

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: C.A.S. v. H. and O., 2003-NSSF-051

Date: 20031003

File No.

Registry: Halifax

Between:

Children's Aid Society of Inverness-Richmond

-Applicant

v.

C.H. and J.O..

-Respondent

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on September 26, 2008.

Judge: The Honourable Justice Moira C. Legere-Sers

Heard: September 5, 2003 - Arichat, N.S.
September 12, 2003 - Port Hawkesbury, N.S.
November 14, 2003 - Arichat, N.S.

Written Decision: November 24, 2003

Counsel: Mr. Lorne MacDowell, for the Applicant
Mr. Frances Moloney, for the Respondent
J.O. not present and unrepresented

By the Court:

[1]This matter commenced as an application made by C.H. to terminate the Permanent Care Order dated June 18, 2001 with respect to the children S.L.A.D. (D.O.B. [in 1995]); R.K.K.H. (D.O.B. [in 1997]); and C.J.C.O. (D.O.B. [in 1998]).

[2]The Children's Aid Society of Inverness-Richmond have applied to terminate C.H. and J.O's access to the above noted children. The description of access is contained in paragraph 2, page 10 of the Order issued on the 17th day of December, 2001. It reads as follows:

"The Respondent C.H. and the Respondent J.O. shall be entitled to supervised access to the child R.K.K.H. (D.O.B. [in 1997]);and all such access shall be in the discretion of the Applicant as to place, duration, and frequency."

[3]Likewise, in paragraph 2, page 10 of the Order issued the 12th day of December, 2001, similar access is allowed between C.H., J.O. and the child, S.L.A.D. (D.O.B. [in 1995]). Likewise, separately to the child C.J.C.O. (D.O.B. [in 1998]).

[4]The history of the proceedings is lengthy. The chronology of events both legal and factual, are described in the court documentation as well as the numerous assessors' reports. I will not repeat the history for the purposes of this decision.

[5]In summary, these children came before the Court in 1999 and on December 2, 1999, with the consent of the parents, the Court found that the children were in need of Protective Services as defined by Section 22(2)(b)(g).

[6]On January 14, 2000 the Order was continued and reviewed in the ordinary course together with the filing of various revised Agency plans until it came before the Court on January 4, 2001. At that time the Court extended the time period in order to give to the Respondents additional time to obtain counsel.

[7]The history of the file indicates numerous efforts to apply significant community resources to address the concerns which precipitated the Children's Aid involvement. There has been various extensions; rollover proceedings to extend the time; attempted reintegrations of at least the oldest child and many assessments to determine the progress made to re-integrate this family.

[8]The Permanent Care Order was granted in recognition that the circumstances would not exist that would address the risks sufficiently, to re-integrate the children into the family home.

[9]The Agency applied for a termination of access in order to support an adoption placement by the foster parents who have been involved for a significant portion of the time since the original application .

[10]The three children currently reside in a foster home and the foster parents wish to formalize their involvement by way of adoption. The Agency supports this as do the therapists most significantly involved in the children's lives.

[11]The mother was not satisfied with the reports supporting the adoption and termination of access and requested an extension of time for this application in order to achieve an independent assessment. She asked that Dr. Hann, a psychologist of her own choosing, conduct an independent assessment.

[12]As a result of the contents of Dr. Hann's assessment, the mother withdrew her application to have the children placed with her, recognizing that the assessment provided no support for such an application.

[13]The mother now seeks to contest the Agency's application to terminate access and seeks to maintain the status quo, which is to allow her to continue to visit every three months with her children in a supervised capacity. This would effectively block an adoption proceeding although it may not necessarily interrupt the stability of the foster home.

[14]I have available to me the documentation submitted through the course of the original Child Protection Proceedings. That documentation includes the assessments made by various therapists. A summary of the Agency's involvement is contained in the Affidavit of Ms. Whitty (EXHIBIT # 1 - tab 1). It is extensive. Every appropriate and available service has been offered and every attempt to improve the communication and connection between the parents and the child made.

[15]Every attempt has been made to connect with the natural fathers of the two oldest children in the course of the original proceedings.

[16]Dr. Susan Hartley, Clinical Psychologist and Therapist to the children has testified in these proceedings. I have reviewed the course of her involvement commencing with her report on the 31st of August, 1999.

[17]After extensive investigation, she made a number of recommendations to the Agency to assist them in helping the mother address the concerns. She recommended significant and ongoing involvement with the Agency which would include intensive supervision of the family, particularly if the Respondent J.O. was present. She recommended parenting intervention with the family support worker; ongoing psychotherapy for the mother; marital therapy for the couple; vocational intervention for J.O.; investigation of J.O.'s potential for substance abuse; day care for R.K.K.H. and a further assessment of S.L.A.D. with respect to her psychological functioning and needs.

[18]Further, on November 1, 1999, Dr. Hartley wrote a follow-up report which strongly recommended the need to explore therapeutic support in the relationship

between the Respondents. She further recommended individual play therapy for the oldest child S.L.A.D..

[19]As of September 7, 2000 the Agency was still looking at the possibility of having the children returned home. Dr. Hartley recommended a Parental Capacity Assessment.

[20]C.H. attended individual assessments with Valerie Rule. By report dated September 11, 2000, Ms. Rule indicated that while the mother is diligent in her approach to the Therapeutic Intervention, she concluded that the mother experienced some difficulty with the retention of new techniques. She concluded that although C.H. learns new techniques well, she does not hold the learning in the memory for long. She must relearn the technique at the next session.

[21]The therapist was concerned with the speed of decomposition and frequent dissociation experienced by C.H. and questioned her ability to consistently offer emotional and physical support to her children. She indicated "C.H. has a difficult time to maintain her own activities of daily living when her emotional state escalates. This produces an unpredictable environment for her children". While

she indicated that C.H. was willing to work she did note that it would take a long time to effect change.

[22]Dr. Krane was employed and by letter dated December 13, 2000 reported on C.H.'s capacity to retain information.

[23]Her conclusion indicated as follows:

“Her profile shows that she is capable of new learning but her learning efficiency can be enhanced by presenting information in small chunks, by repeating the information several times, and by using pictures to provide a meaningful context for to-be-learned material. C.H. displayed behavioral evidence of impatience and frustration that, no doubt, impacts on her ability to learn and on her ability to demonstrate what she knows. Low frustration tolerance and impatience ,also impact on her ability to parent. In summary the Neuropsychological Assessment profile contains evidence of 1) weak auditory(verbal) working memory capacity, 2) limited vocabulary and 3) very weak academic skill levels, including weak reading, spelling and arithmetic skills.”

[24]Dr. Pye was engaged with regards to a Psychological Report which was submitted on December 15, 2000. At that time the plan still contemplated re-integration of the boys with their parent. There were many recommendations

including individual therapy and counselling for the children with a clinical re-evaluation within a year.

[25]Dr. Brooks, a Psychiatrist, submitted a report as a result of his assessment which took place on February 7, 2001. He indicated evidence from the writers interview with C.H. and collateral evidence made clear that the most appropriate diagnosis for C.H. was one of personality disorder of primarily borderline type. In the writers opinion C.H. would meet criteria 1, 2, 4, 5, 6, 8 and possibility others. He included with his assessment a sheet of information that set out the significance of the diagnosis's which included the following:

“Personality disorders are longstanding and persisting maladaptive patterns of perceiving reality, feeling and behaving. With or without treatment it is likely that the basic patterns of behavior exhibited by an individual with a diagnosis of borderline personality disorder will not change significantly until the fourth or fifth decade of life and then will ameliorate only slowly. In the writer's experience a good and stable intimate relationship may result in earlier improvement.

Whether treated or not, this disorder, like all psychiatric disorders, cannot be taken as sufficient evidence of unfitness of an individual to parent a child or children. Many individuals with this disorder are parenting children with more or less success.

In addition to the listed criteria of this disorder C.H. shows clear evidence of two other characteristic features of the disorder - lying and rejection of responsibility. It is clear from the collateral information available that C.H. has been repeatedly violent to at least one of her boyfriends, something which she explicitly denied to the writer.

There is no demonstrably effective treatment for the basic and underlying personality problem in this disorder. “

[26]The Agency commissioned a study by Mr. Bryson to assess the needs of the three children who were then in temporary foster care with supervised parental access. The assessment included an examination of the current functioning, including relationships with their biological parents, foster parents and schooling.

[27]Mr. Bryson interviewed the foster parents, had an opportunity to observe the children and to speak to many, if not all of the therapeutic professionals involved in the on going maintenance of this family.

[28]In his observation material he scheduled a three hour supervised access with the children on June 6, 2001. “When it was apparent that one of the children was about to be harmed, the Assessor terminated the visitation.”

[29]In his report, dated June 12, 2001, he described the disturbing interactions between the children and their parents in extensive detail, outlining many incidents in which there were risk concerns.

[30]He concluded as follows: "Due to S.L.A.D.'s level of anxiety as witnessed by others, and her tendency to attempt to care for her mother, she is likely to initially react with some upset if she were placed in Permanent Care with the Applicant. She may blame herself for the loss of her parents. Therefore, it would be prudent to gradually reduce her contact with her parents. Similarly, the same should be done with R.K.K.H. and C.J.C.O."

[31]Included in his recommendations were the following:

The dependent children be placed in the Permanent Care of the Applicant.

S.L.A.D. be placed in Permanent Care with the same family as her brothers

Supervised visitation between C.H. and J.O. and their children be reduced to twice weekly.

The present visitation schedule is disruptive for the children.

Supervised visitation occur for a maximum of two hours per visitation.

C.H. and J.O. have only one on one visitation with their children.

[32]The revised Agency plan of care dated June 14, 2001 recommended the children be placed in the permanent care and custody with access to the Respondents as noted in their plan.

[33]This plan of care outlines in summary fashion the involvement of the Children's Aid Society with this family. In paragraph 3 the Agency outlined its reasons for stopping the integration of the children into the household and moving to a situation of permanent care with supervised and more limited access.

[34]At page 4 paragraph 3,of the plan, the Agency noted the following:

[35]Based on the limited progress of the parents to date in the disclosure of this information (information not previously disclosed of domestic violence between the parties and violation of court order) the Agency seeks an Order for Permanent Care and Custody of the children with a reduction of access to the parents. The Agency will review access provisions with service providers on a regular basis and

adjust accordingly as the children's needs dictate. The Agency will continue to supervise access.

[36]It is clear that it was the intention of the Agency when reducing access that they anticipated a period of gradual reduction of access to that which was outlined in paragraph 6 (c)(p.10) as follows:

“The Agency proposes access will occur with the male children and their parents weekly and S.L.A.D. and her parents weekly for a period of time to be determined with service providers based on how the children are functioning, then reducing access visits to monthly and subsequently bimonthly until a decision can be made to the ongoing need for access. Given the recent disclosures and the resultant taking into care at the end of the time line of the protection application, the Agency is not in a position to confirm any plan for adoption. Access is proposed as outlined herein. Should the Agency seek to terminate access then a subsequent application would be brought before the Court for consideration.”

[37]It is entirely consistent with the Agency plan (June 14, 2001) preceding the permanent care order; a plan that was endorsed by the Court when the Permanent Care Order was issued, that adoption was within the contemplation of the Agency at the time.

[38]This plan was in line with the legislative directive that access can be ordered where it does not frustrate the long term plans for adoption.

[39]The Agency has, as the parent, all the rights, powers and responsibilities of the parent or guardian for the child's care and custody pursuant to *Section 47(1)* and the Orders dated June 18, 2001.

[40]Pursuant to this plan of care, the Agency initiated a gradual reduction in the pattern of access. This was done to enable the children to adapt to the new situation of permanent care. At the time, S.L.A.D.'s placement was relatively new in permanent care and the recommendations of the therapist include the recommendation not to terminate access completely during the transition, in order to ensure that the children did not adopt an unrealistic view of the parents in the course of S.L.A.D.'s settlement in her new foster home with her brothers.

[41]In dealing specifically with the issue of ongoing access, both the psychologists involved in this proceeding, Dr. Susan Hartley and Michael Bryson, were asked specifically to deal with access within the frame work of permanency planning for the children.

[42]Dr. Hartley indicated in her October 11, 2001 report that if access was terminated completely, S.L.A.D. may idealize her parents and that may prevent her from forming new bonds with her foster parents. She said , in the best possible scenario, it was hoped that the mother and step-father would indicate to S.L.A.D. and the children their support for the placement in foster care to assist S.L.A.D. through the grief process. Clearly, Dr. Hartley's recommendation was that access would be reduced in frequency and reduced further in time.

[43]Mr. Bryson, in his October 16, 2001 report, recommended that access visits be supervised, that due to the quality of the access with all three children present it be reduced to access with one child at a time and that over time it be further reduced. He was clear that access should be discontinued within three months. Mr. Bryson suggested that some of S.L.A.D.'s academic performance, which at the time was problematic, may be related to access visits.

[44]The Agency followed the recommendations of the psychologists and reduced both the respondents' access starting in January 2002 to one visit per month, in March 2002, to one visit every two months and at the time of the proceedings, once every three months. These access visits were also subject to weather

conditions and various scheduling difficulties with both the mother and the children.

[45]The case recordings note that the mother attended a visit with all three children on January 12, 2002, with the two boys on January 18, 2002 and January 19, 2002. On February 15, 2002, both respondents attended with the two boys; and on February 16, 2002 both Respondent's attended a visit with S.L.A.D..

[46]In or about March or April 2002, it appears that the Respondents attended their final visit together, and thereafter in May all visits recorded are with the Respondents visiting the children separately.

[47]I will deal solely with visits that relate to the Mother.

[48]The Respondents visited with S.L.A.D. on March 13, 2002, the boys on March 22, 2002 and thereafter, C.H. visited with two of the children on May 17, 2002, one other child on June 21, 2002, all three on July 19, 2002, all three on October 25, 2002, and three children on November 12, 2002, as well as January 15, 2003.

Various visits had to be cancelled because of her illness, the weather and on one occasion the children were noted to be ill.

[49]The visits clearly decreased more rapidly than originally recommended, due to the various factors including illness and weather. Her contact with the children was reduced significantly and without incident. Every effort was made to have the children attend the visits when they were well and when the weather would allow.

[50] Those visits that did occur are largely uneventful. There is evidence of a connection of sorts with the mother and her efforts at maintaining her contact with the children. In the reporting, there is a sense that the contact with the mother has been reduced significantly and the children are connected to the foster family, in such a way that they refer to the foster parents as the emotional parents to these children. They (the children) are less disturbed by any separation that occurs between the mother and the children. That is not to minimize the existence of a connection.

[51]In supervised and controlled circumstances the facilitators testified that there was evidence of affection and a familiarity between mother and children. However,

the children have severed their relationship to the extent that they begin to call their mother by her first name and refer to another as mother.

[52]In fairness to the mother, she sees this and acknowledges the inevitability of this to facilitate the children's connection in their, by now, permanent placement.

[53]The foster parents, Dr. Hartley and access facilitators spoke of some stress and confusion around the visits.

[54]We are now at a position that access is seen as impeding the ability of the Children's Aid Society of Inverness-Richmond to place the children for adoption in the foster home in which they currently reside. This is a foster home with which the Agency has had considerable history. They have had ample opportunity themselves and through the professionals involved to assess, evaluate, investigate and supervise the family .

[55]One of the issues that was spoken about considerably in the hearing was S.L.A.D.'s ability to attach in a permanent placement with care givers that would

address her need for permanency. S.L.A.D., herself is looking for a “forever home”. Dr. Hartley spoke of this in her March 21, 2002 report.

[56]S.L.A.D. is the child with the longest connection to the mother. The younger boys have less history respectively with the mother.

[57]In looking at the Order for access I refer myself to *Section 47(2)* which states as follows:

Where an Order for Permanent Care and Custody is made the Court may make an Order for access by a parent or guardian or other person, but the Court shall not make an Order unless the Court is satisfied that;

(a) permanent placement in a family setting has not been planed or is not possible and the persons access will not impair the child's future opportunities for such placement.

(b) the child is at least 12 years of age and wishes to maintain contact with that person.

(c) the child has been or will be placed with a person who does not wish to adopt the child; or

(d) some other special circumstance justifies making an Order for access.

[58] It is to be noted that the parents and specifically C.H. made an application to terminate the Permanent Care Order, has withdrawn that and is now focused solely on contesting the Agency's application to terminate access. Recognizing the results of the various studies that have been done, the mother acknowledges she is not now in a position to receive the children and it would not be in their best interest. She is simply wishing to maintain the contact that she has on a three months basis.

[59]Circumstances have changed since that time in that S.L.A.D. has evolved in her placement with her brothers in the foster home and is progressing well, as are the other two children. The foster parents have cared for these children for a significant period of time and have expressed a strong desire to adopt the children. S.L.A.D. has a specific identified need for permanency and emotional long term commitment in a home and the ongoing access order now interferes with the permanency placement of adoption.

[60]It is recognized by the mother that her connection with the children is accurately described by the psychologist as that of friend rather than parental. It is

clearly recognized she is the biological parent but the children have evolved in their relationship with the foster parent.

[61]The question is whether the Agency has provided information which, when taken in its totality, justifies a termination of access in order to address what is the paramount concern in the legislation, that being the best interest of the children.

[62]Clearly the option is to continue access and the contact with the mother or to terminate access in order to allow for an adoption proceeding.

[63]These children have been in care since 1999 and all three children have adjusted well to the reduction of access. That is not to suggest that they do not enjoy seeing their mother every three months in a supervised and well controlled setting. It is simply to underscore their development in a permanent placement.

[64]The children have been together for a year and are strongly attached each to one another and to their foster home.

[65]The ongoing access impeding with their adoption does not significantly add to their lives.

[66]It is clear that the mother has progressed in her emotional well being and is in a current stable relationship. The relationship with J.O., the former Respondent, has broken down and was more violent than was admitted by both parties.

[67]The stability of her current relationship is not certain at this point. It is too new to assess.

[68]There is an updated report dated November 15, 2002 from Dr. Hartley wherein she advised that S.L.A.D. continued to have behavioral difficulties at school last year but has noted improvement this academic year.

[69]Mr. Bryson summarizes his concerns in his report of the 18th of November, 2002 concluding with the following: "As these children have been in foster care for over three years, they require long term stability and permanency. All three children are well adjusted in their foster care home. It is in the best interest to remain where they are."

[70]There are many sources of concern about the access being disruptive to the children in its current form.

[71]There was a recommendation in Dr. Hann's study that further assessment be done of the attachment between the children and the foster parents. In reviewing Dr. Hartley's August 5, 2003 update, she outlined her connection with S.L.A.D.. She confirms that she was involved with this child for four years assessing her initially when she was in her mother's care with both the Respondents parenting her. She was involved in individual psychotherapeutic intervention while in foster care and continued with S.L.A.D.'s care when she was returned to her mother and Mr.O'Brien. When S.L.A.D. was re-apprehended and placed in care, she completed psychotherapy with S.L.A.D. in July of 2002. S.L.A.D. at the time was in her view "demonstrating significant progress in terms of her emotional, cognitive and interpersonal functioning".

[72]She has observed S.L.A.D. in her current foster home on the 30th of July, 2003 and concluded that she continued to make progress. She observed her interactions with her brothers and foster parents. She concluded that S.L.A.D. was feeling secure and had developed a healthy attachment to her care givers and she experiences them as meeting her needs for belonging, stability, nutrients and

protection. Dr. Hartley reviewed her academic progress and spoke to her foster mother.

[73]Dr. Hartley did not observe S.L.A.D. with the foster father. However, she concluded that S.L.A.D.'s experience of the family as a permanent placement and referred to the foster mother as her psychological parent. Dr. Hartley also had an opportunity to observe the two boys who had been there most of their lives. Clearly, they were seen to experience their placement in the family as permanent.

[74]It is to be noted that S.L.A.D.'s move to the foster home, in which she currently resides, occurred in July 2002. Between the 21st of March 2002 and the 15th of November 2002, Dr. Hartley saw S.L.A.D. on eleven occasions and was able to observe first hand S.L.A.D.'s response to the transition and settling into the new foster home with her brothers. From about July to November, she saw S.L.A.D. on a monthly basis assisting her in the transition to the new foster home and in any further transitions that may appear.

[75]The access facilitator Donna Carrigan has had 12 years of experience. She has had long term involvement with this family and has had ample opportunity to see

the children interact with the foster parents. She has confirmed the report to the therapists with respect to their children's adjustment.

[76]Erin Warner is another access facilitator who has been involved from September 1999 forward. She became involved with the access visits and further supports the positive developments and attachment of the children in the foster home.

[77]Both access facilitators confirm that the access visits on the whole went well; that occasionally the children complained about going and occasionally complained about leaving. They were clear that the children referred to their foster parents as their mother and father and confirmed that in the latter part of the visits they began to relate to the Respondent, C.H., as C.H..

[78]Dr. Hartley's testimony, as was her report, was extensive objectively assessing the connection of the children with the Respondent and with the foster parents. She addressed the best interests test and made a recommendation to pursue the adoption.

[79]Mr. Bryson has had significant involvement in the assessment process and recommended that access be terminated in order to facilitate adoption.

DR. HANN'S REPORT

[80]Dr. Hann's report was a turning point for C.H.. After reviewing this report in its totality she made the very difficult decision to withdraw her application to terminate permanent care. She recognizing the limitations that existed that would impair any successful application. She did however continue to pursue her wish to continue contact every three months.

[81]Mr. M., her current partner, submitted an affidavit setting out the particulars of his life's circumstances. Clearly, if this relationship continues and is stable and peaceable, it will provide C.H. possibly the most stable financial and emotional relationship that she has had thus far. Mr. M. is not a known entity to this Child Protection file and admits that he has little knowledge of the circumstances although he is prepared to support C.H. in her pursuit. He is also intending to marry her and to create a home environment for and with her. (They married subsequent to his testimony, [in 2003].)

[82]C.H. has submitted affidavits in support of her application. The bulk and weight of her testimony is intended to provide proof that she has ended her relationship with J.O. and commenced a relationship with a person she believes will provide for her a more stable, healthy and peaceful relationship.

[83]She has reduced her dependency on sedatives and other psychotherapeutic drugs and by January 2002, believes she has been completely free of medications and, as she believes, is more able to be custodial parent to her children.

[84]She asked the Court to consider the major changes in her life. She admits she was compelled by certain health crises in her life to miss a visit or visits. She testified that those cancellations were entirely outside her control. On one occasion she had an attack of kidney stones and on another had to attend the offices of a dental surgeon to have work done on her teeth. That she had to cancel for medical reasons has not been contested.

[85]Dr. Hann noted the improvements in C.H.'s life. He spoke favourably of the improvement and noted that whatever happened respecting the children's placement these improvements are positive for her and provide a positive influence

in her life. He noted however that the risk to the children's stability was too great to contemplate a return given the nature of C.H.'s personality difficulties. He noted that her stability is supported by external factors. A change in these externals might well result in a change in her ability to cope.

[86]Dr. Hann assessed the mother. He had limited ability to assess the children, due to no fault of his own. He was not involved with the children as extensively as the other therapists who I find have adequately addressed and assessed the children's needs.

[87]The changes in the mother's life situation are hopeful for her . She is to be commended for moving in a direction that enhances her life situation.

[88]On their own they do not justify a conclusion that the court ought to impair the ability of the Agency to place all three children for adoption in order to maintain the possibility of continued contact with the mother . Their needs are of paramount importance.

[89]The Agency has provided sufficient evidence to satisfy me that it is in the best interests of these children that access to the parents be terminated in order to facilitate adoption.

[90]It is my understanding that goodbye visits are usually planned in these circumstances. The Order itself shall make no provision for access. Any visits planned by the Agency are gratuitous and are not to be seen to interfere with the Plans for adoption that have been proposed.

[91]Counsel for the Agency shall prepare the order.

J.