IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Citation: F. (Re), 2012 NSSC 198

Date: 20120516
Docket: C080959
Registry: Halifax

IN THE MATTER OF*:*   *Children and Family Services Act*, S.N.S. 1990, c. 5, subsection 29(1)

- and -

IN THE MATTER OF: The Application of the Minister of Community Services for an Order to Locate and Detain F, born December, 1996

Judge:	The Honourable Justice Elizabeth Jollimore
Heard:	May 16, 2012
Counsel:	Sarah K. Gordon for the Minister of Community Services

By the Court:

Introduction

[1]   The Minister of Community Services has applied for an order to locate and detain seventeen year old F. The application is pursuant to subsection 29(1) of the *Children and Family Services Act*, S.N.S. 1990, c. 5. These applications are commonly called "locate and detains".

Background

[2]   F was placed in the permanent care and custody of the Minister in 2009. F lives in a foster home which F left yesterday.

[3]   During the course of the child protection proceeding which resulted in F being placed in the Minister's permanent care and custody, F took part in a psycho-educational assessment. The assessment is over three and one-half years old. I was not provided with a copy of the assessment; F was described to me as a young person with "global functioning delays". Ms. Gosbee's affidavit says that F is immature, easily influenced by others and F may be unable to navigate a return to the foster home without assistance.

The application

[4]   Subsection 29(1) of the *Children and Family Services Act* allows an agency having care and custody of a child to bring an *ex parte* application. Where I'm satisfied that the child who is the subject of the application has withdrawn from the care and control of the agency, without the agency's consent, and the agency has reasonable and probable grounds to believe that the child's health or safety may be at risk, I may issue an order authorizing a peace officer to locate and detain the child and return the child to the agency or its agent. This subsection also applies to parents or guardians.

[5]   Clause 3(1)(e) of the *Children and Family Services Act* defines "child" to mean "a person under sixteen years of age unless the context otherwise requires". F is seventeen years.

[6]   The Minister argues that this is an application where "the context otherwise requires" the definition of child to mean a person over sixteen years of age.

[7]   I was not offered any authority for proposition that a person's diminished intellectual capacity required expanding the age limit for an order to locate and detain. Two decisions were mentioned to me (though I was only able to locate one of the authorities: *Family and Children's Services of Annapolis County and I.T.S.*, 2005 NSFC 10). *Family and Children's Services of Annapolis County and I.T.S.*, 2005 NSFC 10 is not a case dealing with young person of diminished intellectual capacity or an application for an order to locate and detain a child. In *Family and Children's Services of Annapolis County and I.T.S.*, 2005 NSFC 10, the Minister applied to withdraw a protection application with regard to a young person, S.S., who had turned sixteen after a protection finding had been made. While Judge Levy asked the rhetorical question "What does the 'context require'?" in paragraph 10 of his reasons, he

didn't answer that question, beyond holding that S.S. "is still a child within the meaning of the legislation" at paragraph 13. Unfortunately, his decision offers me no guidance on when a context requires altering the definition of child and, on its facts, it has nothing which allows me to reason from it to this application.

[8]   No authority was provided to me where a person over the age of sixteen, whose intellectual age was less than sixteen, was treated as a "child" within the purview of the *Act*.

[9]   In *Nova Scotia (Community Services) (Re)*, 2008 NSSC 286 (sometimes cited as *Re: B(A)*), Justice Gass dismissed an application for an order under subsection 29(1) with regard to a seventeen year old. Noting that such an order would not be granted to a parent or guardian, she was unwilling to grant the request of the Minister.

[10]   Typically, these applications are made by the Minister where a child is on the run: the child has left a placement and is unwilling to return (sometimes described as "GWP" - gone without permission). The child's unwillingness to return is why the peace officer requires the power to detain and return the child. There was no suggestion that F is unwilling to return to the foster home, only that F has been led astray. I am told that the police were notified, either last evening or today, that F left the foster home. I am left with the impression that when located, F will return to the foster home.

[11]   I am mindful of Justice Gass' reasons in *Nova Scotia (Minister of Community Services) v. K.F.*, 2002 NSSF 28, an application under section 62 of the *Children and Family Services Act* by the Minister for a finding that K.F. had sexually abused two children:

> There is no judicial authority which addresses and interprets the phrase "unless the context otherwise requires" in the definition of child. That issue was not specifically addressed in this case. While it was argued that these young people were vulnerable by virtue of their intellectual challenges, there was no expert evidence to indicate that the two complainants in this application were individuals whose intellectual age could bring them within the definition of child during the time in which the Court has found that sexual activity was probably occurring. Moreover, the legislation addresses only chronological age, and contemplates by the context, situations where findings were made before the child reached the age of 16, but the proceedings continued beyond the age of 16 as they are able to by virtue of the legislation. This legislation does not govern persons over the age of 16 who may be of an intellectual age of less than 16.

[12]   I dismiss the Minister's application.

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Elizabeth Jollimore, J.S.C.(F.D.)

Halifax, Nova Scotia