

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

**Citation:** *Nova Scotia (Community Services) v. PBR and SD*, 2021 NSSC 35

**Date:** 20210205

**Docket:** SFH-CFSA 113064

**Registry:** Halifax

**Between:**

**Minister of Community Services**

Applicant

v.

**P.B.R. and S.D.**

Respondents

**Judge:** The Honourable Justice Elizabeth Jollimore

**Heard:** February 1, 2021

**Summary:** Minister sought permanent care of 2 year old and 4 ½ year old. Father consented. Mother did not – she offered evidence and did not question the Minister’s evidence. Statutory deadline passed 4 months ago, mental health concerns not resolved. No less intrusive option for the children than permanent care.

**Key words:** Family, Child protection, Permanent care and custody

**Legislation:** *Children and Family Services Act*, S.N.S. 1990, c. 5, s. 3(2), s. 42(1), s. 42(3)(a), s. 47

**Restriction on publication:**

Publishers please take note subsection 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

Subsection 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.

Publishers of this case further take note that in accordance with subsection 94(2) no person

shall publish information relating to the custody, health and welfare of the children.

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DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY  
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**Citation:** *Nova Scotia (Community Services) v. P.B.R. and S.D.*, 2021 NSSC 35

**Date:** 20210205

**Docket:** SFH CFSA 113935

**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v.

P.B.R. and S.D.

Respondents

**Judge:** The Honourable Justice Elizabeth Jollimore

**Heard:** February 1, 2021

**Counsel:** James C. Leiper for the Minister of Community Services  
Lola Gilmer for P.B.R.  
Jessie Chisholm for S.D.

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Section 94(1) provides:

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**By the Court:****Introduction**

[1] The Minister of Community Services wants an order for the permanent care and custody of E, who is almost 2 years old, and M, who is 4 ½. At a hearing on February 1, 2021 I granted the Minister's request and said that I would provide written reasons. These are my reasons.

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

[3] Ms. R and Mr. D are the children's parents.

[4] This application began in April 2019, when E was less than 2 months old and M was 2 ½.

[5] The Minister became involved after a medical referral about possible "shaken baby syndrome" relating to E. After a series of emergency room visits, E was transferred to the IWK Health Centre where examination revealed:

- subdural hematomas (these result from bleeding into the space between the brain and the outer membrane that surrounds the brain),
- retinal hemorrhages "too numerous to count",
- a fractured rib, and
- a fractured arm.

[6] Alone and together, these injuries were more likely to be inflicted, rather than result from E's own actions, given his age and lack of mobility.

[7] Court orders have placed the children in the Minister's care since the application began, almost 2 years ago.

**Permanent care and custody application**

[8] Ms. R is not consenting to the Minister's request for a permanent care order. She filed an affidavit offering her evidence in the summer of 2020, and she waived the opportunity to question any of the evidence offered by the Minister.

[9] Mr. D consents to the Minister's request.

[10] Both parents are represented by lawyers and have been represented throughout.

## **The Agency's concerns**

[11] The Minister's concerns are:

- (a) the risk of physical harm to the children;
- (b) the parents' mental health; and
- (c) the parents' lack of parenting skills.

[12] Each parent took part in a psychiatric assessment. The resulting diagnoses were different, but Dr. Kronfli's conclusion was the same: the diagnoses weren't a deterrent to parenting – if each parent followed his or her treatment program. For Ms. R, this meant medication and ongoing therapy. For Mr. D, this meant medication, monitoring by his family doctor, and Cognitive Behaviour Therapy. Mr. D also completed a psycho-educational assessment.

[13] Each parent made some effort to follow Dr. Kronfli's recommendations: neither followed them completely. I appreciate that COVID-19 created difficulties for them in doing this, but their time for addressing the Minister's concerns has been extended beyond the statutory time limits.

[14] The parents didn't complete the services the Minister sought for them: particularly, the concerns about their mental health are unresolved.

[15] The children are generally in good health. M has had speech therapy and her language is improving. M's speech therapist was concerned that M may have ADHD, so M completed a psycho-educational assessment. The assessment reported that M has had unclear speech, and aggressive and reactive behaviour (she has difficulty regulating her emotions) throughout her time in care. M's hyperactivity and lack of attention are at clinically significant levels. M will need close supervision at school, likely needing an EPA's support.

## **Review application**

[16] In deciding to grant the Minister's application for the children's permanent care and custody, I considered the evidence and the requirements of the *Children and Family Services Act*, which involved considering:

- 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.

[17] I find that circumstances haven't changed since the last disposition order was made.

[18] The plan that I applied in my earlier decision is being followed. E and M remain in their foster placements and their needs are being met.

[19] There is no less intrusive option. Because the final disposition deadline was 4 months ago, time has run out for circumstances to improve.

[20] In a review application, the options open to me under subsection 42(1) are:

- (a) dismissing the Minister's application and returning the children to Ms. R or Mr. D;
- (b) returning the children to Ms. R or Mr. D, under agency supervision for a specified period;
- (c) placing the children in a third party's care, under agency supervision for a specified period;
- (d) placing the children in the agency's temporary care and custody for a specified period.
- (e) placing the children in the agency's temporary care and custody for a specified period then returning them to a parent or another person for a specified period; or
- (f) placing the children in the agency's permanent care and custody.

[21] Because the deadline for final disposition was in September 2020, approximately 4 months ago, the only available options are returning the children to a parent or placing them in the Minister's permanent care and custody.<sup>1</sup> The statute's deadline for final disposition has passed, so Ms. R has no more time to perfect a plan for the children's return.

[22] I'm not to remove children from a parent unless less intrusive alternatives have been explored. Here, less intrusive options, such as placing E and M with their parents under supervision, haven't been tried because they wouldn't provide adequate protection for the children.

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<sup>1</sup> *T.B. v. Children's Aid Society of Halifax*, 2001 NSCA 99, at paragraph 19

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

[24] No relative, neighbour or community member has been identified as a possible placement for E and M.

[25] I must consider the children'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 their care, their physical, mental and emotional needs, and the appropriate treatment to meet those needs, the level of their mental and emotional development, and family relations.

[26] E is almost 2 years old. He has not lived with his parents since he was approximately 2 months old. His family relations are scant. His needs are capably met in foster care.

[27] M is 4 ½ and has been in foster care since she was 2 ½. She has greater needs than her brother. These have been met in foster care. Her connection to her family is greater, but not overwhelming, given the duration of her time in care and the irregularity of her contact with her parents.

[28] COVID-19 has had an impact on the parents' relationship with their children. From the perspective of Ms. R and Mr. D this is incredibly regrettable. From the children's perspective, it is a fact of their life that I cannot ignore.

## **Conclusion**

[29] I have read the materials the Minister filed, and those filed by Ms. R. 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 the children's best interests, that I grant the Minister's application for their permanent care and custody.

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

Halifax, Nova Scotia