SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services v. G.R.*, 2020 NSSC 207

Date: 2020-07-29
Docket: No. 110770
Registry: Sydney, NS

Between:

Nova Scotia (Community Services)

Applicant

v.

G.R. and.C.

Respondents

LIBRARY HEADING

Restriction on Publication

Section 94(1) of the Children and Family Services Act applies to this decision and provides as follows:

94(1) 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 a relative of the child.

Information that would identify the children, parents or foster parents in this proceeding has been anonymized so that this decision can be published

Judge:	The Honourable Justice Kenneth C. Haley
Heard:	March 3 and 4, 2020; June 18, 2020 and July 7, 2020 in Sydney, Nova Scotia
Written Decision:	July 29, 2020
Summary:	The Minister of Community Services seeks permanent care of the Respondents' child, W., pursuant to s. 42(1)(f) of the *Children and Family Services Act*.

The child was taken into care by the Minister at birth.

The Respondent, G.R. failed or refused to follow the Minister's Plan of Care, insisting she did not require further services, given the extensive history of taking services in the past.

The Court determined G.R.'s decision not to take further services, specifically Dialectical Behavioral Therapy, lacked insight into the protection concerns and it was not in the best interests of the child to be returned to G.R.

Given G.R.'s inability to understand and/or accept the identified child protection concerns, the Court found it was unsafe to return the child to G.R.'s care.

Issues: (1) Permanent Care and Custody vs. Dismissal

Result: Permanent Care and Custody

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Judge:	The Honourable Justice Kenneth C. Haley
Heard:	March 3 and 4th; 2020, June 18, 2020 and July 7, 2020, in Sydney, Nova Scotia
Written Release:	July 29, 2020
Counsel:	Danielle Morrison for the Applicant Alan Stanwick for the Respondent, G.R. K.C. self-represented (did not participate)

By the Court:

[1] This is the Application of the Minister of Community Services (hereinafter called the Minister) dated July 13, 2018, pursuant to s. 42(1)(f) of the *Children and Family Services Act*, seeking an Order for permanent care for the child W, born July *, 2018 who was taken into care at birth.

[2] This matter was the subject of a protection hearing, which was heard together with the permanent care hearing in the matter regarding four older children on September 4, 7, October 15, 17 and 18, 2018.

[3] The decision of this Court in **Nova Scotia Community Services v G.R.**, 2019 NSSC 23, placed the four older children M., G., K. and I. in the permanent care of the Minister (affirmed on appeal, see **G.R. v. Minister of Community Services,** 2019 NSCA 49. The Court reviewed the background and circumstances of G.R., together with the relevant law which is applicable to this application involving W. All of the evidence and Exhibits in the preceding matter are agreed to be applicable in this case involving W.

[4] Ultimately the Court ruled in **Nova Scotia (Community Services) v. G.R.,** supra, regarding the four older children as follows at paragraphs 88-98 wherein permanent care was ordered:

> [88] I reject the plan put forth by G.R. Her plan does not address the short term and long term needs of M., G., K., and I. Some progress was made by G.R.; but the events of February 2017 and beyond clearly establish that G.R. has no meaningful insight into the child protection concerns described herein.
>
> [89] G.R.'s decision to visit her father lacked insight and placed her children at risk. G.R. has expressed contrition for her actions; however past history suggests she cannot be trusted and her credibility is suspect.
>
> [90] The Court does not intend to resolve who may be responsible for G.'s dental issues, suffice to say his sister M. had similar issues while in the care of G.R.
>
> [91] The birth of W. in July 2018 confirms earlier fears that G.R. would reunite with the father of her previous nine children. G.R. was well aware that there was essentially a "zero tolerance" policy in effect with regarding to her having a relationship with K.C. To have a tenth child with K.C. under these circumstances is highly unconscionable and shows a blatant and total disregard for the best interests of her children.

> [92].Any suggestion that the father of W. is some person other than K.C. does not assist G.R. in her bid to have the children returned to her. Not to disclose the identity of the father, or participate in DNA testing, only establishes that G.R. attempted to manipulate the reality of her situation by being evasive and uncooperative. Such conduct cannot be condoned, nor be seen to be in the best interests of her children to any extent.
>
> [93] G.R. testified that K.C. was out of her life. G.R. has not established a base of credibility upon which the Court can safely conclude that K.C. is completely out of her life. To this point, the history of the relationship with K.C. betrays G.R.'s evidence to the contrary. Justice Forgeron predicted this outcome in her decision. Since that time G.R. had has four, if not five, children fathered by K.C. G.R. has clearly not been listening to, nor understanding, the child protection concerns associated with K.C. Had G.R. accepted services, this concern had the potential to be addressed, but G.R. has chosen her path; a path which prohibits the safe return of the children to her.
>
> [94] The court finds that it is not safe to put G.R. in a child caring role at this time. The evidence is clear, convincing, and cogent that G.R. cannot be entrusted with her children M., G., K., and I. Past history and present events make it clear that it would be too dangerous to put G.R. in a child caring role at this time.
>
> [96] The outstanding child protection concerns remain unchanged. G.R. made no progress to address the child protection concerns since the protection stage of this proceeding. It seems this was her defined strategy; to resist and be non-compliant. The legislative timelines have been exhausted. Nothing more can be done to reliably address the child welfare concerns about the Respondent, G.R. The statutory requirements of s. 42(2); (3); and (4) have been met.
>
> [97] The Court finds the Order requested by the Minister is the appropriate one, having considered the totality of the evidence and applicable law. The Court agrees with and accepts the Minister's submissions. It is in the best interest of M., G., K. and I. to be placed in the permanent care and custody of the Minister, pursuant to s. 42(1)(f) and s. 47 of this *Act*. The circumstances justifying this conclusion are unlikely to change within a reasonable foreseeable time.
>
> [98] An Order for permanent care in favour of the Minister will thus issue, with no provision for access.

[5] The Court ruled by a written decision (unreported) on January 17, 2019 that W. was a child in need of protective services pursuant to ss. 22(2)(b) and 22(2)(ja) of the *Act*.

[6] At paragraphs 5 and 7 of this decision, the Court wrote:

> (5) G.R. is encouraged to review the pending Plan of Care, and demonstrate sufficient change for the Court to safely consider the return of W. to her.

> (7) …the Court nonetheless is satisfied the protection finding is appropriate based upon the totality of evidence heard at the permanent care hearing.

[7] The final disposition hearing evidence regarding W. was heard by the Court on March 3 and 4, 2020 which was, unfortunately, adjourned to June 18, 2020 due to Covid-19 public health safety concerns.

[8] The Court received written submissions from the Minister on July 2, 2020, which were replied to orally by counsel for G.R. on July 7, 2020.

[9] In addition to the evidence heard at the protection and permanent care hearings, the Court heard from the following witnesses who testified on behalf of the Minister:

- Dr. Jeffrey MacLeod
- Ryan Ellis
- Daniel Kalbheen

[10] In association with the witnesses, the Court received the following additional documents:

- 1A – Letter from Dr. MacLeod
- 2A – Copy of Dr. MacLeod's file
- 3A – Affidavit of Daniel Kalbheen
- 4A – Affidavit of Daniel Kalbheen
- 5A – Affidavit of Daniel Kalbheen
- 6A – Affidavit of Daniel Kalbheen
- 7A – Plan for Permanent Care

[11] Counsel for the Respondent called as witnesses:

- Mr. Todd Vassallo

- G.R.

[12] The following Exhibits were also tendered:

- 8A – Eastern Nova Scotia Mi'kmaw Mental Wellness Team Referral Form
- 9A – G.R. Certificate for Traffic Control
- 10A – G.R. Certificate from Family Affordable Meal Planning Program
- 10B – G.R. Certificate from Healthy Relationship Program
- 10C – G.R. Certificate from Women 4 Change Program
- 10D – G.R. Certificate from Effects of Domestic Violence on Children Program.

[13] At the conclusion of the protection hearing for the four older children, this Court wrote (see **Nova Scotia (Community Services) v. G.R**., *supra*, wherein at paragraph 4, the Court emphasized the importance of G.R. to follow through with services:

> ….the Court acknowledges that G.R. has made great progress since January 2014. Historically, there have been both failures and successes in terms of parenting. In this particular case the Court will prefer to exploit the successes, rather than dismiss them with dated historical evidence.
>
> The Court accepts the Minister's submission that historical evidence is relevant and that essentially G.R. cannot be trusted to follow through with her commitments. The Court, nonetheless, believes G.R. should have the opportunity to prove she can be trusted as a mother, <u>but she must commit to the process for the return of her children to be an option</u>. (emphasis added). G.R. must become less combative, and less judgmental of the players and the process…..

[14] And again at the final Permanent Care Hearing this Court wrote at paragraphs 67 and 68:

> [67] It is the opinion of the Court that G.R. has failed to commit to the undertaking she made to this Court. G.R. has done so at her peril, and has severely disadvantaged her bid to have the children returned to her care because of her entrenched and combative attitude.

> [68] G.R. has fought the Minister and the Court every step of the way. Her decision that she does not need any further services and that she has learned all that is required to properly parent her children is flawed. Her decision lacks insight into the protection concerns, and is not in the best interests of the children.

[15] It is in this context that the permanent care application regarding the child W. will be analyzed to determine whether or not any change has occurred so as to reduce or eliminate the protection concerns regarding the child W.

[16] Exhibit 7A is the Minister's Plan of Care dated January 13, 2020, filed in relation to W. The Minister identified its concerns at page 3 of the Plan as follows:

> Historical impact of substance use either by G.R. or through those she chooses to associate with.
>
> G.R. currently and historically presents in her executive functioning, as well as choice making placing herself and those in her care at risk.
>
> G.R. has struggled with being open and honest, and continues to deprive or hide information in relation to her relationships.
>
> Inadequate parenting skills.

The Plan goes on to state at page 3:

> While G.R. made some significant improvements in relation to her insight, development of positive social supports, and seeking therapeutic supports; G.R. remains resistant in nearly every rule of the Agency has made in this process and continues to create barriers to address our concerns. Due to inadequate participation in assessment services, the Agency could not adequately determine what services, if any, would be required to address the risk presented by G.R. G.R. presented within her access limited parental ability, although at all times showed significant love and affection for her children. G.R. has shown her ability to maintain a home; however the Agency was limited in its ability to view the residence during unannounced visitation suggesting that G.R. does not spend a great deal of time at the residence. G.R. was placed under review by Income Assistance due to her not paying rent, this information was not provided willingly to Agency Workers for several weeks even after her eviction from her residence. G.R. has repeatedly shown a propensity in withholding critical information from all supports and services connected to her file, including her principle support network within the Native Council.
>
> …G.R. has refused aspects of the Parental Capacity Assessment with Dr. Reginald Landry, and has refused to complete a new assessment. Agency has

> attempted to enforce services recommended as potentially appropriate to G.R., such as Dialectical Behavioral Therapy, which G.R. has resisted; G.R. has refused to allow practitioners to discuss to determine the appropriateness of the referral.

[17] At 6(a) on page 4:

> …G.R. has shown high resistance to services proposed by the Agency, and despite multiple discussions in relation to timelines, continued to fail to abide by direction. G.R. continues to show limitations in her decision making abilities, placing her and her children at risk historically. Historically G.R. has been involved in significant family violence events, and continues to resist or provide information regarding her relationships. While she has improved within her insight towards these concerns, she has failed to address the underlying reasons she continues to make poor decisions. G.R. also impulsively withdraws from any and all supports in times of crisis, raising concerns in her ability to seek supports and services in times of need.

[18] The Plan of Care stipulates at 6(d) on page 4:

> W. will be transferred to Mi'kmaw Family & Children's Services of Nova Scotia to support W.'s and G.R.'s cultural and racial heritage.

[19] The Minister, in its brief to the Court, outlined the long history of G.R.'s involvement with the Minister since 2002, and the resulting permanent care placement of nine older children since 2008, which includes the permanent care order of four children made by this Court on January 17, 2019. **Nova Scotia (Community Services) v. G.R**. 2019 NSSC 23.

[20] The Minister submits at paragraph 91 of its brief:

> Among the findings made by the Court on January 17, 2019 were the following:
>
> (1) G.R. failed to engage in services to ameliorate the risk, despite having stated at the protective finding that she would do so.
>
> (2) G.R. continued to lack meaningful insight into the risk to a child in her care.
>
> (3) G.R.'s history suggests that she could not be trusted and her credibility was suspect.
>
> (4) The outstanding protection concerns remained unchanged.

[21] The Minister further submits at paragraph 92 of its brief that the Decision also expressly accepted the submissions of the Minister, a portion of which were summarized by the Court as follows:

> (a) Dr. Landry described G.R.'s profile as a pattern of chronic psychological maladjustment which is at the core of all the ways in which G.R. places her children at risk and her resistance to make changes.
>
> (b) G.R.'s behavioral issues cannot be changed with medication or support. It requires psychological intervention to alter it.
>
> (c) G.R. requires dialectical behavioral therapy which deals with identifying and changing ongoing patterns of thinking.
>
> (d) There is no quick fix and G.R. has to be willing to engage.
>
> (e) Overall, the psychological tests administered by Dr. Landry showed lack of personal insight and describes an individual who is narcissistic, self-indulgent, suspicious, indulgent, immature, and manipulative, with a grandiose conception of her abilities and anti-social beliefs and behavior.
>
> (f) G.R. has consistently resisted change and continued to do so. Her unaddressed mental health problems and the impact on G.R. functioning as represented in her chaotic lifestyle represent a risk to her children.

[22] It is further submitted by the Minister that:

> (95) At this point G.R. appeared to have become newly connected to her First Nation culture.
>
> (96) Worker Kalbheen attempted to build upon this platform to foster a new level of engagement with G.R. He actively engaged in support circles through the Native Council, and he amended the Agency's requests for supportive services, and approved her engagement in culturally relevant education programs across the board.
>
> (97) G.R. was engaging in supportive counselling with psychotherapist Todd Vassallo in March 2019. The focus of this therapy was to help G.R. to cope with the her current situation, specifically her children being in the care of the Agency.
>
> (98) G.R. attended for three sessions in March 2019, two sessions in May 2019, one session in June 2019, and one session in August, 2019.
>
> (99) While trying to foster a cooperative working relationship with G.R., the Agency was requiring Dialectical Behavioral Therapy (DBT) to address the primary risk in this case.

(100) As explained by Dr. Landry in his testimony at the protection hearing, this was a service that was to change the underlying patterns of behavior that have repeatedly placed her children at risk.

(101) This service was approved to begin with Dr. MacLeod in June 2019. G.R. was initially opposed but following the appeal regarding her older children being dismissed, G.R. agreed to engage in this service.

(102) In June 2019 the Agency learned that G.R. had been evicted, and her Income Assistance was on hold due to a year's worth of outstanding rent. When asked about this G.R. advised that she was paying her rent, she was just getting loans from the landlord of the same amount.

(103) G.R. had been staying with Philip Williams for the previous month. Neither the Agency, the Parent Journey Service provider or Income Assistance had been aware.

(104) Dr. MacLeod testified that G.R. attended two sessions in July 2019. She was not engaging in services. She had no goals for the service. She identified no mental health issues beyond those arising from her separation from her children, and she did not believe that she needed psychological treatment for this. She refers to her counselling with Todd Vassallo as meeting her needs. She did not accept the need for DBT.

(105) In furtherance of engagement with G.R., and in the absence of progress, Dr. MacLeod suggested he would like to get in touch with Mr. Vassallo to discuss their work together, and to ask Mr. Vassallo whether he identify services Dr. MacLeod might offer.

(106) G.R. stated she wanted to speak with Mr. Vassallo above this first, and she would be in touch once she did.

(107) Dr. MacLeod provided her a Release for her to have signed in furtherance of that.

(108) The issue of the outstanding Release was brought to Worker Kalbheen's attention on August 14, 2019 by Dr. MacLeod.

(109) On August 15, 2019 in a meeting with G.R. and Eric Rose, her parenting journey worker, G.R. was encouraged to get the consent information sharing agreement signed with Mr. Vassallo. She was warned about the Agency's timelines. S he stated she would speak to Mr. Vassallo about this.

(110) G.R. attended for her final session with Mr. Vassallo on August 16, 2019. Mr. Vassallo and G.R. discussed her BDT therapy….There is no discussion about

> Mr. Vassallo communicating with Dr. MacLeod on the information sharing agreement.
>
> (111) G.R. never had the Release signed, and never contacted Dr. MacLeod again. She had no further engagement with the Agency or with Mr. Vassallo after August 16, 2019.
>
> (112) …Todd Vassallo advised in evidence that G.R. did not discuss collaborating with Dr. MacLeod.
>
> (113) As the Agency's primary and fundamental concern relating to G.R.'s decision-making judgment and executive functioning were not being addressed by services, in January 2020 the Agency filed a plan for permanent care and custody of the child W.

[23] The Minister maintains that G.R. has not engaged successfully with services to address the risk, and, in particular, Dialectical Behavioral Therapy as recommended by Dr. Landry. This service was effectively refused by G.R. because she was not comfortable with it, and believed she did not need it.

[24] G.R. would prefer the Court accept the evidence of Mr. Vassallo who was critical of the Agency for imposing DBT on G.R. The Minister submits that Mr. Vassallo, although not qualified in the field of parental capacity nonetheless took issue with Dr. Landry recommending it. Mr. Vassallo did no objective testing on G.R., but provided G.R. with a comfortable setting to discuss her issues. The seven sessions G.R. had with Mr. Vassallo resulted in his letter dated September 4, 2019, marked as Exhibit 8A:

> I am writing this letter to confirm that G.R. is actively involved in regular counselling sessions that began on March 11, 2019. The sessions are based on the principles of CBT and DBT with a focus on mindfulness. G.R. will be participating in the New Path's Program, which is an indigenous based program that incorporates the Seven Sacred teachings.
>
> G.R. seems to make progress and is an active participant in our sessions.

[25] The Minister submits at page 33 of its brief:

> Mr. Vassallo was qualified as an expert, but did not present as an expert. He presented as an advocate. His opinion regarding G.R.'s functioning should be given no weight.

[26] Counsel for G.R. submits:

- That G.R.'s counselling with Todd Vassallo address the mental health services requested by the Minister.
- That the risk of sexual abuse has been eliminated.
- That there is no evidence G.R.'s living conditions are unfit at the present time.
- There were a multitude of services G.R. engaged in, including the Family Affordable Meal Program; Healthy Relationships Program; Women 4 Change Program; Domestic Violence Program, including service through the Native Council.
- The programs offered through the Native Council are effective in dealing with issues for indigenous people.
- G.R. was comfortable with Todd Vassallo, and improved as a result.
- G.R. was not comfortable with Dr. MacLeod or Dr. Landry.
- That Mr. Vassallo's counselling could have achieved the same result as DBT.
- It was incumbent on the Agency to support G.R.'s counselling with Todd Vassallo.
- Mr. Vassallo was better equipped and in a better position to deal with G.R. and her problems as an indigenous person.
- The relevance of the *Act* respecting First Nations, Inuit and Metis Children Youth and Family is emphasized such as the importance of reuniting indigenous children with their families and communities as well as the cultural continuity is essential to the well-being of a child, a family, and an indigenous community.
- That protection concerns regarding W. have been reduced or eliminated.
- That W. can safely be returned to the care and custody of G.R.
- That the Minister's application should be dismissed.

DECISION

[27] It is the Court's function to determine whether or not the child W. is in need of protective services at the current time. According to the legislation the Court has only two stark options available:

(1) Order permanent care, or

(2) Dismiss the proceeding and return the child to the Respondent mother, G.R.

[28] If the child is found to be in need of protective services, the matter cannot be dismissed. **G.S. v. Nova Scotia (Minister of Community Services)** 2003, NSSC 19.

[29] I have scrutinized the evidence with care. I am satisfied that the evidence of the Minister is sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test. (**F.H. v. McDougall**, 2008, SCC 53). The contention that the Respondent poses a substantial risk of harm or real chance of danger to her child has been proven to the Court's satisfaction on a balance of probabilities.

[30] I reject the plan put forth by G.R. Her plan does not address the short term and long term needs of W. Some progress has been made by G.R., but her continued resistance to commit to engage in services recommended by the Minister clearly established G.R. has no meaningful insight into the child protection concerns described herein.

[31] As Justice Bourgeois of the Nova Scotia Court of Appeal stated at paragraph 24 in **G.R. v. Minister of Community Services and K.C**., supra:

> …there were ample other concerns demonstrated in the evidence which supporting the hearing judge's conclusion that G.R. remained a risk to her children. Her failure to engage in court-ordered services aimed at alleviating the risk of harm is just one example.

[32] In the preceding hearing dealing with the four older children, the Court placed reliance on Dr. Landry's evidence. At paragraph 77:

> …the Court accepts Dr. Landry's evidence and his explanation/clarification regarding G.R.'s ability or inability to parent. Counsel for the Minister asked:

> Q. Can G.R. safely parent, do you believe she can safely parent without therapy?
>
> The doctor replied:
>
> A. I think without anything there would be a lot of risk. There would be more risk.
>
> And further during cross examination the doctor said:
>
> Given that I don't see her at risk of hurting the children, and I would see, but those mental health issues we talked about certainly would have an impact on the kind of care she would deliver.

[33] After hearing from Mr. Todd Vassallo I continue to agree with the above evidence, and continue to accept Dr. Landry's opinion that G.R. requires extensive therapy to reduce risk.

[34] G.R. refused therapy from Dr. Jeff MacLeod, and unfortunately Mr. Vassallo refused to collaborate with Dr. MacLeod. That would have been the preferable approach in the Court's opinion. The end result is G.R. has not engaged in the court-ordered service of Dialectical Behavioral Therapy.

[35] As Justice Bourgeois noted in the Appeal decision, supra, at paragraph 21:

> During his testimony at the hearing, Dr. Landry was not prepared to opine there was "little risk" to the children should they be placed in the care of G.R. He expressed the view that G.R. required extensive therapeutic intervention before the risk posed to the children could be alleviated.

[36] G.R.'s continued refusal to partake in this therapy supports the Court's concern about continued risk to W. G.R.'s alternate therapy as provided by Mr. Vassallo on a limited and incomplete basis does not persuade the Court to move from its original acceptance of Dr. Landry's position. I do not consider Mr. Vassallo's counselling to be "extensive therapeutic intervention", which is required to reduce or eliminate risk. I reject Mr. Vassallo's evidence to the contrary in this regard.

[37] The pattern remains the same; G.R. remains resistant and non-compliant. To demand or insist upon services being done on her own terms is not acceptable in the Court's view. Unfortunately she does so at her peril and demonstrated to the Court that she continues to lack meaningful insight into the protection concerns.

[38] The Court finds the Order requested by the Minister is the appropriate one having considered the totality of the evidence and the applicable law. The Court agrees with and accepts the Minister's submissions.

[39] It is in the best interests of W. to be placed in the permanent care and custody of the Minister pursuant to ss. 42(1)(f) and 47 of the *Children and Family Services Act*. The circumstances are unlikely to change within a reasonable foreseeable time.

[40] This decision is consistent with the principles of the *Children and Family Services Act of Nova Scotia* and Bill C-92, an Act respecting First Nations; Inuit, and Metis Children, Youth and Families.

[41] An Order for permanent care and custody in favour of the Minister will thus issue.

Order Accordingly,

Haley, J.