

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Nova Scotia (Community Services) v. K.A., 2009 NSSC 90

**Date:** 20090216

**Docket:** SFHCFSA-055063

**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v.

K.A. and L.B.

Respondents

**Editorial Notice**

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

**Restriction on publication:**

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"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 Deborah Gass

**Heard:** February 2, 3, 4, 5 & 6, 2009, in Halifax, Nova Scotia

**Oral Decision:** February 16, 2009

**Written Release of**

**Oral Decision:** March 19, 2009

**Counsel:** Jean Webb, for the applicant  
Linda Tippett-Leary, for the respondent K.A.  
Marian Mancini, for the respondent L.B.

**By the Court:**

[1] This is a decision in the disposition hearing with respect to the children D.B. and B. B.. The application as it currently stands at the conclusion of the hearing is for an order for permanent care and custody of the child D.B., who was born September \*, 2003, and an application for the termination and rollover into a new proceeding with respect to the child B.B., who was born September \*, 2006.

[2] The application for permanent care for D. is opposed by the respondent mother K.A. and is not opposed by the respondent L.B.. In relation to the child B., where I have indicated that the Minister is seeking a termination and what is commonly called a rollover to a continuing supervision order, this is consented to by the father and, while the initial plan of care, which was the termination and memorandum of understanding was opposed by the mother, the current request for the supervision order with the provisions for access is not opposed by her, and in fact is welcomed by her because of the provision for continued access with B..

[3] At this disposition stage, the sole consideration is the best interests of the children. The first disposition order was made on March 5<sup>th</sup>, 2008, so it's one year ago that the first disposition order was made with respect to the children.

[4] This is a matter in which there has been a history of agency involvement. K. herself was a child who was in voluntary care for a period of time between November of 2000 and February of 2001. D., her daughter, was born September, 2003. D. was also placed in voluntary care for a period of time from January of 2004 to November of 2005, or somewhere in that time range, those dates may not be accurate, but there was a period of time when she was in voluntary care.

[5] The current agency involvement began in August of 2007. At that time K. had called J. B., who had been the foster mom for D., she called from New Brunswick and asked her if she could come and get the children and Ms. B. did so and returned to Nova Scotia with the children, kept D., as she had had D. in her care for some considerable period of time in the past, and delivered B. to B.'s father, L.B., who is the other respondent in the matter.

[6] L.B. presented at the agency office with his son, B., expressing concerns with respect to the care his son had received and at that time there had been an abrasion on his head, which I will discuss later.

[7] At any rate, there were a number of complaints and it is noted that a substantial number of those complaints had come over time from L.B. with regard to K.A.'s parenting.

[8] At any rate, in October of 2007 the children were formally taken into care and D. herself has actually been in care for approximately half of her life and when in care has been with J.B.. D. is now five and a half years of age. It is significant to note that Ms. B. has been a stable and consistent influence in the child's life and as well has been a strong support to K.A. throughout.

[9] Ms. A. presents to the court as a kind and loving mother who is well-spoken and articulate. Her life has been chaotic. It has been marked by relationships that have been abusive, either emotionally or physically. She is now pregnant with her third child and is due at the end of March, 2009. Her current plan is to live with her grandmother and take care of her. Her grandmother is in poor and failing health. Ms. A. has been back and forth from the province. At one time, when D. was originally taken into care was when she was living in O., then in the summer of 2007 when D. went back to J.B.'s house and B. went to his dad's she was in New Brunswick, and more recently she had been living in M. and in fact she did

travel back and forth some distance in order to exercise her access while the children were in care. She recently returned to the province of Nova Scotia to take up residency here again, having gone away for periods of time. There were also periods of time when her access with the children was suspended.

[10] There is some dispute about the number of access visits she missed and while she did not miss as many access visits as one might initially assume, the evidence is clear that she did miss quite a number. And while most of the visits appear to have gone well, there were many which were problematic. She has, and it has been attested to by witnesses and it has been documented in the material, had some difficulty in controlling her emotions and temper from time to time. While that is understandable to a large extent because she is a young woman who is under the considerable stress of not having her children with her in her care and when she does have the children with her she has people watching her, at the same time there does appear on the whole of the evidence to be an absence of accountability or responsibility for her actions. There is an excuse or an explanation or a refuting of many of the negative incidents that have been reported in the evidence before the court, and again I refer to the documentary evidence and the oral evidence.

[11] During the course of these proceedings a parental capacity assessment was conducted and the assessment was completed in June of 2008. The assessment does summarize many of the family issues that K.A. has had to deal with from a very young age. They range from her father's illness to being in a group home at the age of 14; the death of her mother; her father's attempts at suicide and then ultimately his suicide in December of 2006; being involved in relationships that have been problematic; a grandmother to whom she is very close but who is also suffering from Alzheimer's Disease; and, as I have indicated, abusive relationships and more recently her pregnancy.

[12] In terms of the abusive relationships, it does appear that her relationship with D.'s father was an abusive one, that her relationship with Mr. B. appeared to not have been abusive but it was marred by the one incident of assault that occurred in December of 2006. This happened shortly after her dad died and it did result in a conviction for Mr. B.. Following that she ended another potentially abusive relationship in 2007.

[13] There was the one incident of concern in August of 2007 when mom was in New Brunswick and this is when B. apparently slipped from her grasp and fell on a

concrete step and suffered an abrasion to his head. The difficulty was the mother felt terrible about it and as a result she lied about it and gave an explanation that it was a rug burn; that she treated it with Polysporin and he didn't have any long term effects from it. Her evidence in court was that she had taken him to the hospital, although she did not report that to anybody in the parental capacity assessment nor during the course of any of the recordings was there any reference to that. At any rate, the incident did occur and she felt terrible about it and the explanation was not a satisfactory one and the child did get some medical treatment as a result.

[14] The children, and particularly B., and I'm referring only to B., did suffer some significant developmental delays. The children appear to have been in mom's care from shortly after the assault when the parents broke up in December of 2006/January of 2007 until August of 2007 when J.B. drove to New Brunswick to pick them up. The evidence before the court is that B. has some developmental delays and the mom was mindful of that as well.

[15] The evidence before the court indicated that mom is capable of nurturing her children and being responsive to their needs, as was observed during her time in the access setting, but there were issues with respect to her inability to reign in her

anger at times, her frustration and as well references with regard to her own impulsive behaviour.

[16] Looking at the entirety of her history and the factors that are taken into consideration in making the recommendations (and at that time they were in support of an order for temporary care) the personal trauma she has experienced in her own short life, her involvement in negative relationships, her impulsive moves, and that meaning that she had gone to New Brunswick, come back and then gone to M. and come back were noted. Also noted were her impulsivity emotionally, her inability to regulate and control her behaviour, her lack of insight into these issues and the tendency to minimize much of the concerns that were raised by the agency. There was not a good prognosis for her, especially now at this late stage in the proceedings.

[17] Those concerns with regard to minimizing concerns apply to Mr. B. as well, and the court heard evidence of that not only in the recent hearing but also in the hearing in September. As well, there is a concern, and it applies to both of them, about their resistance to service providers, although it does appear that Ms. A. has resumed some of the services that were made available to her. At any rate,



returning again to Ms. A., it did appear from the evidence that she is able to meet the physical needs of her children and that she has been a nurturing parent. What comes out in all of the evidence is her own issues, it is not so much her abilities with regard to the children, but it is her dealing with her own issues and the negative impact that has on the stability of the children, their health and their emotional well-being.

[18] In August, when a plan of care was put forward at that time, the expectations were for Ms. A. to obtain and maintain a stable residence and that did not occur, she has only recently returned and she has plans to live with her grandmother but that is very recent. As well, it was expected that she would consistently attend counselling and that was interrupted as well and only recently resumed; that she would consistently attend all access and access was actually suspended and then resumed and there have been issues with respect to access; that she participate in family skills and that she keep all her appointments. So those were recommendations and expectations. But, to a large extent, Ms. A. made her own decisions about what she did or did not need and, to some extent, Mr. B. did the same thing. She didn't think that it was necessary to do the family skills because she knew the practicalities, the basics of food preparation, physical child care, et

cetera, and she was getting counselling to deal with her emotional needs so she felt it was redundant. With regard to the psychiatric assessment, she became upset with Dr. Ahmad and left and that part of the assessment was not conducted. Now, if that occurred in the manner in which Ms. A. described, the court can understand why she would have been very offended by that approach and that it would have been difficult for her to sit down and participate in an assessment. But, there was no indication until she gave her evidence, that I could see, that she would like to have somebody else do the psychiatric assessment and that she couldn't work with him for the purposes of the assessment. If it's in the materials I missed it, but in any event that was not done.

[19] The other issue that came out through the evidence is that the problems to a large extent were with everyone else. There was an issue with respect to every one of the people with whom mom was working, except I believe Amanda Woodcock, who was somebody that she did not have any problem with and as well she finds working with Shanda Woodin a positive thing.

[20] However, she did go away and then she just returned in December of 2008 and counselling and family skills and all of these other services have just resumed in recent weeks.

[21] Meanwhile, D. is in the care of J.B. and she has been with J.B. for about half of her life at this point and we are out of time in terms of this current proceeding. Nothing really has changed and anything that has changed has been very recent and in the very early stages and the court has to look at whether there is a likelihood that the circumstances will change within the time frames that are outlined, and there really hasn't been any change since 2007. Mom's been in and out of the picture and she has been dealing with a lot of personal issues. She does require ongoing counselling; she does present as somebody who can be quite volatile; her emotions are subject to quick change and the court has to bear in mind at this point in time solely what is in the best interests of the child and not what is best for mom.

[22] D. is a child who does need permanency planning and she does need stability and mom's circumstances do continue, even to this day, to be uncertain. While she articulates a plan, which is not yet underway, she intends to get a house

with her grandmother and look after her grandmother who, as I have indicated, is in poor and failing health, she has a baby due at the end of March and although she says that she is giving this child up to the care and guardianship of the paternal grandmother or someone on the father's side of the family, that is by no means a certainty. Anything can happen in that regard. So, under her present circumstances, the viability of her having either of her children returned to her care is just not there. It is not realistic to return D. to her and the court does not have the jurisdiction to return her under a supervision order even if the court felt that that would be something that would be in her interests at this time, because at this point the time frames for any supervision order are extremely limited and there is no agreement to that. And I am, frankly, not satisfied that at this point in D.'s life it is in her best interests to do so.

[23] I am not, however, satisfied that the agency has made out a case for not having access and under this permanent care order, which I am making today, I am making a provision for access. D. is a child who knows and has a loving relationship with her mother and continued access in an order is in her best interests. There is some reference that there would be ongoing informal access anyway, but that is not assured if there is not an order there. Continued access is

not going to be a bar to Ms. B. pursuing the present plan for adoption and certainly that is the plan that is in the child's best interests and under the present plan the child is with the proposed adoptive mother who does have a good relationship with the biological mother so that should not be a difficulty. However, under the permanent care and custody order I am ordering access. Once the adoption goes through, then access will be entirely in Ms. B.'s discretion. The agency had expressed concern that what if something happens with respect to the child's current placement and the current plan for adoption doesn't go through. Well that's a change in circumstances and that could result in an application to vary the provision for access if one of those changes occurs. So I am making the order for permanent care with access.

[24] With respect to B., I am accepting the proposal that has been agreed to, that the current proceeding be rolled over into a new supervision order. I am satisfied that is in B.'s interests and in fact ongoing supervision is important. As was noted, the court probably displayed some disappointment to hear some of the evidence with respect to where things stood with regard to dad's hours of work which was explained by Ms. Mancini; the issues with regard to the developmental assessment not having yet been done; the developmental daycare not being implemented,

although it does appear that the child is in an adequate daycare setting. The child does have developmental needs and that assessment has to be done. There are still ongoing concerns with regard to other people providing child care. All of those matters continue to be a concern. B. has to be the focus of dad's life and he has to accept, as I indicated many months ago, that he doesn't have all the answers and that he has to display continued compliance and progress in focussing on B.'s needs. And as well he does have to learn, he says he knows what the implications are of his abusive behaviour, but the court is very concerned about his attitude towards the child's mother and these parents need to get the help to work on how to maximize and ensure ongoing access with B. should B. remain in his care and the agency eventually move out of the picture, because certainly if he displays an inability to accept Ms. A. as the child's mother with a role to play and accepts the implications of his own behaviour and attitude for B., that can compromise his ability to keep B., so he has to deal with that because his negative attitudes can impact on his child and that can impact on his ongoing care.

[25] The sibling access has to continue and it is a situation where I would hope that counselling for the parents can be put into place to assist them in working out future access should B. remain in his father's care.

[26] I will go back to some occurrences where I note that mom expressed some concern and there were occurrences where I could see how it would be very frustrating and difficult for mom. In reference to some suggestion that was made that she was to “behave like a mother”, it was difficult for her because she was at a point in time when, first of all it was difficult to know what that means, whose definition of behaving like a mother, that’s a difficult expectation to define. It was difficult as well when she had no idea what the future held; the children were not actually in her care; she had to deal with the financial implications of not having the children in her care; there were some basic survival issues that mom had to deal with at that time and one can certainly understand her upset at being told to “behave like a mother” when all of those things were out there. If Dr. Ahmad commented to her as she said he did, that because she was a prostitute that’s why they took her kids, or something to that effect, and the misunderstandings about what she was doing for a living et cetera and the fact that that would certainly put an impediment to her being able to work with Dr. Ahmad in terms of carrying on the assessment, is understandable.

[27] I was also sympathetic to her concern about the access supervisor making an issue about the movies at the elevator at the end of the access visit. It seems to me that the timing and the location of that were unfortunate. As she indicated, Ms. B. could have used her discretion in dealing with whether or not D. would be able to watch those. The timing and the location of that confrontation were unfortunate and it certainly could have been handled better. And certainly there would be every sympathy to her being upset about the fall having occurred with B.. That would have been very upsetting and it was upsetting for both parents to deal with that.

[28] Having said all of that, that does not change my conclusion that under the *Children and Family Services Act* and the requirements of the legislation that the circumstances that brought about the beginning of this proceeding that resulted in the children being taken into care and the proceeding having begun in the fall of 2007, those circumstances, in my view, have not changed. I am not satisfied that they would change within the time frame that is available here. Frankly, D. is five and a half and the time has come for her to get the permanency and stability to which she is entitled. Mom still has a lot of unresolved issues to work through, her own emotional issues and her own physical situation is still very much up in the air



and I am satisfied that the services that have been made available have at times been provided and rejected and at times have not been adequate to address the needs and certainly within the time frame that is left they would not result in any changes that would give the court comfort in returning the children to the care of their mother.

[29] So, under all of the circumstances, I am satisfied that it is in the best interests of D. for an order for permanent care to go forward, with the provision for access and that the termination of the proceedings with respect to B. and the rollover into a new supervision order on terms and conditions as outlined is appropriate as being in his best interests at this time.

J.