IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Children's Aid Society of Halifax v. T.W., 2005 NSSC 176

Date: 20050629
Docket: S.F.H. C.F.S.A.-033292
Registry: Halifax

Between:

Children's Aid Society of Halifax

Applicant

v.

T. W. and R. J.

Respondents

Publishers of this case please take note that s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

Section 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."

Editorial Notice

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

Judge: The Honourable Justice Kevin Coady

Heard: in Halifax, Nova Scotia
May 2, 3, 4, 5, 6, June 6, 7, 8, 9, 15, 2005

Written Decision: June 29, 2005

Counsel: Pamela MacKeigan, for the Children's Aid Society of Halifax
Gary E.G. Manthorne and Bianca Krueger (articled clerk) for Ms. T. W.
Susan J. Young, for Mr. R. J.

Coady, J.:

[1] This is the case of two parents who have been disabled by the long-term abuse of crack cocaine and other illicit substances. It is a case of substance abuse resulting in extreme partner violence and an inability to adequately care for their three young children. This is a case where these children have suffered from the excesses and shortcomings of their parents. It is a case of a family that was functional when not impacted by drugs, violence and neglect. This case is all about substance abuse.

[2] T. W. and R. J. grew up in Halifax throughout the 1970's and 1980's. They both had parental backgrounds rooted in substance abuse. They faced many challenges. Their early lives were made more difficult as they themselves became involved with drugs. They experienced little advancement in the areas of education and career. Life has been a struggle for both.

[3] T. W. and R. J. are both intelligent and articulate. They both know what is required to maintain a stable and loving family life. Unfortunately, the use of drugs, especially cocaine, has prevented them from lifting themselves and their children out of their cycle of life. Consequently, they have a long history with the

applicant and the police. Criminal charges have resulted in incarceration. These events have further limited their recovery.

[4] This is a permanent care application made pursuant to s. 42 of the *Children and Family Services Act*. The applicant is seeking a further order pursuant to s. 47(2) that there be no access between the respondents and their three children. It is the applicant's intention to find one home for all three children, with a view to adoption.

[5] T. W. opposes the Agency's position and seeks either dismissal, or in the alternative, a return of the children under supervision for the balance of the legislated timeline (six months). She argues the latter would give her an opportunity to prove herself.

[6] Mr. J. is presently incarcerated. He was recently granted parole to a halfway house for at least six months. His initial position was that he supported Ms. W.'s plan. If Ms. W.'s plan was not accepted by the Court, his alternative plan was to take custody of the children. Mr. J.' counsel, in closing arguments, advocated only for his own plan.

[7] This proceeding involves three young children. The oldest child, K. M. L. A. W., was born to Ms. W. on September * , 1996 (eight years), the child of a prior relationship. The second child, R. T. S. W. W., was born on November *, 1999 (5 years) to Ms. W. and Mr. J.. The third child, R. D. M. C. W., was born September *, 2001 (3 years) to the respondents. All three children are presently in the temporary care and custody of the applicant. Ms. W. has supervised access to the children. There has been no provision for access by Mr. J. primarily as a result of his incarceration throughout this proceeding.

[8] The protection order of October 13, 2004, issued after an initial supervision order, was changed to a temporary care and custody order. That order also granted admission into evidence "in this proceeding all of the evidence of prior proceedings, wherein the children were found to be in need of protective services". There are four prior proceedings caught by this order.

[9] The first proceeding began in 1996 when K. W. was born. She remained in care for 18 months. The basis for intervention was T. W.'s abuse of drugs, especially cocaine. She had drug addiction issues that predated K.'s birth. Ms. W.

worked hard at recovery. She availed herself of various life and drug programs and random urinalysis. After staying clean for 15 months, the Agency decided not to proceed with a scheduled permanent care hearing.

[10] A "roll-over" second proceeding was initiated in April, 1998 and K. was returned to Ms. W., subject to supervision. The "roll-over" proceeding was continued until October 1998 when the Agency dismissed. The dismissal was based on Ms. W.'s success with programs and her well-established record of not using drugs. Ms. W. was showing that she could put K. ahead of her addictions. There was no question that when "clean" Ms. W. was fully capable of providing a loving and stable environment for her daughter. All reports indicated that when sober Ms. W. was an excellent parent.

[11] The third proceeding was commenced in April, 2000 after 18 months without Agency involvement. It involved K. and R.. The Court granted a supervision order which addressed problems of drug use, supervision and housing. The Agency received evidence that drug use was once again sapping Ms. W.'s ability to properly care for her children. Once again, Ms. W. made the most of

Agency programs and services to achieve sobriety. The supervision order was terminated in June 2001 after 14 months.

[12] The fourth proceeding was commenced on September 5, 2001 when the children, K. and R., were taken into care. R. was born on September *, 2001 and was immediately taken into care. This proceeding addressed issues of drug use, domestic violence between Ms. W. and Mr. J. and the scalding of K.'s feet in a bath tub of hot water. That proceeding continued to a permanent care hearing in February, 2003. Ms. W. had achieved sobriety during that proceeding and, as a result, the Court dismissed the permanent care application and returned all three children to Ms. W. under supervision. The Court trusted Ms. W. to live her life differently. In June, 2003, the Agency dismissed as Ms. W. was taking counselling, was drug free and there had not been any reported incidents of domestic violence since February, 2003.

[13] The Agency agreed to this dismissal with conditions. There were conditions respecting not using drugs and maintaining a domestic violence free environment for the children. Ms. W. and Mr. J. signed an agreement to abide by these

conditions. A *Maintenance and Custody Act* order was put in place, which granted Ms. W. primary care and Mr. J. access.

[14] This is the fifth proceeding involving this family. The following events are the foundations for this action.

- In September, 2003, there was a referral from police reporting an incident of severe domestic violence between Ms. W. and Mr. J. in front of the children. It involved a baseball bat. When the Agency was faced with this incident, they could not contact Ms. W.. However, they agreed that Ms. W. had acted appropriately in contacting the police and they took no further actions.

- In April, 2004, reports were received from the children's daycare. They reported that between December, 2003 and March, 2004 changes were observed of Ms. W. and the children. These observations would suggest that Ms. W. was using again and the care of herself and the children was slipping. Third parties were transporting the children to and from the daycare.

- In April, 2004, Mr. J. called the Agency reporting that Ms. W. was "using" again. This prompted a home visit, wherein Ms. W. was found hiding in a closet. Police and workers described her as "hyper-agitated, physically very different" and suffering weight loss. The home was in disarray and the children were at a friend's home.

- Ms. W. was asked to provide random urinalysis in April, 2004. Between April and June there were 15 visits to her home. On four occasions she was not available and on one occasion refused to provide a sample. The ten samples taken resulted in ten positives for cannabis, four positives for benzodiazepines and on May 28th a positive for cocaine. The positive cocaine result was received on June 15th and on June 16th a decision was made to pursue a supervision order. The supervision order was granted on July 19, 2004.

- Throughout the summer of 2004 the Agency was receiving reports the children were neglected, Ms. W. was prostituting out of her home and patterns of her past were re-emerging. During this period, the Agency

worker could not locate Ms. W. and had reason to believe she was avoiding them.

- On August 13, 2004, the two youngest children were found unsupervised, playing on and next to an extremely busy highway near their home. The younger was completely nude. Cars had to come to a halt to avoid harming the children. They were at great risk of harm or death. The children were returned to their home by strangers. Ms. W. was reported to have come to the door wrapped in a curtain. She took the children inside without a word to anyone. All three children were taken into care.

- On August 20, 2004, the interim hearing was completed, granting the Agency temporary care and custody, with supervised access by Ms. W.. Mr. J. was in prison. Daycare and supportive services were provided to Ms. W. and her children. Ms. W. was required to cooperate with random urinalysis.

- A second period of urinalysis was conducted between August 26th and December 14th, 2004. There were 39 attempts to obtain a sample. Ms. W. was not available on 22 occasions and there were five refusals. There were four samples provided and two tested positive for cocaine. There were three positives for cannabis and benzodiazepines. One of the four was "non-recoverable".

[15] The cumulative effect of all the above led the Agency to file for permanent care on December 9, 2004. Given the long history of Agency involvement, the Agency opted to proceed in a shortened time frame. The Agency adopted the view that in past proceedings Ms. W. would clean up when it came to crunch time. This time there was no progress, services were being ignored and access was problematic. The worker, Picard, put it succinctly when she stated, "children cannot always wait for their parents to clean up their act".

[16] It is helpful to review the history of intervention in this family from the children's perspective. K. is eight years old. She has been in care for nearly four years and subject to supervision for a further two years. R. is five years old and has been in care for two years, three months and supervision for a further

seventeen months. R. is 45 months old and has been in care for 27 months and supervision for three months.

[17] The facts respecting events prior to the June, 2003 dismissal of the fourth proceeding are well-established and do not require revisiting. Generally speaking, the prior proceedings have presented the same concerns as the present action. The results of earlier proceedings are testament to what Ms. W. can do when she attains sobriety and takes control of her life and family. I do make the following findings of fact respecting events post June, 2003:

- The applicant's decision to act in 2004 was not as a result of the February, 2003 outcome. I reject Ms. W.'s position this action amounted to revenge.

- The incident of domestic violence in September, 2003 was severe. K. was exposed to the violence first-hand, and R. and R. were in the home. K. called 911 before Mr. J. pulled the phone out of the wall. I find responsibility for this violence lies predominantly with Mr. J..

- Ms. W. was using cocaine and other drugs as of December, 2003. I conclude the observations of Ms. B., the Daycare Manager, support this finding. I find the children were being neglected during this period of time as a direct result of cocaine use.

- I find when the workers and police attended Ms. W.'s home in April, 2004, she was using cocaine and other drugs. I conclude that the hiding in the closet was an effort to avoid detection, it was not to hide from Mr. J..

- I find between April and June, 2004, Ms. W. continued using drugs on a regular basis. This impacted on her ability to provide a stable life and home for the children. The drug testing supports this conclusion. I also find Ms. W. failed to provide samples because she realized they would test positive for cocaine.

- In 2003/2004, Ms. W. refused to accept services provided and paid for by the Agency, and stated a preference for community-based services. She did not follow-up with those services to an extent that would

benefit her children. I reject Ms. W.'s position her plight is the result of the Agency not providing support. Throughout this proceeding, Ms. W. has gone "head-to-head" with the Agency, rather than partnering with them as she has done successfully in prior proceedings.

- I find all three children have serious developmental problems which require long-term support and therapy. I conclude their behaviours are the result of their exposure to domestic violence and the many breaks in their attachment to their parents and foster parents. K. has become reserved and quiet for a child with much maturity, intelligence and talent. K. and the boys display sexualized behaviour beyond mere curiosity. The boys are very aggressive and agitated, often swearing, spitting, biting and otherwise assaulting their foster parents. I accept the conclusion the boys are "out of control".

- I also accept Shanda Woodin's conclusions set forth in her March 10, 2005 report (Exhibit 13, Tab 7):

> All three children have experienced considerable breaks in their attachment to their significant attachment figure both with their birth mother and father (stepfather) and with Ms. S. who cared for them after they were taken into care initially. These attachment injuries have precipitated extensive issues for these children to cope with, including learning to trust in building attachments once again. This journey of developing healthy attachments and overcoming the undesirable behaviours used as defence mechanisms to ensure their security will be a challenging one for all three and will require ongoing therapeutic intervention.

- I accept her opinion these children have been "wounded deeply".

- I have reviewed all of the evidence concerning locating the boys on the highway on August 12, 2004. I conclude they were being neglected and left unsupervised by Ms. W.. There is not sufficient evidence to conclude Ms. W. put them outside so she could engage in prostitution. I do not accept Ms. W.'s explanation they slipped away while she was occupied with household chores. I find this incident is most serious and a direct result of Ms. W.'s addictions.

- I find Ms. W. was very inconsistent when exercising access throughout this proceeding. She was often a no-show, consistently late and in conflict with the access facilitators. I find these behaviours were the result of her addictions.

- I conclude Ms. W. does not accept any responsibility for the events of the past eight years. She always finds someone else at fault. She views herself as persecuted and an eternal victim. I reject her stated position that her drug use follows intervention and there is no drug use when she is not the subject of a proceeding. The evidence clearly establishes the opposite is the case.
- I find Ms. W. and Mr. J. love their children and the children have some attachment to their parents.

[18] I have considered the entirety of the evidence in making the above findings of fact. I have considered the goals and objectives of the *Children and Family Services Act*. It is the decision of this Court that the Agency's application for permanent care be granted. I have applied the civil standard in arriving at this conclusion.

[19] This decision is a recognition these three children need the stability of a permanent home immediately. I have no confidence Ms. W. can achieve long-term

recovery from her very entrenched addictions. She is unable to protect her children from violence and neglect as long as she is using cocaine and other substances.

[20] She has not shown the ability to sustain sobriety over a lengthy period of time. These children cannot wait for Ms. W. any longer. The factors which led to temporary recovery in prior proceedings are absent in this proceeding. These temporary recoveries that allowed for the return of the children in past proceedings. Ms. W.'s failure to commit to programs, to cooperate with Agency personnel, to take access seriously and to cooperate with random urinalysis tell the Court there is presently no commitment to getting clean, let alone staying clean. Throughout this action Ms. W. has been doing nothing more than going through the motions. These shortcomings speak volumes about the power of cocaine addiction.

[21] There are a number of reasons why Mr. J. cannot provide the children with the stability they require. Some are historical and some are current. He has exposed his children to a degree of domestic violence which has harmed them and will no doubt affect their future lives. He has spent much of the children's lives incarcerated. While his sentences are for property offences, they are the product of

his cocaine addiction. Mr. J. will not be free of his present sentence until at least the end of this year. He will not be in a position to parent for some time.

[22] I acknowledge and commend Mr. J. for the progress he has made while serving his present sentence. However, those strides have not been tested in the reality of the community. He has a cocaine addiction just as severe as Ms. W.'s. He requires a sustained period of recovery in the community before the Court could have any confidence in long-term sobriety.

[23] Mr. J. has limited parenting experience. He has been an absent parent for much of the children's lives. While the children recognize him as their father, there is very little evidence of real attachment to him. It is as if they see him as somewhat of a remote figure. They view him as having a parental link, but do not see him as a responsible and involved parent. Mr. J. has always been on the periphery of their lives. His limited contact has often been negative. I accept Mr. J. loves his children and would like to do what is in their best interests. Unfortunately, he has never displayed the responsibility and concern required of an acceptable parent. He has never been in a position to step in when Ms. W. faltered.

He has many personal demons to conquer before he can effectively parent. The children cannot wait for that possibility.

[24] I have carefully considered Mr. J.' plan of care dated June 8, 2005 (Exhibit # 32). It is his first proposal and came forward mid-trial. It does not represent a plan which would benefit the children. It does not disclose a comprehensive and sustainable parenting plan. I conclude it was the reality of the moment which prompted this plan, i.e. that Ms. W. was unlikely to experience the return of the children. It is somewhat of a default plan.

[25] The *Children and Family Services Act* preamble sets forth the aspirations of the legislation. While the *Act* seeks to maintain the family unit, it also entitles children to protection from abuse and neglect. This family has lost the balance. This decision must focus on protecting the children. Prior decisions have attempted to keep this family intact and that objective has not borne fruit long-term.

[26] The *Act* also requires me to take the least intrusive action. The Agency started this proceeding by way of a supervision order. I find that decision to be the

least intrusive response to Ms. W.'s drug use and associated consequences. Ms. W. refused to cooperate with this approach and as a result permanent care is warranted at this time. This decision is extreme, but necessary to protect these children presently and to ensure a better future. There is no other appropriate measure to achieve these objectives. In the past, many have been tried but have not met with sustained success.

[27] This family is African Nova Scotian. All past foster homes have been African Nova Scotian. The Agency plan is to place all three children together in a similar home. I have considered this in arriving at my decision.

[28] I have been guided through this process by the principle that the paramount consideration is the best interests of these children. I find no other disposition could achieve this objective. In coming to this conclusion, I have considered the guidance provided in s. 3(2) of the *Act* as well as the cases of *C.(G.C.) v. New Brunswick (Minister of Health and Community Services)*, [1988] 1 S.C.R. 1073; *Catholic Children's Aid Society of Metropolitan Toronto v. C.M.*, [1994] 2 S.C.R. 165 and *King v. Low*, [1985] 1 S.C.R. 87.

[29] I have also considered the record of this proceeding and the impact of s. 13(1) of the *Act*. The *Act* requires the Agency to "take reasonable measures to provide services to families and children that promote the integrity of the family". Ms. W. has been offered services over the past eight years that have been geared to preserving her family unit. It was her recent rejection of these services which contributed to this result.

[30] The protection application dated July 19, 2004 alleged the W. children were in need of protective services. The applicant relied on s. 22(2)(b) (substantial risk of physical harm), s. 22(2)(f) (has suffered emotional harm), s.22 (2)(g) (substantial risk of emotional harm), s.22(2)(i) (harm caused by exposure to repeated domestic violence), and s. 22(2)(a) (substantial risk of physical harm caused by chronic and serious neglect). The October 13, 2004 protection order proceeded by consent pursuant to s. 22(2)(g), while reserving the right to call evidence on the other stated grounds. The evidence in this proceeding touched on all grounds.

[31] The evidence in this hearing satisfied me that if the children were returned to either parent, now or in the next six months, all stated grounds would be in play.

[32] In arriving at my decision I have considered s. 42(1) of the *Act*. The following options were available to the Court:

- (a) Dismiss the matter - On the basis of the evidence, this is not a possible outcome. The parents long-standing addictions and associated problems, as well as their history with the Agency, precludes this result.

- (b) Remain in the care and custody of a parent or guardian subject to Agency supervision - Ms. W. has been offered this option in this proceeding and has failed to take advantage of that less intrusive measure.

- (c) Remain in care and custody of a person other than a parent or guardian subject to Agency supervision - The evidence did not disclose such a placement possibility.

- (d) Placement in temporary care and custody of Agency for a specified period - The Agency has met the substantial onus in s. 42(4) and, therefore, this is not a plausible option.

- (e) Placement in temporary care and custody of Agency for a specified period followed by return to a parent or guardian: This is not an option for the same reasons as in (d).

- (f) Placed in permanent care and custody of the Agency.

[33] Section 42(2) requires me to inquire into whether, before ordering permanent care and custody, less intrusive alternatives and services are available to promote the integrity of the family. I have made this inquiry and find these efforts have been tried unsuccessfully. Since September, 2005, Ms. W. has refused to accept these offers. Presently less intrusive services and alternatives would not provide adequate protection for these children.

[34] Section 42(3) requires me to consider whether there is any possibility of placement with a “relative, neighbour or other member of the child’s community or

extended family". No such placement was advanced and the evidence did not disclose any such individuals. In fact, the respondents lacked any family support by way of attendance or contribution.

[35] Section 42(4) requires me to not make a permanent care order "unless the Court is satisfied the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits". I have concluded, given Ms. W. and Mr. J. circumstances, their lives will not change any time soon. Extending this proceeding will not reverse the entrenched additions and behaviours of both parents. They have been unable to sustain recovery, notwithstanding the support they have received over many years.

[36] I have considered s. 47(2) of the *Act* respecting access within the framework of a permanent care order. I will not order access. I find access would impair the children's placement in a new family setting. In fact, Ms. W. has already destroyed the feasibility of permanently placing all three children in their present foster home. She has disclosed knowledge of their location and threatened to attend. These children are under 12 years of age. The Agency supports adoption. I find no circumstances that would indicate value to the children of continued

contact with their parents. The Agency will require maximum flexibility and minimal parental interference in order to place children of these ages together in an adoptive arrangement.

[37] Permanent care is the only viable option for these three children. Addictions have deprived these parents of the opportunity and privilege of raising their children to adulthood. Permanent care will hopefully assist these children in avoiding the mistakes of their parents.

J.