

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. T.L.*, 2019 NSSC 182

Date: 2019-06-05

Docket: 113857

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

T.L. and J.C.

Respondents

LIBRARY HEADING

Judge: The Honourable Justice Theresa M. Forgeron

Heard: May 21 & 22; June 5, 2019

Summary: Child Protection; Protection Finding; Substantial Risk of Physical Harm and Emotional Abuse

Oral Decision: June 5, 2019

Written Release: June 13, 2019

Counsel: Jean Webb for the Minister of Community Services
T.L., self - represented
J.C., self - represented

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“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.”

By the Court:**Introduction**

[1] This decision is about whether D, the 14-year-old daughter and T, the 13-year-old son are in need of protection because of escalating concerns for their physical and emotional safety.

[2] The daughter and son are the children of JC, the mother and TL, the father. The mother and father have been parenting separately since about 2006. Until recently, the parenting arrangement was one of shared and joint custody. The shared parenting arrangement became unsettled over the past few years. The daughter increasingly expressed dissatisfaction with the shared parenting regime. She wants to live with her mother.

[3] In March 2019, the Minister of Community Services became involved with this family because of a referral from a guidance counsellor at the daughter's school. An investigation ensued. The Minister ultimately concluded that protection concerns were substantiated. Initially, the Minister attempted to work with the family on a voluntary basis. The father would not consent to supervised parenting time.

[4] In the absence of co-operation, court proceedings were commenced. Interim orders issued on April 3 and 24, 2019. A Guardian ad Litem was appointed for the daughter.

[5] The Minister is now seeking a protection finding based on a substantial risk of physical harm or a substantial risk of emotional abuse. The mother consented to the protection finding. In contrast, the father did not consent.

[6] The father states that the Minister has no reason to be involved in his life or in the lives of his children. He states that he neither emotionally nor physically abused his children. He further states that the children are not at a substantial risk of physical or emotional abuse. The father states that many of the family difficulties arose because of the mother's alienating conduct. He states that the mother is manipulating the system to circumvent the shared parenting regime.

[7] In order to resolve the contested issues, a protection hearing was held on May 21 and 22, 2019. During the hearing, evidence was received from a school

guidance counsellor, two protection workers, the Guardian ad Litem and from the father. The mother did not testify. In addition, a Guardian ad Litem was appointed for the son, although an interview and report were not able to be completed before the conclusion of the protection hearing.

[8] I adjourned the decision until June 5, 2019, so I would have time to review the evidence and the submissions of the parties.

Issues

[9] In this decision the following issues will be addressed:

- What is the position of each of the parties?
- Has the Minister of Community Services proved that the children are in need of protection because they are at a substantial risk of physical harm or emotional abuse?

Analysis

What is the position of each of the parties?

Position of the Minister and the Mother

[10] The Minister and the mother support a finding that the daughter and the son are at a substantial risk of physical harm and emotional abuse by the father. They state that in his frustration and anger, the father pushed, shoved and berated the children. At times, he called them derogatory names. From the perspective of the Minister and the mother, the father's lack of emotional regulation and escalating temper creates an environment where there is a substantial risk of physical harm and emotional abuse.

Position of the Father

[11] The father denies any protection concerns. He is convinced that both the daughter and the mother are manipulating the system. The father bases his submission on several factors, including the following:

- He has no record of violence despite parenting the daughter and the son 50% of the time since 2006.

- There were absolutely no problems until April 2015 when the mother denied him parenting time. She refused to follow the joint and shared parenting regime. The matter ultimately was decided by the court. The father states that after a contested hearing, the court held that allegations made against him were not true, were highly exaggerated and were taken out of context. As a result, the shared parenting regime was reinstated.
- Because the mother was unsuccessful in court, the father states that she devised another strategy to alienate the children – the mother spoils the children and places few demands on them. The father says that the mother attempts to buy the children’s affection with trips and gifts, including the purchase of cell phones. He states that the children have complete freedom while living with their mother. For example, they go to sleepovers every weekend, stay up late on school nights, stay out late on weekends, and use their phones all night long, all while in their mother’s care.
- In contrast to the mother’s indulgent approach, the father states he imposes age-appropriate rules and regulations to ensure the children’s health and safety. At times, the father removed the children’s cell phones, restricted attendance at sleepovers and assigned the children household chores to teach them responsibility. The father states that the daughter resisted and resented his rules.
- The father states that the children exaggerate and create false stories about him because they want to please their mother and because they want to live in a home devoid of structure and responsibility.
- The father says that he has concrete proof that the children exaggerate and create false stories about him. He said that in January, he gave each child a journal and told them to record all particulars of any abuse or inappropriate parenting. Their journals were blank because there was no abuse or inappropriate parenting.
- The father says that the daughter made false allegations after he grounded her for the first time. Grounding is a reasonable punishment.
- Although the father admits to name calling on limited occasions, he indicates that such does not constitute abuse. He apologized for his conduct and it has not been repeated in some time.
- The father also denies abusing the daughter when he found her drinking alcohol after curfew at a friend’s home. He notes that the mother

approved of his discipline at the time. He states that his actions were a reasonable punishment in the circumstances.

- The father states that protection workers misquoted him in affidavits and during oral evidence. He states this is confirmed from his secret video recording of their meeting.
- The father states that child protection authorities and the mother are undermining his parenting and are undermining his relationships with the children.

Position of the Daughter

[11] According to her Guardian ad Litem, the daughter “presents as genuine, scared, and deeply concerned about having to see her father”. The Guardian indicates that the daughter currently does not want to have any contact with her father. The Guardian recommends counselling. All parties agree with that recommendation.

Has the Minister proved that the daughter and the son are children in need of protection, because they are at a substantial risk of physical harm or emotional abuse?

Brief Review of Applicable Law

[12] 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**, 2008 SCC 53. The phrase “clear, convincing, and cogent” does not create an additional or heightened level of proof.

[13] In making credibility findings, I applied the law set out in **Baker-Warren v. Denault**, 2009 NSSC 59, as approved in **Gill v. Hurst**, 2011 NSCA 100. In addition, I made inferences in keeping with the comments of Saunders, J.A. in **Jacques Home Town Dry Cleaners v. Nova Scotia (Attorney General)**, 2013 NSCA 4.

[14] In making my decision, I am mindful of the threefold legislative purpose as stated in s. 2(1) of the *Children and Family Services Act*- to promote the integrity of the family, to protect children from harm, and to ensure the best interests of children. The paramount consideration, however, is the best interests of the children as stated in s. 2(2) of the *Act*.

[15] The *CFSA* must be interpreted according to a child-centered approach, in keeping with the best interests principle as defined in s. 3 (2) of the *Act*. This definition is multifaceted. It directs the court to consider various factors unique to each child, including those associated with the child's emotional, physical, cultural, social and developmental needs, and those associated with risk of harm.

[16] The Minister relies on two provisions of the *CFSA* to establish a protection finding, both of which are based on substantial risk. Substantial risk is defined in s. 22(1) of the *Act* as meaning a real chance of danger that is apparent on the evidence. In **M.J.B. v. Family and Children's Services of Kings County**, 2008 NSCA 64, para 77, Bateman, J.A. confirmed that in relying upon "substantial risk", the Minister need only prove that there is a real chance that the future abuse will occur, and not that future abuse will actually occur.

Decision on Substantial Risk of Physical Harm

[17] I find that the Minister did prove that the daughter and the son are children in need of protection pursuant to s. 22(b) of the *Act*, which is a finding based on a substantial risk of physical harm. The applicable statutory provisions state as follows:

- 22 (1) In this Section, "substantial risk" means a real chance of danger that is apparent on the evidence.
- (2) A child is in need of protective services where:
 - (a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;
 - (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

[18] The following are the reasons which support my conclusion that the children are at a substantial risk of physical harm caused by the failure of the father to supervise and protect the children adequately:

- The father and the mother are engaged in a high conflict, polarizing and lengthy parenting dispute. The father is convinced that the mother is alienating the children from him. The father is convinced that the mother's singular goal is to destroy his relationship with the children.

- The father is consumed by this conflict. The father views all that occurs from this lens.
- The father is so consumed by the conflict, that he is unable to parent in an objective and healthy fashion. The father is unable to focus on the needs of the children. The children's best interests have fallen victim to the demands of the parental conflict.
- The father has adopted a war-like approach to cope, viewing the mother and now the daughter as the enemy, and himself as victim. His war-like approach includes the surreptitious recording of his children and on another occasion, the protection workers. The father does not believe that his secret recordings were inappropriate. Instead, he feels vindication in what he perceives is proof of his victimization and innocence.
- The father is incorrect. The secret recordings are not proof of his innocence. Rather, the secret recordings are proof of the father's inability to place his children's interest in priority to his needs. The recordings violate the children's privacy in their own home, a place where the children should feel the most secure and protected.
- I find the recordings are proof of how poorly the father is currently functioning as a parent. The father is often angry, anxious and stressed because of the parenting dispute. These emotions significantly cloud his judgement. For example, I find that the father pushed and shoved the daughter when reacting to what the father considers to be the daughter's inappropriate conduct. In addition, the father threw an object when upset with the daughter. The father also frequently yells and berates the children in anger.
- The father feels that he is losing the war because he is losing control of his children and because the children are resistant to him. The father feels betrayed. In the face of these circumstances, the father is becoming increasingly volatile.

[19] I find that given these circumstances, the children are at a substantial risk of being physically harmed by the father's failure to supervise and protect the children adequately. Unless the father changes his parenting and his attitudes by acquiring new skills and a better appreciation of the children's needs, it will only be a matter of time before the children suffer significant physical harm.

Decision on Substantial Risk of Emotional Abuse

[20] The Minister also proved a protection finding based on a substantial risk of emotional abuse as it relates to the daughter. There is insufficient proof in respect of the son.

[21] Section 22(2)(g) of the *Act* provide the court with the jurisdiction to make a finding based on a substantial risk of emotional abuse. This provision states as follows:

22(2) A child is in need of protective services where:

(g) there is substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the abuse;

Section 3(1) (la) of the *Act* defines emotional abuse as follows:

(la) “emotional abuse” means acts that seriously interfere with a child’s healthy development, emotional functioning and attachment to others such as

- (i) rejection,
- (ii) isolation, including depriving the child from normal social interactions,
- (iii) deprivation of affection or cognitive stimulation,
- (iv) inappropriate criticism, humiliation or expectations of or threats or accusations toward the child, or
- (v) any other similar acts;

[22] A finding of a substantial risk of emotional abuse is not one that will be entered lightly. It involves both objective and subjective elements. The parental conduct must be viewed objectively to prove actions that seriously interfere with a child. The parental conduct must also be viewed subjectively based on the impact that the conduct has or will likely have on the specific child.

[23] In the end, the Minister must prove that there is a substantial risk that the father will seriously interfere with three aspects of the daughter’s life – that involving her healthy development, emotional functioning and attachment to others. In addition, for a finding of substantial risk, the Minister must also prove that the father will not or cannot participate in services to remedy or alleviate the abuse.

[24] I find that the Minister did prove a substantial risk of emotional abuse for the reasons previously identified under the last issue, coupled with the following:

- The father berated, belittled and criticized the daughter over several years. The daughter's confidence and self-esteem are being undermined and eroded by the father's inappropriate parenting.
- The daughter is not an adult. She is not able to cope with the constant criticisms. She feels rejected.
- The daughter stated that she felt sick to her stomach when she visits her father because of the stress and anxiety she experiences. She once made a comment about killing herself. The daughter was not suicidal, rather this was an expression of the extent of the daughter's upset.
- The daughter finally sought out professional help. She knew that matters were progressively worsening at her father's home and desperately wanted to be sheltered from this experience. She was wise to do so.

[25] The daughter's experience of the father's parenting in the face of growing hostilities proves that the daughter is at a substantial risk of emotional abuse because her healthy development and emotional functioning are being negatively affected and her attachment to her father, a key figure in her life, is in jeopardy of being destroyed.

[26] The father has not consented to services for his parenting because he does not yet recognize that his parenting is placing his children at risk. I am hopeful that this decision will provide him with some insight. With insight, services can be put into place to remedy the protection concerns and allow the father child relationship to heal, develop and grow as it should.

Conclusion

[27] In summary, this decision is about whether the daughter and the son are children in need of protection. I find that the Minister proved that the daughter and the son are children in need of protective services in that they are at a substantial risk of physical harm and the daughter is at a substantial risk of emotional abuse.

[28] I hasten to add that this decision is not about which parent is responsible or more responsible for the polarized parenting dispute which has negatively consumed this family for too long. That issue was not before me.

[29] What is before me is the fact that two wonderful children have been caught in the middle of their parent's conflict. The children, and not the parents, are the victims.

[30] This conflict must stop. You each have a role to play to ensure that the children are no longer harmed. You each must acquire new skills to change your own parenting. You cannot change the other party. Although I cannot order services today because I heard evidence only on the protection issue, I nonetheless recommend that you discuss services with your social worker and participate on a voluntary basis so that healthy parent child relationships can be restored.

Theresa M. Forgeron, J.