SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Nova Scotia (Community Services) v. L.M., 2010 NSSC 267

Date: Decision Date 20100702
Docket: 68160
Registry: Sydney

Between:

The Minister of Community Services

Applicant

v.

L.M., R.B., and G.V.

Respondents

Editorial Notice

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

Judge: The Honourable Justice Theresa M. Forgeron

Heard: June 10, 11, and 18, 2010, in Sydney, Nova Scotia

Oral Decision: July 2, 2010

Counsel: LeeAnne MacLeod-Archer, for the Applicant
L.M., on her own behalf
R.B., on his own behalf

That s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication. S. 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 a relative of the child

By the Court:

[1] **Introduction**

[2] L.M. is the mother of C. and A.; R.B. is A.'s father, and C.'s stepfather. R.B. has acted in the place of C.'s father because C.'s biological father is not involved in his life. L.M. and R.B. reside together in their home situate on * Street, Sydney.

[3] The Agency became involved with this family because of concerns respecting domestic violence and possible substance abuse. After the interim hearing, the children were placed in the individual, and supervised care of each of the respondents for approximately 50% of the time. The children stayed in the home, with the respondents circulating back and forth according to a structured schedule. The order also stipulated that the parties were to have no contact with each other.

[4] In March, R.B. and L.M. chose to breach the court order by having contact in the home when caring for the children. An argument ensued which became violent. As a result, the children were re-apprehended. Because of safety concerns, A. and C. were placed in the temporary care of the Agency. The respondents were provided with supervised access, and remedial services.

[5] The disposition hearing was contested. The court heard from the following witnesses: Dr. Reginald Landry; Ed Burke, Mary Annette Murphy-Robertson, Krista Morrison, Alexis MacQueen MacDonald, Dyan Degaust, Lillian Chadwick, Mark Sherlock, Nancy Lotherington, Jocelyn Keilty, Wendy Clarke, Theresa Currie Criss, L.M., and R.B.. The decision was reserved until today's date.

[6] **Issues**

[7] The issues to be determined in this decision are as follows:

> 1. Should the children be placed in the temporary care and custody of the Agency, or in the supervised care of L.M. and R.B.?

2. If the children are placed in the temporary care and custody of the Agency, what is the appropriate access order?

[8] **Analysis**

[9] Section 42 of the *Children and Family Services Act* provides the court with the jurisdiction to create disposition orders in the best interests of children. R.B. and L.M. seek a supervision order pursuant to s. 42(1)(b). The Minister seeks a temporary care order as provided in s. 42(1)(d).

[10] In deciding which order the court will issue, it is necessary to review some basic principles, including the legislative purpose of child protection proceedings and the applicable burden of proof.

[11] The purpose of the *Act*, as set out in the preamble and in s. 2(1), is tri-fold. It requires the court to protect children from harm, promote the integrity of the family, and assure the best interests of children. However, the paramount consideration, in all child protection proceedings, is the best interests of the child as stated in s. 2(2) of the *Act*. The *Act* must always be interpreted according to a child-centered approach, in keeping with the best interests of the child as defined in s. 3(2). This definition is multi-faceted; it directs the court to consider important emotional, physical, cultural, and social development factors unique to each child at each step of the proceeding.

[12] Further, the burden of proof rests squarely upon the Agency to prove its case on a balance of probabilities. The Agency must prove why it is in the best interests of the children to remain in the temporary care and custody of the Agency according to the legislative requirements.

[13] Section 42(2) of the *Act* states that the court shall not make an order removing children from the care of parents unless less intrusive alternatives, including services to promote the integrity of the family, have been attempted and have failed, or have been refused by the parents, or would be inadequate to protect the children.

[14] I am satisfied that the Agency has met the burden upon it. The Minister has proven that it is in the best interests of the children to be placed in the temporary

care and custody of the Agency. In so finding, I conclude that less intrusive alternatives, including services to promote the integrity of the family, would be inadequate to protect the children, at this time. I reach this conclusion for the following reasons:

a. Domestic violence has been a chronic and devastating problem in the L.M./R.B. family unit. I accept Dr. Landry's expert opinion that the violence between this couple is situational, and not coercive controlling, separation instigated, or mental health related. I am hopeful that Dr. Landry's assessment will prove accurate - that after services are completed, such violence will disappear. I am hopeful that the parties will learn and implement healthy problem solving and conflict resolution skills. However, in the meantime, as services have not been completed, it is not safe to return the children to the care of R.B. and L.M. at this time.

b. L.M. has not completed the necessary anger management and domestic violence therapy. As a result, she does not have a full understanding and appreciation of these issues. This lack of knowledge hinders her ability to make lasting changes, as is evident from the March incident.

c. L.M. did attend two counseling sessions with Ms. Alexis MacQueen-MacDonald through her EAP plan from work. However, Ms. MacQueen-MacDonald did not complete any course work on domestic violence because L.M. had engaged with Family Services of Eastern Nova Scotia.

d. L.M. saw Ms. Keitly, a therapist with Family Services of Eastern Nova Scotia. Domestic violence counseling was not pursued because Ms. Keitly understood that L.M. was receiving that therapy from Nancy Lotherington through the Transition House

outreach program. L.M. missed three appointments with Ms. Keitly.

e. L.M. completed Phase I of the Transition House outreach program. This program is usually an eight week, group program. Because there was no group, L.M. met with Ms. Lotherington on a one-to-one basis for approximately four to five sessions. Information regarding anger triggers, changing thought processes, and the ABC method were reviewed and explained. L.M. has not completed Phase II of the program. This service remains ongoing. Phase I did not provide L.M. with the needed skills as is evident from the violence which occurred after Phase I had been completed.

f. Both parties minimized the seriousness of the violence which occurred in March 2010, contrary to the no contact provision of the outstanding court order. Minimization and rationalization does little to satisfy the court that the risk to the children has been sufficiently reduced to allow for the reintegration of the family at this time.

g. Dr. Landry testified that the parties required couples' therapy with an expert marriage counsellor. This service has not yet commenced. This service is essential to breaking the domestic violence cycle which is found in the R.B./L.M. relationship. Both L.M. and R.B. are anxious to begin this service. Although L.M. and R.B. are motivated to make changes to their lifestyle, they do not, as of yet, have the necessary skills to allow the court to return the children to their care.

h. R.B. has recently completed anger management and domestic violence therapy with the Second Chance Society and through Family Services of Eastern Nova Scotia. R.B. must complete couples' therapy.

[15] In summary, until L.M. completes the anger management and domestic violence therapy provided through Family Services of Eastern Nova Scotia, and until both parties complete couples' therapy, it is premature to suggest that the children should be returned to the supervised care of the respondents. The children could be emotionally and physically harmed if they were subjected to repeated acts of domestic violence.

[16] C. and A. are vulnerable, young children. The court cannot take a chance with their physical and emotional well-being by returning them to parents who have yet to learn, and assimilate, the necessary skills to change their violent responses. Motivation without services is insufficient. Promises are insufficient. The children deserve a safe, nurturing, and loving environment to call home. L.M. and R.B. cannot provide this environment as of yet.

[17] **If the children are placed in the temporary care and custody of the Agency, what is the appropriate access order?**

[18] L.M. and R.B. seek greater access, which is unsupervised. The Agency does not support the position of the respondents. The Agency's concerns revolve around domestic violence, and the failure of the respondents to follow the court order in the past.

[19] Section 44(1) of the *Act* provides the court with the jurisdiction to create access provisions when a child is placed in the temporary care and custody of the Agency. Sections 44(1)(a) and (f) state as follows:

> 44 (1) Where the court makes an order for temporary care and custody pursuant to clauses (d) or (e) of subsection (1) of Section 42, the court may impose reasonable terms and conditions, including
>
> (a) access by a parent or guardian to the child, unless the court is satisfied that continued contact with the parent or guardian would not be in the best interests of the child;
> ...
>
> (f) any terms the court considers necessary.

[20] This section must be interpreted according to the tri-fold purpose of the *Act* as outlined previously. Further, the best interests test continues to be the paramount consideration. Given the terminology of the legislation, the access conditions which the court imposes must be reasonable and necessary to meet the best interests of C. and A.

[21] I find that it is in the best interests of the children to have increased access, and to have periods of unsupervised access provided L.M. and R.B. are not together during the exercise of unsupervised access. Further, it is also in the best interests of the children to have supervised, joint access visits. I make these determinations for the following reasons:

> a. Access times need to be increased to ensure that the best interests of A. and C. are met. Both parents, as individuals, are capable of meeting the needs of the children. Indeed, the children have healthy and positive attachments to both parties. The children, and in particular, C., are exhibiting significant difficulties and stress because they are not spending enough time with their parents. I am extremely concerned that the limited amount of contact between the children and their parents may cause long term emotional scars to the children, and in particular C.
>
> b. As the parties are presenting as a couple, it is important for the children to be able to see both parents as a couple, provided the environment is safe and free from domestic violence. For this reason, access exercised jointly must be supervised. Further, the joint exercise of access will enable the Agency to gauge the behaviour of R.B. and L.M. as a couple.
>
> c. There is no need for supervision if access is not exercised jointly, or in an unregulated fashion. I find that the likelihood of the parties breaching the court order in a strictly controlled, and regulated access regime is low. Such unsupervised access will then be in the best interests of the children.

[22] According to the respondents' work schedules, joint access can only occur every second Monday and Tuesday. Joint access will be scheduled on one of these days, for three hours.

[23] Further, L.M. will have three, three hour periods of unsupervised access each week. In addition, R.B. will also have three, three hour periods of unsupervised access each week. The order will forbid either party from being present, or communicating with the other, at any time, when the other is exercising unsupervised access. This means no telephone contact, and no in person contact, during the period of time when L.M., or R.B., exercises individual, unsupervised access with the children. Is this understood L.M. and R.B.?

[24] During unsupervised access, the visits are not restricted to the home, but can be exercised in the Sydney area, provided the Agency pre-approves the place where the access will be exercised, and provided the access time lines are met. Further, the Agency will have the right to check in periodically during the exercise of the unsupervised access, and they must, therefore, know, at all times, where the children will be.

[25] Access is also conditional upon neither party consuming alcohol or any illegal substances, or having any alcohol or illegal substances in their residence, during the exercise of access. The parties must also continue taking the remedial services as directed, including couples' therapy, drug and alcohol testing, meetings with the family support worker, and any other recommended counseling. In addition, L.M. is to complete the anger management and domestic violence therapy through Family Services of Eastern Nova Scotia.

[26] In the event, either party fails to comply with any of the terms stated in this order, unsupervised access will terminate immediately, and the matter will be brought back to court for further review.

[27] **Conclusion**

[28] The children will remain in the temporary care and custody of the Agency, subject to access to the respondents, including supervised, joint access, and regulated unsupervised, individual access. The order is also subject to the terms

and conditions previously outlined. The Minister is directed to commence the couples' therapy forthwith.

[29] There is nothing in this order which prevents L.M. and R.B. from communicating and residing with each other, other than during the exercise of unsupervised access.

Forgeron, J.