

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

Citation: Nova Scotia (Community Services) v. S.A.M. , 2012 NSSC 215

Date: 20120605

Docket: SFHCFSA-081152

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

S.A.M. and J.D.K.B.

Respondents

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 Elizabeth Jollimore

Heard: June 5, 2012, in Halifax, Nova Scotia

Counsel: John S. Underhill, for the Minister of Community Services
Colin M. Campbell, for S.A.M.
Wayne Matheson, for J.D.K.B.

By the Court:

[1] The Minister of Community Services has applied for an order determining that D, who is less than two weeks old, is a child in need of protective services and placing D in the Minister's temporary care and custody. The respondents are D's mother and father.

The Agency's involvement

[2] In March 2012, Halifax Regional Police made a referral to the Agency about the respondents. The police had received a call about a domestic assault in progress. The assault involved the respondents. D had yet to be born: the mother was in the sixth month of her pregnancy. The father had punched holes in the wall and broken a coffee table leg.

[3] Four days later, there was another referral to the Agency from the police. The police had responded to a call to find both respondents were intoxicated.

[4] Approximately one month after the first police referral, a staff member at Agency phoned the mother and asked to meet with her. At their meeting, the mother explained that the first police visit was because she was having a fight with another woman and that the police interpreted the father's breaking things in the home as him having assaulted her.

[5] At the time of these incidents each respondent was subject to an undertaking to have no contact with the other. The mother was pregnant and there are no other children. In absence of any child, the Agency could work with respondents only on a voluntary basis. Staff at the Agency determined that at the baby's birth, the mother would be asked to have no contact with the father in the baby's presence and the parents would be asked to participate in services to address the violence between them, if they intended to continue their relationship.

[6] There was a third incident involving the police on April 20, approximately one month before D was born. The police reported that the mother was charged with assaulting the father. The mother was again intoxicated.

[7] In response to this incident, there was a further visit by Agency staff with the mother to discuss the breaches of the orders that she and the father have no contact with each other, and concerns that the parents might be together in the presence of the baby once the baby was born.

[8] Prior to the baby's birth, the mother was asked about her plans on discharge from the hospital. She said she would return to her mother's home in Dartmouth. I'll refer to her mother as Mrs. M.

[9] In a meeting after the baby was born, the parents were asked that they not be together in the baby's presence. In response to this request, the mother asked the social worker to leave and

the father is described as “becoming somewhat hostile”. Though the mother had said that she and the baby would move to Mrs. M’s home, the mother hadn’t taken steps to re-locate and all of the baby’s items had been placed in the parents’ new Halifax apartment. Mrs. M was present during this discussion and she denied that she could provide housing for either of the parents: she said that neither parent’s name was on her lease and that she didn’t have room. The mother said that the father couldn’t stay with his mother because his mother had attempted to “kick the baby out of my stomach”.

[10] When told that separate residences were necessary or the baby would be taken, the mother and Mrs. M “confirmed . . . that they understood that [Mrs. M] must ensure that the Respondents were not left alone together around the baby”. They agreed that the mother and D would move in with Mrs. M.

[11] A risk management conference was held following this meeting at the respondents’ apartment. It was decided “[i]n view of the couples [sic] decision not to cooperate with the agency at investigation stage and given the couples [sic] domestic violence history and alcohol use, decision was made to place the child in temporary foster care”. D was taken into care that day and the Minister filed its Notice of Child Protection Application two days later.

The hearing

[12] The five day hearing was, as is usual, scheduled for fifteen minutes. There were affidavits from Traci Lawson, an intake worker employed by the Department of Community Services, and the mother. All parties were represented by counsel. The parents pressed to have the matter concluded as quickly as possible. Cross-examination of both affiants was waived. With considerable accommodation by counsel, for which I am very grateful, submissions were heard this morning and we recessed until the afternoon for my decision.

The application

[13] This is an interim hearing under section 39 of the *Children and Family Services Act*. I am, at this time, bringing together the hearing which more typically occurs in two parts: the five day hearing, required by subsection 39(1), and the thirty day hearing which is, more accurately, the completion of the interim hearing provided for in subsection 39(4).

[14] There was no strenuous argument that D is a child in need of protective services and I make that finding.

[15] The question is: what order shall I put in place to protect D?

[16] D’s need for protective services arises because of the domestic violence between his parents, because of their abuse of alcohol and because of their failure to take steps to address these problems. The criminal court has ordered them to have no contact with each other. This might have eliminated the domestic violence between them, but each parent has violated, and has been charged with violating, the requirement that they have no contact with each other. The

domestic violence and alcohol abuse occurred in circumstances of heightened risk: during the mother's pregnancy. While the Agency has no statutory authority to act until there is a child, I am gravely concerned by the risks taken during the mother's pregnancy. The mother received treatment for alcoholism in 2010. This was described as weekly addiction counselling and "other" counselling for a period of approximately one year. However, she doesn't appear to have concerned herself with her alcoholism during her pregnancy.

[17] The parents' counsel urged me to distinguish between what occurred prior to D's birth and what has occurred since. The Minister's counsel asked me to acknowledge that what has occurred since D's birth has been in the shadow of the Agency's involvement.

Options pursuant to subsection 39(4)

[18] At the completion of an interim hearing, there are various options available to me. These include:

- (a) placing D in the care of his mother under Agency supervision, as is permitted by clause 39(4)(b);
- (b) placing D in the care of Mrs. M under Agency supervision, as is permitted by clause 39(4)(d); or
- (c) placing D in the temporary care and custody of the Agency, as is permitted by clause 39(4)(e).

[19] The mother has directed my attention to subsection 39(7) of the *Children and Family Services Act*, cautioning me that I am not to make an order placing D with Mrs. M or in the temporary care and custody of the Agency unless I am satisfied that there are reasonable and probable grounds to believe that there is a substantial risk to his health or safety and that he cannot be protected adequately by an order pursuant to clauses 39(4)(a) to (c).

[20] Certainly, placing D with the mother is less intrusive than the other options, though it may not look much different from placing D with Mrs. M, since the mother resides with Mrs. M. Placing D with his mother under supervision is an option available to me, unless there are reasonable and probable grounds to believe there's a substantial risk to D's health or safety and that D can't be protected adequately by such a placement. A "substantial risk" is a "real chance of danger that is apparent on the evidence", according to subsection 39(6).

[21] The day of D's birth, his mother said she planned to return to her mother's. The following day, she said she would move there "if I have to". The evidence in Ms. Lawson's affidavit indicates that the mother follows the example of the father. When the father doesn't cooperate with the Agency, neither does the mother. This is clear from Ms. Lawson's affidavit where she describes a visit to the parents' Halifax apartment that seems to progress well until the father asks Agency staff to leave, when the mother supports this request rather than continue cooperating with Agency staff. In her own affidavit, the mother she stated that she was prepared

to consent to the release of information the Agency sought but, when the father resisted providing consent, she didn't follow through on her own stated willingness to consent to the disclosure. Through much of the Agency's involvement, the parents have been in contact with each other, despite court orders prohibiting this.

[22] D is the most vulnerable of children, dependent on others for his every need.

[23] His mother hasn't demonstrated an independent ability to protect D. Even when compelled to have no contact with the father, she has been unable or unwilling to comply. I am not satisfied that if I placed D in her care, even under the supervision of the Agency, she would comply with an order to have no contact with the father. Their contact brings a substantial risk that D will be exposed to domestic violence. I find there is a substantial risk to D's health or safety that cannot be protected adequately by D's placement with the mother under Agency supervision.

[24] The next option is D's placement with Mrs. M, the maternal grandmother. I have no direct evidence from her. The evidence I have about her is from Ms. Lawson's affidavit and the mother's.

[25] It's argued that Mrs. M has a precarious grasp on D's need for protective services. In argument it was suggested that the incidents when the police were called in April occurred at Mrs. M's home. These events appear to have occurred in the building where Mrs. M lives. It's argued that if they occurred at Mrs. M's apartment, she allowed them to occur or was unable to prevent them. Alternately, she was absent and the drinking which occurred was in violation of the "rules" the mother says exist at Mrs. M's home.

[26] It's not clear these events occurred in Mrs. M's apartment. The street address of Mrs. M's apartment seems to be the same street address as the apartment where the parents were twice visited by the police in April, 2012. The evidence in Ms. Lawson's affidavit doesn't support the contention that the events involving the police occurred at Mrs. M's apartment. Ms. Lawson's affidavit refers to the apartment as the respondents', not Mrs. M's. The addresses shown for the parents on the police's child welfare referral form on April 13 are identical, suggesting the parents were cohabiting at that time. Four days later, the mother's address is unchanged and the father provides a different address for his home.

[27] My concern is whether placing D with Mrs. M under Agency supervision will adequately protect D. The prime concern is that D isn't to be exposed to domestic violence. That's equated with preventing contact between the parents in D's presence.

[28] There is history to show that the parents have breached requirements that they stay away from each other. There is no similar history that D's grandmother has breached an order requiring her to ensure no contact between the parents. The environment Mrs. M provides is one where drinking isn't permitted, according to her daughter. I am satisfied, based on the circumstances in which Mrs. M offered to provide a home to the mother and D, that Mrs. M understands the imperative of ensuring no contact between the parents in D's presence. Mrs. M

offered to provide a home to her daughter and D when it became apparent that D would be taken into care if this option was not available.

[29] The Minister proposes that D live with his grandmother under Agency supervision and that his mother live elsewhere. I am not prepared to consider this option because it is more intrusive to this family than the option of placing D with his maternal grandmother under supervision in the home where his mother resides which option, I am satisfied, is adequate to protect D. If a less intrusive option provides adequately for D's safety, then I am persuaded that is the option I must accept.

Ancillary relief

[30] Both parents have self-referred to Capital Health Addiction Prevention and Treatment Services. I order that they participate in substance abuse assessments and that they follow any recommended therapy, counselling and treatment arising from their assessments. I order that both parents submit to random drug screening which may take the form of random urinalysis or hair segment testing. Each parent must absolutely refrain from use of non-medically prescribed drugs and alcohol: this means no alcohol and no drugs that are not prescribed by a doctor. Prescription drugs may be used only exactly as prescribed.

[31] The parents have already consented to the production of the complete file and records relating to each of them in the possession of the Halifax Regional Police Service and Capital Health Addiction Prevention and Treatment Services. As well, the father has consented to production of the complete file and record relating to him in the possession of the Probation Services Branch of the provincial Department of Justice. Orders shall be prepared if needed in addition to the consent documents signed.

[32] There shall be no drugs which are not medically prescribed or alcohol in the maternal grandmother's home. I understand that Mrs. M already prohibits alcohol from her home. I want her prohibition expanded to include non-medically prescribed drugs and I want her prohibition elevated to the authority of a court order.

[33] If access between D and his father occurred at Mrs. M's home it would create an opportunity for contact between parents in D's presence. I order that the father's access to D shall occur at the Agency's office. To be clear, the mother may be alone with child.

[34] My decision places Mrs. M in a position of particular importance in protecting D. I order that she cooperate and comply with all reasonable requests, directions and recommendations of any representative of the Agency. Representatives of the Agency have the right to enter her residence to provide guidance and assistance and to ascertain that D is being properly cared for. Finally, in the event of non-compliance with any of the terms and conditions of the order arising from my decision, the Minister shall be entitled to take D into care and to bring the matter before the court pursuant to subsection 39(5) of the *Children and Family Services Act*.

Conclusion

[35] Mr. Underhill will prepare the order arising from this decision.

[36] Again, I thank all counsel for their efforts in accommodating the completion of this hearing today and commend them for the quality of their advocacy.

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

Halifax, Nova Scotia