

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. SD and KM*, 2022 NSSC 248

Date: 2022-08-30

Docket: SFHCFSA No. 126140

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

SD and KM

Respondents

Judge: The Honourable Justice Theresa Forgeron

Heard: August 18, 22, and 30, 2022, in Halifax, Nova Scotia

Oral Decision: August 30, 2022

Written Decision: August 31, 2022

Counsel: Shawn O’Hara, counsel for the Applicant, Minister of
Community Services
Sarah Squires, counsel for the Respondent, SD
KM, Respondent, self-represented

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 decision concerns two, eight-year-old girls, MM and LM, who are the children of the mother, SD, and the father, KM. The girls can't live with their mother because of protection concerns. Therefore, two family members filed competing plans of care.

[2] First, the children's father asks that the children be placed in his supervised care. He and his girlfriend have an apartment in HRM which meets the children's needs. The father confirms that he will follow all recommendations of the Minister, including having his girlfriend provide the nighttime care for his daughters; abstaining from alcohol and non-prescription medication; and participating in services.

[3] Second, the maternal grandmother, KD, seeks to have the girls placed in her supervised care and custody. She too states that she will follow all recommendations of the Minister, such as reporting protection concerns if they arise. The mother supports the grandmother's application. The mother and grandmother state that the children will be at a substantial risk of sexual and physical abuse if they are placed in the supervised care of the father.

[4] For her part, although the Minister notes that either plan is viable from a protection perspective, the Minister nonetheless supports the father. In fact, even though the children are currently placed in the interim care and custody of the Minister, the girls are nevertheless living with the father on an extended access visit.

Issue

[5] The only issue which I must decide is the children's placement.

Background Information

[6] Before I analyze the placement issue, I will provide background information to give context to my decision.

[7] The mother and father were a couple for about five years between 2012 and 2017. Their children were born in December 2013. The parties' relationship was marked by substance abuse, violence, conflict, distrust, and anger. The children

were regularly exposed to their parents' unhealthy and dysfunctional relationship and lifestyle.

[8] After the parties' separation, the children lived primarily with the mother and had parenting time with the father. The children also visited their extended maternal and paternal relatives. Unfortunately after separation, the children continued to be exposed to their parents' toxic relationship and substance abuse. The children became enmeshed in the parental conflict.

[9] Child protection authorities eventually became involved with the family for two primary reasons. First, the mother was unable to maintain sobriety while caring for her daughters. The mother often became angry, aggressive, belligerent, and dysregulated when drinking alcohol, including at times being violent with her own mother and sister. The mother's relapse prevention was unsuccessful.

[10] Second, the Minister investigated a sexual abuse allegation concerning the father. In the fall of 2021, the mother reported that the father had sexually abused one of the children by placing his hand in her panties while at a hotel. The father denied anything untoward occurred. A police and child protection investigation followed. No criminal charges were laid. The Minister concluded that the sexual abuse allegations were unsubstantiated.

[11] On May 31, 2022, the Minister held a risk management conference during which the agency determined that the children were in need of protection because of the mother's relapse, untreated mental health issues, and failure to follow the agency's safety plan.

[12] On June 6, 2022, the Minister filed a protection application. During the interim proceedings, the children were initially placed in the supervised care and custody of the maternal aunt. This placement broke down. On August 4, 2022, the children were placed in the Minister's interim care and custody, who in turn placed the children on an extended access visit with their father pending the outcome of the contested placement hearing.

[13] The placement hearing was held on August 18 and 22, 2022. In addition to reviewing the exhibits, I had the benefit of hearing the evidence of the children's counsellor, Natalie Haché; the protection social worker, Victoria Boutilier; the mother, SD; the maternal grandmother, KD; the paternal grandmother, FMA; the father's partner, SR; and the father, KM. Oral submissions were provided at the conclusion of the hearing.

[14] During the placement hearing, the parties also consented to a protection finding being entered based on a finding of a substantial risk of emotional abuse under s. 22(2)(g) of the *Children and Family Services Act*, SNS, 1990, c. 5, with the usual rights and reservations. The parties also agreed to participate in services as the Minister directs.

[15] On August 30, 2022, I delivered my decision. Counsel requested a written version of the decision.

Analysis

[16] Under whose supervised care should the children be placed?

Position of the Minister

[17] The Minister states that although the children could be safely placed with either the father or the grandmother under a supervision order, the father's plan of care is nevertheless preferable for three reasons. First, the father is a parent who is available to provide safe care. His sobriety was confirmed by drug testing. In addition, the Minister states that the evidence does not substantiate a finding that the father sexually assaulted the daughter. Further, the Minister does not believe that the father had an intention to sexually assault the daughter. From the Minister's perspective, the children can be safely placed in the care of the father, with his girlfriend providing any required nighttime care.

[18] Second, the Minister concluded that the father is less likely to draw the children into the parental conflict than is the grandmother. When upset, the grandmother, like the mother, can become emotional, thereby exposing the children to negative, inappropriate, and damaging comments about the father. The children's emotional health is jeopardized when they are exposed to the parental conflict.

[19] Third, the Minister states that the father is co-operative with the Minister's recommendations. He apologized for his initial inappropriate reaction and thereafter was compliant with the Minister.

Position of the Mother and Grandmother

[20] The mother and grandmother state that it is not safe to place the children in the father's care. They expressed two key concerns. First, they state that the children are at a substantial risk of sexual abuse. They believe that the father sexually assaulted the daughter. They emphasize the lack of mitigation because the

father has not successfully completed any services. The mother and grandmother also believe that the Minister's safety plan is faulty because the girlfriend cannot consistently supervise the father's care of the children, such as when she is sleeping or absent from the home.

[21] Second, the mother and grandmother state that the children are at a substantial risk of physical abuse because the father consumes drugs and alcohol and is violent. They state that services have not yet been engaged to mitigate his substance abuse and violence. They fear that the children will be exposed to violence and substance abuse if placed in the father's care.

[22] In contrast, the mother and grandmother state that the children will not be exposed to drugs, violence, or any other protection concern if they are placed in the grandmother's care. In addition, the children asked to be placed in the care of the maternal family because they have a strong, loving, and supportive relationship with the maternal family. The children will be happy and well-protected if they live with the grandmother under a supervision order. Further, the grandmother acted proactively in the past and will continue to do so if the children are placed in her care.

Position of the Father

[23] The father asks that the children be placed in his supervised care. He denies the protection allegations for four reasons. First, he categorically denies sexually assaulting the daughter or in anyway sexually compromising his children.

[24] Second, although he acknowledges past recreational use of illegal substances and alcohol abuse, the father states that such use is historical. Further, he agrees to abstain from all alcohol and drug use. He notes that random drug testing confirms his abstinence as did the outcome of various wellness checks that were completed after the children were placed in his care.

[25] Third, the father states that he understands that the children should not be drawn into the parenting conflict. He is following the Minister's recommendations and will continue to ensure that the children are not exposed to adult matters. The father states, however, that he is deeply concerned about the maternal families' attempts to alienate the children from him and to drag the children into the parenting conflict.

[26] Fourth, the father states that he has and will continue to follow the Minister's directions and recommendations so that the children can be safely placed in his care through a supervision order.

Legislation and Law

[27] The parties rely on the law discussed in *Nova Scotia (Minister of Community Services) v. A.L.*, 2019 NSSC 236. I reviewed this case and I confirm that I applied the principles outlined. I considered the threefold purposes of the *Act*, which are 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 focused on the *Act*'s paramount consideration, as found in s. 2(2), which is the children's best interests.

[28] In addition, I applied 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.

[29] I was also cognizant that the placement hearing began before the protection finding was entered and before the disposition hearing was held. The parties correctly referenced s. 39 of the *Act* as the authority from which to grant the placement decision. I do note, however, that the protection finding was nonetheless entered at the conclusion of the placement hearing as an admission pursuant to s. 22 (2)(g), which is an admission of a substantial risk of emotional abuse. The scheduled disposition pretrial and hearing will focus on the Minister's plan and proposed services for the family.

Decision

[30] After reviewing the evidence and submissions, I find that it is in the best interests of the children to be placed in the care and custody of the father but subject to the supervision of the Minister for four primary reasons.

[31] First, the children were neither sexually assaulted nor are they at a substantial risk of sexual abuse. Sections 22 (2) (c) and (d) of the *Act* are not engaged. The Minister investigated the allegations. The Minister found that the allegations were not substantiated. I agree with the Minister and the father. The evidence does not support a finding of sexual abuse or a substantial risk of sexual

abuse. The father neither intended to, nor did he sexually assault the daughter in the hotel room. Nothing of a sexual nature occurred in the hotel room or anywhere else. Additionally, nothing of a sexual nature occurred when the father answered and dropped his phone while stepping out of the shower. Sexual abuse is not a relevant criterion while the children are in the father's care.

[32] Second, the father is better equipped than is the grandmother to protect the children from a substantial risk of emotional abuse as stated in s. 22 (2) (g) of the *Act*. The children experienced trauma and anxiety because of the parenting conflict. The children are not equipped to process the parenting conflict. In her testimony, the children's counsellor referenced some of the negative consequences associated with the children's immersion in the parenting conflict.

[33] The father no longer involves the children in the parenting conflict. Instead, the children have achieved some stability since being placed with the father on an extended access visit. Ms. Haché reported that the children no longer report exposure to anger, yelling, or upset. Ms. Haché states that the children feel safe in their father's care. The father has shown some insight and is following the Minister's recommendations in an attempt to shelter the children from the toxic parenting conflict.

[34] In contrast, the grandmother has not shown insight. The grandmother is convinced that the father sexually abused his child; that he abuses drugs; that he is violent. These strongly held beliefs lead the grandmother to become visibly upset and elevated in the presence of the children or within their hearing. The grandmother has yet to learn skills to distance the children from her strong feelings. The grandmother has indirectly attempted to influence the children to view their father in a negative light.

[35] In summary, I find there is a substantial risk that the children will experience emotional abuse if placed in the grandmother's care. The grandmother would benefit from services to assist with emotional regulation and to mitigate the protection risk. At this time, the father's plan will provide the children with more stability than will the grandmother's plan.

[36] Third, I find that the father is not currently exposing the children to violence or substance abuse. The father is cooperating with drug testing. All results are negative for drugs and alcohol. Further, other indicia that the father is not abusing drugs or engaging in antisocial behavior, include the father's ability to maintain a stable job and a stable relationship. The father's girlfriend is a calming and positive influence for the father and for the children.

[37] Fourth, I find that the protection concerns associated with the father can be safely and appropriately mitigated through a supervision order under the terms and conditions sought by the Minister, together with the inclusion of the following provisions:

- The father will participate in services, such as counselling or family support work, or both, to successfully complete the following objectives:
(a) To recognize the emotional, physical, and social needs and boundaries of preteen and teenage daughters. (b) To recognize how children are negatively impacted when they are involved in parenting conflict and adult matters. (c) To gain insight into how his past behaviors and messages interfered with the children's relationship with the mother or her family. (d) To gain skills to protect the children from the parenting conflict and to support the children in their distress. (e) To gain skills to manage his emotions and communication with the mother in a healthy and child-centered fashion.
- The father's girlfriend will tend to the children's nighttime needs pending the father's completion of counselling or family support work.
- The father will not consume alcohol or non-prescription drugs, including marijuana, and will continue to participate in drug and alcohol testing through urine sample testing as arranged by the Minister.
- The father will not communicate with or be in the presence of the mother or grandmother. All contact between the children and the mother and grandmother will be as arranged through the Minister's office. The Minister will arrange all access transfers.

[38] I urge the Minister to consider offering comparable counselling to the mother and grandmother, if possible, so that the adults most involved with the children will obtain the education and skills to protect the twins from emotional abuse.

Conclusion

[39] I find that it is in the children's best interests to be placed in the father's care and custody under the supervision of the Minister, with the terms and conditions stated in this decision. The Minister will draft and circulate the order.

