

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *Nova Scotia (Community Services) v. KM*, 2019 NSSC 312

**Date:** 2019-10-28

**Docket:** SFHCFSA 113966

**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v.

K.M. and S.H.

Respondents

Judge: The Honourable Justice Theresa M. Forgeron

Heard: September 10, 11, 27; and October 10, 2019, in Halifax, Nova Scotia

Oral Decision: October 10, 2019

Written Decision: October 28, 2019

Counsel: Peter McVey, Q.C., for the Applicant  
Margo Fulmer, for the Respondent, K.M.  
Jennifer Reid, for the Respondent, S.H.  
Kelsey Hudson, for the Guardian ad Litem

## **By the Court:**

### **Introduction**

[1] This decision concerns two children, E and B, who are the children of KM and SH. The son will soon be 14 years old, and the daughter will be 12 years old.

[2] The mother and the father separated in approximately April 2006 after a verbal altercation, which attracted the attention of the police, who in turn reported the incident to child protection authorities. The initial acrimony did not abate. The parties continue to be embroiled in an unrelenting, all-consuming parenting dispute which regularly engages the police, child protection authorities and the courts.

[3] Not unexpectedly, the children were negatively affected by the parental conflict. The Minister finally commenced legal proceedings in April 2019, primarily because of concerns surrounding emotional abuse arising from the high conflict parenting dispute.

[4] The protection application involved two interim hearings held on April 15 and May 8, 2019. The interim supervision orders placed the children in the care of the mother, with supervised access to the father. In addition, the Minister asked to have Ms. Sly appointed as the son's Guardian ad Litem. The father disputed her appointment. After a contested hearing, I ordered the appointment.

[5] The next substantive hearing involved the protection finding. The mother consented to a finding of a substantial risk of emotional abuse. The father initially contested the protection finding. A settlement conference was therefore convened on June 19, 2019. A proposed agreement was reached. The father was provided time to reflect on the proposed settlement; a second appearance was scheduled on June 20, 2019. At that time, the father consented to a protection finding based on a substantial risk of emotional abuse.

[6] The matter was next scheduled for disposition hearing. During a pretrial, the father advised that he was now contesting both the protection finding and the proposed disposition order.

[7] The contested hearing was held on September 10, 11, and 27, 2019. The following people testified: Mr. Gillis; Ms. Blaikie; Ms. Boyce; Ms. Sly; the mother; the father; the father's friend; and the paternal grandfather. The report of

the counsellor, Roger Godin, was entered by consent. Further, the children's out-of-court statements were admitted as meeting the threshold reliability standard.

[8] The decision was adjourned to October 10, 2019.

### **Issues**

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

- What is the position of each of the parties?
- Do the son and daughter remain children in need of protection because they are at a substantial risk of emotional abuse?
- What is the appropriate disposition order?

### **Analysis**

[10] **What is the position of each of the parties?**

#### *Position of the Minister and the Mother*

[11] The Minister and the mother support a finding that the children are at a substantial risk of emotional abuse or were emotionally abused. From their perspective, the father's lack of emotional regulation and unwillingness to participate in services, creates a substantial risk of emotional abuse. They further state that the father negatively involves the children in the parenting dispute; demeans the mother in the presence of the children; and degrades the children.

#### *Position of the Father*

[12] For his part, the father states that the Minister has no reason to be involved in his life or in the lives of the children. He states that he is not emotionally abusive. He further states that the children are not at a substantial risk of emotional abuse from him. The father relies upon his evidence, and the evidence of the paternal grandfather and friend to support his version of events.

[13] In addition, the father urges the court to disregard the protection finding that was entered in June 2019. He says that that he did not have legal advice and that he did not appreciate the nature and extent of the protection finding. He states that the children are not in need of protection – that the evidence does not support a protection finding.

[14] From the father's perspective, most of the family difficulties arose because of the mother's alienating conduct. He stated that the mother is manipulating the system to circumvent the court-ordered parenting plan. To support his position, the father relied upon various submissions, including the following:

- The mother was sanctioned by the courts at various times for failing to follow the parenting provisions of the court order.
- The mother alienated the children by discussing the court proceedings with them and by reporting false allegations. The mother's alienating approach influenced the children's decisions to attend or not attend access. The mother's alienating approach influenced the children's ability to accurately recall events.
- The allegations put forth by the Minister are historical and all allegations originated with the mother. These allegations were all previously investigated and no action taken. No action was taken because there were no protection concerns.
- He continued to exercise unsupervised parenting time after the Minister concluded the protection investigations.
- His unsupervised parenting time was repeatedly confirmed by the courts in many proceedings over the years, and despite the mother's allegations.
- The Minister made significant errors when reviewing historical data, often taking facts out of context or amplifying their significance. For example, the daughter only slept on the floor for a brief period while awaiting the delivery of bed frames. Despite this explanation, the father was inappropriately accused of neglect. As another example, food issues were advanced to support a neglect finding. Yet, there was only one occasion when food was used as discipline and the father confirmed that he would not do so again. Further, it was impossible for the father to withhold breakfast because the children were not in his care at the time breakfast would be served. Finally, the father's refusal to provide the children with junk food can scarcely be a protection concern given that the father provides healthy and nutritious food to the children when they are in his care.

- Although acknowledging that he texted adverse comments about the mother to the son's cellphone, the father was convinced that he was actually communicating with the mother and not the son.

[15] In addition, the father states that the Minister never investigated the well-documented mental health issues of the mother. The records of Dr. Hudec were never obtained. Instead, protection workers focused on him and thus are not addressing the real issue.

[16] Finally, the father confirmed that he consented to the children attending counselling without agency involvement. He also advised that he attended most of the IWK sessions for which the father was registered and without agency involvement.

#### *Position of the Son*

[17] According to his Guardian ad Litem, the son presents as “calm, matter of fact, level-headed, friendly but not effusive, and a mature 13½ year old.” The son spoke positively of his visits that occur in the presence of the paternal grandparents and in the presence of the father's girlfriend. He noted that during these occasions, that the father “acts better and is no trouble.” The son told Ms. Sly some of his concerns about the father's conduct in the absence of the paternal grandparents or girlfriend. The son is wary of being unsupervised in the father's presence because of the father's conduct.

[18] Ms. Sly made four recommendations. First, access in the presence of the grandparents should continue. Second, all access should be supervised. Third, overnight access should be placed on hold. Fourth, the son should continue with counselling.

[19] **Do the son and daughter remain children in need of protection because they are at a substantial risk of emotional abuse or because of emotional abuse?**

#### *Brief Review of Applicable Law*

[20] 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.

[21] 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.

[22] 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*.

[23] 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.

[24] The Minister relies on a substantial risk of emotional abuse and emotional abuse to substantiate a protection finding. 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.

[25] Section 22(2)(g) of the *Act* provides 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 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;

[26] Section 3(1)(1a) of the *Act* defines emotional abuse as follows:

(1a) “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;

[27] A finding of a substantial risk of emotional abuse, like any other protection finding, is not one that will be entered lightly. Evidence must support such a finding in keeping with the civil burden of proof. Such a finding 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.

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

### *Decision*

[29] I find that the Minister did prove a substantial risk of emotional abuse for the following reasons:

- The June order is presumed correct. The father consented to a protection finding in June. The father did not appeal the order. I find that the father fully appreciated the significance of the June order. The father is not a vulnerable witness or party. The father is intelligent. The father is not a stranger to court proceedings. No legal authority was provided to support the father’s submission that the protection finding can be vacated in such circumstances.

- The evidence does not support a finding that the children are no longer in need of protection. Indeed, the evidence confirms that the father has done little to address the protection concerns after the protection finding was entered. To the contrary, the counsellor, Roger Godin stated that the father was “very resistant to the idea of attending therapy.” Mr. Godin stated that the father did not assume responsibility and constantly blamed the mother for all “that has gone wrong in the children’s life.” The father stopped attending counselling.
- The father and the mother are embroiled in a high conflict, polarizing and protracted parenting dispute. The father is convinced that the mother is alienating the children from him. The father is convinced that the mother is trying to sabotage his relationship with the children.
- The father is consumed by the conflict. He 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. He 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’s disconcerting text messages to the son are emblematic of his inability to prioritize his children’s interest. These texts were a brutal assault against the children’s mother. There was no apology. There was no remorse. These texts are examples of how poorly the father is functioning as a parent. He is often angry, anxious and stressed because of the parenting dispute. These emotions significantly cloud his judgement.
- The father feels betrayed by the children, the courts and the protection workers. The father perseverates on the mother’s conduct. The father is angry, upset and frustrated. The father is blind to the children’s needs. The father believes that holding the mother in contempt is the solution to resolve the serious issues confronting the children.
- Because of his beliefs, the father acted in an inappropriate and damaging fashion. He attempted to draw the children into the dispute by negatively portraying the mother. He belittled and taunted the son. The father is frequently angry and upset. He withholds affection. He yells at the children. The children were often anxious, stressed and upset in the father’s care. The children did not know how to cope. In making these findings, I accept the statements of the children as relayed to Mr. Gillis, Ms. Blaikie, Ms. Boyce and Ms. Sly.



- The father's conduct, viewed objectively, confirms that there is a substantial risk that the children will suffer emotional abuse. The father's conduct will likely seriously interfere with the children's healthy development, emotional functioning and attachment to others.
- There is a substantial risk that by calling the son demeaning names, and by making unsettling, pejorative and cruel comments to the children about their mother, that the children will feel rejected, isolated, deprived of affection, humiliated and hurt. The children's self-esteem was negatively affected, eroded and undermined by the father's inappropriate parenting and by his angry presentation.
- Subjectively, the evidence confirms that the children are not able to cope with their father's negative parenting and his criticisms. They feel rejected. Their attachment to their father is negatively impaired. The children's experience of their father's parenting in the face of growing hostilities proves that they are at a substantial risk of emotional abuse because their healthy development and emotional functioning are being negatively affected and their attachment to their father, a key figure in their life, is in jeopardy of being destroyed.
- The father has not consented to participate in services for his parenting deficits because he does not yet recognize that his parenting is placing his children at risk. Hopefully, this decision will provide him with an opportunity for insight. With insight, services can be put into place to remedy the protection concerns and to foster a healthy father/child relationship.

[30] In summary, I find that the Minister met the burden upon her. The children continue to be in need of protection because they are at a substantial risk of emotional abuse.

[31] **What is the appropriate disposition order?**

*Position of the Minister, the Mother and Son*

[32] The Minister, mother and son agree that the children should continue in the care and custody of the mother but subject to the supervision of the Minister. They consent to the mother working with the protection social worker, social work supervisor, access co-ordinator, case aides, and the family support worker. They

consent to the mother and the children engaging in counselling services. They consent to Ms. Sly continuing as the son's *Guardian ad Litem*.

[33] These parties also want the father to participate in similar services and to obtain a psychiatric assessment. In the meantime, they ask that access include family dinners at the paternal grandparents and other supervised access at times acceptable to the children.

#### *Position of the Father*

[34] The father objects to the Minister's involvement. He refused to meaningfully participate in counselling. He also objects to a psychiatric assessment noting that such an assessment is better suited to the mother. He seeks frequent, unsupervised parenting time.

#### *Decision*

[35] The Minister seeks a supervision order pursuant to s.42(1)(b) of the *CFSA*. The Minister filed a Plan of Care in compliance with s.41(3). Services must be relevant to the protection finding and must address the protection concerns.

[36] The father refuses to meaningfully engage in services. The father went through the motions of attending a few counselling sessions with Mr. Godin, but he did not actively engage or participate in the process. He eventually stopped attending altogether.

[37] The father's decision is most unfortunate. Intensive therapeutic counselling is required so the father can gain insight into the issues and to effect the necessary changes to his parenting style. The father is resistant to participate, likely because such an admission runs counter to his alienation narrative, a narrative that has consumed and propelled the father for many years.

[38] The Minister seeks a psychiatric assessment to determine if there are any underlying mental health issues which are influencing the father's conduct and decision-making. The father disagrees, noting that past psychological assessments confirmed that he did not have any underlying mental health problems. In contrast, the counsellor, Mr. Godin, recommended an assessment because of the father's presentation during counselling.

[39] Given the circumstances of this case, I find that the father must participate in a psychiatric assessment to determine if there are any mental health issues which are preventing him from fully engaging in services.

[40] Further, the father must participate in intensive therapy, preferably with a psychologist, with the following stated goals:

- To acquire skills to manage anger, resentment and frustration in a healthy fashion.
- To acquire skills to improve communication with the children.
- To acquire knowledge on child development in preteens and teenagers.
- To gain insight into the direct and indirect harm that children experience when exposed to parental conflict.
- To acquire skills to protect the children from the parental conflict.
- To acquire knowledge about attachment, self-care and nutrition.
- To acquire skills related to positive and appropriate discipline.
- To acquire skills to better understand the children's feelings and emotions.

[41] Until the father gains insight, his parenting time will be supervised by one of the paternal grandparents or any other person approved by the agency. The father's girlfriend is encouraged to apply for the role of supervisor.

[42] The supervised parenting time will include the family dinners at the paternal grandparents. In addition, supervised access can include access within the community, such as the Wednesday night volleyball league games for the son, and a weekly cooking class with the daughter. Such community based access will provide the children with an opportunity to have meaningful and enjoyable contact with their father, as it will include an activity that is tailored to each child's taste.

[43] The disposition order must also include the following terms:

- The children will be placed in the supervised care of their mother pursuant to the usual terms and conditions.
- The mother must continue to participate in individual counselling, and the counselling is to include education on the direct and indirect harm

that children experience when exposed to parent conflict; the acquisition of skills to protect the children from the parental conflict; together with the other items mentioned in the Minister's Plan of Care.

- The children must continue to participate in individual counselling.
- The father and the mother must engage with a Family Support Worker for services as arranged by the Minister.
- The father and the mother must not share any information with the children that may be emotionally harmful to them. In particular, they shall not share with or expose either child to any document filed, produced or disclosed in this legal proceeding.
- The father shall not discuss with or in the presence of either child any of the following:
  - Any direction given to him by the Agency, its representatives and employees regarding the schedule, frequency, duration, supervision or other terms and conditions of the children's access visits with the father, or
  - Any aspect of the care, supervision or custody of the children enjoyed by the mother, or the Agency's supervision of the children's care and custody.

## **Conclusion**

[44] The Minister proved that the children remain children in need of protection. Services to address the protection concern include counselling, participating in services with a family support worker, exercising supervised access, and the father completing a psychiatric assessment.

[45] I also wish to clarify that this decision is not about which parent is responsible or more responsible for the polarized parenting dispute which negatively consumed this family far too long. That issue was not before me. That issue is not relevant to this decision.

[46] To reiterate, this decision is about how to protect the son and daughter from their parent's conflict. To do so, both parents must meaningfully engage in services so that they can each acquire insight and skills to give priority to the children's

needs. The mother and the father must end their high conflict parenting dispute so that the children can thrive.

[47] Mr. McVey is to prepare the order.

Forgeron, J.