SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services) v NL, WM*, 2023 NSSC 185

Date: 20230608
Docket: Syd No. 123165
Registry: Sydney

Between:
Nova Scotia (Community Services)

Applicant

v.

NL, WM

Respondents

LIBRARY HEADING

Judge:	The Honourable Justice Pamela Marche
Heard:	March 29-31, 2023 in Sydney, Nova Scotia
Final Written Submissions:	June 6, 2023
Written Decision:	June 8, 2023
Subject:	Permanent Care and Custody
Summary:	The parents of a 12 year old have a long history of child protection involvement, primarily related to substance Abuse. The mother acknowledged her substance Abuse issues continue to pose a substantial risk of harm to the child. The parents argued the father could act as the protective parent effectively removing risk of harm.
Issues:	(1) Does the child remains in need of protective services? If so, is it in her best interest to be placed in the permanent care of the Minister?

Result: The father was found not to be credible in terms of the mother's substance Abuse issues and could not, therefore, be relied upon to act as a protective parents. Risk of substantial harm has not been removed. The permanent care order was granted.

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Written Release:	June 8, 2023
Counsel:	Tara MacSween for the Applicant Brianna Renou, for the Litigation Guardian, DM Alan Stanwick for the Respondent NL WM, self-represented

By the Court:

Overview

[1] This is a decision about whether AB should be placed in the permanent care and custody of the Minister. AB was born in September 2010 and is 12 years old. WM is AB's father and NL is AB's mother. AB's parents have a long history of child protection involvement due to issues of substance abuse and violence. The Court must determine whether the circumstances that resulted in the protection finding in February, 2023 still exist or whether the situation has changed such that AB is no longer in need of protective services.

Background and Procedural Facts

[2] Throughout the course of this proceeding NL was represented by counsel and WM represented himself. AB was appointed a Litigation Guardian (the "Guardian"), DM, who was also represented by counsel.

[3] A contested protection hearing resulted in a finding that AB was in need of protective services pursuant to s. 22(2)(b) of the *Children and Family Services Act*, SNS, 1990, c. 5, as amended (the *Act*). See **Nova Scotia (Community Services) v. NL, WM**, 2022 NSSC 45. The Minister indicated an intention to seek permanent care and custody of AB soon after the protection finding was made. The Respondents do not agree.

[4] A contested permanent care hearing was held March 29, 30 and 31, 2023. The Minister offered evidence from three child protection workers: A. Sheppard, J. Lovett, and M. Aucoin. NL testified as did her mother GL. WM testified. The Guardian, DM, gave evidence as well.

[5] Evidence from previous proceedings related to AB and her siblings was admitted by consent and formed part of the evidence pursuant to s. 96(1)(a) of the *Act*.

[6] This is the fourth child protection proceeding involving AB. The history of child protection involvement, in relation to both AB and her siblings, is laid out in **Nova Scotia (Community Services) v. NL**, 2014 NSSC 201 and **Nova Scotia (Community Services) v. BM**, 2015 NSSC 145.

[7] After the permanent care hearing was concluded, the Minister made a motion to admit further evidence in the proceeding. The Respondents objected and were provided an opportunity, along with the Guardian, to provide written submissions in response to the motion. A written decision on the motion has been released concurrent with this decision.

Issue

1. Does AB remain a child in need of protective services? If so, is it in AB's best interest to be placed in the permanent care and custody of the Minister?

Position of the Parties

Position of the Minister

[8] The Minister submits there are only two options before the Court given the legislative deadline to conclude this matter was May 9, 2023: a dismissal of the matter or an order for permanent care and custody. The Minister argues AB remains in need of protective services and thus must be placed in her permanent care and custody. The Minister has indicated a plan for AB to be adopted by her sister, MD, should the permanent care and custody order be granted.

[9] The Minister argues NL has substance abuse issues that have not been fully addressed by NL nor fully acknowledged by WM. The Minister points out that NL suffered multiple significant relapses despite completing a substantive in-house treatment program several years ago. The Minister claims NL continues to struggle with her addiction issues despite her claim that she has the tools and skill to remain sober. The Minister asks the Court to make a finding that NL was using intravenous drugs in March 2022, contrary to WM and NL's denials.

[10] The Minister is asking the Court to infer that WM and NL are in a relationship and continue to reside together. The Minister asserts that the evidence demonstrates that WM and NL have a long-term relationship and a history of attempting to obfuscate both the nature of their relationship as well as their living arrangements.

[11] The Minister claims that services aimed at reducing risk to AB have been attempted and failed in the past and any further services would be inadequate to protect AB given the lack of meaningful and substantive change by her parents. In particular, despite having attended addictions counselling himself over the years, the

Minister asserts that WM has failed to demonstrate insight into the risk posed by NL's ongoing substance Abuse.

[12] The Minister argues it is in AB's best interest to be placed in the permanent care and custody of the Minister and cites the following factors outlined in s. 3(2) of the *Act*:

- *The child's relationship with relatives* – without making any guarantee, the Minister cites a good faith intention to support a plan for MD to adopt AB. The Minister claims to understand that AB will always have a relationship with the Respondents, particularly given her age and her expressed wish to have contact with her parents.

- *The importance of continuity of the child's care and the possible effect on the child of the disruption of that continuity* – the Minister refutes WM's claim that AB has been in his care for most of her life. The Minister says AB has been in the care of WM from May 2015 to October 2019, and again from February 2022 to August 2022, remaining at all other times in the Minister's temporary care or the care of her sister, MD.

- *The child's views and preferences* – the Minister argues that AB's expressed desire to live with her sister was clearly and appropriately communicated through her Guardian, DM. The Minister denies that AB was improperly influenced, by DM, MD or any other person, when communicating her views and preferences. The Minister claims it has been WM who has put undue pressure on AB by inappropriately discussing the current court proceeding with her.

- *The risk the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent* – The Minister says AB needs consistency and stABility and it is not in her best interest to keep coming in and out of care. The Minister argues there is a high likelihood of future child welfare involvement, should AB be returned to WM's care, given the current protection concerns viewed within the context of substantive and long-standing past parenting issues.

- *The degree of risk, if any, that justified the finding that the child is in need of protective services* – the Minister argues that AB remains at

> substantial risk of harm given NL's serious substance Abuse issues and WM's continued lack of insight into same.

Position of WM

[13] WM seeks a return of AB to his care and custody and a termination of the proceeding. WM does not agree that AB was ever at risk of harm and, should AB be at risk, he would act as the protective parent to ensure AB is safe. WM believes AB wishes to return home and was improperly influenced when communicating her preferences to the Guardian, DM.

[14] As part of his post-hearing submissions, WM attached two letters, dated September 17, 2015, and September 29, 2015, respectively, both addressed to the Prothonotary of the Supreme Court (General Division), that appear to pertain to an adoption matter concerning one of AB's older siblings who had been placed in permanent care. WM claims this correspondence demonstrates "why there is a conflict of interest in this proceeding". Although not entirely clear, WM appears to be arguing the Minister is in a conflict of interest, or more specifically perhaps, that the Minister is biased against him.

Position of NL

[15] NL supports WM's position. In her affidavit evidence, NL claims she is sober and has the tools and skills to remain sober. In her final submissions, however, NL acknowledges that her substance abuse issue poses a substantial risk of harm to AB.

[16] NL denies living with WM and claims she resides with her mother, GL. NL says she does not pose a protection risk to AB and, should that change, she is confident that WM would not permit her access to AB.

[17] NL argues the adage "actions speak louder than words" should be considered when assessing whether WM has sufficient insight or concern About the risk posed by NL's addiction issues. She claims the Minister's decision to terminate the previous protection proceeding with AB remaining in WM's custody, and her access to AB being at the discretion of WM, is demonstrative of the Minister's recognition that WM would be protective of AB. NL says the Minister has not met its burden of proof and AB should be returned to WM's care.

Position of the Guardian

[18] The Guardian supports the position of the Minister and believes AB remains at risk of harm and that it is in her best interest that a permanent care order be issued.

[19] In terms of AB's views and preferences, the Guardian reports that AB wants to remain in the care of her sister, MD, but also wishes to maintain contact with her parents, WM and NL. The Guardian relayed that AB loves her parents, and does not wish to hurt their feelings, but feels it would be best for her if she were to remain in MD's care. The Guardian says this is AB's expressed position even though she understands a permanent care and custody order (1) does not necessarily equate to an adoption order in favour of her sister MD, (even if this is the stated intention of the Minister) and (2) does not allow for court ordered parenting time between her and her parents.

Applicable Law

[20] The Minister seeks a permanent care and custody order pursuant to s. 42 of the *Act*. The Minister must prove its case on a balance of probabilities by providing the Court with clear, cogent and convincing evidence that AB remains at substantial risk of harm and that it is in AB's best interest to be placed in the permanent care and custody of the Minister **(Nova Scotia (Community Services) v. C.K.Z.**, 2016 NSCA 61).

[21] Decisions About permanent care must be made keeping in mind the legislative purpose stated in s. 2(1) of the *Act*: to promote the integrity of the family, to protect children from harm and to ensure the best interests of the children. The best interest of the child is the paramount consideration (s. 2(2) and s. 42(1) of the *Act*).

[22] The *Act* must be interpreted according to a child-centered approach. Circumstances that may be relevant to determining a child's best interests are outlined in s. 3(2) of the *Act*. This list is a non-exhaustive. The Court must consider factors unique to the needs of each individual child and how those needs relate to risk of harm (**Nova Scotia (Community Services) v. R.M.N. and M.C**., 2017 NSSC 270).

[23] "Substantial risk" is defined in s. 22(1) of the *Act*. It means a real chance of danger that is apparent on the evidence. The Court must be satisfied that the chance of danger is real, rather than speculative or illusionary, and substantial in that there is a risk of serious harm or a serious risk of harm **(C.R. v. Nova Scotia (Community Services)**, 2019 NSCA 89).

[24] The Minister is relying on past history. Past parenting history may be relevant as it may signal "the expectation of risk" **(D. (S.A.) v. Nova Scotia (Community Services)**, 2014 NSCA 77). The court is concerned with probabilities, not possibilities. Where past parenting history aids in the determination of future probabilities, it is admissible, germane, and relevant **(Nova Scotia (Community Services) v. L.M.**, 2016 NSSC 80).

[25] Prior to the Court granting an Order for permanent care and custody, the requirements of s. 42(2), (3) and (4) of the *Act* must be met.

[26] Section 42(2) states the Court must not remove children from the care of their parents unless less intrusive alternatives, including services to promote the integrity of the family, have been attempted and have failed, or have been refused by the parent, or would be inadequate to protect the children. The obligation to provide services is not without limit. The *Act* obligates the Minister to take "reasonable measures" in this regard **(Children's Aid Society of Shelburne County v. S.L.S.**, [2001] N.S.J. No. 138 (NSCA).

[27] Section 42(3) of the *Act* states when the Court determines that it is necessary to remove the child from the care of a parent, the Court shall, before making an order of temporary or permanent care, consider whether it is possible to place the child with a relative, neighbour, or other member of the child's community or extended family. The onus is on a potential family placement to put before the Court a reasonable plan for the care of the child. "Reasonable" means proposals that are sound, sensible, workable, well-conceived and have a basis in fact **(Children's Aid Society of Halifax v. T.B.,** [2001] N.S.J. No. 225 (NSCA).

[28] Section 42(4) of the *Act* provides that the Court shall not make an order for permanent care and custody unless the Court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the statutory time limits outlined in the *Act*.

[29] Section 45 of the *Act* sets out statutory time limits for child protection proceedings. The timelines outlined in the *Act* reflect the fact that a child's sense of time differs from that of an adult and that a prolonged child protection proceeding is not in a child's best interest **(A.M. v. Nova Scotia (Community Services)**, 2014 NSCA 97).

[30] Once the statutory time limit has expired, as it has in this case, the Court has only two possible options: (1) dismiss the child protection proceeding and return the

child to the parent or guardian's care or (2) place the child in the permanent care and custody of the Minister. The matter can not be dismissed if the child remains in need of protective services. The court has no jurisdiction to make any other order once the time limit has expired **(G.S. v. Nova Scotia (Minister of Community Services)**, 2006 NSCA 4).

Findings and Decision

[31] In making my decision I have applied the civil burden of proof as well as the provisions of the *Act*. I have considered the applicable case law, including that relating to credibility (**Baker-Warren v. Denault**, 2009 NSSC 59 as approved in Gill v. Hurst, 2011 NSCA 100) and inference **(Jacques Home Town Dry Cleaners v. Nova Scotia (Attorney General)**, 2013 NSCA 4. I have analyzed the evidence, in consideration of the law, and I have reflected upon the submissions of counsel and the parties. The case law supports the premise that I may accept all, some, or none of the evidence of the parties and the witnesses.

[32] At the conclusion of the contested protection hearing (see **Nova Scotia (Community Services) v. NL, WM**, 2022 NSSC 45), I concluded:

> *WM did not display sufficient insight or concern About the risk posed by NL in terms of NL's serious addiction problem. WM's attitude in this regard seriously diminished his credibility in terms of his willingness to guard AB against the risk associated with NL. If the substance Abuse issue is not a topic of discussion, it is not clear how WM can protect against it.*

[33] I found the Minister had established, on a balance of probabilities, that WM's resumed cohabitation with NL posed a substantial risk of harm to AB given WM's demonstrated attitude towards NL's serious addiction issue.

[34] I must turn my mind now to whether circumstances have changed sufficiently to remove the risk of harm. I conclude they have not. AB remains at substantial risk of harm.

[35] In her final submissions, NL acknowledges her substance abuse issues pose an ongoing risk of harm to AB. The salient issue, then, is whether WM will act as a protective parent by ensuring AB is not exposed to the risk of harm presented by NL.

[36] The Minister argues I should make a finding that WM and NL are living together. A fair amount of the evidence submitted by the Minister was meant to support such an inference. I agree with the assertion of the Minister that the evidence of WM in relation to living arrangements between himself and NL were designed to obfuscate the matter. WM had difficulty providing clear and straightforward answers in this regard. That said, the importance of drawing such an inference may have been over-rated. I accept that NL was boarding with her mother but spending very little time there. I also found that NL was living primarily with WM full time. These findings, however, do not invalidate WM's plan that NL would begin living primarily with her mother, GL, should AB be returned to his care. The real difficulty lies with WM's unwillingness to be frank About the living arrangements in the first instance. WM's testimony in this issue damaged his credibility.

[37] The Minister is concerned with the company that WM and NL have been keeping. There was a fair amount of evidence submitted by the Minister in relation to individuals staying with WM, on a temporary basis, with known serious criminal involvement and drug activity. Again, WM had difficulty providing clear and straightforward answers. He played semantics with his evidence and claimed to have limited knowledge or concern with the background of one particular friend to whom he was providing shelter. Again, this was unnecessary because I accept WM's ultimate explanation that he was not concerned with exposing AB to the criminality of this person because AB was not in his care at the time and, if she were, he would have not allowed the person to stay there. And again, the real difficulty lies with WM's lack of candour About the situation and the resulting negative impact upon his credibility.

[38] My primary concern surrounds a referral the Minister received in early March 2022 that NL had been using cocaine intravenously. Child protection workers interviewed NL and WM About the incident and saw "small, purple bruises alongside linear scratch marks on three different spots on NL's (left) arm." NL denied the bruises were track marks, claiming instead to have scratched herself on an oven rack. NL confirmed she was right-handed during the interview. WM's reply, when questioned About whether he had any concerns About the referral and NL's bruising, was "None at all." During cross examination, WM explained he had no concerns because he knew that NL had scratched herself on an oven rack.

[39] Given NL long history of substance abuse, and her acknowledged ongoing risk to AB as a result of her addiction, I am prepared to make the finding that the bruises on NL's arm were, more likely than not, track marks resulting from

intravenous drug use. It does not make sense to me that bruising of such a pattern would occur on NL's non-dominant arm from cleaning an oven rack. I do not accept WM's evidence that he witnessed NL scratching herself on the oven racks.

[40] WM cannot be relied upon to be a protective parent for AB if he cannot be honest About the risk. Counsel for NL argues the adage "actions speak louder than words" should apply when assessing whether WM has sufficient insight to act as the protective parent. Certainly, the Minister has been prepared, in the past, to rely on WM to fulfill this role. That being said, there have also been times in the past when WM has allowed NL access to AB, contrary to court order. Within the context of significant past child protection involvement and considering the totality of evidence of past proceedings and the current proceeding, the inability or unwillingness of WM to admit that NL was using, or even possibly using, cocaine intravenously in March 2022 means that I cannot rely upon him to protect AB from risk of harm in the future.

[41] Having found that AB remains at substantial risk of harm, I cannot return AB to WM's care. The time limit embodied within the *Act* has expired and no alternate plans for placement have been put forward. However, before I place AB in the permanent care and custody of the Minister, I must also satisfy myself that such a placement is AB's best interest.

[42] Much evidence was led in relation to AB's views and preferences. I am satisfied that AB wants to remain in the care of her sister MD. I do not accept the argument that AB was unduly influenced when expressing this desire. I wish to make two further points on this issue:

(i) Had the protection concerns been resolved, AB would have been returned to the care of WM, regardless of her stated preference to remain with MD (the matter, presumABle, could then have more appropriately been taken up through a *Parenting and Support Act* application). More specifically, AB's stated preference had no bearing on my assessment of risk in this matter.

(ii) I fully accept that AB wishes to have ongoing contact with her parents and I believe mechanisms could be put in place to allow her to safely do so. I also believe it would be in AB's best interests to have ongoing contact with her parents and would make such an order but for the legislated restraint in the *Act* against doing so. I hope the Minister does, in fact, act in good faith in supporting an openness arrangement in any proposed adoption plan but I fully recognize, in

> making the permanent care and custody order, that the Minister is granted full responsibility and authority for making those decisions going forward.

[43] I accept all other submissions on behalf of the Minister in relation to the best interest analysis and find that it is in AB's best interest to be placed in the permanent care and custody of the Minister.

Conclusion

[44] I take no pleasure in making this decision. It is clear to me that WM and NL deeply love each other and their children, including AB. However, I have no choice, based on my assessment of the evidence, to conclude that AB remains a child in need of protective services. It is in her best interest to be placed in the permanent care and custody of the Minister. The Minister will make arrangements for a final visit between AB and her parents. The Minister will prepare the Order.

Marche, J.