

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. KD*, 2016 NSSC 276

Date: 2016-10-21

Docket: *Sydney* SFSNCFSA No. 82562

Registry: Sydney

Between:

Minister of Community Services

Applicant

v.

KD and JT

Respondents

Judge: The Honourable Justice Theresa M. Forgeron

Heard: June 27, 28, 29 and 30, 2016, in Sydney, Nova Scotia

Written Release: October 21, 2016

Counsel: Adam Neal for the Applicant, Minister of Community Services
Alan Stanwick for the Respondent KD
Jill Perry for the Respondent JT
Jillian MacNeil for the child MT

Sec. 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.

By the Court:

Introduction

[1] This decision is about whether it is safe to return a vulnerable child, who is developmentally delayed, to the care of his father under the provisions of a supervision order. The father wants his son returned to his care. The son wishes to live with his father. The Minister supports the reunification request.

[2] Despite the agreement between the Minister and father, I nevertheless scheduled a hearing to assess the merits of a supervision order in light of the protection history concerning this family. The Minister became involved with this family because of serious protection concerns, including the father's alleged sexual abuse of his step-daughter, substance abuse, domestic violence, neglect and untreated mental health issues.

[3] From the Minister's perspective, notwithstanding the father's sexual abuse, it is now safe to return the son to the supervised care of his father. The Minister notes that the father's sexual abuse involved a non-biological step-daughter; this child, in contrast, is a biological male. In addition, the Minister emphasizes the substantial favourable changes in the father's circumstances. The father no longer uses alcohol or drugs; no longer experiences mental health challenges; and has successfully completed programming on violence, parental conflict, anger management, child development, and parenting strategies. In addition, the father exercised access in a consistent and child-appropriate fashion.

[4] For his part, the father states that the sexual abuse never occurred. The father confirms that he successfully completed all recommended services. He no longer abuses alcohol. His mental health issues have resolved. He has the support of his family. The son can be safely returned to his supervised care.

Issues

[5] This decision will address the following two issues:

- Did the father sexually abuse his step-daughter?
- Have protection concerns been sufficiently reduced such that it is in the son's best interests to be returned to the supervised care of his father?

Background and Procedural Information

[6] Before analysing the issues, background and procedural facts will be detailed to provide context.

Historical Protection Concerns

[7] Sometime between the end of 2000 and the beginning of 2001, the mother and her four year old daughter started to live with the father. Soon thereafter, two sons were born, one in 2001 and the other in 2003. The step-daughter has a learning disability; both sons have developmental delays; the younger son is also autistic.

[8] Over the years, child protection authorities received a number of referrals about the family, some were investigated, while others were not. The only referral that the Minister states was substantiated involved a 2003 domestic violence incident. This incident did not result in the filing of a child protection application.

2012 Protection Concerns

[9] The scope of the Minister's involvement changed dramatically in the summer of 2012 following her investigation of major presenting problems concerning sexual abuse, physical abuse, substance abuse, neglect and the father's suicide attempt. After substantiating these concerns, the Minister filed a protection application on September 5, 2012.

Interim Hearings

[10] The first of five interim hearings was held on September 11, 2012; all three children were placed in the supervised care of their mother. On September 18, the Minister apprehended the boys because of safety concerns arising from the mother's parenting deficits. A second interim hearing was held on September 25, 2012, at which time the boys were placed in the care and custody of the Minister, while the step-daughter remained in the supervised care of the mother. On October 1 and 11, two further interim hearings confirmed these placements and clarified access provisions. The final interim hearing, held on October 16, 2012, resulted in the step-daughter also being placed in the care and custody of the Minister.

Protection Hearing

[11] On December 5, 2012, the parties consented to a protection finding under s. 22 (2)(b) of the *Children and Family Services Act*. Although the father admitted to some of the protection concerns, he remained steadfast in his denial of the sexual abuse allegations. As a result, a contested hearing for a further finding on other s.22 grounds was scheduled for January 4, 30 and 31, 2013. The contested hearing resolved because the Minister abandoned her request for protection findings under s.22 (2) (c),(d),(f), and (g).

Disposition Hearing

[12] On February 11, 2013, the disposition hearing proceeded by consent. There was no change in the children's placement, although the father indicated his intention to eventually seek the return of his sons.

Permanent Care Order for Younger Son

[13] On September 30, 2013, the younger son was placed in the permanent care of the Minister. The younger son was making remarkable gains given his placement in specialized housing which had resources available to meet the son's extensive development challenges. The father recognized that a permanent care order, with a provision for access, was in the child's best interests because of these unique circumstances.

Permanent Care Order for Step-daughter

[14] On August 19, 2014, after several review hearings during which the temporary care order was maintained, the step-daughter was placed in the permanent care of the Minister. The Minister's involvement with the step-daughter later ended with the termination of the permanent care order on March 12, 2015.

Review Hearings for Older Son

[15] On April 26, July 25, September 30, and December 11, 2013; and March 5, May 1, June 24, July 30, and October 22, 2014, the provisions of the temporary care order in respect of the older son was affirmed.

[16] The July 30 consent order also directed the father to participate in a psychological assessment with a sexual component. The father asked that the

assessment be completed as quickly as possible because he wanted to have the son returned to his care. The Minister was not successful in locating an expert to complete the ordered assessment, primarily due to the fact that there was neither an admission, nor conviction of sexual wrong-doing.

[17] By February 11, 2015, the Minister was supporting the father's plan to have the son returned to his care under the provisions of a supervision order. I, however, would not approve this plan without an assessment into the merits because of the sexual abuse allegation involving the father and step-daughter. A hearing was therefore scheduled. On March 31, 2015, the temporary care order was maintained while the parties awaited the scheduled hearing.

[18] On June 24, 2015, the parties participated in a settlement conference which resulted in an order for unsupervised access. After the father began to exercise unsupervised access, the son exhibited worrisome sexualized behaviour as reported by his foster parents. Unsupervised access was halted pending the Minister's investigation, and as later confirmed by orders dated September 14 and December 14, 2015. In addition, the parties consented to Dr. Landry, a child psychologist, completing an assessment of the child in light of his sexualized behaviour.

June 2016 Hearing Into the Merits

[19] The hearing into the merits of the joint request was held on June 27, 28, 29 and 30, 2016. The mother did not participate, although she remained represented by counsel.

[20] Before the hearing began, two preliminary issues were resolved. First, the parties agreed that the court had the jurisdiction to refuse their joint request based on the court's overriding authority to secure the son's best interests. Second, counsel requested that I not consider the mother's statements outlined in agency affidavits because the mother was unavailable for cross-examination having elected not to participate in the hearing. I agreed to this request.

[21] During the hearing, I heard evidence from the step-daughter; access facilitator Jason Jewer; protection workers Renee Wilson, Ainslie Elgebeily and Paul Mugford; family support worker Debbie Carew; Dr. Landry; child-in-care worker Ryan Ellis; the paternal grandmother; clinical therapist Connor Ryan; clinical social worker Michael Bungay; and the father.

The Wishes of the Son

[22] The son's wishes were presented in a thoughtful Voice of the Child Report prepared by his counsel, Jillian MacNeil. The son's wishes were also confirmed through the evidence of other witnesses including Ryan Ellis. In addition, Dr. Landry provided insight into the son's abilities.

[23] I make the following findings in respect of the son:

- The son is moderately developmentally disabled. Although having a chronological age of 14 at the time of the testing, the son has a mental age of about seven years.
- Despite having well-developed expressive language skills, the son's cognitive ability, which affects abstract thinking and problem solving, is significantly below average.
- The son will likely never be independent.
- The son wants to live with his father. The son and father share a strong bond.
- The son stated in reference to foster care, that he had been "stuck here long enough".
- The son has no real appreciation as to why he is in the Minister's care. The son thought "he was not being good" and so was not able to live with his father.

The Son's Sexualized Behaviour

[24] In respect of the son's worrisome sexualized behaviour, I make the following findings, in light of Dr. Landry's opinion, which I accept:

- The father was not the cause of the son's sexualized behaviour.
- The time-specific sexualized behaviour arose from the son accessing pornography on the internet while using his tablet.
- The son did not fully appreciate his actions, nor the words which he used given his disability.

[25] Dr. Landry's recommendation that the son be provided with developmentally appropriate instruction on healthy relationships and sexuality should be implemented.

The Son's Circumstances

[26] The son has lived with the same loving and supportive foster family since September 2012. The son has adapted well. The son has extensive access with his father. All access has been appropriate and child focused. The son and father also have weekly visits with the younger son who is in the permanent care of the Minister. The son has no relationship with the mother or the step-daughter.

[27] Given this context, I will now return to my analysis of the issues.

Analysis

[28] **Did the father sexually abuse his step-daughter?**

Law

[29] Issues related to burden of proof, credibility and reliability lie at the heart of this determination. In **C. (R.) v. McDougall**, 2008 SCC 53 (S.C.C.), a civil sexual abuse case, Rothstein, J. confirmed the following applicable points of law:

- There is only one standard of proof in civil cases - proof on a balance of probabilities. A heightened standard of proof, where criminal or morally blameworthy conduct is alleged, is rejected: paras 39, 40, and 49.
- Where appropriate, a judge must be mindful of inherent probabilities or improbabilities, or the seriousness of the allegations and consequences – all within the context of the one standard of proof: para 40.
- In all cases, the court must scrutinize the evidence when deciding whether it is more likely than not that an alleged event occurred: para 45.
- Evidence must be sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test, although there is no objective standard to measure sufficiency: para 46.

- There is no rule as to when inconsistencies in a plaintiff's evidence will cause a judge to conclude that the evidence is not credible or reliable. A witness' testimony must not be considered in isolation, but rather examined based upon the totality of the evidence to assess the impact of inconsistencies on questions of credibility and reliability relating to core issues: para 58.
- Corroborative evidence, although helpful, is not a legal requirement in sexual abuse cases, and indeed this requirement has been removed in the criminal law context: paras 80 and 81.
- The *W. (D)* approach is not an appropriate tool for evaluating evidence in a civil case: para 86.

[30] In **Baker-Warren v. Denault**, 2009 NSSC 59, as approved in **Hurst v. Gill**, 2011 NSCA 100 at para. 16, this court reviewed guidelines associated with credibility assessment at paras 18 to 21 which reviews the law as follows:

- Credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" **R. c. Gagnon**, 2006 SCC 17 (S.C.C.), para. 20. ... "[A]ssessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" **R. v. M. (R.E.)**, 2008 SCC 51 (S.C.C.), para. 49.
- There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety: **Novak Estate, Re**, 2008 NSSC 283 (N.S.S.C.). On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence, **Novak Estate, Re**, *supra*, quoting **R. v. J.H.** *supra*.
- Questions which should be addressed when assessing credibility include:
 - a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: **Novak Estate, Re**, *supra*;

- b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
- c) Did the witness have a motive to deceive;
- d) Did the witness have the ability to observe the factual matters about which he/she testified;
- e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
- f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: **Faryna v. Chorny** (1951), [1952] 2 D.L.R. 354 (B.C.C.A.);
- g) Was there an internal consistency and logical flow to the evidence;
- h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
- i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

[31] As noted in **Baker-Warren v. Denault**, supra, I placed little weight on demeanor because demeanor is often not a good indicator of credibility: **R. v. Norman** (1993), 16 O.R. (3d) 295 (Ont. C.A.) at para. 55.

Position of the Minister

[32] The Minister states that she has proven that the father sexually abused his step-daughter. The minister believes what was stated by the step-daughter and notes some inconsistencies in the father's evidence.

Position of the Father

[33] For his part, the father forcefully argues that the Minister did not prove, on a balance of probabilities, that he sexually abused his step-daughter, for a number of reasons including the following:

- The step-daughter's evidence should not be accepted because she is a troubled young woman whose reliability is seriously impaired.
- The step-daughter made many unfounded allegations of sexual abuse in the past, including allegations involving a former landlord, a friend's father, two female friends, and possibly a woman. None of these allegations resulted in criminal convictions. The sheer number of allegations make it less probable than not that the sexual abuse allegations against the father are true.
 - The step-daughter was raised by a mother who was not only absent, uninvolved and physically abusive, but who also repeatedly filled the step-daughter's head with tales of being sexually abused as a baby.
- The step-daughter suffers from psychosis and at times is unable to distinguish between reality and fantasy, truth and fiction. She admits to having flashbacks and believing certain disturbing memories were true when they were subsequently proven to be untrue, including the false belief that she sexually assaulted the little sister of a former boyfriend.
- The step-daughter admitted to being uncertain about the alleged sexual abuse when she contacted the father by email. She asked the father "did you do what you did to me? Or did you ever" along with "...I thought maybe for a second I was imaging [sic] things but turns out I was wrong".
- There were glaring inconsistencies in the step-daughter's evidence, including those involving times and dates, and more significant inconsistencies as to details and particulars.
- The seriousness of the step-daughter's allegation increased over time. For example, she initially indicated that the sexual abuse occurred a couple of times a week, but by the time of trial, the step-daughter noted the frequency was almost daily. In addition,

the step-daughter did not allege that there was penetration during the August 2012 incident until she testified.

- The father made admissions against interest and provided credible evidence. The inconsistencies in the father's evidence paled in comparison to those found in the step-daughter's evidence.

Decision

[34] In reaching my decision, I considered the totality of the evidence. The evidence was reviewed in conjunction with the submissions of counsel and the applicable legislation and case law. After completing this review, I have determined that the Minister has proven, on a balance of probabilities, that the father repeatedly sexually abused his step-daughter for about seven years, beginning when the step-daughter was about nine years old and ending in August 2012.

Weaknesses in the Step-Daughter's Evidence

[35] I make this finding despite the weaknesses in the step-daughter's evidence. I recognize, that at times, the step-daughter provided inconsistent evidence. These weaknesses, however, do not detract from the step-daughter's overall credibility and reliability. Some of the inconsistencies arise from the blurring of events which occurs through the passage of time. The step-daughter stated that she lost her virginity to the father and that the repeated acts of sexual abuse took many forms, including intercourse. The step-daughter did not state that intercourse only occurred once. The sexual abuse details, some of which were historical, were initially recounted when the step-daughter was a teenager. The trial occurred about four years later when the step-daughter was a young woman. Inconsistencies, when viewed in this light, do not detract from the step-daughter's overall credibility or reliability.

[36] I make this finding despite the step-daughter's admission that while experiencing psychotic episodes in the past, she was unable to distinguish fact from fiction. I note that the step-daughter was not in a psychotic state when she reported the abuse to protection authorities in 2012. Neither was the step-daughter in a psychotic state when she testified before me in June 2016. The step-daughter's psychosis is being treated. I find that the step-daughter's recollection of the sexual

abuse by the father is not rooted in, or fueled by a psychotic episode. The step-daughter's recollection is fact-based.

[37] I make this finding despite the fact that the father was not convicted of any related Criminal Code offence. Criminal offences are based on proof beyond a reasonable doubt; civil cases are based on proof on a balance of probabilities. A lack of a criminal conviction is but one factor which I must consider when assessing the evidence.

[38] I make this finding despite the fact that the step-daughter stated that other individuals also sexually abused her in the past. I do not accept the premise that the sheer number of past sexual abuse allegations renders the father's sexual abuse less probable. This hearing was about the father's sexual abuse, not the sexual abuse of other individuals. I am not in any position to speculate as to the authenticity of other abuse claims in the absence of a full hearing into each of them. The other allegations of the step-daughter are neutral factors in my assessment of the evidence.

Reasons In Support of Sexual Abuse Finding

[39] I find that the evidence was sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test for five reasons. First, the step-daughter provided her evidence in a straight forward and unbiased fashion; she was not evasive, hesitant or strategic. She neither embellished her evidence, nor was she self-serving. The step-daughter was matter-of-fact in her descriptions. The following are examples of these conclusions:

- She said the father told her that their sexual relationship was “okay” and “normal” because she and the father “were not blood”. It is unlikely that the step-daughter would reach this unnatural conclusion without being convinced of its truth by a sexual predator.
- She felt shame, assumed responsibility for the assaults and was comforted when she learned that the abuse was not her fault. During the first interview, the step-daughter even texted some of the sexual abuse details because she felt shame and embarrassment. The step-daughter further thought that her learning disability may have contributed to her failure to understand that the father's sexual advances were wrong. The step-daughter's self-blaming is consistent with sexual abuse.

- She suffers from psychosis, depression, suicidal thoughts, anxiety, and flashbacks. Such issues are consistent with sexual abuse.
- She said she did not think that the father was sexually inappropriate with either son because the father “likes girls too much”. This unusual rationale lends credence to the step-daughter’s evidence.
- She admitted to drinking alcohol despite the fact that she asked the police officer if she would get into trouble for drinking gin. If she was fabricating, she would not have included this detail.
- She was specific in the alcohol consumed during the August 2012 assault. The step-daughter stated that the father gave her lemon gin, while he drank beer. If the event was manufactured, the step-daughter would not likely have differentiated between the types of alcohol consumed.
- She gave graphic particulars about how the August 2012 assault ended during the two joint protocol interviews, as outlined in exhibit 1, tab 1, para 225 and tab 4, para 286 (e) and (f). These graphic particulars are not consistent with a manufactured story.

[40] Second, I find that there was an internal consistency and a logical flow to the step-daughter’s overall evidence. For example, the step-daughter described a chaotic and dysfunctional family environment, punctuated with substance abuse and violence, including the presence of guns and ammunition. The evidence supports this description as confirmed by the following facts:

- The father admitted to consuming copious amounts of alcohol over many years. He stated that he usually drank beer every week-end, drinking 24 beer on Friday evening between 7:30 or 8:00 pm and 2:00 to 3:00 am; and 36 beer Saturday night to Sunday, although friends would also join him from time to time.
- Renee Wilson observed flies, piles of dirty laundry, unkempt children, overflowing dirt and debris, and unfit living conditions in the home.
- Renee Wilson reported that a sword, three guns, two long rifles, and a shotgun cartilage were removed from the home by police, all of which were found upstairs in an open area.

- The father was convicted of a firearms offence.

[41] Third, the step-daughter readily made admissions against interest. For example, she admitted to police that she drank alcohol; she admitted that she sent an e-mail to the father questioning whether the sexual abuse actually occurred; and she admitted when there was a factual error in the affidavit of the Minister.

[42] Fourth, the step-daughter had no motive to deceive, and no vested interest in the outcome of the case. She was no longer living in the area. She had no relationship with either brother. She had no relationship with the father. She did not hold the mother in high regard, referring to her as a liar, and a lazy and neglectful parent. The step-daughter had nothing to gain by testifying about the father's sexual abuse.

[43] Fifth, the father's evidence was not compelling for a number of reasons, including the fact that the father resisted making admissions against interest, and at times, was hesitant, evasive and strategic when recounting events. The following are examples of these conclusions:

- He denied all domestic violence allegations, except the 2003 incident which he then went on to trivialize.
- He denied using physical force on the children, even though he admitted to Ainslie Elgebeily that he "spanked them on the arse if they started hitting each other but nothing major".
- He minimized his role in the creation of the unfit living conditions in the home, instead placing most of the blame on the mother.
- He minimized his responsibility for the step-daughter's parentification.
- At the hearing, he denied giving the step-daughter alcohol during the August 2012 incident, even when confronted with his earlier statement that he had given her vodka.
- He attempted to hide the fact that his new girlfriend spent time with the son when unsupervised access commenced. During the investigation, the father was asked whether the girlfriend had visited his home or spent overnights with the child; the father confirmed that she had not. Instead, the father noted that he and the son "bumped into her once at the Mall". During the

hearing, however, the father admitted that the girlfriend visited with the son at his home.

Summary of Sexual Abuse Finding

[44] I find that the Minister has proven, on a balance of probabilities, by clear, convincing and cogent evidence, that the father regularly sexually abused the step-daughter for about seven years, beginning when she was about nine years old and continuing until August 2012 when protection authorities began their investigation. The sexual abuse assumed various forms, including intercourse. The step-daughter carries many emotional scars as a result of her victimization from the man she regarded as her father.

[45] Have protection concerns been sufficiently reduced such that it is in the child's best interests to be returned to the supervised care of his father?

Law

[46] Section 46 of the *CFSA* provides the court with the jurisdiction to vary prior disposition orders, or to make further or other orders. In making such orders, I am directed to consider the following factors:

- whether the circumstances have changed since the previous disposition order was made;
- whether the plan for the child's care that the court applied in its decision is being carried out; and
- what is the least intrusive alternative that is in the child's best interests.

[47] In making my decision, I am also mindful of the legislative purpose. The purpose of the *Act* is to promote the integrity of the family, protect children from harm, and to ensure the best interests of children. However, the paramount consideration is the best interests of children as stated in s. 2(2) of the *Act*.

[48] In addition, the Act must 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 various factors unique to each child, including those associated with the child's emotional,

physical, cultural, and social developmental needs, and those associated with risk of harm.

[49] A review hearing also requires the court to determine whether children continue to be in need of protective services within the meaning of the legislation. The court must consider whether the circumstances which resulted in the protection finding still exist, or whether there has been a change in circumstances: **Children's Aid Society of Halifax v. V. (C.)**, [2005] N.S.J. No. 217 (C.A.) at para. 8.

Position of the Parties

[50] The Minister and father argue that regardless of the sexual abuse finding, the son should be placed in the father's supervised care under the provisions of a carefully crafted supervision order, which would include such terms as the following:

- The son and father must live in the paternal grandmother's home. The paternal grandmother will not condone any alcohol use or inappropriate conduct and can be trusted to immediately report any wrong doing to protection authorities.
- The father will submit to regular drug testing to confirm his ongoing abstinence.
- There will be regular checks by protection workers.

[51] The Minister and father submit that protection concerns have been reduced so that the son can be safely returned to the father's supervised care. In support, they offer the following key arguments:

- The step-daughter was a non-biological female; the son is a biological male.
- The father is no longer abusing alcohol, nor is he using illegal drugs. This is confirmed by the drug tests, the paternal grandmother and the father. Further Connor Ryan, clinical therapist with Addiction Services, completed an assessment of the father and concluded that the father's substance abuse was "in full remission".

- The father's mental health issues have been successfully resolved as confirmed by Mike Bungay, clinical social worker who treated the father for about a year. Mike Bungay confirmed that the father was a motivated participant who engaged well in psychotherapy. The father's mood, coping skills and resiliency increased significantly over the treatment period. By the fall of 2013, Mike Bungay noted that the father was goal and future oriented and that his mental health was stabilized. The father was discharged because services were no longer required.
- The father successfully completed all programming offered by the family support worker Debbie Carew. Debbie Carew worked with the father between February and August 2014. She reported that the father engaged well by asking appropriate questions and giving feedback. She stated that the father was eager and appropriate throughout. He was motivated to learn and have his son returned to his care. Topics covered during the sessions included those related to anger management, violence, parenting, conflict resolution, nutrition, safety and supervision, communication, child behaviour management, discipline, healthy relationships, and the *Children's Bill of Rights*.
- The father consistently attended access; access was consistently child-focused and appropriate. This is confirmed by the access facilitator, Jason Jewer and his extensive access notes.

[52] Finally, the son has expressed a firm desire to return to the care of his father. They love each other. The son enjoys his time with his father and with the extended paternal family. Access has been a positive experience for the son.

Decision

[53] I cannot permit the son to return to the father's supervised care because protection risks have not been reduced to the point where it is safe or in the son's best interests to do so. A real chance of danger would be created if I agreed to the joint request. The following reasons support my conclusion:

- I do not accept the premise that protection risks are reduced because the father's sexual abuse involved a non-biological female, while the son is a biological male. The logic of this premise escapes me.

- The protection risk does not arise because the father has a heterosexual orientation. The protection risk arises because the father systematically abused a vulnerable child, his step-daughter, for his own pleasure and control. The sexual abuse spanned approximately seven years. Within that seven year period, the father manipulatively groomed the child to provide him with unlimited sexual favours, often while plying her with alcohol, and while convincing her that this odious sexual relationship was normal. The father was a sexual predator who abused his position of trust. The step-daughter is scarred for life because of the father's conduct.
- The considerable protection risk associated with this lengthy period of sexual predation against a vulnerable child has not been addressed by addiction counselling, mental health therapy, family support sessions or any other service.
- This protection risk has not been reduced because the father no longer abuses alcohol and does not take illegal drugs. I am unable to draw the inference that child abuse is caused by alcoholism.
- My concerns for the son's safety are further heightened because of the father's lack of insight and minimization of some of the other presenting problems, despite having engaged in services. For example, the father no longer abuses alcohol. When questioned about his reasons for stopping, the father stated that he "wanted to take a break from it". When asked what was bothering him about his alcohol consumption, the father stated that he "was spending too much money on it to be honest; it was costing too much". When asked whether the father had any concerns about his behaviour while intoxicated, the father said "no cause I'm usually happy go lucky when I drink". Further, the father assumed little responsibility for the violence in the home or for the unacceptable state of the home. The father deflected most of the blame for these protection issues onto the mother.

Summary of Review Hearing Finding

[54] Although the father made significant changes in his behaviour as evidenced in the favourable reports from service providers, protection risks have not been sufficiently reduced so that it is safe to return the son to the father's care under the provisions of a supervision order. It is not in the son's best interests to do so.

[55] All contact between the father and son must be supervised.

Conclusion

[56] It is a rare and unusual circumstance for a court to deny a joint request of the Minister and respondents. This is one such case.

[57] The father sexually abused his step-daughter in the most abhorrent of fashion over a period of seven years for his own pleasure and control. The risks flowing from this conduct have not been addressed through services, nor by the fact that the son is a biological male. It is not safe to return the son to the father's supervised care. It is not in the son's best interests to do so.

[58] Although I recognize that the son will be distressed by my decision, it is nevertheless the only decision that meets the legislative mandate in the circumstances of this case. The Minister must ensure that the decision is explained to the son in a developmentally appropriate manner.

[59] The temporary care order, with a provision for supervised access, will be continued. Counsel are to contact scheduling for a date for the next disposition review. Mr. Neal is to draft the order.

Forgeron, J.