FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. C.Z. and* G.*P.,* 2021 NSFC 5

Date: 20210502
Docket: FBWCFSA No. 116863
Registry: Bridgewater

Between:

Minister of Community Services

Applicant

v.

C.Z. and G.P.

Respondents

Restriction on Publication: Pursuant to subsection 10(2) of the *Family Court Act*, the judge is required to as far as possible guard against any publicity in proceedings in the Court. Information that would identify the parties, witnesses or children in this proceeding has been anonymized so that this decision can be published.

Judge:	The Honourable Judge Marci Lin Melvin
Heard	April 6, 2021, in Bridgewater, Nova Scotia
Final Written Submissions:	Alan Ferrier – April 23, 2021 Jennifer Rafuse – April 22, 2021 Nicholaus Fitch – April 23, 2021
Counsel:	Alan Ferrier, QC, counsel for the Applicant, the Minister of Community Services Jennifer Rafuse, for the Respondent, C.Z. Nicholaus Fitch, for the Respondent, G.P.

By the Court:

Application Before the Court

[1] The Respondent, G.P., seeks the reinstatement of access to his child D.E.P.

[2] The matter was heard on April 6, 2021. Six witnesses testified in this matter including both Respondents.

[3] The Court has reviewed all of the evidence.

Facts

[4] The Respondents, C.Z. and G.P., are the biological parents of the child, D.E.P., born December 8, 2019.

[5] D.E.P. was taken into the temporary care and custody of the Minister of Community Services on December 9, 2019.

[6] The parents continued to have parenting time to this child as arranged by the Applicant and at the discretion of the agency.

[7] The Respondent father, G.P., was exercising supervised parenting time to the child, D.E.P., twice a week for one hour on each visit.

[8] This parenting time was terminated by the agency on November 9, 2020, as a result of what counsel for G.P. argues was due to G.P.'s frustration with the family support worker.

[9] During supervised parenting time on November 9, 2020, an incident occurred when G.P. picked up a plastic block and held his arm up as if he intended to throw the block at the family support worker, due to his frustration and anger with the worker.

Issue

[10] Is it in the best interests of this child to have parenting time reinstated with the Respondent father, G.P.?

Evidence

[11] Shane Chapman, the family support worker, testified on cross-examination: The incident occurred near the end of the visit when G. P. was changing the child's diaper. The child was fussing. G.P. was struggling trying to change the diaper, and G.P. expressed concerns that Mr. Chapman was telling him what to do. Mr. Chapman was not getting irritated or upset. He was "observing" G.P., not "staring" at him.

[12] Karen Hanhams, a case-aid for the Applicant testified. On cross-examination, she said on November 9, 2020, she was sitting in the play area and heard G.P.'s raised voice which got her attention. She said Mr. Chapman didn't sound irritated, rather, he was trying to keep things calm and she didn't think he was losing his patience.

[13] She said G. P. was telling Mr. Chapman he had too much to say, G.P. pulled the block back and looked like he was going to throw it. Someone called G.P.'s name and Ms. Hanhams told him to refocus, and G.P. put the block down.

[14] Mr. Bouchard also testified for the Applicant.

[15] G. P. testified on his own behalf.

[16] G.P.'s evidence was that he was frustrated with the manner in which the family support worker was treating him. He wanted something done about it. His evidence was further that he had planned some sort of altercation in advance of this access meeting, but wasn't sure what it would be.

[17] On cross-examination by Mr. Ferrier, G.P. confirmed that Mr. Chapman wasn't the only agency worker he wasn't happy with. He had earlier "gotten rid of" a case-aid, because "... she was bias."

[18] G.P. said he wanted attention brought to Mr. Chapman, because he wanted "... them to listen to us .... wanted them to investigate."

[19] G.P. did not believe Mr. Chapman was doing his job properly.

[20] Mr. Ferrier: "Your way of bringing attention to him was to get angry."

[21] G.P.: "Yah."

[22] Mr. Ferrier: "In front of your child."

[23] G.P.: "But he wasn't at risk. He wasn't affected."

[24] Mr. Ferrier: "Is that acceptable to you to yell at someone in the same room your child is in?"

[25] G.P. (No response.)

[26] Mr. Ferrier: "Your way to get attention was to deliberately get angry with Mr. Chapman in front of your child?"

[27] G.P.: "I'm done. No more questions with you …. You know I got a heart problem."

[28] G.P. did go on to further testify.

[29] Traci-Lee Hatt, the site coordinator for the access facility, testified on behalf of G.P.

[30] When cross-examined by Mr. Ferrier, she said that she was the one to call G.P.'s name to get his attention when he raised his hand to throw the block at Mr. Chapman. He was in the act of throwing it and it looked threatening.

[31] She testified she heard Mr. Chapman say to Mr. Porter: "You've got to calm down or this won't go well for all of us."

[32] She testified that G.P. was "... shaking and red in the face." She said she didn't feel threatened but said: "Oh yes, it was a scary moment." She said G.P. was standing beside the child when this was happening and Mr. Chapman was about six feet away.

[33] Mr. Fitch called his client, C.Z., to the stand.

[34] When questioned about the incident on November 9, 2020, she replied: "I thought it would be arguing like in the past. I didn't know about the blow up. I was even shocked myself."

[35] Mr. Ferrier: "So if you knew it was going to be trouble, why didn't you try to talk him out of it?"

[36] C.Z.: “I know when I deal with G.P. is to just to let him get back to normal.”

[37] She testified that she never confronts him about his anger. She sticks to herself, because her son is in the room, and when she’s at a visit she tries to stay out of it and be a parent with the child and not to focus on “… them two fighting.”

[38] Mr. Ferrier: “The baby was fussing and G. P. was getting angrier by the minute?”

[39] C.Z.: “ Yes, when anyone tells him to do something it’s like they’re trying to tell him he’s stupid or something.”

[40] As noted by Mr. Fitch, on behalf on C.Z., the facts that triggered this application for the re-instatement of G.P.’s access are uncontradicted.

Argument

[41] Counsel for the Applicant argues that G.P.’s behaviour is reminiscent of his previous behaviours with respect to anger issues in previous child welfare matters, which he is not able to control in the presence of his children. The court notes, at least in this instance, it also applies to agency workers.

[42] The Applicant argues the evidence is clear that G.P. has no understanding of the impact that his anger and out-of-control behaviours in the presence of his child might have upon the child.

[43] G.P.'s partner - and mother of the child - C.Z., supports his application, however was clear in her evidence that she knew G.P. had planned some sort of altercation with the family support worker at the access visit on November 9, 2020.

[44] As a result of the altercation, the Applicant determined that no further family support workers would be made available and G.P.'s parenting time would be suspended pending decision of the Court.

[45] Counsel for the Applicant Minister argues that G.P.'s "... behaviour is entrenched and unresolved. He continues to get frustrated and angry when the child is upset or unsettled. In 2016, the Court of Appeal predicted a high probability that this would occur …. The continuing risk to ... [the child] is real and probable because GP does not recognize the risk to ... [the child]."

[46] Ms. Rafuse, counsel for G.P., argues that her client picked up a small plastic toy block and held it in his hand in a manner which looked as though he might throw it in the direction of the family support worker.

[47] She argues her client testified that he had no intention of actually throwing the block but he did it because he was frustrated with the family support worker for what he believed was overstepping his bounds.

[48] Ms. Rafuse further notes that G.P. was trying to do a diaper change with the child and the child was fussy. G.P. became frustrated when the family support worker told him to let the child run around so he would stop fussing even though there were only five minutes left until the end of the visit, and G.P. wanted to finish the diaper change.

[49] Ms. Rafuse argues the child was not upset by it and not even aware of what was going on. Her client's position is that he has made significant progress in terms of managing his anger and frustrations through counselling and remains committed to engaging in services if the agency is willing to provide same.

[50] Ms. Rafuse argues that G.P. wants more time with the child to improve on his parenting skills and demonstrate what he has learned but cannot do this unless he has access visits with the child.

[51] Mr. Fitch, on behalf of C.Z., notes his client was aware that something would happen that day but that there was not a plan in place. She testified that she was aware of G.P.'s frustration with respect to the family support worker. As noted

by Mr. Fitch in his brief, both of the Respondents testified honestly, readily admitting that what G.P. had done was wrong but it was out of frustration.

[52] Mr. Fitch argues that the isolated incident should be viewed in the wider context of the countless positive access visits that have taken place.

Analysis

[53] While this may be true, it is concerning to the Court that G.P. planned to do something during his access visit with his child, to let the family support worker know he was frustrated with him.

[54] Had G.P. given this any thought, he would have realized this could easily be construed as a threat, or even seen as intimidation. As noted by Ms. Hatt in her testimony: “It was a scary moment.” Which begs the question: if an adult found the moment scary, how would a very young child assimilate such a moment?

[55] This is not G.P.’s first foray before the Court with respect to agency involvement with his children and G.P.’s inability to control his frustration and his anger issues. Two of his children have been placed in the permanent care of the Applicant because of similar behaviours. How could G.P. believe that any display of frustration or anger in the presence of his child would in any way be construed as appropriate?

[56] It is disappointing to the Court that with all the resources that have been provided to G.P. to assist with controlling his anger, that he would act out in this manner. Even though G.P. "thought" about letting the agency worker know he was frustrated and angry (and carried through with that thought), there is no evidence that he gave any "thought" about the effect this action would have on his child. Or for that matter, what the agency would think of him acting in this manner, and how that might affect his parenting time in the future.

[57] If G.P. acts in anger in the presence of employees from the Department of Community Services, who are supervising him and making notes on his behaviour as to how he interacts with the child, what would he do if he were alone with his child?

[58] An access hearing is typically little more than a baby step in most child welfare proceedings. But to be clear, this is not an "access" hearing in the truest sense. G.P. *had* access. Only as a result of his habitual and longstanding behaviour involving his anger issues, did he lose the privilege of getting to know his child.

[59] Given this history, this application has taken on a more ominous tone.

[60] The Court has considered the best interests of this child and the evidence of G.P.'s recent parenting difficulties as well as the struggles he has had with parenting in the past.

Best Interest of the Child

[61] The ***Children and Family Services Act***, S.N.S., 1990, c. 5, which governs child welfare matters in Nova Scotia, is clear that in all matters, the Court must consider the child's best interest above everything else.

[62] In the ***Children's Aid of Halifax v. L. F.***, [1999] N.S.J. No. 134 [NSFC], Judge Buchan noted:

> The intention of the *Children and Family Services Act* is to protect children, societies innocents, from harm. Albeit that the integrity of the family is to be promoted and also protected, the best interest of the child overrides all other issues...

[63] As noted by Justice Jesudason in ***Nova Scotia (Minister of Community Services) v. A.L.***, 2019 NSSC 236, at paragraphs 67 and 68:

> Again, child protection proceedings are not about punishing parents or the minister. Rather, they are about taking positive steps to ensure that children are protected from harm and addressing any child protection concerns so that children can hopefully be safely returned to their parents care in a manner consistent with a child's best interest, indeed, as … stated by Justice Abella in the Supreme Court of Canada of *AC v. Manitoba [Director of Child and Family Services]*, 2009 SCC 191, the general purpose of the best interest standards is to provide judges with a focus and perspective through which to act on behalf of those who are vulnerable: paragraph 81.

> Here, it is the children who are the most vulnerable. They are the ones who have been the most impacted by what has happened.

[64] Section 3 [2] of the *Act* directs the Court to consider a number of circumstances before determining the best interest of the child. The circumstances are fluid and pertinent to the relevancy of each case.

[65] The Court will review those circumstances as it pertains to the best interest of the child, D.E.P. and a relationship with his father, G.P.

3 [2](a) The importance for the child's development of a positive relationship with a parent ... and a secure place as a member of the family:

[66] The *Act* is clear with respect to the importance for a child's development and having a positive relationship with a parent and a secure place as a member of a family.

[67] A court has to be convinced therefore, that parenting time, as an example, would allow a child to develop a positive relationship with a parent and feel safe as a member of that family.

[68] In this case, the Court has to be convinced that the relationship between the child and G.P. would be a *positive* relationship for the child. There is recent and

past evidence of G.P.'s anger in the presence of children, and of G.P.'s lack of insight as to how his anger could affect a child.

[69] More importantly, the Court would have to be convinced that it is in the child's best interest to have a relationship with G.P.

[70] There is no evidence before the Court to convince the Court of any of these eventualities.

(b) The child's relationships with relatives:

[71] A court needs to be cognizant of a child's relationship with his or her relatives, and one could obviously say that a father is a relative.

[72] Clearly a negative relationship between a child and his or her relatives would not be considered in a child's best interests.

[73] One must therefore conclude that a positive relationship with one's relatives is what a court would look at when considering the best interest of the child. Having weighed all of the evidence, even the "positive" evidence that Mr. Fitch entreated the Court to consider during other access visits, the Court cannot conclude the relationship between the child and G.P. would be a positive relationship.

(c) The importance of continuity in the child's care and possible effect on the child of the disruption of that continuity:

[74] In the case before the Court, the infant child had supervised parenting time with G.P., one hour twice per week, which began in December 2019 and ended in November 2020.

[75] There is no evidence before the Court to indicate if either experience - access with G.P. or the termination of it - had an effect on the child, negatively or positively.

[76] And in the limited experience this child had with G.P., could the lack of that continuity be actually considered a disruption in his life?

(d) the bonding that exists between the child and the child's parent or guardian:

[77] There is no evidence of a bond between G.P. and the child given the limited time they had together.

(e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs:

[78] There is no evidence before the Court as to the child's physical, mental, or emotional needs. But common sense must prevail. And common sense would say

that a child's needs cannot be met in an environment where a parent cannot control frustration that erupts into angry outbursts as is noted in past and present evidence.

[79] Further, there is no evidence before the Court that G.P. has the physical, mental and emotional ability to meet D.E.P.'s physical, mental, and emotional needs, or is able to provide the appropriate care or treatment to meet those needs.

[80] Regrettably, given the incident that led these parties to Court, the Court finds there is a greater probability than not that G.P. lacks the ability to meet the D.E.P.'s emotional needs. Having a parent who can flare-up in this manner in front of a child is another red flag for the Court.

(f) the child's physical, mental and emotional level of development:

[81] The child was barely 11 months old when parenting time with G.P. was terminated by the agency.

[82] There is no evidence with respect to the child's physical, mental, and emotional level of development at that time

….

(l) the risk that the child may suffer harm through being ... kept away from, ... returned to the care of a parent:

[83] There is no evidence to indicate that the child may suffer harm by being kept away from G.P. There is evidence from the Minister however, and indeed from the Respondent C.Z., of G.P.'s anger and inability to control his anger in front of a child. Therefore, the Court finds there is a greater risk that the child may suffer harm should there be a resumption of parenting time with G.P.

(m) the degree of risk, if any, that justified the finding that the child is in need of protective services:

[84] The Respondents consented to or took no position on any of the findings, and the child has remained "in need of protective services" throughout.

(n) any other relevant circumstances:

[85] This may include a parent's ability to understand something as simple as basic child care, and how a parent's reactions and actions to life situations can affect a child's mental, emotional and physical well-being.

[86] Or even more germane given the evidence in this case, other relevant circumstances may also include evidence of past parenting. The Court finds in this matter that evidence of past parenting is crucial in a determination of what is in the best interests of this child.

[87] A court should not be expected to consider a child welfare application involving the health, safety, and life of a child, in a vacuum. A court needs to assess all relevant evidence which might negatively, or positively, impact on a child's life, safety and best interests. Even at this juncture - a hearing on a parent's access.

Past Parenting

[88] The Applicant has asked the Court to consider that past parenting history is relevant and may be used to assess present circumstances.

[89] Courts frequently examine past circumstances to assist in determining the probability of events reoccurring. Courts are concerned with probabilities not

possibilities, and therefore often considers past history to determine future probabilities.

[90] An order pursuant to the *Children and Family Services Act,* s.96 (1) was granted by this Court on January 11, 2021. The order allows the Court to admit the evidence of two prior proceedings involving the children A.S.P., born March 15, 2013, and G.C.P., born June 17, 2014.

[91] The evidence with respect to these historical matters is copious and involves appeals including an appeal to the Supreme Court of Canada.

[92] Counsel for the Applicant has referred to historical evidence pertinent to G.P.'s anger issues and the manner in which Respondent C.Z. dealt with them.

[93] As noted by Justice Forgeron, in ***Nova Scotia [Minister of Community Services] v. G. R.,*** 2011 NSSC 88, and confirmed by the Court of Appeal:

> [22] Past parenting history is also relevant. Past parenting history may be used in assessing present circumstances. An examination of past circumstances helps the court determine the probability of the event reoccurring. The court is concerned with probabilities, not possibilities. Therefore, where past history aids in the determination of future probabilities, it is admissible, germane, and relevant….

[94] In ***Nova Scotia (Community Services) v. C.K.Z.***, 2016 NSCA 61, involving the same two Respondents, at paragraph 90 and 91, the Court notes:

In her testimony, CKZ tried to retract from the previous statements she made to the Minister about the gravity and frequency of the children's exposure to conflict, yet she acknowledged it was still a problem. The following excerpts from C.K.Z.'s cross-examination testimony highlight the risk of ongoing conflict:

> *Q. So when I asked you earlier is it - if it was true that before this incident blew up, that you had - you'd had enough; that [GLP] had - his behaviour had - was not good enough anymore, you didn't like the hollering, the stomping the feet and all that stuff – you answered my questions about that earlier, and you agreed with me that was something you had had enough of?*
>
> *A. Yes.*
>
> *Q. So it was true?*
>
> *A. Certain things was true and certain things I made up.*
>
> *Q. So the hollering was true?*
>
> *A. Yes.*
>
> *Q. And it was constant?*
>
> *A. Yes.*
>
> *Q. And it was yelling?*
>
> *A. Yes.*
>
> *Q. Swearing?*
>
> *A. Yes.*
>
> *Q. In the presence of the baby?*
>
> *A. Yes.*
>
> *Q. So you didn't lie about that to anybody?*
>
> *A. No.*
>
> *Q. So it's not all lies?*
>
> *A. Some parts, like with what I said about like [GLP] was hollering at the baby since he was born; that was false.*
>
> *Q. But at that time, for quite a while before April, it was true?*
>
> *A. Certain things, yes.*
>
> *Q. OK. So how long has it been going on for?*
>
> *A. Pretty much – it wasn't just certain situations. It was mostly like arguments with our relationship. It didn't have like - it wasn't that bad.*

Q. But you told me that you have had enough?

A. All the time, yes.

Q. All right so it had reached a level that you couldn't tolerate any more?

A. Yes....

Q. So what does that – when does it get to the point where you can't tolerate it anymore?

A. Well, pretty much ... if it was putting my life at risk, I couldn't take it anymore, or if things got really out of control like -....

Q. So after baby [GCP] was taken into care, you certainly knew that the issues of - regarding [GLP]'s behaviour around you or the baby was important again?

A. Yes.

Q. Because you'd raised them?

A. Yeah.

Q. And it certainly was bad, don't you agree?

A. Yes.

Q. Whether you exaggerated or not, it was still bad enough?

A. Yes.

Q. And like you said you were hoping to bring [GLP] to attention; is that the best way to -

A. Yes.

Q. – Describe it?

A. Yes.

Q. All right. So you've had access between the two of you since then?

A. Yes.

Q. Right? And you've witnessed on at least two occasions when [GLP] lost it again?

A. Yes.

Q. In the middle of access?

A. Yes.

Q. So it hasn't gone away, has it?

A. On certain things, yes, and he's been controlling it a lot more, and it's just - it wasn't bad like it used to be. It's just the only thing that he does

> *now is just when he gets upset, that he tries to leave the situation, but if someone keeps talking to him when he's angry, that's when he'll explode.*
>
> *Q. So if someone disagrees with him on anything, that's a problem, right?*
>
> *A. Yes.…*
>
> *Q. Do you know why he gets so angry?*
>
> *A. Yes I do. It's just when things are not being dealt with, that's when he loses it. Like I can explain a little bit more; like if we report something and things ain't getting dealt with that's when he will lose it.*
>
> *Q. And why does he get angry, then, when he can't quiet down the baby [GCP]?*
>
> *A. Because – which – he was trying everything, and it's just being - it's like being a new father, pretty much there, and when he doesn't calm the child down he gets frustrated, and then he feels like a bad father because he can't calm the child down. And that's when he gets him frustrated.*
>
> *Q. And then he gets Angry?*
>
> *A. Yes.…*
>
> *Q. Has he always, in the seven years that you've known him, shown anger when he got frustrated?*
>
> *A. Yes.*

Past parenting history is informative when the court has to determine the probability that risk will continue. (see *Nova Scotia (Minister of Community Services) v. Z. (S.)and M. (K. L.))* In the present case, given the entrenched history of conflict which is not resolved, there is a high probability it will continue.

Conclusion

[95] As argued by Mr. Ferrier in the case presently before the Court, the cross-examination of C.Z. in 2016, and now, is hauntingly familiar and does not bring the Court one iota of comfort with regard to G.P's parenting abilities. The

continuing risk to the child is real and probable because G. P. does not recognize the risk.

[96] It is apparent on the evidence, that as much as G.P. may want to change, and has tried to change, he cannot seem to prevent his anger from bubbling to the surface. Further, he does not recognize the effect this anger would have on a child.

[97] Ms. Rafuse and Mr. Fitch, on behalf of the Respondent parents, lend much empathy to their client's positions. As purely *obiter*, the Court understands how difficult it must be for the Respondents, with their limited resources in all things, to reconcile and fully comprehend these difficulties.

[98] The Court, however, can only make decisions based on the evidence in the best interests of this child.

[99] The Court has considered the evidence, the well-reasoned and empathetic arguments of counsel, reviewed the jurisprudence, weighed the evidence on a balance of probabilities, and finds on a balance of probabilities, that it is not in the best interest of the child D.E.P., to have access with the Respondent, G.P.

Marci Lin Melvin, JFC