

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v. K.B., 2007 NSSC 236

Date: 20070807

Docket: SFHCFSA-045782

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

K. B.

Respondent

Editorial Notice

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

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: July 23, 24, 25 & 26, 2007, in Halifax, Nova Scotia

Counsel: Amy Sakalauskas, for the Applicant
Linda Tippett-Leary, for the Respondent

By the Court:

Introduction

[1] This is an application by the Minister of Community Services (MCS) for an order of permanent care and custody pursuant to s. 42(1)(f) of the **Children and Family Services Act**, S.N.S. 1990, c. 5 (“**CFSA**”) in relation to the male child G.M.B (the child) born April *, 2006.

[2] K.B. (the mother) is the mother of the child. The person named as the biological father of child was determined by paternity testing not to be the biological father. No other person was identified as fitting the definition of a parent under the **CFSA** and no other person took part in the proceeding before the court.

Background:

[3] The MCS received a referral from the IWK Health Centre on April *, 2006, the day the child was born. The referral was from a social worker at the IWK who reported some concerns about the mother. The concerns included reports from the

mother's doctor that the mother had missed nine appointments and only attended three appointments for pre-natal care. The social worker also reported that the mother seemed intellectually delayed. The mother and her partner were not living together but were considering moving in together. Other concerns included the mother reported that she did not have very much for the child and she had no family support in Nova Scotia.

[4] Another call was received by the MCS on April *, 2006 from the same social worker at the IWK reiterating her earlier concerns and reporting that the mother and her partner had broken up the night before as the partner was demanding DNA testing to determine the paternity of the child. The social worker was more concerned as the mother had planned to move in with her partner. There were concerns that the mother was impatient and would be going home with a newborn without any support. The mother had reported that she had been sexually abused by her father at the age of 14 and had attempted suicide.

[5] The mother and child were discharged from the hospital on April *, 2006 and the MCS conducted a drop-in visit at the mother's home on Saturday, April *, 2006. Both the mother and her partner were at the mother's home. The workers

for the MCS determined that the mother had enough formula and diapers to last for the weekend.

[6] On April *, 2006 the mother arrived at the IWK Health Centre with the child by ambulance. The mother indicated that the child was having trouble breathing and was turning blue. The mother reported that she was out of money and had no formula or diapers for the child. The mother reported that she had been feeding the child canned milk. Staff at the IWK again called the MCS and reported that the mother appeared overwhelmed and exhausted. Concern was again expressed over the lack of support available to the mother. The child was admitted to the hospital on April *, 2006.

[7] A representative of the MCS attended the IWK on April *, 2006 and met with the mother. The mother was asked about the formula she had shown the workers for the MCS on April *, 2006 and she reported that the child had consumed all of that formula in one day. The mother reported that the breathing problems with the child had started prior to the visit from the workers on April *, 2006 but she did not report her concerns to the workers.

[8] On April *, 2006 the MCS held a risk management conference regarding the child. They reviewed the reported concerns of the mother's limited intellectual ability, the mother's isolation, the lack of pre-natal care, concern that her partner was involved with drugs, poor role modelling in her own upbringing, lack of family support, the mother was victim of sexual and physical abuse and neglect, the mother's reported suicide attempt and the mother's psychiatric involvement as a teenager. The MCS decided to take the child into their care.

[9] On April *, 2006 the maternal grandmother contacted the social worker for the MCS to ask if she could put forward a plan for the child to be placed with her or her son. The mother would not consent to placement of the child with her mother or brother. The mother had indicated that she was going to take the child and return to live in *, however, she decided to stay in Nova Scotia.

[10] The mother initially exercised supervised access to the child along with her partner who had been evicted from his apartment and who was now residing with the mother. On May 24, 2006 the mother reported to the social worker for the MCS that her partner tried to choke her, the police were called and her partner was

charged and taken into custody. The mother began to exercise her access with the child without her partner.

[11] Services were set up for the mother including a parental capacity assessment, personal counselling and a family skills worker. Counselling was set up with Martin Whitzman. The mother attended only four appointments out of approximately 18 appointments scheduled. The parental capacity assessment was completed on November 30, 2006 and recommended that the child be placed in the permanent care and custody of the MCS. Family skills training for the mother got off to a slow start, primarily because two family skills workers left their employment with the MCS.

[12] Initially the mother had a problem focussing on the child during access visits. She became involved in disputes with the staff of the MCS by yelling, swearing and acting in an aggressive manner. Her behaviour settled and the vast majority of her access visits with the child were positive and appropriate. There were fewer angry outbursts and inappropriate comments as time passed. The mother had conflict with another parent who was a client of the MCS. This other client was charged with assault for breaking the mother's jaw.

[13] The social worker received a complaint from a relative of the woman charged with assaulting the mother that the mother was in the courtroom where the woman was to appear on another matter. This relative complained that there was a no contact order and the mother had no business being in the courtroom. The social worker for the MCS confronted the mother about being in the courtroom and explained to the mother that she may be charged for violating the no contact order.

[14] The mother entered into a few relationships with men from the time the child was taken into care until the time of the trial. She had a short relationship in the summer of 2006 and another relationship from the summer of 2006 until December of 2006. The mother began a new relationship in March of 2007 with a man she met in January 2007. The mother suffered two miscarriages between the date the child was taken into care until the date of the trial.

[15] In June 2007 the mother was given notice that her lease would not be renewed when it ended in October 2007. The landlord testified that the mother and he had a number of confrontations and she had problems with other tenants. The

landlord also had concerns as the mother's boyfriend was a former tenant and he was living with the mother. The landlord accused the mother of threatening him with a dog on July 5, 2007. The police were called as a result of this incident but no charges were laid. The mother said that the landlord had made her very uncomfortable by asking her questions about her sexual relationships and inviting her out for meals, drinks and rides on his boat. The mother moved into a new apartment with her boyfriend on July 1, 2007.

[16] The mother filed an affidavit with the court on July 18, 2007. The affidavit was not sworn until July 26, 2007. The affidavit set out her plan for the child; the mother's evidence was that her current boyfriend would be a great support to her.

[17] Between the date the affidavit was filed and the date it was sworn there were problems in the relationship between the mother and her boyfriend. On July 13, 2007 the mother called the police to her home and the boyfriend was charged with uttering threats to the mother. On July 14, 2007 the police were at the mother's residence again as a result of a call from her with regard to her boyfriend being at her residence. The boyfriend was charged with assault, uttering a threat and breach

of the undertaking entered into the day before which required he not have contact with the mother.

[18] On July 20, 2007 the social worker for the MCS and the family skills worker made an unannounced visit to the mother's new apartment. The mother was slow to answer the door but invited the workers into her home. The workers noted the smell of marijuana in the apartment. The mother showed the workers the apartment. The mother told the workers not to go in the bathroom as there was cat litter on the floor. The social worker for the MCS opened the bathroom door. The mother's boyfriend was in the bathroom. As a result of this incident the boyfriend was again charged with breach of undertaking for having contact with the mother. The evidence presented by the MCS showed that the boyfriend had a criminal history which included violence.

[19] The evidence of the adoption worker for the MCS was that the child would be a good candidate for adoption and a placement could likely be found for the child in two to three months.

[20] The outside date for making a disposition is September 22, 2007.

History of the Proceedings:

[21] The child was taken into care on April *, 2006. The Protection Application and Notice of Hearing, dated April 13, 2006, alleged that the child was in need of protective services pursuant to ss. 22(2)(b), (g), (ja) and (k) of the **CFSA**. The interim hearing was completed on April 27, 2006. On June 29, 2006, based on the consent of the parties, the child was found to be in need of protective services pursuant to s. 22(2)(g) of the **CFSA**. On September 22, 2006 the person who had been named as the biological father was removed as a party to the proceeding by consent after paternity testing showed he was not the biological father of the child. On September 22, 2006 the disposition hearing was held and by consent the child was placed in the temporary care and custody of the MCS.

[22] On review a further order for the child's Temporary Care and Custody was made on December 15, 2006. The MCS filed a plan of care on January 18, 2007 seeking permanent care and custody of the child. The order of temporary care and custody was renewed on March 9, 2007 and June 5, 2007. A trial was held on July 23, 24, 25, and 26, 2007.

Position of Parties:

[23] The MCS is seeking an order placing the child in the permanent care and custody of the Minister. The plan is to seek an adoption placement for the child. The mother seeks a dismissal of the proceeding with the child returning to her care or that the child be placed with the maternal grandmother or maternal uncle.

Legislation:

[24] The preamble to the **CFSA** sets out that the basic rights and fundamental freedoms of children and their families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests and of society's interest in protecting children from abuse and neglect. The preamble says that children have a sense of time that is different from that of adults and services provided pursuant to this **Act** and proceedings taken pursuant to it must respect the child's sense of time. The preamble also provides that social services are essential to prevent or alleviate the social and related economic problems of individuals and families.

[25] The paramount consideration in all proceedings under the **CFSA** is the best interests of the child. In considering the best interests, I am to consider all of the factors in s. 3(2) of the **CFSA**. Along with the other factors, I must consider the importance of the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family. I must consider the child's physical, mental and emotional needs and the appropriate care or treatment to meet those needs. I must consider the child's level of development. I must consider the effect on the child of delay in the disposition of the case. I must consider the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian. I must consider the degree of risk that justified the finding that the child is in need of protective services.

[26] It was agreed that the child was in need of protective services under s. 22(2)(g) of the **CFSA**:

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

Paragraph (f) reads:

(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

[27] The Minister also alleges that the child is in need of protective services pursuant to s.22(2)(b), (ja) and (k).

[28] Under section 41 of the **CFSA** I am to consider the evidence from the protection hearing and the plan of care prepared by the Minister.

[29] Under section 42 of the **CFSA** I am to make a disposition order in the best interests of the child. As this proceeding is almost at the end of the outside date for making dispositions under the **CFSA** my only real options are under s. 42(1)(a) to dismiss the matter or an order for permanent care and custody pursuant to s. 42(1)(f). Any further order for temporary care and custody or a supervision order could only be in effect until September 22, 2007.

[30] There are other subsections of section 42 of the **CFSA** that I must consider:

(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

(a) have been attempted and have failed;

(b) have been refused by the parent or guardian; or

(c) would be inadequate to protect the child.

(3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

[31] The maximum time period for an order of supervision or an order of temporary care and custody under sections 43 and 45 of the **CFSA** is twelve months.

Analysis:

[32] The onus is on the Minister of Community Services to show that it is in the best interests of the child to be placed in the permanent care and custody of the MCS. The burden, while the civil standard, is a heavy one. On a review there is a two-stage test, the first whether the child is still in need of protective services and the second is a consideration of the best interests of the child.

[33] One thing was consistent in all of the evidence from people who witnessed the mother and the child together. The mother loves her child very much and she interacts with the child appropriately.

[34] The concerns expressed with returning the child to the mother include the level of the mother's intellectual functioning, her immaturity, her lack of judgment, her involvement with inappropriate and violent male partners, her anger management, her lack of support systems and her lack of insight into why the child was taken into care. The mother in this case resisted attempts by the MCS to offer her services. She did not attend counselling appointments on a consistent basis and she did not become engaged in the counselling until June of 2007.

[35] While the family skills work got off to a slow start, the mother became engaged in the family skills training. The mother missed some appointments with the family skills worker. The family skills worker reported that the mother had to work through some anger issues before she would settle into parenting instruction. The family skills worker reported that the mother was appropriate in interacting with the child, was open to learning and loves her child.

[36] The mother's partner at the time the child was born was charged with assaulting her. The mother's most recent boyfriend was charged with assaulting her, uttering threats to her and having contact with her with an undertaking in place requiring him not to have such contact. During cross-examination the MCS provided proof of further convictions of the mother's boyfriend for violence. When the mother attended her counselling appointment with Martin Whitzman in June 2007 she credited her boyfriend with keeping her sane and providing her with guidance and support. By the time of her next counselling appointment (July 26, 2007), the mother had broken up with the boyfriend as a result of the charges against him. The mother reported that she was finished with the boyfriend and she would not allow him to interfere with her plans to get the child back. However,

when the mother testified she was not as clear that the relationship with her boyfriend was finished and she would not rule out reconciling with him.

[37] The mother's romantic relationships are a definite problem in her life. She has been involved in at least two relationships with violent men. She does not seem to recognize the problems in the relationship until they are so blatant that charges result. On cross-examination, the mother said that she did not ask about her boyfriend's criminal record as it was not her business. The mother failed to recognize how her being involved in a relationship with domestic violence impacts her parenting and impacts children who are exposed to the violence. The mother's lack of insight in this area is of major concern.

[38] The mother's therapist said the mother does not see the consequences of her actions. The mother reacts emotionally and without much logic. Martin Whitzman expressed the need for the mother to work on trying to recognize problems before it was too late and before someone else has to tell her that there are problems. The mother had become engaged in the therapy with Martin Whitzman and he felt that her motivation was genuine. I accept that the mother has engaged with Martin

Whitzman in therapy and genuinely wants to work on her problems so that she does not repeat past mistakes.

[39] Debra Garland prepared the parental capacity assessment in November 2006 and recommended that the child be placed in the permanent care and custody of the MCS. Debra Garland expressed concern about the mother's ability to make connections between actions and consequences. Debra Garland expressed concern over the mother being taken advantage of as she appeared to be naive. The mother's relationship history was identified as a problem. The mother's cognitive ability was found to be in the extremely low range. Other concerns were the mother's failure to assume responsibility for the child being in care, the mother not learning from mistakes but repeating mistakes, the mother's lack of control over her impulses and the mother's lack of support system.

[40] Debra Garland expressed concern about the mother's memory as she did not seem to remember her family history. The mother explained that this was because she wanted to forget. The mother did not have a pleasant childhood and it is understandable that she would want to forget. Under cross-examination the mother again showed this lack of memory for unpleasant events. When she was asked

about incidents where the police had been called to her home, she could not remember an incident where the police reported finding her on the ground saying that someone shoved her. She could not remember reporting to the police that she was receiving threatening phone calls and her father was mentioned as a suspect. She could not recall reporting that an ex-boyfriend was threatening her in October of 2006.

[41] The mother has expressed concern about her relationship with the social worker for the MCS. It is not unusual for a parent and a social worker to have a rocky relationship as the parent views the social worker as the person who took their child away. In this case there were some reasons other than the usual ones why the mother did not have a good relationship with the social worker. The mother testified that despite the mother's expressed concern that she encountered the woman who had broken her jaw during access visits, the social worker for the MCS was slow to change the access schedule.

[42] The social worker told the mother that she should not attend court when the woman who was charged with assaulting her was appearing before the court. The social worker told the mother that the mother may be charged with breaching the

court order for attending court. The mother was not on a court order to not have contact with this woman; the woman was required to have no contact with the mother. The mother was entitled to attend court when this woman was before the court. The courts in Nova Scotia are open to the public. The social worker should not have told the mother not to attend court and should not have misinformed the mother that she may be charged as a result of attending court.

[43] On July 20, 2007 the social worker and the family skills worker attended unannounced at the mother's apartment to view the apartment. The mother invited them in and showed them the bedroom. The mother told the workers not to go into the bathroom. As soon as the mother said not to enter the bathroom the social worker for the MCS entered the bathroom. I questioned the social worker as the authority she had to do this and she could not provide any authority for her actions. The social worker's only authority to be in the home of the mother was at the mother's invitation and she stepped outside that authority by ignoring the explicit instruction of the mother not to enter a room. The ends do not justify the means. There were no children living in the home and it is different from a situation where a representative of the MCS has authority to enter the home when a child is living in the home under the supervision of the MCS. I found the social worker's actions

more troubling because of the mother's intellectual challenges. Some concern by the mother over her relationship with the social worker for the MCS is understandable.

[44] There is no doubt from the evidence that the mother loves her child very much and has made advancements in her participation in services to assist her in parenting. When services were first provided the mother missed many family skills and therapy appointments. She was not engaged in these services and did not appear to see the need for the services. She has become more involved in the family skills sessions and she has become engaged in therapy. The mother has had stable accommodations. She lived at an apartment for two and one half years prior to moving to her new apartment on July 1, 2007. She clearly wants what is best for her child.

[45] The child has been in the care of MCS since April 2006. The mother became only recently engaged in therapy to work on the issues which caused the child to be in need of protective services. The mother continued to enter into relationships with men who are bad for her and who do not treat her as she deserves to be treated. The mother, as recently as June 2007, wondered why the

MCS was not returning her child to her. The mother thought that her past abuse was being used against her. I accept that she has put the abuse and betrayal by her father behind her. However, as a result of her upbringing she did not have good parenting role models. Her needs were not met as a child and she needs help understanding how to meet the needs of a child. If the mother had the benefit of a better upbringing herself her child may not have been taken into care. The child is still in need of protective services as the concerns that brought the child into care have not been addressed and there is still substantial risk of emotional harm to the child if the child is placed in the mother's care.

[46] The concern on the night that the child came into care was not only that she fed the child canned milk. The concern was that she needed assistance and did not ask for assistance. The mother did not ask the workers who did the drop-in visit for advice on the child's breathing problems, although she said the breathing problems were exhibited prior to the arrival of the workers. The mother showed the workers enough formula to get through the weekend but ran out and did not seek community resources to assist in obtaining formula and diapers for the child.

[47] The mother needs help with relationships. She needs help with her anger. She needs help to develop insight into why her child came into care. She needs help to develop logical reactions to situations. She needs to learn to solve problems. She needs to develop parenting skills and to understand children's stages of development. The mother also needs time to work on all of these things. Sadly, there is not enough time left in this proceeding for the mother to work on all of these issues in order for me to be satisfied that the child protection concerns have been addressed and the child would no longer be in need of protective services if he was in his mother's care. It is not in the child's best interest to be returned to his mother at this time. The child cannot wait for the mother to deal with all of the issues, he needs a stable placement that can meet his needs. The mother cannot provide that stability at this time. There is no less intrusive alternative than permanent care and custody which will adequately protect the child.

[48] It would take more time than is available between now and September 22, 2007 (the outside date), for the mother to alleviate the child protection concerns. As stated in **Nova Scotia (Community Services) v. L.L.P., [2003] NSCA 1** at paragraph 31:

The **Act** does not require a court to defer a decision to order permanent care until the maximum statutory time limits have expired. The direction of s.46(6) of the statute is to the opposite effect. Where a child is in the temporary care and custody of the Agency, at each further disposition hearing, the court may not make a further order for temporary care and custody if the court is satisfied that the circumstances justifying the earlier order are unlikely to change within a reasonably foreseeable time, not exceeding the remainder of the applicable maximum time period.

And later at paragraph 33:

Having found that circumstances are unlikely to change, the judge had no option, in this case, but to order permanent care.

I find that the circumstances are unlikely to change within a reasonably foreseeable time not exceeding the maximum time available under the **CFSA**.

[49] The mother has requested that the child be placed with her mother or her brother. While I am required to consider family placements prior to placing a child in the permanent care and custody of the MCS, I do not have a plan from either the maternal grandmother, maternal uncle or any other person. As stated in **Family and Children's Services of Cumberland County v. D.M.M.**, [2006] NSCA 341, the onus is on the third parties to present a plan for the child that is

sound, sensible, workable, well conceived and in the child's best interest. The only plan in this case was put forward by the mother.

[50] In order for the court to make an order for access where an order for permanent care and custody is made the burden is on the parent seeking access to establish that such would be in the child's best interest. I have evidence from the adoption worker that an order for access could deter potential adoptive families. The mother has not provided any evidence to satisfy me that an order for access would be in the child's best interests.

[51] The MCS assured the court and the mother in their submissions that therapy with Martin Whitzman for the mother would be available regardless of the outcome of the trial for another month and one-half through the contract between Martin Whitzman and the MCS.

Conclusion

[52] The child will be placed in the permanent care and custody of the MCS.

There will be no order for access.

J.