

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Nova Scotia (Community Services) v. T.L.M., 2005 NSSC 112

Date: 20050401
Docket: SFHC-37194
Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

T. L. M.,
R. H. a.k.a. R. M. and
W. G. R.

Respondents

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 relative of the child.”

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

Judge: The Honourable Justice R. James Williams

Heard: April 1, 2005, in Halifax, Nova Scotia

Oral Decision: April 1, 2005

Edited/Released: May 10, 2005

Counsel: James Leiper, for the applicant
David Grant, for the respondents

By the Court:

[1] This is a proceeding under the *Children and Family Services Act*. R. H. is the mother of C. M. and J. M.. W. R. is the father of S. R.. Ms. H., Mr. R. and these three children lived together in Mr. R.'s [...] home from approximately April 2004 to February 7, 2005. On February 7, 2005, the children were taken into care by the Department of Community Services; this proceeding initiated. The Department's concerns relate to drinking and domestic violence and consequent emotional harm to the children. The children were returned to Ms. H.'s care following the first Court appearance in this proceeding, Mr. R. agreed to live separately on a temporary basis.

[2] Prior to April 2004 Mr. R. lived in the same residence with S. and his then common law spouse, R. M.. It is alleged by the agency that this relationship also involved drinking, conflict and abusive behaviour that would have impacted negatively on S..

[3] The primary issue at this point is the "in need of protective services" issue. Are the three children, J. and C. M. and S. R., in need of protective services

pursuant to s. 22(2) of the *Children and Family Services Act*? The onus in these proceedings is always on the child welfare agency, here the Minister of Community Services.

[4] The *Children and Family Services Act* contains a number of provisions that guide the Court in its consideration of this and other issues, including the factors outlined in the preamble of the Act and the provisions related to “best interests” being the primary test or consideration for the Court.

[5] The Act treats the family as the primary place where children should be. This should be maintained unless it becomes inconsistent with their best interests to be there. The burden of proving or showing that things should be otherwise or, for that matter, that proceedings such as these should continue, is, as I have stated, on the agency.

[6] Here, the grounds alleged by the agency that the children are in need of protective services include:

s. 22(2) A child is in need of protective services where

...

(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

...

[7] I am satisfied with respect to S. and C. that they are in need of protective services both pursuant to section 22, subsections (f) and (g) and that J. is in need of protective services pursuant to subsection (g). S. and C. have exhibited significant concern and anxiety concerning some of the events that have occurred in the home. There is a substantial risk that all will suffer emotional harm.

[8] The factual background of the matter is complex. It arises in part from a conflict between Ms. H. and Mr. R. on January 19, 2005, and in part from Mr. R.'s "history". Ms. H. and Mr. R. have reacted to this proceeding and the allegation of alcohol abuse and conflict within their home with a kind of siege mentality. They have said that there is a conspiracy against them, that everybody got it wrong, it did not happen, if it did happen it was not very serious, that statements made by the children were induced or wrong. They have said that there was no drinking,

then that there was just a little bit of drinking. There have been various responses. They have said people were rude to them. They have said a number of different things. There may or may not be some thread of truth to some of their concerns about how they were treated, in terms of how they felt about other people's demeanors. The bottom line is the one common pattern to what they have said, until they hit the witness stand, and even then until questions were very directive, was that it was all somebody else's fault and that they had no responsibility.

[9] This is a situation where, in terms of whatever happened on January 19th, 2005, I am satisfied that there was a serious dispute between them. I am satisfied that there was drinking on at least the part of Mr. R.. I am satisfied that the children were in fear. I am satisfied that there was swearing and yelling. I am satisfied that the reaction of Ms. H. and Mr. R. to the children's statements to others was to attempt to "shut down" communication from/about their household. Ms. H. and Mr. R. took the attitude that they would not talk openly about whatever problems were coming to light that evening, and that they would discourage the children from talking (after their first conversations with social workers or outsiders). There is more than one statement from S. and C. before the court. I am satisfied that the differences between these statements (from the children) are as

Mr. Whitzman (an independent professional who saw the children) alluded to, largely because of parent intervention with the children and the suggestion that they not talk to anybody. I do not accept the suggestion that what was said is “Don’t talk to anybody unless we’re there”. I am concluding from that it was essentially, as S. said, “We were told not to talk to anybody because Dad said we might have to go away”. I conclude that there was and is a substantial risk that these children will suffer emotional harm in the care of this couple and that S. and C. have suffered emotional harm. Ms. H. and Mr. R., at this point have not provided or engaged in services that would remedy these concerns.

[10] I accept the evidence of Ms. M. (Mr. R.’s former partner) that threats of violence, violence and a pattern of alcohol use was a problem within her relationship with Mr. R.. When I say this, I do not say this was all or only about Mr. R.. It may well be that Ms. M. drank and that it was a relationship in which both parties contributed to conflict. The bottom line, however, is there was conflict, serious conflict, more than once. It was harmful to S.. It was harmful to Ms. M., and it was harmful to Mr. R.. There is a pattern here and that is that conflict and arguments between Mr. R. and his partner(s) (now Ms. H.) escalate

when he uses alcohol. I conclude that this is harmful to the children. The evidence of this pattern of behaviour is not just from Ms. M..

[11] Ms. H. acknowledges that Mr. R. told her that there were problems in his relationship with Ms. M. which were alcohol and otherwise related (although in the questioning of Ms. H. this had to almost be dragged out of her). Further, Mr. R. quite openly acknowledges the nature of these problems in his relationship with Ms. M.. So, despite the fact that Mr. R.'s and Ms. H.'s response to this proceeding is that it is "everybody else's fault", if we peel it back a little bit, there is some acknowledgement by them of the seriousness of this - and the fact that for Mr. R., alcohol use and domestic violence have a relationship.

[12] J. F. suggested that Mr. R. had a rifle on January 19, 2005 and spoke of suicide. Mr. R. and Ms. H. deny this. I don't need to decide whether there was a rifle there. It matters not with respect to the legal issue now before me - whether these children are in need of protective services. It is clear that there was a serious and significant problem in the home of Ms. H. and Mr. R. on January 19, 2005 and that it was one involving alcohol and domestic violence. Domestic violence (as defined by the statutes and by most of this community) is not limited to purely

physical altercations, does not only mean that you are “pounding on each other”. If you are yelling and demeaning and saying “get out of here, get out of here” in front of your children, that, from the perspective of the children, is domestic violence. Such behaviour is emotionally harmful to the children and, for that matter, the adults involved. That needs to be understood by these adults.

[13] Minimizing (by Ms. H. and Mr. R.) these issues is a significant problem. I am very disturbed by the fact that Ms. H.’s testimony seems to suggest that “well, there’s a drink here, there’s a drink there, there’s a couple of drinks there”. Yet, on the other hand, it is acknowledged by Mr. R. that he is an alcoholic who has had serious alcohol-related relationship problems in the past. If he is stating to this Court that he is an alcoholic, then he is stating that he cannot drink. If he is stating that he is an alcoholic and the issues, to use the phrasing used by Ms. H., that arise when he drinks are escalated domestic conflict, escalated conflict and arguments between the two adults in a relationship in a household with children, then both adults need to understand that once that starts becoming a pattern, it is the agency’s duty to intervene. Domestic violence is referred to as one of the specific heads with respect to a need of protective services intervention and the

agency has no choice but to intervene. Here, given the evidence of Mr. R. and Ms. M., there is a pattern of behaviour by Mr. R. when he drinks that is problematic.

[14] With respect to the other subsections of s. 22(2) that have been alleged by the agency - in terms of a need of protective services - I would expressly reserve on them and leave it open to the Court to make further findings.

[15] The finding in need of protective services has been made. The problem with alcohol is acknowledged by Mr. R.. The future issues before the Court are, in many respects, fairly clear. In my view, there should be remedial interventions.

[16] Counselling should be provided to Ms. H. to alert her and to provide information to her about the nature of alcoholism and what I perceive as a significant problem with her rather benign acceptance of there being “one or two drinks from time to time”. Obviously that will have to take place following the unrelated medical intervention that is about to take place with respect to her.

[17] With respect to the issue of treatment, these events occurred in January and at the start of February. At some time in March, Mr. R. engaged in the CORE

program at the Commission on Drug Dependency. At this point I am unclear as to how significant an engagement that is or what treatment intervention he has undertaken.

[18] I hope that today is somewhat of a turning point. This is a situation where, first of all, there has to be some recognition that this is not a battle that has to be won at every date and every stage by W. R. and R. H. against the agency. This, in many respects, is not the agency's case anymore. The agency has a responsibility to present evidence. In terms of investigation, the agency's responsibility is to put forward evidence. They have done that. They have put Ms. F. and Ms. M. on the witness stand. Mr. R. and Ms. H. can sit there and say they lied, they did this or that, but there was very little in terms of cross-examination that dissuaded me from accepting the core of their statements and, in fact, much of what they said is consistent, when you strip it away, with what Ms. H. and Mr. R. had to say (except as to the seriousness of the events and recognition of their potential impact on the children) about Mr. R.'s history of alcohol use and domestic conflict.

[19] I have really no evidence that says, apart from alcohol (and the consequent conflict) in this home, there is any independent problem. Alcohol has been

presented as the match that starts the fire. So the solution for Ms. H. and Mr. R., the way of ensuring that the agency is out of their life as a couple, that the court is out of their life and that their children are in their lives, is not complicated and, quite frankly, not within my reach, not within the agency's reach, but is within the reach and control of Ms. H. and Mr. R..

[20] So that as long as they come to the Court and say "there is a conspiracy, the world is against us, somehow the children's statements are untrue, yet happen to match up with what Ms. F. said and with what Ms. M. said" and the rest of it, then they are creating a situation where the Court has to make a choice between their evidence that "the world is okay" and the rest of the evidence (including their, and especially Mr. R.'s acknowledgement of problems in his relationship with Ms. M.) and his statement that "I am an alcoholic", and that there was some drinking on January 19, 2005.

[21] I have made my choice now. I have found the children in need of protective services. Ms. H. and Mr. R. may or may not like that choice, but now they have a choice to make and that choice is where they go from here.

[22] One of the events that is going to occur in the next few days is Ms. H.'s hospitalization. One of the possibilities is that if arrangements can't be made for the children then they are going to have to come temporarily back into care. Nobody wants that. Ms. H. and Mr. R. may say, well, that is the agency's fault. From where I sit, it is not the agency's fault. These events, this proceeding, started some time ago and if Mr. R. had said, "I'm an alcoholic and there's a problem", or if they had both said that "alcohol is a problem in our household or a potential problem in our household", or whatever instead of denying there was a problem then we would have been beyond just dealing with defining what the problem is today. That did not happen. I am not saying that to blame Ms. H. and Mr. R., I am saying it to point out that is why we are dealing with this issue of what happens next week now instead of maybe being able to deal with it three weeks ago or a month ago. No one should say that the issue of placement of the children next week is the agency's fault. Ms. H. and Mr. R. had every right to take the position they did, but there are consequences, delays as a result.

[23] I have found the children in need of protective services, and in doing so identified alcohol use and domestic conflict as serious issues. Now this proceeding must move on.

[24] Now, the evidence from both Ms. H. and Mr. R. says that alcohol is a problem for Mr. R. when he is dealing with a partner. Both have said that with respect to Ms. M.. The events of January 19th demonstrate it with Ms. H.. Ms. H. and Mr. R. both also said that this is a better relationship than maybe past relationships that Mr. R. has had and, for that matter, that Ms. H. has had. To me that says that from their point of view this relationship is something that is worth working on, worth committing to, worth making sacrifice for. I assume that. In fact, I am pleased to hear that, I am glad to hear that. So, “how is that going to happen?” becomes the question and I do not know, because nobody has taken that tact at this point, everything has been “get rid of the legal proceeding, the agency is wrong”. Well, we are past that.

[25] Again, I am not being critical of Ms. H. and Mr. R. for taking the positions they did, but they need to accept that by taking that approach we did not get to the next stage (beyond the in need of protective services issue) until now.

[26] The question becomes “where do we go from here?” Well, what we need to do is we need to make sure that alcohol is not in the home of Ms. H. and Mr. R.

and more particularly we need to try to make sure that alcohol is not in Mr. R.'s life.

[27] So the question becomes “what can you do?” I do not want you to think of it only in terms of what can you do to satisfy the agency. While you need to think in those terms to some extent, the real question here is “what can you do to satisfy the Court?” What can you do to satisfy me that you accept that alcohol is an issue in your lives and want to do something about it? Ms. H., that does not mean saying “a drink or two is okay”. That means saying “no, a drink or two is not okay”. You have heard Mr. R. say that part of what he did not like about the relationship with Ms. M. is that if she took a drink it was hard for him. Well, we should not need him to tell us or you that again. It is obvious it would be hard for someone in that situation. So there should really never be any alcohol in your home. The question then becomes, “well, why did he slip between November and mid-January when this all came on?” I do not know. He said that he was trying to be social. Maybe it was because partly he was in a new relationship and he did not know whether you would be supportive if he did not drink. It does not matter because it is done. But what needs to be done is a plan adopted that can convince me, can convince the agency that the children’s best interests lie in being in your

home. The agency needs to be convinced because you are going to be working with them in terms of services. In the end it is entirely possible that you will fail to convince them but you convince me. It is also possible that you convince them but not me.

[28] So, what needs to be done is basically a plan put together that says, “okay, how can we do this, how can we make sure alcohol is not part of our life?” Now you heard me ask the question about antibuse. I do not know that much about antibuse either. I do not know whether it takes two weeks on it to take effect or I do not know anything about that, but I am willing to listen. And you need to understand, I am not going to order you on antibuse, Mr. R.. I do not have the jurisdiction to do that, and I don’t know whether it’s appropriate. That is obviously something you would have to take up with a doctor. I am not looking for you to ask me any questions. You need to talk to Mr. Grant and receive his advice, you need to talk to your doctor and there is going to be time for that. But just think about this for a second, think about if you are the agency, and one thing that you say is in response to all this (and the agency has acknowledged the main issue here is alcohol and what it leads to in terms of violence) one statement to the agency is “there is a conspiracy, nothing happened and then they have got all this

stuff with the kids and that”; then think about the other message and another course of action and that is, “we don’t necessarily agree that this is as serious as you say but we do acknowledge that it is potentially as serious as you say, we do acknowledge that alcohol is a significant issue for Mr. R. and has been in the past and we want to take some steps to demonstrate that alcohol is out of his life”. And what this takes, Mr. R., is you need to convince the Court that this is the most important thing to you, and that means that if there is somebody scheduled to come for a blood or urine test it means you do not go into town to the CORE program. It means that you are there for the test or you call them ahead and say “meet me here”. Do not kind of say “catch me if you can” or “I left a phone number, find me if you can”. You need to be aggressive, you need to be the actor saying “I want to make this happen”. Whether you follow up with the – don’t read me wrong and say that I think – and I am not saying that I think antibuse is the answer here. I asked the question, I do not know enough about it to think it is or not. If I do not hear anything more about antibuse, I’m not going to think anything other than probably it was not appropriate.

[29] Now, Mr. Grant, I am prepared to adjourn the matter to Monday to hear submissions on the temporary care arrangement, if you want. Otherwise, the

existing order is going to remain in place at this point because I really do not have much in the way of evidence as to what interventions or possibilities there are with respect to Mr. R. and I do not know what alternatives they have. The issue with respect to the medical thing is somewhat different and even the way the question is asked is different. Let me just give you an example, and I am not suggesting this is a solution - his mother says that she cannot do it by herself, but I do not know whether she could just move into the trailer with him and be both a supervisor in terms of his alcohol use because I do not have anything to indicate that he cannot look after the children if there is no alcohol. So what this is about at this point is trying to come up with something creative, and the reason that is important is my focus is not on the two of you or the agency or whatever. It is on the three kids. All of us agree it is not in the interests of those kids to come out of your home next week, Nobody suggests otherwise. But we have to find a way of doing that.

[30] Now, I am telling you the evidence before me, the way it is right now, I am not going to just put you into that home by yourself without some other intervention, Mr. R.. And, Mr. Grant, if you want to come back on Monday afternoon so that you and Mr. Leiper can talk or whatever, I have made two suggestions and surely there are other possibilities out there but if there is a

problem, instead of blaming people for there being a problem, there needs to be a solution. So I have mentioned two and there may be others.

[31] My assumption is that whatever surgery Ms. H. is having she's waited for and my view, and I will be very frank with this, is that she should have it. I do not even know what kind of surgery it is, and if something can be arranged where he is living with his mother and she agrees that she would report any use of alcohol on his part, then you should put that to the agency and the agency will deal with it.

[32] I hope I have been very clear in saying that where this proceeding goes from here I see as largely being determined by Ms. H. and Mr. R. and what they do with the alcohol (and domestic conflict) issue. And I give you both credit. You have acknowledged the problem on the witness stand. It is not in your affidavits. It is a hard thing to say. It is a hard thing to acknowledge. You have talked about it, and you have acknowledged it. I have made those findings and now we need to move forward constructively and basically create some sort of situation where fighting the disease of alcoholism is something that is easier, not harder for you to do as a family.

J. S. C. (F. D.)

Halifax, Nova Scotia