

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Minister of Community Services) v. A.G.; T.H., C.C. A.H.*, 2022 NSSC 18

Date: 2022-01-18

Docket: FKCFSA No. 118366

Registry: Kentville

Between:

Minister of Community Services

Applicant

v.

A.G., T.H., C.C. and A.H.

Respondents

Restriction on Publication: Pursuant to subsection 94(1) of the *Children and Family Services Act*, 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. This decision complies with this restriction so that it can be published.

Judge: The Honourable Justice Jean M. Dewolfe

Heard: October 14, 2021, in Kentville, Nova Scotia

Written Release: January 18, 2022

Counsel: John MacMillan for the Minister of Community Services
Pavel Boubnov for the Respondent A.G.
Hope Bell for the Respondent A.H.
T.H. Not Present
C.C., Self-Represented

RESTRICTION ON PUBLICATION:

Pursuant to subsection 94(1) of the Children and Family Services Act, 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. This decision complies with this restriction so that it can be published. 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:

[1] This is an application by the Minister of Community Services (“the Minister”) seeking permanent care and custody of a 10-year-old child, B., pursuant to the *Children and Family Services Act*, S.N.S. 1990, c. 5 (the “Act”). Ms. G. is B.’s mother, Mr. H. is B.’s father and A.H. is B.’s maternal grandmother. Originally, this proceeding involved two children, B. and his younger brother T. Both children were in the care of their paternal grandmother, C.C., at the commencement of this proceeding. B. was placed in the temporary of the Minister

in June 2020. T. remained in the care of C.C., and the proceeding with respect to him has been terminated.

[2] This matter was heard on October 14, 2021 by Microsoft Teams Video with consent. Ms. G. appeared by telephone. Mr. H. did not appear or participate at the hearing. The only plans before the Court are the Minister's plan for permanent care and custody and A.H.'s plan to have B. placed in her care. A.H.'s plan is supported by Ms. G.

BACKGROUND

[3] Both Mr. H. and Ms. G. have a history with child protection from the time of B.'s birth relating to drug use, mental health issues, domestic violence, neglect and inadequate supervision. This matter is the third child protection proceeding involving B.

[4] During the second proceeding in 2016, B. & T. were placed with C.C. In 2017, they were placed with Ms. G. This placement failed after only 4 weeks, and the children were returned to C.C.'s care. Shortly thereafter, B. and T. were placed with Mr. H. This placement lasted 5 months, following which they were placed in foster care. In November 2017, C.C. agreed to care for B. and T. long term, they were placed in her care, and the proceeding terminated.

[5] In August 2018, B. went to live with A.H. In August 2019 he returned to C.C.'s care.

[6] In June 2020 this proceeding commenced following C.C.'s surrender of B. to the Minister. C.C. stated that she was unable to care for B. due to his aggression towards her and T. and his challenging behaviours.

EVIDENCE

[7] The Minister submitted affidavits from social workers Trina Earle, Lael Aucoin and Emily Sweeney which were admitted by consent. These affidavits describe the history of the parties' involvement with the Minister and the progress of the proceeding.

[8] **Kathleen Archibald**, B.'s child-in-care-worker submitted three affidavits and was cross examined.

[9] In her first affidavit dated September 20, 2021, Ms. Archibald reported that B. was frequently violent towards staff and occasionally towards other youth at his group home and frequently caused property damage. At that time, B. needed to be physically restrained multiple times a week.

[10] In her second affidavit dated September 21, 2021, Ms. Archibald outlined B.'s circumstances. She noted that B. shows "extreme anxiety" over uncertainty. He works well with multiple caregivers because if he is angry at one he can talk to another. He is frequently disruptive at his group home. She reported that between January 1 and September 16, 2021, there were fifty incidents when physical restraints had to be used on B., in addition to many other occasions when he left the group home without permission, expressed a desire to hurt or kill himself, or was violent either physically or emotionally. She testified that B. regularly puts himself in danger by leaving his placement and by being violent. Ms. Archibald also testified that B. is seeing a counsellor weekly and a psychiatrist as needed and has been prescribed medication for ADHD and anxiety.

[11] In cross examination, Ms. Archibald testified that B. has a good rapport with certain staff and that they can usually de-escalate B. without physical restraint.

[12] Ms. Archibald testified that B. is regularly attending school, but has two workers that attend with him. She reported B. would prefer a placement without other youth.

[13] In her third affidavit, dated October 6, 2021, Ms. Archibald responded to A.H.'s proposal that she care for B. Ms. Archibald recounted the Minister's experience with A.H. when caring for her own children. The Minister had received

referrals regarding A.H. starting when her daughter, Ms. G. was 13. At that time, A.H. presented as overwhelmed by Ms. G.'s behaviour. Ms. G. and her younger sister alleged that A.H. had hit them; A.H. denied this. However, she admitted that she became very frustrated with Ms. G. and was concerned that she would hit her.

[14] In 2006, Ms. G., age 16, told the Minister that she had been kicked out of A.H.'s home. A.H. denied this, but Ms. G. had gone to live with her grandmother.

[15] In 2014, the Minister received a referral regarding A.H.'s 14-year-old son. He had disclosed significant conflict with A.H. and had alleged that A.H. had grabbed him. A.H. complained that her son would not attend school or take his medications. She alleged he was controlling and verbally abusive to her. She later reported that they were attending counselling.

[16] Ms. Archibald said that the Agency had concerns about Ms. G. assisting A.H. and caring for B. due to her lack of consistency and substance abuse concerns.

[17] She testified that A.H. is currently caring for Ms. G.'s daughter M. and there are no concerns with respect to M. who is a compliant child.

Monique Simonse

[18] The Minister relies on the report of psychologist Monique Simonse, dated May 22, 2021. Ms. Simonse was qualified by consent as a psychologist who is able to make assessments and provide recommendations for the mental health of children. As such, she was permitted to provide expert opinion evidence in this area.

[19] Ms. Simonse noted that B. had had much inconsistency in his life. B. exhibits aggressive and challenging behaviours which are not in the normal range. She stated that B.'s violence, in particular towards T., suggests attachment issues. He lacks emotional regulation and is described by teachers and caregivers as impulsive, angry, aggressive, anxious and defiant.

[20] Ms. Simonse concluded (at page 33 of her report, p. 46 of Exhibit 2)

Results of this assessment indicate that (B.) is struggling behaviourally and emotionally as a result of problems with managing his emotions. Results of current testing support (B.'s) diagnose (*sic*) with ADHD. Defiant and oppositional disorder, conduct disorder, hyperarousal, mood switches and depression were also reported. (B.) has experienced trauma as a result of experiencing emotional neglect. His parents have not been able to provide adequate care and as a result (B.) has experienced inconsistent parenting circumstances. These experiences have likely created feelings of unsafety and trust issues in relationships and have affected his ability to attach in a safe manner. This likely has impacted the way he relates to family members, authority figures and professionals that are trying to support him in his development. His inattention, hyperactivity, impulsivity and the fact that he missed in class time due to his behaviour problems, have likely affected his academic performance, his ability to focus and take in information, and the ability to build healthy relationships with teachers and peers. His current

presentation is likely a response to the traumatic events, the inconsistent caregivers and the frequent moves he experienced in his young life, increased by underlying ADHD and anxiety. (B.'s) ability to regulate his emotions depends on stability in his environment. Stability created by offering routine, structure and boundaries in a neutral way will decrease his hyper arousal, ADHD, anxiety and trauma symptoms (B.'s) current presentation is likely a result of the combination of ADHD and anxiety and his past traumatic experiences. He needs to have consistency, needs adults who care for him to provide him with good communication of what he can expect, and validate his emotions and offer support, rather than punishment.

Respondent's Evidence

Ms. G.

[21] Ms. G. filed an affidavit dated October 3, 2021. She supports A.H.'s plan for B.'s care. She was living with her mother at that time while recuperating from a car accident but also had her own residence approximately 5-minute walk away. She noted that her older daughter, M., resides with A.H., but Ms. G. hopes to have her returned to her care. She indicates that she is willing to assist A.H. with B.'s care.

[22] On cross examination Ms. G. confirmed that she suffered a significant brain injury in a car accident in 2021 and has recently been diagnosed with cervical cancer. She often requires her mother's assistance in attending appointments because she can not drive.

A.H.

[23] A. H. filed two affidavits.

[24] In her first affidavit, dated September 1, 2021, she proposes that she care for B. She notes that she is self-employed as a cleaner. She has had care of Ms. G.'s 13-year-old daughter, M., since Ms. G.'s car accident in April 2021. M. is described as an easily managed, well-behaved child.

[25] A.H. testified that she has a "close relationship" with B. She has been visiting with B. at his group home. She describes B.'s behaviour as having deteriorated since he came into the Minister's care. A.H. has taken some jiu-jitsu recently and believes that this will assist her de-escalating B. She has also taken a parenting an ADHD child course. (10 weeks).

[26] A.H. agrees that B. has experienced a "trauma-filled" childhood but believes that he would benefit from living with family as opposed to an "institution".

[27] A.H. admits she took B. off his ADHD medication while he lived with her but said that this was recommended by his doctor.

[28] A.H. has rented the same home for 18 years, she has a vehicle, and her work hours are flexible. She identified Ms. G., her other daughter and her brother as supports.

[29] She does not have a medical plan, so she proposes to use the public mental health system for B.'s counselling.

[30] On cross examination, she admitted that she did not complete a “Parenting a Defiant Child” course in which she was enrolled in 2019, and has no training in trauma informed parenting or non-physical crisis intervention.

[31] This matter is a Review hearing and as such pursuant to s. 46(4) of the Act the Court is directed as follows:

- (4) Before making an order pursuant to subsection (5), the court shall consider
 - (a) whether the circumstances have changed since the previous disposition order was made;
 - (b) whether the plan for the child’s care that the court applied in its decision is being carried out;
 - (c) what is the least intrusive alternative that is in the child’s best interests; and
 - ...

[32] The Minister must prove on the balance of probabilities that the child continues to be a child in need of protection pursuant to s. 22(2) of the Act.

[33] The Minister relies on subsection (kb), (b), (g), and (h) of s. 22(2) which state:

- (kb) the child is in the care of an agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the child’s care and custody;
- (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;

(h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to cooperate with the provision of, services or treatment to remedy or alleviate the condition;

[34] Subparagraph (a) provides:

(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

[35] The Act defines "substantial risk" to mean a "real chance" of danger that is apparent on the evidence: s. 22 (1).

[36] Pursuant to section 42 (2), the Court must consider less intrusive alternatives, unless they would be inadequate to protect the child. The Court must also consider whether it is possible to place the child with family: s. 42(3).

[37] Family placement plans must be viewed in the context of the best interests of the child: *Family and Children's Services of Kings County. v. B.D.* [1999] N.S.J. 220 (C.A.).

[38] The Court is required to make a disposition that is in the child's best interest: s. 42(1). This requirement is the paramount consideration: section 2(2). The factors which the Court must address in reaching this determination are set out at section 3(2) of the Act which provides as follows:

(2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

- (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;
- (b) the child's relationships with relatives;
- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- (d) the bonding that exists between the child and the child's parent or guardian;
- (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- (f) the child's physical, mental and emotional level of development;
- (g) the child's cultural, racial and linguistic heritage;
- (ga) the child's sexual orientation, gender identity and gender expression;
- (h) the religious faith, if any, in which the child is being raised;
- (i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
- (j) the child's views and wishes, if they can be reasonably ascertained;
- (k) the effect on the child of delay in the disposition of the case;
- (l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;
- (m) the degree of risk, if any, that justified the finding that the child is in need of protective services;
- (n) any other relevant circumstances.

[39] Past parenting history is relevant to the present circumstances: *Nova Scotia (Minister of Community Services) v. L. (S.E.)*, 2000 NSCA 55 (CanLII).

[40] The Act imposes statutory timelines within which applications must be heard: s. 45(2).

ANALYSIS

[41] B. is under fourteen and the timeline for disposition expired on November 1, 2021. There are only two options available to the Court: either terminate the proceeding and adopt A.H.'s plan, or order permanent care.

[42] Neither of B.'s parents are able to resume care and custody of B. C.C., his paternal grandmother and legal custodian/guardian prior to this application, is also unable/unwilling to resume care of him. Therefore, I accept the Minister's position that section 22 (2) (kb) continues to be made out with respect to B.

[43] The Court has significant concerns with respect to A.H.'s plan to care for B.

[44] A.H. appears to have experienced significant conflict with her daughters and her younger son when she was raising them.

[45] A.H. has M. in her care, but she is an "easy" child who, unlike B., is not rude, violent, and does not challenge A.H.'s authority. When B. was in her care from 2018-2019 he missed a significant amount of school.

[46] A.H. has not sought to improve her parenting skills until very recently. When B. left her care, A.H. stopped participating in "Parenting a Defiant Child", a course which had been recommended to assist her in dealing with B. She has not

taken or identified any courses in parenting with a trauma informed approach. She has taken a few jiu-jitsu classes and feels this will take the place of non-violent restraint training. She is taking a 10-session course on helping children with ADHD.

[47] There is no reason to expect that A.H.'s parenting abilities have improved significantly since she parented B. in 2018-2019, or parented her own children.

[48] B. has very high needs. This seems to come as a surprise for A.H., who indicated she believes that his violent behaviours are as a result of him being placed away from family. She testified that she has never seen B. become violent and that she will rely primarily on B.'s self-regulation skills. This is simply not credible or realistic. B. has longstanding and complex issues which lead to severe behavioural issues. A.H.'s lack of insight into these issues and B.'s needs is of significant concern to this Court.

[49] In addition, the Court finds that A.H.'s plan is too general and unrealistic, and is inadequate to meet B.'s needs.

[50] B. currently receives weekly counselling. He has two full time assistants at school. His behaviours are managed and supported by a team of caregivers. He is provided with routine and structure.

[51] A.H. works full time, albeit with a flexible schedule. Her only named supports are her daughters and a brother. Ms. G. is, in this Court's opinion, unlikely to be able to provide more than minimal assistance and if she is unable to be reliable in her assistance this would dysregulate B. as it has in the past. In fact, A.H. must provide significant assistance to Ms. G. at this time. A.H. has provided no supporting affidavits from her other daughter or brother, and the extent and appropriateness of the assistance they could provide is unknown.

[52] A.H. has another child in her home, M. with whom B. allegedly interacts appropriately. However, B. has expressed a preference for a placement in a home without other children. A.H. is not at all concerned by the possible repercussions to both B. and M. of having both reside in her care should conflict occur.

[53] A.H. does not have a private medical plan. B.'s only access to counselling would be through the public system. A.H. has not initiated this process and has no interim plan for any waiting period.

[54] B. takes several medications. A.H. has been non-compliant with medication for B. in the past, which led to an increase in behavioural disruptions at school and at home. She testified that this was due to medical advice but provided no confirmation.

[55] This Court is not satisfied that A.H. can provide the structure, routines and boundaries that B. needs to manage his challenging behaviours. Without this his placement with her is likely to break down as it has in the past, subjecting B. to further instability.

[56] This Court finds that A.H.'s plan for B.'s care is inadequate to meet his needs, and is therefore not in his best interests.

[57] Ms. Simonse recognized that B. is close to his family. The Minister is not opposed to continued contact if that is in B.'s best interests. However this recommendation is secondary to his need for stability, routine and empathetic, trauma informed parenting.

[58] B. has been hurt emotionally and developmentally by his early experiences. As a result, he needs capable, trauma informed caregivers to respond to his high needs. This care cannot be provided by A.H.

[59] The Court therefore orders that B. be placed in the permanent care and custody of the Minister.

Dewolfe, J.