

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

**Citation:** Nova Scotia (Health) v. J.K.D., 2009 NSSC 289

**Date:** 20090929

**Docket:** SFSNAPA 062139

**Registry:** Sydney, Nova Scotia

**Between:**

The Minister of Health, Province of Nova Scotia

Applicant

v.

J. K. D.

Respondent

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DECISION

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**Editorial Notice**

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

**Judge:** The Honourable Justice M. Clare MacLellan

**Application Heard:** July 13, 2009

**Oral Decision:** July 13, 2009

**Written Decision:** September 28, 2009

**Counsel:** Mr. Joseph Wall - Counsel for the Applicant,  
Minister of Health  
Mr. Matthew MacNeil - Counsel for the Respondent,  
J. K. D.

**By the Court:**

[1] As indicated earlier, the matter before the Court is the matter of Mr. D. and, in particular, whether or not he remains an adult in need of protective services. There are competing applications from both parties, competing affidavits. I've read the affidavits and I heard from the various witnesses that were called in cross examination as well as some cases re-direct.

[2] This case is different than most adult protection cases in that we are dealing with a young person who has an unfortunate health condition. The Minister, in his originating application, provided the court with numerous medicals which chronicled the physical and unfortunately mental deterioration of this person; the interplay that he had with the relationship that he had with his work, with his wife and with his social outlets. He is now in his third facility, \* Facility. Mr. D. has been through two other facilities after being removed from his home. Prior to his illness he worked at \* . He also took care of his wife and enjoyed a good relationship with her. Since that time he has been placed in three facilities where he

appears to be settling in. He does not, according to the guardian Mrs. P. D., socialize with the other residents to any great deal and that's given mainly, in her opinion, due to the large discrepancy in age of the other guests. With that age discrepancy would come, reasonably, the discrepancy in interests.

[3] Dr. R. describes Mr. D.'s condition as a neurological condition that will progressively worsen. Mr. D. is forty-two (42) years old.

[4] Mr. Wall is correct that the first thing the Court must examine in this case is not the tragedy of this case; there is tragedy. We must not be sidetracked by how sad it is and the pain that both parties are going through. Mrs. D. said "no one understands what he is going through" and I think she is probably very very correct. None of us can even pretend to walk in his shoes, walk in her shoes, see where they were, the difference between 2007 and when we had the first of Dr. Maharaj's reports to where we are today, just 2009. So we must take that tragedy and put it aside, and that's one thing that we have to do, we have to take a moment and put it aside; and we have to look at the onus that we're given. Before I even

look at bests interests I must examine, or if I'm even entitled to look at best interests, I must examine the threshold test as to whether or not Mr. D. fits 3(b)(i) or (ii). 3(b)(i) there's a question. He in his current premises without his wife, is he subjected to mental cruelty. Possibly, I have no evidence of that so I can't make a finding in relation to that section 3(b)(i) as I have no evidence. So we'll examine s. 3(b)(ii) in his current premises, that's \*. I think we'll all agree that's one of our newest and more user friendly facilities. In this new facility does he fit 3(b)(ii) (Adult Protection Act), and that is:

“is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his adequate care and attention”.

[5] In relation to the emotional element which I examine, bearing in mind Dr. R.'s reports, who is a psychiatrist and has treated both parties, indicated by correspondence dated April 2, 2009 (as attached to Exhibit # 7, May 25, 2009):

I am writing on behalf of B. D.. B. is a long time patient at the Mental Health Clinic in \*. She, as I am sure you are aware of, has significant other medical problems. Her husband has recently been placed under the Adult Protection Act in a long term care facility, \*, in \*, N.S. I had

recommended the importance of visits for her husband who has considerable difficulty with adjusting to his new placement. I would support certainly a minimum of twice a week trips for B. to visit him in Sydney and I wonder if she can be offered some assistance in this area.

I hope this is of assistance to you. Should you need further information, please contact me.

The doctor writes in his earlier letter (March 31, 2009):

B. D., as you may know is a client here at the \* Clinic where I have been seeing her for almost three years. She has been dealing with chronic illness and loss of vision for several years. As you may also know, B.'s husband K. has been recently diagnosed with a neurological disorder and placed in \* enhanced care facility. He has always been a great support to B. regarding her blindness and generally in helping her to ambulate, run errands, etc.

Since K.'s physical deterioration and placement, B. has been struggling to adjust to many losses and is fairly isolated now without her husband's presence at home. I am requesting that she be approved for funding to enable her to visit K. at \* at least 'twice' a week, in order to help her cope more easily with this transition.

[6] Based on Dr. R.'s first letter read into the record, and based on the comments made by Mrs. D., legal guardian (Exhibit # 6 and viva voce) who is retained for this purpose, this is her purpose, to come and tell us what this incompetent person needs, and that is what she did. She stated this

man is isolated, he can't mix with the people, the age difference is marked, he is in his room watching t.v. with his door closed. He relies on his wife. He misses his wife, he wants to see her every day. The reality is, at this stage, July 2009, he can't see her every day and, therefore, I make on the balance of probabilities of finding under s. 3(b)(ii) that he, even in his physically attractive premises is lacking adequate care and attention in that his soul mate is not able to see him more than once a week, and that is only with the assistance of Social Assistance. Mr. MacNeil is right, the time this couple have left together is unknown. As Mrs. D. said, we don't know what it is, we're dealing with the here and now; and here and now Mr. D. needs his wife; he misses her. We know she misses him; and it sounds cruel but she's not the focus today. Mr. D. misses her. He calls her when he falls on the floor; he calls her when he needs something; he is relying on her and he relies on her emotionally. He has very few pleasures left in life unfortunately, the television, the cable and more importantly his soul mate, his wife.

[7] I note Mrs. S. A. the adult protection worker on this matter, wrote on February 20, 2009 in Mr. D.'s proposed plan of care that "arrangements have been made for his wife to visit several times a week" (Exhibit # 2).

[8] I find that it fits exactly on the balance of probabilities within adequate care and intention as meant by the Act. It's not a huge request that the guardian put forward. Although I will note that in my fifteen plus years doing Adult Protection applications this is the third time a guardian has asked me for a service. The third time in fifteen years, once in every five years. There's no flood gates going to happen here, that's not going to happen, and if it did, it's still in the Minister's responsibility to comply if a person is found to be an adult in need of protective services. When you examine the request that the guardian is making on behalf of Mr. D., it's less than two thousand dollars for the next six months. Is that a huge amount of money to spend to fulfill the requirement of providing him adequate attention within the meaning of the Act?

[9] I find the threshold case has more than made out, clearly made out on the balance of probabilities. I'm here, I saw the situation, I saw the

couple interact, I heard from the guardian. The guardian was not contradicted on cross examination, at no point did this look like a ruse or some false wish to pretend that they want to be together when she is really just taking a taxi to the \* Mall to shop, there was none of that proven or alleged. The evidence is they need each other, he needs her.

[10] He needs to get his teeth fixed. He needs to see his wife one more time a week, one more time than is already funded by Social Services will cost less than two thousand dollars over the next six months. That's a reasonable request and it is a service that should come readily as the Minister stated in the plan of care. This is a service that has tails attached in that it is temporary. It's a transitional award to help him further entrench himself in \*. It's a temporary award within the meaning of the case law, within the meaning of the Chief Justice's decision in the ***Minister of Health (Nova Scotia), vs R.G. 2005 NSCA 59*** case and this is an Interim Order. So we don't have the concern of a seventeen year span as decided in ***Minister vs R.G.*** because some things are going to have to happen in the next six months, I think they may be either very workable for the D.s' or very painful. I really don't know which, but in the next six months there is



an opportunity for Mrs. D. to either make up her mind and sell the house and move to an apartment near \*, find a friendly neighbour who would be happy with gas money, find a way to have Handi-Trans be opened to her, re-apply or appeal to increase her social assistance one trip per week award. This is an opportunity for her to attempt to find an inexpensive way to be closer to her husband, that doesn't involve travelling from \* to Sydney. She is going to have to do this. She's an articulate woman and she's challenged by her blindness but she's articulate. I think if there is an opportunity she's going to be the person who will find it. Now we can ask what has she done. We have been involved in this case for seven months which is really not long. What has she been doing for the last seven months, she's been seeing her husband from one facility to another. Remember, he's been in three facilities in the last seven months as well as receiving increasingly depressing medical news so she has been busy, but unfortunately, she's going to be a wee bit busier in the next six months.

[11] There are some service groups, I have heard, that do provide this service; if that is so, I'm talking about the travelling, or she's going to have to drive her appointments with her Sydney doctors; and this will give her

an opportunity with doctors in the Sydney area, book appointments three and four months in advance to dovetail her medical appointments so that she can spend part of that day with her husband, part of the next day with her husband. So, she will have to attempt that, so this is what I mean when I say it's a transitional order. It is intended to help Mr. D. continue to adapt, bearing in mind that he has very little social activity, and that's a concern if we are to comply with the Adult Protection Act. Also, to give his wife an opportunity to make a plan, to make a plan to see what she can do to bring her physically closer to him. Maybe she can't, I don't know, but she has physical challenges now she has him established in \*; that part is done. He's not moving around any more as he has been since Adult Protection became involved. Now she can turn her focus to being closer to him physically. If he was, for any reason, to go to \*, I accept that that would not be a good location for him. His wife says he wouldn't settle; secondly, he already has a peace bond against him in \*. Whether or not there was anything connecting the peace bond to his health, we don't know. However his mother is in \* and they do not have a good relationship. He can only see his mother now for an hour a month because of the negative impact flowing from their interactions. So, it would be not in

his best interest to place him in \* . We have no evidence to the contrary. There's no evidence except what his wife states and what his guardian understood. There's nothing to say \* is better, that he should want to go there, or that he knows everyone and all of the \* friends are there, there's nothing, there's no proven plus for Mr. D. in \* , there are only minuses, not to mention that would be his fourth facility in seven months. We know from doing this work how adapting is difficult for seniors and chronically ill younger people when facilities are changed.

[12] In relation to the twenty-one hundred dollars a month that Mr. Wall would have us believe goes into the D. household, that is not accurate. It's somewhere around fourteen hundred, all other money is earmarked for care giving services for Mrs. D. to give her her insulin injections because she's blind and can't give her own injections. She has a hundred and fifty dollars that social assistance gives her for taxiing so there's fourteen hundred dollars going into this house to maintain the house, maintain herself , and she is trying to maintain Mr. D. in relation to pyjama's and slippers on a trust fund of a hundred dollars. Now, a hundred dollars to some may not seem like a lot but if one only receives fourteen hundred

dollars then one hundred dollars a month is a lot and has to be looked at as it really is. She has to maintain a balance so that he can have his phone; so that when he falls down he has a means of calling her. It is essential that he has a phone. It is essential that he has T.V. because he can't socialize with guests. So this hundred dollars a month is essential. So I find there's not excess money, I'm at a loss as to why there's not some other fund that could be tapped into but I'll leave that to Mr. MacNeil and Mrs. D. to see if there is, but right now, that's the only money that I have before me deals with where I have a young man, forty-three (43) years, who has a wife that he loves, and she loves him. They should see each other as documented in the Minister's plan of care (per February 9, 2009 Exhibit # 2, attachment B). They have limited time together and the time they will recognize each other is limited. They do not have the money to facilitate these visits two times per week.

[13] I Order that for the next six months that Mrs. D. be given the taxi money for an extra trip a week, which is fifty dollars a week for taxi fare, and hopefully she can ultimately find someone who will drive her for only gas money, as we see this means quite often. As well, Mr. D.'s dental

work. I don't know a lot about dental work; but when I look at Mrs. D.'s affidavit and I read Dr. A.'s estimate of six hundred and thirty-four dollars (\$634.00) for complicated extraction, that doesn't sound like cosmetic work, that sounds like something that somebody would not want to have "composite filling" done unless necessary. Failure to do so could result in compromising Mr. D.'s health when he is already very ill.

[14] I will give the Agency permission, or the Minister permission if they feel it's necessary, to interface with Dr. A., the dentist, and receive confirmation that this is essential dental work. I leave that in their discretion, it certainly appears the dental work is necessary. The estimate is reasonable in my view. It is something that if one does not take care of dental work then the patient can end up with a medical condition and one can almost take judicial notice of that fact. So that has to be taken care of, and that's part and parcel of the "best interests" as meant by the Adult Protection Act. If one has fourteen hundred dollars to run one house and contribute to your husband in another facility, albeit modestly, there's not any money left for dental care. I find that this would be a one time expense in relation to the fact that it does involve extractions. The Minister staff can

satisfy themselves that it's essential. If for any reason the dentist indicates that it was optional and could be passed over, then you can bring the matter back and I may alter it, but I certainly don't find that it is optional based on the description given in court. The best evidence before me indicates the extractions are necessary.

[15] Therefore, I'm renewing the Order for a period of six months as indicated. I hope that the guardian will be able to assist Mrs. D. in finding a way, either an inexpensive way to be closer to her husband or to be physically closer to him through an apartment in Sydney. These are choices she now has time to make and in the meantime until she can come up with a plan his best interests will be met by seeing her more than once a week, bearing in mind she is blind. She will be able to see him twice a week until she's able to find a cheaper way if one exists.

[16] The matter will be reviewed in six months, in the interim that's the Order of the Court. I find that he's an adult in need of protective services for the reasons given. His best interests require regular contact with his

wife and corrective dental work. I find it's in Mr. D.'s best interests that this Order be made. Both findings are made on the balance of probabilities.

[17] The Minister's application is dismissed.

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J.