

FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Health and Wellness) v. R.T., J.VZ. (GAL)*, 2020 NSFC 13

Date: 2020-10-30

Docket: Kentville No. 118162

Registry: Kentville

Between:

Minister of Health and Wellness

Applicant

v.

R.T. by Jon van Zoost, *Guardian ad litem*

Respondents

Judge: The Honourable Judge Jean M. Dewolfe

Heard September 16, 2020, in Kentville, Nova Scotia

Written Submissions: September 10, 2020 & September 15, 2020 for the Applicant
August 17, 2020 & September 14, 2020 for the Respondent

Counsel: Donald Urquhart, for the Applicant
Daleen van Dyk, for the Respondent by his *Guardian ad Litem*, Jon van Zoost

Decision: October 30, 2020

By the Court:

[1] This decision arises as a result of a dispute regarding the wording of an Order pursuant to the *Adult Protection Act* (“APA”), related to the Guardian’s role in the face of proposed changes to R.T.’s placement.

Background

[2] R.T. was found to be an adult in need of protection pursuant to the *APA* on April 30, 2020 (“the April Order”). Mr. Jon van Zoost was appointed as *Guardian ad litem* for R.T. (“the *Guardian*”), and he consented to the finding in the April Order.

[3] Paragraph 1 of the April Order provided that:

1. Pursuant to Section 10(5) of the *Adult Protection Act*, the Minister is hereby authorize to provide R.T. with services, including placement in a facility approved by the Minister, which will enhance the ability of R.T. to care and fend adequately for himself or will protect him from neglect, provided that the services and facilities are consistent with appropriate psychiatric or medical advice and recommendations.

[4] Section 9(3) of the *Act* states as follows regarding placement:

- 9 (3) Where the court finds, upon the hearing of the application, that a person is an adult in need of protection and either
 - (a) is not mentally competent to decide whether or not to accept the assistance of the Minister; or

- (b) is refusing the assistance by reason of duress, the court shall so declare and may, where it appears to the court to be in the best interest of that person,
- (c) make an order authorizing the Minister to provide the adult with services, including placement in a facility approved by the Minister, which will enhance the ability of the adult to care and fend adequately for himself or which will protect the adult from abuse or neglect;

[5] On August 20, 2020, the *Guardian* applied for a review of the April Order and sought an Order that R.T. not be moved from his current placement. The *Guardian* proposed that the Court Order specify:

- (1) that (the *Guardian*) would be “consulted about any proposed relocations or other aspects of the care plan during this proceeding and that (the *Guardian*) be able to speak with the Department of Community Services workers as well as the Adult Protection workers regarding (R.T.’s) care plan, a copy of which should be provided to (the *Guardian*); and
- (2) that R.T. would participate in this proceeding through (the *Guardian*).

[6] The *Guardian* filed two affidavits dated August 17, 2020 and October 19, 2020 setting out his interactions with R.T., his caregivers, and various health professionals, R.T.’s substitute decision maker, the *APA* social worker and supervisor and DCS.

[7] The Court received and reviewed the affidavits of two Adult Protection workers and a supervisor of Adult Protection Services for the Continuing Care Division of the DHW. The affidavits of Michael Humphries and Julie Jaillet detail the history of R.T.'s needs, and provide evidence upon which to base an adult in need of protection finding as well as detailing interactions with the *Guardian*.

[8] The picture the Court has received from reviewing these affidavits is that R.T. is a very vulnerable adult, who has suffered a traumatic brain injury, and has a history of Autism Spectrum Disorder. He has no awareness of his limitations and is unlikely to improve. He has trouble relating to others and his unpredictable behaviour has led medical practitioners to recommend that he not be moved frequently and would best suited to a room of his own, near family.

[9] In March 2020, R.T. had been placed on his own in a small options home. This placement suited R.T. well, as he was the only resident and it was near family and friends. This placement was a temporary one.

[10] In August 2020, MHW considered a change of placement for R.T. The *Guardian* sought advance notice of any proposed placement changes for R.T., and full disclosure of R.T.'s care plan from both the Department of Health and Wellness ("DHW") and any other agencies and individuals involved in formulating

that plan, i.e., the Department of Community Services (“DCS”) which was responsible in part for assessing R.T.’s care level, and providing placement recommendations. DCS’s communication with the *Guardian* was inconsistent, and they appeared to be confused as to the *Guardian’s* role.

[11] On the August review, DHW took the position that while they could provide advance notice of placement changes to the *Guardian*, they could only provide him with information within its control. DHW argued that the Court could not bind DCS, nor could DHW compel DCS to provide information. Therefore, DHW proposed a form of order providing as follows:

1. The litigation guardian shall be provided with a copy of the care plan in the possession of the Minister of Health and Wellness for the Respondent, R.T.
2. The litigation guardian shall be included, for the duration of this proceeding, in the care planning for the Respondent.
3. For clarity, the litigation guardian shall be consulted by the Minister of Health and Wellness and by those persons otherwise involved in the care plan for the Respondent within the Ministry of Health and Wellness, where those persons are responsible for any aspect of the care plan, including placement.
4. The consultation shall include, but not be limited to, proposed changes in the Respondent’s placement and services being provided to the Respondent for the duration of this proceeding.
5. Recommendations of the litigation guardian shall be taken into consideration in implementing changes to the care plan, if there is no consent regarding changes to the care plan, including changes to placement, either party may bring the matter to Court for determination.
6. The litigation guardian may seek and obtain information from third parties regarding the Respondent where the information relates to the plan for the Respondent’s care, including proposed changes in placement or other

services. This provides permission for the litigation guardian to make such requests, but does not compel the third party to provide the requested information.

[12] The *Guardian* sought:

1. In paragraph 1, to delete the words, "... in the possession of the Minister of Health and Wellness..."
2. In paragraph 3, to delete the words, "... within the Ministry of Health and Wellness"
3. In paragraph 5, to add the words, "... before any change in placement" after the words "care plan"
4. In paragraph 6, to delete the final sentence, "This provides permission for the litigation guardian to make such requests, but does not compel the third party to provide the requested information."

[13] On October 19, 2020, the parties agreed to a 6-month extension of the adult in need of protection finding. They also agreed on a new placement for R.T. which was described as the only available placement for an individual with R.T.'s needs.

[14] The question then before the Court relates to the DHW providing information to the *Guardian* in the future during the duration of this *APA* proceeding.

[15] The case of *Nova Scotia (Minister of Health) v J.J.* 2002 SCC 12 confirms this Court's role in overseeing placement of those found to be adults in need of protection pursuant to the *APA*.

[16] Pursuant to S.12 of the *Adult Protection Act*, this Court's paramount responsibility is to protect the adult's welfare and best interests.

[17] In *J.J.*, the Supreme Court of Canada, noted that pursuant to the *APA*, "a review is required of the state's decisions which may, however well intentioned, be incompatible with the best interests of those adults who have lost the right to make those decisions for themselves" (para. 17). This review includes decisions relating to placement (para. 21).

[18] The *Guardian* has assumed responsibility for R.T. and is answerable to the Court during these proceedings. The Court relies on the *Guardian* to provide information so as to assess R.T.'s best interests. The *Guardian* must therefore have advance notice of proposed changes to R.T.'s care plans including placement changes.

[19] DHW agrees that aspects of the care plan, including placement, can be brought back to the Court by the *Guardian* for a determination. DHW is also prepared to involve the *Guardian* prior to any proposed changes in placement.

[20] DHW and the *Guardian* differ with respect to the disclosure of information held by DCS which is not provided to DHW. Counsel for the *Guardian* argues that the DHW must ensure the *Guardian* can obtain information related to R.T.'s care plan from both DHW and DCS. She argues that the *Guardian* must be able to obtain information from third parties, and that if the third party does not provide that information, then the care plan needs to be reviewed by the Court.

[21] The Court cannot compel DHW to provide information which it does not have in its possession. The *APA* does not provide this Court with the statutory authority to compel DCS to provide information to the *Guardian*.

[22] The DHW is ultimately responsible for creating R.T.'s care plan and approving his placement. No such authority has been given to DCS, who are merely operating to support DHW in this regard. DHW has agreed to provide the *Guardian* with advance notice of any impending changes to R.T.'s care plan/placement of which they are aware. Theoretically, DCS could propose changes to R.T.'s care plan, without consulting the *Guardian*, and refuse to communicate with the *Guardian*. However, even in such an instance DHW would be obliged to provide the new care plan including the proposed placement to the *Guardian*, and would be required to consult with the *Guardian* in advance, pursuant to the *APA* Order which acts as DHW's authority. The *Guardian* could

then place the matter before the Court. The Court finds that it can adequately protect the best interests of the adult in need of protection by allowing the *Guardian* to bring any proposed change to the plan of care to the Court's attention.

[23] Therefore, I will sign the draft order provided by Counsel for DHW on September 16, 2020 with the following amendments:

- In paragraph 3, the words, "... before any change in placement" will be added after the words "...care plan...". This is consistent with DHW's agreement in paragraph 4 to consult with respect to the "proposed" changes.
- In paragraph 6 the last sentence should be deleted as it is unnecessary.

Jean M. Dewolfe, JFC