

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

**Citation:** *Nova Scotia (Community Services) v. LD and DD*, 2021 NSSC 99

**Date:** 2021-03-18

**Docket:** SFHCFSa No. 113865

**Registry:** Halifax

**Between:**

Minister of Community Services

Applicant

v.

L.D. and D.D.

Respondents

v.

D.M.D

(by her Guardian *ad-litem*, S.S.)

Third Party

Judge: The Honourable Justice Theresa M. Forgeron

Heard: March 1, 2, 8, 9 and 18, 2021, in Halifax, Nova Scotia

Oral Decision: March 18, 2021

Written Release: March 19, 2021

Counsel: Elizabeth Whelton, QC, counsel for the Applicant, the  
Minister of Community Services  
Noel Fellows, counsel for the Respondent, L.D.  
D.D., Respondent, self-represented  
Kelsey Hudson, counsel for the Guardian *ad-litem*, S.S.

**Restriction on Publication: Restriction on Publication**

Pursuant to subsection 94(1) of the *Children and Family Services Act*, S.N.S. 1990, c. 5, there is a ban on disclosing 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.

**By the Court:**

**Introduction**

[1] This permanent care application concerns a vulnerable 17-year old teenager, DMD, who is diagnosed with an extremely low cognitive ability. DMD consistently asks to be returned to the care of her parents. DMD says that she misses her mother, sister, pets, and family. DMD wants to go home.

[2] The Minister and DMD's Litigation Guardian do not support DMD's request. They say that it is not safe to return DMD to her father's care because he did not successfully address the protection concerns. Protection concerns were identified as neglect, unsafe living conditions, hoarding, the father's violent temper, and the parents' unauthorized removal of DMD from the Minister's care. Given the serious protection concerns, the Minister and the Litigation Guardian state that the only available legislative option is to place DMD in the permanent care and custody of the Minister.

[3] The mother, LD, initially contested the Minister's application. By the time of trial, however, the mother confirmed that she would neither offer evidence nor challenge the Minister's request for permanent care. I am satisfied that the mother understands the nature and consequences of her decision.

[4] For his part, the father, DD, objected. He both minimized and denied the protection concerns. He said that there was no neglect. He denied that DMD had 64 cavities, or that her hair was matted and filled with head lice and nits, or that she lacked an understanding of basic hygiene practices. The father also denied that his home was unsafe noting that he and his wife got behind in their cleaning. He notes that some of the structural issues were subsequently repaired. Additionally, the father denied having a violent temper, although he acknowledged situational anger. Finally, the father denied that he had anything to do with DMD's month-long disappearance from the Minister's care.

[5] The father says it is imperative that DMD be returned home immediately to prevent DMD from being subjected to further emotional abuse at the group home where she lives.

## **Issues**

[6] In this decision, I will answer the following two questions:

- Is DMD a child in need of protection?
- Should DMD be placed in the permanent care and custody of the Minister?

## **Background Information**

[7] The father and mother have five children who were born between 1984 and 2003. DMD is the youngest of their children.

### *Initiation of Current Proceeding*

[8] Child protection authorities were engaged with the family at various times over the past 25 years. Their latest involvement began in February 2019 when DMD's school reported alarming concerns about DMD's lack of hygiene. The Minister was unable to complete her investigation because the father refused to allow the Agency access to his home.

[9] Because of the father's refusal and the serious concerns surrounding DMD's presentation, the Minister filed a Notice of Child Protection Application on April 1, 2019. Initially, the Minister sought a supervision order with supportive services. The first appearance was held on April 4, 2019 and an interim supervision order issued.

[10] On April 5, 2019, social workers went to the parents' home. Conditions were worse than anticipated. The home was filthy with an overpowering stench. Many of the floors, walls, baseboards, door frames, and doors were covered in a dark gooey residue. The home smelled of urine and feces. The home was strewn with dirt and garbage. Walking was obstructed because of piles of bags and boxes and other items that were being hoarded. DMD's room was especially concerning. It had an intense foul odor even though the window was open. DMD's room had a latch on the outside of the door. After viewing the unsanitary and unsafe home, social worker Martin MacLean threw away his shoes.

[11] The Minister quickly convened a Risk Management Conference; the decision was made to take DMD into care. DMD was taken to a place of safety and later transferred to a group home.

[12] The matter returned to court for interim variation on April 12, 2019; DMD was placed in the care and custody of the Minister, a status which was maintained throughout the balance of the proceedings. Further, during this appearance, Susan Sly was appointed as DMD's litigation guardian. On April 24, 2019, the final and third interim appearance was concluded.

### *Protection and Disposition Outcomes*

[13] On June 13, 2019, the protection finding was entered by consent pursuant to clause 22(2)(g), while reserving the Minister's right to seek additional grounds as described in clauses 22(2) (f), (h), (j), and (k) of the *Children and Family Services Act*, 1990, c. 5, s. 1.

[14] On September 6, 2019, the disposition hearing also proceeded by consent. The Minister's Plan of Care identified three key areas of concern – inadequate living conditions, inadequate parenting skills and neglect, and the father's anger management issues. Proposed services for the father and mother included engaging with the Chebucto Family Center and with a counsellor for the following purposes:

- To develop routines to maintain the home.
- To develop skills to clean and organize the home on a regular basis.
- To develop skills to evaluate what household items were needed and what household items should be discarded.
- To gain insight into how DMD was negatively impacted by the state of the home.
- To gain insight into how DMD was placed at risk because of parental neglect.
- To develop skills to support DMD and to ensure that DMD's physical and emotional needs were met.
- For the father to gain insight into the ineffective and harmful consequences associated with his current expression of anger and to develop skills to express his anger in pro-social ways as opposed to using threats of violence.
- For the mother to process how the father's anger impacted her life.

[15] In addition, medical, dental, counselling, and psychological assessment services were planned for DMD to help ameliorate her experience of trauma and to

treat the physical, emotional, and mental health issues that arose while DMD was in the care of her parents.

### *Post Disposition Conduct and Review Hearings*

[16] The first disposition review was held on December 4, 2019. The Minister relayed concerns about the parents' lack of participation in services and the father's threatening and violent communication. The temporary care order was renewed.

[17] On January 22, 2020, Meaghan Goudey, Ms. Sly, and Mr. MacLean met with DMD to review the outcome of a recent Risk Management Conference. They confirmed that the Minister was seeking a permanent care order. DMD was upset with the news. DMD was protective of the father and mother. DMD opined that if she were home, her parents would participate in services and effect the necessary changes to their lives.

[18] On January 24, 2020, the father and Mr. MacLean spoke twice. Neither conversation was productive. In addition to using foul language and warning that he would sue the agency, the father made two threats. The first, to kill somebody and the second, to blow up the Minister's office. Because of the seriousness of the threats, all access between the father and DMD was cancelled.

### *DMD Disappears*

[19] The next access visit was therefore scheduled between DMD and her mother on January 27, 2020 at the library in Clayton Park. After pretending to need to use the washroom, DMD disappeared. Despite the circumstances, the father and mother denied being involved in DMD's disappearance. The father remained uncharacteristically calm.

[20] A Locate and Detain Order issued on January 28, 2020. The Minister and the police diligently searched for DMD, but to no avail. While searching the family home, social workers observed that it remained in poor condition with a significant odor of animal urine and feces.

[21] The next scheduled disposition review was held on February 11, 2020. The mother and DMD's sister testified that they did not know where DMD was and that they had nothing to do with DMD's disappearance. The temporary care order was confirmed.

[22] On February 27, 2020, a confidential referral was received. The referral confirmed the address of the two homes where DMD was living after her disappearance. The referral was concerned for DMD's health and safety.

#### *DMD Is Located*

[23] Acting on this tip, the Minister and the police found DMD in one of the identified homes, which home is located three doors up from the father's home. Agency workers and the police were alarmed by DMD's presentation. She was filthy. Her hair matted and greasy. She had a foul body odor. Bugs were crawling in her hair, on her body, in her bed, and on the floor and walls. DMD was shaking, crying, and gagging. An ambulance was called. DMD was eventually taken to a place of safety and then returned to the group home.

#### *Subsequent Reviews*

[24] The protection proceeding continued. Given Covid protocols, subsequent review hearings were held via teleconference on March 25, 2020; May 12, 2020; July 31, 2020; October 22, 2020; and January 15, 2021. DMD remained in the temporary care of the Minister.

[25] Legislative time limits were fast approaching. The Minister maintained that a permanent care order was in DMD's best interests. In contrast, the father, mother, and DMD wanted the protection application terminated and DMD returned to her home. A settlement conference was convened to determine if the matter would resolve. It did not. The contested hearing would proceed as scheduled in March 2021.

[26] On the eve of trial, the father's lawyer, the third whom he had retained, applied to be removed as solicitor of record. The father consented to the motion. The court inquired about a potential adjournment request. During two separate court conferences, the father confirmed that he wanted to proceed as a self-represented litigant. He did not want an adjournment.

#### *Contested Permanent Care Hearing*

[27] The contested in-person hearing was held on March 1, 2, 8, and 9, 2021. The following people testified: social worker, Meaghan Goudey; social worker, Kristin Nickerson; litigation guardian, Susan Sly; psychologist, Liza Gabriel; counsellor, Danielle Trottier; counsellor, Crystal Shanks-Tracey; social worker,

Martin MacLean; social worker, Katie Brown; case aide, Jessica Samson; and the father. The parties provided submissions at the conclusion of the hearing.

[28] I adjourned the oral decision until March 18, 2021.

### **Analysis**

#### **[29] Is DMD a child in need of protection?**

##### *Position of the Minister and Litigation Guardian*

[30] The Minister states that DMD remains a child in need of protection. The Litigation Guardian supports the Minister's request over DMD's objections. The Minister and the Litigation Guardian provide the following reasons in support of their position:

- Neither the mother nor the father successfully completed the case plan. There was no meaningful engagement.
- The father lacks insight; he continues to deny and minimize.
- The issues surrounding neglect, inadequate parenting skills, unsafe living conditions, and the father's anger have not resolved.
- The father is not credible. The father and the mother orchestrated DMD's disappearance. The father and mother do not prioritize DMD's emotional, physical, or psychological needs.
- DMD flourished in the Minister's care because her needs were met. DMD now takes pride in her hygiene and appearance. She keeps her room organized and tidy. She is learning independent living skills. She is attending school and participating in activities.

##### *Position of the Father*

[31] The Father states that DMD is not a child in need of protection for the following reasons:

- DMD was not neglected. She had a shower every day. Her hair was combed. She did not have 64 cavities. She did not have body odor.
- DMD's presentation is explained by the fact that she was sexually abused by a school aid several years ago.

- His home was messy because they were behind in their cleaning. There were structural problems which the Housing Department since fixed. They have decluttered. The home is safe. It does not pose a danger.
- DMD was never locked in her room. The latch was there to keep the dogs out and not to keep DMD in. The latch could easily be lifted from inside the room in any event.
- He is not violent. His anger is situational and understandable. Most people would respond as he did if their child were taken away. He would never act on the threats that he made.
- DMD is being bullied and emotionally abused in the group home.

### *Law*

[32] A permanent care decision engages several sections of the *CFSA* as well as principles extracted from case law. I will review six principles arising from the legislation and case law that I applied in this decision.

[33] First, the Minister bears the burden of proving that a permanent care order should issue. This is a civil proceeding which requires proof on the balance of probabilities based on clear, convincing, and cogent evidence. There is no heightened burden on the Minister: *Nova Scotia (Community Services) v CKZ*, 2016 NSCA 61, para 53.

[34] Second, s. 46 of the *Act*, together with the *Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)*, [1994] 2 S.C.R. 165, at paras. 35 to 37 and *Children's Aid Society of Halifax v. V. (C.)*, 2005 NSCA 87 at para. 8 direct me to consider the following factors:

- Whether the circumstances have changed since the previous disposition order was made.
- Whether the plan for the child's care that the court applied in its decision is being carried out.
- Whether the least intrusive alternative that is in the child's best interests is being applied.

[35] Third, I am directed to consider the threefold purpose of the *Act*, which is to promote the integrity of the family, to protect children from harm, and to ensure the children's best interests. However, in my decision, I must focus on the *Act's* paramount consideration which is noted in s. 2(2) as the children's best interests.



[36] Fourth, I must apply 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 me to consider various factors unique to each child, including those associated with the child's emotional, physical, cultural, and social developmental needs and those associated with risk of harm.

[37] Fifth, I must examine the protection grounds upon which the Minister relies in support of a permanent care order. In this case, the Minister relies on s. 22 (2) (k) and (g) of the *Act* to support the continued protection finding. Section 22 (k) is based on a substantial risk of neglect and s. 22(g) is a substantial risk of emotional abuse. Substantial risk is defined in s. 22(1) as meaning a "... a real chance of danger that is apparent on the evidence." The Minister need only prove that there is a real chance that future abuse will occur and not that future abuse will actually occur: *M.J.B. v. Family and Children's Services of Kings County* 2008 NSCA 64.

[38] Sixth, the Minister also appropriately relies on past parenting history. Although "[t]here is no legal principle that history is destiny", past parenting is relevant as it may signal "the expectation of risk": *D.(S.A.) v. Nova Scotia (Community Services)* 2014 NSCA 77, para. 82. The court is concerned with probabilities, not possibilities. Therefore, where past parenting history aids in the determination of future probabilities, it is admissible, germane, and relevant: *Nova Scotia (Community Services) v. L.M.* 2016 NSSC 80.

#### *Decision – Substantial Risk of Neglect*

[39] The Minister proved that DMD continues to be a child in need of protection because there is a substantial risk that DMD will experience neglect in the father's care. Neglect is defined in s. 2(1)(p) of the *Act* as meaning a chronic and serious failure to provide a child with adequate food, clothing, or shelter; adequate supervision; affection or cognitive stimulation; or any other similar failure to provide. The Minister proved many of these failures. In addition, the Minister also proved that the father and mother refused to co-operate with services and treatment to remedy or alleviate the harm.

[40] I will now explain my conclusion by examining three factors. First, I will review the conditions of neglect which informed the initial protection finding. Second, I will review whether the father successfully addressed these concerns. Third, I will discuss why DMD remains at a substantial risk of neglect if returned to her father's care.

*Neglect*

[41] Between February and April 2019, DMD's neglect was evident from her physical appearance, emotional presentation, and the conditions of the home where she lived.

[42] When workers met with DMD in February 2019, they were deeply concerned about her physical appearance. DMD was unkempt. Her hair was greasy, matted, and filled with live head lice and nits. Her clothes were dirty. She had a foul body odor because she was not bathed. Her fingernails were long and dirty. DMD did not know how to properly clean herself or how to care for herself when she was menstruating. DMD had 64 cavities; her teeth were brown and covered in residue. DMD was bullied because of her appearance and body odor.

[43] Workers were also concerned about DMD's presentation. DMD was withdrawn, made poor eye contact, and lacked confidence. She was a shell of a person.

[44] Further, the home where DMD lived was nothing short of a house of horrors. It was unfit and unsafe. It reeked of urine and feces. Brown goopy residue was found throughout. Garbage and dirt were everywhere. Boxes and bags were stacked and overflowing. DMD's room was in rough shape. Despite the window being opened, the foul odor was most pronounced. When testifying as to the home's condition almost two years later, Mr. MacLean was so overwhelmed that he was visibly and genuinely shaken.

[45] In summary, the Minister proved that between February and April 2019, DMD experienced serious neglect while in the care of the father and mother.

*Failure to Address Protection Concerns*

[46] The Minister also proved that the father did not address these protection concerns as illustrated by the following three examples. First, the father did not engage in services. The Minister's Case Plan, adopted by the parties and the court, was specific and clear. The father needed to address issues of hoarding, household cleanliness, and inadequate parenting skills. Given the father's contempt of and threats to Agency employees, services were arranged through the Chebucto Family Center and an independent counsellor. The father did not participate in services.

[47] Second, the father lacks insight into the protection concerns. The father denied that DMD's appearance and presentation were problematic. He denied the

cavities. He denied the body odor. He denied the lack of hygiene. He denied that DMD was withdrawn. Instead, the father blamed DMD's presentation on an alleged and unproven allegation which he made several years earlier about a school aide inappropriately touching DMD when she was cleaning DMD who had defecated in her clothes while at school.

[48] The father also minimized the protection concerns surrounding the state of the home noting that they simply got behind in their cleaning. Further, although the parties effected some changes to their home, almost two years later, the father acknowledged several tasks remain outstanding.

[49] Third, the father did not improve his parenting skills to ensure he can meet DMD's physical and emotional needs. To the contrary, the father and mother did just the opposite. I find that the father and mother planned and orchestrated DMD's disappearance between January and February 2020. In so doing, the father sacrificed DMD's health and safety in favour of his own selfish and misguided objectives.

[50] DMD experienced significant trauma during her month-long disappearance. DMD was found in an unsafe and unfit home filled with drug paraphernalia. Bugs were crawling in her hair and on her body, as well as on the bed and in the room where she was found. She was unbathed, hair matted and greasy, reeking of body odor. She was shaking, gagging, and vomiting.

[51] I find that the father and mother knew where DMD was living. Indeed, DMD was living three houses up from the father and mother. I infer that the father and mother regularly visited DMD during this time. Despite their observations, neither the father nor the mother took action to ensure DMD's health and safety.

[52] In drawing the inferences that I have and in making this finding, I completely reject the father's evidence. The father was not credible. The father did not tell the truth. Some of the factors upon which I rely are as follows:

- The father was furious about the Minister's decision to seek permanent care and custody. The father threatened Mr. MacLean after a violent tirade.
- DMD attempted to take eight bags of clothes and supplies from the group home when she left for the access visit on the night of her disappearance. The case aide only allowed her to take three bags.
- The mother took the bags out to the father who was waiting with his truck.

- DMD gave her cell phone to the mother allegedly to repair a crack. DMD said she was not worried about not having a phone.
- Neither the father nor the mother ever expressed upset, anger, or concern about DMD's disappearance. In fact, the father was uncharacteristically calm. The mother taunted the worker.
- DMD was found three doors up from the father's home. The father described being on great terms with his neighbours and community.

[53] In summary, the Minister proved that the father utterly failed to meaningfully address the serious protection concerns.

#### **Prospective Substantial Risk of Neglect**

[54] The Minister proved that DMD would be at a substantial risk of neglect if she were returned to the father's care for the following reasons:

- Although the father's love for DMD is genuine, the father neither acquired the insight nor parenting skills necessary to recognize and meet DMD's basic physical and emotional needs. The father lacks the ability to meet DMD's needs.
- The father fails to assign priority to DMD's needs.
- The father was incorrect in denying that DMD's presentation was caused by the neglect DMD experienced while living in her parent's care. After being placed in the Minister's care, DMD was provided with safety, security, and attention. Her physical, medical, and emotional needs were met. As a result, DMD is no longer withdrawn or underconfident. To the contrary, she blossomed. She is a strong advocate. She takes pride in her hygiene and appearance. She takes pride in her organized and clean room. She enjoys working with animals, and in particular horses. She enjoys school, friends, and a variety of activities.
- The father does not live in a safe home. The home is unfit and unsanitary. Although minimal progress was made, such progress will be fleeting because the father did not learn basic cleaning and organizational skills. Further, the father did not address the complex issues associated with hoarding.

[55] The evidence overwhelmingly supports a finding that DMD will be subjected to a substantial risk of neglect if returned to the father's care.

*Decision on Substantial Risk of Emotional Abuse*

[56] In addition, I find, pursuant to s. 22(2)(g) of the *Act*, that the Minister proved that DMD would be at a substantial risk of emotional abuse if she were returned to the father's care. The Minister proved that the father failed to co-operate with services designed to alleviate the abuse. My analysis of this issue mirrors the three-stage analysis referenced above.

[57] First, I find that at the outset of this proceeding, DMD experienced emotional abuse while in the care of her parents. Emotional abuse is defined in s. 2(1)(1a) of the *Act* as including isolation such as depriving a child from normal social interaction; deprivation of affection or cognitive stimulation; or any other similar acts. DMD experienced emotional abuse because she was isolated from all normal social interactions. She was often alone in her unsanitary and unfit room with little stimulation. The parents lack basic parenting skills and thus provided inadequate supervision or emotional support. The father has a violent temper. As a result, DMD was withdrawn and lacking in healthy hygiene and social skills.

[58] Second, as noted previously, the father refused to meaningfully engage in services to correct these deficits. Further, the father was unable to make necessary changes on his own because he lacks insight into the nature of the protection concerns. The father has no interest in making positive and permanent changes to correct the protection concerns.

[59] Third, DMD is at a substantial risk of future emotional abuse because the father refused to correct his parenting deficits. DMD's emotional and social progress will quickly be undone if she is returned to her father's care as is evident from DMD's circumstances during her month-long disappearance.

[60] In the circumstances, the Minister proved that DMD will be at a substantial risk of emotional abuse if she is returned to the care of her father.

*Summary on Protection Issue*

[61] The Minister proved that DMD continues to be a child in need of protection pursuant to s.22 (k) and (g) of the *Act* in that DMD will be at a substantial risk of neglect and emotional abuse if returned to the father's care. The Minister further

proved that the father neither engaged in services to correct the protection concerns nor did he correct the protection concerns without professional assistance.

**[62] Should DMD be placed in the permanent care and custody of the Minister?**

[63] Despite the requests of the father and DMD, I find that the Minister proved that its sought after permanent care order is in DMD's best interests. It is the only order available to me because of the unresolved protection concerns and because the legislative time limits have expired: *NJH v Nova Scotia (Community Services)*, 2006 NSCA 20, para 20.

[64] Further, the evidence fails to disclose any less intrusive alternatives. The only alternative plan presented was from the father. In dismissing the father's plan, I note that although appropriate services were offered, the father not only refused services, but he made violent threats to the Minister's employees. The father's plan must be rejected as it does not meet the legislative requirements of the *Act*. The father's plan does not satisfactorily address the serious and long-standing protection concerns.

**Conclusion**

[65] The Minister's application is granted. DMD remains a child in need of protection. DMD requires love, stability, guidance, and attention. These needs can only be met through the issuance of a permanent care order. The father's plan is dismissed. If DMD were returned to the father's care, she would be placed at a substantial risk of neglect and emotional abuse.

Forgeron, J.