CANADA
PROVINCE OF NOVA SCOTIA
2009

IN THE SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)

Citation: Children's Aid Society of Cape Breton-Victoria County v. R.M.S., 2009 NSSC 418

Date: September 3, 2009
Docket: 60762
Registry: Sydney

Between:

Children's Aid Society Cape Breton-Victoria County

Applicant

v.

R.M.S., J.B.

Respondents

Oral Decision

Editorial Notice

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

Judge: The Honourable Justice Kenneth C. Haley

Decision: Oral Decision given September 3, 2009

Heard: September 3, 2009, in Sydney, Nova Scotia

Written Decision: February 24, 2010

Counsel: David Raniseth, counsel for the Applicant
Vince Gillis, counsel for the Respondent, J.B.
Luke Wintermans, counsel for R.M.S.
Lisa Fraser Hill, counsel for child R.S.

By the Court:

[1] This is an application by the Children's Aid Society Cape Breton-Victoria County under s.46 of the *Children and Family Services Act of Nova Scotia* whereby there was a reapprehension of children, S.S. born December *, 1998 and J.M.S. born April *, 2008 under the supervised care of the named respondents in this action R.M.S. and J.B.. There is a third child R.S. who is a named party to the proceeding but not subject to the reapprehension or a party to this proceeding.

[2] We were in court subsequent to the apprehension on June 30th, 2009, on July 7th and the matter was put over again to July 16th of this year when an order for temporary care was issued by this court and the matter was put over for hearing to today's date for a full review of the circumstances involving the reapprehension of the children.

[3] I note upon review of Exhibit No. 2 which is the disposition hearing order, supervision order, that it was issued on May 11, 2009, pursuant to s.42(1)(b) of the *Children and Family Services Act*, the children R.S. ordering S.S. and J.M.S. will remain in the care and custody of the respondents R.M.S. and J.B. subject to the supervision of the applicant the Children's Aid Society Cape Breton Victoria.

[4] Specified as conditions of that supervision were, under para. A of that order:

> The respondents shall participate in hair sample drug testing and/or random urinalysis drug testing as required by the Agency.
>
> That the respondents, R.M.S. and J.B., were to make referrals to the Addiction Services and follow any recommended treatment that results from these referrals.
>
> That the respondents both refrain from the consumption of alcohol and the consumption of illegal or prescriptive drugs unless the prescriptive drugs are used as directed by a physician.
>
> That the respondents comply with all reasonable requests, inquires, directions or recommendations of the Agency including making the children available to the Agency representatives.

And there are other provisos in the order which are referenced in the exhibit and the court need not comment further.

[5] Paragraph H of that order indicates:

> In the event of non-compliance by the respondents, R.M.S. and J.B., with any of the terms and conditions of this order the applicant, the Children's Aid Society Cape Breton Victoria, shall be entitled to take the children R.S., S.S. and J.M.S. into care and bring them back before this court pursuant to s.43(3) of the *Children and Family Services Act.*

[6] Section 43(3) reads as follows:

> As a term of a supervision order the court may provide that non-compliance of any specific term or condition of the order may entitle the Agency to take the child into care and when the Agency takes the child into care, pursuant to this subsection or ss. 33, as soon as is practicable but in any event within five working days after the child is taken into

> care of the Agency, bring the matter before the court and the court may review and vary the order pursuant to s.46.

[7] Section 46(4) indicates:

> Before an order pursuant to ss.5 this court shall consider
>
> > (a) whether the circumstances have changed since the previous disposition order was made...

There is no question that has been established here in view of the evidence heard here today.

> ···whether the plan for the child's care that the court applied in its decision is being carried out.

And again, the evidence supports that there has been some movement away from the intended plan as outlined by the Agency.

[8] The court shall also consider:

> (c) what's the least intrusive alternative that is in the child's best interest and;
>
> (d) whether the requirements of subsection 6 have been met.
>
> On the hearing of an application for review, the court may in the child's best interest
>
> > (a) vary or terminate the disposition order made pursuant to subsection (1) of section 42 including any term or condition that is part of that order;

> (b) order that the disposition order terminate on a specified future date; or
>
> (c) make a further or another order pursuant to subsection (1) of Section 42, subject to the time limits specified in Section 43 for supervision orders and in Section 45 for orders for temporary care and custody.

[9] In this case, as all cases, the primary concern of the court is the best interest of the children and in this instance S.S.and J.M.S., are the two children who are the subject of the reapprehension.

[10] As well the court is mindful of the provisions of the *Children and Family Services Act* that the court shall not make an order removing the child or children from the care of a parent or guardian unless the court is satisfied that least intrusive alternatives including services to promote the integrity of the family pursuant to s.13

> (a) have attempted and have failed
> (b) have been refused by the parent or the guardian or
> (c) would be inadequate to protect the child.

[11] The court is faced with the task of determining what is in the best interest of the two children, namely S.S. and J.M.S., under these circumstances, which are serious and concerning to the court. There was an initial apprehension in September of 2008, there was a hearing in October of 2008 and the court granted an order of supervised care for the respondents, conditional upon them following certain specified requirements and conditions outlined by the Agency. It might sound trite but these things are done with due care and diligence to insure that it is in the best interest of the children. It is

not always what's best for the parents. The parents lose some of their parental authority and rights in this regards because the state has officially become involved and the court has become involved to insure what appears to be a potential risk for the child to remain in that environment is reduced or eliminated, and if it cannot be then the children can not be returned to ensure their best interests. So the parents have a positive obligation to work with the Agency involved and the court, to attempt to address any identified deficiencies in their parenting ability. That's what this is all about. This is not about taking children from their parents and walking away and being indifferent to the family unit and the integrity of a particular family. What this is about is insuring that families can live safely and productively and that the children in our community are going to be safe in the care of any specified parent. Now if they need help, they will get help. If they accept the help then there shouldn't be any problem in that family going off and doing what all families do and living in a nice, safe, family environment. If the parents cannot meet those expectations, then in those difficult cases, and they do happen, the children have to be removed and placed in a safe environment if the parents cannot or will not meet their parental obligations. So it is about the kids, it's all about the kids and when parents come into this courtroom and are given the opportunity to participate and work with trained professionals, social workers, psychiatrists, addiction personnel to work through their difficulties, they should embrace that opportunity and not reject it or dismiss it as being intrusive upon their lifestyle. Is it intrusive, yes it is. But to dismiss it as being irrelevant to the long term objective, to have those children returned to a safe and happy environment, it strikes the court as being an amazing position to take by any parent, an absurd one to be exact.

[12] So in this particular instance we have J.B. and R.M.S. agreeing to do certain things and undertaking to it by way of court order. That has significance, if not to them, certainly to the court. When a commitment is made to this court the court expects the Respondents to meet that commitment and not to trivialize it because it doesn't suit their daily perspective or it might interfere with their weekends. The very thought that you would have the ability to believe or think that random drug testing could be in someway be controlled by your personal wants for the weekend is just amazing to the court. I think J.B. to your credit you acknowledged that you made a mistake in that regard. R.M.S. I think you need an attitude adjustment in terms of how you view the seriousness of the situation and what a court order means. Start taking some responsibility and do some soul searching about what you can do to be a better parent and better cooperate with the services that are being afforded to you to assist in getting you out of this situation. Defiance and fighting is going to do nothing but result in the very situation you want to avoid, and that's what you're in now. You don't have your children do you. So I hope you've learned a lesson here since June 30th. The importance of your need to participate and be compliant but do it in a productive way, don't do it in an aggressive or indignant way which may result in mixed messages being received by the people involved.

[13] It strikes me that the comments of Susan MacMillan in terms of the weekend arrangements that you were hoping could be arranged, in no way indicated a commitment on her part . It indicated that she would look into it and check it out. It was

in no way an endorsement or an acknowledgment or green light for you and J.B. to go ahead and start refusing to provide samples, which was in violation of this court order and I hope you understand that if there was any uncertainty in that regard you had an obligation to clarify it as opposed to unilaterally taking liberties with this court order. The court does not like this or appreciate how you've addressed this issue.

[14] The being said, the evidence is clear that the concerns raised by the Agency in terms of drug testing appear to be on the decline. Since June 30th there have been an increase in tests. I think we are past the point where you believe that weekend tests are no longer in the cards, by virtue of your refusal on June 28th and June 14th, and from my recollection of the evidence as of July 2nd, at least in your case R.M.S., there has been fairly consistent compliance. Where there hasn't been compliance, the excuses or explanations that are offered, quite frankly, they may be true, they may not be true, but I find under the circumstances, not enough effort is being made to make yourself available for these types of tests. Whether it is a buzzer not working or a phone not working, find another way to insure that you make yourself readily available for this random drug testing.

[15] I've dealt with this in other cases where apparently random doesn't mean random, random seems to be what people want it to mean, as opposed to random in terms of showing up and taking samples when people perhaps least expect it, because of the concern of alcohol and/or drug abuse. Your past history warrants that concern. You're making wonderful efforts to move forward with your lives, respectively and rid

yourselves of your drug addictions and alcohol addictions, and I applaud you for that. But that being said, when you come to this court and say you are not doing drugs anymore, and I am not suggesting that you are, but because of your past history and because you want to have the children in your care there is a requirement by this court to confirm your evidence and ensure that J.B. and R.M.S. are drug free for the sake of the children. That is why the drug tests are required. You can shake your head all you want R.M.S. but this is an important thing for you to hear. That's why I have talked about the attitude adjustment R.M.S. that you require. Don't talk, I am giving my decision, you listen, you listen and you listen hard because what is about to happen here today is going to favour you but you are going to need to comply with the court order if you want to have any further continuance of having the children in your care. I will give you an opportunity to have your children returned to your care. I am not going to hold you out in abeyance wondering what I am going to decide here today. I am going to order the return of the children to your supervised care. J.B. will have to vacate the premises, because quite frankly J.B. your history of avoiding drug samples has been horrendous and not acceptable and the court has no confidence in your evidence saying that you aren't doing drugs when in fact we don't have any empirical scientific data to establish that. Until such time as that is provided to this court you will have to remain away from R.M.S. while she has care of those children.

[16] R.M.S. I am telling you right now, attitude adjustment. If someone shows up at your home and they say jump, you better say how high and any antagonistic attitude you take towards the social workers or the Agency workers, the counsel workers, that is

only going to further impair and jeopardize your ability to have your children remain in your care. You can come to this court in future incidents if that happens and put every explanation on the book that you care to put on the book but it is going to ring shallow unless you show a definite change to respect the system and the process that we are all partaking in. No one wants to do this. We would all be happier if your children weren't apprehended by the Agency and you could do this on your own without the intervention of the Agency representatives. But that is not the case. You need help, that help is going to be provided to you but you have to be willing to accept that help and follow through and hopefully rid yourself of being under any sort of supervision order. And it happens. Last week and Mr. Raniseth stood up in this courtroom and he withdrew an application against a young mother and her child after a year of being in court. But she followed every step, she did everything, she successfully addressed all the issues, the problems and at that point the Agency was able to come to this court and withdraw the application because those children could safely live with their mother without fear of any risk or personal harm. And that is what I want to see happen in your case, but you need to work cooperatively and very hard and very diligently with the services that are going to be provided to you and don't excuse yourself from doing it because you're having a bad day or it is a difficult week. I am saying this for the very purpose of bringing attention to the attitude that you and J.B. expressed by refusing to provide samples on weekends. You had no business doing that except it suited your purposes, but it was not compliant with this court order.

[17] You are fortunate today that the court is not taking a more aggressive stance on this, but I see in you a family unit that can be salvaged. I see in you a family unit that should be together but you need assistance through the supervised care assistance of the Agency. To have those children in temporary care, removed from you and seeing them three times a week for one hour at a time, seems to me to be not a productive way to deal with this particular case and that is not going to happen. Those children will be returned to your care, and J.B. you are going to have to demonstrate that you are the man that you said you are here today in this court.

[18] During the course of this evidence I've had no difficulty in listening to the evidence of Ms. Kehoe of Barry MacNeil, of Gail Crane who was the nurse I gather who took the samples and I will say this as part of my decision in terms of the testing Mr. Raniseth, I would hope and ask, I will not direct, but I will ask that there be some inquiry into establishing a policy for the availability of male nurses to deal with male clients. It seems unacceptable to the court that in this day and age we have a situation where we have a female nurse charged with the responsibility of obtaining a sample from a male client to obviously ensure the integrity of the sample, but resulting in the gender, privacy and embarrassment issues testified about here today. The Court can't imagine why anyone would put J.B. or any male patient in that position, let alone putting a female nurse in that position. It has to be awkward for both parties and I don't understand why it has to come to this courtroom for this point to be made. So I would encourage you to recommend to Bay Shore and to whomever that there should be some sensitivity given to how these samples are taken and whether or not the presence

of a female nurse was instrumental in J.B. not being able to provide samples. It is plausible that indeed was instrumental in him not being able to provide samples and now the Agency argues because of his non-compliance the children should be removed. You have to connect the dots here and not permit situations that are avoidable. Better policies and protocol should be developed in this regard.

[19] At this point in time the court is satisfied that there is sufficient evidence to establish, that R.M.S. is drug free at this time, has established a good period of time at least since the reapprehension, that the court can have confidence in that she is drug free at this time and does not present a risk to her children. What happened prior to June 30th is of interest to the court but the court is not prepared to utilize that as a means to deprive this mother of the opportunity to have the supervised care of her children. That being said, I think the message has been made clear to you R.M.S. both the importance for you to be compliant from this date onward, as you apparently are doing currently.

[20] So in essence then, I am ordering that the children be returned to the supervised care of R.M.S., subject to the caveat that J.B. vacate the premises and have no direct contact with his children while in the care of R.M.S.. That is not to say J.B. that you can't have access to your children as arranged and approved by the Children's Aid workers and I trust you will respect any decision they make in that regard to permit you to have access to your children. But again, you have an obligation to be respectful of how they want to structure that and sometimes what you want may not be what you get,

but if you work with them and are respectful of them I think time is on your side and you may find out that the results will start to be more to your liking if you cooperate. It is a simple request this court asks of you.

[21] I think the message here J.B., R.M.S. is that you know I think it has been eloquently mentioned by both counsel, is that they think you got the message. I hope you got the message because quite frankly, this is the second occasion we've been in this court and the court has granted a supervision order. You have to understand the position you're in and do everything you can to maintain the integrity of this family unit. You seem like a loving family, you're trying your best and I want to encourage that and support that. So don't fight with each other, work together and you will hopefully get through this. Thank you very much. Close the court.

J.