IN THE SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: Children's Aid Society of Halifax v. C.V., 2005 NSSC 85

Date: 20050421
Docket: **S.F.H. No. CFSA 029575**
Registry: Halifax

BETWEEN:

CHILDREN'S AID SOCIETY OF HALIFAX

APPLICANT

-and-

C. V. and L. F.

RESPONDENTS

Review Application

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

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 a relative of the child".

Judge: The Honourable Associate Chief Justice Deborah K. Smith

Heard: February 14th, 15th, 16th, 17th, 18th 24th, March 1st, 2nd and 18th , 2005 in Halifax, Nova Scotia

Counsel: Elizabeth Whelton, for the Children's Aid Society of Halifax
C. V., Self-represented
L. F., Self-represented
Terrance Sheppard, Amicus curiae

[1] This matter involves a Review Hearing in relation to X. F. who was born on December [...] , 2003. The parties to the application are the Children's Aid Society of Halifax and X.'s parents, C. V. and L. F..

BACKGROUND AND FACTS

[2] The matter before the Court has an involved and unique history the particulars of which can be obtained from my previous decisions. In brief, X. F. has been found to be a child in need of protective services. Shortly after this proceeding began, the Respondent parents orchestrated the disappearance of X. in order to prevent her from coming into the care and custody of the Children's Aid Society of Halifax. The child's whereabouts remained unknown to the Children's Aid Society of Halifax and the Court until May of 2004. That month, there was a multi-day standoff between the Respondent parents and the police as the police attempted to enforce the terms of the Court's Order placing X. in the temporary care and custody of the Children's Aid Society of Halifax. During the standoff, which involved the infant child, a shot was fired from within the residence where the Respondent parents, the infant child and the child's grandmother

were located. The Court was not given any evidence as to who fired the shot in question and the Court did not make any findings in this regard.

[3] Following the standoff the infant child was placed in the physical care and custody of the Children's Aid Society of Halifax where she has remained.

[4] In June of 2004 the initial Disposition Hearing was held. Following the completion of that hearing the Court ordered that X. F. remain placed in the temporary care and custody of the Children's Aid Society of Halifax until further Order of the Court. At the time of that hearing both of the Respondents were incarcerated as a result of the standoff that occurred in May of 2004. As a result, the Disposition Order did not include a clause permitting access between the Respondents and their daughter. However, the Court reserved the right to deal with the issue of access upon an application being brought by any party.

[5] On September 7th, 2004 the Court commenced its initial Disposition Review Hearing. In the decision rendered following that hearing the Court stated at ¶ 48 - 55:

> I am satisfied that X. F. continues to be a child in need of protective services.

Serious questions have been raised throughout this proceeding about the mental health of both of the Respondents. I accept Dr. Pottle's opinion that Mr. F. suffers from a Delusional Disorder (Persecutory type) as well as a Personality Disorder. Dr. Pottle's opinion related to Mr. F.'s mental health around the time of the armed standoff. There is no evidence before me that Mr. F.'s mental condition has changed since the time that Dr. Pottle assessed him in June.

As indicated previously, Dr. Pottle testified that *aside from any problems related to strange beliefs* [emphasis added by the Court] an individual who suffers from a Delusional Disorder is still able to function fairly well. The matter that the Court must consider is whether the problems that are created by Mr. F.'s beliefs place X. at risk.

Mr. F. believes that he is being persecuted and that the Government of Canada has conspired to take X. F. from him. His views have resulted in X., who is less than a year old, being hidden from both child protection authorities and the Court. In addition, they have put X. in the centre of an armed standoff with police that took place over a number of days. Mr. F.'s views have clearly placed X. at substantial risk of physical and emotional harm.

As indicated previously, I did not receive any expert testimony in this hearing concerning Ms. V.'s mental health. At the time of the Interim Hearing (in February of 2004) I referred Ms. V. for the preparation of a psycho/social history, a psychological/psychiatric examination and assessment, a parental assessment including an examination and assessment of parenting skills and techniques and a home study and assessment (This is actually one global assessment portions of which are conducted by different individuals). To date, Ms. V. has not participated in this assessment despite arrangements for such having been made by the Children's Aid Society of Halifax.

While I do not have expert opinion evidence concerning Ms. V.'s mental health, I have no hesitation in finding that the evidence that has been presented in this hearing, as well as Ms. V.'s behaviour in Court, raise serious questions and concerns about her mental health.

I am satisfied that Ms. V. was actively involved in both the disappearance of X. F. (to avoid the said child coming into the supervision or care of the Children's Aid Society of Halifax) and in the armed standoff that occurred in Halifax in May of 2004. In my view, these events and Ms. V.'s actions in these events put X. F. at substantial risk of physical and emotional harm.

> Ms. V. and Mr. F. point out that X. was a healthy and happy baby when taken into care at the time of the armed standoff. This, however, does not detract from the fact that this child was clearly placed at risk when involved in the standoff with police earlier this year. It is well established that a child protection agency or the Court need not (and in fact should not) wait for a child to actually be harmed before finding the child to be in need of protection. If there is a substantial risk of harm as defined by the **Children and Family Services Act** that is sufficient to find a child to be in need of protection. It must be remembered that one of the goals of the **Children and Family Services Act** is to *protect* children from harm. In many cases, protecting a child requires child welfare involvement *before* actual harm occurs.

[6] At the conclusion of that hearing the Court ordered that X. F. remain in the temporary care and custody of the Children's Aid Society of Halifax. For reasons given in that decision neither of the Respondents were awarded access at that time.

[7] In that same decision the Court ordered that the Respondents participate in an assessment which would include a psycho/social history, a psychological/psychiatric examination and assessment, a parental assessment including an examination and assessment of parenting skills and techniques, and a home study and assessment. The Court, in its decision, made reference to the fact that both of the Respondents appeared to subscribe to certain conspiracy theories and stated at ¶ 84:

> I am hopeful that this assessment will be beneficial to all of the parties to this proceeding. As I have indicated previously, in light of the Respondents' conspiracy theories, I am of the view that the assessment process will be much more beneficial to Ms. V. and Mr. F. if they have a say in who actually conducts the assessment. In order

> to assist in this regard, I am going to give both of the Respondents until December 10th, 2004 (two weeks from the date of this decision) to advise the Agency's counsel, Elizabeth Whelton, in writing, of which psychologist and psychiatrist they wish to conduct the assessment. The psychologist and psychiatrist must both be individuals who are licensed and registered to practice in the province of Nova Scotia and must be available to undertake the assessment in the Halifax Regional Municipality without significant delay. In the event that the Respondents do not provide the above-noted notification to Ms. Whelton, in writing, on or before the 10th day of December, 2004, the Children's Aid Society of Halifax shall be at liberty to select the psychologist and the psychiatrist who will conduct the assessment. If any difficulties arise in relation to this assessment (including the issue of payment of the psychologist or psychiatrist), I hereby reserve the right to deal with the matter further.

[8] A Disposition Review Order was issued on November 30th , 2004 which contained the above terms. Neither of the Respondents selected a psychologist or a psychiatrist to conduct the assessment that had been ordered by the Court. Accordingly, the Children's Aid Society of Halifax arranged for this assessment to be performed by the Assessment Services Team of the IWK Health Centre. Despite this Order being issued, and arrangements having been made for the assessment, neither of the Respondents have participated in the said assessment.

[9] At the time of the initial Review Hearing the Court referred to s. 42(3) of the **Children and Family Services Act** which stipulates that prior to making a temporary or permanent care and custody Order pursuant to sections 42(1)(d), (e) or (f) of the said **Act** the Court shall consider whether it is possible to place the child with a relative, neighbour, or other member of the child's community or extended family pursuant to s.

42(1)(c) of the said **Act** with the consent of the relative or other person. The Court noted that earlier in the proceedings some of X.'s relatives had apparently expressed an interest in caring for her-but it was unclear whether they were still interested in having X. placed in their care or the particulars of any plan that they may wish to advance. None of these individuals had come to Court indicating a desire to participate in these proceedings nor had they put a plan of care before the Court or formally consented to having X. placed with them. In order to insure that anyone who was seriously interested in advancing such a plan was given the opportunity to do so, the Court included in its last Order a provision which required the Children's Aid Society of Halifax to personally serve anyone who expressed an interest in having X. placed in their care with notice of the time, date and place that the matter was next scheduled to come before the Court. In addition, the Children's Aid Society of Halifax was ordered to provide such person with a copy of s. 42(3) of the **Children and Family Services Act**.

[10] Pursuant to this direction, the said Society served both A. and J. F. and both P. and K. V. with notice of the next court date, as well as a copy of s. 42(3) of the **Children and Family Services Act**. Despite being served with this information none of these individuals appeared before the Court to indicate a desire to participate in these proceedings nor have any of them put a plan of care before the Court for consideration.

RELIEF REQUESTED

[11] This hearing originated as a result of a Review Application which was signed by Ms. V. and filed with the Court on November 17th, 2004. That Review Application was subsequently withdrawn and the matter proceeded based on a Review Application filed with the Court on February 3rd, 2005 by the Children's Aid Society of Halifax. In that Application the said Society requested that X. F. be placed in the permanent care and custody of the Children's Aid Society of Halifax. For reasons given at the commencement of the hearing, I declined to hold a permanent care hearing at that time and the matter proceeded as a temporary care hearing.

[12] The hearing could not be completed prior to the expiration of the Disposition Review Order dated November 30th, 2004 and accordingly, pursuant to Civil Procedure Rule 69.12(4), the Court issued a further Disposition Review Order dated February 25th, 2005. The Children's Aid Society of Halifax has requested that the terms and conditions of that Order continue and that the matter be set down for a permanent care and custody hearing.

[13] As I understand the Respondents' position, they are seeking a dismissal of the application or alternatively, the return of the child to Ms. V. under supervision.

STATUTORY CONSIDERATIONS/CASELAW

[14] The matter before the Court involves a Review Hearing pursuant to s. 46 of the **Children and Family Services Act.** Sections 46 (4) and (5) of the said **Act** read as follows:

> **Matters to be considered**
>
> **(4)** Before making an order pursuant to subsection (5), the court shall consider
>
> (a) whether the circumstances have changed since the previous disposition order was made;
>
> (b) whether the plan for the childs care that the court applied in its decision is being carried out;
>
> (c) what is the least intrusive alternative that is in the childs best interests; and
>
> (d) whether the requirements of subsection (6) have been met.
>
> **Powers of court on review**
>
> **(5)** On the hearing of an application for review, the court may, in the childs best interests,

> (a) vary or terminate the disposition order made pursuant to subsection (1) of Section 42, including any term or condition that is part of that order.
>
> (b) order that the disposition order terminate on a specified future date; or
>
> (c) make a further or another order pursuant to subsection (1) of Section 42, subject to the time limits specified in Section 43 for supervision orders and in Section 45 for orders for temporary care and custody.

[15] In the case of **Catholic Children's Aid Society of Metropolitan Toronto v. C.M., [1994] 2 S.C.R. 165** the Supreme Court of Canada confirmed that on a status Review Hearing the Court must conduct a two-fold examination. First, the Court must determine whether the child continues to be in need of protection and, as a consequence, requires a Court Order for his or her protection. In addition, the Court must consider the best interests of the child which the Supreme Court has confirmed is an important and, in the final analysis, a determining element of the decision as to the need for protection. The Court confirmed that the need for continued protection may arise from the existence or absence of the circumstances that triggered the initial Order for protection or from circumstances which have arisen since that time.

[16] The first question that the Court must answer in this Review Hearing is whether X. F. continues to be a child in need of protection. In answering this question, the Court

must take into consideration her best interests as well as the matters referred to in s. 46 (4) of the **Children and Family Services Act.** Throughout this proceeding the burden remains on the Children's Aid Society of Halifax to establish that there is a continued need for protection and also to satisfy the Court that the Order that they are seeking is appropriate in the circumstances.

ANALYSIS

[17] I am satisfied that X. F. continues to be a child in need of protective services.

[18] As I have indicated previously, serious questions have been raised throughout this proceeding about the mental health of both of the Respondents. Mr. F. has been found to suffer from a Delusional Disorder (Persecutory type) as well as a Personality Disorder. While I have not been given expert opinion evidence concerning Ms. V.'s mental health, I have concluded that the evidence which has been presented in this proceeding, as well as Ms. V.'s behaviour in Court, raises serious questions and concerns about her mental health. Further, I concluded at the last Review Hearing that X. F. has been placed at substantial risk of physical and emotional harm as a result of her parents beliefs and actions. I ordered an assessment of the parents (including a

psychological/psychiatric examination and assessment as well as a parental assessment) which the Respondent parents have refused to participate in.

[19] As I understand it, the Respondents have declined to participate in this assessment due to a number of factors including the fact that the Assessment Services Team operated by the IWK Health Centre is a cooperative venture funded jointly by the provincial departments of Health, Community Services and Justice. Ms. V. and Mr. F. submit that this funding arrangement takes away from the Assessment Team's independence and will somehow effect the outcome of the assessment. In addition, they question the qualifications of the assessors.

[20] I do not accept the Respondents' position in this regard. They have not satisfied me that there is any valid reason why the Assessment Services Team of the IWK Health Centre could not conduct this assessment. Further, the position advanced by the Respondents fails to deal with the fact that I provided each of them with an opportunity to select which psychologist and psychiatrist would conduct the assessment. Neither of the Respondents selected an assessor and accordingly, as per my decision, the choice was made by the Children's Aid Society of Halifax.

[21] While Mr. F., during the course of this Review Hearing, suggested to the Court that he was unable to select an assessor due to his present incarceration, he did not present any evidence to the Court to support this suggestion. Further, Ms. V. did not provide the Court with any evidence which would suggest that she was unable to select an assessor.

[22] While there are clearly mental health issues at play in this case, I am satisfied that both of the Respondents had the ability to select a psychologist and a psychiatrist to conduct this assessment had they chosen to do so.

[23] I conclude that Ms. V. and Mr. F. have not participated in the Court ordered assessment as they refuse, without justification, to do so.

[24] During the course of this proceeding, Ms. V. filed an affidavit sworn to by Mr. L. F.'s brother, W. F.. In this affidavit, Mr. W. F. gave evidence about the "good and loving fatherly relationship" between Mr. L. F. and X.. In addition, this deponent refers to Ms. V. as an honest and intelligent woman and a "nurturing, loving and caring

mother". This witness goes on to state that while X. was in the care of her parents she was a "healthy and happy and well taken care of infant".

[25] What is surprising about Mr. W. F.'s affidavit is what it *doesn't* say. As indicated previously, Mr. W. F.'s brother, L., has been diagnosed with a Delusional Disorder (Persecutory type) as well as a Personality Disorder. In May of 2004, both Ms. V. and L. F. were involved in a standoff with police during which time a shot was fired from within the house that X. was staying in. X., an infant, was involved throughout this standoff. The affidavit filed by Mr. W. F. is noticeably bereft of any comment on these very significant issues.

[26] Nothing provided to me in the evidence given at the time of this Review Hearing satisfies me that circumstances have changed to an extent that X. F. is no longer in need of protection. I find that she continues to be a child in need of protective services.

[27] After reviewing all of the possible dispositions referred to s. 42(1) of the **Children and Family Services Act**, I have concluded that a further Order granting the Children's Aid Society of Halifax temporary care and custody of X. F. is in her best interests. In arriving at this decision, I have considered all of the factors set out in

s. 46(4) of the said **Act**. Further, I am satisfied that a Temporary Care and Custody Order is the least intrusive alternative that is in X.'s best interests and I am also satisfied that less intrusive alternatives, including services to promote the integrity of the family, would be inadequate to protect the said child.

[28] For the same reasons set out in my decision of November 26, 2004, I am not satisfied that X. F. would be adequately protected while in the care and custody of Ms. V., even under the terms of a Supervision Order. In my view, there is still a substantial risk that Ms. V. would disappear again with X. if this child was returned to her mother's care. I remain concerned that if the child was returned to Ms. V. under the terms of the Supervision Order and the decision was made to reapprehend the child, X. could once again be involved in a standoff with police. Finally, it is my view that Ms. V.'s inability or unwillingness to cooperate with the Children's Aid Society of Halifax makes a Supervision Order impracticable and places the infant child at risk.

[29] In addition, for the reasons set out in my last decision and herein, I am not satisfied that it is in X.'s best interests to award either Ms. V. or Mr. F. access at this time.

[30] In arriving at this decision, I have considered and applied the plan of care filed by the Children's Aid Society of Halifax in support of this hearing. However, I have not accepted that portion of the plan that seeks an Order for permanent care and custody. A Permanent Care and Custody Hearing has been scheduled to commence on May 16th, 2005. The application by the Children's Aid Society of Halifax for permanent care and custody of X. F. will be decided at that time.

[31] As indicated previously, s. 42(3) of the **Children and Family Services Act** mandates the Court to consider reasonable family or community options prior to making an Order for temporary or permanent care and custody. In this case, there are no relatives, neighbours, members of the child's community or extended family who have come to Court or who have put forward a plan indicating a desire for or consenting to having X. placed in their care. While Mr. W. F., in his affidavit, indicated a willingness to supervise Ms. V.'s care of X., he did not request or consent to X. F. being placed in his care.

[32] I am satisfied, based on the evidence before me, that a further Order should issue which will contain the same terms as my Order issued February 25, 2005 with one exception. I am no longer satisfied that there is any useful purpose in ordering the

Respondents to participate in an assessment. The Respondents have made it clear that they do not intend to participate in the assessment that was ordered by the Court previously. As I indicated earlier, a Permanent Care and Custody Hearing is scheduled to commence on May 16, 2005. At this stage, I see little purpose in continuing to order the Respondents to participate in an assessment which they clearly are not prepared to participate in. Accordingly, that portion of my previous Order will not be renewed.

[33] There are two additional matters that I wish to deal with. In correspondence filed with the Court on February 1st, 2005, Ms. V. suggested that the Respondent parents would like a response to a request by them to mediate a resolution of this matter or to participate in a settlement conference.

[34] Section 21 of the **Children and Family Services Act** provides for mediation and reads as follows:

> **Mediator**
>
> **21 (1)** An agency and a parent or guardian of a child may, at any time, agree to the appointment of a mediator to attempt to resolve matters relating to the child who is or may become a child in need of protective services.
>
> **Stay of proceedings**

> **(2)** Where a mediator is appointed pursuant to subsection (1) after proceedings to determine whether the child is in need of protective services have been commenced, the court, on the application of the parties, may grant a stay of the proceedings for a period not exceeding three months.
>
> **Extension of time limits**
>
> **(3)** While a stay of proceedings pursuant to subsection (2) is in effect, any time limits applicable to the proceedings are extended accordingly. 1990, c. 5, s. 21.

[35] The Children's Aid Society of Halifax suggests that the facts and circumstances of this case are not conducive to mediation or a settlement conference. They submit that in order for either of these processes to be successful all parties must have the capacity to understand and appreciate each other's position in an attempt to find some "middle ground". They further submit that throughout this proceeding there has been a lack of co-operation by the Respondent parents and they suggest that the only way to resolve this case is for the Court to decide it.

[36] While, in my view, it is almost always preferable for parties to mediate or settle their differences (including in child welfare proceedings), in the circumstances of this case, I agree with the comments made by Ms. Whelton on behalf of the Children's Aid

Society of Halifax that mediation or a settlement conference is highly unlikely to resolve the matter. The matter requires adjudication by the Court.

[37] I also wish to comment on a concern that has been raised by Ms. V. and Mr. F. in relation to the case notes or the records that have been prepared by the main social worker responsible for this case.

[38] Ms. Barbara McPherson is the main social worker involved with this file. She confirmed during her testimony that she is responsible for accurately recording events relating to this proceeding.

[39] During the course of Ms. McPherson's testimony it was learned that in January of 2005 X. F. was moved to a new foster home as the foster parents that had originally been looking after her were retiring. Ms. McPherson testified that internal records would have been prepared that would have documented this transfer but acknowledged that her own case notes do not reflect this move. Ms. McPherson further acknowledged that this information should have been included in her records.

[40] I agree with the Respondents' suggestion that this information should have been reflected in Ms. McPherson's case notes. Parents of a child in care are entitled to know relevant information about their child including the fact that the child has been moved during care. Ms. McPherson herself acknowledges that this information should have been included in her notes and wasn't. In my view, the fact that this information was not included in Ms. McPherson's case notes does not effect the outcome of this Review Hearing. The Court, in deciding this matter, must take into consideration all of the evidence that has been presented during the hearing and make a determination based on that evidence. After considering all of the evidence presented, I am satisfied that it is in X. F.'s best interests that the terms of my Order issued February 25th, 2005 should continue with the exception of the assessment clauses which will not be renewed.

Smith, A.C.J.