

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services) v. K.C.*, 2014 NSSC 58

Date: 2014-02-11

Docket: SFH-CFSA 087712

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

K.C. and B.B.

Respondents

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on February 10, 2014.

Restriction on publication:

Publishers of this case please take note that s. 94(1) of the Children and Family Services Act applies and may require editing of this judgment or its heading before publication.

Section 94(1) provides:

No person shall publish or make public 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 relative of the child.

Publishers of this case further take note that in accordance with s. 94(2) no person shall publish information relating to the custody, health and welfare of the children.

Judge: The Honourable Justice Elizabeth Jollimore

Heard: February 10, 2014

Oral Decision: February 10, 2014

Written Reasons: February 11, 2014

Counsel: Cindy G. Cormier, for the Minister of Community Services
Ms. C not appearing

Introduction

[1] This is a disposition hearing with regard to K, who has recently turned three. K's mother, Ms. C, has consented to a disposition order with regard to fifteen year old S, K's older sibling.

[2] The deadline for the disposition is tomorrow. Today's hearing was scheduled one week ago. Ms. C was present when this hearing was scheduled and had notice of it. Ms. C failed to appear today. She spoke with April Faulkner, the long term social worker who is working with this family, and let Ms. Faulkner know that she wouldn't be attending today. Ms. C has, however, filed materials showing K's upcoming health appointments and some past appointments.

[3] The Minister of Community Services seeks a disposition order requiring that K remain in Ms. C's care under the Minister's supervision. This order would be granted under section 42 of the *Children and Family Services Act*, S.N.S. 1990, c. 5. Ms. C opposes this motion and asks that I terminate the Minister's proceeding with regard to K. Mr. B has taken no part in the proceeding.

Disposition orders

[4] Disposition orders are governed by section 41 of the *Act*. Where I find that a child is in need of protective services, there must be a disposition hearing no more than ninety days after the protection finding, according to subsection 41(1). The evidence taken on the protection hearing must be considered in making the disposition order. Before I make a disposition order I must have the agency's plan for the children's care. The plan for S and K was filed on January 27, 2014.

[5] Where I make a disposition order I must state the plan that I'm applying in making my decision, the reasons for my decision (including the evidence on which I base my decision) and, if I'm removing a child from a parent's care, I must explain why the child can't be adequately protected in the parent's care. The last point is not relevant in this case because the Minister isn't asking to have K removed from her mother's care.

[6] The focus of a disposition hearing is squarely on K's best interests.

[7] There are a variety of options available to me in a disposition hearing. These are outlined in section 42 and include dismissing the proceeding (which

Ms. C seeks) and allowing the child to remain with a parent under supervision (which the Minister seeks).

[8] A disposition order must be granted in the child's best interests, which means I must consider subsection 3(2) of the *Act* where this interest is defined. A disposition order is to remedy the reason the child was found to be in need of protective services.

[9] A dismissal order is appropriate if the child is no longer in need of protective services at the date of the disposition hearing.

This proceeding

[10] When this proceeding began in September 2013, the Minister alleged that both children were in need of protective services having regard to clauses 22(2)(b) and (g) of the *Children and Family Services Act*. Under the former clause, there was concern of substantial risk of physical harm inflicted by a parent or caused by the parent's failure to supervise and protect the children adequately. Under the latter clause, there was concern of a substantial risk of emotional harm accompanied by a parent's failure to provide or refusal, unavailability or inability to consent to services or treatment to remedy or alleviate the harm. Our legislation defines emotional harm in clause 22(2)(f) by its manifestation in the form of severe anxiety, depression, withdrawal, self-destructive or aggressive behavior.

[11] At the outset, the Minister offered the evidence of Keya Leahey, a social worker, who filed an affidavit noting three essential concerns: parent/adolescent conflict; parent mental health; and child mental health. Much of Ms. Leahey's affidavit related to S. S's behaviour and her reports raised clear concerns: Ms. C and S engaged in loud arguments and there was evidence that S was harming herself. S wasn't allowed to be alone with K because Ms. C felt S was a bad influence on K. Ms. C has said that S was "abusing" K, and that S yelled around K. (It appears that S and Ms. C both did this.)

[12] Concerns about Ms. C's mental health have been raised at different times by different individuals. Ms. Leahey observed that Ms. C was having difficulty focusing on their conversation and spoke in a monotone throughout their ninety minute meeting on June 24, 2013.

[13] Ms. Leahey contacted Nadine McMullin at the IWK Mobile Crisis Unit who had met with Ms. C once, when they spoke about S. Ms. McMullin is a social

worker with the IWK Health Centre FUNDS (Follow Up Next Day Service) program.

[14] The meeting between Ms. McMullin and Ms. C lasted three and one-half hours. Ms. McMullin was quoted as observing that Ms. C “was upset” when told there didn’t seem to be grounds for involuntary medical treatment for S. Ms. McMullin found Ms. C’s presentation to be unusual: she made broad statements about S likely having a psychosis or bipolar disorder but without having any details for the basis for these beliefs. Other unnamed members of the Mobile Crisis Unit also felt Ms. C’s presentation was unusual. Ms. McMullin thought Ms. C’s presentation could have been attributable to a cognitive delay or brain injury. Ms. McMullin found Ms. C to be quite strident and apparently “paranoid”. During their meeting, Ms. McMullin suggested Ms. C self-refer to Community Mental Health Services. When Ms. McMullin later contacted Community Mental Health Services, she found that Ms. C had not attended.

[15] According to the Mobile Crisis Unit staff, Ms. C experiences cognitive distortions. Ms. McMullin was unable to identify if Ms. C has a brain injury, a significant mental illness or a substance abuse problem.

[16] Halifax Regional Police reported that, on September 26, 2013 when S left the family home, Ms. C “appeared confused [. . .] Very confused.” “She was all over the place in her thoughts and couldn’t remember key details with respect to things she said that just happened.” She “appeared to be on ‘strong medication that impaired her ability to think straight’.”

[17] On October 1, 2013 RCMP made a referral to the Mobile Mental Health Crisis Team because they were concerned about Ms. C’s mental health. The RCMP were worried that Ms. C’s mental health may be impairing her ability to appropriately respond to S’s teen issues.

[18] In some regards, Ms. C has provided appropriate care for K. When Ms. C found razors in S’s bedroom, she threw them out because she didn’t want K to get them. Similarly, the services of Tom Lamey, a family support worker, were discontinued as of January 10, 2014 based on his report that he hadn’t identified any concern with respect to Ms. C’s parenting K. Ms. C is able to meet K’s basic needs. She ensures that K is not exposed to dangerous objects and attempts to protect her from loud arguments. At three years of age, K needs this protection.

[19] Ms. Leahey met with Ms. C on September 16, 2013 and observed that K didn't appear to respond in a manner expected for a child her age: twice she cried inexplicably and at other times she flailed her arms, grunting and squealing to get attention from adults.

[20] On October 2, 2013, S said that K doesn't talk very much and only makes sounds. She said that K shakes a lot when she is angry and waves her hands a lot and that K understands things but doesn't say any words. Ms. C, according to S, will make K lay on her bed for an hour to listen to relaxation tapes and K is not allowed to get up.

[21] Mr. Lamey visited with Ms. C on October 20, 2013. He reported that K, then two and one-half, used only simple words such as "momma" and "apple". K walked on her toes quite frequently and would shake her arms and hands quite quickly by her side.

[22] An IWK crisis team nurse contacted the agency to express concerns about K on November 1, 2013. Ms. MacNessa was reporting remarks that S had made to her: Ms. C took K out of daycare one month earlier and keeps the curtains closed in her apartment. K may be developmentally delayed and is not socialized with other children.

[23] In November a subsidy was arranged to allow K to return to daycare.

[24] On November 23, Ms. C said she believed that K might have a form of autism but the daycare workers did not agree. Ms. C said that she taken K to two different doctors during the past summer. She said she was open to determining what the process would be for referring K to the development team at the IWK.

[25] April Faulkner's January 23, 2014 affidavit says that S has reported to her counsellor, Wendy Green, that K shakes when she is concentrating and that K runs back and forth for long periods of time, sometimes as much as an hour.

[26] While K's basic physical needs are met, the needs surrounding her mental and emotional development and her speech development, must also be met.

[27] Ms. C has provided proof of various appointments for K. She is unwilling to allow the Minister to monitor K's attendance, prognosis and follow through with these appointments. She does not appreciate the impact of her own well-being on K's development.

[28] In making my decision, I must consider K's best interests. Because the Minister seeks to have K stay with her mother, many of the considerations in subsection 3(2) of the *Act* are addressed: developing a positive relationship with a parent, ensuring continuity of care, and promoting bonding with a parent. K's delayed speech development and her physical actions (running, flailing her arms) indicate there are needs – mental, emotional and developmental needs - that can only be met with any certainty by the Minister's continued involvement. It's with regard to these aspects of K's best interests, identified in clauses 3(2)(e) and (f), that I find myself compelled to grant the Minister's motion.

[29] Of the options proposed by the Minister and Ms. C, as well as those contained in subsection 42(1), I find that it is in K's best interests that the Minister's request be granted.

[30] The plan that I am applying is that outlined in agency's plan for the children's care. At this point, the plan may be incomplete because the Minister lacks sufficient information to devise a complete plan. For example, the plan requires Ms. C to continue to take all prescribed medications, as prescribed. This presumes that Ms. C's prescribed medications are appropriate, though there are concerns that she receives prescriptions from multiple doctors.

Other relief

[31] Earlier in this proceeding, the Minister sought an order for production of Ms. C's psychiatric file. Ms. C is treated by Dr. Craig Gosse. Ms. C faxed a consent form to the court last week. She had signed it, indicating that Ms. Faulkner could speak with Dr. Gosse. In speaking with Dr. Gosse, Ms. Faulkner learned that Ms. C's consent was very limited: Dr. Gosse was only able to discuss Ms. C's need for private (not public) transportation.

[32] The Minister renewed the request for a production order relating to Ms. C's psychiatric file at this proceeding.

[33] The issue of Ms. C's mental health has been raised repeatedly. An assessment done a decade ago raised questions about her mental health. Affidavits filed by employees of the Minister of Community Services reflect similar concerns raised by the police, the RCMP and the IWK Mobile Crisis Unit. A better awareness of Ms. C's mental health will enable the Minister to target services to Ms. C and her children.

[34] Where this request had previously been made and discussed with Ms. C, I am willing to grant an order for production of Dr. Gosse's file.

[35] I understand the Minister anticipates seeking production of Ms. C's MSI records and a parental capacity assessment. At this point, I simply note these matters for Ms. C's information.

[36] When all parties were in court on February 4, 2014, I mentioned the prospect of having counsel appointed for Ms. C who is unrepresented. I will do my utmost to communicate my thoughts with regard to this to all parties by the end of this month.

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

Halifax, Nova Scotia