

IN THE SUPREME COURT OF NOVA SCOTIA  
(FAMILY DIVISION)

**Citation:** Nova Scotia (Community Services) v. K.H., 2010 NSSC 483

**Date:** 2010 10 27

**Docket:** SFHCFSA-055303

**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v.

K. H. and G. G.

Respondents

**Restriction on publication:**

PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT S. 94(1) OF THE CHILDREN AND FAMILY SERVICES ACT, S. N. S., 1990, CHAPTER 5 APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION. SECTION 94(1) PROVIDES:

"94(1) 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."

PUBLISHERS OF THIS CASE FURTHER TAKE NOTE THAT IN ACCORDANCE WITH S. 94(2) NO PERSON SHALL PUBLISH INFORMATION RELATING TO THE CUSTODY, HEALTH AND WELFARE OF THE CHILDREN.

**Editorial Notice**

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

**Judge:** The Honourable Justice Leslie J. Dellapinna

**Heard:** October 27, 2010 in Halifax, Nova Scotia

**Written Decision:** March 25, 2011

**Counsel:** John Underhill, counsel for the Minister  
Jennifer Schofield, counsel for G. G.  
Sheena McCarthy, counsel for K. H.  
Peter Katsihtis, counsel for the Guardian *ad litem*

**By the Court:**

**ORAL DECISION:**

[1] It should come as no surprise given that this is the third half day that we've been dealing with this that I have been giving this matter a lot of thought, so I don't pretend that all the notes that I have before me were prepared today although certainly the final conclusion was prepared today.

[2] My decision is as follows: Contrary to what Ms. H. believes this proceeding is not all about her but rather is about the children of the Respondents. This is the second proceeding between the Minister and the Respondents regarding their children, B. and L., who are now 14 and 11 years of age respectively. The first proceeding took place between October 2007 and March 2009. After a four day trial in January 2009 the first child protection proceeding was terminated and I ordered in a Corollary Relief Judgement that the parties would share joint custody of their children with Mr. G. having primary day to day care of them. Ms. H. was to have the children from Thursday after school to the following Monday morning on alternate weekends and special event times were addressed separately.

[3] As it turned out B. apparently refused to live with her father. That was not completely unexpected. During the course of the January trial I was told of B.'s preference to live with her mother but I did not feel that living with Ms. H. was in B.'s best interests and my reasons included:

1. Ms. H. had an unpredictable relationship with Mr. J. marked by arguments, separations and even domestic violence. Their relationship was not helped by their alcohol consumption;
2. Ms. H. exposed the children to adult issues; and
3. I felt that Mr. G. was in a better position to offer the children a stable and safe environment.

[4] The evidence in this proceeding shows that after the release of my decision last year B. remained living with her mother and for a time with Mr. J.. The Agency monitored B.'s situation and according to Ms. Dutch's affidavit of July 9, 2010 the relationship between the Respondents had not improved. It continued to

be acrimonious. The evidence also established that the relationship between Ms. H. and Mr. J. continued on the same track as before the trial. They still had their arguments, they continued to consume alcohol from time to time and they separated yet again. I should note that in July 2009 B. reported that Mr. J. slapped her in the face. Ms. H. told us today that she witnessed him doing so. B. also accused her father of grabbing her by the throat and touching her inappropriately. Mr. G. has been charged under the Criminal Code as a result of B.'s allegations. Ms. H. too is facing criminal charges as a result of an altercation between her and Mr. J. in the spring of this year, an altercation that seems, based on the evidence, to have followed as a result of Ms. H. and Mr. J. consuming alcohol. Neither Mr. G. nor Ms. H. have yet had the opportunity to respond to the charges against them.

[5] On March 17 of this year during a court appearance before me in relation to this proceeding, Ms. H. said that Mr. J. would not be part of her life in the future.

[6] In March 2010 the Agency began these protection proceedings. The Agency was of the view that both children were in need of protection because of the accusations made by B. against her father, the ongoing discord between the

Respondents and the effect that discord was having on the children. Also it was clear that my previous order was not being followed and wasn't working.

[7] I granted a Protection Order on June 3, 2010 with the consent of the parties. On June 10 B. was formally ordered to be in the care and custody of the Agency. Also in June of this year, B. was placed in a group home in \*. Previous placements in the home of one of her friends' parents and then in the home of her paternal aunt had broken down.

[8] As a result of an interim order that I issued on March 17 L. was placed in the care and custody of his father under the Agency's supervision and he remains in the care and custody of his father.

[9] Ms. H. made it know that she was going to contest B.'s placement and L.'s as well. My June 10 order was subject to the outcome of a placement hearing that was set for June 28.

[10] Ms. H. failed to file an affidavit by the deadline given so the June 28 hearing was cancelled. On July 5 I granted two Disposition Orders whereby B. was to

remain in the care and custody of the Minister with the provision that neither of the Respondents were to have any contact with B. except for supervised access arranged by the Minister. A separate Supervision Order was put into place whereby L. remained in the care and custody of his father subject to the Agency's supervision.

[11] Those orders where, at least in my mind, subject to the outcome of today's hearing whereby Ms. H. seeks custody of B. and L.. Parenthetically the July 5 orders were reviewed and renewed on September 30 for jurisdictional reasons.

[12] I was told during the July 5 hearing that B. had again left her placement in \* and her whereabouts at that time were unknown. On July 9 I granted the Agency a Locate and Detain Order pursuant to section 29 of the *Children and Family Services Act*, S.N.S. 1990, c. 5..

[13] Ms. H. seeks to have both B. and L. placed in her care under the Agency's supervision.

[14] Sub-section 2 (1) of the *Children and Family Services Act* provides that the purpose of the *Act* is to protect children from harm, promote the integrity of the family and assure the best interests of children. Subsection 2 says that in all proceedings and matters pursuant to this *Act* the paramount consideration is the best interests of the child. Sub-section 3 (2) provides a list of circumstances that are to be considered when determining what is in a child's best interests. It is clear from reading sub-section 3 (2) that the child's relationship with his or her family is to be given great weight as well as the child's physical, mental and emotional health and stability. The child's wishes if they can be reasonably ascertained should also be considered. I have heard evidence from Mr. W. (B.'s guardian *ad litem*) that he spoke with B. and that it is B.'s wish that she reside with her mother. The Court is also to consider the risk the child may suffer by being kept from or being returned to a parent. The Court should also opt for the least intrusive remedy to address any child protection issue.

[15] After having reviewed the evidence including the affidavits and the testimony I have come to the following conclusions:

1. Both children are still in need of protective services;

2. The relationship between the Respondents is still toxic and the children need to be protected from the ongoing animosity. Ultimately it is the Respondents who have to do something about their relationship and its impact on the children;

3. My opinion regarding the relationship between Ms. H. and Mr. J. has not changed since I released my earlier decision in March of last year. I continue to believe that the children should not be exposed to further volatility, instability and the possible violence that that relationship has in the past generated. Ms. H., if she wanted, could insulate the children from that relationship by having no further contact with Mr. J. but that is not her plan. In spite of what she told me on March 17<sup>th</sup> she now says she would prefer to have a family including Mr. J.;

4. B. is a troubled child who needs guidance, stability and protection from her own poor decisions and she probably needs individual counselling;

5. L.'s placement appears to be working for him. I am aware of the charges against Mr. G. which have not yet been proven but whatever may be the relationship difficulties between Mr. G. and B., L. appears to be doing well in his father's care.



[16] This Review Application is pursuant to section 46 of the *Children and Family Services Act* but I have approached it as if it was a first disposition hearing because Ms. H. had made it clear that she was contesting placement at the disposition stage and although she failed to file her affidavit for the initial hearing that I scheduled I'm not going to require her to prove a change in circumstance since the July 5 order or subsequent orders. That said, I have reviewed the provisions of section 46 as well as the provisions of sections 41 and 42.

[17] The Agency seeks a continuation of the Temporary Care Order regarding B. and a continuation of the Supervision Order regarding L.. Mr. G. supports the Agency's position as does Mr. W., but as I said Ms. H. wants both children placed in her care and custody and says in her affidavit that she is willing to take part in services.

[18] I have considered the options contained in sub-section 42(1) and have considered too what I believe to be in the children's best interests in the circumstances of this case.

[19] I will deal first with L.. Since being placed in his father's care and custody under the supervision of the Agency L.'s circumstances have not changed. He remains in his father's care, his mother has supervised access although not as much as she would like and Mr. G. for the most part is cooperating with the Agency. He has not completed the Substance Abuse Assessment as ordered, which is a concern. There was evidence of alcohol being detected on his breath at different times by various people. That too is a concern, however so far there is no evidence that his alcohol consumption is adversely affecting his parenting of L. or his relationship with the children. He nevertheless would be well advised to complete the assessment and, given the circumstances of this case, consider minimizing his alcohol consumption. As I said earlier the charges against him are a concern but at this time he has not had his trial. The evidence suggests that he is capable of caring for L. and that L. is in a stable environment. It is also evident that L. misses his mother.

[20] Having considered all of the evidence and the legislation I order that L. remain in his father's care and custody under the supervision of the Agency. In other words there will be no variation of the existing Supervision Order.

[21] Regarding B., ideally what would be in B.'s best interest would be to place her in the custody of one of her parents assuming they would love her, comfort her, protect her from harm and protect her from herself when need be and provide her with stability, appropriate supervision and guidance. Given the outstanding charges against Mr. G. and B.'s unwillingness to live with her father at this time placing her in the custody of Mr. G. is not an option. Whereas B. is still in need of protective services dismissal is not an option and I've not been advised of any third party caregiver that could be considered. So realistically it comes down to a choice between keeping her in the temporary care and custody of the Minister or placing her in the care and custody of Ms. H. under the Agency's supervision. In the circumstances of this case the ideal situation that I referred to earlier, i.e. placing her in the care of one her parents - is not in B.'s best interests notwithstanding B.'s expressed wishes. So I look to the only remaining possible order which at this time is in her best interest and therefore I order that B. remain in the temporary care and custody of the Minister.

[22] The evidence clearly has demonstrated that in spite of it being B.'s wish to be in her mother's care, that would not be in her best interests. Ms. H. has, by her actions, shown that she cannot be trusted to cooperate with the Agency's workers

or comply with the Court's order. She has cooperated to some degree but only when it suits her.

[23] The Alcohol Abuse Assessment that is before the Court is of little value as it depended on Ms. H.' honest self-reporting which honesty and openness did not happen. She has fed the Agency and this Court inaccurate information particularly regarding B.'s whereabouts this past summer and with respect to her relationship with Mr. J.. She withheld information that would have helped the Agency locate B.. This was done at a time when she knew that the Agency was looking for B. and when she knew that the Court wanted to know where B. was located. She knowingly acted in violation of this Court's order and in violation of her undertaking to the Provincial Court and perhaps worse than that she has indicated that she would do it again if she thought it was necessary in her view to protect her children. She has encouraged and enabled B. to act in a way that is inconsistent with this Court's order. She allowed B. to not attend school for two months in order to hide her from the Agency. She does not protect B. from her own poor choices. She does not acknowledge the Agency's or this Court's concerns for the children. She knowingly acts in a way that causes harm to Mr. G.'s relationship with the children. She continues to expose B. to and involve her in adult issues

and she has exposed B. to domestic violence. She has no insight into her children's real emotional needs and she has no appreciation for the harm her actions may be causing the children. She continues to have a relationship with Mr. J. and has left B. in his care even after seeing him slap B. in the face and after she herself told the police that after drinking Mr. J. gets very aggressive and even violent. She's been belligerent, sometimes irrational and at times completely inappropriate with Agency workers. She's misquoted them many times and even threatened the Agency on at least one occasion. She has been dishonest under oath and has said that she would do it again.

[24] I have serious concerns for B.. It may be that in spite of the Agency's and this Court's best efforts the protection concerns that relate to her will not be alleviated. But I am not prepared to give up on her. Placing her in Ms. H. care and custody at this time would not be in her best interests and therefore I decline to vary the Temporary Care Order.

[25] Mr. Underhill, I ask that your office prepare the orders.

J.