

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

**Citation:** Nova Scotia (Community Services) v. J.M. 2010 NSSC 441

**Date:** 2010/11/25

**Docket:** SFSNCFSA070478

**Registry:** Sydney

**Between:**

Minister of Community Services

Applicant

v.

J.M.

Respondent

**Judge:** The Honourable Justice Theresa M. Forgeron

**Heard:** November 5, 2010 and November 8, 2010  
in Sydney, Nova Scotia

**Oral Decision:** November 25, 2010

**Written Decision:** December 1, 2010

**Counsel:** Robert Crosby, Q.C., for the applicant  
David Campbell, Q.C., for the respondent

**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.

1990, c. 5

**By the Court:**

**I. Introduction**

[1] J.M. is the mother of two young children, J. and Ja. Originally, the family's home was in Ontario, where the children lived in the supervised care of Ms. M. because of child protection concerns. In March 2010, the family moved to Cape Breton, with the permission of the Ontario Agency, under a supervision order which was to be monitored by the local child protection office.

[2] On May 21, 2010, the local agency apprehended the children after receiving a referral from the police. The children have remained in the care and control of the Agency since that time, subject to supervised access between the children and Ms. M.

[3] On August 19, 2010, the children were found to be in need of protective services pursuant to s. 22(2)(b) of the *Children and Family Services Act*. The parties were unable to reach agreement as to disposition. Therefore, a contested disposition hearing was held on November 5 and 8, 2010. The following witnesses testified during the hearing: Cst. Donnie MacKay, Cst. Michael Abraham, Cst.

Ashley MacDonald, Cst. Justin MacKinnon, Sandi Virick, and J.M. The decision was reserved until today's date.

## **II. Issues**

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

- a) Should the children be placed in the temporary care and custody of the Agency, or in the supervised care of Ms. M.?
- b) If the children are placed in the temporary care and custody of the Agency, should access be supervised?
- c) What other disposition terms are in the best interests of the children?

## **III. Analysis**

[5] **Should the children be placed in the temporary care and custody of the Agency, or in the supervised care of Ms. M.?**

[6] 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. Ms. M. seeks a supervision order pursuant to s. 42(1)(b); the Minister seeks a temporary care order as provided in s. 42(1)(d).

[7] The Minister assumes the burden of proof. The Agency must prove its case on a balance of probabilities by providing the court with “clear, cogent, and convincing evidence”: **C. (R.) v. McDougall** 2008 SCC 53. In this case, 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.

[8] In making this decision, I am required to review and apply the legislative purpose, which is threefold - to protect children from harm, to promote the integrity of the family, and to assure the best interests of children. However, the paramount consideration is the best interests of the child as stated in s. 2(2) of the *Act*.

[9] The *Act* must always be interpreted according to a child-centered approach, in keeping with the best interests’ principle as defined in s. 3(2) of the *Act*. This definition is multifaceted. It directs the court to consider important emotional, physical, cultural, and social developmental factors unique to each child at each step of the proceeding.

[10] Further, s. 42(2) of the *Act* states that the court is not to remove 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 parent, or would be inadequate to protect the children.

[11] I am satisfied that the Minister has met the burden upon her. The Minister has proven that it is in the best interests of J. and Ja. 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, and in some instances have been attempted and have failed. As a result, J. and Ja. cannot be adequately protected while in the care of Ms. M. I reach this conclusion for a number of reasons.

[12] First, Ms. M. lacks meaningful insight as to the nature of the problems confronting her. She fails to grasp the severity of these problems which resulted in child protection intervention. Because Ms. M. lacks insight, she has no appreciation of the dangers, and has no motivation to effect permanent and lasting changes to her unhealthy lifestyle which is negatively interfering with safe parenting. Ms. M.'s minimization of the problems and her failure to accept

responsibility by assigning blame to others are but two examples of her lack of insight.

[13] Second, Ms. M. has a serious alcohol problem; she is a binge drinker. The incidents of May 21 and August 26, 2010 are examples of this fact. Further, despite Ms. M. linking her violence and anger to alcohol use, she has not stopped drinking alcohol. Rather, Ms. M. extends the time periods between drinking binges. In addition, she continued to consume alcohol even though the Ontario supervision order forbade its use.

[14] Third, Ms. M. requires meaningful therapy to deal with the significant personal issues confronting her. It is highly improbable that Ms. M. will heal herself given the nature and extent of the violent physical, sexual, and emotional abuse which she endured throughout most of her life. Unless Ms. M. undertakes extensive and meaningful therapy, she will continue to engage in high risk activities in an attempt to mask the pain and memories. Ms. M. must come to terms with her past. To date, there is little evidence of successful therapeutic intervention.

[15] Fourth, Ms. M. also requires basic parenting skills to ensure that her home is physically safe for her children. I accept that the trailer where she and her children were residing was filthy and had been in that condition for some time. The dead kitten, and the conditions of the floors and furniture were not caused by a night of partying by teenage babysitters. The conditions were unsafe for the children. I reject Ms. M.'s explanation. Ms. M. must acquire and implement basic housekeeping skills to ensure a safe, physical environment for her children.

[16] Fifth, Ms. M. requires anger management and healthy conflict resolution skills. Her treatment of the police, hospital workers, and child protection workers consistently shows her inability to manage frustration and anger in a safe fashion. Until Ms. M. learns to channel her anger and frustration in a healthy way, her children remain at risk of physical harm. Ms. M. has very little control of her temper, and has high impulsivity. She is highly confrontational. This poses significant protection concerns for children, especially for children who are so vulnerable and young.

[17] Finally, Ms. M. has not exercised access on a consistent basis. Her excuses are less than satisfactory. This failure shows the impact of Ms. M.'s ongoing challenges and inability to focus on the best interests of the children.

[18] Despite these findings, it is nonetheless clear that Ms. M. loves her children deeply. It is also clear that J. and Ja. have a strong bond with their mother.

However, love and bonding do not necessarily create a safe haven for children. As a result, the children will remain in the temporary care and control of the agency pursuant to s. 42(1)(d) of the *Act*.

[19] **If the children are placed in the temporary care and custody of the Agency, should access be supervised?**

[20] Ms. M. seeks unsupervised access. The agency does not support this position and seeks supervised access and services to help reduce the child protection concerns.

[21] 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.

[22] 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 J. and Ja.

[23] I find that it is in the best interests of the children to have supervised access given the significant child protection concerns reviewed previously, and given the ages of the children. J. and Ja. are young and vulnerable toddlers with no ability to self-protect. Further, Ms. M. cannot be trusted to voluntarily follow conditions in a court order without supervision, given her past breaches of the Ontario supervision order.

[24] Given these circumstances, the risks associated with unsupervised access do not outweigh any benefits that might possibly occur. Access, under the legislation, must be tailored to meet the needs of the children, and not the interests of parents. All access will be supervised and in cooperation and conjunction with the Agency at this time.

[25] **What other disposition terms are in the best interests of the children?**

[26] In addition, the disposition order will provide that Ms. M. engage in a number of services to reduce the child protection concerns in the best interests of the children. The terms are as follows:

- a. Ms. M. will attend therapeutic counseling to assist with the healthy resolution of issues arising from her past, including issues surrounding physical, sexual, emotional, and domestic violence;
- b. Ms. M. will engage in anger management therapy to acquire healthy problem-solving skills and skills to properly manage her anger and frustration in a safe fashion;
- c. Ms. M. will complete Transition House outreach services by completing Phase I and II;
- d. Ms. M. will refrain from the use of alcohol and all drugs unless prescribed by a physician, and then only in the doses so prescribed. Ms. M. will not permit any alcohol or non-prescribed medication in her home or on her person.

- e. Ms. M. will engage with a Family Support Worker to learn basic homemaking and child care skills;
- f. Ms. M. will maintain a stable, clean home which is free from hazards;
- g. Ms. M. will participate in random drug testing, which can include hair samples or urinalysis;
- h. Ms. M. will attend the access visits as scheduled;
- i. Ms. M. will attend scheduled appointments with her caseworker and other involved professionals, providing information in a timely fashion, and follow through with all reasonable directions of the involved professionals.
- j. Ms. M. will complete the parental capacity assessment being prepared by Dr. Landry; and
- k. Ms. M. will sign all necessary releases of information as it relates to her service providers.

[27] **Conclusion**

[28] The children will remain in the temporary care and custody of the Agency, subject to supervised access to Ms. M., and subject to the terms and conditions previously outlined.

DATED at Sydney, Nova Scotia, this 25th day of November, 2010.

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The Honourable Justice Theresa M. Forgeron