

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Children's Aid Society of Halifax v. W., 2004 NSSF 78

Date: 20040715

Docket: SFHCFSA031586

Registry: Halifax

Between:

Children's Aid Society of Halifax

Applicant

v.

T.W. and A.J.W.

Respondents

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on May 28, 2008.

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 Leslie J. Dellapinna

Heard: July 14 and 15, 2004, in Halifax, Nova Scotia

Written Decision: August 30, 2004

Counsel: John Underhill with Katherine Carrigan, for the Children's Aid Society

Donna Franey with Eric Kendric, for T.W.

By the Court:

[1] T.W. and A.J.W. are husband and wife. They have five children, namely: A.W., born [in 2002], K.W., born [in 2000], R.W., born [in 1997], C.W., born [in 1995], and D.W., born [in 1993].

[2] The Children's Aid Society of Halifax seeks a finding that the Respondents' children are in need of protective services pursuant to subsections 22(2)(b), (g), (j) and (ja) of the *Children and Family Services Act*. The Interim Hearing was completed by consent on May 11, 2004. The Respondents oppose the protection finding.

[3] The present application, dated April 20, 2004, is not the first time the Agency has made such an application with respect to these Respondents. The family first came to the Agency's attention on May 5, 2003, when as a result of an unrelated matter, officers from the Halifax Regional Police Department entered the Respondents' home and found it to be "in a total state of uncleanness with dirty diapers, clothing, garbage, cat urine and feces on the floor" and with other debris lining the hallways "making it almost impassable" and in the opinion of the officers, a possible fire hazard.

[4] Agency workers attended at the home and confirmed the police officers' observations. Further investigation revealed that one of the school-aged children was attending school smelling of cat urine, and on four occasions in the preceding two years attended school with head lice.

[5] In November 2003, the Agency received a call from the Principal of the children's school. She expressed concerns about T.W.'s parenting skills and reported the three older children, who were students at the school, were coming to school dirty and reeking of cat urine and two of them coming to school with lice and sometimes inadequately dressed. When the Agency investigated, they found the W.'s home to be cluttered and messy and the odour in a basement room was overwhelming. T.W. claimed that she suffered from depression, and had let things go. The Agency applied for a supervision order to monitor the state of the home and to provide supportive services to the children whom the Agency felt were at risk due to the Respondents' neglect. At the conclusion of the Interim Hearing, that Application was dismissed. That was in January of 2004.

[6] On March 29, 2004, the Agency received another phone call from the Principal of the children's school. At that time, she reported that the three children who were enrolled at the school were missing a great deal of class time due to unexplained absences, unexplained tardiness and being sent home

because of recurring lice. She also said the children volunteered information about the uncleanliness of their home, mentioning the smell as well as flies.

[7] Another investigation followed. During an interview of R.W. and C.W. by the Agency worker, the children disclosed much the same information as they had previously volunteered to the school secretary. When T.W. was asked about the condition of the home she denied any problem. She also refused the Agency Workers entry to her home. After obtaining an Investigative Order pursuant to subsection 26(2) of the *Children and Family Services Act* on April 8, 2004, Agency Workers attended at the W.' home. After calling in the assistance of the Halifax Regional Police, they entered the home and took photographs of what they saw. I cannot satisfactorily describe what was depicted in those pictures. There were piles of clothing in many parts of the house, including the staircase, to such an extent that it would be difficult for an adult to walk through the piles, let alone a child. The bedrooms were in disarray. The toilet in the main bathroom was clogged such that it couldn't be used. The kitchen counters, floor and table were littered with dirty dishes and debris. There was feces and feces stains on the floor and garbage heaped on the back deck, so much so that exiting the back door in the event of an emergency would have been difficult and dangerous if not impossible.

[8] In addition to the clothing, dirt, animal feces, garbage and flies, the evidence disclosed other safety concerns. No child, indeed no person, should have to live in such conditions.

[9] The evidence established that in addition to the condition of their home, which was so extreme I have no difficulty concluding that it presented a safety and health hazard, that the Respondents were not making any reasonable effort to follow up on the children's academics. In the school year 2003/2004, D.W. missed 57½ days of school, or approximately 47% of the school year. C.W., who has special needs and went to school under an Individual Placement Plan, was absent 53½ days. Because of his frequent absences, he lost access to therapeutic services offered by the school. R.W. was absent 56½ days. In addition to the absences, the children were frequently 30 to 60 minutes late without excuse. Also, homework was not being monitored at home and not handed in. In spite of R.W. and D.W. showing an ability to do the work, primarily because of the time that they missed from class and incomplete assignments, neither will be advancing to the next grade level this year.

[10] These events occurred in spite of reasonable, and in fact, considerable efforts by the school staff to bring these problems to the Respondents' attention and their encouragement of the Respondents to take a more active role in their children's school work.

[11] Evidence provided by the school Principal and D.W.'s home-room teacher satisfied me that for much of the past year the three older children, when they were in school, attended smelling of cat urine.

So much so, that they were ostracized by other children. It is a circumstance that they did not need to endure, and should not have had to experience.

[12] In her Affidavit, T.W. acknowledged the condition of the home on the day the Agency's Workers arrived, but claims she did not recognize what a state parts of the home had gotten into until she saw the photographs. That statement is difficult to believe given the deplorable state of the home. It is also inconsistent with her evidence during cross-examination when she acknowledged that she did not allow neighbourhood children into the home to play with her children for the preceding two months because of the condition of her home. She also indirectly acknowledged the home was not fit for the children when she said she would not let her children go to someone else's home if their home was in the same state.

[13] T.W. put her desire to maintain animals in her home before other consideration, i.e. the needs of her children. Although I do not doubt that the Respondents' love their children, they appear to put the needs of cats and dogs before the needs of their own children.

[14] T.W. never did explain why the children missed as much time from school as they did or why they did not communicate more with the school. She said the main reason the children were absent from school was the need to keep the children home due to head lice. I do not accept that to be the case. Lice accounted for only part of their absences. T.W. also tended to put the responsibility for the children's poor school performance on the shoulders of the children themselves. She barely accepted any personal responsibility at all.

[15] T.W. pointed to post-natal depression as part of the reason she allowed herself to fall so far behind in the care of the home. Her youngest child was born [in 2002]. She claimed in January of 2004 that her depression had been addressed. If it was not, she was not doing enough to deal with her mental health issues either by way of medical treatment, counselling or other kinds of help at home. Only when the Agency became re-involved in March of 2004 was some meaningful action taken by the Respondents. T.W. claimed too that her separation from her husband in January of 2004 was a contributing factor. Perhaps it was. She also emphasized many times that she had five children to care for. Without minimizing how much responsibility that entails, one has to keep in mind that three of those children were or should have been in school during the day, leaving T.W. with only two young children to care for at home. T.W. was not employed outside of the home.

[16] Beyond lip service, neither Respondent demonstrated that they truly accept that there is any legitimacy to the concerns raised by the Applicant. They claim that to the extent that those concerns were legitimate, they have taken steps to remedy all of those concerns. They have made a start, but I am not satisfied that the task is yet complete. Their plans too are sketchy and incomplete. True, they have cleaned their home, which was one of the two most visible signs of

their neglect, but they resisted the Agency's efforts to determine the underlying cause of their behaviour.

[17] A.J.W. and T.W. say they are moving to a rental home in [name of place changed]. The reason? T.W. has found a home she likes. Little thought appears to have been given to the fact that the children will now be separated from their neighbourhood friends whom T.W. claims that they have. It is a factor, I would think, that is important to consider, especially when taking into account the ostracization that the children suffered at school.

[18] Although A.J.W. is apparently starting a new job in downtown Halifax, the details of which are also sketchy, they are moving farther away from Halifax. Although the children's physician, as well as T.W.'s physician and psychiatrist who she is seeing for the first time next month, are in Halifax, they are moving farther away from the city. They have no friends, family or support systems in [name of place changed]. T.W. could not provide the address of the house to which they are moving.

Subsection 2(1) of the *Children and Family Services Act* states:

"The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children."

The current application is for a protection finding pursuant to Section 40. Subsection 40(1) reads:

"Where an application is made to the court to determine whether a child is in need of protective services, the court shall, not later than ninety days after the date of the application, hold a protection hearing and determine whether the child is in need of protective services."

Subsection 4 provides:

"The court shall determine whether the child is in need of protective services as of the date of the protection hearing and shall at the conclusion of the protection hearing, state, either in writing or orally on record, the court's findings of fact and the evidence upon which those findings are based."

Subsection 5 reads:

"Where the court finds that the child is not in need of protective services, the court shall dismiss the application."

Subsections 22(2)(b), (g), (j) and (ja) provide:

(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

...

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

...

(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j);

[19] In arriving at my decision today I have considered these provisions as well as the remaining relevant provisions of the *Children and Family Services Act* and also the recitals, including the sixth recital which reads:

“And whereas the basic rights and fundamental freedoms of children and their families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests, and of society’s interests in protecting children from abuse and neglect.”

[20] The onus is on the Applicant.

[21] I am satisfied that the children are in need of protective services pursuant to subsections 22(2) (b), (g), and (ja). Under those sections proof of actual harm is not necessary. The Agency need not and, whenever possible, should not wait for harm to occur before acting. There is evidence of significant neglect by both Respondents. They have failed to supervise and protect their children adequately. As a result of their neglect, the children were forced to live in unsafe and unsanitary conditions until the Agency stepped in. Their safety and health was placed at risk by, among other things, the dishevelled state of their home, the dirt, the animals, the animal feces and urine to which they were constantly exposed, and the lice. If this continued, physical harm to one or all of the children was a likely occurrence. Similarly, the Respondents’ neglect and refusal of services offered since April of 2004, as well as services offered last year during the previous proceeding, created a substantial risk of emotional harm to these children. There is already evidence of withdrawal, particularly by the school-aged children while at school. I would think that with the Respondents’ stated heightened awareness they would appreciate the risk that one or more of their children might suffer anxiety or depression or worse if this state of affairs continued.

[22] While the Respondents have taken some positive steps to reduce the risk of harm to the children (I am referring in particular to cleaning the home and getting rid of some of the cats), I believe based on the evidence that there is still much more to be done. Cleaning the house is not enough. Notwithstanding T.W.'s self-assurance, I have serious concerns regarding the parenting competence of the Respondents. I fear that if this Application was dismissed at this stage there is a very real risk that the Respondents will revert to their previous ways. To date I have no report from the Respondents' marriage counsellor and, obviously, I have no report from the psychiatrist to whom T.W. has been referred. I also have nothing from the Respondents other than their assurances to convince me that the second most visible sign of their neglect, i.e. the children's education, is remedied. I believe that a Parental Capacity Assessment would be helpful in identifying the Respondents' parenting deficiencies and perhaps in recommending services such as counselling or a Family Skills Worker to help remedy such deficiencies.

[23] I therefore find that all five children are in need of protective services. The terms and conditions of the Interim Order will continue, which Interim Order provides that the children will remain in the care and custody of the Respondents subject to the supervision of the Agency. There are other conditions that will continue.

[24] I am also granting the variation application of the Agency and order that pursuant to subsection 39(4)(g) of the *Children and Family Services Act*, the Respondents shall be referred for the preparation of a psycho-social history, a psychological examination and a parental assessment including an examination and assessment of parenting skills and techniques, and a home study and assessment.

Dellapinna, J.