

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services) v C.M.*, 2019 NSSC 130

Date: 2019-04-29

Docket: Sydney, NS

Registry: 109745

Between:

Nova Scotia (Community Services)

Applicant

v.

C.M., C.W.

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: March 26, 2019 in Sydney, Nova Scotia

Final Written Submissions: April 4, 2019

Written Decision: April 29, 2019

Subject: Child protection; party standing; test for determination

Summary: A grandmother applied for standing in a child protection proceeding where the parents weren't offering a plan for the return of the children, and the Minister seeks permanent care and custody of the children.

Issues: Whether the grandmother meets the test for party standing in child protection proceedings.

Result: Grandmother's application for standing dismissed. She failed to satisfy the court that there is a reasonable possibility, when compared to alternatives, that the children's welfare may be enhanced by granting standing to her and hearing further evidence on her plan.

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Counsel: Danielle Morrison, counsel for the Minister of Community Services
Danielle MacSween, counsel for C.M.
C.W., self rep (not present)
Gordon Gear, counsel for G.M.

By the Court:

Background

[1] C.M. and C.W. are the parents of two children together. C.S.A.M. was born on August *, 2015 and E.M. was born on September *, 2017. C.M. is also the mother of D.M., for whom no father is named on the birth certificate. D.M. was born on August *, 2018.

[2] G.M. is the maternal grandmother of the children. She seeks party standing in this proceeding. There is a separate proceeding involving an infant D.M., in which she does not seek standing.

- [3] C.M. has long-standing drug addictions, as well as a history of poor lifestyle choices, including relationships with violent partners like C.W.
- [4] The Minister has been involved off and on with C.M. since 2010. G.M. played a role throughout, providing a home for C.M. and the children at times, and supervising C.M.'s contact with the children as well.
- [5] Most recently, C.M. and the two older children lived with G.M. from summer, 2018 through October, 2018. During that timeframe, a Protection Order issued under the *Children and Family Services Act*, S.N.S.1990 c.5 directed that the children reside in the care of G.M. or her parents A.M. and A.M., subject to the supervision of the Minister. C.M. was only allowed supervised contact with the children, but the Minister approved G.M. and her parents as access supervisors. No other family members were approved to supervise access.
- [6] In the fall of 2018, concerns arose about C.M. having unsupervised visits with C.S.A.M. and E.M.. The agency investigated and after concluding that the referral was substantiated, took the children into its care in October, 2018.

Issue: Does G.M. meet the test for party standing in these proceedings?

- [7] Section 36.1 of the *Children and Family Services Act*, SNS 1990, c 5 states

36 (1) The parties to a proceeding pursuant to Sections 32 to 49 are

...

(f) a third party added as a party at any stage in the proceeding pursuant to the Civil Procedure Rules or Family Court Rules, as the case may be.

- [8] G.M. bears the onus of demonstrating, on a balance of probabilities, that she fits the criteria for party standing. The test is as follows:

- Whether G.M. has a direct interest in the subject matter? The parties concede that she does.
- Whether G.M. has a familial or other relationship with the children? The parties concede that she does, not only as the maternal grandmother but as someone with whom the children have lived in the past.
- Whether there is a reasonable possibility, compared to alternatives, that the children's welfare may be enhanced by granting standing, and

hearing relevant evidence from G.M? G.M. says that there is; the Minister says there is not.

[9] G.M. argues that she meets the above criteria, and should be granted standing. She says that she now realizes that she must put the best interests of her grandchildren first. She says that she will not continue to put her daughter's interests above those of the children, and that she won't allow C.M. back into their lives without being sure she's not abusing drugs.

[10] The Minister is opposed to granting G.M. standing. In support of its position, the Minister cites the history of repeated interventions on this file, and a number of times when G.M. has failed to protect the children from the risk posed by C.M.

[11] The Minister cites the following examples:

1. During the Minister's 2010-11 voluntary involvement with C.M.'s oldest child O.M. (who is not the subject of this proceeding), G.M. reported concerns to the Minister on two occasions, but failed to report her daughter's ongoing drug use, or an attempted overdose.
2. During that timeframe, G.M. did not report ongoing conflict between her and C.M.
3. In 2015, while C.M. had supervised access with O.M., she became pregnant with C.S.A.M.. She admitted to G.M. that she snorted hydromorphone while pregnant. G.M. did not call to report this to the Minister, until she and C.M. argued over the child tax benefit a week later.
4. G.M. acknowledges that in 2015, social workers emphasized her obligation to protect O.M. from their mother's drug use, and that she knew the risk to the child from C.M.'s drug use. Even though G.M. confirmed that she would report concerns, she failed to do so in a timely way.
5. The Minister terminated its involvement in March, 2016, at which time C.W. was incarcerated. Only 11 months later, an incident occurred in G.M.'s home involving C.W. and G.M.'s teenaged daughter, J.M. C.S.A.M. was also present in the home with G.M. when the altercation occurred, but G.M. was not the person who called police that night.

6. G.M. denies that she heard the altercation, as she was in another room with C.S.A.M. watching T.V. Despite becoming aware of the incident when police responded, she did not call the Minister to report it.
7. Only one month after that incident, C.W. was charged with domestic violence involving C.M. The Minister received a referral about that incident, though not from G.M.
8. G.M. did not report that C.M. and C.W. had resumed their relationship, even though she knew there was a history of domestic violence and C.W. was charged in 2017.
9. During the fall of 2018, the children were residing with G.M. or her parents under a court order. One of those three family members was to supervise all of C.M.'s contact with the children. Yet C.W.'s mother told workers that C.M. was seeing the children at her home without one of those supervisors present.
10. When C.M. became pregnant again in 2018, G.M. did not call the Minister. G.M. says she left it to C.M. to call the social worker and obtain prenatal care. She also left it to C.M. to call the New Horizons methadone program to advise of her pregnancy.
11. G.M. did not report any concerns to the Minister after C.M. gave birth to D.M. in August, 2018, despite C.M.'s failure to visit the baby in hospital, her failure to return to the hospital to get her staples removed, her missed mental health appointments, and her failure to visit the two older children in G.M.'s care.
12. Although she did express concerns about C.M.'s mental health to hospital staff, G.M. did not call the Minister to express that concern, and only raised it with workers when they met with her in late September, 2018.
13. Before the children were taken into care in October, 2018, police found C.M. out on the streets at 3:00 a.m. with one of the children. G.M. denies any possibility that C.M. took the child from her home without G.M. knowing and suggests that C.M. left the home of A.M. and A.M. with the child. C.M. was known to come and go between both homes.

The Minister says that G.M.'s explanations amount to excuses and denial. She blames her parents for being too lenient with C.M., she

blames C. W.'s mother for allowing C.W. unsupervised contact, and she blames workers for jumping to conclusions about C.M.'s unsupervised access.

14. The Minister also points to G.M.'s negative attitude towards the Minister. G.M. acknowledges that she does not want workers involved in her life, and that she feels she can handle these problems without the Minister's help.

[12] G.M. says many of the concerns outlined above are mistakenly attributed to her.

[13] For example, G.M. says there was confusion between the two social workers who spoke with C.W.'s mother. M.H. told workers that C.M. was attending her home to see the children without G.M. or G.M.'s parents present. G.M. says that the social worker jumped to the conclusion that G.M. allowed this unsupervised contact. She notes that social workers didn't question A.M. and A.M., who might have been allowing this to happen. A.M. and A.M. weren't fully committed to the idea of supervising C.M.'s access, and G.M. says that the Minister knew this.

[14] In addition, G.M. points out that when the children were placed with M.H. in October, 2018, the social worker was clear that C.W. was to have no contact, as he hadn't been accessing services and hadn't been in touch with workers. Yet within 24 hours, C.W. had unsupervised contact with the children at his mother's home. G.M. says that M.H.'s report that C.M. was having unsupervised access at her home is suspect as a result.

[15] G.M. also argues that she has never downplayed C.M.'s drug addiction like the family members in the cases cited.

[16] G.M. acknowledges that, historically, she has not always reached out to the Minister. Her resistance to the Minister's involvement was clear in her evidence. Simply put, she does not want the Minister involved in her life. Yet at the same time, she says that she'd report concerns to the Minister if they arise in future.

[17] The case law cited by the Minister and G.M. provides examples of plans advanced in similar situations which were rejected by the court. G.M. says that these cases are distinguishable, and that she has not made the same mistakes as

those people. She says that she can provide a safe, loving home for the three children, and that her plan merits consideration at a future hearing.

[18] The Nova Scotia Court of Appeal has recognized that history of parenting is relevant in child protection cases, because history often repeats itself. History of a person's approach to supporting a parent in these cases is also relevant and important, as it can predict their future approach to child protection concerns.

Findings

1. G.M. loves her grandchildren, and she loves her daughter C.M.
2. She has a history of placing C.M.'s interests above those of her grandchildren.
3. She has a history of not reporting concerns to the Minister, or not reporting concerns in a timely way.
4. She acknowledges that she can not detect when C.M. is using Ritalin, which is C.M.'s most recent drug of choice.
5. C.M. left the province with C.W. and her whereabouts are currently unknown. She could return at any time. She has dropped out of the children's lives at times in the past.
6. G.M. is able to keep C.M. away from the children currently, because C.M. has left the province.
7. Historically G.M.'s instincts have led her to protect C.M. and try to help her. Her attempts to deal with C.M.'s problems without the Minister's help have placed the children at risk.
8. G.M. has made many poor decisions as it relates to protection of these children.
9. She resents the Minister's involvement in her family and historically, has not been wholly cooperative with the Minister.
10. She takes some responsibility for problems in the past.

[19] G.M. failed to take reasonable steps to protect the children in 2018 after D.M. was born. She observed concerning behaviours by C.M., and her explanation that she took no steps to report her concerns because "the kids were with me" is short-sighted. The new baby was in the neo-natal intensive care

unit waiting to be discharged. G.M. expected that D.M. would be placed with her and the other children, under the Minister's supervision.

[20] C.M. was entitled to access the children at G.M.'s home under the court order, even though she'd been behaving erratically and showing signs of drug use. Despite clear evidence that C.M. was "off the rails", G.M. didn't call the Minister to report concerns. In fact, she allowed C.M. to stay at her home for a few days before C.M. left the province with C.W. So while G.M. did not minimize C.M.'s drug use, she was wilfully blind at the very least.

[21] G.M. and her parents, who she describes as too lenient, were entrusted to supervise C.M.'s contact with the children. G.M.'s experience with the Minister should have left her with an appreciation that the Minister assesses risk on an ongoing basis. And that the Minister can only do so based on a complete picture. G.M.'s failure to report C.M.'s behaviours in 2018 denied the Minister that opportunity, and placed the children at risk.

[22] Although G.M.'s evidence was sincere and paints a picture of a grandmother for whom the penny has dropped, she continues to resent the Minister's involvement. She says that she would report concerns and not allow contact between C.M. and the children, but history tells a different story.

[23] Her plan has deficiencies. She testified that she would only allow supervised contact between the children and her parents, as well as her daughter J.M. That wasn't part of her initial plan as outlined in her affidavit. It appears that she will say what she thinks the court and the Minister want to hear. Further, her plan leaves only G.M., her other daughter (who is 16 years of age), or her boyfriend to supervise contact. This is not practical.

[24] E.M. must be seen at the I.W.K. regularly. G.M. would have to arrange for child care in her absence. Her supports would be limited under her plan. Her boyfriend works away for several months a year, and she denies that he lives with her when he's back in Nova Scotia. Her 16 year-old daughter cannot be tasked with extended care of C.S.A.M. while she travels to Halifax with E.M. And her parents can't provide care, as she says their access with the children should be supervised. Her teenaged daughter cannot be tasked with this responsibility either.

[25] G.M. also has her own mental health issues to deal with. She acknowledges having a history of panic attacks and anxiety. She says she is currently

medicated for those conditions. However, in 2011 an argument between her and C.M. became physical. She says she “shook” her daughter, but she told the social worker that she “snapped”, and C.M. reported a black eye and bloody nose. At that time, she says that her medication was being changed. That situation could easily arise again, especially with the stress of caring for two young children, plus policing the access arrangements she proposes for J.M. and her parents.

[26] Added to that is the real possibility that, should G.M. be granted standing and successfully obtains supervised custody of the children, C.M. will return, seeking contact with the children.

[27] To compound that concern, G.M.’s long-term plan isn’t clear. In September, 2018 she told C.M. that she would no longer “babysit” for her, if C.M. continued to disappear for periods of time. This suggests that she saw her role as the children’s primary caregiver as short-term.

[28] In the affidavit filed in support of her application for standing, G.M. outlines a long-term plan. However, she also testified that she’d need evidence of long-term abstinence on C.M.’s part before she’d let her back into the children’s lives. This suggests that she sees a future role for C.M. in parenting the children. That is a concern because G.M. has traditionally let C.M. resume a parenting role, despite her long-standing problems.

[29] In addition, once the legislative deadline passes, G.M. would be the only arbiter of C.M.’s sobriety and lifestyle. Where she cannot determine if C.M. is abusing Ritalin, G.M.’s ability to assess C.M.’s sobriety and ensure the children’s safety is questionable.

[30] Finally, a major problem with G.M.’s plan is her history of failing to call the Minister with concerns, and her failure to cooperate with the Minister’s past involvement. She offers explanations for those failures, but I do not accept them as sufficient. She has exercised poor judgment. For example:

1. When C.M. became pregnant in 2018, G.M. left it to her to call the social worker, and to obtain prenatal care. G.M. knew or ought to have known that was unlikely to happen.
2. There was a domestic violence incident between C.W. and her daughter J.M. in 2017, which she failed to report. She says that she

thought the police would call the Minister, but she should also have called, to be sure the Minister knew about the incident.

3. She was aware that C.W. was having unsupervised contact with her grandson C.S.A.M., but says that she thought the Minister would know. That is not a reasonable assumption, and a prudent grandmother would have called the Minister to be sure that the risk was being managed properly.
4. She was aware that C.M. faced a medical emergency when she went into labour in 2017, but she did not call the Minister. She says she didn't think it was necessary. Again, her insight is questionable here. C.M. was involved with the Minister, and any development involving her children was important.
5. Given the subsequent loss of one of the twins, it was especially important for G.M. to alert the Minister, so that the Minister could assess the situation and provide support to C.M., for whom such a loss would likely (and did) compound her addictions and mental health problems.
6. When C.M. was assaulted, G.M. didn't call the Minister because the assault didn't happen in her home. This shows a lack of insight into the risk presented by her daughter's lifestyle, as well as a failure to recognize the Minister's role in assessing that risk.
7. When C.M. announced her plan to accompany C.W. to western Canada, G.M. told her to call her social worker. G.M. didn't make that call herself, when she knew or ought to have known C.M. was unlikely to call.
8. G.M. allowed C.M. stay with her for a couple of days before leaving. G.M.'s teenaged daughter was present in the home during that time. G.M. knew that C.M. was in a bad place in her life. She said that she didn't know if she'd see C.M. alive again, which is why she allowed her to stay. However, in those circumstances, C.M. posed a risk to G.M.'s teenaged daughter, and G.M. either failed to recognize that risk or chose to place her daughter at risk.
9. G.M. denies that C.M. was using drugs when she stayed with her, but she knew that C.M. was using drugs in 2018. She knew that C.M. has long standing addictions. She also acknowledges that she can't tell when C.M. is using Ritalin, one of her most recent drugs of choice.

10. At no time in the past decade did G.M. sever her relationship with C.M. It is C.M. who leaves.

[31] G.M. says that she's finished with C.M. She says she would call police if C.M. returns and seeks contact with the children. She truly believes this and means to stick to her guns. But she has a complicated relationship with C.M., and has repeatedly let her back into her life and home.

[32] G.M. thinks that she can cope without the Minister's help. She's believed that since the Minister first became involved almost a decade ago. But C.M. has long-standing addictions, a history of violent relationships, and poor lifestyle choices.

[33] Nothing G.M. has done in the past 9 years has changed that, but as recently as 2018 she was still trying. It is likely she will continue to try. The Minister argues that if G.M. receives a call from C.M. asking for a plane ticket home because C.W. has assaulted her again, it's likely G.W. will provide it. I agree.

[34] G.M.'s plan lacks insight into her daughter's behaviours, her mental health issues, her addictions, the needs of the children and G.M.'s own relationship with C.M. She is angry at C.M. now, but she's angry at the Minister too. She wants to be left alone to do what she thinks is right, but she has not historically made the right choices. She has not always put the interests of her grandchildren first, and history predicts that she will likely continue in that vein.

[35] G.M. has not met the onus on her to show that, when compared to alternative plans, there is a reasonable possibility that her plan would enhance the children's welfare. G.M.'s plan is not well-conceived or realistic. It changed with her testimony. It fails to realistically address some of the challenges G.M. can expect, including how she would manage C.M. should she return. It also fails to address the challenges to her own mental health, and the stress of raising two children under 4 years of age with a limited support network.

[36] G.M. clearly loves her grandchildren. She wants to do what is best for them. But she also loves her daughter. Their relationship is complex and at times, tumultuous. I am not satisfied that G.M. fully recognizes or accepts the risks posed by C.M. and her lifestyle, even at this stage of things. I am not satisfied that she will put the children's best interests ahead of C.M.'s needs, and in particular, I am not satisfied that she would be able to resist C.M.'s demands to

see the children if she re-enters their lives. Finally, even after almost a decade of involvement with the Minister, I am not satisfied that she sees the Minister as a valuable partner and resource to whom she'd turn for help when that happens.

[37] In all of these circumstances I dismiss G.M.'s application for standing under s.36 of the *CFSA*.

MacLeod-Archer, J.