CANADA
PROVINCE OF NOVA SCOTIA
2010

SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)
Citation: Nova Scotia (Community Services) v. B.B. 2010 NSSC 245

Date: February 23, 2010
Docket: 60416 and 061235
Registry: Sydney

Between:

Minister of Community Services

Applicant

v.

B. B. and J.H.

Respondent

ORAL DECISION

Judge:	The Honourable Justice Kenneth C. Haley
Heard:	February 15th, 19th and February 23rd, in Sydney Nova Scotia
Oral Decision:	February 23, 2010
Written Decision:	June 12, 2010
Counsel:	Mr. David Raniseth, for the Applicant Mr. Allan Stanwick , for the Respondent, B.B. Ms. Jill Perry, for the Respondent, J.H.

By the Court:

[1] This is a Permanent Care Hearing before this Court which has been scheduled for some time. As counsel have pointed out this has been before this Court for a number of months now going through the initial apprehension, the interim phase under s. 39, the protection phase and a series of disposition review hearings. We are now in the Final Disposition Review stage and the Agency has come forth with their position seeking Permanent Care with no access to the Respondents and plans to place the two named children namely R.H. and M. H. up for adoption.

[2] By virtue of a Decision of this Court July 20, 2009, the children were placed in supervised care of the Respondent, B.B. under terms and conditions which are identifiable in the orders that were issued by this Court.

[3] As I recall going through the scheduling of this matter, the Court took great pains to schedule this matter for the three days which were eventually agreed upon by counsel namely February 15th, 19th and February 23rd.

[4] It goes without saying that family law matters are very time consuming, complex, and require great attention and detail from all concerned, most importantly the Court. The Court is mindful of its mandate under the legislation that the best interest of the children is paramount.

[5] However, there are provisions under the *Children and Family Services Act* which speak to that duty imposed upon the players in this process. When the Children's Aid Agency, an Agency of the state becomes involved a family by taking children into care there is a statutory requirement that their involvement be done within certain time lines, with certain expectations, in the hopes that primarily the family unit can be reunited to the point where deficiencies identified by the Agency which resulted in the apprehension can be remedied so that parent and child can be reunited and the family unit consolidated to again form part of our social fabric.

[6] That is their mandate. So, when the Agency seeks permanent care that is an expression of the Agency indicating that all remedies, all internal services,

have been exhausted to the point that the named parents in the proceeding are not capable of looking after their children and that the children would remain or be put in risk of harm if they were placed in the care of those parents.

[7] The Court is thus mindful of the requirements under the *Act,* the *Children and Family Services Act*, and the expectations of the *Act* but also the *Act* is very clear in terms of the mandatory time lines within which certain things must be done by the Agency and the Court.

[8] The Court understands and accepts the rationale for time lines under the *Act* but acknowledge they can be problematic in terms of scheduling.

[9] The Court has seen situations where the involvement of the Agency and the implementation of their services and remedial services have resulted in a major turn around by their clients, the parents involved resulting in children being reunited with their parents in a much better and more harmoniousness environment

because the parents have learned how to become better parents thanks to the guidance and support of the agencies' remedial services.

[10] So, there is good work being done and there is good process referred to in the legislation. The time lines, yes, are restrictive, and make things difficult but in the Court's experience and as a general rule, it does work. When there are exceptions to not meeting the time lines, the Court is clothed with some discretion to exceed those time lines, be it a Protection Hearing stage or a Disposition Review stage. It does become more critical as we approach the final deadline as referenced in s. 45(1) (a) which is refers to not just the interim deadlines but also the final deadline at which time this matter must be concluded using the date of apprehension as a commencement date. However as stated by Justice Cromwell in **Children's Aid Society of Cape -Victoria v A.M.**, 2005 NSCA 58 (NSCA):

> [28] Turning to the first submission, there was no loss of jurisdiction here. The Court made this clear in **Nova Scotia (Minister of Community Services) v. B.F.** 2003 NSCA 110 (CanLII), (2003), 219 N.S.R. (2d) 41 (C.A.); [2003] N.S.J. No 405 (Q.L.) (C.A.) At paras. 57 and 58 and **The Children's Aid Society and Family Services of Colchester County v H.W.** reflex, (1996), 155 N.S.R. (2d) 334 (C.A.). The *Act*

> contemplates that there will be a judicial determination of the child's best interests. If a time limit, which is a milestone toward that determination, caused the Court to lose jurisdiction to determine the child's best interests it would contradict the purpose of the *Act*. Therefore, the court did not lose jurisdiction by reserving its decision as to disposition for longer than the time limits for temporary care orders under s. 45.

[11] Section 45 (1) (a) of the *Children and Family Services Act*, reads as follows:

> Where the Court has made an Order for Temporary Care and Custody, the total period of duration of all Disposition Orders, including any Supervision Orders shall not exceed (a) where the child was under 6(six) years of age at the time of the application commencing procedures 12 (twelve) months.

There is a statutory time limit to have all of the proceedings in this matter which deals with the apprehension of children under 6 (six) to be completed within a 12 (twelve) month period. Sometimes these time lines are not met and as a consequence discretion must be utilized to assess the individual circumstance of each case and determine if it is in the best interest of the children to exceed those deadlines.

[12] I think counsel are quite correct in pointing out that there are some circumstances which are different than others such as not having available reports, which may be critical to the evidentiary fabric of any particular proceeding, or instances of availability of counsel which may result in some litigants being self presented as opposed to being represented by counsel. There are circumstances and situations which the Court may deem appropriate to extend the time and do so in such a way that it won't necessarily offend the purposes and intent of the legislated time line.

[13] In this particular instance the Court has been advised and informed that the deadline for this matter to conclude is February 24, 2010. That is tomorrow. As I have indicated this Court and this Court's scheduling office basically stood on its head to make dates available to fit within the statutory time lines as dictated by the legislation.

[14] The commencement date of February 15th, and subsequently February 19th were scheduled dates lost to this Court. As of February 23rd we are now in day 1

of a 3 day hearing. The case should be now either concluded or near conclusion which would put this matter within the time lines as anticipated.

[15] The Court commenced this matter this morning and heard from two witnesses and a third who just completed her direct examination. The Court then consulted counsel on the implications of s. 45 (1)(a) in view of the fact that the deadline is tomorrow's date and we are now only starting the proceeding which in reality should have been the third and final day of the proceeding.

[16] As a consequence the Court and counsel started to explore possible dates to extend this hearing past February 24th in the hopes that we could find time that would be approximate to this hearing date and not be months away which may be more problematic in terms of justifying an extension from the Court's prespective.

[17] The Court heard submissions today regarding the best interests of the children which the test that the Court must apply as in all cases, what is best for the children. Mr. Stanwick has indicated that there is no specific provision to

extend but there is a residual discretion in the court. The test is what is in the best interest of the children. He would suggest it should be done on a case by case basis and he does note that the children have been in the supervised care of B.B for the last six months.

[18] When asked the question whether or not, Mr. Stanwick and Ms. Perry agreed to extend the deadline past tomorrow's date, they both responded in the negative, arguing that it is not in the best interest of the children to do so.

[19] Mr. Raniseth, on behalf of the Agency, has taken a contrary view and put before this Court his rationale for suggesting that it would be in the best interest of the children to extend the deadline to conclude the hearing and hear all the evidence which the Court has not had the benefit of hearing at this point in time.

[20] As Mr. Raniseth suggests there will be no judicial review if the Court were to dismiss the hearing here today. That argues in favour of the extension.

[21] The Court finds that there is some merit to Mr. Raniseth's argument, however has concern that the result of the argument would perhaps put this matter over for months as opposed to weeks. We are talking two to three months as opposed to two to three weeks.

[22] The scheduler's office indicated that we were looking at dates for mid April with no success from counsel and I can indicate from the Court's perspective, the Court has done everything it possibly could have done to accommodate counsel to have this matter heard in a timely fashion even if it were to go past the deadline.

[23] Counsel are busy, counsel have other matters and other matters before other courts which also require time lines and commitments as well. But the Court is satisfied that for this matter to be rescheduled past February 24th it would be in May of 2010 which is troubling to the Court.

[24] The Court will comment on why this current position has resulted. We had appeared in this Court on February 15th, on a Monday morning to commence the

proceeding, only to learn that defence counsel had belatedly received some disclosure notes, case notes from the Children's Aid Worker, that were apparently faxed to the Respondent lawyer's offices around 7:00 o'clock on the previous Friday evening. Mr. Stanwick indicated that he didn't become aware of those notes until his arrival in the office on Monday morning. Ms. Perry did indicate in her comment that she may have seen the notes on the fax machine on Saturday, but nonetheless the Court was of the view that the timing of that disclosure was late and not timely and as a result Mr. Stanwick and Ms. Perry were entitled to the adjournment they requested on February 15th.

[25] To put it bluntly, the cause of that adjournment request has to lay at the feet of the Agency. At that point in time the Court adjourned to Friday, February 19th, 2010 and with any luck at all and perhaps with small impositions on counsel such as short breaks and lunch hours and sitting a little later, that a two day hearing might be sufficient to conclude the matter. And if further time was required to conclude a day or less may be easier to identify within the very booked and heavy docket schedule that this Court is currently working under.

[26] However, on Friday morning, unfortunately Mr. Raniseth had reported in sick. Again an unfortunate and unforseen circumstance and in this instance unavoidable. No one can fault Mr. Raniseth personally for being ill but the reality is that he is the counsel for the Agency in this particular matter and as a consequence of his illness this matter had yet again to be adjourned until today's date.

[27] So, as indicated by Respondent's counsel the position that we are in here currently is by no means a result of the conduct of the Respondent. The Court is reluctant to and hesitates to cast deliberate blame upon the Agency for these delays but the reality is they have to accept responsibility for these delays.

[28] The question is "is it in the best interest of the children to extend this hearing past the deadline of February 24th into the month of May, is that in the best interest of the children?"

[29] It would be easier for the Court to perhaps answer that in the infirmitive if there were outstanding reports or outstanding information that was not available but that is not the case . The Agency was prepared to call it's evidence, was calling it's evidence but unfortunately the time that was left available after the loss of February 15th and 19th makes it impossible for the Agency to conclude their case in a timely manner pursuant to the time lines as outlined in the legislation.

[30] There is some systemic aspect to the delay being occurred but the *Act* is clear that there is a mandatory provision that these matters be concluded within a year in the best for children in terms of their sense of time. If the Court was able to find some time and some dates proximate to the February 24th date within days or weeks, the Court may view this matter differently, but the Court is very concerned about extending the time line months past the statutory deadline and whether that is in the best interests of the children.

[31] The Court is comforted to learn through the evidence here today that the children have been in the supervised care of the Respondent, B.B. for the last 7 (seven) months.

[32] As Ms. Perry indicates in her submission, the Court can infer there is no imminent harm or risk to the children, if the Agency has not seen fit to apprehend the children under those circumstances, albeit, having pronounced their intentions to seek permanent care. Ms. Perry indicates as well the Court does not have to concern itself with an unknown placement of the children at this time that they have been in there mother's care for the last seven months. As she further indicates there is nothing to suggest that the Children's Aid Society will magically disappear from the lives of these named respondents. I think Ms. Perry is quite right when she indicates that the Agency will still maintain its investigative mandate to ensure that the children M.H and J.H. are not at risk or at harm.

[33] The Court is further comforted by the evidence heard here today, that some of the remedial services as referenced by the first two witnesses namely the family home worker, which is authorized through Public Health Department and also the therapeutic counsellor, Edward Burke, that those remedial services can be made available to the Respondents on a volunteer basis if requested without the involvement of the Agency with or with out a court order.

[34] There were some positive aspects that the Court heard this morning with regard to the progress made in that regard, in particular by B.B. regarding her involvement with the public health worker and the therapeutic counsellor.

[35] I think that Mr. Burke said it best that there were stressors involved and perhaps some of the deficiencies noted by B.B. through the course of her involvement with Mr. Burke and other remedial services was that there were situational stressors involved, and that the uncertainly of not knowing whether the children will be in her care or not, may have been a reason for some of her

inability to focus and follow through on some of the services as intended but he did not question her effort and her ability to try follow direction as required.

[36] Mr. Burke indicated that the removal of those situational stressors would be of great benefit to the progress of B.B. As he indicated in his evidence, the stressor of

> "not knowing if the children were going to be returned is larger than all the other issues"

[37] So one would think that perhaps some finality to the situation may be a benefit to all concerned including the children in their best interests. As indicated by counsel the options available to the Court are to grant an extension and deem it in the best interest of the children to do so or dismiss the matter in the children's best interest.

[38] This is not an ideal situation on either side of the equation. As indicated by Mr. Raniseth to dismiss the matter means that there is no final judicial review of all

the evidence that the Court would have heard in the matter although the Court is intimately knowledgeable of all of the evidence up to this point in time, having been involved in the earlier phases of this proceeding. Also it is not necessarily a windfall for the Respondents in terms of the matter being dismissed because of the circumstances surrounding the dismissal may not necessarily disengage their involvement with the Agency.

[39] Upon hearing the evidence to date, the Court is satisfied that the current circumstances of the children residing into the supervised care of B. B. establishes that they are not in any imminent harm or risk.

[40] The Court cannot stress enough to all the parties here including counsel that everything from the Court's respective has been done to address this matter in a timely fashion within the statutory limits of the legislation and the Court understands that circumstances do arise that make it impossible to meet the deadlines in a strict and structured basis, but, that being said, we must not disregard the statutory time lines in a cavalier and arbitrary fashion.

[41] As a consequence in this particular matter the Court finds the wording and the language in s. 45 (1)(a) mandates the Court not to proceed past or exceed the statutory deadline of February 24th and the matter shall be dismissed accordingly.

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J.