SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. M.O.*, 2019 NSSC 117

Date: 20190313
Docket: SFHCFSA-107405
Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

M.O.

Respondent

-and-

P.O.
(by his Litigation Guardian, Wayne Stewart)

Respondent

-and-

C.O.
(by his Guardian *Ad-Litem*, John Manning)

Third Party

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 C. LouAnn Chiasson

Heard: January 14, 15 and 16, 2019, in Halifax, Nova Scotia

Written Release: April 2, 2019

Counsel: Sarah Gordon for the Applicant
Zachary Chisholm for the Litigation Guardian
Daniel Roper for the Guardian *Ad-Litem*

By the Court:

[1] C(15) and G(13) are the children of M.O. and P.O.. A Notice of Child Protection Application was made on October 23, 2017. At the time of the Notice, the children C and G had been taken into care by the Minister and have remained in care since that time. The Minister is requesting an order for permanent care of the children pursuant to s. 42(1)(f) of the *Children and Family Services Act*, R.S.N.S. 1990, c.5, as amended ("CFSA").

[2] M.O., the mother of the children, objects to the placement of her children in permanent care and seeks to have the children returned to her care.

[3] P.O., the father of the children, has been hospitalized over a number of months. On October 9, 2018, a hearing was held to determine whether a litigation guardian should be appointed for P.O.. Dr. Stephen Phillips, P.O.'s treating physician, testified at the hearing. A litigation guardian was appointed for P.O. at the conclusion of the October hearing.

[4] The children were found to be in need of protective services on January 10, 2018, pursuant to section 22(2)(g). The Protection Order reserved the right to all parties to lead evidence and cross examine on the other grounds specified in the Notice of Application (ss. 22(2) (a), (d),(f), (g), (h), (i) and (kb). P.O. did not appear and provided no evidence to the Court at the Protection hearing.

[5] The first disposition order was taken out on March 28, 2018. As both children were under the age of fourteen at the time the Disposition Order was issued, the statutory time line expires March 28, 2019 (ref s 45(2)(a) of the CFSA).

[6] The Minister sought permanent care of the children and trial dates were secured in June 2018. The trial of this matter was scheduled to be heard months later, commencing on January 14, 2019.

[7] M.O. was represented by legal counsel from November 2017 to January 2019. As late as December 4, 2018 M.O. was represented in court by her counsel. M.O. advised her counsel of her dissatisfaction and intention to seek new counsel after the December 4, 2018, court appearance. M.O. formally discharged her counsel thereafter.

[8] M.O. appeared in court on January 14, 2019, seeking an adjournment as a result of her discharging her counsel. M.O. discharged her counsel immediately

before the trial (scheduled seven months prior). It was confirmed that M.O. had made no efforts to secure new counsel as of the date of the trial.

[9] The request to adjourn was denied and the trial proceeded as scheduled. The court was mindful of the statutory deadlines in this matter and carefully weighed the prejudices to all parties (ref *Darlington v. Moore*, 2012 NSCA 68).

[10] The trial was held January 14-16, 2019. The court reserved the right to M.O., should she be able to secure new counsel by February 7, 2019, to recall any witness for cross examination and to make any further submissions, new legal counsel wished to make.

[11] New dates were secured in March 2019 to allow M.O.'s potential new counsel to recall any witness and to make submissions. M.O. was to advise the court by February 7, 2019, if she had secured counsel. On February 7th, she confirmed that she had not retained counsel. The parties were then afforded the opportunity to make closing arguments.

ISSUES:

1) Are C and G still children in need of protective services?
2) If so, should permanent care and custody of the children be granted?

EVIDENCE

[12] The following witnesses provided evidence to the court:

1) Dr. Steven James Phillips- treating physician of P.O.;
2) Dr. Miroslava Kolajova- psychiatrist that treated M.O.;
3) Michael Belgrave- therapist for child, C;
4) Thomas Patrick Osborne- therapist for child, C;
5) Andrea White- intake social worker;
6) Allison Stone- intake social worker;
7) Jessica Oldham- children in temporary care social worker
8) Megan Power- long term child protection social worker;
9) Wayne Stewart- litigation guardian for P.O., father of C and G;
10) M.O., mother of C and G; and
11) John Manning- litigation guardian for child, C.

[13] The Agency Plan of Care filed on February 22, 2018, indicated the risks to C and G if they were returned to the care of M.O. and/ or P.O.:

1) Parent mental/ emotional health
2) Emotional abuse
3) Risk of physical harm
4) Family Violence
5) Risk of sexual abuse.

[14] The allegations of physical harm related not only to the conduct of M.O. and P.O. but also involved other siblings of C and G. The allegations of family violence involved M.O. and her behaviour towards C. M.O. allegedly threatened C with a knife, as well as other allegations of physical abuse of C by M.O.. The allegations of family violence also included siblings of C and G as aggressors (including B, a brother). It is alleged that C was sexually assaulted by an older adult brother, K.

[15] I will review the evidence as it relates to each of the alleged risks:

EVIDENCE RE: MENTAL HEALTH

[16] Concerns related to the mental health of M.O. and P.O. were made known to the Agency commencing in 2016. Referral sources included a member of the Halifax Regional Police and staff with the Mental Health Mobile Crisis Team. At that time, a risk management conference was held and no further action was taken. It was determined by the agency that, although M.O. and P.O. appeared to have delusional thoughts regarding government conspiracies and individuals trying to harm them, these did not appear to be impacting the children, C and G.

[17] This changed in 2017 when a further referral was made to the agency. Concerns were again raised about the mental health of M.O. and P.O..

[18] In relation to the mental health of P.O., I heard evidence from Dr. Phillips. Dr. Phillips was qualified as an expert in the field of neurology, capable of providing opinion evidence on the assessment, diagnosis, management and prognosis of neurological conditions and diseases on cognitive functioning and capacity. He indicated that P.O. has a diagnosis of multiple cerebral infarcts from Intracranial Atherosclerosis. In layman’s terms, P.O. has suffered multiple extensive areas of stroke damage on both sides of his brain from blockages in the arteries.

[19] On October 9, 2018, a hearing was held to determine whether a litigation guardian should be appointed for P.O. pursuant to Civil Procedure Rule 36. Dr. Phillips testified at the October hearing and testified that P.O. was totally incapable of independent living and was a “shell of a person”.

[20] The functional capacity of P.O. was rated at 0 out of 100. Dr. Phillips went on to state that P.O. was totally dependent on others for his care. Given the mini strokes suffered by P.O., he could only converse at the most basic level when he was awake. Dr. Phillips testified that P.O. would be unable to comprehend the evidence provided at a court hearing and would be unable to follow or understand a court proceeding. As a result, Wayne Stewart was appointed litigation guardian for P.O..

[21] Dr. Phillips provided an updated report in December, 2018. He indicated that there was no change in P.O.’s condition from October, 2018. He indicated that P.O. is totally dependent on round-the-clock nursing care. P.O. has a feeding tube, is incontinent, and spends much of his time sleeping. Dr. Phillips went on to state that P.O. had been hospitalized for over 10 months (as of December 2018) and there was “no prospect of meaningful functional recovery.” Dr. Phillips was guarded about P.O.’s prognosis for survival.

[22] Dr. Phillips also testified that M.O.’s visits with P.O. were not daily or weekly, but were infrequent. He indicated that M.O. did not appear to appreciate the level of P.O.’s impairment. He gave an example of M.O. wanting a passport style photograph taken of P.O. which was logistically challenging given P.O.’s condition.

[23] Evidence in relation to P.O. was also given by Wayne Stewart, litigation guardian for P.O.. He indicated that on a visit to P.O., P.O. could make eye contact but could not speak or communicate with him. On another occasion he could not stay awake. He indicated that P.O. was awaiting placement in a long term care facility and that his condition was deteriorating.

[24] Given the foregoing information, any plan involving P.O. as a caregiver to C and G is not feasible.

[25] Evidence was provided in relation to the mental health of M.O.. On October 23, 2017, M.O. was involuntarily held at the Mayflower Unit of the Nova Scotia Hospital. She remained hospitalized pursuant to the involuntary commitment for

72 hours. The discharge summary of M.O. was entered into evidence. Dr. Kolajova was M.O.'s attending physician.

[26] The discharge summary discloses that M.O. had multiple visits over the past two years after police were contacted about bizarre behaviour. On October 17, 2018, M.O. was criminally charged with threatening her son C with a knife. While in cells, her behaviour was such that she was assessed by a psychiatrist who deemed her fit to stand trial, but a further assessment was requested. Her diagnosis on admission was Psychosis NOS.

[27] The report of Dr. Kolajova indicates that:

> "The psychiatric assessment concluded that she has persecutory delusions with auditory, visual, and tactile hallucinations. The persecutory delusions revolve around a family relative, variably referred to as "Ashley" or "Amy", conspiring against her with goal of stealing her identity to bring illegal immigrants into Canada. Mrs. O believes that this individual has been following her, filming her, and "gassing" her through the ventilation system at night. "Ashley/amy" is her husband's niece and she is jealous of her and is trying to steal her identification and has her SIN. She believes that "Ashley/ Amy" has stolen many identifications and has a lot of power because of it. With this power she has paid "Alison, who is C's IWK MH worker" to brainwash C", leading him to have more defiant behaviors to cause the family troubles, and this manipulation on part of Alison is what led to him accusing Mrs. O of threatening him with a knife. Mrs. O also reports "Ashley/ Amy" doing witchcraft on her, describing tactile hallucinations in her leg veins. Complicating the delusion, P (husband) corroborated these delusional themes. P was google searched and results showed several purported lawsuits against various people (including former US presidents George Bush and Barrack Obama) with unclear motives, and reports/ emails sent to various departments in USA stating that they prevented him from being the president of Nigeria."

[28] During hospitalization, M.O., appeared cooperative with staff and denied that she would cause harm to herself or to others. The hospital contacted P.O. and their adult son K who corroborated M.O.'s version of events. Despite significant concerns, Dr. Kolajova was unable to keep M.O. beyond the 72 hour involuntary commitment. Dr. Kolajova requested M.O. remain in hospital voluntarily but M.O. left (against medical advice). The discharge diagnosis was: delusional disorder, persecutory type- with bizarre content, continuous.

[29] Dr. Kolajova testified at the trial. She indicated that the diagnosis of M.O. would not resolve without further psychiatric intervention. Dr. Kolajova indicated

that although M.O. had no insight into her mental health at the time of her discharge, there was no imminent risk to herself or others. This decision was based on the fact that C and G were in the Minister's care at that time.

[30] The delusions of M.O. are not confined in time to incidents around her hospitalization. These statements continued to be made by M.O. during the trial of this matter. M.O. submitted a document marked Exhibit 14 for consideration by the court. M.O. denies the allegations made against her and her family. She indicates that people who are illegally in Canada are trying to kill her with witchcraft (Kerry and Angela) with the purpose of taking C and G. M.O. goes on to state that Angela is spraying harsh toxic gas on her and P.O.. This document was presented to the court on the first day of trial.

[31] In her written closing arguments dated February 2, 2019, M.O. indicated as follows:

> "And that Mrs. O is still relying on the fact Kerry K, Angela L.O., and my older son K.L.O. is the one who connived with the with the Sackville District Office to brainwash innocent child C.O. to accused his mother Mrs. O/ K.O. of the charges in court, for him to make it look like I and K.O. did to him. The charge that Mrs O carried weapon on him. And that the senior brother K.O. sexually assaulted him. Nor of these was true.
>
> That I Mrs O hears every conversation been discussed on my family above my apartment were the above mentioned people lived. That last night I heard the above mentioned people called in C.O. for questioning about his mother, when C.O. want to say I quote C say the only thing that I don't like about my mother is on how she carried weapon on me, and immediately C.O. was stopped by Angela L.O., quote Angela L we were the one that trained you to say all that about your mother and K.O.. And these their conversation happen around 12:30 AM 2-2-2019."

[32] The delusions are ongoing. The denial of abuse is ongoing. M.O. accepts no responsibility and has no insight into her mental illness and its impact on her children.

RISK OF PHYSICAL HARM/ FAMILY VIOLENCE

[33] In June 2017, C began to experience significant difficulties. On June 21, 2017, C presented at the emergency department with suicidal thoughts. C reported that his older brother B had been physical with him and threatened to kill him. C also expressed concerns about his mother's mental health as she was making

comments about the people who lived above them, but there was no one living above them. C was released with a follow up plan of treatment.

[34] Three weeks earlier B had been brought to the emergency department by the Halifax Regional Police pursuant to section 14 of the *Mental Health Act*. The referral indicated that B was being violent and was agitated in the home. At the time of his admission, B was diagnosed with a serious mental illness but M.O. and P.O. had B leave the hospital against medical advice and missed all follow up appointments for B to address his mental health.

[35] In July when Allison Stone and Andrea White attended the residence of M.O. and P.O., M.O. indicated that she was a psychologist. As such, M.O. indicated she would be able to observe anything of concern in her children. There is, however, no evidence before the court to confirm that M.O. is a psychologist. She indicated to the social workers in July that conflict between C and B is simply normal sibling fighting.

[36] During cross examination at the time of trial, however, M.O. revealed that she had to call the police to intervene on one occasion when C and B were fighting. She indicated that the fight was physical and so intense that she was unable to stop it. She indicated that she had to call the police because she did not want to be blamed if one of the children was killed. It is unknown if this is the incident wherein police brought B into the emergency department in May, 2017.

[37] M.O. indicated that B continues to reside with her. She indicated that if the children were returned to her care she has no concern related to conflict between C and B. The evidence, however, discloses significant concern in relation to the fighting between C and B.

[38] In addition to the conflict with B, C also revealed that M.O. had hit him, scratched him, and threatened him with a knife. M.O. denies any such incident with the knife occurred. She denies any inappropriate behaviour as it relates to C. M.O. relies on the fact that the criminal charges against her were not pursued as indicative of the fact that she behaved appropriately at all times.

[39] The alleged incident involving a knife is not the only allegation of physical abuse of C. On another occasion in August 2017, C contacted the police alleging that he was being hit by his mother and his brother. When the police arrived, they spoke to C in the hallway of the residence. M.O. and P.O. came out into the hallway to yell at C and caution him against speaking with the police.

[40] A social worker also attended the residence. The worker, Ms. Slayter spoke with M.O. who advised that part of C's problem was that the woman upstairs was trying to kill him. M.O. described the woman upstairs as a relative from Nigeria who used voodoo and brainwashed C. Despite these concerns, C remained in the care of M.O. and P.O. and a safety plan was developed. Subsequently the children C and G were taken into care in October, 2017.

[41] C had two counsellors during the course of these proceedings, Thomas Osborne and Michael Belgrave. Thomas Osborne testified at the trial. He is a clinical therapist with the IWK, Community Mental Health. Mr. Osborne testified that he provided counselling to C.

[42] C revealed to Mr. Osborne that he had been sexually abused by his older brother for a prolonged period of time. These incidents started when C was 7 and continued until he was 12. C felt helpless to escape which led to him being hyper vigilant about his environment. C continues to suffer from flashbacks and dreams, particularly related to the sexual abuse. Mr. Osborne also testified to C's allegations of physical abuse at the hands of his brothers.

[43] As a result of these incidents, C had symptoms of depression and PTSD. It was recommended that C begin trauma counselling. Mr. Osborne testified that C blamed himself for the trauma that was caused and that this is not unusual. He indicated C would need ongoing counselling and a stable environment to address the issues and trauma from his chaotic family of origin.

[44] Michael Belgrave also provided counselling to C during the gap in counselling with Thomas Osborne. He indicated that parenting traumatized children can be challenging as their reactions can be unexpected and extreme. These children can easily be triggered into the "fight or flight" response.

RISK OF SEXUAL ABUSE

[45] C disclosed to multiple sources the sexual abuse by his older brother K over a period of years. He advised his school counsellor, he told his mother (who did not believe the allegation), he told a social worker and a police officer during a joint interview on October 18, 2019. The allegations of sexual abuse were prolonged, significant and severe. C's older brother K was charged with criminal offences related to the sexual assault of C.

[46] K was found guilty and is currently incarcerated. M.O. testified at the criminal trial. She indicated that she could not believe that it happened because she did not see it. She indicated that when C mentioned to her that this was happening in September 2017, they held a family meeting. K denied anything happened. M.O. indicated that C was never at risk in her care. M.O. stated that K was found guilty and was sentenced to prison for "an unjust cause".

[47] C had the benefit of a litigation guardian, John Manning. Mr. Manning provided reports throughout the proceeding. The first report of Mr. Manning revealed the following:

> "When I asked him what had happened that he is no longer with his parents and siblings, he unhesitatingly stated that he was being physically abused by his mother and father and sexually abused by his brother for several years, but he had only reported this recently… He said he feels guilty and bad for what has happened to his family but he thinks he did the right thing.
>
> It is clear that he has a great deal of anxiety and distress about the whole matter; he worries about his sister G and worries about the mental health of his parents and his brother who abused him for so long."

[48] C was suicidal and spent approximately one week in the Geron Centre, IWK, in the summer of 2018. Mr. Manning indicated that C struggled with his family's reactions to his revelations. He advised Mr. Manning that he felt like a "pariah to his family except for G." His emotional difficulties were exacerbated around the time of the criminal trial of K.

[49] In the last report of Mr. Manning, of December 15, 2018, he confirmed that C had not had contact with M.O. for several months. M.O. had relocated to Ontario and was working there. Although having contact information for the foster family of C and G, M.O. made no attempts to contact them. C felt abandoned by his mother and wanted to be placed in permanent care.

[50] In stark contrast is the evidence presented by M.O.. She indicates in a document presented to the court (Exhibit 14) that C and G lived in "their very safe home". She goes on to state that she has "build [sic] a very good relationship" with C and G. M.O. referred to both C and G as doing well academically as an indication that there were no problems in her home. She indicated repeatedly that herself and her husband, P.O., were highly educated people and fully capable of raising C and G.

[51] I find as a fact that C was abused in his home. He was abused by his brothers, K and B, and was abused by his mother M.O..

[52] I find as a fact that the abuse of C was either not believed or was ignored by M.O. and P.O..

[53] I find as a fact that both M.O. and P.O. have unaddressed mental health concerns which impact on their ability to parent.

[54] Although there was no evidence of direct abuse suffered by the child G, the risks posed to her in residing with M.O. and P.O. are clear from the evidence before the court.

LAW & ANALYSIS

[55] The purpose of the *Children and Family Services Act*, R.S.N.S. 1990, c.5, as amended (CFSA) is found in section 2 of the Act:

> "2(1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.
>
> (2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child."

[56] The best interests of C and G are the paramount consideration before the court. The interests of all others are irrelevant.

[57] As the date for final disposition nears, the options available to a judge are reduced to two: dismiss the proceeding (because the children are no longer in need of protection), or make an order for permanent care and custody (ref *Children's Aid Society of Halifax v. B. (T.)*, 2001 NSCA 99 (N.S. C.A.)).

[58] I must consider whether C and G are to be returned to the care of their mother, M.O., or whether they are to be placed in permanent care. There was no plan before the court to place the children in the care of P.O. given his health (the particulars of which are detailed herein). Given the health of P.O., no joint plan was advanced on behalf of M.O. and P.O..

ISSUE #1- Are C and G still in need of protective services?

[59] The Minister bears the burden of proving that there is a substantial risk to C and G if they were to be returned to M.O.. Jollimore, J. defined "substantial risk"

in *Nova Scotia (Community Services) v. R.H*, 2018 NSSC 104 (N.S. S.C.), at paragraph 22:

> [22] "Substantial risk" is a real chance of danger that's apparent on the evidence: *Children and Family Services Act*, R.S.N.S. 1990, c. 5, subsection 22(1). It is the real chance of physical or emotional harm that must be proved to the civil standard. The Minister is not required to prove that future physical or emotional harm will actually occur: *MJB v. Family and Children Services of Kings County*, 2008 NSCA 64 (CanLII) at paragraph 77, adopting *B.S. v. British Columbia (Director of Child, Family and Community Services),* 1998 CanLII 5958 (BC CA), at paragraphs 26 to 30.

[60] The burden of proof on the Minister is on a balance of probabilities. As stated by Forgeron J. in *Nova Scotia (Community Services) v RMN*, 2017 NSSC 270, at paragraph 18:

> "The Minister bears the burden of proof. It is a civil burden of proof based on a balance of probabilities. The Minister must present evidence that is sufficiently clear, convincing and cogent: *C. (R.) v. McDougall*, 2018 SCC 53 (S.C.C.). The phrase "clear, convincing, and cogent" does not create an additional or heightened level of proof. Rather, the Minister must prove why it is in the best interests of the son to be placed in the Minister's permanent care and custody according to the legislation."

[61] I have reviewed the evidence before the court. I have heard from a number of witnesses. I am mindful of the statutory framework of the CFSA, supra.

[62] I find that C and G are children in need of protective services and if returned to the care of M.O. they would be at substantial risk.

ISSUE #2- Should C and G be placed in permanent care

[63] Having found that C and G continue to be in need of protection, I then need to determine whether they should be placed in the permanent care and custody of the Minister. I must determine the following:

(a) I must determine whether or not there are services to promote the integrity of the family that have been attempted and have failed, or have been refused by a parent, or would be inadequate to protect the child.

(b) I must also determine whether or not the circumstances that are before the court are likely to change before the timeline expires.

(c) I also must consider whether or not there are less intrusive means to address the issue than placement in permanent care.

[64] I have clearly indicated that M.O. does not recognize she has any mental health issues. As such, services have not been accessed by M.O. because she does not believe she needs any services.

[65] It has been noted that the timeline in this matter expires in another 11 days. M.O.'s ongoing denial of abuse and denial of any mental health issues, there is no indication that her circumstances are likely to change.

[66] On the first day of trial, M.O. appeared with one of her adult children, L. The adult child (20 years of age) indicated that she wished to have the children placed in her care. C and G were in the care of the Minister of Community Services from the date the application was made in October 2017. It was not until January 14, 2019, that one of their siblings indicated the possibility that the children should be placed with her.

[67] M.O.'s adult child did not return to the court for the proceeding after the first morning. She did not put forward any evidence with respect to her proposed plan. M.O. advised the court that her adult daughter was attending university full time and could not participate or provide evidence to the court despite her request to be considered a placement for the children.

[68] Pursuant to s42(3)(a) of the CFSA, I am to consider whether it is possible to place the children with a relative, neighbour or other member of the children's community or extended family with whom the child at the time of being taken into care had a meaningful relationship.

[69] The necessity to consider a family placement was considered by Jollimore J. in *Nova Scotia (Minister of Community Services) v. MR* 2019 NSSC 9. She held at paragraphs 31 and 32:

> "31 When I consider the children's best interests (each child's individual circumstances, each child's relationship needs, the identified risk, and the impact of delay), I conclude that it is in the children's best interests that I not consider the proposal.

> 32 The proposal is not viable because it cannot address the identified risk. The delay is contrary to the children's interest in certainty. My decision to not consider the proposal does not undermine the children's individual needs, which are being met, or their relationship needs, which can be addressed under subsection 47(3) of the Act."

[70] Simply advising the court that you wish the children placed in your care is insufficient to support a finding that it is in their best interests. The onus falls upon the adult sibling advancing the plan to provide sufficient information to support that the plan is in the children's best interests (ref *Children's Aid Society of Halifax v. B. (T.)*, [2001] N.S.J. No. 225 (N.S. C.A.)).

[71] The risks to which C and G were exposed to in the home of M.O. and P.O. make such an alternative placement untenable. The delay in bringing the plan forward and the complete lack of information in relation to the plan renders the proposal futile. The allegations of sexual and physical abuse of C by his siblings, which was denied by other siblings, renders the request unreasonable.

CONCLUSION

[72] C suffers from the revelations that he made about what was going on in his family, and according to his litigation guardian despite this he knew he was doing the right thing. It is clear in reviewing the evidence that C was very brave and he did the right thing.

[73] C and G continue to be in need of protective services. They shall be placed in the permanent care of the Minister of Community Services.

Chiasson, J.