SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. JD*, 2023 NSSC 395

Date: 20231207
Docket: 125647
Registry: Sydney

Between:

Minister of Community Services

Applicant

v.

JD

Respondent

Judge:	The Honourable Justice Lee Anne MacLeod-Archer
Heard:	November 28, 2023, in Sydney, Nova Scotia
Written Release:	December 7, 2023
Counsel:	Lindsay McDonald for the Applicant Jeff Columbus for the Respondent Mealey MacDonald for the Litigation Guardian

By the Court:

BACKGROUND

[1] This is a decision involving two children: 16-year-old WD and 14-year-old CD, who is severely autistic and requires a very high level of care.

[2] The children were removed from their mother's care on April 25, 2022. The Minister took the position that the children were at substantial risk and that a less intrusive order leaving the children in JD's care was not possible. The social worker's affidavit filed in support of the Application outlines significant concerns with JD's coping, her longstanding alcohol abuse, and neglect of the children's needs leading to WD's assumption of a parenting role for his younger brother.

[3] The Protection application was filed on April 27, 2022. Interim orders were granted at the 5 and 30-day stage on consent. JD also consented to a Protection order on July 21, 2022, finding that the children were in need of protective services under ss.22(2)(b), (g), and (k) of the *Children and Family Services Act*, S.N.S. 1990, c.5 (*CFSA*), which state:

> **Child is in need of protective services**
>
> …
>
> **22 (2)** A child is in need of protective services where
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> **(b)** there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);
>
> …
>
> **(g)** there is substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the abuse;
>
> …
>
> **(k)** there is a substantial risk that the child will experience neglect by a parent or guardian of the child, and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the harm;

[4] On October 19, 2022, JD consented to a Disposition order which required her to participate in remedial services to address her alcohol use and her unresolved grief over the death of the children's father. At the same time, the order required her to abstain from consuming alcohol and drugs.

[5] The Disposition orders were reviewed regularly until the time limit for CD approached, at which time the Minister filed its Permanent Care and Custody (PCC) plan and sought hearing dates.

[6] JD exercised weekly access with the boys, but it remains supervised due to substance use concerns. She was offered additional access after WD requested it, but she declined. Her recent request for increased access was denied because by then, WD wasn't interested.

LEGISLATION

[7] The legislation sets out a number of statutory requirements the court must consider when the Minister seeks a PCC order:

> **Disposition Order**
>
> **42 (1)** At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:
>
> > **(a)** dismiss the matter;
> >
> > **(b)** the child shall remain in, be returned to or be placed in the care and custody of a parent or guardian or third party, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
> >
> > **(c)** the child shall remain in or be placed in the care and custody of a person other than a parent or guardian or third party, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
> >
> > **(ca)** where the child is or is entitled to be an aboriginal child, the child shall remain in or be placed in the customary care and custody of a person, with the consent of that person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
> >
> > **(d)** the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;
> >
> > **(e)** the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;

> **(f)** the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.
>
> **(2)** The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,
>
> **(a)** have been attempted and have failed;
>
> **(b)** have been refused by the parent or guardian; or
>
> **(c)** would be inadequate to protect the child.
>
> **(3)** Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether
>
> **(a)** it is possible to place the child with a relative, neighbour or other member of the child's community or extended family with whom the child at the time of being taken into care had a meaningful relationship pursuant to clause (c) of subsection (1), with the consent of the relative or other person; and
>
> **(b)** where the child is or is entitled to be an aboriginal child, it is possible to place the child within the child's community.
>
> **(4)** The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

[8] I have considered the above provisions, along with the preamble to the *CFSA* and the purpose of the legislation as stated in s.2(1). I've given paramount consideration to the best interests of the children, as directed by s.2(2) of the legislation. In doing so, I've considered the circumstances outlined in s.3(2).

THE ONUS

[9] The Minister bears the onus or proving, on a balance of probabilities, that the children remain in need of protective services as defined in the *CFSA*.

STATUTORY DEADLINES

[10] The deadline for all disposition orders in relation to CD was October 19, 2023. The deadline for WM is April 19, 2024 because he was 15 years old when the

proceeding started. The parties agreed that an extension of the deadline for CD to complete the trial was in his best interests, so the merits of JD's plan can be assessed.

AVAILABLE ORDERS

[11] No family or community members have come forward to offer an alternative plan for the boys, so an order under s.42(3) isn't possible. As the statutory deadline for CD has passed, that leaves me with only two options: return CD to his mother's care if he's no longer a child in need of protective services in her care; or if the Minister proves that CD remains a child in need of protective services, I must order PCC.

[12] To obtain a PCC order for WD, the Minister must satisfy the court not only that he remains a child in need of protective services, but also that:

> …. the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. (s.42(4)).

[13] In determining whether the children remain in need of protective services at this time, I must look at the situation as it stands today. I am not revisiting the earlier orders.

POSITION OF THE PARTIES

[14] The Minister's plan for Disposition is dated October 6, 2022. It required JD to engage in individual counselling for grief and substance use, participate in a psychiatric assessment, and to cooperate with drug and alcohol testing through random urinalysis. Services were also outlined for the children.

[15] The Disposition plan also required JD to cooperate with recommendations made by the consulting psychiatrist and abstain from the use of alcohol and drugs. After receipt of Dr. Kronfli's report, the Minister asked JD to complete a relapse prevention program and individual counselling.

[16] The Minister asks that the court grant a PCC order for both children. She says that JD has not alleviated the risks, nor can she address them within the statutory timeline available for WD. She points out that, despite the boys being in the Minister's care for over 18 months, with JD having no childcare responsibilities, and

with the Minister facilitating services, she hasn't been able to overcome her challenges.

[17] JD says that she has addressed the risk, but she plans to continue to engage in the services recommended by the Minister. She also says that she has support from her partner and therapists if the children are returned to her care.

THE EVIDENCE

[18] Dr. Kronfli is a consulting psychiatrist who was qualified by consent to give opinion evidence in the areas of diagnosis and management of psychiatric disorders and the impact of such a diagnosis on a person's capacity to provide care for children. He conducted a psychiatric assessment on JD and prepared a written report dated December 23, 2022.

[19] In Dr. Kronfli's opinion, JD doesn't suffer from an identifiable psychiatric disorder or anxiety disorder. However, his report states that she does suffer from a "substance use disorder that has affected her ability to provide consistent and adequate parenting" to her children.

[20] Dr. Kronfli also expressed the opinion that "during her lifetime, Ms. [JD] had developed maladaptive coping mechanisms that demonstrate Cluster C personality traits." He testified that a maladaptive coping style leads to impulsive decisions, because a person with Cluster C personality traits gets overwhelmed when stressed. He said that poses particular problems when that person is caring for children, particularly a special needs child.

[21] One of the main features Dr. Kronfli identified with JD's personality type is avoidant, submissive, and dependant behaviour. That is a concern where there's evidence that JD has been the victim (and on one occasion the perpetrator) of domestic violence in her current relationship.

[22] It is also a concern because her partner continues to use alcohol. In his report, Dr. Kronfli recommended that JD abstain absolutely from alcohol and substance use and avoid individuals who use substances. He testified that being around someone using alcohol can trigger cravings in someone trying to abstain. He also expressed concern with JD's marijuana use because it can reduce one's motivation (their "get up and go"), which is a problem for a parent struggling to meet a child's special needs.

[23] In his report, Dr. Kronfli recommended that JD access a "focused substance use, especially to alcohol, program" and that she attend addictions counselling and AA meetings. In his opinion, JD does not have good insight into her alcohol "problem".

[24] Dr. Kronfli further concluded that JD "would benefit from continuing supportive individual counselling, specifically Cognitive Behavioural Therapy (CBT). This type of therapy would help to improve her daily coping skills and increase her self-reliance and boundary-setting in her relationships."

[25] After receiving that report, the Minister asked JD to engage in remedial services, including relapse prevention programming and individual counselling. To enhance her chances of success, where JD is an indigenous woman living off reserve, the Minister arranged for a family support worker (FSW) who speaks Mi'kmaw to work with JD as well.

[26] JD did engage with counsellor Alicia MacDonald, who testified that she took a CBT approach with JD's counselling. She confirmed that a person can show progress after 6 – 14 sessions of CBT, but for some people it takes years. She confirmed that JD only attended 3 of 6 confirmed sessions with her. She referred JD to Norma Gould at NADACA for relapse therapy through a culturally appropriate program, but JD only attended 4 of 7 sessions.

[27] The Minister implemented random alcohol and drug testing for JD to monitor her compliance with the report's recommendations for complete abstinence. The collection nurse's notes, along with the lab results, and a report from Dr. B. Nassar, the Medical Director of the Toxicology Section of the Division of Clinical Chemistry with Nova Scotia Health central zone, were tendered by consent. The lab results show positive tests for substances in JD's urine. Dr. Nassar's interpretation report concludes "with a very high degree of certainty" that JD tested positive for cannabinoids and/or ethanol on 14 of the 17 dates when urine was collected from her between February 19 – May 17, 2023.

[28] In addition to the lab results, the Minister advanced evidence of other alcohol use and impairment. For example, Cst. Bennet of the RCMP testified that she arrested JD on September 25, 2023 at which time she observed JD to be "grossly impaired". She kept JD in cells overnight to sober up, as per protocol.

[29] In addition, access aides, the social worker, and the FSW all noted concerns with JD being impaired on various occasions through the summer and fall of 2023.

JD filed an affidavit in which she claimed that she'd abstained from alcohol after June, 2023, and she insisted that was true when she testified.

CREDIBILITY

[30] JD denies that she was impaired when arrested on September 25, 2023. She later conceded that she'd been drinking vodka that day, but she insisted that it was only "a few drinks".

[31] She also denies telling the FSW that her boyfriend hit her. Yet the FSW testified that she observed bruises on JD's left arm and when she asked about them, JD told her that Mr. F hit her and "you should see my body" (or words to that effect).

[32] The Minister asks me to make an adverse credibility finding against JD. The Minister says that her denial of alcohol use despite the clear evidence of an experienced RCMP officer, and her denial of domestic violence, despite the observations and account of the FSW brings the credibility of her evidence into question.

[33] In making credibility determinations, I am guided by the law as stated by Forgeron, J. in ***Baker-Warren v. Denault***, 2009 NSSC 59, as approved in ***Gill v. Hurst***, 2011 NSCA 100. I find that JD's assertion that she wasn't impaired on September 25, 2023 is not credible. I accept the evidence of Cst. Bennet that JD was grossly impaired that day.

[34] I also accept the FSW's evidence regarding her conversation with JD about a fight with her boyfriend and the source of the bruise on her left arm.

[35] Further, I accept the evidence of the Minister's witnesses who reported concerns with JD being impaired at access, at a FSW session, and during phone calls. They were clear in their recollection of JD's behaviours (thinking she was in Italy; claiming she was on an online interview while watching Tik Tok videos), her presentation (slow, slurred speech), and their observations about her environment (a can of alcohol in her hand on July 4, 2023). Their evidence is consistent with other evidence supporting the concerns with ongoing alcohol use and abuse.

[36] I also infer from the evidence that JD called the social worker twice in one morning to cancel the same appointment, each time with a different excuse, that she was impaired when she made those calls (per ***Jacques Home Town Dry Cleaners v. Nova Scotia (Attorney General)***, 2013 NSCA 4).

[37] All of this leads me to conclude that JD's evidence isn't credible. It's not likely that she deliberately set out to deceive, but she has convinced herself of her own "truths" and until she's confronted with evidence to the contrary, she sticks to her story.

[38] It's clear from listening to JD testify that she is in denial about the extent of her alcohol dependency. She also lacks insight into the impact her alcohol use has on her children, and her ability to provide stable, safe care for them. She lacks insight into the nature of her relationship with Mr. F as well. The only real insight she demonstrated was acknowledging that her mother's excessive drinking scared her as a child, and that her own drinking has scared her children.

CONCLUSION

[39] Despite concerted efforts and flexibility shown by the social worker, the FSW, and program providers, JD did not fully engage in remedial services. I find that nothing has really changed since the Minister filed its protection application. JD continues to live her life the way she chooses and has failed to make the changes necessary to parent her children safely.

[40] As a result, I find that there's still substantial risk to the children in JD's care. She has been unable to achieve or maintain sobriety, and she is involved in an unhealthy relationship. The children would not be safe or thrive in that environment.

[41] I recognize that JD loves her children very much. She wants to parent them, but she can't overcome her own personal challenges, let alone parent a special needs child. This decision will cause her a lot of anguish, which hopefully she will address through counselling, rather than relying on substances.

[42] The Minister has met the onus on her. The children remain at substantial risk of neglect, physical harm, and emotional abuse. Services have not alleviated the risk. JD's plan is untenable given her ongoing alcohol abuse and inability to provide a safe, stable, predictable home environment. Given these findings, the only option for CD is a PCC order. I find that it's in CD's best interests to be placed in the permanent care and custody of the Minister.

[43] I also find that a PCC order is in WD's best interests. I am satisfied that the circumstances giving rise to the earlier orders are not likely to change in the foreseeable future, and certainly not by April 19, 2024.

[44] The Minister will prepare the appropriate orders.

MacLeod-Archer, J.