FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. R.R.*, 2013 NSFC 30

Date: 20131030
Docket: FAMMCA-088177
Registry: Amherst

Between:

Minister of Community Services

Applicant

v.

R.R.

Respondent

Restriction on Publication: Pursuant to Section 94(1) of the *Children and Family Services Act*

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge:	The Honourable Judge S. Raymond Morse
Heard:	October 29, 2013, in Amherst, Nova Scotia
Oral Decision:	October 30, 2013
Written Decision:	February 25, 2014
Counsel:	Aleta Cromwell and Patricia McFadgen, for the Applicant Robert Moores, for the Respondent

TO PUBLISHERS AND OTHER READERS OF THIS CASE:

PLEASE TAKE NOTE THAT SECTION 94(1) OF THE ***CHILDREN AND FAMILY SERVICES ACT*** APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION

SECTION 94(1) PROVIDES:

> 94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

By the Court:

INTRODUCTION

[1] This is the matter between Minister of Community Services and R.R. And the matter had been before the court for a hearing yesterday and at the conclusion of that hearing, the court confirmed that it would provide an oral decision this afternoon.

[2] L.R., date of birth September *, 2011 and J.R.-W. (hereafter referred to as J.) date of birth May *, 2013, were taken into care on October 4, 2013 on the basis that they were in need of protection pursuant to section 22(2), subparagraphs (b), (e), (g), (i), (j) and (ja) of the *Children and Family Services Act*. The initial 5-day hearing was held October 10, 2013. At the conclusion of that hearing, the court made the necessary finding as to reasonable and probable grounds and granted the Minister's request for an initial Order for Temporary Care and Custody. Counsel for the respondent confirmed that the respondent would be willing to consent to the finding as to reasonable and probable grounds but felt that a Supervisory Order in favour of R.R. would be appropriate and confirmed that the respondent was adamantly opposed to the Minister's request for temporary care and custody. The court therefore scheduled the matter for completion of interim hearing on the understanding that the hearing would be required in order to determine the interim disposition or placement issue as raised by the respondent. The matter was therefore scheduled for completion of interim hearing on October 29, commencing at 9:30.

[3] As I've already indicated at the conclusion of the hearing on October 29, following submissions by counsel, the court scheduled the matter for oral decision on today's date in recognition of the need to determine the issue on a timely basis. The court, however, noted a reservation of its right to file detailed written reasons if necessary and appropriate.

[4] The issue for determination is whether the Minister's request for an Order for Temporary Care and Custody should be approved or a Supervisory Order granted subject to appropriate terms and conditions. The respondent is not

contesting that there remains reasonable and probable grounds to believe the children are in need of protective services.

[5] During the course of the interim hearing held October 29, seven exhibits were tendered. The witnesses who testified on behalf of the Minister included Dr. Gradstein, family physician; Constable Tom Wood of the Amherst Police Department; Intake Protection Worker, Aimee Maillet; and Long Term Protection Worker, Kristen MacDonald. The respondent's mother, C.R., and the respondent herself, R.R., gave evidence in response to the Minister's case. Because the evidence is fresh in everyone's mind, I'm not going to review the evidence in detail. While I am not therefore providing a detailed summary, I want however to assure both parties that I have carefully considered all the evidence, both viva voce and documentary for purposes of this decision.

[6] The evidence confirms that the youngest child, J., has been diagnosed with congenital adrenal hyperplasia, the acronym being CAH. This condition affects the adrenal gland's ability to make cortisol and aldosterone. This affects the infant's ability to regulate salt levels which can create a life-threatening situation if salt levels become too low. Unfortunately, the condition also causes an increase in male hormone production which can result in malformation of the genitalia. Treatment of the condition involves daily administration of medications for life, as well as potential reconstructive surgery.

[7] The respondent, R.R., is a young mother, only 19. Unfortunately, R.R. has had a significant history of child welfare involvement, having been a ward herself in Ontario and then subsequently becoming involved with Ontario child welfare after the birth of her first child. Tragically, while the respondent was herself a child in care, she was apparently sexually assaulted. Not surprisingly, this history has affected the respondent's attitude towards the child welfare system in general and I believe it has had impact upon her interaction with agencies both in Ontario and Nova Scotia.

[8] The respondent's involvement with child welfare in Ontario following the birth of her first child was due in part to concerns relating to domestic violence with the child's father. However, subsequent Ontario agency involvement was a result of domestic violence and adult conflict between the respondent and her sister and her sister's boyfriend.

[9] Following the birth of the younger child, J., staff at the Hospital for Sick Children in Toronto reported concerns to the Ontario agency including concerns relating to the respondent's understanding of the current and long term impact of J.'s medical condition. The Ontario agency subsequently became concerned about the respondent's failure to follow through appropriately with medical appointments and blood work for J.

[10] A letter from Dr. Diane Wherrett, Endocrinologist with Sick Kids Hospital in Toronto dated September 16, 2013 was attached as Exhibit B to Exhibit 3, the Affidavit of Ms. Maillet. The physician's letter contains the following paragraph at the bottom of page 1.

> Unfortunately mother was unable to bring her for visit on August 13. (Her being a reference to the child, J.) Follow up was arranged with the local pediatrician on August 20 who found the baby to be gaining weight and looking well. Unfortunately, mom did not complete the required blood work which was only done a week later, on Aug. 27. Sodium was low at 125. Despite repeated attempts to reach mother, no phone calls were returned. Therefore we asked for assistance from the Children's Aid Society in order to locate J. We understand by this point mom had gone to Nova Scotia to be closer to her mother. I understand that J. was seen in hospital in Amherst and had confirmed hyponatremis . . . (I may be mispronouncing some of the medical words, I'll do my best, bear with me.)

[11] On August 29 the Ontario agency contacted the paternal grandmother, C.R., in Nova Scotia. C.R. confirmed that the respondent and the children were now living with her in Nova Scotia. C.R. then contacted a Dr. Montgomery in Ontario who advised that J. needed to be taken to Amherst Hospital immediately because of low salt levels as confirmed by the August 27 lab results.

[12] Workers from the Amherst agency attended the home of the respondent on August 30. C.R. advised that she was aware of the Ontario test results indicating that J.'s salt levels were low and indicated that they were going to take the child to see Dr. Gradstein, her family doctor, and that they were just waiting for a drive to the doctor's office. However, subsequent contact by the agency with Dr. Gradstein's office confirmed that the appointment for J. was not scheduled until September 5. The agency therefore re-contacted C.R., and again, C.R. is the child's maternal grandmother, and requested that the child be taken to emergency department at the Amherst Hospital.

[13] The results of the August 30 blood work done in Amherst confirmed a reading of 123 which was identified by the attending physician, Dr. Ferguson, as not too bad, albeit this result still confirmed the child as being hyponatremic as confirmed in Dr. Gradstein's report. This lab report is actually attached, that is the Amherst Hospital lab report, is attached to Exhibit 1, Dr. Gradstein's report of October 22, 2013. In her report, Dr. Gradstein explained or indicated the test results as being due either to illness, medication non-compliance or improper dosing. There is no evidence indicating that the child, J., was ill on either August 27 or August 30.

[14] The respondent, R.R., was then asked by Dr. Gradstein to arrange for blood work weekly given the low sodium levels and the associated risks. The respondent did not do so. During her direct examination the respondent testified that "I accidentally slipped up." On cross examination, she said that she was busy and "had let it slip my mind". At another point in her cross examination however, the respondent indicated that it was just blood work and she didn't see the lack of follow-through on weekly testing as being an issue because she knew she was giving the child proper dosage of medications.

[15] Dr. Gradstein testified that she made it clear that blood work was to be completed on September 5 and that she made the necessary arrangements for that to happen on that date. She testified that during the discussion with the respondent, she got a lot of resistance from the respondent. She confirmed that her office subsequently had to follow up with the respondent and actually threaten to report her to child welfare authorities in order for the respondent to get the blood work done several days after the initial appointment with Dr. Gradstein on September 5. Following the collection of that sample there was a three week lapse or interval before the next blood test despite Dr. Gradstein's expressed request for weekly blood work to monitor the child's salt level.

[16] Dr. Gradstein had further concerns as a result of contact with the respondent on October 4 indicating as follows in her report dated October 22, 2013, Exhibit 1.

> It is my professional opinion that R. is fully aware of how dangerous her daughter's condition is. She appears to be a reasonably smart, articulate young lady and she's had ample education and support to provide safe care and reasonable parenting decisions. Why she is choosing not to, only she can say, but I do not feel that she is parenting safely, not for her older daughter and especially not for J., whose condition is life-threatening. She

> appears contemptuous of their needs, and the opinions of those helping her and I think this attitude puts her children at significant risk.

[17] On October 4 the decision was made to take the children into care. Constable Wood of the Amherst Police Department described his involvement in the taking into care and the difficulties encountered. During the course of their attendance at the respondent's residence the officers had to physically restrain the respondent because of her aggressive and violent behaviours. The respondent kicked one officer in the head. The respondent told Constable Wood that she was going to get a gun and shoot him in the face. The respondent was restrained, arrested and taken to Amherst police station. No charges however have as of yet been laid.

[18] During her direct testimony the respondent admitted that she had reacted badly to the taking into care and she apologized, but then stated that her children are her life. She testified that she didn't mean to kick the officer in the head but then described the altercation as "some tossing around and that she accidently hit him".

[19] During her testimony, the respondent was asked about her involvement with Durham Police in Ontario in March 2013 and she suggested that the altercation at that time between herself and her sister's boyfriend was not as bad as it seems. She suggested that she knows how to control her anger and that she has coping skills but it was her sister's boyfriend who was unwilling to compromise. The altercation related to an incident where the boyfriend had apparently fed some of his food to his dog and the respondent took exception to this, because it was done without a reason, and I think she also indicated without making the dog sit. The respondent indicated that she then proceeded to challenge her sister's boyfriend, named B., on what had happened and as she went by him, he lifted his arm and caught her so she "snuffed him". She did this by punching him in the face with her fist. She then suggested that this was like a mosquito bite as far as B. was concerned.

[20] During her testimony the respondent disputed Dr. Gradstein's concerns relating to the respondent leaving the baby J. unattended on an examination table when visiting Dr. Gradstein's office on October 4. Dr. Gradstein made it clear in her evidence that she was concerned for the child's safety. The respondent suggested that the examination room was no bigger than a car and therefore it was pretty much impossible to be more than one arm's length away from the table at

any spot in the room. She maintained as well that her boyfriend was within arm's length of the child where he was seated in the examination room. She also disputed Dr. Gradstein's evidence that the doctor had seen her roll her eyes when the doctor expressed concern about the child being left unattended on the examination table and stated "how did she see me roll my eyes if her back was turned". When I use the word "unattended" I do not mean to suggest that the respondent, R.R., left the room. The doctor's concern about the child being unattended, as I understood her evidence, was premised upon the fact that she did not believe that any adult and in particular R.R. was within an appropriate distance of the child as the child was placed or positioned on the examination table.

[21] R.R. denied that she needs to work on anger management issues and expressed her belief that having to participate in programs as requested by the agency before the children are returned will only prolong the process. She asserted that she is a good mom and the agency should not try to fight her. At one point in referring to the agency she suggested that "all you guys do is fight with parents".

[22] During her redirect examination, R.R. testified that the agency as far as she was concerned barely did an investigation and then decided to jump down her throat.

LAW

[23] This application falls to be determined under the *Children and Family Services Act.* I would note that the following sections of the *Act* are relevant to the determination of the application: the preamble, s. 2, s. 3(2), s. 22, and s. 39, in particular, subsections (4), (6), (7) and (11).

[24] Clearly the burden of proof rests with the Minister to establish that an Order for Temporary Care and Custody would be appropriate and consistent with the best interests of both children. As Associate Chief Judge O'Neil stated in Nova Scotia, **Community Services v. F.L.**, 2011 NSSC 512, at paragraph 47:

> The Minister is seeking to have the child continue in its care. Sub-Section 39(4)(d) and s.39(4)(e) are subject to the limitation of section 39(7); that the court must be "satisfied that there are reasonable and probable ground to believe that there is a substantial risk to the child's health or safety and that the child cannot be protected adequately by an order under clause (a), (b) or (c)".

[25] Section 39(6) defines substantial risk as "a real chance of danger that is apparent on the evidence."

[26] Section 39(11) confirms that at the interim hearing stage of the protection proceeding "the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances." Hearsay evidence is therefore admissible subject to the court's assessment as to its credibility and trustworthiness.

CONCLUSIONS

[27] Dr. Gradstein's letter, Exhibit 1, contains hearsay information. However, I am satisfied that the hearsay evidence is admissible and can be relied upon for purposes of this decision in accordance with section 39(11). I find Dr. Gradstein to have been a credible and trustworthy witness and I view the information contained within her letter as also being credible and trustworthy. Similarly, I find the other medical reports as attached to Exhibit 3 to be credible and trustworthy and I have therefore relied upon the information contained in such reports for purposes of this decision.

[28] This court has an obligation to assess credibility. I find the witnesses who testified on behalf of the Minister to be credible. I believe that they all gave their evidence in a straightforward and believable manner. While Constable Wood acknowledged one error in his occurrence report, I do not believe that that error would support or justify the conclusion that Constable Wood's testimony is therefore unreliable in other respects. I certainly accept Constable Wood's testimony as to the altercation between Amherst Police and the respondent on October 4 as an accurate account of what transpired during the taking into care.

[29] I have significant reservations with respect to R.R.'s credibility. While her demeanour during her testimony was at times concerning, I accept that to some extent her demeanour may just be a reflection or extension of her personality. Similarly her method of expression was at times streetwise, but again that is not the basis for my credibility concerns. Credibility means not only truthfulness but reliability and accuracy. I find R.R.'s evidence on many occasions to have been self-serving. On more than one occasion she attempted to minimize her role in certain situations or disputed the seriousness of certain situations. For example, she minimized the seriousness of the missed blood work. She minimized her

altercation with the police during the taking into care. She minimized the seriousness of the altercation with her sister's boyfriend and she minimized her conduct when attending at the agency following the taking into care when she made lewd remarks. Accordingly I find R.R.'s testimony to be lacking in credibility and where her testimony conflicts with the testimony of witnesses, such as Dr. Gradstein or Constable Wood, I accept and rely upon their testimony in preference to that of R.R.

[30] I am therefore satisfied that the Minister has adequately discharged the burden of proof for purposes of this application. I find that the Minister has established on a balance of probabilities that there are reasonable and probable grounds to believe that there is a substantial risk to the children's health or safety such that the children cannot be protected adequately by a less intrusive Order under s. 39.

[31] I find that the evidence supports and justifies the conclusion that there is a substantial risk of medical neglect in relation to the youngest child in particular, the child J. The evidence supports and justifies the conclusion that there are only two explanations for the lab test results confirming low sodium levels on August 27 and August 30, either non-compliance with the medication regime or improper dosage. In either case, the respondent would be responsible. Medical professionals have noted a lack of concern on the part of the respondent with respect to J.'s medical condition as well as failure to follow through in keeping scheduled appointments and ensuring that J.'s medical condition is properly monitored. J.'s medical condition is extremely serious and potentially life-threatening. Any neglect or sub-standard care on the part of the responsible parent such as R.R. obviously exposes such a child to a significant risk of harm and I'm satisfied that the evidence establishes a substantial risk in relation to the child, J.

[32] Both children are infants and therefore vulnerable and unable to self-protect. They require adequate parenting on a consistent basis to ensure that their physical and emotional needs are adequately met. The respondent's history of agency and child welfare involvement supports and justifies the conclusion that there is a substantial risk to the children's health or safety if the children were to be returned to the respondent's care at this point in time. In these circumstances I find that it is clear that extending the existing Order for Temporary Care and Custody would be consistent with the best interests of both children and is necessary to ensure their safety and welfare at this point in the proceeding. I find the evidence supports and

justifies the conclusion that the respondent at this point in time is not able to provide adequate parenting for both children on a consistent basis.

[33] The evidence further supports and justifies the conclusion that the respondent has difficulty, major difficulty, controlling her anger and emotions. She has demonstrated a capacity for physical aggression and violence on more than one occasion, even when the children have been present in the home. I find therefore that the evidence relating to domestic violence and physical aggression also supports and justifies the conclusion that there's a substantial risk to the children's health or safety such that the children cannot be protected adequately by a less intrusive Order at this point in the protection proceeding.

[34] Accordingly, I have concluded that the granting of the Minister's request for a further Order for Temporary Care and Custody would be consistent with the best interests of both children at this point in the proceeding. I have concluded that such an Order is required in order to protect the children from what I find to be a substantial risk of harm. At this point in time, I also find that the children's physical, mental and emotional needs and the appropriate care or treatment to meet those needs can best be assured by way of a further Order for Temporary Care and Custody. I find a less intrusive form of Order would be inadequate to alleviate the substantial risk of harm and therefore inconsistent with the best interests of the children.

[35] I believe that R.R. is an intelligent person. I believe that she has the ability and capacity to demonstrate that she can provide adequate parenting for her children, if not better than adequate parenting, if she chooses and wishes to do so. She should not view the agency as the enemy. The Minister has confirmed that the plan at present is to offer her the opportunity to participate in services and assessments in an effort to address the protection concerns. I sincerely hope that R.R. will do her best to demonstrate how effective a parent she can be.

[36] I would confirm therefore that, or reconfirm the finding as to reasonable and probable grounds. I am certainly satisfied based upon the evidence that was adduced on October 29, that there are certainly reasonable and probable grounds to believe the children are in need of protective services. The Minister's request for an Order for Temporary Care and Custody is hereby granted. Family support services, hair follicle testing and urinalysis testing and anger management are hereby authorized. I am not satisfied that the Minister's request for a psychiatric assessment is appropriate as there has really been little evidence or explanation

offered to support this request at this point in the proceeding. The Minister can of course choose to advance that request at some point in the future if the Minister believes it is necessary to do so. I do however authorize a parenting capacity assessment. In authorizing a parenting capacity assessment I acknowledge that such an assessment is intrusive but I believe that authorization of such an assessment in this case is clearly consistent with the best interests of both children and of course it is the best interests of the children that is paramount.

[37] I also want to indicate to R.R. that contrary to her mother's experience, I have reviewed many parenting capacity assessments that are favourable or supportive of the parent. And, in fact, the reports can offer very meaningful assistance to parents when it comes to resumption of care and custody and parenting of their children on a go-forward basis. So I sincerely hope that R.R. will participate fully and appropriately in the court-authorized parenting capacity assessment.

[38] Ms. McFadgen I'd ask you to . . . or Ms. Cromwell, I'm not sure which, counsel for the Minister will prepare the Order. We now need to schedule the matter for pre-hearing and protection hearing. (Discussion followed concerning scheduling. Pre-hearing scheduled for December 4, 2013 and protection hearing scheduled for December 18, 2013.)

Morse, JFC.