s aunt and R.R. for periods of time prior to her placement with R.R. in 2012.

[62] J.R. chose not to address the concerns regarding her mental health, parenting abilities, relationship and home. Instead J.R. placed H. with R.R., the father she knew to be unsupportive and uncommitted.

[63] J.R. was dependent on M.W. in 2012, and continues to be physically and emotionally dependent on him today. There is no evidence that M.W. has participated in any therapeutic or mental health services since 2012, or that they have done couples or domestic violence counselling. Candy O'Brien's evidence is that J.R.'s mental health has improved, and Dr. Peutz indicates that she is compliant with medication for her depression and anxiety. The Court has no information as to M.W.'s circumstances.

[64] This Court has serious concerns as to how M.W. would react to H. returning to live with him and J.R. This would undoubtedly put a strain on J.R. and M.W.'s relationship. H. can be challenging and has high needs. I accept Sheila Bower-Jacquard's evidence that H. needs a calm, safe, structured home, and trauma informed parenting. While J.R. says she and M.W. are willing to learn about how to provide structure and trauma informed parenting, this has not yet occurred.

[65] J.R.'s support system appears to be somewhat stronger today than in 2012. However, her church connection is relatively new and untested, and her mother lives in N.B. and does not visit frequently. Practically speaking, M.W. would still be her primary support.

[66] J.R.'s health is stable but her conditions limit her mobility. She would require back up and support from M.W. to care for H. This Court has serious concerns as to whether this would be acceptable to H. or in her best interests. H. maintains that M.W. hit her when she resided with him and J.R. Until recently she continued to express fear of him.

[67] H. is almost twelve. She desperately wants a relationship with her Mother. Connection to family is very important to H. I accept Ms. Simon's testimony that H. needs a long term, stable connection to someone she can rely on soon.

Otherwise the emotional harm to H. will be severe. On the basis of the evidence before me, I cannot find that J.R. has the ability to provide a safe, stable home for H or the parenting abilities to safely parent H. Return to J.R.'s care at this stage could be emotionally devastating and/or put H. at physical risk.

[68] J.R. was not part of H.'s life and it was not anticipated that she would put forth a Plan of Care. Therefore, J.R. was not offered services other than supervised access and joint counselling with H. J.R. did not request other services. Therefore, I find that the Minister has discharged its responsibility pursuant to s. 42(2) of the Act.

[69] The Minister's uncontradicted evidence is that an access order post permanent care would impair H.'s permanent placement opportunities. No special circumstances exist pursuant to s. 47(2)(d). Therefore, there will be no order for access.

[70] The time lines in this proceeding have expired. No family placements other than J.R. exist at this time. H. needs a long term, stable, appropriate placement now. The Minister has discharged its burden of proving on a balance of probabilities that a less intrusive alternative, *i.e.* placement with J.R., cannot adequately protect H. from substantial risk.

[71] Therefore, H. shall be placed in the permanent care and custody of the Minister.

Jean Dewolfe, JFC