SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. C.C.*, 2022 NSSC 191

Date: 20220705
Docket: SFSNCFSA No. 118771
Registry: Sydney

Between:

Nova Scotia (Community Services)

Applicant

v.

C.C. and R.M.

Respondents

LIBRARY HEADING

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: April 6; May 10 & 11, 2022

Summary: The Minister applied for a permanent care and custody order of a two year old child who'd spent most of her young life in the care of the Minister. The mother presented a plan for the child, but the father did not. Both parents had a lengthy child protection history and two of their older children had been placed in the Minister's permanent care and custody. The time period for a final disposition order had passed, due to Covid-19 delays and delays attributable to the mother. The Court concluded that the risks apparent when the protection finding was made remain unresolved, thus the Minister's application cannot be terminated and the child returned to the care of the mother. The only available order at this late stage is to place the child in the Minister's permanent care.

Key words: Child protection; permanent care and custody

Legislation: *Children and Family Services Act*, S.N.S. 1990, c. 5

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Restriction on Publication

Section 94(1) of the *Children and Family Services Act* applies to this decision and provides as follows:

94(1) 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 a relative of the child.

Judge:	The Honourable Justice Lee Anne MacLeod-Archer
Heard:	April 6; May 10 & 11, 2022
Final Written Submissions:	June 21, 2022
Written Release:	June 30, 2022
Counsel:	Jillian Barrington for the Applicant Rosemary Osasere for the Respondent, C.C. Alan Stanwick for the Respondent, R.M.

By the Court:

INTRODUCTION:

[1] C.C. and R.M. are the parents of A.C., who was born in May 2020. The Minister became involved with the family due to historic concerns with parental drug use, domestic violence, mental health, unfit living conditions, and conflict with the law.

[2] I summarized the parents' long history of child protection involvement in my 2019 decision as follows: "C.C. was involved with the Minister before she met R.M. [in 2014]. The Minister's concerns included unfit living conditions and drug use. When she and R.M. became partners, R.M. was involved with the Minister as well. He was in a relationship where he perpetrated domestic violence and used drugs. His daughter with that former partner was exposed to both risks."

[3] The Minister initially decided to pursue a supervision order, with A.C. remaining in her parents' care. However, before that application was filed, concerns arose that R.M. was abusing drugs again. When a visit to the home on July 15, 2020 disclosed drug paraphernalia and R.M. admitted to drug use, the Minister took A.C. into care.

[4] The parents consented to both the 5-day and 30-day interim orders. In those orders, C.C. and R.M. were ordered to refrain from using non-medically prescribed drugs and alcohol. They consented to a protection order on October 13, 2020 which contained the same prohibition.

[5] The Minister filed its plan for the child on November 24, 2020 in advance of the first disposition hearing. The risks identified included substance abuse, inadequate parenting/condition of the home, and R.M.'s mental health. The order sought was temporary care, with a continued prohibition on the use of drugs and alcohol, and services to address the risks.

[6] The first disposition hearing was held on January 12, 2021. Subsequent temporary care orders were issued before the Minister filed its final plan seeking permanent care and custody (PCC) on December 1, 2021. The enumerated risks included: substance abuse; unfit living conditions, and parent mental/emotional

health. The plan outlines the many services offered to the parents to address the risks.

[7] The final disposition review hearing was scheduled to start on January 12, 2022. However, it was adjourned while C.C. made application for new counsel. With other delays, she didn't file a plan of care for A.C. until April 5, 2022 and the hearing didn't start until April 6, 2022.

[8] C.C.'s plan doesn't address the identified risks, other than to say that C.C. "intends to continue engaging in services."

[9] R.M. did not file a plan, nor did he participate in the hearing.

LEGISLATION

[10] In any proceeding under the *Children and Family Services Act*, S.N.S.1990 c.5 (*CFSA*), the Court must give priority to the best interests of the child, in accordance with s. 2(2). The factors to be considered in determining a child's best interests are set out in s. 3(2) of the *CFSA*, which I have considered and applied.

[11] Before a court can grant an order removing a child from the care of a parent, the *CFSA* requires the circumstances enumerated in s. 42(2)-(4) to be met.

[12] The court must complete the final review hearing within the legislative time periods, absent exceptional circumstances (**A.M. v Nova Scotia (Community Services**), 2020 NSCA 29). The time limits are supposed to reflect a child's sense of time (**P.H. v Nova Scotia (Community Services**), 2013 NSCA 83).

[13] This proceeding is 6.5 months past the final deadline legislated under the *CFSA*. Initially, and by consent of the parties, I agreed to extend the deadline for completion of the hearing in the best interests of the child, to ensure that all viable plans for her future are considered.

[14] However, after C.C.'s failure to attend court for completion of her cross-examination, I declined to further extend the deadline. It is not in A.C.'s interests to see this proceeding prolonged any longer (**A.M. v Nova Scotia (Community Services,** 2014 NSCA 97). In making that decision, I referenced the reason for the delays which account for the extended deadline, a version of which is attached as Schedule "A" to this decision.

[15] When a child protection proceeding is past the legislated time limit, the Court has only two options: 1) issue an order granting permanent care of the child to the Minister; or 2) dismiss the proceeding (which would result in the child's return to the care of her parent(s)).

ONUS

[16] The Minister must prove its case on a balance of probabilities. I find that it has done so.

[17] C.C. submitted to an hour's cross-examination on May 11, 2022 before court closed for the day. She was scheduled to complete her cross-examination on June 2, 2022 but she failed to appear. Efforts to contact her that day were unsuccessful, and the hearing was concluded days later after she offered an unsatisfactory excuse for her failure to appear.

[18] That leaves C.C.'s evidence largely untested, which weighs against her. Where her evidence contradicts the Minister's version of events, I accept the Minister's evidence. The Minister's evidence was unshaken on cross-examination, and it remains persuasive.

[19] I have no evidence from R.M. I infer from his decision not to present a plan or participate in the hearing that he has not overcome his addictions, mental health challenges, or the other risks identified by the Minister in this and earlier proceedings.

ISSUE: IS A.C. STILL A CHILD IN NEED OF PROTECTIVE SERVICES?

[20] The Minister says that the risks present when A.C. was found to be a child in need of protective services on October 13, 2021 remain risks today. C.C. says that those risks have been alleviated. She says that she demonstrated progress after accessing remedial services, and that she ended her relationship with R.M.

[21] C.C. argues that:

- Without proof of a positive drug test, there's no evidence that she was abusing drugs;
- The condition of the home improved with the help and support of the Minister;

- There is no evidence that she is involved in criminal activities.

[22] I will address each risk as C.C. has presented them:

#1 – Substance abuse

[23] I find there are risks associated with C.C.'s drug use. She continues to deny it, but I accept the Minister's evidence and submissions that she continues to abuse drugs. The evidence of current use is compelling, including her bruised arms, the used needles and bloody Kleenex, the missed urine tests, and her presence at a drug dealer's home. Her explanation for all of these red flags is simply not believable.

[24] C.C.'s continued denial of drug use is particularly concerning, given my earlier finding that she was abusing drugs in 2017 - 2018. She continues to deflect blame to R.M. and others, or she offers creative (and incredible) explanations, instead of acknowledging and addressing the problem. Her lack of insight and lack of honesty means that she is unable and/or unwilling to change, which leaves A.C. at risk in her care.

[25] I've inferred from R.M.'s decision not to present a plan of care or participate in the hearing that the risks associated with his involvement continue. Therefore, C.C.'s knowledge of R.W.'s drug use and the status of their relationship is relevant to the issue of current risk.

[26] R.M. has a history of opioid abuse, and over the years he's accessed numerous services to overcome his addictions. The records from the Opiate Recovery Program show that he tested positive for cocaine, benzodiazepine, alcohol, hydromorphone, and Ritalin even while assuring social workers that he was "clean". The evidence shows that on at least one occasion, he snorted drugs while in the home where A.C. was living with them.

[27] I also accept the Minister's argument that C.C. knew about R.M.'s drug use. It's impossible to believe that she was oblivious when: a box of used needles and bloody Kleenex was stored in a box next to her bed and R.M. admitted that some of the needles were his; she couldn't account for her prescription Ritalin on two occasions, all the while knowing that R.M. was abusing drugs; and she reported to police that he stole her iPad to sell for drug money.

[28] In addition, when pressed about how she could be unaware of R.M.'s drug use, she told workers "I know now". To suggest that she only realized R.M. was

using drugs when workers discovered the drug paraphernalia next to her bed defies belief. That, along with her changing story about where the box came from, lacks any air of reality.

[29] I find that C.C. knew R.M. was abusing drugs - she was aware he injected, snorted, and otherwise ingested non-prescription drugs and drugs that weren't prescribed to him, and she knew he was abusing drugs in the home. It's very likely that she observed him impaired from drugs on numerous occasions, and it's likely that she used drugs with him.

[30] In my 2018 decision I said: "Although I'm satisfied that R.M. remains abstinent from opioids at this time, I agree there is a real concern about the potential for relapse and the lack of supports in place."

[31] It's clear from the evidence that R.M. relapsed soon after my 2018 decision. C.C. was aware from that decision and the Minister's involvement, that R.M.'s drug addictions posed a risk and was a barrier to her parenting children while in a relationship with him. Yet she not only stayed in a relationship with him, she got pregnant again.

[32] In her closing submissions, C.C. says that "…the risk [is] sufficiently reduced [because] she availed [herself] of services recommended by the Agency, which provided gainful insight and ultimately led to the breakup of her relationship with the co-respondent [R.M.]"

[33] I don't accept that submission. This is not the first time C.C. has claimed that she and R.M. are separated, each time in an effort to regain custody of a child taken into care by the Minister. R.M. and C.C. have been a couple since 2014. Even after the Minister asked R.M. to leave the home on July 15, 2020, he returned and stayed with C.C.'s approval.

[34] I find that, whether or not they are temporarily separated for purposes of this proceeding, they remain a committed couple. R.M.'s presence in the home poses a significant risk to any child living in that home.

#2 – Inadequate parenting/condition of the home

[35] The Minister discovered R.M. and C.C. living with their two older children in unfit and unsafe conditions in 2017. Those children were taken into care while services were offered. Although the parents acknowledged the unfit living

conditions, they had myriad excuses, none of which satisfactorily explained the condition of the home. Those two children were later placed in the Minister's PCC.

[36] As I said in my 2018 decision: "The cleanliness and safety of C.C.'s home has been a longstanding concern, even before she and R.M. started their relationship. She's promised to maintain her home appropriately in the past, but concerns have resurfaced over and over again. The child (and her siblings) was placed with relatives so that the home could be cleaned on several occasions."

[37] The photos taken by Paul Mugford on July 15, 2020 show the deplorable and dangerous condition of the home on that date. C.C. says that since then, she's addressed the problem with the help and support of the Minister.

[38] However, the Minister hasn't been able to gain entry to the home since October, 2021, so there's no way to verify this claim. Even if it was recently tidied, the evidence admitted under s.96 of the *CFSA* satisfies me that unfit living conditions are a perennial problem and will likely occur again. That's especially so, if the parents have a toddler in the home and are tasked with all the care and responsibility that involves.

#3 – Criminal activity

[39] C.C. is correct in stating that there is no evidence of recent criminal charges against her. However, that's not the end of the inquiry. I've found that she uses non-prescription drugs, which is illegal. She's been seen at the home of a known drug dealer, and she associates with people in the drug culture, including R.M..

[40] In addition, police were called to her home on at least two occasions, including once in 2020 over a "disagreement" between R.M. and C.C. where C.C. alleged that R.M. stole her iPad to sell for drug money. In another incident where police were called to the home, someone caused damage to their apartment door and to their vehicle. According to C.C., that dispute arose from an unpaid debt. There have been other incidents arising from unpaid debts, in particular, drug debts. R.M.'s presence in the home only heightens that risk, because C.C. attributes most of those debts to him.

[41] Irrespective of whether police have laid charges against her, C.C.'s lifestyle continues to present a risk to any child in her care.

A child in need of protective services

[42] Section 22(2) of the *CFSA* defines a child in need of protective services. I made a finding that A.C. was a child in need of protective services under s. 22(2) on October 13, 2020. That finding was confirmed at each stage of the proceeding thereafter. For purposes of this final disposition review, I must determine whether A.C. is still a child is need of protective services (**Catholic Children's Aid Society of Metropolitan Toronto v. CM**, [1994] SCJ No. 37 (SCC)). I am not limited to considering only the risks enumerated in the Minister's plan, if there are other risks from circumstances "… which have arisen since that time" (**CM** (supra.)).

Conclusion re: risks

[43] History of parenting is relevant in child protection cases where there are historical concerns. R.M. and C.C. have been involved with the Minister for years, individually and as a couple. Two of their older children were placed in the Minister's PCC after they accessed services but failed to alleviate the risk. All of that history is relevant to the assessment of current and ongoing risk to A.C.

[44] C.C. and R.M. have repeatedly assured the Minister over the years that they have turned their lives around and that they can safely parent a child. The evidence in this and earlier hearings belies that. Although C.C. made some progress during this proceeding, problems arose when the Minister tried to implement expanded access. This tells me that C.C. isn't capable of maintaining gains she's made through the many services she's taken over the years.

[45] C.C.'s plan for care of A.C. is short on detail, and it fails to address the identified risks. It simply indicates that she will continue to "access services". I'm not satisfied that the risk to A.C. has been alleviated, such that C.C.'s plan could be considered viable. When combined with her longstanding relationship with R.M and my finding that she will likely reconcile with him (if they are even separated), the risk to A.C. remains too high to return her to C.C.'s care.

[46] I find that A.C. remains a child in need of protective services at this time.

Section 42(2) – Have the least intrusive measures, including services, been attempted and failed? or would they be inadequate to protect the children?

[47] Remedial services were offered to the parents. C.C. continues to deny drug use, she denies conflict with the law, she maintains that her home is safe, and she maintains that she ended her relationship with R.M..

[48] As I said in my 2018 decision: "C.C. and R.M. were present when I delivered my decision on January 18, 2018. I outlined the problems with their engagement and lack of progress with services. They knew what the Minister expected going forward. They knew that if they failed to demonstrate commitment and sufficient progress with services, they could lose custody of D.M." The same is true now.

[49] The Minister initially left A.C. in her parents' care under supervision, on their assurance that they had made lifestyle changes since 2018. That was the least intrusive option at the time. Even after A.C. was taken into care, the Minister sought a temporary care order while the parents addressed the risks. Unfortunately, C.C. has not overcome the risks identified by the Minister, despite years of services and clear direction on what needs to change.

[50] I find that less intrusive measures were attempted and failed, and that now, less intrusive measures would be inadequate to protect A.C.

Section 42(3) – Are there any family members available to care for the children?

[51] No family members have advanced a plan to care for A.C..

Section 42(4) and 46(6) - Are circumstances likely to change in a reasonably foreseeable period of time not exceeding the maximum time limits?

[52] The deadline for a final disposition review passed 6.5 months ago, so I need not consider whether circumstances are likely to change in a reasonably foreseeable period of time.

[53] C.C. and R.M. demonstrated a pattern in prior proceedings of missing appointments and court dates, then making flimsy excuses for their failure to attend. C.C.'s failure to appear on June 2, 2022 to submit to cross-examination in this proceeding is the most recent example. Her excuses for missed drug tests and missed access visits fall flat too.

[54] As I noted in my 2019 decision: "Evidence in the last hearing started within the legislative timelines, but ran over by several months due to illness and scheduling challenges. The latest hearing was plagued by similar problems, as well as the parents' failure to appear on one scheduled hearing date."

[55] It appears that C.C.'s objective in this and earlier proceedings was to drag matters out, hoping for a different result, but not putting in a genuine effort to make long-lasting and effective change.

Disposition

[56] A.C. is entitled to a safe, stable, permanent home. She has been in care for the majority of her young life. At this point, it's in her best interests to move forward. I find that an order for PCC is in the child's best interests. It is in her best interests to move expeditiously towards the Minister's plan for adoption into the same home as A.C.'s older siblings.

[57] I grant the Minister's application for an order for permanent care and custody of the child A.C..

MacLeod-Archer, J.

SCHEDULE "A"

DATE	MATTER TYPE	OUTCOME/REASON FOR ADJOURNMENT
June 28, 2021	Review Hearing	Counsel have no instructions from parents
Sept. 15, 2021	Review Hearing	C.C. consents via counsel
Nov. 24, 2021	Review Hearing	Counsel have no instructions from parents
Dec. 22, 2021	Settlement Conference	Adjourned – C.C. ill
Dec. 23, 2021	Review Hearing	C.C. counsel removed
Jan. 5, 2022	Settlement Conference	Neither parent present; JSC adjourned
Jan. 12, 2022	Hearing to start	C.C. requests adjournment to retain counsel – granted
Jan. 20, 2022	Conference	C.C. says she hasn't heard from Legal Aid -adj granted
Feb. 4, 2022	Conference	C.C.'s new counsel recently retained and requests time to review file – adj granted
Feb. 17, 2022	Conference	Hearing dates scheduled
April. 6, 2022	Hearing	Hearing begins but C.C. ill; she is directed to attend by telephone in the morning but too ill to continue p.m. - adjourned
April 7, 2022	Hearing	C.C. still ill - adjourned
April 13, 2022	Hearing	C.C. tests positive for Covid-19 April 8 – date released
May 5, 2022	Conference (converted from full day hearing)	MCS counsel is a close contact with Covid-19 positive case – date released
May 9, 2022	Conference	MCS counsel tests negative; C.C. counsel requests adjournment but denied – matter to proceed as scheduled next day
May 10, 2022	Hearing	Evidence heard
May 11, 2022	Hearing	C.C. testifies and cross-examination commenced (1 hour) to be completed June 2/22; C.C. in court when date is set
June 2, 2022	Hearing	C.C. not present; MCS and C.C. counsel cannot reach her - adjourned
June 6, 2022	Hearing	C.C. appears and explains that she thought next court date is June 11 (Saturday); did not ask worker during access, did not phone lawyer, MCS or court to confirm; hearing concluded