SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. CK*, 2023 NSSC 135

Date: 20230425
Docket: *Sydney* No. 123012
Registry: Sydney

Between:

Minister of Community Services

Applicant

v.

CK, CG

Respondents

Judge:	The Honourable Justice Lee Anne MacLeod-Archer
Heard:	February 7, 8 and April 17, 2023, in Sydney, Nova Scotia
Written Release:	April 25, 2023
Counsel:	Tara MacSween and Cheryl Morrison for the Applicant Pavel Boubnov for the Respondent, CK Robyn Fougere for the Respondent, CG

By the Court:

BACKGROUND

[1] CK and CG are the parents of BK, who was born August of 2021. CK has two older children with former partner LJ who are in the custody of relatives.

[2] Both parents have a history with child protective services. Historic concerns relating to CK include domestic violence, substance abuse, mental health, and poor decision-making. This is the fourth child protection proceeding involving CK.

[3] Historic concerns for CG relate to substance abuse and inadequate parenting skills. Those concerns arose initially in relation to CG's child with another partner, but they continued throughout this proceeding.

[4] The Minister became involved with CK and CG on a voluntary basis before BK was born. However, due to ongoing concerns with drug use and their history of child protection concerns, BK was taken into care at birth.

[5] The Minister arranged services for the parents to address the identified risks. The parents cooperated with services, with CK engaging in counseling, educational and support programs, and random alcohol and drug testing. She also completed a mental health assessment with a psychologist, at the Minister's request. In November, 2022, the psychologist diagnosed CK with several psychiatric disorders.

[6] The Minister reviewed its file at a risk management conference on December 16, 2022 and decided to seek an order placing BK in its permanent care and custody. The Minister concluded that the risks giving rise to this proceeding had not been alleviated, and there were still significant concerns with CK's insight and decision-making due to her mental health challenges, and with CG's drug use.

[7] The Minister's concerns with CG have not been addressed, but CG did not advance a plan for care of the child, and he offered no evidence at the final review hearing. He supports the maternal great-aunt's plan for adoption of BK if the court grants an order for PCC.

[8] This decision will focus on CK, as she advanced a plan for BK to be placed in her care. She argues that proceeding should be dismissed, because she has addressed the concerns raised by the Minister.

PROCEDURAL HISTORY

[9] The Minister filed its application to find the child BK a child in need of protective services under the ***Children and Family Services Act***, S.N.S. 1990, c.5 (***CFSA*)**, on August 17, 2021. A protection order was granted under s.22(2)(b) of the ***CFSA*** on November 12, 2021. An order at the first Disposition stage was granted on February 14, 2022. The Minister's plan at that time was to place BK in the care of CK and CG if they successfully addressed the risks.

[10] In its plan, the Minister requested that CK attend counselling, participate in mental health therapy, attend several educational and support programs, abstain from drugs and alcohol use, and cooperate with random drug and alcohol testing. Some of these were services that CK had completed at least once already, during earlier child protection proceedings.

[11] The Disposition Review Orders granted every three months since that first Disposition Order reflect the same terms for services. The Minister filed a plan for permanent care and custody of BK on January 4, 2023. The statutory timeline under s.45(2)(a) of the ***CFSA*** expired on February 14, 2023.

ISSUES

1. Is BK still a child in need of protective services?

2. What order is in the best interests of the child BK?

ISSUE #1: Is BK still a child in need of protective services?

[12] BK was found to be a child in need of protective services on November 12, 2021. At this review hearing, I must assess whether BK continues to be a child in need of protective services (**Catholic Children's Aid Society of Metropolitan Toronto v MC**, [1994] SCJ No 37).

[13] The concerns raised by the Minister can be categorized as follows:

Mental Health Challenges

[14] The Minister argues that concerns with CK's behaviours throughout this proceeding, and historically, can be attributed to her mental health challenges. The Minister says that she exhibits impulsivity and poor judgment in her decisions, which creates a risk to BK.

[15] During earlier involvements, the Minister requested that CK participate in mental health services to address the concerns. She did so but was unable to maintain the progress she made.

[16] In this proceeding, the Minister requested that CK take remedial services again. In particular, the Minister requested that CK attend counselling and participate in a mental health assessment. The goal was to identify a diagnosis that might give rise to recommendations for remedial services that would help CK address the risks associated with her symptoms and behaviours.

[17] With the deadline for all disposition orders set to expire on February 14, 2023, the Minister recognized that the wait time for publicly funded mental health services was far too long. The Minister therefore arranged for private mental health counselling for CK, which started October 6, 2022.

[18] Dr. Williams is the psychologist retained by the Minister to provide counselling to CK. At the Minister's request, she also completed a mental health assessment to identify what challenges CK faces. She diagnosed CK with several overlapping, but discrete, conditions:

- Persistent Depressive Disorder;
- Social Anxiety Disorder;
- Post-Traumatic Stress Disorder (PTSD);
- Borderline Personality Disorder (BPD); and
- Attention Deficit Hyperactivity Disorder (ADHD).

[19] Dr. Williams was qualified by consent to offer opinion evidence in the assessment, diagnosis and treatment of mental health and neurodevelopmental disorders. She testified and answered questions on cross-examination.

[20] Dr. Williams' report confirms that CK's conditions are manageable. In the report, she suggests that CK's behavioural and cognitive difficulties relating to BPD should be stabilized before treatment for her other conditions starts. For example,

she says that CK must first develop adaptive means of coping with strong emotions without abusing substances. Dr. Williams' report suggests that dialectical behaviour therapy (DBT) is recommended in this initial phase.

[21] The report goes on to say that after CK's behaviours and cognition are stabilized, she can move on to formal treatment of PTSD and other conditions. Dr. Williams' treatment recommendations at that stage include cognitive processing therapy (CPT).

[22] The report suggests that these therapies may be available through the publicly funded mental health system. Given that the Minister arranged private counselling for CK because the public wait list was too long, it's likely that the wait time for public mental health services will be several months. However, Dr. Williams testified that her colleague offers CPT privately, and that there wouldn't be a wait list.

[23] In terms of timing, Dr. Williams stated in her report that "Progress is expected to continue to be slow, as is typical with individuals presenting with multiple comorbid diagnoses and complex needs…" In her testimony, she stated that intensive therapy could take between 6 – 12 months to complete. Although her report suggests approaching therapy in stages, she testified that, in her opinion, CK could tolerate engaging in these therapeutic interventions at the same time. She also testified that a patient would typically show some improvement before completing 20 sessions of CPT and within 6 months of starting the other therapies.

[24] CK testified that she plans to complete all therapies recommended by Dr. Williams. She feels that, now that she has been offered a diagnosis and understands the nature of her challenges, she will be able to benefit from those interventions.

[25] The Minister points out that, whether or not CK benefits from future interventions, the deadline for a final order has now passed, such that there's no time left for CK to demonstrate stability in her life and improved mental health.

Unhealthy Relationships/Poor Decision-Making

[26] CK concedes that history of past parenting is relevant to an assessment of current risk, but she says that her relationship with former partner LJ is over. As such, she suggests that he no longer poses a risk to a child in her care. Their relationship was toxic, with domestic violence perpetrated by both against each other, though more often and more intensely by LJ, resulting in an ODARA rating

of "high risk of lethality". CK and LJ separated and reconciled several times, despite co-contact orders. Their children were exposed to the conflict and violence.

[27] CK says that she has now completed services to help her recognize and deal with unhealthy relationships. And she points out that there's no evidence that her current boyfriend DR is abusive or that they are living together. She argues that a conviction for a conviction under s.320.13(2) of the ***Criminal Code***, RSC 1985, c C-46, LRC 1985, C-46 (for dangerous operation of a motor vehicle causing bodily harm) is only "marginally relevant" to the question of whether DR poses a risk to her and BK.

[28] In response, the Minister says:

- As recently as December, 2022 CK allowed LJ into her home to deliver gifts for the children. She didn't tell the Minister and when confronted about it, she minimized the risk;
- CK did not disclose her relationship with DR until questioned by the social worker, which is consistent with a pattern of her failing to disclose new relationships until asked;
- She doesn't acknowledge that DR's conviction poses any risk, yet he's subject to a conditional sentence, a DNA order, and an interlock provision, all of which supports the inference that DR has a "substance abuse issue which would increase risk to a child."
- CK's relationship with LJ followed a pattern of happy periods punctuated by domestic violence and separation. She followed the same patter with CG, and she now appears to be following the same pattern with DR, in that she currently describes the relationship as "like a fairy tale".
- CK says that if the Minister is concerned about her relationship with DR that she'll end it, yet she knew in October 2022 that the Minister had concerns and to date, she hasn't terminated the relationship.

[29] I decline to draw an inference that DR has a "substance abuse" issue based on the limited evidence before me, but I do find that his criminal record and the circumstances leading to his recent conviction are evidence of anti-social behaviour. That conviction is, therefore, more than marginally relevant to this issue of risk to a child.

[30] Further, I'm satisfied that CK continues to make life choices that demonstrate poor judgment. Her inability to go long without a partner combined with her preference for men who exhibit violent and/or anti-social behaviours, is cause for concern. Even though DR isn't living with her and there's no evidence of violence, his anti-social behaviour poses a risk to CK and a child in her care. The services she's taken have not helped her recognize this risk.

[31] The Minister recognizes that CK's issues with decision-making and relationships can be attributed to her mental health challenges. However, the Minister's concern is that CK's therapy is in the early stages, and that her emotional lability, combined with her tendency to flip-flop quickly and drastically in how she views her romantic partners, continues to cause instability and would expose BK to risk.

[32] The Minister acknowledges that it's not CK's diagnosis that poses the risk, but the behaviours that result (per **KB v NS (Community Services)**, 2013 NSCA 32). CK argues that **KB** isn't relevant, as there's no evidence that she exhibits the types of behaviours cited in that case. I disagree. The behaviours referenced in **KB** (which include a chaotic lifestyle, difficulty with relationships, manipulative behaviour and self-injury or suicidal gestures) are consistent with those enumerated in Dr. Williams' report. Dr. Williams noted at page 9 of her report that "[CK] endorsed all of the aforementioned symptoms and behaviours."

[33] CK's ability to maintain a stable lifestyle and cope with her mental health challenges is a real concern. Although Dr. Williams notes that CK has "shown some stability across the last several months (self-reported continued abstinence from drug and alcohol use, medications adherence, and attendance and participation in assessment and intervention sessions)" she also notes that CK reported daily use of cannabis to manage her anxiety and emotional regulation.

[34] Dr. Williams goes on to suggest that this "does not appear to be a problematic pattern of use…" and that "[CK] does not meet criteria for any current substance use disorders." Yet Dr. Williams goes on to recommend that CK develop adaptive means of coping with strong emotions without abusing substances, and that CK stay connected with her family physician for "psychopharmacological management of symptoms… related to the… current diagnoses reported herein."

[35] The diagnoses offered by Dr. Williams include anxiety disorder and BPD (which involves emotional dysregulation), both of which CK reported that she's

managing with cannabis. There is no evidence that her use of cannabis is medically prescribed or supervised, which is concerning given her history of addiction.

[36] Further, and more importantly, the Minister notes that CK has a history of improvement with services, followed by periods of falling back on problem behaviours and exhibiting poor judgment. The Minister's Plan for PCC filed in January, 2023 references this pattern, and the materials filed under s.96 of the ***CFSA*** support the Minister's argument.

[37] Police involvement during this proceeding illustrates the Minister's concern. CK was charged with assault in February, 2022 after she threw a phone at a police officer. When social workers met with her that day, she was highly emotional and appeared to be in a mental health crisis. However, she refused to go to the hospital for assessment.

[38] More recently, CK was charged with break and enter at the home of her mother's partner. Though she claimed to have her mother's permission and entered at her mother's request, she acknowledged on cross-examination that her decision was "wrong", and that she acted impulsively without thinking.

[39] It's concerning that CK involved herself in her mother's conflict in this way, especially after engaging in services to manage her behaviours, including impulsivity. This was also after the Minister reminding her (repeatedly) to avoid drama and conflict. It's concerning too, that the incident involved her mother, who CK says would provide support if she is granted custody of BK.

[40] CK says that her life is more stable now than it as been in recent years, but she is still dealing with significant challenges. These include criminal charges, anxiety for which she's self-medicating with cannabis, symptoms of her other mental health conditions, and conflict with CG, to name a few.

[41] When this proceeding ends, CK will have to manage these challenges on her own. For example, if her plan for BK was accepted, she would have the additional challenge of co-parenting with CG. Their high-conflict relationship makes it very likely that BK would be exposed to risk.

[42] The Minister's concern for CK's mental health and stability is a valid one. While she has made some gains, the question of whether CK can establish and maintain a stable life remains to be seen and is largely dependent on successful

management of her mental health. That, in turn, depends on consistent mental health therapy, which may not be possible in the publicly funded mental health system.

[43] In response to the concerns about her mental health, CK argues that a diagnosis does not make her an unfit parent if her mental health concerns are properly managed. This is true.

[44] A mental health diagnosis does not make a person an unfit parent. It's the behaviours that arise from the diagnosis that cause risk. And while history doesn't always repeat itself, historic behaviours and risks that were present in the past can be evidence of future risk **(Nova Scotia (Minister of Community Services) v ZS (1999)**, 18 NSR (2d) 99 (CA)**).**

[45] In assessing CK's evidence of improved mental health functioning and reduced risk to BK, I have to weigh her credibility. I can accept all, some, or none of her evidence (per **Baker-Warren v Denault**, 2009 NSSC 59). Credibility issues don't just arise when a person is trying to mislead the court; they can arise where a witness had little opportunity to observe events, or if they present their evidence strategically, or if they overstate (or minimize) their evidence.

[46] CK made some admissions against interest, which can boost a witness' credibility. But she also tends to embellish, and when pressed, she corrects her overstatement. She does so strategically, adding information that she believes will enhance her case, but then retracting information when challenged.

[47] For example, she testified that DR's five-year-old son spends time with them every Saturday; yet when the Minister's counsel questioned whether she reported this to the Minister, she backpedaled and said that she doesn't have much contact with the boy. She obviously realized that, if she is not permitted to have unsupervised time with her own children, she should not be having unsupervised contact with anyone else's child.

[48] In addition, the evidence supports the Minister's assertion that CK is not candid with information unless and until pressed. For example, she acknowledged on cross-examination that she did not tell Dr. Williams about DR's criminal record because Dr. Williams didn't specifically ask her about that.

[49] Finally, CK testified that her life now is "very, very stable". I cannot accept that assertion given the evidence of police involvement, conflict with others, and her ongoing (and still largely untreated) mental health challenges.

[50] I view the evidence from her mother and friend with the same skepticism. Their credibility was negatively impacted by their advocacy for her CK.

[51] The Minister bears the onus of proving on a balance of probabilities that BK remains a child in need of protective services. CK bears no onus of disproving that.

[52] I have weighed the evidence as a whole. I have given priority to the best interests of the child as required by s.2 and s.41 of the ***CFSA***. I have considered whether there is a substantial risk (meaning a real chance of danger that is apparent on the evidence, per **MJB v Family and Children's Services of Kings County**, 2008 NSCA 64, recognizing that the Minister need not prove that harm will actually occur, only that there is a real chance of it.

[53] I find that the Minister has proven that there remains a substantial risk of harm to the child in CK's care. The risk is not speculative or illusory. It's a real chance of harm. BK is a vulnerable, young child with no ability to self-protect. He relies on the adults in his life to provide a secure, stable home.

[54] CK is taking steps to address the identified risks, but she has not overcome her challenges to the point that BK can be safely placed in her care. I find that BK therefore remains a child in need of protective services.

[55] Before making a final Disposition order, I must consider s.13 and ss.42(2), (3), and (4) of the ***CFSA***. I'm satisfied that appropriate services have been offered to CK. As I've outlined above, remedial services have been offered several times, but CK hasn't been able to maintain progress and stability. As such, the services failed (or are inadequate) to reduce the risk to BK.

[56] I'm also satisfied that family placements have been explored. BK was placed in his maternal great-aunt's care at birth. She hopes to adopt BK if the order for PCC is granted. No other options for family placement were advanced at the hearing.

[57] I need not consider whether the circumstances justifying a PCC order are likely to change in a reasonably foreseeable period, given that the statutory time limit has passed.

ISSUE #2: What order is in the best interests of the child BK?

[58] BK's best interests lie in having a stable, secure, long-term placement in a loving home. The ***CFSA*** recognizes that a child's sense of time is unique, so it contains strict statutory time limits. The legislation does not contemplate dismissing a child protection proceeding at the end of the statutory timeline, and placing a child who remains in need of protective services with a parent who is still trying to make significant life changes. In fact, the Nova Scotia Court of Appeal has given clear guidance that, at the end of the statutory deadline: "… if the children are still in need of protective services, the matter cannot be dismissed." (***GS v Nova Scotia (Community Services***), [2006] NSJ no.52)

[59] This proceeding is past the final deadline. While that does not rob me of jurisdiction (**MA v Children's Aid Society of Cape Breton-Victoria,** 2005 NSCA 58 (CA)), it does leave me with only one option: I must grant an order placing the child BK in the Minister's permanent care and custody. In doing so, I find that a PCC order is in BK's best interests.

[60] CK will find this decision hard to accept. She loves BK and she is trying to change her life to meet his needs. I hope that she won't abandon her goal of achieving improved mental health, because if her aunt adopts BK, she might be permitted to play a role in his life going forward. Her two older children would also benefit from her efforts to achieve and maintain a stable, healthy lifestyle as well.

[61] The Minister will prepare the order.

MacLeod-Archer, J.