

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *A.C. v. M.E.*, 2013 NSSC 192

Date: 20130624

Docket: SFHMCA-086106

Registry: Halifax

Between:

A. C.

Applicant

v.

M. E.

Respondent

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 Deborah Gass

Heard: May 16, 2013, in Halifax, Nova Scotia

Counsel: Shelley Hounsell-Gray, for the Applicant
Colin Campbell, for the Respondent

By the Court:

[1] The issue is whether to name and serve the father in a *Maintenance and Custody Act* application which follows the termination of *Children and Family Services Act* proceedings.

[2] In this case, the child was taken into care at four months of age and placed with a third party under a supervision order. Although both parents were served with notice of the CFSA, the father did not attend any court proceedings, nor did he participate in any way with the child or the services available during these proceedings.

[3] Ultimately the maternal grandmother applied for standing under the CFSA and subsequently she made an application for leave to apply for custody of the child under the MCA.

[4] Upon reading the application it is noted that the jurat is wrong. M. E., the maternal grandmother, is actually the Applicant. A.C. is the Respondent mother.

[5] It is argued that the father need not be named or served because:

- 1) Although named in the CFSA proceeding, he never attended court, participated in services, or had access with the child since the proceeding began August 1, 2012.
- 2) The father was not named on the child's birth registration. He has not acknowledged paternity.
- 3) There has never been an order for custody, access or child support as between the mother and the putative father.
- 4) The father has had little involvement with the child and no contact for over a year.

[6] The maternal grandmother, mother and the Minister support the contention that the father need not be named or served with notice of this application.

[7] These are two very distinct proceedings. Under the CFSA the parent or guardian of a child is defined in s. 3(r) as:

(r) "parent or guardian" of a child means

(i) the mother of the child,

(ii) the father of the child where the child is a legitimate or legitimated child,

(iii) an individual having the custody of the child,

(iv) an individual residing with and having the care of the child,

(v) a step-parent,

(vi) an individual who, under a written agreement or a court order, is required to provide support for the child or has a right of access to the child,

(vii) an individual who has acknowledged paternity of the child and who

(A) has an application before a court respecting custody or access or against whom there is an application before a court for support for the child at the time proceedings are commenced pursuant to this Act, or

(B) is providing support or exercising access to the child at the time proceedings are commenced pursuant to this Act,

but does not include a foster parent;

[8] Given the facts in this case, the father does not fit the definition of parent, but given the overarching purpose and intent of the legislation, it has been considered preferable to name the father as a party more often than not, depending on the circumstances.

[9] By contrast, the provisions of the *Maintenance and Custody Act*, define a parent as:

s. 2 (i) "parent" includes, in the case of a child of unmarried parents, a person who has been ordered by a court of any law district to pay maintenance for the child;

[10] And s. 18 provides as follows:

18 (1) In this Section and Section 19, "parent" includes the father of a child of unmarried parents unless the child has been adopted. (Emphasis Added)

(2) The court may, on the application of a parent or guardian or other person with leave of the court, make an order

(a) that a child shall be in or under the care and custody of the parent or guardian or authorized person; or

(b) respecting access and visiting privileges of a parent or guardian or authorized person.

...

(5) In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall apply the principle that the welfare of the child is the paramount consideration. R.S., c. 160, s. 18; 1990, c. 5, s. 107.

[11] Given that the father received notice in the CFSA proceedings, which involved “state” intervention in the life of the child and his family, and given that he chose to not participate in any way, is it now necessary to name him in the MCA proceeding involving the maternal grandmother’s application for custody? In my view he falls within the definition of parent under s. 18 of the MCA and therefore is a party to the proceedings and must be named. However, under such circumstances, the issue of service of notice upon him may be another matter for consideration.

J.