

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

**Citation:** *Nova Scotia (Community Services) v. Z.M. and J.L.*, 2020 NSSC 284

**Date:** 2020-10-14

**Docket:** SFH CFSA 115544

**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v.

Z.M. and J.L.

Respondents

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Elizabeth Jollimore

**Heard:** September 30, 2020 and October 8, 2020

**Summary:** Minister's application for permanent care granted where parents have disengaged and presented no plan.

**Key words:** Family, Child protection

**Legislation** *Children and Family Services Act*, S.N.S. 1990, c. 5, sections 3, 42, 47

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**Counsel:** Megan M. Roberts for the Minister of Community Services  
Zachary Chisholm for Z.M.  
Noelle Yhard for J.L.

**Restriction on publication:**

**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.”

## **By the Court:**

### **Introduction**

[1] The Minister of Community Services wants an order for the permanent care and custody of Z who is almost 16 months old.

[2] The application is under section 47 of the *Children and Family Services Act*, S.N.S. 1990, c. 5.

[3] Ms. M and Mr. L are Z's parents.

[4] Z was 2 months old when she was taken into the Minister's temporary care, where she's remained for almost 14 months.

### **Permanent care and custody application**

[5] The parents have been represented by counsel from the beginning of the Minister's application. In mid-June 2020, the parents moved to Ontario and, soon after, they stopped instructing their lawyers who have made diligent efforts to contact them by phone, by email, and through Facebook. Neither parent's lawyer has asked to be removed as counsel, ensuring each parent would have speedy access to counsel if the parent resumed contact with his or her lawyer. This hasn't happened.

[6] The parents are not consenting to - or contesting - the Minister's request for a permanent care order. Neither has offered any plan for Z.

### **The Agency's concerns**

[7] The Minister's concerns about the parents are:

- (a) their mental health;
- (b) their substance abuse;
- (c) their lack of parenting skills; and
- (d) their transiency.

[8] The parents began drug testing in August 2019. Mr. L didn't engage in counselling, though it was arranged for him. The Minister assigned a family support worker.

[9] By late November 2019, the parents' access was suspended because they weren't attending. In December 2019, the parents were evicted from their apartment. Without secure housing, their circumstances seemed to be unravelling and access was again suspended. The parents became transient and failed to meaningfully engage with the family support worker.

[10] The parents moved to Ontario in mid-June 2020. They stopped instructing their lawyers shortly after they moved, and their contact with Z ended.

[11] The parents didn't complete the services the Minister sought for them and there is no information suggesting that they've undertaken any services in Ontario.

### **Review application**

[12] While the Minister's application is unopposed, I must consider the evidence and the requirements of the *Children and Family Services Act* and determine whether to grant the Minister's application for Z's permanent care and custody.

[13] I must consider:

- whether circumstances have changed since the last order was granted,
- whether the plan of care that I applied is being carried out,
- the least intrusive approach available, and
- whether the concerns which prompted the earlier order are unlikely to change within a reasonably foreseeable time that doesn't exceed the final disposition deadline in February 2021.

[14] I find that circumstances haven't changed since the last disposition order was made in July 2020. The parents continue to be absent and it appears they continue to ignore services.

[15] The plan for Z's care that I applied in my earlier decision is being followed. Z remains in her foster placement and her needs are being met.

[16] There is no less intrusive option, given the parents' absence and lack of involvement which, in turn, make it unlikely that the circumstances which justified the earlier order will change by the final disposition deadline in February 2021.

[17] In a review application, the options open to me under subsection 42(1) are:  
(a) dismissing the Minister's application and returning Z to a parent;

(b) returning Z to a parent, under agency supervision for a specified period;

(c) placing Z in the care of a third party, under agency supervision for a specified period;

(d) placing Z in the agency's temporary care and custody for a specified period;

- (e) placing Z in the agency's temporary care and custody for a specified period after which Z would be returned to a parent or another person for a specified period; or
- (f) placing Z in the agency's permanent care and custody.

[18] I must consider each of these possible dispositions: *T.B. v. Children's Aid Society of Halifax*, 2001 NSCA 99, at paragraph 19.

[19] The deadline for final disposition is in February 2021, approximately 4 months from now. I'm not required to delay a permanent care decision until the maximum time limit has expired: *L.L.P. v. Nova Scotia (Minister of Community Services)*, 2003 NSCA 1, at paragraph 31.

[20] Neither parent is looking for Z's return, either outright or under supervision, or for some other placement for a specified period. The options under 42(1)(a) – (e) aren't available.

[21] I'm not to remove Z from her parents unless less intrusive alternatives have been explored. Here, less intrusive options, such as placing Z with her parents under supervision, have not been tried because they'd be inadequate to protect Z. Services have been made available to Ms. M and Mr. L. After a matter of months, the parents disengaged.

[22] Where I think it's necessary to remove Z from her parents, I must consider the possibility of placing her with a relative, neighbour or community member: clause 42(3)(a) of the *Children and Family Services Act*.

[23] The parents proposed that Z could be placed with Mr. L's father and stepmother in Ontario, however Mr. L's father and stepmother declined to offer themselves as a possible placement.

[24] Ms. M's father has contacted the Minister about Z. He's been aware of this case since August 2019. In March 2020, Mr. M phoned a social worker and told her he wanted to adopt Z. She told him that "parents need to be in support of a family member adopting a child".

[25] Mr. M spoke with another of the Minister's social workers at some point within the last six weeks. Mr. M said he wanted to be a placement for Z. This social worker told him she "did not have consent to speak to him about this matter".

[26] Mr. M hasn't applied for standing in this application. He hasn't contacted the court or the Minister's lawyer to offer a plan for Z. I can't assess the seriousness

of his desire to provide a home for Z or his suitability. His overtures seem to have been discouraged. Each worker who spoke with him immediately raised an obstacle to his involvement. Neither encouraged him to contact the Minister's lawyer – or any lawyer, or the court – to advance his position.

[27] Even if Mr. M wanted to provide a home for Z, the Minister doesn't support placing Z with him, for 2 reasons:

- Mr. M's relationship with his daughter (Z's mother) from 2009 – 2011 when Ms. M was between the ages of 13 and 15, has been described as physically and mentally abusive, and
- Documentation from the Nova Scotia Health Authority about Ms. M disclosed that Mr. M "may struggle with bipolar disorder and alcohol abuse."

[28] I don't need to assess these reasons because Mr. M hasn't presented a plan. However, I'd be more comfortable with this if the Minister's staff, rather than discouraging Mr. M's offers of help, directed Mr. M to their counsel or Nova Scotia Legal Aid's Child Protection Group Navigator, or suggested he speak to a lawyer of his own. The Minister's counsel couldn't offer Mr. M any legal advice but could direct him to Nova Scotia Legal Aid's Child Protection Group Navigator, and suggest he speak to a lawyer of his own.

[29] I have an obligation to consider whether it's possible to place Z with a relative, neighbour or community member: subsection 42(3) of the *Children and Family Services Act*. This obligation shows that the *Act* prefers these placements. The prospect of a family placement, which the legislation obliges me to consider, should not be discouraged.

[30] The Child Protection Group Navigator is currently available only in the Halifax Regional Municipality. This case offers an example of why the program would be valuable to children throughout Nova Scotia, by assisting those who may wish to offer placements to children in the Minister's care.

[31] I must consider Z's best interests in making a disposition order, so I turn to subsection 3(2) of the *Act*. I am particularly mindful of the importance of the continuity of Z's care, her mental and emotional needs, and the appropriate treatment to meet those needs, the level of her mental and emotional development, and family relations. Z is almost 16 months old. She has not lived with her parents since she was approximately 3 months old. She has not seen them in over four months and her contact with them before that was limited and sporadic. Her family relations are scant. Her needs are capably met in foster care.

## **Conclusion**

[32] I have read the materials the Minister filed. I have conducted the analysis required by the legislation. I conclude that it is appropriate, under the terms of *Children and Family Services Act* and in Z's best interests, that I grant the Minister's application for Z's permanent care and custody.

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Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia