

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services) v. KW*, 2022 NSSC 330

Date: 20220504

Docket: SFH-CFSA 120786

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

KW and DM, by his litigation guardian, Susan Sly

Respondent

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Judge: The Honourable Justice Elizabeth Jollimore

Heard: April 20 – 22, 2022

Summary: Minister granted for permanent care and custody of 3 children, aged 13, 7 and 4, where returning the children to their mother was not the least intrusive option in the children’s best interests and the circumstances justifying this decision are unlikely to change before the statutory deadline for final disposition in 10 weeks’ time.

Key words: Child Protection, *Children & Family Services Act*, neglect, unfit living conditions

Legislation: *Children and Family Services Act*, S.N.S. 1990, c. 5, subsection 46(6) and clause 46(4)(c)

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Dates heard: April 20 - 22, 2022

Oral decision: May 4, 2022

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Counsel: Deanna Bru, for the Minister of Community Services
Neil Robertson, for KW
Kelsey Hudson, for DM's litigation guardian, Susan Sly

Introduction

[1] The Minister of Community Services wants 3 children placed in her permanent care and custody. The children are a 13-year-old boy, D; a 7-year-old girl, H; and a 4-year-old girl, B. The children’s mother, Ms. W, wants the children returned to her. Susan Sly, the litigation guardian for 13-year-old D, supports the Minister’s request for a permanent care and custody order for him.

[2] Ms. W is the only respondent because the children’s father died in 2018.

[3] The issues that will determine whether the children are returned to Ms. W are:

1. Whether returning the children to Ms. W is the least intrusive alternative that’s in the children’s best interests under clause 46(4)(c) of the *Children and Family Services Act* and
2. Whether the circumstances that justify a permanent care order are unlikely to change before June 28, 2022, under subsection 46(6) of the *Act*.

[4] The children lived with their mother, their 19-year-old half-brother, and their maternal grandparents in a 2-bedroom apartment. The Minister became involved with the family after a referral about their living conditions. All counsel have described the apartment using the term “hoarding”: different areas of the apartment, including the bathtub, were completely congested with items.

[5] The report of unfit living conditions is what lead the Minister to the family, where the Minister discovered a more significant concern: the children’s neglect. The children’s diet and personal hygiene were inadequate, and they were inadequately stimulated: they didn’t attend school, have friends or acquaintances, or take part in social, faith-based, or extra-curricular activities. They had no dental care and – it seemed – only the oldest child had ever seen a doctor.

First issue: Is returning the children to Ms. W the least intrusive alternative that is in the children’s best interests?

[6] A final disposition hearing is a review application, governed by section 46 of the *Children and Family Services Act*. Ms. W says that circumstances have changed since the previous disposition order was made and the Agency’s plan for the children has been carried out. She argues that returning the children to her is

the least intrusive alternative that is in the children's best interests. The Minister and Ms. Sly disagree.

[7] When the children were brought into care, their needs were great. Then 6-year-old H "was unable to walk up and down stairs", and she fell "regularly on stairs and flat ground when walking". H's brother, then 12 years old, was "challenged" by stairs. He struggled to put on socks. He didn't know what steps were involved in taking a shower. Both these children were overweight. The youngest, then 3 ½ years old, wasn't toilet trained. Her front teeth were visibly decayed.

[8] The older children said that they had never seen a dentist and didn't remember getting any vaccinations or needles. Ms. W says the oldest child was vaccinated but the younger children were not because their father didn't agree with vaccines.

[9] All 3 children were booked for dental surgery, occupational therapy, and physiotherapy. The 2 older children completed psychoeducational assessments, while the youngest was referred to NS Hearing and Speech. All 3 needed glasses. The older children have received counselling and are involved in organized recreational activities.

[10] A month after coming into care, D was able to identify "some" letter sounds (he could identify letters with "minimal errors") and he "started making addition questions" and "learned how to write his numbers". Appreciate that he was then 12 years old.

[11] D was assessed in October 2021 by Jennifer Denney-Hazel who was agreed to be qualified as an expert in psychology. His language skills (listening vocabulary, listening comprehension, vocabulary, and sentence repetition) were all in the limited to low average range. His phonological skills were "well below the level expected for his age". His ability to learn, recall and recognize meaningful information was in the low average range, while his visual perceptual and motor coordination were below the accepted level. His spelling skills were weak, and his math skills were "extremely low". His communication, functional academics, and social skills were measured at extremely low, while his understanding of health and safety, leisure, self-care, and self-direction were in the limited or low average range.

[12] H's psychological assessment was completed by Caitlin Neily in September 2021. Ms. Neily was agreed to be qualified as an expert in psychology. She found that H's intellectual ability rated in the average range, while her verbal skills, math skills, reading, writing and arithmetic, communication, understanding of health and safety, leisure, and social skills were all in the very low or extremely low range.

[13] These findings aren't surprising given the children's lack of social interaction and education.

[14] The foster parents provided insights into the children's circumstances: D, for example, didn't know to take his clothes off to shower or to apply shampoo to wet (not dry) hair. The children had seldom been outside.

[15] Ms. W has yet to demonstrate an ability to act on the recommendations of the psychologists' reports.

[16] The children were taken into care 2 months before Ms. W and the rest of their family were evicted from their apartment.

[17] The Minister has provided the service of family support workers to Ms. W since May 2021. As early as June 2021, the first family support worker, Colleen Armstrong, began advising Ms. W of the steps to find a suitable home for herself and the children. When the first family support worker was replaced in October 2021 with a second, Susan MacLeod, Ms. MacLeod, too, guided Ms. W on the steps to finding a suitable home. Ms. W also had a housing support worker. Ms. W was directed to assistance with preparing her income taxes.

[18] Aside from needing a home to which the children could return, there was a more immediate need: since March 2021, Ms. W, her older son, and parents have lived in 2 different motel rooms, with extended family, and, for a while, in a car. Ms. W had received 2 Income Assistance cheques that she couldn't cash at a bank because she didn't have a home address.

[19] Though from June 2021 until March 2022, family support workers prodded Ms. W about applying for income assistance, completing her taxes, and taking other steps that would advance her search for a home. Ms. W took few steps.

[20] Regardless of the help she was given and the imperative for housing, there's been no reasonable explanation why Ms. W made no progress in her search for housing.

[21] Less than a month before this trial, on March 23, Ms. W and her mother signed a lease for a 3-bedroom home. This home is where Ms. W plans that she, her parents, and all 4 of her children will live until she can finalize her application for the Canada Child Benefit. Ms. W proposes that she will have 1 bedroom, her sons will share 1, her daughters will share 1, and her parents will sleep in the living room.

[22] Ms. W believes the Canada Child Benefit will provide her with enough money so she can afford the apartment without her parents' help, and her parents will be able to live elsewhere.

[23] Rent is \$1,500 with additional amounts for cable, heat, and electricity. Ms. W qualifies for Income Assistance of \$380 for essentials. She thinks she may qualify for an additional \$1,013 in income assistance if the children are with her. She's also applying for a rent subsidy. She believes all this, with the Canada Child Benefit, will allow her to pay the rent. There is no budget that shows these sums (whatever they will be) will allow her to meet the family's expenses.

[24] The lease began on April 5. Approximately 2 weeks later, just as the trial was beginning, Ms. W had mattresses for the children.

[25] Because it has taken a year for Ms. W to find a home, at the time of the hearing, the children's contact with Ms. W had never advanced to spending time in her home. Department staff have not been inside any of Ms. W's accommodations (other than the apartment from which she was evicted), to see if Ms. W has maintained those accommodations in a better condition than the apartment where the children lived. From the Minister's perspective, there is nothing to show that Ms. W is able to maintain a safe and hygienic home. Agency staff couldn't observe if there was healthy food, stimulating books or toys or a usable tub or shower so the Minister couldn't determine if her concerns about child neglect were being addressed.

[26] Ms. W didn't provide photographs of any of her earlier accommodations to show her ability to ensure a fit and clean home or a stimulating environment for the children. She did provide photographs of her newly rented home which was unoccupied and almost empty.

[27] At her visits with the children, Ms. W didn't demonstrate her recognition of the children's needs, or her own ability to meet them.

[28] Over the summer and into September 2021 social workers and the family support worker talked to Ms. W about bringing junk food to visits, rather than healthy snacks. She continued to supply sugary drinks during October. Visits with Ms. W were inactive, though D and H both lost weight since coming into care simply as a result of a healthier diet and more active lifestyle. D has lost 50 pounds.

[29] To the extent that it's been possible to observe Ms. W's parenting through the limited lens of access visits, she has not changed her parenting sufficiently that it is now in the children's best interests to be returned to her. It remains in the children's best interest to be in Minister's care.

[30] That conclusion doesn't resolve case because the final deadline isn't until June 28, 2022. That leads to second issue.

Second issue: Are the circumstances unlikely to change before June 28, 2022?

[31] I may make further temporary care orders *unless* I'm satisfied that the circumstances which justified the earlier orders "are unlikely to change" before the final disposition deadline of June 28, 2022, less than 10 weeks after this hearing ended.

[32] The Minister is not required to wait until the absolute final deadline to bring her application for permanent care: *LLP and RFP v. Nova Scotia (Minister of Community Services)*, 2003 NSCA 1. Because of the uncertainty the children are experiencing, it's in their best interests that there is a resolution and a proceeding not be prolonged any longer than absolutely necessary: *TH v. Minister of Community Services and RW*, 2013 NSCA 83 at paragraph 87.

[33] Megan Power, the long-term social worker assigned to Ms. W and the children, testified that if the children were to be returned to their mother, the timeline for their return would be approximately 6 months: 3 months to transition from foster care back into their mother's care, and 3 more months of monitoring the re-unified family to ensure the improvements to the children's circumstances were long-lasting. Risks must be remediated before children are returned home and then, once the children are returned, the situation is monitored to ensure the risks don't return or new risks arise.

[34] Even if the children were returned immediately, there is not enough time to monitor the family to the standard Ms. Power suggests.

[35] The Minister's primary concern is the children's neglect.

[36] Ms. W was involved in counselling for 13 months, from March 3, 2021, to mid-April 2022. There were 3 reports from Danielle Trottier, Ms. W's counsellor. The parties agreed that Ms. Trottier was qualified to offer expert evidence in the field of counselling therapy of adults, and she was cross-examined. At the conclusion of their work, Ms. Trottier reported that Ms. W "appeared to improve her insight around the importance of income assistance". There was no mention of any insight into the neglect of the children, though this was the greater concern.

[37] Ms. W completed a psychological assessment in June 2021. Dr. Kathleen O'Connor, who was agreed to be an expert in psychology, psychological assessments, diagnoses, functioning and related treatment, provided a report and was cross-examined. In her report, Dr. O'Connor recorded that Ms. W "displayed very limited insight into the nature and depth of the Agency's concerns with her home environment, and into the significant concerns with her children's development that have unfolded since they were placed into foster care".

[38] To Dr. O'Connor, Ms. W described the Minister's expectations as finding a proper home, keeping the home clean and neat, maintaining appointments for herself and the children, and keeping the children in school. Ms. W's list doesn't encompass the full range of the Minister's concerns.

[39] In her affidavit, Ms. W says she understands what's needed. For example,

The children need to brush their teeth twice daily

The children need to shower or bathe daily

The children need to eat nutritious food

The children need to regularly see a dentist, doctor, and optometrist

The children need their clothing to be washed at least weekly

The children need to attend school

The children should have activities

The children should have a bedtime and not be permitted to watch tv until all hours.

[40] Ms. W hasn't demonstrated her ability to address these needs if the children were returned to her care. Her affidavit is written from the perspective of what she will do – she has not shown that she can do any of these things.

[41] While the children are in foster care it is difficult to demonstrate an ability to meet these needs. However, Ms. W hasn't offered any evidence of what she has done, like telling me about nutritious meals she has made, or consistently bringing healthy snacks to her access visits or engaging the children in active play during her visits. She hasn't found a dentist and optometrist who are taking on patients. She hasn't put the children's names on the provincial list of people seeking a family doctor. She hasn't described any changes she's made to her life in the past year, such as cleaning routines for her accommodations, or shopping for health food and meal preparation. She has only recently referred herself to a community-based support. She's made no inquiries about tutors or counsellors for the children.

[42] The Minister's secondary concern is the unfit living conditions of Ms. W's home.

[43] There is no evidence that Ms. W has resolved this problem. Typically, I would be provided with photographs from one party or the other showing the condition of Ms. W's accommodations over the previous months. The Minister has not been able to provide these photographs, but there's been nothing to prevent Ms. W from providing that sort of photograph.

[44] I am satisfied that the circumstances which justified the earlier orders "are unlikely to change" before June 28, 2022. There has been too little progress to date to expect that these circumstances can change by June 28, 2022.

[45] It's clear that Ms. W cares deeply for her children. She has diligently attended each and every appointment. Her love and her joy in her children is apparent when, for example, I read her psychological assessment. It's unclear why she was unable to meet her children's needs: she is a parent who wants to.

[46] I place the children into the Minister's permanent care and custody. As required, I make an order for no access. I do this because the legislation requires me to: I do question the effectiveness of such an order. Children can have great loyalty to parents and D, H and B do not have negative feelings about their mother. Where children know a parent's name, they can locate her through social media.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia