

Supreme Court of Nova Scotia (Family Division)
Citation: Nova Scotia (Community Services) v. SS, 2021 NSSC 231

Nova Scotia (Community Services) v. SS, AB, RB

SFSNCFSA-120233

- **Danielle Morrison for Community Services**
- **Alan Stanwick, Counsel for SS**
- **Courtney Somerton, Counsel for AB**
- **Robert Sager, Counsel for RB**

Background and Procedural Facts

1. There are four children at the heart of this protection decision: PS, born February *, 2010, age 11, MkB, born November *, 2014, age 6, SB, born May *, 2017, age 4 and MB, born April *, 2019, age 2.
2. SS is the mother of all four children. RB is the father of MkB. AB is the father of the two youngest children, SB and MB. SS has not disclosed the identity of PS's father.
3. RB resides in Ontario. SS and AB relocated from Ontario to Nova Scotia early in 2020. The child, PS, has been voluntarily placed by SS with SS's mother in Ontario. The child MkB currently resides in Ontario with RB, but primary care and residency of MkB is a matter of significant contention between RB and SS. All parties agreed that Nova Scotia has proper jurisdiction to deal with the child protection matter for all four children.
4. The Minister is seeking a protection finding under s. 22(2)(b) (risk of physical harm); s. 22(2)(g) (risk of emotional abuse); and s.22(2)(k) (risk of neglect). The Minister is also asking the Court to make a protection finding under any other applicable protection ground not specifically included in the pleadings, referencing s. 22(2)(i) (exposure to domestic violence) in particular.
5. A Notice of Child Protection Application was filed on November 20, 2020. The 5-day Order was granted November 25, 2020 and the interim hearing was completed on December 18, 2020.
6. The Protection docket scheduled for February 11, 2021 was adjourned so that SS could obtain new legal counsel. On February 19, 2021, the Court was advised that SS was contesting a protection finding. RB and AB both indicated their consent to the protection finding.
7. Hearing dates were scheduled for April 19 and 20, 2021 with all parties consenting that it was in the best interest of the children to go over the legislative deadline in order to conduct a contested protection hearing.

8. Due to Covid-19 public health restrictions, the adjourned matter was heard on July 13-15, 2021.
9. The Minister relied on the evidence of child protection workers Renee Wilson and Krista Morrison as well as Ms. CS, AB's mother. SS was the deponent in two affidavits dated December 16, 2020 and June 28, 2021, each filed July 5, 2021. AB filed an affidavit dated July 9, 2021. RB did not file an affidavit and was not present to give evidence.

Issues

10. Has the Minister of Community Services proved the children are in need of protective services? If so, under what grounds?

Position of the Parties

Position of the Minister

11. The Minister's position is that the children are at substantial risk of physical harm, emotional harm and neglect. The Minister also asserts that the children have been exposed to or been made aware of violence and there has been a failure or refusal to obtain services or treatment to remedy or alleviate the violence.
12. The Minister argues:
 - The children are at risk of physical and emotional harm because SS, RB and AB continue to be involved in highly conflictual and contentious parenting disputes.
 - The children have been exposed to violence and SS has failed to engage in services or treatment to remedy or alleviate the violence. The Minister acknowledges that SS has participated in domestic violence programming and has completed a co-parenting course but asserts these services have failed to remedy or alleviate the exposure to violence risk as demonstrated by the fact that SS continues to initiate contact with AB despite direction from the Minister to refrain from such contact which continues to be volatile.
 - Even though the state of SS's home has improved, the concern about risk of neglect continues because the care of the children is often overlooked in the aftermath of the constant state of chaos that SS generates in her wake.
 - SS has made numerous and ongoing allegations about RB and AB that are unfounded and serve to propagate the high conflict and turmoil that places the children at risk.
 - SS has demonstrated a lack of insight to the protection concerns raised. She attributes all troubling issues to others, citing either justification or victimization, for her actions or inactions. As a result, the Minister argues SS is likely to continue to expose her children to ongoing protection concerns.

Position of SS

13. SS is opposed to a protection finding being made and seeks a dismissal of the proceeding at this stage.

- SS argues that the Minister has not met the burden of proving any protection concern. She asserts there is no evidence to demonstrate that she has failed to supervise or protect the children adequately.
- SS claims there was no indication of medical, dental or educational neglect at the time of the protection hearing. SS points to the evidence of Krista Morrison who, upon visiting SS, observed her house to be clean and noted no concern about the children's hygiene or availability of food in the home.
- SS denies that she has disrupted contact between the children and their paternal families and asserts that she has been compliant in facilitating parenting time. She refutes the assertion on behalf of the Minister that children who are in the middle of parental conflict are at risk of physical harm.
- SS argues the Minister has not demonstrated that the children have been exposed to adult talk and issues at the time of the protection hearing.
- In response to concerns about domestic violence, SS points out:
 - she has ended her relationship with AB
 - charges against her have been dropped; and
 - she has engaged in remedial services to alleviate the violence.

Position of AB

14. AB consents to a protection finding pursuant to s. 22(2) (b), (g) and (k).

Position of RB

15. RB consents to a protection finding pursuant to s. 22(2) (b), (g) and (k).

Applicable Law

16. The applicable legislation is the Nova Scotia *Children and Family Services Act*, S.N.S. 1990, c.5 (the *Act*). Section 40 of the *Act* calls for a determination of whether the children are in need of protective services. Section 22(2) sets out the grounds for making a protection finding:

22 (2) A child is in need of protective services where

...

(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

...

(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;

...

(i) the child has been exposed to, or has been made aware of, violence by or towards (i) a parent or guardian, or (ii) another person residing with the child, and the parent or guardian fails or refuses to obtain services or treatment, or to take other measures, to remedy or alleviate the violence;

...

(k) there is a substantial risk that the child will experience neglect by a parent or guardian of the child, 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 harm;

17. Section 3(1)(p) of the *Act* defines “neglect” as the chronic and serious failure to provide the child

- a. *adequate food, clothing or shelter*
- b. *adequate supervision*
- c. *affection or cognitive stimulation, or*
- d. *any other similar failure to provide.*

18. Section 3(1)(la) of the *Act* defines “emotional abuse” as follows:

s. 3(1) In this Act,

...

(la) “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. inappropriate criticism, humiliation or expectation of or threats or accusations towards the child; or
- iv. any other similar acts.

19. Except for findings under s. 22(2) (a) and (c), which have the result of placing a parent or guardian on the Child Abuse Register, a protection finding is not made against a parent or guardian. Rather it is the circumstances of the child which places them at risk. **Nova Scotia (Community Services) v. CKZ**, 2016 NSCA 61, at paragraph 47 states:

Nowhere in s. 22(2) is the protection status of a child linked to the specific **attributes** of his or her parent or guardian. It is, however, clearly linked to the actions, failure to act, or inability to act of the adults responsible for the child’s care. Whether a child is in need of protective services is based upon the real life, lived experiences of the child. Nowhere in that definition, or elsewhere in the *Act*, is the status of a child as

being in need of protective services informed by the reason **why** their parents acted, failed to act, or have the inability to act in a particular manner.

20. The Court is obligated to consider whether there are facts that support a protection finding under any of the grounds in s. 22(2), regardless if they are pleaded. **Children's Aid Society of Halifax v. H.A. & Z.A.**, 2002 NSCA 94.
21. The Minister is assigned the burden of proof and it is the civil burden of proof. **F.H. v. MacDougall**, 2008 SCC 53. The Minister must prove its case on a balance of probabilities by providing the Court with “clear, convincing and cogent evidence.” **Nova Scotia (Community Services) v. C.K.Z.**, *supra*.
22. “Substantial risk” is defined in s.22(1) of the *Act*. It means a real chance of danger that is apparent on the evidence. When deciding whether there is a “substantial risk,” I must only be satisfied that the “chance of danger” is real, rather than speculative or illusionary, and “substantial” in that there is a “risk of serious harm or serious risk of harm” (**Winnipeg Child and Family Service v. K.L.W.**, 2000 SCC 48 paragraphs 104, 106, and 117). It must be more likely than not that this “risk” or “chance of danger” exists on the evidence presented. **CR v. Nova Scotia (Community Services)**, 2019 NSCA 89.
23. As noted in **MJB v. Family and Children’s Services of Kings County**, 2008 NSCA 64, 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.
24. In **Nova Scotia (Community Services) v. KM**, 2019 NSSC 312, Forgeron J. stated at paragraphs 27 and 28 the following with respect to a finding of substantial risk of emotional abuse:
 - [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.

Findings

25. The Minister has established that the children are in need of protective services pursuant to 22(2)(b) (risk of physical harm); (g) (risk of emotional abuse); (k) (risk of neglect) and (i) (exposure to violence and failure to engage in services to remedy or alleviate the violence).

26. In September 2020, the Minister received a referral that the children were being neglected. The children had been left in the care of AB while SS had returned to Ontario to deal with legal issues in relation to the parenting of MkB. The referral disclosed that there was a lot of screaming and cursing in the presence of the children and the children were dirty and poorly dressed.
27. In October 2020, the Minister received a police referral regarding an incident of violence between SS and AB. SS had returned home from Ontario and the relationship between SS and AB had ended badly. SS confirmed that the children were in the home and one child directly witnessed the incident of violence between SS and AB.
28. During the fall of 2020, child protection workers continued to have concerns about the lack of cleanliness and the level of chaos in the home. The children were not registered for school until late October 2020 and only then at the insistence of child protection workers. SS and AB continued to experience significant conflict over parenting time.
29. The parenting dispute between SS and RB was also ongoing and peaked when RB attended in Nova Scotia in November 2020 for the purpose of returning MkB to Ontario, as per court order. SS refused to allow MkB to leave. SS gave a number of reasons to justify her refusal to turn MkB over to RB, ultimately claiming she was protecting the six-year old's right to choose not to go.
30. Eventually the children were enrolled in school and the condition of the home improved. SS engaged in some remedial services included a co-parenting course and domestic violence programming. However, despite these efforts to alleviate risk, I am satisfied there are protection concerns that continued to exist at the time of the protection hearing:
- The conflict between SS and RB and between SS and AB continues at an escalated level. This dynamic persists despite SS's completion of a co-parenting course which has clearly not been effective to remediate the situation.
 - The conflict is marked by flashpoints over parenting time significant enough to attract ongoing child protection referrals and frequent requests for police intervention. There has been no real abatement in the conflict.
 - The children are enmeshed in the chaos that ensues from the conflict which puts them at ongoing risk of physical and emotional harm. For example:
 - As recently as a week before the protection hearing, there was a violent incident between SS and AB resulting from a contentious parenting time exchange. SS acknowledges the children MB and SB were present for the exchange saying: "Upon taking the children out, he (AB) was very aggressive with them, he pulled MB out by one arm." I am satisfied this recent incident demonstrates ongoing risk of physical harm pursuant to s 22(2)(b) and the fact that high conflict between parents can very well equate to risk of physical harm to children.
 - SS goes on to say about the incident: "I forgot to include in the email, the children and I were denied the ability to say bye and they left in tears begging for their mommy because they did not get a proper goodbye." SS, at the same time, reported concerns about the impact of the conflict upon the children noting that SB was

regressing and wetting herself through the day and both MB and SB were not sleeping properly. I am satisfied that this recent incident, considered in the context of the unrelenting conflict, demonstrates ongoing risk of emotional harm that may seriously interfere with children's healthy development pursuant to s. 22(2)(g).

- SS testified about her history of domestic violence with both RB and AB. SS acknowledges the children have witnessed this violence and that this exposure has caused the children emotional harm. However, despite participating in domestic violence programming, which SS described as being very thorough, SS still engages in behaviours that expose her children to violence. The violence has not been remedied or alleviated. AB has been charged with breach of the no contact order with SS. SS continues to instigate direct contact with AB, contrary to the direction of the Minister. SS knows or ought to know that such contact is likely to generate conflict and increase the potential for violence. Her obstinacy in this regard demonstrates an ongoing risk pursuant to s. 22(2)(b) and (g) and an existing protection concern pursuant to s. 22(2)(i).
- In June 2021, SS organized a three-way call between herself, AB and the child MkB so that MkB could talk directly to AB about the reasons MkB does not want to live with his father RB in Ontario. SS claims she facilitated this call because of the bond between MkB and AB. Involving a 6-year-old child in this type of discussion, and continuing to evoke and rely upon opinions solicited from such a young child about the vicious dispute between his parents places the burden of unrealistic expectations upon that child who is therefore at risk of emotional harm pursuant to s. 22(2)(g).
- The child MkB requires dental work that has been outstanding for some time. Dental neglect was a concern of child protection authorities even before the children relocated to Nova Scotia. The dental work has still not been done. SS and RB each blame the other. Regardless, the outstanding dental work is evidence of a chronic and serious failure to provide for the child that constitutes a protection concern under s. 22(2)(h).

Conclusion

31. SS has cited a multitude of protection concerns against AB and RB. AB admits to some of these allegations. Some of the allegations remain unfounded. Regardless, all parties involved, apart from SS, have consented to the protection finding. SS also agrees that protection concerns exist; she asserts the protection concerns simply do not relate to her.
32. As stated previously, apart from s. 22(2)(a) and (c), a protection finding is not made against a parent or guardian. It is the circumstances of the child which places a child at risk. That being said, I find that SS has demonstrated a serious lack of insight into the role that she plays in creating and perpetuating the chaotic and conflictual situation surrounding these children that generates the protection concerns. SS's inability to accept responsibility for her behaviours contributes to the finding that these children are in need of protective services. I make this finding with the hope that the situation may change for the benefit of the children involved.

33. The children are in need of protective services pursuant to s. 22(2)(b), (g), (i) and (k). A Protection Order will issue accordingly.

Marche, J.