IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Children's Aid Society of Halifax v. D.H., 2006 NSSC 1

Date: 20060103
Docket: SFHCFSA 036105
Registry: Halifax

Between:

Children's Aid Society of Halifax

Applicant

v.

D. H. and R. S.

Respondents

and

A. M. S. Third Party

Restriction on publication: Publishers of this case please take note that s. 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:

> "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 relative of the child."

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

Judge: The Honourable Justice Douglas C. Campbell

Heard: October 3,4,5,6,7,11,12,14,21,25, 2005 in Halifax, Nova Scotia

Counsel: Elizabeth Whelton, counsel for the Applicant
Shawna Hoyte, Counsel for D. H.
Marriot Gilpin, Counsel for R. S.
Kenneth Armour, Counsel for A. M. S.

By the Court:

[1] This is an application pursuant to the *Children and Family Services Act, S.N.S. 1990, c. 5 ("The Act")* by the Children's Aid Society of Halifax for an order placing the respondents' three children in its permanent care and custody. The respondents seek the return of the custody of the children to their mother who is no longer living with their father.

[2] The third party is the paternal grandmother of the children and she supports the mother's plan but offers, in the alternative, to take custody of the children.

[3] The evidence consumed 10 days of trial time.

THE FACTS:

[4] The children are approximately aged five, four and one and one-half years, respectively. The older two children were born in British Columbia and the youngest was born in Nova Scotia.

[5] Prior to the birth of the oldest child, the child welfare agency in [...], British Columbia became involved with the couple because of concerns about the home environment in light of the pending child birth. Initially, the parents' involvement with the agency was voluntary. After the birth, the agency arranged for the mother and child to live in a transition house and indicated to her that a return by her with the baby to the home would result in an apprehension of the child. The evidence disclosed that there were filthy living conditions, drug and alcohol abuse by the parents, a large number of people in the home, a number of animals that left feces on the floor and a general lack of appropriate household management.

[6] The first child was born on November [...], 2000. Later that month a teaching homemaker was made available to the couple.

[7] The mother continued at the transition house with the child until December 11, 2000, when the matter was brought before the courts and an order placing the baby in the mother's care subject to agency supervision was taken out. By March 15th, 2001 the baby was taken into care and remained there until May 14, 2002 (a period of 14 months) when she was returned to the parents' care under court

ordered supervision which continued until August 14, 2002 when the matter was terminated.

[8] In the meantime, on October [...], 2001 the second child was born and taken into agency care at birth. She remained in care for approximately seven months when she was returned (along with the first born child) to the parents under court ordered supervision which continued for three months whereupon the matter was terminated.

[9] During this time frame, there had been extensive services provided by the agency to work with the couple to deal with conditions of filth and to offer parenting skills to deal with various deficiencies regarding the physical care of the young children.

[10] Approximately three months later, in November 2002, the family moved to [...], British Columbia.

[11] The agency operating there became involved after a referral from the RCMP. The agency concluded that the home was dangerously unkept. There was garbage and rotting food in the home. The children were dirty and had matted hair. There were fleas from the animals and continuing concerns with respect to a lack of parenting skills. As a result, the children were taken into care for a period of eleven months and thereafter returned under a court ordered supervision which lasted six months.

[12] The social worker in British Columbia who laterally took charge of the case was Kevin Longard. He testified before me. Early in the proceeding, the agency made application for a "Continuing Custody order" which in Nova Scotia would be called an order for permanent care and custody.

[13] Mr. Longard indicated that while the request for permanent care was still in place, his agency decided to give the family a last chance to obtain the necessary parenting skills and household management skills to allow for a safe return of the children. He considered that the only way to achieve that goal was to put in place very extensive hands-on, in-home training and services. His agency put in place two in-home workers. He testified that the required services were so extensive that one worker would not be sufficient. These workers dealt with household

management and parenting skills. As well, counselling was made available for anger management issues for the father and anxiety and stress related mental health issues for the father.

[14] Mr. Longard testified that there was progress being made at times but only while the agency was applying pressure through the extensive services and supervision. He indicated that their lack of necessary progress was not because of an unwillingness but because they simply could not establish an independent ability to perform the basic tasks of household management and parenting.

[15] By January 21, 2004, the home, after having been kept clean for some time had gone back to its previous state which included garbage and animal feces in the home. As a result, the agency placed fourteen conditions (in writing) on the couple's continued care of the children in order to ensure that they were not put at risk. He expressed the view that, while the parents had different needs, they both chose the inappropriate lifestyle.

[16] A supervision order was scheduled to expire on April 21, 2004. Prior to that time, the parents obtained permission from the agency to go back to [...], British Columbia to visit the paternal grandmother. Once there they indicated to the agency that they would be staying in [...], British Columbia. The order expired and was not renewed by virtue of the fact that the family no longer lived in the area where that agency operated.

[17] On May 19, 2004, a new referral about the family was made indicating the same complaints of household filth and personal hygiene of the children. However, before the agency in [...], B.C. could locate the family, they left British Columbia in June 2004 to move back to Nova Scotia.

[18] On July 2, 2004, a Canada wide child welfare alert was issued by the Ministry of Children and Family Development in British Columbia indicating that the family had fled from British Columbia notifying recipients to contact child welfare authorities if the family is identified. By then the mother was late term in her pregnancy with their third child.

[19] When the family arrived in Nova Scotia, they did not initially have a place to live and were sleeping in the van which had transported them from British

Columbia to Nova Scotia. The van fell over a bank in the night and the police came to the scene as a result of that accident and later made a referral to the agency in Nova Scotia.

[20] The third child was born on July [...], 2004 in Halifax. The next day, the social worker from the agency visited the mother at the hospital who accepted voluntarily the services of a public health nurse and a "doula" (a person trained to provide parents of a new baby with parenting training). She worked with the mother three times per week for three hour sessions each over several months. The public health nurse and her replacement provided regular services for a period of five months.

[21] Various child welfare concerns were noted by those who assisted the family. A dog was left unattended sitting next to the baby; there were computer parts spread over the floor; the apartment was found to be filthy; mattresses were bare on occasion the girls were wearing only their underwear; their hair was dirty; the dishes were unwashed; pots of food were left on the stove, and on one occasion, the children were given a pot of Kraft dinner to eat with their fingers and on another, a cold can of stew for breakfast.

[22] To assist with the socialization of the older two children, the agency enrolled them in daycare. There was evidence that the children came to daycare in dirty clothes.

[23] There is evidence that the children were left alone in the bathtub at ages less than three and less than four and that their mother would direct them to dry themselves off and get themselves dressed.

[24] The agency formed the view that their services had not resulted in a sufficient amount of progress. The agency received a report from the doula that the uncleanliness of the house had worsened and that the children were smelling of urine, that they were being locked in their room and that there were animal feces on the floors.

[25] By December 7, 2004 the agency made a decision to bring the matter before the court. The children were ordered to be left in the care of their parents but made subject to the supervision of the agency.

[26] On December 23, 2004 at 8:00 a.m. approximately, the social worker attended at the family residence and did not initially gain entry. She could hear the two older children and eventually saw that they were alone. The mother came from upstairs appearing as though she had just been awakened by the worker's arrival. Familiar issues with respect to the household management were of additional concern to the social worker. A decision was made to take the children into agency care as a result of which a temporary care and custody order was granted.

[27] During the involvement of the Children's Aid Society of Halifax, the family was provided with the following services: alcohol and drug counselling, individual counselling, in-home management, a doula, daycare for the two older children, a parental capacity assessment, public health nurse, parenting resource centre and food banks.

[28] By February 2005, the parties report that they would be separating. Prior to that time, the father's close friend and his partner had been living in the same residence with the family. He separated from his partner but continued to reside with the family after his partner moved out. He later began a relationship with the mother and at the time of the trial they were a couple residing with his parents.

THE ISSUE:

[29] The issue in the case is whether or not the agency's plan for the permanent care of the children with the intention of placing them for adoption should be endorsed by order of the court.

[30] Under the terms of the *Act*, the outside date for final disposition in this matter is April 27, 2006 which is approximately four months from the preparation of this decision. That being so, the alternatives available to the court are to terminate the proceedings and return the children to one of the respondents, to continue them in temporary care with services designed to resolve outstanding issues or to return them to either parent or the paternal grandmother subject to supervision. Since the paternal grandmother has brought an application pursuant to the *Maintenance and Custody Act*, *R.S.N.S. 1989, c.160 ("The MCA")* a further

alternative if the child welfare matter were to be terminated would be to grant custody pursuant to the *MCA* to the paternal grandmother.

CULTURAL CONSIDERATIONS:

[31] Included in the documentary evidence from British Columbia was a notation that the respondents may have an aboriginal heritage. When questioned about that possibility by the agency worker in [...], British Columbia, the father replied by saying that that is his "ace in the hole". It was not made clear to the court what he meant by that remark.

[32] The evidence before me with respect to the parties possible aboriginal heritage was vague. The mother testified that while she was growing up she was told by family members that someone on her father's side of the family was aboriginal. She was not sure how many generations came before hers after that person of the Blackfoot Nation entered her lineage. I was left with the impression that it would have been a number of generations. She indicated that when as a child, she was living with her grandmother in the United States, she lived near a reserve and went to school there and often visited the reserve. She does not have legal aboriginal status and has not taken steps to pursue a claim for such although she expressed a desire to look into it. I was given no evidence that the mother has, during her adulthood, been a member of any aboriginal community or band or that she relates to any aspect of such culture or associates with it in any way.

[33] Regarding the father, the evidence is that he has no legal aboriginal status although he may have First Nations roots (MicMac and Apache), from an unknown number of generations ago. There is no evidence from him that he has taken part in any aboriginal band or community or relates to the culture.

[34] The mother testified that she was raised as a Jehovah's Witness. However, she confirms that she does not practice that religion and she specified that she does not raise her children in that faith as it is her belief that a choice of religion for the children should not be made until they are old enough to take part in that decision.

[35] The existence of cultural and religious heritage on the part of the parents in a child welfare proceeding can be of very great significance. It can certainly be relevant to the choice of placement for the children. It may impact on the

particular services that would be helpful to the parents and a sensitivity on the part of those designing services would be needed in order to maximize their benefit and understand the parties' needs.

[36] The impact of religious and cultural heritage is not as profound when, as is the case here, reliance by the parents on those heritages is not occurring. In the case of child placement considerations, both during the period of temporary care and in the event of permanent care, there is a duty on the parents to bring forward culture based placement options if they exist. That has not been done. In the case of services, there was no suggestion from the parties of a need for or an availability of such services. In the case of sensitivities, there is nothing in the evidence to cause me to conclude that the agency workers or their contractors were insensitive to heritage issues.

[37] It was strongly argued by counsel that I should find that the agency failed to give proper attention to the parties' aboriginal heritage. It was not made clear to me how that deficiency, if it existed, should impact the outcome of this case. Because of the lack of reliance by the parties on a possible cultural heritage and given an apparent lack of knowledge of that culture by them, my decision is not affected by that argument. The risk to the children's well-being from the concerns referred to above is of greater concern.

ANALYSIS:

[38] Dr. Lowell Blood of IWK Health Centre Assessment Services prepared a 45 page Parental Capacity Assessment report. From pages 23 through 30 of that report, Dr. Blood identifies significant concerns regarding the parents' ability to meet basic needs noting that the children smelled of urine, sleep on mattresses soaked with urine, are dirty, were not properly fed and are often unsupervised or locked in their room. He lists concerns of an inability to meet emotional needs due in part to certain mental health issues relating to the parents, particularly the father. He notes concerns about the ability of the parents to separate their needs from the children and he lists a number of child management concerns, an area in which he describes the mother as "seriously deficient" at page 30. He concludes at page 42:

> "There is very strong evidence that these children have been subjected to serious, chronic neglect. While in the care of (the mother) and (the father) the children

> experienced physical neglect (the failure to protect from harm and provide basic needs); emotional neglect (inattention to nurturing, emotional needs and emotional well-being); and medical neglect (failure to provide appropriate medical treatment). It is apparent that the basis for this neglect was (the mother's and the father's) inability to understand their children's needs; their inability to give priority to their children's needs as opposed to their own; and their abdication of parental responsibility."

[39] And at page 43 he states in respect of the mother:

> "She attaches quickly and strongly to individuals developing dependent relationships. There is doubt as to whether she can look after her own needs, much less those of her children and she presently finds herself in a situation where she is being parented, herself...there is no doubt that (the mother) cares for her children, there is real concern that this attempt at change will be no more successful than previous attempts".

[40] He went on to effectively recommend permanent care to the agency.

[41] The fact that the children are the subject of a third physical apprehension (except for the youngest who was not born at the time of the first two) is very significant because of the instability and uncertainty arising from the back and forth to their parents' care. I find on the evidence that the couple have been the subject of extremely intensive services during all three time frames when the children were in agency care. The fact that the parents relapsed each time to an established pattern of poor parenting casts considerable doubt on whether they could have together provided a safe home for their children.

[42] There has been a significant change in circumstance in that the parents have separated. The mother is in a relationship with another man and they live together with his parents who offer to be supportive of the couple with regard to the care of the children. Counsel have argued that this material change in circumstance justifies, at a minimum, a return of the children to their mother under court ordered supervision by the agency to provide her with an opportunity to parent without the live-in influence of the father.

[43] There is no doubt whatsoever that if a final disposition were to have been needed at a time when the parents were still together as a couple, permanent care would be the only realistic alternative. This is so because of the extensive history

of repeated failures in acquiring parenting and household management skills over a five year period despite extensive helpful interventions.

[44] The case comes down to a question of whether the above mentioned change of circumstance is a reason to deny the permanent care request of the agency and give the mother a further last chance to obtain the missing parenting skills in her new environment.

[45] Clearly, the child welfare concerns are of such significance that a termination of the proceedings and a full return of the children to their mother is not feasible. The father concedes that a return to his care is also not appropriate. The remaining alternatives to permanent care are a return to the mother or the grandmother under supervision. There are a number of factors that should be taken into account in responding to that suggestion.

[46] The mother contends that her deficiencies with respect to household management were caused largely by the father and his ability to control and dominate her, a position she took after they had separated. A number of the workers involved with the family testified that they made no such observation from their work with the family. The mother contends that when she would clean the house, the father would quickly make it untidy or unclean and that she could never keep up with this. There may be a degree of truth to her contention; however, it does not seem realistic to me that the father could contribute to the untidy conditions to such an extent that a stay-at-home mother (even with no help from the father) could not keep the dishes clean, avoid animal feces on the floor and keep the children's clothing clean and have them dressed for the day.

[47] The fact that this is the third court proceeding for this family is very significant. All three children were taken into care at birth. Of the 61 months since the oldest child was born, she has been in agency care for 37 months, in court ordered agency supervision for 12.5 months, in voluntary agency supervision for 6 months and with her parents on an unsupervised basis for 5 months. For the second born child's 50 month life to date, those respective statistics are 30 months, 9.5 months, 5 months and 5 months. For the third born child's 17 month life to date, he has never been in the unsupervised care of his parents and has been in agency care for 10 months, under court ordered supervision for a ½ month and under voluntary supervision for 4.5 months.

[48] Under the scheme of the *Act*, a child welfare agency does not have responsibility to sustain and bolster the parents' responsibilities indefinitely. Dr. Blood testified that, if possible, the next placement for these children should be their last one. He indicated that an attempt to test the parenting skills in the context of the mother's new common-law relationship offered too much risk to the children. He indicated that a return and then a subsequent reapprehension would be disastrous for the children. I agree with him.

[49] In the case of *Nova Scotia (Minister of Community Services) v. S.Z. et al* (1999)179 N.S.R. (2d)240 Justice Williams of the Supreme Court Family Division stated:

> "The question of whether a matter should be adjourned and the parent given more time to address personal deficiencies or problems must be resolved by a balancing of the child's needs, best interests and protection including the need to be as a matter of first choice with the family and parents...
>
> Should the agency seek a permanent order where there is what seems like so much time left on the statutory clock? The agency has a right, if not a duty, to do so where it believes it can satisfy the burden of proof put on it by the operation of the relevant statutory provisions...
>
> The time limits set out in Section 45(1) are just that limits. They are not goals they are not waiting periods. Each case is different. Each case must be decided on its own particular facts and circumstances."(Emphasis added)

[50] In *Nova Scotia (Minister of Community Services) v. P.(L.L.)* (2003) 211 N.S.R. (2d) 47 Justice Bateman speaking for the Nova Scotia Court of Appeal approved the above passage at page 56.

[51] At page 55 she states as follows:

> "Any service based measure intended to preserve or reunite the family unit, must be one which can effect acceptable change within the limited time permitted by the Act. ...ultimately parents must assume responsibility for parenting their children. The Act does not contemplate that the agency shore up the family indefinitely."

[52] And at page 56:

> "The Act does not require a court to defer a decision to order permanent care until the maximum statutory time limits have expired. The direction of section 46(6) of the statute is to the opposite effect."

[53] Section 46(6) of the *Act* states:

> "Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time."

[54] There are approximately four months from the release of this decision to the overall statutory deadline in this case. Given the longstanding pattern of services and parenting failures, it is not realistic to assume that the change in the mother's partnership would assure a full and permanent reversal of the problems from the past. Her current partner lived with the parents and these children for many months and was part of the lifestyle that gave rise to the apprehension. Their relationship is relatively new.

[55] There comes a time when permanency planning for children in care is a paramount consideration in assessing their best interests. These children are beyond that point. I am not satisfied that the child welfare concerns in this case are likely to change within a reasonably foreseeable time and in any event not within the four months remaining in the statutory time line. Not all of the child welfare concerns relate to the father's input or control over the mother, if that exists. Matters of a lack of basic cleanliness, hygiene, medical attention and minimum household management are to some extent based on both parents' inability to independently master the tasks. A change of partner cannot reinvent missing skills.

[56] The paternal grandmother applied to be added as a third party a few short weeks prior to the trial. She supports the return of the children to their mother but in the alternative offers to take care and custody of all three children or alternatively of the two girls and in the further alternative, the youngest child. She has had some contact with her grandchildren. For the first number of years, she was not on good terms with their father and was not aware of their birth. She moved to British Columbia and lived in the same town and at times in the same

residence with the family for a number of months. There was no contact for the period when the family moved from [...], British Columbia to [...]. There has been some contact during the last year and half when the parties lived in Nova Scotia although they have been in care for much of that time and therefore the contact has been somewhat minimal.

[57] The agency does not support the grandmother's plan noting that there was a period of involvement with a child welfare agency by the grandmother with respect to one of her children.

[58] I have concluded that the grandmother's plan is not sufficiently developed, that it is presented too late in the process and that it has not had sufficient opportunity to be tested for the risks envisaged by the agency. Accordingly, I would deny the grandmother's claim both pursuant to the *Act* and alternatively through the *MCA*.

[59] Section 42(2) of the *Act* states that the court shall not make an order removing a child from the care of a parent unless the court is satisfied that less intrusive alternatives, including services have been attempted and have failed or have been refused or would be inadequate to protect the child. That finding has been made at the time that the children were taken into temporary care. Nothing has changed in the interim that would cause the court to reach a different conclusion.

[60] Subsection (3) of Section 42 requires a court upon removing a child from their parents' care to consider the possibility of a placement with a relative, neighbour or community member. The burden is on the parents' to bring forward such a plan and that did not occur. Therefore no further consideration by the court is required.

[61] For the reasons given above, I am satisfied that the circumstances justifying a permanent care order are unlikely to change within a reasonably foreseeable time not exceeding the time limits and that accordingly the requirements of Section 42(4) have been met.

[62] In conclusion, I order pursuant to the authority in Section 42(1)(f) of the *Act* that the three children be placed in the permanent care and custody of the

Children's Aid Society of Halifax. Very recent amendments to the *Act* have changed the requirement that court ordered access to the children impairs an adoption plan. The order will be silent as to access by the parents. Parental and grand parental access to the children shall be as arranged by the agency.

J.