

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v. S.R.A. L., 2008 NSSC 400

Date: 20090116

Docket: SFHCFSA-061200

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

S. R. A. L. and G. A. M.

Respondents

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."

Judge: The Honourable Justice Leslie J. Dellapinna

Heard: November 20, 2008, in Halifax, Nova Scotia

Written Decision: January 16, 2009

Counsel: J. Underhill counsel for the Minister
P. Katsihtis counsel for S. L.

By the Court:

[1] This is an interim hearing pursuant to section 39 of the *Children's and Family Services Act*. The Agency seeks confirmation of the reasonable and probable grounds finding made earlier by the Court and argues that the child J. should remain in the care and custody of Ms. B. who the child considers to be her grandmother and that the children L. and C. remain in the care and custody of the Minister. It is the Agency's position that not only are there reasonable and probable grounds to believe that the children are in need of protective services but also that there are reasonable and probable grounds to believe that the children's health or safety would be at substantial risk if they were returned to the care of their mother.

[2] The Respondent, Mr. G. A. M., is presently incarcerated and not in a position to care for the children.

[3] The Respondent, S. L., seeks the return of the children to her under a Supervision Order or alternatively asks that the children be placed with family members, in this case Ms. B., to take care of the child J. and her aunt, Ms. S., to take care of the two younger children, under a Third Party Supervision Order. She says she would like to be able to live with Ms. S. with the children in Ms. S.' home or if the Court thinks that isn't possible then she would like the children placed with Ms. S. in any event rather than have them remain in foster care. Ms. S. consents to caring for the children in her home and also agrees to having Ms. L. live with her if that is permitted by the Court.

[4] I am satisfied, first of all, that there continue to be reasonable and probable grounds to believe that the children are in need of protective services. This application was made after a police search of Ms. L.'s home found significant quantities of cocaine, ecstasy pills and marijuana in places that were accessible by the children. According to the child welfare referral form, a knife was also found in the living room of her home and ammunition found in the basement. Other evidence, which I find to be credible and trustworthy, suggests that crack cocaine had been manufactured in the home on previous occasions and I've concluded that it's highly unlikely that Ms. L. was not aware of the drugs being in her home. It is very likely too that she was at least aware of and probably involved in the manufacturing of the drugs and probably too in the distribution and sale of those drugs. More importantly and significantly, all of this took place in the home of the children. The children were exposed to drugs and the risk involved by living in and being in close proximity to persons involved in the drug culture. As such they were at substantial risk of physical harm.

[5] Ms. L. does not admit her involvement in the possession, manufacture or distribution of controlled substances and, in fact, denies it and denies any knowledge of the manufacture of crack cocaine in her home. What is most disturbing is her apparent failure to appreciate the risks posed to the children by their exposure to drugs and the people who deal in drugs. Because of that I don't believe that, at this time at least, she can be trusted to adequately protect the children from harm. For that reason I have reasonable and probable grounds to believe that there would be a substantial risk to the children's health or safety if they were returned to her care.

[6] Being mindful that in all proceedings and matters pursuant to the *Children's and Family Services Act* the best interests of the children are paramount and the least intrusive means of intervention should be implemented, I find that the children can be adequately protected and cared for if placed with family members or in the case of J., that she continue to be in the care of Ms. D. B. who is someone who she has a relationship as close to any extended family member.

[7] I appreciate the Agency's desire to be cautious but I've heard from Ms. C. S. and I believe that she's quite capable of caring for the children and protecting them from harm. She said she won't allow drugs in her home and that she would call the police if anyone brought them to her home. She says too that if family or other pressure was such that she felt that she couldn't care for the children or protect them adequately, she would advise the Agency. I accept her evidence. While I am attracted to the idea of placing all of the children under the same roof, J. is doing well in the care of the B.s and is doing well in the school in their area. I think it's best, particularly considering that this is an interim order only, not to disrupt that arrangement right now. I don't doubt that she misses her siblings but hopefully a provision for access between the children can address that to some extent. I therefore order the following:

- Pursuant to sub-section 39(4)(d) of the *Children's and Family Services Act*, the child J. S., born March *, 2001, shall remain in the care and custody of D. B., subject to the supervision of the Applicant, the Minister of Community Services, on the current terms

and conditions contained in paragraphs 3 (a),(b), (c), (d), and (e) of the Protection Application.

- Pursuant to sub-section 39(4)(d) the children L. A. M., born May *, 2005, and C. M., born October *, 2007, shall be placed in the care and custody of Ms. C. S. subject to the supervision of the Minister of Community Services on the following terms and conditions: Ms. S. shall co-operate and comply with all reasonable requests, inquiries, directions and recommendations of any representative of the supervising Agency, in this case the Department of Community Services. Also, any representative of the Agency shall have the right to enter her residence and the residence of the children to provide guidance and assistance and to ascertain that the children are being properly cared for. Further, she shall make the children available to meet the representatives of the Agency as may be requested from time to time. Further, she shall not allow the Respondents to reside with or contact or associate in any way with the children except as authorized by the Minister. And, finally, in the event of non-compliance by Ms. S. with any of the terms and conditions of this order, the Minister of Community Services shall be entitled to take the children into care and bring the matter back before this Court pursuant to sub-section 39(5) of the *Act*.

- The children shall have access to each other as may be arranged by the Minister and on such terms and conditions as are determined by the Minister to be in their best interests. I will say simply this; such access in my opinion should be at reasonable times and should

be as frequent as is reasonably possible and made in consultation with Ms. B. and Ms. S.. It may be that when Ms. L. exercises her access to the two younger children arrangements could be made for the older child to be present with her so that Ms. L. can exercise access to all three children at the same time and they with each other. In that regard, it will be ordered that pursuant to sub-section 39(4)(f) of the *Act*, Ms. L. shall have access to the children on such terms and conditions as may be arranged by the Minister and that access would not be limited to but rather would include reasonable telephone access. The phone access, too, will be arranged in consultation with Ms. B. and Ms. S.. Subject to the access provisions of the Court's order, Ms. L. shall not reside with the children until otherwise ordered.

- I find it's in the children's best interests at this time that Ms. L. not reside with the children. This will permit Ms. S. an opportunity to not only care for the children but to establish a parent-like relationship with them so that they will understand the hierarchy in her home and that hierarchy or authority will not be diluted by Ms. L.' constant presence.

- It will be ordered pursuant to sub-sections 39 (4) (c) and (f) that the Respondent, G. M., shall not reside with or contact or associate in any way with the children except for access on such terms and conditions as may be arranged by the Minister.

- Further, pursuant to sub-section 39(4)(g) of the *Act* the Respondents, Ms. L. and Mr. M., shall be referred for the preparation of a Parental Capacity Assessment, including a psychological component to be arranged by the Minister.

- Further, pursuant to sub-section 39(4)(g) of the *Act* the Respondent, S. L., shall refer herself to Capital District Health Addiction Prevention Treatment and Services for a substance abuse assessment, with a report to be filed with the Court, and shall co-operate and participate in any therapy and/or counseling as may be recommended as a result of that assessment.

- Further, the Respondent, Ms. L., shall refrain from the abuse of alcohol or non-medically prescribed drugs, shall abstain absolutely from the use of illicit drugs during the currency of this Order and shall submit to random urinalysis and drug testing as requested by the Minister who shall have the right to terminate this service after two successive failures to provide samples as requested.

[8] Further, the Order for Production in relation to the police records as requested in paragraph 9 on page 5 of the Protection Application is granted.

[9] I want to emphasize that this Order is an interim order only and I am optimistic that with Ms. L.'s co-operation with the services that are offered, and I believe she will co-operate with them, and provided she distances herself from people who have a negative influence on her,

there's reason to believe that she will be reunited with her children in the not too distant future.

The report that I've seen from the previous Court proceeding causes me to believe that she can learn from her mistakes and move on from them but who she associates with and doesn't associate with will have a significant impact on how successful she will be.

J.