

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

**Citation:** Nova Scotia (Community Services) v. S.N., 2011 NSSC 198

**Date:** 20110414

**Docket:** SFHCFSA-067232

**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v.

S. N. & J.S.

Respondents

<b>Editorial Notice</b>
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**Restriction on publication:**

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 relative of the child."

**Judge:** The Honourable Justice Mona M. Lynch

**Heard:** April 11, 12, 13 & 14, 2011, in Halifax, Nova Scotia

**Written Decision:** May 25, 2011

**Counsel:** Cindy Cormier for the Applicant  
Linda Tippett-Leary for the Respondent (S.N.)  
Heather McNeill for the Respondent (J.S.)

**By the Court:**

[1] We are back for the decision on the matter of Minister of Community Services (M.C.S.) v. S.N. and J.S. This is a matter that involves J.S. who was born on February \*, 2009 and who I will refer to as the child.

[2] From his birth until November 5, 2009 the child lived with his mother in various locations. She lived with her sister. She lived with the baby's paternal grandmother, with a friend and then at SHYM which is Supportive Housing for Young Mothers. The mother was fifteen years old when the child was born. I think it was a week before her sixteenth birthday and she is eighteen years old today. While living at SHYM on November 5, 2009 the child was taken into care by the M.C.S. and he has remained in the care of the M.C.S. since that date.

[3] The M.C.S. has been involved with the mother and the child since about April 2009 when concerns were raised by a social worker with the I.W.K. Hospital and the mother's sister. Concerns included the mother's immaturity and her instability in housing. There was a major concern about her inability to put the child's needs ahead of own. There were major concerns about her relationship with the child's father. There was concern that the father was abusive emotionally

and perhaps physically. Concerns were raised about the horrific upbringing that the mother had when she was growing up with a very abusive father and an alcoholic mother.

[4] In July 2009 the mother and the child went to live at SHYM. This is, as I said, Supportive Housing for Young Mothers but it was apparent from the evidence of the mother's sister that it was not as supportive as she had anticipated and hoped. The mother didn't do all that well at SHYM. Concerns were unexplained time away from the program, not having a schedule for the child and being later absent from the parenting program. But there were periods when the mother did attend the parenting program regularly. The other concerns were not being honest, excessive phone use, not responding to the child's queues and needs and being rough with the child when she was angry. When the child was taken into care, the mother was asked to leave SHYM.

[5] The mother moved into a group home for young women and then in the Spring of 2010 she reunited with her sister. Through the Summer of 2010 a plan developed and was approved by the M.C.S. that the mother would move in with her sister and that home visits would start. The plan would be the eventual return

of the child to the mother at her sister's house under the supervision of the M.C.S. The move to her sister's lasted a little over a month.

[6] Her sister had concerns that the mother was not attending school, as was the agreement when she moved in, and there was concern about the mother not being truthful. As things had not been very successful on the past occasion when the mother had lived with her sister, she asked her to leave the home. In her testimony, the sister said that perhaps she had thrown in the towel a little too soon or given up too soon on the mother. When the mother was asked to leave her sister's home, she moved back into \* and things were not going well there.

[7] I have to say that that is not surprising, that things would not go well in a group home. I think a group home would be a very hard place to live. You have a number of young people with problems under the same roof and that cannot be an easy place to live.

[8] There were concerns still at the same time about the mother having the relationship with the father.

[9] The matter proceeded under the *Children & Family Services Act* before the court. The protection finding was made February 1, 2010 under Section 22(2)(g) of the *Children & Family Services Act*. The first disposition was April 23<sup>rd</sup> which placed the child in the temporary care and custody of the M.C.S. and he has remained in their care. Access was provided to the mother. The order also provided for the parents to participate in counselling and the services of a family skills worker. Counselling was provided for the father through the M.C.S. Counselling was not provided for the mother through the M.C.S. but she received counselling through Probation Services.

[10] Counselling went well, according to the report of the counsellor, Ms. Dupuis, whom she met with regularly. The report of January 14<sup>th</sup>, describes her as engaged and actively participating in her own treatment and committed to working with this counsellor on a long term basis. They worked on healthy relationships. There was a report of July 14, 2010 saying she was still engaged and actively participating in therapy, however, this is sometimes impacted when she is experiencing times of crisis.

[11] On February 4, 2011 there was the final report from Ms. Dupuis and it is very unfortunate that the counselling with Ms. Dupuis had to end right at a critical time for the mother. The Parental Capacity Assessment had just been released and the M.C.S. had just decided to look for permanent care and custody, and at that same time Ms. Dupuis was indicating to the mother that the counselling services that she was providing could no longer be provided because the mother no longer fit the mandate at the place where Ms. Dupuis was working.

[12] The family skills work did not start out very smoothly. The person was in place in February of 2010 and was then on medical leave. The service did not really start until May 2010. There was concerns about missed appointments, not getting to work on some issues and in her testimony Ms. Nussey did indicate that the contact she saw between the mother and the child was positive. The access notes that were filed as an exhibit tell the same story. They show that the access between the mother and the child was appropriate; she was attentive; she was responding to his queues; she was keeping him quiet and cuddled when he was sick; and, again, the family skills worker said that what she saw was child-focussed and appropriate.

[13] There were missed appointments with the family skills worker; there were missed appointments for access. Almost always there was a reason given for the missed appointment or access and sometimes it was not the fact that the mother missed; it was that the M.C.S. indicated that she had to call two hours ahead of the visit and she hadn't called within that time. There weren't many missed visits until November 2010, after the Parental Capacity Assessment which outlined some concerns. As well, the placement with her sister had broken down and the plan of care for the M.C.S. had been filed which indicated they were seeking permanent care and custody of the child.

[14] The Parental Capacity Assessment outlined much the same concerns with regard to the mother's immaturity, concerns about her relationship and concerns about dishonesty. It's fair to say in November 2010 that the mother was reeling. She had put together a plan to keep the child in her care at her sister's home and the Agency was in agreement with that. Everything looked good for her and then very early in the Fall of 2010 everything fell apart. She was back at \*; things weren't good. She was told that she would not have the child back in her care. Everyone was telling her that. At that point access was missed more often; appointments with the family skills worker were not kept and by her own

testimony, the mother said, “I didn’t see any point in going to family skills work to work on parenting when I wasn’t going to be a parent”. As I said, there was concerns at that point about her mental health and depression. So, not participating in the programming was not good at that point but to some extent I can say it was understandable at that point.

[15] Things were not all bad in the Fall of 2010 for the mother. She had terminated her relationship with the father and had started a new relationship with her now-boyfriend. In November she moved in with her boyfriend and his family. Through that, she built trust and a relationship with the family. The boyfriend’s family is very supportive and by all accounts an appropriate place for the mother. The boyfriend’s family are willing to offer her support. She has indicated this is her first experience with unconditional love in a family setting and the support being offered by the boyfriend’s family is not a limited time offer for as long as the relationship with their son lasts. They are offering her support as long as she needs it.

[16] The relationship with her boyfriend is up and down. It is not a perfect relationship. Both acknowledge that the actions he took when he was in a rage



were inappropriate and that he struck the car and broke his hand. They both acknowledged it was inappropriate at the time and inappropriate behaviour in front of a child. So the relationship between the mother and her boyfriend has some issues but I am not deciding about their relationship. This is a bigger question than that.

[17] The mother indicates, "I've made mistakes. I was immature. I screwed up. I didn't put "the child" first. I was too interested in my social life and not in him. I should not have been with the child's father and I should not have lived with his mother." It's always easier to look back and see the mistakes you made in your life than it is to realize when you were living them that they were mistakes. One of the things I will say is that the mother isn't denying. Some people will still not acknowledge that they made mistakes. She's indicating she made mistakes; she's not saying it is everybody else's fault. I think her sister said something similar when she took the stand in that that was what she had said up to a certain point, "Everybody else's fault but mine". She has acknowledged her responsibility for the child being in the care of the M.C.S.

[18] The concerns that brought the child into care - one of the biggest ones was her relationship with the child's father. She is currently not in a relationship with the father. The immaturity was another issue and I find that that has improved since the time the child was taken into care and that she recognizes the issues and the problems. Counselling, there was concern from the M.C.S. that she had not participated in counselling but when I look back at the reports from Dawn Dupuis she did participate in counselling. The reports were good and there was some work on issues such as healthy relationships. There is no doubt that she missed some counselling. She missed some family skills but all of the access reports are good and her care of the child during the partial supervision all seemed to be positive.

[19] My decision is to decide what is in the best interests of this child. The *Children & Family Services Act* contains a number of provisions and the preamble of the *Act* indicates a number of things but it indicates that parents and guardians have responsibility for care and supervision of their children and children should only be removed from the supervision either partially or entirely when all other measures are inappropriate. So that is what I have to do - I have to look at all other reasonable alternatives and all reasonable alternatives must be exhausted before I can permanently remove a child from his parents.

[20] So, now I have to look at the measures - whether the measures are appropriate. One, the best interests of the child are paramount. There is no doubt about that and when I am considering best interests I have to look at things such as promoting the integrity of the family. That's all part of the preamble in best interests. I have to look at the bonding that exists between the parent and the child, and certainly in the access report and the Parental Capacity Assessment from Ms. Shepherd there is discussion about the bonding that exists between the mother and the child. I have to look at - to compare the merits of the plan. The plan of the M.C.S. is for the child to be placed for adoption. The plan of the mother is to live with her boyfriend's parents who have indicated that they would support her in having the child with her.

[21] As I have already indicated the mother recognizes that she has issues; she recognizes her faults; she accepts responsibility; she recognizes she needs help and support. She has indicated, "I don't think I could parent on my own". But she recognizes that she can get the help and support from her boyfriend's home and that they are willing to help and support her.

[22] Ms. Shepherd, in the Parental Capacity Assessment, indicated that she had hoped that at the time that the mother would live with the child, with her sister, and that was why she did not say in the Parental Capacity Assessment that she was recommending permanent care and custody, because she had hoped that it would work out between the mother and her sister so that the child could remain in the mother's care. But, she was not surprised that it did not work out. She indicated that on the stand. She indicated that the mother does not have a lot of support from her family and that you look at what other supports you have outside the family when you do not have family supports. Ms. Shepherd indicated that the mother had made gains in counselling and so I have to consider those things. When I am looking at the other supports, the boyfriend's family are the other support. The mother has been living with them for five months now. The placement with her sister did not seem to work out but this one seems to be working out.

[23] The M.C.S. did not really consider the plan with the boyfriend's family when it was first brought up by the mother in December. It was brand new and I can see why they would not have considered it at that point. The social worker for the M.C.S. did not meet with the boyfriend's family until February. At that time, names were taken and dates of birth and checks were made without the boyfriend's

family being aware that those checks were being made. So that was not exactly the greatest start to a relationship. I think the boyfriend's family felt that their privacy was invaded when that happened.

[24] From what I have seen and from the testimony I have from the boyfriend's household, from the boyfriend's mother and step-father, the boyfriend and the child's mother, this seems to be a very supportive home and I am not really clear why it was not considered further. I find that the plan she is putting forward is appropriate to meet the child's physical, mental and emotional needs. When I compare the plan of returning the child to the mother in a supportive house or adopted to the M.C.S., I cannot find that this is an inappropriate plan.

[25] This is not a case where the mother has a substance abuse problem. This is not a case where some of the issues that I see in matters where children are permanently removed from their parents. Her issues are immaturity; really bad luck with the family of origin; she has some dishonesty issues but I think those probably come from trust issues. I find that those can be overcome with time. We do not take children permanently from their parents for failing to participate in services. I have to look at the overall picture and the issues that caused this child

to be in need of protective services. The mother is in a stable placement; she did participate in some counselling and worked on things such as the relationship issues.

[26] The M.C.S. indicates to me, “Well, she could still be in a relationship with the child’s father”. That would be a concern to me but I do not have any evidence that that is the case. The M.C.S. indicated as well that she could leave the boyfriend’s family home tomorrow and move into an apartment.

[27] I am left with only two choices here - that is to dismiss the application or place the child in permanent care and custody. If I dismiss the application certainly she can move out on her own tomorrow but she would be very foolish to do that because I am sure the M.C.S. would be taking the child right back into care. She has said on the stand, under oath, and in her affidavit that she does not think she is able to parent on her own and that she needs the support of her boyfriend’s family. Certainly, if she made a plan other than with the boyfriend’s family then the M.C.S. can assess the risk to the child if that happens and I would expect them to do that.

[28] Section 42(2) of the *Act* requires me to be satisfied that less intrusive alternatives than permanent care would be inadequate to protect the child and that is where I cannot get over. I cannot say that this plan is inadequate to protect the child. When I am left to answer that question, why the child could not be adequately protected in the care and custody of his mother with the plan she has put forward, it is part of what I would have to give reasons on and when I thought about the reasons I could not formulate the reasons to say why the child could not be adequately protected while in the care of his mother when she is living with her boyfriend's family. So I cannot be satisfied that it is in the best interests of the child to place him in the permanent care and custody. The evidence for me to decide that always has to be clear, convincing and cogent to satisfy me on the balance of probabilities and I am not satisfied.

[29] So, basically, the bottom line is I am not satisfied that the less intrusive alternatives to promote the integrity of the family would be inadequate to protect the child. I cannot say why he would not be adequately protected in the care and custody of his mother with the plan she has put forward. So I do find it is in the best interests of the child to dismiss the application. I would have preferred that there was time for this to be a gradual thing so that he could gradually move into

the boyfriend's family's home and there would be supervision of the M.C.S. and a continuation with services, but I am only left with two choices - that is dismiss or permanent care. So I am dismissing.

[30] I just want you to understand (speaking to the mother) you really have to maintain the support that you are given. You have to continue to accept that. There are still some things that you need to learn about parenting. I think you have been to the Dartmouth Resource Center, they offer parenting courses as I understand it, and you can continue with those without the M.C.S. I agree with Ms. Shepherd, you need to continue in counselling and maybe with the help of Ms. Dupuis, you can find a counsellor other than her since you do not fit the mandate of her services anymore. But those are things that you can look for in the community.

[31] I wish you every luck.



J.